

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

LEGACY LAKES OF STUART, LTD.,

Petitioner,

vs.

Applicant No. 2002-092B

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

PETITION FOR REVIEW

Pursuant to Section 120.569 and .57, *Florida Statutes*, and Rule 67-48.005, *Florida Administrative Code* ("F.A.C."), Petitioner, LEGACY LAKES of STEWART, LTD. ("Legacy"), requests an administrative hearing to contest the FLORIDA HOUSING FINANCE CORPORATION's ("FHFC") scoring of Legacy's 2002 Universal Application ("Application"). In support of this Petition, Legacy provides as follows:

1. Legacy is a Florida for-profit limited partnership with its address at 20725 SW 46th Avenue, Newberry, Florida 32669. Legacy is in the business of providing affordable rental housing units.

2. FHFC is the state agency delegated the authority and responsibility for administering affordable housing programs in the State of Florida pursuant to Chapter 420, F.S., and Rule 67-48, F.A.C., 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.

4. The award of Bond funds is made through a competitive process in which project owners apply using the Universal Application.

5. The 2002 Universal Application is comprised of numerous forms, which request information of each applicant. FHFC has adopted the Universal Application by reference at Rule 67-48.002(116), F.A.C.

6. On April 15, 2002, all applicants, including Legacy, submitted Universal Applications to FHFC for review. Legacy submitted its Application in an attempt to obtain funding to assist in the construction of a 217-unit affordable housing apartment complex in Stuart, Martin County, Florida.

7. On May 13, 2002, FHFC completed its preliminary review and scoring of Legacy's Application. At that time, Legacy was awarded a preliminary score of 67 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(9), F.A.C., was allowed to submit to FHFC Notice of Possible Scoring Errors ("NOPSE"). The purpose was to point out errors in FHFC's scoring of applications. Several NOPSE's were filed regarding the scoring of Legacy's application.

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(11), F.A.C. All revised documentation was due to FHFC by June 26, 2002. Legacy submitted numerous "cures" in an attempt to receive maximum points.

10. Subsequent to the submittal of revised information pursuant to Rule 67-48.004(12), 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. Legacy's final score was 71 out of a possible 71 points. FHFC concluded however that Legacy failed to satisfy a threshold criterion because a properly completed Local Government Verification that development is consistent with Zoning and Land Use Regulation was not filed.

12. Legacy'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 proposed project will be jeopardized if funding is not obtained; accordingly, Legacy's substantial interests are affected by this proceeding. In the instant appeal, Legacy is challenging FHFC's threshold determination.

13. At Universal Application Instructions, page 18 the applicant is asked to provide evidence of Appropriate Zoning. The applicant is required to demonstrate that the Development site is appropriately zoned and consistent with local land use regulations. The applicant is required to provide the appropriate verification form as

Exhibit 28. The primary purpose in requiring this information is to ascertain the applicant's ability to proceed with the proposed development.

14. The Local Government Verification Form includes a verification, which asks the appropriate local government authority to certify that to the best of their knowledge, no additional land use regulation hearings or approvals are required to obtain the "zoning classification or density described herein". In an attempt to comply with this requirement, Legacy submitted the appropriate application certifications to Stuart's City Development District. The District completed all required certifications with the exception of the form, which verifies consistency with zoning and land use regulations. In response to the initial application, FHFC in its preliminary review, found that Legacy failed to satisfy a threshold criterion.

15. As a cure for this issue, Legacy submitted documentation, which supported the conclusion that the proposed development was consistent with applicable zoning and land use regulations. In its review of the documentation, however, FHFC failed to find that Legacy had satisfied the threshold requirement. This conclusion is incorrect.

16. As indicated previously, the information being requested is to determine how far along in the development process the Applicant is. Specifically FHFC wishes to know if the proposed project is consistent with the relevant local government's applicable zoning requirements. To the extent the development is consistent no further local government hearings are needed. If the development is not consistent then numerous hearings and the issue of denial is possible.

17. In the instant case, the City's Verification submitted at Exhibit 22 clearly provides an acknowledgment that Legacy's overall site plan is zoned RPUD (Residential Planned Unit Development) and CPUD (Commercial Planned Unit Development). Under the City's Land Development Code ("Code"), an RPUD designation allows multi-family residential development up to 15 units per acre. Further, the CPUD designation allows all of the RPUD uses with additional provisions for commercial usage. Legacy's proposed development is 17.3 acres and 217 units, well within the permitted amount for these zonings.

18. Due to a drafting quirk in their Code, the City of Stuart was unable to execute Exhibit 28 as written. This failure to execute was not based on the proposed project being inconsistent with the current RPUD and CPUD zoning. The City explained that their discomfort came in certifying that "no further land use regulation hearings" were required. Unique to the City of Stuart is the procedure that any modification to a zoned, approved PUD, no matter how big or how small, is handled through the City's zoning ordinance. As a result, even a minor site plan modification to a zoned, approved PUD requires hearings for approval.

19. The prior PUD plan for the property that Legacy now seeks to develop allowed for two separately owned, multi-family developments on contiguous parcels containing a total of 239 units. Legacy's plan will combine the two parcels under one developer by removing the previous center PUD district boundary line between the parcels. Accordingly, all Legacy must do is remove the line between the two approved developments to make one development which proposes a smaller number of units.

This type of amendment in other jurisdictions would be a minor amendment, which could be approved by planning staff with no need for further hearings. In Stuart, however, even such a minor change is classified as such a Major PUD Amendment.

20. Legacy believes that the City's Code negates the public policy goals and incentives of pre-planning efforts via the PUD process, but nevertheless points out that this process is set up to provide a safety net for assured approval. When an application is disapproved, the *city commission shall state the reasons for the disapproval and indicate what further modifications* to the master development plan or other submitted documents *must be made for approval.*" [emphasis added]. In effect, zoning cannot be denied, only site plan modifications may be required, and as noted in Exhibit 22, Legacy has preliminary site plan approval.

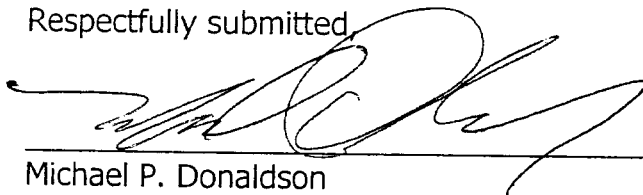
21. The proposed development site is currently zoned RPUD and CPUD, which allows for multi-family land use and Legacy seeks to build less than the allowed density. The land use and zoning that Legacy will have at the end of the City's process is identical to the current land use and zoning designations. Legacy already possesses the proper land use and zoning designation for the development it proposes.

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

- a. Whether FHFC erred in scoring Legacy's application.
- b. Whether Legacy has adequately provided information concerning zoning.

WHEREFORE, based on the foregoing, Legacy respectfully requests to the extent the facts are undisputed, a recommended order which finds that Legacy has achieved threshold. To the extent the facts are in dispute, Legacy requests a formal hearing.

Respectfully submitted,

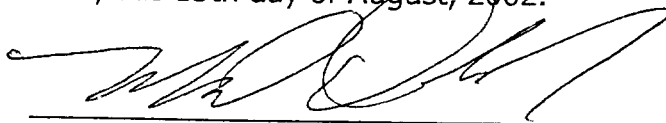


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CERTIFICATE OF SERVICE

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