

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

MORSE LANDING, LTD.,

Petitioner,

v.

**FHFC CASE NO. 2002-0029
Application No. 2002-175B**

**FLORIDA HOUSING FINANCE
CORPORATION,**

Respondent.

RECOMMENDED ORDER

Pursuant to notice and Sections 120.569 and 120.57(2) of the Florida Statutes, the Florida Housing Finance Corporation, by its duly designated Hearing Officer, Chris H. Bentley, held an informal hearing in Tallahassee, Florida, in the above styled case on September 17, 2002.

APPEARANCES

For Petitioner, Morse
Landing, Ltd.:

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& Williams
P. O. Box 12500
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For Respondent, Florida Housing
Finance Corporation:

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STATEMENT OF THE ISSUE

There are no disputed issues of material fact. The sole issue is whether Morse Landing, Ltd., submitted documentation with its Application and subsequent cure to demonstrate site control as required by Part III.C.2 of the Universal Application Instructions.

PRELIMINARY STATEMENT

At the informal hearing, the parties stipulated to the admission into evidence of Joint Exhibits 1 through 10 as well as Hearing Exhibit 11 which consists of five parts, P1 through P5. Joint Exhibit 1 is a PREHEARING STIPULATION containing 15 numbered paragraphs of STIPULATED FACTS. That document basically describes the application process, and the circumstances regarding the scoring of Petitioner's application with regard to the issue in dispute. The JOINT PREHEARING STIPULATION is attached to this Recommended Order as Attachment A, and paragraphs 1 through 15 of the STIPULATED FACTS recited therein are incorporated in this Recommended Order.

Subsequent to the hearing, the parties timely submitted their Proposed Recommended Orders.

FINDINGS OF FACT

Based upon the undisputed facts and documents received into evidence at the hearing, the following relevant facts are found:

1. STIPULATED FACTS Paragraphs 1 through 15 contained in the PREHEARING STIPULATION are hereby adopted as findings of fact as though set forth herein.

2. The Universal Application Instructions in Part III.C.2, states:

Evidence of Site Control (Threshold)

Applicant must demonstrate site control by providing the documentation required in Section a., b. or c., as indicated below. The required documentation must be provided behind a tab labeled "**Exhibit 23**". Site control must be demonstrated for all sites if proposed Development consists of Scattered Sites.

a. A qualified contract is one that has a term which does not expire before the last expected closing date of December 31, 2002 or that contains extension options exercisable by the purchaser and conditioned solely upon payment of additional monies which if exercised, would extend the term to a date not earlier than December 31, 2002; provides that the buyer's remedy for default on the part of the seller includes or is specific performance; and the buyer **MUST** be the Applicant unless a fully executed assignment of the qualified contract which assigns all of the buyer's rights, title and interests in the qualified contract to the Applicant, is provided.

b. The deed or certificate of title must be recorded in the county in which the property is located.

c. The lease must have an unexpired term of at least 50 years from the Application Deadline and the lessee must be

the Applicant. The lease may be contingent only upon receipt of MMRB, SAIL, and/or HC funding.

3. As Exhibit 23 to its application in response to the instructions set forth in Part III.C.2.a. of the Universal Application Instructions, Petitioner submitted a PURCHASE AND SALE AND OPTION AGREEMENT (Purchase Agreement).

4. The Purchase Agreement gives the buyer, Petitioner, an option to purchase 217 acres in Duval County, Florida. The Purchase Agreement divides the 217 acres into 5 parcels and sets forth a schedule by which absolute closing dates can be determined for the 5 parcels.

5. The Petitioner, in its Application, proposes to develop, not 217 acres, but only 72.7 acres located somewhere within the larger 217-acre site addressed by the Purchase Agreement.

6. It is not possible to determine from the Application nor the matters in evidence at hearing where within the larger 217-acre parcel the Petitioner proposes to develop 72.7 acres as the subject of this proceeding.

7. The Purchase Agreement provides a closing schedule for the five parcels within the 217-acre tract with closing dates that must be no later than: Parcel 1, January 1, 2000; Parcel 2, January 1, 2001; Parcel 3, January 1, 2002; Parcel 4, January 1, 2003; and Parcel 5, January 1, 2004.

8. During the cure period, Petitioner submitted a "CLARIFICATION OF PURCHASE AND SALE AND OPTION AGREEMENT" (the "Clarification") dated

June 25, 2002. The Clarification provides in relevant part that two of the parcels “have already been acquired by Buyer/Optionee” and that the date to acquire the third parcel has been extended to February 1, 2003. A revised time table of closing with regard to the five parcels is as follows:

Closing on Parcel 1	Completed
Closing on Parcel 2	Completed
Closing on Parcel 3	February 1, 2003
Closing on Parcel 4	February 1, 2004
Closing on Parcel 5	February 1, 2005

9. It cannot be determined from the evidence in this proceeding whether the 72.7-acre parcel that Petitioner proposes to develop with multi-family apartments and which is the subject of this proceeding, is located within Parcels 1, 2, 3, 4 or 5 or a combination thereof.

10. The evidence in this proceeding establishes that there has been a closing on two of the five parcels comprising the larger 217-acre tract. It cannot be determined from the evidence whether the 72.7-acre development site which is the subject of this proceeding is located in whole or in part in either of the two parcels on which there has been a closing.

11. There is no evidence showing that the Petitioner provided in its Application, any documentation demonstrating that the deed or certificate of title to the development site has been recorded in the county in which the property is located.

CONCLUSIONS OF LAW

12. Pursuant to Sections 120.569 and 120.57(2), Florida Statutes, the Hearing Officer has jurisdiction of the parties and the subject matter of this cause.

13. Petitioner's substantial interests are affected by the Respondent's proposed scoring of its Application and Petitioner has standing to bring this action. The issue in this action is whether Petitioner has demonstrated site control as required by Part III.C.2 of the Universal Application Instructions. After review of the evidence in this cause as well as the applicable statutes and rules, and having considered the argument of counsel and reviewed the Proposed Recommended Orders, it is determined that Petitioner has failed to meet the requirements for the demonstration of site control set forth in Part III.C.2 of the Universal Application Instructions.

14. Part III.C.2 of the Universal Application Instructions potentially provide three different methods by which an applicant can demonstrate site control. Part III.C.2.a. provides that site control can be demonstrated by the applicant having a contract to purchase the subject property which contract will not expire before the last expected closing date of December 31, 2002. Part III.C.2.b. provides that when the applicant already holds title to property it can demonstrate site control by providing documentation that the deed or certificate of title is recorded in the county in which

the property is located. Part III.C.2.c. deals with lease holds and is not applicable in this proceeding.

15. In order to determine whether or not the applicant has demonstrated site control pursuant to Part III.C.2, one must know which of the five parcels or combination thereof which make up the 217-acre tract contain the 72.7-acre development site. If all or part of the development site is located in Parcels 1 and 2 on which there has been a closing, the Petitioner is required by Part III.C.2.b. to provide documentation that the deed has been recorded in the county in which the property is located. No such documentation has been provided. While it can be assumed that the 72.7-acre development site is located somewhere within the larger 217-acre tract, it cannot be assumed nor determined on the evidence provided herein whether the property that comprises the 72.7-acre site has already been closed on or remains subject to a purchase contract. On the evidence presented in this proceeding it cannot be determined whether the 72.7-acre development site is subject to a contract to purchase or, in fact, has already been purchased and a deed conveyed to Petitioner or some other party. That being the case, the Petitioner has failed to demonstrate site control as provided by Part III.C.2 of the Universal Application Instructions.

16. If the 72.7-acre development site has already been purchased, then Petitioner has failed to demonstrate site control as provided by Part III.C.2.b. because there is no evidence that the deed or certificate of title to such acreage has been

recorded in the county in which the property is located. Similarly, even assuming that the Revised closing schedule is acceptable, it is impossible to tell whether the 72.7-acre development site is located in land that has not yet been purchased, but remains subject to purchase under the terms of the Purchase Agreement. Again, that being the case, Petitioner has failed to demonstrate site control as required by Part III.C.2.a.

17. The Universal Application Instructions which have been adopted as a rule provide that Part III.C.2, entitled “Evidence of Site Control (Threshold)”, is a threshold item. Rule 67-21.003(13), Florida Administrative Code, provides that “The Corporation shall reject an Application if, following the submission of the additional documentation, revised pages and other information as the Applicant deems appropriate as described in Subsection (6) above: . . . (b) The Applicant fails to achieve the threshold requirements as detailed in these rules, the applicable Application and Application instructions. . . .” As set forth above, Petitioner has failed to achieve the threshold requirements set forth in Part III.C.2 of the Application.

RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law recited herein, it is RECOMMENDED that:

1. Petitioner has failed to demonstrate site control as required in Part III.C.2. For that reason, Petitioner has failed to meet threshold requirements.

Respectfully submitted and entered this ___ day of October, 2002.



CHRIS H. BENTLEY
Hearing Officer for Florida Housing
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PREHEARING STIPULATION

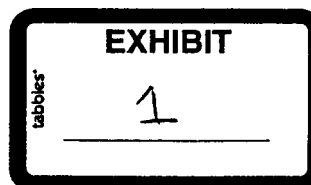
The Parties, by and through undersigned counsel, submit this Prehearing Stipulation for purposes of expediting the informal hearing scheduled for 2:00 pm, September 17, 2002, in Tallahassee, Florida, and state as follows:

STIPULATED FACTS

The parties have agreed to and stipulate to the following facts:

1. Petitioner, Morse Landing, Ltd., ("Morse Landing"), is a Florida limited partnership with its address at 1103 West Hibiscus Blvd., Suite 408 Melbourne, Florida.
2. Respondent, Florida Housing Finance Corporation ("Florida Housing") is a public corporation that administers governmental programs relating to the financing and refinancing of affordable housing and related facilities in Florida, pursuant to Section 420.504, Florida Statutes.
3. To encourage the development of affordable rental housing for low-income families, Florida Housing provides low-interest mortgage loans to developers of qualified multi-family housing projects. In exchange for an interest rate lower than conventional market rates,

ATTACHMENT A



the developer agrees to “set-aside” a specific percentage of the rental units for low-income tenants.

4. Through its Multi-Family Mortgage Revenue Bond (MMRB) program, Florida Housing funds these mortgage loans through the sale of tax-exempt and taxable bonds. Applicants then repay the loans from the revenues generated by their respective projects. Because Florida Housing’s available pool of tax-exempt bond financing is limited, qualified projects must compete for this funding. To determine which proposed projects will put the available funds to best use, Florida Housing has established a competitive application process to assess the relative merits of proposed projects.

5. Florida Housing’s competitive application process for MMRB financing is included with other financing programs within a single application process (the “Universal Application”) governed by rule Chapters 67-21 and 67-48, Florida Administrative Code.

6. The 2002 Universal Application and accompanying instructions are incorporated as form “UA1016” by reference into Chapter 67-21, Florida Administrative Code, by Rule 67-21.002(97).

7. For the 2002 Universal Application cycle, applicants who complete and submit form UA1016 with attachments are given a preliminary score by Florida Housing.

8. Florida Housing provides an opportunity for applicants to submit additional materials to “cure” any items for which the applicant received less than the maximum score, or for which the application may have been rejected for failure to achieve “threshold.”

9. After considering the submitted cures, Florida Housing provides notice to applicants of any resulting scoring changes. The resulting scores are known as “pre-appeal” scores.

10. On or about April 15, 2002, Morse Landing and others submitted applications for MMRB financing in the 2002 cycle. Morse Landing requested \$14,000,000 in tax-exempt bond funding to help finance a 234-unit garden style apartment complex to be located in Jacksonville, Florida. In its application, Morse Landing committed 40% of these units to house families earning 60% or less of the area median income.

11. In order to meet threshold, applicants must provide evidence of “site control” such as a contract, deed or lease. The specific site control requirements are stated in paragraph III.C.2 of the Application.

12. Site control is a “threshold” requirement. Failure to properly document site control results in the rejection of the application and its elimination from the rankings for funding.

13. In its initial scoring of the Morse Landing application, Florida Housing decided that the documents submitted in the Morse Landing application regarding site control failed to meet threshold requirements of Part III, Section C, subsection 2 of the Universal Application because, according to the Corporation, Morse Landing failed to provide a contract demonstrating a term which does not expire before December 31, 2002.

14. Morse Landing submitted cure materials in response to the initial scoring including a “Clarification of Purchase and Sale and Option Agreement.”

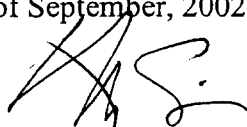
15. Following the submission of this cure material, Florida Housing again determined that the Morse Landing application failed the threshold site control requirement of III, Section C, subsection 2 of the Universal Application because, according to the Corporation, the Clarification of Purchase and Sale and Option Agreement submitted as a cure fails to demonstrate that the parcel with the extended time period is the Development site.

JOINT EXHIBITS

The parties proffer the following joint exhibits:

- Exhibit 1: Prehearing Stipulation.
- Exhibit 2: Assignment of Contract dated April, 2002, between Frank Blazeovich and RIA-CHP (from Exhibit 23 to the Morse Landing Application #2002-165B).
- Exhibit 3: Real Estate Purchase and Sale and Option Agreement dated June 1, 1998, between Roger B. Holmes, Sr. and Frank Blazeovich with exhibits A through F (Id.).
- Exhibit 4: Assignment of Purchase Agreement, dated June 25, 2002, between RIA-CHP and Morse Landing Ltd. (from Morse Landing's cure)
- Exhibit 5: Clarification of Purchase and Sale and Option Agreement dated June 25, 2002 (from Morse Landing's cure)
- Exhibit 6: 2002 Universal Application, Form UA1016, Instructions for Part III, Section C
- Exhibit 7: Local Government Verification of Status of Site Plan Approval for Multi-family Developments, dated April 5, 2002
- Exhibit 8: Local Government Verification that Development is Consistent with Zoning and Land Use Regulations, dated April 5, 2002
- Exhibit 9: Land Survey Map
- Exhibit 10: 2002 Universal Scoring Summary for Morse Landing

Respectfully submitted this 17 day of September, 2002.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by via facsimile, regular U. S. Mail and/or hand delivery to J Andrew Bertron, Esquire, Huey, Guilday Tucker, Schwartz & Williams, P.A., P.O. Box 12500, Tallahassee, Florida 32317-2500, and by hand delivery to _____, Hearing Officer, this 17 of September, 2002.



Matthew A. Sirmans
Assistant General Counsel

NOTICE OF RIGHT TO SUBMIT WRITTEN ARGUMENT

All parties have the right to submit written arguments in response to a Recommended Order for consideration by the Board. Any written argument should be typed, double-spaced with margins no less than one (1) inch, in either Times New Roman 14-point or Courier New 12-point font, and may not exceed five (5) pages. Written arguments must be filed with Florida Housing's Finance Corporation's Clerk at 227 North Bronough Street, Suite 5000, Tallahassee, Florida, 32301-1329, no later than 5:00 p.m. on Monday, October 7, 2002. Submission by facsimile will not be accepted. Failure to timely file a written argument shall constitute a waiver of the right to have a written argument considered by the Board. Parties will not be permitted to make oral presentations to the Board in response to Recommended Orders.