

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

MERRYPLACE AT PLEASANT CITY  
ASSOCIATES, LTD.,

Petitioner,

vs.

FHFC Case No: 2005- 018UC  
Application No. 2005-036C

FLORIDA HOUSING FINANCE  
CORPORATION,

Respondent.

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**PETITION FOR INFORMAL  
ADMINISTRATIVE PROCEEDING**

Petitioner, MERRYPLACE AT PLEASANT CITY ASSOCIATES, LTD. (“MerryPlace”), pursuant to sections 120.569 and 120.57(2), Florida Statutes, and Rules 67-48.005 and 28-106.301, Florida Administrative Code (“F.A.C.”), hereby requests an informal administrative proceeding to challenge the scoring of its Application for 2005 tax credit funding by Respondent, the FLORIDA HOUSING FINANCE CORPORATION (“FHFC”), and states:

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

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FLORIDA HOUSING FINANCE CORPORATION  
TALLAHASSEE, FLORIDA  
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2. The address and telephone number of the Petitioner are:

MerryPlace at Pleasant City Associates, Ltd.  
400 N. Ashley Drive, 2<sup>nd</sup> Floor (FLI-010-02-07)  
Tampa, FL 33602  
Telephone No. (813) 224-3622

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

Warren H. Husband  
Metz, Hauser, 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 encourage private developers to build and operate 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 develop specific multi-family housing projects. An applicant entity will then sell 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 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.

7. Because FHFC’s available pool of federal tax credits each year is limited, qualified projects must compete for this funding. To assess the relative merits of proposed projects, FHFC has established a competitive application process pursuant to Chapter 67-48, F.A.C. Specifically, FHFC’s application process for 2005, as set forth in Rules 67-48.002-.005, F.A.C., involves the following:

- a. the publication and adoption by rule of an application package;
- 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 preliminary 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 applicants to challenge, via informal or formal administrative proceedings, FHFC's evaluation of any item for which the applicant received less than the maximum score; and
- j. final scores, ranking, and allocation of tax credit funding to applicants through the adoption of final orders.

**Issue Presented:**  
**Does the MerryPlace Development Consist of "Scattered Sites"?**

8. After considering various NOPSE's and NOAD's filed against the MerryPlace Application, FHFC awarded the Application the maximum score of 66 points. At the same time, however, FHFC rejected the MerryPlace Application, citing its alleged failure of several "threshold" items (site plan approval, infrastructure availability, zoning, and environmental safety). FHFC also withheld 3.75 tie-breaker proximity points to which the Application was otherwise entitled. *See* Exhibit A (FHFC Scoring Summary for MerryPlace). MerryPlace's substantial interests in competing for 2005 tax credit funding have therefore been adversely affected.

9. These adverse FHFC scoring decisions were specifically based upon FHFC's conclusion that the MerryPlace development constitutes a "scattered site." *See* Exhibit A. This conclusion triggered special requirements in the application involving the above-referenced threshold items and proximity points, with which MerryPlace allegedly did not comply.

10. Thus, this proceeding is centered upon FHFC's definition of "scattered sites," which states as follows:

"Scattered Sites" for a single Development means a Development consisting of more than one parcel in the same county where two or more of the parcels (i) are not contiguous to one another or are divided by a street or easement and (ii) it is readily apparent from the proximity of the sites, chain of title, or other information available to the Corporation that the properties are part of a common or related scheme of development.

Fla. Admin. Code R. 67-48.002(92).<sup>1</sup>

11. In its original application, MerryPlace submitted a land contract evidencing its acquisition of a single 5-acre parcel of property for its development from the West Palm Beach Housing Authority. While a NOPSE was filed against MerryPlace by a competing applicant claiming that this 5-acre parcel was a "scattered site," FHFC rejected this claim in its post-NOPSE scoring.

12. Nevertheless, in response to a NOAD filed against MerryPlace by a competing applicant, FHFC now argues that the addition during the cure period of three small parcels of property to the primary 5-acre parcel converted the MerryPlace development into a "scattered site" under FHFC's rule, because at least one of the parcels is allegedly non-contiguous and separated from the others by an intervening street. *See* Exhibit A, p.4 (Item #1C).

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<sup>1</sup> All emphasis in quoted material is supplied by the undersigned unless otherwise noted.

13. FHFC's analysis of the MerryPlace development, however, has evidently been confused by some fundamentally mistaken assertions of fact set forth in this NOAD, including that the MerryPlace development is comprised of only these three small parcels of property added during the cure period. Indeed, the opening sentence of this NOAD's argument incorrectly states as follows: "[T]he Development is in fact a Scattered Site, comprised of three parcels of land divided by public streets."

14. Contrary to these misstatements, the property assembled for the MerryPlace development is actually comprised of four parcels – the primary 5-acre parcel plus the three smaller parcels added during the cure period and referenced in the NOAD. These four parcels are contiguous, with no parcel separated from the others by an intervening street. As such, FHFC's scoring of the MerryPlace Application is incorrect and must be reversed, as more fully set forth below.

#### **MerryPlace's 2005 Tax Credit Application**

15. On or about February 16, 2005, MerryPlace and others submitted applications for financing in FHFC's 2005 funding cycle. MerryPlace (FHFC Applic. #2005-036C) applied for \$1,309,044 in annual tax credits to help finance its project, a 128-unit garden-style apartment complex in West Palm Beach, Florida. All of these units are dedicated to housing families earning 60% or less of the area median income, with 15% of the units reserved for families earning 30% or less of the area median income.

16. Notably, this 128-unit multifamily rental community is part of a larger 14-acre redevelopment of an economically depressed, inner city area in downtown West

Palm Beach, which will also include an additional 112 homeownership units. This redevelopment is being orchestrated by the West Palm Beach Housing Authority (the “Housing Authority”), which is the principal of one of MerryPlace’s general partners.

17. In its original application, MerryPlace included as Exhibit 27 a “Contract for Purchase and Sale of Real Property,” dated February 14, 2005, for a single 5-acre parcel of property. This parcel is described in Exhibit A to the Contract and designated as “Parcel - 2 (Rental Property).” The contract (the “primary contract”) provides for the conveyance of the 5-acre parcel from the present owner, the Housing Authority, to MerryPlace.

18. In its initial scoring, notice of which was received by MerryPlace on March 21, 2005, FHFC found no fault with the property for the MerryPlace development.

19. Soon thereafter, a competing applicant filed a NOPSE against the MerryPlace Application. In this NOPSE, the competing applicant argued that the 5-acre parcel is actually a “scattered site,” because the parcel allegedly contains several existing streets.

20. On April 18, 2005, MerryPlace received a revised Scoring Summary from FHFC in which FHFC rejected this NOPSE.

21. As the result of another NOPSE, however, MerryPlace was required to move the location of its “tie-breaker measurement point” in order to maximize its tie-breaker points for proximity to a grocery store.

22. Relying upon FHFC's prior determination that its 5-acre parcel was not a "scattered site," MerryPlace and the Housing Authority took the following actions:

- a. The Housing Authority entered into a contract, dated April 25, 2005, to purchase from Marine Engine Equipment Company, Inc. ("Marine Engine") three additional parcels of property contiguous to the 5-acre parcel (the "secondary contract"). On that same date, the Housing Authority and MerryPlace entered into an assignment transferring the Housing Authority's right to acquire these three parcels to MerryPlace.
- b. MerryPlace and the Housing Authority entered into two amendments to the primary contract regarding the 5-acre parcel, dated April 18 and April 25, 2005, respectively.

23. On April 26, 2005, MerryPlace submitted all of the above documents in its cure materials.

24. The secondary land contract and assignment concern three small parcels of property, together comprising approximately one acre, added to the southeast corner of the development. These three parcels are contiguous to each other and to the 5-acre parcel, and they are listed in Exhibit A to the secondary contract as "Parcel 1," "Parcel 2," and "Parcel 3."

25. The 5-acre parcel conveyed in the primary contract, as amended, and the three parcels conveyed in the secondary contract are accurately depicted in the attached Exhibit B. The 5-acre parcel is labeled as the "Primary 5-Acre Parcel," with the three additional parcels numbered as described in the secondary contract and labeled collectively as the "Secondary Parcels." As can be readily seen, the four parcels are not "scattered sites" under FHFC's definition, because the four parcels are contiguous, with no parcel separated from the others by an intervening street.



26. Nonetheless, yet another competing applicant chose to file a NOAD, again arguing that the MerryPlace development presented a “scattered site.” This NOAD, however, confuses the distinct parcels to be conveyed in the primary and secondary contracts and alleges in its opening statement that the MerryPlace development “is in fact a Scattered Site, comprised of three parcels of land divided by public streets.” See Exhibit C, p.1 (Brief Statement of Explanation). The NOAD’s “scattered site” claim is expressly based upon the false premise that the MerryPlace development consists only of the three parcels that are the subject of the secondary contract: “[The secondary contract] clearly identifies the three parcels of property which make up the Development as “Parcel 1,” “Parcel 2,” and “Parcel 3.” See Exhibit C, p.1. In fact, however, the MerryPlace development is comprised of four parcels: (a) the 5-acre parcel conveyed in the primary contract; plus (b) the set of three parcels, comprising one acre, conveyed in the secondary contract. Stated otherwise, the NOAD mistakenly assumes that the three added parcels that are the subject of the secondary contract are actually three separate pieces of property that together comprise the entirety of the MerryPlace development.

27. This basic assumption upon which the NOAD is premised is both factually incorrect and patently unreasonable. The primary and secondary contracts contain different property descriptions, recite different acreages (5 acres versus 1 acre), and are from different sellers (the Housing Authority versus Marine Engine).

28. Apparently confused by the NOAD’s misstatement of the facts, FHFC concluded from the cure materials that the MerryPlace development is a “scattered site.”

On May 26, 2005, MerryPlace received notice of this decision in FHFC's Scoring Summary, in which FHFC explained its position as follows:

As a part of its proximity cure, the Applicant deemed it necessary to keep the Application consistent by submitting an April 25, 2005 Contract for Purchase and Sale of Real Property, concerning three parcels consisting of a total of approximately one acre, along with an Assignment of Purchase and Sale Agreement showing the Applicant as the Assignee. With the addition of this property, it appears that the Development site consists of Scattered Sites. . . .

*See Exhibit A, p.4 (Item #1C).*

29. FHFC's determination that the MerryPlace development constitutes a "scattered site" triggered special requirements in the application involving site plan approval, infrastructure availability, zoning, environmental safety, and proximity points, with which MerryPlace allegedly did not comply. Thus, despite achieving an FHFC maximum score of 66 points, FHFC rejected the MerryPlace Application on these "threshold" items and withheld 3.75 proximity points to which the Application was otherwise entitled. *See Exhibit A.*

30. As stated above, however, the NOAD relied upon by FHFC in making this determination is factually inaccurate, as the application and cure documents themselves make clear. The MerryPlace project is comprised of four parcels of property, not three. These four parcels are contiguous, with no parcel separated from the others by an intervening street. As such, the MerryPlace development is not comprised of "scattered sites" and FHFC's determination to the contrary must be reversed.

WHEREFORE, Petitioner, MerryPlace at Pleasant City Associates, Ltd., requests that:

a. FHFC revise its scoring to reflect satisfaction of all threshold items identified in Exhibit A and to award MerryPlace 3.75 tie-breaker proximity points for the development's proximity to the designated services;

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 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 to reflect satisfaction of all threshold items identified in Exhibit A and to award MerryPlace 3.75 tie-breaker proximity points for the development's proximity to the designated services;

e. FHFC enter a Final Order revising its scoring to reflect satisfaction of all threshold items identified in Exhibit A and to award MerryPlace 3.75 tie-breaker proximity points for the development's proximity to the designated services; and

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

Respectfully submitted on this 16th day of June, 2005.

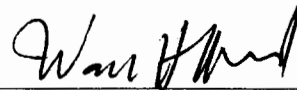


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**CERTIFICATE OF SERVICE**

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 16th day of June, 2005.



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Attorney

## 2005 MMRB, SAIL & HC Scoring Summary

As of: 05/24/2005

File # 2005-036C Development Name: Merry Place

As of:	Total Points	Met Threshold?	Proximity Tie-Breaker Points	Corporation Funding per Set-Aside Unit	SAIL Request Amount as Percentage of Development Cost	Is SAIL Request Amount Equal to or Greater than 10% of Total Development Cost?
05 - 24 - 2005	66	N	3.75	\$58,999.02	%	N
Preliminary	66	N	5	\$58,999.02	%	N
NOPSE	66	N	5	\$58,999.02	%	N
Final	66	N	3.75	\$58,999.02	%	N
Final-Ranking	0	N	0		0	

**Scores:**

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Final Ranking
Optional Features & Amenities									
1S	III	B	2.a.	New Construction	9	9	9	9	0
1S	III	B	2.b.	Rehabilitation/Substantial Rehabilitation	9	0	0	0	0
2S	III	B	2.c.	All Developments Except SRO	12	12	12	12	0
2S	III	B	2.d.	SRO Developments	12	0	0	0	0
3S	III	B	2.e.	Energy Conservation Features	9	9	9	9	0
Set-Aside Commitments									
4S	III	E	1.b.	Total Set-Aside Percentage	3	3	3	3	0
5S	III	E	1.c.	Set-Aside Breakdown Chart	5	5	5	5	0
6S	III	E	3	Affordability Period	5	5	5	5	0
Resident Programs									
7S	III	F	1	Programs for Non-Elderly & Non-Homeless	6	6	6	6	0
7S	III	F	2	Programs for Homeless (SRO & Non-SRO)	6	0	0	0	0
7S	III	F	3	Programs for Elderly	6	0	0	0	0
8S	III	F	4	Programs for All Applicants	8	8	8	8	0
Local Government Support									
9S	IV		a.	Contributions	5	5	5	5	0
10S	IV		b.	Incentives	4	4	4	4	0

## 2005 MMRB, SAIL & HC Scoring Summary

As of: 05/24/2005

File # 2005-036C

Development Name: Merry Place

**Threshold(s) Failed:**

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result of	Rescinded as Result of
1T	V	D		Equity Commitment	Applicant provided an equity commitment from Enterprise Social Investment Corporation. Paragraph 3 of the commitment states that the commitment is "subject to investor approval", therefore the commitment was not scored as firm and not considered as a source of financing.	Preliminary	Final
2T	V	B		Construction Financing Shortfall	The Applicant has a construction financing shortfall of \$3,302,963.	Preliminary	Final
3T	V	B		Permanent Financing Shortfall	The Applicant has a permanent financing shortfall of \$10,154,963.	Preliminary	Final
4T	III	C	1	Site Plan Approval	The Applicant has provided a new completed and executed Local Government Verification of Status of Site Plan Approval form, which reflects the "Development Location" as "On Spruce Avenue at the Northeast corner of Spruce Avenue and 17th Street." Based on the information provided in the Applicant's cures, it appears that the proposed Development consists of Scattered Sites and the Applicant failed to provide evidence of site plan approval for each of the Scattered Sites which comprise the proposed Development.	Final	
5T	III	C	3.a.	Availability of Electricity	The Verification of Availability of Infrastructure - Electricity form provided in the Application reflects the "Development Location" as "On Spruce Avenue at the Northeast corner of Spruce Avenue and 17th Street." Based on the information provided in the Applicant's cures, it appears that the proposed Development consists of Scattered Sites and the Applicant failed to provide evidence of the availability of electricity for each of the Scattered Sites which comprise the proposed Development.	Final	
6T	III	C	3.b.	Availability of Water	The Verification of Availability of Infrastructure - Water form provided in the Application reflects the "Development Location" as "On Spruce Avenue at the Northeast corner of Spruce Avenue and 17th Street." Based on the information provided in the Applicant's cures, it appears that the proposed Development consists of Scattered Sites and the Applicant failed to provide evidence of the availability of water for each of the Scattered Sites which comprise the proposed Development.	Final	
7T	III	C	3.c.	Availability of Sewer	The Verification of Availability of Infrastructure - Sewer Capacity, Package Treatment or Septic Tank form provided in the Application reflects the "Development Location" as "On Spruce Avenue at the Northeast corner of Spruce Avenue and 17th Street." Based on the information provided in the Applicant's cures, it appears that the proposed Development consists of Scattered Sites and the Applicant failed to provide evidence of the availability of sewer service for each of the Scattered Sites which comprise the proposed Development.	Final	
8T	III	C	3.d.	Availability of Roads	The Verification of Availability of Infrastructure - Roads form provided in the Application reflects the "Development Location" as "On Spruce Avenue at the Northeast corner of Spruce Avenue and 17th Street." Based on the information	Final	

## 2005 MMRB, SAIL & HC Scoring Summary

As of: 05/24/2005

File # 2005-036C Development Name: Merry Place

**Threshold(s) Failed:**

Item #	Part Section	Subsection	Description	Reason(s)	Created As Result of	Rescinded as Result of
9T	III	C	4 Zoning	provided in the Applicant's cures, it appears that the proposed Development consists of Scattered Sites and the Applicant failed to provide evidence of the availability of roads for each of the Scattered Sites which comprise the proposed Development. The Local Government Verification that Development is Consistent with Zoning and Land Use Regulations form provided in the Application reflects the "Development Location" as "On Spruce Avenue at the Northeast corner of Spruce Avenue and 17th Street." Based on the information provided in the Applicant's cures, it appears that the proposed Development consists of Scattered Sites and the Applicant failed to provide evidence of appropriate zoning for each of the Scattered Sites which comprise the proposed Development.	Final	
10T	III	C	5 Environmental Safety	The Verification of Environmental Safety - Phase I Environmental Site Assessment form provided in the Application reflects the "Development Location" as "On Spruce Avenue at the Northeast corner of Spruce Avenue and 17th Street." Based on the information provided in the Applicant's cures, it appears that the proposed Development consists of Scattered Sites and the Applicant failed to provide evidence of a Phase I environmental review and, if applicable, evidence of a Phase II environmental review, for each of the Scattered Sites which comprise the proposed Development.	Final	

**Proximity Tie-Breaker Points:**

Item #	Part Section	Subsection	Description	Available	Preliminary	NOPSE	Final	Final Ranking
1P	III	A	10.a.(2)(a) Grocery Store	1.25	0	0	0	0
2P	III	A	10.a.(2)(b) Public School	1.25	0	0	0	0
3P	III	A	10.a.(2)(c) Medical Facility	1.25	0	0	0	0
4P	III	A	10.a.(2)(d) Pharmacy	1.25	0	0	0	0
5P	III	A	10.a.(2)(e) Public Bus Stop or Metro-Rail Stop	1.25	1.25	1.25	0	0
6P	III	A	10.b. Proximity to Developments on FHFC Development Proximity List	3.75	3.75	3.75	3.75	0

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

Item #	Reason(s)	Created As Result of	Rescinded as Result of
1P	Applicants are to provide the latitude/longitude coordinates for an exterior public entrance to the service. The provided sketch appears to show a point that is not on a public entrance doorway threshold.	Preliminary	Final

## 2005 MMRB, SAIL & HC Scoring Summary

As of: 05/24/2005

File # 2005-036C Development Name: Merry Place

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

Item #	Reason(s)	Created As Result of	Rescinded as Result of
1P	The Grocery Store listed on the Surveyor Certification Form does not meet Florida Housing's definition of a Grocery Store. As stated on page 13 of the Universal Application Instructions, a Grocery Store must consist of a minimum of 4,500 square feet or more of air conditioned space. The Grocery Store listed on the Certification form consists of only 1,814 square feet and is therefore ineligible for tie-breaker points.	NOPSE	Final
1P	The Applicant submitted documentation during the CURE period showing that the site is a Scattered Site. Based on this documentation, the Applicant has not correctly answered the question at Part III.A.2.b. and provided the Address, total number of units and latitude/longitude information for each of the Scattered Sites behind a tab labeled Exhibit 20, as required by the Universal Application Instructions. Furthermore, per page 12 of the Application Instructions the Surveyor Certification Form was not properly completed because the Yes/No box regarding Scattered Sites was not filled out.	Final	
2P	Applicants are to provide the latitude/longitude coordinates for an exterior public entrance to the service. The provided sketch appears to show a point that is not on a public entrance doorway threshold.	Preliminary	Final
2P	The Applicant submitted documentation during the CURE period showing that the site is a Scattered Site. Based on this documentation, the Applicant has not correctly answered the question at Part III.A.2.b. and provided the Address, total number of units and latitude/longitude information for each of the Scattered Sites behind a tab labeled Exhibit 20, as required by the Universal Application Instructions. Furthermore, per page 12 of the Application Instructions the Surveyor Certification Form was not properly completed because the Yes/No box regarding Scattered Sites was not filled out.	Final	
5P	The Applicant submitted documentation during the CURE period showing that the site is a Scattered Site. Based on this documentation, the Applicant has not correctly answered the question at Part III.A.2.b. and provided the Address, total number of units and latitude/longitude information for each of the Scattered Sites behind a tab labeled Exhibit 20, as required by the Universal Application Instructions. Furthermore, per page 12 of the Application Instructions the Surveyor Certification Form was not properly completed because the Yes/No box regarding Scattered Sites was not filled out.	Final	

### Additional Application Comments:

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result of	Rescinded as Result of
1C	III	A	2.b.	Scattered Sites	As a part of its proximity cure, the Applicant deemed it necessary to keep the Application consistent by submitting an April 25, 2005 Contract for Purchase and Sale of Real Property, concerning three parcels consisting of a total of approximately one acre, along with an Assignment of Purchase and Sale Agreement showing the Applicant as the Assignee. With the addition of this property, it appears that the Development site consists of Scattered Sites and the Applicant has not correctly answered the question at Part III.A.2.b. and provided the Address, total number of units and latitude/longitude information for each of the Scattered Sites behind a tab labeled Exhibit 20, as required by the Universal Application Instructions.	Final	
2C	III	B	2	Scattered Sites	Based on the information provided in the Applicant's cures, it appears that the proposed Development consists of Scattered Sites and the Applicant has not correctly answered the question at Part III.B.2. relative to the proximity of each	Final	



## 2005 MMRB, SAIL & HC Scoring Summary

As of: 05/24/2005

File # 2005-036C

Development Name: Merry Place

**Additional Application Comments:**

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result	Rescinded as Result
					feature and amenity to each of the Scattered Sites.		

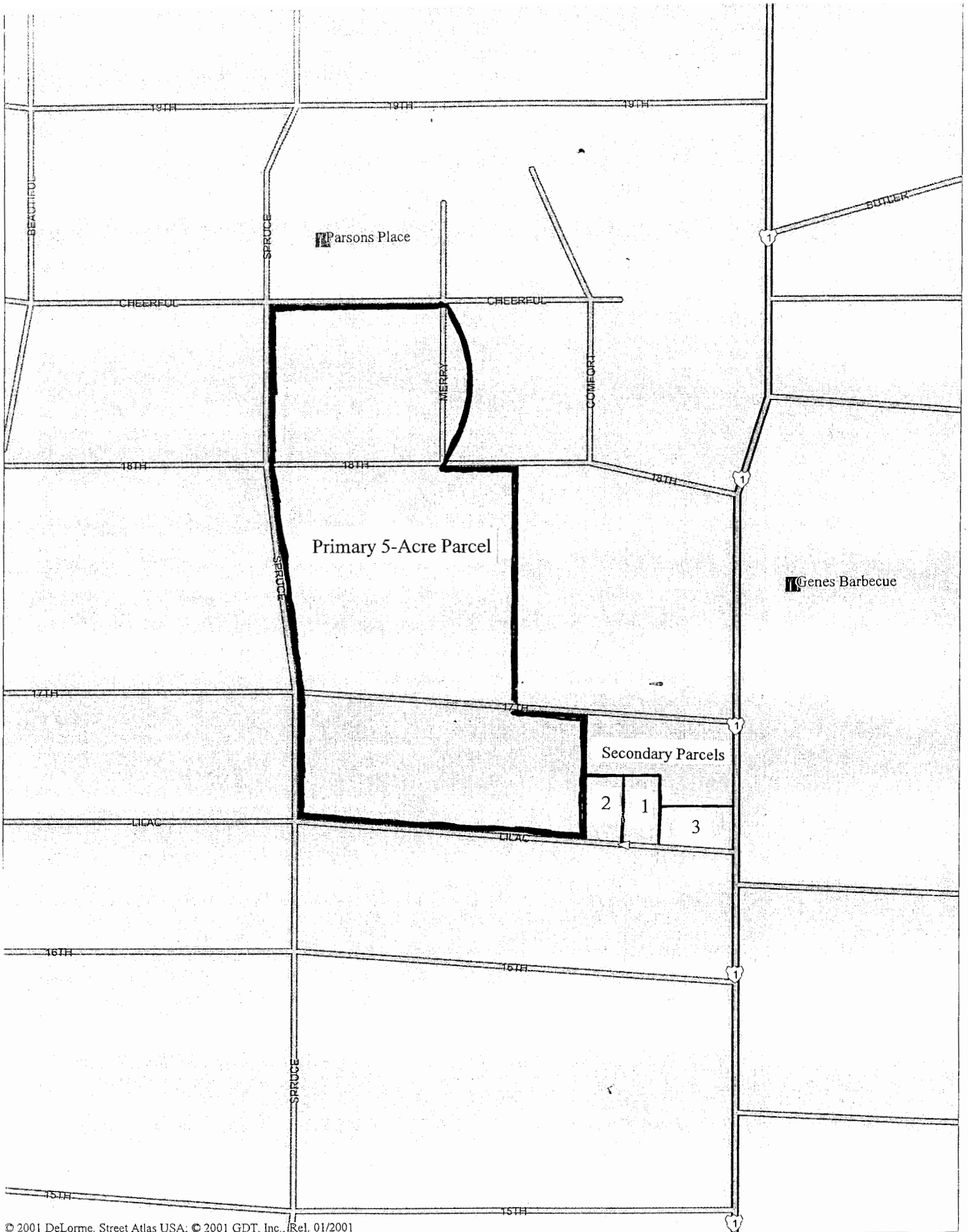


Exhibit B

Brief Statement of Explanation regarding  
Application No. 2005-036C

**Provide a separate brief statement for each Cure of NOAD**

Flagler Crossing Limited Partnership (2005-064C) submits the following statement in support of its Notice of Alleged Deficiency (NOAD) as a result of the application cure material submitted by Merry Place at Pleasant City Associates, Ltd. ("Merry Place" or "Applicant") and raises the following issues with respect to cure materials submitted by Merry Place.

**Part III Development Section**  
**Section A. General Development Information**  
**Subsection 2.b. Scattered Sites**  
**Subsection 10.a. Proximity**

**Applicant Error**

The cure materials submitted by the Applicant conclusively demonstrate that the Development is in fact a Scattered Site, comprised of three parcels of land divided by public streets. As the Applicant failed to disclose this fact in Part III, Section A, Subsection 2(b) of the Application, the Application must be rejected. Since the Surveyor Certification submitted with the Applicant's cure also fails to show that the Development is a Scattered Site, (the Surveyor did not check the box) the Certification is invalid. The Applicant is therefore not entitled to receive any proximity tie-breaker points under Part III Section A, Subsection 10.a. of the Application.

As part of its cure, the Applicant submitted an amended Surveyor Certification in an attempt to obtain grocery store proximity points. (See attached Exhibit "A"). The Surveyor Certification amended the Applicant's Tie-Breaker Measurement Point as well as naming a new grocery store. Other cure materials submitted by the Applicant included a First Amendment to Contract for Purchasing Sale of Real Property. (See attached Exhibit "B"). This cure material, which has a legal description attached, describes the Development site as consisting of approximately 5.5 contiguous acres which "... is bounded on the north by 19<sup>th</sup> Street, on the south by Lilac Court, on the west by Spruce Avenue, and on the east by Dixie Highway." The Applicant's cure material also included a legal description to a Contract for Purchase and Sale of Real Property which clearly identifies the three parcels of property which make up the Development as "Parcel 1," "Parcel 2" and "Parcel 3." (See attached Exhibit "C").

Attached as Exhibit "D" to this NOAD is a Street Atlas printout showing the proposed location for the Merry Place Development. The printout shows that the Development site is intersected by 17<sup>th</sup> Street and also by 18<sup>th</sup> Street. Moreover, attached as Exhibit "E" to this NOAD is a certification from a licensed surveyor attesting to the fact that 17<sup>th</sup> Street and 18<sup>th</sup> Street each divide the Development Site based on Merry Place's own legal description submitted in their cure.

Under the Corporation's rules, a Scattered Site means "... a development consisting of more than one parcel in the same county where two or more parcels (i) are not contiguous to one another **or are divided by a street or easement** . . ." Rule 67-48.002 (92) F.A.C. (Emphasis Added). Thus, the Merry Place Development is a Scattered Site, because it is divided by streets and has multiple parcels.

In light of the forgoing, the Application fails to satisfy the Application's threshold requirements as the Applicant has failed to disclose that its Development Site consists of Scattered Sites. The Applicant is further not entitled to receive any proximity tie breaker points because its Surveyor Certification fails to disclose that the Development consists of Scattered Sites.

Attached is an executed NOAD Summary Form and copies of the Applicant's Cure Form which reflect the issues raised in this pleading.

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