

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In re: Town Parke, Ltd.

Case No. 2011-0018VW

**ORDER GRANTING WAIVER OF RULE 67-48.004(14)(e),
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 January 27, 2012, pursuant to a "Petition for Waiver or Variance from Florida Administrative Code Rule 67-48.004(14)(e) (2009)(2010)(2011)" (the "Petition") filed by Town Parke, Ltd., ("Petitioner") on November 9, 2011. Notice of the Petition was published on November 18, 2011 in Volume 37, Number 46, of the Florida Administrative Weekly.

Florida Housing received one comment in support of this Petition from the Honorable Charles Lacey, Mayor of the City of Winter Springs. A copy of Mayor Lacey's letter is attached hereto as Exhibit A. 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 hereto.

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

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Della M. Harrell /DATE: 1/27/2012

2. During the 2009 Universal Cycle, Petitioner applied for and was awarded competitive low-income housing tax credits (“Housing Credits”) in the amount of \$1,510,000 to finance the construction of Town Parke Apartments- Phase I (the “Development”) located in Seminole County, Florida, under application numbers 2009-244C, 2010-018CX and 2011-027C.

3. Based in part on the circumstances described below, Petitioner has previously sought and obtained a waiver to extend its Placed-In-Service date by exchanging its 2009 Housing Credit allocation for a 2011 allocation (*In re: Town Parke, Ltd.*, FHFC Case No. 2011-006VW).

4. Rule 67-48.004(14)(e)(2009 - 2011), Fla. Admin. Code (the “Rule”) provides, in pertinent part:

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:

(e) Site for the Development; notwithstanding the foregoing, after the Applicant has been invited to enter credit underwriting and subject to written request of an Applicant to Corporation staff and approval of the Corporation, the site for the Development may be increased or decreased, as follows: (i) for the Competitive HC, SAIL and HOME Programs provided the

Tie Breaker Measurement Point is on the site and the total proximity points awarded during scoring are not reduced...

5. Petitioner requests a waiver or variance from the above Rule to permit relocation of the Development site, due to circumstances beyond its control. Petitioner also requests extension of any pertinent deadlines in its Carryover Allocation Agreement to accomplish this relocation.

6. During the original 2009 application process, Petitioner obtained approval of and commitments regarding the Development from the local government, the City of Winter Springs (the "City").

7. Subsequently, the City denied Petitioner's request for final site plan approval in response to opposition by local groups, including homeowner's associations citing concerns regarding crime and the burden on the local school system.

8. In response to these concerns, Petitioner modified its Final Development Plan to decrease the number of units and to implement age restrictions on the units in accordance with the Housing for Older Persons Act.

9. Despite these concessions, the City modified its own Comprehensive Plan and issued a denial of the Final Development Plan, allegedly based on the potential economic impact of the proposed Development.

10. Petitioner subsequently filed suit against the City on December 21, 2010, alleging violations of both the Federal and Florida Fair Housing Acts. Petitioner specifically alleged that the denial violated both statutes by creating a disparate impact on the local minority population, by perpetuating segregated housing patterns and by preventing the development of affordable housing.

11. On September 29, 2011, Petitioner and the City attended a mediation conference and attempted to negotiate a settlement of the dispute, a key component of which was the relocation of the Development site, for which Petitioner must seek a waiver of the aforementioned Rule.

12. Petitioner now seeks this waiver to accomplish this settlement with the City. Petitioner also seeks an amendment of its 2011 Carryover Allocation Agreement to reflect the Development site change and to include newly issued deadlines of June 1, 2012 for the Site Control requirement and for satisfying the 10% test set forth in Sections 5.a. and 5.b. therein, respectively.

13. The new Development site is located on the same road approximately 2.5 miles from the original location, and includes the following Seminole County parcel numbers: 26-20-30-5AR-0D00-012H, 26-20-30-5AR-0D00-012P and 26-20-30-5AR-0D00-012Q. The requested

change would neither affect the scoring of Petitioner's application nor allow Petitioner to gain an unfair advantage over other applicants. Florida Housing staff has verified that the Development would receive the same overall score and proximity tie breaker points at the proposed new site.

14. 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.

15. The Board finds that Petitioner has demonstrated that strict application of the above Rule under these circumstances would cause substantial hardship to Petitioner and violate the principles of fairness, in that the Development has been delayed and its site approval denied through no fault of its own and at considerable expense and hardship to Petitioner.

16. The Board finds that denial of this request could result in the Development not being built, which would result in considerable financial losses and litigation costs for Petitioner.

17. The Board finds that the granting of this Petition would serve the underlying purpose of Chapter 420, Part V, Florida Statutes, by facilitating the development of much needed affordable housing in the City of Winter Springs.

IT IS THEREFORE ORDERED:

A waiver of Rule 67-48.004(14)(e), Fla., Admin. Code (2009 – 2011) is hereby **GRANTED**. Petitioner shall be permitted to relocate the Development site to the site described by the parcel numbers herein. Additionally, Petitioner's 2011 Carryover Allocation Agreement shall be amended to reflect the Development site change and to include newly issued deadlines of June 1, 2012 for the Site Control requirement and for satisfying the 10% test set forth in Sections 5.a. and 5.b. therein, respectively, subject to the payment of processing fees as set forth in the Carryover Allocation Agreement and subject to the requirements of Section 42 of the Internal Revenue Code.

DONE and ORDERED this 27th day of January, 2012.



Florida Housing Finance Corporation

By:

A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be the name of the Chairperson.

Chairperson

Copies furnished to:

Wellington H. Meffert II
General Counsel
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

Kevin Tatreau
Director of Multifamily Programs
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

Kerey Carpenter
AHG Group, LLC
1551 Sandspur Road
Maitland, Florida 32751

Joint Administrative Procedures Committee
Attention: Ms. Yvonne Wood
120 Holland Building
Tallahassee, Florida 32399-1300

NOTICE OF RIGHTS

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.


CITY OF WINTER SPRINGS, FLORIDA

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CHARLES LACEY
 OFFICE OF THE MAYOR

November 17, 2011

VIA OVERNIGHT DELIVERY

Mr. Steve Auger, Executive Director
 Members of the Board of Directors
 Florida Housing Finance Corporation
 227 North Bronough Street, Suite 5000
 Tallahassee, Florida 32301

RECEIVED
 11 NOV 19 AM 9:19
 FLORIDA HOUSING
 FINANCE CORPORATION

RE: Town Parke Apartments – City of Winter Springs

Dear Board Members and Mr. Auger:

We understand that the Florida Housing Finance Corporation (“FHFC”) issued an allocation of Low Income Housing Tax Credits (LIHTC) to Town Parke, Ltd. (Town Parke”) for the development and construction of the Town Parke Apartments to be located on S.R. 434 in the City of Winter Springs (“City”).

As you may know, the development of this affordable apartment community is the subject of pending litigation between Town Parke and the City. The parties to the litigation recently engaged in settlement discussions and have reached a contingent resolution to the litigation. That resolution resulted in the City approving an affordable housing apartment project within the City at a different location generally at the intersection of S.R. 434 and Moss Road (“Moss Road Location”). I am writing on behalf of the City of Winter Springs to formally and respectfully request that FHFC approve the change to the Moss Road Location so the apartments can be constructed in our community in accordance with the final settlement terms reached by the parties.


It is important to note that the resolution of the litigation was unanimously approved by the City Commission at a duly noticed public hearing and was embraced by the citizens that chose to speak at the hearing. Also, no citizens spoke against the project at the Moss Road Location. Further, upon approval of the location change by FHFC, the affordable housing project can proceed through an expedited City permitting process which was specially agreed to by the parties so that the project can be constructed in the very near future once Town Parke finalizes and submits its final technical engineering and building permit applications.

We are aware of the FHFC rule prohibiting a change in the location of the development site during the application process and the reasons for that rule. We understand that Town Parke has filed a Petition asking FHFC to grant a waiver to that rule. Given the unique circumstances that have arisen after Town Parke received its LIHTC allocation and our desire to reach an amicable resolution to the pending litigation, we believe that a waiver from the rule should be granted so the project can be completed at the Moss Road Location. Without the waiver, the proposed settlement cannot be achieved, the lawsuit will not be dismissed and the parties will not receive the public benefits of completing this affordable housing project within the City of Winter Springs. In addition, if the waiver is not approved by FHFC, the parties will unfortunately be required to resume very costly litigation and the project will not be completed as agreed to by the parties.

The City of Winter Springs strongly supports the final resolution reached in this case and the construction of the project at the new Moss Road Location. We respectfully request that FHFC approve Town Parke's Petition, which we believe is in the best interests of the citizens of Winter Springs and the affordable housing needs of our community.

We thank you in advance for your consideration.

Sincerely,



Charles Lacey
Mayor
The City of Winter Springs, Florida

Cc:
City Commission of Winter Springs
City Manager Kevin L. Smith
Scott Culp, Town Parke (via email)