

STATE OF FLORIDA

FLORIDA HOUSING FINANCE CORPORATION

CIVIC TOWERS SENIOR, LLLP

Petitioner,

FHFC Case No.: 2020-055VW

v.

APPLICATION NO. 2016-521C

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

PETITION FOR WAIVER OF RULE 67-21.027(6)

Petitioner, Civic Towers Senior, LLLP, a Florida limited liability limited partnership (the "Petitioner") submits its Petition to Respondent, Florida Housing Finance Corporation (the "Corporation"), for a waiver of Rule 67-21.027(6), F.A.C. (the "Rule"), to allow Petitioner to finalize the submission of its Final Cost Certification Application Package ("Form FCCAP") and submit same to the Corporation. In support of this Petition for Rule Waiver of Rule 67-21.027(6), F.A.C. (the "Petition"), Petitioner states as follows:

A. Petitioner and the Development.

1. The name, address, telephone, and facsimile numbers for Petitioner and its qualified representative are:

Civic Towers Senior, LLLP
3101 Bee Cave Road, Suite 220
Austin, Texas 78746
Attention: Jeffrey Green
Telephone: (512) 717-3932
Email: Jeff@RedwoodHousing.com

The name, address, telephone, and facsimile numbers of Petitioner's attorneys are:

Gary J. Cohen, Esq.
Shutts & Bowen LLP
200 S. Biscayne Blvd., Ste. 4100
Miami, FL 33131
Telephone: (305) 347-7308
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2. The Petitioner timely submitted its application for non-competitive 4% low-income housing tax credits ("Credits") (Application #2016-521C) for the development named "Civic Towers Senior". Corporation has issued a Preliminary Determination of Credits to Petitioner.

3. Equity raised from Housing Credits was used for the acquisition and rehabilitation of Civic Towers Senior, a 151 unit senior affordable housing complex serving low-income elderly residents in the "Civic Center" area just north of downtown in Miami, Florida (the "Development").

4. The requested rule waiver will not adversely affect the Development. However, a denial of this Petition (a) will result in substantial economic hardship to Petitioner, and (b) would violate principles of fairness. Section 120.542(2), Fla. Stat. (2019).

5. The waiver being sought is permanent in nature.

THE RULES FROM WHICH WAIVER IS SOUGHT

6. The Rule requires submission of the Final Cost Certification Application Package ("Form FCCAP") in order to itemize all expenses incurred in association with the construction or rehabilitation of a housing credit development. Form FCCAP is incorporated by reference into the Rule. The Rule (and Form FCCAP) both require that a General Contractor Cost Certification ("GCCC") be included in this submission package, together with a certified public accountant ("CPA") opinion letter and unqualified audit report for the GCCC. The GCCC instructions

contained within Form FCCAP reiterate the foregoing requirements. The GCCC instructions set forth requirements and audit procedures to be followed by the CPA when performing the audit of the general contractor's cost certification. Included within the cost certification package is a "General Contractor Costs Certification - GC Certification" form to be executed by the general contractor and the CPA ("GC Certification"), certifying the accuracy of the costs incurred by the general contractor.

7. The rehabilitation of the 151-unit senior affordable housing development (known as Civic Towers Senior) has been completed . Petitioner has encountered continued difficulties in securing cooperation of its general contractor in connection with the cost certification process (for example, Petitioner's accountants encountered difficulty in obtaining an engagement letter from the general contractor, and in initially obtaining confirmation of costs incurred by the general contractor). Several months ago, Petitioner's accountants submitted their draft cost certification report to the Corporation and have made the revisions suggested thereto by the Corporation. However, Petitioner (and its accountants) have been unable to obtain the general contractor's signature to and execution of the necessary representation letter to the accountants, and also to the General Contractor Cost Certification form. Unless Petitioner and its accountants are able to obtain the General Contractor's signature to the audit representation letter and General Contractor Cost Certification form, the accountants will be forced to issue a opinion letter with disclaimers and qualified audit report. In this regard, it is important to note that there is no dispute as to the amount of costs reflected in the report and the certification; rather, the General Contractor has simply been unwilling to execute the necessary forms. The General Contractor's principal is not in good health, and to date has refused to execute the above referenced forms.

B. Rule from Which the Waiver is Sought.

8. The relevant portion of the Rule for which this waiver is sought, provides as

follows:

“(6) The Final Cost Certification Application Package (Form FCCAP) shall be used by an Applicant to itemize all expenses incurred in association with construction or Rehabilitation of a Housing Credit Development, including Developer’s and General Contractor’s fees as described in Rule 67-21.026, F.A.C. Such form package shall be completed, executed and submitted to the Corporation in both hard copy format and electronic files in Microsoft Excel spreadsheets for the HC Development Final Cost Certification (DFCC) and the General Contractor Cost Certification (GCCC) included in the form package, along with the executed Extended Use Agreement and appropriate recording fees, IRS Tax Information Authorization Form 8821 for all Financial Beneficiaries if requested by the Corporation, a copy of the syndication agreement disclosing the rate and all terms, the required certified public accountant opinion letter for both the DFCC and GCCC, an unqualified audit report prepared by an independent certified public accountant for both the DFCC and GCCC, photographs of the completed Development, the monitoring fee, and documentation of the placed-in-service date as specified in the Form FCCAP instructions. The Final Housing Credit allocation will not be issued until such times as all required items are received and processed by the Corporation. The Final Certification Application Package (“Form FCCAP”) is adopted and incorporated herein by reference...”(emphasis added).

C. Statute Implemented.

9. The Rule for which a waiver is requested is implementing, among other sections of the Florida Housing Finance Corporation Act (the “Act”), the statute that governs the allocation of federal low-income housing tax credits. See §§ 420.5099, Florida Statutes (2018).

10. Pursuant to Chapter 120.542(1), Florida Statutes, “[s]trict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances. The Legislature finds that it is appropriate in such cases to adopt a procedure for agencies to provide relief to persons subject to regulation.” Therefore, under Section 120.542(1), Florida Statutes and Chapter 28-104, F.A.C., the Corporation has the authority to grant waivers to its requirements when strict application of these requirements would

lead to unreasonable, unfair, and unintended consequences in particular instances. Specifically, Section 120.542(2) states:

“Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, “substantial hardship” means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, “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), Florida Statutes.

11. In this instance, Petitioner meets the standards for a waiver.

D. Justification for Petitioner’s Requested Waiver

12. Petitioner’s CPA has completed nearly all of the work necessary for submission of Form FCCAP and advises that there are no disputes or disagreements regarding costs to be reported, but is unable (as described above) to obtain the signature of the general contractor to the GCCC Certification and to certain other certificates and affidavits required by the CPA of the general contractor. However, CPA cannot issue an unqualified or opinion letter audit report with respect to the GCCC at this time, due to its inability to obtain requested documentation from the general contractor.

13. Petitioner has submitted a draft of the cost certification documents to Corporation, and has made all revisions suggested by the Corporation.

14. Petitioner is requesting that Corporation waive the required execution of the GC Certification by the general contractor, and accept the CPA’s opinion letter with disclaimers and qualified audit report for the GCCC. Petitioner will submit the GCCC executed by the CPA. Petitioner will submit the unqualified CPA opinion letter and unqualified audit report for the DFCC.

15. The requested waiver will ensure the availability of all of the tax credit equity financing, a portion of which will otherwise be lost as a consequence of the delays and difficulties described herein.

E. Conclusion

16. The facts set forth in Sections 12 through 15 of this Petition demonstrate the hardship and other circumstances which justify Petitioner's request for a Rule waiver; that is, the inability to obtain the general contractor's execution of the GC Certification and other documentation necessary in order for the CPA to issue its unqualified opinion letter and audit report with respect to the GCCC, and as a result Petitioner's inability to obtain Form 8609 and generate and deliver promised tax credits to its tax credit investor.

17. As demonstrated above, the requested waiver serves the purposes of Section 420.5099, Florida Statutes, 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. Further, by granting the requested waiver, the Corporation would recognize principles of fundamental fairness in the development of affordable rental housing.

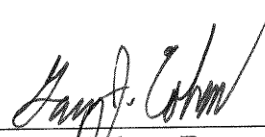
18. The waiver being sought is permanent in nature. Should the Corporation require additional information, a representative of Petitioner is available to answer questions and to provide all information necessary for consideration of this Petition.

WHEREFORE, Petitioner respectfully requests that the Corporation:

- A. Grant this Petition and all the relief requested therein;
- B. Grant a waiver of the Rule to permit submission of Form FCCAP without the GC Certification executed by the general contractor, and with a qualified certified public accountant opinion letter with disclaimers and qualified audit report with respect to the GCCC; and

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

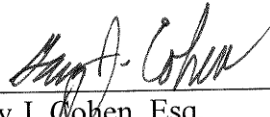
Respectfully submitted,



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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 the Florida Housing Finance Corporation, 227 North Bronough Street, Tallahassee, Florida 32301, with copies served by overnight delivery on the Joint Administrative Procedures Committee, 680 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400, this 19th day of August, 2020.



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