

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2011-015VW

SEVILLE PLACE HOLDINGS, LTD.,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

PETITION FOR WAIVER OF RULE 67-48.027, F.A.C.

Petitioner Seville Place Holdings, Ltd. (“Seville” or “Petitioner”) petitions Respondent Florida Housing Finance Corporation (“Florida Housing” or the “Corporation”) for a waiver of the restriction on submitting an Application (as defined in Rule 67-48.002(9)) to Florida Housing, as required pursuant to Rules 67-48.004 and 67-48.0072, F.A.C., until after tax exempt bonds have been issued to the Development (as herein defined). *See* Rule 67-48.027(2)(m), F.A.C. (the “Rule”). In support of its Petition, Seville states:

1. Pursuant to Section 120.542, Fla. Stat., and Rule 28-104.002, F.A.C., Seville requests a waiver of the Rule which prohibits submitting an Application for Housing Credits (as defined in Rule 67-48.002(61)) to Florida Housing, as required in Rules 67-48.004 and 67-48.0072, F.A.C., until after tax exempt bonds have been issued to the Development (as herein defined).
2. Seville requests a waiver so that it can submit an Application for 4% Housing Credits prior to the time the Bonds (as herein defined) are issued.

A. THE PETITIONER

3. The name, address, telephone and facsimile numbers for Seville and its qualified representative are:

Seville Place Holdings, Ltd.
315 S. Biscayne Blvd.
Miami, FL 33131
Telephone: (305) 460-9900
Facsimile: (305) 460-9911
Email: tdelpozzo@relatedgroup.com

4. For purposes of this Petition, the address, telephone and facsimile numbers of Petitioner's attorney is:

Brian J. McDonough, Esquire
STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
150 West Flagler Street, Suite 2200
Miami, Florida 33130
Telephone: 305-789-3200
Facsimile: 305-789-3395
Email: bmcdonough@stearnsweaver.com

B. THE DEVELOPMENT AND FUNDING

5. Seville has received commitments from various funding sources (as further described herein) to be used for the development and construction of Seville Place Apartments, an existing 444 unit multifamily apartment complex located in Orange County, Florida (the "Development"). Seville anticipates substantially rehabilitating the property and converting the existing 444-unit apartment project by renovating the existing apartment project and reducing the number of apartments to 264 units. The subject property was acquired by the Petitioner on April 15, 2011 using Neighborhood Stabilization Program (NSP) funds ("NSP Funds") awarded to Seville by Orange County, Florida (the "County").

6. Funding for the Development will be derived from the following sources:
 - a. approximately \$9,500,000.00 in tax exempt multifamily housing bonds (the “Bonds”) which will be issued by the Orange County Housing Finance Authority (“OCHFA”);
 - b. approximately \$3,400,000.00 in equity which will be contributed as capital to Seville by an investor limited partner in connection with its purchase of Housing Credits (as defined in Rule 67-48.002(63)); and
 - c. \$7,000,000.00 of NSP loan proceeds made available to Seville pursuant to a loan to Seville of NSP Funds from the County.
 - d. \$1,000,000 of State Housing Initiatives Partnership (“SHIP”) Funds from the County.

7. The County has partnered with Orlando Neighborhood Improvement Corporation, Inc. and The Related Group to implement the County’s Plan to redevelop the existing Seville Place Apartments by demolishing 180 existing units thereby reducing the units in such apartment complex from 444 units to a more manageable 264 units. The County’s commitment to this Development is evident by virtue of (a) its designation for redevelopment in its Consolidation Plan of the area in which the Development is located; (b) its award to Seville of the NSP Funds and SHIP Funds; and (c) its agreement to issue the Bonds and make a loan of such Bond proceeds of approximately \$9,500,000.00. Attached as Exhibit A to this Petition is a letter from Mitchell Glasser, Manager of the County’s Housing and Community Development Division, which provides additional information regarding the County’s support for this Development.

8. Seville is unable to close on the equity contribution, the bonds and the NSP2 Loan without Seville’s having (i) undergone a full credit underwriting with respect to the allocation of

Housing Credits to the Development, (ii) submitted an Application to Florida Housing for Housing Credits, and (iii) received a favorable recommendation (on a preliminary basis) for such Housing Credits.

9. The requested Rule waiver will enable Seville to take an existing apartment development that has long been in need of repair and substantial renovation and which has been the subject of foreclosure proceedings and create a significantly improved and streamlined (from 444 to 264 units) apartment project that will be an integral part of the County's plan to improve the area in which the Development is located. This goal of the Petitioner and the County fits squarely within the goals of the Corporation to preserve affordable housing in the State of Florida. The Development will serve an often neglected component of the County's rental demographic, as 134 of the 264 units in the reconfigured Development will be leased to families earning less than fifty percent (50%) of the County's area median income.

10. Moreover, the requested Rule waiver will not adversely impact the Development. A denial of this Petition could (a) result in substantial hardship to Seville; (b) deprive Orange County of additional and essential affordable housing units in a timely manner; (c) impair the County's desire to implement its plan to redevelop the Seville Place Apartments and improve the area in which such complex is located; and (d) violate principles of fairness. § 120.542(2), Fla. Stat. (2011).

11. More significantly, should its Petition be denied, Seville may be unable to deliver additional low-income housing units to a market in desperate need of quality affordable housing. Further, should its Petition be denied, the existing tenants currently residing at the apartment complex, most of whom meet the proposed income restrictions, will not receive the benefits of the proposed improvements to the existing apartment complex.

12. The requested Rule waiver is permanent in nature.

C. THE RULE FROM WHICH RELIEF IS REQUESTED AND THE STATUTE IMPLEMENTING THE RULES

13. Seville realleges and incorporates Paragraphs 1 through 12 as though fully set forth herein.

14. Rule 67-48.027(2)(m) provides, in pertinent part, that a party desiring to have allocated to it Housing Credits in connection with bonds issued to it by a local housing finance authority such as the OCHFPA must proceed as follows:

After bonds are issued to the Development, [the Developer shall] make Application to the Corporation, as required in Rules 67-48.004 and 67-48.0072, F.A.C.

Rule 67-48.027(2)(m), F.A.C.

15. The Florida Housing Finance Corporation Act¹ designates the Corporation as the State of Florida's housing credit agency within the meaning of Section 42(h)(7)(A) of the Internal Revenue Code of 1986. As the designated agency, Florida Housing is responsible for and is authorized to establish procedures for the allocation and distribution of low-income housing tax credits ("Allocation Procedures"). §§ 420.5099(1) and (2), Fla. Stat. (2011). The Allocation Procedures were established in Chapter 67, Florida Administrative Code. Accordingly, the Rule subject to Seville's waiver request is implementing, among other sections of the Act, the statutory authorization for Florida Housing's establishment of Allocation Procedures for the HC Program. §§ 420.5099(1) and (2), Fla. Stat. (2011).

¹ The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.516 of the Florida Statutes (the "Act"). See also Rule 67-40.020(1), F.A.C. ("Act" means the Florida Housing Finance Corporation Act, section 420.501 through 420.516 of the Florida Statutes").

D. JUSTIFICATION FOR SEVILLE'S REQUESTED WAIVERS

16. Seville realleges and incorporates Paragraphs 1 through 15 as though fully set forth herein.

17. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., Florida Housing has the authority to grant waivers to its rule requirements when strict application of these rules would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers shall be granted when the person who is subject to the rule demonstrates that the application of the rule would (1) create a substantial hardship or violate principles of fairness,² and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. § 120.542(2), Fla. Stat. (2011).

18. In this instance, Seville meets the standards for Rule waivers.

19. The requested waiver to allow Seville to submit its Application prior to the Bonds being issued will enable Seville to obtain the financing necessary to finance the substantial rehabilitation of the Development and thereby provide essential affordable housing to the citizens of Orange County, Florida.

20. Without the Rule waiver, Seville will be unable to obtain adequate financing for its use in rehabilitating the Development.

E. CONCLUSION

21. Controlling statutes and Florida Housing's Rules are designed to allow the flexibility necessary to provide relief from rule requirements when strict application, in particular circumstances, would lead to unreasonable, unfair, or unintended results. Waivers should be

² "Substantial hardship" means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. "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 Section § 120.542(2), Fla. Stat. (2011).

granted when the applicant subject to the rule demonstrates that strict application would: (a) create a substantial hardship or violate principles of fairness; and (b) the purpose of the underlying statute has been or will be achieved by other means. § 120.542(2), Fla. Stat. (2011).

22. The requested waiver will not adversely impact the Development or Florida Housing, and will ensure that 264 affordable housing units will be substantially renovated in an area of the County in substantial need of such improvements. Local support for affordable housing development is an important consideration in the Respondent's determination to provide financial or other support to various developments. The support of the County for this Development is very apparent by virtue of (a) its commitment to issue the Bonds; (b) its award to the Petitioner of \$7,000,000 in NSP Funds; and (c) its award to the Petitioner of \$1,000,000 in SHIP Funds.

23. However, a denial of the requested waiver could result in a substantial hardship for Seville which would be denied the ability to provide decent, safe, and affordable housing units to a market in desperate need of extremely low and low income housing.

24. Finally, by granting the requested waiver, Florida Housing would recognize the economic realities and principles of fundamental fairness of developing affordable residential housing by encouraging the development of affordable housing projects and enabling developers to meet the needs of both very low-income and low-income families in dire need of affordable and safe housing and social services. This recognition would promote participation by experienced developer entities in meeting the purpose of the Act, through new construction and in an economical and efficient matter.

25. Should Florida Housing require additional information, Seville is available to answer questions and provide all information necessary for consideration of its Petition for Waiver of Rule 67-48.027(m).

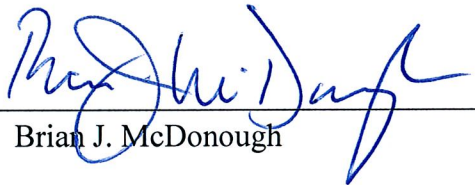
WHEREFORE, Petitioner Seville Place Holdings, Ltd., respectfully requests that Florida Housing Finance Corporation:

- A. Grant the Petition and all the relief requested herein;
- B. Waive the Rule's restriction against Seville's submitting an Application for Housing Credits prior to the Bonds being issued; and
- C. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
Attorneys for Petitioner
150 West Flagler Street, Suite 2200
Miami, Florida 33130
Telephone: 305-789-3200
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Email: bmcdonough@stearnsweaver.com

By: _____



Brian J. McDonough

CERTIFICATE OF SERVICE

The Original Petition is being served by overnight delivery, with a copy served by electronic transmission, for filing with the Corporation Clerk for Florida Housing Finance Corporation, 227 N. Bronough Street, Tallahassee, Florida 32301, with copies served by overnight delivery on the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, Florida 32399-1300, this 18th day of August, 2011.



Brian J. McDonough



HOUSING AND COMMUNITY DEVELOPMENT DIVISION

2011-015WV
MITCHELL L. GLASSER, *Manager*

525 East South Street • Orlando, Florida 32801

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March 1, 2011

Mr. Steve Auger, Executive Director
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, FL 32301-1329

Re: Seville Place Apartments
4% Tax Credit Allocation

Dear Mr. Auger:

Orange County has been actively working on redeveloping Seville Place, an existing 444 unit apartment complex located at 3124 N. Pine Hills Road, Orlando, Florida. The complex has been in foreclosure for some time, is under a court appointed receiver and is in need of substantial rehabilitation. A key component of our redevelopment plan is the reduction in the number of units at the complex to a more manageable 264 rental units by demolishing 180 units. Orange County has partnered with a non-profit and for profit development team, Orlando Neighborhood Improvement Corporation and The Related Group, respectively, to implement the redevelopment plan.

The Seville Place property has most of the financing in place including an \$8 million dollar commitment from Orange County (\$7 million from Neighborhood Stabilization Program). The most difficult challenge has been securing permanent debt financing. The most advantageous financing for the long term success of the project would be bond financing with four percent tax credits. The development team has been able to secure the credit enhancements required to close on the bond financing.

The property is located within 2.5 miles of another complex, Oak Glen Apartments, which was funded under the state's Guarantee Program and has been provided a Subordinate Mortgage Incentive Loan by Florida Housing. We are aware of the policy concerning the 2.5 mile rule and understand the risk involved for the Guarantee Program. However, we believe that Seville Place will not have a negative impact on Oak Glen Apartments.

As previously mentioned, the redevelopment plan includes the reduction of total units from 444 to 264 most of which will be two and three bedroom units. The two bedroom units will be reduced from 270 to 164 units, the three bedroom units will be reduced from 34 to 20 units, effectively removing 120 two and three bedroom units from the market area. Since Oak Glen is comprised of 52 two bedroom and 36 three bedroom units, this reduction will be beneficial to Oak Glen and to the overall market.

Mr. Steve Auger
March 1, 2011
Page 2

If you analyze the numbers even further, due to the requirements of the Neighborhood Stabilization Program, 66 of the remaining two bedroom units and three (3) of the remaining three bedroom units within Seville Place will be leased to households earning under 50 percent of the area median income (AMI), further reducing the direct competition to Oak Glen, which includes 66 units at 60 percent AMI and 8 units at 150 percent AMI. In total, the redevelopment plan for Seville Place reduces the number of two and three bedroom units available to tenants earning over 50 percent AMI from 304 to 115 units. The impact of these changes to the Seville Place demographics will be beneficial to Oak Glen.

As of February 28, 2011, the Oak Glen occupancy was 100 percent for the two bedroom units and 80.5 percent for the three bedroom units. As such, there were seven (7) vacant three bedroom units and there weren't any vacant two bedroom units. Based on the proposed reduced unit count at Seville Place, there will only be 20 three bedroom units, of which 18 (or 90 percent) are currently occupied. Therefore, the three bedroom units at Seville Place will not adversely impact the vacancies at Oak Glen. Furthermore, the redevelopment schedule indicates that the rehabilitated units at Seville Place will not be ready for occupancy for over one year. As such, there will be significant time for Oak Glen to achieve stabilized occupancy.

Orange County is very committed to this project because it has designated this area of Pine Hills for redevelopment in its Consolidated Plan. Orange County has recently completed a Pine Hills Task Force and a Neighborhood Economic Development and Market Analysis of the Pine Hills area by Real Estate Research Consultants. One of the recommendations of the group is to create a Neighborhood Improvement District to include the area surrounding Seville Place and the County Commission is taking up this item on April 1, 2011.

In addition, the Orange County School Board is currently rebuilding the Evans High School. This \$75 million project is directly across the street from the Seville Place Property. The new high school is going to be more than just a school for students. It will also serve as a community school with programs for the whole family. Therefore, the rehabilitation and redevelopment of Seville Place Apartments is a critical component to our redevelopment efforts.

A common misconception of Pine Hills is that it is just one large neighborhood with a lot of crime. In reality, crime has decreased and Pine Hills is a large community made up of several neighborhoods. The census data shows Pine Hills population at 50,000; however, our recent market analysis puts the population at 70,000. Orange County's second largest city, Apopka has a population of 40,000 and the City of Winter Park has 30,000 residents. Excluding Orlando, Pine Hills has a population that is larger than any other city in Orange County. The point here is that Pine Hills is a large and densely populated community. Traveling 1.5 miles in this community can easily take you into a different area of Pine Hills which has many distinct locational characteristics and mix of residential and non-residential uses including several commercial corridors.

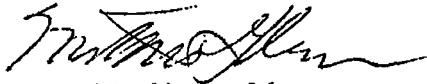
Mr. Steve Auger
March 1, 2011
Page 3

As the Manager of the Housing and Community Development Division for Orange County, I strongly believe that the plans for rehabilitating Seville Place and revising the unit mix will ultimately prove beneficial to Oak Glen. The project is worthy of getting a formal third party market study by a very well respected appraiser who is familiar with the area and the submarkets of Seville Place to determine the true impact its rehabilitation will have on Oak Glen. The development team is prepared to order this market study and begin formal underwriting.

We are confident that the results will show that the proposed rehabilitation of Seville Place will actually have a positive impact on Oak Glen, not an adverse one. As outlined above, there are several reasons why Seville Place is worthy of a rule waiver. We are requesting the opportunity to complete the research and present our full case to the Florida Housing staff in order to receive an exception to the proposed rule under consideration.

We greatly appreciate your assistance and consideration in this very sensitive matter.

Sincerely,



Mitchell L. Glasser, Manager
Housing and Community Development Division

MG/er

C: Kevin Tatreau, Director of Multifamily Development Programs, Florida Housing Finance Corp.
Tony Del Pozzo, Vice President, The Related Group
Bob Ansley, President, ONIC