

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

**BROWNSVILLE MANOR
APARTMENTS,**

Petitioner,

v.

**FHFC CASE NO. 2004-029-UC
Application No. 2004-076S**

**FLORIDA HOUSING FINANCE
CORPORATION,**

Respondent.

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, Chris H. Bentley, held an informal hearing in Tallahassee, Florida, in this matter on August 27, 2004.

APPEARANCES

For Petitioner, Brownsville
Manor Apartments:

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For Respondent, Florida Housing
Finance Corporation
(Florida Housing):

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STATEMENT OF THE ISSUE

The issues in this hearing involve whether Petitioner, Brownsville Manor Apartments, met threshold requirements with regard to Exhibits 26, 29, 30, 31 and 32 to its Application.

PRELIMINARY STATEMENT

The parties entered into a Joint Stipulation of Facts and Exhibits which has been marked as Joint Exhibit 1 in this proceeding. In addition to Joint Exhibit 1, Joint Exhibits 2 through 9 have been admitted into evidence pursuant to Stipulation.

FINDINGS OF FACT

Based upon the undisputed facts and Exhibits received into evidence at the hearing, the following relevant facts are found:

1. On or before March 31, 2004, Petitioner submitted an Application to Florida Housing Finance Corporation ("Florida Housing") for the award of funds from the State Apartment Incentive Loan ("SAIL") program for the development of affordable rental housing in the 2004 Universal Cycle.
2. Florida Housing is a public corporation organized under Chapter 420, Fla. Stat., to administer the financing and refinancing of projects which provide housing affordable to persons and families of low, moderate and middle income in Florida.

3. Florida Housing receives its funds for the SAIL program from an allocation of documentary stamp tax revenue and publishes a Notice of Funding Availability announcing the amount of SAIL funding, which in the 2004 Universal Cycle was approximately \$55,000,000. Florida Housing received requests from all applicants for SAIL loans in the 2004 Universal Cycle.

4. SAIL funds are apportioned among the counties, grouped as most, medium, and the least populated counties, and according to set-asides and special targeting goals set forth in the statute for the elderly, commercial fishing workers and farmworkers and families. See Section 420.5087 (3), Fla. Stat.

5. Florida Housing has established by rule a process (the “Universal Cycle”) in which applicants for any of the above-referenced Florida Housing multi-family rental programs submit a single application (the “Universal Cycle Application”) by which projects are evaluated, scored, and competitively ranked. See Section 420.507 (22)(f), Fla. Stat. and Chapter 67.48, Fla. Admin. Code.

6. The 2004 Universal Cycle Application, adopted as Form UA1016 (Rev. 3-04) by Rule 67-48.002 (111), Fla. Admin. Code, consists of Parts I through V and instructions, some of which are not applicable to every Applicant. Some of the parts include “threshold” items.

7. Failure to properly include a threshold item or satisfy a threshold

requirement results in rejection of the application. Other parts allow applicants to earn points, which are different from threshold items.

8. After Petitioner submitted its 2004 Universal Cycle Application, on or before March 31, 2004, Florida Housing's staff commenced scoring the Application pursuant to Part V, Chapter 420, Fla. Stat. and Chapter 67-48, Fla. Admin. Code. Florida Housing completed the scoring process on April 29, 2004.

9. After performing preliminary scoring, Florida Housing's staff notified Petitioner of the results. Any applicant could question the scoring of Petitioner's Application if it believed Florida Housing had made a scoring error, within 10 calendar days after the date the applicant received the preliminary scores by filing a Notice of Possible Scoring Error ("NOPSE").

10. Florida Housing reviewed each NOPSE that was timely received. On May 28, 2004, Florida Housing sent Petitioner any NOPSE relating to its Application submitted by other applicants and Florida Housing's position on any NOPSE.

11. Petitioner could submit additional documentation, revised forms, and other information that it deemed appropriate to address any issue raised in any NOPSE, Florida Housing's position on each NOPSE and preliminary scoring. These documents, revised forms and other information were known as "cures" and were due on or before June 10, 2004 (the "cure period").

12. After Petitioner submitted its cures, all applicants had an opportunity to review Petitioner's cures. Any applicant could submit to Florida Housing a Notice of Alleged Deficiencies ("NOAD") to challenge the Petitioner's cures. Florida Housing then reviewed each NOAD and made a determination on each NOAD.

13. Following this process, on July 9, 2004, Florida Housing sent Pre-Appeal Scores and a Notice of Rights to Petitioner. The Notice of Rights notified Petitioner that it could contest Florida Housing's actions by requesting an informal hearing before a contracted hearing officer.

14. Petitioner timely requested an informal hearing on August 2, 2004, and submitted its Petition for Informal Hearing on August 2, 2004.

15. Florida Housing found that Brownsville Manor failed threshold because the Local Government Verification of Status of Site Plan Approval for Multifamily Development reflected "an Address of the Development site that was different from the Address stated elsewhere within the Application and the City is not stated." (Cure Item 10T, formerly Item 1T.) (Exhibit 26 to Application; Joint Exhibit 2)

16. Florida Housing found that Brownsville Manor failed threshold because the letter submitted from the Miami-Dade Water and Sewer Department for water pertained to "a project for the proposed construction of [158] residential multi-family units and the Development proposed in the Application consists of a total of 178

units,” and the letter failed to reference whether water was available to the development site prior to the application deadline of March 31, 2004. (Cure Item 11T, formerly Item 3T.) (Exhibit 29 to Application; Joint Exhibit 3)

17. Florida Housing found that Brownsville Manor failed threshold because the letter submitted from the Miami-Dade Water and Sewer Department for sewer “concerns a project for the proposed construction of [158] residential multi-family units and the Development proposed in the Application consists of a total of 178 units.” Florida Housing further found the letter failed to reference whether sewer was available to the development site prior to the application deadline of March 31, 2004. (Cure Item 12T, formerly Item 3T.) (Exhibit 30 to Application; Joint Exhibit 3)

18. Florida Housing found that Brownsville Manor failed threshold because the letter submitted to verify the availability of roads was deficient because the letter failed to state that the roads to the development site were in place prior to March 31, 2004. (Cure Item 13T, formerly Item 5T.) (Exhibit 31 to Application; Joint Exhibit 4)

19. Florida Housing found that Brownsville Manor failed threshold because the Local Government Verification form reflected an address for the development site that was different from the address stated elsewhere within the application. (Cure Item 14T, formerly Item 6T.) (Exhibit 32 to Application; Joint Exhibit 5)

20. The Universal Application Package Instructions have been adopted as a rule. Part III.C.1 is entitled “Status of Site Plan Approval or Plat Approval (Threshold)”. The rule goes on to state that “To achieve threshold, Applicant must provide the applicable Local Government verification form behind a tab labeled ‘Exhibit 26’”.

21. Joint Exhibit 2 in this proceeding is Exhibit 26 to the Petitioner’s Application. It is a form taken from the list of forms that have been adopted as a rule in Rule 67-48.002(111), Fla. Admin. Code, and is entitled “Local Government Verification of Status of Site Plan Approval for Multifamily Developments”. On that form is a line that states “Address of Development Site”. Beside that line the Petitioner, on Exhibit 26 of its Application wrote “NE Corner of NW 32 AV & NW 41st”.

22. Rule 67-48.002(2), Fla. Admin. Code, defines the word “Address” as meaning “. . . the address assigned by the United States Postal Service and must include address number, street name, city, state and Zip Code”.

23. The parties have stipulated and agreed that the address assigned to the development site by the United States Postal Service is 4190 Northwest 32nd Avenue, Miami, Florida 33142.

24. The address set forth by Petitioner on its Exhibit 26 to the Application

(Joint Exhibit 2 in this proceeding) is not the address assigned by the United States Postal Service and does not include the address number, city, state or Zip Code of the development site.

25. The parties stipulated and agreed that the actual physical location of the development site is not in dispute.

26. The Universal Application Package Instructions at Part III.C.3 entitled “Evidence of Infrastructure Availability (Threshold)” requires verification of the availability of certain types of infrastructure including availability of water, sewer, roads and zoning. Pursuant to the rules set forth in the Universal Application Instructions at Part III.C.3, the verification of availability of water must be provided in the Application in “Exhibit 29” to the Application. The same rule requires that evidence of availability of sewer must be provided in the Application in “Exhibit 30” to the Application. Petitioner’s Exhibits 29 and 30 to its Application are contained in Joint Exhibit 3 in this proceeding.

27. Exhibits 29 and 30 to Petitioner’s Application (Joint Exhibit 3) is a single document which is a letter dated April 22, 2004 from the Miami-Dade Water and Sewer Department. While the letter is dated April 22, 2004 and affirms the status of existing water and sewer availability, the letter does not verify that water and sewer was available on or before March 31, 2004.

28. The rules set forth in the Universal Application Package Instructions at Part III.C.3 specifically require that “verification of the availability of each type of infrastructure [including water, sewer, roads and zoning] on or before the Application Deadline must be provided”. The parties have stipulated that the Application Deadline in this proceeding was March 31, 2004.

29. Exhibits 29 and 30 to Petitioner’s Application (Joint Exhibit 3) does not verify the availability of water or sewer on or before March 31, 2004.

30. Exhibits 28 and 29 to the Application (Joint Exhibit 3) are for the purpose of verifying the availability of water and sewer respectively for the proposed development. The letter dated April 22, 2004 from Miami-Dade Water and Sewer Department which Petitioner has included as its Exhibits 29 and 30 to its Application states “This letter is in response to your inquiry regarding water and sewer availability to the above-referenced project for the proposed construction of one hundred fifty eight (158) residential multi-family apartment units.”

31. The rule set forth in the Universal Application Package Instructions at Part III.C.3 requires that “Evidence of availability of roads must be provided behind the tab labeled ‘Exhibit 31’”. Petitioner’s Exhibit 31 to its Application is Joint Exhibit 4 in this proceeding.

32. As noted above, Part III.C.3 of the Instructions requires that verification

of the availability of roads on or before the Application deadline must be provided. Petitioner's Exhibit 31 to its Application (Joint Exhibit 4), is a letter from the Miami-Dade County, Florida Public Works Department dated May 3, 2004. While it affirms the availability of a paved public road, it does not verify that road infrastructure was available on or before March 31, 2004, the Application Deadline.

33. The rule set forth in the Universal Application Package Instructions at Part III.C.4 requires that an applicant must provide the appropriate verification to demonstrate that the proposed Development site is appropriately zoned and consistent with local land use regulations regarding density and intended use in "Exhibit 32" to the Application. The same rule requires that "the verification must demonstrate that the zoning designation for the Development site was effective on or before the Application Deadline".

34. On Petitioner's Exhibit 32 to its Application (Joint Exhibit 5), there is a line that states "Address of Development Site". Beside that line the Petitioner has stated "NE corner of NW 32 AVE & NW 41st". As stated above, that is not the address assigned by the United States Postal Service.

35. Petitioner's Exhibit 32 to its Application (Joint Exhibit 5) states "on or before 06/09/04, the zoning designation for the referenced Development site is RV-4". The verification set forth in Exhibit 32 to Petitioner's Application (Joint Exhibit

5) does not demonstrate that the zoning designation for the Development site was effective on or before March 31, 2004, the Application Deadline.

36. The parties have stipulated and agreed that this project encompasses 178 total units, 20 of which are existing rehabilitated units and 158 of which are proposed for new construction.

CONCLUSIONS OF LAW

36. Pursuant to Sections 120.569 and 120.57(2), Fla. Stat., and Rules 28-106.301 and 67-48.005, Fla. Admin. Code, the Hearing Officer has jurisdiction over the parties of this proceeding.

37. The Petitioner's substantial interests are affected by the proposed agency action of the Respondent. Therefore, Petitioner has standing to bring this proceeding.

38. The 2004 Universal Application Package including instructions, exhibit forms and an uncompleted application are rules incorporated by reference by Rule 67-48.002(111), Fla. Admin. Code.

39. Rule 67-48.004(13)(b) states that Florida Housing shall reject an Application if, following the submission of the additional documentation, revised pages and other information as the Applicant deems appropriate "The Applicant fails to achieve the threshold requirements as detailed in these rules, the applicable Application, and Application instructions"

40. By rule, the Local Government Verification of Status of Site Plan Approval for Multifamily Developments is a threshold item. Exhibit 26 to Petitioner's Application (Joint Exhibit 2) is the form adopted as a rule and requires the "Address of Development Site" to be set forth in Exhibit 26.

41. Rule 67-48.002(2), Fla. Admin. Code, defines the word "Address" as meaning ". . . the address assigned by the United States Postal Service and must include address number, street name, city, state and Zip Code".

42. The definition of "Address" is clear in the rules and it is equally clear that Exhibit 26 to the Application requires the "Address of Development Site". In filling out Exhibit 26 to its Application, Petitioner did not put the Address assigned by the United States Postal Service and did not include the address number, street name, city, state or Zip Code. Therefore, Petitioner has failed to meet the threshold requirement as detailed in the rules with regard to local government verification of the status of site plan in Exhibit 26 (Joint Exhibit 2).

43. The rules of Florida Housing set forth in the Universal Application Package Instructions at Part III.C.3 entitled "Evidence of Infrastructure Availability (Threshold)" requires verification of the availability of certain types of infrastructure including availability of water, sewer, roads and zoning.

44. The Universal Application Package Instructions at Part III.C.3 requires

that the verification of availability of water must be provided in the Application in “Exhibit 29” to the Application. The same rule requires that evidence of availability of sewer must be provided in the Application in “Exhibit 30” to the Application.

45. Exhibits 29 and 30 to Petitioner’s Application (Joint Exhibit 3 in this proceeding) is a single document and is a letter dated April 22, 2004 from the Miami-Dade Water and Sewer Department. While the letter is dated April 22, 2004 and affirms the status of existing water and sewer availability, the letter does not verify that water and sewer was available on or before March 31, 2004, the Application Deadline.

46. The Universal Application Package Instructions at Part III.C.3 specifically require that “verification of the availability of each type of infrastructure [including water, sewer, roads and zoning] on or before the Application Deadline must be provided”. The parties have stipulated that the Application Deadline in this proceeding was March 31, 2004.

47. Exhibits 29 and 30 to Petitioner’s Application (Joint Exhibit 3) does not verify the availability of water or sewer on or before March 31, 2004. The rules of Florida Housing make the verification set forth in Exhibits 29 and 30 to an application threshold items. Rule 67-48.004(13)(b) provides that Florida Housing shall reject an Application if the Applicant fails to achieve the threshold requirements

as detailed in the rules. With regard to the verification of water and sewer set forth in Exhibits 29 and 30 to its Application, the Petitioner has failed to achieve threshold requirements.

48. The rules set forth in the Universal Application Package Instructions at Part III.C.3 require that “Evidence of availability of roads must be provided behind the tab labeled ‘Exhibit 31’”. Petitioner’s Exhibit 31 to its Application is Joint Exhibit 4 in this proceeding. As noted above, Part III.C.3 of the Instructions require that verification of the availability of roads on or before the Application Deadline of March 31, 2004 must be provided.

49. Petitioner’s Exhibit 31 to its Application (Joint Exhibit 4) is a letter from the Miami-Dade County, Florida Public Works Department dated May 3, 2004. While it affirms the availability of a paved public road, it does not verify that road infrastructure was available on or before March 31, 2004, the Application Deadline.

50. Evidence of infrastructure availability such as roads is a threshold requirement. Rule 67-48.004(13)(b), Fla. Admin. Code, requires that Florida Housing shall reject an “Application if the Applicant fails to achieve the threshold requirements as detailed in the rules”. Failing to verify that the road infrastructure was available on or before the Application Deadline is failure of a threshold item.

51. The rules in Universal Application Package Instructions at Part III.C.4

require that an Applicant must provide the appropriate verification to demonstrate that the proposed Development Site is appropriately zoned and consistent with local land use regulations regarding density and intended use. In “Exhibit 32” to the Application, the same rule requires that “the verification must demonstrate that the zoning designation for the Development Site was effective on or before the Application Deadline.” The rule further provides that this is a threshold item.

52. The Universal Application Package Instructions at page 71 under the title “THRESHOLD REQUIREMENTS” states that “Requirements to meet Threshold include: . . . ability to proceed must be demonstrated by submission of the required certifications or documentation as the case may be of site plan/plat approval, site control, infrastructure availability, zoning approval, and environmental site assessment. Infrastructure and zoning must be in place as of the Application Deadline”.

53. Exhibit 32 to Petitioner’s Application is Joint Exhibit 5 in this proceeding. Petitioner’s Exhibit 32 (Joint Exhibit 5) states “on or before 06/09/04, the zoning designation for the referenced Development Site is RV-4.” The verification set forth in Exhibit 32 to Petitioner’s Application (Joint Exhibit 5) does not demonstrate that the zoning designation for the Development Site was effective on or before March 31, 2004, the Application Deadline. Therefore, with regard to

Exhibit 32 to its Application, Petitioner has failed a threshold requirement.

54. Petitioner has failed to achieve the threshold requirements with regard to Exhibit 32 (Joint Exhibit 5) for a second reason. On Exhibit 32, a form that has been adopted as a rule, there is a line that states “Address of Development Site.” Beside that line the Petitioner has stated “NE corner of NW 32 AVE & NW 41st.” As noted above, the word “Address” is defined in Rule 67-48.002(2) as the address assigned by the United States Postal Service. The entry beside the requirement for an address of the development site on Exhibit 32 is not the address assigned by the United States Postal Service. So for that reason also Petitioner has failed to achieve the threshold requirements with regard to Exhibit 32.

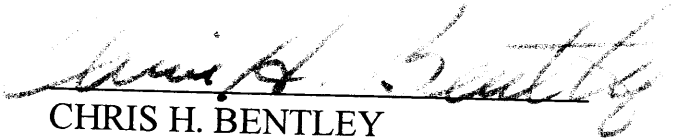
55. Because the proposed project is for a total of 178 residential multi-family apartment units, the statement by the Miami-Dade Water and Sewer Authority Department in Petitioner’s Exhibits 29 and 30 to its Application (Joint Exhibit 3) that it is responding to an inquiry regarding water and sewer availability for the proposed construction of 158 residential multi-family apartment units with no reference to 178 units, does not meet the requirement of verifying the availability of water and sewer for a 178 unit development which contains 158 new construction units and 20 rehabilitated units. Therefore, the Applicant has failed to achieve threshold requirements with regard to Exhibits 29 and 30 (Joint Exhibit 3) to its Application.

RECOMMENDATION

Based on the Findings of Fact and Conclusions of Law stated herein, it is
RECOMMENDED:

1. That a Final Order be entered determining that Petitioner Brownsville Manor Apartments' Application has failed to achieve the threshold requirements and should be rejected pursuant to Rule 67-48.004(13), Fla. Admin. Code.

Respectfully submitted and entered this 20th day of September, 2004.



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NOTICE OF RIGHT TO SUBMIT WRITTEN ARGUMENT

All parties have the right to submit written arguments in response to a Recommended Order for consideration by the Board. Any written argument should be typed, double-spaced with margins no less than one (1) inch, in either Times New Roman 14-point or Courier New 12-point font, and may not exceed five (5) pages. Written arguments must be filed with Florida Housing Finance Corporation's Clerk at 227 North Bronough Street, Suite 5000, Tallahassee, Florida, 32301-1329, no later than 5:00 p.m. on September 25, 2004. Submission by facsimile will not be accepted. Failure to timely file a written argument shall constitute a waiver of the right to have a written argument considered by the Board. Parties will not be permitted to make oral presentations to the Board in response to Recommended Orders.