

STATE OF FLORIDA
HOUSING FINANCE CORPORATION

CASE NO. 2018-004VW

SOCIETY OF ST. VINCENT DE PAUL SOUTH PINELLAS, INC.,
Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,
Respondent.

SOCIETY OF ST. VINCENT DE PAUL SOUTH PINELLAS, INC., INC.
PETITION FOR WAIVER OF RULE UNDER 28-104.002

Petitioner, SOCIETY OF ST. VINCENT DE PAUL SOUTH PINELLAS, INC., (“Petitioner”) petitions Respondent, Florida Housing Finance Corporation (“Corporation”) for a waiver to extend the closing date due to extraordinary circumstances and states:

PETITIONER

1. The address, telephone number, facsimile number of the Petitioner is:

SOCIETY OF ST. VINCENT DE PAUL SOUTH PINELLAS, INC.
Attention: Michael J. Raposa, Executive Director
384 15th Street
St. Petersburg, FL 33705
Telephone: (727) 954-7990
Facsimile: (727) 821-6244
2. The address, telephone number, facsimile number of the Petitioner’s Counsel is:
DiVito & Higham, P.A.
Attention: Joseph A. DiVito, Esq.
4514 Central Avenue
St. Petersburg, FL 33711
Telephone: (727) 321-1201
Facsimile: (727) 321-5181
3. Petitioner successfully applied for financing from the Corporation as follows:

A total of FOUR MILLION NINE HUNDRED THOUSAND AND 00/100 DOLLARS (\$4,900,000.00) from the State Apartment Incentive Loan Program (SAIL) and ONE HUNDRED

THOUSAND AND 00/100 DOLLARS (\$100,000.00) from the Extremely Low Income Program (ELI) that Corporation administers pursuant to Chapter 67-48 Florida Administrative Code. The Petitioner's Application No. is 2046-274S. Petitioner applied for SAIL/ELI funds to finance a portion of the costs to develop a Smaller Permanent Supportive Housing for Persons with Special Needs known as "Ozanam Village II", located in the Pasco County, Florida area (the "Development").

4. On February 8, 2016, staff of the Corporation issued a preliminary commitment letter and an invitation to enter credit underwriting to Developer with a closing deadline of February 8, 2017.

5. On December 9, 2016, the Board of the Corporation approved a one-year extension of the loan closing deadline until February 8, 2018.

6. On February 24, 2017, staff approved a six-month extension of the credit underwriting deadline to August 28, 2017, and on August 22, 2017, an additional four-month extension of the credit underwriting deadline to December 8, 2017, and a third extension of the credit underwriting deadline to June 8, 2018.

7. Petitioner has not been able to meet the deadlines due to extraordinary circumstances set forth herein and requests an extension.

8. While not directly relevant to this Petition, but relevant to the global development of the Petitioner's goals for affordable housing to serve Pasco County, Florida, Petitioner represents that the subject Development is part of the same campus for which it has been awarded funding for Ozanam Village I (application 2015-226S) and Ozanam Village III (application 2017-169S).

9. Should the Corporation have questions or require additional information, Petitioner is available to provide any additional information necessary for consideration of this Petition.

RULE FROM WHICH WAIVER IS SOUGHT

10. Petitioner requests a Waiver from Rule 67-48.0072(4)(c) and 67-48.0072(21), F.A.C. (2014), more specifically, Petitioner is seeking a Waiver from the provisions of the time deadline for closing the Development.

11. The Rules applicable:

Rule 67-48.0072(4)(c) F.A.C. (2014)

"(4) If the invitation to enter credit underwriting is accepted:

(c) For SAIL, EHCL, and HOME Applicants, the loan must close within 12 months of the date of the invitation to enter credit underwriting. Applicants may request one (1) extension of up to 12 months. All extension requests must be submitted in writing to the program administrator and

contain the specific reasons for requesting an extension and shall detail the time frame to close the loan. The written request will then be submitted to the Corporation's Board for consideration. The Board shall consider the facts and circumstances of each Applicant's request and any credit underwriting report, if available, prior to determining whether to grant the requested extension. The Corporation shall charge a non-refundable extension fee of 1 percent of each loan amount if the Board approves the request to extend the commitment beyond the initial 12 month closing deadline. In the event the loan does not close by the end of the 12 month extension period, the preliminary commitment or firm commitment, as applicable, will be deemed void and the funds will be de-obligated."

"(21) Information required by the Credit Underwriter shall be provided as follows:

(a) SAIL, EHCL, and HOME Applicants must complete the credit underwriting process within nine (9) months of the Applicant's acceptance to enter credit underwriting. Unless an extension is approved by the Corporation in writing, failure to complete the credit underwriting process by the specified deadline shall result in withdrawal of the preliminary commitment. In determining whether to grant an extension, the Corporation shall consider the facts and circumstances of the Applicant's request, inclusive of the responsiveness of the Development team and its ability to deliver the Development timely. If the Corporation's decision is to deny the Applicant's request for an extension, then prior to the withdrawal of the preliminary commitment, the Board shall consider the facts and circumstances of the Applicant's request, the Corporation's denial, and any credit underwriting report, if available, and make a determination of whether to grant the requested extension.

(b) For Competitive HC Developments, all preliminary items required for the Credit Underwriter's preliminary HC allocation recommendation must be provided to the Credit Underwriter within 21 Calendar Days of the date of the invitation to enter credit underwriting. Unless an extension is approved by the Corporation in writing, failure to submit the required credit underwriting information by the specified deadline shall result in withdrawal of the invitation to enter credit underwriting. In determining whether to grant an extension, the Corporation shall consider the facts and circumstances of the Applicant's request, inclusive of the responsiveness of the Development team and its ability to deliver the Development timely. If the Corporation's decision is to deny the Applicant's request for an extension, then prior to the withdrawal of the invitation, the Board shall consider the facts and circumstances of the Applicant's request, the Corporation's denial, and any credit underwriting report, if available, and make a determination of whether to grant the requested extension."

STATUTES IMPLEMENTED BY THE RULES

12. The Rule implements, among other sections of the Florida Housing Finance Corporation Act, the Florida Statute that created the SAIL Program. See Florida Statute 420.5087.

**PETITIONER REQUESTS A WAIVER FROM THE RULE
FOR THE FOLLOWING REASONS**

13. Petitioner entered into a Developer Agreement with GHD Construction Services, Inc., (GHD). Petitioner selected GHD, based upon their representation of substantial experience with affordable housing, specifically the SAIL/ELI program and the requirements of those programs. Petitioner relied upon GHD to know the time line requirements for the Development, as well as the obligations of Petitioner, as set forth in the Commitment Letter. Petitioner makes no excuse, but would offer that upon regular inquiry of GHD as to meeting the time line requirements, Petitioner was assured that the Development was proceeding diligently. As recently as November 7, 2017, Petitioner inquired of GHD about meeting the underwriting deadline, and was assured by Brian Smith of GHD, that he “had submitted everything to underwriting to meet the deadline. Petitioner relied upon this representation. Petitioner further submits:

a. Upon learning of GHD’s misrepresentation and the failure of GHD to fulfill the requirements of the Corporation and Rule 67-48.0072(4)(c) and 67-48.0072(21), Rule F.A.C. (2014) Petitioner declared a default and gave 30 days’ notice to cure the non-performance of GHD or the Developer Agreement would be terminated, such notice as required by the Agreement.

b. GHD failed to cure said default and Petitioner terminated the Developer Agreement, effective December 7, 2017.

c. Petitioner immediately entered into negotiations with Shannon Nazworth of Ability Housing, Inc., to assume the role of co-Developer with Petitioner. Ability Housing, Inc., stands ready and willing and able to assist the Petitioner in meeting the time line for the Development if this Petition is granted for an extension.

d. Petitioner has also entered into negotiations with a new general contractor in order to proceed with the Development, if this Petition is granted for an extension.

e. Petitioner appeared at the Board meeting of the Corporation on December 8, to apologize for being able to meet the time line requirements for the Development. During the year 2017, the Petitioner made numerous inquiries of GHD, expressing concern as to the delays, and as repeatedly assured that the Development was proceeding well. Petitioner relied upon these representations that all was well, and reasonably believed such misrepresentations based upon the prior reputation and experience of GHD. Petitioner now believes such assurances were flagrant misrepresentations by GHD.

f. While not directly related to this Petition, Petitioner is also terminating its relationship with GHD for Ozanam Village III, demonstrating that it intends to no longer be do business with GHD.

g. Petitioner stands ready and willing to commit its full attention to fulfilling the obligations of the Commitment and proceed with the Development if permitted to do so, and construct this much needed affordable housing in Pasco County, Florida.

14. This waiver will not adversely impact the Development for the following reasons:

a. The Development will have a new and well-qualified co-Developer with Ability Housing, Inc., which has the requisite expertise and experience to successfully develop and complete the Development;

b. The Development is adjacent to Ozanam Village I, which is nearing completion, and development of the subject site is compliments Ozanam Village I and allows economies of scale for management and delivery of services.

15. The waiver will actually benefit the Development, as it will serve to meet the high demand for affordable housing in Pasco County, Florida, and compliments Ozanam Village I and will compliment and achieve further economies of scale for Ozanam Village III.

16. A pertinent statute relating to the granting of waivers provides:

“Waivers shall be granted when the Applicant demonstrates that the application of the rule would create a substantial hardship or would violate principles of fairness”. (See Section 120.542(2) Florida Statute). The term “substantial hardship” is defined as a demonstrated economic, technological, legal and other type of hardship to the Applicant. The hardship in this case is related to “other type of hardship” in that the misrepresentations of GHD, which were reasonably relied upon by Petitioner, are directly related to Petitioner failing to meet the deadlines for the funding. Petitioner believed the deadlines were being met. Further, the failure to construct the Development will have an adverse impact to Ozanam Village I in that the economies of scale for management and delivery of services will be lost.

**WAIVER WILL SERVE THE UNDERLYING
PURPOSE OF THE STATUTE**

17. Granting the requested Waiver will serve the purposes of the Statute which is implemented by the rules for which the Waiver is sought. The Florida Housing Finance Corporation Act (beginning at Section 420.501) was enacted to encourage sponsors, including

nonprofit sponsors such as Petitioner, to participate in public investment in the State Apartment Incentive Loan Program for persons of very low income. The SAIL Program was created to assist eligible housing providers by providing quality housing to persons of very low income which the Development wil meet.

TYPE OF WAIVER

18. The Waiver being sought is to allow the time line for closing on the Development to be extended by six (6) months.

ACTION REQUESTED

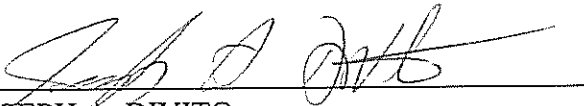
19. Petitioner requests the following: That the Corporation grant the Petition for Waiver and grant Petitioner a waiver from Rule 67-48.0072(4)(c) and 67-48.0072(21) F.A.C. (2014), such that the Corporation permits a waiver for the time line for meeting the closing deadline and extend the time for closing by six (6) months.

20. The waiver would be permanent as to the Petitioner.

21. Grant such further relief as may be deemed appropriate.

22. A copy of the Petition has been provided to the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, FL 32399-1300.

Respectfully submitted this 9 day of January, 2018.



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