

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

VILLA AURORA, LLLP,

Petitioner,

v.

FHFC Case No. 2005-009UC

FLORIDA HOUSING FINANCE
CORPORATION,

Application No. 2005-020CS

Respondent.

RECOMMENDED ORDER

Pursuant to Notice, an informal administrative hearing was scheduled on July 12, 2005 for this case in Tallahassee, Florida before Florida Housing Finance Corporation's appointed Hearing Officer, David E. Ramba. At hearing, the parties filed a Joint Proposed Recommended Order.

APPEARANCES

For Petitioner:

Gary J. Cohen
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Miami, FL 33131

For Respondent:

Wellington Meffert, General Counsel
Florida Housing Finance Corporation
227 N. Bronough Street, Ste 5000
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JOINT EXHIBITS

The following exhibits were admitted into evidence:

Exh. 1: Florida Housing Final Scoring Summary Sheet (dated 5/24/2005)

Exh. 2: Cure form for Scoring Item 2T (28 pages)

Exh. 3: Exhibit 3 to Petitioner's Application (7 pages)

Exh. 4: Copies of sec. 620.187 and 620.9001 (for judicial notice)

WITNESSES

There were no witnesses for either party.

STATEMENT OF THE ISSUE

The issue in this case is whether Florida Housing Finance Corporation ("Florida Housing") scored Petitioner's application for State Apartment Incentive Loan ("SAIL") funding and an allocation of Low Income Housing Tax Credits ("Housing Credits") in the 2005 Universal Cycle, in a manner which was neither unreasonable nor clearly erroneous. Specifically, Florida Housing contends that Petitioner failed to demonstrate site control sufficient to meet the required threshold, as required at Part III, Section C, Subsection 2, ("III.C.2.") in Form UA1016 (Rev. 2-05), Florida Housing's 2005 Universal Application.

PRELIMINARY STATEMENT

Petitioner applied during the 2005 Universal Cycle, for SAIL funds and an allocation of Housing Credits. Petitioner was notified by Florida Housing of its final scores on or about May 25, 2005. On June 9, 2005, Petitioner timely filed a Petition for

an Informal Administrative Hearing under Sections 120.569 and 120.57(2), Florida Statutes, disputing the Florida Housing's final scoring of its 2005 Universal Cycle Application for the proposed Villa Aurora project. After review of the Petition, Florida Housing granted Petitioner an informal hearing in this matter. Petitioner sought a determination that the Petitioner had demonstrated that it had control of the project site. The parties agree that the sole issue for determination in this proceeding is whether Villa Aurora, Ltd., and Villa Aurora LLLP, are the same entity as a matter of law. As no disputed issues of material fact exist, an Informal hearing was conducted pursuant to Sections 120.569 and 120.57(2), Fla. Stat., on July 12, 2005. References to the evidence shall be designated as "Exh." followed by the appropriate Exhibit number.

FINDINGS OF FACT

1. The Petitioner, Villa Aurora, LLLP (Villa Aurora"), is a Florida limited liability limited partnership. The address of the Petitioner is c/o Carrfour Supportive Housing, Inc., 155 South Miami Avenue, Suite 1150, Miami, Florida 33151, telephone number (305) 371-8300. Petitioner's substantial interests are affected by the agency action.

2. The Respondent is Florida Housing Finance Corporation ("Florida Housing"), whose address is 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329. The Agency's file or identification number with respect to this matter is Application No. 2005-020CS.

3. Petitioner applied for an allocation of low-interest loan funds under the FHFC State Apartment Incentive Loan ("SAIL") program, and an allocation of competitive 9% low-income housing tax credits under the FHFC Housing Credit ("HC")

program, as set forth in Section 42 of the Internal Revenue Code of 1986, as amended. FHFC is the agency designated by the United States Treasury to administer the allocation of tax credits in the State of Florida.

4. The application for SAIL and HC is comprised of numerous forms which request information of each applicant. FHFC adopted the forms by reference in Rule 67-48, FAC.

5. On or about February 16, 2005, Petitioner submitted to FHFC a SAIL and HC application in the SAIL Homeless Special Set Aside for the 2005 funding cycle. The application was submitted in an attempt to assist in the financing of the construction of a 76 unit apartment complex in Miami, Florida.

6. The application was scored by FHFC in accordance with the provisions of Rule 67-48, FAC. By letter dated on or about March 18, 2005, FHFC advised Petitioner that its preliminary score was 62 points, together with 7.5 proximity tie-breaker points, and was found to have failed the threshold requirements of site plan approval, site control, zoning and shortage of financing funds. No points were deducted and no additional grounds for threshold failure or rejection created as a result of any Notices Of Potential Scoring Error (“NOPSE’s”) filed against Petitioner.

7. Petitioner did not submit any evidence of site control in Petitioner’s initial application submitted on or about February 16, 2005,

8. On or about April 26, 2005, Petitioner submitted “cure” documentation to FHFC requesting four additional points for local government incentives, and curing all of the above-referenced threshold failures (including providing a lease with Miami-Dade

County to evidence to satisfaction of the threshold requirement of site control). No Notices of Alleged Deficiency (“NOAD’s”) were filed against Petitioner’s application.

9. On or about May 25, 2005, FHFC advised Petitioner that its total points were increased to 66, that Petitioner’s total proximity tie-breaker points remained at 7.5, and that Petitioner had satisfied and cured all prior failures of threshold requirements., with the exception of the threshold requirement of site control, noting “Applicant attempted to cure Item 2T by submitting a long term lease, executed by Villa Aurora Inc. with an Assignment to Villa Aurora, Ltd. However, the cure is deficient because neither the Lease nor the Assignment reflects the Applicant, Villa Aurora, LLLP, as the Lessee/Assignee.” (Exhibit “1”)

10. On or about April 26, 2005 Petitioner submitted (as part of its cure documentation, in response to Item 2T of the preliminary scoring summary report issued on March 18, 2005, the following documents: (a) a lease agreement (entitled “Second Amended Lease Agreement”) dated April 21, 2005 by and between Miami-Dade County and Villa Aurora, Inc.), and (b) an Assignment of Lease dated April 22, 2005 by and between Villa Aurora, Inc. (the lessee under the lease with Miami-Dade County) and Villa Aurora, Ltd. (Exhibit “2”).

11. FHFC determined that the site control cure was deficient, because the tax credit/SAIL applicant (Villa Aurora, LLLP) was neither the lessee under the lease with Miami-Dade County, nor the assignee of the lease under the Assignment of Lease from Villa Aurora, Inc. (Exhibit “1”)

12. A limited partnership adopting limited liability limited partnership status must add the suffix “LLLP” to its name. As such, Villa Aurora, Ltd. changed its name in the Statement of Qualification to Villa Aurora, LLLP. (Exhibit “3”)

13. The assignee under the April 22, 2005 Assignment of Lease from Villa Aurora, Inc. (Villa Aurora, Ltd., a Florida limited partnership) is the same legal entity as Petitioner (Villa Aurora, LLLP., a Florida limited liability limited partnership).

14. In Exhibit 3 of Petitioner’s initial SAIL/HC application, the organizational documentation of the Applicant was included. Villa Aurora, Ltd., a limited partnership, was organized on January 24, 2005 upon its filing of an Affidavit and Certificate of Limited Partnership (Exhibit “3”). On that same date, Villa Aurora, Ltd. applied for status as a “limited liability limited partnership” under Florida Statutes §§620.187 and 620.9001(3) (Exhibit “4”).

CONCLUSIONS OF LAW

1. Pursuant to Sections 120.569 and 120.57(2), Fla. Stat. and R. 67-21 and 67-48, Fla. Admin. Code, the Hearing Officer has jurisdiction over the parties to this proceeding.

2. Florida Housing is authorized to institute a competitive application process, for the MMRB and HC programs, Sec. 420.507 (22)(f), Fla. Stat., and has done so, R. 67-48.004, Fla. Admin. Code

3. Petitioner’s substantial interests are affected by Florida Housing’s actions, thus, Petitioner has standing to initiate this action.

4. Florida Housing's application form and instructions are adopted as Form, UA1016 (Rev. 2-05). R. 67-48.004(1)(a), Fla. Admin. Code. Part III, Section C, Subsection 2.c of the Universal Application, UA1016, requires evidence of site control to be filed as Exhibit 27 to the application.

5. Applicants may demonstrate "site control" by submitting a copy of a lease having an unexpired term of at least 50 years from the Application Deadline and the lessee must be the Applicant. Rule 67-48, FAC, specifically incorporates the SAIL and HC application, and the forms referenced therein. The instructions to Part III Section C Subsection 2 (incorporated by the aforementioned Rule) provide, in relevant part, that evidence of site control may be met by provision of a lease where the lessee is the Applicant (see page 26 of the Universal Application Instructions). Petitioner has complied with the instructions for Part III Section C Subsection 2 and provided evidence (in its "core documentation") that Petitioner is the valid assignee of a lease which satisfies the threshold requirement of site control.

6. As required by sec. 620.9002, Fla. Stat. a limited partnership adopting limited liability limited partnership status must add the suffix "LLLP" to its name. As such, Villa Aurora, Ltd. changed its name in the Statement of Qualification to Villa Aurora, LLLP. (Exhibit "3")

7. Villa Aurora, LLLP is not a different legal entity than Villa Aurora, Ltd.; it is the same entity. "A limited liability limited partnership continues to be the same entity that existed before the filing of a statement of qualification under Florida Statute

§620.9001(3) of the Revised Uniform Partnership Act of 1995”). Florida Statute §620.187(2).

8. Thus, the Assignment of Lease from Villa Aurora, Inc. dated April 22, 2005 was legally effective as to Villa Aurora, LLLP, which was the same entity as the assignee Villa Aurora, Ltd.

9. Petitioner has adequately demonstrated the satisfaction of the threshold requirement of site control, through a valid Assignment of Lease to Petitioner, and should be scored as having 66 total points and 7.50 proximity tie-breaker points, and having satisfied all threshold requirements.

RECOMMENDATION

Based on the Findings of Fact and Conclusions of Law stated above, it is hereby RECOMMENDED that Florida Housing enter a Final Order finding that Petitioner did meet the threshold requirement therein for “site control,” at Part III, Sec. C, Subsection 2, of the UA1016 application, and affirming Florida Housing’s scoring of Petitioners Application.

Respectfully submitted this 2nd day of August, 2005.



David E. Ramba, Hearing Officer

Copies furnished to:

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