

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

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FLORIDA HOUSING FINANCE CORPORATION

GARFIELD PLACE APARTMENTS, LTD.,  
Petitioner,

v.

FHFC CASE NO.: 2002-0039

FLORIDA HOUSING FINANCE  
CORPORATION,

APPLICATION NO.: 2002-065B

Respondent.

\_\_\_\_\_ /

**FINAL ORDER**

This cause came before the Board of Directors of the Florida Housing Finance Corporation ("Board") for consideration and final agency action on October 10, 2002. On or before April 15, 2002, Petitioner submitted its Application to Florida Housing Finance Corporation ("Florida Housing") to compete for an allocation of Multifamily Mortgage Revenue Bonds (MMRB) program loans and non-competitive tax credits in the 2002 Universal Cycle program. Petitioner timely filed a Petition Requesting Review of Florida Housing Finance Corporation's Scoring of Application No. 2002-065B Garfield Place Apartments, pursuant to Sections 120.569 and 120.57(2), Florida Statutes, (the "Petition") challenging Florida Housing's scoring on parts of the Application. Florida Housing reviewed the Petition pursuant to Section 120.569(c), Florida Statutes. An informal hearing was held in this case on August 29, 2002, in Tallahassee, Florida, before Florida Housing appointed Hearing Officer, Diane D. Tremor. Petitioner and Respondent timely filed Proposed Recommended Orders.

After consideration of the evidence, arguments, testimony presented at hearing, and the Proposed Recommended Orders, the Hearing Officer issued a Recommended Order. A true and correct copy of the Recommended Order is attached hereto as "Exhibit A." The Hearing Officer recommended Florida Housing enter a Final Order with respect to Part III, Section D and the disqualification of Petitioner's Exhibit 45, resulting in the rejection of Petitioner's application for failure to meet threshold requirements, be upheld..

The findings and conclusions of the Recommended Order are supported by competent substantial evidence.

In accordance with the foregoing, it is hereby **ORDERED**:

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

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

3. The Hearing Officer's recommendation that a Final Order be entered with respect to Part III, Section D and the disqualification of Petitioner's Exhibit 45, resulting in the rejection of Petitioner's application for failure to meet threshold requirements is approved and accepted as the appropriate disposition of this case. Accordingly, Petitioner's application is rejected for failure to meet threshold requirements.

DONE and ORDERED this 10<sup>th</sup> day of October, 2002.

FLORIDA HOUSING FINANCE  
CORPORATION

By: \_\_\_\_\_

  
Chairperson

**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.**

Copies to:

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730 Bonnie Brae Street  
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**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

**GARFIELD PLACE APARTMENTS, LTD.,**

**Petitioner,**

**v.**

**FHFC CASE NO. 2002-0039  
Application No. 2002-065B**

**FLORIDA HOUSING FINANCE  
CORPORATION,**

**Respondent.**

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**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 August 29, 2002.

**APPEARANCES**

For Petitioner, Garfield  
Place Apartments, Ltd.:

Thomas J. Settle  
730 Bonnie Brae St.  
Winter Park, FL 32789

For Respondent, Florida Housing  
Finance Corporation:

Hugh R. Brown  
Assistant General Counsel  
Florida Housing Finance Corporation  
227 North Bronough Street, Suite 5000  
Tallahassee, FL 32301-1329

## **STATEMENT OF THE ISSUE**

There are no disputed issues of material fact. The sole issue for determination is whether the Respondent, Florida Housing Finance Corporation, erred in its scoring and ultimate rejection of Petitioner's Multifamily Mortgage Revenue Bond Application for the 2002 Funding Cycle. More specifically, the issues are whether Respondent properly determined that: (1) Petitioner failed to properly complete Part III, Section D of the Application, resulting in a loss of five (5) points from Petitioner's score, and (2) that Petitioner failed to meet threshold requirements regarding financing (Part V, B, Exhibit 45, "Commitment to Defer Developer Fee"), resulting in the rejection of Petitioner's application.

## **PRELIMINARY STATEMENT**

At the informal hearing, the parties stipulated to the admission into evidence of Exhibits 1 through 8.<sup>1</sup> Official recognition of the Universal Application Instructions (Form UA1016) was taken. At the commencement of the hearing, the parties filed a Prehearing Stipulation (Exhibit 1) containing a Joint Stipulation of Facts. 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 is attached to this Recommended

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<sup>1</sup> Exhibit 3 was improperly identified on the record as being Part V, Section D of the Application. The correct identification of that Exhibit is Part III, Section D.

Order as Exhibit 1, and the facts recited therein are incorporated in this Recommended Order.

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, Garfield Place Apartments, LTD, timely submitted its Multifamily Mortgage Revenue Bond Application Number 2002-065B for the 2002 Funding Cycle.

2. The Universal Application Package contains Instructions. Part III of the Application pertains to "Development." Section D of Part III requires the applicant to set forth its "Demographic or Area Commitment," and the Instructions specifically state that "Applicants may select only one of the following" seven designations of commitment. The application form itself does not repeat this instruction to select only one designation. In its initial application, Petitioner checked two of the designations; to wit: "urban in-fill development" and "large family development." As a consequence, Petitioner did not receive the five points available for either designation. Petitioner asserts that it never intended to apply under the "urban in-fill category," since it was not seeking qualification for housing credits, but checked both

categories in order to provide the Respondent with more information than was required.

3. 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. In addition, Rule 67-21.003, which describes the application and selection process for loans under the Multifamily Mortgage Program, states that there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the application deadline. These items include the "demographic or area commitment or targeted demographic area." See Rule 67-21.003(14)(i), Florida Administrative Code. Thus, under the Respondent's rules, there was no opportunity for Petitioner to "cure" this portion of its application after the application deadline of April 15, 2002.

4. In its initial application, Petitioner's Exhibit 45, entitled "Commitment to Defer Developer Fee," listed P.A.C. Land Development Corporation as the "name of developer," but left blank the space where the applicant is to fill in the number of years the developer would defer the development fee to fill the potential gap in financing. This was a curable deficiency. Petitioner timely submitted a revised Exhibit 45. This revised "Commitment to Defer Developer Fee" inadvertently listed as the "name of developer" the Petitioner/Applicant, Garfield Place Apartments, Ltd.

The Respondent determined that the Commitment was invalid and accordingly disqualified the revised Exhibit 45. This resulted in a financing shortfall, and thus a determination by Respondent that Petitioner had failed to meet a threshold item.

5. The Universal Application Instructions set forth the requirements to meet threshold. These include a requirement that financing documentation reflect that “total sources must equal or exceed uses.” In addition, Rule 67-21.003(13), Florida Administrative Code, provides that an Application shall be rejected if, following the submission of additional documentation or revised pages, the applicant fails to achieve the threshold requirements as detailed in the applicable application and application instructions.

### **CONCLUSIONS OF LAW**

Pursuant to Sections 120.569 and 120.57(2), Florida Statutes, and Chapter 67-21, 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 Respondent acted properly with respect to the scoring and ultimate rejection of Petitioner’s application. A review of the applicable rules, instructions and application form leads to the conclusion that Respondent properly scored and ultimately rejected Petitioner’s application.



The Universal Application Instructions, which, along with the application form itself, are adopted as rules by existing Rule 67-21.002(97), Florida Administrative Code. As such, applicants, as well as the Florida Housing Finance Corporation, are bound by their terms. Moreover, Section 67-21.003(2) mandates that:

Failure to submit an Application completed in accordance with the Application instructions and these rules will result in rejection of the Application or a score less than the maximum available in accordance with the instructions in the Application and this rule chapter.

The application instructions are abundantly clear with respect to Part III, Section D, pertaining to “Demographic or Area Commitment.” They explicitly state that “Applicants may select only one of the following.” The fact that the application form did not repeat this instruction does not relieve applicants from complying with the application instructions. Indeed, the very first page of those instructions encourage applicants to review the instructions and the applicable rules before completing and submitting an application.

The application of Petitioner’s argument that the Respondent should have gleaned Petitioner’s intent to apply as a “large family development,” and thereby eliminate from Petitioner’s application the check-mark Petitioner placed next to “urban in-fill category” would be inconsistent with Rule 67-21.003(1), Florida Administrative Code, which prohibits Respondent’s staff from assisting any applicant. The materiality of Petitioner’s erroneous completion of Part III, Section D, with respect to the very competitive application process which the Respondent’s

rules require is exemplified by Rule 67-21.003(14)(i), Florida Administrative Code. That rule mandates that certain items, including “demographic or area commitment,” be included in the initial application and cannot be revised, corrected or supplemented after the application deadline. The Respondent has thus determined, by rule, that the initial submission of the demographic or area commitment designation by an applicant is essential to a fair, competitive process. This rule further requires that failure to submit these items shall result in rejection of the application without opportunity to submit additional information. The Petitioner having failed to indicate a single demographic or area commitment designation, the Respondent would have been justified, under its rules, to reject Petitioner’s application on this ground alone.

With respect to the financing documents, specifically Exhibit 45, Petitioner was afforded the opportunity to “cure” its initial omission of providing the length of time in which the developer committed to defer its developer fee. However, instead of curing Exhibit 45, the Petitioner’s revised Exhibit 45 failed to include the name of the developer, and instead inserted its own name. Thus, there was no commitment by the developer to defer its developer fee and there was no offset of a funding shortfall until the closing of permanent financing or after the closing of permanent financing. The Application instructions clearly provide that if a deferred development fee is to be utilized as a source of funding during the construction and/or permanent phases, the “Developer” must provide an executed “commitment to Defer Developer Fee” form

within the application. Petitioner's failure to provide such a form constitutes its failure to meet the threshold requirements of the application process.

In summary, Respondent's application of the clear and unambiguous rules to the scoring and rejection of the Petitioner's Application Number 2002-065B was neither clearly erroneous nor unreasonable. Indeed, the rules (which include the instructions and the application form) compel such a result.

### **RECOMMENDATION**

Based upon the Findings of Fact and Conclusions of Law recited herein, it is RECOMMENDED that the Respondent's scoring of Petitioner's application with respect to Part III, Section D and the disqualification of Petitioner's Exhibit 45, resulting in the rejection of Petitioner's application for failure to meet threshold requirements, be upheld.

Respectfully submitted and entered this 10<sup>th</sup> day of September, 2002.



DIANE D. TREMOR  
Hearing Officer for Florida Housing  
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