

RESOLUTION NO. RS2020-614

A Resolution authorizing the Metropolitan Development and Housing Agency to negotiate and enter into a PILOT Agreement and accept payments in lieu of ad valorem taxes with respect to a multi-family housing project located at 600 Creative Way, known as the Briarville.

WHEREAS, Tennessee Code Annotated 13-20-104 ("the Act") authorizes a Metropolitan Government for which a housing authority is created to delegate to such housing authority the authority to negotiate and accept payments in lieu of ad valorem taxes ("In Lieu of Tax Payments") from the housing authority's lessees operating low-income housing tax credit property ("LIHTC Property") upon a finding that such payments are deemed to be in furtherance of the housing authority's public purposes; and

WHEREAS, the Metropolitan Development and Housing Agency ("MDHA") was created pursuant to state law and is the housing authority for the Metropolitan Government; and

WHEREAS, by Ordinance No. BL2015-1281 as amended by Ordinance Nos. BL2016-334 and BL2016-435 (the "LIHTC Ordinance"), the Metropolitan Council (i) authorized MDHA to negotiate and accept In Lieu of Tax Payments from qualified lessees of LIHTC Property owned by MDHA and (ii) approved MDHA's program for determining qualifications and eligibility for such In Lieu of Tax Payments, a copy of which was attached to the LIHTC Ordinance (the "PILOT Program"); and

WHEREAS, the Metropolitan Council approved an annual tax abatement not to exceed \$2,500,000; and

WHEREAS, a balance in the amount of annual funding available for LIHTC's is currently \$528,684

WHEREAS, The Briarville Apartments LP ("Owner") plans to acquire land located at 600 Creative Way (the "Project Site"); and

WHEREAS, Owner has proposed that an apartment project consisting of approximately 184 units restricted to individuals and families earning 60% or less of the Area Median Income (AMI) utilizing income averaging, known as the Briarville, be constructed on the Project Site by Owner and operated as a LIHTC Property (the "Project"); and

WHEREAS, the Board of Commissioners of MDHA has approved MDHA's purchase of the Project Site and authorized the Executive Director of MDHA to take all actions on behalf of MDHA to (i) acquire the Project from Owner, (ii) lease the Project Site and the Project to Owner, (iii) enter into an in lieu of tax agreement with the Owner, a copy of which is attached hereto as Exhibit A (the "PILOT Agreement"), and (iv) submit the PILOT Agreement to the Metropolitan Council for approval as required by the Act and the PILOT Ordinance; and

WHEREAS, the PILOT Agreement has been submitted to the Metropolitan Planning Commission which has recommended approval and provided a list of other LIHTC properties in the census tract; and

WHEREAS, those portions of the Project and the Project Site owned by MDHA will be exempt from ad valorem taxation pursuant to Tennessee Code Annotated 67-5-206; and

WHEREAS, the Owner has agreed to make annual PILOT payments payable to the Metropolitan Government in accordance with the attached PILOT Agreement; and

WHEREAS, the value of the project when completed is estimated to be \$27,125,782 based on an income evaluation of the Project and its corresponding tax credits;

WHEREAS, for the purpose of the \$2,500,000 annual cap set forth in the PILOT Ordinance, the difference between the annual in lieu of tax payment payable under the PILOT Agreement and the projected real property ad valorem taxes that would otherwise be payable with respect to the Project in the first tax year after completion of the Project is \$435,992; and

WHEREAS, MDHA's entering into the PILOT Agreement to facilitate the Project is in the interest and welfare of the citizens of the Metropolitan Government and will further MDHA's public purposes by providing financial incentives for construction of affordable housing units through the federally sponsored low income housing tax credit program resulting in a positive impact on the supply of affordable housing in Davidson County; and

WHEREAS, MDHA has submitted the PILOT Agreement to the Metropolitan Council for approval as required by the Act and the PILOT Ordinance.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1: That the Council of the Metropolitan Government finds that MDHA's entering into the PILOT Agreement and acceptance of payments in lieu of ad valorem taxes with respect to the Project Site and the Project is in furtherance of the MDHA's public purpose of providing for and facilitating an adequate supply of affordable housing and in furtherance of the other public purposes described above.

Section 2: That the PILOT Agreement and the Project comply with the PILOT Ordinance and the PILOT Program.

Section 3: The Council of the Metropolitan Government finds that for the purpose of the \$2,500,000 annual cap set forth in the PILOT Ordinance, the difference between the annual in lieu of tax payment payable under the attached PILOT Agreement and the projected real property ad valorem taxes that would otherwise be payable with respect to the Project in the first tax year after completion of the Project is \$435,992.

Section 4: That the Council of the Metropolitan Government hereby approves the terms of MDHA's PILOT Agreement with the Owner in the form attached as Exhibit A.

Section 5: That this Resolution shall take effect from and after its adoption, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

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APPROVED by Metropolitan

INTRODUCED BY:

Development and Housing Agency:

James E. Harkin
Executive Director

[Signature]

APPROVED AS TO AVAILABILITY OF FUNDS:

[Signature]
Finance Director

Member(s) of Council

APPROVED AS TO LEGALITY OF FORM AND COMPOSITION

William H. G.
MDHA Attorney

PILOT AGREEMENT

THIS PILOT AGREEMENT (the “**PILOT Agreement**”) is made and entered into as of the 13th day of October, 2020, by and between the METROPOLITAN DEVELOPMENT AND HOUSING AGENCY (“**MDHA**”) and The Briarville Apartments, LP (the “**Owner**”).

WITNESSETH:

WHEREAS, MDHA is a public body and a body corporate and politic organized under the Tennessee Housing Authorities Law, Tenn. Code Ann. §13-20-101, et seq., (the “**Act**”);

WHEREAS, § 13-20-104(f) of the Act provides that a metropolitan government may delegate to a housing authority the authority to negotiate and accept in lieu of ad valorem taxes (“**In Lieu of Tax Payments**”) from a party that operates a low income housing tax credit (“**LIHTC**”) property, as such term is defined in the Act (a “**LIHTC Property**”) on property leased by such party from a housing authority;

WHEREAS, MDHA is the housing authority, as defined in the Act, for the Metropolitan Government of Nashville and Davidson County, Tennessee (the “**Metropolitan Government**”);

WHEREAS, by Ordinance No. BL2015-1281 as amended by Ordinance No. BL2016-334 (collectively, the “**PILOT Ordinance**”), the Metropolitan Government (i) authorized MDHA to negotiate and accept In Lieu of Tax Payments from lessees of LIHTC Property owned by MDHA, and (ii) approved MDHA’s program for determining qualifications and eligibility for such In Lieu of Tax Payments (the “**PILOT Program**”);

WHEREAS, Owner intends to acquire land located at 600 Creative Way and more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the “**Project Site**”);

WHEREAS, Owner intends to construct a 184 unit apartment project, known as The Briarville Apartments, on the Project Site and operate it as a LIHTC Property (the “**Project**”);

WHEREAS, MDHA is authorized by law and has deemed it necessary and desirable to acquire the Project Site for the purpose of facilitating the Project in accordance with the PILOT Program, the PILOT Ordinance and the Act;

WHEREAS, the Board of Commissioners of MDHA approved MDHA’s purchase of the Project Site and authorized the Executive Director of MDHA to take all actions on behalf of MDHA to undertake the following:

- (A) acquire the Project Site;
- (B) enter into a lease with Owner pursuant to which Owner will (i) lease the Project Site and the Project from MDHA with MDHA having the right to cause Owner to purchase the Project Site and the Project from MDHA upon expiration of the tenth (10th) Tax Year, (ii) construct the Project on the Project Site, and (iii) by recorded agreement, commit to operate the Project as a LIHTC Property in accordance with the requirements of the Internal Revenue Code and the Tennessee Housing Development Agency (“THDA”) for a minimum period of fifteen (15) years after the Project is complete (the “**Project Lease**”);
- (C) enter into this PILOT Agreement;
- (D) submit this PILOT Agreement to the Metropolitan Planning Commission to obtain a recommendation of approval or disapproval, as envisioned by the PILOT Ordinance;
- (E) submit this PILOT Agreement to the Metropolitan Council of the Metropolitan Government (the “**Metropolitan Council**”) for approval as required by the PILOT Ordinance; and
- (F) take such other action and execute such other documents as the Executive Director deems necessary or desirable to facilitate construction of the Project and the transactions described above consistent with this PILOT Agreement, the Act, the Project Lease, the Metropolitan Ordinance and the PILOT Program (including MDHA’s application and policies and procedures related thereto).

WHEREAS, MDHA intends to acquire the Project Site from Owner and will concurrently enter into the Project Lease; and

WHEREAS, Owner has agreed to make In Lieu of Tax Payments with respect to the Project as described herein.

NOW, THEREFORE, for and in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties hereto, and as an inducement to Owner to construct the Project and operate the Project as LIHTC Property, MDHA and Owner agree as follows:

1. With respect to Project Site and the real property component of the Project, Owner shall make In Lieu of Tax payments to MDHA who will then remit the payment to the Metropolitan Government, as follows:

(a) The In Lieu of Tax Payments shall be equal to the Applicable Ad Valorem Taxes, as defined below, through and including the calendar year in which the construction of the Project is completed.

(b) Commencing on January 1st of the calendar year following the year in which the Project is placed into service (“**Tax Year 1**”) and each tax year subsequent to the Tax Year 1 (Tax Year 1 and each subsequent tax year being referred to herein as a “**Tax Year**”) through the tenth (10th) Tax Year, in Lieu of Tax Payments shall be as follows:

Tax Year	In-Lieu of Tax Payment
1	\$22,000
2	\$22,660
3	\$23,340
4	\$24,040
5	\$24,761
6	\$25,504
7	\$26,269
8	\$27,057
9	\$27,869
10	\$28,705

Subject to Section 1(e) below, the In Lieu of Tax Payments shall be fixed and shall not fluctuate with the amount of the assessment for the Project Site or the Project or the tax rate in effect for any Tax Year. The amount of the In Lieu of Tax Payments is approximately equal to \$120 per unit within the Project, with a three percent (3%) annual increase. In Lieu of Tax Payments for each Tax Year shall be paid when due but in any event not later than the date on which the Applicable Ad Valorem Taxes would become delinquent.

(c) After the tenth Tax Year, this Agreement shall expire and Owner shall pay 100% of the Applicable Ad Valorem Taxes.

(d) The term “**Applicable Ad Valorem Taxes**” shall mean any real property ad valorem taxes that, but for ownership of the Project Site and the Project by MDHA, would have been due and payable to the Metropolitan Government pursuant to Tenn. Code Ann. § 67-5-102 with respect to the Project Site and the Project.

(e) Notwithstanding anything contained herein to the contrary, if THDA or the IRS determines that the Project is not in compliance with LIHTC requirements and is therefore not operated as a LIHTC Property at any time during a Tax Year, Owner shall pay 100% of the Applicable Ad Valorem Taxes with respect to such Tax Year.

(f) Notwithstanding anything contained herein to the contrary,

Owner shall pay 100% of the Applicable Ad Valorem Taxes for the periods before Tax Year 1 and after Tax Year 10, if the Project Lease is in effect during such periods.

2. Commencing in Tax Year 1 and in each Tax Year subsequent through the (10th) Tax Year, Owner shall provide to MDHA an annual report not later than September 1st of each Tax Year containing the following information:

- (a) The value of the Project, as estimated by the Owner;
- (b) The date and remaining term of the Project Lease;
- (c) The amount of In Lieu of Tax Payments payable in such Tax Year;
- (d) The date in which the Project is scheduled to return to the regular tax rolls and be eligible to pay 100% of the Applicable Ad Valorem Taxes following the tenth (10th) Tax Year;
- (e) A calculation of the Applicable Ad Valorem Taxes for such Tax Year that, but for ownership of the Project Site and the Project by MDHA, would have been due and payable to the Metropolitan Government pursuant to Tenn. Code Ann. § 67-5-102 with respect to the Project Site and the Project;
- (f) A copy of the Owner's most recent Annual Certification as submitted to THDA, certifying compliance with LIHTC requirements; and
- (g) A copy of any monitoring or compliance reports provided by THDA to the Owner during such Tax Year.

3. Commencing with Tax Year 1 and each Tax Year thereafter, Owner shall pay to MDHA a monitoring and reporting fee to be set by MDHA but not to exceed five percent (5%) of the amount In Lieu of Tax Payment due with respect to such Tax Year (the "Annual MDHA Fee"). The Annual MDHA Fee shall be paid not later than fifteenth (15th) day of such Tax Year. Unpaid amounts shall bear interest at the rate of four percent (4%) in excess of the average prime rate of interest published from time to time by the Federal Reserve or similar commonly accepted reporting organization if the Federal Reserve ceased to publish such information. Owner's failure to pay the Annual MDHA Fee within thirty (30) days after written notice from MDHA shall constitute a default under this PILOT Agreement in which event Owner shall pay 100% of the Applicable Tax Rate for such Tax Year instead of the In Lieu of Tax Payment set forth above.

4. Owner's payment of the In Lieu of Tax Payments shall satisfy the requirement in Tenn. Code Ann. § 67-5-206(a) that MDHA pay the Metropolitan Government for services, improvements or facilities furnished by the Metropolitan Government for the benefit of the Project.

5. This PILOT Agreement may not be assigned to any party other than the

assignee of the lessee's interest under the PILOT Lease pursuant to an assignment that is made in accordance with the PILOT Lease, including MDHA consent requirements, if any, specified therein. Each permitted assignee shall assume Owner's obligations under this PILOT Agreement concurrent with the assignment of the PILOT Lease.

6. This PILOT Agreement shall be construed in accordance with the laws of the State of Tennessee, and if any one or more of the provisions of this PILOT Agreement shall be held invalid, illegal or unenforceable in any respect, by final decree of any court of lawful jurisdiction, such invalidity, legality or unenforceability shall not affect any other provision hereof, but this PILOT Agreement shall be construed the same as if such invalid, illegal or unenforceable provision had never been contained herein. This PILOT Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same instrument.

7. This PILOT Agreement is subject to and conditioned upon (i) approval of this PILOT Agreement by the Metropolitan Council as required by the PILOT Ordinance, (ii) Owner's satisfaction of all conditions and requirements imposed by MDHA in connection with this PILOT Agreement or the transaction contemplated herein, (iii) MDHA taking title to the Property and entering into a mutually acceptable Project Lease, and (iv) THDA's approval of the Project and allocation of low income housing tax credits, to the extent such approval or allocation has not been received as of the date of this PILOT Agreement.

8. MDHA shall remit all In Lieu of Tax Payments received in connection with the Project and/or the Project Lease to the Metropolitan Government within fifteen (15) days of receipt.

IN WITNESS WHEREOF, the parties hereto have executed this PILOT Agreement as of the day and date first above written.

METROPOLITAN DEVELOPMENT AND HOUSING AGENCY

By: James E. Harlow

Title: Executive Director

The Briarville Apartments, LP

By: [Signature]

Title: Manager

FILED WITH THE METROPOLITAN CLERK

Elizabeth Waites

Date

EXHIBIT A

A tract of land in the 8th District, Davidson County, Tennessee. Tract being bounded on the north by the Briarville Cemetery not of Record, on the north and east by the Christian Schools Inc. tract as recorded in Instrument Number 200608100098319, Register's Office, Davidson County, Tennessee, (RODC), on the east by Cyan Properties, LLC. tract as recorded in Instrument Number 201501230006580, RODC, on the south by the northern Right of Way (ROW) of Creative Way, on the south and west by the Barbara Walton tract as recorded in Instrument Number 201811050109329, RODC, on the west by an unnamed Road and by the Christian Schools Inc. tract as recorded in Instrument Number 200212270159465, RODC. Tract being described as follows:

Point of Beginning being a ½" iron rod old at the southwestern corner of the Cyan Properties, LLC. Tract and on said northern ROW; thence with said ROW North 83°48'31" West a distance of 303.77' to a 5/8" iron rod old; thence with the common line of the Barbara Walton tract said North 08°10'07" East a distance of 291.07' to an iron pipe old, thence North 81°15'13" West a distance of 148.09' to a 5/8" iron rod old; thence with the common line of an unnamed road North 06°12'07" East a distance of 464.48' to an iron rod new; thence with the common line of the Christian Schools Inc. tract North 06°37'41" East a distance of 166.92' to an iron rod old, thence with the common line of the said Briarville Cemetery South 84°35'53" East a distance of 240.45' to a point, thence North 04°05'34" East a distance of 151.11' to an iron rod new; thence with the common line of the said Christian Schools Inc. tract South 85°45'49" East a distance of 207.94' to a 5/8" iron rod old, thence with the common lines of the said Christian Schools Inc. tract and the Cyan Properties, LLC, tract South 06°19'02" West a distance of 1090.32' to the point of beginning.

Having an area of 401,756 square feet or 9.223 acres.

The above described property is described by a survey dated January 14, 2020, prepared by Jason J. Stivers, with Stivers Land Surveying, License No. 2219, whose address is 1134 Lakewood Drive, Gallatin, TN 37066.

Being all of the same property conveyed by Joe W. Bates and Janie Thomas Bates to The Briarville Apartments, LP, a Tennessee limited partnership, by General Warranty Deed of record in Instrument No. 20200117-0006643, Register's Office for Davidson County, Tennessee.

Being all of the same property conveyed by Doris A. Thomas, Trudie E. Thomas, Janie Bates, Fred Thomas, James K. Thomas, Sr., Jackie F. Thomas, Richard Dixon, Patrick Dixon and Wayne Calvin Dixon to The Briarville Apartments, LP, a Tennessee limited partnership, by General Warranty Deed of record in Instrument No. 20200117-0006644, Register's Office for Davidson County, Tennessee.

Certification of Consistency with the Consolidated Plan

U.S. Department of Housing
and Urban Development

I certify that the proposed activities/projects in the application are consistent with the jurisdiction's current, approved Consolidated Plan.
(Type or clearly print the following information:)

Applicant Name: The Briarville Apartments, LP

Project Name: The Briarville

Location of the Project: 600 Creative Way
Madison, TN 37115

Name of the Federal Program to which the applicant is applying: 4% LIHTC

Name of Certifying Jurisdiction: MDHA

Certifying Official of the Jurisdiction Name: Emel Alexander

Title: Director of Community Development

Signature: 

Date: 10/12/20



METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY
Planning Department
Metro Office Building
800 Second Avenue South
Nashville, Tennessee 37201
615.862.7150
615.862.7209

Memo

To: MDHA
From: Metropolitan Nashville Planning Department
Date: October 6, 2020
Re: Planning Commission Recommendation for PILOT Agreement

This memo fulfills the Planning Commission obligations as outlined in the MDHA Housing Tax Credit PILOT Program General Program Description which was attached as Exhibit A to BL2016-435. The memo consists of two parts.

PART I: RECOMMENDATION ON GENERAL PLAN CONSISTENCY

Project: **Briarville (600 Creative Way)**
184 multi-family residential units
All units are income and rent restricted

Zoning: Multi-family Residential Alternative (RM20-A) is intended for single-family, duplex, and multi-family dwellings at a density of 20 dwelling units per acre and is designed to create walkable neighborhoods through the use of appropriate building placement and bulk standards. *At 20 units per acres, RM20-A would permit a maximum of 184 units on the site.*

Policy: T3 Suburban Neighborhood Evolving (T3 NE) is intended to create and enhance suburban residential neighborhoods with more housing choices, improved pedestrian, bicycle and vehicular connectivity, and moderate density development patterns with moderate setbacks and spacing between buildings. T3 NE policy may be applied either to undeveloped or substantially under-developed “greenfield” areas or to developed areas where redevelopment and infill produce a different character that includes increased housing diversity and connectivity. Successful infill and redevelopment in existing neighborhoods needs to take into account considerations such as timing and some elements of the existing developed character, such as the street network, block structure, and proximity to centers and corridors. T3 NE areas are developed with creative thinking in environmentally sensitive building and site development techniques to balance the increased growth and density with its impact on area streams and rivers.

District Major Institutional (D MI) is intended to maintain, enhance, and create Districts where major institutional uses are predominant and where their development and redevelopment occurs in a manner that complements the character of surrounding communities. Land uses include large institutions such as medical campuses, hospitals, and colleges and universities as well as uses that are ancillary to the principal use.

Project Details:

The 9.2 acre site is located on the north side of Creative Way, west of the intersection of Creative Way and Briarville Road. The properties to the east are a mix of single-family residential and vacant properties. The properties to the south of the site are two Specific Plan (SP) Zoning Districts, which permit multi-family and non-residential development.

The proposed development consists of eight multi-family buildings on the site. A total of 184 units are proposed, including 92 2-bedroom units and 92 3-bedroom units. All of the units will income and rent restricted, with the average income restriction to be no greater than 60% of area median income (AMI).

Planning Department Analysis: The site is zoned RM20-A. The proposed site plan shows eight buildings across the site. Development amenities include on-site management, clubhouse, community room, and a pool.

The site is located on the border of two policies: T3 NE Policy to the western portion of the site and D MI Policy to the eastern portion of the site. The primary policy on the site is T3 NE which is applied to areas that are undeveloped, underdeveloped, or suitable for substantial infill and redevelopment and are anticipated to be developed in suburban residential patterns, but at higher densities and with greater housing variety than classic suburban neighborhoods. This development meets the intent policy by creating infill development with higher than traditional suburban density and housing variety.

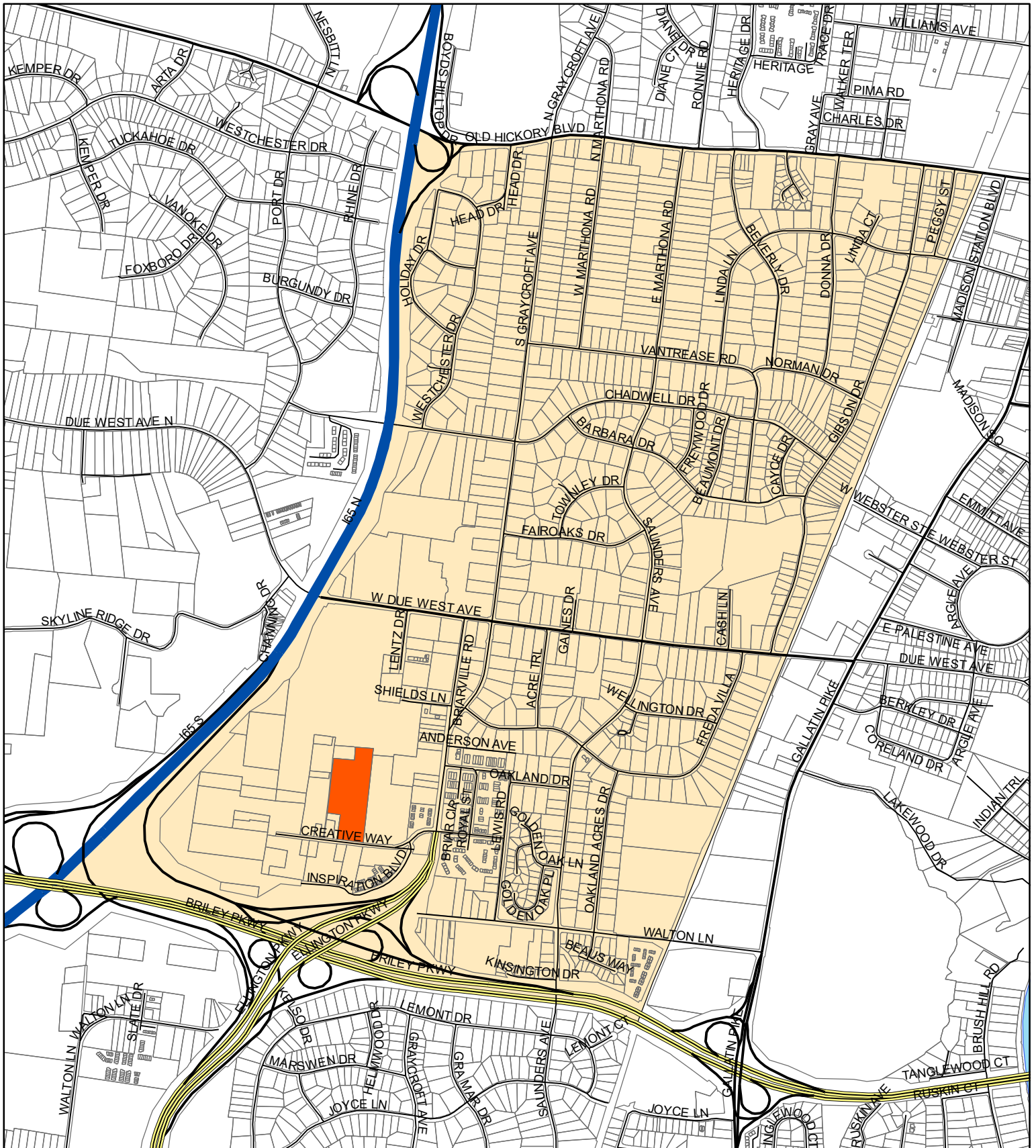
The eastern policy on the site is D MI Policy which is applied to areas with major institutional uses, where they make up a part of the fabric of the surrounding area. The property to the east is the Nossi College of Art Campus. As the site is located on the policy line, the site will serve as a transition from the mix of non-residential properties to the east and the evolving policy to the west. The policy gives the following guidance for transitioning between policy areas, “buildings at the edges of the district form transitions in scale and massing where it adjoins lower-intensity Community Character policy areas, with thoughtful attention given to the placement and orientation of buildings within these edges as they relate to their surroundings.” The proposed site plan provides buffered areas between the residential development and institutional development to the east.


Planning Determination: The proposed development will achieve the goals of the policies to provide a transition between existing properties and provide suburban residential development. This project is consistent with the NashvilleNext adopted general plan and the Community Character Policies on site.

PART II: LIST OF FEDERALLY SUBSIDIZED MULTI-FAMILY PROPERTIES WITHIN THE CENSUS TRACT

See attached map.

Federally Subsidized Multi-Family Projects within Census Tract 047037010802



 Parcel 05100017300



0.25 0.125 0 0.25 Miles