

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

GREEN GABLES APARTMENTS, LTD.,

Petitioner,

v.

FHFC CASE NO.: 2004-024-UC
Application No. 2004-105C

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, on August 25, 2004, an informal administrative hearing was held in this case in Tallahassee, Florida before 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:

Bryce W. Ackerman, Esquire
Gray, Ackerman & Haines, P.A.
125 NE 1 Avenue, Ste. 1
Ocala, FL 34470

For Respondent:

Hugh R. Brown, Assistant General Counsel
Florida Housing Finance Corporation
227 N. Bronough Street, Ste. 5000
Tallahassee, FL 32301-1329

EXHIBITS

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

- Exhibit 1: Prehearing Stipulation.
- Exhibit 2: Cure documentation submitted by Green Gables regarding the proximity tie breaker points including the 2004 Cure Form, the Cure Explanation, an attached page including a single paragraph beginning with the words "Attention Scorer:..." and a single page letter from the surveyor dated June 8, 2000.
- Exhibit 3: Preliminary Scoring Summary for Application 2004-105C, dated April 27, 2004.
- Exhibit 4: NOPSE Scoring Summary for Application 2004-105C, dated May 19, 2004.
- Exhibit 5: Final Scoring Summary for Application 2004-105C, dated July 8, 2004.

WITNESSES

There were no witnesses for either party.

PRELIMINARY STATEMENT

On or before March 31, 2004, Petitioner, Green Gables Apartments, Ltd., ("Green Gables") submitted an application to Respondent, Florida Housing Finance Corporation ("Florida Housing") for Low Income Housing Tax Credits in the 2004 Universal Cycle Application program. There are no disputed issues of material fact.

STATEMENT OF ISSUE

The issue in this case is whether the Florida Housing Finance Corporation erred in failing to award Petitioner 1.25 proximity tie-breaker points for choosing a Bus-Stop.

FINDINGS OF FACT

The following facts were jointly stipulated by the parties prior to the hearing.

1. Green Gables timely submitted an Application to Florida Housing for low income housing tax credits in the 2004 Universal Cycle in connection with a proposed 124 unit townhouse development in Marion County, Florida.
2. To encourage the development of low-income housing for families, Congress in 1987 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 for each year. The developer sells, or syndicates, the Tax Credits to generate a substantial portion of the funding necessary for construction of the development.
3. Florida Housing is a public corporation organized pursuant to section 420.504, Florida Statutes, to provide and promote financing of affordable housing and related facilities in Florida. Florida Housing is an agency as defined in section 120.52, Florida Statutes, and, therefore, is subject to the provisions of Chapter 120, Florida Statutes.
4. Florida Housing is the statutorily created "housing credit agency" responsible for the allocation and distribution of low-income Tax Credits (also know as housing credits) in Florida. See section 420.5099, Florida Statutes. In this capacity, Florida Housing determines which entities will receive housing credits for financing the construction or rehabilitation of low-income housing.

5. Florida Housing is governed by a Board of Directors appointed by the Governor with the Secretary of the Department of Community Affairs sitting ex-officio.

6. Housing credits are allocated by Florida Housing through a competitive application process. Applications for housing credits are submitted to Florida Housing through a once-a-year process referred to as the Universal Cycle, which is governed by chapter 67-48, Fla. Admin. Code.

7. The Universal Cycle is a single-application process for the housing credit program, the Florida Housing-administered SAIL program under section 420.5087, Florida Statutes, and the Home Investment Partnership Program operated by Florida Housing pursuant to section 420.5089, Florida Statutes, and federal Housing and Urban Development regulations.

8. Florida Housing uses a scoring process for the award of housing credits outlined in rule 67-48.004, Fla. Admin. Code, and a Qualified Allocation Plan (QAP). The provisions of the QAP are adopted and incorporated by reference in rule 67-48.025, Fla. Admin. Code.

9. Pursuant to the QAP, housing credits are apportioned among the most populated counties, medium populated counties, and least populated counties. The QAP also establishes various set-asides and special targeting goals.

10. The 2004 Universal Cycle Application, adopted as Form UA1016 (Rev. 3-04) by rule 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, including “tie-breaker” points; however, the failure to provide complete, consistent and accurate information as prescribed by the instructions may reduce the Applicant’s overall score.

11. To provide a means of determining which applicant should rank higher when all threshold requirements are met and application scores are identical, Florida Housing awards “tie-breaker” points for proposed developments which are in close proximity to certain services, such as a Medical Facility, Pharmacy, or Bus Stop or Metro-Rail Stop. See Part III, Section A, subsection 10 of the Universal Cycle Application Instructions.

12. Preliminary scores for all applicants were released by Florida Housing on April 29, 2004. Following consideration of comments submitted by other applicants and further review of applications pursuant to rule 67-48.004(4) and (5), Fla. Admin. Code, Florida Housing released Notices of Possible Scoring Error (NOPSE) scores on May 28, 2004. Applicants were then permitted to submit “cures” to problems identified in the preliminary and NOPSE scores. See rule 67-48.004(6), Fla. Admin. Code. Applicants also were allowed to comment on the “cures” submitted by competitor applicants by filing Notices of Alleged Deficiencies (NOADs). See rule 67-48.004(7).

13. After review of NOADs, final scores were released by Florida Housing through a Universal Scoring Summary dated July 9, 2004. Each applicant received its own Universal Scoring Summary.

14. When preliminary scores were released by Florida Housing on April 27, 2004, Green Gables was awarded no proximity tie-breaker points out of a possible 1.25 tie-breaker points for its proximity to one of the following: (i) Medical Facility, (ii)

Pharmacy, or (iii) Bus Stop or Metro-Rail Stop. In its explanation for the scoring, Florida Housing stated that “Applicant selected too many services. Must choose between Medical Facility, Pharmacy, or Bus Stop/Metro-Rail Stop.” See Item #s 3P, 4P and 5P of Florida Housing’s Preliminary Scoring Summary for Green Gables dated April 27, 2004.

15. In response to the Preliminary Scoring Summary, Green Gables submitted “cure” materials relating to the proximity tie-breaker points consisting of a “Brief State of Explanation regarding Application 2004-105C” (“Cure Explanation”) as well as a letter dated June 8, 2004, authored by the surveyor that certified the distance to the bus stop to be 505 linear feet.

16. In the Cure Explanation, Green Gables included the following instruction: “In the event that the bus-stop does not qualify for maximum points, please use the pharmacy that was shown on the Surveyor Certification.” Attached to the Cure Explanation was a single page containing a single paragraph that stated:

Attention Scorer: Please use the location of the bus-stop as shown on the Surveyor Certification as the service selected for the Proximity Tie-Breaker Point. The location of the Medical Facility and Pharmacy was added only to be used in the event that the location of the Bus-Stop did not achieve maximum proximity points for this Application.

17. On July 6, 2004, Florida Housing released “final” scores for the Green Gables Application which awarded no proximity tie breaker points awarded for proximity to a Medical Facility, Pharmacy, or Public Bus Stop or Metro-Rail Stop (items 3P, 4P and 5P respectively). In its explanation for this scoring, Florida Housing stated:

Applicant attempted to Cure 3P, 4P and 5P, but the Cure was deficient because although Applicant included paragraphs requesting scorer to score Bus Stop, Applicant also included the following language – ‘In the event that the Bus Stop does not qualify for maximum points, please use the Pharmacy that was shown on the Surveyor Certification.’ Applicant’s choice was therefore not decisive.

CONCLUSIONS OF LAW

1. Pursuant to Sections 120.569 and 120.57(2), Florida Statutes, and Rule 67-48, Florida Administrative Code, the Hearing Officer has jurisdiction over the parties to this proceeding.

2. Part III, Section A, Subsection 10 of the 2004 Universal Cycle Application Instructions (the "Application Instructions") sets forth the requirements for awarding tie-breaker points for proximity to certain eligible services. The part of the Application Instructions relevant to Green Gables' application reads as follows:

Applicants that have not selected the Elderly Demographic Commitment at Part III.D. and are proposing a Development in a Small or Medium County may only select Grocery Store, Public School, ***and only one of the following: (i) Medical Facility, (ii) Pharmacy, or (iii) Bus Stop or Metro-Rail Stop;***

Page 14, Application Instructions.

3. The Surveyor Certification submitted by Green Gables in its initial application as Exhibit 25 failed to select only one of the three (3) eligible services; rather, it included all three: Medical Facility, Pharmacy, and Bus Stop or Metro-Rail Stop.

4. Florida Housing properly determined that Green Gables was entitled to no proximity tie-breaker points out of a possible 1.25 points based on the documentation submitted with its initial application because Green Gables failed to select only one of the three (3) eligible services.

5. Green Gables, in its cure materials, selected a bus stop as the eligible service.

6. The Cure materials can only be concluded to have chosen the bus stop. While there were statements conditioning the use of the pharmacy as an alternative

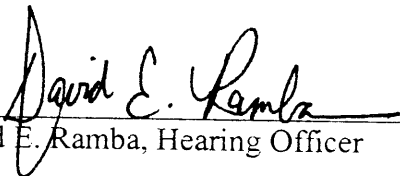
contained in the cure materials, it did not supersede the directions from the applicant or the measurement from the surveyor to use the location of the bus stop for the proximity tie-breaker points.

RECOMMENDED ORDER

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

A Final Order be entered awarding Petitioner 1.25 tie-breaker points for proximity to a Bus Stop.

DATED this 13th day of September, 2004, in Tallahassee, Florida.



David E. Ramba, Hearing Officer

Copies furnished:

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