

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

WEST BARTOW PARTNERSHIP LTD., LLLP

Petitioner,

vs.

APPLICATION NO. 2007-038C

FLORIDA HOUSING FINANCE CORP.,

Respondent.

**PETITION FOR WAIVER FROM RULES
67-48.004(1)(a) and 67-48.0075(7)(a)1, F.A.C.**

WEST BARTOW PARTNERSHIP LTD., LLLP ("Petitioner"), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the "Corporation") for waiver from Rule 67-48.004(1)(a), and 67-48.0075(7)(a)1, Florida Administrative Code (2007). This Petition is filed pursuant to Section 120.542, Florida Statutes and Chapter 28-104, Florida Administrative Code.

THE PETITIONER

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

West Bartow Partnership Ltd., LLLP
430 South Hartsell Avenue
Lakeland, FL 33815
(863) 687-2911
(863) 682-1226

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

Gary J. Cohen, Esq.
Shutts & Bowen LLP
1500 Miami Center
201 S. Biscayne Boulevard
Miami, FL 33131
(305) 347-7308
(305) 347-7808

3. Petitioner successfully applied for financing from the Housing Tax Credit (“HC”) Program in the 2007 Universal Application Cycle; Multi-Family 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 2007-038C (the “Application”). Petitioner applied for housing credits and a “supplemental loan” to finance a portion of the costs to develop a multi-family rental apartment complex in Polk County, Florida, to be known as The Manor at West Bartow (the “Development”). The Development is a 100-unit apartment complex.

THE RULES FROM WHICH WAIVER IS SOUGHT

4. Petitioner requests a waiver from various sections of Rule 67-48.004(1)(a), Florida Administrative Code.

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

(1)

(a) The Universal Application Package or UA1016 (Rev. 3-07) is adopted and incorporated herein by reference and consists of the forms and instructions, obtained from the Corporation, for a fee at 227 North Bronough Street, Suite 5000, Tallahassee, FL 32301-1329, or available, without charge on the Corporation’s Website under the 2007 Universal Application link labeled Instructions and Application, which shall be completed and submitted to the Corporation in accordance with this rule chapter in order to apply for the SAIL, HOME, HC or SAIL and HC Programs(s).

6. The specific Instructions of the Universal Application Instructions provides under Part II A.2.a:

(1) If applying for HC, the Applicant must be a limited partnership... or a limited liability company. The Applicant entity shall be the recipient of the Housing Credits and may not change until after the Carryover Allocation Agreement is in effect. Once the Carryover Allocation has been executed by all parties, replacement of the Applicant or a material change (33.3 percent 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 will require Board approval prior to the change.

7. Petitioner requests a waiver from the provisions of Rule 67-48.0075(7)(a)1., Florida Administrative Code. Rule 67-48.0075(7)(a)1., pertaining to the terms and provisions of repayment of supplemental loans, provides in part:

. . . with the principal forgivable provided the units for which the supplemental loan amount is awarded or targeted to ELI Households for at least 15 years.

STATUTES IMPLEMENTED BY THE RULES

8. Rule 67-48.004(1)(a) referenced above implements, among other sections of the Florida Housing Finance Corporation Act¹, the statute that designates the Corporation as the State of Florida's housing credit agency for the federal Housing Tax Credit Program to establish procedures necessary for the proper allocation of federal low-income housing tax credits (the "Procedures"). See Section 420.5099, Florida Statutes. These Procedures are established in Rule Chapter 67, Florida Administrative Code. Accordingly, the Rule subject to this request is implementing, among other sections of the Act, the statutory authorization for the Corporation's establishment of Procedures for the HC Program.

9. Rule 67-48.0075(7)(a)1. referenced above implements the provisions of Section 34 of Chapter 2006-69 (H.B. No. 1363), which act appropriated the sum of \$30,000,000 to assist in the production of housing units for extremely low-income persons as defined in Florida Statute Section 420.0004(8). In the 2007 Universal Application Cycle, provision was made for the award of "supplemental" loans to applicants agreeing to set aside a specified percentage of apartment units to extremely low-income persons ("ELI Households"). Rule 67-48.0075(7)(a) sets forth the terms and

¹ The Florida Housing Finance Corporation Act is set forth in Section 420.501 through 420.516, Florida Statutes.

conditions of such supplemental loans, providing in part that “. . . with the principal forgivable provided the units for which the supplemental loan amount is awarded are targeted to ELL Households for at least 15 years”. Accordingly, Rule 67-48.0075(7)(a) implements the provision of Chapter 2006-69, Section 34.

10. The Corporation has the authority pursuant to Section 120.542(1), Florida Statutes, and 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 principles of fairness², 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.

FACTS DEMONSTRATING ENTITLEMENT TO WAIVER

11. Petitioner requests a waiver of the Rule restricting the ability of Petitioner to make a material change in the ownership structure of the applicant entity prior to loan closing. The applicant entity is West Bartow Partnership Ltd., L.L.P. and its sole general partner is West Bartow GP, Inc. The Petitioner desires this Waiver to change the general partner from West Bartow GP, Inc. to Lakeland-Polk Housing Corporation (“LPHC”), a non-profit entity. Both West Bartow GP, Inc. and LPHC are ultimately controlled by the same entity, the Lakeland Housing Authority. The change is needed in order to obtain tax-exempt status for the property for Florida property (ad valorem) tax purposes. If a senior housing development is owned by a partnership, such as the Petitioner, the property will only be exempt for Florida ad valorem property tax purposes if the

² “Substantial hardship” means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. “Principles of Fairness” are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the Rule. Section 120.542(2), Florida Statutes.

general partner is exempt from federal income tax, which the current general partner is not. Changing the general partner of the Petitioner to LPHC will insure the property will obtain tax-exempt status for Florida property tax purposes. There is no negative impact to the Development as a result of this change.

12. Petitioner requires a waiver of that portion of Rule 67-48.0075(7)(a)1. which requires, with respect to repayment of supplemental loans, that the principal balance thereof be automatically forgiven provided the units for which the supplemental loan amount is awarded are targeted to ELI Households for at least 15 years. Due to potential negative federal income tax ramifications pertaining to forgivable loans, Petitioner desires this Waiver in order to waive that portion of the foregoing rule requiring that such supplemental loan be automatically forgiven. In furtherance of such Waiver, it is requested that the loan documentation for such supplemental loan shall provide that the principal of such loan may be forgivable by the Corporation, in its sole discretion, at maturity provided the units for which the supplemental loan amount were awarded were targeted to ELI Households for at least 15 years and remain in programmatic compliance.

13. The Corporation has the authority pursuant to Section 120.542(1), Florida Statutes, to provide relief from its rules if strict application of the rule will lead to unreasonable, unfair and unintended consequences in particular instances. Unless the Rules are waived to allow the changes as outlined above, the Petitioner will (i) not obtain tax-exempt status of the property (for ad valorem property tax purposes) which will result in a substantial financial burden to the Petitioner, and (ii) be subject to "phantom taxable income" which will result in substantial financial burden to the Petitioner.

WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE

14. Petitioner believes that a waiver of these rules will serve the purposes of Section 420.5099 and the Act which is implemented by the rules, because one of their 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 credit is sought. Section 420.5099(2), Fla. Stat.

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 Credit program, and the appropriation of funds for supplemental loans to projects housing ELL Households, stimulates private sector initiatives to increase the supply of affordable housing. By granting this request, the Corporation would recognize the goal of increasing the supply of affordable housing through private investment in persons of low-income.

TYPE OF WAIVER

15. The waiver being sought is permanent in nature.
16. Should the Corporation have questions or require any additional information necessary for consideration of the Petition, please contact the undersigned.


ACTION REQUESTED

17. Petitioner requests the following:
 - (a) Grant the Petition and all relief requested herein;
 - (b) That the Corporation grant this waiver allowing Petitioner to change the general partner from West Bartow GP, Inc. to Lakeland-Polk Housing Corporation, and for West Bartow GP, Inc. to become a special limited partner of Petitioner; and

(c) That the Corporation grant this waiver allowing for the loan documentation evidencing the supplemental loan from the Corporation to provide that the principal amount of such loan may be forgiven in the sole discretion of the Corporation, provided the units for which the supplemental loan is awarded or targeted to E.I.I households for at least 15 years and remain in programmatic compliance.

18. 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 17th day of May, 2008.




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Counsel for Petitioner

CERTIFICATE OF SERVICE

The Petition is being served by overnight delivery for filing with the Corporation Clerk for the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301, with copies served by overnight delivery on the Joint Administrative Procedures Committee, Room 120, 600 Calhoun Street, The Holland Building, Tallahassee, Florida 32399-1300, this 11th day of May, 2008.



Gary J. Cohen, Esq.

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