

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

SOUTHWEST FLORIDA GWI HOUSING
XVII, INC.

Petitioner,

vs.

APPLICATION NO. 2014-406H

CASE NO. 2015-046VW

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

**AMENDED PETITION FOR WAIVER OF RULE 67-48.004 AND PROVISIONS
OF RFA 2014-109, FOR A CHANGE IN OWNERSHIP STRUCTURE AND
REPLACEMENT OF THEIR BOARD BY MORE THAN 33.3%**

SOUTHWEST FLORIDA GWI HOUSING XVII, INC., a Florida Not For Profit Corporation (“Petitioner”), by and through its undersigned counsel, hereby petitions Respondent, the FLORIDA HOUSING FINANCE CORPORATION (the “Corporation”) for a waiver of the Corporation’s prohibition of a material change in the ownership structure and replacement of their Board by more than 33.3% of the named Applicant prior to loan closing, which is set forth in the Corporation’s Request For Applications No. 2014-109 (the “RFA”). This Amended Petition is filed pursuant to Section 120.542, Florida Statutes and Chapter 28-104, Florida Administrative Code.

THE PETITIONER

In support of its petition, the Petitioner states:

1. The address, telephone number, facsimile number and e-mail address of the Petitioner are:

Southwest Florida GWI Housing XVII, Inc.
5100 Tice St.
Ft. Myers, FL 33905
Attn: Rick Evanchyk
Telephone: 239-995-2106
Facsimile: 239-995-5868
Email: RickEvanchyk@GoodwillSWFL.org

2. The address, telephone number, facsimile number and e-mail address of Petitioner's counsel are:

John A. Noland, Esquire
Henderson, Franklin, Starnes & Holt, P.A.
1715 Monroe Street
Fort Myers, FL 33902
Telephone: 239-344-1140
Facsimile: 239-344-1515
Email: john.noland@henlaw.com

3. The Petitioner timely submitted its Competitive Application for the development named "Moore Haven Apts", a new construction 50-unit rural development intended to serve the low and very low-income Family demographic living in Glades County, Florida (the "Development"). The Development received an invitation into credit underwriting from the Corporation on August 18th, 2014, which was timely accepted by Petitioner on August 22nd, 2014.

4. The HOME funds allocated to the Petitioner, together with other loan and equity sources, will provide the necessary funds for the construction of the Development.

THE RULES FROM WHICH WAIVER IS SOUGHT

5. Petitioner requests a waiver from Rule 67-48.004, F.A.C. which adopts and

incorporates the Competitive Application Package (the "Rule"). Specifically, Petitioner is seeking a waiver from Exhibit B.2 of the Competitive Application Package, which prohibits a material change in the ownership structure and Board change of more than 33.3% of the Petitioner prior to loan closing.

6. Exhibit B.2 of the Competitive Application Package provides, in relevant part:

(2) The HOME Applicant entity shall be the borrowing entity and cannot be changed until after loan closing. Replacement of the Applicant or a material change (33.3 percent or more of the Applicant, a General Partner of the Applicant, or a member of the Applicant) in the ownership structure of the named Applicant prior to loan closing shall result in disqualification from receiving funding and shall be deemed a material misrepresentation. Changes after loan closing require Board approval.

STATUTES IMPLEMENTED BY THE RULE

7. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act, the statute that created the HOME Investment Partnership Program; HOME Investment Partnership Fund. *See* Section 420.5089 F.S. (the "Statute").

8. The Corporation has the authority pursuant to Section 120.542(1), Florida Statutes, and Chapter 28-104, F.A.C., to grant waivers to its rule requirements when strict application of such rules would lead to unreasonable, unfair and unintended consequences in particular instances.

9. Per Section 120.542(2), Florida Statutes, waivers shall be granted when the person subject to the rule demonstrates that the application of the rule would (1) create a substantial hardship or violate principals of fairness, and (2) the purpose of the underlying statute has been or will be achieved by other means by the person.

PETITIONER REQUESTS A WAIVER FROM THE
RULES FOR THE FOLLOWING REASONS

10. Petitioner requests a waiver from Rule 67-48.004 and Provision Exhibit B.2 of the RFA

prohibiting Petitioner from making a material change in its ownership structure prior to loan closing. Petitioner seeks to replace more than 33.3% of its Board members.

11. Change of the Board members is necessary to continue to meet the mission of the Petitioner to be able to produce, manage and maintain viable affordable housing units. Certain Board members would like to resign and it is the Petitioner's desire to be able to replace them with others who will maintain the strong culture and drive of the Non-Profit.

- a. Resigning Board members are: Daniel F. Adams, William Barrett, Sherri Denning, Ray V. Pottorf, Dale Schneider, Michael Sullivan, Rick Evanchyk, Joseph Spielman.
- b. New Board members are: Raymond Earl Sturwold, Patricia Thompson, Katherine Britton, Michael F. Carr, Penelope Morrill, Joseph Wubbena.

12. Petitioner's Board has voted approval for such change.

13. The Corporation has the authority pursuant to Section 120.542(1), Florida Statutes, to provide relief from its rules if strict application of those rules will lead to unreasonable, unfair or unintended results in particular instances. Unless the Rule is waived to allow the changes as outlined above, certain unreasonable, unfair and unintended consequences will occur, resulting in a substantial hardship to the Petitioner and the Development. Strict application of the Rule will lead to the unintended consequence of preventing internal structuring changes within the originally contemplated Development. This will result in a substantial hardship to Petitioner, as the change in ownership structure is merely a change in form. The Corporation will not be harmed in the granting of this Petition, as the intent of the Rule will not be violated, only an internal restructuring will occur.

14. Petitioner received and accepted its invitation to underwriting on August 22nd, 2014,

properly completed underwriting with a positive recommendation on June 4th, 2015 and received final Board approval from the Corporation by issuing a firm commitment on June 22nd, 2015.

15. The requested change would neither affect the scoring of the Petitioner's Application nor allow Petitioner to gain an unfair advantage over other Applicants. All Applicants that applied for funding received awards during this RFA cycle. There are no other unfunded Applicants and no detrimental harm can be done by this waiver of the rule and the transition of the Petitioners Board.

16. The requested waiver will not adversely affect the Development, the Corporation or any other Applicant seeking funds pursuant to the RFA. However, a denial of this Petition (a) will result in a substantial economic hardship to Petitioner; (b) possibility that the Development may not move forward; (c) could deprive Glades County, Florida of essential affordable housing units in a timely manner and (d) would violate principles of fairness. 120.542(2), Fla. Stat.

WAIVER WILL SERVE UNDERLYING PURPOSE OF THE STATUTE

17. Petitioner believes that a waiver of the Rule will serve the purpose of the Statute which is implemented by the Rule. The Florida Housing Finance Corporation Act (Section 420.501 F.S.) was passed in order to encourage private and public investment in facilities for persons of low-income. The purpose of the creation of the HOME Investment Partnership Program is to stimulate creative private sector initiatives to increase the supply of affordable housing. By granting this waiver and permitting Petitioner to change its Board and ownership structure, as requested in this Petition, the Corporation would recognize the goal of increasing the supply of affordable housing through private investment in persons of low-income.

18. By granting the requested waiver, the Corporation would recognize the economic realities and principles of fundamental fairness in the development of affordable rental housing. This recognition would promote participation by experienced developers to further the Corporation's

purposes through construction of projects for low & very low-income families in an economically viable manner. The specific goal of providing 50 units of affordable housing in Glades County, Florida will be achieved through the approval of the waivers requested in this Petition, with no detriment to any party. Granting of the requested waiver will serve the underlying purpose of Chapter 420, Part V, Florida Statutes by facilitating the development of multifamily housing that is affordable to family residents.

TYPE OF WAIVER

19. The waiver being sought is permanent in nature.

ACTION REQUESTED

20. Should the Corporation require additional information, Petitioner is available to answer questions and to provide all information necessary for consideration of its Petition for Waiver from Rule 67-48.004, F.A.C. and Provision Exhibit B.2 of the RFA.

WHEREFORE, Petitioner respectfully requests the following:

- A. Grant the Petition and all relief requested herein;
- B. Waive Rule 67-48.004, Florida Administrative Code, which adopts and incorporates the Competitive Application Package and Provision Exhibit B.2 of the RFA, allowing Petitioner to change its ownership structure and Board by more than 33.3% prior to loan closing; and
- C. Grant such further relief as may be deemed appropriate.

Respectfully submitted this 12th day of January, 2016,



Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that this Petition is being served by hand delivery for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 Bronough Street, Suite 5000, Tallahassee, FL 32301-1329, with copies served by hand delivery to the Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 West Madison Street, Tallahassee, Florida 32399-1400 and via email to Hugh Brown at Florida Housing Finance Corporation at hugh.brown@floridahousing.org , this 12th day of January, 2016.

John A. Nolasco