

BEFORE THE STATE OF FLORIDA
HOUSING FINANCE CORPORATION

MIDTOWN DELRAY, LLC, and
ASCOT DEVELOPMENT, LLC,

Petitioners,

vs.

Case No. 2008-042VW

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

**PETITION FOR WAIVER OF EXTENSION FEE IN
RULE 67-58.020(6), FLORIDA ADMINISTRATIVE CODE**

Petitioners, MIDTOWN DELRAY, LLC, along with ASCOT DEVELOPMENT, LLC (hereinafter "Petitioners" or collectively "Applicant"), pursuant to Section 120.542, Florida Statutes, hereby file their Petition for Waiver of Extension Fee in Rule 67-58.020(6), Florida Administrative Code, requesting Respondent FLORIDA HOUSING FINANCE CORPORATION ("FHFC") to grant – in conjunction with Applicant's submitted Request for Extension of Credit Underwriting – a waiver of the 1- percent extension fee provided in that rule, under FHFC's Community Workforce Housing Innovation Program ("CWHIP"). In support, Petitioners state as follows:

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1. Rule 67-58.020(6), Florida Administrative Code, provides:

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.

2. As a result of the very lengthy processes that led ultimately to the local government issuing the Development Order for Petitioners' multi-family homeownership CWHIP-approved project ("Project"), credit underwriting has not yet been completed for the Project. Further, credit underwriting will not be completed on or before the meeting of the Board of Directors of FHFC currently scheduled for June 12, 2008.

3. On May 19, 2008, pursuant to Rule 67-58.020(6), Florida Administrative Code, Petitioners submitted in writing to FHFC a request for an extension of time to complete credit underwriting for 10 months, through and including March 2009, in order to close the loan.

4. Section 120.542, Florida Statutes, provides that those “subject to regulation by an agency rule may file a petition with that agency, with a copy to the [Administrative Procedures C]ommittee, requesting a variance or waiver from the agency’s rule.” This Petition for Waiver includes all of the legal requirements for such a waiver.

5. Petitioners participated fully in the vigorous local government approval processes through the planning and zoning board and the city commission, as well as through negotiations, modifications, and responses to issues raised by a number of neighborhood associations and individual citizens. Petitioners paid meticulous attention to the issues raised by citizens in surrounding neighborhoods and appropriately and diligently responded thereto in order to secure local government approval of the Project.

6. Petitioners participated fully in the vigorous local government approval process that began with over 12 months of staff review starting in October 2006 and lasted through the final public hearing in April 2008. Petitioners negotiated and modified their plans in response to issues raised by a number of neighborhood associations and individual citizens. Petitioners paid meticulous attention to the concerns of citizens in surrounding neighborhoods and appropriately and diligently responded thereto in order to secure local government approval of the Project.

Numerous public hearings were held over more than a 7-month period to discuss the plans for the Project. Hearings included:

9/17/07 - Planning and Zoning Board (Approved);

10/16/07 - City Commission 1st Reading (Approved);

10/24/07 - Site Plan Review Board (Approved);

11/6/07 - City Commission 2nd Reading (Continued);

11/20/07 - City Commission 2nd Reading (Appeal);

12/11/07 - City Commission 2nd Reading (Rezoning Approved);

3/17/08 - Planning and Zoning Board (Plat Approved);

4/09/08 - Site Plan Review Board (Approved additional modifications to site plan); and

4/15/08 - City Commission (Final Plat Approved)

7. Petitioners have made all diligent efforts to garner support for and approval of the Project by the local government in order to have credit underwriting completed by the June 12, 2008 Board of Directors meeting, but have been unable to complete the processes through no fault of their own but due to the time necessary to receive final Development Order approval of the Project.

8. The extension requested on May 19, 2008, would give Petitioners sufficient time to close on the loan in question and to begin to

construct 116 homes – 32 of which would fall in the affordable housing category – and a 30,000-square-foot office building. The development will bring jobs as well as affordable housing options to such essential services personnel as teachers, firefighters, and nurses in the Delray Beach area, and will bring additional economic benefits to the Delray Beach area.

9. The waiver requested would serve the underlying interests of the provisions governing CWHIP by ensuring that the Project is able to move forward through credit underwriting for successful completion of the Project.

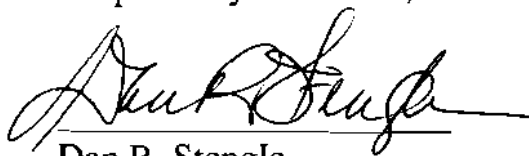
10. It will not serve the underlying interests of the provisions governing CWHIP by assessing the 1-percent extension fee because such fee will burden the Project without recognition of the Petitioners' essential efforts to secure local government Development Order approval of the Project. Approval of the Project came as a result of Petitioners' necessary, timely, and diligent efforts to respond to issues raised during the approval processes at the local government level.

11. It would serve no beneficial purpose under the CWHIP Program to (in effect) “punish” – through imposition of the extension fee – applicants and developers in circumstances where they employ their best efforts to address local citizen issues and those of the local government

approval entities in order to secure local government approval of projects approved for CWHIP funding. To impose such a fee in such circumstances would only serve as a disincentive for CWHIP applicants and developers to address fully and completely issues that arise during the local government approval processes, which necessarily would jeopardize local approval of CWHIP Program projects to the detriment of this vital, legislatively-established essential workforce housing program.

WHEREFORE, Petitioners MIDTOWN DELRAY, LLC, and ASCOT DEVELOPMENT, LLC, request that Respondent FLORIDA HOUSING FINANCE CORPORATION grant this Petition for Waiver of Extension Fee in Rule 67-58.020(6), Florida Administrative Code, foregoing the application of the 1-percent extension fee, for Petitioners' CWHIP Project.

Respectfully submitted,

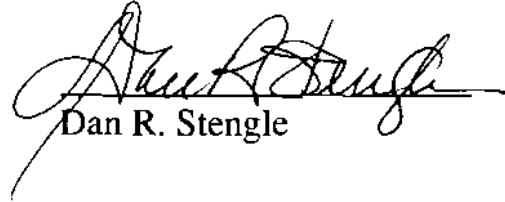


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ATTORNEYS FOR PETITIONERS

CERTIFICATE

I HEREBY CERTIFY that the original and one copy of the foregoing
Petition have been filed by Hand Delivery to the Agency Clerk, Florida
Housing Finance Corporation, 227 N. Bronough Street, Suite 5000,
Tallahassee, Florida 32301, and a copy has been served by Hand Delivery to
the Administrative Procedures Committee, 120 Holland Building, 600 S.
Calhoun Street, Tallahassee, Florida 32399-1300, this 9th day of June 2008.


Dan R. Stengle