

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

FHFC CASE NO. 2014-081VW  
Application No. 2014-080C

**PARADISE POINT SENIOR HOUSING, LLC**

Petitioner,

vs.

**FLORIDA HOUSING FINANCE  
CORPORATION,**

Respondent.

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**PETITION FOR WAIVER OF RULE 67-48.004(14)(i) and (l)  
FOR A CHANGE IN NUMBER OF UNITS AND  
HOUSING CREDIT REQUEST AMOUNT**

Paradise Point Senior Housing, LLC (the "Petitioner") hereby petitions Florida Housing Finance Corporation (the "Corporation") for a waiver or variance of the Corporation's prohibition on changes in "Total Number of Units" and the "Housing Credit Request Amount" designated by an applicant in its response to RFA 2013-001 - Affordable Housing Developments Located in Medium and Small Counties. See Rule 67-48.004(14)(i) and (l), F.A.C.

In support of its petition, the Petitioner states:

**A. THE PETITIONER**

1. The name, address, telephone and facsimile numbers, and email address for the Petitioner and its qualified representative for Petitioner's application (the "Application") in response to RFA 2013-001 - Affordable Housing Developments Located in Medium and Small Counties (the "RFA") are:

Paradise Point Senior Housing, LLC  
c/o Gorman & Co., Inc.  
200 North Main Street  
Oregon, WI 53675  
Attn: Hana Eskra  
Telephone: 305-668-5810  
Facsimile: 608-835-3922  
E-Mail: [heskra@gormanusa.com](mailto:heskra@gormanusa.com)

2. For purposes of this Petition, the address, telephone number and facsimile number of the Petitioner's attorney are:

Brian J. McDonough, Esquire  
Stearns Weaver Miller Weissler  
Alhadeff & Sitterson, P.A.  
150 West Flagler Street  
Miami, Florida 33130  
Telephone: 305-789-3350  
Facsimile: 305-789-3395  
E-mail: [bmcdonough@stearnsweaver.com](mailto:bmcdonough@stearnsweaver.com)

## **B. THE DEVELOPMENT**

3. The Petitioner timely submitted its Application in response to the RFA for the development named "Paradise Point Senior Housing" (the "Development"). *See* Application No. 2014-080C. Petitioner received a preliminary allocation of Low-Income Housing Tax Credits for the Development.

4. The syndication of Low-Income Housing Tax Credits, together with other loan sources, will provide funds for the construction of a multifamily residential apartment community intended to serve low-income individuals and families in Key Largo, Monroe County, Florida.

5. The requested rule waiver will not adversely affect the Development. However, a denial of this Petition (a) will result in substantial economic hardship to Petitioner; (b) could

deprive Monroe County of essential, affordable housing units, and (c) would violate principles of fairness<sup>1</sup>. Section 120.542(2), Fla. Stat. (2013).

6. The waiver being sought is permanent in nature.

### C. RULES FROM WHICH WAIVER IS SOUGHT

7. Petitioner requests a waiver from Rule 67-48.004(14)(i) and (l), Florida Administrative Code (the "Rule"). Specifically, Petitioner is requesting a decrease in the total number of units from 47 to 42, and a corresponding pro rata decrease in its funding request amount from \$1,175,000 to \$1,050,000.

The Rule 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 attempted changes to these items will not be accepted. Those items are as follows:**

**(i) Total number of units; notwithstanding the foregoing, for the SAIL and HC Programs the total number of units may be increased after the Applicant has been invited to enter credit underwriting, subject to written request of an Applicant to Corporation staff and approval of the Corporation;...**

**(ii) Funding Request Amount....**

Rule 67-48.004(14)(i) and (l), F.A.C.

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<sup>1</sup>"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.



**D. STATUTES IMPLEMENTED BY THE RULE**

8. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act, the statute that designated the Corporation as the housing credit agency responsible for the allocation and administration of Low-Income Housing Tax Credits. See Section 420.5099, Florida Statutes.

**E. PETITIONER REQUESTS A WAIVER FROM THE RULE FOR THE FOLLOWING REASONS**

9. Petitioner requests a waiver from Rule 67-48.004(14)(i), Florida Administrative Code. Petitioner is seeking a waiver from the Rule allowing it to decrease the total number of units from 47 to 42. Petitioner recognizes that the grant of this request necessitates a corresponding pro rata reduction in the amount of Low-Income Housing Tax Credits applied for, and therefore also requests approval of the reduction in the "Housing Credit Request Amount" set forth in the Application from \$1,175,000 to \$1,050,000. Therefore, Petitioner also requests a waiver from Rule 67-48.004(14)(l), Florida Administrative Code.

10. It is not uncommon for unforeseen events to occur after submission of an application to the Corporation. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., the Corporation has the authority to grant waivers to its rule requirements when strict application of these rules would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers shall be granted when (1) the person who is subject to the rule demonstrates that the application of the rule would create a substantial hardship or violate principles of fairness, 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. (2011).

11. The following facts demonstrate the economic hardship and other circumstances which justify Petitioner's request for waiver:

- a. In October, 2013, Petitioner signed a sales contract with the owner of the property on which the Development is to be constructed. The acreage of the land under contract would have permitted 47 units of housing in the Development.
- b. Petitioner timely submitted its Application to the Corporation in response to the RFA, for 47 low-income tax credit housing units (See Section 4(e) (1) of the Application) and a Funding Request Amount equal to \$1,175,000 (See Section 9(a) of the Application).
- c. Following the preliminary allocation of Low-Income Housing Tax Credits to the Petitioner, the seller of the land advised the Petitioner that it had leased a portion of the land to Federal Express, in violation of the purchase agreement between Petitioner and the land seller.
- d. Federal Express, presumably a bona fide lessee without knowledge of the purchase agreement, leased its site, including the relevant portion of the land under contract to the Petitioner. It has since made improvements thereto, and would likely be unable or unwilling to curtail its operations and make that portion of the land available to Petitioner as it would otherwise been, under the Purchase Agreement.

- e. Petitioner has concluded that to pursue the purchase of the original acreage will result in a protracted lawsuit with both the land seller and Federal Express, which could take up to two years to resolve. Petitioner and the land seller reached a settlement which resulted in the reduction of the Development's parcel size by .212 acres, for a new development site measuring 2.392 acres. This decrease in acreage reduces the number of units allowed on the site to only 42.
  
- f. Petitioner's scoring and allocation of Low-Income Housing Tax Credits would not have been affected if Petitioner had originally included 42 units in the Application, and sought a funding amount equal to \$1,050,000. There are no points associated with this aspect of the Application. Nor does this change adversely impact any other applicant, as no other applicant in this RFA sought Low-Income Housing Tax Credits for development in Monroe County.
  
- g. A denial of the requested waiver would result in a substantial economic hardship for Petitioner, because it is legally impossible to construct the number of units for which Petitioner applied on the remaining acreage. Zoning and other local government entitlements cannot be obtained for 47 units on the Development's reduced land area. Petitioner is the victim of the wrongdoing of the land seller but is seeking the best possible outcome in terms of preserving its ability to construct the bulk of the originally-planned Development on the available acreage, rather than engage in lengthy and expensive litigation with no certainty of the outcome. Unless



the requested waiver is granted, Petitioner would likely be forced to default under its purchase agreement for the balance of the site, lose its earnest money deposit, and be unable to provide any housing for senior households in this location in Monroe County.

12. A waiver of the Rule's restriction against decreasing the total number of units and the funding request amount in Petitioner's Application would serve the purposes of Section 420.5099, F.S., and the Act as a whole, because one of the Act's primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to households of limited means.

13. By granting the waiver and permitting Petitioner to decrease the total number of units and the funding request amount, the Corporation would recognize the economic realities and principles of fundamental fairness in developing affordable rental housing by encouraging the development of senior affordable housing projects, particularly in difficult development areas, and enabling developers to meet the needs of low-income families and senior households. This recognition would promote participation by owners such as Petitioner in meeting the Act's purpose of providing affordable housing where it is desperately needed.

14. Should the Corporation require additional information, Petitioner is available to answer questions and to provide all information necessary for consideration of this Petition.

**F. ACTION REQUESTED**

Petitioner requests the following:

- a. That the Corporation grant Petitioner a waiver from Rule 67-48.004(14)(i) and (l), Florida Administrative Code, allowing it to decrease the total number of units in the Development from 47 to 42, and to decrease the Housing Credit Request amount set forth in the Application from \$1,175,000 to \$1,050,000;
- b. Grant the Petition and all the relief requested therein; and
- c. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER  
ALHADEFF & SITTERSON, P.A.  
Counsel for Paradise Point Senior Housing, LLC  
150 West Flagler Street, Suite 150  
Miami, Florida 33131  
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By:   
BRIAN J. MCDONOUGH, ESQ.



**CERTIFICATE OF SERVICE**

The Petition is being served by overnight delivery for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301, with copies served overnight delivery on the Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 West Madison Street, Tallahassee, Florida 32399-1400, this 11 day of November, 2014.

  
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Brian J. McDonough, Esq.

STEARNS WEAVER MILLER  
WEISSLER ALHADEFF & SITTERSON, P.A.

Patricia K. Green  
150 West Flagler Street, Suite 2200  
Miami, FL 33130  
Direct: (305) 789-3345  
Fax: (305) 789-2621  
Email: pgreen@stearnsweaver.com

November 11, 2014

**Via FedEx**

Ashley Black  
Corporation Clerk  
Florida Housing Finance Corporation  
227 N. Bronough St.  
Suite 5000  
Tallahassee, Florida 32301

**RE: Petition for Rule Waiver**

Dear Ms. Black:

Enclosed is a Petition for Rule Waiver, submitted on behalf of Paradise Point Senior Housing, LLC, for consideration by the Board at its next meeting. I have sent a duplicate copy to the Joint Administrative Procedures Committee. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Patricia K. Green

PKG/zs  
Enclosures

cc: Joint Administrative Procedures Committee (with Enclosures)