

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2012-051VW

AVON PARK HOUSING AUTHORITY, a public body corporate and politic duly created, organized and existing under the laws of the State of Florida

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION, a public corporation and a public body corporate and politic duly created and existing under the laws of the State of Florida

Respondent.

PETITION FOR WAIVER OF RULE 67-48.010(21)

Petitioner Avon Park Housing Authority, a public body corporate and politic duly created, organized and existing under the laws of the State of Florida (“APHA”) petitions Respondent Florida Housing Finance Corporation, a public corporation and a public body corporate and politic duly created and existing under the laws of the State of Florida (“Florida Housing”) for a waiver of the rule requiring APHA to provide to Florida Housing an annual budget of income and expenses for Lakeside Park I Apartments located in Highlands County, Florida (the “Development”). See Rule 67-48.010(21), F.A.C. (the “Rule”). In support of its Petition, APHA states:

1. Pursuant to Section 120.542, Fla. Stat., and Rule 28-104.002, F.A.C., APHA requests a waiver of the Rule which requires the provision of the Development budget proscribed in Rule 67-48.010(21), F.A.C.

A. THE PETITIONER

2. The name, address, telephone and facsimile numbers for APHA and its qualified representative are:

Avon Park Housing Authority
P. O. Box 1327
Avon Park, Florida 33826
Attention: Larry Shoeman, Executive Director
Telephone: (863) 452-4432
Facsimile: (863) 452-5455

3. For purposes of this Petition, the address, telephone and facsimile numbers for Petitioner's attorney are:

Saxon, Gilmore, Carraway & Gibbons, P.A.
201 E. Kennedy Boulevard, Suite 600
Tampa, Florida 33602
Attention: Jozette V. Chack-On, Esq.
Telephone: (813) 314-4519
Facsimile: (813) 314-4555

B. THE DEVELOPMENT AND FUNDING

4. APHA owns and operates a seventy-nine (79) unit multi-family public housing development known as Lakeside Park. APHA also owns and operates a fifty (50) unit elderly/disabled public housing development known as Delaney Heights. Lakeside Park and Delaney Heights were built in the late 1960's, and are supported annually through the U.S. Department of Housing and Urban Development ("HUD") with public housing operating and capital funding based on the consolidated operation and maintenance of the one hundred twenty-

nine (129) units. As such, APHA's annual audited financial statements are consolidated, and do not segregate income and expenses for each development.

5. The Development is part of Lakeside Park, and only consists of sixteen (16) units.

6. Florida Housing made a loan in the amount of Seven Hundred Sixty Thousand Dollars (\$760,000) to APHA under Florida Housing's Request for Proposals (RFP) 2008-01 dated April 11, 2008 (the "RFP") and Florida Housing's State Apartment Incentive Loan Program (the "Program") to provide a portion of the funds for the rehabilitation and permanent financing of the Development (the "Loan").

7. Under the RFP, the Program is to be administered by Florida Housing pursuant to Fla. Admin. Code Rule Chapter 67-48, except for the sections that are not applicable as listed in the RFP. The Rule was not listed, and therefore, is applicable.

8. The Rule requires APHA to provide Florida Housing with an annual budget of income and expenses for the Development. As stated above, APHA's annual audited financial statements are consolidated, and do not segregate income and expenses for the Development.

9. The costs associated with changing APHA's current reporting system to segregate the Development's income and expenses and the additional audit costs would cause APHA substantial hardship. Further, APHA intends to repay the Loan in full within fifteen (15) years through an automatic direct deposit from the capital funds that APHA receives from HUD each year for the next fifteen (15) years (the "Automatic Payment Process"), which would not be impacted by the Development's income and expenses. In lieu of strict compliance with the Rule's required Development budget, APHA wishes to provide to Florida Housing a Development budget based on a per unit breakout formula (i.e., 16 units = 12.4% of the total 129 units) (the "Modified Budget").

10. The requested Rule waiver would save APHA from incurring the substantial hardship of having to make costly software modifications and from incurring additional audit costs to segregate the Development's sixteen (16) units from the consolidated one hundred twenty-nine (129) units.

11. The requested Rule waiver will not adversely impact the Development or Florida Housing. A denial of this Petition could (a) result in substantial hardship to APHA; and (b) violate principles of fairness. § 120.542(2), Fla. Stat. (2008).

12. The requested Rule waiver is permanent in nature.

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

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

14. APHA requests a waiver of the Rule which provides:

“The Applicant shall provide to the Corporation an annual budget of income and expenses for the Development, certified as accurate by an officer of the Development, no later than 30 days prior to the beginning of the Development's fiscal year.”

Rule 67-48.010(21).

D. JUSTIFICATION FOR APHA'S REQUESTED WAIVER

15. APHA realleges and incorporates Paragraphs 1 through 14 as though fully set forth herein.

16. 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, 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. (2008).

17. In this instance, APHA meets the standards for a waiver of the Rule.

18. Without the Rule waiver, APHA would face substantial hardship in having to make costly software modifications and in incurring additional audit costs to segregate the Development's sixteen (16) units from the consolidated one hundred twenty-nine (129) units, which hardship would impact APHA's ability to provide decent, safe, and affordable housing.

19. Further, the purpose of the underlying statute will be achieved by the Modified Budget and the Automatic Repayment Process.

E. CONCLUSION

20. Controlling Florida law is 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 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. (2008).

21. The requested waiver will not adversely impact the Development or Florida Housing.

22. However, a denial of the requested waiver could result in a substantial hardship for APHA, which would impact APHA's ability to provide decent, safe, and affordable housing.

23. Should Florida Housing require additional information, APHA is available to answer questions and provide all information necessary for consideration of its Petition for Waiver of Rule 67-48.010(21).

WHEREFORE, Petitioner APHA respectfully requests that Florida Housing:

- A. Grant the Petition and all the relief requested herein;
- B. Waive the Rule's strict requirement in this instance only, and allow for the Modified Budget; and
- C. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

SAXON, GILMORE, CARRAWAY &
GIBBONS, P.A.

Attorney for Petitioner

201 E. Kennedy Boulevard, Suite 600

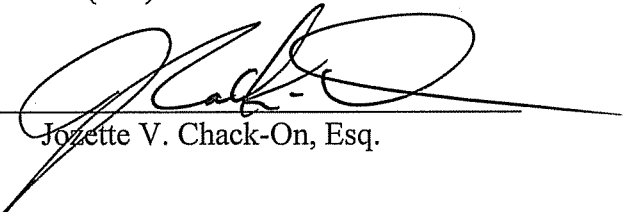
Tampa, Florida 33602

Attention: Jozette V. Chack-On, Esq.

Telephone: (813) 314-4519

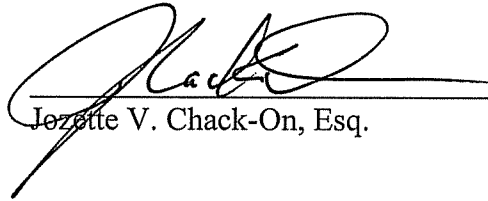
Facsimile: (813) 314-4555

By: _____


Jozette V. Chack-On, Esq.

CERTIFICATE OF SERVICE

The original Petition for Waiver of Rule 67-48.010(21) 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, Suite 500, 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 24th day of August.



Jozette V. Chack-On, Esq.