

BEFORE THE STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

IN RE: SUMMIT HOUSING PARTNERS, LLC,

Petitioner,

CASE NO. 2010-0041W

RECEIVED
10 FEB 15 PM 3:33
STATE OF FLORIDA
Housing Finance Corporation

**PETITION FOR EMERGENCY WAIVER OF CERTAIN
SET-ASIDE REQUIREMENTS CONTAINED IN APPLICATION
INSTRUCTIONS ADOPTED BY RULE 67-21.003**

Petitioner Summit Housing Partners, LLC, pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code, requests an emergency waiver of certain set-aside requirements within the Application Instructions that are adopted by Rule 67-21.003, Florida Administrative Code. In support of this request, Petitioner states:

Identification of Petitioner

1. The name, address, telephone number and facsimile number of the Petitioner are:
Summit Housing Partners, LLC
105 Tallapoosa Street, Suite 300
Montgomery, AL 36104
Telephone: (334) 954-4458
Facsimile: (334) 954-4496

2. The name, address, telephone number and facsimile number of Petitioner's counsel are listed below. Correspondence to Petitioner relating to this matter should be directed to the undersigned.

The Applicable Rules

3. The Application Instructions are adopted by Rule 67-21.003.
4. The Application Instructions include in Part III 3 E 1 b. (1) (b) and (c) the following set-aside requirements ("Set Aside Requirements"):

E. Set-Aside Commitments

All set-aside commitments will be included in the Land Use Restriction Agreement(s) and/or Extended Use Agreement, and must be maintained in order for the Development to remain in compliance, unless the Board approves a change.

1. Commitments for MMRB and HC Applications:

If there is an inconsistency between the minimum set-aside section and the information stated on the total set-aside breakdown chart in this Application, the percentage(s) stated on the total of the set-aside breakdown chart will be considered the Applicant's set-aside commitment.

Applicant's requesting Competitive HC and HOME must complete the questions at Part III.E.1.a. and b. of the Application for the Competitive HC Funding and the questions at Part III.E.2.a. of the Application for the HOME funding.

* * *

b. Set-Aside Commitment.

(1) Set-Aside Location A Development (Threshold)

A proposed development qualifies as a Set-Aside Location A Development if the location of the proposed Development. A proposed Development qualifies as a Set-Aside Location A Development if the location of the proposed development is within a Set-Aside Location A Area and the Applicant selected the applicable demographic commitment (elderly or family) at Part III.D. of the Application. The only exception to this provision is if the proposed Development also qualifies as a HOPE VI Development at Part III.a.2.d. of the Application.

Applicants with Set-Aside Location A Development must meet the following Set-Aside Requirements.

* * *

- (b) Applicants requesting MMRB must commit to Set-Aside at least 85% of the Development's residential units at 50% AMI or less.
- (c) All Applicants must meet the minimum ELI Set-Aside threshold set out at Part III.E.1.b.(2)(a)(iii) of these instructions.

If any part of a Development's site is located within the boundaries of an area designated as a Set-Aside Location A Area, then the Development will be deemed to be a Set-Aside Location A Development.

5. As can be seen, the only exception to the Set-Aside Requirements for Location A Developments is for a proposed development that qualifies as a HOPE VI Development. Petitioner's Development does not so qualify.

6. These Set-Aside requirements were not applicable in Leon County in prior years. Rather, these requirements were made applicable to developments in certain parts of Leon County in the 2009 version of the Application Instructions, which were adopted and became effective in August, 2009.

Citation to Statute Implemented

7. Rule 67-21.003 includes among the law implemented the following: Sections 420.502, 420.507(4), (13), (14), (18), (19), (20), (21), (24), and 420.508, Florida Statutes.

Background

8. Petitioner proposes to acquire the existing Oak Pointe Apartments at 1747 Capital Circle Northeast, Tallahassee, Florida. The contract for this purchase expires on March 10, 2010. Petitioner has applied for financing that will allow it to continue to offer these units as affordable housing. A key part of the financing for the project is Petitioner's application for funding in accordance with the Multi-Family Mortgage Revenue Bond ("MMRB") program, which is described in and subject to Chapter 67-21, Florida Administrative Code. This project was not submitted within a competitive cycle and is not the recipient of any soft funds.

9. This application was filed on October 20, 2009, and assigned Application No. 2009A-215B (the "Application"). The Application shows that the proposed Development will exceed the applicable federal set-aside requirements, but will not comply with the ELI and Location A Set-Aside Requirements. Nonetheless, the Application was approved by the Board on December 4, 2009-- presumably because the FHFC staff (like the Petitioner) was not aware that the Set-Aside Requirements were applicable to Petitioner's Development. Thereafter, the Petitioner was invited and entered into credit underwriting, and paid the required good faith deposit of \$76,000. The Credit Underwriting Report is scheduled to be considered by the Board at its meeting of February 26, 2010. Petitioner anticipated that a closing would occur shortly thereafter, as the purchase contract expires on March 10, 2010..

10. However, Petitioner recently was advised (on February 8, 2010) that the ELI and Location A Set-Aside Requirements apply to Petitioner's Development.

Requested Action

11. Accordingly, Petitioner requests an emergency waiver of the referenced Set-Aside Requirements.

Petitioner Requests That the Waiver Be Permanent

12. Petitioner requests that the waiver be permanent.

Specific Facts That Demonstrate a Substantial Hardship, That Make the Situation an Emergency and That Show That the Petitioner Will Suffer an Immediate Adverse Effect

13. Petitioner has expended considerable time and resources in its effort to obtain the requested funding. As noted, the Application for funding has been approved by the Board, the Petitioner has been invited and entered into credit underwriting and has paid the required good faith deposit, and the Credit Underwriting Report is scheduled for consideration by the Board at its meeting on February 26, 2010. The requested funding is critical to the Petitioner's ability to continue to offer these rental units as affordable housing. Petitioner will not be able to offer the rental units as affordable housing if it is required to comply with the referenced Set-Aside Requirements. Accordingly, Petitioner will suffer a substantial economic hardship if it is required to comply with these requirements.

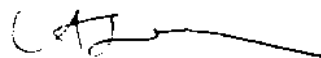
14. As noted, the contract for purchase expires on March 10, 2010. If the request for waiver is processed in accordance with the normal time frames in s. 120.542, the request likely could not be considered until the next Board meeting, which is currently scheduled for April 30, 2010. Petitioner is concerned that it will not be able to feasibly extend the contract for the time necessary to allow this request to be considered at the next Board meeting on April 30, 2010, as this would delay the closing date well into May, 2010 (or even later). Accordingly, the Petitioner will suffer an immediate adverse effect unless the waiver is issued more expeditiously than the time frames provided in s. 120.542, F.S.

The Requested Waiver Will Serve the Purpose of the Underlying Statute

15. One of the principal purposes of the referenced statutes is to stimulate construction and substantial rehabilitation of rental housing for eligible persons and families, and to provide incentives to construct affordable housing on a timely basis. See e.g., Section 420.502, Florida Statutes. The granting of this requested waiver will serve this purpose. The Development will exceed the applicable federal set-aside requirements for affordable housing. There are no FHFC-financed Guarantee Fund projects within the relevant market area or that would be affected by the granting of this waiver. As noted, this project was not submitted within a competitive cycle and is not the recipient of any soft funds.

WHEREFORE, Petitioner respectfully requests the entry of a final order granting the requested emergency waiver of the referenced Set-Aside Requirements.

Respectfully submitted this 15th day of February, 2010.




Lawrence E. Sellers, Jr.
Florida Bar No. 300241
HOLLAND & KNIGHT, LLP
Post Office Box 810
Tallahassee, FL 32302-0810
Telephone: 850-224-7000
Facsimile: 850-222-2185

*Attorneys for Petitioner,
Summit Housing Partners, LLC*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petition for Emergency Waiver was furnished by fax/e-mail to, Corporation Clerk, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301; and that a true and correct copy has been provided via e-mail to Wellington H. Meffert, General Counsel, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329; and to Scott Boyd, Joint Administrative Proceedings Committee, Room 120, Holland Building, Tallahassee, Florida ; all on this 15th day of February, 2010.



Lawrence E. Sellers, Jr.

9158510_v3