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FLORIDA HOUSING
FINANCE CORPORATION

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

THE ARBORS SENIOR APARTMENTS
LIMITED PARTNERSHIP,

Petitioner,

vs.

Case No: 2012-012UC
FHFC Applic. #2011-127C

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

**PETITION FOR
INFORMAL ADMINISTRATIVE PROCEEDING**

Petitioner, THE ARBORS SENIOR APARTMENTS LIMITED PARTNERSHIP (“Arbors”), pursuant to Sections 120.569 and 120.57(2), Florida Statutes, and Rules 28-106.301 and 67-48.005(2), Florida Administrative Code (“F.A.C.”), hereby requests an informal administrative proceeding to challenge the incorrect scoring of its application for tax credit funding in the 2011 Universal Cycle by Respondent, the FLORIDA HOUSING FINANCE CORPORATION (“FHFC”). Specifically, FHFC erred in rejecting the bus stop submitted by Arbors for “proximity tie-breaker” points, thereby significantly diminishing the competitiveness of its Application and materially and adversely affecting Arbors’ substantial interests. In support of its Petition, Arbors states as follows:

1. The name and address of the agency affected by this action are:

Florida Housing Finance Corporation
City Center Building, Suite 5000
227 N. Bronough Street
Tallahassee, Florida 32301-1329

2. The address and telephone number of the Petitioner are:

The Arbors Senior Apartments Limited Partnership
2206 Jo An Drive
Sarasota, FL 34231
Telephone No. (941) 929-1270

3. The name, address, telephone number, and fax number of the Petitioner's attorney, which shall be the Petitioner's address for service purposes during the course of this proceeding, are:

Warren Husband
Metz, Husband & Daughton, P.A.
P.O. Box 10909
Tallahassee, Florida 32302-2909
Telephone No. (850) 205-9000
Facsimile No. (850) 205-9001

The Low-Income Housing Tax Credit Program

4. The United States Congress has created a program, governed by Section 42 of the Internal Revenue Code ("IRC"), by which federal income tax credits are allotted annually to each state on a per capita basis to help facilitate private development of affordable low-income housing for families. These tax credits entitle the holder to a dollar-for-dollar reduction in the holder's federal tax

liability, which can be taken for up to ten years if the project continues to satisfy all IRC requirements.

5. The tax credits allocated annually to each state are awarded by state “housing credit agencies” to single-purpose applicant entities created by real estate developers to construct and operate specific multi-family housing projects. The applicant entity then sells this ten-year stream of tax credits, typically to a “syndicator,” with the sale proceeds generating much of the funding necessary for development and construction of the project. The equity produced by this sale of tax credits in turn reduces the amount of long-term debt required for the project, making it possible to operate the project at below-market-rate rents that are affordable to low-income and very-low-income tenants.

6. Pursuant to section 420.5099, Florida Statutes, FHFC is the designated “housing credit agency” for the State of Florida and administers Florida’s low-income housing tax credit program. Through this program, FHFC allocates Florida’s annual fixed pool of federal tax credits to developers of affordable housing.¹

¹ FHFC is a public corporation created by law in section 420.504, Florida Statutes, to provide and promote the financing of affordable housing and related facilities in Florida. FHFC is an “agency” as defined in section 120.52(1), Florida Statutes, and is therefore subject to the provisions of Chapter 120, Florida Statutes.

The 2011 Universal Application Cycle

7. Because FHFC's available pool of funding each year is limited, proposed affordable housing projects must compete for this financing. To assess the relative merits of proposed developments, FHFC has established a competitive application process pursuant to Chapter 67-48, F.A.C. As set forth in Rules 67-48.002-.005, F.A.C., FHFC's application process for 2011 consisted of the following:

- a. the publication and adoption by rule of a "Universal Application Package," which applicants use to apply for a variety of FHFC-administered funding programs, including federal tax credits and SAIL loans;
- b. the completion and submission of applications by developers;
- c. FHFC's preliminary scoring of applications;
- d. an initial round of administrative challenges in which an applicant may take issue with FHFC's scoring of another application by filing a Notice of Possible Scoring Error ("NOPSE");
- e. FHFC's consideration of the NOPSE's submitted, with notice to applicants of any resulting change in their scores;
- f. an opportunity for the applicant to submit additional materials to FHFC to "cure" any items for which the applicant received less than the maximum score;
- g. a second round of administrative challenges whereby an applicant may raise scoring issues arising from another applicant's cure materials by filing a Notice of Alleged Deficiency ("NOAD");

- h. FHFC's consideration of the NOAD's submitted, with notice to applicants of any resulting change in their scores;
- i. an opportunity for an applicant to challenge, via informal or formal administrative proceedings, FHFC's evaluation of any item in their own application for which the applicant received less than the maximum score;
- j. final scores, ranking, and allocation of tax credit funding to applicants, adopted through final orders; and
- k. an opportunity for applicants to challenge, via informal or formal administrative proceedings, FHFC's final scoring and ranking of competing applications where such scoring and ranking resulted in a denial of FHFC funding to the challenger.

8. On or about December 6, 2011, numerous applications were submitted to FHFC seeking tax credit funding. Arbors (FHFC Applic. #2011-127C) applied for \$1,748,881 in annual tax credits to help finance the development of its project, a 120-unit apartment complex for seniors in Hillsborough County, Florida. Arbors committed 90% of its project to serving elderly residents earning 60% or less of the area median income ("AMI"), with 10% dedicated to housing elderly residents earning 33% or less of AMI.

9. In its preliminary scoring, FHFC awarded Arbors the maximum score of 79 points and a total "proximity tie-breaker" score of 35.50 out of a possible 37 points. This proximity tie-breaker score is the result of points awarded to each Applicant based on the distance between its proposed Development and various services that would be of benefit to residents, including a bus stop, grocery store,

medical facility, library, etc. Arbors' proximity tie-breaker score included an award of 6.00 points for the proximity of its proposed Development to a "Public Bus Transfer Stop," which is defined in Part III.A.10.a.(2)(a)(ii) of the Application Instructions (pp. 30-31) as follows:

For purposes of proximity tie-breaker points, a Public Bus Transfer Stop means a fixed location at which passengers may access at least three routes of public transportation via buses. Each route must have a scheduled stop at the Public Bus Transfer Stop at least hourly during the times of 7am to 9am and also during the times of 4pm to 6pm Monday through Friday, excluding holidays, on a year-round basis. This would include both bus stations (i.e. hubs) and bus stops with multiple routes. Bus routes must be established or approved by a Local Government department that manages public transportation. Buses that travel between states will not be considered.

10. Further, FHFC requires the following for all services submitted for proximity tie-breaker points:

To be considered for proximity tie-breaker points in this Application, all Transit Services [which includes a Public Bus Transfer Stop] . . . must be in existence and available for use by the general public as of the Application Deadline . . .

FHFC Application Instructions, p. 37.

11. NOPSE's filed by two competing applicants called into question whether the bus stop identified in the Arbors Application satisfied the above-stated requirements, leading FHFC to withdraw the 6.00 proximity tie-breaker points

previously awarded. *See Appendix A* (FHFC Scoring Summary, Item 1P). Notably, the NOPSE's made no specific representations about the bus service that actually existed as of the Application Deadline (December 6, 2011).

12. In its cure materials, Arbors provided a letter from a manager at the Hillsborough Area Regional Transit Authority ("HART"), dated December 6, 2011, confirming that the bus stop met FHFC's substantive requirements for a Public Bus Transfer Stop as of the Application Deadline (December 6, 2011). *See Appendix B* ("the December 6, 2011 letter").

13. A subsequent NOAD filed by a competing Applicant, however, supplied a letter from the same manager, dated March 5, 2012, stating as follows:

The stop meets transit industry standards for service and service proximity by multiple routes. However, HART cannot determine if the stop meets the precise standards for service as defined by the Florida Housing Finance Corporation.

In this letter, the manager also purports to "withdraw" the December 6, 2011 letter.

See Appendix C.

14. FHFC responded to these documents by continuing to withhold from Arbors the 6.00 proximity tie-breaker points previously awarded for the Public Bus Transfer Stop, stating as follows:

The Applicant attempted to cure Item 1P by providing a letter from the Manager of the Transit Authority confirming that there are 3 routes at the bus stop with the required hourly stops; however, a NOAD provided a more recent letter from the same Manager of the Transit Authority stating that he wished to withdraw that confirmation.

*See Appendix A (FHFC Scoring Summary, Item 5C).*²

15. Whatever confusion may have been spawned by the previous letters from a manager at HART, HART's CEO has now clarified the situation via his attached letter, dated April 12, 2012. *See Appendix D.* While explaining that HART does not wish to offer an official opinion on the application of FHFC's requirements, HART's CEO confirms the accuracy of the December 6, 2011 letter. In addition, HART's CEO includes with his letter a map of the service provided at the location as of December 6, 2011, the relevant date for establishing bus service under FHFC's requirements. The bus stop identified in the Arbors' Application appears as a red dot at the center of this map as Stop #1246 and reflects service by Routes 30, 34, and 573 as of December 6, 2011, consistent with the earlier HART letter of that date.

16. Thus, for all the above reasons, the 6.00 proximity tie-breaker points at issue should be restored to Arbors.

² Arbors received notice of this scoring decision on or about March 28, 2012. This Petition is timely filed in response to that notice.

WHEREFORE, Petitioner, The Arbors Senior Apartments Limited Partnership, requests that:

a. FHFC revise its scoring and restore to Arbors the 6.00 proximity tie-breaker points at issue in this proceeding;

b. FHFC conduct an informal hearing on the matters presented in this Petition if there are no disputed issues of material fact to be resolved;

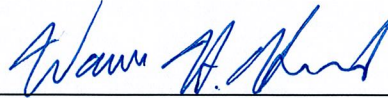
c. FHFC forward this Petition to DOAH for a formal administrative hearing pursuant to section 120.57(1), Florida Statutes, if there are disputed issues of material fact to be resolved, or if non-rule policy forms the basis of any FHFC actions complained of herein;

d. FHFC's designated hearing officer or an Administrative Law Judge, as appropriate, enter a Recommended Order directing FHFC to revise its scoring and restore to Arbors the 6.00 proximity tie-breaker points at issue in this proceeding;

e. FHFC enter a Final Order revising its scoring and restoring to Arbors the 6.00 proximity tie-breaker points at issue in this proceeding; and

f. Arbors be granted such other and further relief as may be deemed just and proper.

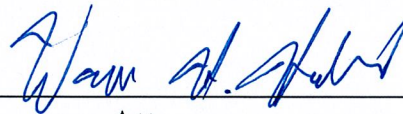
Respectfully submitted on this 19th day of April, 2012.



WARREN H. HUSBAND
FL BAR No. 0979899
Metz, Husband & Daughton, P.A.
P.O. Box 10909
Tallahassee, Florida 32302-2909
850/205-9000
850/205-9001 (Fax)
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and a true and correct copy of the foregoing document were served via hand delivery to the **CORPORATION CLERK**, Florida Housing Finance Corporation, 227 N. Bronough Street, City Center Building, Suite 5000, Tallahassee, Florida, 32301-1329, on this 19th day of April, 2012.



Attorney

Scoring Summary Report

File #: 2011-127C Development Name: The Arbors

As of: 03/27/2012

	Maximum Points/Eligibility	Preliminary	NOPSE	Final	Final Ranking
Met Threshold	Y/N	N	N	Y	
Total Points	79	79.00	79.00	79.00	
Ability to Proceed Tie-Breaker Points	6	6.00	6.00	6.00	
Proximity Tie-Breaker Points	37	35.50	29.50	30.00	
Eligible for 1/8th Mile Ranking Preference	Y/N	N	N	N	
Eligible for Age of Development Tie-Breaker Ranking Preference	Y/N	N	N	N	
Eligible for Concrete Construction Tie-Breaker Ranking Preference	Y/N	Y	Y	Y	
Eligible for Florida General Contractor Tie-Breaker Ranking Preference	Y/N	Y	Y	Y	
RA Level Classification (preference given to the lowest RA Level Classification)	1 - 6	6	6	6	

Scores:

Item #	Part	Section	Subsection	Description	Maximum Available Points	Preliminary	NOPSE	Final	Final Ranking
1S	II.	B.	1.c.	Developer Housing Credit Development Experience	3.00	3.00	3.00	3.00	
Construction Features and Amenities									
2S	III.	B.	3.a.	Optional - NC & Rehab. Units	9.00	9.00	9.00	9.00	
3S	III.	B.	3.b.	Optional - All Developments Except SRO	12.00	12.00	12.00	12.00	
3S	III.	B.	3.c.	Optional - SRO Developments	12.00	0.00	0.00	0.00	
4S	III.	B.	3.d.	Optional - Universal Design & Visitability	10.00	10.00	10.00	10.00	
5S	III.	B.	5.a.(1)	Green Building Features (NC & Redev.)	7.00	0.00	0.00	0.00	
5S	III.	B.	5.a.(2)	Green Building Certification (NC & Redev.)	10.00	10.00	10.00	10.00	
5S	III.	B.	5.b.	Green Building Features (Rehab. & Preserv.)	10.00	0.00	0.00	0.00	
Set-Aside Commitments									
6S	III.	E.	1.b.(2)	Special Needs Households	4.00	4.00	4.00	4.00	
7S	III.	E.	1.b.(3)	Total Set-Aside Commitment	3.00	3.00	3.00	3.00	
8S	III.	E.	3.	Affordability Period	5.00	5.00	5.00	5.00	
Resident Programs									
9S	III.	F.	1.	Programs for Non-Elderly & Non-Homeless	6.00	0.00	0.00	0.00	
9S	III.	F.	2.	Programs for Homeless (SRO & Non-SRO)	6.00	0.00	0.00	0.00	
9S	III.	F.	3.	Programs for Elderly	6.00	6.00	6.00	6.00	
10S	III.	F.	4.	Programs for All Applicants	8.00	8.00	8.00	8.00	
Local Government Contributions									
11S	IV.	A.		Contributions	5.00	5.00	5.00	5.00	
Local Government Incentives									
12S	IV.	B.		Incentives	4.00	4.00	4.00	4.00	

Threshold(s) Failed:

Item #	Part	Section	Subsection	Description	Reason(s)	Created as Result of	Rescinded as Result of
1T	II.	A.	3.	Principals	The Applicant failed to identify the officers and directors for the special limited partner, Affordable Housing Solutions, Inc., a Georgia nonprofit corporation.	Preliminary	Final
2T	III.	C.	2.	Site Control	The Real Estate Purchase Agreement dated November 24, 2010 contains a Right to Sell to Third Party (Section B.3). Confirmation was not provided from Seller that Seller has not sold or entered into an agreement to sell the property to a third party and that the property is still under contract with RLJ Beneficial Acquisitions, LLC.	Preliminary	Final
3T	V.	D.	1.	Non-Corporation Funding	The Applicant provide an equity letter from RBC Capital Markets which states on page one that the tax equity contribution will be \$15,736,783. The Applicant provided a loan commitment letter from Chase Bank which states on page 2 "Tax Credit Equity: Approximately \$1,748,881 annually". Due to this inconsistency the loan commitment letter could not be used as a source of financing.	NOPSE	Final
4T	V.	B.		Construction/Rehab. Analysis	The Applicant has a construction financing shortfall of \$6,212,658.	NOPSE	Final
5T	V.	B.		Permanent Analysis	The Applicant has a permanent financing shortfall of \$704,784.	NOPSE	Final

Ability To Proceed Tie-Breaker Points:

Item #	Part	Section	Subsection	Description	Maximum Available Points	Preliminary	NOPSE	Final	Final Ranking
1A	III.	C.	1.	Site Plan/Plat Approval	1.00	1.00	1.00	1.00	
2A	III.	C.	3.a.	Availability of Electricity	1.00	1.00	1.00	1.00	
3A	III.	C.	3.b.	Availability of Water	1.00	1.00	1.00	1.00	
4A	III.	C.	3.c.	Availability of Sewer	1.00	1.00	1.00	1.00	
5A	III.	C.	3.d.	Availability of Roads	1.00	1.00	1.00	1.00	
6A	III.	C.	4.	Appropriately Zoned	1.00	1.00	1.00	1.00	

Proximity Tie-Breaker Points:

Item #	Part	Section	Subsection	Description	Maximum Available Points	Preliminary	NOPSE	Final	Final Ranking
Transit Services									
1P	III.	A.	10.a	Public Bus Stop	2.00	0.00	0.00	0.00	
1P	III.	A.	10.a	Public Bus Transfer Stop or Public Bus Transit Stop	6.00	6.00	0.00	0.00	
1P	III.	A.	10.a	Public Rail Station	7.00	0.00	0.00	0.00	
Tier 1 Services									
2P	III.	A.	10.a	Grocery Store	4.00	4.00	4.00	4.00	
3P	III.	A.	10.a	Public School	4.00	0.00	0.00	0.00	
3P	III.	A.	10.a	Senior Center	4.00	4.00	4.00	4.00	
4P	III.	A.	10.a	Medical Facility	4.00	3.50	3.50	4.00	
Eligible for Tier 1 Service Score Boost (Yes/No)						N	N	N	
Total Tier 1 Service Score					12.00	11.50	11.50	12.00	
Tier 2 Services									
5P	III.	A.	10.a	Public Park	2.00	2.00	2.00	2.00	
6P	III.	A.	10.a	Community Center	2.00	2.00	2.00	2.00	
7P	III.	A.	10.a	Pharmacy	2.00	2.00	2.00	2.00	
8P	III.	A.	10.a	Public Library	2.00	2.00	2.00	2.00	
FHFC Proximity List									
9P	III.	A.	10.b	Proximity to Developments on FHFC Development Proximity List	10.00	10.00	10.00	10.00	

Reason(s) for Failure to Achieve Selected Proximity Tie-Breaker Points:

Item #	Reason(s)	Created As Result	Rescinded As Result
1P	Evidence provided in NOPSEs calls into question whether the Public Bus Transfer Stop/Public Bus Transit Stop listed on the Surveyor Certification for Competitive HC Applications form is a location in which passengers may access (i) at least three routes of public transportation or (ii) one route with scheduled stops at least every 20 minutes during the times of 7am to 9am and also during the times of 4pm to 6pm Monday through Friday and that travels at some point in the route in either a lane or corridor that is exclusively used by buses.	NOPSE	

Additional Application Comments:

Item #	Part	Section	Subsection	Description	Comment(s)	Created as Result of	Rescinded as Result of
1C	V.	B.		Pro Forma	The Applicant provided an equity commitment from RBC Capital Markets which contains a pay-in schedule showing the amount of equity to be provided prior to construction completion as \$10,228,909. However, in the Application the Applicant listed \$5,507,874 as the amount of equity to be provided prior to construction completion. The larger amount (\$10,228,909) was used for construction financing. This had no material impact on the Development's financing.	Preliminary	
2C	III.	A.	10.b.	Proximity to Developments on FHFC Development Proximity List	The Application qualifies for 10 automatic proximity points at Part III.A.10.b.(1) of the Application.	Preliminary	NOPSE
3C	III.	A.	10.	Proximity	The Applicant did not qualify for 10 automatic proximity points at Part III.A.10.b.(1) of the Application as stated in 2C. It was awarded 10 proximity points because the proposed Development is more than 2.5 miles away from other existing developments that serve the same Demographic.	NOPSE	
4C	V.	B.		Pro Forma	The loan commitment provided states a loan commitment fee of 1% of both the construction and permanent loan amounts. However, the amounts listed on the proforma for loan origination fees exceed these amounts. Therefore, the Total Development Cost was reduced by \$33,687.	NOPSE	
5C	III.	A.	10.	Proximity	The Applicant attempted to cure Item 1P by providing a letter from the Manager of the Transit Authority confirming that there are 3 routes at the bus stop with the required hourly stops; however, a NOAD provided a more recent letter from the same Manager of the Transit Authority stating that he wished to withdraw that confirmation.	Final	



Hillsborough Area Regional Transit Authority

1201 E. 7th Avenue • Tampa, Florida 33605
(813) 223-6831 • fax (813) 223-7976 • www.goHART.org

December 6, 2011

To Whom It May Concern:

Please be advised that as of December 6, 2011, the HART bus stop on W. Hillsborough Ave. (latitude and longitude coordinates N27 59 48.1 W82 33 49.2) is served by three (3) HART bus routes. Bus routes, 30 (Town N' Country), 34 (Hillsborough Ave.), and 573 (Town N' Country FLEX). These routes as scheduled provide weekday service at least hourly during the times of 7am to 9am and also during the times of 4pm to 6pm Monday through Friday, excluding holidays, on a year-round basis.



Steve Feigenbaum
HART Service Planning Manager

Appendix B

*Winner of the American Public Transportation Association
2010 Outstanding Public Midsize Transportation System Achievement Award*





Hillsborough Area Regional Transit Authority
1201 E. 7th Avenue • Tampa, Florida 33605
(813) 223-6831 • fax (813) 223-7976 • www.goHART.org

March 5, 2012

To Whom It May Concern:

The purpose of this letter is to withdraw my letter of December 6, 2011 concerning HART transit service on W. Hillsborough Ave. coordinates N27 59 48.1 W82 33 49.2.

The stop meets transit industry standards for service and service proximity by multiple routes. However, HART cannot determine if the stop meets the precise standards for service as defined by the Florida Housing Finance Corporation.

Sincerely,



Steve Feigenbaum
HART Service Planning Manager



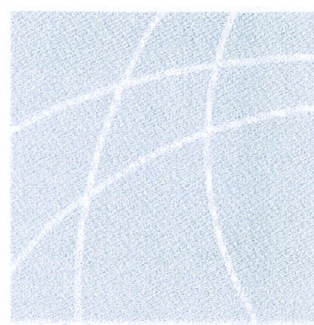
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Appendix C



Hillsborough Area Regional Transit Authority

1201 E. 7th Avenue • Tampa, Florida 33605
(813) 223-6831 • fax (813) 223-7976 • www.goHART.org



April 12, 2012

To Whom It May Concern:

The purpose of this letter is to clear up any confusion that may have resulted from the previous HART letters of December 6, 2011, and March 5, 2012 (copies attached).

The HART letter of December 6, 2011 was fundamentally accurate with respect to service availability at the location on that particular day. We wish to make sure the statements are understood in context. Please see the attached map of the service that was provided on December 6, 2011 at the location.

The letter of March 5, 2012 was simply intended to make clear to the Florida Housing Finance Corporation that HART is expressing no official position concerning whether the location in question complies with any particular criteria Florida Housing Finance Corporation may have established for its 2011 Universal Cycle Application. That remains true for this letter as well.

Respectfully,

A handwritten signature in black ink, appearing to read "P. Hale", written over a horizontal line.

Philip R. Hale
Chief Executive Officer



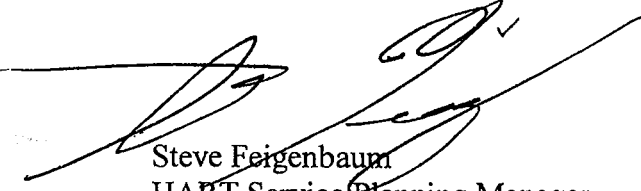
Hillsborough Area Regional Transit Authority

1201 E. 7th Avenue • Tampa, Florida 33605
(813) 223-6831 • fax (813) 223-7976 • www.goHART.org

December 6, 2011

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March 5, 2012

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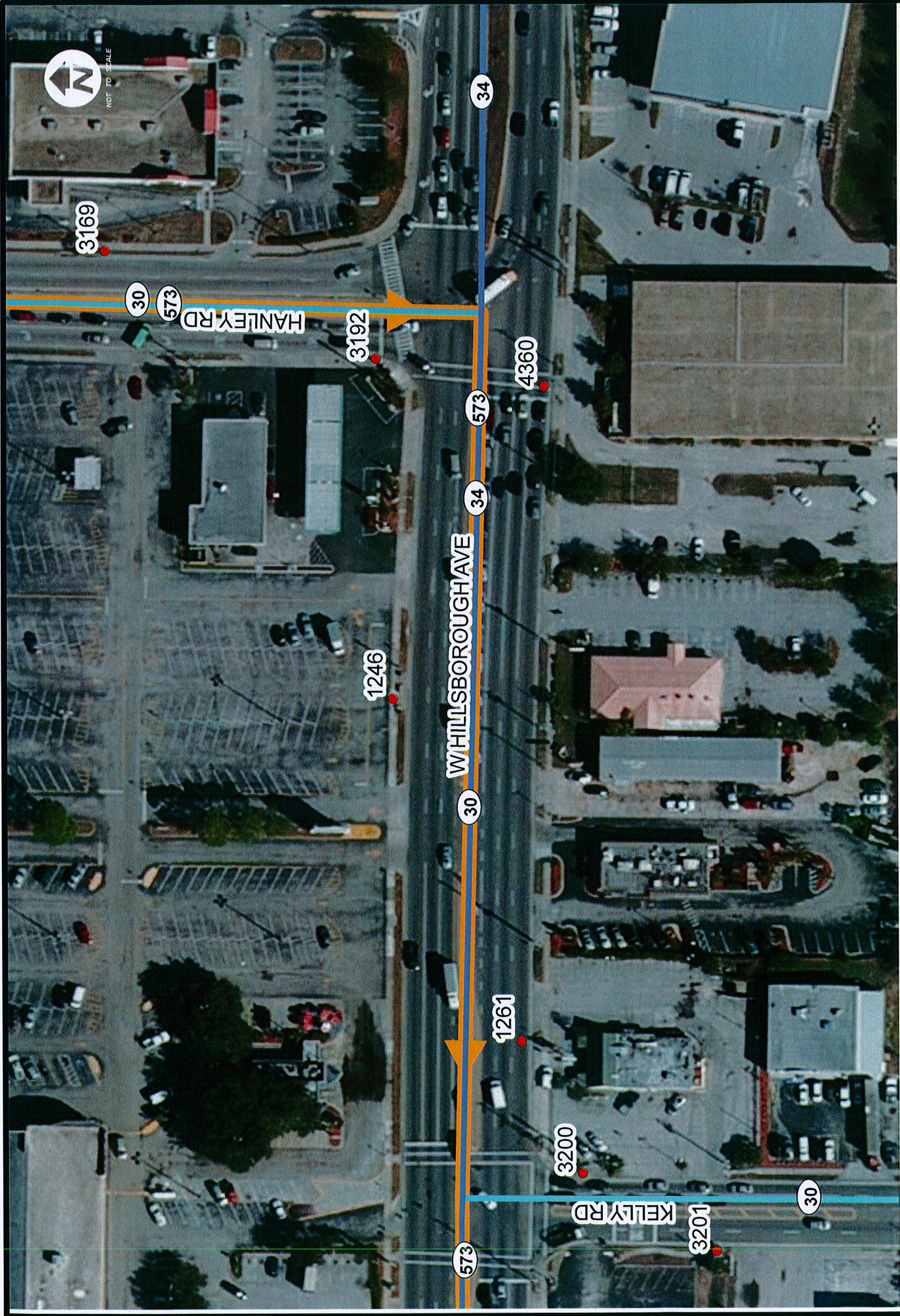
Sincerely,




Steve Feigenbaum
HART Service Planning Manager



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 Flex Route 573 Direction of Travel