

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

WAKULLA TRACE APARTMENTS,
LTD., a Florida limited partnership

Petitioner,

vs.

APPLICATION NO. 2005-088C
CASE NO. 2005-058VW

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

**PETITION FOR WAIVER FROM RULES
67-48.004(1)(a), 67-48.004(14) AND 67-48.004(15)**

WAKULLA TRACE APARTMENTS, LTD., a Florida limited partnership (“Petitioner”), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the “Corporation”) for a waiver from Rules 67-48.004(1)(a), 67-48.004(14) and (15), Florida Administrative Code (2005). This Petition is filed pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code.

THE PETITIONER

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

Wakulla Trace Apartments, Ltd.
c/o Judd K. Roth
519 Linden Street
Allentown, PA 18101

FILED
2005-05-11
10:00 AM
TALLAHASSEE, FLORIDA

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

Maureen McCarthy Daughton
Broad and Cassel
215 S. Monroe Street, Suite 400
Tallahassee, FL 32301
(850)681-6810
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3. Petitioner successfully applied for Housing Credits in the 2005 Universal Application Cycle – Multifamily Mortgage Revenue Bonds (MMRB) Program; State Apartment Incentive Loan (SAIL) Program; Home Investment Partnership (HOME) Rental Program and Housing Credit (HC) Program (the “Universal Cycle”) that the Corporation administers pursuant to Chapter 67-48, Florida Administrative Code. The Petitioner's application number is 2005-088C (the “Application”). Petitioner applied for Housing Credits in connection with a multifamily housing project to be located in Wakulla County, Florida (the “Development”), to be known as Wakulla Trace Apartments (the “Development”). The Development will have 34 units. The Application for Housing Credits was approved for funding at the August 25, 2005 Board meeting.

THE RULES FROM WHICH WAIVER IS SOUGHT

4. Petitioner requests a waiver from a provision of the Universal Application Instructions which are incorporated into Chapter 67-48, Florida Administrative Code by Rule 67-48.004(1)(a), 67-48.004(14) and 67-48.004(15), Florida Administrative Code. More specifically, Petitioner is seeking a waiver from sections of what is designated as the “Application and Selection Procedures for Development”, of Rule 67-48.004.

5. Rule 67-48.004(1)(a) provides:

(a) The Universal Application Package or UA1016 (Rev. 2-05) consists of the forms and instructions, obtained from the Corporation at 227 North Bronough Street, STE 5000, Tallahassee,

FI 32301-1329, which shall be completed and submitted to the Corporation in accordance with this rule chapter in order to apply for the SAIL, HC, or SAIL and HC program(s). The Universal Application Package is adopted and incorporated herein by reference, effective February 7, 2005.

The following provisions of the Universal Application Instruction are applicable to this

Petition:

Part II. Applicant and Development Team

A.2a(1) If applying for the HC, the Applicant must be a limited partnership...The Applicant Entity shall be the recipient of the Housing Credits and cannot be changed until after a Final Housing Credit Allocation has been issued. Replacement of the Applicant or a material change (33.3% or more of the Applicant, a General Partner of the Applicant, or a member of the Applicant) in the ownership structure of the named Applicant prior to this time shall result in disqualification from receiving an allocation and shall be deemed a material misrepresentation. Changes to the limited partner of a limited partnership will not result in disqualification.

* * *

B. Development Team

1. The identity of the Developer(s) listed in this Application may not change until the construction or Rehabilitation/Substantial Rehabilitation of the Development is complete.

6. Rule 67-48.004(14) provides:

(14) 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:

(b) Identity of each Developer, including each co-Developers;

* * *

7. Rule 67-48.004(15) provides:

(15) A Development will be withdrawn from funding and any outstanding commitments for funds or HC will be rescinded if at any time the Board determines that the Applicant's Development or Development Team is no longer the Development or Development Team described in the Application, and the changes made are prejudicial to the Development or to the market to be served by the Development.

STATUTES IMPLEMENTED BY THE RULES

8. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act,¹ the statute that created the State Housing Tax Credit Program. See §§420.5099 and 420.5093, Florida Statutes.

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

9. Petitioner requests a waiver of Rules 67-48.004(1)(a), 67-48.004(14) and 67-48.004(15), restricting the ability to change the Developer prior to the completion of construction of the Development and restricting the ability to make material changes to the General Partner of the Applicant prior to the issuance of the Final Housing Credit Allocation. Petitioner is seeking the waiver so that it may change the sole General Partner, Wakulla County Senior Citizens Council, Inc., a non-profit entity to a for-profit LLC, Wakulla Senior Council, LLC. Petitioner is also seeking to substitute Kiss Roth, LLC for the two co-developers, Kiss and Company, Inc. and Judd K. Roth who have formed Kiss Roth, LLC.

10. The sole General Partner of the Petitioner is Wakulla County Senior Citizens Council, Inc., a Florida non-profit corporation (the "Senior Council"). The Limited Partners and

¹ The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.516 of the Florida Statutes.

co-developers of the Development are Wakulla Senior Council, LLC, a Florida limited liability company (the "Wakulla LLC"), Judd K. Roth and Kiss and Company, Inc.

11. Subsequent to the tax credit application being approved, Wakulla LLC will be replaced as a limited partner by tax credit investor, Fifth Third Community Development Corporation ("Fifth Third"). In order to avoid certain tax liabilities to the non-profit, General Partner, Fifth Third has requested that Wakulla LLC replace Senior Council as General Partner. Wakulla LLC is wholly owned and controlled by the Wakulla County Senior Citizens Council, Inc.

12. Two of the three Developer entities Kiss and Company, Inc. and Judd K. Roth have merged and formed Kiss Roth, LLC for administrative purposes.

13. Combining of the two Developer entities will not adversely impact the Development because the Developer continues to have the requisite expertise and experience to successfully complete the Development.

14. The substitution of the for-profit Wakulla LLC for the non-profit entity as General Partner is to meet the anticipated tax benefit delivery schedule of Fifth Third and is necessary to maintain the current credit pricing on the transaction. Moreover, the Wakulla LLC is wholly owned and controlled by the Wakulla County Senior Citizens Council, Inc., thus no effective change in the General Partner will occur.

15. The Corporation has the authority pursuant to Section 120.542(1), Florida Statutes and Rule Chapter 28-104, F.A.C. to grant waivers to its rule requirements when strict application of such rules would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers shall be granted when the person subject to the rule demonstrates that the application of the rule would (1) create a substantial hardship or violate principals of fairness,

and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. Section 120.542 (2), Florida statutes. The granting of this Petition on both issues will serve the purposes of the underlying statute. Denying the Petition specifically on the issue of the General Partner will produce adverse pricing consequences, a substantial hardship to the Petitioner.

WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE

16. Petitioner believes that a waiver of these rules will serve the purposes of the statute which is implemented by the rule. The Florida Housing Finance Corporation Act (Section 420.501, et seq.) was passed in order to encourage private and public investment in persons of low income. The creation of the Housing Tax Credit Program was to stimulate creative private sector initiatives to increase the supply of affordable housing. By granting this Waiver, the Corporation would recognize this goal.

TYPE OF WAIVER

17. The waiver being sought is permanent in nature.

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

ACTION REQUESTED

19. Petitioner requests the following:

That the Corporation grant the Petitioner a waiver from the cited provisions of the Universal Application Instructions which is incorporated into Chapter 67-48 F.A.C., by Rule 67-48.004(1)(a) and Rules 67-48.004(14) and 67-48.004(15) such that the Corporation allows the requested change to the General Partner and the change in the Developer entity.

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

21. 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 14 day of December, 2005.



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