

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

PINNACLE POINTE, LTD.,

Petitioner,

v.

**FLORIDA HOUSING FINANCE
CORPORATION,**

Respondent.

**FHFC CASE NO. 2002-0035
Application No. 2002-072B**

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 styled case on September 3, 2002.

APPEARANCES

For Petitioner, Pinnacle
Pointe, Ltd.:

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For Respondent, Florida Housing
Finance Corporation:

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STATEMENT OF THE ISSUE

There are no disputed issues of material fact. The sole issue for determination in this proceeding is whether Petitioner is entitled to receive 1.25 proximity tie-breaker points for the proximity of a public bus stop to the tie-breaker measurement point.

PRELIMINARY STATEMENT

At the informal hearing, the parties stipulated to the admission into evidence of Exhibits 1 through 6. Respondent's objection to Petitioner's proffered Exhibit 7 was sustained on the basis that such Exhibit was not submitted as part of the Petitioner's application.

Subsequent to the hearing, the parties timely submitted their Proposed Recommended Orders.

FINDINGS OF FACT

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

1. Petitioner, Pinnacle Pointe Ltd., submitted to the Respondent a Multifamily Mortgage Revenue Bond application to assist in the financing of a 268-unit apartment complex to be located in Orlando, Florida.

2. In the 2002 Universal Application cycle, tie-breaker points may be awarded to applicants upon a showing that their existing or planned development is within a certain distance to various services, including grocery stores, public schools, medical facilities and public bus stops or metro-rail stops. The number of points to be awarded is based upon the distance between the designated Tie-Breaker Measurement Point on the proposed development site and the claimed tie-breaker service. For example, with respect to bus stops, 1.25 tie-breaker points are awarded when the distance is less than or equal to one-tenth of a mile; 1.0 point for two-tenths of a mile; .75 points for three-tenths of a mile; .5 points for four-tenths of a mile; and .25 points for one-half a mile.

3. In its initial application, among other claimed tie-breaker points for proximity services, Petitioner sought .75 tie-breaker points for a bus stop located at a distance of between 0.2 and 0.3 miles. In preliminary scoring, Petitioner received those .75 tie-breaker points.

4. In timely submitted “cure” documentation, Petitioner sought the full 1.25 tie-breaker points based upon information concerning a different bus stop from the one identified in its original application. In connection with this “cure,” Petitioner submitted a revised “Surveyor Certification” and a revised Special Purpose Survey Location Sketch showing the location of the bus stop. While the survey map correctly identified the longitude and latitude of the newly designated bus stop by degrees, minutes and seconds, the Surveyor’s Certification incorrectly converted

those measurements to degrees and minutes or incorrectly transcribed the true longitude and latitude of the newly designated bus stop. The Surveyor's Certification also certifies that the distance between the tie-breaker measurement point and the bus stop is 0.07 miles. However, when utilizing the numeric designations of latitude and longitude recited in the Surveyor's Certification, it is revealed that the designated bus stop is far more than five-tenths of a mile from the proposed development. Accordingly, Petitioner was awarded no tie-breaker points for its proximity to a bus stop.

5. 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 67-21.002(97), Florida Administrative Code. The application instructions set forth a specific procedure for verifying claimed proximity tie-breaker points through utilization of a commercial software product known as Street Atlas USA, Version 9. Those detailed instructions, at pages 9 through 15, provide, among other things, that latitude and longitude coordinates are to be determined in degrees and minutes truncated after three decimals. If the minutes are not stated to three decimals, Respondent will utilize "0" for any missing decimals. The instructions require the submission of a Surveyor Certification Form (Exhibit 21) and a land survey map. The instructions and Surveyor Certification Form require a correct statement of latitude and longitude for both the tie-breaker measurement point and the location of the claimed tie-breaker service, and require that such Certification be

signed and dated by a licensed Florida surveyor under oath. While the instructions require that the survey map show the location of the latitude/longitude coordinates for the tie-breaker measurement points on the site, they do not require the latitude/longitude coordinates for the claimed tie-breaker service. The instructions further provide the manner in which Respondent and applicants may verify the information required regarding tie-breaker proximity points. The instructions clearly contemplate that the Respondent will utilize the information contained upon the Surveyor Certification Form to verify distances.

6. Based upon the inability of Respondent's scorers to verify that the bus stop identified in Petitioner's "cure" documents was located within one-half (0.5) mile of the Petitioner's tie-breaker proximity designation, Petitioner was awarded no tie-breaker points for a bus stop.

CONCLUSIONS OF LAW

Pursuant to Sections 120.569 and 120.57(2), Florida Statutes, and Chapters 67-21 and 67-48, Florida Administrative Code, the Hearing Officer has jurisdiction of the parties and the subject matter of this proceeding. The Petitioner's substantial interests are affected by the proposed action of the Respondent Corporation. Therefore, Petitioner has standing to bring this proceeding.

The sole issue in this proceeding is whether the information timely submitted by the Petitioner was sufficient to merit an award of proximity tie-breaker points for

bus stop services. While counsel for the Petitioner has ably argued in support of a deviation from the rules of the Respondent as contained in the instructions and forms pertaining to tie-breaker points, a consideration of the entirety of Respondent's rules regarding the competitive application process mandates a rejection of those arguments.

In essence, Petitioner urges that the Respondent's scorers should have realized that the designation of the longitude and latitude coordinates of the bus stop contained within the Surveyor's Certification was erroneous (since they resulted in a distance far beyond the maximum distance allowed for the award of tie-breaker points), and should have, instead, accepted the Surveyor's Certification that the bus stop was located within 0.07 miles (less than the distance for which Petitioner would have received the maximum number of 1.25 points), and verified this by relying upon the latitude/longitude coordinates contained upon the Special Purpose Survey Location Sketch attached to the Surveyor's Certification. This argument ignores several relevant rules of the Respondent, by which both applicants and the Respondent are bound.

First, since the instructions, which constitute rules, do not require that the survey map contain the coordinates of the claimed tie-breaker service, but do require a statement of those coordinates on the Surveyor's Certification, which must be signed by a licensed Florida surveyor under penalties of perjury, it is clear that the instructions contemplate that location determinations are to be verified based upon

the information contained within the Surveyor Certification and not the survey map. Second, the instructions require that the coordinates be expressed in minutes taken to a minimum of three decimal places. The coordinates on the survey map were not so expressed. It would be a violation of the Respondent's instructions/rules for Respondent to score the Petitioner's tie-breaker points by using any procedure other than that described by the instructions/rules.

Most importantly, Rule 67-21.003(1), Florida Administrative Code, prohibits Respondent's staff from assisting any applicant by copying, collating or adding documents to an application. Petitioner's argument would require that staff change figures on a document submitted under oath by a licensed surveyor, add revised figures to a survey map by converting minutes and seconds to minutes and use a verification procedure not used for other applicants. This would be contrary to the clear intent of Rule 67-21.003(1). To preserve the integrity of the competitive application process, and confidence in the results, it is critically important that all applications be treated equally under the rules.

Petitioner elected to revise its bus stop information in its "cure," thus, pursuant to Rule 67-21.003, Florida Administrative Code, there was no opportunity for a further "cure" to correct any mistakes or inconsistencies in the cure itself. The applicant could and should have verified the surveyor's coordinates, as contained in the Surveyor Certification, before transmitting this "cure" to the Respondent. Inconsistencies created by an applicant as a result of a "cure" constitutes justification

for a rejection or reduction of points by the Respondent. See Section 67-21.002(9), Florida Administrative Code. Rules 67-21.002(2) and (3), Florida Administrative Code, require that applications be evaluated and scored using the factors specified in the Universal Application Package, and that failure to complete an application in accordance with the instructions will result in a score less than the maximum available. The Petitioner having failed to accurately complete the Surveyor Certification in compliance with the application instructions, it was not entitled to proximity tie-breaker points in connection with its claimed bus stop service.

RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law recited herein, it is RECOMMENDED that Petitioner receive no (0) tie-breaker points for the proximity of a bus stop to its proposed project.

Respectfully submitted and entered this 26th day of September, 2002.



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NOTICE OF RIGHT TO SUBMIT WRITTEN ARGUMENT

All parties 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. Written arguments must be filed with Florida Housing's Finance Corporation's Clerk at 227 North Bronough Street, Suite 5000, Tallahassee, Florida, 32301-1329, no later than 5:00 p.m. on Monday, October 7, 2002. Submission by facsimile will not be accepted. 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.