



OFFICE OF THE COUNTY ATTORNEY

Douglas M. Duncan  
County Executive

Charles W. Thompson, Jr.  
County Attorney

**MEMORANDUM**

TO: Scott W. Reilly  
Assistant Chief Administrative Officer

VIA: Marc P. Hansen  
Deputy County Attorney

FROM: Scott R. Foncannon  
Assistant County Attorney

RE: Development Districts

DATE: April 12, 2006

You have asked this office to give its opinion on whether the County Executive may take the time to obtain recommendations from an *ad hoc* citizens advisory committee on the implementation of a development district prior to issuing an Executive Fiscal Report under Section 14-8.<sup>1</sup>

For the reasons stated below, it is my opinion that because the County Code is silent as to the sources of information the County Executive may consider for preparation of the Executive Fiscal Report, the Executive may take the time to obtain recommendations of a citizens advisory committee.

**LEGISLATIVE HISTORY**

In 1994 the Montgomery County Council enacted legislation (Bill No. 44/46-92) to authorize the creation of development districts and the issuance of County bonds to finance the construction of certain infrastructure improvements in the districts. As stated in the bill, the purpose of the development district was to create a method to finance infrastructure improvements necessary for the development of land in areas of the County identified for new development. The bill authorized taxes and assessments on the property within the district to pay for the bonds which finance the construction of the improvements. The bill also established

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<sup>1</sup>Section references are to the Montgomery County Code (2004).

the procedures for creating the district and issuing the bonds. This bill is codified in Chapter 14 of the Montgomery County Code. There have been two minor legislative amendments to the bill since 1994. Neither amendment affects the question addressed in this memorandum.

## **DEVELOPMENT DISTRICT LAW AND PROCEDURES**

The procedure for creating and financing the development district is complex and includes three separate County Council resolutions during the process.

### **The First Resolution**

Section 14-6 of the Code states that if a petition is filed with the Council requesting the formation of a development district, the Council, after notice and hearing, must first issue a resolution approved by the County Executive declaring its intent to establish a development district in a specified geographic area.

### **Planning Board Review**

Section 14-7 of the Code states that after the Council's first resolution is adopted one or more owners of the land located in the district may submit an application for provisional adequate public facilities approval to the Planning Board. "Within a reasonable time," the Planning Board must review all developments in the district and as a condition of approval identify infrastructure improvements necessary to provide adequate public facilities for the district. Section 14-7(b)(c).

### **Executive Fiscal Report**

Section 14-8 of the Code states that after the Planning Board has acted under Section 14-7(b), but before the Council holds a public hearing under Section 14-9(a), the County Executive must submit an Executive Fiscal Report that estimates the cost of each infrastructure improvement listed by the Planning Board, the amount of revenue needed to cover the district's share of all infrastructure improvements funded by the district, and the estimated rate of tax that would produce the necessary revenue. Section 14-8(b) also requires the report to contain a recommendation on whether to create the district, its boundaries, which infrastructure improvements listed by the Planning Board the district should fully or partly fund, and alternate financing or revenue raising measures. There is no limitation on what resources, consultants or information the Executive may consider to formulate and prepare the report. The Code states that the report must be submitted after the Planning Board has acted but before the Council holds its public hearing under Section 14-9(a)

### **The Second Council Resolution**

Section 14-9 of the Code states that the Council must hold a public hearing not less than 45 days after the Planning Board had acted on all applications filed under Section 14-7 for the district. After the hearing, the Council may adopt a resolution, with approval of the County Executive, to create the district.

### **The Third Council Resolution**

Section 14-13 of the Code requires a third council resolution to authorize the bonds to finance the district. The requirements of this resolution are extensive and require the Council to describe the proposed infrastructure improvements, specify the principle amount of the bonds, and levy the special taxes or assessments at a rate sufficient to provide for the payment of the principle and interest on the bonds.

### **FACTS**

On April 5, 2006, the Clarksburg Ombudsman issued a press release that announced the creation of the Clarksburg Development District Advisory Committee (“Advisory Committee”) for the purpose of seeking input and recommendations on implementation of the development districts in the Clarksburg area and announced that the County was putting all development district decisions on hold pending the recommendations and findings of the Advisory Committee.

The County Council issued its resolution declaring its intent to establish the Clarksburg Skylark Development District and the Clarksburg Village Development District on October 30, 2001. The Planning Board has completed its review under Section 14-7. The County Executive has not issued the Executive Fiscal Report for either of these districts and has determined that it would be appropriate to obtain the recommendations of the Advisory Committee before preparing the Executive Fiscal Report for these two districts. Finally, the Council has not set a hearing date under Section 14-9.

### **DISCUSSION**

The cardinal rule for interpreting a law is to ascertain and carry out the intent of the lawmakers. *Tucker v. Firemen's Fund Ins. Co.*, 308 Md. 69, 73 (1986). The purpose and intent of the development district legislation is to provide a mechanism for providing infrastructure improvements in a developing area of the County in an organized and cost effective way and to create a way to pay for the improvements with tax exempt bonds. The statute, by its terms, anticipates and requires a substantial amount of due diligence by the County prior to the final resolution approving the issuance of the bonds and authorizing the infrastructure improvements.

Section 201 of the Montgomery County Charter vests the County Executive with all of the executive power vested in Montgomery County by the constitution, the laws of Maryland and by the Charter. As the chief executive officer of the County, the County Executive is required to execute the laws of the County.

The Executive Fiscal Report required by Section 14-8 of the Code, is extensive and requires the Executive to consider and compile a multitude of information from a variety of sources. The report required by Section 14-8 must not only contain costs, revenue and financing information, but a recommendation of what infrastructure to fund and whether to actually create the district. It is clearly anticipated by the statute that the Council's decision to create the district under Section 14-9 would rely on the information contained in the report by the Executive. The extensive nature of the report together with the general complexity of Chapter 14 supports the

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Executive's decision to form an advisory committee of citizens who already live within the boundary of the proposed district and this decision appears reasonable in light of the purpose and intent of the statute. Holding off on finalizing the Executive Fiscal Report by taking the time necessary to set up the advisory committee to seek recommendations is reasonable and clearly within the Executive's authority under Charter Section 201.

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