

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

Florida Low Income Housing Associates, Inc.
Petitioner,

vs.

Florida Housing Finance Corporation,
Respondent.

FHFC Case No. 2002-707H
Application No. 2002-707H

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FLORIDA HOUSING
FINANCE CORPORATION

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PETITION FOR FORMAL ADMINISTRATIVE HEARING
PURSUANT TO SECTIONS 120.569 AND 120.57(1), FLORIDA STATUTES

Petitioner, Florida Low Income Housing Associates, Inc. (hereafter "FLIHA"), by and through its undersigned counsel, hereby files this Petition for Formal Administrative Hearing Pursuant to Sections 120.569 and 120.57(1), Florida Statutes, and in support thereof, states the following:

1. Petitioner, FLIHA, is a Florida corporation not for profit organized under Chapter 617, Florida Statutes ("F.S.") and qualified to do business in the State of Florida. FLIHA is in the business of developing affordable residential housing in Florida. FLIHA's address is 701 White Boulevard, Inverness, FL 34453, telephone (352) 726-1113. FLIHA submitted an Application for the Magic Lake Villas garden apartments development as part of the 2002 HOME Rental Cycle.

2. Respondent is the Florida Housing Finance Corporation ("FHFC"), 227 North Bronough Street, Suite 5000, Tallahassee, FL 32301-1329, telephone (850) 488-4197. This Petition concerns the FHFC's funding awards for the 2002 HOME Rental funding cycle.

3. Petitioner's attorneys in this matter are Jon C. Moyle, Jr., Esq., and Cathy M. Sellers, Esq., Moyle Flanigan Katz Raymond & Sheehan, P.A., 118 North Gadsden Street, Tallahassee, FL 32301, telephone (850) 681-3828. All papers to be served in this proceeding are to be directed to Mr. Moyle and Ms. Sellers at the above address.

4. FLIHA received notice of the FHFC's decision regarding the final scores for the 2002 HOME Rental Application cycle through the 2002 HOME Rental Scoring Summary, which was attached to a July 22, 2002 memorandum from Kerrey Carpenter, FHFC Deputy Development Director, entitled "Final Scores and Notice of Rights."

**Statement of FLIHA's Substantial Interests in this Proceeding
and Statement of Facts Warranting Funding of FLIHA's Application**

5. FLIHA's substantial interests are affected by the FHFC's 2002 HOME Rental Application Cycle final scoring and funding determinations. FLIHA is a developer of affordable housing that submitted a HOME Rental Application for the 2002 funding cycle, seeking funding to construct the Magic Lake Villas development, which is proposed to consist of 72 garden apartment units to be located in Ocala, Florida. FLIHA's application was competitively evaluated against other applications also seeking funding for the 2002 HOME Rental Cycle.

6. Under the FHFC's Final Scores for the 2002 HOME Rental Cycle, dated July 22, 2002 (attached as Exhibit A), FLIHA's application received a score of 84 points, which would be sufficient for FLIHA to receive funding from the FHFC for the 2002 HOME Rental Cycle for the Magic Lake Villas development. However, as discussed in detail in paragraph 10 herein, the FHFC erroneously determined that FLIHA did not meet the threshold application requirement, set forth in Part II, Section B and Exhibit 11 of the

HOME Rental Application, that the developer “have developed and completed at least two affordable housing developments similar in magnitude to the Development proposed in the HOME Rental Application.” As a result of this erroneous determination, FLIHA was rendered ineligible to receive funding for the Magic Lakes Villas development the 2002 HOME Rental Application Cycle.

7. The FHFC's incorrect evaluation of FLIHA's Application for the Magic Lake Villas project with respect to the developer experience requirement negatively affected FLIHA's competitive position in the 2002 HOME Rental Cycle, and rendered it ineligible for funding in the Cycle, thereby causing FLIHA to suffer a direct, immediate injury-in-fact to its substantial interests. Therefore, clearly, FLIHA has standing in this proceeding under Agrico Chemical Co. v. Dept. of Environmental Regulation, 406 So.2d 478 (Fla. 2d DCA 1981), to challenge the FHFC's evaluation and scoring of FLIHA's Application for the Magic Lake Villas development.

8. Further, because FLIHA is an “Applicant” for the 2002 HOME Rental Application Cycle funding within the meaning of Section 67-48.002(8), F.A.C., FLIHA is a “party,” as that term is defined in Section 120.52(12), F.S., and thus is entitled under Sections 120.569 and 120.57(1), F.S., and by FHFC Rule to a hearing under 120.57(1), F.S., concerning the evaluation and scoring of FLIHA's Application for the Magic Lake Villas development .

Disputed Issues of Material Fact

9. The following are disputed issues of material fact in this proceeding:

(a) Whether FLIHA has developed and completed at least two affordable housing developments “similar in magnitude” to the Magic Lake Villas development.

(b) Whether the development work entailed in developing a 72-unit garden apartments development is “similar in magnitude” to the development work entailed in developing: (i) a 40 unit single family residential development; (ii) a 99-unit single family residential unit development; and (iii) other HOME, SAIL, and Housing Credit development projects.

(c) Whether assembling the development team for 72-unit garden apartments development is “similar in magnitude” to assembling the development team for: (i) a 40 unit single family residential development; (ii) a 99-unit single family residential unit development; and (iii) other HOME, SAIL, and Housing Credit development projects.

(d) Whether obtaining the development project financing for a 72-unit garden apartments development is “similar in magnitude” to obtaining financing for: (i) a 40 unit single family residential development; (ii) a 99-unit single family residential unit development; and (iii) other HOME, SAIL, and Housing Credit development projects.

(e) Whether performing all activities necessary to meet the financial obligations for a 72-unit garden apartments development is “similar in magnitude” to performing activities necessary to meet the financial obligations for: (i) a 40 unit single family residential development; (ii) a 99-unit single family residential unit development; and (iii) other HOME, SAIL, and Housing Credit development projects.

(f) Whether performing all activities necessary to ensure that a 72-unit garden apartments development is constructed and leased in a timely manner is “similar in magnitude” to performing all activities necessary to ensure that the following kinds of development are constructed and leased in a timely manner: (i) a 40 unit single family residential development; (ii) a 99-unit single family residential unit development; and

(iii) other HOME, SAIL, and Housing Credit development projects.

(g) Whether selecting and contracting with the management entity to manage a 72-unit garden apartments development is “similar in magnitude” to selecting and contracting with the management entity to manage the following kinds of development:

(i) a 40 unit single family residential development; (ii) a 99-unit single family residential unit development; and (iii) other HOME, SAIL, and Housing Credit development projects.

(h) Whether the FLIHA is entitled to a determination by the FHFC that FLIHA’s Application for the Magic Lake Villas development meets the threshold requirement with respect to being eligible for funding under the 2002 HOME Rental Cycle.

(i) Whether FLIHA meets the requirements of FHFC’s 2002 HOME Rental Application, and, specifically, Part II, Section B and Exhibit 11, such that it is entitled to receive funding from the FHFC for the Magic Lake Villas development for the 2002 HOME Rental Application Cycle.

**Statement of Facts Entitling FLIHA
to Relief in this Proceeding**

10. In addition to the specific facts FLIHA alleges in paragraphs 5 through 8 above, FLIHA alleges the following facts that entitle it to relief in this proceeding:

(a) As discussed in paragraph 6, above, the FHFC determined that FLIHA was not eligible to receive funding for the 2002 HOME Rental Cycle because it did not have sufficient development experience with respect to projects “similar in magnitude” to the garden apartment type of construction proposed for Magic Lake Villas. It must be

noted that its initial evaluation of the Application for Magic Lakes Villas, the FHFC determined that FLIHA met the threshold requirement with respect to having the requisite development experience to be eligible for funding because FLIHA previously had developed only single and multifamily projects. Only after the developer experience issue was raised in a NOPSE submitted by a competing Applicant did the FHFC decide that FLIHA did not have the requisite development experience. FLIHA submitted a Cure describing and explaining its development experience for projects “similar in magnitude” to the Magic Lake Villas project and the development activities that will be required for the Magic Lake Villas project. However, the FHFC refused to revise its position that FLIHA did not have the requisite developer experience to warrant funding of the project.

(b) Nowhere in Chapter 420, F.S., Chapter 67-48, F.A.C., or any other FHFC rule is the term “similar in magnitude” defined, nor has that term been previously interpreted in case law regarding housing financing by the FHFC. Accordingly, the plain meaning of the terms “similar” and “magnitude” must be applied in determining whether FLIHA has previously engaged in development “similar in magnitude” to the proposed Magic Lake Villas project. Phillipine Cultural Found., Inc. v. Dep’t. of Revenue, 787 So. 2d 125 (Fla. 2d DCA 2001); Kirby Ctr. v. Dep’t. of Labor and Employment Security, 650 So. 2d 1060 (Fla. 4th DCA 1995); Davis Water & Waste Ind., Inc. v. Embry Development Co., 603 So. 2d 1357 (Fla. 1st DCA 1992) (when Florida Statutes do not define the term at issue, the language must be given its plain meaning).

(c) The Tormont Webster’s Illustrated Encyclopedic Dictionary defines “similar” as “showing some resemblance; related in appearance or nature, alike although not identical.” Webster’s Ninth New Collegiate Dictionary defines “similar” as “having

characteristics in common.” The Torront Webster’s Illustrated Encyclopedic Dictionary defines “magnitude” as “greatness in size or extent.” Webster’s Ninth New Collegiate Dictionary defines “magnitude” as “the importance, quality, or caliber of something.”

(d) Given these definitions, it is clear that FLIHA has previous development experience “similar in magnitude” for purposes of meeting the developer experience requirement in Part II, Section B and Exhibit 11 of the Application.

(e) In its Application and Cure, FLIHA described its extensive, 10 years of experience as a developer of single-family and multifamily affordable housing projects in Florida. Among FLIHA’s previous development projects are four affordable housing developments, ranging from 40 to 99 units of single family residential development, listed in on FLIHA’s Chart of Experience in Exhibit 11 to the Application, as well as other SAIL, Housing Credit, and HOME projects. In its Cure, FLIHA explained that as the *developer* of a project (as opposed to the *builder*), the activities and tasks it undertakes in the development process are essentially the same regardless whether a development project consists of single family, multifamily, garden apartment, or other type of development. The relevant inquiry, then, is whether the developer has sufficient experience in these various kinds of *development activities* with respect to affordable housing -- not whether the *developer* previously has developed the exact same *type* of construction -- which would instead be a relevant consideration for a *builder*.

(f) The developer’s responsibilities and activities in the development process include: (1) planning the development; (2) assembling the development team, which consists of selecting and retaining the development’s architect, attorney, engineer, general contractor, and management agent, based on the experience and expertise of

those parties; (3) obtaining the project's financing; (4) meeting all financial obligations of the development; (5) ensuring that the project is constructed and leased in a timely manner; and (6) selecting and contracting with the management entity to manage the development once it is constructed and occupied. Again, as explained in FLIHA's Cure, the nature and magnitude of these activities that comprise the responsibilities of the project's developer are the same or similar, regardless of the construction type (i.e., single family, multifamily, garden apartment, or other) of the proposed development.

(g) In this regard, FLIHA's development responsibilities and activities are, and have been, essentially the same regardless of whether the proposed development is a 40-unit single family development -- as with its Marion and Citrus County developments listed in Exhibit 11 of the Application, or whether the development is as extensive and varied as the 99-unit Heron Woods single family development listed in the Exhibit 11 of the Application -- which consists of more units than are proposed for the Magic Lakes Villas projects. In addition, as previously stated, FLIHA has extensive experience in developing other HOME, SAIL, and Housing Credit developments -- which, per the definition of "magnitude" are similar in quality to the proposed Magic Lake Villas development, which is a HOME Rental project.

(h) The point is, each of these construction types -- whether single family, multifamily, garden apartment, or other type, require the developer to undertake the *same kinds of development activities and responsibilities* as are entailed in developing the proposed Magic Lake Villas garden apartments project. Thus, as demonstrated by the facts stated herein and through facts that will be established at hearing in this proceeding,

it is clear that FLIHA previously has developed projects “similar in magnitude” to the proposed Magic Lake Villas development.

(h) Accordingly, FLIHA has met the requirement in Part II, Section B and Exhibit 11 of the Application and all other rule requirements that it have previously developed projects “similar in magnitude” to the proposed Magic Lake Villas project. As such, it is incumbent on the FHFC to revise the final scoring of FLIHA’s Application, to determine that FLIHA meets the threshold requirement with respect to developer experience and thus is entitled to receive funding for the Magic Lake Villas project.

**Rules and Statutes Entitling FLIHA to Relief
in this Proceeding**

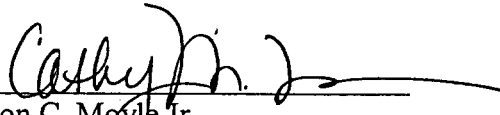
11. The rules and statutes that entitle FLIHA to relief in this proceeding are Part V of Section 420, Florida Statutes, Rule Chapter 67-48, F.A.C., the 2002 HOME Rental Application, and, specifically, Part II, Section B and Exhibit 11 of the 2002 HOME Rental Application, which has been adopted as an agency rule by the FHFC.

Relief Requested

WHEREFORE, Petitioner, Florida Low Income Housing Associates, Inc., respectfully requests the FHFC to grant this request for a Formal Administrative Hearing pursuant to Sections 120.569 and 120.57(1), Florida Statutes; to forward this Petition to the Division of Administrative Hearings for assignment of an Administrative Law Judge and conduct of a formal administrative hearing; to determine, following the hearing, that FLIHA is has sufficient developer experience as required by the Application for purposes of being eligible to receive funding under the 2002 HOME Rental Cycle; to revise

FLIHA's final ranking and score for the Magic Lake Villas Application for the 2002 HOME Rental Application Cycle; and to award funding to FLIHA for the Magic Lake Villas development for the 2002 HOME Rental Application Cycle.

Respectfully submitted this 13th day of August, 2002.



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**Florida Housing Finance Corporation
HOME Rental Application Spreadsheet
Subject to further validation and verification**

File No.	Development Name	Total Development Cost	Developer	County	Non-Entitlement Area	FP/ NP	Applied as a CHDO	Total Units	HOME Request Amount	Currently Issued Local Gov. Bonds	Preliminary		NOPSE		FINAL	
											Score	Threshold Met	Score	Threshold Met	Score	Threshold Met
2002-701H	Villa Salon, Inc.	\$5,150,437.00	Catholic Charities of the Diocese of Palm Beach	St. Lucie	Y	NP	N	50	\$804,934	N	86.00	N	86.00	N	86.00	N
2002-702H	Villas De Mallorca	\$23,120,510.00	Royal Castle Builders, LLC National Development of America,	Broward	N	FP	N	250	\$1,800,000	N	61.00	N	61.00	N	61.00	N
2002-703H	Cypress Pointe	\$5,536,180.00	National Development of America,	Bradford	Y	NP	Y	72	\$4,100,000	N	81.40	N	81.40	N	81.50	Y
2002-704H	Auburn Woods	\$5,900,000.00	LLC National Development of America,	Baker	Y	NP	Y	72	\$4,300,000	N	81.05	N	81.05	N	81.05	Y
2002-705H	Pinnacle Grove	\$19,517,568.00	Pinnacle Housing Group, Inc. Florida Low Income Housing	Indian River	Y	FP	N	234	\$3,000,000	N	84.00	N	79.00	N	81.00	Y
2002-706H	Magnolia Village	\$3,561,273.00	Florida Low Income Housing Associates, Inc.	Citrus	Y	NP	Y	42	\$3,000,000	N	82.65	N	82.65	N	82.65	Y
2002-707H	Magic Lake Villas	\$6,444,763.00	Associates, Inc.	Marion	Y	NP	Y	72	\$5,000,000	N	84.00	N	84.00	N	84.00	N
2002-708H	The Villas at Lake Smart	\$18,273,991.00	The Carlisle Group, Inc.	Polk	N	NP	N	220	\$2,000,000	N	58.00	N	58.00	N	56.95	N
2002-709H	Santa Clara Apartments Old Cutler Village	\$19,331,903.00	The Carlisle Group, Inc.	Miami-Dade	N	FP	N	208	\$2,500,000	N	60.45	N	60.45	N	60.45	Y
2002-710H	Brookside Apartments	\$27,387,978.00	Pinnacle Housing Group, Inc.	Miami-Dade	N	FP	N	288	\$2,500,000	N	61.00	Y	61.00	Y	61.00	Y
2002-711H	Lakeside Apartments	\$12,806,662.00	Sandspur Housing Partners, Ltd.	Alachua	Y	FP	N	176	\$2,600,000	Y	86.00	Y	86.00	Y	86.00	Y
2002-712H	Washington Shores Apartments	\$13,500,000.00	LCA Development II, Inc.	Orange	N	NP	Y	297	\$7,000,000	*	52.00	N	52.00	N	52.00	N
2002-713H	Regatta Bay Apartments Brittany Bay Apartments - Phase III	\$27,844,318.00	Sandspur Housing Partners, Ltd.	Osceola	Y	FP	N	344	\$7,000,000	Y	82.00	Y	82.00	Y	86.00	Y
2002-715H	Moultrie Village Apartments	\$9,743,318.11	The Richman Group of Florida	Collier	Y	FP	N	80	\$6,250,000	N	81.00	N	81.00	N	81.55	Y
2002-717H	Griffin Park	\$18,844,184.00	LCA Development II, Inc.	St. Johns	Y	NP	Y	132	\$2,000,000	Y	86.00	Y	86.00	Y	86.00	Y
2002-718H	Woodlawn Terrace	\$6,359,078.00	Housing for Rural, Inc.	Lake	Y	NP	Y	232	\$18,844,184	N	69.00	N	69.00	N	69.00	N
2002-719H	Shady Lane Azalea Apartments	\$3,725,892.00	Heritage Affordable Development, Housing for Rural, Inc.	St. Johns	Y	NP	Y	76	\$4,555,000	N	86.00	N	85.00	N	86.00	Y
2002-720H	Normandy Apartments	\$4,395,000.00	Community Housing Partners Corporation	Walton	Y	NP	Y	45	\$3,650,000	N	78.94	N	78.94	N	83.55	N
2002-721H	Whispering Pines Apartments	\$8,496,000.00	Florida Non-Profit Housing, Inc. The Center for Affordable Housing,	Hardee	Y	NP	Y	40	\$2,325,000	N	81.00	N	81.00	N	86.00	Y
2002-723H	Oakwood Apartments	\$2,667,100.00	ReGENCY Development Associates, Inc., CHP Housing Development, LLC, and The Germaine Company, Inc.	Duval	N	NP	Y	100	\$2,035,000	N	61.00	N	61.00	N	61.00	Y
2002-724H	La Mirada Gardens, Ltd.	\$12,893,673.00		Indian River Lake Manatee	Y Y Y	NP NP FP	Y Y N	61 72 144	\$5,996,000 \$1,011,100 \$800,000	N N Y	79.00 64.00 80.00	N N N	79.00 64.00 80.00	N N N	86.00 69.00 85.00	Y N Y

* Unable to determine based on commitments provided.

