

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

**FHFC CASE NO. 2017-007VW
RFA NO. 2015-232CS**

WEST LAKES PHASE I, LP,

Petitioner

vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

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FLORIDA HOUSING
FINANCE CORPORATION

PETITION FOR WAIVER OF RULE 67-48.002(95)

Petitioner, WEST LAKES PHASE I, LP, a Florida limited partnership ("Petitioner"), by and through its undersigned counsel, hereby petitions Respondent, FLORIDA HOUSING FINANCE CORPORATION ("Florida Housing") for a waiver of the timing provisions of the 2015 Qualified Allocation Plan ("2015 QAP") as incorporated and adopted by Rule 67-48.002(95), Florida Administrative Code ("F.A.C.") (2014) (the "Rule") pertaining to a tax credit exchange. In support, Petitioner states as follows:

A. THE PETITIONER

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

West Lakes Phase I, LP
Attention: Clara Trejos
1718 Peachtree Street NW, Suite 684
Atlanta, Georgia 30309
Telephone: (904) 642-6361
Facsimile: (404) 506-9703
Email: ctrejos@columbiare.com

2. The address, telephone number, facsimile number and e-mail address of Petitioner's counsel is:

Hollie A. Croft, P.A.
Broad and Cassel, LLP
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Orlando, FL 32801
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3. On May 5 2015, Petitioner timely submitted its Application in response to the RFA 2015-103-- Housing Credit Financing to Provide Affordable Multifamily Rental Housing that is part of Local Revitalization Initiatives (the "RFA") to assist in the revitalization of an Orlando community, including the demolition of existing dilapidated housing and the construction of a 200 unit development located in the City of Orlando, Orange County, Florida (the "Development"). The Development is part of a local revitalization initiative by the City of Orlando and the Petitioner, and is the first phase of redevelopment in the area. Petitioner requested housing tax credits in the amount of \$2,110,000.00 and State Apartment Incentive Loan financing ("SAIL") in the amount of \$2,000,000.00. The Development received an allocation of 2015 Low-Income Housing Tax Credits ("Tax Credits") and was invited to credit underwriting on July 2, 2015. On October 29, 2015, Petitioner entered into a Carryover Agreement for allocation of 2015 Tax Credits. The Credit Underwriting Report was approved at the October 2016 Florida Housing Board meeting and the SAIL commitment letter was issued on November 1 and accepted on November 1. The "placed in service" date for the Development is December 31, 2017.

B. WAIVER IS PERMANENT

4. The waiver being sought is permanent in nature.

C. THE RULE FROM WHICH WAIVER IS REQUESTED

5. Petitioner requests a waiver of Rule 67-48.002(95), F.A.C. and Subsection II.K. of the 2015 QAP, which provides as follows:

“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).

6. The process found in the 2015 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 2017.

D. STATUTES IMPLEMENTED BY THE RULE AND THE 2015 QAP

7. The 2015 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.* (2015) (the “Statute”).

E. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE AND SUBSECTION II.K. OF THE 2015 QAP

8. As mentioned above, Petitioner requests a waiver of the timing requirements found in the 2015 QAP to permit Florida Housing to approve the credit exchange prior to the last quarter of 2017.

9. Through no fault of the Petitioner, the Development has suffered unforeseen events that make it clear that the Development will not be placed in service by the required date—December 31, 2017. Petitioner acquired the land via long term ground lease on May 4, 2015 and started the revitalization in January 2016 by demolishing the existing apartments. The demolition efforts concluded in July 2016. In May of 2016, Petitioner closed on the last of its financing except for the SAIL Loan. Petitioner had planned to close with the low-income housing tax credit investor in September/October, prior to the SAIL closing, at which point vertical construction was going to proceed and the first mortgage lender was going to fund. However, due to an increase in construction costs, the Development had to be redesigned, resulting in a delay of the closing and getting permits. The redesign was concluded quickly and a permit ready letter was obtained in time for the rescheduled closing on the housing credit syndication in November, but due to the uncertainty in the equity markets after the presidential election, the low-income housing tax credit investor substantially reduced its capital contribution, making the transaction not viable. The Petitioner has been able to secure a

replacement low-income housing tax credit investor with less than a \$0.02 per tax credit reduction in capital contribution. Petitioner anticipates being prepared to close with the investor immediately following the February 3 Florida Housing Board meeting. However, the construction schedule is sixteen (16) months, and while Petitioner had arranged for the general contractor to speed up the schedule to accommodate the December 31, 2017 placed in service deadline when closing was scheduled for November, it is impossible to further condense the schedule. Therefore, it is clear that certificates of occupancy will not be issued prior to the placed in service deadline. Due to this certainty, the low-income housing tax credit investor is requiring a credit swap now instead of the last quarter of 2017.

10. As we are already into 2017, and closing is scheduled to promptly follow the February Board Meeting, it is evident that construction will not be completed by December of 2017, and the placed in service deadline will not be met.

11. The low-income housing tax credit investor is concerned about the uncertainty of the credit exchange if delayed until the last quarter of 2017 and is unwilling to close on the Development. Given that it is now known that the Development will not meet the placed in service deadline, the low-income housing tax credit investor is unwilling to invest millions of dollars in a Development that may not receive credits. Without the waiver request and approval of the credit swap the low-income housing tax credit investor will no longer participate in the Development resulting in the Development not being constructed.

12. As illustrated above, the delays have been caused by circumstances outside the control of the Petitioner. Petitioner undertook the revitalization efforts over a year ago, investing over \$4,500,000 in the Development thus far, including a \$500,000 capital contribution from the nonprofit general partner. The increase in construction costs were quickly mitigated by the

Petitioner. Further, the issues currently being experienced in the equity markets were unforeseen and quickly mitigated by the replacement of the investor and further deferral of developer fee. Accordingly, these events coupled with the 16 month construction schedule make it impossible to meet the December 31, 2017 deadline.

13. 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,¹ 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.* (2016).

14. In this instance, Petitioner meets the standards for a waiver of the Rule and timing limitations in the 2015 QAP. The requested waiver will not adversely impact the Development or Florida Housing and will ensure that the local revitalization effort already underway will be complete, and that 200 affordable housing units will be constructed and made available for the target population in Orange County, Florida. The strict application of the 2015 QAP and the timing limitation on the credit swap will create substantial hardship for Petitioner because it will not be able to build the Development if the low-income housing tax credit investor does not participate and the local community revitalization effort will not be successful, and will, in fact, be incomplete. Further, the waiver will serve the purposes of the Statute and the Act, because

¹ “Substantial hardship” means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, “principles of fairness” are violated when the 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. § 120.542(2), *Fla. Stat.* (2016).

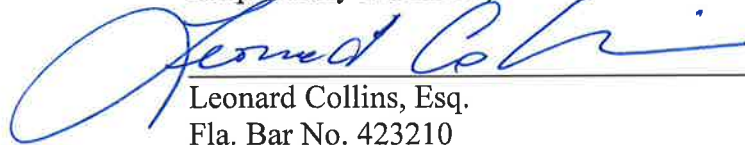
one of the Act's primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State.

15. 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, the Corporation 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.* (2016).

F. ACTION REQUESTED

16. For the reasons set forth herein, Petitioner respectfully requests Florida Housing (i) grant the requested waiver of the timing requirements found in the 2015 QAP and allow the requested credit exchange to be approved before the last calendar quarter of 2017; (ii) grant the Petition and all of the relief requested herein; and (iii) grant such further relief as it may deem appropriate.

Respectfully submitted,



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COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

The original Petition is being served by hand delivery, for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, with copies served by hand delivery on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 17th day of January, 2017.

By: 

Leonard Collins, Esq.
Fla. Bar No. 423210