

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2019-096VW
Application No. 2018-074C

HOGAN CREEK REDEVELOPMENT
PARTNERS, LLC

Petitioner,

v.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

PETITION FOR WAIVER OF RULE 67-48.002(95) AND THE 2016 QAP

Petitioner, Hogan Creek Redevelopment Partners, LLC (the “Petitioner”), pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code, hereby petitions Respondent, Florida Housing Finance Corporation (“Florida Housing”), for a waiver of the timing provisions of the 2016 Qualified Allocation Plan (“2016 QAP”) as incorporated and adopted by Rule 67-48.002(95), Florida Administrative Code (“F.A.C.”) (2017) (collectively, the “Rule”) pertaining to a tax credit exchange. Due to forces outside of Petitioner’s control, Petitioner cannot meet the 10% test as required by the Carryover Allocation Agreement. In support, Petitioner states as follows:

A. THE PETITIONER

1. The address, telephone and facsimile numbers for Petitioner and its qualified representative are:

Hogan Creek Redevelopment Partners, LLC
205 E. Central Blvd.
Suite 304
Orlando, FL 32801

Attn.: Kevin Fitzpatrick
Telephone: 352-636-5129
E-mail: kfitzpatrick@gardnercapital.com

2. On December 14, 2017, Petitioner timely submitted its Application in response to RFA 2017-114 for Housing Credit Financing for the Preservation of Existing Affordable Multifamily Housing Developments (the “RFA”) and was assigned Application No. 2018-074C (the “Application”) seeking Housing Credits in the annual amount of \$1,660,000 to assist in the rehabilitation of a 183 unit development located in Duval County, Florida (the “Development”). On December 18, 2018, Petitioner entered into a Carryover Agreement for the allocation of its Tax Credits. Pursuant to 26 U.S.C. 42(h)(1)(E)(i), the Development must be placed in service not later than the close of the second calendar year following the calendar year in which the allocation is made. Under the Carryover Agreement, the federally-mandated placed-in-service date is December 31, 2020. Furthermore, pursuant to 26 U.S.C. 42(h)(1)(E)(ii), and Florida Housing’s requirements, the Petitioner’s deadline to meet the 10% test was June 30, 2019. On July 1, 2019, the Corporation granted an extension of the 10% test to December 18, 2019. In order to meet the 10% test, the Petitioner will need to close on its equity and debt financing and begin rehabilitation of the Development, which is cannot do by December 18, 2019.

B. WAIVER IS PERMANENT

3. The waiver being sought is permanent in nature.

C. THE RULE FROM WHICH WAIVER IS REQUESTED

4. Petitioner requests a waiver of Subsection II.K. of the 2016 QAP. At the time the Application was submitted, Rule 67-48.002(95), F.A.C. (2017) provided:

"QAP" or "Qualified Allocation Plan" means, with respect to the HC Program, the 2016 Qualified Allocation Plan which is adopted and

incorporated herein by reference, effective upon approval by the Governor of the state of Florida, pursuant to Section 42(m)(1)(B) of the IRC and sets forth the selection criteria and the preferences of the Corporation for Developments which will receive Housing Credits. The QAP is available on the Corporation's Website under the Multifamily Programs link or by contacting the Housing Credit Program at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, or from <http://www.flrules.org/Gateway/reference.asp?No=Ref-07355>.

Subsection II.K. of the 2016 QAP provided:

K. Notwithstanding any other provision of this QAP, where a Development has not been placed in service by the date required or it is apparent that a Development will not be placed in service by the date required, and such failure is due to circumstances beyond the Applicant's control, and the Applicant has returned its Housing Credit Allocation in the last calendar quarter of the year in which it was otherwise required to be placed in service, the Corporation may reserve allocation in an amount not to exceed the amount of Housing Credits returned, and may allocate such Housing Credits to the Applicant for the year after the year in which the Development was otherwise required to be placed in service, provided the following conditions have been met: (i) the sponsor must have provided written notice to the Corporation, describing the circumstances, all remedial measures attempted by the Applicant to mitigate the delay, and any other pertinent information, prior to returning the allocation; and (ii) the Executive Director must find and determine that the delay was caused by circumstances beyond the Applicant's control, that the sponsor exercised due diligence in seeking to resolve the circumstances causing delay, that the Development in all respects, except time placed in service, still meets the conditions upon which the Housing Credits were originally allocated, and that the Development is still desirable in terms of meeting affordable housing needs.

(Emphasis added).

5. The process found in the 2016 QAP requires an applicant to return its allocation of housing tax credits in the last calendar quarter of the year in which it was otherwise required to be placed in service before a tax credit exchange request can be approved by the Executive Director of Florida Housing. Petitioner is requesting a waiver of this limitation on the timing of the tax credit exchange, to allow a credit exchange to be approved by the Executive Director, or

the Board of Directors of Florida Housing, at this time rather than in the last calendar quarter of 2020.

D. STATUTES IMPLEMENTED BY THE RULE AND THE 2016 QAP

6. The 2016 QAP and the Rule implement, among other sections of the Florida Housing Finance Corporation Act (the “Act”), the statutes relating to the allocation of Low-Income Housing Tax Credits contained in Section 420.5099 of the Florida Statutes. *See* § 420.5099, *Fla. Stat. (2017)* (the “Statute”).

E. JUSTIFICATION FOR GRANTING WAIVER

7. As mentioned above, Petitioner requests a waiver of the timing requirements found in the 2016 QAP to permit Florida Housing to approve the tax credit exchange prior to the fourth quarter of 2020. Petitioner cannot satisfy the requirement in the Carryover Allocation Agreement, as extended, to spend 10% of the reasonably expected basis of the Development, by December 18, 2019.

8. Over the last year the Development has suffered unforeseen events and hardships that make it clear that the Development will not be placed in service by the end of 2020. These challenges are summarized as follows:

(a) A credit swap will enable Petitioner to extend the 10% test from December 18, 2019 to a later date in 2020. Since this is a complex Public Housing Authority rehabilitation of an occupied building, Petitioner can't meet the 10% test by December 18, 2019 as there is no land acquisition cost, and unlike a new construction project where we could complete a large materials purchase and store the material, we cannot reasonably purchase materials in advance of HUD approval of the RAD conversion. The RAD conversion includes approval of the Development's overall scope of work which will ultimately determine the

materials and quantities required for the project. The development team has accrued typical predevelopment costs such as architectural, market study, appraisal, environmental study, asbestos study, and legal fees totaling over \$300,000. However, in order to meet the 10% Test, Petitioner will be required to have a basis in the development of at least \$1,990,554. This is far greater than the project's predevelopment budget and can only be met through closing and construction. Petitioner's debt and equity partners are not willing to close prior to the RAD conversion approval.

(b) Second, the Development is part of a joint venture with a Public Housing Authority and will be participating in the HUD RAD Conversion Program as noted above. Participation in the HUD RAD Conversion Program requires multiple levels of review and approval by HUD. The Petitioner submitted the RAD Financing Plan and Capital Needs Assessment to HUD in August of 2019. The expected turn around time for HUD's review of the submission is 90 to 120 days. As such, feedback from HUD is not expected until December of 2019, at the earliest. Submission of the HUD financing plan required final debt and equity commitments, completion of third-party reports such as appraisals, Capital Needs Assessment, environmental site assessments, a complete scope of work, and a corresponding project budget and pro-forma. The development of a feasible scope of work and corresponding project budget required significant coordination between the City of Jacksonville, architect, general contractor, and Petitioner which extended the duration of the design phase as outlined below.

As with many buildings constructed in the early 70's, asbestos and lead based paint was suspected and the development team enlisted professionals to identify the locations of asbestos containing materials throughout the building. This is a crucial first step in the scoping process for buildings of this era as asbestos remediation costs can vary significantly depending on the location and available remediation methods. Asbestos containing materials were identified and remediation plans were formulated as the first step of the design process.

Further delaying the design process for the rehabilitation scope, the original architectural plans for the structure were generally not available, and plans that were available, usually conflicted with the structure as built. Petitioner organized several site visits and meetings with the architect, general contractor, Jacksonville Housing Authority, and the City of Jacksonville after receiving the Invitation to Credit Underwriting to create a "base" set of plans. The architect and general contractor spent several days on site measuring and surveying the existing building to develop the drawings.

After the architect created a set of current condition plans essentially from "scratch", the design team was able to continue the rehabilitation scoping process in more detail as the current conditions became known. Items such as location of plumbing stacks, electrical layouts, and mechanical systems were critical in developing a feasible scope and budget for the rehabilitation and the fact that a set of base plans needed to be created and the entire building surveyed and measured by the general contractor and architect, initial delays and hardships were

experienced in the design process and ultimately impacted the timeline for the RAD Financing Plan submission to HUD.

9. Petitioner has previously requested a 6-month extension of the September 30, 2019 deadline for submission of the Credit Underwriting Report, construction commencement, and closing of the tax credit partnership. The development team expects permit plans to be submitted by the end of November of 2019 with permits being received by February of 2020. Petitioner is currently holding closing calls with debt and equity providers and is projecting a late March 2020 closing. Given the rehabilitation timeframe of 16 months, it is evident that Petitioner will not meet its place in service date of December 31, 2020. With a credit swap, Petitioner is confident we can complete credit underwriting prior to March 2020, close on the tax credit partnership, commence construction, and meet its 10% test, as extended due to the credit swap.

10. Under Section 120.542(1), *Fla. Stat.*, and Chapter 28-104, F.A.C., Florida Housing has the authority to grant waivers to its rule requirements when strict application of the rules would lead to unreasonable, unfair and unintended consequences, in particular instances. Waivers shall be granted when the person who is subject to the rule demonstrates that the application of the rule would: (1) 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.* (2017).

11. In this instance, Petitioner meets the standards for a waiver of the Rule and timing limitations in the 2016 QAP. The requested waiver will not adversely impact the Development or Florida Housing and will ensure that 183 affordable family housing units will be preserved and made available for the target population in Duval County, Florida. Further, the waiver will

serve the purposes of the Statute and the Act, because one of the Act's primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State.

12. As mentioned above, the requested waiver serves the purpose of the Statute because one of the primary goals of the Statute is to facilitate the availability of decent, safe, and sanitary housing in the State of Florida for low-income households. Moreover, the Statute was enacted, in part, to encourage private and public investment in facilities for persons of low-income. By granting this waiver, Florida Housing would recognize the goal of increasing the supply of affordable housing through private investment in persons of low-income, and recognizing the economic realities and principles of fundamental fairness in developing affordable rental housing. *See* § 420.5099(2), *Fla. Stat.* (2017).


F. ACTION REQUESTED

13. For the reasons set forth herein, Petitioner respectfully requests Florida Housing (i) grant the requested waiver of the timing requirements found in the 2016 QAP to allow the requested credit exchange to be approved before the fourth calendar quarter of 2020; and (ii) grant this Petition and all of the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted,

Hogan Creek Redevelopment Partners, LLC, a
Florida limited liability company

By: Hogan Creek GP, LLC

By: 

Martin Moore, Manager
205 E. Central Blvd. Suite 304
Orlando, FL 32801
Telephone: 407-341-4550
E-mail: mmoore@gardnercapital.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petition was filed by electronic delivery to:

Florida Housing Finance Corporation,
Attn: Corporation Clerk
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301
CorporationClerk@floridahousing.org,

Joint Administrative Procedures Committee
680 Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399
Joint.admin.procedures@leg.state.fl.us

This 19th day of November, 2019.



Martin Moore