

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

SOUTHWEST FLORIDA GWI
HOUSING XVII, INC.,

Petitioner

FHFC CASE NO.: 2015-046VW

v.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent

ORDER GRANTING WAIVER OF RULE 67-48.004(4)

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on January 29, 2016, pursuant to a Petition for Waiver (“Petition”). Florida Housing Finance Corporation (“Florida Housing”) received the Petition on December 29, 2015, from Southwest Florida GWI Housing XVII, Inc. (“the Petitioner”). Notice of the Petition was published on December 31, 2015, in Volume 41, Number 251, of the Florida Administrative Register. An Amended Petition was filed on January 12, 2016. 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:

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION



/DPTL: 1-29-16

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.

2. Petitioner was selected to receive financing from the HOME Investment Partnership Program under RFA 2014-009 to assist in the construction of a 50-unit rural development serving low-income tenants in Moore Haven, Glades County, Florida. Petitioner's Application Number was: 2014-406H (the "Application"). Rule 67-48.004(4), Fla. Admin. Code, prohibits an Applicant from changing the Applicant Development team identified in the Application. It provides, in relevant part:

(4) For all funding programs outlined in this rule chapter, a Development will be withdrawn from funding and any outstanding commitments for funds or HC will be rescinded if, at any time, the Board determines that the Applicant's Development or Development team is no longer the Development or Development team described in the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 or to the Credit Underwriter, and the changes made are prejudicial to the Development or to the market to be served by the Development.

3. Exhibit B of the RFA 2015-109 Application clarifies what changes will be considered prejudicial to the Development:

(2) The HOME Applicant entity shall be the borrowing entity and cannot be changed until after loan closing. Replacement of the Applicant or a material change (33.3 percent 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 loan closing shall result in disqualification from receiving funding and shall be deemed a material misrepresentation. Changes after loan closing require Board approval.

4. Petitioner's Application identifies Southwest Florida GWI Housing XVII, Inc. as both the Applicant and the Developer. Petitioner is seeking this waiver because it desires to replace most or all of its Board members prior to loan closing. This would constitute a material change of the Applicant. A complete list of Board members to be replaced, along with proposed replacements, was provided in the Amended Petition.

5. The Board finds that granting the waiver would neither affect the scoring of Petitioner's application nor allow Petitioner to gain an unfair advantage over other applicants. The Board further finds that granting the waiver would have no detrimental impact on Florida Housing or any of its programs.

6. 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.

7. Petitioner has demonstrated that the waiver is needed because of circumstances beyond its control, and that it would suffer a substantial hardship if the waiver is not granted. Petitioner has also demonstrated that the purpose of the underlying statute, which is to "encourage development of low-income housing in the state" (§420.5099, Fla. Stat.), would still be achieved if the waiver is granted.

8. The Board finds that strict application of the above Rules under these circumstances would cause substantial hardship to Petitioner, and that granting this request furthers Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida.

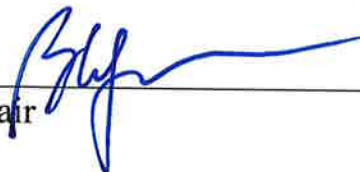
IT IS THEREFORE ORDERED:

Petitioner's request for a waiver of Rule 67-48.004(4), Fla. Admin. Code is hereby **GRANTED** to permit Petitioner to replace the Applicant's Board members named in the Application with those new Board members specified in Petitioner's Amended Petition.

DONE and ORDERED this 29th day of January, 2016.

Florida Housing Finance Corporation

By:


Chair

Copies furnished to:

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Joint Administrative Procedures Committee
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NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTIONS 120.542(8), 120.569, AND 120.57, FLORIDA STATUTES. SUCH PROCEEDINGS ARE COMMENCED PURSUANT TO CHAPTER 67-52, FLORIDA ADMINISTRATIVE CODE, BY FILING AN ORIGINAL AND ONE (1) COPY OF A PETITION WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.