

OVIEDO TOWN CENTER PARTNERS, LTD.,

Petitioner,

vs.

APPLICATION NO. 2005-082S

FHFC Case No.

FLORIDA HOUSING FINANCE CORP.,

2007-007VW

Respondent.

**PETITION FOR WAIVER FROM RULES 67-48.004(1)(a),
67-48.004 (14)(a), (b), (j) and (k) AND 67-48.004(15), F.A.C.**

OVIEDO TOWN CENTER PARTNERS, LTD. ("Petitioner"), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the "Corporation") for waiver from Rules 67-48.004(1)(a), 67-48.004(14)(a), (b), (j) and (k) and 67-48.004(15), Florida Administrative Code (2005). This Petition is filed pursuant to Section 120.542, Florida Statutes and Chapter 28-104, Florida Administrative Code.

THE PETITIONER

1. The address, telephone and facsimile number of the Petitioner is:

Oviedo Town Center Partners, Ltd.
c/o Atlantic Housing Partners
329 North Park Avenue, Suite 300
Winter Park, FL 32789

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

Maureen McCarthy Daughton, Esquire
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215 South Monroe Street, Suite 400
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(850)681-6810
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3. Petitioner successfully applied for financing from the Housing Tax Credit (“HC”) Program in the 2005 Universal Application Cycle; Multi-Family Mortgage Revenue Bonds (“MMRB”) Program; State Apartment Incentive Loan (“SAIL”) Program; Home Investment Partnership (“HOME”) Rental Program; and Housing Credit (“HC”) Program (the “Universal Cycle”) that the Corporation administers pursuant to Chapter 67-48, Florida Administrative Code. The Petitioner’s Application number is 2005-082S (the “Application”). Petitioner applied for SAIL funds to finance a portion of the costs to develop a multi-family rental apartment complex in Seminole County, Florida, to be known as Oviedo Town Center Apartments (the “Development”). At the time of the Application, it was anticipated that the Development would be a 120-unit apartment complex.

THE RULES FROM WHICH WAIVER IS SOUGHT

4. Petitioner requests a waiver from various sections of Rules 67-48.004(1)(a) and 67-48.004 (14)(a), (b), (j) and (k), Florida Administrative Code. More specifically, Petitioner is seeking a waiver from what is designated as the “Application and Selection Procedures for Development,” subsection (1)(a) and (14) of Rule 67-48.004. Rule 67-48.004(1)(a) provides:

(1)

(a) The Universal Application Package or UA1016 (Rev. 2-05) consists of the forms and instructions, obtained from the Corporation, at 227 North Bronough Street, Suite 5000, Tallahassee, FL 32301-1329, which shall be completed and submitted to the Corporation in accordance with this rule chapter in order to apply for the SAIL, HOME, HC or SAIL and HC Programs(s). The Universal Application Package is adopted and incorporated herein by reference, effective February 7, 2005.

5. The Specific Instructions of the Universal Application Instructions provides under Part II A.2.a.(2):

(2) If applying for MMRB, SAIL or HOME, the Applicant entity shall be the borrowing entity and cannot be changed until after loan closing. Replacement of the Applicant or a material

change (33.33% 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 this time shall result in disqualification from receiving funding and shall be deemed a material misrepresentation. Changes after loan closing require Board approval.

6. The Specific Instructions of the Universal Application Instructions further provides under Part II.B.1.:

B. Development Team.

* * *

1. Developer or principal of Developer (Threshold).

The identity of the Developer(s) listed in this Application may not change until the construction or Rehabilitation/Substantial Rehabilitation of the Development is complete.

* * *

7. Rule 67-48.004(14)(a) provides:

(14) 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:

- (a) Name of Applicant;
- (b) Identity of each Developer, including all Co-Developers;

* * *

- (j) Total number of units;
- (k) With regard to the SAIL and HC programs, the Total Set-Aside Percentage as stated in the last row of the total set-aside breakdown chart for the program(s) applied for in the Set-Aside Commitment section of the Application

8. Rule 67-48.004(15) provides:

(15) A Development will be withdrawn from funding and any outstanding commitments for funds or HC will be rescinded if at

any time the Board determines that the Applicant's Development or Development team is no longer the Development or Development team described in the Application, and the changes made are prejudicial to the Development or to the market to be served by the Development.

STATUTES IMPLEMENTED BY THE RULE

9. The Rule implements, among other sections of the Florida Housing Finance Corporation Act¹, the statute that created the SAIL program. Section 420.5087, Florida Statutes.

10. 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. 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 fairness², and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. Section 120.542(2), Florida Statutes.

FACTS DEMONSTRATING ENTITLEMENT TO WAIVER

11. The Applicant Entity is Oviedo Town Center Partners, Ltd. The Petitioner desires this Waiver to change the Applicant Entity to Oviedo Town Centre Development Group, L.L.L.P.³ The Petitioner is also requesting to change the General Partner from CED Capital Holdings 2005 B, L.L.C. to Oviedo Town Centre Development Managers, L.L.C. These changes are necessary for the estate planning purposes of Alan H. Ginsburg. In spite of these changes to the corporate structure, the identity of the majority of the underlying managers of

¹ The Florida Housing Finance Corporation Act is set forth in Section 420.501 through 420.516, Florida Statutes.

² "Substantial hardship" means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. "Principles of Fairness" are violated when 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. Section 120.542(2), Florida Statutes.

³ This Board approved a similar request to change the name of the Applicant entity in FHFC Case No. 2006-074VW at its January 2007 Board meeting.

Oviedo Town Centre Development Managers, L.L.C. are the same as the prior officers of the managing general partner of CED Capital Holdings 2005 B, L.L.C.

12. The Petitioner is also requesting to change the Developer entity from Sandspur Housing Partners, Ltd. to Atlantic Housing Partners, L.L.L.P. This change, again, is for the estate planning purposes of Alan H. Ginsburg. This change will not adversely impact the Development because the Developer continues to have the requisite expertise and experience to successfully develop and complete the Development. Accordingly the continuity, progress and quality of the Development will not be disrupted.

13. The Corporation has the authority pursuant to Section 120.542(1), Florida Statutes, to provide relief from its rule if strict application of the rule will lead to unreasonable, unfair and unintended consequences in particular instances. Unless the rule is waived to allow the changes as outlined above, certain unreasonable, unfair and unintended consequences will result. Specifically, Alan H. Ginsburg, the ultimate Guarantor (individually, or through trusts created for his benefit and/or the benefit of his family) of various entities in the Atlantic Housing Partners entities ("Atlantic"), is engaged in certain estate planning strategies to protect his interests and the interests of his family members. If the Corporation were to deny Petitioner's request to make these changes to the Applicant and developer entities the result would preclude Mr. Ginsburg from effecting certain of his estate planning strategies resulting in negative tax consequences, which is an unreasonable, unfair and unintended consequence of the rule.

14. The Development, as submitted in the Application, reflects a total set-aside percentage of 70% (or 84 affordable units) based on a total of 120 units. Subsequent to the final engineering it was determined that Petitioner could not design the site to accommodate the number of units originally anticipated. Thus, the number of units had to be decreased. Petitioner seeks to reduce the number of total units by 19, but does not seek a corresponding decrease in the

number of affordable units.⁴ Since the number of affordable units will not be reduced, the total set-aside percentage will actually increase to 83%.

15. These changes will not adversely impact the Development or the delivery of affordable units. Strict application of this rule in this case will lead to an unreasonable and certainly an unintended result. The intent of this rule was to ensure that Developers do not provide fewer units of affordable housing than what is set forth in the Application. In this case the number of affordable units that will be provided remains the same as that set forth in their Application. The total set-aside percentage actually increases as a result of the unit modification. Denial of this Petition will violate principles of fairness and will not further the purpose for which the rule was implemented.

WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE

16. Petitioner believes that a waiver of these rules will serve the purposes of the statute which is implemented by the rule. The Florida Housing Finance Corporation Act (Section 420.501, et seq.) was passed in order to encourage private and public investment in persons of low income. The creation of the SAIL program was to provide first, second or other subordinated mortgage loans or loan guarantees to sponsors, including for-profit, non-profit and public entities, to provide affordable housing to very low income persons. By granting these Waivers requesting and permitting Petitioner to make the above-requested changes, the Corporation would recognize the goal of increasing the supply of affordable housing through private investment in persons of low-income.

TYPE OF WAIVER

17. The waivers being sought are permanent in nature.

⁴ The reduction of units will result in the unit mix changing from 20 1-bedroom units, 60 2-bedroom units, and 40 4-bedroom units to 24 1-bedroom units, 18 2-bedroom units, and 59 3-bedroom units.

18. Should the Corporation have questions or require any additional information necessary for consideration of the Petition, please contact the undersigned.

ACTION REQUESTED

19. Petitioner requests the following:

a. A waiver from Rules 67-48.004(1)(a), 67-48.004(14)(a), (b), (j) and (k) and 67-48.004(15), F.A.C., to allow the relief requested.

20. A copy of the Petition has been provided to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, FL 32399-1300.

Respectfully submitted this 13 day of February, 2007.



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