

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

CREATIVE CHOICE HOMES XXXII, LTD.,

Petitioner

vs.

APPLICATION NO. 2003-020C

FLORIDA HOUSING FINANCE CORP.,

Respondent.

PETITION FOR WAIVER OF RULE 67-48.004(14)(e), F.A.C.

CREATIVE CHOICE HOMES XXXII, LTD., a Florida limited partnership ("Petitioner"), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the "Corporation") for a waiver of Rule 67-48.004(14)(e), Florida Administrative Code (2003). 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:

Creative Choice Homes XXXII, Ltd.
4243-D Northlake Boulevard
Palm Beach Gardens, FL 33410
(561) 627-7988
(561) 627-3218 Facsimile

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

Maureen McCarthy Daughton
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215 S. Monroe Street, Suite 400
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3. Petitioner successfully applied for financing from the Housing Tax Credit (“HC”) program in the 2003 Universal Application Cycle – Multifamily Mortgage Revenue Bonds (MMRB) Program; State Apartment Incentive Loan (SAIL) Program; HOME Investment Partnerships (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 2003-020C (the “Application”). Petitioner applied for an allocation of Competitive HC to finance a portion of the costs to develop a 72-unit multifamily rental development in Levy County, Florida, to be known as Manatee Springs (the “Development”). In the Application, the Development site was identified as the intersection of North Park Avenue and NW 6th Street, Chiefland, Florida 32626. The site control documentation filed as part of the Application identified the parcel as approximately 8 acres.

4. Petitioner recorded an Extended Low-Income Housing Agreement with respect to the Development on April 19, 2006 in ORB 1011, Page 243, Public Records of Levy County, Florida (the “EUA”). In addition to the buildings and related amenities constituting the Development, Petitioner also constructed a lift station, as required by the approved plans for the Development. The City of Chiefland is requiring that Petitioner dedicate to the City of Chiefland that portion of the Development site (constituting a 20 foot by 25 foot area) containing the lift station (the “Lift Station Site”), by conveying the Lift Station Site to the City of Chiefland. However, the City of Chiefland will not accept a deed of the Lift Station Site so long as the Lift Station Site is subject to the EUA.

5. Petitioner sought approval from the Corporation to release the Lift Station Site from the EUA. The Corporation has determined that the dedication of the Lift Station Site will result in a “change” of the “Site” for the Development, thus requiring a Petition for waiver. The

conveyance of the Lift Station Site to the City of Chiefland does not impact the location of the Tie Breaker Measurement Point, or the location of the Development on the site.

THE RULE FROM WHICH WAIVER IS SOUGHT

6. Rule 67-48.004(14)(e) (2003) provides in part:

(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. And attempted charges to these items will not be accepted. These items are as follows:

* * *

(e) Site for the Development;

* * *

STATUTES IMPLEMENTED BY THE RULES

7. The Rule implements, among other sections of the Florida Housing Finance Corporation Act,¹ the statute that created the Housing Credit Program. See §420.5093, Florida Statutes. The Act designates the Corporation as the State of Florida’s housing credit agency within the meaning of Section 42(h)(7)(A) of the Internal Revenue Code of 1986. As the designated agency, the Corporation is responsible for and is authorized to establish procedures for the allocation and distribution of low-income housing tax credits (“Allocation Procedures”). Section 420.5099(1) and (2), Florida Statutes (2003). Accordingly, the Rules subject to Petitioner’s request for rule waiver are implementing, among other sections of the Act, the statutory authorization for the Corporation’s establishment of Allocation Procedures for the HC Program.

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

8. The pertinent statute regarding granting of waivers provides: “Waivers shall be granted when the applicant demonstrates that application of the rule would create a substantial hardship or would violate principles of fairness.” Section 120.542(2), Florida Statutes (2003). “Substantial Hardship” is defined as a demonstrated economic, technological, legal or other type of hardship “to the applicant.” The hardship in this case to the Petitioner is Petitioner will not be able to comply with requirements imposed by the City of Chiefland.

WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE

9. In light of the considerable time that it takes to develop multi-family rental housing, the Corporation’s statutes and rules are designed to allow the flexibility necessary to respond to changed circumstances, particularly those that arise through no fault of the Petitioner, which might necessitate a modification in a Development. FHFC routinely approves such changes when they would not have otherwise affected the scoring of the application, because the Applicant thus derives no unfair advantage over its competitors in an application cycle. Indeed the specific purpose of Rule 67-48.004(14) is to prevent an applicant from changing key elements in its application after reviewing the applications of its competitors, thereby allowing the Applicant to gain a possible competitive advantage. Due to the fact that the conveyance of the Lift Station Site will not result in a change in the Tie Breaker Measurement point of Petitioner’s application, the Petitioner has not received any unfair advantage over its competitors. The Corporation will not be harmed in the granting of this Petition, as the intent of the Rule will not be violated.

10. The violation of principles of fairness and imposition of a substantial hardship would result from strict compliance with the provisions of F.A.C. Rule 67-48.004(14). The City of Chiefland provides utility services to the Development, and requires ownership of the lift

station in connection with such services. Unless the Corporation grants Petitioner's petition for waiver to allow Petitioner to convey the Lift Station Site to the City of Chiefland, the City of Chiefland could disconnect the Development from the utilities provided by the City of Chiefland. The substantial hardship which would result from strict compliance with the foregoing is obvious.

11. Petitioner believes that a waiver of these rules will serve the purposes of Section 420.5099 and the Act which is implemented by the rule, because one of the goals is to facilitate the availability of decent, safe and sanitary housing in the State of Florida to low-income persons and households by ensuring:

The maximum use of available tax credits in order to encourage development of low-income housing in the State, taking into consideration the timeliness of the application, the location of the proposed housing project, the relative need in the area for low-income housing and the availability of such housing, the economic feasibility of the project, and the ability of the Applicant to proceed to completion of the project in the calendar year for which the credit is sought.

Section 420.5099(2), Florida Statutes (2003).

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 requesting and permitting Petitioner to make the aforementioned changes, the Corporation would recognize the goal of increasing the supply of affordable housing through private investment in persons of low-income. The requested waiver will not adversely impact the Development or the Corporation.

TYPE OF WAIVER

12. The waiver being sought is permanent in nature.

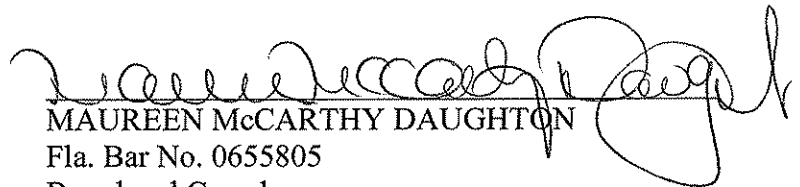
13. Should the Corporation have questions or require any additional information, Petitioner is available to provide any additional information necessary for consideration of the Petition.

ACTION REQUESTED

14. Petitioner requests that the Corporation grant the Petition and all the relief requested here;

15. 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 21 day of August, 2007.



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