

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

HUNTINGTON OAKS OF  
HILLSBOROUGH COUNTY, LTD.,

Petitioner,

vs.

Applicant No. 2002-097B

FLORIDA HOUSING FINANCE  
CORPORATION,

Respondent.

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**PETITION FOR REVIEW**

COMES NOW Petitioner, Huntington Oaks of Hillsborough Co., Ltd. ("Huntington"), pursuant to Section 120.569 and .57, *Florida Statutes* ("F.S.") and Rule 67-48.005, *Florida Administrative Code* ("FAC"), requests an administrative hearing to review and contest the Florida Housing Finance Corporation ("FHFC") scoring of Huntington's 2002 Universal Application. In support of this Petition, Huntington provides as follows:

1. Huntington is in the business of developing affordable housing units in the State of Florida. Huntington's address is 20725 S.W. 46<sup>th</sup> Avenue, Newberry, Florida 32669, and its phone number is 352/472-7773.

2. FHFC, pursuant to Chapter 420, F.S. and Rules 67-48 and 67-21, FAC, is the State agency delegated the authority and responsibility for administering and awarding funding from several affordable housing programs. These programs provide direct funding and other economic incentives to developers who construct much needed

affordable housing in the State, including the Multi-Family Revenue Bond Program("Bond").

3. 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. The award of Bond Program funds is made through a competitive process, which project owners apply for by submitting a Universal Application.

4. The 2002 Universal Application is comprised of numerous forms, which request information of each applicant. FHFC has adopted the forms by reference in Rule 67-48.004(1), F.A.C.

5. On April 15, 2002, all applicants, including Huntington, submitted Universal Applications to FHFC for review. Huntington submitted its Application in an attempt to obtain funding to assist in the construction of a 277-unit affordable housing apartment complex in Hillsborough County, Florida.

6. To review and score the applications, FHFC, in Rule 67-48.004, F.A.C., has established a multi-step scoring process, which at least initially allows all applicants to point out errors that FHFC may have missed. Additionally, the process allows applicants to correct errors and omissions made during the preparation of the application. The process concludes with the entry of Final Scores.

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

8. Subsequent to the release of FHFC's preliminary scores, each applicant, pursuant to Rule 67-48.004(4), F.A.C., was allowed to submit to FHFC Notice of Possible Scoring Errors ("NOPSE"). The purpose of an NOPSE was to point out errors in FHFC's scoring of applications.

9. 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(6), F.A.C. All revised documentation was due to FHFC by June 26, 2002. Huntington submitted numerous "cures."

10. Subsequent to the submittal of revised information pursuant to Rule 67-48.004(7), 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.

11. On July 22, 2002, FHFC finalized its review of the revised documentation and NOADs and issued Final Scores. Huntington's Final Score was 71 out of a possible 71 points.

12. In addition to the 71 possible points available, the Universal Application allows applicants to earn up to 7.5 tiebreaker points. The tie-breaker points are based upon the proposed project's proximity to specified local amenities, including grocery stores, public schools, medical facilities, bus or metro rail stops, and other affordable housing developments funded by FHFC. Huntington was awarded 2.25 tiebreaker points by FHFC in its Final Score for proximity to a grocery store (1 point), a public

school (1 point) and bus stop or metro-rail stop (.25). FHFC, however, declined to award 3.75 points for proximity to other affordable housing projects.

13. Huntington'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 proposal project will be jeopardized if funding is not obtained; accordingly, Huntington's substantial interests are affected by this proceeding. In the instant appeal, Huntington is challenging FHFC's failure to award tiebreaker points as to the proximity to other affordable housing projects.

14. The application at Part III, Section A(11)(c), provides that an applicant can receive tie-breaker points based on the proximity of its proposed development to other affordable housing projects previously funded by FHFC. The further away the proposed project is from an existing project, the more points, up to a maximum of 3.75, the applicant may receive. The intent of the proximity provision is to insure that, to the maximum extent possible, affordable housing projects are interspersed throughout a community rather than in certain limited areas.

15. In order to determine proximity to other affordable housing projects, FHFC has developed a list, which allegedly includes all affordable housing projects statewide "funded from the 2000 and 2001 cycles." This list is referred to as the FHFC Proximity List, which is incorporated by reference at Rule 67-48.002(116), FAC.

16. On April 15, 2002, in response to the affordable housing project proximity tiebreaker component of the application, Huntington indicated that the closest development, serving the same demographic group as its proposed development, was

not located within 2.5 miles. Based on this response, Huntington was entitled to an additional 3.75 in tiebreaker points.

17. In scoring Huntington's application, FHFC in its preliminary scoring awarded no tiebreaker points for proximity to other developments. FHFC failed to award the tie-breaker points based on the existence on the Proximity List of Application No. 2001-MF-014 ("Sanctuary Cove"), which was to be located less than .5 mile from Huntington's proposed project and allegedly funded from the 2000 and 2001 cycles. Huntington did not believe that Sanctuary Cove was a viable project and therefore did not consider it for proximity purposes.

18. Despite several requests, FHFC staff has been unwilling to disclose whether Sanctuary Cover has successfully completed or even entered into underwriting. Nonetheless, FHFC found it appropriate to add Sanctuary Cove to the proximity list. Based on documents obtained from FHFC through a public records request, however, it is clear that Sanctuary Cove failed to successfully complete or even enter into credit underwriting for its proposed project within the time allowed by FHFC Rule. As provided in a letter dated December 7, 2001, the Applicant was required to accept the invitation into credit underwriting within 10 days or be removed from the ranked list. (See Attachment A.) A letter dated May 2, 2002, makes it clear that the developer of Sanctuary Cove has not entered into credit underwriting as required. (See Attachment B.)

19. In addition, Sanctuary Cove has lost actual control of the Hillsborough County site and therefore has lost any potential for funding. Upon knowledge and

belief, the loss of site control occurred prior to the submittal date for this year's application. Several e-mail messages indicate that the initial developer of the project had lost site control and was attempting to reacquire the same. Accordingly, no development has occurred, or can occur, using funding from FHFC from either the 2000 or 2001 funding cycle. (See Attachment C.)

20. Under FHFC's use of the Proximity List, developers such as Huntington who desire and are attempting to provide much needed affordable housing within 2.5 miles of the Sanctuary Cove site will be unfairly treated because of their inability to obtain tie-breaker points.

21. More importantly, the citizens in the area of the Huntington project will be denied much needed affordable housing. In essence, given that Sanctuary Cove will not be built and that the strict application of the Proximity List will insure Huntington will not be built, no affordable housing in this area will be available.

22. Prior to the Application Deadline and again during the Application scoring and review process, Huntington brought to FHFC's attention the fact that Sanctuary Cove was incorrectly included on the Development Proximity List. This afforded FHFC the opportunity to correct their mistake. FHFC, however, was unwilling to do so.

23. Ironically, the FHFC Board of Directors, during its recent June 21, 2002, meeting, agreed to correct a mistake in the proximity list. Indeed, the Board specifically granted a waiver request submitted by Allapatah Gardens, Ltd.

24. In essence, Allapatah asked that a project currently on the proximity list be excluded from use for purposes of determining tie-breaker points. The primary

reason for the request in Allapatah was that the project in question should not have been included on the list. The same conclusion and action by FHFC should occur here.

25. Pursuant to Section 120.542(1), F.S., Huntington also filed with FHFC a variance request, which further allowed FHFC the opportunity to correct their error. Ironically, Huntington's request is almost identical to a request made by another applicant, which was granted by FHFC. At the time of filing this Petition, FHFC has not finally acted on this request, although FHFC staff will recommend denial of the request. Apparently, the reason for the denial is that the alleged error in the proximity list in the Allapatah case occurred prior to the April 15, 2002, application deadline, whereas the error in the instant case was discovered after the deadline. Not only is this a distinction without a difference, it is also not correct. As early as January of 2002, FHFC was aware of the difficulties the developer of Sanctuary Cove was having. Indeed, a specific email message dated February 14, 2002, indicates that FHFC staff specifically advised FHFC management that Sanctuary Cove should probably not be included on the proximity list. (See Attachment D.)

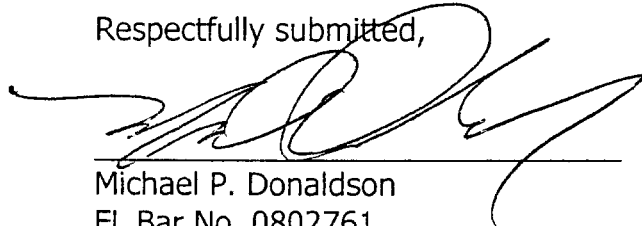
26. The material issues of fact and conclusions of law in the instant proceeding are as follows:

- a) Whether FHFC erred by not awarding Huntington 3.75 tiebreaker points for its proximity to other affordable projects.
- b) Whether Sanctuary Cove will be funded using 2000 and 2001 funds.
- c) Whether FHFC staff was aware that Sanctuary Cove would not be funded prior to April 15, 2002.

- d) Whether FHFC by not awarding Huntington 3.75 tiebreaker proximity points acted in a manner, which is inconsistent with their actions regarding other proximity list errors.

WHEREFORE, based on the foregoing, Huntington respectfully requested to the extent that the facts are undisputed, the entry of a recommended order, which awards 3.75 tiebreaker points to Huntington for its proximity to other affordable housing projects. To the extent that the facts are in dispute, Huntington requests a formal administrative hearing.

Respectfully submitted,

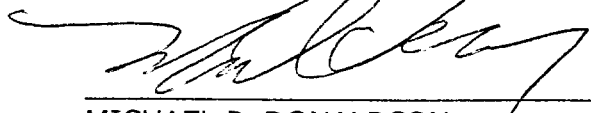


Michael P. Donaldson  
FL Bar No. 0802761  
CARLTON FIELDS, P.A.  
P.O. Drawer 190  
215 S. Monroe St., Suite 500  
Tallahassee, FL 32302  
Telephone: (850) 224-1585  
Facsimile: (850) 223-7000

Attorney for Huntington Oaks  
of Hillsborough County, Ltd.

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the original of the foregoing has been filed by Hand Delivery with Sherry Green, Agency Clerk, Florida Housing Finance Corporation, 227 N. Bronough St., 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





VIA FACSIMILE AND FEDEX

December 7, 2001

Mr. Stuart Myers  
SIM Holding Company  
2121 Ponce de Leon Boulevard, PH 2  
Coral Gables, Florida 33134

JEB BUSH  
Governor

ROBERT JAY TAYLOR  
Chairman

CINDY MEYER-WEBB  
Vice Chairman

BOARD OF DIRECTORS  
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SANDRA TERRY

STEVEN SEIBERT  
Ex Officio

MARK KAPLAN  
Executive Director

RE: **Sanctuary Cove - 2001MF-014**

Dear Mr. Myers:

At the December 6, 2001 meeting of Florida Housing's Board of Directors, the Board approved the invitation of the next eleven (11) applications to enter Final Credit Underwriting. Please accept this letter as Florida Housing's invitation for the above-referenced Application to enter credit underwriting "at your own risk". The Board also authorized the issuance of an Acknowledgement Resolution in a tax-exempt bond amount not to exceed \$18,790,000.

It is important to note that this invitation to Final Credit Underwriting does not assure the Applicant of successfully completing credit underwriting or of an allocation amount. Although your Application is among those for which funding is currently anticipated to be available, you should nevertheless be aware that if you decide to proceed into Final Credit Underwriting, it is solely "at your own risk".

Please also note that the invitation to Final Credit Underwriting and the issuance of an Acknowledgement Resolution allows you to be reimbursed for project costs incurred within sixty (60) days prior to the official action date, which is December 6, 2001, the date the Board extended the invitation to Final Credit Underwriting.

Upon receipt of your acceptance to proceed to Final Credit Underwriting, the Credit Underwriter will contact you concerning any credit underwriting fees or information required to complete a Final Credit Underwriting Report. All information required to complete the report should be submitted to the Credit Underwriter within thirty (30) days of the date of this letter. Failure to submit the Final Credit Underwriting and Appraisal Fee or meet the deadlines set forth above shall result in the immediate termination of Credit Underwriting activities and the Application shall be moved to the bottom of the

ranked list. The contact information for the Credit Underwriter assigned to this transaction is as follows:

Ben Johnson  
Seltzer Management Group  
7500 McElvey Road  
Panama City Beach, Florida 32408-4629  
850.233.3616 / 850.233.1429 fax

Please indicate whether you are planning to proceed into Final Credit Underwriting and the date you plan to enter. A written response should be faxed to Florida Housing, attention Bill Metler, Multifamily Bond Manager at (850) 414-5479 by Friday, December 14, 2001.

Pursuant to Rule 67-21.003(7), F.A.C., should you decline the invitation to Final Credit Underwriting, the Application shall be removed from the ranked list. If you have any questions or concerns, please contact me at (850) 488-4197.

Sincerely,



Bill Metler  
Multifamily Bond Manager

Cc: David Westcott, Multifamily Bond Administrator  
Wayne Conner, Deputy Development Officer  
Jan Rayboun, Loan Closing Coordinator  
Ben Johnson, Seltzer Management Group



May 2, 2002

Sanctuary Cove Associates, Ltd.  
SIM Holding Corporation  
Stuart Myers  
2121 Ponce de Leon Blvd, PH  
Coral Gables, FL 33134

JEB BUSH  
Governor

ROBERT JAY TAYLOR  
Chairman

ORLANDO J. CABRERA  
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SANDRA TERRY

STEVEN SEIBERT  
Ex Officio

MARK KAPLAN  
Executive Director

RE: Sanctuary Cove

Dear Mr. Myers:

At the December 6, 2001 meeting of the Corporation's Board of Directors, the Board set a closing deadline of September 30, 2002 for the above-referenced Development. The Board felt that this was sufficient time to close all of the remaining deals receiving 2001 bond allocation. Any Development not closed by this date risks losing its bond allocation, unless the Board approves the extension of this closing deadline.

To date, the Corporation has not received a Credit Underwriting Report on the above-referenced Development. The purpose of this letter is to inform you that if you do not have a completed, favorable Credit Underwriting Report for this Development approved by the Board no later than the August Board meeting, then staff will recommend to the Board that it not extend the September 30, 2002 closing deadline for this Development.

In order for a Credit Underwriting Report to be considered by the Board at its June 21, 2002 meeting, the report should be submitted to Florida Housing no later than May 24, 2002. In order for a Credit Underwriting Report to be considered by the Board at its August 23, 2002 meeting, the report should be submitted to Florida Housing no later than July 26, 2002.

As always, staff stands ready to assist you in meeting these deadlines. If you have any questions or concerns, please do not hesitate to call.

Sincerely,

A handwritten signature in cursive script, appearing to read "Wayne Conner".

Wayne Conner  
Deputy Development Officer

Cc: Ben Johnson , Seltzer Management.

ATTACHMENT B

**From:** Bill Metier  
**To:** Mara.Mades@CornerstoneGrp.com  
**Date:** 2/13/02 11:45AM  
**Subject:** Sanctuary Cove

Mara'

I am the Bond Manager responsible for the Sanctuary Cove MMRB application.

I was wondering what progress has been made on re-acquiring site control.

Thanks.

ATTACHMENT C

**Bill Metler - RE: Sanctuary Cove**

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**From:** Mara Mades <Mara.Mades@CornerstoneGrp.com>  
**To:** 'Bill Metler' <Bill.Metler@floridahousing.org>  
**Date:** 2/13/02 12:46 PM  
**Subject:** RE: Sanctuary Cove

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I e-mailed the atty (at Stearns Weaver) Friday. She was supposed to check up, since the buyer's deposit (or contract cancelling) was Feb. 8th. I also e-mailed her this a.m., and will hopefully get an answer today.

-----Original Message-----

**From:** Bill Metler [mailto:Bill.Metler@floridahousing.org]  
**Sent:** Wednesday, February 13, 2002 11:46 AM  
**To:** Mara.Mades@CornerstoneGrp.com  
**Subject:** Sanctuary Cove

Mara'  
I am the Bond Manager responsible for the Sanctuary Cove MMRB application. I was wondering what progress has been made on re-acquiring site control. Thanks.

**Bill Metler - RE: Sanctuary Cove**

---

**From:** Mara Mades <Mara.Mades@CornerstoneGrp.com>  
**To:** 'Bill Metler' <Bill.Metler@floridahousing.org>  
**Date:** 2/14/02 4:33 PM  
**Subject:** RE: Sanctuary Cove

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They are checking with the Seller. They think they will have an answer by Monday.

-----Original Message-----

**From:** Bill Metler [mailto:Bill.Metler@floridahousing.org]  
**Sent:** Thursday, February 14, 2002 4:02 PM  
**To:** Mara.Mades@CornerstoneGrp.com  
**Subject:** RE: Sanctuary Cove

Hi Mara,  
Did you hear from Stearns, Weaver in reference to site control of Sanctuary Cove land?  
Thanks

*Thanks  
Bill*

**Bill Metler - RE: Sanctuary Cove**

---

**From:** Mara Mades <Mara.Mades@CornerstoneGrp.com>  
**To:** 'Bill Metler' <Bill.Metler@floridahousing.org>  
**Date:** 2/14/02 4:33 PM  
**Subject:** RE: Sanctuary Cove

---

They are checking with the Seller. They think they will have an answer by Monday.

-----Original Message-----

**From:** Bill Metler [<mailto:Bill.Metler@floridahousing.org>]  
**Sent:** Thursday, February 14, 2002 4:02 PM  
**To:** Mara.Mades@CornerstoneGrp.com  
**Subject:** RE: Sanctuary Cove

Hi Mara,  
Did you hear from Stearns, Weaver in reference to site control of Sanctuary Cove land?  
Thanks

**Bill Metler - Sanctuary**

---

**From:** Mara Mades <Mara.Mades@CornerstoneGrp.com>  
**To:** "david.westcott@floridahousing.org" <david.westcott@floridahousing.org>  
**Date:** 2/18/02 12:25 PM  
**Subject:** Sanctuary  
**CC:** "robert.mcelroy@floridahousing.org" <robert.mcelroy@floridahousing.org>

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The other seller dropped. We are going to re-negotiate the contract this week (just need to review timing of closing with them). Will let you know as soon as we sign the contract.



**Bill Metler - RE:**

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**From:** Mara Mades <Mara.Mades@CornerstoneGrp.com>  
**To:** 'Kerey Carpenter' <Kerey.Carpenter@floridahousing.org>  
**Date:** 2/14/02 1:52 PM  
**Subject:** RE:

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Okay.

One other note: Sanctuary Cove was included - Hillsborough family. Will know in a week, but that deal probably will not move forward. I will let you know as soon as possible.

-----Original Message-----

**From:** Kerey Carpenter [<mailto:Kerey.Carpenter@floridahousing.org>]  
**Sent:** Thursday, February 14, 2002 1:51 PM  
**To:** Mara.Mades@CornerstoneGrp.com  
**Subject:** RE:

Urban in-fill developments located in large counties were not included on the list.

>>> Mara Mades <Mara.Mades@CornerstoneGrp.com> 02/14/02 01:42PM >>>  
Yes. (Also family).

-----Original Message-----

**From:** Kerey Carpenter [<mailto:Kerey.Carpenter@floridahousing.org>]  
**Sent:** Thursday, February 14, 2002 1:44 PM  
**To:** Mara.Mades@CornerstoneGrp.com  
**Subject:** Re:

Is it an urban in-fill development?

>>> Mara Mades <Mara.Mades@CornerstoneGrp.com> 02/14/02 11:40AM >>>  
I noticed on the proximity list that Mallard's Landing is missing. We closed that last month with the Corporation (2001 bond deal). It is located at the SW corner of Biscayne Road and I-295, in Jacksonville, Duval County. 388 units.

Any questions, just call! My # is 786-709-2231.

ATTACHMENT D

**ELECTION OF RIGHTS**

Application Number: 2002-097B Development Name: Huntington Oaks of Hillsborough Co., 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.  I elect a formal proceeding at the Division of Administrative Hearings. This option is available only if there are disputed issues of material fact.

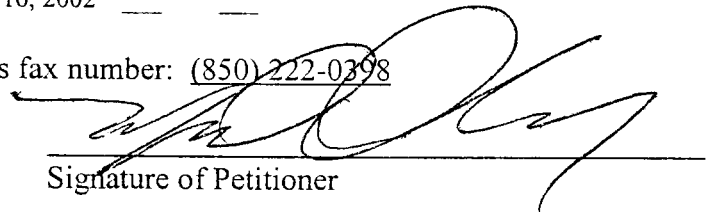
Note: Applicant must submit an appropriate petition in accordance with Rule 28-106.201, Florida Administrative Code. (attached)

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  
For Huntington Oaks of  
Name: Hillsborough Co., 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.**