

STATE OF FLORIDA
HOUSING FINANCE CORPORATION

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

vs.

FHFC Case No.: 2018-054VW

FLORIDA HOUSING FINANCE CORPORATION,
Respondent.

SOCIETY OF ST. VINCENT DePAUL SOUTH PINELLAS, INC.
AMENDED PETITION FOR WAIVER
FOR RULES 67-48.0072(21)(b) (2016) and 67-48.004(3)(h) (2016)

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 & Vasti, 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 2017-169S. 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 III", located in the Pasco County, Florida area (the "Development").

4. On January 26, 2018, the Board of the Corporation approved a one-year extension of the firm commitment deadline until August 12, 2018.

5. Petitioner will not be able to meet the deadlines due to extraordinary circumstances set forth herein and requests an extension.

6. 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 II (application 2015-226S) and Ozanam Village III (application 2016-274S).

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

RULES FROM WHICH WAIVER IS SOUGHT

8. Petitioner requests a Waiver from Rule 67-48.0072(21)(b), F.A.C. (2016), more specifically, Petitioner is seeking a Waiver from the provisions of the time deadline for receiving a firm loan commitment for the Development.

9. The Rule applicable:

Rule 67-48.0072(21)(b) F.A.C. (2016)

(b) For SAIL, EHCL, and HOME that is not in conjunction with Competitive HC, unless stated otherwise in a competitive solicitation, the firm loan commitment must be issued 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 achieve credit underwriting report approval and issuance of a firm loan commitment by the specified deadline shall result in withdrawal of the preliminary commitment. Applicants may request one (1) extension of up to six (6) months to secure a firm loan commitment. All extension requests must be submitted in writing to the program administrator and contain the specific reasons for requesting the extension and shall detail the time frame to achieve a firm loan commitment. In determining whether to grant an extension, the Board 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. The Corporation shall charge a non-refundable extension fee of one (1) percent of each loan amount if the request to extend the credit underwriting and firm loan commitment process beyond the initial nine (9) month deadline is approved. If, by the end of the extension period, the Applicant has not received a firm loan commitment, then the preliminary commitment shall be withdrawn.

10. Petitioner also requests a Waiver from Rule 67-48.004(3)(h), F.A.C. (2016), more specifically, Petitioner is seeking a change to the demographics.

11. The Rules applicable: Rule 67-48.004(3)(h) F.A.C. (2016)

“(3) For the SAIL, HOME and Housing Credit Programs, notwithstanding any other provision of these rules, the following items as identified by the Applicant in the Application must be maintained and cannot be changed by the Applicant after the applicable submission, unless provided otherwise below . . .

(h) Demographic Commitment. . .”

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 WAIVER FROM THE RULES FOR THE FOLLOWING REASONS

13. From Rule 67-48.0072(21)(b) F.A.C. (2016): 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, 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 was unaware this statement was false. Petitioner further submits:

a. Upon learning of GHD's misrepresentation and the failure of GHD to fulfill the requirements of the Corporation Rule 67-48.0072(21), Rule F.A.C. (2016) 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. After termination of the GHD Developer Agreement, Petitioner immediately entered into negotiations with Shannon Nazworth of Ability Housing, Inc., to assume the role of co-Developer with Petitioner. Petitioner and Ability Housing, Inc., have executed a developer agreement with the Petitioner.

d. Upon reviewing the status of the development, it became apparent that multiple items that GHD had reported as completed, were not complete and some had not even been commenced. As a result, a redesign of the civil engineering was required. With Ability Housing's assistance, the Petitioner engaged the services of a new civil engineer to develop the site plan and other engineering work.

e. Those plans are being completed and submitted to the county building department. It will take an estimated 6 months to receive approval and permits from the various agencies that must review the plans.

f. Petitioner has also entered into a contract with a new general contractor in order to proceed with the Development.

g. 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.

h. While not directly related to this Petition, Petitioner has terminated its relationship with GHD for Ozanam Village III, demonstrating that it intends to no longer be do business with GHD.

i. Petitioner has remained steadfast in making the Development a reality and has committed resources and reserve funds to pursue an aggressive timeline. Petitioner continues to stand ready and continues 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. From Rule 67-48.004(3)(h) F.A.C. (2016): The demographic population intended to be served at the time of application was "Persons receiving benefits under the Social Security Disability Insurance (SSDI) program or the Supplemental Security Income (SSI) program or from veterans' disability benefits." Applicant seeks to add an additional demographic selection for Adult person requiring independent living services in order to maintain housing or develop independent living skills and who have a Disabling Condition that neither currently impairs nor is likely to impair their physical mobility, such as person with a mental illness. This additional demographic commitment will allow flexibility to populations served for this project.

15. The waivers will not adversely impact the Development for the following reasons:

a. The Development has 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, as demonstrated by significant progress in completing the redesign so quickly;

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

16. 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 III and will compliment and achieve further economies of scale for Ozanam Village II.

17. 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 II, in that the economies of scale for management and delivery of services will be lost. Further, Applicant believes the additional demographic will further server the need for affordable housing for persons with a Disabling Condition.

WAIVERS WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE

18. Granting the requested Waivers 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 will meet.

TYPE OF WAIVERS

19. The Waivers being sought is to allow the time line for closing on the Development to be extended by ten (10) months and for the additional demographic for Adult person requiring independent living services in order to maintain housing or develop independent living skills and who have a Disabling Condition that neither currently impairs nor is likely to impair their physical mobility, such as person with a mental illness.

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(21)(b) F.A.C. (2016), such that the Corporation permits a waiver for the time line for meeting the firm loan commitment deadline and extend the deadline for the firm loan commitment by ten (10) months and grant Petitioner a waiver from Rule 67-48.004(3)(h) F.A.C. (2016) to allow the additional demographic for Adult person requiring independent living services in order to maintain housing or develop independent living skills and who have a Disabling Condition that neither currently impairs nor is likely to impair their physical mobility, such as person with a mental illness.

20. The waivers 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 5th Day of July, 2018.



JOSEPH A. DIVITO
Fla. Bar No. 0228915
DiVito, Higham & Vasti, P.A.
4514 Central Avenue
St. Petersburg, FL 33711
JAD@DivitoHigham.com
Telephone: (727) 321-1201
Facsimile: (727) 321-5181
Counsel for Petitioner