

## RESOLUTION NO. RS2020- 528

### **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 579 Hickory Hills Boulevard, known as Hickory Ridge, Phase II.**

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, by Ordinance BL2020-287, the Metropolitan Council established new property tax rates increasing the total property tax levy per \$100 of assessed value for properties within the General Service District from 2.755 to 3.788 and increasing the total property tax levy per \$100 of assessed value for properties within the Urban Service District from 3.155 to 4.221; and

WHEREAS, the above property tax rate adjustment impacts the property tax abatement calculation for the four previous PILOT projects that the Metropolitan Council has approved this year; and

WHEREAS, by Resolutions RS2020-238, RS2020-261, RS2020-339, and RS2020-338 the Metropolitan Council approved a total tax abatement of \$1,390,642 for those four projects; and

WHEREAS, after adjusting for the new tax rate, the total abatement of the four previous PILOT projects approved this year is updated to \$1,910,576 leaving MDHA with a remaining abatement capacity balance of \$589,424

WHEREAS, Hickory Ridge Apartments, Phase II, LP ("Owner") acquired land located at 579 Hickory Hills Boulevard (the "Project Site"); and

WHEREAS, Owner has proposed that an apartment project consisting of approximately 60 units restricted to individuals and families earning 60% or less of the Area Median Income (AMI) utilizing income averaging, known as Hickory Ridge, Phase II 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, MDHA has certified that the Project is consistent with MDHA's Consolidated Plan for Nashville-Davidson County and that there are no other PILOT agreements in effect in the same census tract of the Project Site; 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 \$6,957,088 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 \$60,740 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 \$60,740.

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.

APPROVED by Metropolitan

Development and Housing Agency:

James E. Harlan  
Executive Director

APPROVED AS TO AVAILABILITY  
OF FUNDS:

[Signature]  
Finance Director

APPROVED AS TO LEGALITY OF  
FORM AND COMPOSITION

William H. Chappi  
MDHA Attorney

INTRODUCED BY:

[Signature]

Member(s) of Council

## PILOT AGREEMENT

THIS PILOT AGREEMENT (the “**PILOT Agreement**”) is made and entered into as of the 18th day of August, 2020, by and between the METROPOLITAN DEVELOPMENT AND HOUSING AGENCY (“**MDHA**”) and the Hickory Ridge Apartments, Phase II, 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 has acquired land located at 579 Hickory Hills Boulevard and more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the “**Project Site**”);

WHEREAS, Owner intends to construct a 60 unit apartment project, known as Hickory Ridge Phase II, 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 (10<sup>th</sup>) 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 1<sup>st</sup> 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 (10<sup>th</sup>) Tax Year, in Lieu of Tax Payments shall be as follows:

<b>Tax Year</b>	<b>In-Lieu of Tax Payment</b>
1	\$44,674
2	\$46,014
3	\$47,395
4	\$48,816
5	\$50,281
6	\$51,789
7	\$53,343
8	\$54,943
9	\$56,592
10	\$58,289

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 \$745 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 (10<sup>th</sup>) Tax Year, Owner shall provide to MDHA an annual report not later than September 1<sup>st</sup> 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 (10<sup>th</sup>) 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 (15<sup>th</sup>) 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: \_\_\_\_\_

Title: \_\_\_\_\_

Hickory Ridge Apartments, Phase II, LP

By: *John T. H...*

Title: *President of General Partner*

FILED WITH THE METROPOLITAN CLERK

\_\_\_\_\_  
Elizabeth Waites      **RS2020-528**

\_\_\_\_\_  
Date

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. Hanlin

Title: Executive Director

Hickory Ridge Apartments, Phase II, LP

By: \_\_\_\_\_

Title: \_\_\_\_\_

FILED WITH THE METROPOLITAN CLERK

\_\_\_\_\_  
Elizabeth Waites **RS2020-528**

\_\_\_\_\_  
Date

**EXHIBIT A**

A tract of land containing 14.4820 acres, more or less, situated in District No. 9 of Davidson County, Tennessee, and without the corporate limits of the City of Nashville, Tennessee, and being all of Lot 2, as shown on the Final Plat of the Hickory Ridge S/D, of record as Instrument No. 20091217-0114656, in the Register's Office for Davidson County, Tennessee, to which plat specific reference is hereby made for a more particular description.

TOGETHER WITH AND SUBJECT TO the rights of others in the joint permanent easements for ingress and egress as shown on the above referenced plat and as set out in Instrument No. 20021204-0149561, and an Access and Utility Easement Agreement of record in Instrument No. 20190424-0037892, Register's Office for Davidson County, Tennessee.

Being the same property conveyed by ANTHONY CAMDEN SUGGS AND MIKE SUGGS, to HICKORY RIDGE APARTMENTS, PHASE II, L.P., a Tennessee limited partnership, by General Warranty Deed of record in Instrument No. 20160418-0037138, Register's Office for Davidson County, Tennessee.



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

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# Memo

**To:** MDHA  
**From:** Metropolitan Nashville Planning Department  
**Date:** July 06, 2020  
**Re:** Planning Commission Recommendation for PILOT Agreement

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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:** **Hickory Ridge Phase II (Parcel 03100016700)**  
60 multi-family residential units  
All units are income and rent restricted

**Zoning:** One and Two-Family Residential (R10) requires a minimum 10,000 square foot lot and is intended for single -family dwellings and duplexes at an overall density of 4.63 dwelling units per acre including 25 percent duplex lots.

Planned Unit Development Overlay District (PUD) is an alternative zoning process that allows for the development of land in a well-planned and coordinated manner, providing opportunities for more efficient utilization of land than would otherwise be permitted by the conventional zoning provisions of Title 17. The PUD district may permit a greater mixing of land uses not easily accomplished by the application of conventional zoning district boundaries, or a framework for coordinating the development of land with the provision of an adequate roadway system or essential utilities and services. In return, the PUD district provisions require a high standard for the protection and preservation of environmentally sensitive lands, well-planned living, working and shopping environments, and an assurance of adequate and timely provision of essential utilities and streets.

**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.

**Conservation (CO):** is intended to preserve environmentally sensitive land features through protection and remediation. CO policy applies in all Transect Categories except T1 Natural, T5 Center, and T6 Downtown. CO policy identifies land with sensitive environmental features including, but not limited to, steep slopes, floodway/floodplains, rare or special plant or animal habitats, wetlands, and unstable or problem soils. The guidance for preserving or enhancing these features varies with what Transect they are in and whether or not they have already been disturbed.

**Project Details:**

The 14.48 acre project site is located north of the intersection of Old Hickory Boulevard and Hickory Hills Boulevard. As Hickory Hills Boulevard extends north, it becomes a private drive. The site is located to the east of the private drive and south of Hickory Ridge Phase I.

The proposed project consists of 35 2-bedroom units and 25 3-bedroom units, for a total of 60 units. All the proposed units are income and rent restricted. The proposed site plan shows three multi-family buildings with two-three stories in height. The buildings are oriented along the parking area serving the development. One vehicular access point off of Hickory Hills Boulevard is proposed with the development.

**Planning Department Analysis:** The PUD overlay controls the uses and general layout on the site. In 2009 the preliminary PUD plan was revised to permit 114 multi-family units within the whole PUD site.

There are two policies on the site. The CO policy is located on the portions of the site that are impacted by natural features, such as steep slopes and water features. These features are primarily located on the western and southern portions of the site. The proposed areas for multi-family development are centralized on the site, located outside of the conservation features. This is in line with the intent of the policy to preserve environmentally sensitive land features.

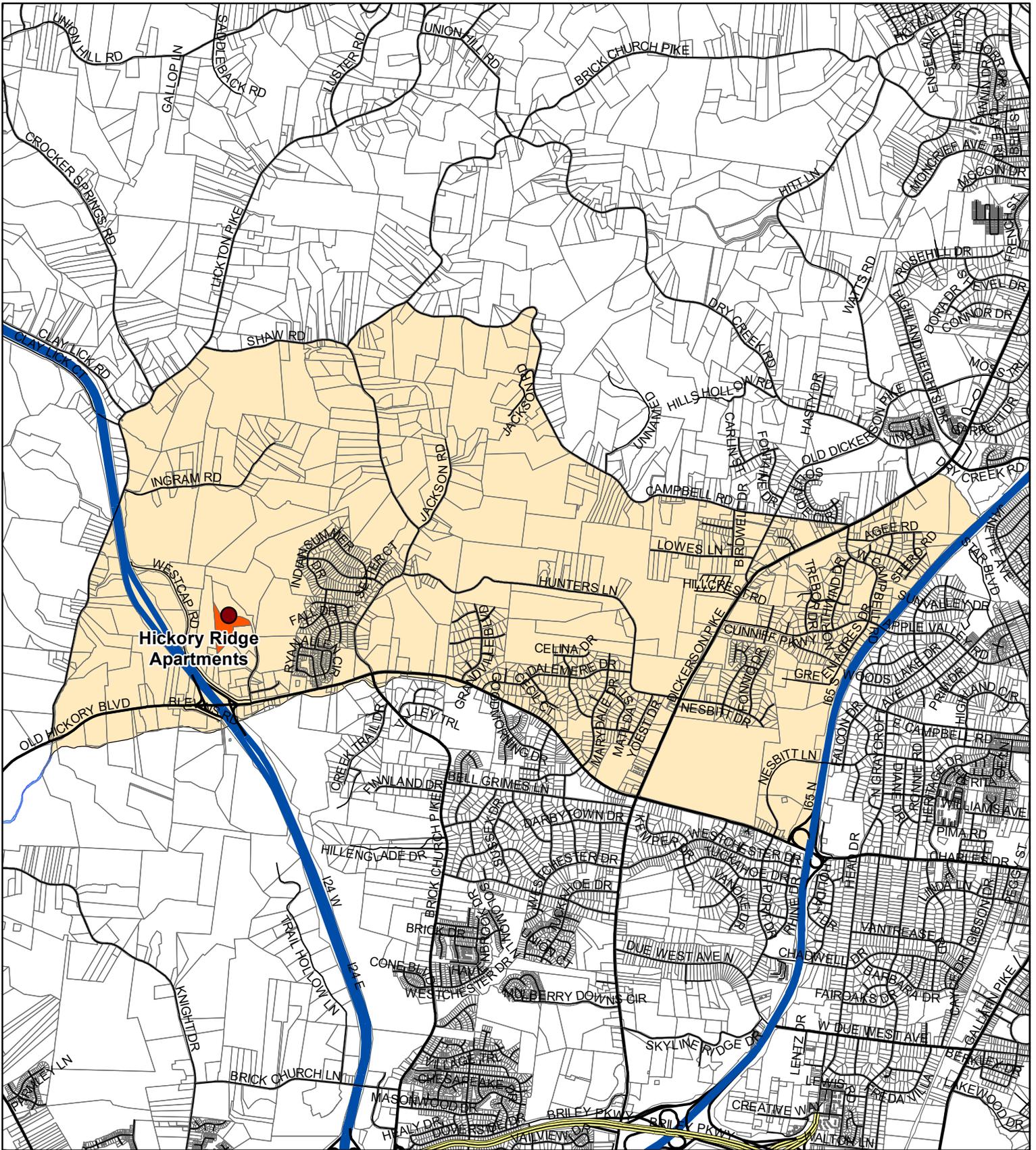
The second policy on the site, T3 NE, is intended to create moderate density suburban residential development. The surrounding development at the intersection of Old Hickory Boulevard and Hickory Hills Boulevard, south of the site, has been developed with commercial and civic uses. To area to the east of the site is existing single-family development and the area to the north of the site is vacant, but is within conservation and residential policy. The proposed density on the site is slightly more than four dwelling units per acre. With the proposed density, it creates a transition from the commercial corridor and surrounding residential development. The proposed development establishes additional housing opportunities at a level that is compatible with the existing development, and would be compatible with a variety of potential development to the north. The proposed multi-family residential introduces a new building type to the area, as intended by the policy. Multi-family development also permits the clustering of development on the portions of the lot unaffected by the steep slopes.

**Planning Determination:** The proposed site plan meets several goals of the policies including establishing residential uses at an intensity compatible with the surrounding development, transitioning from a commercial corridor into a residential area as called for by the policy as well as establishing a new development style within the area. This project is consistent with the NashvilleNext adopted general plan and the Community Character Policies.

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

See attached map.

# Federally Subsidized Multi-Family Projects within Census Tract 047037010201



Low Income Tax Credit Project	# of Units
Hickory Ridge Apartments	54

- Low Income Tax Credit Project
- Parcel 03100016700



# 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: Hickory Ridge Apartments, Phase II, LP

Project Name: Hickory Ridge Apartments Phase II LP

Location of the Project: 579 Hickory Hills Blvd  
\_\_\_\_\_  
\_\_\_\_\_

Name of the Federal Program to which the applicant is applying: 9% LIHTC

Name of Certifying Jurisdiction: MDHA

Certifying Official of the Jurisdiction Name: Emel Alexander

Title: Director of Community Development

Signature: 

Date: 6/26/2020