

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

CORAL BAY COVE, LLC,

Petitioner,

CASE NO.: 2017- 079VW

v.

APPLICATION NO. 2016-394BS

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

**PETITION FOR WAIVER OF
RULES 67-48.004(3)(c), 67-21.003(8)(c), AND 67-60.006(1), F.A.C.**

Petitioner Coral Bay Cove, a Florida limited liability company (the “Petitioner”) submits its Petition to Respondent Florida Housing Finance Corporation (the “Corporation”) for a waiver of Rules 67-48.004(3)(c), 67-21.003(8)(c), and 67-60.006(1), F.A.C. On November 16, 2017, the U.S. House of Representatives suddenly passed a bill that would eliminate Private Activity Bonds effective January 1, 2018. If the waiver is not granted, Petitioner will lose approximately \$18 million in tax credit equity and, with it, the ability to provide much needed affordable housing. In support of its Petition, the Petitioner states as follows:

A. THE PETITIONER

1. The name, address, telephone and facsimile numbers, and email address for Petitioner and its qualified representative are:

Francisco Rojo
Manager
Coral Bay Cove, LLC
3050 Biscayne Boulevard, Suite 300

Miami, Florida 33137
Tel (305) 538-9552, Ext. 103
Fax (305) 538-9553
E-mail: francisco@landmarkco.net

2. The name, address, telephone and facsimile numbers for Petitioner's attorney are:

Brian J. McDonough
Stearns Weaver Miller Weissler Alhadeff & Sitterson
150 West Flagler Street
Suite 2200
Miami, FL 33130
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Tel: (305) 789-3350
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B. THE DEVELOPMENT AND ITS FINANCING

3. In an effort to increase affordable housing in Miami-Dade County, Petitioner plans to build Coral Bay Cove (the "Development") utilizing, in part, proceeds derived through the issuance of tax-exempt bonds (or a tax-exempt loan which is treated in the same manner as bonds and is used interchangeably with the term "bonds" herein) by the Corporation.

4. To make the Development economically viable, Petitioner submitted an application in response to RFA 2016-109 (the "RFA") on October 18, 2016. At that time, Petitioner intended for the bonds to be issued by the Corporation. Petitioner indicated this intent on page 10 of its application and proceeded in compliance with Rule 67-21.028(1), F.A.C.

5. Through and including the date of submission of this petition, Petitioner continued to proceed with issuance of the bonds by the Corporation.

6. On November 16, 2017, however, the U.S. House of Representatives passed bill 227-205 (the "Bill"), which terminates the tax-free status of certain bonds, including Private Activity Bonds, beginning January 1, 2018. Because of this Bill, Petitioner must make preparations to close on the bonds prior to December 31, 2017 or risk the benefits of utilizing tax

exempt mortgage revenue bonds including non-competitive housing credits anticipated to be allocated to the Project and the roughly \$18 million tax credit equity that would be generated through the syndication of such housing credits.

7. The Corporation is not able to issue the bonds prior to December 31, 2017. However, the Housing Finance Authority of Miami-Dade County will likely be able to issue the bonds before the deadline if the requested waiver is granted.

8. The requested Rule waiver will not adversely affect the Corporation because the waiver would ensure that the State Apartment Incentive Loan and Extremely Low Income Loans are utilized, thereby increasing the availability of affordable housing. However, a denial of this Petition: (a) will result in a substantial economic hardship to Petitioner by causing it to be unable to move forward with this Project through no fault of its own, (b) could deprive Miami-Dade County of desperately needed affordable housing units, and (c) would violate principles of fairness.¹ *See* Section 120.542(2), Fla. Stat. Due to the significant time and costs that will be incurred by Petitioner in order to proceed to secure bonds through the Housing Finance Authority of Miami-Dade County, Petitioner is requesting that this waiver continue to be applicable in the event Petitioner does not close on its bonds on or prior to December 31, 2017 or in the event Private Activity Bonds are not eliminated by Congress.

9. The requested waiver is permanent in nature.

C. RULE FROM WHICH WAIVER IS SOUGHT

10. Petitioner requests a waiver from the following rules (the “Rules”):

¹ “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. *See* Section 120.542(2), Florida Statutes.

- Rule 67-48.004(3)(c), F.A.C., which provides: “For the SAIL, HOME and Housing Credit Programs, notwithstanding any other provision of these rules, the following items as identified by the Applicant in the Application must be maintained and cannot be changed by the Applicant after the applicable submission, unless provided otherwise below: . . . (c) Program(s) applied for. . . .”
- Rule 67-21.003(8)(c), F.A.C., which provides: “Notwithstanding any other provision of these rules, there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application is deemed complete. Those items are as follows: (c) Program(s) applied for”
- Rule 67-60.006(1), F.A.C., which provides: “The failure of an Applicant to supply required information in connection with any competitive solicitation pursuant to this rule chapter shall be grounds for a determination of nonresponsiveness with respect to its Application. If a determination of nonresponsiveness is made by the Corporation, the Application shall not be considered.”²

² The RFA required, among other things: “(b) If the Applicant intends to use Non-Corporation-issued Tax-Exempt Bonds, the Applicant must provide, as Attachment 16, the required letter from the Public Housing Authority, County Housing Finance Authority, or Local Government (i) confirming that the Applicant has applied for the Tax-Exempt Bonds, (ii) stating the amount of Bonds requested, and (iii) confirming that the closing on the Bonds has not occurred and will not occur prior to the Application Deadline for this RFA, as outlined in Section Four A.11.a.(2)(b) of the RFA.” Given Petitioner’s intent to finance the Development with bonds issued by the Corporation, Petitioner did not include the subject letter in Attachment 16 of its Application. Petitioner will simultaneously request a waiver of this RFA requirement in conjunction with this Petition. The bond closing did not occur prior to the application deadline and Petitioner is **not** requesting a waiver of the prohibition from closing on the bonds prior to the application deadline.

D. STATUTES IMPLEMENTED BY THE RULES

11. The Rules are implementing, among other sections of the Florida Housing Finance Corporation Act, Sections 420.502, 420.507, 420.508, 420.5087, 420.5089, 420.509, and 420.5099, Florida Statutes.

- Section 420.502 provides the legislative findings supporting the Act.
- Section 420.507 provides for the Corporation's powers, which, among other things, includes issuing bonds for the provision of affordable housing; imposing conditions respecting the granting of mortgage loans and making rules to carry out the purposes of, and exercising any power granted by, the Florida Housing Finance Corporation Act, Part V, of Chapter 420, Florida Statutes.
- Section 420.508 provides for special powers for the Corporation regarding multifamily and single-family projects, including, among other things, making and participating in the making of mortgage loans for permanent or construction financing of development costs of projects subject to specified conditions, and establishing terms of mortgage loans funded pursuant to Part V of Chapter 420, Florida Statutes.
- Section 420.5087 provides for the State Apartment Incentive Loan Program.
- Section 420.5089 provides for the HOME Investment Partnership Program and HOME Investment Partnership Fund.³
- Section 420.509 provides for revenue bonds.

³ Petitioner is not receiving funds from the HOME Investment Partnership Program or HOME Investment Partnership Fund.

- Section 420.5099 provides for the allocation of the low-income housing tax credit.

E. JUSTIFICATION FOR REQUESTED WAIVER

12. Petitioner requests a waiver from the Rules because Petitioner could not otherwise proceed to closing. But for the unexpected passage of the Bill, Petitioner would have continued to pursue issuance of the bonds via the Corporation. However, in light of the Bill and the possible passage of legislation by the U.S. Congress of legislation that includes provisions of the Bill which abolish Private Activity Bonds, such as multifamily mortgage revenue bonds, the only means for Petitioner to receive the benefits of tax-exempt bonds may very well be to close on such bonds by December 31, 2017. Because the Corporation cannot issue the bonds before that date, Petitioner is essentially forced to pursue another issuer (*i.e.*, the Housing Finance Authority of Miami-Dade County).

13. 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: (1) the person who is subject to the rule demonstrates that the application of the rule would 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.

14. For the reasons stated above, application of the Rule would have a material adverse effect on the Development's viability. Strict application of the Rule would create a substantial hardship for Petitioner in that multifamily housing revenue bonds may not be able to be issued by the Corporation after December 31, 2017, and the State Apartment Incentive Loan

and Extremely Low Income Loan funds would be forfeited and the Project would not be able to be built.

15. If this requested waiver is not granted, Petitioner will suffer a substantial and unnecessary economic and operational hardship. Without the bonds, the Development will be financially infeasible as affordable housing. Thus, denial of the requested waiver would deny Miami-Dade County of this needed affordable housing.

16. A waiver of the Rules' requirements would serve the purposes of the implementing statutes, and the Act as a whole, because one of the Act's primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to households of limited means.

17. Should the Corporation require additional information, a representative of Petitioner is available to answer questions and to provide all information necessary for consideration of this Petition.

F. ACTION REQUESTED

18. Petitioner requests the following:
- a. That Florida Housing grant Petitioner a permanent waiver from Rules 67-48.004(3)(c), 67-21.003(8)(c), and 67-60.006(1), F.A.C., so that Petitioner may pursue issuance of the bonds by the Housing Finance Authority of Miami-Dade County instead of the Corporation;
 - b. That the Corporation's granting of this waiver continue to be applicable in the event Petitioner does not close on its bonds on or prior to December 31, 2017 or in the event Private Activity Bonds are not eliminated by Congress.
 - c. That the Corporation grant the Petition and all the relief requested therein; and

d. That the Corporation grant such further relief as may be deemed appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
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/s Brian J. McDonough
BRIAN J. MCDONOUGH, ESQ.

CERTIFICATE OF SERVICE

The original Petition is being served by hand delivery, with a copy served by electronic transmission for filing with the Corporation Clerk for the Florida Housing Finance Corporation, CorporationClerk@floridahousing.org, 227 North Bronough Street, Tallahassee, Florida 32301, with copies served by hand delivery to the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 20th day of November, 2017.

/s Brian J. McDonough
Brian J. McDonough, Esq.