

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: ST. CLOUD PRESERVE, LLC

FHFC Case No.: 2008-096VW
Application No.: CWHIP 06-28

**ORDER DISMISSING PETITION FOR WAIVER
OF RULE 67-58.020(6), FLORIDA ADMINISTRATIVE CODE**

THIS CAUSE came on for consideration and final action before the Board of Directors of Florida Housing Finance Corporation ("Florida Housing") on December 12, 2008, pursuant to a "Petition for Waiver or Variance from Rule 67-58.020(6), F.A.C." (the "Petition"), filed by St. Cloud Preserve, LLC ("Petitioner") on October 10, 2008. Notice of the Petition was published in Volume 34, Number 37, of the Florida Administrative Weekly. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised in the premises, the Board of Directors (the "Board") of Florida Housing hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties.
2. On April 30, 2007, during the 2006 Community Work Housing Innovation Pilot Program ("CWHIP") request for proposal ("RFP"), Florida

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Della Harrell / DATE: 12-15-08

Housing invited Petitioner to enter into credit underwriting to finance, in part, the construction of Wolf Creek Village in Walton County, Florida.

3. Rules 67-58.020(6) and 67-58.070(6), Fla. Admin. Code (2008), both provide:

The Applicant has 14 months from the date of the acceptance of the letter of invitation to complete credit underwriting and receive Board approval unless an extension of up to 10 months is approved by the Board. All extension requests must be submitted in writing to the program administrator and contain the specific reasons for requesting an extension and detail the timeframe to close the loan. The written request will then be submitted to the Corporation's Board for consideration. The Corporation shall charge an extension fee of 1 percent of the CWHIP loan amount if the Board approves the extension request.

4. Petitioner requests a waiver of the above Rules, to avoid paying an extension fee of 1 percent of the CWHIP loan amount.

5. 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.

6. As grounds for its request for a waiver, Petitioner states that it is being adversely affected by the current economic climate, constricted credit markets, unforeseen time delays and other related matters.

7. The Board finds that strict application of the above Rules under these circumstances would not cause substantial hardship to Petitioner or violate the principles of fairness.

8. Four other developers who responded to the 2006 CWHIP RFP have paid the extension fee of 1 percent for their respective CWHIP loan amount, while others have chosen to decline the loan, making those funds available for projects more prepared to proceed. By granting this waiver, Florida Housing would provide Petitioner an unfair advantage over the other applicants who paid the extension fee, thus violating the principles of fairness.

9. Should Applicants complete credit underwriting with a positive recommendation from the credit underwriter by May 8, 2009, the 1% extension fee will be refunded to the Applicants at closing, eliminating any hardship.¹ Moreover, the conditions experienced by Petitioner are not substantially different than those experienced by any of the 2006 RFP participants as to justify disparate treatment under the Rules. Ultimately, the Petitioner's invitation to enter into credit underwriting was not made in perpetuity. Rather, a time limit of 14 months was placed on each Applicant to enter into credit underwriting. As clearly stated in the above noted Rules, Florida Housing **shall** impose a fee extension on those Applicants that have exceeded their allotted time.

¹ Pursuant to the Rule, closing must occur within 90 days of the CWHIP loan commitment (issued after the credit underwriting report is approved by the Board). Closing extensions must be approved by the Board and require payment of a 1% extension fee.

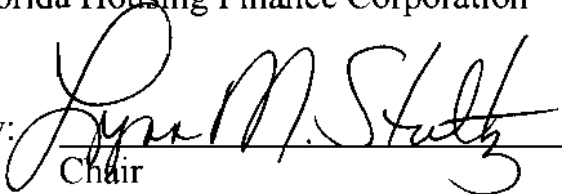
10. The Board finds that Petitioner has failed to demonstrate how waiving these Rules create a substantial hardship, violate the principles of fairness, or further the purpose of the underlying statute.

IT IS THEREFORE ORDERED:

The Petition for Waiver of Rule 67-58.020(6), Florida Administrative Code, is hereby **DISMISSED**, and all relief requested therein is **DENIED**.

DONE and ORDERED this 12th day of December, 2008.

Florida Housing Finance Corporation

By: 
Chair



Copies furnished to:

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Joint Administrative Procedures Committee
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NOTICE OF RIGHTS

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329, AND A SECOND COPY, ACCOMPANIED BY THE FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, 300 MARTIN L. KING, JR., BOULEVARD, TALLAHASSEE, FLORIDA 32399-1850, OR IN THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.