

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

PASCO CWHIP PARTNERS, LLC,

Petitioner

CWHIP APPLICATION NO. 2007-004W

v.

CASE NO. 2012-033VW

FLORIDA HOUSING
FINANCE CORPORATION,

Respondent.

**PETITION FOR WAIVER OR VARIANCE FROM
RULES 67-58.020(6) AND 67-58.070(6), F.A.C.**

Petitioner, PASCO CWHIP PARTNERS, LLC, (“PCP”), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation, (“FHFC”) for a waiver or variance from Rules 67-58.020(6) and 67-58.070(6), Florida Administrative Code. This Petition is filed pursuant to Chapter 28-104, Florida Administrative Code and Section 120.542, Florida Statutes.

THE PETITIONER

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

Pasco CWHIP Partners, LLC.
215 49th St. S.
St. Petersburg, FL 33707
Office: (352) 424-0424
Fax: (727) 328-9392

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

Patrick P. Sullivan, Esq.
Law Offices of Patrick P. Sullivan, P.A.
215 49th St. S.

St. Petersburg, FL 33707
Office: (727) 323-7759
Fax: (727) 328-9392

3. On December 31, 2007, FHFC issued an application for Community Workforce Housing Innovation Pilot (“CWHIP”) program funding.

4. In response to this application Petitioner, PCP, successfully applied for CWHIP funding during the FHFC’s 2007 funding period and was subsequently invited into credit underwriting. Petitioner’s 2007 CWHIP application was assigned number 2007-004W. Petitioner sought CWHIP funding to assist with financing a workforce housing project in Pasco County, Florida. The project initially consisted of thirty-nine, two and three bedroom townhomes in western Pasco County and twenty-one single family, three bedroom detached homes in eastern Pasco County.

5. On or around November 13, 2008, PCP, received a commitment letter from FHFC and invitation to enter credit underwriting for an award of \$5,000,000.00 in CWHIP funding and \$300,000.00 in supplemental loan.

6. Subsequent to the receipt of the November 13, 2008 commitment letter, FHFC issued a memorandum entitled “Final Agency Action and Notice of Rights” dated April 24, 2009, that notified PCP that their project had been de-obligated.

7. On or around September 8, 2009, PCP, received a revised invitation to enter into credit underwriting where FHFC offered PCP a preliminary commitment for a CWHIP loan of up to \$1,735,000.00 under Emergency Rule 67ER09-4, F.A.C of which PCP did not accept.

8. On or around February 22, 2010, PCP, received a revised invitation to enter credit underwriting for the original award amount of \$5,000,000.00 and a

supplemental loan of \$300,000.00.

9. On or around August 3, 2010, PCP, received another revised invitation to enter into credit underwriting for a revised award amount of \$2,500,000.00 and a supplemental loan of \$150,000.00 based off of the downsizing of the project from 60 units to 30 units.

10. On or around August 5, 2010, PCP, officially accepted the August 3, 2010 invitation to enter into credit underwriting and the revised award.

11. On August 5, 2010, PCP, officially started its initial 14 month period to complete credit underwriting and receive board approval.

12. House Bill 639 (2011) was passed on March 31, 2011 and signed into law by the governor on June 21, 2011. House Bill 639 (2011) temporarily prevents any new construction funded by the state of Florida until July 1, 2012. Petitioners approved project, Village Green with Ten Oaks, is a new construction project. Due to the newly enacted legislation House Bill 639 (2011) PCP is now stopped for the second time in its efforts to finalize the underwriting for this viable housing project for the Pasco County community workforce, specifically teachers.

13. On or around September 21, 2011 Petitioner, PCP, due to House Bill 639 (2011) ban on new construction funded by the state formally requested a 10 month extension of FHFC to completed underwriting according to Rules 67-58.020(6) and 67-58.070(6), Florida Administrative Code and on or around October 14, 2011 the FHFC board of directors granted that request.

14. Petitioner, PCP, has extinguished its initial 14 months from the date of the acceptance letter to complete credit underwriting and the only 10 month extension

granted by the Florida Administrative Code and the FHFC board through Rules 67-58.020(6) and 67-58.070(6), Florida Administrative Code is set to expire on August 3, 2012.

15. House Bill 639 (2011) provision which temporarily prevents any new construction funded by the state will expire on July 1, 2012. No new legislation which prevents any new construction funded by the state has been passed to replace it.

16. Petitioner, PCP, could not move forward with credit underwriting during the 10 month extension granted by the board according to FHFC and the law due to House Bill 639 (2011). It was only after the legislature did not extend House Bill 639 ban on new construction in the 2012 legislative session that FHFC gave the petitioner, PCP, the green light to resume credit underwriting in April 2012.

17. Petitioner, PCP, due to the extensive time constraints of what is required and needed in order to complete the credit underwriting process could not finish credit underwriting within the quick fuse of August 3, 2012 restarting the whole process in April 2012. For that reason petitioner will be submitting this request for a second extension of time due to the unusual circumstances that both the de-obligation and House Bill 639 has presented this viable project.

18. The CWHIP program statute due to the complexity and time constraints in credit underwriting initially gives participants 14 months from the date of the acceptance letter or invitation to completed underwriting and board approval with a possible 10 month extension.

THE RULES FOR WHICH A WAIVER OR VARIANCE IS SOUGHT

19. Petitioner requests a waiver or variance from one portion of the Rules 67-58.020(6) and 57-58.070(6), Florida Administrative Code.

20. The language of both rules are the same and is set forth below:

The Applicant has 14 months from the date of the acceptance of the letter of invitation to complete credit underwriting and receive Board approval unless an extension of up to 10 months is approved by the Board.

(emphasis added) All extension requests must be submitted in writing to the program administrator and contain the specific reasons for requesting an extension and detail the timeframe to close the loan. The written request will be submitted to the Corporation's Board for consideration. The Corporation shall charge an extension fee of 1 percent of the CWHIP loan amount if the Board approves the extension request.

21. Petitioner has previously provided a written request for a ten month extension in which to complete credit underwriting and received Board approval on October 14, 2011. The ten month extension expires on August 3, 2012.

22. The Petitioner is seeking a temporary waiver or variance of that portion of the rule which authorizes FHFC to only grant one extension up to 10 months after the initial 14 months from the date of the acceptance of the letter of invitation to complete underwriting. The portion of the Rules 67-58.02(6) and 67-58.070(6) for which waivers or variances is sought is underlined above in paragraph 20.

STATUTES IMPLEMENTED BY THE RULE

21. Rules 67-58.020(6) and 67-58.070(6), F.A.C., set forth above, implement section 420.5095, Florida Statutes.

22. FHFC has the express authority pursuant to section 120.542(1), Florida Statutes, to grant variances or waivers to its rules under certain circumstances. Specifically, FHFC may grant relief from strict application of a rule in particular

instances when application of the rule would 1) create a substantial hardship, violate principles of fairness or unintended results in particular situations; and 2) the purpose of the underlying statute has been or will be achieved by other means. The legislature has indicated that a “substantial hardship” means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver.

23. Petitioner seeks a temporary waiver of that portion of Rules 67-58.020(6) and 67-58.070(6) which lets FHFC board to only grant one extension up to 10 months after the initial 14 months from the date of the acceptance of the letter of invitation to complete underwriting.

24. The waiver or variance of that portion of Rules 67-58.020(6) and 67.58.070(6) which allows FHFC to only grant one extension up to 10 months after the initial 14 months from the date of the acceptance of the letter of invitation to complete underwriting is temporary because this second extension request will be for a one time additional second extension of additional time for 186 days from August 3, 2012 to complete credit underwriting and obtain board approval of its project. This would be temporary in nature lasting only amount of time within the second extension of 186 days from August 3, 2012.

25. The petitioner has had a substantial hardship placed in front of them while they were in their main underwriting stage and moving forward with the process. A substantial hardship by means of a legal process was introduced by the Florida Legislature which forced the project to be put on hold for a long period of time. A new construction moratorium bill House Bill 639 (2011) was passed which stalled the project beyond any control of the petitioner. This law is now close to expiring and the 2012

Legislative body did not extend it, which will now let the Applicant move forward with the process. This substantial hardship justifies a waiver or variance from Rules 67-58.020(6) and 67.58.070(6) granting them a second extension to complete credit underwriting. Not doing this given all that has happened since the petitioner first entered credit underwriting would be a violation of the principle of fairness.

**GRANTING THE VARIANCE OR WAIVER WILL
SERVE THE UNDERLYING PURPOSE OF THE STATUTE**

26. Granting the variances or waivers as requested will serve the purpose of the underlying statute. Specifically, section 420.5095 which is implemented by the rules in question seeks to provide safe, sanitary and affordable workforce housing to teachers of Pasco County who are classified as income and occupational eligible workforce housing beneficiaries. East Pasco County is still facing critical shortages of affordable housing for teachers and is necessary for the economic well being of their communities. Specifically, Ch. 420.5095 identifies the need for funding for housing so essential services personal like teachers can afford to work and live.

27. East Pasco County has a need for affordable housing. Essential services personnel and school teachers will benefit from these new homes which provide an affordable option for these families well below current price points for homes and new construction within the area. The “Village Green With Ten Oaks” remains a very viable project located in portion of Pasco County not affected by foreclosures or current market conditions.

28. In sum, acting favorably on PCP Petition will promote the development of workforce housing in Pasco County and serve the underlying purpose of the statute, Section 420.5095, Florida Statutes.

REQUEST FOR TEMPORARY RELIEF

29. The waiver or variance of that portion of Rules 67-58.020(6) and 67.58.070(6) which allows FHFC board to only grant one extension up to 10 months is temporary in nature because the second extension if approved will expire in 186 days from August 3, 2012.

30. Should the Corporation have questions or require any additional information necessary for consideration of the Petition, please contact the undersigned.

RELIEF REQUESTED

31. Petitioner, PCP, upon accepting FHFC invitation to enter into credit underwriting on August 5, 2010 they could not complete it due to House Bill 639 (2011) which stopped all new construction funded by the state of Florida until July 1, 2012. If it was not for House Bill 639 (2011) petitioners would have been able to successfully complete credit underwriting. Petitioner's due to House Bill 639 (2011) requested and received a 10 month extension from October 14, 2011 until August 3, 2012. Petitioners were stopped by House Bill 639 (2011) from the passage of the bill on March 31, 2011 until when the initial credit underwriting period of 14 months was set to expire on October 3, 2011. Petitioner feels very strongly that they should be given that 186 days back in the form of a second extension.

32. Petitioner requests the following:

- a. PCP is requesting that a second extension of 186 days be added back on to the date of petitioners first extension which is due to expire on August 3, 2012. due to the enacted legislation House Bill 639 which prevented any new construction and PCP from completing credit

underwriting. Since credit underwriting has been stopped by this new legislation and just recently restarted PCP needs additional time in order to complete underwriting and secure board approval for the project granted;

b. PCP requests such other relief as the Board deems appropriate.

33. A copy of this Petition has been provided by overnight delivery via Fed Ex to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, FL 32399-1300 and Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301.

Respectfully submitted this 18th day of June, 2012

s/ Patrick P. Sullivan

Patrick P. Sullivan, Esq.
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St. Petersburg, FL 33707
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Florida Bar No. 0060440
Counsel for Petitioner, PCP

CERTIFICATE OF SERVICE

I hereby certify that this Petition was provided by overnight delivery via Fed Ex for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301 with a copy being provided by overnight delivery via Fed Ex to the Joint Administrative Procedures Committee, Room 120, 600 Calhoun Street, The Holland Building, Tallahassee, Florida 32399-1300 and via email and facsimile to Hugh Brown at Florida Housing Finance Corporation, this 18th day of June, 2012.

s/ Patrick P. Sullivan

Patrick P. Sullivan, Esq.