

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

DDC INVESTMENTS, LTD.
d/b/a DENISON DEVELOPMENT
FLORIDA, LTD.,

Petitioner,

v.

FHFC Case No.: 2012-015UC
Application No. : 2011-136C

FLORIDA HOUSING FINANCE
CORPORATION,

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 June 8, 2012. The matter for consideration before this Board is a Recommended Order issued under section 120.57(2), Florida Statutes. After a review of the record and otherwise being fully advised in these proceedings, this Board finds:

On or before December 6, 2011, DDC Investments, Ltd. d/b/a Denison Development Florida Ltd, (“Petitioner”), submitted its 2011 Universal Cycle Application No. 2011-136C (“Application”) to Florida Housing Finance Corporation (“Florida Housing”) seeking an allocation of

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Della C. Harrell / DATE: 6/8/12

competitive “9%” Tax Credits under the federal Low Income Housing Tax Credit program to fund the project known as Merritt Grand.

Petitioner timely filed its “Amended Petition for Informal Administrative Proceedings,” (the “Petition”) challenging Florida Housing’s scoring on its Application No. 2011-136C. The parties stipulated to the facts at issue. Accordingly, an informal hearing was held before Florida Housing Finance Corporation’s appointed Hearing Officer Diane D. Tremor, pursuant to Sections 120.569 and 120.57(2), Florida Statutes, on May 10, 2012.

A Recommended Order was filed on May 23, 2012. A true and correct copy of the Recommended Order is attached hereto as “Exhibit A.” The Recommended Order recommends that Florida Housing enter a Final Order finding that:

Florida Housing correctly awarded no tie-breaker points to its Application No. 2011-136C, due to Petitioner’s failure to provide evidence of “Verification of Local Government Contribution – Loan,” on Application Exhibit 38, and erred when it accepted Petitioner’s “Corrected Exhibit 26 – Local Government Verification of Site Plan Approval for Multifamily Developments,” awarding ½ “Ability to Proceed” tie-breaker point, rather should have awarded one point for Petitioner’s original Exhibit 26.

RULING ON THE RECOMMENDED ORDER

The Board finds that the findings of fact and the conclusions of law of the Recommended Order are supported by competent substantial evidence.

ORDER

1. The Findings of Fact of the Recommended Order are adopted as Florida Housing's Findings of Fact and incorporated by reference as though fully set forth in this Order.

2. The conclusions of law of the Recommended Order are adopted as Florida Housing's conclusions of law and incorporated by reference as though fully set forth in this Order.

IT IS HEREBY **ORDERED** that Petitioner is awarded no tie-breaker points for Petitioner's "Verification of Local Government Contribution – Loan," Application Exhibit 38, and is awarded ½ "Ability to Proceed" tie-breaker point for Petitioner's "Corrected Exhibit 26 – Local Government Verification of Site Plan Approval for Multifamily Developments," on Petitioner's Application No. 2011-136C.

DONE and ORDERED this 8th day of June, 2012.



FLORIDA HOUSING FINANCE
CORPORATION

By: _____
Chair

Copies to:

Wellington H. Meffert II
General Counsel
Florida Housing Finance Corporation
337 North Bronough Street, Suite 5000
Tallahassee, FL 32301

Linda Loomis Shelley, Esq.
Karen A. Brodeen, Esq.
Fowler White Boggs PA
101 North Monroe Street, Suite 1090
Tallahassee, FL 32301

Diane Tremor, Hearing Officer
Sundstrom Friedman & Fumero LLP
2548 Blairstone Pines Drive
Tallahassee, FL 32301

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329, AND A SECOND COPY, ACCOMPANIED BY THE FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, 300 MARTIN LUTHER KING, JR., BLVD., TALLAHASSEE, FLORIDA 32399-1850, OR IN THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

DDC INVESTMENTS, LTD
d/b/a DENISON DEVELOPMENT
FLORIDA, LTD.,
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vs.

FLORIDA HOUSING FINANCE
CORPORATION,
Respondent.

FHFC Case No. 2012-015UC
Application No. 2011-136C

RECOMMENDED ORDER

Pursuant to notice and Sections 120.569 and 120.57(2), Florida Statutes, the Florida Housing Finance Corporation, by its duly designated Hearing Officer, Diane D. Tremor, held an informal hearing in Tallahassee, Florida, in the above captioned proceeding on May 10, 2012.

APPEARANCES

For Petitioner:

Linda Loomis Shelley
Karen A. Brodeen
Fowler White Boggs, PA
101 North Monroe Street, Suite 1090
Tallahassee, Florida 32301

For Respondent:

Wellington H. Meffert, II
General Counsel
Florida Housing Finance Corporation
227 North Bronough Street, Ste. 5000
Tallahassee, FL 32301-1329

STATEMENT OF THE ISSUES

There are no disputed issues of material fact. The issues for determination in this proceeding are whether Petitioner's application was entitled to receive additional points for Local Government Support and for local government Site Plan Approval.

PRELIMINARY STATEMENT

At the informal hearing, the parties stipulated to the admission into evidence of Joint Exhibits 1 through 8 and to Petitioner's Exhibits 1 through 3. Joint Exhibit 1 is a Joint Stipulation of Facts and Exhibits. That document basically describes the application process and the circumstances regarding the scoring of Petitioner's application with regard to the issues in dispute. The Joint Stipulation of Facts and Exhibits (Joint Exhibit 1) is attached to this Recommended Order as Attachment A, and the facts recited therein are incorporated in this Recommended Order.

Subsequent to the hearing, the parties timely submitted their Proposed Recommended Orders, which have been fully considered by the undersigned.

FINDINGS OF FACT

Based upon the undisputed facts and documents received into evidence at the hearing, the following relevant facts are found:

1. The Petitioner, DDC Investments, LTD d/b/a Denison Development Florida, LTD., submitted Application Number 2011-015C in Florida Housing's 2011 Universal Cycle seeking low income rental housing tax credits for its project known as Merritt Grand. (Joint Exhibit 1)

Local Government Contribution

2. The 2011 Universal Application Instructions, at Part IV.A, allow applicants to receive five (5) points for a Local Government Contribution, which includes a loan. The Instructions further provide, at pages 93-94, that: "State, federal or Local Government funds initially obtained by or derived from a Local Government qualify as a Local Governmental contribution even though the funds are directly administered by an intermediary, such as a housing finance authority" To be entitled to such points, Applicants are required to submit, as Exhibit 38, a form entitled "Local Government Verification of Contribution – Loan." That form states that the Certification on the form:

"must be signed by the chief appointed official (staff) responsible for such approvals, Mayor, City Manager, County Manager/Administrator/Coordinator, Chairperson of the City Council/Commission or Chairperson of the Board of County Commissioners. If the contribution is from a Land Authority organized pursuant to Chapter 380.0663, Florida Statutes, this Certification must be signed by the Chair of the Land Authority. One of the authorized persons named above may sign this Form for certification of state, federal or Local Government funds initially obtained by or derived from a Local Government that is directly administered by an intermediary, such as a housing finance authority, a community reinvestment corporation, or a state-certified

Community Housing Development Organization (CHDO). Other signatures are not acceptable. . . .

The upper portion of the form requires the completion of spaces for the “name of the City or County” which committed to the loan amount on or before the Application Deadline and the amount of the commitment (loan amount). The form also contains a space for the name of a government contact who can verify the contribution. (See Joint Exhibit 2)

3. As part of its initial application, Petitioner submitted, as its Exhibit 38, an executed “Local Government Verification of Contribution – Loan” form, stating in the space labeled “Name of City or County” that the “Saint Petersburg Housing Authority” committed \$120,000.00 in the form of a reduced interest rate loan to the Applicant. The St. Petersburg Housing Authority was listed as the name of the government contact, and the Certification on the form was signed by the Chairman, Joseph T. Lettelleir. (Joint Exhibit 2)

4. In its preliminary scoring of Petitioner’s application, Florida Housing awarded Petitioner the maximum five (5) points for Local Government Contributions under Part IV, A. (Joint Exhibit 4)

5. After the preliminary scoring, competing applicants submitted Notices of Proposed Scoring Errors (“NOPSEs”) to Florida Housing challenging the award of the maximum five points awarded to Petitioner for Local Government

Contributions. The NOPSEs raised objections that the Chairman of the Saint Petersburg Housing Authority was not authorized to sign the Certification on Exhibit 38 and that the Saint Petersburg Housing Authority is ineligible to provide a local contribution loan for purposes of Exhibit 38 because it is not a county or municipality. The NOPSEs contained documentation raising a question as to whether the City of St. Petersburg approved the loan commitment. (Joint Exhibit 5)

6. Thereafter, Petitioner submitted two Cure forms regarding its initially submitted Exhibit 38. One Cure form urged that the Saint Petersburg Housing Authority is eligible as a source of Local Government Contribution, and the other urged that Joe Lettelleir, as Chairman of the Board of the Saint Petersburg Housing Authority appointed by the Mayor of St. Petersburg, is the appropriate person to sign the Certification attached to the Form included as Exhibit 38. However, the Petitioner attached to its Cure a "Substitute Exhibit 38" with notation: "Should FHFC reject signature by Chief Appointed Official Joe Lettelleir." The Certification on the revised Exhibit is signed by Darrell Irions, Chief Executive Officer, and the person listed as the government contact is Darrell Irions. That Exhibit is otherwise identical to the Petitioner's originally submitted Exhibit 38. (Joint Exhibit 6)

7. In its final scoring of Petitioner's application, Florida Housing did not award Petitioner any points for a Local Government Contribution under Part IV.A. As reasons for that determination, Florida Housing stated that "the funding committed was not from the City/County, but from the Saint Petersburg Housing Authority," that Petitioner's Exhibit 38 "does not indicate if the funding commitment is from the city or county and it is still signed by the St. Petersburg Housing Authority," and that the form "must be signed by the chief appointed official (staff) responsible for such approvals, Mayor, City Manager, County Manager/Administrator/Coordinator, Chairperson of the City Counsel/Commission [sic] or Chairperson of the Board of County Commissioners." (Joint Exhibit 8)

Site Plan Approval

8. Part III, Section A, Subsection 10 of the 2011 Universal Application Instructions allows tie breaker points in the competitive Housing Credit Program if the applicant meets threshold requirements for certain elements, including site plan/plat approval. The Instructions further provide that if an applicant does not receive the full one point for site approval during the preliminary scoring, but later successfully cures the site plan approval failure, only one-half (0.5) point may be awarded. (Instructions, pages 55 – 56)

9. In order to demonstrate site plan approval, which is a threshold requirement, Petitioner was required to submit, as Exhibit 26, a form entitled

“Local Government Verification of Status of Site Plan Approval for Multifamily Developments.” Petitioner’s originally submitted Exhibit 26, in the space designated for “Legally Authorized Body,” bears the signature of Dave Goodwin, with the words “Dave Goodwin, Planning and Economic Development Director” hand-printed under the signature. The form has a notation stating that “ ‘Legally Authorized Body’ is not an individual. Applicant must state the name of the City Council, County Commission, Board, Department, Division, etc., with authority over such matters.” The form also requires a Certification that the City/County has vested the signatory with the authority to verify status of site plan approval. Dave Goodwin signed this Certification, stating his title as “Plng & Eco. Dev. Director” and filling in the “City of St. Petersburg” as the entity which vested such authority. (Joint Exhibit 3)

10. In its preliminary scoring of Petitioner’s application, Florida Housing determined that Petitioner failed to meet threshold requirements with regard to site plan approval and awarded Petitioner zero tie-breaker points for site plan approval, stating that Petitioner’s Exhibit 26 was incomplete because the form reflects a person rather than a legally authorized body. (Joint Exhibit 4)

11. In response to this preliminary scoring, Petitioner submitted as a Cure a revised Exhibit 26, which has the “Legally Authorized Body” space filled out with “City of Saint Petersburg.”

12. In the final scoring of Petitioner's application, Florida Housing rescinded its initial determination of failure to meet threshold with regard to site plan approval and awarded Petitioner 0.5 tie-breaker points for site plan approval. (Joint Exhibit 8)

13. Petitioner submitted evidence that another competing applicant in the same 2011 Universal Cycle received the full 1.0 tie-breaking point for site plan approval and no determination of failure to achieve threshold requirement for site plan approval when that applicant filled in the "Legally Authorized Body" space on Exhibit 26 with the words "Zoning Administrator*". The star referenced the words "on behalf of the Office of Zoning." (Petitioner's Exhibit 2)

CONCLUSIONS OF LAW

Pursuant to Sections 120.569 and 120.57(2), Florida Statutes, and Chapter 67-48, Florida Administrative Code, the Informal Hearing Officer has jurisdiction of the parties and the subject matter of this proceeding. [ME: Rewrite] Because Florida Housing determined that Petitioner was not ineligible to receive five (5) points for a Local Government Contribution and was entitled to only ½ point instead of 1.0 point for Site Plan Approval, Petitioner's substantial interests are affected by Florida Housing's proposed agency action.

There are two issues for determination in this proceeding. The first is whether Petitioner submitted sufficient documentation regarding a Local

Government Contribution. More specifically, the issue is whether Petitioner's Exhibit 38 complied with the Application Instructions and the forms prescribed by Florida Housing's rules. The second issue is whether Petitioner was entitled to receive more than ½ point for its documentation of Site Plan Approval.

Local Government Contribution

The Universal Application Package or UA 1016 (Rev. 2-11), which includes the application forms and the Application Instructions, is adopted by Rule 67-48.004(1)(a), Florida Administrative Code. As applicable to the issues raised in this proceeding regarding a local government contribution in the form of a loan, the Instructions, at pages 93 and 94, provide, in part, that

State, federal, or Local Government **funds initially obtained by or derived from a Local Government qualify** as a Local Government Contribution even though the funds are directly administered by an **intermediary such as a housing finance authority, a community reinvestment corporation, or a state-certified Community Housing Development Corporation** Local Government contributions that have not received final approval will not qualify as a Local Government contribution for purposes of this Application. (Emphasis supplied)

The Instructions further provide, at page 93, that Applicants must provide the Local Government Verification of Contribution – Loan form behind a tab labeled “Exhibit 38,” and that said form must reflect the effective date of the Local Government commitment, which date must be on or before the Application Deadline. This last requirement is reflected on the printed form. After spaces

provided for the name of the development and the development location, the form states: “On or before the Application Deadline for the 2011 Universal Application Cycle . . . **the City/County** of _____ committed \$ _____ in the form of a reduced interest rate loan to the Applicant . . .”

Under the two blank spaces are the words “**Name of City or County**” and “loan amount”.

The Local Government Verification of Contribution – Loan form provides a listing of persons authorized to sign the form “for certification of state, federal or Local Government funds **initially obtained by or derived from a Local Government that is directly administered by an intermediary** such as a housing finance authority, . . . “ (Emphasis supplied) That same portion of the form states the persons authorized to sign the Certification, including “the chief appointed official (staff) responsible for such approval,” and states that “[o]ther signatories are not acceptable,” and that “[t]he Applicant will not receive credit for this contribution if the certification is improperly signed.”

Apart and separate from the issue of who may sign the Certification appearing on the form is the requirement stated both in the Application Instructions and the form, that the funds committed must be “initially obtained by or derived from a Local Government.” As demonstrated by the language emphasized in bold type above, this repeated requirement is clear and unambiguous.

Petitioner argues that there is nothing on the form or any other part of the Application which inquires about the origin of the loan claimed as a contribution from local government. That is not correct. The form specifically requests the name of the City or County which committed the loan on or before the Application Deadline. In addition, the Certification of the truth and correctness of the information provided on the form references “funds initially obtained by or derived from a Local Government”. The Instructions provide: “Local Government contributions that have not received final approval will not qualify as a Local Government contribution for purposes of this Application.” Moreover, both the Instructions and the form refer to funds “directly administered by an intermediary.” An “intermediary” is defined in *Random House Webster’s College Dictionary* (2000) as an “intermediate agent or agency; a go-between or mediator.” An “intermediate” is “being, situated or acting between two points, stages, things, persons, etc.” Thus, to be qualified to administer funds proposed for the loan, the St. Petersburg Housing Authority would have to be acting “between” the local government and the Applicant in this case. Again, it follows that the submission of a properly completed and executed Verification form is intended to be an affirmation that the funds proposed for the loan were initially obtained by a City or a County.

Importantly, Petitioner makes no argument in this proceeding, nor did it submit any information in its Application, that local government (i.e., the City or the County) was the source of the funds proposed to be loaned to the Petitioner. Petitioner did not address in its CURE materials the allegations and documents submitted with the NOPSEs suggesting that the funds proposed for a loan were not initially obtained by or derived from the City of St. Petersburg. Instead, as it did at the informal hearing, Petitioner argued that it was proper for the St. Petersburg Housing Authority, through its “chief appointed official (staff)” to execute the form entitled Local Government Verification of Contribution – Loan.

The undersigned agrees that the language on the Certification portion of the form describing the individual authorized to execute the form, which language is different than that appearing on prior versions of the form (see Petitioner’s Exhibit 1) permits a “chief appointed official (staff)” of an entity other than a City or a County to execute the form. However, that begs the issue. The person or entity signing the form must be acting as an “intermediary” in the administration of funds initially obtained by or derived from a City or a County. Petitioner’s original and revised Exhibit 38 fail to demonstrate that required fact. Accordingly, Petitioner was entitled to no points for the Local Government Contribution sought through its Exhibit 38.

Site Plan Approval

The factual and legal issues regarding Petitioner's compliance with Florida Housing's rules with regard to Site Plan Approval are not complicated. In Petitioner's initial Exhibit 26, a form entitled "Local Government Verification of status of Site Plan Approval for Multifamily Developments," a signature with a handwritten notation reading "Dave Goodwin, Planning and Economic Development Director" was inserted in statement number 2 of the form which contained a blank space for the "Legally Authorized Body." The same form stated that a " 'Legally Authorized Body' is not an individual. Applicant must state the name of the City Council, County Commission, Board, Department, Division, etc., with authority over such matters." Petitioner's initial Exhibit 26 simply did not follow the form's instruction to identify, in the space provided, the "Legally Authorized Body" as defined in the form. The form specifically states that an individual is not a "Legally Authorized Body."

Florida Housing's Application Instructions require a "properly completed and executed" Exhibit 26. (Instructions page 56, paragraph 1.a) The Application Instructions, along with the forms, are adopted by rule. See Rule 67-48.004(1)(a), Florida Administrative Code. Petitioner did not comply with those rules in its initially submitted Exhibit 26, and the consequence was, as prescribed in the

Application Instructions at pages 55 and 56, a reduction of ½ point in its Ability to Proceed tie-breaker points.

Petitioner argues that Florida Housing erred when it reviewed and scored Petitioner's initial Exhibit 26 by "assuming" that only an entity can be a "Legally Authorized Body." Florida Housing was not required to make any "assumptions" because of the clear language on the form stating that a "Legally Authorized Body" is not an individual. Petitioner then argues that the form itself is "imperfect." This is not a rule challenge proceeding brought pursuant to Section 120.56, Florida Statutes. In this proceeding, the validity of Florida Housing's rules, which include its forms in the 2011 Universal Cycle, is presumed.

Petitioner further argues that there is no evidence in the record, either through a NOPSE or otherwise, that Dave Goodwin in his capacity as Planning and Economic Development Director, is not authorized by the City of St. Petersburg to approve site plans or that the authority to approve site plans resides in any particular body. In this regard, Petitioner misconceives its burden of proof. In these proceedings, the burden is upon the Applicant to demonstrate compliance with Florida Housing's rules with regard to its application. There was no obligation on the part of Florida Housing, either during its scoring process or in this proceeding, to disprove that an individual may place his or her signature on a

space specifically stating that an “individual” may not sign as the “Legally Authorized Body.”

Petitioner’s Exhibit 3, which contains excerpts from the City of St. Petersburg Code of Ordinances, was offered by Petitioner to demonstrate that David Goodwin is designated by the Mayor to make decisions regarding the approval of site plans. This document was not presented as a part of Petitioner’s initial application, nor was it presented as part of Petitioner’s Cure documents. In any event, a review of Petitioner’s Exhibit 3, while referencing a “POD”, defined as the person officially recognized by the Mayor to perform the duties described in that section of the Code, does not mention David Goodwin, nor does it mention the “Planning and Economic Development Director” or any entity identified as “Planning and Economic Development.”

As noted in the Findings of Fact, Petitioner’s Application was deemed to meet threshold requirements with regard to Site Plan Approval as a result of its Cure document stating the name of the “Legally Authorized Body” as the City of St. Petersburg. In accordance with Florida Housing’s rules, Petitioner was awarded only ½ point as an Ability to Proceed tie-breaker point because Petitioner did not get it right the first time, but cured the deficiency in its revised Exhibit 26. As discussed in the case of *Plaza La Isabella, LLC v. Florida Housing Finance Corporation*, FHFC Case No. 2006-022UC (Final Order July 31, 2006), where

tie-breaker points are involved, the scrutiny of compliance with Florida Housing's rules should be especially strict, since the purpose of tie-breaker points is to distinguish between competing applicants who have identical scores.

RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law recited herein, it is RECOMMENDED that a Final Order be entered awarding Petitioner's application no points for a Local Government Contribution and one-half (1/2) tie-breaker point for Site Plan Approval.

Respectfully submitted this 23rd day of May, 2012.



DIANE D. TREMOR
Hearing Officer for Florida Housing
Finance Corporation
Sundstrom, Freidman & Fumero, LLP
2548 Blairstone Pines Drive
Tallahassee, Florida 32301
(850) 877-6555

Copies furnished to:

Linda Loomis Shelley
Karen A. Brodeen
Fowler White Boggs, PA
101 North Monroe Street, Suite 1090
Tallahassee, Florida 32301

Wellington H. Meffert, II
General Counsel
Florida Housing Finance Corporation
227 North Bronough Street, Ste. 5000
Tallahassee, FL 32301-1329

NOTICE OF RIGHT TO SUBMIT WRITTEN ARGUMENT

In accordance with Rule 67-48.005(3), Florida Administrative Code, Applicants have the right to submit written arguments in response to a Recommended Order for consideration by the Board. Any written argument should be typed, double-spaced with margins no less than one (1) inch, in either Times New Roman 14-point or Courier New 12-point font, and may not exceed five (5) pages, excluding the caption and certificate of service. Written arguments must be filed with Florida Housing Finance Corporation's Clerk at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, no later than 5:00 p.m. five (5) calendar days from the date of issuance of the Recommended Order. Failure to timely file a written argument shall constitute a waiver of the right to have a written argument considered by the Board. Parties will not be permitted to make oral presentations to the Board in response to Recommended Orders.

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FHFC CASE NO.: 2012-015UC
Application No. : 2011-136C

FLORIDA HOUSING FINANCE
CORPORATION,

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JOINT STIPULATION OF FACTS AND EXHIBITS

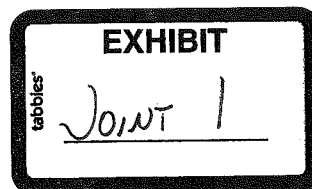
Petitioner, DDC Investments, Ltd. d/b/a Denison Development Florida, Ltd. (“Petitioner”), and Respondent, Florida Housing Finance Corporation (“Florida Housing”), by and through undersigned counsel, submit this stipulation for purposes of expediting the informal hearing scheduled for May 10, 2012, in Tallahassee, Florida, and agree to the findings of fact and to the admission of the exhibits described below.

THE PARTIES

1. Petitioner is DDC Investments, Ltd. d/b/a Denison Development Florida, Ltd., which is authorized by the Florida Department of State to conduct business in the State of Florida as a foreign limited partnership. Its business address is 2520 Longfellow Street, Suite 310, Austin Texas, 78705. For purposes of this proceeding, Petitioner’s address is that of its undersigned counsel, Linda Loomis Shelley, Esquire, Fowler White Boggs, PA, 101 North Monroe Street, Suite 1090, Tallahassee, Florida, 32301; telephone number (850) 681-4260,

Attachment A.

1



facsimile number (850) 681-3381. and is in the business of providing affordable rental housing units in the State of Florida.

2. Florida Housing is a public corporation, with its address at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301, organized to provide and promote the public welfare by administering the governmental function of financing and refinancing housing and related facilities in the State of Florida. Section 420.504, F.S.

BACKGROUND

3. Florida Housing administers various affordable housing programs including the Housing Credit (HC) Program pursuant to Section 42 of the Internal Revenue Code and Section 420.5099, F.S., under which Florida Housing is designated as the HC agency for the state of Florida within the meaning of Section 42(h)(7)(A) of the Internal Revenue Code, and Rule Chapter 67-48, F.A.C.; and

4. The 2011 Universal Cycle Application, through which affordable housing developers apply for low income rental housing tax credits under the above-described affordable housing program administered by Florida Housing, together with Instructions and Forms, comprise the Universal Application Package or UA1016 (Rev. 2-11) adopted and incorporated by Rule 67-48.004(1)(a), F.A.C.

5. Because the demand for HC tax credits exceeds that which is available, qualified affordable housing developments must compete. To assess the relative merits of proposed developments, Florida Housing has established a competitive application process known as the Universal Cycle pursuant to Rule Chapter 67-48, F.A.C. Specifically, Florida Housing's application process for the 2011 Universal Cycle, as set forth in Rule 67-48.001-.005, F.A.C., involves the following:

- a. the publication and adoption by rule of a “Universal Application Package,” which applicants use to apply for funding under the HC and HOME Programs administered by Florida Housing;
- b. the completion and submission of applications by developers;
- c. Florida Housing’s preliminary scoring of applications (preliminary scoring summary);
- d. an initial round of administrative challenges in which an applicant may take issue with Florida Housing’s scoring of another application by filing a Notice of Possible Scoring Error (“NOPSE”);
- e. Florida Housing’s consideration of the NOPSEs submitted, with notice (NOPSE scoring summary) to applicants of any resulting change in their preliminary scores;
- f. an opportunity for the applicant to submit additional materials to Florida Housing to “cure” any items for which the applicant was deemed to have failed to satisfy threshold or received less than the maximum score;
- g. a second round of administrative challenges whereby an applicant may raise scoring issues arising from another applicant’s cure materials by filing a Notice of Alleged Deficiency (“NOAD”);
- h. Florida Housing’s consideration of the NOADs submitted, with notice (final scoring summary) to applicants of any resulting change in their scores;
- i. an opportunity for applicants to challenge, by informal or formal administrative proceedings, Florida Housing’s evaluation of any item in their own application for which the applicant was deemed to have failed to satisfy threshold or received less than the maximum score;¹
- j. final scores, ranking of applications, and award of funding to successful applicants, including those who successfully appeal the adverse scoring of their application; and
- k. an opportunity for applicants to challenge, by informal or formal administrative proceedings, Florida Housing’s final scoring and ranking of competing applications where such scoring and ranking resulted in a denial of Florida Housing funding to the challenging applicant.

¹ This proceeding is the subject of such a challenge.

PETITIONER'S APPLICATION AND SCORING ISSUES

6. FHFC prepared the application package for the competitive 2011 Universal Cycle. The application package is adopted by reference in FHFC Rule 67-48.004(1)(a), Fla. Admin. Code, and includes the application form, application exhibit forms, and application instructions ("Instructions"). One of the programs that is administered through the 2011 Universal Cycle is the Housing Credit Program that allocates low income rental housing tax credits.

7. During the 2011 Universal Cycle, DDC submitted an application for Merritt Grand to qualify for low income rental housing tax credits ("Application").

Exhibit 38

8. With respect to Part IV, Section A, the applicable type of local government contribution is a loan. Form 38 is entitled and described in the application form as "Local Government Verification of Contribution-Loan Form." As required by the Application, Form 38 was completed and included behind a tab attached as "Exhibit 38."

9. The Instructions for Part IV, Section A of the 2011 Universal Application state that an applicant is entitled to five points for a Local Government Contribution (loan) if: 1) the dollar amount has a value equal to or greater than the amounts on the County Contribution List; 2) such contribution is demonstrated by providing the properly completed applicable form; and 3) there is an attachment that either shows, as applicable, the payment stream for all present value calculations or the calculations by which the total amount of each waiver is determined. Instructions, at 92-93.

10. The Instructions further advise:

State, federal or Local Government funds initially obtained by or derived from a Local Government qualify as a Local Governmental contribution **even though the funds are directly administered by an intermediary such as a housing finance authority, a community reinvestment corporation, or a state-certified**

Community Housing Development Organization, provided that they otherwise meet the requirements set forth in this Application, including those relating to the executed verification form. Local Government contributions that have not received final approval will not qualify as a Local Government contribution for purposes of this Application. **The following will not qualify as a Local Government Contribution: (i) a contribution from an Applicant or Developer or Principal, Affiliate or Financial Beneficiary of an Applicant or a Developer and (ii) HOPE VI funds.**

Instructions, at 92-93 (emphasis added).

11. The loan verification form reiterates that an entity other than a county or municipality may administer the local government contribution:

This certificate must be signed by the chief appointed official (staff) responsible for such approvals, Mayor, City Manager, County Manager, Administrator Coordinator, Chairperson of the City Council Commission or Chairperson of the Board of County Commissioners... One of the authorized persons named may sign this form for certification of state, federal or Local Government funds initially obtained by or derived from a Local Government that is **directly administered by an intermediary such as a housing finance authority, a community reinvestment corporation, or a state-certified Community Housing Development Organization (CHDO).**

Form 38 (emphasis added).

12. The completed loan verification form submitted as Exhibit 38 states that the “Government Contact” is the Saint Petersburg Housing Authority and it is executed by the Chairman of the Saint Petersburg Housing Authority, Joseph Lettelleir.

13. In the preliminary scoring, Merritt Grand was awarded the maximum five points for Part IV, Section A and a total score of 79 points.

14. After the preliminary scoring, applicants were provided the opportunity to submit Notices Of Proposed Scoring Errors (“NOPSEs”) to FHFC challenging specific section scores awarded to other applications. NOPSEs filed by certain other applicants disputed the maximum five points awarded preliminarily for Part IV, Section A to Merritt Grand.

15. The Application received NOPSEs raising objections that the signature of the Chairman of the Saint Petersburg Housing Authority is not eligible to sign Form 38 and that the Saint Petersburg Housing Authority is ineligible to provide a local contribution loan for purposes of Form 38 because it is not a county or municipality.

16. After review of the NOPSEs, Petitioner submitted Cures pursuant to Rule 67-48.004(6), Fla. Admin. Code, which provides an applicant the opportunity to submit additional documentation, revised pages, and other information that it deems appropriate.

17. As to the issue of whether the appropriate signature was obtained for Form 38, DDC's Cures include arguments that: 1) Execution of Form 38 is not limited to county or municipal officials; and 2) the Chairman of the Saint Petersburg Housing Authority is eligible to sign Form 38 because he was appointed by the Mayor and is "the chief appointed official responsible for such approval." Additionally, in the event that FHFC might ultimately reject the signature of the Chairman of the Saint Petersburg Housing Authority, the Cures included a Substitute Exhibit 38 that was signed by Darrell Irions, the Chief Executive Officer of the Saint Petersburg Housing Authority, as the "chief appointed [staff] responsible for such approvals."

18. In the March 2012 Scoring Summary Reports, FHFC did not award Petitioner any points for Part IV, Section A. The scoring sheet attributes the revised scoring to have been created as a result of NOPSE. The stated basis for the scoring of zero points for Item 11S of the application was as follows:

The Local Government Verification of Contribution – Loan form must be signed by the chief appointed official (staff) responsible for such approvals, Mayor, City Manager, County Manager/Administrator/Coordinator, Chairperson of the City Counsel/Commission or Chairperson of the Board of County Commissioners. Therefore, zero points were awarded and the Applicant was not eligible for automatic points.

The Applicant received zero points for the Local Government Verification of Contribution – Loan form because the funding committed was not from the

City/County, but from the Saint Petersburg Housing Authority. The Applicant was not eligible for automatic points.

March 2012 Scoring Summary Reports, Merritt Grand, at 2.

Reason(s) Scores Not Maxed:

Item #	Reason(s)	Created As Result	Rescinded As Result
11S	The Local Government Verification of Contribution- Loan form must be signed by the chief appointed official (staff) responsible for such approvals, Mayor, City Manager, County Manager/Administrator/Coordinator, Chairperson of the City Council/Commission or Chairperson of the Board of County Commissioners. Therefore, zero points were awarded and the Applicant was not eligible for automatic points.	NOPSE	
11S	The Applicant received zero points for the Local Government Verification of Contribution - Loan form because the funding committed was not from the City/County, but from the Saint Petersburg Housing Authority. The Applicant was not eligible for automatic points.	NOPSE	

19. The March 2012 Scoring Summary Report provides the following additional comment regarding the final scoring of the Application:

The Applicant attempted to cure Item 11S. However, the Local Government Contribution – Loan form does not indicate if the funding commitment is from the city or county and it is still signed by the St. Petersburg Housing Authority. Therefore, zero points were awarded. The Applicant does not qualify for automatic points.

Additional Application Comments:

Item #	Part	Section	Subsection	Description	Comment(s)	Created as Result of	Rescinded as Result of
5C	IV.	A.		Local Government Contributions	The Applicant attempted to cure item 11S. However, the Local Government Contribution - Loan form does not indicate if the funding commitment is from the city or county and it is still signed by the St. Petersburg Housing Authority. Therefore, zero points were awarded. The Applicant does not qualify for automatic points.	Final	

Exhibit 26- Site Plan Approval

20. Part III, Section A, Subsection 10, of the 2011 Universal Application addresses tie breaker points and applies only to the competitive Housing Credit Program.

21. Subsection 1. provides a maximum of six tie breaker points for the “Ability to Proceed” if the applicant meets the threshold requirements for all of the following elements: site plan/plat approval, availability of electricity, availability of water, availability of sewer, availability of

roads, and appropriate zoning. Instructions, at 55. A maximum of one point may be awarded for each of those elements. Instructions, at 56.

22. In order to receive the full point for site plan/plat approval, Form 26 must be fully and correctly completed as Exhibit 26 to an application. Instructions, at 56. The Instructions also provide that if an application does not receive the full one point for site plan approval during the preliminary scoring, but later successfully cures the site plan failure, only a maximum of one half point (0.5) may be awarded. Instructions, at 55-56.

23. The Application for Merritt Grand received a preliminary score of zero for site plan/plat approval. Exhibit 26 includes the signature of Dave Goodwin, Planning and Economic Development Director as attesting that the site plan has been reviewed. Underneath the signature block, the form states “(“Legally Authorized Body *)”. The asterisk refers to the following statement on Form 26:

* “ Legally Authorized Body” is not an individual. Applicant must state the name of the City Council, County Commission, Board, Department, Division, etc, with authority over such matters.”

24. Underneath Mr. Goodwin’s signature and title is a section entitled “Certification.” The Certification section includes the signature of Mr. Goodwin, his title, and identifies the “City of St. Petersburg” in the space where the form requests the “Name of City or County.”

25. In the preliminary scoring, Merritt Grand received no points for site plan/plat approval and was determined to have failed threshold. According to the January 2012 Scoring Summary Report: “The required Local Government Verification of Status of Site Plan Approval for Multifamily Developments form is incomplete. The form reflects a person rather than an [sic] a legally authorized body.”

26. Petitioner submitted a Cure contending that Exhibit 26 was properly executed and FHCA erred in not awarding the point. Petitioner also submitted a Cure that includes a corrected exhibit that names “City of Saint Petersburg” as the “Legally Authorized Body.”

27. In the March 2012 Summary Scoring Report, Merritt Grand was awarded a final score of one half point (0.5) for site plan/plat approval. The Summary Scoring Report also notes that Merritt Grand failed threshold because: “The required Local Government Verification of Status of Site Plan Approval for Multifamily Developments form is incomplete. The form reflects a person rather than an [sic] a legally authorized body.”

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/Plat Approval	The required Local Government Verification of Status of Site Plan Approval for Multifamily Developments form is incomplete. The form reflects a person rather an a “legally authorized body”.	Preliminary	Final

OFFICIAL RECOGNITION OF RULES

28. The parties request the Honorable Hearing Officer take official recognition (judicial notice) of Rule Chapter 67-48, Fla. Admin. Code, as well as the incorporated Universal Application Package or UA1016 (Rev. 2-11) which includes the forms and instructions.

29. The parties stipulate, subject to arguments on the grounds of relevance, to the official recognition of any Final Orders of the Florida Housing Finance Corporation and to any Rules promulgated by the Florida Housing Finance Corporation, including past and present versions of the Universal Cycle Application, Instructions, and any forms and exhibits attached thereto or incorporated by reference therein.

EXHIBITS

The parties offer the following joint exhibits into evidence and stipulate to their authenticity, admissibility and relevance in the instant proceedings, except as noted below:

Exhibit J-1: This Joint Stipulation of Facts and Exhibits.

- Exhibit J-2: Petitioner's Exhibit 38 to original Application (Local Government Verification of Contribution-Loan)
- Exhibit J-3: Petitioner's Exhibit 26 to original Application (Site Plan Approval)
- Exhibit J-4: 2011 Universal Cycle Scoring Summary Report (Preliminary), dated January 19, 2012.
- Exhibit J-5: Notices of Possible Scoring Error (NOPSE's) 387, 435, and 516, filed on Application No. 136C
- Exhibit J-6: Petitioner's Cures and alternative Exhibit 38 and 26 (Local Government Verification of Contribution-Loan; Site Plan Approval)
- Exhibit J-7: Notice of Alleged Deficiency (NOAD's) 841, 875, and 933, filed regarding Petitioner's Application Exhibits 38 and 26
- Exhibit J-8: 2011 Universal Cycle Scoring Summary Report (Final), dated March 27, 2012.

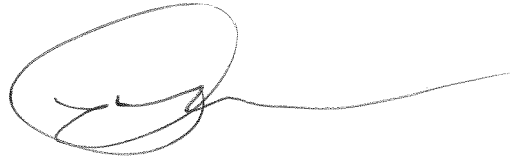
Petitioners' Exhibits:

- Composite Exhibit 1: Silver Sands 2007 Universal Cycle documents (Application Ex. 43; NOPSE; Cure; 2011 Universal Cycle Scoring Summary Report Dated May 9, 2007)
- Composite Exhibit 2: Havana Tower 2011 Universal Cycle documents (Application Ex. 26; 2011 Universal Cycle Scoring Summary Report Dated March 27, 2012)
- Composite Exhibit 3: Portions of City of St. Petersburg Regulations: Section 1-2, Definitions; and Section 16.70.040.1.4 Site Plan Review

Respectfully submitted this 10th day of May, 2012.



LINDA LOOMIS SHELLEY
Florida Bar No: 240621
KAREN A. BRODEEN
Florida Bar No: 512771
FOWLER WHITE BOGGS, PA
101 North Monroe Street, Suite 1090
Tallahassee, FL 32301
(850) 681-4260
Fax: (850) 681-6036
Attorneys for DDC Development,
Ltd.



Wellington H. Meffert, II,
General Counsel
Fla. Bar No. 0765554
Florida Housing Finance Corporation
227 North Bronough St., Ste. 5000
Tallahassee, Florida 32301
Phone: 850-488-4197
Fax: 850-414-6548