

**THE STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

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FLORIDA HOUSING  
FINANCE CORPORATION

MORSE LANDING, LTD.,

Petitioner,

Application No. 2002-175B

v.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent,

**PETITION FOR INFORMAL ADMINISTRATIVE HEARING**

Petitioner, Morse Landing, Ltd., through its undersigned counsel and pursuant to §120.57(2) and §120.569, Fla. Stat., and Rules 28-106.301 and 67-48.005, F.A.C., files this Petition for Informal Administrative Hearing, and says as follows:

**I. PARTIES AND NOTICE**

1. Petitioner is Morse Landing, Ltd. ("Morse Landing"), whose address is 1103 West Hibiscus Blvd., Suite 408, Melbourne, Florida 32901, and whose telephone number is 321-723-9200. For purposes of these proceedings, Morse Landing's address and telephone number shall be that of its undersigned counsel.

2. The affected agency is Florida Housing Finance Corporation ("the Corporation"), 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329. The Corporation's identification number for this matter is 2002-175B.

3. Morse Landing received notice of the Corporation's decision by way of a memorandum from the Corporation dated July 22, 2002, sent by Federal Express, and received by Morse Landing on July 23, 2002.

## II. ULTIMATE FACTS ALLEGED

4. On or before April 15, 2002, Morse Landing submitted an application for the Multifamily Bonds Program for the 2002 cycle. Morse Landing proposed to construct a low-income multifamily housing development in Duval County, Florida.

5. The Corporation determined that Morse Landing failed to meet threshold on Part III.C.2 of the application because the “[a]pplicant failed to provide a contract demonstrating a term which does not expire before December 31, 2002.” (Universal Scoring Summary, Item #2T).

6. As evidence of site control, Morse Landing submitted a Purchase and Sale and Option Agreement (“the Option”) dated June 1, 1998, at Exhibit 32 of the application. Morse Landing also submitted an Assignment of Contract (“Assignment”), which assigned the Option.

7. The Option conveys the right to purchase up to five parcels (Parcels 1, 2, 3, 4 and 5) containing a total of 217 acres. The Option specifies time periods for the completion of certain inspections (total of 270 days) and due diligence (270 days) prior to closing on the first (Parcel 1) of the five parcels. Closing on Parcel 1 (the “Initial Closing”) must occur within 30 days of the completion of inspections and due diligence.

8. The Option further specifies that the buyer must take down Parcels 2, 3, 4 and 5 at the rate of one parcel per year running from the Initial Closing date.

9. Adding the time periods together yields the following closing dates. Each time period runs from the expiration of the prior time period.

<u>Event</u>	<u>Time Period</u>	<u>Date</u>
Execution of Option	n/a	June 1, 1998
Inspection Period	6 months	December 1, 1998
Extension of Inspection Period	3 months	March 1, 1999
Due Diligence	9 months	December 1, 1999
Initial Closing on Parcel 1	1 month	January 1, 2000
Closing on Parcel 2	1 year	January 1, 2001
Closing on Parcel 3	1 year	January 1, 2002
Closing on Parcel 4	1 year	January 1, 2003
Closing on Parcel 5	1 year	January 1, 2004

10. *Morse Landing never intended to acquire all five parcels and reassigned back to the assignor the right to all parcels but the multifamily parcel.* As stated in its application, Morse Landing initially acquired the right to 217 acres (Exhibit 23), but the proposed development is only 72.7 acres (Exhibits 22 and 25). The proposed development is a multifamily development (garden apartments) which Morse Landing proposed to construct on the multifamily parcel delineated on Exhibit "C" to the Option in Exhibit 23. (Another copy is attached as Exhibit "T" to this Petition).

11. During the cure period, Morse Landing submitted a Clarification of Purchase and Sale and Option Agreement ("the Clarification") executed by three parties: the original seller; original buyer (assignor to Morse Landing); and Morse Landing. The Clarification specified that: i) two parcels have already been taken down, and ii) the option to acquire the third parcel "expires after February 1, 2003." Thus, the cure demonstrated that Morse Landing has a contract with a term which does not expire before December 31, 2002. On this basis alone, Morse Landing has demonstrated site control.

12. Even assuming for the sake of argument that one cannot tell that Parcel 3 is the multifamily parcel on which Morse Landing will construct the proposed development, the options

on Parcels 4 and 5 do not expire until January 1, 2003 and January 1, 2004, respectively.

*Therefore, all of the remaining parcels have options which do not expire until after December 31, 2002, and Morse Landing has demonstrated site control.*

### **III. RULES AND STATUTES WHICH REQUIRE REVERSAL OR MODIFICATION OF THE CORPORATION'S PROPOSED ACTION**

13. Morse Landing is entitled to relief pursuant to the provisions of §§120.569, 120.57(2), and 420.5093, Fla. Stat.; Rules 67-48.002, 67-48.004, and 67-48.005, F.A.C.; the application instructions adopted by reference in Rule 67-48.002, F.A.C.; together with established decisional law of Florida courts and administrative agencies.

### **IV. SUBSTANTIAL INTERESTS**

14. Morse Landing's substantial interests are affected by the Corporation's proposed final score because Morse Landing is the developer entity and applicant for the development. Morse Landing will incur damages, including lost development costs and loss of financing, if the requested points are not awarded.

### **V. REQUEST FOR RELIEF**

WHEREFORE Morse Landing requests:

- i) That an informal hearing be conducted before a Hearing Officer, pursuant to Section 120.57(2), Florida Statutes; Chapter 28-106, F.A.C.; and Rule 67-48.005, F.A.C.;
- ii) That recommended and final orders be entered finding that Morse Landing: a) demonstrated evidence of site control on Part II.C.2; and b) met all threshold requirements in the application; and

iii) Such other relief as is appropriate.

Dated this 13<sup>th</sup> day of August, 2002.

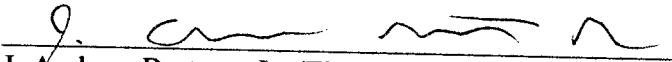
  
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EXHIBIT C

INTERSTATE I-295

MULTI-FAMILY

WETLAND

WETLAND

OPEN SPACE

SINGLE FAMILY

OPEN SPACE

WETLAND

PATIO HOME

ENTRY ROAD

WETLAND

WETLAND

MORSE AVE.

ENTRANCE WITH SIGNAGE

X = ENTRY SIGNAGE (CA. S.F. MAXIMUM EACH)

HOLMES MORSE AVENUE PROPERTY  
REZONING MAP

RONALD W. FUSSELL, AGENT

FOR: ROGER S. HOLMES, JR.

SITE STATISTICS

TOTAL SITE ACREAGE = 217.0 ACRES

EXISTING ZONING - RLD-A & RR

PROPOSED ZONING - PUD

PROPOSED USE	MULTI-FAMILY - 42 AC. ±
	SINGLE-FAMILY - 73 AC. ±
	PATIO HOME - 18 AC. ±
	WETLANDS - 45.0 AC.



Hill,  
Boring &  
Associates, Inc.

Civil Engineers and Planners

1414 BELFORT GARDEN PLAZA SUITE 101

EXHIBIT I

1" = 600'