

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

CASE NO. 2017-084VW

LAKE BEULAH, LTD.

Petitioner,

vs.

FHFC APPLICATION: 2016-369BS
REQUEST FOR APPLICATIONS: 2016-109

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

PETITION FOR WAIVER OF RULE 67-48.0072(21)(b), F.A.C.

Pursuant to Section 120.542, Florida Statutes, and Rule 28-104.002, Florida Administrative Code, Petitioner Lake Beulah, Ltd., a Florida limited partnership, submits its Petition to Respondent Florida Housing Finance Corporation (“Florida Housing”) for a temporary waiver or variance of Florida Housing’s requirement that “The Corporation shall charge a nonrefundable extension fee of one (1) percent of each loan amount if the request to extend the credit underwriting and firm loan commitment process beyond the initial nine (9) month deadline is approved. . . .” *See* Rule 67-48.0072(21)(b), Florida Administrative Code (the “Rule”). Petitioner will suffer a hardship if the waiver is denied as there is currently pending legislation that, if adopted, could eliminate private activity bonds and paying the extension fee before the resolution of this issue is a hardship that Petitioner desires to avoid until it is determined that the proposed financing can actually occur..

In support thereof, Petitioner states:

A. THE PETITIONER

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

Matthew Rieger
Lake Beulah, LTD
3225 Aviation Ave.
Suite 602
Coconut Grove, FL 33133
Tel: 305-537-4704
Fax: N/A
E-mail: MattR@htgf.com

2. The name, address, telephone and facsimile numbers, and email address 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. Petitioner timely submitted its Application in response to the Request for Applications ("RFA") for the development named "Lake Beulah View," which later received an approval to change the development name to "Twin Lakes Estates – Phase II" (the "Development"). *See* Application No. 2016-369BS. The Development will need the sources of financing resulting from the contemplated tax-exempt financing and equity raised through the syndication of the resulting low-income tax credits in order to be able to be feasible. The Petitioner has separately requested of the Florida Housing Board, by letter dated November 14, 2017, to extend the 9-month period to secure a firm commitment for the SAIL and ELI Loan, and if such is granted, the Petitioner will be obligated to pay a 1% extension fee based upon the

amount of the contemplated SAIL and ELI loans (a \$66,000 extension fee) within a few days of January 5, 2018.

4. The Development described immediately above will happen only if the Private Activity Bonds are not abolished as a result of the pending federal legislation. Thus, Petitioner is in need of a Rule waiver, so that it can delay the payment of the extension fee until the Tax Bill legislation is finalized without the abolishment of the private activity bonds (or fails), or July 5, 2018, whichever is earlier.

5. The requested Rule waiver will not adversely affect the Development or Florida Housing because, if Private Activity Bonds remain and the Development does not withdraw, the extension fee will be paid.

6. The requested waiver is temporary in nature.

C. RULE FROM WHICH WAIVER IS SOUGHT

7. Petitioner requests a waiver from Rule 67-48.072(21)(b), F.A.C., which requires each payment of extension fee to be paid after the original commitment period has expired.

D. STATUTES IMPLEMENTED BY THE RULE

8. Section 420.507, Florida Statutes, authorizes Florida Housing to, among other things, issue loans for the provision of affordable housing and make rules to carry out the purposes of and exercise any power granted by the Florida Housing Finance Corporation Act, Part V, of Chapter 420, Florida Statutes. Section 420.508, Florida Statutes, authorizes Florida Housing to, among other things, make and participate in the making of mortgage loans for permanent or construction financing of development costs of projects subject to specified conditions, and to establish terms of mortgage loans funded pursuant to Part V of Chapter 420, Florida Statutes.

E. JUSTIFICATION FOR REQUESTED WAIVER

9. On November 16, 2017, the U.S. House of Representatives passed bill 227-205 (the "Bill"), which would terminate the tax-free status of certain bonds, including Private Activity Bonds, beginning January 1, 2018. As a result of this Bill, Petitioner could potentially lose the benefits of such tax-exempt financing including the tax credit equity that will be generated through the anticipated allocation of housing credits that the Development will receive due to its use of tax exempt financing to construct the Development.

10. 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.

11. For the reasons stated above, application of the Rule would have a material adverse effect on the Development's viability, forcing Petitioner to potentially withdraw its SAIL and ELI Loan funding before the extension fee is due. Strict application of the Rule would create a substantial hardship for Petitioner in that the closing could not occur.

12. If this requested waiver is not granted, Petitioner will suffer a substantial and unnecessary economic and operational hardship. Absent the waiver, Petitioner will not be able to close on the tax-exempt financing in 2017 and – if the Bill passes in its current form – will not ever be able to close. Denial of the requested waiver would thus deny Polk County of this much-needed affordable housing.

13. A waiver of the Rule's requirements would serve the purposes of Section 420.509, F.S., 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.

14. Should Florida Housing 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

15. Petitioner requests the following:

- a. That Florida Housing grant Petitioner a temporary waiver from Rule 67-48.0072(21)(b), Florida Administrative Code, allowing the extension fee to be paid after Tax Bill issue has been resolved, but in any event, by no later than July 5, 2018; Petitioner will comply with the Rule, and pay the extension fee, five (5) business days upon Florida Housing request subsequent to the Bill's resolution assuming that private activity bonds remain a viable financing option, or July 5, 2018.
- b. That Florida Housing grant the Petition and all the relief requested therein; and
- c. That Florida Housing 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.