

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

TOWN PARKE, LTD.

Petitioner,

vs.

FHFC Case No. 2011 - 018VW
FHFC Application Nos. 2009-244C /
2010-018CX / 2011-027C

FLORIDA HOUSING FINANCE CORPORATION

Respondent.

**PETITION FOR WAIVER OR VARIANCE FROM FLORIDA
ADMINISTRATIVE CODE RULE 67-48.004(14)(e) (2009)(2010)(2011)**

TOWN PARKE, LTD. ("Petitioner"), by and through its undersigned attorney, hereby petitions the Florida Housing Finance Corporation ("Florida Housing") for a waiver or variance from Rule 67-48.004, Florida Administrative Code ("FAC"). This Petition is filed pursuant to Section 120.542, Florida Statutes and Chapter 28-104, Florida Administrative Code.

In support of its Petition, Petitioner states:

THE PETITIONER

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

Town Parke, Ltd.
700 West Morse Boulevard, Suite 220
Winter Park, Florida 32789
Telephone: (407) 741-8500
Facsimile: (407) 551-2353

2. The address, telephone, and facsimile number of Petitioner's counsel, which shall be used for service purposes during the course of this proceeding, are:

Kerey Carpenter, Esquire
AHG Group, LLC
1551 Sandspur Road
Maitland, Florida 32751

Telephone: (407) 741-8534
Facsimile: (407) 551-2353

3. Petitioner successfully applied for financing from the Housing Tax Credit (“HC”) Program in the 2009 Universal Application Cycle (the “Universal Cycle”), which the Corporation administers pursuant to Chapter 67-48, Florida Administrative Code. The Petitioner’s Application number is 2009-244C (the “Application”). Petitioner applied for an allocation of housing credits to finance a portion of the costs to construct a 94-unit multi-family rental apartment complex in Seminole County, Florida, to be known as Town Parke Apartments – Phase I.

4. As explained below, factors outside of Petitioner’s control have delayed the development process and the closing on this project. As a result of these delays, Petitioner previously petitioned for a Rule Waiver or Variance because it was unable to complete the Development before December 31, 2011, the Placed-in-Service Date pertaining to its 2009 Housing Credit allocation. The Corporation granted that petition. Petitioner then returned its 2009 Carryover Allocation of Housing Credits and received a 2011 Carryover Allocation Agreement of Housing Credits from the Corporation. In the 2011 Carryover Allocation, the Corporation identified two additional application numbers, related to the extension and previous Rule Waiver: 2010-018CX and 2011-027(C). These same factors outside of Petitioner’s control have now caused Petitioner to file this Petition for Rule Waiver/Variance requesting a change in the Site of the Development, as explained below.

THE RULE FROM WHICH A VARIANCE/WAIVER IS SOUGHT

5. Rule 67-48.004(14), as in effect for the 2009, 2010 and 2011 Universal Application Cycles. Rule 67-48.004(14)(e), provides in relevant part as follows:

Notwithstanding any other provision of these rules, there are certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application Deadline. Failure to submit these items in the Application at the time of the Application Deadline shall result in rejection of the Application without opportunity to submit additional information. Any attempted changes to these items will not be accepted. Those items are as follows:

. . .

(e) Site for the Development; notwithstanding the foregoing, after the Applicant has been invited to enter credit underwriting and subject to written request of an Applicant to Corporation staff and approval of the Corporation, the site for the Development may be increased or decreased, provided the Tie Breaker Measurement Point is on the site and the total proximity points awarded during scoring are not reduced;

STATUTES IMPLEMENTED BY THE RULE

6. The Rule implements, among other sections of the Florida Housing Finance Corporation Act¹, the statute that created the Housing Credits Program. Section 420.5093, Florida Statutes. The Act designates Florida Housing 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”). Section 420.5099(1) and (2), Florida Statutes. Accordingly, the Rule implements, among other sections of the Act, the statutory authorization for Florida Housing’s establishment of Allocation Procedures for the Housing Credit Program.

7. Florida Housing has authority pursuant to Section 120.542(1), Florida Statutes and Chapter 28-104, F.A.C. to grant waivers to its rule requirements when strict application of such rules would lead to unreasonable, unfair and unintended consequences in particular instances. Waivers shall be granted when the person subject to the rule demonstrates that the application of the rule would (1) create a substantial hardship or violate principals of fairness,

¹ The Florida Housing Finance Corporation Act is set forth in Section 420.501 through 420.526, Florida Statutes.

and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. Section 120.542(2), Florida Statutes.

FACTS DEMONSTRATING ENTITLEMENT TO WAIVER/VARIANCE

8. For the reasons set forth below, compliance with the provisions of the aforementioned Rule would give rise to substantial hardship to Petitioner and would violate principals of fairness.

9. The following facts demonstrate the economic hardship and other circumstances which justify Petitioner's request for a Rule waiver/variance.

(a) Petitioner timely submitted its 2009 Universal Application to the Corporation for its Housing Credits Program;

(b) The Corporation issued its Preliminary Allocation in December 2009;

(c) The Preliminary Allocation reserved \$1,510,000.00 for Housing Credits;

(d) As a result of the Carryover Allocation Agreement, the Development's Placed-in-Service Date was initially December 31, 2011;

(e) Closing of this transaction has been delayed because the City of Winter Springs (the "City") denied Petitioner's request for Final Development Plan approval. The City's denial was made despite prior approval of Petitioner's conceptual plan and was done only after several groups and homeowners' associations opposed the Development claiming the Development would result in an increase in crime in the area because it provided housing for low-income individuals. Further, the opposition alleged the Development would increase the burden on the local school system. To address these concerns, Petitioner modified its Final Development Plan to include a decrease in the number of units and to implement an age restriction on the units in accordance with the Housing For Older Persons Act. Despite these revisions, the City modified

its Comprehensive Plan and issued a denial of the Final Development Plan that appeared to turn on the economic impacts of the project. (See Exhibit "A").

(f) On December 21, 2010, the Petitioner filed suit against the City alleging violations of both Federal and Florida Fair Housing Acts. The complaint alleges that the denial violates both statutes because (1) it will have a disparate impact on minorities in the City of Winter Springs due to lack of affordable housing in the City, and (2) it perpetuates segregated housing patterns in and around the City of Winter Springs by preventing the development of affordable housing.

(g) As a result of the City's actions, the Petitioner filed a previous Petition for rule waiver/variance because the City's denial and subsequent litigation prevented this Development from meeting the deadlines of the 2009 Carryover Allocation Agreement, as amended. The Corporation granted that Petition and issued a 2011 Carryover Allocation Agreement with a corresponding change in the deadlines.

(h) On September 29, 2011, the Petitioner attended mediation with representatives of the City of Winter Springs. The Parties are negotiating a contingent resolution. A key component to the proposed resolution would be a relocation of the Site of the Development. The proposed new Site is on the same road in the City of Winter Springs with Seminole County

Parcel ID Numbers:

26-20-30-5AR-0D00-012H
26-20-30-5AR-0D00-012P
26-20-30-5AR-0D00-012Q

To become effective, the proposed resolution requires approval by the City Commission of the City of Winter Springs and requires approval by the Corporation for the Rule Waiver requested in this Petition. Additionally, Petitioner requests revision and/or reissuance of the 2011

Carryover Allocation Agreement to reflect the change in the Site and to modify the deadlines in Paragraphs 5a and 5b to June 1, 2012. If these approvals are not granted, this Development will not be built and other municipalities might be encouraged to prevent the development of affordable housing using similar tactics. Granting the rule waiver/variance will allow for the eventual development of much needed affordable housing in the City of Winter Springs.

(h) Further, a denial of this requested waiver/variance will result in substantial hardship to the Petitioner. To date, the Petitioner has spent over \$1,200,000 on this project, including over \$150,000 to the Corporation for Carryover fees and various extension fees caused by the City's actions. Failure to receive the requested relief will result in substantial financial hardship and a return of 2011 credits.

STATUTES IMPLEMENTED BY THE RULES

10. The Rules implement, among other sections of the Florida Housing Finance Corporation Act,² the statute that created the Housing Credits Program. See §420.5093, Florida Statutes. The Act designates the Corporation 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, 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. Accordingly, the Rules subject to Petitioner's waiver/variance request are implementing, among other sections of the Act, the statutory authorization for the Corporation's establishment of Allocation Procedures for the HC Program.

11. 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.

² The Florida Housing Finance Corporation Act is set forth in Sections 420.01 and 420.516 of the 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 is that Petitioner will not be able to close on this Development, Petitioner will lose in excess of \$1,200,000 already invested, and the City’s efforts to prevent the construction of these much needed affordable housing units for the benefit of the local residents of the Seminole County area would be rewarded.

**WAIVER/VARIANCE WILL SERVE THE UNDERLYING
PURPOSE OF THE STATUTE**

12. A waiver/variance of these rules will serve the purposes of Section 420.5099 and the Act which is implemented by the rules, because a central goal of both 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 (2011)

13. The Florida Housing Finance Corporation Act (Section 420.501, et seq.) was passed in order to encourage private and public investment in housing for 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 waiver/variance the Corporation would recognize the goal of increasing the supply of affordable housing through private investment in housing for persons of low-income. The recognition would provide

participation by experienced developer entities, such as Petitioner, in meeting the purposes of the Act regardless of the possible delays from factors outside their control.

14. The requested waiver/variance will not adversely impact the Development or the Corporation.

15. Strict application of the provisions of Rule 67-004(14) would violate principals of fairness and impose a substantial hardship on Petitioner. Unless the waiver/variance is granted, Petitioner would not be able to utilize the Housing Credits for the development of Town Parke, a much needed affordable housing community.

16. By granting a waiver/variance and permitting Petitioner to relocate the Site for the Development, Respondent would recognize the economic realities of developing and constructing affordable rental housing. This recognition would promote participation by owners and developers, such as Petitioner, in meeting Respondent's purpose by providing affordable housing, through new construction, in an economical and efficient manner.

TYPE OF WAIVER/VARIANCE

17. The wavier/variance that is being sought is permanent in nature.

ACTION REQUESTED

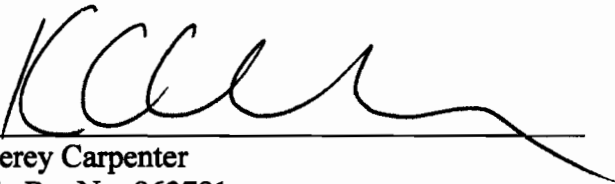
18. Petitioner requests that the Corporation grant the following relief:

a. Grant a waiver/variance from Rule 67-48.004(14) to permit a change in the Site for the Development from the descriptions that were submitted in the Application and with carryover documentation to the Development Site at Seminole County Parcel ID Numbers: 26-20-30-5AR-0D00-012H; 26-20-30-5AR-0D00-012P; 26-20-30-5AR-0D00-012Q and as reflected on the site location map attached as Exhibit A; and

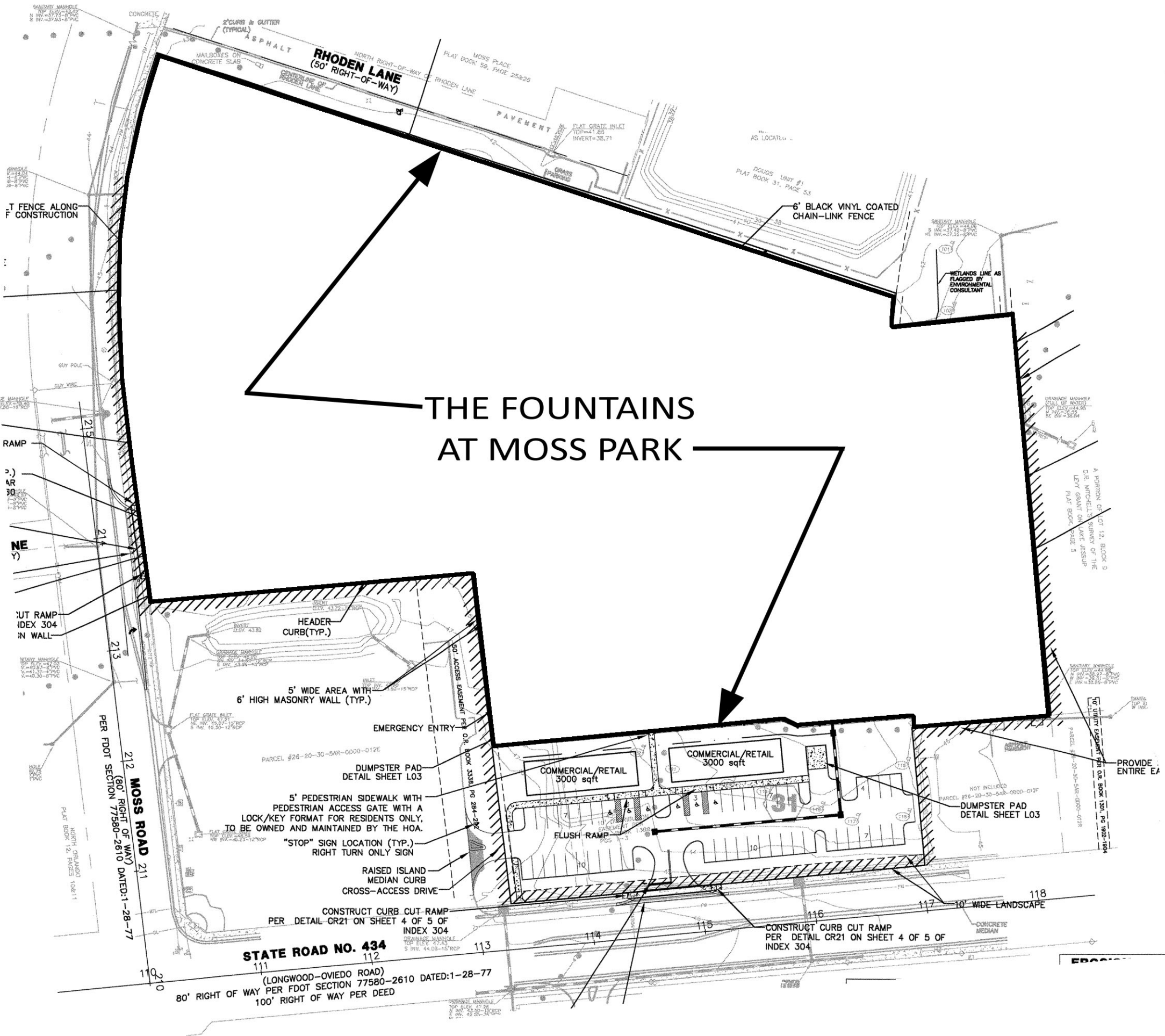
b. Modify and reissue the 2011 Carryover Allocation to reflect the revised Site for the Development and to reflect newly issued deadlines of June 1, 2012 for Site Control and for satisfying the 10% test (Sections 5a and 5b of the 2011 Carryover Allocation Agreement).

19. A copy of this Petition has been provided to the Joint Administrative Procedures Committee, Room 120, The Holland Buildings, Tallahassee, FL 32399-1300.

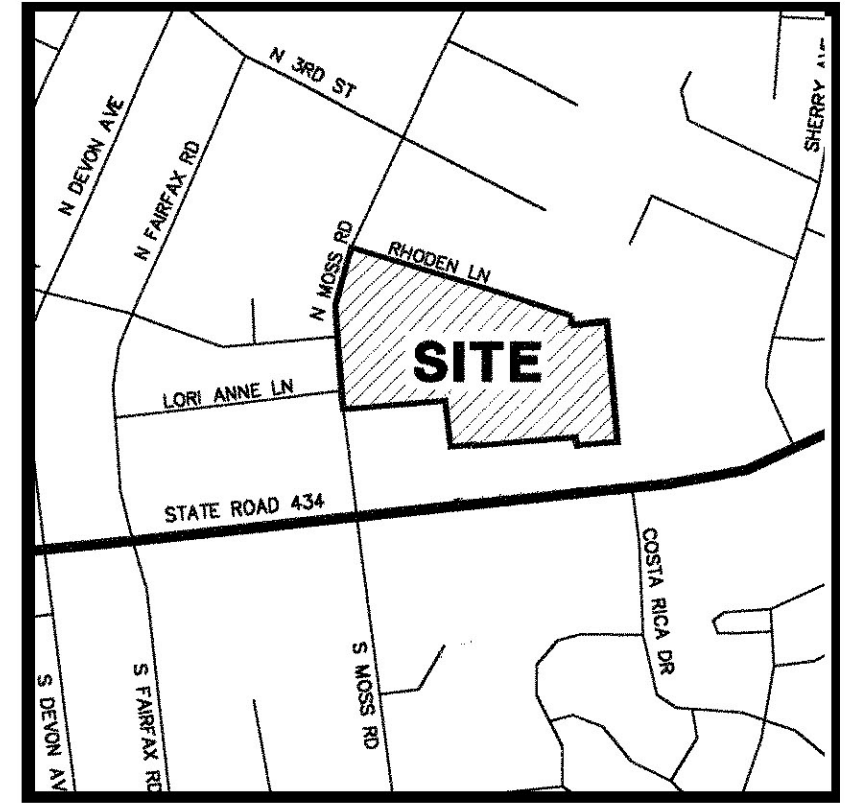
Respectfully submitted on this 9th day of November, 2011.



Kerey Carpenter
Fla Bar No. 963781
AHG Group, LLC
1551 Sandspur Road
Maitland, Florida 32751
Telephone: (407) 741-8534
Counsel for Petitioner



THE FOUNTAINS AT MOSS PARK



LOCATION MAP