

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

MANATEE COVE, LTD.,

Petitioner

vs.

APPLICATION NO. 2005-0065
2005-511C
2006-06SEL

FLORIDA HOUSING FINANCE CORP.,

Respondent.

AMENDED AND RESTATED
PETITION FOR WAIVER OF RULE 67-48.004(14)(e), F.A.C. (2005)

MANATEE COVE, LTD., a Florida limited partnership ("Petitioner"), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the "Corporation") for a waiver of Rule 67-48.004(14)(e), Florida Administrative Code (2005). This Petition is filed pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code.

THE PETITIONER

1. The address, telephone number and facsimile number of the Petitioner is:

Manatee Cove, Ltd.
c/o The Richman Group of Florida, Inc.
580 Village Blvd., Suite 360
West Palm Beach, FL 33409
(561) 242-4814
(561) 242-5304 Facsimile

2. The address, telephone number and facsimile number of Petitioner's counsel is:

Heather M. Conger, P.L.
Broad and Cassel
390 N. Orange Avenue, Suite 1400
Orlando, FL 32801
(407) 839-4200
(407) 650-0966 Facsimile

3. Petitioner successfully applied for financing from the State Apartment Incentive Loan ("SAIL") program in the 2005 Universal Application Cycle – Multifamily Mortgage Revenue Bonds (MMRB) Program; State Apartment Incentive Loan (SAIL) Program; HOME Investment Partnership (HOME) Rental Program and Housing Credit (HC) Program (the "Universal Cycle") that the Corporation administers pursuant to Chapter 67-48, Florida Administrative Code. The Petitioner's application number is 2005-0065 (the "Application"). Petitioner applied for SAIL Funds to finance a portion of the costs to develop a 192-unit multi-family rental development in Brevard County, Florida, to be known as Manatee Cove Apartments (the "Development"). In the Application the Development site was identified as U.S. Highway 1 South of NASA Boulevard in Melbourne, Florida. The Site control documentation filed as part of the Application identified the parcel as approximately 14.35 acres. In 2006, Petitioner applied for and received End of Line SAIL Funding (Application No. 2006-06SEL). Petitioner also has applied for 4% tax credits (Application No. 2005-511C).

4. Construction of Manatee Cove Apartments is complete and the units are in leasing. Petitioner seeks to convey a one acre triangular shaped piece of property (the "outparcel") which is not part of the Development, but was part of the larger parcel identified in the purchase contract provided as proof of site control in the initial SAIL Application.

THE RULE FROM WHICH WAIVER IS SOUGHT

Rule 67-48.004(14)(e), provides in part:

(14) Notwithstanding any other provision of these rules, there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application Deadline. Failure to submit these items in the Application at the time of the Application Deadline shall result in rejection of the Application without opportunity to submit additional information. And attempted charges to these items will not be accepted. These items are as follows:

* * *

(e) Site for the Development;

STATUTES IMPLEMENTED BY THE RULES

5. The Rule implements, among other sections of the Florida Housing Finance Corporation Act,¹ the statute that created the SAIL Program. See §420.5087, Florida Statutes. The purpose of the SAIL Program is to provide loans to for profit and non profit entities to provide affordable housing to very-low income persons. See §420.5087, Florida Statutes (2005).

6. The pertinent statute regarding granting of waivers provides: "Waivers shall be granted when the applicant demonstrates that application of the rule would create a substantial hardship or would violate principles of fairness." Section 120.542(2), Florida Statutes. "Substantial Hardship" is defined as a demonstrated economic, technological, legal or other type of hardship "to the applicant." "Principles of Fairness" are violated when the "literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule."

WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE

7. At the Corporation's instruction and in order to demonstrate that it did not receive any unfair advantage in the scoring of the initial application, Petitioner has submitted an Affidavit certifying Tie-Breaker Measurement Point. The Affidavit is attached hereto as Exhibit 1. The Affidavit confirms¹ that the Tie-Breaker Measurement Point is not located on the outparcel that Petitioner seeks to sell.

8. In light of the considerable time that it takes to develop multi-family rental housing the Corporation's statutes and rules are designed to allow for flexibility necessary to

¹ The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.516 of the Florida Statutes.

respond to changed circumstances, which might necessitate a modification in a Development. FHFC routinely approves such changes when they would not have otherwise affected the scoring of the application, because the Applicant thus derives no unfair advantage over its competitors in an application cycle. Indeed the specific purpose of Rule 67-48.004(14), F.A.C. is to prevent an applicant from changing key elements in its application after reviewing the applications of its competitors, thereby allowing the Applicant to gain a possible competitive advantage. Due to the fact that the Tic Breaker measurement point is not located on the outparceel, the Petitioner has not received any unfair advantage over its competitors.

9. Denial of Petitioner's request will violate principles of fairness as it relates to Petitioner and will cause substantial hardship to Petitioner. The purpose of the Rule is to prevent applicants from gaining an unfair advantage over competitors by changing the site of the development during the competitive process. The literal application of the Rule would prevent applicants from transferring portions of their development sites that are not needed for the intended Development, an unintended consequence of the Rule. In this case, the site plan for the Development reflects that the outparceel was never intended to be used for the Development, and denying Petitioner's request would cause Petitioner to retain acreage that is not needed or desired, thus creating additional expense through annual property taxes, and potential liability by virtue of having property that is outside the Development walls, but still owned by the Petitioner. The proceeds of the sale of the outparceel will be used by Petitioner to decrease the debt on senior financing for the Development.

10. Petitioner believes that a waiver of this rule will serve the purposes of Section 420.5087 and the Act which is implemented by the rule. The Florida Housing Finance Corporation Act (Section 420.501, et seq.) was passed in order to encourage private and public

investment in persons of low income. The creation of the SAIL Program was to stimulate creative private sector initiatives to increase the supply of affordable housing. By granting this waiver request the Corporation continues to recognize the goal of increasing the supply of affordable housing through private investment in persons of low-income.

11. The requested waiver will not adversely impact the Development or the Corporation.

TYPE OF WAIVER

12. The waiver being sought is permanent in nature.

13. Should the Corporation have questions or require any additional information, Petitioner is available to provide any additional information necessary for consideration of the Petition.

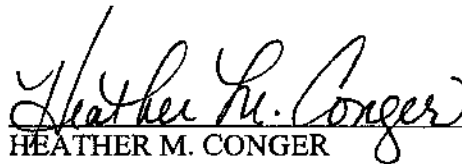
ACTION REQUESTED

14. Petitioner requests the following:

a. Grant the Petition and all the relief requested here;

15. A copy of the Petition has been provided to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, FL 32399-1300.

Respectfully submitted this 28th day of August, 2009.



HEATHER M. CONGER
Fla. Bar No. 0118206
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390 N. Orange Ave., Suite 1400
Orlando, FL 32801
(407) 839-4200
(407) 650-0966 Facsimile

Counsel for Petitioner

**AFFIDAVIT CERTIFYING TIE-BREAKER MEASUREMENT POINT
(Manatee Cove - 2005-006S/2006-06SEL/2005-511C)**

STATE OF FLORIDA

COUNTY OF PALM BEACH

BEFORE ME, the undersigned authority, personally appeared W. Todd Fabbri ("Affiant"), who being by me first duly sworn, on oath, says:

1. That this Affidavit is given on the personal knowledge of Affiant.
2. That Affiant is the Executive Vice President of the Sole Member of the General Partner of MANATEE COVE, LTD., a Florida limited partnership (the "Applicant"), and is authorized to make this Affidavit on behalf of the applicant entity of Application Nos. 2005-006S/2006-06SEL (together, the "SAIL Applications") and Application No. 2005-511C (the "Non-Competitive HC Application").
3. Affiant certifies that the Tie-Breaker Measurement Point as defined in Rule Chapter 67-48, F.A.C. and as stated on the Surveyor Certification Form provided with the SAIL Application and the Non-Competitive HC Application is not located on the parcel described on the attached Exhibit "A".

Dated as of this 30 day of June, 2009.

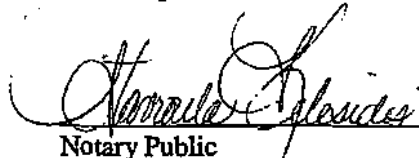


W. Todd Fabbri, as Executive Vice
President of the Sole Member of the General
Partner of Manatee Cove, Ltd.
Affiant

SUBSCRIBED AND SWORN TO before me this 30th day of June, 2009, by W. Todd Fabbri, who is personally known to me or has produced a valid driver's license as identification.



STAVROULA KELESIDIS
NOTARY PUBLIC - STATE OF FLORIDA
COMMISSION # DD507007
EXPIRES 1/16/2010
BONDED THRU 1-886-NOTARY



Notary Public
Printed Name: Stavroula Kelesidis
My Commission Expires: 1-16-2010



Exhibit "A"

FROM THE NORTHWEST CORNER OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 34, TOWNSHIP 27 SOUTH, RANGE 37 EAST, BREVARD COUNTY, FLORIDA, RUN S 00° 08' 33" E ALONG THE WEST LINE OF SAID NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 34, A DISTANCE OF 375.09 FEET; THENCE S 88° 52' 16" E PARALLEL WITH THE NORTH LINE OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4, A DISTANCE OF 306.43 FEET TO THE EAST RIGHT-OF-WAY LINE OF THE FLORIDA EAST COAST RAILROAD AND THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE CONTINUE S 88° 52' 16" E, A DISTANCE OF 370.17 FEET; THENCE S 26° 31' 14" W, A DISTANCE OF 314.18 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF THE FLORIDA EAST COAST RAILROAD, SAID RIGHT-OF-WAY LINE BEING 37.50 FEET EASTERLY, BY PERPENDICULAR MEASUREMENT, FROM THE CENTERLINE OF SAID RAILROAD; THENCE N 40° 29' 28" W ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 154.71 FEET; THENCE S 88° 59' 02" E, A DISTANCE OF 16.69 FEET; THENCE N 40° 29' 28" W ALONG THE EASTERLY RIGHT-OF-WAY LINE OF FLORIDA EAST COAST RAILROAD, SAID RIGHT-OF-WAY LINE BEING 50 FEET EASTERLY, BY PERPENDICULAR MEASUREMENT, FROM THE CENTERLINE OF SAID RAILROAD, FOR A DISTANCE OF 224.91 FEET TO THE POINT OF BEGINNING, SAID PARCEL CONTAINING 1.196 ACRES OF LAND MORE OR LESS.