STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LAKEWOOD SENIOR APARTMENTS LIMITED PARTNERSHIP,	)	
Petitioner,	)	
vs.	)	Case Nos. 98-3441RX 98-3873
FLORIDA HOUSING FINANCE CORPORATION,	)	
Respondent,	)	
and	)	
LCA DEVELOPMENT, INC.; THE GATEHOUSE GROUP, INC.; VESTCOR EQUITIES, INC.; and THE WILSON COMPANY,	)	
Intervenors.	)	

FINAL ORDER

A formal hearing was held in these cases before Larry J. Sartin, a duly designated Administrative Law Judge of the Division of Administrative Hearings, on October 12, 13, and 23, 1998, in Tallahassee, Florida.

APPEARANCES

For Petitioner: James C. Hauser, Esquire
Warren H. Husband, Esquire
Skelding, Labasky, Corry, Hauser, Jolly & Metz, P.A.
Post Office Box 669
Tallahassee, Florida 32302

For Respondent: Michael J. Glazer, Esquire
Stephanie W. Redfearn, Esquire
Ausley & McMullen

227 South Calhoun Street
Tallahassee, Florida 32301

and

Stephen M. Donelan, Esquire
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

For Intervenors: J. Stephen Menton, Esquire
Rutledge, Ecenia, Underwood,
Purnell & Hoffman, P.A.
215 South Monroe Street, Suite 420
Post Office Box 551
Tallahassee, Florida 32302

STATEMENT OF THE ISSUE

The issue in Case No. 98-3441RX is whether a 15 percent penalty provision of the Florida Housing Finance Corporation's 1998 Application Package for Low Income Housing Tax Credits, adopted and incorporated into the Florida Administrative Code, by reference pursuant to Rules 67-48.002(10) and 67-48.004(1), Florida Administrative Code, constitutes an invalid exercise of delegated legislative authority.

The issue in Case No. 98-3873 is whether Respondent appropriately applied the 15 percent penalty to Petitioner on its 1998 Application for Low Income Housing Tax Credits.

PRELIMINARY STATEMENT

On or about March 10, 1998, Petitioner submitted an application for 1998 Low Income Housing Tax Credits with Respondent. Petitioner requested tax credits of 1.1 million dollars to help finance a 150-unit apartment complex in Orange

County, Florida. On or about May 13, 1998, Respondent notified Petitioner of its score. Petitioner learned that its score for Form 4 of its application had been subjected to a penalty of 22.5 points. This penalty resulted from the imposition of a 15 percent penalty for an error on Form 4 of Petitioner's application.

On or about June 15, 1998, Petitioner filed a Petition for Informal Administrative Hearing with Respondent to contest the imposition of the 22.5 point penalty. On or about July 13, 1998, a second Petition for Informal Administrative Hearing was filed with Respondent challenging the rejection of its application. On or about July 28, 1998, Petitioner filed a Motion to Transfer Proceedings to the Division of Administrative Hearings with Respondent.

By letter dated August 31, 1998, Respondent filed the two petitions and the motion to transfer with the Division of Administrative Hearings and requested the assignment of an Administrative Law Judge to conduct formal proceedings. The petitions were designated Case No. 98-3873. The case was assigned to Administrative Law Judge Mary W. Clark.

A related case, Oaks Trail Associates, Ltd. vs. Florida Housing Finance Corporation, DOAH Case No. 98-3874, was filed simultaneously with Case No. 98-3873. The Oaks Trail Associates, Ltd. (hereinafter referred to as "Oaks Trail") case was also assigned to Judge Clark.

On July 28, 1998, Petitioner and Oaks Trail filed a Petition to Determine Invalidity of Existing Rules, alleging that the 15 percent penalty provision of Respondent's 1998 Application Package for Low Income Housing Tax Credits, adopted and incorporated into the Florida Administrative Code, by reference pursuant to Rules 67-48.002(10) and 67-48.004(1), Florida Administrative Code, constitutes an invalid exercise of delegated legislative authority.

Petitioner simultaneously filed a second Petition to Determine Invalidity of Existing Rules alleging that provisions of Respondent's 1998 Application Package for Low Income Housing Tax Credits, adopted and incorporated into the Florida Administrative Code, by reference pursuant to Rules 67-48.002(10) and 67-48.004(1), Florida Administrative Code, to the extent relied upon by Respondent to reject Petitioner's application for "altering" the application constituted an invalid exercise of delegated legislative authority.

The rule challenge petition filed by Petitioner and Oaks Trail was designated Case No. 98-3441RX. The rule challenge petition filed solely by Petitioner was designated Case No. 98-3442RX. Both cases were assigned to the undersigned by Orders of Assignment entered July 30, 1998.

On August 14, 1998, Case Nos. 98-3441RX and 98-3442RX were consolidated and scheduled for a September 28 and 29, 1998, hearing. On September 17, 1998, an order consolidating Case Nos.

98-3441RX, 98-3442RX, 98-3873, and 98-3874 was entered without objection. By the same order, the formal hearing was rescheduled for October 12 and 13, 1998.

On September 17, 1998, Petitions to Intervene filed by LCA Development, Inc., The Gatehouse Group, Inc., Vestcor Equities, Inc., and the Wilson Company in the four consolidated cases were granted.

On September 17, 1998, Oaks Trail filed a Notice of Dismissal in Case No. 98-3874. Oaks Trail also filed a Notice of Withdrawal from Case No. 98-3441RX. By order entered September 23, 1998, Case No. 98-3874 was closed and Oaks Trail was dismissed from Case No. 98-3441RX.

On October 5, 1998, Petitioner filed a Notice of Partial Dismissal Regarding DOAH Case No. 98-3873 and a Notice of Dismissal of Case No. 98-3442RX. Based upon a Stipulation entered into by the parties and attached to the notices, Petitioner voluntarily dismissed those portions of its challenge in Case No. 98-3873 to the rejection by Respondent of its application for an "alteration" of its application and all of Case No. 98-3442RX. By order entered October 8, 1998, Case No. 98-3442RX was closed and it was acknowledged that portions of Case No. 98-3873 had been dismissed by Petitioner.

Prior to the formal hearing of the remaining cases, Case No. 98-3441RX and Case No. 98-3873, the parties filed a Joint Prehearing Stipulation. The parties stipulated to the issues

which remained to be decided and certain facts, which have been included in this Final Order to the extent determined relevant. The parties also agreed that Case No. 98-3873 should be conducted as a Summary Hearing pursuant to Section 120.574, Florida Statutes.

At the final hearing Petitioner presented the testimony of Gwen Lightfoot, Angeliki Sellers, Edward S. Ryan, and Don Paxton. Petitioner's Exhibits 1-8, 10, 12-16, 18, 20-25, 27-30, 35-54, 57-58, and 62-69 were accepted into evidence. Petitioner's Exhibits 17 and 19 were marked for identification, but withdrawn. Petitioner's Exhibit 55 was marked and offered into evidence, but was rejected. Petitioner's exhibits 6-8, 13-15, 24-25, 28-30, 35-54, 57, 62-63, and 67-69 were accepted into evidence only to the extent ultimately determined relevant to this proceeding.

Respondent presented the testimony of Ms. Lightfoot and Ms. Sellers. Respondent's Exhibits 1-11 were accepted into evidence.

Intervenors called no witnesses and offered no exhibits.

Official recognition of Part V, Chapter 420, Florida Statutes, was taken.

The transcript of the formal hearing was filed on November 9, 1998. Proposed orders were, therefore, required to be filed on or before November 19, 1998. Petitioner filed a proposed order on November 19, 1998. Respondent and Intervenors jointly filed a proposed order on November 19, 1998. Those

proposed orders have been fully considered in entering this Final Order.

FINDINGS OF FACT

A. The Parties.

1. Petitioner, Lakewood Senior Apartments Limited Partnership (hereinafter referred to as "Lakewood"), was an applicant for 1998 Low Income Housing Tax Credit funding.

2. Respondent, the Florida Housing Finance Corporation (hereinafter referred to as "FHFC"), has been designated by the State of Florida to administer a Low Income Housing Tax Credit Program. Section 420.5099, Florida Statutes. FHFC is governed by a nine-member board (hereinafter referred to as the "Board"). The members of the Board are appointed by the Governor.

3. Intervenors, LCA Development, Inc. (hereinafter referred to as "LCA"), The Gatehouse Group, Inc. (hereinafter referred to as "Gatehouse"), Vestcor Equities, Inc. (hereinafter referred to as "Vestcor"), and The Wilson Company (hereinafter referred to as "Wilson"), were all applicants for 1998 Low Income Housing Tax Credit funding.

B. The Low Income Housing Tax Credit Program.

4. To encourage the development of low-income housing for families, Section 42 of the Internal Revenue Code of 1986, creates federal income tax credits that are allocated to each of the states for award through state-administered programs to developers of rental housing for low-income and very low-income

families. Tax credits allocated to developers through the program may be sold by the developer to generate a substantial portion of the funding necessary for construction of low-income housing projects.

5. The program has been in existence in Florida since 1987. Since its inception, in excess of 43,000 affordable housing units have been produced in Florida through the program.

6. Every year each state receives an annual allotment of tax credits. Generally, Florida's annual allotment of tax credits is apportioned among three county groupings based on population: large counties, medium counties, and small counties. Applicants compete for the tax credits allocated to a group based upon which county an applicant's proposed housing is to be located in.

7. Section 420.5099, Florida Statutes, establishes FHFC's responsibility for the allocation of Florida's share of tax credits:

> The corporation shall adopt allocation procedures that will ensure the maximum use of available tax credits in order to encourage development of low-income housing in the state, taking into consideration the timeliness of the application, the location of the proposed housing project, the relative need in the area for low-income housing and the availability of such housing, the economic feasibility of the project, and the ability of the applicant to proceed to completion of the project in the calendar year for which the credit is sought.

8. Section 42 of the Internal Revenue Code of 1986, requires that each state ensure that the minimum amount of tax credits necessary for an applicant to implement a proposed project are awarded in order to ensure the maximum use of a state's available credits. How tax credits are allocated is required to be reviewed at three distinct phases in order to carry out this goal: the first phase is the initial application/allocation phase; the second phase is a credit underwriting carryover stage; and the last phase is a final cost certification stage.

9. Section 42 of the Internal Revenue Code of 1986, requires that each state establish a qualified allocation plan (hereinafter referred to as the "Allocation Plan") establishing the procedures to be followed in awarding low income tax credits allocated to the state. Consistent with this requirement, FHFC has adopted an Allocation Plan for Florida through the adoption of Chapter 67-48, Florida Administrative Code.

10. The Allocation Plan establishes a competitive application process intended to carry out the first stage required by the Internal Revenue Code.

11. The actual application (hereinafter referred to as the "Application") used to carry out the first stage of the allocation process provided for in the Application Plan is revised by FHFC on an annual basis. The Application is adopted as part of an Application Package, which includes the

Application, tabs, and instructions thereto adopted by FHFC. The Application Package is amended each year to refine and clarify the Application Package, and to implement any new directives from the Board. Once revised, the Application Package is adopted by rule.

12. Once the annual Application Package is adopted and an annual application cycle opens, the adopted Application Package is made available to interested persons for completion and submission to FHFC. Completed Applications received by FHFC are evaluated and scored pursuant to the Application Package, projects are ranked within their respective county groupings, and the highest ranked projects are invited to participate in the second stage of the allocation process, credit underwriting.

13. Once an applicant completes credit underwriting and receives a Preliminary Allocation Certification indicating the amount of tax credits preliminarily allocated to the project, the applicant may proceed to construct the project. Once the project is completed, the applicant enters the final phase of the process, the Final Cost Certification phase.

14. The Internal Revenue Code requires that all credits allocated to a state for a particular year must be allocated by December 31 of that year. Any credits not allocated go into a national pool consisting of all credits not used by December 31. All states that use all their credits by December 31 are then eligible to share in the credits available in the national pool.

FHFC makes every effort to ensure that it allocates all of Florida's allocated credits so that the State may participate in the national pool.

C. The Application Process.

15. Prior to each application cycle, FHFC revised its previous year's Application Package and adopts an Application Package for the upcoming year by rule.

16. After adopting the Application Package by rule, FHFC opens the cycle and makes the Application Package available.

17. All Applications are required to be fully completed and filed by a date certain specified in the rules. Information contained in the Application is required to be certified true and accurate by the applicant.

18. All submitted Applications are evaluated and scored by a Review Committee pursuant to the procedures established in the rules. See Rule 67-48.004, Florida Administrative Code.

19. In 1998, the Review Committee was a committee of eight persons designated by the rules to organize the scoring of all applications. The Review Committee was made up of seven members of the staff of FHFC appointed to by the Board and one member of the staff of the Department of Community Affairs. Rule 67-48.002(80), Florida Administrative Code.

20. Following the notification of preliminary scores, applicants are given a week to review the scores of all applicants. See Rule 67-48.005, Florida Administrative Code.

Once notified of the preliminary scores, applicants have the right to file a written Notification of Possible Scoring Error (hereinafter referred to as a "NOPSE"). A NOPSE could be filed to point out a possible scoring error on the applicant's score or on any other applicants' score.

21. All NOPSE's filed during the 1998 cycle were reviewed by FHFC to determine if any modification in an applicant's score should be made.

22. Following the resolution of all NOPSE's, the preliminary scores of all applicants are reviewed by the Board. After the Board's review and approval of the preliminary scores and the ranking of applicants, notice of intended funding is provided to each applicant.

23. Following approval of preliminary scores by the Board, applicants are given a second opportunity to challenge their preliminary score or the preliminary score of any other applicant by filing a Direct or Competitive Appeal. See Rule 67-48.005, Florida Administrative Code.

24. No authority for re-scoring any Application, other than as the result of the filing of a NOPSE or a Direct or Competitive Appeal, was authorized for the 1998 cycle pursuant to Chapter 67-48, Florida Administrative Code.

25. Following the resolution of all Direct or Competitive Appeals, the Board approves the final scores awarded to each Application by final order of the FHFC.

26. Final scores are ranked by county grouping and a "funding line" is determined. The funding line is the point on the ranking sheet for each county group which represents the cut-off between those applicants that will be funded and those that will not. Applicants ranked above the funding line are given the opportunity to advance to the next two phases of the process required for them to receive funds. See Rule 67-48.026, Florida Administrative Code. For example, for the large county group, the amount of tax credits requested by the highest ranked applicant is deducted from the total tax credits available for the large county group. The amount of tax credits sought by the next highest ranked applicant is then deducted from the remaining tax credits. This process is followed until all the tax credits available for the large county group are allocated.

D. The Credit Underwriting Phase.

27. Those applicants to whom tax credits are tentatively allocated during the application process are next invited to "credit underwriting." Rule 67-48.026, Florida Administrative Code.

28. A "credit underwriter" is defined in Rule 67-48.002(25), Florida Administrative Code, as follows:

> (25) "Credit Underwriter" means the legal representative under contract with [FHFC] having the responsibility for providing stated credit underwriting services. Such services shall include, but not be limited to, reviewing the financial feasibility and viability of Projects and proposing to the Corporation the amount of a

SAIL or HOME loan and/or the amount of Tax Credit needed, if any.

The credit underwriter provides a comprehensive analysis of the preliminarily approved Applications, the applicant, the real estate market, the development economics, and the project's ability to proceed.

29. The credit underwriter verifies the accuracy of information contained in the Application, confirms that the Application complies with applicable statutory and rule requirements of the FHFC, and determines whether the project is financially feasible as presented.

30. Although Applications are required by the rules to be reviewed on their face, during the credit underwriting phase the credit underwriter is allowed to look at pertinent information not contained within the submitted Application. The credit underwriter verifies the accuracy and reasonableness of the information provided in an Application. The credit underwriter looks at the availability of financing, the structure of the proposal, and the estimated total project cost.

31. The credit underwriter may adjust the financial projections set forth in the Application. Historically, the credit underwriter typically increases project costs.

32. Ultimately, the credit underwriter recommends a preliminary allocation of tax credits to each applicant above the funding line. The amount of tax credits recommended may differ

from that requested by the applicant. The amount initially requested by the applicant, however, cannot be exceeded. The applicant is limited to the lower of the amount applied for, the lowest amount needed for financial viability, or the qualified basis calculation amount.

33. FHFC may accept, modify, or reject the credit underwriter's recommendations. Rule 67-48.026(10), Florida Administrative Code.

34. Applicants successfully completing the credit underwriting phase are issued a Preliminary Allocation Certification which indicates the amount of tax credits preliminarily allocated to the project.

E. The Final Cost Certification Phase.

35. Construction of the project typically takes two to three years from the submittal of the Application.

36. If a project cannot be completed by the end of the calendar year, the applicant must enter into a Carryover Agreement. Pursuant to this agreement, FHFC promises to allocate a "not to exceed" amount of tax credits to the project if it is completed within two years in accordance with the Carryover Agreement.

37. Once the project is completed, the applicant is required to submit a Final Cost Certification. The Final Cost Certification details the actual costs incurred in completing the project, verified by an independent certified public accountant.

Prior to 1998, the Final Cost Certification had to be certified by a credit underwriter.

38. One purpose for the Final Cost Certification is to ensure that actual costs are consistent with, and do not exceed, those allowed by federal and state requirements.

39. The applicant is issued an IRS Form 8609 which establishes the amount of tax credits allocated to the applicant. The amount of tax credits allocated after the Final Cost Certification may be less than the originally approved tax credits for the project.

F. The 1998 Application Package; Project Funding & Economic Viability (Project Cost Pro Forma), Form 4.

40. Effective January 6, 1998, FHFC adopted by reference in its rules the 1998 Application Package, "Form CAP98." Rules 67-48.002(10) and 67-48.004(1), Florida Administrative Code.

41. The adoption of the 1998 Application Package and the allocation of tax credits through the application phase was consistent with the description of the application process, supra.

42. Among the forms required to be submitted as part of the 1998 Application was Form 4, "Project Funding & Economic Viability (Project Cost Pro Forma)."

43. The purpose of Form 4 is to ensure that an applicant had firm commitments for funding from financially capable sources

sufficient to cover the costs of the project which would not be covered by tax credits.

44. A total of 150 points were available for the information on Form 4. This was the highest possible single award of points in the 1998 Application.

45. To the extent that firm commitments were not demonstrated on Form 4, an applicant was to be awarded less than 150 points.

46. In two places on Form 4, applicants are informed that they could not request a developer fee in excess of the limits established by the FHFC rules and the 1998 Application Package. For Lakewood's Application, the maximum developer fee was 20 percent of project cost.

47. The parties stipulated that Lakewood's Form 4 demonstrated that all necessary funding for its project was firmly secured. Therefore, the parties agreed that, but for the imposition of the penalty provision at issue in this proceeding, Lakewood was entitled to an award of 150 points for Form 4.

G. The 15% Penalty.

47. The following provision appears on Form 4 of the 1998 Application:

> **FULL POINTS WILL BE AWARDED ONLY IN THE EVENT THAT ALL INFORMATION REQUIRED BY THIS FORM IS PROVIDED IN STRICT ACCORDANCE WITH THE FORM'S REQUIREMENTS. FAILURE TO PROVIDE COMPLETE, ACCURATE INFORMATION IN THE FORMAL AND LOCATION**

PRESCRIBED BY THIS FORM WILL RESULT IN A 15% REDUCTION OF POINTS FOR FORM 4. ONLY INFORMATION CONTAINED WITH THIS APPLICATION WILL BE CONSIDERED FOR PURPOSES OF POINTS AWARDED OR APPEALED.

(This provision will hereinafter be referred to as the "15% Penalty"). The 15% Penalty appears in materially identical form on Forms 5, 6, 7, 8, 10, and 22 of the 1998 Application.

H. The Development of the 15% Penalty.

48. Since the inception of the Low Income Housing Tax Credit Program in Florida, the application process has become increasingly competitive and litigious. For example, for the 1998 cycle FHFC received Applications for approximately 72.6 million dollars but only approximately 10.7 million dollars of tax credits available. Consequently, only eleven of the ninety Applications will likely be funded from the 1998 cycle.

49. Because of the increased competitiveness and the litigious nature the application process, the Board appointed a Combined Cycle Committee (hereinafter referred to as the "Cycle Committee") to work with the staff of FHFC to improve the Application and application process for the 1998 cycle. The Board also instructed staff to strictly construe the Application, make sure forms in the 1998 Application were as clear as possible, and to implement a penalty for failures to follow the instructions.

50. The development of the 1998 Application Package began

in the spring of 1997. On July 14, 1997, the first rule development workshop was held. The purpose of the workshop, which was attended by approximately forty individuals, was to provide a forum for comments and suggestions from developers and other interested persons concerning the Application Package and the process.

51. Following the July 1997 workshop, FHFC prepared a draft of the 1998 Application Package. The draft consisted of the 1997 Application Package with changes proposed for the 1998 cycle noted with strike-through for deleted language and underlining for added language. See Respondent's Exhibit 2, the "Red Book."

52. Among the proposed changes to the 1997 Application Package contained in the Red Book was the inclusion of the following language on Page 1 of the Instructions:

> **FULL POINTS WILL BE AWARDED ONLY IN THE EVENT THAT ALL INFORMATION REQUIRED BY EACH FORM IS PROVIDED IN STRICT ACCORDANCE WITH THE APPLICATION REQUIREMENTS. FAILURE TO PROVIDE COMPLETE, ACCURATE INFORMATION IN THE FORMAT AND LOCATION PRESCRIBED BY THE APPLICATION WILL RESULT IN A REDUCTION OF POINTS AS INDICATED ON**
>
> **EACH FORM. ONLY INFORMATION CONTAINED WITH THIS APPLICATION WILL BE CONSIDERED FOR PURPOSES OF POINTS AWARDED OR APPEALED.**

This language was repeated throughout the Red Book, modified only to specify that the penalty was 15 percent and to refer to the specific section or form the language was included in.

53. The 15% Penalty applied only to the points available for a form on which an error or omission occurred. The penalty applied regardless of the number of errors or omissions on a form and regardless of the significance of the error or omission.

54. FHFC was aware at the time that it was considering the 15% Penalty that the point difference between the highest and lowest point totals above the funding line for the 1997 cycle for the large county category was 43.03 points. FHFC also knew that historically only a half point to two points separated funded applicants and unfunded applicants.

55. The 15% Penalty modified the previous treatment of errors or omissions on Applications. Prior to 1998 if an error was made in an Application, the Application was either rejected if the error related to certain specified "threshold requirements" or staff simply corrected the error. For example, if an applicant requested a developer fee in excess of the developer fee cap, scorers would adjust the claimed fee downward. No penalty would be imposed on the applicant.

56. Copies of the Red Book were made available to interested persons to review before and during a second rule development workshop held on September 22, 1997. The purpose of this workshop was to review the proposed changes in the Red Book and to give the approximately sixty-five individuals that attended the workshop an opportunity to make comments and suggestions as to how to improve the Application Package and the

application process.

57. The 15% Penalty was specifically explained during the September 22, 1997, workshop. Lakewood was represented at the meeting. The following explanation of the 15% Penalty was given:

> Before we go on into rules and QAP things, I want to add one more global comment to be sure everybody in this room understands the new big change in the application whereby you [sic] if you don't fill it out exactly the way the instructions tell you, you're going to get penalized then and there, okay? There's a 15% penalty on many of these forms. On Form 3 we set out a chart for you to show that if you don't give all the information exactly where you say it is in the application, all your T's are crossed and your I's dotted, you're going to get reduced points.
>
> Now, the whole purpose of this is not to make your life miserable or to make our lives miserable. It is to make you pay attention to the application and to reduce appeals, okay?

FHFC Exhibit 11.

58. In addition to the two workshops, two public meetings were held by the Cycle Committee to discuss the proposed Application Package. Questions and comments concerning the proposed Application Package were invited.

59. FHFC staff were also available to answer questions concerning the 1998 Application Package and the process at any time up until the deadline for submittal of the 1998 Application.

60. Throughout the period of time during which the 1998 Application Package was being developed, FHFC staff emphasized

the need for accuracy on the Application and explained to prospective applicants that the 15% Penalty existed.

61. FHFC formally adopted the 1998 Application Package containing the 15% Penalty. No challenges to the rule which incorporated the 1998 Application Package were filed before the rule became effective.

62. Full-day workshops were subsequently conducted by FHFC throughout the State to explain how to complete the 1998 Application and to answer questions thereon. The 15% Penalty was explained during these workshops.

I. Purpose for the 15% Penalty.

63. It is important for Applications to be complete and accurate during the application phase. The application phase is FHFC's first opportunity to analyze proposed projects in accordance with the Internal Revenue Code and FHFC's rules. The Internal Revenue Code requires that the minimum number of tax credits necessary to complete a project be determined during the application phase. Therefore, even though modifications may be made during the credit underwriting and final phases, FHFC is still required to make sure that Applications approved in the application phase are as accurate as possible. FHFC's purpose for adopting the 15% Penalty was described by Gwen Lightfoot, Deputy Development Officer for FHFC:

Well, it's - we have to go into a little bit of history in order to really understand from whence this approach came. When I first came to the Agency, that was in 1992, we had enough credits that everybody that applied that was really ready to go would be able to get the credits. And there were times at the end of the year when staff would be frantically calling up developers and saying, Do you have a site, are you ready to go? You know, you told me that you were going to turn this application in and we didn't get it and we need one more to secure the national pool. And so, you know, that was the atmosphere under which the credit program was operating six years ago.

It was critical for us to get the national pool in those days because that would add, oh, $6 million to the amount of credits that we would have, which is thousands of unit. So, each year we got more and more competitive, more and more developers learned about the program, more and more developers realized that they could make a good living with, you know, affordable housing.

The mechanism that the code creates encourages public/private partnerships, so this is a good way for the private community to provide affordable housing and make a living. So, the competition became more and more intense.

In 1997, by then, it was extremely contentious, litigious, extremely competitive. I can remember - I think it was in 1996, it might have been the year before, we had over 300 issues on appeal, and that's just insanity. So in this scope of things we tried to come up with a way to make sure that this application was accurate and complete and - well, I guess those are the best words - because we have a mandate in the Federal code and in the State code that we can allocate no more credits than is absolutely necessary for the project viability. That means it is critical for us to have an accurate and complete application.

The overall purpose of the app is to be an objective mechanism by which we can maximize the use of the credits. We have got to have a way to

> be sure that we are getting the best bang for our buck, I guess is a good way to say it. So, when we laid the penalty over the entire application, we were searching for a rational, fair, objective approach which was designed to reduce appeals, to be fair to everybody, come up with a mechanism by which we could award partial points for people who had done, you know, the main thrust of the particular question but had for some reason not done it perfectly, rather than make them lose all of the points for an issue, we only make them lose a%age of the points.
>
> The other big thing that played into the decision to go with this penalty approach is that in the six years that I have been reviewing these applications there is a very strong and direct correlation between an applicant's ability to put together a complete, thorough, accurate, well thought out and organized application. And the product that they produce and the way that they handle the compliance period.
>
> These properties are not just coming in the door, getting their credits and going out the door and never seeing the agency again. We have to monitor them for 50 years. So, the attention to detail is so critical that, in addition to being a mechanism to select between really good applicants, it is also - it lets them know, it helps teach the applicant what they are in for with regard to detail and long-term commitments. It is just the whole thing to help us get an accurate and complete application so we can accurately allocate credits. (Transcript 71)

64. By its terms, the 15% Penalty applied regardless of the magnitude of the error committed on an Application. For example, if an amount was overstated by $1.00, a 15 percent penalty applied. The application of the 15% Penalty was based upon an objective determination of whether an error occurred. The staff had no discretion to make a subjective determination as to the significance of an error or omission.

65. Although it was not the intent of FHFC for the imposition of the 15% Penalty to be the determining factor in whether an applicant was awarded tax credits, the effect of the 15% Penalty can have that impact.

J. Imposition of the 15% Penalty on Lakewood.

66. On or about March 10, 1998, Lakewood submitted a completed 1998 Application to FHFC for 1998 tax credit funding. Lakewood sought approximately 1.14 million dollars in tax credits for a 150-unit apartment complex to be located in Orange County, Florida.

67. Lakewood's Application was completed by Don Paxton, an employee of the developer, contractor, and management company for Lakewood.

68. Mr. Paxton attended the September 22, 1997, rule development workshop. Mr. Paxton was aware and understood that the 15% Penalty had been included in the 1998 Application and that it was intended to punish for inaccuracies contained in submitted Applications. He also was aware that the 15% Penalty applied to inaccuracies on Form 4. Finally, Mr. Paxton was aware that the developer fee available for Lakewood's proposed project was limited to 20 percent of project cots.

69. On Form 4 of Lakewood's Application, Lakewood claimed a developer fee in excess of the 20 percent of project cost limitation Lakewood was subject to. The developer fee requested

by Lakewood was $1,959,714.00, or $240,000.00 in excess of the maximum developer fee Lakewood could request.

70. The excess amount included in the developer fee cost claimed by Mr. Paxton represented an advisory fee which Lakewood had agreed to pay to Affordable Housing, an advisory group specializing in the development and marketing of tax credit-financed housing for senior citizens. Nothing in Lakewood's submitted 1998 Application informed FHFC that the excess amount included as a development fee by Lakewood was attributable to Affordable Housing. Based upon what was provided to FHFC by Lakewood in its Application, it was reasonable for FHFC to conclude that Lakewood was requesting a developer's fee in excess of 20 percent of project cost.

71. Mr. Paxton included the advisory fee because of an instruction of page 10 of Form 4 that "Consulting fees, if any, must be paid out of the developer fee." Mr. Paxton knew, however, that Affordable Housing was not a consultant as the term "consultant" is used in the 1998 Application Package.

72. Mr. Paxton's interpretation of the instruction concerning the payment of consultant fees on page 10 of Form 4 was not reasonable.

73. Mr. Paxton also included the advisory fee as part of the developer fee because that was the only way for Lakewood to treat the $240,000.00 fee as a cost eligible for tax credit reimbursement. While it was a part of the total project cost, it

was not part of the project cost eligible for reimbursement with tax credits.

74. The inclusion of the advisory fee as part of the developer fee did not diminish the fact that Lakewood's Form 4 demonstrated secure financing and, consequently, the economic feasibility of its project and its ability to proceed.

75. Due to the excessive developer fee included by Lakewood on Form 4, the scorers of Lakewood's Application imposed the 15% Penalty. A total of 22.5 points was deducted from the 150 points Lakewood would otherwise have been entitled to for Form 4.

76. With the reduction of Lakewood's total score by 22.5 points, Lakewood fell below the funding line for the 1998 cycle. Without the 22.5 point penalty, Lakewood would have been above the funding line.

K. Other Applications of the 15% Penalty.

77. FHFC applied the 15% Penalty to other applicants during the 1998 cycle for errors on Form 4, including the inclusion of developer fees in excess of applicable limits. For example, the penalty was imposed on Applications 8, 9, 30, 58, and 59.

78. FHFC initially imposed the 15% Penalty on the Application of Kay Larkin because the requested developer fee combined with the requested consulting fee, which was separately listed, exceeded the applicable developer fee. FHFC took this position even though the separately listed consulting fee was included as an ineligible cost. Kay Larkin challenged the 15%

Penalty. FHFC subsequently agreed to remove the penalty because it was decided that FHFC should not have combined the eligible developer costs and the ineligible consulting fee. The developer fee standing alone did not exceed the developer fee cap. The Kay Larkin matter is distinguishable from this matter because Lakewood listed the entire amount as an eligible developer fee.

79. In the case of the 1998 Application filed by Harvard House, FHFC did fail to impose the 15% Penalty for the inclusion of a developer fee in excess of the developer fee cap. It failed to impose the penalty through oversight. Although Lakewood pointed this error out in a NOPSE it filed concerning its score, no NOPSE or direct or competitive appeal was filed by any applicant concerning the Harvard House Application. FHFC, therefore, had no authority pursuant to the 1998 Application to modify the score it had awarded Harvard House.

80. FHFC committed the same error in scoring the Application submitted by Orchid Trace, which had included a developer fee in excess of the limit of $1.00. Again, although Lakewood raised this error in a NOPSE concerning its score, no NOPSE or direct or competitive appeal concerning Orchid Trace's score was filed.

81. FHFC's imposition of the 15% Penalty to Applications which included developer fees in excess of the developer fee caps was consistent except to the extent that FHFC inadvertently

failed to impose the penalty on Harvard House and Orchid Trace.

82. Some applicants failed to include a general contractor fee on the Project Cost Pro Forma of Form 4. General contractor fees were limited to 14 percent of project cost. FHFC did not, however, impose the 15% Penalty on those applicants for their omission. Two applicants above the funding line, Magnolia Pointe and Nantucket Bay, failed to include any general contractor fee on the appropriate line. Most applicants, including Lakewood, left some line blank on the 1998 Application and were not penalized.

83. The following instruction was included on page 1 of the 1998 Application:

> **BE SURE TO ANSWER ALL QUESTIONS, FOLLOW ALL INSTRUCTIONS AND FILL IN ALL LINES. DO NOT LEAVE ANY BLANKS. IF AN ITEM IS NOT APPLICABLE TO THIS PROJECT, INDICATE BY USING "N/A". INCOMPLETE OR BLANK ITMES WILL RESULT IN LOSS OF POINTS.**

84. Applicants were not specifically required to report a general contractor fee on their Form 4. In some cases, applicants did not incur general contractor fees. Consequently, on those forms where the applicant did not include a general contractor fee, the FHFC had to assume that the applicant did not intend to pay a general contractor fee.

85. Where a particular item was not specifically required or FHFC could not know whether an item had been left off in error, FHFC interpreted the 15% Penalty to not require the

imposition of a penalty for merely failing to mark the item "N/A."

L. Intervenors' Standing.

86. Intervenors are engaged in the business of providing affordable residential rental units for low income and/or very low income persons.

87. Intervenors, through subsidiaries or affiliates, submitted Applications to FHFC seeking allocation of tax credits from the 1998 combined cycle pursuant to Section 420.5099, Florida Statutes (1998). Intervenors, through subsidiaries or affiliates, also submitted Applications seeking tax credits from one or both of the preceding two cycles (1996 and 1997), and anticipate filing Applications in the 1999 cycle.

88. For the 1998 cycle, Intervenors, through subsidiaries or affiliates, submitted the following Applications for projects located in FHFC's large county group and were awarded the following points:

Company	Project	Scores
LCA	050C - Magnolia Pointe	652.75
Gatehouse	075CS - Nantucket Bay Apartments	644.47
	077C - The Rosemary	656.00
Vestor	040C - Courtney Manor Apartments	640.75
Wilson	047C - Windermere Apartments	640.75

89. The scores for Intervenors' projects were based upon FHFC staff's comparative review and scoring of the Applications

submitted in the 1998 cycle, resolution of all direct and competitive appeals, informal hearings conducted by FHFC designated Hearing Officers, and Board action at its August 21 and September 11, 1998, meetings.

90. At the commencement of the final hearing in these cases, the Board had not entered final orders on the scoring of the 1998 Application. The projects of LCA and Gatehouse, however, were above the funding line and were issued "at risk" invitations to credit underwriting. The projects of Vestcor and Wilson were tied with a third applicant for the remaining tax credits for the large county group, which was not sufficient to fund all three projects.

91. On October 16, 1998, the Board voted to issue final orders confirming the scores of all applicants except Lakewood. The Board issued final orders for the funding of all of Intervenors' projects.

92. If Lakewood prevailed in this proceeding and the 15% Penalty was not imposed, its score would rank it ahead of Vestcor's and Wilson's projects. Based upon the Board's action at the October 16, 1998, meeting, however, the projects of Vestcor and Wilson will still be funded.

CONCLUSION OF LAW

A. Jurisdiction.

93. The Division of Administrative Hearings has jurisdiction over the parties to, and the subject matter of, this

proceeding. Sections 120.56(1) and (3), 120.569, and 120.57(1), Florida Statutes (1997).

B. Standing.

94. Sections 120.56(1) and (3), Florida Statues, allow any person that is "substantially affected by an agency rule" to institute a proceeding to determine whether the rule is "an invalid exercise of delegated legislative authority."

95. Section 120.569, Florida Statutes, allows any person whose "substantial interests" are determined by proposed agency action to challenge the agency's action through a proceeding pursuant to Section 120.57, Florida Statutes. If the proceeding involves a disputed issue of material fact, the proceeding is to be conducted pursuant to Section 120.57(1), Florida Statutes.

96. The evidence in these cases proved that Lakewood was denied tax credits by FHFC. The evidence also proved that the Department, in denying tax credits to Lakewood, applied the 15% Penalty and that the 15% Penalty constitutes a rule of FHFC. Lakewood, therefore, was "substantially affected" by the Department's rule and action, and had standing to institute this proceeding under both Sections 120.56 and 120.569, Florida Statutes.

97. As to Intervenors, the evidence proved and the parties stipulated that Intervenors participated in the 1998 cycle and were governed by the 15% Penalty provision. The evidence, however, failed to prove that Intervenors were "substantially"

affected by the 15% Penalty.

98. In order to conclude that Intervenors were "substantially affected" by the 15% Penalty or the application of the 15% Penalty to Lakewood, Intervenors were required to prove that they will suffer an injury of sufficient immediacy to entitle them to participate in this proceeding. See Ameristeel Corporation v. Clark, 691 So. 2d 473 (Fla. 1997).

99. The only possible injury which Intervenors could suffer in this proceeding would be a loss of tax credits for the 1998 cycle. The evidence, however, proved that the tax credits for the 1998 cycle have already been awarded to Intervenors and that the award will not be changed as a result of this proceeding. Consequently, Intervenors will not be impacted by any decision concerning the validity of the 15% Penalty or Lakewood's challenge to its score.

100. The only possible impact on Intervenors which could occur as a result of this proceeding is that credits otherwise available for the 1999 cycle could be reduced by any credits awarded to Lakewood. Such an impact is too speculative and not of sufficient immediacy to conclude that Intervenors will suffer an injury of sufficient immediacy to entitle them to participate in this proceeding. See Brasfiled & Gorrie General Contractors, Inc. v. Ajax Construction Company, 627 So. 2d 1200 (Fla. 1st DCA 1993); and Grimes v. Walton County, 591 So. 2d 1091 (Fla. 1st DCA 1992).

101. As to the rule challenge proceeding, the evidence proved that the 15% Penalty is a rule that only applies to the 1998 cycle. It cannot, therefore, have any direct impact on the 1999 cycle or Intervenors' participation in that cycle. Nor can it be assumed that Intervenors will be subjected to the 15% Penalty even if it were adopted for the 1999 cycle.

C. Burden of Proof.

102. The burden of proof, absent a statutory directive to the contrary, is on the party asserting the affirmative of the issue in a Chapter 120, Florida Statutes, proceeding. Antel v. Department of Professional Regulation, 522 So. 2d 1056 (Fla. 5th DCA 1988); Department of Transportation v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981); and Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 249 (Fla. 1st DCA 1977).

103. In Case No. 98-3441RX, the rule challenge proceeding, Lakewood had the burden of proving the invalidity of the challenged rule. See St. Johns River Water Management District v. Consolidated-Tomoka Land Co., 23 Fla. L. Weekly D1787b (Fla. 1st DCA 1998).

104. In Case No. 98-3873, Lakewood also had the burden of proving its entitlement to the tax credits it has sought from FHFC.

D. The Rule Challenge.

105. An "invalid exercise of delegated legislative authority" is defined in Section 120.52(8), Florida Statutes, as "action which goes beyond the powers, functions, and duties delegated by the Legislature." In particular, an existing rule is to be considered an "invalid exercise of delegated legislative authority" if any one or more of the following apply:

> (a) The agency has materially failed to follow the applicable rulemaking procedures or requirements set forth in this chapter;
>
> (b) The agency has exceeded its grant of rulemaking authority, citation to which is required by s. 120.54(3)(a)1;
>
> (c) The rule enlarges, modifies, or contravenes the specific provisions of law implemented, citation to which is required by s. 120.54(3)(a)1;
>
> (d) The rule is vague, fails to establish adequate standards for agency decisions, or vest unbridled discretion in the agency;
>
> (e) The rules is arbitrary or capricious;
>
> (f) The rules is not supported by competent substantial evidence; or
>
> (g) The rules imposes regulatory costs on the regulated person, county, or city which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.

106. Lakewood has alleged that the 15% Penalty is an invalid exercise of delegated legislative authority as defined in Section 120.52(8)(b), (c), (d), (e), and (f), Florida Statutes.

E. Grant of Rulemaking Authority.

107. The specific rulemaking authority cited by FHFC for the 15% Penalty is Section 420.507(12), Florida Statutes:

> [FHFC] shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this part, including the following powers which are in addition to all other powers granted by other provisions of this part:
>
> . . . .
>
> (12) To make rules necessary to carry out the purposes of this part and to exercise any power granted in this part pursuant to the provisions of chapter 120.

108. The foregoing grant of rulemaking authority is broad enough to allow the adoption of any rule by FHFC that does not enlarge, modify, or contravene the specific provisions of law FHFC is attempting to implement.

109. The evidence failed to prove that FHFC "has exceeded its grant of rulemaking authority, citation to which is required by s. 120.54(3)(a)1" in adopting the 15% Penalty.

F. The Law Implemented by the 15% Penalty.

110. The specific law implemented by FHFC in adopting the 15% Penalty is Section 420.5099, Florida Statutes:

> (1) The [FHFC] is designated the housing credit agency for the state within the meaning of 42(h)(7)(A) of the Internal Revenue Code of 1986 and shall have the responsibility and authority to establish procedures necessary for proper allocation and distribution of low-income housing tax credits and shall exercise all powers necessary to administer the allocation of such credits.

> (2) The corporation shall adopt allocation procedures that will ensure the maximum use of available tax credits in order to encourage development of low-income housing in the state, taking into consideration the timeliness of the application, the location of the proposed housing project, the relative need in the area for low-income housing and the availability of such housing, the economic feasibility of the project, and the ability of the applicant to proceed to completion of the project in the calendar year for which the credit is sought.
>
> . . . .

111. Section 420.5099, Florida Statutes, requires and authorizes FHFC to accomplish two things: (a) establish procedures for the allocation of credits; and (2) ensure maximum use of available tax credits.

112. While Section 420.5099, Florida Statutes, establishes the criteria FHFC should take into account in carrying out the charge to ensure maximum use of available tax credits, virtually no guidance is provided as to the procedures to be established by FHFC.

113. FHFC has attempted to design an application process that is fair to all applicants. One that gives all applicants an equal opportunity to complete for tax credits. FHFC has encouraged and facilitated the participation of all potential applicants in the development of the process. Every year FHFC reviews the process and modifies it in an effort to achieve the best procedure possible. These efforts are consistent with and

well within the authority of FHFC under Section 420.5099, Florida Statutes.

114. In adopting the 15% Penalty, FHFC followed all of the steps it normally takes in adopting the procedures governing the allocation process for 1998. FHFC elected to adopt the 15% Penalty in order to encourages accuracy by applicants in completing the application process, to increase the level of fairness and objectivity in evaluating Applications, and to impose a penalty for errors committed by some applicants that were not committed by others. All of these goals were intended to improve the allocation procedures which the Legislature charged FHFC with the responsibility and authority to adopt.

115. In adopting the 15% Penalty, FHFC has not adopted an additional substantive criterion not authorized by the Legislature in Section 420.5099(2), Florida Statutes, as argued by Petitioner. It has only adopted one of the procedural requirements for allocation which was not specified by the Legislature, but it was authorized to adopt.

116. The 15% Penalty provision is no different in its purpose than prohibiting modifications or amendments to Applications after they are filed. Like a cut-off date for when Applications are deemed complete, ensuring accuracy in Applications and reducing discretion in evaluating Applications are reasonable facets of the allocation procedures FHFC is authorized to adopt.

117. Even Lakewood has accepted the authority of FHFC to adopt a scoring mechanism that penalizes Applicants for providing unclear and incomplete information "that impairs FHFC's ability to assess satisfaction of the statutory criteria." Lakewood, however, argues that the 15% Penalty goes too far when it applies to immaterial errors that "do not impair this assessment and are unrelated to satisfaction of the statutory criteria." This argument, however, goes to the question of whether the procedure adopted by FHFC is arbitrary and capricious.

118. The evidence failed to prove that the 15% Penalty "enlarges, modifies, or contravenes the specific provisions of law implemented . . . ."

G. Vagueness, Adequacy of Standards, and Discretion.

119. The 15% Penalty is not vague. A rule is vague or fails to establish adequate standards for agency decisions when the terms of the rule are so vague that persons of common intelligence must guess as to the rule's meaning. See Department of Health and Rehabilitative Services v. Health Care and Retirement Corporation, 593 So. 2d 539 (Fla. 1st DCA 1992).

120. There is nothing complicated or vague about the 15% Penalty. The 15% Penalty provides that if an applicant commits an error in completing a form of the 1998 Application, the points otherwise awarded for that form are reduced by 15%. Lakewood's representative understood this result.

121. Any confusion suffered by Lakewood's representative in this matter related not to the imposition of the 15% Penalty, but to the complexity of the 1998 Application Package itself. At best, Lakewood's representative may have been confused about how to treat the advisory fee Lakewood had incurred. He was not, however, confused about the fact that developer fees were limited to 20% of project costs, that the amount included on Lakewood's 1998 Application exceeded that limitation, and that the 15% Penalty applied to inaccuracies.

122. The fact that FHFC scorers made errors in applying the 15% Penalty does not support a conclusion that the 15% Penalty is vague. Again, it merely supports the conclusion that the 1998 Application and the evaluation thereof was complex.

H. Arbitrary and Capricious; Competent Substantial Evidence.

123. A rule is considered arbitrary if it is not supported by logic or reasons. It is capricious if it is irrational and not supported by reason. Agrico Chemical Company v. Department of Environmental Regualtion, 365 So. 2d 759, 763, (Fla. 1st DCA 1978), cert. denied, 376 So. 2d 74 (Fla. 1979).

124. The evidence in this case proved that FHFC's rationale for adopting the 15% Penalty was based upon logic and reason. It was not irrational. Nor was it unsupported by the evidence. The process of allocating tax credits is a detailed and highly competitive process. FHFC has made every effort to ensure that

the process is as subjective as possible and that its discretion is limited.

125. The 15% Penalty does have the effect of imposing the penalty on a wide range of errors. From the fairly insignificant to the significant. It would not be reasonable, however, to adopt a penalty for every possible situation. And it would defeat one of the purposes for adopting the 15% Penalty to adopt a penalty that allows FHFC to exercise discretion in deciding when a penalty should be imposed or the extent to which a penalty should be applied.

126. The evidence failed to prove that the 15% Penalty is arbitrary or capricious. The evidence also failed to prove that the 15% Penalty is not supported by competent substantial evidence.

I. Application of the 15% Penalty to Lakewood.

127. In Case No. 98-3873, Lakewood has argued that FHFC arbitrarily and capriciously applied the 15% Penalty to its application. The evidence failed to support this argument.

128. The evidence failed to prove that FHFC applied the 15% Penalty in an inconsistent manner to similar facts. See Amos v. Department of Health and Rehabilitative Services, 444 So. 2d 43, (Fla. 1st DCA 1983).

129. The evidence also failed to prove that FHFC interpreted or applied the 15% Penalty inconsistently to similarly-situated parties. See Central Florida Regional

Hospital, Inc. v. Department of Health and Rehabilitative Services, 582 So. 2d 1193 (Fla. 5th DCA).

130. The evidence proved that in those cases where the 15% Penalty was not applied, it was not applied through error only. The evidence also proved that, when FHFC learned of the error, it was prohibited from taking an action to correct its mistake by its rules. These facts distinguish FHFC's actions from its application of the 15% Penalty to Lakewood in these cases.

131. The evidence also failed to prove that the failure to penalize applicants that did not fill in blanks with a "N/A" constitutes a similar situation to Lakewood. Failing to include "N/A" on a line is not the same as including a dollar amount in excess of the clear instructions as to the amount of developer fee that an applicant could seek tax credits for. Additionally, even if the situations were similar, the remedy would not be to forgive Lakewood's error. The appropriate remedy would be to impose the penalty on those applicants that failed to include an "N/A" on blank lines in their applications. This remedy is not available because all the applicants who made this error are not before this forum.

132. Finally, the evidence failed to prove that the application of the 15% Penalty to Lakewood under the circumstances of this matter was not consistent with the mandate of the 15% Penalty.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is

ORDERED that Petition to Determine Invalidity of Existing Rules filed in Case No. 98-3441RX is DISMISSED. It is further

ORDERED that the Florida Housing Finance Corporation correctly applied the 15% Penalty on Form 4 of Lakewood Senior Apartments Limited Partnership's 1998 Application.

DONE AND ORDERED this 7th day of January, 1999, in Tallahassee, Leon County, Florida.

LARRY J. SARTIN
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
www.doah.state.fl.us

Fax Filing (850) 921-6847

Filed with the Clerk of the
Division of Administrative Hearings
this 7th day of January, 1999.

COPIES FURNISHED:

James C. Hauser, Esquire
Warren H. Husband, Esquire
Skelding, Labasky, Corry, Hauser,
Jolly & Metz, P.A.
Post Office Box 669
Tallahassee, Florida 32302

Stephen M. Donelan, Esquire
Florida Housing Finance Corporation
Suite 5000
227 North Bronough Street
Tallahassee, Florida 32301-1329

Michael J. Glazer, Esquire
Stephanie W. Redfearn, Esquire
Ausley & McMullen
227 South Calhoun Street
Tallahassee, Florida 32301

Michael G. Maida, Esquire
J. Stephen Menton, Esquire
Rutledge, Ecenia, Underwood,
Purnell & Hoffman, P.A.
215 South Monroe Street, Suite 420
Post Office Box 551
Tallahassee, Florida 32302

Carroll Webb
Executive Director and General Counsel
Joint Administrative Procedures Committee
Holland Building, Room 120
Tallahassee, Florida 32399-1300

NOTICE OF RIGHT TO JUDICIAL REVIEW

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.