

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

WOODLAND PARK
REDEVELOPMENT I, LLC

CASE NO.: 2018-059VW

Petitioner,

APPLICATION NO. 2016-008CS

v.

FLORIDA HOUSING FINANCE
CORPORATION

Respondent.

**PETITION FOR WAIVER OF RFA TOTAL DEVELOPMENT
COST LIMITATION AND RULES 67-48.0072(28)(E) AND 67-48.0075(3)**

Petitioner Woodland Park Redevelopment I, LLC, a Florida limited liability company (“Petitioner”) submits its Petition to Respondent Florida Housing Finance Corporation (the “Corporation”) for a waiver of certain provisions of its Request for Applications 2015-106 (the “RFA”), and Rules 67-48.0072(28)(e) and 67-48.0075(3) (2014), in order to permit an adjustment of the Total Development Cost Per Unit Limitation (“TDC”) found in Exhibit “C” to the RFA and the strict application of Rules 67-48.0072(28)(e) and 67-48.0075(3), Florida Administrative Code (the “Rules”) in effect at the time Petitioner submitted its application in response to the RFA.

1. Pursuant to Section 120.542, Fla. Stat. (2017) and Rules 28-104.001 through 28-104.006, F.A.C., Petitioner requests a waiver of those portions of the RFA (described more fully herein) and of Rules 67-48.0072(28)(e) and 67-48.0075(3) pertaining to the TDC limitation.

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

Woodland Park Redevelopment I, LLC
c/o Pinnacle Housing Group, LLC
9400 South Dadeland Boulevard
Suite 100
Miami, Florida 33156
(305) 854-7100
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E-Mail: David@pinnaclehousing.com

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

Gary J. Cohen, Esq.
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4. Pursuant to RFA 2015-106, Petitioner timely submitted its application for competitive housing credits ("Housing Credits") and for loan funding under the State Apartment Incentive Loan program ("SAIL"). *See* Application Number 2016-008CS. Petitioner was preliminarily awarded Housing Credit and SAIL funding.

5. The proceeds of the above-referenced financing will be used for new construction of at least 96 low-income units to be known as Woodland Park Phase I ("Development"). The Development will serve low-income residents in Gainesville, Alachua County, Florida.

6. The relevant portion of Rule 67-48.0072(28)(e) provides as follows:

(e) ...“During the credit underwriting process and as a part of the final cost certification process, the Development will be subjected to the Total Development Cost per unit limitation test as outlined in a competitive solicitation.

7. The relevant portion of Rule 67-48.0075(3) provides as follows:

Total Development Cost includes the following:

(b) The cost of site preparation, demolition and development...

(j) The cost of such other items, including relocation costs...

8. The relevant portion of the RFA provides as follows:

5. Total Development Cost Per Unit Limitation:

The Corporation shall limit the Total Development Cost (TDC) per unit for all Developments categorized by the construction type of the units as indicated by the Applicant in the RFA. The maximum amounts are provided on the TDC Per Unit Limitation chart set out below (the maximum TDC per unit exclusive of land costs and exclusive of any operating deficit reserves that are part of the permanent phase (i.e., non-construction) financing for the Development which have not been included within the Developer fee, applying any applicable TDC multiplier and/or TDC add-on) and will be tested during the scoring of the RFA, during the credit underwriting process, and during the final allocation process, as outlined below.

See RFA, Exhibit C, Section 8. At its June 2018 Board meeting, FHFC increased the TDC per unit for all developments funded from RFA 2014-111 through RFA 2018-109.

The applicable Rule for which a waiver is requested is implementing, among other provisions of the Florida Housing Corporation Act (the "Act"), the statute that created the SAIL Loan Program and provides for the allocation of housing credits. See Sections 420.5087 and 420.5099, Fla. Stat. Further, pursuant to the provisions of the RFA, "Proposed Developments funded with Housing Credits and, if applicable, SAIL funding, will be subject to the requirements of the RFA, the Application requirements outlined in Rule Chapter 67-60, F.A.C., credit underwriting and program requirements for Housing Credits and, if applicable, SAIL, as outlined in Rule Chapter 67-48, F.A.C., and the Compliance Requirements of Rule Chapter 67-53, F.A.C.". See RFA, Section 3.F.3.

9. Under Section 120.542(1), Fla. Stat. 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. Waivers shall be granted created when (1) the person who is subject to the requirement demonstrates that the application of the requirement would create a substantial hardship or violate principles of fairness, and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. Section 120.542(2), Fla. Stat.

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

11. Petitioner requests an adjustment of the TDC limitation to allow demolition and relocation costs to be excluded from the computation of TDC. Petitioner does not seek an adjustment of the TDC limitation amount (as adjusted per the June 2018 Board meeting), but rather only to exclude the relocation and demolition costs when calculating the total development cost of the Development.

12. A denial of the Petition would (a) result in substantial economic hardship to Petitioner due to an inability to realize the full potential of funds currently committed to the Development; (b) deprive Gainesville and Alachua County of essential affordable rental units set aside for persons of limited means who desperately need the housing, as well as other amenities and services which the Development will offer; and (c) violate principles of fairness.¹ Section 120.542(2), Fla. Stat.

¹ “Substantial hardship” means a demonstrated economic, technological, legal or other type of hardship to the person who is requesting the variance or waiver. “Principles of fairness” are violated when literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated person who are subject to the rule. Section 120.542(2), Fla. Stat.

13. Petitioner is in need of the requested waiver because (as is well known) construction prices have risen, and as a result the Development's total cost would (as a result of such construction cost increases) exceed the TDC limit (as adjusted at the June 2018 Board meeting). Exclusion of the costs of demolition and relocation would cause the Development to be within applicable TDC limits.

14. In the past, larger public housing authorities ("PHA") have dealt with this issue by removing demolition and relocation costs from the development budget, and directly paying such costs out of PHA funds (rather than from development sources) in order to avoid exceeding the applicable TDC limit. Such PHA's typically have separate sources of funds to cover these costs (previously earned developer fees, city or county funds, etc.).

15. The public housing authority involved with this Development (Gainesville Housing Authority; "GHA") does not have the option of the above "work around", as its unrestricted capital funds are limited and the City of Gainesville does not have significant additional funds to provide to the Development. GHA has committed to re-allocate some of its funds that were promised to modernize another public housing development to cover the increase in additional construction costs. As such, a source of funds has been located to cover such additional costs. If the Corporation permits the requested waiver to allow demolition and relocation costs to remain in the Development budget but be removed from the TDC calculation, GHA and the Development will be able to continue to search for additional funds to replace the GHA funds described above, which will permit GHA to then use its funds to modernize the public housing development for which such funds were originally committed (and avoid hardship to such public housing development).

16. Petitioner believes that demolition and relocation costs are not directly related to the construction of new housing units and (in the case of a “Redevelopment” transaction such as the Development) are not a typical development cost. For example, HUD treats such costs as not directly tied to total development cost or the provision of new units.

17. If the waiver is not granted and GHA were to remove the demolition and relocation costs from the Development’s total development budget (and fund such costs directly), GHA would have no way to recoup such funds in the event the Development were able to locate additional funds (such as, for example, Federal Home Loan Bank funds), since such costs would no longer be within the Development budget and be eligible to be paid with replacement funds.

18. The requested waivers will ensure the availability of Housing Credit and SAIL financing which will otherwise be lost as a consequence of exceeding the TDC limit.

19. The facts set forth in Sections 13 through 17 of this Petition demonstrate the hardship and other circumstances which justify Petitioner’s request for a Rule waiver; that is, the increase in construction costs referenced herein, the loss of a substantial sum of money should the transaction not go forward, the loss of affordable housing for the low-income and very low-income families in Gainesville and Alachua County, and the atypical nature of the expenses sought to be excluded from the computation of TDC.

20. As demonstrated above, the requested waivers serve the purposes of Sections 420.5087 and 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. Further, by granting the requested waivers, FHFC would recognize principles of fundamental fairness in the development of affordable rental housing.

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, Petitioner is available to answer questions and to provide all information necessary for consideration of its Petition.

WHEREFORE, Petitioner Woodland Park Redevelopment I, LLC, respectfully requests that the Corporation:

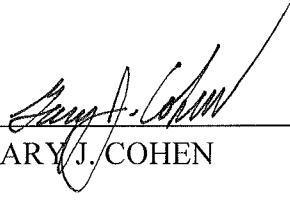
- A. Grant the Petition and all the relief requested therein; and
- B. Award such further relief as may be deemed appropriate.



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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 9th day of July, 2018.



GARY J. COHEN