

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

OVIEDO TOWN CENTER PARTNERS, LTD.,

Petitioner,

APPLICATION NO. 2005-082S

vs.

FHFC CASE NO.: 2008-0011W

FLORIDA HOUSING FINANCE CORP.,

Respondent

**PETITION FOR WAIVER FROM FLORIDA
ADMINISTRATIVE CODE RULE 67-48.004(14)**

OVIEDO TOWN CENTER PARTNERS, LTD. ("Petitioner"), by and through its undersigned attorney, hereby petitions the Florida Housing Finance Corporation (the "Corporation") for a waiver from Rule 67-48.004(14), Florida Administrative Code ("FAC"). 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 Petitioner is:

Oviedo Town Center Partners, Ltd.
c/o Atlantic Housing Partners
329 North Park Avenue, Suite 300
Winter Park, Florida 32789
407-741-8500 (telephone)
(407) 551-2353 (facsimile)

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

Kerey Carpenter
AHG Group, LLC
1551 Sandspur Road
Maitland, Florida 32751
407-741-8534 (direct line)
407-551-2353 (facsimile)

FLORIDA HOUSING FINANCE CORPORATION

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3. Petitioner successfully applied for financing from the State Apartment Incentive Loan (“SAIL”) Program in the 2005 Universal Application 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 community 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 community.

THE RULES FROM WHICH A WAIVER IS SOUGHT

4. Petitioner requests a waiver from Rule 67-48.004(14) (j) and (m), as in effect for the 2005 Universal Application Cycle. Rule 67-48.004(14) provides in relevant part as follows:

(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 attempt to make changes to these items will not be accepted. Those items are as follows:

- (j) Total number of units;
- (m) Funding Request (except for Taxable Bonds) amount

STATUTES IMPLEMENTED BY THE RULE

5. 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.

6. The Corporation has 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

¹ The Florida Housing Finance Corporation Act is set forth in Section 420.501 through 420.526, Florida Statutes.

instances. Waivers shall be granted when the person subject to the rule demonstrates that 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. Section 120.542(2), Florida Statutes.

FACTS DEMONSTRATING ENTITLEMENT TO WAIVER

7. The provisions of the foregoing Rule prohibit a change in the total number of units and a change in the funding request amount. For the reasons set forth below, compliance with the foregoing provisions of the aforementioned Rule would give rise to substantial hardship to Petitioner and would violate principles of fairness.

8. The original SAIL application filed by Petitioner reflected a 120-unit apartment community. Petitioner desires to decrease the size of development to 106 units, due to a delay in construction caused when the City of Oviedo would not issue permits because it wanted time to study the possibility of taking a portion of the site for a public right of way. As a result of the City's actions, Petitioner agreed with the City to reduce the number of units during the study so that permits could be issued. The 14 units removed from this site will be included in a separate phase of the development.

9. Petitioner submitted an application in FHFC's 2005 Universal Application Cycle for \$3,000,000 in annual SAIL funds to finance the development of Oviedo Town Center. In recognition of the fact that Petitioner seek to reduce the "total number of units" for Oviedo Town Center from 120 to 106, Petitioner seeks to proportionately reduce its requested SAIL Loan from \$3,000,000 to \$2,650,000, resulting in the return of \$350,000 in SAIL fund allocation. With the proportionate reduction in the funding request amount, the proposed changes to Oviedo Town

Center would have had no impact on the application's scoring, thus providing Petitioner with no advantage over its competitors.

10. In light of the considerable time that it takes to develop and construct multi-family rental housing, FHFC's statutes and rules are designed to allow the flexibility necessary to respond to changed circumstances, particularly those that arise through no fault of the Petitioner, which might necessitate a modification in a proposed project. FHFC routinely approves such changes when they would not have otherwise affected the scoring of the application, because the Applicant thus derives no unfair advantage over its competitors in an application cycle. Indeed, the specific purpose of Rule 67-48.004(14) is to prevent an applicant from changing certain key elements in its application after reviewing the applications of its competitors, thereby allowing the applicant to gain a possible advantage.

11. As explained above, the project changes requested by Petitioner result from actions by the City of Oviedo, through no fault of Petitioner. Further, the proposed changes to Oviedo Town Center would have had no impact on the application's scoring, thus providing Petitioner with no advantage over its competitors.

WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE

12. FHFC's approval of the requested waiver would serve the purpose of the underlying Florida Statute, Section 420.5087, as well as the SAIL Program. The purpose of both the Statute and the program is to facilitate and stimulate the development of multi-family rental housing that is affordable to families of limited means. If the requested waiver is granted, the SAIL funds in question will be used to fund an affordable multi-family rental housing community for which there is a desperate need in the City of Oviedo, Florida.

13. The violation of principles of fairness and imposition of a substantial hardship would result from strict compliance with the provisions of FAC Rule 67-48.004(14). Unless the foregoing request is granted, construction of the Oviedo Town Center Apartments cannot move forward. The substantial hardship which would result from strict compliance with the foregoing Rule is obvious.

14. By granting a waiver and permitting Petitioner to reduce the total number of units and SAIL fund amount, Respondent would recognize the economic realities of developing and constructing affordable rental housing. This recognition would promote participation by owners and developers such as Petitioner in meeting Respondent's purpose by providing affordable housing, through new construction, in an economical and efficient manner.

TYPE OF WAIVER

15. The waiver being sought is permanent in nature.

ACTION REQUESTED

16. Petitioner requests a waiver from Rule 67-48.004(14) to permit a change in the total number of units from 120 to 106 units and to permit a change in the SAIL Loan amount from \$3,000,000 to \$2,650,000.

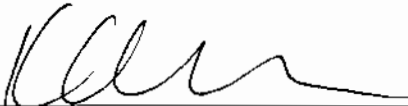
Respectfully submitted this 4th day of February, 2008.



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Florida Bar No. 963781
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CERTIFICATE OF SERVICE

I hereby certify that an original and one copy of the foregoing have been filed with Corporation Clerk of the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida, 32301; and that a true and correct copy of the foregoing has been furnished to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, Florida 32399-1300.



Kerey Carpenter