2005-010UC

BEFORE THE STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

COPY

POSTMASTER ASSOCIATES, LTD.,

Petitioner,

vs.

Agency Case No. 2005-054C

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

________________________________/

PETITION REQUESTING INFORMAL HEARING
AND GRANT OF THE RELIEF REQUESTED

Pursuant to Sections 120.569 and 120.57, Florida Statutes ("F.S."), Rule 67-48.005(2), Florida Administrative Code ("FAC") and Rule 28-106.301, FAC, Petitioner, POSTMASTER ASSOCIATES, LTD. ("Petitioner") requests an informal hearing concerning the scoring by Florida Housing Finance Corporation ("FHFC") of Petitioner's Application No. 2005-054C, and to then grant the relief requested. In support of this Petition, Petitioner states as follows:

AGENCY AFFECTED

1. The name and address of the agency affected is Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329. The Agency's file or identification number with respect to this matter is 2005-054C.

PETITIONER

2. The Petitioner is Postmaster Associates, Ltd., a Florida limited partnership. The address of the Petitioner is c/o MDHA Development Corporation, 7483 S.W. 24th Street, Suite 209, Miami, Florida 33155, telephone number (305) 267-3624. Petitioner's representative is

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION
[signature] /DATE. 6/9/05

Gary J. Cohen, Esq., whose address is c/o Shutts & Bowen LLP, 201 S. Biscayne Boulevard, Suite 1500, Miami, Florida 33131, telephone number (305) 347-7308.

PETITIONER'S SUBSTANTIAL INTERESTS

3. Petitioner's substantial interests will be affected by the determination of FHFC as follows:

(a) Petitioner has applied for an allocation of competitive 9% low-income housing tax credits under the FHFC Housing Credit ("HC") program. The HC Program is set forth in Section 42 of the Internal Revenue Code of 1986, as amended, and it awards developers and investors a dollar for dollar reduction in income tax liability through the allocation of tax credits in exchange for construction of affordable rental housing units. FHFC is the agency designated by the United States Treasury to administer the allocation of tax credits in the State of Florida.

(b) An HC application is comprised of numerous forms which request information of each applicant. FHFC adopted the forms by reference in Rule 67-48, FAC.

(c) On or about February 16, 2005, Petitioner submitted to FHFC a HC application in the Large County set-aside for the 2005 funding cycle. The application was submitted in an attempt to assist in the financing of the construction of a 55 unit apartment complex in Miami, Florida.

(d) The application was scored by FHFC in accordance with the provisions of Rule 67-48, FAC. By letter dated on or about March 17, 2005, FHFC advised Petitioner that its preliminary score was 66 points, together with -0- proximity tie-breaker points, and that Petitioner had failed to satisfy numerous threshold requirements, all of which have subsequently been cured and satisfied. As a result of Notices of Potential Scoring Errors ("NOPSE's") filed against Petitioner, FHFC notified Petitioner on or about April 14, 2005 that its score remained

the same, that its total proximity tie-breaker points remained the same, and that Petitioner had failed the threshold requirement of "Developer Prior Experience Chart" because "Inclusionary zoning is not considered to be an affordable housing program. Therefore, the Developer Prior Experience Chart provided in the Application does not reflect experience with a minimum of two affordable housing developments."

(e) On or about April 26, 2005, Petitioner submitted "cure" documentation to FHFC resolving the various threshold items failed (site plan approval, site control, zoning and environmental safety). Petitioner also submitted cure documentation as to the "Developer Prior Experience Chart", arguing in the alternative (i) that "inclusionary zoning" is an affordable housing program, and (ii) submitting a new "Developer Prior Experience Chart" reflecting an additional completed affordable housing development on such chart. As a result of its "cure" documentation, Petitioner's "prior experience chart" reflected two completed affordable housing developments utilizing tax exempt bonds and 4% tax credits (Ward Tower and Longwood Vista), together with two additional completed affordable housing projects (Abacoa Town Center and Village at Abacoa Town Center) utilizing the affordable housing program of inclusionary zoning.

(f) On or about May 4, 2005 a Notice of Alleged Deficiency ("NOAD") was filed against Petitioner's cure documentation, re-alleging that inclusionary zoning is not an affordable housing program, and alleging (<u>for the first time</u>) that the Ward Tower transaction (which was reflected on Petitioner's originally submitted Developer Prior Experience Chart and on its re-submitted Developer Prior Experience Chart submitted as part of its cure documentation) did not have a certificate of occupancy prior to the deadline for the submission of cures.

(g) On or about May 25, 2005, FHFC advised Petitioner that its total points remained at 66, that Petitioner's total proximity tie-breaker points were increased to 7.5, that Petitioner's other four threshold failures (site plan approval, site control, zoning and environmental safety) had been satisfactorily cured, and that Petitioner's threshold failure with respect to its Developer Prior Experience Chart identified as Item 5T on the Scoring Summary issued as of May 25, 2005 (that is, the finding that "inclusionary zoning is not considered to be an affordable housing program" and that the Developer Prior Experience Chart failed to reflect experience with a minimum of two affordable housing developments) had been rescinded as part of the final scoring summary. However, FHFC went on to find (in Item 6T in the Scoring Summary) that "the Applicant attempted to cure Item 5T by submitting a new Developer Prior Experience Chart and adding an additional qualified development. However, a NOAD provided evidence that one of the developments has not received its Certificates of Occupancy. Therefore, because the Developer cannot claim credit for this development on its prior experience chart, the Developer lacks sufficient experience to meet threshold."

(h) In essence, FHFC determined in its final Scoring Summary that the reason the requisite "developer experience" was found not to exist was because one of the listed developments (Ward Tower) did not have its certificate of occupancy. FHFC reversed and rescinded its prior finding that "inclusionary zoning is not considered to be an affordable housing program."

(i) Under the HC program, the HC applications are scored by FHFC. A finite amount of tax credits are allocated to applicants in certain geographic areas (large county, medium county and small county areas as defined by FHFC) and pursuant to certain set-aside classifications. Only those applications receiving the highest scores are awarded tax credits.

Petitioner's ability to finance its proposed project will be jeopardized if tax credits are not obtained; accordingly, Petitioner's substantial interests are affected by this proceeding.

NOTICE OF AGENCY DECISION

4. Petitioner received notice of FHFC's scoring of its "cure" documentation by Federal Express delivery on or about May 26, 2005. Attached as Exhibit "A" is a copy of the Universal Scoring Summary setting forth the scoring, which scoring gives rise to this Petition.

ULTIMATE FACTS ALLEGED

5. In Petitioner's initial HC application submitted on or about February 16, 2005, Petitioner indicated (in Exhibit 11 submitted as part of its application) that MDHA Development Corporation possessed the requisite developer experience by submission of a "prior experience chart developer" which reflected three completed affordable housing developments; Ward Tower under the affordable housing program of "MMRB and 4% tax credit", Abacoa Town Center under the affordable housing program of inclusionary zoning, and Village at Abacoa Town Center under the affordable housing program of inclusionary zoning.

6. On or about March 28, 2005, a NOPSE was filed against Petitioner's application, alleging (in part) that inclusionary zoning is not an affordable housing program.

7. Respondent's April 14, 2005 Scoring Summary (attached as Exhibit "B") accepted the argument submitted in the NOPSE, determining that "inclusionary zoning is not considered to be an affordable housing program."

8. On or about April 26, 2005, Petitioner submitted "cure" documentation to FHFC. The portion of such "cure" documentation pertaining to the "Developer Prior Experience Chart" is attached as Exhibit "C".

9. In the "cure" documentation submitted with respect to the issue of the "Developer Prior Experience Chart", Petitioner ably demonstrated that "inclusionary zoning" is in fact an

"affordable housing program". Petitioner also submitted a new chart (entitled "Prior Experience Chart Developer") which was identical to the chart previously submitted in its original application, except for the addition of one more completed affordable housing development (Longwood Vista), a tax exempt bond and 4% tax credit transaction located in Doraville, Georgia. As a result of submission of the revised "Prior Experience Chart Developer", Petitioner has submitted evidence of two completed affordable housing developments developed under the affordable housing program of "tax exempt bonds and 4% tax credits" and two additional completed affordable housing developments under the affordable housing program of "inclusionary zoning".

10. In the final scoring summary (attached as Exhibit "A"), FHFC determined the following: (i) that (as evidenced in Item 6T of the scoring summary) Petitioner failed the threshold requirement of developer prior experience because a NOAD provided evidence that one of the developments (Ward Tower) had not received its Certificate of Occupancy, and (ii) that FHFC rescinded its prior finding that "inclusionary zoning is not considered to be an affordable housing program." Obviously, FHFC has entered an internally inconsistent and erroneous finding on the final Scoring Summary. Since FHFC rescinded its prior finding that inclusionary zoning is not an affordable housing program, than even if (assuming for the moment) the Ward Tower transaction had not received its certificate of occupancy by the cure deadline (which is not the case), Petitioner had demonstrated three other completed affordable housing projects (since the projects on the developer experience chart developed under the affordable housing program of "inclusionary zoning" were, as a result of FHFC's finding in Item 5T, now qualifying projects). For the reasons set forth below, FHFC's final finding that Petitioner failed to satisfy the threshold requirement of "developer prior experience" is incorrect.

FACTS WHICH WARRANT REVERSAL OF AGENCY'S PROPOSED ACTION

The specific facts which warrant reversal of FHFC's proposed action are as follows:

RESCISSION OF DECISION ON INCLUSIONARY ZONING

11. As a result of the Scoring Summary, FHFC has rescinded its earlier finding in Item 5T that "inclusionary zoning" is not an affordable housing program. As such, disregarding Ward Tower for the moment, Petitioner has demonstrated the requisite experience by virtue of three completed affordable housing developments indicated on its Developer Prior Experience Chart (two developed under the affordable housing program of "inclusionary zoning" and one developed under the tax exempt bond and 4% tax credit affordable housing program). As such, no further analysis is necessary in order to find that Petitioner has demonstrated the requisite developer experience.

LACK OF STANDING ON CERTIFICATE OF OCCUPANCY ISSUE

12. Addressing Respondent's finding that the Ward Tower development did not "count" due to the lack of a certificate of occupancy, FHFC's analysis is incorrect for the following reasons.

13. Under FAC Rule 67-48.004(9), after review of NOPSE's, cure documentation and NOAD's, FHFC prepares final scores. Rule 67-48.004(9) provides in relevant part that:

> "In determining such final scores, no Application shall be rejected or receive a point reduction as a result of any issues not previously identified in the notices described in subsections (3) (preliminary scoring summary issued by FHFC), (4) (NOPSE's filed by competing applicants) and (5) (scoring summary issued after scoring of NOPSE's)."

The issue of whether or not Ward Tower had received its certificate of occupancy was not previously identified in the initial scoring summary (Rule 67-48.004(3)), in any NOPSE filed against Petitioner's application (Rule 67-48.004(4)), or in FHFC's scoring summary issued after

scoring of NOPSE's (Rule 67-48.004(5)). Under Rule 67-48.004(9), FHFC and competing applicants could no longer raise this issue. As such, FHFC acted erroneously and without authority in even considering the allegation that Ward Tower had not received its certificate of occupancy by the cure deadline.

14. Rule 67-48.004(9) continues on to state that "However, inconsistencies created by the Applicant as a result of information provided pursuant to subsections (6) (submission of cure documentation by an applicant) and (7) above (submission of NOAD's) will still be justification for rejection or reduction of points, as appropriate." In other words, FHFC may reject an application in its preparation of final scores for only three reasons: (i) first, an issue identified in the preliminary scoring or NOPSE's which has not been adequately cured, (ii) issues raised by a NOAD pertaining to issues created in cure documentation which attempt to cure items identified in preliminary scoring or NOPSE's, or (iii) issues created as a result of inconsistencies as a result of the submission of cure documentation, identified either by FHFC or by a NOAD.

15. Petitioner's submission of a new developer experience chart does not fall into any of the three categories identified above permitting a rejection or point reduction. The new developer prior experience chart only added one more completed affordable housing development (Longwood Vista); otherwise, the chart was identical to that submitted in the original application. The Ward Tower transaction was identified on the initial developer prior experience chart contained in the initial application, and the issue of whether or not such job was "completed" or had received its certificate of occupancy was not identified either in preliminary scoring, in a NOPSE, or in the scoring summary following NOPSE's. As such, FHFC and competing applicants were foreclosed from raising such issue in a NOAD or from rejecting an application for such issue under Rule 67-48.004(9). No inconsistency was created as the result

of the submission of the revised developer prior experience chart; the addition of the Longwood Vista development did not create any "inconsistency", but rather merely added an additional completed affordable housing development. Rule 67-48.004(7) states that:

> "Each NOAD is limited only to issues created by document revisions, additions, or both, by the Applicant submitting the Application pursuant to subsection (6) above (cure documentation)."

No issue pertaining to Ward Tower was created by Petitioner's submission of a new developer prior experience chart; the addition of the Longwood Vista job as a completed affordable housing development did not "create an issue" with respect to the Ward Tower transaction.

16. For all of the reasons set forth above, FHFC erred in considering the NOAD filed raising the issue of the Ward Tower certificate of occupancy. As such, Petitioner met the threshold requirement of developer experience, even without considering the two completed affordable housing developments developed under the affordable housing program of "inclusionary zoning", by virtue of completing two affordable housing developments under the affordable housing program of tax exempt bonds and 4% tax credits (Ward Tower and Longwood Vista).

REVIEW LIMITED TO ISSUES IDENTIFIED ON SCORING SUMMARY

17. Since FHFC rescinded (in the final scoring summary attached as Exhibit "A") its prior finding that "inclusionary zoning" is not considered to be an affordable housing program, Petitioner has demonstrated the requisite developer experience by virtue of four completed affordable housing developments. It is the longstanding policy of FHFC that scoring decisions should only be based on issues articulated in the FHFC scoring summaries.

18. In the case of Tiger Bay of Gainesville, Ltd. and Goodbread Hills, Ltd. vs. Florida Housing Finance Corporation, (Case No. 2004-051UC), FHFC (in characterizing the decision of Hearing Officer Ramba in the underlying Blitchton Station case from the 2004 cycle) stated that

"We believe that, and Hearing Office Ramba, essentially set us straight and held us to our language that we have in our scoring report and held us to the structure of that report." In the Blitchton Station case, the applicant had originally been found to fail the threshold requirement of "site control" because (as stated in the post-NOPSE scoring summary) the party purporting to sell the property to the applicant did not in fact own the property, and the post-NOPSE scoring summary noted that "evidence provided in NOPSE calls into question the ability of John M. Curtis, trustee, to lawfully convey the property". The petitioner in that case submitted an underlying contract in its cure documentation to demonstrate Mr. Curtis' legal ability to convey the property. In that case, as a result of a NOAD, FHFC determined (in the final scoring summary report) that such applicant continued to fail the threshold requirement of site control due a missing exhibit to the underlying contract, not rescinding its prior determination concerning the ability of Mr. Curtis to lawfully convey the property, and noting (in an "additional application comment") that the applicant's attempted cure was deficient due to a missing exhibit. See transcript excerpt attached as Exhibit "D".

19. FHFC acknowledged (in the Tiger Bay transcript) that it erred in its finding that such applicant failed the threshold requirement of site control, because the applicant had demonstrated the ability of Mr. Curtis to "lawfully convey the property" by virtue of its submission of an underlying contract in its cure documentation (in response to FHFC's post-NOPSE scoring summary). FHFC admitted in the Tiger Bay transcript that it erred in raising the issue of a missing exhibit, because such issue was not adequately identified on the post-NOPSE scoring summary; the post-NOPSE scoring summary had as its reason for the threshold failure the inability of the applicant to lawfully convey the property. FHFC acknowledged (see page 56 of the transcript attached as Exhibit "D") that the only issue with regard to the scoring of an

application was the issue identified in the post-NOPSE scoring summary. In the instant case, the only issue identified on the final scoring summary is that the Ward Tower transaction had received its certificate of occupancy. The issue of whether inclusionary zoning is an affordable housing program has been rescinded and is no longer relevant. As such, developer has satisfied the requirements of the scoring summary in the following ways: (i) the two developments listed on its revised prior experience chart under the affordable housing program of "inclusionary zoning" now qualify as completed affordable housing developments, since FHFC has rescinded its finding that inclusionary zoning is not an affordable housing program, and (ii) FHFC's position that Ward Towers is not a qualifying affordable housing development due to the lack of a certificate of occupancy is erroneous, since the issue pertaining to such certificate of occupancy was not properly raised under Rule 67-48.004(9) and (7).

INCLUSIONARY ZONING AS AN AFFORDABLE HOUSING PROGRAM

20. In addition to the foregoing arguments, Petitioner has adequately established that "inclusionary zoning" is an "affordable housing program". The term "affordable housing program" is not defined anywhere in the 2005 application or instructions. As noted in the Landings on Millennia Blvd. v. Florida Housing Finance Corporation, (FHFC Case No. 2002-0057) (excerpt attached as Exhibit "E"), where terms are not otherwise defined in the application then such terms "should be given their plain and ordinary meaning when interpreting rules" (the issue was the definition of "grocery store" in that case). Webster's On-line Dictionary defines "program" as "a system of projects or services intended to meet a public need" (see attached Exhibit "F"). As such, the term "affordable housing program" would generally be defined as a system of projects or services intended to meet the public need of affordable housing. Clearly, inclusionary zoning is a system which assists in meeting the public need of affordable housing.

The Governor's Affordable Housing Study Commission 2001 final report (excerpts attached hereto as part of Exhibit "C") indicates as much, by stating that inclusionary zoning "assists the local government in meeting its legal responsibilities under the housing element; that is, it is a system which assists local government in meeting the public need of affordable housing." Such report continues on to state, with respect to each local government's legal obligation to affirmatively further fair housing within its jurisdiction in order to receive federal dollars such as CBG funds, that "inclusionary zoning is the optimum way for local governments to further fair housing."

21. On January 29, 2002, Miami-Dade County, as further evidence of inclusionary zoning's merit as an affordable housing program, passed legislation (copy attached as part of Exhibit "C") which directed the County Manager to prepare "a plan for affordable housing program based on the concept of inclusionary zoning." The County Manager's background to the proposed legislation indicates that ". . . an inclusionary zoning program emerged as an effective option for providing both additional and more widely distributed affordable housing." Miami-Dade County has clearly determined that "inclusionary zoning" is a system which meets the public need of affordable housing.

22. The NOPSE upon which FHFC apparently relied in determining that inclusionary zoning is not an affordable housing program stated, in relevant part, that "We believe that the purpose of requiring a developer to designate a type of Affordable Housing Program is to ensure that the developer had sufficient experience in working with an affordable housing financing program. Inclusionary zoning is not a financing program" (excerpt attached as Exhibit "G"). Nowhere in the 2005 application, instructions or rules is it indicated that the term "affordable housing program" should be construed as having a "finance" element. Florida Housing Finance

Corporation could have easily provided for such a requirement but to date has not done so; as such, the phrase "affordable housing program" must be given its plain and ordinary meaning; that is, a system intended to meet the public need of affordable housing. Such a "system" need not be "finance" related. For all the reasons set forth above, FHFC erred in determining that "inclusionary zoning" is not an "affordable housing program".

CERTIFICATE OF OCCUPANCY

23. With respect to FHFC's finding that the Ward Tower development had not been completed by the cure deadline, attached as Exhibit "H" is a copy of the temporary certificate of occupancy which was issued for the Ward Tower development (a single building development) on April 7, 2005 (before the cure deadline of April 26, 2005). Under the Florida Building Code applicable to Miami-Dade County, issuance of a temporary certificate of occupancy permits a developer to allow tenants to move into and occupy a building; that is, the building is effectively "completed" since occupancy is permitted. See attached Exhibit "I". The intent of Exhibit 11 to the FHFC application is for a developer to demonstrate that it has the requisite experience in having completed two affordable housing developments; this intent is met and satisfied with respect to the Ward Tower transaction. The developer in that case (MDHA Development Corporation) had completed the transaction, as evidenced by the attached temporary certificate of occupancy. The temporary certificate of occupancy is the functional equivalent of the certificate of occupancy required by Exhibit 11. See attached Exhibit "I" (excerpt from Florida Building Code) describing the legal effect of a temporary certificate of occupancy.

RELEVANT RULES AND STATUTES

24. Rule 67-48, FAC, specifically incorporates the HC application, and the forms referenced therein. The instructions to Part II. Section B. Subsection 1.c. requires that each experienced developer must demonstrate experience in the completion of at least two affordable

rental housing developments by providing a prior experience chart. Petitioner has complied with the instructions and provided evidence (in its "cure documentation") that the developer (MDHA Development Corporation) has the necessary and relevant developer experience and that the threshold requirement of developer experience has been met.

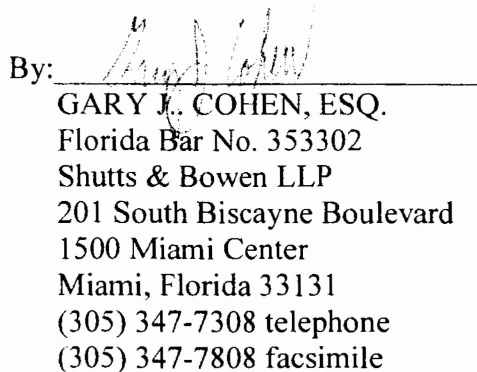
RELIEF SOUGHT

25. The specific action which Petitioner wishes FHFC to take is to reverse its previous decision and determine that MDHA Development Corporation satisfies the requirement of developer experience.

WHEREFORE, Petitioner respectfully requests FHFC:

1. To reverse the prior determination that Petitioner has failed the threshold requirement of developer experience, which would result in Petitioner's application having a score of 66 points with 7.5 proximity tie-breaker points, and having met all threshold requirements.

Respectfully submitted,



By:______________________

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that an original and one copy of the foregoing have been filed with Stephen P. Auger, Deputy Development Officer, Attn: Corporation Clerk of the Florida Housing Finance Corporation, 227 N. Bronough Street, Suite 5000, Tallahassee, Florida 32301, on this ______ day of June, 2005.

GARY J. COHEN, ESQ.

EXHIBIT A

2005 MMRB, SAIL & HC Scoring Summary

As of: 05/25/2005

File # 2005-054C **Development Name:** Postmaster Apartments

As Of:	Total Points	Met Threshold?	Proximity Tie-Breaker Points	Corporation Funding per Set- Aside Unit	SAIL Request Amount as Percentage of Development Cost	Is SAIL Request Amount Equal to or Greater than 10% of Total Development Cost?
05 - 25 - 2005	66	N	7.5	$47,690.33	%	N
Preliminary	66	N	0	$47,690.33	%	N
NOPSE	66	N	0	$47,690.33	%	N
Final	66	N	7.5	$47,690.33	%	N
Final-Ranking	0	N	0		0	

Scores:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Final Ranking
				Optional Features & Amenities					
1S	III	B	2.a.	New Construction	9	9	9	9	0
1S	III	B	2.b.	Rehabilitation/Substantial Rehabilitation	9	0	0	0	0
2S	III	B	2.c.	All Developments Except SRO	12	12	12	12	0
2S	III	B	2.d.	SRO Developments	12	0	0	0	0
3S	III	B	2.e.	Energy Conservation Features	9	9	9	9	0
				Set-Aside Commitments					
4S	III	E	1.b.	Total Set-Aside Percentage	3	3	3	3	0
5S	III	E	1.c.	Set-Aside Breakdown Chart	5	5	5	5	0
6S	III	E	3	Affordability Period	5	5	5	5	0
				Resident Programs					
7S	III	F	1	Programs for Non-Elderly & Non-Homeless	6	0	0	0	0
7S	III	F	2	Programs for Homeless (SRO & Non-SRO)	6	0	0	0	0
7S	III	F	3	Programs for Elderly	6	6	6	6	0
8S	III	F	4	Programs for All Applicants	8	8	8	8	0
				Local Government Support					
9S	IV		a.	Contributions	5	5	5	5	0
10S	IV		b.	Incentives	4	4	4	4	0

2005 MMRB, SAIL & HC Scoring Summary

As of: 05/25/2005

File # 2005-054C **Development Name:** Postmaster Apartments

Threshold(s) Failed:

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result of	Rescinded as Result of
1T	III	C	1	Site Plan Approval	The Applicant failed to provide the required Local Government Verification of Status of Site Plan Approval for Multifamily Developments form.	Preliminary	Final
2T	III	C	2	Site Control	The Applicant failed to provide any of the required documentation to demonstrate site control.	Preliminary	Final
3T	III	C	4	Zoning	The Applicant failed to provide the required Local Government Verification that Development is Consistent with Zoning and Land Use Regulations form.	Preliminary	Final
4T	III	C	5	Environmental Safety	The Applicant failed to provide the required Verification of Environmental Safety Phase I Environmental Site Assessment form and, if applicable, the Verification of Environmental Safety Phase II Environmental Site Assessment form.	Preliminary	Final
5T	II	B	1	Developer Prior Experience Chart	Inclusionary zoning is not considered to be an affordable housing program. Therefore, the Developer prior experience chart provided in the Application does not reflect experience with a minimum of two affordable housing developments.	NOPSE	Final
6T	II	B	1	Developer Prior Experience Chart	The Applicant attempted to cure Item 5T by submitting a new Developer prior experience chart and adding an additional qualified development. However, a NOAD provided evidence that one of the developments has not received its Certificates of Occupancy. Therefore, because the Developer cannot claim credit for this development on its prior experience chart, the Developer lacks sufficient experience to meet Threshold.	Final	

Proximity Tie-Breaker Points:

Item #	Part	Section	Subsection	Description	Available	Preliminary	NOPSE	Final	Final Ranking
1P	III	A	10.a.(2)(a)	Grocery Store	1.25	0	0	1.25	0
2P	III	A	10.a.(2)(b)	Public School	1.25	0	0	0	0
3P	III	A	10.a.(2)(c)	Medical Facility	1.25	0	0	1.25	0
4P	III	A	10.a.(2)(d)	Pharmacy	1.25	0	0	0	0
5P	III	A	10.a.(2)(e)	Public Bus Stop or Metro-Rail Stop	1.25	0	0	1.25	0
6P	III	A	10.b.	Proximity to Developments on FHFC Development Proximity List	3.75	0	0	3.75	0

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

Item #	Reason(s)	Created As Result of	Rescinded as Result of
1P	Applicant did not provide required Surveyor Certification Form.	Preliminary	Final

2005 MMRB, SAIL & HC Scoring Summary

As of: 05/25/2005

File # 2005-054C **Development Name:** Postmaster Apartments

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

Item #	Reason(s)	Created As Result of	Rescinded as Result of
1P	Applicant did not provide required sketches.	Preliminary	Final
3P	Applicant did not provide required Surveyor Certification Form.	Preliminary	Final
3P	Applicant did not provide required sketches.	Preliminary	Final
5P	Applicant did not provide required Surveyor Certification Form.	Preliminary	Final
6P	Applicant did not provide the required Surveyor Certification Form and does not qualify for automatic 3.75 proximity points..	Preliminary	Final

Additional Application Comments:

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result	Rescinded as Result
1C	V	D		Fee Waiver Not Counted	The Applicant listed a $105,087 Miami-Dade County fee waiver as a source of funding during construction and permanent financing. A fee waiver cannot be used as a source (or an expense in the pro forma) of funding during construction or permanent financing, therefore it was not counted as a firm commitment. The Applicant had other financing commitments that were considered firm and totaled more than what was needed for financing.	NOPSE	

EXHIBIT B

2005 MMRB, SAIL & HC Scoring Summary

As of: 04/14/2005

File # 2005-054C **Development Name:** Postmaster Apartments

As Of:	Total Points	Met Threshold?	Proximity Tie-Breaker Points	Corporation Funding per Set- Aside Unit	SAIL Request Amount as Percentage of Development Cost	Is SAIL Request Amount Equal to or Greater than 10% of Total Development Cost?
04 - 14 - 2005	66	N	0	$47,690.33	%	N
Preliminary	66	N	0	$47,690.33	%	N
NOPSE	66	N	0	$47,690.33	%	N
Final	0	N	0		0	
Final-Ranking	0	N	0		0	

Scores:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Final Ranking
				Optional Features & Amenities					
1S	III	B	2.a.	New Construction	9	9	9	0	0
1S	III	B	2.b.	Rehabilitation/Substantial Rehabilitation	9	0	0	0	0
2S	III	B	2.c.	All Developments Except SRO	12	12	12	0	0
2S	III	B	2.d.	SRO Developments	12	0	0	0	0
3S	III	B	2.e.	Energy Conservation Features	9	9	9	0	0
				Set-Aside Commitments					
4S	III	E	1.b.	Total Set-Aside Percentage	3	3	3	0	0
5S	III	E	1.c.	Set-Aside Breakdown Chart	5	5	5	0	0
6S	III	E	3	Affordability Period	5	5	5	0	0
				Resident Programs					
7S	III	F	1	Programs for Non-Elderly & Non-Homeless	6	0	0	0	0
7S	III	F	2	Programs for Homeless (SRO & Non-SRO)	6	0	0	0	0
7S	III	F	3	Programs for Elderly	6	6	6	0	0
8S	III	F	4	Programs for All Applicants	8	8	8	0	0
				Local Government Support					
9S	IV		a.	Contributions	5	5	5	0	0
10S	IV		b.	Incentives	4	4	4	0	0

2005 MMRB, SAIL & HC Scoring Summary

As of: 04/14/2005

File # 2005-054C **Development Name:** Postmaster Apartments

Threshold(s) Failed:

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result of	Rescinded as Result of
1T	III	C	1	Site Plan Approval	The Applicant failed to provide the required Local Government Verification of Status of Site Plan Approval for Multifamily Developments form.	Preliminary	
2T	III	C	2	Site Control	The Applicant failed to provide any of the required documentation to demonstrate site control.	Preliminary	
3T	III	C	4	Zoning	The Applicant failed to provide the required Local Government Verification that Development is Consistent with Zoning and Land Use Regulations form.	Preliminary	
4T	III	C	5	Environmental Safety	The Applicant failed to provide the required Verification of Environmental Safety Phase I Environmental Site Assessment form and, if applicable, the Verification of Environmental Safety Phase II Environmental Site Assessment form.	Preliminary	
5T	II	B	1	Developer Prior Experience Chart	Inclusionary zoning is not considered to be an affordable housing program. Therefore, the Developer prior experience chart provided in the Application does not reflect experience with a minimum of two affordable housing developments.	NOPSE	

Proximity Tie-Breaker Points:

Item #	Part	Section	Subsection	Description	Available	Preliminary	NOPSE	Final	Final Ranking
1P	III	A	10.a.(2)(a)	Grocery Store	1.25	0	0	0	0
2P	III	A	10.a.(2)(b)	Public School	1.25	0	0	0	0
3P	III	A	10.a.(2)(c)	Medical Facility	1.25	0	0	0	0
4P	III	A	10.a.(2)(d)	Pharmacy	1.25	0	0	0	0
5P	III	A	10.a.(2)(e)	Public Bus Stop or Metro-Rail Stop	1.25	0	0	0	0
6P	III	A	10.b.	Proximity to Developments on FHFC Development Proximity List	3.75	0	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
1P	Applicant did not provide required Surveyor Certification Form.	Preliminary	
1P	Applicant did not provide required sketches.	Preliminary	
3P	Applicant did not provide required Surveyor Certification Form.	Preliminary	
3P	Applicant did not provide required sketches.	Preliminary	
5P	Applicant did not provide required Surveyor Certification Form.	Preliminary	
6P	Applicant did not provide the required Surveyor Certification Form and does not qualify for automatic 3.75 proximity points..	Preliminary	

2005 MMRB, SAIL & HC Scoring Summary

As of: 04/14/2005

File # 2005-054C **Development Name:** Postmaster Apartments

Additional Application Comments:

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result	Rescinded as Result
1C	V	D		Fee Waiver Not Counted	The Applicant listed a $105,087 Miami-Dade County fee waiver as a source of funding during construction and permanent financing. A fee waiver cannot be used as a source (or an expense in the pro forma) of funding during construction or permanent financing, therefore it was not counted as a firm commitment. The Applicant had other financing commitments that were considered firm and totaled more than what was needed for financing.	NOPSE	

EXHIBIT C

Brief Statement of Explanation regarding
Application 2005 – 054C

Provide a separate brief statement for each Cure or NOAD

In response to a NOPSE, FHFC determined that "Inclusionary Zoning" was not considered to be an affordable housing program. Applicant contends the following in reponse: The Governor's Affordable Housing Study Commission 2001 Final Report recommended inclusionary zoning as a means to increase private sector involvement in the development and production of affordable housing. The Study Commission's report described inclusionary zoning as a tool "that assists a local governments in meeting its legal responsibilities under the housing element." The report illustrates the benefits of inclusionary zoning by stating it is a viable affordable housing program in that "local governments may ensure that the private sector does not use all the developable residential land only for middle- and upper-income housing." The report further states: "Although inclusionary land use ordinances have at least two concurrent objectives - to increase the supply of affordable housing and to create socioeconomically integrated communities - additional smart growth benefits also accrue. Housing choices are increased, as is diversity in community schools and the amount of affordable housing co-located with suburban employment opportunities, creating a jobs-housing balance and reducing transportation budrens. In addition, every local government receiving federal dollars, such as Community Development Block Grant funds, has a legal obligation to affirmatively further fair housing within its jurisdiction. Inclusionary housing is the optimum way for local governments to further fair housing. Inclusionary housing policies provide a meaningful move forward for low-income

families that might otherwise be lost in the concentration of poverty that results from exclusionary zoning and land use practices." Moreover, the publication entitled, "Creating Inclusive Communities in Florida," which is available on FHFC's web site, recommends inclusionary zoning as a tool for local governments to "use its authority and expertise to encourage and assist the private sector to produce affordable housing." As further evidence of inclusionary zoning's merit as an affordable housing program, Miami-Dade County, on January 29, 2002, passed legislation in which the County adopted a plan that had been prepared in response to the Board of County Commissioners Resolution R-870-01, passed on July 24, 2001, which directed the County Manager to prepare "a plan for an affordable housing program based on the concept of inclusionary zoning."

In addition to inclusionary zoning's merits as a viable program for the production of affordable housing, neither the Universal Application Instructions nor rule chapter 67-48.002, F.A.C., specifically defines "affordable housing program." The words are not capitalized and in accordance with the Universal Application Instructions on page 1, "Unless otherwise provided in these Instructions and the Application, capitalized terms are as defined in the rule chapters." The NOPSE filed against this application alleged FHFC intended for the affordable housing program listed to evidence prior experience on behalf of the Developer be "finance" related. Absent FHFC specifically defining of such by rule or otherwise, the Applicant should be given credit for relevant experience.

The Applicant affirms that inclusionary zoning is an affordable housing program and should therefore be deemed to have met the Developer experience requirement;

<u>however, in accordance with rule chapter 67-48.004(6), F.A.C., Applicant hereby submits a revised Prior Experience Chart for the Developer. By submission of the foregoing, Applicant should be deemed to have met threshold.</u>

LOCAL ADOPTION OF INCLUSIONARY HOUSING AND LINKAGE FEE ORDINANCES

Florida's 1985 Growth Management Act requires every local government in the state to adopt a housing element that addresses adequate and affordable housing for all of its current and future anticipated populations. Local governments must ensure that adequate sites are available for affordable housing, including housing for those with special needs.

While local governments are not expected to build affordable housing, they are required to assist the private sector to do so. To that end, local governments provide local government contributions to developers seeking state and federal funds, waive or pay impact fees when possible, expedite permitting for affordable housing, and sometimes adopt regulatory incentives such as linkage fees or inclusionary zoning ordinances. The Legislature showed its support for these types of ordinances this year when it enacted a Commission recommendation to revise sections 125.0103 and 166.043, *Florida Statutes*, to expressly permit local adoption of land use mechanisms to increase the supply of affordable housing.

Inclusionary Housing. "Inclusionary zoning" is a misnomer; it is a land use ordinance that assists a local government in meeting its legal responsibilities under the housing element. It requires developers of multiple market rate units, say 25, 50, or 100, to include some percentage of affordable, lower-cost units, usually from five to twenty percent, within their

developments. In this way, local governments may ensure that the private sector does not use all the developable residential land only for middle- and upper-income housing.

Although inclusionary land use ordinances have at least two concurrent objectives—to increase the supply of affordable housing and to create socioeconomically integrated communities—additional smart growth benefits also accrue. Housing choices are increased, as is diversity in community schools and the amount of affordable housing co-located with suburban employment opportunities, creating a jobs-housing balance and reducing transportation burdens.

In addition, every local government receiving federal dollars, such as Community Development Block Grant funds, has a legal obligation to affirmatively further fair housing within its jurisdiction.

> In the **Development of Regional Impact** process (Chapter 380, *Florida Statutes*), Florida law requires that large commercial developments ensure affordable housing for the employees they generate when the community lacks adequate affordable housing for those workers. This statute operates as a combination linkage fee and inclusionary housing ordinance. Unfortunately, the statute has been largely ineffective at producing affordable housing. A local inclusionary housing ordinance can change that. The inclusionary housing ordinance could be drafted to apply to both commercial and residential developments, and could make irrelevant the time consuming, costly, and arduous process of Developments of Regional Impact. The inclusionary housing ordinance is a land development regulation that requires no expensive studies from the developers and can be easily and equitably applied in a routine fashion.

Inclusionary housing is the optimum way for local governments to further fair housing. Inclusionary housing policies provide a meaningful move forward for low-income families that might otherwise be lost in the concentration of poverty that results from exclusionary zoning and land use practices.

An inclusionary land use ordinance will likely vary a great deal from one jurisdiction to another. Some

The legal obligation to provide for the housing needs of the entire current and anticipated population, as outlined in Chapter Three, does not mean that local government is expected to develop or construct housing. Local government is expected to use its authority and expertise to encourage and assist the private sector to produce affordable housing. Affordable housing is developed by the private sector with the help of construction subsidy. But oftentimes financial subsidy for construction is not enough. Local government has a number of tools to encourage and assist the private sector in developing affordable housing. Those tools include (1) PLANNING, (2) FINANCING, and (3) REGULATORY REFORM.

HOW IS AFFORDABLE HOUSING DEVELOPED?

Local government has a number of tools to encourage and assist the private sector in developing affordable housing.

PLANNING FOR AFFORDABLE HOUSING

Planning is an essential part of producing affordable housing. In Florida, planning for affordable housing begins with comprehensive planning. Every local government is required to plan, in its housing element, for the housing needs of its entire population; existing residents, anticipated residents, and those with special needs such as farmworkers and people in need of group homes. Part of comprehensive planning for affordable housing is the designation of adequate sites for affordable housing on the future land use map. The future land use map is a required element in the comprehensive plan. Another part of planning for affordable housing is implementation of the comprehensive plan housing element and future land use map through consistent land development regulations and development orders.

Planning for affordable housing includes adequate sites zoned for multi-family housing and a zoning code that creates a friendly environment for the development of affordable housing.

take the task of comprehensive plan and or zoning changes to accommodate the multi-family housing. If the developer does brave an application for a zoning change he or she is often subjected to abusive behavior. Police escorts from city and county commission chambers to protect developers from the NIMBY crowd are not atypical enough. In addition to the emotional stress, the developer suffers substantial time delays and increases in the cost of development which may result in higher costs to the residents.

Implementation Through Land Development Regulations

Every local government must adopt land development regulations (ordinances), which implement the policies in the comprehensive plan within twelve months from adoption of the plan or plan amendment. These land development regulations may be as commonplace as an impact fee waiver/ reduction, or as progressive as an inclusionary zon-

ing ordinance, requiring all developments of a certain size to include a certain percentage of affordable housing within the development.

Even in instances of good comprehensive planning, evidenced by a housing element with measurable goals, policies, and objectives based on reliable data and analysis, an affordable housing development may be tied up in the development or permitting process by vehement opposition from the community because of inadequate land development regulations. For example, zoning codes that are so restrictive as to necessitate a public hearing for any increase in density or deviation from a minimum threshold will result in NIMBY opportunities.

The adoption of a zoning code that implements the future land use map and the goals, objectives, and policies of the housing element is the first step in avoiding this problem. For example, a zoning code which provides a density bonus as a special exception, rather than as a conditional use, or a zoning code which permits all types of residential uses within each residentially zoned area would go a long way toward avoiding NIMBYism. Another progressive move toward averting NIMBYism is to delegate to staff those matters which are not required by local charter or bylaws to come before the city or county commission. In general, it is best to avoid all unnecessary opportunities for constituent pressure.

Every time a public hearing is held another opportunity for NIMBYism is presented.

FINANCING

Most of the financing for affordable housing will come from federal and state programs administered by the Florida Housing Finance Corporation. Those programs are covered in Appendix 2. But in many of these programs developers are competing in a process that rewards those who can leverage state dollars with local contributions. All counties and entitlement cities in Florida have SHIP funds. Local governments over 50,000 in population also have federal HOME and CDBG monies to award to local developers. Making these awards in a timely manner can be critical to the developer's success in securing the private sector conventional financing that often constitutes over half the funds needed to finance the development. Local government can also contribute financially though a number of other means, such as waiver, payment, or reduction in water and sewer, transportation or impact fees, contribution of infrastructure, or using general revenue to supplement the financial subsidy in the development. Developing affordable housing is only accomplished through the joint efforts of the private and public sectors.

Financing for affordable housing is available from numerous state, federal, and conventional sources. Local governments can leverage these funds through a variety of contributions.

Miami-Dade Legislative Item
File Number: 020101

File Number: 020101 **File Type:** Report **Status:** Accepted
Version: 0 **Reference:** **Control:** County Commission
File Name: ENHANCED AFFORDABLE HOUSING PROGRAM **Introduced:** 1/14/2002
Requester: County Manager **Cost:** **Final Action:** 1/29/2002
,nda Date: 1/29/2001 **Agenda Item Number:** 12A4

Notes: **Title:** PLAN FOR AN ENHANCED AFFORDABLE HOUSING PROGRAM THAT PROMOTES EQUITABLE DISTRIBUTION THROUGH INCLUSIONARY ZONING AND A HOUSING DATA CLEARINGHOUSE

Indexes: NONE **Sponsors:** NONE
Sunset Provision: No **Effective Date:** **Expiration Date:**
Registered Lobbyist: None Listed

Legislative History

Acting Body	Date	Agenda Item	Action	Sent To	Due Date	Returned	Pass/Fail
Board of County Commissioners	1/29/2002	12A4	Accepted				P
Economic Development & Housing Committee	1/17/2002	7A SUB	Accepted				P
C ty Manager	1/14/2002		Assigned	Barbara Jordan	1/14/2002	1/14/2002	
REPORT:	ITEM PRCSD TO PRNT- TLO						

Legislative Text

I ,DER
To: Honorable Chairperson and Members Date:
Board of County Commissioners

Subject: Plan for an Enhanced Affordable Housing Program
From: Steve Shiver that promotes Equitable Distribution through
County Manager Inclusionary Zoning and a Housing Data Clearinghouse

The Housing Data Clearing House (Attachment F) section of this report is being substituted due to modifications made following the Clearinghouse Work Group meeting on January 8, 2002.

Attached for your review and consideration is a Plan for an Enhanced Affordable Housing Program that Promotes Equitable Distribution through Inclusionary Zoning and A Housing Data Clearinghouse.

STAFF RECOMMENDATION
It is recommended that the subject Plan be endorsed by the Board and that staff be authorized to proceed with its implementation.

MANAGER'S BACKGROUND
This Plan has been prepared in response to the Board of County Commissioners Resolution R-870-01, passed on July 24, 2001. It directed the County Manager to prepare, within six months, a plan for an affordable housing program based on the concept of inclusionary zoning. The Resolution also charged the Department of Planning and Zoning, again within six months, to prepare a plan for an affordable housing data clearinghouse.

Much of the background for this Plan is found in a report entitled The Distribution of Affordable Housing: Challenges and Opportunities, transmitted to the Board in November, 2001. Most importantly, this report's major focus was the issue of equitable distribution of affordable, especially publicly assisted housing. The current Plan is strongly linked with this earlier effort because an inclusionary zoning program emerged as an effective option for providing both additional and more widely distributed affordable housing. The staff Committee which has worked on both of these items recognized early on that they had to be joint goals. The Plan being submitted reflects that conclusion.

In confronting either of these matters, housing data which is complete, accurate and timely is essential. Thus, a plan for the establishment of a housing data clearinghouse is also included. This endeavor will require cooperation from several cities, state and federal agencies and progress has already been made in that regard.

A large amount of substantive background research by staff supports this Plan, but to help in implementation there is an added feature.

A public/private stakeholder work group has been formed to assist staff in developing this revised and enhanced affordable housing program featuring inclusionary zoning, modifications of existing publicly assisted housing programs, and methods to overcome local resistance to placement of affordable housing. I am confident that the forthcoming product will lead to success in expanding affordable housing options and will initiate improvement in the distribution of all publicly assisted housing.

Prior Experience Chart Developer

Name of Development	Location (City & State)	Affordable Housing Program	Total Number of Units
Ward Tower	Miami, Florida	MMRB & 4% TC	100 *
Abacoa Town Center	Jupiter, Florida	Inclusionary Zoning	221 **
Village at Abacoa Town Center	Jupiter, Florida	Inclusionary Zoning	192 **
Longwood Vista	Doraville, Georgia	MMRB & 4% TC	280 **

* Project represents experience of MDHA Development Corporation

** Project represents experience of board member of MDHA Development Corporation

EXHIBIT D

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

TIGER BAY OF GAINESVILLE, LTD.
and GOODBREAD HILLS, LTD.,

Petitioners,

vs. CASE NO. 2004-051UC

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

IN RE:	Informal Hearing
BEFORE:	Hearing Officer Bentley
DATE:	February 16, 2005
TIME:	Commenced at 2:00 p.m. Concluded at 4:10 p.m.
LOCATION:	227 North Bronough Street Tallahassee, FL
REPORTED BY:	VERONICA M. GUTIERREZ Court Reporter

ACCURATE STENOTYPE REPORTERS, INC
2894 REMINGTON GREEN LANE
TALLAHASSEE, FL 32308 (850)878-2221

1 **HEARING OFFICER BENTLEY:** No, he just finished
2 his opening, actually.
3 **MR. AUGER:** I'm going to have to remember
4 that.
5 **MR. BROWN:** We're going to have to take a
6 lunch. The key to this is the scoring sheet. And
7 by that, I mean the final scoring sheet. That's
8 Joint Exhibit 4, the final scoring sheet for
9 Blitchton. If you look at that, item 5T states
10 what are the reasons --
11 **HEARING OFFICER BENTLEY:** Can you give me the
12 exhibit number?
13 **MR. RASKY:** That's Joint Exhibit 5.
14 **MR. MAHER:** Four.
15 **MR. AUGER:** Joint Exhibit 4.
16 **MR. BROWN:** I'm sorry, 4.
17 **HEARING OFFICER BENTLEY:** Okay.
18 **MR. BROWN:** The key to this and what we
19 believe the reason Hearing Officer Ramba decided
20 the way that he did is that the reason given for
21 the threshold failure is, "Evidence provided in
22 NOPSE calls into question the ability of John M.
23 Curtis, trustee, to lawfully convey the property."
24 Hearing Officer Ramba found that they had given us
25 sufficient information on the CURE to establish

1 that.

2 The business about the missing exhibit shows

3 up in a comment, not a finding, not a reason. It

4 never appears in the threshold failed section of

5 the report. We believed at the time when we were

6 scoring this application, as Petitioner does now,

7 that the reason changed when we got the CURE, that

8 the reason changed from an issue of it being the

9 ability of Mr. Curtis to convey the property to

10 being an issue of the -- of a missing exhibit. We

11 believe that, and Hearing Officer Ramba,

12 essentially, set us straight and held us to our

13 language that we have in our scoring report and

14 held us to the structure of that report.

15 And what he held was that -- I mean,

16 conspicuous by his absence in his recommended order

17 is, is, is argument about this thing failing

18 threshold for having a missing exhibit. This

19 report does not state that. This report has as its

20 the reason that the ability of John Curtis to

21 lawfully convey the property was the reason. There

22 was not a new threshold failure generated with,

23 with the reason being a missing exhibit.

24 And, you know, we're here today to basically

25 say that we learned our lesson about these scoring

1 reports, and we believe that Mr. Ramba was correct.
2 Now --
3 **HEARING OFFICER BENTLEY:** Mr. Brown, let me
4 inquire. Forgive me for interrupting.
5 **MR. BROWN:** Sure.
6 **HEARING OFFICER BENTLEY:** I'll do it anyway.
7 You are saying that -- your argument is couched on
8 the notion that the only issues with regard to the
9 scoring of the Blitchton application are those
10 issues that articulated in Joint Exhibit 4, which
11 is the July 8, '04, scoring summary?
12 **MR. BROWN:** Whether or not Curtis had the
13 ability to convey the property and whether that
14 CURE that he submitted fixed that problem.
15 **HEARING OFFICER BENTLEY:** And you are also
16 saying that in that context the existence or
17 nonexistence in the application of this Exhibit B
18 to the Denson contract was not raised as an issue;
19 is that what you're telling me?
20 **MR. RASKY:** It wasn't applicable. It was
21 raised as an issue, and we believe now,
22 erroneously, by us. But we don't believe --
23 actually, the Denson-Curtis contract that is
24 missing the exhibit is an exhibit itself to a
25 letter from Mr. Curtis' attorney explaining to us

1 that he did have the legal ability to enter into
2 the qualified contract with the applicant, because
3 he had this here contract and now attached it. An
4 exhibit to that exhibit was this zoning map.
5 Zoning was never an issue, and as you can see by
6 Joint Exhibit 15, we had a certification of zoning,
7 so it really was not an applicable exhibit. And it
8 was not a required exhibit, and it had nothing to
9 do with the issue.
10 **HEARING OFFICER BENTLEY:** So is your argument
11 that it's not a required exhibit and thus not
12 applicable, or is your argument that the existence
13 or nonexistence of the exhibit is not relevant to
14 this proceeding because it was not properly raised
15 in the scoring summary, which is Exhibit 4?
16 **MR. BROWN:** Both. It wasn't properly raised
17 in the scoring summary, and we argued that in the
18 Blitchton case and were corrected by Hearing
19 Officer Ramba and we got his order.
20 **HEARING OFFICER BENTLEY:** Then on that issue
21 of whether or not it was properly raised, then as I
22 understand it, then you're arguing that the only
23 issues as to the scoring of the Blitchton
24 application that can be raised in this proceeding
25 are scoring issues that were heard in the earlier

EXHIBIT E

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

THE LANDINGS ON MILLENNIA BLVD.,

Petitioner,

v. FHFC CASE NO.: 2002-0057

FLORIDA HOUSING FINANCE CORPORATION, APPLICATION NO.: 2002-76S

Respondent.
_______________________________________/

FINAL ORDER

This cause came before the Board of Directors of the Florida Housing Finance Corporation ("Board") for consideration and final agency action on October 10, 2002. On or before April 15, 2002, Petitioner submitted its Application to Florida Housing Finance Corporation ("Florida Housing") to compete for an allocation of SAIL funding. Petitioner timely filed a Petition for Formal Administrative Hearing, pursuant to Sections 120.569 and 120.57(1), Florida Statutes, (the "Petition") challenging Florida Housing's scoring on parts of the Application. Florida Housing reviewed the Petition pursuant to Section 120.569(c), Florida Statutes, and determined that there were no disputed issues of material fact. An informal hearing was held in this case on September 5, 2002, in Tallahassee, Florida, before Florida Housing appointed Hearing Officer, Diane D. Tremor. Petitioner and Respondent timely filed Proposed Recommended Orders.

After consideration of the evidence, arguments, testimony presented at hearing, and the Proposed Recommended Orders, the Hearing Officer issued a Recommended Order. A true and

> 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.

There is no other definition of a "grocery store" contained within the statutes or promulgated rules which govern this proceeding.

4. The Universal Application Package, which includes both the application forms and the instructions, is adopted as a rule and is incorporated by reference in the Respondent's Rule 67-48.002(116), Florida Administrative Code.

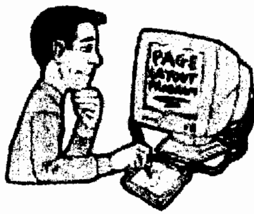
5. Petitioner's application asserted entitlement to 1.25 tie-breaker points due to the location of a Family Dollar Store within one mile of its proposed development. Through a Notice of Potential Scoring Error ("NOPSE"), another applicant challenged Petitioner's designation of the Family Dollar Store as a grocery store.

6. In its timely submitted "cure," Petitioner presented an affidavit stating that the Family Dollar Store designated by Petitioner is in excess of 6,000 square feet of air conditioned space, that customers select items from shelves and present them at checkout counters at the front of the store for purchase, and that in excess of 150 linear feet of shelf space in the store was dedicated to the sale of food and household goods. The affidavit contained a non-exclusive listing of some 29 food products (such as cereal, peanut butter, spaghetti sauce, pastas, rice, macaroni, crackers, cookies, popcorn, cake mixes, coffee and tea, condiments, bottled and canned juices, soft drinks and canned items, including tuna, meat, soup, fruits, vegetables, and apple sauce) and some 13 categories of household goods (such as toilet paper, storage and

be entitled to tie-breaker points, a proposed development must be within a certain proximity to a "supermarket," but it did not. Respondent argues that it intended to convey the "ordinary meaning of 'grocery' within its definition." While words should be given their plain and ordinary meaning when interpreting rules, Respondent's argument disregards the fact that it undertook to define the words "grocery store" within its promulgated rule. That definition could have incorporated an "ordinary" dictionary meaning of "grocery" or it could have incorporated any other requirement deemed appropriate by the Respondent. If there were no rule definition of "grocery store" to which all applicants were bound, Respondent's argument that great deference to an agency's interpretation might have merit. But, here, Respondent itself has provided its interpretation by a clear and unambiguous definition, it has adopted that definition by rule, and Respondent may not enlarge, modify or change that definition to the detriment of applicants who relied upon the definition provided.

As clearly enunciated in the cases of Cleveland Clinic Hospital v. Agency for Health Care Administration, 679 So.2d 1237 (Fla. 1st DCA 1996); Boca Raton Artificial Kidney Center v. Department of Health and Rehabilitative Services, 493 So.2d 1055 (Fla. 1st DCA 1986); and Central Florida Regional Hospital, Inc. v. Department of Health and Rehabilitative Services, 582 So.2d 1193 (Fla. 5th DCA 1991), rev. denied, 592 So.2d 679 (Fla. 1991), an agency must follow its own rules. It cannot apply one set of rules during the application process and then apply a different set of rules after the applicants have already relied upon the agency's

EXHIBIT F



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English Non-English

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Program

Definition: Program

Program

Noun

1. A system of projects or services intended to meet a public need; "he proposed an elaborate program of public works"; "working mothers rely on the day care program".
2. A series of steps to be carried out or goals to be accomplished; "they drew up a six-step plan"; "they discussed plans for a new bond issue".
3. (computer science) a sequence of instructions that a computer can interpret and execute; "the program required several hundred lines of code".
4. A course of academic studies; "he was admitted to a new program at the university".
5. A radio or television show; "did you see his program last night?".
6. A performance (or series of performances) at a public presentation; "the program lasted more than two hours".
7. A document stating the aims and principles of a political party; "their candidate simply ignored the party platform"; "they won the election even though they offered no positive program".
8. An announcement of the events that will occur as part of a theatrical or sporting event; "you can't tell the players without a program".

Verb

1. Arrange a program of or for.
2. Write a computer program.

Source: WordNet 1.7.1 Copyright © 2001 by Princeton University. All rights reserved.

Date "program" was first used in popular English literature: sometime before 1550. (references)

Specialty Definition: Program

Domain **Definition**

EXHIBIT G

Biscayne Housing Group
2950 S.W. 27th Avenue • Suite 200 • Miami, Florida 33133
Tel: 305-357-4732 • 305-357-4706 • Fax: 305-357-4745

March 25, 2005

Mr. Stephen P. Auger
Deputy Development Officer
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

Re: Brief Statement of Explanation regarding Application No. 2005-054C

Dear Mr. Auger:

On or about March 18, 2005 the Florida Housing Finance Corporation ("Corporation') released the scores of Applications submitted by the developers in connection with the 2005 Universal Cycle. Pursuant to the Rules of the Corporation, an applicant has the opportunity to advise the Corporation of potential scoring errors in the scoring of an application by the Corporation and such NOPSE's must be filed on or before March 28, 2005.

We believe the Corporation should have rejected Application 2005-054C for failure to satisfy threshold. The basis for our position is the Applicant did not identify for the Developer, MDHA Development Corporation, the requisite experience in the completion of two affordable rental housing developments.

In order to properly complete the Application, the Applicant must include a Prior Experience Chart that must include certain information. Pursuant to the Application Instructions, Part II.B.1.c., the Prior Experience Chart must include at least two (2) affordable housing developments that identify, among other things, the affordable housing program utilized. The developer in Application 2005-054C included three (3) developments on its Prior Experience Chart. However, only one of the developments properly identified an affordable housing program. The other two (2) developments listed "Inclusionary Zoning" under the heading "Affordable Housing Program."

Inclusionary Zoning is not an Affordable Housing Program. The term refers to local ordinances or guidelines that require or encourage residential developments to include a certain percentage of affordable housing within their development. Inclusionary rules are usually triggered by the filing of a residential site development proposal; this sometimes involves a rezoning or annexation. The housing may be on-site or off-site. Often, payments may be made to a trust fund in lieu of building housing. [1] We believe that the purpose of requiring a developer to designate a type of Affordable Housing Program is to insure that the developer had sufficient

[1] See The Enterprise Foundation Resource Database.

experience in working with an affordable housing financing program. Inclusionary zoning is not a financing program.

The failure of the Developer to be able to show at least two (2) developments with an appropriate Affordable Housing Program should cause Application 2005-054C to be rejected. Furthermore, the Application Instructions, at Part II.B.1, provides that the developer "listed in this Application may not change until the construction or Rehabilitation/Substantial Rehabilitation of the Development is complete." Since the developer cannot be change and it is clear that the developer listed in the Application cannot demonstrate that it possess the requisite skills and experience required to complete the project, we respectfully submit that based upon the above fact, Application 2005-054C must be rejected.

Respectfully Submitted,

Gonzalo DeRamon

2692051_v2

EXHIBIT H

MIAMI-DADE COUNTY

11805 S.W. 26 ST. MIAMI, FL 33175
TEMPORARY CERTIFICATE OF OCCUPANCY

FOLIO: 3031220580010 BUILDING PERMIT NO: 2002111107
ADDRESS: 5301 NW 23 AVE CERT NO: 2005058739
OCCUPANCY TYPE: PROCESS NO: H2005008677
OCCUPANCY PER FLOOR:
0
LOAD PER FLOOR:
0
MAILING ADDRESS/CONTACT PERSON / LEGAL DESCRIPTION:
ROBERT L LEVIS (3 22 53 ... 33 AC M/L
3000 NW 32 AVE DADE COUNTY H.U.D. HOUSING
MIAMI,FLORIDA.00175 PROPOSED ... 822
DADE COUNTY HOUSING DE...

CONDITIONS:
OK PER MR CHARLES DANGER BLDG CAT 01 ONLY FINAL MISSING
ROOF CAT 92 96 MISSING ... AND FINAL
DATE OF CO ISSUANCE: 4 ... 2005
THIS CERTIFICATE M U ... PREMISES.

THIS TEMPORARY CERTIFICATE OF OCCUPANCY IS VALID FOR A LIMITED TIME AS INDICATED BELOW. A FINAL CERTIFICATE OF OCCUPANCY MUST BE ISSUED PRIOR TO THE EXPIRATION DATE UNLESS AN EXTENSION HAS BEEN AUTHORIZED AND ANOTHER TEMPORARY ISSUED. THE OCCUPANCY COMPLIES WITH APPLICABLE CODE REQUIREMENTS OF MIAMI-DADE COUNTY, PROVIDED THERE IS NO CHANGE OF OCCUPANCY AND NO ENLARGEMENT, ALTERATION OR ADDITION IN THE BUILDING OR STRUCTURE. SUCH CHANGES REQUIRE A NEW CERTIFICATE OF OCCUPANCY.

** THIS CERTIFICATE EXPIRES: JULY 6, 2005. **

FOR USE OTHER THAN SINGLE FAMILY RESIDENCE, TOWNHOUSE OR DUPLEX, THE TEMPORARY CERTIFICATE OF OCCUPANCY
*** IS NOT AN AUTHORIZATION TO USE THE BUILDING. ***
PLEASE CONTACT THE MIAMI-DADE DEPARTMENT OF PLANNING AND ZONING, PERMIT SECTION AT 786-315-2666 FOR A CERTIFICATE OF USE AS WELL AS THE OCCUPATIONAL LICENSE OFFICE AT 305-270-4949 FOR THEIR REQUIREMENTS.

EXHIBIT I

owner of a building which does not meet the minimum size, height, occupancy, occupancy classification or number-of-stories criteria which would result in classification as a threshold building under s. 553.71(7) Florida Statutes, may designate such building as a threshold building, subject to more than the minimum number of inspections required by the *Florida Building Code, Building*.

105.13.3 The fee owner of a threshold building shall select and pay all costs of employing a special inspector, but the special inspector shall be responsible to the enforcement agency. The inspector shall be a person certified, licensed or registered under chapter 471 Florida Statutes as an engineer or under chapter 481 Florida Statutes as an architect.

105.13.4 Each enforcement agency shall require that, on every threshold building:

105.13.4.1 The special inspector, upon completion of the building and prior to the issuance of a certificate of occupancy, file a signed and sealed statement with the enforcement agency in substantially the following form: "To the best of my knowledge and belief, the above-described construction of all structural load-bearing components complies with the permitted documents, and the shoring and reshoring conforms to the shoring and reshoring plans submitted to the enforcement agency."

105.13.4.2 Any proposal to install an alternate structural product or system to which building codes apply be submitted to the enforcement agency for review for compliance with the codes and made part of the enforcement agency's recorded set of permit documents.

105.13.4.3 All shoring and reshoring procedures, plans and details be submitted to the enforcement agency for recordkeeping. Each shoring and reshoring installation shall be supervised, inspected and certified to be in compliance with the shoring documents by the contractor.

105.13.4.4 All plans for the building which are required to be signed and sealed by the architect or engineer of record contain a statement that, to the best of the architect's or engineer's knowledge, the plans and specifications comply with the applicable minimum building codes and the applicable fire-safety standards as determined by the local authority in accordance with this section and 633 Florida Statutes.

105.13.5 No enforcing agency may issue a building permit for construction of any threshold building except to a licensed general contractor, as defined in s. 489.105(3)(a) Florida Statutes, or to a licensed building contractor, as defined in s. 489.105(3)(b) Florida Statutes, within the scope of her or his license. The named contractor to whom the building permit is issued shall have the responsibility for supervision, direction, management and control of the construction activities on the project for which the building permit was issued.

105.13.6 The building department may allow a special inspector to conduct the minimum structural inspection of threshold buildings required by this code, s. 553.73, FS, without duplicative inspection by the building department. The building official is responsible for ensuring that any person conducting inspections is qualified as a building inspector under part XII of chapter 468, Florida Statutes, or certified as a special inspector under chapter 471 or chapter 481, Florida Statutes. Inspections of threshold buildings required by s. 553.79(5), Florida Statute, are in addition to the minimum inspections required by this code.

SECTION 106
CERTIFICATES

106.1 Certificate of Occupancy

106.1.1 Building occupancy. A new building shall not be occupied or a change made in the occupancy, nature or use of a building or part of a building until after the building official has issued a certificate of occupancy. Said certificate shall not be issued until all required electrical, gas, mechanical, plumbing and fire protection systems have been inspected for compliance with the technical codes and other applicable laws and ordinances and released by the building official.

106.1.2 Issuing Certificate of Occupancy. Upon completion of construction of a building or structure and installation of electrical, gas, mechanical and plumbing systems in accordance with the technical codes, reviewed plans and specifications, and after the final inspection, the building official shall issue a certificate of occupancy stating the nature of the occupancy permitted, the number of persons for each floor when limited by law, and the allowable load per square foot for each floor in accordance with the provisions of this code.

106.1.3 Temporary/Partial occupancy. A temporary/partial certificate of occupancy may be issued for a portion or portions of a building which may safely be occupied prior to final completion of the building.

106.2 Certificate of Completion. A certificate of completion is proof that a structure or system is complete and for certain types of permits is released for use and may be connected to a utility system. This certificate does not grant authority to occupy or connect a building, such as a shell building, prior to the issuance of a certificate of occupancy.

106.3 Service utilities

106.3.1 Connection of service utilities. No person shall make connections from a utility source of energy, fuel or power to any building or system which is regulated by the technical codes for which a permit is required, until released by the building official and a certificate of occupancy or completion is issued.

Gary J. Cohen

From: Maria De Pedro Gonzalez [develo_m@Bellsouth.net]

Sent: Tuesday, June 07, 2005 3:59 PM

To: Gary J. Cohen

Subject: Further Clarification on Issue Related to TCO

iary: See below for further clarification on this issue if you think it will help.

hanks.

IDPG

laria de Pedro-Gonzalez
xecutive Director
IDHA Development Corporation
05-267-3624
05-267-3676 fax
evelo_m@bellsouth.net

----Original Message-----
rom: Levis, Robert L. (MDHA) [mailto:RLEVIS@miamidade.gov]
ent: Tuesday, June 07, 2005 3:22 PM
o: 'develo_m@Bellsouth.net'; 'Marylena Lopez'; Perdigon, Albert (MDHA)
c: 'Floyd Harper'; Levis, Robert L. (MDHA); Brown, H. Patrick (MDHA); Perez, Rodolfo (MDHA)
ubject: RE: Fire Inspection

laria,

le did further research to determine whether or not the TCO for Ward Towers allows for "residency", i.e. allows residents) move in.

reddy Valderrama of the Miami-Dade Building Department sent us further documentation, Section 106.1.3 emporary/Partial Certificates of Occupancy, showing clearly that "occupancy" is allowed under a TCO. However, because)day's documentation did not, as yesterday's did not, mention the word "residency", I called him and talked to him ersonally. He confirmed, and I made him reiterate confirmation, that a TCO does allow residents to move in, i.e. it does llow "residency", in our sense of the word.

Robert L. Levis
ssistant Director
ousing, Planning, and Development
liami-Dade Housing Agency (MDHA)
el: 305-638-5757
ax: 305-638-6135