

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

GREEN TURNKEY PLAZA, LTD.,

Petitioner,

v.

FHFC CASE NO.: 2012-016UC
Application No. 2011-208C

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 proposed consent agreement between the parties. After a review of the record and otherwise being fully advised in these proceedings, this Board finds:

On or before December 6, 2011, Green Turnkey Plaza, Ltd. (“Petitioner”), submitted its 2011 Universal Cycle Application (“Application”) to Florida Housing Finance Corporation (“Florida Housing”) seeking an allocation of competitive “9%” Tax Credits under the federal Low Income Housing Tax Credit program to fund the project known as Washington Square Apartments.

Petitioner timely filed its “Petition for Review,” (the “Petition”) challenging Florida Housing’s scoring on its Application, No. 2011-208C. Petitioner

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Della M. Harrell / DATE: 4/8/12

challenged the decision of Florida Housing to award no points for a submitted Local Government Contribution (Fee Waiver) form, and 1.75 of a possible 2.0 tie-breaker points for proximity to a public park. These decisions were based upon, respectively, Florida Housing's finding that the amount of the fee waiver claimed was incorrectly calculated, and Florida Housing's measurement of the distance between the proposed Development and the public park.

After further review, Florida Housing determined that it erred in the scoring of Petitioner's application in that it overlooked an alternate Cure to the Local Government Contribution issue, and had incorrectly calculated the distance between the proposed Development and the public park.

To resolve this matter, Florida Housing and Petitioner reached a Consent Agreement, providing that Petitioner was entitled to a total of 79 application points, 6 ability-to-proceed tie-breaker points, and 36.50 proximity tie-breaker points. A copy of the Consent Agreement is attached as Exhibit "A."

RULING ON THE CONSENT AGREEMENT

The Board finds that the findings of fact and the conclusions of law of the Consent Agreement are reasonable and appropriate under the circumstances.

ORDER

In accordance with the foregoing, it is hereby found and ordered:

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

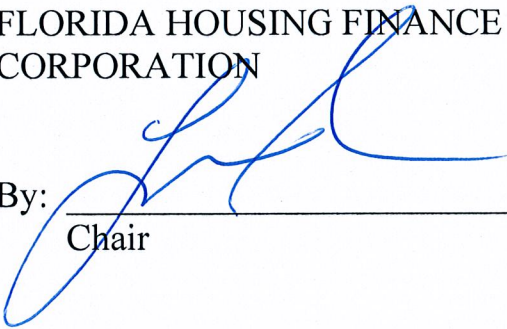
2. The conclusions of law of the Consent Agreement are adopted as Florida Housing's conclusions of law and incorporated by reference as though fully set forth in this Order.

Accordingly, it is found and **ORDERED** Petitioner's Application No. 2011-208C meets all threshold requirements and is entitled to 79 application points, 6 ability-to-proceed tie-breaker points, and 36.50 proximity tie-breaker points.

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



FLORIDA HOUSING FINANCE CORPORATION

By: 
Chair

Copies to:

Wellington H. Meffert II
General Counsel
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Tallahassee, FL 32301

Kevin Tatreau
Director of Multifamily Development Programs
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
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Donna Blanton
Counsel for Petitioner
Radey, Thomas, Yon & Clark, P.A.
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Tallahassee, Florida 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**

GREEN TURNKEY PLAZA, LTD.,

Petitioner,

vs.

**FHFC CASE NO.: 2012-016UC
Application No. 2011-208C
2011 Universal Cycle**

**FLORIDA HOUSING FINANCE
CORPORATION,**

Respondent.

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FINANCE CORPORATION**

CONSENT AGREEMENT

Petitioner Green Turnkey Plaza, Ltd. ("Green Turnkey") and Respondent Florida Housing Finance Corporation ("Florida Housing"), by and through undersigned counsel, hereby present the following Consent Agreement:

APPEARANCES

For Petitioner:

Donna E. Blanton
Florida Bar No.: 948500
Radey Thomas Yon & Clark, P.A.
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Tallahassee, Florida 32301
850-425-6654 (phone)
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For Respondent:

Hugh Brown, Deputy General Counsel
Florida Bar No.: 003484
Florida Housing Finance Corporation
227 N. Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

PRELIMINARY STATEMENT

On or before December 6, 2011, Green Turnkey submitted an Application to Florida Housing for an award of tax credits through the 2011 Universal Cycle. On March 29, 2012, Florida Housing notified Green Turnkey of the results of scoring its Application and provided Green Turnkey with a Notice of Rights pursuant to Sections 120.569 and 120.57, Florida Statutes. Green Turnkey timely filed a Petition for Informal Administrative Hearing (“Petition”) challenging the findings that Green Turnkey was not entitled to five Local Government Contribution points and that Green Turnkey was entitled to only 1.75 proximity tie-breaker points for its proximity to a public park. Florida Housing has reviewed the petition and its scoring decisions and has determined that Green Turnkey is entitled to five Local Government Contribution points and two proximity tie-breaker points for a public park. Thus, Green Turnkey receives 79 total points, 6 ability to proceed tie-breaker points, and 36.50 proximity tie-breaker points. Additionally, Green Turnkey has satisfied all threshold requirements.

Upon issuance of a Final Order adopting the terms of this Consent Agreement, Green Turnkey agrees to dismiss its Petition with prejudice. The parties waive all right to appeal this Consent Agreement or the Final Order to be issued in this case, and each party shall bear its own costs and attorney’s fees. This Consent Agreement is subject to the approval of the Board of Directors of Florida Housing (“The Board”). If the Board does not approve this Consent Agreement, no Final Order will be issued and this Consent Agreement shall be null and void as if it were never executed.

STIPULATED FINDINGS OF FACT

1. Green Turnkey is a Florida limited partnership with its address at 2950 SW 27th Avenue, Suite 200, Miami, Fl, 33133, and is in the business of providing affordable rental housing units.

2. Florida Housing is a public corporation that is 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. § 420.504, Fla. Stat.; Rule Chapter 67-48, Fla. Admin. Code.

3. The Low Income Housing Tax Credit (“Tax Credit”) program is created within the Internal Revenue Code, and awards a dollar for dollar credit against federal income tax liability in exchange for the acquisition and substantial rehabilitation or new construction of rental housing units targeted at low and very low income population groups. Developers sell, or syndicate, the Tax Credits to generate a substantial portion of the funding necessary for construction of affordable housing development.

4. Florida Housing is the designated “housing credit agency” responsible for the allocation and distribution of Florida’s Tax Credits to applicants for the development of rental housing for low income and very low income families.

5. Florida Housing uses a Qualified Allocation Plan (QAP), the Universal Application and a scoring process for the award of Tax Credits, as outlined in Rule 67-48.004, Florida Administrative Code. The provisions of the QAP are adopted and incorporated by reference in Rule 67-48.002(94), Florida Administrative Code. Pursuant to the QAP, Tax Credits are apportioned among the most populated counties, medium populated counties, and

least populated counties. The QAP also establishes various set-asides and special targeting goals.

6. The 2011 Universal Application Package (or UA1016 (Rev. 2-11)) is adopted and incorporated by reference through Rule 67-48.004(1)(a), Florida Administrative Code. It consists of Instructions and forms, some of which are not applicable to every Applicant.

7. Florida Housing's scoring process for 2011, found at Rules 67-48.004-.005, Florida Administrative Code, involves the following:

- a. the publication and adoption by rule of an application package;
- b. the completion and submission of applications by developers;
- c. Florida Housing's preliminary scoring of applications;
- 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 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 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 to applicants of any resulting change in their scores;
- i. an opportunity for applicants to challenge, via informal or formal administrative proceedings, Florida Housing's evaluation of any item for which the applicant received less than the maximum score; and
- j. final scores, ranking, and allocation of funding to successful applicants, as well as those who successfully appeal through the adoption of final orders.

8. The 2011 Universal Cycle Application offers a maximum score of 79 application points. In the event of the tie between competing applications, the Universal Cycle Application Instructions provide for a series of tie-breaking procedures to rank such applications for funding priority, including an award of up to six points for a demonstrated ability to proceed and an award of up to 37 points for proximity to certain services, such as transit facilities, a grocery store, a medical facility, a public school, a public park, a community center, a pharmacy, senior center and a public library.

9. On or about December 6, 2011, Green Turnkey and others submitted applications for financing in Florida Housing's 2011 funding cycle. Green Turnkey (Application #2011-208C) applied for Tax Credits to help finance the construction of an 88-unit affordable apartment complex in Miami, Florida, called Washington Square Apartments.

10. Green Turnkey received notice of Florida Housing's initial scoring of the Application on or about January 19, 2012, at which time Green Turnkey was awarded a preliminary score of 79 points out of a possible 79 points, and 10 of 37 possible proximity "tie breaker" points (awarded for geographic proximity to certain services and facilities), and 6 of 6 possible ability to proceed tie-breaker points. Florida Housing also concluded that the Green Turnkey application had failed threshold requirements.

11. On or about January 25 2012, Florida Housing received a NOPSE in connection with Green Turnkey's application. On or about February 23, 2012, Florida Housing sent Green Turnkey the NOPSE relating to its application submitted by a competing applicant, Florida Housing's position on the NOPSE, and the effect the NOPSE had on the applicant's score.

12. On or before February 29, 2012, Green Turnkey timely submitted its cure materials to Florida Housing.

13. On or about March 6, 2012, Florida Housing received NOADs in connection with Green Turnkey’s application. Florida Housing issued its final scores on March 28, 2011, which were formally received by Green Turnkey a day later.

14. At the conclusion of the NOPSE, cure review, and NOAD processes, Florida Housing determined that Green Turnkey met all threshold requirements and awarded the Green Turnkey Application a score of 74 application points. The reason that Green Turnkey did not receive all 79 available application points was explained as follows:

Item #	Reason(s)	Created As Result
11S	The Applicant provided a Local Government Verification of Contribution - Fee Waiver form at Exhibit 37. Based on evidence provided by a NOPSE, it appears the impact fees were calculated incorrectly and may have been overstated. Therefore, the Applicant received zero points for the Local Government Contribution. The Applicant is not eligible for automatic points.	NOPSE

Additional Application Comments:

Item #	Part	Section	Subsection	Description	Comment(s)	Created as Result of
6C	IV.	A.		Local Government Contributions	The Applicant attempted to cure item 11S. However, evidence provided in a NOAD contradicted the Applicant's interpretation of the applicable ordinance.	Final

15. Florida Housing also determined when final scores were released that the Green Turnkey Application was entitled to only 1.75 proximity tie-breaker points for a public park, as illustrated in Green Turnkey’s Final Scoring Summary Report:

Proximity Tie-Breaker Points:

Item #	Part	Section	Subsection	Description	Maximum Available Points	Preliminary	NOPSE	Final
5P	III.	A.	10.a	Public Park	2.00	0.00	0.00	1.75

16. On or before April 19, 2012, Green Turnkey submitted a Petition for Informal Administrative Hearing pursuant to Sections 120.569 and 120.57(2), Florida Statutes.

17. The two issues raised in the petition were: (1) Florida Housing incorrectly determined that Green Turnkey was not eligible for Local Government Contribution points during preliminary scoring and subsequently overlooked a valid Cure submitted by Petitioner,

and (2) Florida Housing incorrectly determined that Green Turnkey was not entitled to two proximity tie-breaker points for a public park due to a mathematical error.

STIPULATED CONCLUSIONS OF LAW

18. Pursuant to Sections 120.569 and 120.57(2), Florida Statutes, and Florida Administrative Code Chapter 67-48, the Florida Housing Board of Directors has jurisdiction over the parties to this proceeding.

19. Florida Housing is statutorily authorized to institute a competitive application process for the allocation of Tax Credits and has done so through Rules 67-48.004 and 67-48.005, Florida Administrative Code.

20. An agency's interpretation of its own rules will be upheld unless it is clearly erroneous, or amounts to an unreasonable interpretation. *Legal Envtl. Assistance Found., Inc., v. Board of County Comm'rs of Brevard County*, 642 So. 2d 1081 (Fla 1994); *Miles v. Florida A and M Univ.*, 813 So. 2d 242 (Fla. 1st DCA 2002). This is so even if the agency's interpretation is not the sole possible interpretation, the most logical interpretation, or even the most desirable interpretation. *Golfcrest Nursing Home v. Agency for Health Care Admin.*, 662 So. 2d 1330 (Fla. 1st DCA 1995).

STIPULATED DISPOSITION

Green Turnkey has met all threshold requirements and is entitled to 79 application points, 6 ability to proceed tie-breaker points, and 36.50 proximity tie-breaker points.

Respectfully submitted this 29th day of May 2012.

By: 

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