

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

BEAR LAKES ACQUISITION, LTD.,

Petitioner,

vs.

FHFC Application  
No. 2002-044B

FLORIDA HOUSING FINANCE  
CORPORATION,

Respondent.

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**PETITION FOR INFORMAL ADMINISTRATIVE PROCEEDING**

The Petitioner BEAR LAKES ACQUISITION, LTD. ("Bear Lakes Acquisition"), by and through its undersigned counsel, files this Petition for Informal Administrative Proceeding in accordance with Sections 120.569, 120.57(2), *Florida Statutes*, and Uniform Rule 28-106.301, *Florida Administrative Code*. In support of its Petition, Bear Lakes Acquisition states:

**A. Nature of Proceeding:**

1. Bear Lakes Acquisition is proposing to develop a multi-family housing project known as "Renaissance Apartments" in Palm Beach County, Florida. Renaissance Apartments is an affordable housing project. Bear Lakes Acquisition filed an application for funding assistance with the Respondent, FLORIDA HOUSING FINANCE CORPORATION ("FHFC"). The application deadline was April 15, 2002.

2. The FHFC evaluated the application and issued a preliminary score and a threshold report. The FHFC determined, among other things, that Bear Lakes Acquisition had failed to provide the proper documentation to establish site control over the property where Renaissance

Apartments is proposed to be located. Specifically, FHFC was concerned that an exhibit to the deed conveying title to the property to Bear Lakes Acquisition had not been included with the Bear Lakes Acquisition Application.

3. In response, Bear Lakes Acquisition prepared and filed a “Cure Package” which included a “Cure Form” pertaining to Part III, Section C, Subsection 2, Exhibit No. 23. Bear Lakes Acquisition submitted pages 2 and 3 to the exhibit, and, intentionally, left the pages blank because the pages have nothing to do with site control of the subject property.

4. No “Notice of Alleged Deficiency” or “NOAD” was filed by any other applicant with regard to the Bear Lakes Acquisition Cure Package.

5. The FHFC staff then evaluated the Bear Lakes Acquisition Application as modified by the Cure Package. On or about July 22, 2002, the FHFC determined that the materials provided by Bear Lakes Acquisition regarding site control were not sufficient, and the FHFC determined the Bear Lakes Acquisition Application did not “meet threshold requirements” and was therefore not eligible for funding.

6. Through this Petition for Informal Proceeding, Bear Lakes Acquisition is challenging the determination that the information it provided is insufficient to establish site control, and that the Bear Lakes Acquisition Application meets FHFC threshold requirements and is eligible for funding.

**B. Name and Address of Each Agency Affected:**

7. The agency affected by this proceeding is the FLORIDA HOUSING FINANCE CORPORATION, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329. The agency’s file or identification number is 2002-044B.

**C. Name, Address, Telephone Number, and Description of Petitioner:**

8. The Petitioner is,  
  
Bear Lakes Acquisition, LTD.  
2121 Ponce de Leon Blvd.  
Pent House  
Coral Gables, Florida 33134  
Telephone: 305-443-8288

For the purposes of this proceeding, the address and telephone number of Bear Lakes Acquisition will be the address and telephone number of undersigned attorneys.

9. Bear Lakes Acquisition is an applicant for funding with the FHFC for the application cycle that has an application deadline of April 15, 2002. Bear Lakes Acquisition is substantially affected by the decision of the FHFC that the Bear Lakes Acquisition Application does not meet threshold requirements because the determination results in funding being denied even though the scoring of the Bear Lakes Acquisition Application would result in funding being approved.

**D. Statement of Notice:**

10. Bear Lakes Acquisition received notice of the FHFC's decision by notice dated July 22, 2002.

**E. Statement of Ultimate Facts Alleged:**

11. The FHFC follows a two-step application process. FHFC evaluates applications for funding and issues a preliminary score. Applicants can respond to preliminary scores by submitting "Cures," containing additional or revised documentation to support the applications.

12. Bear Lakes Acquisition filed its application in a timely manner for the funding cycle with an application deadline of April 15, 2002. Among the issues that applicants must address is site control of the property where the proposed project is located. Exhibit 23 of the FHFC's application

form is used to convey required information to verify site control. Bear Lakes Acquisition filed Exhibit 23 with its application. The Exhibit was supported by a warranty deed, dated February 6, 2001, conveying the property to Bear Lakes Acquisition. The deed has an "Exhibit A" attached to it which is the legal description of the property. Exhibit A is a three (3) page exhibit, and only page one (1) of the exhibit was provided to the FHFC by Bear Lakes Associates.

13. When it issued its preliminary score, the FHFC advised Bear Lakes Acquisition that it would need to provide pages 2 and 3 of the exhibit in order to demonstrate site control.

14. When it provided its Cure Form, Bear Lakes Acquisition provided pages 2 and 3 of the exhibit, intentionally left blank, because to do otherwise would not have conveyed accurate, complete, and consistent information regarding site control, and would instead have conveyed information regarding site control that was not consistent with Bear Lakes Acquisition's ownership of the property. The two pages describe property within the total parcel upon which an easement was given to the Florida Department of Transportation by Bear Lakes Acquisition. Including the two pages would have reflected that Bear Lakes Acquisition does not control the entire site, and, moreover, that the "FDOT parcel" was to be excluded from the site being developed by Bear Lakes Acquisition. That is not the case. In fact, the easement was not given to the Florida Department of Transportation until after the "Cure period." It occurred in July 2002, after the June 2002 Cure submission. Furthermore, and more significantly, the transaction only provided "easement rights." It had nothing to do with the ability of Bear Lakes Acquisition to use the property, as set forth on page 1 of Exhibit A of the deed. Indeed, Bear Lakes Acquisition intends to undertake development activities on the parcel as reflected in site plans that are included as part of the Bear Lakes Acquisition Application. These site plans include land originally intended as the "FDOT parcel."

15. Bear Lakes Acquisition did not fail to include pages 2 and 3 of Exhibit A to the warranty deed in an effort to confuse the issue of site control, but instead did so in an effort to provide accurate, complete, and consistent data regarding site control. Bear Lakes Acquisition owns the entire site, and nothing in the two pages of the exhibit negate that or relate in any manner to Bear Lakes Acquisition's rights to conduct development activities on the total site.

16. The FHFC staff evaluated many applications in the course of the 2002 Universal Application Cycle. In numerous instances, the FHFC overlooked missing exhibits; overlooked inconsistent responses; and overlooked other deficiencies in applications, even including failure to include required filing fees. These missing materials, inconsistent responses, and application deficiencies were overlooked even when they were pointed out to the FHFC through NOPSE or NOAD responses filed by other applicants. In several instances the FHFC determined that applications met threshold requirements even though, under the FHFC's rules, the applications did not meet threshold requirements. In some instances the FHFC actually scored exhibits as if they had been filed when they had not been filed.

17. The fact that Bear Lakes Acquisition did not provide the two (2) pages to the exhibit to the deed for the property where the proposed project would be located does not result in any inaccurate, incomplete, or inconsistent information being conveyed to the FHFC. Certainly, in any event, Bear Lakes Acquisition is entitled to the same deference that has been accorded other applicants.

**G. Statement of the Relief Sought by Petitioner:**

WHEREFORE, the Petitioner Bear Lakes Acquisition, LTD., requests the following relief:

That the Florida Housing Finance Corporation determine that the Petitioner's application for funding meets threshold requirements, score the application in accordance with the "Universal Scoring Summary," rank the Petitioner's application based upon that scoring, and grant the application for funding.

RESPECTFULLY SUBMITTED this 13<sup>th</sup> day of August, 2002.

BRIAN BALLARD, ESQUIRE  
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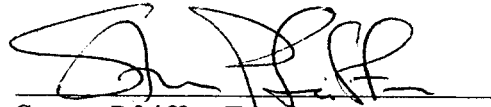


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COUNSEL FOR PETITIONER  
BEAR LAKES ACQUISITION, LTD.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via hand delivery to the Corporation Clerk, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, and to Wellington Meffert, General Counsel, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329 this 13<sup>th</sup> day of August, 2002.

A handwritten signature in black ink, appearing to read 'S. Pfeiffer', written over a horizontal line.

Steven Pfeiffer, Esquire