

WATERBURY COMPANIES LLC  
175 FIRST STREET SE #1904  
ST. PETERSBURG, FLORIDA 33701

To: Florida Housing Finance Corporation

From: Mark Waterbury

Date: February 21, 2018

Re: Rule 67-21 Developer Fee

MEMORANDUM

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I would like to express my disagreement with, and concern regarding, the reduction in allowable developer fee being proposed in Rule 67-21.

Prior, the Rules were changed to allow the developer fee to be 18% on the acquisition portion of a rehab acquisition. This fee structure recognized the recurring challenge of securing adequate funds on rehab transactions. Such funding shortfalls invariably came at the expense of limiting the amount of required rehab that could be funded, which in turn made transactions unfeasible.

Most people would agree that the term "Developer Fee" can be a bit of a misnomer. In acquisition renovation transactions, much of the fee is not financed from the equity or debt, but rather paid over time from the cash flow of the project. The increased tax credits generated by claiming the 18% developer fee allows for the adequacy of funding improvements and holds the developer accountable to maintain the property going forward to earn out the balance of his developer fee from cash flow. Changing the Rule as proposed will dramatically reduce the number of transactions that can feasibly be rehabilitated going forward because of the resulting shortfall in proceeds.

There is also concern over the timing of the proposal. There are currently developers who have been expending large sums of due diligence funds, third party fees and non-refundable deposits under a feasibility framework that assumed an 18% developer fee that has been in effect for over a decade. It takes an incredible commitment of time and resources by a developer to prepare a prospective rehab transaction to be qualified for a LIHTC or Bond application. The proposed Rule change would make many unfeasible.

As a case in point, a pending Tax Exempt bond transaction is preparing to submit an application in the next week. The transaction has assumed an 18% developer fee on the acquisition portion of the development budget. Of the entire development fee, only 15% will be funded at close and the balance of 85% is projected to be funded from cash flow over the following 15 years. If the allowable developer fee were to be reduced to 4%, the tax credits would be insufficient to fund the necessary renovations budgeted, and no cash fee would be paid, making the transaction unfeasible.

I would like to conclude by saying that the original rationale for allowing for an 18% developer fee on an acquisition rehab was well conceived, logical and necessary to allow the feasibility of properties to be renovated. For the reasons I have attempted to communicate, reducing the “developer fee” is contrary to good policy and will come at the expense of many fewer projects. Please feel free to contact me at 727-480-0522 if you would like to discuss in more detail.

Sincerely,

A handwritten signature in blue ink that reads "J. Mark Waterbury". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

J. Mark Waterbury