

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

BELMONT HEIGHTS ASSOCIATES
PHASE III, LTD.,

Petitioner,

v.

FHFC CASE NO.: 2003-050
APPLICATION NO.: 2003-110C

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

RECOMMENDED ORDER

An informal hearing on this matter was noticed for September 11, 2003. BELMONT HEIGHTS ASSOCIATES PHASE III, LTD., ("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

The representatives for the parties at the hearing are as follows:

For Petitioner:

Michael Donaldson, Esquire
Carlton Fields, P.A.
P.O. Drawer 190
215 S. Monroe St., Suite 500
Tallahassee, FL 32302

For Respondent:

Matthew A. Sirmans, Assistant General Counsel
Florida Housing Finance Corporation
227 N. Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

JOINT EXHIBITS

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

STATEMENT OF THE ISSUE

The issue in this case is whether Petitioner's application contained sufficient documentation to receive 1.25 tie-breaker points for proximity to a grocery store and 1.25 tie-breaker points for proximity to a public school.

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, Belmont Heights timely filed a Petition for an Informal Administrative Hearing under Sections 120.569 and 120.57(2), Florida Statutes, disputing the Florida Housing Finance Corporation's ("Corporation") final scoring of its 2003 Universal Cycle Application for the proposed Belmont Heights Estates Phase III apartment complex. The Corporation granted Petitioner an informal hearing in this matter. Petitioner sought a determination that the Petitioner was entitled to 1.25 tie-breaker proximity points for proximity to a grocery store and was entitled to 1.25 tie-breaker proximity points for proximity to a public school. The parties agree the surveyor report provided by Petitioner contain correct latitude and longitude coordinates of the grocery store and public school and therefore entitled to the tie-breaker proximity points.

FINDINGS OF FACT

1. On or before April 8, 2003, Petitioner submitted an Application to Florida Housing Finance Corporation's ("Florida Housing") 2003 Universal Cycle for the award of an allocation of low-income housing tax credits ("Tax Credits") for the development of Belmont Heights Estates Phase III, a proposed 251-unit affordable housing apartments complex to be located in Tampa, Hillsborough County, Florida.

2. Florida Housing is a public corporation organized under Chapter 420, Fla. Stat., to provide and promote the public welfare by administering the governmental function of financing and refinancing houses and related facilities in Florida in order to provide decent, safe and sanitary housing to persons and families of low, moderate and middle income.

3. To encourage the development of low-income housing for families, in 1987 Congress created federal income Tax Credits that are allotted to each state, including Florida. Section 42 of the Internal Revenue Code governs this program. 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 sells, or syndicates, the Tax Credits to generate a substantial portion of the funding necessary for the construction of the development.

4. Florida Housing is the statutorily created "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, Fla. Stat.)

5. After the scoring process, Florida Housing allocates the Tax Credits pursuant to Fla. Admin. Code R. 67-48 *et. al.*, and a Qualified Allocation Plan ("QAP"). The provisions of the QAP are adopted and incorporated by reference in Fla. Admin. Code R. 67-48.025

6. Pursuant to the state and federal statutory mandates, Florida Housing has established a competitive application process that attempts to insure the most effective use of available Tax Credits. (See Section 420.507 (22)(f), Fla. Stat. and Fla. Admin. Code R. 67.48 *et. al.*) Awards for the SAIL program, the Multifamily Mortgage Revenue Bonds program and the Low Income Housing Tax Credit program are included in a single application process (the “Universal Cycle”) governed by Fla. Admin. Code R. 67-48 *et. al.* The Housing Credit program is included in this competitive application process in which applicants for any of the above-referenced Florida Housing multi-family rental programs submit a single application (the “Universal Application”).

7. The 2003 Universal Application, adopted by Fla. Admin. Code R. 67-48.002(111), parts I through V, 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.

8. Petitioner submitted its 2003 Universal Application, on or before April 8, 2003. As part of its Application, Petitioner submitted a Surveyor Certification at Part III, Section A, Subsection 11.b(1), at Exhibit 25, which indicated the longitude and latitude coordinates for the location of a grocery store and public school. In its Application, Petitioner indicated that both the grocery store and public school were less than or equal to one mile from the proposed development site and was therefore entitled to a total of 2.50 Proximity tie-breaker points or 1.25 points for each service.

9. After Petitioner submitted its 2003 Universal Application, Florida Housing's staff commenced scoring the Application pursuant to Part V, Chapter 420, Fla. Stat., and Fla. Admin. Code R. 67-48 *et. al.* Florida Housing completed the scoring process on May 12, 2003.

10. After performing preliminary scoring, Florida Housing's staff notified Petitioner of the results. Florida Housing awarded Petitioner one Tie-Breaker Proximity Point for its proximity to a grocery store and no points for its proximity to a public school. Florida Housing determined that Petitioner was only entitled to one Tie-Breaker Proximity Point based upon the Street Atlas USA 2003 software. The Street Atlas USA 2003 software determined that the grocery store was more than one mile away from the proposed development site and that the public school was more than five miles away.

11. Petitioner could submit additional documentation, revised forms, and other information that it deemed appropriate to address any curable issue raised in any NOPSE, Florida Housing's position on each NOPSE and preliminary scoring. These documents, revised forms and other information were known as "cures" and were due on or before June 19, 2003 (the "cure period").

12. In response to Florida Housing's preliminary score, Petitioner submitted a cure to Part III, Section A, Subsection 11.b(1), at Exhibit 25, providing another Surveyor Certification along with a Surveyor's Report which confirmed that both the grocery store and school were less than one mile from the proposed development site's Tie-Breaker Measurement Point. The surveyor concluded that the Street Atlas USA 2003 software failed to correctly locate the location of the grocery store and public school and that both were less than or equal to one mile of the proposed development site.

13. After Petitioner submitted its cures, all applicants had an opportunity to review Petitioner's cures. Any applicant could submit to Florida Housing a Notice of Alleged Deficiencies ("NOAD") to challenge the Petitioner's cures. A NOAD was filed on Petitioner's application questioning Petitioner's cure to Part III, Section A, Subsection 11.b(1) at Exhibit 25, specifically, that Petitioner's cure did not state that the Street Atlas USA 2003 software failed to correctly identify a location that is on the service site upon entering the service's address.

14. Florida Housing then reviewed the NOAD and determined in its final scoring of Petitioner's Application, that the cure to Part III, Section A, Subsection 11.b(1) and Exhibit 25 failed to achieve the selected proximity tie-breakers points. This item is designated as 1P and 2P on the 2003 Universal Scoring Summary.

15. Following this process, Florida Housing on July 18, 2003, sent Pre-Appeal Scores and a Notice of Rights to Petitioner. The Notice of Rights notified Petitioner that it could contest Florida Housing's actions by requesting an informal hearing before a contracted hearing officer.

16. Petitioner timely requested an informal hearing by filing its "Petition for Review," on August 12, 2003.

17. Part III, Section A, Subsection 11.b, of the 2003 Universal Application Instructions states in part that, "If an Applicant concludes upon entering an Address for a service... into the Street Atlas USA 2003 software that the software fails to correctly identify a location that is on a service site, the Applicant may provide evidence of the inaccuracy..." Petitioner's Surveyor Certification and Affidavit of Surveyor demonstrated that the surveyor entered the addresses of the grocery store and public school in the Street Atlas 2003 software and determined that it failed to correctly identify the location of either service.

CONCLUSIONS OF LAW

1. Pursuant to Sec. 120.569 and 120.57(2), Fla. Stat. and Fla. Admin. Code R. 67-48 *et. al.*, the Hearing Officer has jurisdiction over the parties to this proceeding. The Petitioner's substantial interests are affected by the proposed action of the Corporation. Therefore, the Petitioner has standing to bring this proceeding.

2. Florida Housing is authorized to institute a competitive application process pursuant to section 420.507 (22)(f), Fla. Stat., and has done so at Fla. Admin. Code R. 67-48.004.

3. The 2003 Universal Application, Parts I through V, and accompanying instructions are incorporated by reference into Fla. Admin. Code R. 67-48.002(111). Part III, Section A, Subsection 11 says in part:

To be eligible for tie-breaker points, the Applicant must indicate the proximity of the Proposed Development to services and Development Address...If an Applicant concludes upon entering an Address for a service (Grocery Store, Public School, Medical Facility or Pharmacy) into the Street Atlas USA 2003 software that the software fails to correctly identify a location that is on a service site, the Applicant may provide evidence of the inaccuracy behind a tab labeled "Exhibit 25" of the Universal Application...for consideration by Florida Housing. At a minimum, the evidence must contain an additional 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 2003 software fails to correctly identify a location that is on the service site upon entering the service's Address; and (3) the correct latitude and longitude coordinates (seconds, truncated after one decimal place) of the main public entrance for the respective service.

4. Petitioner submitted a Sworn Clarification and Affidavit of Mark A. West, a licensed professional surveyor in the State of Florida, which reaffirmed his conclusion that when he entered the address of the grocery store and public school, the Street Atlas USA 2003 software failed to correctly identify a location that is on the service site of the grocery store or the public school. Mr. West confirmed and clarified this determination was the basis for his use

of the longitude and latitude coordinates. Mr. West then provided the correct latitude and longitude coordinates of the main public entrances to both service sites


5. Petitioner has provided information in its cure documentation which satisfies the required elements to achieve the selected Proximity Tie-Breaker Points, provided in the instructions to Part III, section A, Subsection 11.b(1), at Exhibit 25 of the Universal Application. Accordingly, Petitioner is entitled to 1.25 Proximity Tie-Breaker Points for proximity to a grocery store; and 1.25 Proximity Tie-Breaker Points for proximity to a public school.

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 giving Applicant 1.25 Proximity Tie-Breaker Points for proximity to a grocery store and 1.25 Proximity Tie-Breaker Points for proximity to a public school.

Dated this 2nd day of September, 2003 in Tallahassee, Florida.



David E. Ramba, Hearing Officer

Copies Furnished to:

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