

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

FHFC CASE NO. 2011-009VW

WESTGATE PLAZA APARTMENTS, LTD.,

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

RECEIVED
11 JUN 10 AM 9:19
STATE OF FLORIDA
HOUSING FINANCE CORPORATION

PETITION FOR WAIVER OF RULE 67-48.027, F.A.C.

Petitioner Westgate Plaza Apartments, Ltd. (“Westgate”) petitions Respondent Florida Housing Finance Corporation (“Florida Housing”) for a waiver of the restriction on submitting an Application (as defined in Rule 67-48.002(9)) to Florida Housing, as required pursuant to Rules 67-48.004 and 67-48.0072, F.A.C., until after tax exempt bonds have been issued to the Development (as herein defined). *See* Rule 67-48.027(m), F.A.C. (the “Rule”). In support of its Petition, Westgate states:

1. Pursuant to Section 120.542, Fla. Stat., and Rule 28-104.002, F.A.C., Westgate requests a waiver of the Rule which prohibits submitting an Application for Housing Credits (as defined in Rule 67.48.002(61)) to Florida Housing, as required in Rules 67-48.004 and 67-48.0072, F.A.C., until after tax exempt bonds have been issued to the Development (as herein defined).
2. Westgate requests a waiver so that it can submit an Application for 4% Housing Credits prior to the time the Bonds (as herein defined) are issued.

A. THE PETITIONER

3. The name, address, telephone and facsimile numbers for Southwest and its qualified representative are:

Westgate Plaza Apartments, Ltd.
1666 Kennedy Causeway
Suite 505
North Bay Village, FL 33141
Telephone: (305) 538-9552, ext. 103
Facsimile: (305) 538-9553
Email: francisco@landmarkco.com

4. For purposes of this Petition, the address, telephone and facsimile numbers of Petitioner's attorney is:

Brian J. McDonough, Esquire
STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
150 West Flagler Street, Suite 2200
Miami, Florida 33130
Telephone: 305-789-3200
Facsimile: 305-789-3395
Email: bmcdonough@stearnsweaver.com

B. THE DEVELOPMENT AND FUNDING

5. Westgate has received commitments from various funding sources (as more further described herein) to be used for the development and construction of Westgate Plaza Apartments, a new 80-unit development intended to serve elderly low income families in West Palm Beach, Palm Beach County, Florida (the "Development").

6. Funding for the Development will be derived from the following sources:
- a. approximately \$7,000,000.00 in tax exempt bonds (the "Bonds") which will be issued by the Housing Finance Authority of Palm Beach County, Florida ("HFAPB");

- b. approximately \$5,030,000.00 in equity which will be contributed as capital to Westgate by an investor limited partner in connection with its purchase of the Housing Credits; and
- c. \$6,100,000.00 of NSP2 loan proceeds made available to Westgate pursuant to a loan to Westgate of NSP2 funds from Palm Beach County, a political subdivision of the State of Florida (the "County") in furtherance of the County's Neighborhood Rental Redevelopment Loan Program ("NRRLP").

7. It is anticipated that the Development will be developed with assistance from the Palm Beach County Housing Authority (the "Housing Authority"). The Development is part of a neighborhood redevelopment plan.

8. Westgate is unable to close on the equity contribution, the bonds and the NSP2 Loan without Westgate's having (i) undergone a full credit underwriting with respect to the allocation of Housing Credits to the Development, (ii) submitted an Application to Florida Housing for Housing Credits, and (iii) received a favorable recommendation (on a preliminary basis) for such Housing Credits.

9. The requested Rule waiver will enable Westgate to provide desperately needed affordable housing for 80 families in West Palm Beach, of which at least 80% will be elderly. It will also providing affordable housing to the citizens of Palm Beach County.

10. Moreover, the Rule waiver will not adversely impact the Development. A denial of this Petition could (a) result in substantial hardship to Westgate; (b) deprive Palm Beach County of additional and essential affordable housing units in a timely manner; and (c) violate principles of fairness. § 120.542(2), Fla. Stat. (2009).

11. More significantly, should its Petition be denied, Westgate may be unable to deliver additional low-income housing units to a market in desperate need of quality affordable housing.

12. The requested Rule waiver is permanent in nature.

C. THE RULE FROM WHICH RELIEF IS REQUESTED AND THE STATUTE IMPLEMENTING THE RULES

13. Westgate realleges and incorporates Paragraphs 1 through 12 as though fully set forth herein.

14. Rule 67-48.027(m) provides, in pertinent part, that a party desiring to have allocated to it Housing Credits in connection with bonds issued to it by a local housing finance authority such as the HFAPB must proceed as follows:

After bonds are issued to the Development, [the Developer shall] make Application to the Corporation, as required in Rules 67-48.004 and 67-48.0072, F.A.C.

Rule 67-48.027(m), F.A.C.

15. The Florida Housing Finance Corporation Act¹ 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, Florida Housing is responsible for and is authorized to establish procedures for the allocation and distribution of low-income housing tax credits ("Allocation Procedures"). §§ 420.5099(1) and (2), Fla. Stat. (2009). The Allocation Procedures were established in Rule Chapter 67, Florida Administrative Code. Accordingly, the Rule subject to Westgate's waiver request is implementing, among other

¹ The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.516 of the Florida Statutes (the "Act"). See also, Rule 67.40.020(1), F.A.C. ("Act" means the Florida Housing Finance Corporation Act, section 420.501 through 420.516 of the Florida Statutes")

sections of the Act, the statutory authorization for Florida Housing's establishment of Allocation Procedures for the HC Program. §§ 420.5099(1) and (2), Fla. Stat. (2009).

D. JUSTIFICATION FOR WESTGATE'S REQUESTED WAIVERS

16. Westgate realleges and incorporates Paragraphs 1 through 15 as though fully set forth herein.

17. 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 these 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,² 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. (2009).

18. In this instance, Westgate meets the standards for Rule waivers.

19. The requested waiver to allow Westgate to submit its Application prior to the Bonds being issued will enable Westgate to obtain the financing necessary to finance the construction of the Development and thereby provide essential affordable housing to the elderly citizens of Palm Beach County, Florida.

20. Without the Rule waiver, Westgate will be unable to obtain adequate financing for its use in developing the Development.

E. CONCLUSION

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 the 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), Fla. Stat. (2009).

21. Controlling statutes and Florida Housing's Rules are designed to allow the flexibility necessary to provide relief from rule requirements when strict application, in particular circumstances, would lead to unreasonable, unfair, or unintended results. Waivers should be granted when the applicant subject to the rule demonstrates that strict application would: (a) create a substantial hardship or violate principles of fairness; and (b) the purpose of the underlying statute has been or will be achieved by other means. § 120.542(2), Fla. Stat. (2009).

22. The requested waiver will not adversely impact the Development or Florida Housing, and will ensure that 80 affordable housing units will be constructed of which at least 80% will be available for elderly individuals and families in Palm Beach County, Florida.

23. However, a denial of the requested waiver could result in a substantial hardship for Westgate which would be denied the ability provide decent, safe, and affordable housing units to a market in desperate need of extremely low and low income housing.

24. Finally, by granting the requested waiver, Florida Housing would recognize the economic realities and principles of fundamental fairness of developing affordable residential housing by encouraging the development of affordable housing projects and enabling developers to meet the needs of both very low-income and low-income families in dire need of affordable and safe housing and social services. This recognition would promote participation by experienced developer entities in meeting the purpose of the Act, through new construction and in an economical and efficient matter.

25. Should Florida Housing require additional information, Westgate is available to answer questions and provide all information necessary for consideration of its Petition for Waiver of Rule 67-48.027(m).

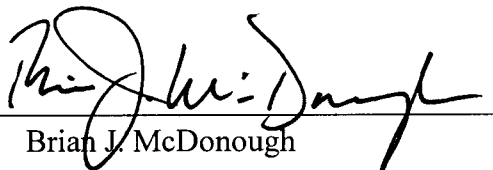
WHEREFORE, Petitioner Westgate Plaza Apartments, Ltd., respectfully requests that Florida Housing Finance Corporation:

- A. Grant the Petition and all the relief requested herein;
- B. Waive the Rule's restriction against Westgate's submitting an Application prior to the Bonds being issued; and
- C. Grant such further relief as may be deemed appropriate.

Respectfully submitted,

STEARNS WEAVER MILLER WEISSLER
ALHADEFF & SITTERSON, P.A.
Attorneys for Petitioner
150 West Flagler Street, Suite 2200
Miami, Florida 33130
Telephone: 305-789-3200
Facsimile: 305-789-3395
Email: bmcdonough@stearnsweaver.com

By:



Brian J. McDonough

CERTIFICATE OF SERVICE

The Original Petition is being served by overnight delivery, with a copy served by electronic transmission, for filing with the Corporation Clerk for Florida Housing Finance Corporation, 227 N. Bronough Street, Tallahassee, Florida 32301, with copies served by overnight delivery on the Joint Administrative Procedures Committee, Room 120, The Holland Building, Tallahassee, Florida 32399-1300, this 9th day of June, 2011.



Brian J. McDonough