

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BOYNTON ASSOCIATES, LTD.,)
)
 Petitioner,)
)
vs.) Case No. 01-3503
)
FLORIDA HOUSING FINANCE)
CORPORATION,)
)
 Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted in this case on November 19, 2001, in Tallahassee, Florida, by Carolyn S. Holifield, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Jon C. Moyle, Jr., Esquire
Moyle, Flanigan, Katz, Kollins,
Raymond & Sheehan, P.A.
118 North Gadsden Street
Tallahassee, Florida 32301

For Respondent: Elizabeth G. Arthur, Esquire
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

STATEMENT OF THE ISSUES

The issue is whether Petitioner, Boynton Associates, Ltd., is entitled to receive additional points for Form 5 of its application, related to local government contributions, for the

Florida Housing Finance Corporation's 2001 Combined Rental Cycle and, if so, whether Petitioner qualifies for an allocation of federal low-income housing tax credits.

PRELIMINARY STATEMENT

On or about February 26, 2001, Petitioner, Boynton Associates, Ltd. (Boynton), submitted an application to the Florida Housing Finance Corporation for the allocation of low-income housing credits. After a complete review and evaluation of the application by the Florida Housing Finance Corporation, Boynton's application did not receive the maximum number of points in several categories. Based on the total number of points awarded to Boynton's application, it was not eligible for the allocation of federal low-income housing credits.

On August 21, 2001, Boynton filed a Petition for an Informal Hearing ("Petition") with the Florida Housing Finance Corporation in which it challenged the scoring of Forms 4, 5, and 20 of its application. Prior to the conduct of an informal hearing, a hearing officer appointed by the Florida Housing Finance Corporation determined that the Petition raised disputed issues of material fact and, thus, was properly the subject of a final hearing. The matter was then forwarded to the Division of Administrative Hearings to conduct a formal hearing.

In the Prehearing Stipulation filed by the parties prior to the final hearing, the parties stipulated to certain facts which

required no proof at hearing. The parties also stipulated that the issues related to the scoring of Forms 4 and 20 of Boynton's application had been resolved and, accordingly, did not need to be addressed in this proceeding.

At hearing, Petitioner presented the testimony of Alison Kerr-Hull Colvard, Jeffrey Kammerude, and Dick Hudson. Respondent presented the testimony of Christopher G. Buswell and Michael Rumph. The parties had six joint exhibits received into evidence. Petitioner had six exhibits received into evidence and Respondent had twelve exhibits received into evidence.

A Transcript of the proceeding was filed on December 12, 2001. At the conclusion of the hearing and at the request of the parties, the time for filing proposed recommended orders was set for January 4, 2002. Both parties timely filed Proposed Recommended Orders. On January 7, 2002, Petitioner filed a Corrected Proposed Recommended Order. On February 15, 2002, the parties requested that the undersigned delay issuing the Recommended Order because the parties were pursuing a settlement in the case. In a Joint Request filed on February 26, 2002, the parties again requested a delay in issuing the Recommended Order. In a Status Report filed on March 8, 2002, the parties indicated that they were unable to resolve the matter and requested that the Recommended Order be issued.

FINDINGS OF FACT

1. Petitioner, Boynton Associates Ltd., a Florida Limited Partnership, is the Applicant and owner of property know as Boynton Terrace Apartments located in Boynton Beach, Palm Beach County, Florida ("City" or "City of Boynton Beach").

2. To encourage the development of low-income housing for families, in 1987, Congress created the federal Low-Income Housing Tax Credit Program that is allotted to each state, including Florida Tax Credits, each year. The low-income housing credits equate to a dollar-for-dollar reduction of the holder's federal tax liability. This reduction can be taken for up to ten years if the project satisfies the Internal Revenue Code's requirements each year.

3. Each state receives an annual allotment of housing credits, primarily on a per capita basis. For the year 2001, Florida's allotment of low-income housing credits is \$23,973,567, of which \$20,695,689 is available for allocation.

4. The Florida Housing Finance Corporation is the "housing credit agency" responsible for the allocation and distribution of Florida's low-income housing tax housing credits to applicants for the development and/or substantial rehabilitation of low-income housing. See Subsection 420.5099(1), Florida Statutes.

5. Pursuant to state and federal mandates, the Florida Housing Finance Corporation has established a competitive application process for the award of low-income housing credits.

6. Rule 67-48.004, Florida Administrative Code, as adopted on February 22, 2001, established the process by which the Florida Housing Finance Corporation evaluates, scores, and competitively ranks the applicants for the award of funds and the allocation of housing credits.

7. Under the review and application process, staff of the Florida Housing Finance Corporation first conducts a preliminary review of the applications. Based on that review, a preliminary score is assigned to each application.

8. After the Florida Housing Finance Corporation's preliminary review and scoring, all applicants may review the applications and challenge what they believe to be scoring errors made by the Florida Housing Finance Corporation. Any applicant alleging scoring errors must make such challenges, in writing, on a Notice of Possible Scoring Error Form (NOPSE) within ten days of the applicant's receiving the preliminary score. This form is an official form developed and provided by the Florida Housing Finance Corporation.

9. The Florida Housing Finance Corporation then reviews each timely filed NOPSE, adjusts scores where applicable, and issues a position paper to the affected applicants informing

them of the decision relative to the NOPSE. Affected applicants are then given an opportunity to submit supplemental information, documentation, or revised documents that might address challenges made in any NOPSE. Any such submission by an applicant whose scores have been challenged is called a "Cure."

10. The Florida Housing Finance Corporation provides a Cure Form on which the challenged applicant may submit its statement of explanation addressing the issues raised in the NOPSEs.

11. Following the submission of a Cure by an applicant whose application has been challenged, competitors are allowed to review the supplemental or corrective information which comprises the Cure. After reviewing the Cure, competitors may point out what they perceive to be errors or deficiencies on the challenged applicant's Cure. These perceived errors or deficiencies are then submitted to the Florida Housing Finance Corporation, in writing, on a form entitled, Notice of Alleged Deficiency (NOAD), that was developed and provided by the Florida Housing Finance Corporation.

12. The Florida Housing Finance Corporation reviews the Cure submitted by the applicant whose application has been challenged and the NOADs submitted by competing applicants. Following this review, the Florida Housing Finance Corporation assigns each application a pre-appeal score.

13. Boynton submitted an application to Florida Housing Finance Corporation for the 2001 Combined Rental Cycle ("2001 Combined Cycle") to receive annually \$559,025.14 in tax credits for the rehabilitation of Boynton Terrace, a multifamily housing property. The application was submitted on February 26, 2001, the deadline for submitting applications for the 2001 Combined Cycle.

14. Pursuant to the review and scoring procedures set forth in the 2001 Combined Cycle Application Form and Rule 67-48.004, Florida Administrative Code, as adopted February 22, 2001, described in paragraphs 7 through 12 above, the Florida Housing Finance Corporation scored the application of Boynton.

15. The application for the allocation of housing credits consists of several forms. However, the only form at issue in this case is Form 5, entitled "Local Government Contributions."

16. Form 5 indicates a local government's support of the affordable housing project for which tax credits are being sought. In scoring Form 5, Florida Housing Finance Corporation awards points based on the amount of "tangible, economic benefit that results in a quantifiable cost reduction and are development specific."

17. The maximum number of points that can be awarded on Form 5 is 20 points. To obtain the maximum number of points for Form 5, the applicant must provide evidence of a local

government contribution for which the dollar amount is equal to or greater than one of the following: (1) a specified amount according to the county in which the proposed project is located, or (2) ten percent (10%) of the total development costs of the project listed in Form 4 of the application. In this case, Boynton's application indicated that the local government contribution was 10 percent of its total development costs of \$5,096,789, or \$509,678.90.

18. At or near the time Boynton's application was submitted, the Florida Housing Finance Corporation determined that the application was complete and, thereafter, conducted a preliminary review of the application. Based on its preliminary review of Boynton's application, the Florida Housing Finance Corporation awarded a total of 618 points to Boynton. Of this preliminary score, the Florida Housing Finance Corporation awarded Boynton 20 points, the maximum allowed, for Form 5.

19. The Florida Housing Finance Corporation's preliminary award of 20 points to Boynton for its Form 5 was based on local government contributions listed on the application as follows: (1) donation of landscaping materials valued at \$50,000 and donation of dumpsters during the rehabilitation of Boynton Terrace valued at \$19,845; (2) waiver of tipping fees at the local landfill of \$25,500 and waiver of building permit fees of

\$61,609; and (3) \$353,196 for waiver of the requirement to construct 58 parking spaces at \$6,089.60 per space.

20. Form 5 provides that a local government contribution for a waiver of parking space requirements will not be recognized except in certain circumstances. Among the circumstances in which a waiver of parking space requirements is expressly recognized as a local government contribution are rehabilitation developments located in areas targeted for neighborhood revitalization by local governments. Once this threshold requirement is established, the local government must also verify that the existing local government code would require the additional parking, and that the parking requirements are waived specifically for the subject development.

21. As part of the information required by Form 5, Boynton provided a letter from Mr. Michael Rumph, the Director of Planning and Zoning for the City of Boynton Beach, verifying that Boynton Terrace is a rehabilitation development located in an area targeted for revitalization by the local government. Additionally, the letter stated in part the following:

In support of the [Boynton Terrace Apartments] housing development, the City of Boynton Beach has accepted and processed an application for a variance to provide relief from the City of Boynton Beach Land Development Regulations, Chapter 2, Zoning, Section 11 Supplemental Regulations, H. 16.

a.(2)., requiring a minimum parking space ratio of 2 spaces per unit, to allow a reduction of 58 spaces or a 1.3 space per unit variance.

22. The Boynton Terrace Apartments rehabilitation development is located in an area targeted for neighborhood revitalization by the local government. As such, if parking requirements are waived for the project, such waiver or variance is recognized as a local contribution.

23. Boynton Terrace is comprised of 84 multi-family residential units. For each unit in the development, the City of Boynton Beach Land Development Regulations requires two parking spaces. Accordingly, based on the City's regulations, 168 parking spaces would be required for the Boynton Terrace development.

24. Boynton applied for a variance to be able to construct fewer parking spaces than the 168 spaces, since much of the area currently occupied by existing parking would be encroached upon by the construction of the new clubhouse/community center, the new landscaping, and other amenities.

25. The City Commission for the City of Boynton Beach, after a full hearing on Boynton's request, granted the variance, which obligated Boynton to provide 1.3 parking spaces for every multi-family residential unit at the property rather than two parking spaces for every such unit. As a result of the City

Commission's decision, the Boynton Terrace development was required to have 110 parking spaces instead of the 168 spaces required by the City of Boynton Beach Land Development Regulations.

26. On Form 5 of its application, Boynton indicated that the City reduced the required number parking spaces from 168 to 110. Form 5 of the application also indicated that by the City's reducing the required number of parking spaces by 58 spaces, the local government contribution with regard to parking spaces was the cost of constructing 58 parking spaces at a cost of \$6,089.60 per space, or \$353,196.80.

27. An attachment to the City's "contribution letter" referred to in paragraph 21, and part of Boynton's application, indicated that as a result of the City's reducing the number of parking spaces required at Boynton Terrace, the City's contribution to the Boynton Terrace development was \$353,196.80. According to the aforementioned attachment, this amount represented the cost of constructing 58 parking spaces at a cost of \$6,089.60 per space.

28. After the Florida Housing Finance Corporation issued it preliminary scores, three competing applicants submitted NOPSEs, challenging Boynton's Form 5 score of 20. According to the NOPSEs, the competing applicants believed that Boynton was not entitled to be awarded points based on a local contribution

of \$353,196 for a waiver or variance of the number of parking spaces required for the development. According to the NOPSEs, Boynton was only receiving a cost savings from not having to construct 11 parking spaces because 157 parking spaces already existed at Boynton Terrace. Based on these challenges, the competing applicants indicated that the local government contribution for a waiver of the City's parking space requirement should be reduced from \$353,196 to \$66,985.60, the cost of Boynton's constructing 11 parking spaces at \$6,089.60 per space.

29. The Florida Housing Finance Corporation reviewed and considered the NOPSEs filed by competing applicants that challenged the local government contribution of \$353,196 listed on Form 5 of Boynton's application. Following its review, the Florida Housing Finance Corporation reduced Boynton's preliminary score on Form 5 from 20 points to 8.79 points. This reduction in points represented a pro rata reduction based on the Florida Housing Finance Corporation's decision that the local government contribution, with regard to parking spaces, was \$66,985.60 instead of \$353,196, the amount stated on Form 5 of Boynton's application.

30. As previously noted in paragraph 10, applicants whose applications have been challenged are permitted to submit a Cure in response to NOPSES filed by competing applicants. The

Florida Housing Finance Corporation's Cure Form consists, in part, of a page entitled "Brief Statement of Explanation for Revision/Addition for Application 2001-____." In addition to submitting a Cure Form, pursuant to Rule 67.48.004 (11), Florida Administrative Code, as adopted February 22, 2001, Boynton was allowed to submit additional documentation, revised forms, and other information that it deemed appropriate to address the issues raised in the NOPSEs and to any score reductions imposed by the Florida Housing Finance Corporation.

31. In response to the NOPSEs filed by the competing applicants and the Florida Housing Finance Corporation's reduction in Boynton's Form 5 score, Boynton submitted an explanation on a Cure Form, which stated in relevant part the following:

[T]he application involves substantial rehabilitation with new amenity areas, a clubhouse/community center and dumpsters. To meet the demands called for under the proposed renovation, many of the parking spaces are lost to provide for the rehabilitation and other features called for within the application. As such, because of these significant changes, the applicant would have had have [sic] new parking areas and the incurred costs in providing for the new parking. In cooperation and conjunction with the City, the applicant was able to obtain specific cost savings for the parking and has evidenced same within the application as called for. The applicant is saving the stated number of spaces and the costs associated with otherwise having to build them.

32. According to the Cure submitted by Boynton, the application "involves substantial rehabilitation with new amenity areas, a clubhouse/community center and dumpsters." Boynton also stated that "to meet the demands called for under the proposed renovation, many of the parking spaces are lost to provide for the rehabilitation and other features called for within the application."

33. While the Cure submitted by Boynton referred generally to "amenity areas" and a "clubhouse/community and dumpsters," Form 7 of Boynton's application noted the specific features that would be included in the Boynton Terrace rehabilitation project. Form 7 of the application listed several features that could be included in the rehabilitation project. From this list, applicants were to mark the boxes, indicating the particular features that would be included in their respective developments.

34. Form 7 including the category, "Quality of Design," includes Sections A, B, and C. Each section lists features which the applicant may provide as part of the rehabilitation project. At the end of the "Quality of Design" category" is the following pre-printed language:

IMPORTANT! CHECKING ITEMS IN SECTIONS A, B,
AND C OF QUALITY DESIGN COMMITS THE
APPLICANT TO PROVIDE THEM. . . .

35. On Form 7, Section B of the "Quality of Design" category, Boynton indicated that it would provide eight of the listed features. These features included the following: an exercise room, a community center or clubhouse, a playground/tot lot, a covered picnic area, an outside recreation facility for older children, and a library.

36. After Boynton submitted its Cure Form, competing applicants filed (NOADs) with the Florida Housing Finance Corporation pursuant to Rule 67-48.004(12), Florida Administrative Code, as adopted on February 22, 2001. One NOAD indicated that no documents were submitted by Boynton to show the number of spaces that would have to be eliminated or demolished as part of the rehabilitation or how many spaces would have to be constructed as part of the rehabilitation process. Another NOAD stated that the Cure submitted by Boynton amounted to a "de facto appeal," because the initial application did not indicate that the renovation would involve the loss of parking spaces.

37. The NOADs relied on a 1980 as-built survey to argue that Boynton Terrace already contained a parking lot with 157 spaces.

38. Based on its review of Boynton's Cure Form and the NOADs submitted in response thereto, the Florida Housing Finance

Corporation determined that Boynton should be awarded 8.79 points for Form 5.

39. The Florida Housing Finance Corporation believes that the 8.79 points awarded to Boynton for Form 5 are appropriate based on its determination of the local government contribution listed on and substantiated by the application and the information provided on Boynton's Cure Form. In reducing Boynton's preliminary award for Form 5 from 20 points to 8.79, the Florida Housing Finance Corporation accepted and concurred with the statements expressed in the NOPSEs. According to those statements, described in paragraph 28, Boynton should receive credit for a local contribution of \$66,985, the cost of building 11 parking spaces.

40. The Florida Housing Finance Corporation does not accept that the proposed cost of constructing each new parking space is \$6,089, as noted in Boynton's application, is the actual cost. Rather, it considers the proposed cost of \$6,089 to be questionable. The reason the Housing Corporation questioned the proposed cost of \$6,089 to construct each new parking space was that documentation reflected that during a period of less than three months, the projected cost went from \$4,017.19 per space as of December 6, 2000, to \$5,821 as of February 12, 2001, and finally to \$6,089 as of February 23, 2001.

41. During the time Boynton's application was being reviewed, Mr. Christopher Bushwell, a former construction manager with the Corps of Engineers and an auditor with the Florida Housing Finance Corporation, questioned the increased cost of the construction of each parking space from \$4000 to \$6000. Despite Mr. Bushwell's concern about the accuracy of the projected cost of construction of each parking space, no staff member of the Florida Housing Finance Corporation called to verify the figure with the City of Boynton Beach.

42. The Florida Housing Finance Corporation produced no evidence to support its contention that the projected or estimated cost for construction of each parking space was not accurate. Yet it persisted in its belief that Boynton "back[ed] into" the parking space estimates solely for the purpose of presenting to the Florida Housing Finance Corporation a local government contribution equal to or near \$353,196, a figure that would result in Boynton's being awarded the maximum of 20 points for Form 5.

43. The projected cost of \$4,017 for construction of a parking space was included on the City's Variance Review Report dated December 6, 2000. That report analyzed Boynton's request that a variance be granted that allowed one parking space per unit, or a total of only 84 parking spaces. It is unknown who arrived at this figure or how it was derived.

44. On January 16, 2001, the City agreed to grant Boynton a variance to reduce the number of parking space by 58, thereby reducing the number of required parking spaces from two spaces per unit to 1.3 spaces per unit.

45. After the variance was granted on January 16, 2001, on February 12, 2001, the City of Boynton Beach submitted a letter to the Florida Housing Finance Corporation stating that the variance had been granted reducing the required number of parking spaces from two spaces per unit to 1.3 spaces per unit. The letter stated that the cost for each parking space was \$5,821, which would result in a local government contribution of \$337,630.

46. On February 23, 2001, the City of Boynton Beach submitted another letter to the Florida Housing Finance Corporation identical to the February 12, 2001, letter except that the attachment to the former letter indicated that the construction cost for each parking space was \$6,089.60. This projected cost would result in the local government contribution of \$353,196.80 for the reduction in required parking spaces.

47. The estimates for the cost of constructing each parking space stated in the February 12 and February 23, 2001, letters were made by Jeffrey Kammerude and approved by the City's Engineering Department.

48. Mr. Kammerude is a licensed contractor and the construction manager of Heritage Construction Company, the company that would be responsible for the renovation of Boynton Terrace. Mr. Kammerude changed the estimated cost of each parking space from \$5,821 to \$6,089 because at the time of the former estimate, it was his belief that the local building code required a 20-foot minimum driveway or aisle-way. However, after meeting with City officials, Mr. Kammerude was told that the 20-foot aisle-way that he had used in making the February 12, 2001, estimate was incorrect and that with the back-to-back parking that existed at Boynton Terrace, the aisle-way had to be 27 feet wide. The increased size of the aisle-way would require a corresponding increase in the required pavement and, thus, an increase in the cost of constructing each parking space.

49. The reason given by Mr. Kammerude for increasing the estimated cost of each parking space was uncontroverted. Moreover, the greater weight of the evidence established that the estimated cost of \$6,089 per parking space was not only reasonable, but was likely lower than the actual per space construction cost because it did not include the cost of curbing.

50. In view of the credible testimony of Mr. Kammerude, the cost estimate of \$6,089.60 for constructing a parking space at Boynton Terrace is reasonable.

51. In February 2001, at or near the time Boynton submitted its application to the Florida Housing Finance Corporation, the parking lot at Boynton Terrace was in poor condition and had many potholes and cracks in the pavement. Given the condition of the parking lot, the rehabilitation of Boynton Terrace would require repaving of at least part of the parking lot.

52. On October 31, 2001, about eight months after Boynton submitted its application, Mr. Bushnell went to Boynton Terrace to count the parking spaces and look at the parking lot. From his cursory observation, it appeared that the parking lot had been recently resurfaced and was in "excellent shape. However, Mr. Bushnell did not conduct a comprehensive inspection of the parking lot and was unable to determine the quality of the work done on the parking lot or whether the work complied with the requirements of the applicable provisions of the City of Boynton Beach Land Development Code.

53. The City of Boynton Beach requires a permit for the repaving and/or repair of parking lots at developments such as Boynton Terrace. However, no permit was issued for the repaving and/or repair of the parking lot at Boynton Terrace referenced in the preceding paragraph. Consequently, the City never conducted an inspection of the parking lot to determine if the

parking lot repairs and/or repaving at Boynton Terrace met the applicable City Code requirements.

54. Based on the number of parking spaces that he counted while at Boynton Terrace, Mr. Bushnell questioned the cost reduction of eliminating spaces. Moreover, because Mr. Bushnell saw concrete pads in place for dumpsters, he did not believe that parking spaces needed to be eliminated in order to place dumpsters on the property. Finally, in reaching the conclusion that there would be no reduction in parking spaces, Mr. Bushnell did not consider the number of spaces that would be eliminated as a result of the addition of any of the new amenities to the property such as the clubhouse/community center, picnic areas, and mailbox kiosks, and the landscaping required under the City Code.

55. Boynton had a site plan prepared on or near December 2000, which showed the placement of many of the new amenities to be included as a part of the rehabilitation of the Boynton Terrace development. The site plan was used as part of Boynton's submission and presentation to the City when it was seeking a parking space variance. According to the site plan, the clubhouse/community center would consume 25 to 30 parking spaces, the landscaping of the development would consume about 15 parking spaces, and the picnic area would consume about two to four parking spaces.

56. The Florida Housing Finance Corporation did not consider that the addition of the new amenities would reduce the number of parking spaces at the property and result in the need to construct new parking spaces unless the City of Boynton Beach granted a variance to Boynton.

57. Boynton did not include the December 2000 site plan as part of its application or Cure submitted to the Florida Housing Corporation. Moreover, Boynton did not provide information in its application or Cure regarding how many spaces would be eliminated as a result of construction of a clubhouse community center.

58. At hearing, Boynton presented credible evidence that the clubhouse/community center would be constructed over existing parking spaces and that without a variance from the City of Boynton Beach, it would have to construct new spaces to replace those spaces lost to construction as well as to other features related to the rehabilitation of the development.

59. Boynton also presented credible evidence that additional parking spaces at Boynton Terrace would be eliminated due to the City's landscaping requirements, the construction of a picnic area, a tot lot, and mail box kiosks.

60. The City's Code requires 20 feet of landscaping for each parking space. However, this information was not included

in the Cure submitted by Boynton to the Florida Housing Finance Corporation.

61. The variance granted by the City of Boynton Beach amounted to a waiver of the parking space requirements applicable to the Boynton Terrace rehabilitation project which provided a tangible economic benefit that resulted in a quantifiable cost reduction that is specific to the development.

CONCLUSIONS OF LAW

62. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. Subsection 120.57(1), Florida Statutes.

63. Subsection 420.5093(1), Florida Statutes, created the State Housing Tax Credit Program ("Program"). According to that provision, the Program was created "for the purposes of stimulating creative private sector initiatives to increase the supply of affordable housing in urban areas, including specifically housing for the elderly, and to provide associated commercial facilities associated with such housing facilities."

64. The Florida Housing Finance Corporation is authorized to administer and implement the Program. Pursuant to Section 420.5093, Florida Statutes, the Florida Housing Finance Corporation is responsible for determining those qualified projects which shall be considered designated projects and eligible for tax credit under Section 220.185, Florida Statutes,

and establishing procedures necessary for proper allocation and distribution of state housing tax credits.

65. Section 420.5093, Florida Statutes, provides in material part the following:

(2) The Florida Housing Finance Corporation shall determine those qualified projects which shall be considered designated projects under s. 220.185 and eligible for the corporate tax credit under that section. The corporation shall establish procedures necessary for proper allocation and distribution of state housing tax credits, including the establishment of criteria for any single-family or commercial component of a project, and may exercise all powers necessary to administer the allocation of such credits. . . .

(3) 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 and associated mixed-use projects in urban areas, taking into consideration the timeliness of the application, the location of the proposed project, the relative need in the area of revitalization and 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.

(4)(a) A taxpayer who wishes to participate in the State Housing Tax Credit Program must submit an application for tax credit to the corporation. The application shall identify the project and its location and include evidence that the project is a qualified project as defined in s. 220.185. The corporation may request any information from an applicant necessary to enable the corporation to make tax credit allocations

according to the guidelines set forth in subsection (3).

66. The terms "designated project" and "qualified projects" within the meaning of Subsection 420.5093(2), Florida Statutes, are defined in Subsections 220.185(1)(d) and (e), Florida Statutes, as follows:

220.185 State housing tax credit.-

(1) DEFINITIONS.-As used in this section, the term:

(d) "Designated project" means a qualified project designated pursuant to s. 420.5093 to receive the tax credit under this section.

(e) "Qualified project" means a project located in an urban infill area, at least 50 percent of which, on a cost basis, consists of a qualified low-income project within the meaning of s. 42(g) of the Internal Revenue Code, including such projects designed specifically for the elderly but excluding any income restrictions imposed pursuant to s. 42(g) of the Internal Revenue Code upon residents of the project unless such restrictions are otherwise established by the Florida Housing Finance Corporation pursuant to s. 420.5093, and the remainder of which constitutes commercial or single-family residential development consistent with and serving to complement the qualified low-income project.

67. Pursuant to Subsection 420.5099(1), Florida Statutes, the Florida Housing Finance Corporation is the housing credit agency for the State of Florida within the meaning of 42(h)(7)(A) of the Internal Revenue Code of 1986 and is authorized to establish procedures for the proper allocation and

distribution of low-income housing tax credits. (Pub. L. 101-239, Section 7108(c)(1) redesignated former paragraph (7) of 42(h) of the Internal Revenue Code as (8).)

68. Section 420.5099, Florida Statutes, provides in relevant part the following:

420.5099 Allocation of the low-income housing tax credit.-

(1) The Florida Housing Finance Corporation is designated the housing credit agency for the state within the meaning of s. 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.

(3) The corporation may request such information from applicants as will enable it to make the allocations according to the guidelines set forth in subsection (2), including, but not limited to, the information required to be provided the corporation by chapter 67, Florida Administrative Code.

69. Pursuant to its rulemaking authority granted in Subsection 420.507(12), Florida Statutes, the Florida Housing Finance Corporation promulgated Rule 67-48.004, Florida Administrative Code. That Rule, as adopted February 22, 2001, entitled "Application and Selection Procedures for Developments" sets forth the application process relevant to the 2001 Combined Cycle and details the procedures for bringing possible scoring errors of competitor applicants to the attention of Florida Housing.

70. Rule 67-48.004, Florida Administrative Code, as adopted February 22, 2001, provides in relevant part the following:

(8) The Application Package shall be evaluated and preliminarily scored using the factors specified in the Application Package. Preliminary scores shall be transmitted to all Applicants along with the Review Committee's scoring sheets, penalty report and threshold report.

(9) Applicants who wish to notify the Corporation of possible scoring errors relative to another Applicant's Application must file with the Corporation, within 10 Calendar Days of the date of receipt of the preliminary scores, a written request for a review of the other Applicant's score. Each request must specify the assigned Application number and the forms and the scores in question, as well as describe the alleged deficiencies in detail. Each request is limited to the review of only one Application's score. Requests which seek the review of more than one Application's score will be considered improperly filed and ineligible for review. There is no

limit to the number of requests which may be submitted. The Review Committee will review each written request timely received. Failure to timely and properly file a request shall constitute a waiver of the right of the Applicant to such a review of the preliminary score; however, Applicants shall retain the rights set forth in paragraph (12) below.

(10) The Corporation shall transmit to each Applicant the notice of possible scoring errors submitted by other Applicants with regard to said Application. Said notice shall also include the Review Committee's position regarding the correctness of the notice of possible scoring errors by other Applicants, along with any other items identified by the Review Committee to be addressed by the Applicant.

(11) Within 15 Calendar Days of the notice set forth in paragraph (10) above, each Applicant shall be allowed to submit additional documentation, revised forms and such other information as the Applicant deems appropriate to address the issues raised pursuant to paragraphs (8) and (10) above that could result in rejection of the Application, imposition of penalties or a score less than the maximum available on each form. Where specific pages of the Application are revised, changed or added, each new page(s) must be marked as "revised," and submitted. Failure to mark each new page(s) "revised" will result in the Corporation not considering the revisions, changes or additions to that new page. Pages of the Application that are not revised or otherwise changed may not be resubmitted. Where revised or additional information submitted by the Applicant creates an inconsistency with another item in that Application, the Applicant shall also be required in its submittal to make such other changes as necessary to keep the Application consistent as revised. The Applicant shall submit an original and three

copies of all additional documentation and revisions. Only revisions, changes and other information received by the deadline set forth herein will be considered. Any subsequent revision submitted prior to the deadline shall include a written request from the Applicant for withdrawal of any previously submitted revision(s). Each Applicant must submit a computer disk containing all revised completed forms. Nothing on the computer disk that is not otherwise contained within the original of the revised forms will be considered.

(12) Within 10 Calendar Days of the deadline for receipt by the Corporation of the documentation set forth in paragraph (11) above, all Applicants may submit to the Corporation a notice of alleged deficiencies in any other Application. Each notice is limited only to issues created by documents revised and/or added by the Applicant submitting the Application pursuant to paragraph (11) above. Each request must specify the assigned Application number, the forms and the documents in question, as well as describe the alleged deficiencies in detail. Each notice is limited to the review of only one Applicant's submission. However, there is no limit to the number of notices which may be submitted. Notices which seek the review of more than one Applicant's submission will be considered improperly filed and ineligible for review. The Review Committee will only review each written notice timely Received.

(13) The Corporation shall transmit a copy of the notices of alleged deficiencies to the affected Applicant.

(14) Following the receipt and review by the Review Committee of the documentation described in paragraphs (10), (11) and (12) above, the Review Committee shall then prepare pre-appeal scores. In determining such pre-appeal scores, no Application shall be rejected, receive a point reduction or have any penalty imposed as a result of any issues not previously identified in the

notices described in paragraphs (8), (9) and (10) above. However, inconsistencies created by the Applicant as a result of information provided pursuant to paragraph (11) above will still be justification for rejection, reduction of points or penalties imposed, as appropriate. Notwithstanding the foregoing, any deficiencies in the mandatory elements set forth in paragraph (18) below can be identified at any time prior to preparation of the pre-appeal scores and will result in rejection of the Application. Pre-appeal scores shall then be transmitted to all Applicants, along with notice of appeal rights.

* * *

(16) If any Applicant or any Affiliate of an Applicant is determined by the Corporation to have engaged in fraudulent actions or to have deliberately and materially misrepresented information within the current Application or in any previous Applications for financing or Housing Credits administered by the Corporation, the Applicant and any of Applicant's Affiliates will be ineligible to participate in any program administered by the Corporation for a period of up to two years, which will begin from the date the Board approves the disqualification of the Applicant's Application. Such determination shall be either pursuant to a factual hearing before the Board at which the Applicant shall be entitled to present evidence or as a result of a finding by a court of law or recommended order of an administrative law judge. The Applicant or Affiliate of the Applicant determined to be ineligible shall be entitled to file a petition contesting such determination within 21 Calendar Days of notice by the Corporation pursuant to the provisions of Chapter 120, Florida Statutes. Failure to timely file a petition shall constitute a waiver of the right to contest the determination.

71. As an applicant for housing tax credits, Petitioner Boynton bears the burden to demonstrate by a preponderance of the evidence in the record that it is entitled to the additional points at issue in this proceeding. Department of Transportation v. J.W.C., Co., 396 So. 2d 778 (Fla 1st DCA 1981). In this case, Boynton has met its burden.

72. The evidence established that Boynton received a local contribution credit for the provision of 58 parking spaces for its rehabilitated development. The uncontroverted evidence established that under applicable City regulations, 168 parking spaces were required for the major rehabilitation of Boynton Terrace. Moreover, it was undisputed that the City of Boynton Beach adopted a variance waiving this City Code requirement, so that Boynton was required to provide only 110 parking spaces in the rehabilitated development.

73. The undisputed evidence established that between 58 and 65 existing parking spaces will be lost to accommodate the addition of several new amenities and other features of the rehabilitation project that were included in Boynton's application. Moreover, the evidence established that without a variance, Boynton would have to construct parking spaces to replace all those lost to the construction of the new amenities

as well as additional spaces needed to meet the City Code requirement of two parking spaces per unit.

74. The greater weight of evidence established that Boynton's cost savings estimates of \$6,089.60 per parking space and \$353,196.80 total for the 58 parking spaces were waived pursuant to the City's variance for Boynton Terrace.

75. The City's granting of the variance, and, thereby, waiving of the parking space requirements applicable to Boynton Terrace, results in a tangible economic benefit of \$353,196.80 that is specific to the Boynton Terrace rehabilitation project. Therefore, Boynton is entitled to maximum award of 20 points for Form 5 of its 2001 Combined Cycle application, for a total of 622 points for its application.

RECOMMENDATION

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

RECOMMENDED that the Florida Housing Finance Corporation award to Petitioner, Boynton Associates, Ltd., the maximum number of 20 points for Form 5 of the 2001 Combined Cycle, and enter a Final Order awarding Boynton Associates, Ltd., a total of 622 points for its Combined Cycle Application.

DONE AND ENTERED this 17th day of April, 2002, in
Tallahassee, Leon County, Florida,

CAROLYN S. HOLIFIELD
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 17th day of April, 2002.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

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.