

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

2007 DEC 21 PM 4: 23

PEBBLE HILL ESTATES LIMITED
PARTNERSHIP,

FLORIDA HOUSING
FINANCE CORPORATION

Petitioner

vs.

APPLICATION NO. 2005-123C

FLORIDA HOUSING FINANCE CORP.,

Respondent.

**PETITION FOR VARIANCE OF THE 2005 QUALIFIED
ALLOCATION PLAN REQUIREMENTS FOR RETURNING
HOUSING CREDIT ALLOCATIONS AND FOR AN
IMMEDIATE ALLOCATION OF 2008 HOUSING CREDITS**

PEBBLE HILL ESTATES LIMITED PARTNERSHIP, a Florida limited partnership ("Petitioner"), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the "Corporation") for a variance of the Qualified Allocation Plans (a) prohibition from returning its 2007 Housing Credit Allocation ("Housing Credits") prior to the last quarter of 2008, 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 its Housing Credits is required before the Corporation may reserve an allocation of Housing Credits, and immediately provide a binding commitment for an allocation of 2008 Housing Credits to Pebble Hill. See Rules 67-48.002(83) and 67-48.025, Florida Administrative Code (collectively the "Rules"), and Qualified Allocation Plan. This Petition is filed pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code.

THE PETITIONER

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

Pebble Hill Estates Limited Partnership
c/o RLI Beneficial Holdings 2005, LLC
Donald W. Paxton
6455 Gateway Avenue, Suite A
Sarasota, Florida 34231
(941)-929-1270
(941)-929-1271 Facsimile

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

Maureen McCarthy Daughton
Broad and Cassel
215 S. Monroe Street, Suite 400
Tallahassee, FL 32301
(850)681-6810
(850)521-1478 Facsimile

3. Petitioner successfully applied for financing from the Housing Tax Credit ("HC") program in the 2005 Universal Application Cycle – Multifamily 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 2005-123C (the "Application"). Petitioner applied for HC Funds to finance a portion of the costs to develop an 80-unit single-family rental development in Jackson County, Florida, to be known as Pebble Hill Estates (the "Development"). On December 8, 2005, the Corporation issued its Preliminary Allocation of Housing Credits reserved in the amount of \$941,011 ("Preliminary Allocation Certificate"). As permitted by Rule 67-48.028, F.A.C., Pebble Hill and the Corporation entered into a Carryover Allocation Agreement ("Carryover Agreement"). Under the Carryover Agreement the Development's Placed-in-Service Date was December 31, 2007. In September 2006, Petitioner requested an

extension of the construction commencement condition of the Carryover Agreement. This request was granted by letter dated October 4, 2006. The construction commencement was extended again by letter on December 20, 2006. Construction for purposes of the Carryover Agreement was commenced on December 29, 2006.

4. In March 2007 Petitioner filed a Petition for Variance of the 2005 Qualified Allocation Plan requesting to return its 2005 Housing Credit allocation for reservation of 2008 Housing Credits. Petitioner's request was based on numerous delays caused by modifications to the site plan required by the City of Marianna. The FHFC Board determined that strict application of the Rules under circumstances beyond the Petitioners control, namely ongoing local government issues that delayed the construction of the Development, would cause substantial hardship to Petitioner and violate principles of fairness. The FHFC Board granted the request, however as opposed to reserving 2008 credits, Petitioner received an immediate allocation of 2007 credits. Petitioner closed this transaction in May 2007. The 2007 Carryover Allocation Agreement was executed on August 20, 2007.

5. In 2005, when the application for funding was filed, Jackson County, Florida, was deemed a Difficult Development Area (DDA) by the Internal Revenue Code. The Internal Revenue Code defines a DDA as "any area designated by the Secretary of Housing and Urban Development as an area which has high construction, land, and utility costs relative to area median gross income." Low Income Housing Tax Credit (LIHTC) Developments located in areas designated as DDAs qualify for an additional subsidy to encourage development in locations where development costs are high relative to rents that can be collected on units. LIHTC Developments in DDAs are eligible for an additional tax credit subsidy of up to thirty (30) percent.

6. When the Petitioner filed its initial Application in 2005, Jackson County was designated a DDA under the Internal Revenue Code. Due to Jackson County's DDA status the applicant received an additional tax credit subsidy of 30% percent.

7. When the Petitioner filed its 2007 petition to return the 2005 Housing Credits in exchange for 2008 Credits, it continued to rely upon the additional tax credit subsidy.¹

8. After allocation of the 2007 Housing Credits, and after the 2007 Carryover Allocation Agreement was executed both FHFC and the Applicant discovered that Jackson County was not designated as a DDA in the Internal Revenue Code in 2007. The result of this is that the Petitioner would not receive the benefit of the additional tax credit subsidy upon which the deal had been structured initially. It was never the intent of either the Petitioner or the Corporation to change the structure of the deal by approving the credit swap.

9. In 2008 Jackson County has once again been designated as a DDA by the Internal Revenue Code.

10. As set forth more fully below, Petitioner seeks to return its 2007 Housing Credit Allocation now, rather than wait to the last calendar quarter of 2008, as required under the QAP, and to immediately receive an allocation of 2008 Housing Credits from Florida Housing.

THE RULES FROM WHICH VARIANCE IS SOUGHT

11. Rule 67-48.002(83) defines the "Qualified Allocation Plan" (QAP) as follows:

"QAP" or "Qualified Allocation Plan" means, with respect to the HC Program, the 2005 Qualified Allocation Plan which is adopted and incorporated herein by reference, effective upon approval by the Governor of the State of Florida, pursuant to Section 42(m)(1)(B) of the IRC and sets forth the selection criteria and the preferences of the Corporation for Developments which will receive Housing Credits.

¹ FHFC in its Order granted the request but granted 2007 Housing Credits not 2008.

12. Section 11 of the 2005 QAP provides that Housing Credits may be returned only in the last calendar quarter of the year (October through December) in which it is required to be placed in service,

. . . 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, 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 Housing 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, provided the following conditions have been met
....

2005 QAP at p. 6.

STATUTES IMPLEMENTED BY THE RULES

13. The Rule implements, among other sections of the Florida Housing Finance Corporation Act,² the statute that created the Housing Credits Program. See §420.5099, Florida Statutes. The Act 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, the Corporation is responsible for and is authorized to establish procedures for the allocation and distribution of low-income housing tax credits ("Allocation Procedures"). Section 420.5099(1) and (2), Florida Statutes (2005). Accordingly, the Rules subject to Pebble Hill's variance requests are implementing, among other sections of the Act, the statutory authorization for the Corporation's establishment of Allocation Procedures for the HC Program.

² The Florida Housing Finance Corporation Act is set forth in Sections 420.501 through 420.516 of the Florida Statutes.

14. The pertinent statute regarding granting of waivers provides: "Waivers shall be granted when the applicant demonstrates that application of the rule would create a substantial hardship or would violate principles of fairness." Section 120.542(2), Florida Statutes. "Substantial Hardship" is defined as a demonstrated economic, technological, legal or other type of hardship "to the applicant." The hardship in this case to the Petitioner is that without the additional tax credit subsidy which the DDA status provides, Petitioner will lose approximately \$2,820,000 which was never intended by either the Petitioner or the Corporation.

WAIVER WILL SERVE THE UNDERLYING PURPOSE OF THE STATUTE

15. Petitioner believes that a variance of these rules will serve the purposes of Section 420.5099 and the Act which is implemented by the rule, 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 the credit is sought.

Section 420.5099(2), Florida Statutes (2005).

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 Tax Credit Program was to stimulate creative private sector initiatives to increase the supply of affordable housing. By granting this variance requesting and permitting Petitioner to make the aforementioned changes, the Corporation would recognize the goal of increasing the supply of affordable housing through private investment in persons of low-income. The recognition would

provide participation by experienced developer entities, such as Pebble Hill, in meeting the purposes of the Act regardless of the possible delays from factors outside Petitioner's control.

16. The requested variances will not adversely impact the Development or the Corporation.

TYPE OF VARIANCE

17. The variance being sought is permanent in nature.

18. Should the Corporation have questions or require any additional information, Petitioner is available to provide any additional information necessary for consideration of the Petition.

ACTION REQUESTED

19. Petitioner requests the following:

- a. Grant the Petition and all the relief requested here;
- b. That the Corporation provide a variance from the 2005 Qualified Allocation Plan's prohibition from returning Housing Credits prior to the last quarter of 2008;
- c. Allow the immediate return of the Petitioner's 2007 Housing Credit Allocation; and
- d. Immediately provide an allocation of 2008 Housing Credits to Pebble Hill in an amount not to exceed the amount of its Housing Credit Allocation.

20. 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 21 day of December, 2007.

A handwritten signature in dark ink, appearing to read "Maureen McCarthy Daughton", is written over a horizontal line.

MAUREEN McCARTHY DAUGHTON

Fla. Bar No. 0655805

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Counsel for Petitioner

PEBBLE HILL ESTATES

LIMITED PARTNERSHIP