

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

AVALON RESERVE, LTD.,

Petitioner,

vs.

Applicant No. 2002-151BS

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

PETITION FOR REVIEW

Pursuant to Section 120.569 and .57, *Florida Statutes*, and Rule 67-48.005, *Florida Administrative Code* ("F.A.C."), Petitioner, AVALON RESERVE, LTD. ("Avalon"), requests an administrative hearing to review and contest the FLORIDA HOUSING FINANCE CORPORATION's ("FHFC") scoring of Avalon's 2002 Universal Application ("Application"). In support of this Petition, Avalon provides as follows:

1. Avalon is a Florida for-profit limited partnership with its address at 800 Highland Avenue, Suite 200, Orlando, FL 32803-3907. Avalon is in the business of providing affordable rental housing units.

2. FHFC is the state agency delegated the authority and responsibility for administering affordable housing programs in the State of Florida pursuant to Chapter 420, F.S., and Rules 67-21 and 67-48, F.A.C., including the State Department Incentive Loan ("SAIL") program and the Multi-Family Revenue Bond program ("Bond").

3. The SAIL program lends money to developers at low interest rates and with liberal repayment terms. The SAIL funds are to be used to supplement the construction of affordable housing projects.

4. The Bond program uses both taxable and tax-exempt bonds to provide below market rate loans to developers who agree to set aside a certain percentage of their apartment units for low-income residents.

5. The award of SAIL and Bond funds is made through a competitive process in which project owners apply using the Universal Application.

6. The 2002 Universal Application is comprised of numerous forms, which request information of each applicant. FHFC has adopted the forms by reference in Rule 67-48.002(116), F.A.C.

7. On April 15, 2002, all applicants, including Avalon, submitted Universal Applications to FHFC for review. Avalon submitted its Application in an attempt to obtain funding to assist in the construction of a 300-unit affordable housing apartment complex in Orange County, Florida.

8. On May 13, 2002, FHFC completed its preliminary review and scoring of Avalon's Application. At that time, Avalon was awarded a preliminary score of 71 points out of a possible 71 points.

9. Subsequent to the release of FHFC's preliminary scores, each applicant, pursuant to Rule 67-48.004(9), F.A.C., was allowed to submit to FHFC Notice of Possible Scoring Errors ("NOPSE"). The purpose of a NOPSE is to point out errors in

FHFC's preliminary scoring of applications. Several NOPSE's were filed regarding the scoring of Avalon's application.

10. In response to the NOPSE's and FHFC's preliminary review, applicants were allowed 15 days to submit revised documentation to correct any errors in their applications pursuant to Rule 67-48.004(11), F.A.C. All revised documentation was due to FHFC by June 26, 2002. Avalon submitted numerous "cures" in an attempt to receive maximum points.

11. Subsequent to the submittal of revised information pursuant to Rule 67-48.004(12), F.A.C., each applicant was allowed the opportunity to provide a Notice of Alleged Deficiency in Scoring ("NOAD") with respect to the revised documentation submitted by other applicants.

12. On July 22, 2002, FHFC finalized its review of the revised documentation and NOADs and issued final scores. Avalon's final score was 71 out of a possible 71 points.

13. In addition to the 71 possible points available, the Universal Application allows applicants to earn up to 7.5 tie-breaker points. The tie-breaker points are based upon the proposed project's proximity to specified local services, including grocery stores, public schools, medical facilities, bus or metro rail stops, and other affordable housing developments funded by FHFC.

14. Avalon's position in the ranking and its ability to be awarded funding is dependent on how FHFC scores its Application. The ability to finance the proposed project will be jeopardized if funding is not obtained; accordingly, Avalon's substantial

interests are affected by this proceeding. In the instant appeal, Avalon is challenging FHFC's failure to award tie-breaker points for a bus stop and grocery store.

TIE-BREAKER POINTS GROCERY STORE

15. The Universal Application beginning at page 8 of 21 requests information regarding the tie breaker information. Specifically, the Universal Application asks for the proximity of a grocery store to a proposed development. Grocery store is defined by the Universal Application Instructions as a self-service retail market that sells food and household goods and has at least 4,500 square feet of air conditioned space. Depending on the proximity of a grocery store to the proposed project, an applicant can obtain up to 1.25 tie-breaker points.

16. In an attempt to gain the maximum tie-breaker points available, Avalon in its initial application submitted a Surveyor Certification at Exhibit 21, which indicated that an Ideal Food Store was located within a mile of the proposed development and, accordingly, 1.25 tie-breaker points should be awarded. Avalon also listed the Ideal Food Store at Universal Application, page 8 of 21. In its preliminary scoring, FHFC awarded Avalon these 1.25 points.

17. During the NOPSE phase of the scoring process, a number of NOPSE's were filed which pointed out to FHFC that the Ideal Food Store did not meet the definition of a grocery store in that the Ideal Food Store was not 4,500 square feet. FHFC agreed with the NOPSE's and reduced the number of tie-breaker points by 1.25 points.

18. In response to the NOPSE's and FHFC's rescoring, Avalon discovered that Winn-Dixie Market Place was located within one mile of the proposed development. Accordingly, Avalon submitted as a cure a revised Surveyor Certification which provided the new coordinates for the Winn-Dixie Market Place. Unfortunately, as pointed out in numerous NOADs, Avalon did not change Universal Application page 8 of 21 to reflect the Winn-Dixie Market Place, rather Ideal Food Store is still indicated. Based on this error FHFC declined to award 1.25 tie-breaker points. FHFC's action is incorrect.

19. The non-substantial error complained of in the NOADs and accepted by FHFC is one, which this year's Universal Application was designed to avoid. Indeed, as a matter of policy, FHFC in this year's Universal Application specifically illuminated the imposition of penalty points for errors, which did not impact upon the substance of the application. The error complained of here is not that the actual grocery store does not exist within a mile, but rather that the Surveyor Certification indicates Winn-Dixie, while the Universal Application at page 8 of 21 indicates Ideal Food Store. Unlike past years, there are no penalty point reductions for internal inconsistencies in the Application or Application exhibits. Indeed, a reduction in points is only appropriate if the store was actually further away than indicated.

20. There are numerous examples in this year's cycle where FHFC followed this policy change and failed to penalize an applicant for inconsistencies regarding tie-breaker points, including one with the exact same circumstances as Avalon. These inconsistencies were the subjects of NOADs where FHFC failed to penalize the Applicant. These examples include Application 2002-076S (Applicant changed the

grocery store to Publix from Family Dollar in Surveyor Certification section, but cure left Family Dollar on page 8 of 21 of the Universal Application); Application Nos. 2002-008B, 2002-043S, 2002-065B, 2002-072B, 2002-086BS and 2002-159CS (all of which had cures that changed the tie-breaker point on the Surveyor Certification, but failed to include a new surveyor map with the corresponding change); and Application No. 2002-140C (cure changed bus stop distance in Surveyor Certification from under 0.1 miles to between 0.1 and 0.2 miles, but cure left "under 0.1 mile" in the body of the Universal Application.)

21. More importantly in the instant case, the Surveyor Certification form, submitted by Avalon, is correct when it indicates that a Winn-Dixie Market Place is less than one mile from the proposed project. Accordingly, Avalon is entitled to 1.25 points.

TIE-BREAKER POINTS BUS STOP

22. FHFC, also as a result of a NOPSE and NOAD, did not award Avalon 1.25 tie-breaker points for having a bus stop within 1.0 mile of the proposed development. Specifically, FHFC in its 2002 Universal Scoring Summary dated July 22, 2002, concluded that "The LYNX Vanpool Service Stop referenced in the Application and its cure was not in existence and available for use by the general public as of the Application Deadline as required by the Application Instructions."

23. FHFC's conclusion is simply incorrect. The LYNX Vanpool link referenced in the original Universal Application response, as well as in Avalon's cure, has been in place since at least the time of Application submittal. Indeed, service has continued through the pendency of this process as is reflected by the log, which LYNX requires

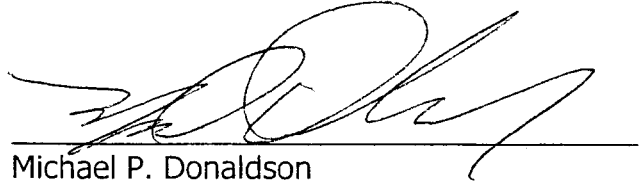
Avalon to maintain. This service has always been available to the general public; therefore, the award of 1.25 points is appropriate.

24. The material issues of fact and conclusions of law in the instant proceeding are as follows:

- a. Whether FHFC erred in scoring the tiebreaker component of Avalon's application.
- b. Whether a grocery store is located within 1 mile of Avalon's proposed project.
- c. Whether this year's application allows a penalty for an inconsistency between a Surveyor Certification and Universal Application page 8 of 21.
- d. Whether the bus stop used by Avalon was in place at the appropriate time.

WHEREFORE, based on the foregoing to the extent the facts are not in dispute Avalon requests an informal hearing and, to the extent the facts alleged are in dispute, Avalon requests a formal administrative hearing. Ultimately, Avalon respectfully requests the entry of a recommended order which awards 1.25 tiebreaker points (grocery store) and 1.25 tiebreaker points (bus stop) to Avalon.

Respectfully submitted,

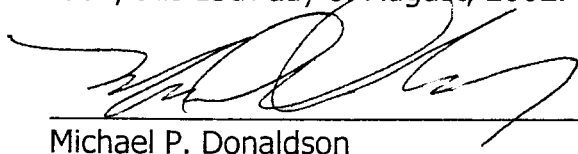


Michael P. Donaldson
Florida Bar Number 802761
CARLTON FIELDS, P.A.
215 S. Monroe St., Suite 500
Post Office Drawer 190
Tallahassee, FL 32302-0190
Telephone: (850) 224-1585
Facsimile: (850) 222-0398

Attorneys for Petitioner,
Avalon Reserve

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing has been filed by Hand Delivery with the Agency Clerk, Florida Housing Finance Corporation, 227 N. Bronough Street, Suite 5000, Tallahassee, FL 32301, and a copy furnished by Hand Delivery to Wellington H. Meffert, II, General Counsel, Florida Housing Finance Corporation, 227 N. Bronough St., Suite 5000, Tallahassee, FL 32301, this 13th day of August, 2002.



Michael P. Donaldson

ELECTION OF RIGHTS

Application Number: 2002-151BS

Development Name: Avalon Reserve, Ltd.

1. [] I do not desire a proceeding.

2. [] I elect an informal proceeding to be conducted in accordance with Sections 120.569 and 120.57(2), Florida Statutes. In this regard I desire to (Choose one):

[] submit a written statement and documentary evidence; or

[] attend an informal hearing to be held in Tallahassee.

Note: Rule 28-106.301, Florida Administrative Code, requires Applicant to submit a petition in a prescribed format. (attached)

3. [X] I elect a formal proceeding at the Division of Administrative Hearings. This option is available only if there are disputed issues of material fact.

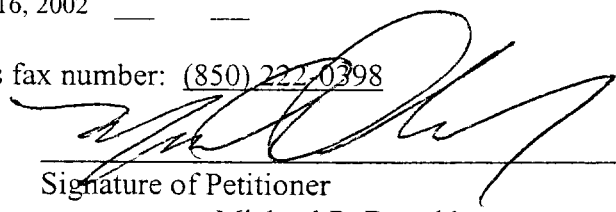
Note: Applicant must submit an appropriate petition in accordance with Rule 28-106.201, Florida Administrative Code. (attached)

Following are my top eight preferences, in order from 1-8 (with 1 being my first choice, etc.) for scheduling my informal hearing. Formal hearings will be scheduled by the Division of Administrative Hearings.

Hearing Dates:	<u>A.M.</u>	<u>P.M.</u>	Hearing Dates:	<u>A.M.</u>	<u>P.M.</u>	Hearing Dates:	<u>A.M.</u>	<u>P.M.</u>
August 29, 2002	___	___	September 9, 2002	___	___	September 17, 2002	<u>8</u>	<u>7</u>
August 30, 2002	___	___	September 10, 2002	___	___	September 18, 2002	<u>6</u>	<u>5</u>
September 3, 2002	___	___	September 11, 2002	___	___	September 19, 2002	<u>4</u>	<u>3</u>
September 4, 2002	___	___	September 12, 2002	___	___	September 20, 2002	<u>2</u>	<u>1</u>
September 5, 2002	___	___	September 13, 2002	___	___			
September 6, 2002	___	___	September 16, 2002	___	___			

Please fax a Hearing Schedule to me at this fax number: (850) 222-0398

DATE: August 13, 2002



Signature of Petitioner

Michael P. Donaldson

Name: _____ For: Avalon Reserve, Ltd.

Address: P.O. Drawer 190

Tallahassee, FL 32302

Phone: (850) 224-1585

TO PRESERVE YOUR RIGHT TO A PROCEEDING, YOU MUST RETURN THIS FORM WITHIN (21) DAYS OF RECEIPT OF THIS NOTICE TO THE FLORIDA HOUSING FINANCE CORPORATION AT THE ADDRESS INDICATED IN THE NOTICE OF RIGHTS. TO FACILITATE THE SCHEDULING OF HEARINGS, THIS FORM MAY BE SUBMITTED PRIOR TO FILING A PETITION.