

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

AMARYLLIS PARK PLACE DEVELOPMENT PARTNERS,
LLC

Petitioner,

FHFC CASE NO. 2018-076VW
Application No. 2017-096C

v.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

PETITION FOR WAIVER OF RULE 67-48.002 (95)

Petitioner Amaryllis Park Place Development Partners, LLC (the “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 2016 Qualified Allocation Plan (“2016 QAP”) as incorporated and adopted by Rule 67-48.002(95), Florida Administrative Code (“F.A.C.”) (the “Rule”) pertaining to a tax credit exchange. In support, Petitioner states as follows:

A. THE PETITIONER

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

Amaryllis Park Place Development Partners, LLC
205 E. Central Blvd.
Suite 304
Orlando, FL 32801
Attn.: Joe Chambers
Telephone: 407-341-4550
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2. On December 2, 2016, Petitioner timely submitted its Application in response to RFA 2016-110 for Housing Credit Financing for Affordable Housing Developments located in Small and Medium counties (the “RFA”) to assist in the construction of an 84 unit development located in Sarasota County, Florida (the “Development”). On December 22, 2017, Petitioner entered into a Carryover Agreement for the allocation of its Tax Credits. Pursuant to 26 USC 42(h)(1)(E)(i), the Development must be placed in service not later than the close of the second calendar year following the calendar year in which the allocation is made; in this case, the federally-mandated placed-in-service date would be December 31, 2019.

B. WAIVER IS PERMANENT

3. The waiver being sought is permanent in nature.

C. THE RULE FROM WHICH WAIVER IS REQUESTED

4. Petitioner requests a waiver of Rule 67-48.002(95), F.A.C. and Subsection II.K. of the 2016 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).

5. The process found in the 2016 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 2019.

D. STATUTES IMPLEMENTED BY THE RULE AND THE 2016 QAP

6. The 2016 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. (2016)* (the “Statute”).

E. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE AND SUBSECTION ILK OF THE 2016 QAP

7. As mentioned above, Petitioner requests a waiver of the timing requirements found in the 2016 QAP to permit Florida Housing to approve the tax credit exchange prior to the fourth quarter of 2019.

8. Due to a multitude of challenges, which have largely been overcome at this point, a financial closing for the subject project has been delayed. Petitioner has successfully overcome a number of obstacles such as site plan approval, mitigating construction cost escalation, HUD Disposition approval, State Historic Preservation Office approval, and HUD project-based voucher and Subsidy Layering approvals. The history of this development process is as follows:

(a) In June of 2017, Petitioner anticipated Board Approval of funding for Amaryllis Park Place and contacted HUD to begin the Demolition/Disposition (Demo/Dispo) process in order to receive HUD approval to demolish the existing public housing structures on site. Petitioner reached out to HUD prior to receiving an Invitation to Credit Underwriting in hopes of getting an early start on the lengthy Demo/Dispo process. Petitioner executed an Invitation to Credit Underwriting on August 7, 2017.

(b) In September of 2017, Petitioner was notified by HUD that they will not approve of the Demo/Dispo application until approval to demolish the structures is granted by the State Historic Preservation Office (SHPO) since the subject site was listed on the Florida Master Site File (FMSF), an inventory of potentially culturally or historic resources. Once Petitioner was alerted, it began to work closely with SHPO to receive approval to undertake the development. A request was made to SHPO for the Florida Master Site File (FMSF) on record for the property.

(c) After repeated requests to the SHPO, Petitioner received the FMSF on November 1, 2017. SHPO requested new FMSF forms for each structure type along with a historical narrative and photos in compliance with Historic American Buildings Survey guidelines. The development team retained a historical consultant to research the existing housing development and prepare the FMSF forms, narrative, and photos as requested.

(d) After many weeks of intense research and due diligence, the final narrative and FMSF forms were delivered to SHPO February 12, 2018. Over a month later,

Petitioner received a letter from SHPO stating that in their opinion, the public housing structures may be eligible for listing on the National Register of Historic Places and that demolition would have an adverse effect to historic properties. The letter further outlined that in order to demolish the existing structures, the team would need to undertake the National Historic Preservation Act Section 106 process, which requires additional research, public meetings and a case study on the property.

(e) After meeting the Section 106 approval requirements, a Memorandum of Agreement was executed between HUD, SHPO, Sarasota Housing Authority, and Amaryllis Park Place Development Partners, LLC on June 20, 2018. The MOA allows for the demolition of the existing structures and requires the development team to memorialize the previous public housing with interpretive panels that will be prominently displayed at the new Amaryllis Park Place development.

(f) Throughout this process, Petitioner held meetings and solicited feedback from existing residents relating to the potential historic attributes of the property, including a resident meeting with the development team and a HUD official in attendance. Each time, the development team was met with overwhelming support from the residents for the demolition of the aged structures and redevelopment of new affordable housing. On September 25, 2018, the proposed development received HUD Demo/Dispo approval.

(g) Furthermore, a credit swap will enable petitioner to meet the 10% test as it will extend the current due date of November 2018 to a date in 2019. Because this is a Public Housing Authority redevelopment that is also all concrete construction

we can't reasonably meet the 10% test because there is no land acquisition cost, and unlike a wood- frame project where we could complete a large lumber purchase and store the material, we cannot reasonably purchase concrete (hollow-core slabs) in advance, mostly due to structural engineering concerns.

(h) In addition, the petitioner has selected an equity provider but will not be able to close on the tax credit partnership without a credit swap as the investor has cited Placed-in-Service date concerns. Petitioner believes a financial closing could occur before the end of 2018 if a credit swap is approved and thus the PIS deadline is delayed until 2020. Given this, Petitioner faces a substantial hardship since a lack of equity contribution will prevent the project from moving forward as equity partners are unwilling to close until a swap is approved.

(i) To summarize, Petitioner has received site plan approval, HUD subsidy layering review approval, HUD Demo/Dispo approval, SHPO demolition approval, and City of Sarasota Historic Review Board approval for the proposed development. Outstanding is receipt of building permits, which the submission of permit plans was delayed due to the ongoing SHPO process and the City not accepting permit plans until the historic process was settled. The team expects to receive Building Permits by the end of 2018. Petitioner has held several resident meeting for existing residents and plans to begin the relocation process in 60-90 days.

9. Petitioner has previously requested from FHFC an extension of the Credit Underwriting Report, closing of tax credit partnership, and commencement of construction from the current deadline of September 30, 2018. Assuming a Credit Swap is granted, petitioner

expects to financially close and commence construction by the first quarter 2018. Without a credit swap, petitioner will be unable to meet the 10% test and will not be able to close with an equity partner due to the inherent PIS deadline risk.

10. 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. 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).

11. In this instance, Petitioner meets the standards for a waiver of the Rule and timing limitations in the 2016 QAP. The requested waiver will not adversely impact the Development or Florida Housing and will ensure that 84 affordable elderly housing units will be preserved and made available for the target population in Sarasota County, Florida. Further, the waiver will serve the purposes of the Statute and the Act, because one of the Act's primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State.

12. 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, Florida Housing 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

13. For the reasons set forth herein, Petitioner respectfully requests Florida Housing (i) grant the requested waiver of the timing requirements found in the 2016 QAP to allow the requested credit exchange to be approved before the fourth calendar quarter of 2019; (ii) approve the exchange of 2017 tax credits for 2018 tax credits and (iii) grant this Petition and all of the relief requested herein; and (iv) grant such further relief as it may deem appropriate.

Respectfully submitted,

Amaryllis Park Place Development Partners, LLC

By: Amaryllis Park Place GP, LLC

By:



Joseph Chambers, Manager