

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

SUWANNEE POINTE, LP

Petitioner,

FHFC CASE NO. 2018-070VW

Application No. 2017-100C

v.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

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PETITION FOR WAIVER OF RULE 67-48.002(95)

Petitioner Suwannee Pointe, LP (the "Petitioner") by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation ("Florida Housing") for a waiver of the timing provisions of the 2016 Qualified Allocation Plan ("2016 QAP") as incorporated and adopted by Rule 67-48.002(95), Florida Administrative Code ("F.A.C.") (the "Rule") pertaining to a tax credit exchange. In support, Petitioner states as follows:

A. THE PETITIONER

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

Suwannee Pointe, LP
1002 West 23rd Street,
Suite 400
Panama City, FL 32405
Attn: Joseph F. Chapman, IV
Telephone: 850-769-8981
Fax: 850-914-8445
E-mail: joey.chapman@royalamerican.com

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

James A. Boyd, Jr., General Counsel
Royal American Development, Inc.
1002 West 23rd Street
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Panama City, FL 32405
850-769-8981 (Phone)
850-914-8445 (Facsimile)
Email: jim.boyd@royalamerican.com

3. On November 21, 2016, Petitioner timely submitted its Application in response to RFA 2016-110 for Housing Credit Financing for Affordable Housing Developments Located in Medium and Small Counties (the "RFA") to assist in the construction of a 36-unit development located in Live Oak, Florida (the "Development"). Petitioner requested housing tax credits in the annual amount of \$477,091. The Development received an allocation of 2016 Low-Income Housing Credits ("Tax Credits") and was invited to credit underwriting on June 19, 2017. On November 9, 2017, Petitioner entered into a Carryover Agreement for the allocation of its Tax Credits. Pursuant to the Carryover Agreement, the Petitioner must submit site control documentation and its 10% test certification by May 31, 2018; the Development must commence construction by August 31, 2018; and the Development must be placed in service no later than November 30, 2019.

4. On May 23, 2018, pursuant to a written request from the Petitioner, Florida Housing extended the Petitioner's deadline for submitting site control documentation and its 10% test to September 30, 2018.

B. WAIVER IS PERMANENT

5. The waiver being sought is permanent in nature.

C. THE RULE FROM WHICH WAIVER IS REQUESTED

6. Petitioner requests a waiver of Rule 67-48.002(95), F.A.C. and Subsection II.K. of the 2016 QAP, which provides as follows:

“K. 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 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.”

(emphasis added).

7. 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. Petitioner is requesting a waiver of this limitation on the timing of the tax credit exchange, to allow a credit exchange to be approved by the Executive Director, or the Board of Directors of Florida Housing, at this time rather than in the last calendar quarter of 2019.

D. STATUTES IMPLEMENTED BY THE RULE AND THE 2016 QAP

7. The 2016 QAP and the Rule implement, among other sections of the Florida Housing Finance Corporation Act (the “Act”), the statutes relating to the allocation of Low-Income Housing Tax Credits contained in Section 420.5099 of the Florida Statutes. *See §420.5099, Fla. Stat. (2016)* (the “Statute”).

E. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE AND SUBSECTION II.K OF THE 2016 QAP.

8. As mentioned above, Petitioner 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 2019.

9. Over the last year the Development has suffered several unforeseen events that make it clear that the Development will not be placed in service by November 30, 2019. The Development was proceeding towards closing, having already submitted final architectural and civil engineering plans for permitting, when the culminative effect of the following events necessitate an extension of the November 30, 2019 placed in service date.

- a) Due to the reduction in the federal corporate income tax rate, the equity markets suffered a significant pull-back. The result of this reduction in equity pricing was felt not only by the Petitioner and this Development but by many projects scheduled to close in the near future. The Petitioner’s tax credit investor - R4 Capital, LLC - has advised the Petitioner that it will not be able to close on the terms that had previously been feasible. More importantly, the tax credit investor will not close this Development without an exchange of the credits.

- b) Due the changing economic conditions, the interest rates initially quoted by the construction and permanent lenders have increased. Not only is the cost of funds increasing since the Development's application was initially submitted, the Development is also experiencing significant increases in construction costs.
- c) During the review of the Development's architectural and civil engineering plans, it was determined that one of the proposed residential buildings is situated upon a potential sink hole. Accordingly, the architectural plans must be heavily modified and a new civil engineering plan must be developed.

10) The Developer is actively working to overcome the substantial funding gap created by the unforeseen circumstances described in this Petition.

11) As discussed above, the delays have been caused by circumstances outside the control of the Petitioner. The issues which ensued due to the tax credit industry's reaction to the reduction in marginal corporate tax rates were not only unforeseen and unanticipated by the Petitioner, they were unforeseen and unanticipated by the tax credit industry. Furthermore, the increased costs associated with the Development – both construction cost in general and the additional burden associated with the Development's redesign due to the discovery of a sinkhole – were also unforeseen and unanticipated by the Petitioner. Accordingly, the delay in closing which has risen due to the need to reevaluate the financial structure of the transaction and redesign the Development make it unfeasible to meet the November 30, 2019 placed in service deadline. In addition, without the FHFC's approval of the Waiver and its associated credit swap, the tax credit investor will not participate in the Development, resulting in the Petitioner's inability to construct the Development.

12) 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 the rules would lead to unreasonable, unfair and unintended consequences, in particular instances. Waivers shall be granted when the person who is subject to the rule demonstrates that the application of the rule would: (1) create a substantial hardship or, violate principles of fairness,¹ 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.* (2016).

13) In this instance, Petitioner meets the standards 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 36 new affordable family housing units will be constructed and made available for the target population in Suwannee County, Florida. The strict application of the 2016 QAP and the timing on the credit swap will create substantial hardship for Petitioner because it will not be able to construct the Development. Further, the waiver will serve the purposes of the Statute and the Act, because one of the Act's primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State. In addition, the Development represents the only funding of new construction in a small county – other than Monroe County - for the last two years.

14) As mentioned above, the requested waiver serves the purpose of the Statute because one of the primary goals of the Statute is to facilitate the availability of decent, safe, and sanitary housing in the State of Florida for low-income households. Moreover, the Statute was enacted, in part, to encourage private and public investment in facilities for persons of low-income. By granting this waiver, Florida Housing would recognize the goal of increasing the supply of affordable housing

¹ "Substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "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. 120.542(2), *Fla. Stat.* (2016)

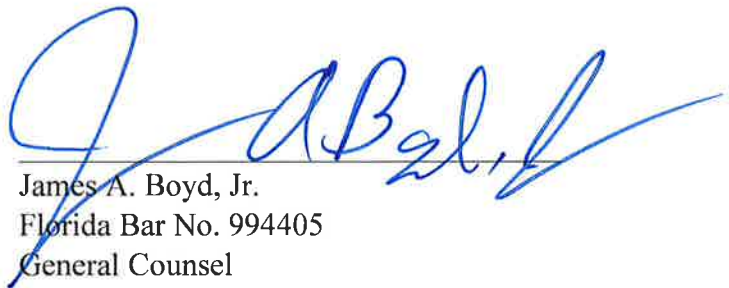
through private investment in persons of low-income and recognizing the economic realities and principles of fundamental fairness in developing affordable rental housing. See §420.5099(2), *Fla. Stat.* (2016).

F. ACTION REQUESTED

WHEREFORE, Petitioner Suwannee Pointe, LP respectfully requests 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 all the requested credit exchange before the last calendar quarter of 2019;
- C. Grant a corresponding extension of deadlines relative to those credits; and
- D. Grant such further relief as it may deem appropriate.

Respectfully submitted on August 21, 2018



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Counsel for Petitioner, Suwannee Pointe, LP

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petition for Waiver is being filed by electronic filing (with a copy by U.S. Mail) with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Fifth Floor, Tallahassee, Florida 32301 this 21 day of August, 2018.



James A. Boyd, Jr.