

FLORIDA HOUSING FINANCE CORPORATION
Board Meeting
January 27, 2012
Action Items



LEGAL

Action

I. LEGAL

A. In Re: Town Parke, Ltd. – FHFC Case No. 2011-018VW

Development Name: (“Development”):	Town Parke Apartments, Phase I App. Nos. 2009-244C; 2010-018CX; 2011-027C
Developer/Principal: (“Developer”):	Atlantic Housing Partners, LLLP
Number of Units: 94	Location: Seminole County
Type: Garden Apartments	Set Asides: 10% @ 33% AMI 79% @ 60% AMI
Demographics: Family	HC: \$1,510,000

1. Background

- a) Town Parke, Ltd. (“Petitioner”) successfully applied for an allocation of Low Income Housing Tax Credits (HC) during the 2009 Universal Application Cycle. Due to various circumstances beyond Petitioner’s control, the Development has been delayed and Petitioner has previously sought and obtained a rule waiver to extend its Placed-In-Service date, by exchanging its 2009 HC allocation for a 2011 HC allocation.
- b) On November 9, 2011, Florida Housing received this “Petition for Waiver or Variance from Florida Administrative Code Rule 67-48.004(14)(e)(2009)(2010)(2011)” (the “Petition”). A copy of the Petition is attached as [Exhibit A](#).

2. Present Situation

- a) Rule 67-48.004(14)(e), Fla. Admin. Code (2009-2011) provides, in pertinent part:

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 Deadline. Failure to submit these items in the Application at the time of the Application Deadline shall result in rejection of the Application without opportunity to submit additional information. Any attempted changes to these items will not be accepted. Those items are as follows:

(e) Site for the Development; notwithstanding the foregoing, after the Applicant has been invited to enter credit underwriting and subject to written request of an Applicant to Corporation staff and approval of the Corporation, the site for the Development may be increased or decreased, as follows: (i) for the Competitive HC, SAIL and HOME Programs provided the Tie Breaker Measurement Point is on the site and the total proximity points awarded during scoring are not reduced...

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- b) Petitioner has requested a waiver of the above Rule to permit relocation of the Development site, due to circumstances beyond its control. During the original 2009 application process, Petitioner obtained approval of and commitments regarding the Development from the local government, the City of Winter Springs (the "City"). Subsequently, the City denied Petitioner's request for final site plan approval, apparently in response to opposition by local groups, including homeowner's associations citing concerns regarding crime and the burden on the local school system. In response to these concerns, Petitioner modified its Final Development Plan to decrease the number of units and to implement age restrictions on the units in accordance with the Housing for Older Persons Act. Despite these concessions, the City modified its own Comprehensive Plan and issued a denial of the Final Development Plan that appeared to turn on the economic impacts of the proposed Development.
- c) Petitioner subsequently filed suit against the City on December 21, 2010, alleging violations of both the Federal and Florida Fair Housing Acts. Petitioner specifically alleged that the denial violated both statutes by creating a disparate impact on the local minority population, by perpetuating segregated housing patterns and by preventing the development of affordable housing. On September 29, 2011, Petitioner and the City attended a mediation conference and attempted to negotiate a settlement of the dispute, a key component of which was the relocation of the Development site, for which Petitioner must seek a waiver of the aforementioned Rule. Petitioner now seeks this waiver to accomplish this settlement with the City. Petitioner also seeks revision and/or reissuance of 2011 Carryover Allocation Agreement with Florida Housing to reflect the change and to modify the deadlines therein to June 1, 2012.
- d) The new Development site is on the same road as the original site, and the requested change would neither affect the scoring of Petitioner's application nor allow Petitioner to gain an unfair advantage over other applicants – Florida Housing staff has verified that the Development would receive the same overall score and proximity tie breaker points at the proposed new site. Denial of this request could result in the Development not being built, which would result in considerable financial losses and litigation costs for Petitioner.
- e) On November 9, 2011, the Notice of Petition was published in the Florida Administrative Weekly. To date, Florida Housing has received one comment regarding the Petition, a letter from the Mayor of the City of Winter Springs supporting the granting of the waiver request. A copy of this letter is attached as [Exhibit B](#).
- f) Section 120.542(2), Florida Statutes provides in pertinent part:

Variations and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.

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- g) Petitioner has demonstrated that strict application of the above Rule under these circumstances would cause substantial hardship to Petitioner and violate the principles of fairness, in that the Development has been delayed and its site approval denied through no fault of its own and at considerable expense and hardship to Petitioner. The granting of this waiver would also serve the underlying purpose of the statute, by facilitating the development of much needed affordable housing in the City of Winter Springs.

3. **Recommendation**

Staff recommends the Board grant Petitioner's request for a waiver of Rule 67-48.004(14)(3), Fla. Admin. Code (2009-2011), to permit the requested relocation of the Development and to extend any pertinent deadlines in the Carryover Allocation Agreement to June 1, 2012.

SINGLE FAMILY BONDS

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II. SINGLE FAMILY BONDS

A. Request Approval to Issue Mortgage Credit Certificates (MCC)

1. Background

- a) Florida Housing's Board previously approved Single Family staff's request to create and implement a Mortgage Credit Certificate (MCC) Program on July 30, 2004. Staff entered rule development, promulgated Chapter 67-54, F.A.C., and the Program rollout date was March 3, 2005. No MCCs have been issued since December 31, 2007.
- b) Mortgage Credit Certificates are nonrefundable, federal tax credits that provide a form of housing assistance to persons with low and moderate incomes. The holder of an MCC receives an annual tax credit that the holder can apply against his or her federal tax liability in each year the MCC is effective. The tax credit is equal to a specific percentage of the interest paid or accrued by the holder with respect to certain qualifying mortgage loans. The percentage must be at least 10% but may not exceed 50%, but in no instance shall the amount of the annual credit exceed \$2,000 (See [Exhibit A](#)). The effect of the tax credit is to increase the homebuyer's after-tax pay and thus increase his or her ability to afford a home. To qualify for an MCC, the homebuyer must meet the same requirements as for the FHFC single family bond program. Due to the nature of the tax benefits provided, other state HFAs with MCC programs report that these credits tend to serve beneficiaries with incomes above 80% of area median income (AMI) as those with lower incomes are not as likely to incur a tax liability.
- c) Before issuing MCCs, Florida Housing must elect not to issue an amount of qualified mortgage bonds and other private activity bonds it otherwise could issue (including any unused carryforward from previous years). Pursuant to the Internal Revenue Code, MCC's use \$4 of bond volume cap for every \$1 of MCC issued. Notice to the public regarding the issuance of MCCs, including the eligibility requirements and the method for issuing MCCs, must be published at least 90 days prior to issuing any MCCs.

2. Present Situation

- a) It was reported at the December 9, 2011 FHFC Board meeting that Florida Housing had approximately \$1,347,325,925 of Private Activity Bond (PAB) allocation earmarked for its single family program. On December 30th, we received an additional \$1,141,780,067 in 2011 PAB allocation carryforward bringing the single family total to \$2.489 billion. In addition, the Corporation received an additional \$428,241,622 in 2012 PAB allocation on January 1, 2012.
- b) Florida Housing just completed issuance of the 2011C/2009B5 Bond issue in the amount of \$137,000,050. With this issue we have exhausted our New Issue Bond Program allocation. Due to the unfavorable pricing that exists for housing bonds, we do not anticipate selling mortgage revenue bonds in the near future.

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- c) Staff proposes to elect to not issue up to \$500 million of its single family volume cap and to make such volume cap available for a new MCC Program that will offer up to \$125 million of MCCs. Staff also proposes setting the percentage of the credit at 50%. Staff plans to begin the MCC Program in the spring of 2012 and will, pursuant to IRS rules, end it on the earlier of the date all MCCs are issued under the new MCC Program or December 31, 2014. The guidelines and parameters for eligibility in the MCC Program will generally follow the same guidelines and parameters applicable to the types of borrowers and types of properties that qualify for Florida Housing's Single Family Program. Most program parameters are set by Section 25 of the Internal Revenue Code, which governs MCCs.
- d) It is anticipated that operating this program will be at least revenue neutral for Florida Housing.

3. **Recommendation**

That the Board approve Resolution 2012-01 (See [Exhibit B](#)), authorizing staff to take all action necessary to create and implement the new MCC Program, subject to further approvals by bond counsel, special counsel, and the appropriate Florida Housing staff.

SPECIAL ASSETS

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III. SPECIAL ASSETS

A. Request Ratification of PLP Short-pay and Termination of PLP LURA for United Development Communities, Inc. (PLP 03-048)

Development Name: UDC AHRP (“Development”)	Location: Miami-Dade County
Developer/Principal: United Development Communities, Inc. (“Developer/Borrower”)	Set-Aside: 100% @ 80% AMI
Number of Units: 7 Homes	Allocated Amount: \$500,000
Demographics: Home Ownership	Servicer: N/A

1. Background

- a) United Development Communities, Inc. applied for Pre-Development Loan Program (PLP) funds in 2004 and was awarded a PLP loan in the amount of \$500,000 for acquisition and rehabilitation of seven properties in Miami-Dade County. The PLP loan closed on September 16, 2004. As of June 31, 2006, the Borrower had acquired and rehabilitated seven properties and of the seven, five have been sold to affordable home buyers and the proportionate amount of the PLP loan was repaid from the sales of each property. The Borrower was unable to sell the two remaining properties. On November 21, 2007, the first lien holder filed a motion for summary judgment of foreclosure. The Borrower requested that Florida Housing purchase the first mortgage on the two remaining properties to allow time for the properties to be sold and to repay the PLP loan. Staff analyzed the financial position of the two properties and concluded that Florida Housing could purchase the first mortgage and maintain them until a qualified purchaser could be found and the properties could be sold as affordable housing.
- b) At the January 2008 Board meeting, the request to purchase the first mortgages was approved and the first mortgages for each property were purchased. Subsequently, one of the properties was sold in December 2008. The sale proceeds were enough to repay the first mortgage and a partial repayment of the PLP loan.
- c) The remaining property has continued to be marketed by the Borrower. FHFC staff have reached out to the development community, local housing authorities, and other stakeholders, and listed the property on the FHFC website with little or no interest shown. Expenses to maintain the property have continued to increase. With prior sales in the area under \$20,000, the Borrower requested permission to sell the property via an absolute auction. Auction Company of America held the auction on December 16, 2011. The bid price was \$7,250 with net proceeds to Florida Housing of \$3,500. The current outstanding balance of the loans on the property including expenses is \$191,081.70. The purchaser has agreed to pay all closing costs associated with the sale of the property.
- d) Due to depressed home prices and current housing market conditions, the short sale will eliminate continuing annual carrying expenses of approximately \$5,000 for insurance and property taxes.

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2. **Present Situation**

- a) Pursuant to Board Resolution 2010-02 dated January 22, 2010, the Board delegated authority to the Chair or Vice Chair, with the advice of Florida Housing's Financial Advisor, to, upon approval by the Chair, or in the absence of the Chair, the Vice Chair to (i) engage in activities to sell the Development (the "Sale"), (ii) to negotiate, finalize, execute, deliver, and perform on behalf of Florida Housing any and all agreements, documents, certificates, and instruments required in connection with the Sale of the Development, and (iii) bind Florida Housing thereby, as may become necessary between Board meetings to maintain or recover the maximum value from such properties.
- b) On January 9, 2012, the Board Chair authorized staff to proceed with the sale of the UDC AHRP property and the release of the LURA.

3. **Recommendation**

Ratify the short sale for the UDC AHRP property and the release of the LURA.