

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

JASMINE HOUSING, LTD.
(2009-198C)
(PROJECT NAME:
THE JASMINE),

Petitioner,

vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

FHFC Case No.: 2009-063 UC

DOAH CASE NO.: _____
FLORIDA HOUSING APPLICATION
NO. 2009-198C

**PETITION FOR INFORMAL
ADMINISTRATIVE HEARING**

Petitioner, Jasmine Housing, Ltd., ("The Jasmine" or "the Applicant"), by and through its undersigned attorney and pursuant to Sections 120.569 and 120.57(2), Florida Statutes (2009), and Rules 28-106.301 and 67.48.005, Florida Administrative Code ("F.A.C.") hereby files its petition for an informal administrative hearing to review the scoring and proposed funding determination of the Florida Housing Finance Corporation ("Florida Housing" or "Corporation") with respect to the application submitted by The Jasmine seeking an allocation of funds from the 2009 Universal Application Cycle ("2009 Cycle") funding batch.

1. Petitioner's name, address and telephone number are:

Jasmine Housing, Ltd.
c/o The Gatehouse Group, Inc.
120 Forbes Blvd.
Mansfield, MA 02048
508-337-2525

2. The name, address, telephone and facsimile number of Petitioner's representative for service purposes during this proceeding are:

Michael G. Maida
Michael G. Maida, P.A.
1709 Hermitage Blvd., Suite 201
Tallahassee, FL 32308
850/425-8124
850/681-0879

3. The name and address of the affected agency are:

Florida Housing Finance Corporation
227 N. Bronough Street
City Centre Building, Room 5000
Tallahassee, FL 32301-1329

4. Florida Housing is a public corporation organized pursuant to Section 420.504, Fla. Stat., to provide and promote the public welfare by administering the governmental function of financing and refinancing affordable housing and related facilities in Florida. Florida Housing is governed by a Board of Directors (the "Board"), appointed by the Governor with the Secretary of the Department of Community Affairs sitting ex-officio. Florida Housing is an agency as defined in Section 120.52, Fla. Stat., and therefore is subject to the provisions of Chapter 120, Fla. Statutes.

Affordable Housing Programs

5. Florida Housing administers various affordable housing programs including the Multifamily Mortgage Revenue Bonds (MMRB) Program pursuant to Section 420.509, Fla. Stat., and Rule Chapter 67-21, Fla. Admin. Code and the Housing Credit (HC) Program pursuant to Sections 420.507 and 420.5099, Fla. Stat., and Rule Chapter 67-48, Fla. Admin. Code.

6. The 2009 Universal Application Cycle, through which affordable housing developers apply for funding under various affordable housing programs administered by Florida Housing, is adopted as the Universal Application Package or UA1016 (Rev. 5-09) by Rules 67-21.003(1)(a) and 67-48.004(1)(a), Fla. Admin. Code, respectively, and consists of Parts I through V with instructions.

7. Because the demand for an allocation of Housing Credits and MMRB funding exceeds availability under the Housing Credit Program and the MMRB Program, qualified affordable housing developments must compete for this funding. To assess the relative merits of proposed developments, Florida Housing has established a competitive application process known as the Universal Cycle pursuant to Rule Chapters 67-21 and 67-48, Fla. Admin. Code, respectively. Specifically, Florida Housing's application process for the 2009 Universal Cycle is set forth in Rules 67-21.002-.0035 and 67-48.001-.005, F.A.C.

8. As discussed in more detail below, Florida Housing scores and competitively ranks the applications to determine which applications will be allocated MMRB funds or an allocation of Housing Credits.

9. The Corporation's scoring and evaluation process for applications is set forth in Rules 67-21.003 and 67-48.004, F.A.C. Under these Rules, the applications are preliminarily scored based upon factors contained in the application package and the Florida Housing rules. After the initial scoring, Florida Housing issues preliminary scores to all applicants.

10. Following release of the preliminary scores, competitors can alert Florida Housing of an alleged scoring error concerning another application by filing a written Notice of Possible Scoring Error ("NOPSE") within a specified time frame. After the Corporation considers issues raised in a timely filed NOPSE, it notifies the affected applicant of its decision.

11. Applicants have an opportunity to submit "additional documentation, revised pages and such other information as the Applicant deems appropriate ('cures') to address the issues" raised by preliminary or NOPSE scoring. See Rules 67-21.003 and 67-48.004(6), F.A.C. In other words, applicants can cure errors or omissions in their applications pointed out during preliminary scoring or raised by a competitor during the NOPSE process.

12. After affected applicants submit their "cure" documentation, competitors can file a Notice of Alleged Deficiencies ("NOAD") challenging the quality or validity of a cure. Following the Corporation's consideration of the cure materials submitted by the affected applicants and its review of the issues raised in the NOADs, Florida Housing publishes final scores for all the submitted applications.

13. Rules 67-21.0035 and 67-48.005, Fla. Admin. Code, establish a procedure through which an applicant can challenge the final scoring of its application. The Final Scores and Notice of Rights advise adversely affected applicants of their right to appeal Florida Housing's decision.

14. This Petition seeks review pursuant to Section 120.57(2), Florida Statutes, of the final scoring determinations made by the Florida Housing Finance Corporation with respect to the allocation of housing credits from the 2009 Universal Cycle. There are no disputed issues of material fact.

The 2009 Florida Housing Final Scores Regarding The Jasmine

15. On August 20, 2009, The Jasmine and many other entities submitted applications seeking an allocation of Housing Credits from the 2009 Universal Cycle. Jasmine's application was assigned Application No. 2009-198C.

16. In the Final Scores and Notice of Rights dated December 3, 2009, (and received via overnight mail on December 4, 2009) Florida Housing released its 2009 Universal Scoring Summary reflecting its decision regarding any "Cure" and NOAD final scoring determinations for the applications in the 2009 Cycle (the "Scoring Summary").

17. According to the Scoring Summary, The Jasmine's Application failed to meet threshold with respect to water availability and was scored five out of a possible six points for Ability to Proceed Tie-Breaker Points. The Jasmine was awarded maximum points in all other areas of its Application.

18. The Jasmine would be entitled to an allocation of Housing Credits from the 2009 Universal Cycle if Florida Housing had followed its adopted rules and scored The Jasmine correctly and consistently with other applications. Through this Petition, The Jasmine challenges the conclusion that it is not entitled to an allocation of Housing Credits and seeks a determination that, under the applicable scoring criteria, The Jasmine's Application is entitled to an allocation of Housing Credits. Thus, The Jasmine's substantial interests are subject to a determination in this proceeding.

19. The December 3, 2009 Final Scores and Notice of Rights ("Notice") advised applicants of their right to contest Florida Housing's scoring determinations regarding their application by filing a petition within twenty-one days from the date an affected applicant received the Notice. Under Rule 67-48.005, F.A.C., an applicant may petition for an informal hearing if the appeal does not involve disputed issues of material fact. This Petition is timely filed.

Infrastructure Availability and The Jasmine's Application

20. In order to obtain an allocation of Housing Credits, an application must satisfy certain threshold requirements. One of the threshold requirements for all applicants in the 2009 Cycle was to demonstrate the availability of infrastructure.

21. The Universal Application Package Instructions at Part III.C.3 entitled "Evidence of Infrastructure Availability (Threshold)" require verification of the availability of certain types of infrastructure, including availability of water. Pursuant to the rules set forth in the Universal Application Instructions at Part III.C.3, the verification of availability of water must be provided in the Application in "Exhibit 29" to the Application.

22. As part of its original application, The Jasmine included a letter from Miami-Dade County dated August 17, 2009, which is captioned "Water and Sewer Availability" for The Jasmine. (See attached Exhibit "A.") As reflected in Exhibit A, although the development site is located within the City of North Miami service area, all "construction connection charges and connection charges shall be determined once the property owner enters into an agreement for water and/or sewer service." Thus, as reflected in Exhibit A, The Jasmine is required to pay connection charges to Miami-Dade County. The Application was initially scored as having achieved threshold and maximum points with respect to water availability.

23. During the NOPSE phase, a competitor challenged whether The Jasmine demonstrated infrastructure availability. Although the development is located in unincorporated Miami-Dade County, the development site was within the designated water service area of the City of North Miami. The Corporation accepted this challenge and made a determination that the Applicant failed to achieve threshold with respect to water availability.

24. Thereafter, the Applicant provided another letter from Miami-Dade County dated October 30, 2009 again confirming that in order to have water provided to the development site all connection charges must be paid to Miami-Dade County Water and Sewer Department and not the City of North Miami. (See attached Exhibit "B.")

25. Miami-Dade County provides water to the City of North Miami pursuant to a July 2007 contract between the two local governments. The water provided by Miami-Dade County to the City of North Miami ensures that there is sufficient water capacity to service retail customers that are located in unincorporated Miami-Dade County. The subject development is located in unincorporated Miami-Dade County. As such, The Jasmine is a beneficiary of this inter-government water agreement. Miami-Dade County, and not the City of North Miami, receives payment for all water connection charges. Water service cannot be provided to The Jasmine's development unless Miami-Dade County receives payment for water connection charges. Moreover, Miami-Dade County can lien The Jasmine Development for charges that are not paid when due and is entitled to a service fee as a result of water being provided to the property. Accordingly, Miami-Dade County is an appropriate governmental entity to attest to water availability.

26. In post NOPSE scoring Florida Housing scored The Jasmine as failing to meet threshold and further did not award an Ability-to-Proceed Tie-Breaker Point for availability of water. Florida Housing's determination was based on its conclusion that the infrastructure letter was from the wrong governmental entity. The Applicant asserts that as water connection charges must be paid to the Miami-Dade Water and Sewer Department prior to water being provided to a consumer, Miami-Dade County is an appropriate governmental entity to attest to water availability.

27. If Florida Housing had properly evaluated and scored The Jasmine's application, The Jasmine would be entitled to an allocation of Housing Credits.

Specific Facts Warranting Reversal

28. Specific facts warranting reversal or modification of Florida Housing's proposed action are those alleged in this Petition, and include but are not limited to the following:

a. Florida Housing's rules set forth in the Universal Application Package Instructions as Part III.C.3 entitled "Evidence of Infrastructure Availability (Threshold)" require verification of the availability of certain types of infrastructure including water.

b. The Universal Application Package Instructions at Part III.C.3 require that the verification of availability of water must be provided in the Application as "Exhibit 29" to the Application.

c. The subject property is located in unincorporated Miami-Dade County. As a result of inter-government agreements, Miami-Dade County supplies water to the City of North Miami. The water service area of the City of North Miami, supplies customers that are located in unincorporated Miami-Dade County. The Jasmine development is located in unincorporated Miami-Dade County.

d. The Applicant included within its Application a letter from Miami-Dade County dated August 17, 2009 which is captioned "Water and Sewer Availability," which shows that Miami-Dade County determines the amount of water connection charges it is entitled to receive once The Jasmine enters into an agreement for water.

e. The Jasmine is required to pay all water connection charges to Miami-Dade County. Water service cannot be provided to this development unless Miami-Dade County receives payment for water service. Miami-Dade County can lien The Jasmine Development for

charges that are not paid when due and is entitled to a service fee as a result of water being provided to the property.

f. Exhibit 29 of the original and “cure” material submitted by The Jasmine properly disclose water infrastructure availability.

g. The Corporation scored The Jasmine’s Application as having failed to meet threshold with respect to water infrastructure availability.

h. The Corporation scored The Jasmine’s Application as not being entitled to receive an Ability to Proceed Tie-Breaker Measurement Point with respect to water infrastructure availability

i. The Jasmine would have been entitled to receive an allocation of Housing Credits had the Corporation scored The Jasmine’s Application as having met threshold and awarded the Application with a tie-breaker point with respect to water infrastructure availability.

29. The Jasmine reserves its right to demand a formal administrative hearing pursuant to Section 120.57(1), Florida Statutes (2009) in the event that any issues of material fact are raised by its petition.

Conclusion

30. The original and Cure documents submitted by the Jasmine demonstrate that it met threshold and is entitled to receive a tie-breaker point with respect to water infrastructure availability.

31. Florida Housing erred in its evaluation and scoring of The Jasmine’s Application.

32. The Jasmine was excluded from the funding range in the 2009 Universal Cycle as a result of Florida Housing’s erroneous scoring of its Application.

33. Properly evaluating and scoring The Jasmine's Application results in The Jasmine being ranked in the funding range for an allocation of Housing Credits.

34. The Jasmine's December 3, 2009 Scoring Summary Report is based upon incorrect scoring of The Jasmine's Application.

ULTIMATE FACT AND LAW

35. As a matter of ultimate fact and law, The Jasmine states that its Application met threshold, is entitled to a one-point Ability to Proceed Tie-Breaker Point and is entitled to an allocation of Housing Credits from the 2009 cycle.

STATUTES AND RULES AT ISSUE IN THIS PROCEEDING

36. The statutes and rules at issue in this proceeding include, but are not limited to, Sections 420.507, 420.509 and 420.5099, Florida Stat. (2009); Rule 28.106.201, Rule 67-21.0035, Rule 67-48.004, and Rule 67-48.005, F.A.C.

WHEREFORE, Petitioner, Jasmine Housing, Ltd., respectfully requests that:

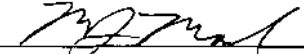
A. Florida Housing Finance Corporation refer this Petition to be heard before a hearing officer approved by Florida Housing;

B. An informal administrative hearing be conducted pursuant to Section 120.57(2), Florida Stat. (2007), to review Florida Housing's scoring determination regarding The Jasmine's Application;

C. Recommended and final orders be issued determining that The Jasmine is entitled to an allocation of funds based upon a correct scoring of The Jasmine's Application; and

D. Such further relief as may be deemed appropriate be granted.

RESPECTFULLY SUBMITTED this 28th day of December, 2009.


MICHAEL G. MAIDA
FL BAR No.: 0435945
Michael G. Maida, P.A.
1709 Hermitage Blvd., Suite 201
Tallahassee, FL 32308
850/425-8124

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that an original and one copy of the foregoing have been filed with Corporation Clerk, Florida Housing Finance Corporation, 227 N. Bronough Street, Suite 5000, Tallahassee, FL 32301-1329, on this 28th day of December, 2009.


MICHAEL G. MAIDA



Carlos Alvarez, Mayor

Water & Sewer
P O Box 330316 • 3071 SW 38th Avenue
Miami, Florida 33233-0316
T 305-665-7471

miamidade.gov

August 17, 2009

Nick A. Inamdor
445 N.W. 4th Street, Suite 108
Miami, Florida 33128

Re: Water and Sewer Availability (09-221102) for "The Jasmine"
located at The East side of NW 24th Avenue, 250 feet South of
the Intersection of NW 24th Avenue and NW 119th Street,
Miami, FL; and, The Southwest corner of the Intersection of
NW 119th Street and NW 22nd Court, Miami, FL.

Ladies and Gentlemen:

This letter is in response to your inquiry regarding water and sewer
availability to the above-referenced property for the construction and
connection of seventy-eight (78) residential apartment units.

This property is located within the designated water service area of
the City of North Miami.

The County owns and operates a twenty (20) inch sewer force main
located in N.W. 32 Avenue at N.W. 119 Street, from which the
property owner shall connect and install a sixteen (16) inch sewer
force main easterly in N.W. 119 Street to a point abutting the subject
property, thence eight (8) inch sewer force main facilities to the
property wherein the owner shall construct and install private sewage
pumping station facilities in order to serve the owner's property,
subject to the Department's rules, regulations, and standards, and any
applicable governmental approvals and restrictions.

Construction connection charges and connection charges shall be
determined once the property owner enters into an agreement for
water and/or sewer service, provided the Department is able to offer
those services at the time of the owner's request. Information
concerning the estimated cost of facilities must be obtained from a
consulting engineer.

All costs of engineering and construction will be the responsibility of
the property owner. Easements must be provided covering any on-site
facilities that will be owned and operated by the Department. Other
points of connection may be established by the Department. Please
be advised that the right to connect the referenced property to the
Department's sewer system is subject to the terms, covenants and
conditions set forth in the Settlement Agreement between the Florida

- ADA Coordinator
Agriculture
Animal Services
Arts and Public Places
Audit and Management Services
Aviation
Building
Building Code Compliance
Business Development
Capital Improvements
Citizens' Independent Transportation Trust
Commission on Ethics and Public Trust
Communications
Community Action Agency
Community & Economic Development
Community Relations
Consumer Services
Correctional & Rehabilitation
Cultural Affairs
Elections
Emergency Management
Employee Relations
Employment Trust
Enterprise Technology Services
Environmental Resources Management
Fair Employment Practices
Finance
Fire Rescue
General Services Administration
Governmental Information Center
Historic Preservation
Homeless Trust
Housing Agency
Housing Finance Authority
Human Services
Independent Review Panel
International Trade Commission
Juvenile Services
Medical Examiner
Metro-Miami Action Plan
Metropolitan Planning Organization
Parks and Recreation
Planning and Zoning
Police
Procurement Management
Property Appraisal
Public Library System
Public Works
Safe Neighborhood Parks
Seaport
Solid Waste Management
Strategic Business Management
Team Metro
Transportation
Task Force on Urban Economic Revitalization
Vintage Museums And Gardens
Water & Sewer



Water and Sewer Availability
"The Jasmine"
(09-221102)
August 17, 2009
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Department of Environmental Protection ("DEP") and the County dated July 27th, 1993, the First Amendment to Settlement Agreement between DEP and the County dated December 21st, 1995, the First Partial Consent Decree and the Second and Final Partial Consent Decree entered in the United States of America Environmental Protection Agency vs. Metropolitan Dade County (Case Number 93-1109 CIV-MORENO), as currently in effect or as modified in the future, and all other current, subsequent or future agreements, court orders, judgments, consent orders, the consent order between DEP and the County filed on April 4, 2004, consent decrees and the like entered into between the County and the United States of America, State of Florida and/or any other governmental entity, and all other current, subsequent, or future enforcement and regulatory actions and proceedings.

This letter is for informational purposes only and conditions remain in effect for thirty (30) - days from the date of this letter. Nothing contained in this letter provides the property owner with any vested rights to receive water and/or sewer service. The availability of water and/or sewer service is subject to the approval of all applicable governmental agencies having jurisdiction over these matters. When development plans for the subject property are finalized, and upon the owner's request, we will be pleased to prepare an agreement for water and/or sewer service, provided the Department is able to offer those services at the time of the owner's request. The agreement will detail requirements for off-site and on-site facilities, if any, points of connection, connection charges, capacity reservation and all other terms and conditions necessary for service in accordance with the Department's rules and regulations.

If we can be of further assistance in this matter, please contact us.

Very truly yours,



Michael Suchogorski
New Business Supervisor



Miami-Dade Water and Sewer Department
 P. O. Box 330316 • 3071 SW 38th Avenue
 Miami, Florida 33133-0316
 T 305-665-7471

miamidade.gov

- ADA Coordination
- Ageds Coordination
- Animal Services
- Art in Public Places
- Audit and Management Services
- Aviation
- Building
- Building Code Compliance
- Business Development
- Capital Improvements Construction Coordination
- Citizens' Independent Transportation Trust
- Commission on Ethics and Public Trust
- Communications
- Community Action Agency
- Community & Economic Development
- Community Relations
- Consumer Services
- Corrections & Rehabilitation
- Cultural Affairs
- Systems
- Emergency Management
- Employee Relations
- Employment Training
- Energy Technology Services
- Environmental Resource Management
- Job Employment Practices
- Finance
- Fire Service
- General Services Administration
- Historic Preservation
- Homeless Trust
- Housing Agency
- Housing Finance Authority
- Human Services
- Independent Review Panel
- International Trade Consortium
- Juvenile Assessment Center
- Medical Examiner
- Metro-Miami Action Plan
- Metropolitan Planning Organization
- Park and Recreation
- Planning and Zoning
- Police
- Procurement Management
- Property Appraiser
- Public Library System
- Public Works
- Site Neighborhood Parks
- Support
- Solid Waste Management
- Strategic Business Management
- Team Metro
- Traffic
- Task Force on Urban Economic Revitalization
- Wayside Museum And Gardens
- Water & Sewer

October 30, 2009

VIA U.S. MAIL

Nick A. Inamdar
 445 N.W. 4th Street, Suite 108
 Miami, FL 33128

Re: Water and Sewer Availability (09-221102) for "The Jasmine" located at The East side of NW 24th Avenue, 250 feet South of the Intersection of NW 24th Avenue and NW 119th Street, Miami, FL; and The Southwest corner of the Intersection of NW 119th Street and NW 22nd Court, Miami, FL

Dear Mr. Inamdar:

This letter re-confirms that the above-described property is located within the designated water service area of the City of North Miami and the designated sewer service area of Miami-Dade County.

The above-described property is required to pay Miami-Dade County's Water and Sewer Connection Charges. The City of North Miami is prohibited from rendering water service to the above-described property until a written receipt from the Miami-Dade Water and Sewer Department has been provided to the City of North Miami.

I hope this letter clarifies the information that was previously provided to you in the August 17, 2009 letter from Michael Suchogorski, New Business Supervisor for the Miami-Dade Water and Sewer Department.

Sincerely,

John Renfrow, Director
 Miami-Dade Water and Sewer Department



ELECTION OF RIGHTS

Application Number: 2009-198C Development Name: The Jasmine

- 1. I do not desire a proceeding.
- 2. I elect an informal proceeding to be conducted in accordance with Sections 120.569 and 120.57(2), Florida Statutes. In this regard I desire to (Choose one):
 - submit a written statement and documentary evidence; or
 - attend an informal hearing to be held in Tallahassee.

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

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

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

Following are my top four preferences, in order from 1-4 (with 1 being my first choice, etc.) for scheduling my informal hearing. All formal hearings will be scheduled by the Division of Administrative Hearings.

Hearing Dates:	A.M.	P.M.
January 12, 2010		
January 13, 2010		

Hearing Dates:	A.M.	P.M.
January 14, 2010	1	
January 15, 2010	2	

Matters heard after these dates will likely not be funded in the current Application Cycle.

Please fax a Hearing Schedule to me at this number: 950-681-0879
(include Area Code)

DATE: 12/17/09

Michael D. Maish

Signature of Petitioner

Name: Michael G. Maish

Address: P.O. Box 12093

Tallahassee FL 32317

Phone: (850) 425-8124

(include Area Code)

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