

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

In re SP MANOR LLC
(Lummus Park Manor)

RFA 2015-111
FHFC Case No.

PETITION FOR WAIVER OF RULE 67-48.002(95)

Petitioner, SP Manor LLC (“SP Manor”), by and through undersigned counsel and pursuant to section 120.542, Florida Statutes, and Florida Administrative Code Chapter 28-104 hereby petitions Florida Housing Finance Corporation (“Florida Housing”) for a waiver of the timing provisions of the 2016 Qualified Allocation Plan (the “2016 QAP”) as incorporated and adopted by Florida Administrative Code Rule 67-48.002(95) (the “Rule”) pertaining to a tax credit exchange. In support, SP Manor states as follows:

The Petitioner

1. The name of the Petitioner is SP Manor LLC. For purposes of this proceeding, the address, email address, telephone number, and fax number are that of SP Manor’s counsel:

Lawrence E. Sellers, Esq.
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The Development

2. On December 4, 2015, SP Manor timely submitted its application in response to RFA 2015-111 for Housing Credit Financing for the Preservation of Existing Affordable Multifamily Housing Developments to assist in the preservation of a 51-unit development located

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in Miami-Dade County, Florida, called Lummus Park Manor (the “Development”). See Application Number 2016-290C.

3. SP Manor requested housing tax credits in the annual amount of \$500,000. The Development received an allocation of 2016 Low-Income Housing Tax Credits (“Tax Credits”) and was invited to underwriting on October 28, 2016. On December 15, 2016, SP Manor entered into a Preliminary Allocation and Carryover Agreement for the allocation of its Tax Credits. Pursuant to 26 U.S.C. § 42(h)(1)(E)(i), the Development must be placed in service not later than the close of the second calendar year following the calendar year in which the allocation is made; in this case, the federally-mandated placed-in-service date would be December 31, 2018.

The Rule For Which The Waiver Is Sought

4. SP Manor requests a waiver of Florida Administrative Code Rule 67-48.002(95) and Subsection II.K. of the 2016 QAP, which provide as follows:

Notwithstanding any other provision of this QAP, 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, and 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 [Florida Housing Finance] 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: (i) the sponsor must have provided written notice to the Corporation, describing the circumstances, all remedial measures attempted by the Applicant to mitigate the delay, and any other pertinent information, prior to returning the allocation; and (ii) the Executive Director must find and determine that the delay was caused by circumstances beyond the Applicant’s control, that the sponsor exercised due diligence in seeking to resolve the circumstances causing delay, that the Development in all respects, except time placed in service, still meets the conditions upon which the Housing Credits were originally allocated, and that the Development is still desirable in terms of meeting affordable housing needs.

Id. (emphasis added).

5. The process found in the 2016 QAP requires an applicant to return its allocation of housing tax credits in the last calendar quarter of the year in which it was otherwise required to be placed in service before a tax credit exchange request can be approved by the Executive Director of Florida Housing. SP Manor is requesting a waiver of this limitation on the timing of the tax credit exchange, to allow a tax credit change to be approved by the Executive Director or the Board of Directors of Florida Housing at this time rather than in the last quarter of 2018.

Statutes Implemented By The Rule And The 2016 QAP

6. The 2016 QAP and the Rule implement the statutes governing the allocation of low-income housing tax credits. *See* § 420.5099, Fla. Stat. The Act designates Florida Housing as the State of Florida's housing credit agency, and as the State's designated agent, Florida Housing is responsible for and is authorized to establish procedures for the allocation and distribution of low-income housing tax credits. § 420.5099(1), (2), Fla. Stat.

Justification For The Requested Waiver

7. SP Manor requests a waiver of the timing requirements found in the 2016 QAP to permit Florida Housing to approve the tax credit exchange prior to the last quarter of 2018.

8. The disruption in the equity market jeopardizes the probability that the Development will be placed in service by December 31, 2018.

9. There is also uncertainty regarding a credit swap if delayed until the fourth quarter of 2018; such delay will all but certainly reduce SP Manor's likelihood of finding a tax credit investor. Absent approval of the requested waiver and approval of the credit swap, a tax credit investor is unlikely to participate in the transaction, resulting in the inability for SP Manor to construct the Development.

10. Florida Housing has the authority to grant waivers to its rule requirements when strict application would lead to unreasonable, unfair, and unintended consequences in particular instances. § 120.541(1), Fla. Stat. A waiver shall be granted when the person who is subject to the rule demonstrates that 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.

11. Florida Housing has already approved other requests to waive the timing requirements of the 2016 QAP for developments to be placed in service by December 31, 2018. *See Equality Park, Ltd. v. Fla. Housing Fin. Corp.*, Consent Agenda Item Approved at June 16, 2017 Board Meeting, FHFC Case No. 2017-039VW; *Dr. Alice Moore Apartments, LLLP v. Fla. Housing Fin. Corp.*, Consent Agenda Item Approved at June 16, 2017 Board Meeting, FHFC Case No. 2017-028VW; *In Re: Jasmine Housing, Ltd.*, Order Granting Waiver of Rule 67-48.002(95), FHFC Case No. 2017-028VW (May 5, 2017).¹

12. Here, SP Manor also meets the requirements for a waiver of the Rule and timing limitations in the 2016 QAP. The requested waiver will not adversely impact the Development or Florida Housing and will ensure that 51 affordable elderly housing units will be preserved and made available for the target population in Miami-Dade County. The strict application of the 2016 QAP and the timing limitation on the credit swap will create substantial hardship for SP Manor because it will likely keep the developer from being able to close. Further, the waiver will serve the purposes of the statute and the Florida Housing Finance Corporation Act because one of the

¹ In addition, such waivers are routinely granted by Florida Housing. *See, e.g., In Re: Osprey Apartments, LLC*, Order Granting Waiver of Rules 67-48.002(92), 67-48.004(3)(g)(14)(g), Florida Administrative Code (2013), FHFC Case No. 2015-042VW (Dec. 11, 2015); *Janie Poe Assocs. 3, LLC v. Fla. Housing Finance Corp.*, Order Granting Waiver of 2012 Qualified Allocation Plan, Paragraph 9, as incorporated by reference at Rule 67-48.002(94), F.A.C., FHFC Case No. 2015-002VW (March 20, 2015).

Act's primary purposes is to facilitate the availability of decent, safe, and sanitary housing in this state. *See* § 420.5099(2), Fla. Stat. Denial of the waiver would deprive Miami-Dade County of essential and affordable housing units.

13. Moreover, the Florida Housing Finance Corporation Act was enacted, at least in part, to encourage private and public investment in facilities for persons of low income. By granting this waiver, it increases the chances that SP Manor will be able to find a tax credit investor to support the Development. If the Development is supported by a tax credit investor, Florida Housing would recognize the goal of increasing the supply of affordable housing through private investment in housing for persons of low income, and recognize the economic realities and principles of fundamental fairness in developing affordable rental housing. *See* § 420.5099(2), Fla. Stat.

Petitioner Requests A Permanent Waiver

14. SP Manor requests a permanent waiver.

Action Requested

WHEREFORE, SP Manor respectfully requests that Florida Housing:

- A. Grant this Petition and all of the relief requested herein;
- B. Grant the requested waiver of the timing requirements found in the 2016 QAP and allow the requested credit exchange before the last calendar quarter of 2018; and
- C. Grant such further relief as it may deem appropriate.

Respectfully submitted on July 6, 2017.

/s/Lawrence E. Sellers, Jr.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this Petition for Waiver of Rule 67-48.002(95) was filed by email with Kate Fleming, Agency Clerk, kate.flemming@floridahousing.org; that a true and correct copy was provided by email to Hugh Brown, General Counsel, hugh.brown@floridahousing.org, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301; and that a true and correct copy was provided to the Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 West Madison Street, Tallahassee, Florida 32399-1400, and via email to joint.admin.procedures@leg.state.fl.us, all on July 6, 2017.

/s/Lawrence E. Sellers, Jr.

Lawrence E. Sellers, Jr.