

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

TOWN PARKE, LTD.

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION

Respondent.

FHFC Case No. 2011-006vw
FHFC Application No. 2009-244C

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FLORIDA HOUSING FINANCE CORPORATION

**PETITION FOR WAIVER OR VARIANCE FROM THE 2009 QUALIFIED
ALLOCATION PLAN REQUIREMENTS FOR RETURNING
HOUSING CREDIT ALLOCATIONS AND FOR AN
IMMEDIATE ALLOCATION OF 2011 HOUSING CREDITS**

Pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code, TOWN PARKE, LTD. ("Petitioner"), by and through its undersigned counsel, hereby petitions the FLORIDA HOUSING FINANCE CORPORATION (the "Corporation") for a waiver or variance from the Corporation's requirement that an applicant, such as Petitioner, wait until the last calendar quarter of the year in which such applicant is otherwise required to place its project in service in order to return a housing credit allocation and obtain a reservation for an allocation in a future year. The return of Petitioner's 2009 Carryover Allocation of Housing Credits is required before the Corporation may reserve and provide a binding commitment to Petitioner for an allocation of Housing Credits for a future year. See Rules 67-48.002(88) and 67-48.023, Florida Administrative Code (collectively the "Rules"), and Qualified Allocation Plan ("QAP"). In support of its Petition, Petitioner states:

THE PETITIONER

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

Town Parke, Ltd.
700 West Morse Boulevard, Suite 220
Winter Park, Florida 32789
Telephone: (407) 741-8500
Facsimile: (407) 551-2353

2. The address, telephone, and facsimile number of Petitioner's counsel, which shall be used for service purposes during the course of this proceeding, are:

Kerey Carpenter, Esquire
AHG Group, LLC
1551 Sandspur Road
Maitland, Florida 32751
Telephone: (407) 741-8534
Facsimile: (407) 551-2353

3. Petitioner successfully applied for financing from the Housing Tax Credit ("HC") Program in the 2009 Universal Application Cycle (the "Universal Cycle"), which the Corporation administers pursuant to Chapter 67-48, Florida Administrative Code. The Petitioner's Application number is 2009-244C (the "Application"). Petitioner applied for an allocation of housing credits to finance a portion of the costs to construct a 94-unit multi-family rental apartment complex in Seminole County, Florida, to be known as Town Parke Apartments – Phase I.

4. As explained below, factors outside of Petitioner's control have delayed the development process and the closing on this project. As a result of these delays, Petitioner anticipates it will be unable to complete the Development before December 31, 2011, the Placed-in-Service Date pertaining to its 2009 Housing Credit allocation.

5. Petitioner seeks to return its 2009 Carryover Allocation of Housing Credits now, rather than wait to the last calendar quarter of 2011 as required under the QAP, and to immediately receive a 2011 Carryover Allocation of Housing Credits from the Corporation.

THE RULE FROM WHICH A VARIANCE/WAIVER IS SOUGHT

6. Rule 67-48.002(95) (2009) defines the QAP as follows:

"QAP" or "Qualified Allocation Plan" means, with respect to the HC program, the 2009 Qualified Allocation Plan which is adopted and incorporated herein by reference, effective upon approval by the Governor of the State of Florida, pursuant to Section 42(m)(1)(B) of the

IRC and sets forth the selection criteria and the preferences of the Corporation for Developments which will receive Housing Credits.”

7. Section 10 of the 2009 QAP provides that Housing Credits may be returned only in the last calendar quarter of the year (October through December) in which a Development is required to be placed in service:

“...where a Development has not been placed in service by the date required, or it is apparent that a Development will not be placed in service by the date required, such failure is due to circumstances beyond the Applicant’s control, and the Applicant has returned its Housing Credit Allocation in the last calendar quarter of the year in which it was otherwise required to be placed in service, the Corporation may reserve allocation in an amount not to exceed the amount of Housing Credits returned, and may allocate such Housing Credits to the Applicant for the year after the year in which the Development was otherwise required to be placed in service, provided the following conditions have been met...”

2009 QAP at pp. 14-15.

8. Here, Petitioner is returning the credits before the last quarter of the calendar year and requesting a 2011 Carryover Allocation of Housing Credits from the same calendar year, with a corresponding extension of all time requirements in the 2011 Carryover Allocation.

9. The requested variance will ensure the availability of Housing Credits for the Development which might otherwise be lost as a consequence of development delays caused by factors outside the Petitioner’s control.

10. The following facts demonstrate the economic hardship and other circumstances which justify Petitioner’s request for a Rule waiver/variance.

(a) Petitioner timely submitted its Universal Application to the Corporation for its Housing Credits Program;

(b) The Corporation issued its Preliminary Allocation in December 2009;

(c) The Preliminary Allocation reserved \$1,510,000.00 for Housing Credits;

(d) As a result of the Carryover Allocation Agreement, the Development’s Placed-in-Service Date is December 31, 2011;

(e) Closing of this transaction has been delayed because the City of Winter Springs (the “City”) denied Petitioner’s request for Final Development Plan approval. The City’s denial was made despite prior approval of Petitioner’s conceptual plan and was done only after several groups and homeowners’ associations opposed the Development claiming the Development would result in an increase in crime in the area because it provided housing for low-income individuals. Further, the opposition alleged the Development would increase the burden on the local school system. To address these concerns, Petitioner modified its Final Development Plan to include a decrease in the number of units and to implement a senior restriction on all units. Despite these revisions, the City modified its Comprehensive Plan and issued a denial of the Final Development Plan that appeared to turn on the economic impacts of the project. (See Exhibit “A”).

(f) The Petitioner filed suit against the City alleging violations of both Federal and Florida Fair Housing Acts. The complaint alleges that the denial violates both statutes because (1) it will have a disparate impact on minorities in the City of Winter Springs due to lack of affordable housing in the City, and (2) it perpetuates segregated housing patterns in and around the City of Winter Springs by preventing the development of affordable housing. (See Exhibit “A”).

(g) The rule waiver/variance is needed because the City’s denial and subsequent litigation are preventing this Development from meeting the deadlines of the Carryover Agreement, as amended. To deny the rule waiver/variance would encourage other municipalities to prevent the development of affordable housing. Granting the rule waiver/variance will allow the court adequate time to make a determination as to whether the City has violated the Fair Housing Act, enacted to protect many of the households that are in desperate need of affordable housing. In addition, it will allow for the eventual development of much needed affordable housing in Winter Springs.

(h) Further, a denial of this requested waiver/variance will result in substantial hardship to the Petitioner. To date, the Petitioner has spent over \$1,074,120 on this project and failure to receive the requested relief will result in financial hardship and a return of 2009 credits. Without the assurance of a

2011 Carryover Allocation of Housing Credit from the Corporation, this development will not go forward.

STATUTES IMPLEMENTED BY THE RULES

11. The Rules implement, among other sections of the Florida Housing Finance Corporation Act,¹ the statute that created the Housing Credits Program. See §420.5093, Florida Statutes. The Act designates the Corporation as the State of Florida’s housing credit agency within the meaning of Section 42(h)(8)(A) of the Internal Revenue Code of 1986. As the designated agency, the Corporation is responsible for and is authorized to establish procedures for the allocation and distribution of low-income housing tax credits (“Allocation Procedures”). Section 420.5099(1) and (2), Florida Statutes. Accordingly, the Rules subject to Petitioner’s waiver/variance request are implementing, among other sections of the Act, the statutory authorization for the Corporation’s establishment of Allocation Procedures for the HC Program.

12. 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.” The hardship in this case is that Petitioner will not be able to close on this Development, Petitioner will lose in excess of \$1,074,120 already invested, and the City’s efforts to prevent the construction of these much needed affordable housing units for the benefit of the local residents of the Seminole County area would be rewarded.

**WAIVER/VARIANCE WILL SERVE THE UNDERLYING
PURPOSE OF THE STATUTE**

13. Petitioner believes that a waiver/variance of these rules will serve the purposes of Section 420.5099 and the Act which is implemented by the rules, because a central goal of both is to facilitate the

¹ The Florida Housing Finance Corporation Act is set forth in Sections 420.01 and 420.516 of the Florida Statutes.

availability of decent, safe, and sanitary housing in the State of Florida to low-income persons and households by ensuring:

“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.”

Section 420.5099(2), Florida Statutes (2011)

The Florida Housing Finance Corporation Act (Section 420.501, et seq.) was passed in order to encourage private and public investment in housing for persons of low income. The creation of the Housing Tax Credit Program was to stimulate creative private sector initiatives to increase the supply of affordable housing. By granting this waiver/variance the Corporation would recognize the goal of increasing the supply of affordable housing through private investment in housing for persons of low-income. The recognition would provide participation by experienced developer entities, such as Petitioner, in meeting the purposes of the Act regardless of the possible delays from factors outside their control.

14. The requested waiver/variance will not adversely impact the Development or the Corporation.

TYPE OF WAIVER/VARIANCE

15. The waiver/variance that is being sought is permanent in nature.

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

ACTION REQUESTED

17. Petitioner requests that the Corporation grant the following relief:

a. Grant a waiver/variance from the 2009 QAP's prohibition from returning Housing Credits prior to the last quarter of 2011;

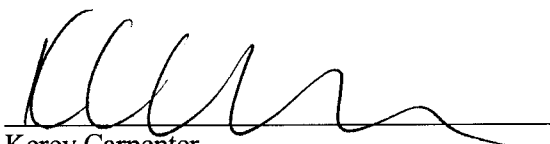
b. Allow the immediate return of the Petitioner's 2009 Carryover Allocation of Housing Credit;

c. Grant a waiver/variance from the 2009 QAP's prohibition on the reservation of a Housing Credit allocation prior to the year in which the Development was otherwise required to be placed in service; and

d. Immediately provide a 2011 Carryover Allocation of Housing Credits to Petitioner in an amount not to exceed the amount of its current Housing Credit Allocation, with a corresponding extension of all time requirements, in the 2011 Carryover Allocation.

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

Respectfully submitted on this 29th day of March, 2011.



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 MERITAS LAW FIRMS WORLDWIDE

MEMORANDUM

TO: Kerey Carpenter
General Counsel
AHG Group, LLC
1551 Sandspur Road
Maitland, FL 32751

FROM: Rebecca Rhoden

DATE: March 16, 2011

RE: Summary of Atlantic Housing Partners' Litigation over City of Winter Springs's
Denial of Application to Develop Town Parke

You have asked us to provide a summary of the lawsuits between Atlantic Housing Partners and the City of Winter Springs. Below please find a factual summary of the two pending lawsuits, which does not contain any analysis of or strategy relating to such lawsuits.

I. BACKGROUND

In the beginning of 2009, Atlantic Housing Partners (“AHP”) initiated a plan to develop a parcel of land located within the Winter Springs Town Center into Town Parke Apartments, an income-restricted apartment community (the “Project”). To obtain financing from the Florida Housing Finance Corporation, AHP submitted the Project to the Winter Springs City Commission for conceptual approval. The City Commission granted AHP conceptual approval and provided AHP with written verification that the Project’s intended use and density were consistent with the City’s Comprehensive Plan.

Following proper procedure, AHP prepared and submitted to the City Planner its Final Development Plan for the Project. Several groups and homeowners’ associations opposed the Project and voiced their objections, claiming that the Project would result in an increase in crime in the area because the Project provided housing for low-income individuals and would increase the burden on the local school systems. To address these concerns, AHP modified its Final Development Plan, including decreasing the number of apartment units and implementing a “senior restriction” on the units.

In September of 2009, after AHP had received conceptual approval and had expended significant resources to obtain the federal financing sources and prepare its final engineering plans and development

agreement, the City adopted amendments to its Comprehensive Plan. The amendments added several new policies to the Comprehensive Plan with respect to housing and future land use. Specifically, the amended Comprehensive Plan provides that developments in the Town Center must “optimally increase and diversify the City’s tax base and economic well-being,” (FLU Policy 2.3.3, “Optimization of Tax Base”). Additionally, the amended Comprehensive Plan provides that the City “may require, as a condition of considering the approval or denial of a development project, that developers provide a written economic fiscal impact report . . . that details the associated fiscal impacts of any proposed new development project on the City and School District.” FLU Policy 2.3.4.

To comply with these new requirements, AHP hired Dr. Hank Fishkind, an expert in urban and regional economics, to produce the report, which determined that the Project would have a positive financial impact on the City. AHP submitted Dr. Fishkind’s report along with AHP’s application for approval to begin developing the land. In its application, AHP submitted its modified Final Development Plan and requested approval of its final engineering plans and several special exceptions to certain requirements contained in the City’s Code of Ordinances.

On October 13, 2010, the Planning and Zoning Board of the City Commission recommended that the City Commission deny AHP’s application. On October 25, 2010, the City Commission conducted a hearing on the application. From the comments made by the City Commissioners before the vote, it appears that the question of whether to approve the application turned on the economic impacts of the Project. There was no discussion of the development agreement, special exceptions, or final engineering plans. Ultimately, the Board of County Commissioners unanimously voted to deny the application. Despite having granted AHP preliminary approval based on the Project’s compliance with the Comprehensive Plan, in its written denial letter, the City contended that the modified Final Development Plan did not comply with, and was not consistent with, the Comprehensive Plan. The City also contended that the special exceptions did not satisfy Section 20-321 of the City Code based upon the new FLU Policies 2.3.3 and 2.3.4.

II. LITIGATION AGAINST WINTER SPRINGS

1. Atlantic Housing Partners, LLLP v. City of Winter Springs (State Court Action – Petition for Writ of Certiorari; Circuit Court of the Eighteenth Judicial Circuit, 10-57-AP)

AHP filed a Petition for Writ of Certiorari in Seminole County Circuit Court. AHP’s Petition asks the court to issue a writ of certiorari quashing the City Commission’s denial of AHP’s final application.

a. AHP’s argument:

The Circuit Court has review of the City Commission’s denial because the City Commission acted in a quasi-judicial capacity. AHP’s Petition alleges that the City Commission acted improperly when it determined that the final application failed to comply with the Comprehensive Plan. Specifically, AHP alleges that (1) that the City Commission, in denying the final application, did not comply with the “essential requirements of law,” and (2) that the City’s decision was not supported by “competent substantial evidence.”

Kerey Carpenter
March 17, 2011
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b. The litigation:

AHP filed the Petition on November 24, 2010. On January 12, 2011, in light of the City's failure to respond to AHP's Petition, the Court directed the City to "show cause" why the Court should not grant the Petition outright. In response, on February 1, the City (1) argued that it was not required to respond to the Petition, and (2) moved to strike AHP's Petition on the grounds that the Petition's Appendix was "deficient." On February 11, AHP filed its reply to the City's February 1 response and its opposition to the City's motion to strike. The City then moved for the opportunity to file a legal response to AHP's Petition. The Court granted the City the opportunity to file a response to the Petition and denied the City's motion to strike. The City's response is due by March 23, 2011. AHP will then have twenty (20) days to reply to that response.

2. Atlantic Housing Partners LLLP, et al. v. City of Winter Springs (Federal Court Action – Complaint for Violation of Fair Housing Act; U.S. District Court for the Middle District of Florida, 6:10-cv-1905-Orl-35DAB)

AHP filed a complaint in federal court arguing that the City Commission's denial of AHP's final application violated both the Federal and Florida Fair Housing Acts.

a. AHP's argument:

AHP's complaint alleges that the denial violates both statutes because (1) it will have a disparate impact on minorities in Winter Springs due to lack of affordable housing in the city, and (2) it perpetuates segregated housing patterns in and around Winter Springs by preventing the development of affordable housing.

b. The litigation:

AHP filed the complaint on December 20, 2010. On February 25, 2011, the City responded to the complaint by filing a motion to dismiss the complaint. On March 14, AHP filed its response to the City's motion to dismiss. The Court has not yet ruled on the City's motion to dismiss.

RER/nr

c: W. Scott Culp
Jay Brock
Michael V. Elsberry

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