From: Mark Hendrickson <mark@thehendricksoncompany.com>
Date: June 26, 2017 at 4:56:59 PM EDT
To: Trey Price <Trey.Price@floridahousing.org>, Ken Reecy <Ken.Reecy@floridahousing.org>
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Subject: Comment from Mark Hendrickson on HC Scoring Process

Attached are my comments related to the scoring process for the award of Housing Credits and SAIL
Thanks

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June 25, 2017

Mr. Trey Price
Executive Director
Florida Housing Finance Corporation
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Re: Comments on FHFC 9% Housing Credit and SAIL Scoring System

Dear Mr. Price:

Thank you for the opportunity to comment on the FHFC scoring system for 9% Housing Credits and SAIL.

As was stated by FHFC at the workshop—all changes to the application should be viewed through a public policy lens. Does the change benefit the public? Does the change lead to policy based allocation of precious public resources? Or does the change benefit a specific type of developer? To be direct, any change that leads back to allocation of resources by lottery should be viewed with a high level of skepticism—whatever the purported rationale put forth by the developer pushing the change.

Background on Past Changes to Scoring System

At one point, FHFC's award of housing credits and SAIL was driven by the actual scores of the applications. Many scoring items were included, with the ultimate tiebreaker (not used that often) being an absolute leveraging calculation (no A or B groups).

In the early 2000's, certain large developers, led by Carlisle Development among others, began pushing for changes that would drive the FHFC system to a lottery. Their mantra was that the scoring system, particularly leveraging, led to a "race to bottom"—a concept that was never proven out by actual data. Changes that they were successful in getting FHFC to adopt included:

- "Dumbing Down" of the application, achieved by removing items from scoring and making the application simpler.
- Removal of leveraging as a meaningful scoring item by creating the A and B groups and assigning an adjustment factor to high-rise developments that made it virtually impossible for them to be classified in the B Group.

- Instituting a "cure" system, so that developers could turn in essentially shell applications, and then cure the mistakes in the ones that drew winning lottery numbers.
- Elimination of the requirement to include backup material proving that something existed, replaced by forms that only required a signature from a local government.
- Massively reducing the amount of funding required for a local government contribution (from $1 million in large counties, to under $100,000)

It is important to note: No one promoting these changes said, "These changes will lead to a lottery" (although many of us did point that out). Instead, they dressed up the changes and presented them as if they were addressing concerns of FHFC staff—too much time spent scoring, too many appeals, applications rejected for minor errors, and of course the "race to the bottom" nonsense that told FHFC they were funding inferior developments. FHFC did not conclude that the award of Housing Credits by lottery was good policy, it happened because of the cumulative impact of the changes.

At the end of this process, award of Housing Credits was driven largely by lottery, with the large developers able to flood the system with a massive amount of applications. This gave them a much higher chance of winning, created an un-level playing field, and virtually eliminated the chance for high priority deals to be funded (one lottery number).

It should be noted that one item that still required backup was the purchase and sales contract, where that document was still included in the application. Also, the need to obtain the smaller local government contribution also inhibited to some degree the ability of the large developers to turn in unlimited applications. It isn't that it is that difficult to get a local government contribution—many give them to all or most developers. However, it is difficult if you are working on 25-40 applications to submit all at one time.

After several years, FHFC began to move towards factors that would break the ties and lessen the impact of the lottery. One major attempt was using an absolute score for proximity as a tiebreaker. This did break most ties, but again the system was altered to only require some minimal score on proximity in order to maintain the tie. However, cures were eliminated, and with them shell applications.

Another factor that was instituted was the local government preference, now known as the Local Government Area of Opportunity Funding. This system is an anathema to the developers who thrive only in a lottery system, as it allows local governments to select (and fund) priority deals that meet local goals—as opposed to funding by lottery.

Proposed changes to System that would again move system to lottery

Several changes have been proposed to the system this year. Some of them would again push the system back to the lottery:

- Elimination of the "small" local government contribution (so that large developers could flood the system with applications without even having to obtain a minimal level of financial support from local governments)
- Removal of sales contract from the application
- Elimination of the Local Government Area of Opportunity Funding process
- Wrapping multiple RFA's into a single RFA (small and medium size developers can work on a limited number of applications at one time—the larger developers can create application factories)

While the stated rationale for these proposed changes varies, their cumulative impact would be to return to a lottery driven award of Housing Credits. Those that want the lottery as the driving force in allocation always attempt to eliminate any scoring item that is proven to break ties and other items that inhibit their ability to turn in a massive amount of applications. Once again, developers are dressing up these proposed changes by claiming they are designed to address FHFC concerns about the time involved with scoring, applications rejected for minor errors, fair housing, and amount of litigation.

Suggestions for Scoring Changes

1. Change threshold items in the application to point scoring items. FHFC has stated over the years that it is difficult to reject an application because of what appears to be a minor error. This can be hard to defend, when a developer complains to a legislator that their application was booted "simply" because they forgot to attach an Exhibit to a sales contract, for example. By making this change for the sales contract and other threshold items, it removes this argument (much harder to complain that you lost 5 points for making an error than that your application was rejected entirely because of that error). The suggestion would be to make all threshold items other than signing the application, turning it in on time, and paying the appropriate fees, 5 point scoring items.

2. Enhance leveraging as a scoring item. I understand that FHFC is unlikely to return to a hard leveraging calculation (meaning $25,999 per unit beats $26,000 per unit). However, how difficult would it be to simply require applicants to be in the top 50%? The A and B groups should be divided with 50% in Group A and 50% in Group B. This would drive down the cost of units because it would have a meaningful impact on what cost level would still make it into the A Group. It should be noted that FHFC is correctly instituting "policing" policies to make sure that development costs are real. However, it would be just as productive to give developers a meaningful incentive to keep costs down. The current A-B Group system does not adequately accomplish this. However, with this change, FHFC will see a reduction in the costs

of deals that it funds. It should be noted that some applications seem to be submitted for the sole purpose of seeding the B Group.

As for the “race to the bottom” charge, this never took place. I have repeatedly asked, show me the year when the race to the bottom took place, because I must have missed it. More importantly, FHFC requires extensive physical features and energy efficiency measures. The “bottom” isn’t really the imaginary 1940’s public housing that opponents of leveraging profess is created by leveraging. All winning applications will still need to meet FHFC physical standards.

3. The adjustment factor for high-rise developments (pushed by Carlisle and others, can’t think why), should be significantly reduced. As it stands now, it creates an incentive to build high-rises, because it virtually assures an applicant that they will be in the A Group. Because the competition in the large counties is county by county, if all that can be built in a county is a high-rise, then they will be competing against one another—FHFC would then fund a more cost effective high-rise, rather than the one chosen by lottery.

Suggestions for Items NOT to Change

1. Local Government Contribution: This requirement has been in place since 1988. It has been a reliable way to gauge local government support. During that time period, thousands of local government contributions have been obtained—the argument that this somehow has led to massive NIMBY or Fair Housing problems is spurious and misleading. Large developers want a return to a lottery system. Getting rid of local government contribution helps them achieve that goal. While getting a local government contribution is not particularly difficult, it is a problem if you are attempting to flood the system with 40 applications and have to deal with multiple local governments simultaneously. The application factory can be derailed by this requirement—or at least inhibited.

   The amount of good this system has created massively outweighs the minor problems that are cited as the reasons for its elimination. While most developers can get the contribution, it inhibits those wishing to turn in a massive amount of application simultaneously, and also weeds out some truly poor deals and developers that are unable to obtain the contribution.

   As for Fair Housing—if this was a serious problem with local government contributions, and given the volume of contributions over the years, there must have been a multitude of Fair Housing cases filed by now, correct? Not really. This is simply being thrown at FHFC as a bogeyman.

2. Sales Contract: The sales contract should remain as part of the application. The amount of fraud that would be incentivized by its elimination is frightening. Again, if FHFC wants to not reject an applicant, make this a scoring item rather than threshold.

3. Local Government Area of Opportunity Funding: As one detailed in the letters from the JHFA and HFA of Hillsborough County, this system works. It brings demonstrably better developments into funding than would have been achieved through a lottery system and has not been driven by political considerations. Instead, it replaces lottery with a thoughtful deliberative process which allocated public resources in a rational manner.

Therefore, in summary:

1. Large developers drove the system to lottery to increase their chances of being awarded public resources, not because it was good public policy. They dressed up the changes that created the lottery behind a façade of supposed public purpose objectives.

2. Some of the proposed changes being pushed this year would make the system more lottery-driven. The purported rationale for some of these changes is reminiscent of those given for changes that initially led to the lottery.

3. Replacing threshold items with points makes for a more defensible scoring system.

4. Enhancing leveraging will lead to reduced development costs, and can be achieved without a reduction in the quality of what is produced.

5. Items such as local government contribution and the inclusion of the sales contract in the application should be retained.

6. The Local Government Area of Opportunity Funding system should be retained because it results in better developments being funded and the elimination of lottery as a method of distributing public resources.

Thank you for the opportunity to comment on the proposed scoring system. Please feel free to contact me with any questions.

Sincerely,

Mark Hendrickson
President, The Hendrickson Company