

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

CASE NO. 2015-035VW

OAKLAND PRESERVE, LLC

Petitioner,

v.

FLORIDA HOUSING FINANCE
CORPORATION

Respondent.

**PETITION FOR WAIVER OF THE QUALIFIED ALLOCATION PLAN'S
REQUIREMENT FOR RETURNING HOUSING CREDIT ALLOCATIONS, AND FOR
AN IMMEDIATE ALLOCATION OF 2015 HOUSING CREDITS**

Petitioner Oakland Preserve, LLC, a Florida limited liability company ("Oakland") submits its Petition to Respondent Florida Housing Finance Corporation (the "Corporation") for a waiver of the 2014 Qualified Allocation Plan's (a) prohibition from returning its 2014 Housing Credit Allocation prior to the last quarter of 2016, and (b) requirement that a housing credit allocation can be reserved only for the year after the year in which the development is required to be placed in service ("Placed-in-Service Date"). The return of these Housing Credits is required before the Corporation may reserve an allocation of 2015 Housing Credits that Oakland requests be immediately allocated. *See* Rule 67-48.002(94), Florida Administrative Code (the "Rules"), and Qualified Allocation Plan Section II.K.

1. Pursuant to Section 120.542, Fla. Stat. (2015) and Rules 28-104.001 through 28-104.006, F.A.C., Oakland requests a waiver of Rule 67-48.002(94), Florida Administrative Code, and of Section II.K of the Qualified Allocation Plan ("QAP") to allow the immediate return of its 2014 Housing Credit Allocation, and an immediate allocation of 2015 Housing Credits.

2. The name, address, telephone and facsimile numbers for Oakland and its qualified representative are:

Oakland Preserve, LLC
9400 South Dadeland Boulevard
Suite 100
Miami, Florida 33156
Attention: David O. Deutch
Telephone 305-854-7100
Telecopier 305-859-9858
E-Mail: david@pinnaclehousing.com

3. The name, address, telephone and facsimile numbers of Oakland's attorneys are::

Gary J. Cohen, Esq.
Shutts & Bowen LLP
201 S. Biscayne Blvd., Ste. 1500
Miami, Florida 33131
305-347-7308 (telephone)
305-347-7808 (telecopier)

4. Pursuant to RFA 2013-003, Oakland timely submitted its application for competitive Housing Credits under the Low Income Housing Tax Credit program ("LIHTC Program" or "HC Program"). See Application Number 2014-241C.

5. Equity raised from Housing Credits will be used for new construction of 80 low-income housing tax credit units to be known as Oakland Preserve (the "Development"). The Development will serve low-income tenants in Oakland Park, Broward County, Florida. The Development entails the new construction of five residential buildings.

6. On January 31, 2014, Oakland's application was preliminarily selected for funding by FHFC. However, due to appeals filed by other competitors in RFA 2013-003, the award to Oakland was not finalized until the June 13, 2014 Corporation Board of Directors meeting.

7. Under Rule 67-48.028(1), if an Applicant cannot complete its development by the end of the year in which the preliminary allocation of Housing Credits is issued, such applicant

must enter into a “carryover allocation agreement” with the Corporation by December 31 of the year in which the preliminary allocation is issued. The carryover allocation allows the applicant until the end of the second year following the year in which the carryover allocation is issued to place the development in service. As such, an applicant receiving a preliminary allocation of 2014 housing credits must enter into a carryover allocation agreement with FHFC by December 31, 2014 and must place the development in service by December 31, 2016. On December 29, 2014, Oakland and the Corporation entered into a carryover allocation agreement for the Development. The carryover allocation agreement required that Oakland satisfy the “10% test” by June 30, 2015, commence construction and close tax credit financing by September 30, 2015, and place the Development in service by December 31, 2016.

8. Pursuant to requests submitted by Oakland on May 29 and September 22, 2015, the Corporation extended the date for satisfying the “10% test” until December 29, 2015 and extended the date for commencement of construction and closing of the tax credit financing until December 31, 2015. Neither of these two extensions affected the required placed in service deadline, which continued to be December 31, 2016. As explained more fully below, the Development will not be able to meet the above deadlines, and as such is requesting an exchange of Housing Credits (2015 for 2014).

9. The investor partner of the project is unwilling to close the tax credit financing (which closing is anticipated to occur in March 2016) and wait until the fourth quarter of 2016 (as is required by Section II.K. of the QAP) to find out whether or not the 2014 Housing Credits can be exchanged for 2015 Housing Credits (with extended dates for placement in service and other requirements in the carryover allocation agreement). They will only close with the certainty of an allocation of 2015 Housing Credits (and corresponding later dates for satisfaction of requirements in the new carryover allocation agreement).

10. The reason for the delay in closing the tax credit financing and commencement of construction is as follows. Applicant was invited to credit underwriting in June 2014, immediately after the final award of 2014 Housing Credits. Applicant had submitted its application for housing credits in late 2013 and initial rankings were completed in early 2014; however, due to appeal litigation filed against the Applicant (which resulted in a full administrative hearing before the Division of Administrative Hearings in Tallahassee), the final award was not received until June 13, 2014, approximately four months later than would have been the case had such appeal litigation not been filed against Applicant. Upon receipt of its invitation for credit underwriting, Applicant immediately commenced customary pre-construction activities (preparation of building plans, securing of entitlements from the City of Oakland Park and Broward County, and preparation of the plat necessary for development), and began the submission process by October 2014. Unfortunately, during the commencement of such pre-construction activities, the City of Oakland Park experienced changes in senior management staff resulting in a slower than expected procurement of governmental entitlements. This factor, plus “not in my backyard” (“NIMBY”) opposition from neighbors bordering the development site, led to a delay of approximately seven months in securing final site plan approval and plat approval from the Development’s original time line. Most importantly, the plat was finally approved by the City of Oakland Park on June 3, 2015 and by Broward County on June 23, 2015, and was recorded in the public records of Broward County based on the County’s final acceptance of the plat on October 1, 2015, nearly a year after its initial submittal. In Broward County, formal review of building plans by the building department of any municipality cannot commence until such time as the plat has been recorded. The delay in obtaining plat approval and the eventual recordation of the plat (nearly 12 months from the time of submission to recordation) has significantly slowed progress of the Development.

11. All of the above items were and are outside of Oakland's control, starting with the delay in the allocation of 2014 Housing Credits due to appeals filed in RFA 2013-003 and the other delays described herein.

12. As set forth more fully below, Oakland seeks to return its 2014 Housing Credit allocation now, rather than wait for the last calendar quarter of 2016, as required under the QAP, and obtain from the Corporation an immediate allocation of 2015 Housing Credits, instead of an allocation in 2017, the year after the current Placed-in-Service Date.

13. The requested waivers and variance will not adversely affect the Development. A denial of the Petition, however, would (a) result in substantial economic hardship to Oakland; (b) deprive Oakland Park and Broward County of essential affordable rental units set aside for low-income and very low-income tenants; and (c) violate principles of fairness.

14. Section 42(m) of the Internal Revenue Code requires each state allocating agency to adopt an allocation plan for the allocation and distribution of federal low income housing tax credits. The Corporation, as the allocating agency for the State of Florida, must distribute housing credits to applicants pursuant to its qualified allocation plan.

15. The 2014 QAP (Section II.K) provides that Housing Credits may be returned **only** in the last calendar quarter of the year in which a development is required to be placed in service, and an allocation may only be made for the year after the Placed-in-Service Date:

...where a Development has not been placed in service by the date required or it is apparent that a development will not be placed in service by the date required, and such failure is due to circumstances beyond the Applicant's control, and the Applicant **has returned its Housing Credit allocation in the last calendar quarter of the year** in which it was otherwise required to be placed in service, the Corporation may reserve allocation in an amount not to exceed the amount of credits returned, and may allocate such housing credits to the Applicant **for the year after the year** in which the Development was otherwise required to be placed in service..."

2014 QAP at Section II.K (emphasis added).

16. The applicable Rules for which waivers are requested are implementing, among other sections of the Florida Housing Finance Corporation Act (the “Act”),¹ the statute that created the Housing Credits Program. *See* § 420.5099, Fla. Stat. (2014). The Act designates FHFC as the State of Florida’s housing credit agency within the meaning of Section 42(h)(8)(A) of the Internal Revenue Code of 1986. As the designated agency, FHFC 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. (2014). Accordingly, the Rules subject to Oakland’s waiver requests are implementing, among other sections of the Act, the statutory authorization for the Corporation’s establishment of Allocation Procedures for the HC Program. §§ 420.5099(1) and (2), Fla. Stat. (2014).

17. The requested waivers will ensure the availability of Housing Credits which might otherwise be lost as a consequence of development delays described herein.

18. The facts set forth in Section 10 of this Petition demonstrate the hardship and other circumstances which justify Oakland’s request for Rule waiver; that is, the initial delay in the award 2014 Housing Credits and the subsequent delays described herein.

19. As demonstrated above, the requested waivers serve the purposes of Section 420.5099 and the Act, as a whole, because one of their primary 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

¹ The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.517 of the Florida Statutes, (the “Act”).

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.

§ 420.5099(2), Fla. Stat. (2014).

20. Further, by granting the requested waivers, FHFC would recognize principles of fundamental fairness in the development of affordable rental housing. This recognition would promote participation by experienced developer entities, such as Pinnacle Housing Group, LLC, in meeting the purposes of the Act, regardless of the possible delays from factors outside of its control.

21. The requested waivers will not adversely impact the Development or the Corporation.

22. The waivers being sought are permanent in nature.

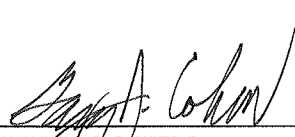
Should the Corporation require additional information, Oakland is available to answer questions and to provide all information necessary for consideration of its Petition for Waiver of the Qualified Allocation Plan's Requirement for Returning Housing Credit Allocations, and for an Immediate Allocation of 2015 Housing Credits.

WHEREFORE, Petitioner Oakland Preserve, LLC, respectfully requests that the Corporation:

- A. Grant the Petition and all the relief requested therein;
- B. Waive the 2014 Qualified Allocation Plan's prohibition from returning Housing Credit Allocations prior to the last quarter of 2016;
- C. Allow the immediate return of the Oakland's 2014 Housing Credit Allocation;
- D. Waive the 2014 Qualified Allocation Plan's requirement that a Housing Credit Allocation cannot be reserved until the year after the Development's Placed-in-Service Date;

E. Immediately allocate 2015 Housing Credits to Oakland, in an amount not to exceed the amount of its 2014 Housing Credit Allocation; and

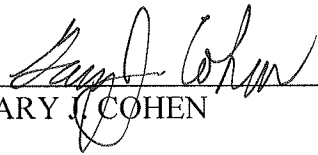
F. Award such further relief as may be deemed appropriate.



GARY J. COHEN
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(305) 347-7308
ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

The Original Petition is being served by facsimile and overnight delivery for filing with the Corporation Clerk of the Florida Housing Finance Corporation, 227 North Bronough Street, City Centre Building, Room 5000, Tallahassee, Florida 32399, with copies served by overnight delivery on the Joint Administrative Procedures Committee, Room 680, Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400 this 8th day of October, 2015.



GARY J. COHEN

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