

## APPENDIX

The Office of Legislative Oversight compiled this Appendix of fact finding to support the Council's staff's analysis of legal issues raised by the Clarksburg Town Center Advisory Committee. Sue Richards, Senior Legislative Analyst, prepared the material in this Appendix, which is listed below. A brief explanation of the fact finding scope and contents is included on the following page.

### **Appendix 1. Fact Finding for the Clarksburg Town Center Development District**

- 1A Background Information and Chronology of Approvals
- 1B The Evolution of the List of Approved Development District Infrastructure Items
- 1C A Review of the Development District Infrastructure Items and the Developer Obligations in the Planning Board's Regulatory Approval Documents

### **Appendix 2. Fact Finding for the West Germantown Development District**

- 2A Background Information and Chronology of Approvals
- 2B The Evolution of the List of Approved Development District Infrastructure Items
- 2C A Review of the Development District Infrastructure Items and the Developer Obligations in the Planning Board's Regulatory Approval Documents

### **Appendix 3. Fact Finding for the Kingsview Village Development District**

- 3A Background Information and Chronology of Approvals
- 3B The Evolution of the Approved Development District Infrastructure Items
- 3C A Review of the Development District Infrastructure Items and the Developer Obligations in the Planning Board's Regulatory Approval Documents

### **Appendix 4. A Brief Review of Exactions and Development Taxes in Montgomery County**

- 4A Understanding Exactions – In-Kind Contributions and Development Taxes
- 4B A Brief History of Exactions and Development Taxes in Montgomery County
- 4C Coordinating Development District Taxes with WSSC's System Development Charge – A Chronology of the Clarksburg Town Center Water Main
- 4D Coordinating Development District Taxes with the County's Transportation Impact Taxes – An Estimate of Potential Development District Refunds in Clarksburg

## **Explanation of Fact Finding Scope and Contents**

On March 22, Council President Praisner appointed a team of Council and OLO staff to prepare a report on Development District implementation, in response to legal issues raised by the Clarksburg Town Center Advisory Committee.

To assist the Council staff with its legal analysis, OLO was asked to conduct the discrete fact-finding tasks that are summarized in this Appendix. The scope of the report was to include:

- Factual information about the actions to create the County's existing and proposed development districts;
- An integrated chronology of regulatory approval dates and development district approval dates for the existing development districts;
- A review of how the list of infrastructure items approved for funding in each of the existing development districts evolved;
- An analysis of whether the infrastructure items approved for funding in each of the existing districts were also developer obligations established by the Planning Board in its regulatory approval documents; and
- An analysis of the eligibility of district infrastructure items to be funded under the criteria established in the County's development district law (Chapter 14).

The task of matching the infrastructure items approved for development district financing to the infrastructure requirements established in the Planning Board's regulatory approval documents turned out to be a complex undertaking. The development district decision documents and the regulatory approval documents OLO reviewed both lacked the details necessary to determine whether the infrastructure items referenced in both sets of documents were identical or not.

Below is a summary description of the attached appendices that explains how the information OLO compiled for each of existing districts aligns with the tasks initially proposed; it also clarifies where OLO was not able to fully compile the material that was originally envisioned.

- ***Appendix A presents factual information for the Clarksburg Town Center Development District.*** For the CTC Development District, OLO was able to provide factual information about the actions to create the district, an integrated chronology of the regulatory approvals and the development district approvals, an analysis of the correspondence between the infrastructure items approved for development district financing and whether they were also requirements in the Planning Board's regulatory approvals, and information from the regulatory record about the basis for these requirements.

- ***Appendices B and C present factual information for the West Germantown and Kingsview Village Center Development Districts.*** For these Districts, OLO was able to provide factual information about the actions to create each district, integrated chronologies of the regulatory approvals and development district milestones for each district, and a review of the regulatory record to identify references to the infrastructure items financed for each district.

OLO was not able to determine precisely how the items approved for development district financing corresponded to the Planning Board's regulatory approval requirements. Because OLO was not able to determine whether the infrastructure items approved for district financing were also requirements of the Planning Board's regulatory approvals, OLO was able to provide only general answers about the legal basis for each relevant condition of approval.

- ***Appendix D introduces the concepts of exactions and development taxes and provides a brief review of their history in Montgomery County.*** The fourth appendix presents an explanation of exactions and their history in Montgomery County. OLO prepared a chronology of the Clarksburg Town Center Water Main project to examine the coordination between WSSC's system development charge and the use of Clarksburg Town Center development district taxes. OLO also compiled information about impact tax collections in Clarksburg to provide the basis for an estimate of impact tax refunds that could be available to development district applicants under current County law.

**A. The Chronology of Approvals for the Clarksburg Town Center Development District**

The Clarksburg Town Center Development District (CTCDD) is located in northern Montgomery County. The CTCDD lies 1 mile east of I-270 between MD 121 (Clarksburg Road) and Stringtown Road. It is bounded by Snowden Farm Parkway to the east and Clarksburg's Historic District to the west.

The CTCDD covers 247 acres. It consists of 1 development project, Clarksburg Town Center ("The CTC Project"). The CTC Project is being developed as a neo-traditional community. The currently approved project consists of 1,255 units including 530 multi-family units, 497 townhouses, and 228 single-family detached homes, plus a retail component. On April 26, 2007, the developer filed applications that would reduce the total number of units to 1,240, including 355 multi-family units, 661 townhouses and 224 single-family homes. The new applications propose 265,000 square feet of non-residential space.

On July 5, 2000 the developer of the parcel, Terrabrook LLC, submitted the initial petition for the CTCDD. At that time, Terrabrook was the sole owner of the 263-acre parcel.<sup>1</sup> The developer's initial petition stated the developer intended to build a project consisting of approximately 500 multi-family units, 600 townhouses, and 200 single-family detached units, plus 100,000 square feet of office space and 150,000 square feet of retail space.

**1. What were the dates for each step of the development district approval process?**

The establishment of the CTCDD began in July 2000; as of July 2007, it is not complete. On September 26, 2000, the Council adopted Resolution 14-648, signaling its intent to create a development district. On March 4, 2003, the Council adopted Resolution 15-87 to establish the CTCDD.

In October 2003, NNPPII-Clarksburg, LLC (referred to as Newland Communities) acquired ownership of the CTC Project. According to Finance Department staff, 1 month later (in November 2003), Newland Communities requested that the County government defer its process to issue development district bonds until after Newland receives regulatory approvals for the third phase of the CTC Project.

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<sup>1</sup> The acreage of the CTCDD is smaller than the original acreage owned by the developer because the CTCDD excluded property that was dedicated for the school site and the park, as well as property conveyed to Terrabrook to accommodate the storm water management sand filter facility.



Exhibit A-1 presents dates for each step of the approval process for the CTCDD.

**Exhibit A-1. CTCDD Chronology**

<b>Step</b>	<b>Description</b>	<b>Date</b>
Step 1	Developer files initial petition to create a development district.	July 5, 2000
Step 2	Council holds public hearing on developer's initial petition.	August 1, 2000
Step 3	Council adopts 1 <sup>st</sup> resolution expressing intent to create a development district.	Sept. 26, 2000
Step 4	Developer submits application for provisional adequate public facilities (PAPF) approval to the Planning Board.	Nov. 14, 2000
Step 5	Planning Board acts on developer's application for PAPF approval.	March 22, 2001
Step 6	Executive submits Fiscal Report to Council.	Oct. 17, 2002
Step 7	Council holds public hearing.	Dec. 10, 2002
Step 8	Council adopts 2 <sup>nd</sup> resolution to create a development district.	March 4, 2003
Step 9	Council adopts 3 <sup>rd</sup> resolution to specify bond conditions.	To be determined
Step 10	Council adopts resolution to establish initial tax rate.	To be determined

Source: Council Resolutions.

**2. What were the dates of the regulatory approvals for the CTC Project that makes up the development district?**

As noted above, the CTCDD consists of 1 development project, Clarksburg Town Center. The regulatory approvals for the CTC Project span 13 years. They began in 1994 and are ongoing today.

- In late 1994, the developer filed a preliminary plan subdivision application and project plan application. The Planning Department deemed these applications to be complete on November 23, 1994 and December 6, 1994, respectively.

- On June 12, 1995, the Planning Board mailed its Opinion approving Project Plan 9-94004 for the Clarksburg Town Center, subject to 14 conditions.
- On March 26, 1996, the Planning Board mailed its Opinion, approving Preliminary Plan 1-95042 for the Clarksburg Town Center, subject to 17 conditions.

Between July 1997 and June 2004, the developer submitted 3 site plan applications for the CTC Project:

- On July 16, 1997, the Planning Department deemed the developer's application for Site Plan Phase I to be complete. The Planning Board mailed its Opinion approving Site Plan Phase I 8-98001, subject to 44 conditions, on March 3, 1998.
- On October 12, 2001, the Planning Department deemed the developer's application for Site Plan Phase II to be complete. The Planning Board mailed its Opinion approving Site Plan Phase II 8-02014, subject to 7 conditions, on June 17, 2002.
- On June 3, 2004, the Planning Department deemed the developer's application for Site Plan Phase I-Retail to be complete. The developer later withdrew this application.

In addition to these regulatory approvals, Planning staff administratively approved several amendments to Site Plan Phase I and Site Plan Phase II.

On April 26, 2007, the developer filed applications to amend the approved project plan (91994004B), preliminary plan (11995042B), and site plans (8-98001, 8-02014, 8-02014B, and 8-98001G).

**3. Did the Planning Board issue its approvals for the project plan, preliminary subdivision plan, and site plans for the CTC Project before or after the Council adopted its resolutions to create the CTCDD?**

**Exhibit A-2** presents the chronology of regulatory approvals for the CTC Project, interspersed with the chronology of Council actions to initiate and establish the CTCDD. A review of these timelines shows the following:

- The Planning Board approved the project plan for the CTC Project in June 1995, about 5 years before the Council adopted its 1<sup>st</sup> resolution signaling the Council's intent to create a development district (in September 2000) and almost 8 years before the Council adopted its 2<sup>nd</sup> resolution to create the CTCDD (in March 2003).
- The Planning Board approved the preliminary plan for the CTC Project, in March 1996, about 4½ years before the Council adopted its 1<sup>st</sup> resolution signaling its intent to create a development district (in September 2000); and 7 years before the Council adopted its 2<sup>nd</sup> resolution to create the CTCDD (in March 2003).

*Appendix 1A. Fact Finding for the Clarksburg Town Center Development District*

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- The Planning Board's site plan approvals for the CTC Project occurred before and after Council actions to establish the CTCDD.
  - The Planning Board's Site Plan approval for Phase I in March 1998 preceded adoption of the Council's 1<sup>st</sup> resolution for the CTCDD (September 2000) by 2 years and 5 months.
  - The Planning Board's Site Plan approval for Phase II in June 2002 fell between the Council's adoption of the 1<sup>st</sup> resolution (September 2000) and the 2<sup>nd</sup> resolution (March 2003).
  - The Planning Board's Site Plan approval for Phase III has not yet occurred.
- After the Planning Board granted initial project plan, preliminary plan, and site plan approvals for the CTC Project, the property owner filed several site plan amendments; many of these preceded the creation of the CTCDD.

**Exhibit A-2. Chronology of CTC Regulatory and Development District Approvals**

<b>Type Of Action</b>	<b>Document</b>	<b>Action/Event</b>	<b>Date</b>
Regulatory Review	Preliminary Plan 1-95042	Developer's filed Preliminary Plan Application is deemed complete.	Nov. 23, 1994
	Project Plan 9-94004	Developer's filed Project Plan Application is deemed complete.	Dec. 6, 1994
		Planning Board mails Opinion approving the Project Plan for the Clarksburg Town Center, subject to 14 conditions.	June 12, 1995
	Preliminary Plan 1-95042	Planning Board mails Opinion approving the Preliminary Plan for the Clarksburg Town Center, subject to 17 conditions.	Mar. 26, 1996
	Site Plan Phase I 8-98001	Developer's filed Site Plan Phase I Application is deemed complete.	July 16, 1997
Planning Board mails Opinion approving Site Plan Phase I, subject to 44 conditions.		Mar. 3, 1998	
Development District	1 <sup>st</sup> Resolution	Developer files initial petition to establish development district with the County Council.	July 5, 2000
		County Council holds public hearing on developer's initial petition to establish a development district.	Aug. 1, 2000
Regulatory Review	Preliminary Plan Revision 1-95042R	Developer's filed application to revise Preliminary Plan is deemed complete.	Aug. 17, 2000
Development District	1 <sup>st</sup> Resolution	County Council adopts Resolution 14-648.	Sept. 26, 2000
	Provisional APF Review	Developer files application for PAPF approval with Planning Board.	Nov. 14, 2000
		Planning Board submits letter informing County Executive of Planning Board's unanimous approval of developer's PAPF application.	Mar. 22, 2001
Regulatory Review	Preliminary Plan Revision 1-95042R	Planning Board mails Opinion that revises Preliminary Plan.	Aug. 14, 2001
	Site Plan Phase II 8-02014	Developer's filed Site Plan Phase II application is deemed complete.	Oct. 12, 2001
		Planning Board mails Opinion approving Site Plan Phase II, subject to 7 conditions.	June 17, 2002
Development District	Executive's Fiscal Report	County Executive transmits Fiscal Report and Recommendation to Establish Development District to the County Council.	Oct. 17, 2002
	2 <sup>nd</sup> Resolution	Council holds public hearing on Resolution #2.	Dec. 10, 2002
		Council adopts Resolution 15-87.	Mar. 4, 2003
Regulatory Review	Site Plan Phase I - Retail 8-04034	Developer's filed application for Site Plan Phase I-Retail is deemed complete.	June 3, 2004
	Compliance Plan	Planning Board approves conceptual compliance plan to redesign the Clarksburg Town Center.	June 15, 2006
	Project, Preliminary and Site Plan Amendments	Developer files applications to amend the current project plan (91994004b), preliminary plan (11995042B), and site plans (8-98001, 8-02014, 8-02014B and 8-98001G).	April 26, 2007

Source: Council Resolutions and M-NCPPC Development Approval Information Center.

**B. Evolution of Infrastructure Items Approved for CTCDD Funding**

The process to create a development district incorporates multiple reviews of lists of infrastructure items to be financed by the development district. These reviews occur:

- When the developer submits the initial petition to the Council;
- When the developer submits the Provisional Adequate Public Facilities (PAPF) application to the Planning Board;
- When the Executive's Fiscal Report is prepared; and finally,
- When the Council adopts the 2<sup>nd</sup> resolution.

This section examines how the lists of infrastructure items to be funded by the CTCDD evolved. The source documents for this review include the developer's initial petition, the developer's PAPF application, the Planning Board's PAPF approval letter to the County Executive, the Executive's Fiscal Report, and the Council's 2<sup>nd</sup> resolution.

**Exhibit B-3** (at page 1B-11) summarizes the developer's initial infrastructure funding requests, the recommendations made by the Planning Board and the Executive, and the items the Council approved for funding. The discussion below describes the proposed infrastructure improvements and the rationale for each recommendation.

**1. What infrastructure items did the developer propose for CTCDD financing in the initial petition for a CTCDD?**

The initial petition filed by the developer proposed 17 items for district financing, including:

- Twelve transportation improvements, including Stringtown Road, Clarksburg Road, Piedmont Road, and various internal streets;
- One water and sewer improvement (a 20" water main extension); and
- Four other improvements, including a civic center and a local park.

The petition stated that each proposed improvement "serves members of the general public, and not merely the residents or occupants of a single development or subdivision",<sup>2</sup> and:

The public infrastructure proposed to be constructed through the bonds to be issued by the County represent major pieces of infrastructure that will benefit the entire Clarksburg area and includes road construction and major intersection improvements to existing State and County roads, street lighting and sidewalks,

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<sup>2</sup> Petition of Terrabrook Clarksburg LLC [Appended to proposed County Council Resolution: Clarksburg Town Center Development District. Introduced July 11, 2000], p.3.

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the trunk line water main serving the project, storm water management facilities, and the civic center building located in the town center. Such improvements fall within the definition of "Infrastructure Improvement" within the purview of Section 14-3 of the Montgomery County Code, and represent investments in the Clarksburg region that will benefit the public interest.<sup>3</sup>

**Exhibit B-1**, on pages 1B-2 to 1B-4, lists the 17 improvements and displays project descriptions from Exhibit C of the Petition for the Development District filed by Terrabrook Clarksburg LLC in June 2000.

**Exhibit B-1. Items Proposed For CTCDD  
Financing-Developer's Initial Petition**

Item	Transportation Improvements
Street Construction (Item 4)	"These public streets serve to connect the outlying areas with Clarksburg Town Center, the Town Square Civic Center, Clarksburg Elementary School and the Greenway Park, providing access to the greater Clarksburg community".
Main Street (Item 4a)	"A 70' R/W, 36' paving section extends from Rte 355 east through Clarksburg Town Center to Piedmont Rd A305 relocated".
F Street (Item 4b)	"A 60' R/W, 36' paving section extends west from Piedmont Rd. A305 relocated to Main Street providing access to the proposed Clarksburg Elementary School and the Greenway Park".
H Street (Item 4c)	"A 60' R/W, 36' paving section extends westerly from Piedmont Road A305 relocated to Stringtown Rd".
K Street (Item 4d)	"(Greenway Road) a 70' R/W, 36' paving section extends south from Clarksburg Road. crossing Main Street to Stringtown Rd".
Stringtown Road Improvements (Item 6)	"Construction of improvements easterly from Rte 355 to Piedmont Road, including the bike path, median, and curb and gutter. This improvement will be constructed in two segments, the first within one half (52.5 ft.) of the 105 foot right of way between MD 355 and the Greenway Rd (K Street) and the second within one half (60 ft) of the 120 foot right of way between Greenway Rd (K Street) to the Piedmont Road (A305)".
Piedmont Road (Item 7)	"This roadway extending south from Clarksburg Rd to Stringtown Rd will be constructed as a 32 ft. two lane open section road within an eighty (80) foot wide right of way. An eight (8) foot wide bike path will extend along the westerly side to the full extent of the improved road. At the Stringtown Road. intersection, turn lanes and a median will be constructed to match the improvements proposed there".

<sup>3</sup>*Id.*

**Exhibit B-1. Items Proposed For CTCDD  
Financing - Developer's Initial Petition (continued)**

<b>Item</b>	<b>Transportation Improvements (continued)</b>
Lowering Route 355 at Stringtown Road. (Item 8)	"Rte 355 at the intersection of Stringtown Road needs to be lowered to accommodate the proper site (sic) distance".
Route 355 Intersection Imps. (Item 9)	"Reconstruction of the southbound right turn lane along Rte 355 at Rte 121 to provide free flowing movement. Construct the eastbound left turn lane along Rte 121 at Rte 355 and a westbound left turn lane along Rte 121 at Rte 355. Construct a northbound right turn lane along Rte 355 at Stringtown Road".
Clarksburg Road Route 121 Road Imps (Item 10)	"Clarksburg Road from Rte 355 to Piedmont Rd will be improved as follows: From Rte 355 east to Greenway Rd (K Street) construct one-half of the 38 ft section with curb and gutter and a six ft bike path. At the Greenway Road (K Street) interchange, construct a westbound 300 foot left turn lane and taper. From Greenway Rd (K Street) to Piedmont Rd A 305 construct one-half of a 32 foot section with six foot bike path. Provide a left turn lane at Piedmont Rd intersection, requiring a 200' transition beyond Piedmont to existing".
Red Grave Road/Route 355 into CTC (Item 11)	"Construct a 26 ft paving section with curb and gutter in a 50 ft right of way east from Rte 355 to O Street (this is the westerly extension of Main Street)".
Comus Road re-striping (Item 12)	"Re-stripe eastbound Comus Road to provide an exclusive left turn lane at Route 355".
Acquisition of right of ways (Item 13)	"Includes all costs associated with the acquisition of right of ways for all off site road improvements".
<b>Item</b>	<b>Other Improvements</b>
Civic Center (Item 1)	"The Civic Center . . . is proposed to be an approximately 20,000 sq. ft. structure to be used by the Clarksburg community at large for public activities. This building will provide opportunities for holding public meetings, will include a public library, and will include office space for public/governmental agencies. The Town Square itself will provide open space with seating areas, plantings and walkways which will provide a setting for pedestrian activity as well as a focal point for the Clarksburg Town Center".
School/Ball Field site grading (Item 3)	"A portion of the proposed school site is located at the northeasterly corner of the tract, approximately 8 acres bounded by Clarksburg Road on the north and Piedmont Road on the east. The westerly portion of that site is presently owned by MNCPPC and contains facilities currently in use by the Kings Pond Community Park, which must be dedicated prior to implementation of the proposed improvements. The grading will be conducted on both portions of the site and will be graded to accommodate ball fields and a pad site for the new Clarksburg Elementary School".

**Exhibit B-1. Items Proposed For CTCDD  
Financing - Developer's Initial Petition (continued)**

Item	Other Improvements (continued)
Trails/Hiker Biker Path (Item 5)	"All the trails and bike paths in the Green Way Park, central to CTC, are included in this item. These trails and bike paths will be part of a trail/bike path system that ultimately connects the County Greenway Park system from Little Bennett Park to Gaithersburg".
Public Local Parks (Item 14)	"Construction of local park, covering 15 to 25 acres, across Piedmont Road from the residential development, with ball fields, tennis courts, a pond and hiker/biker trails, and a small square park in the center of the residential portion of the development which will serve as a focal point for main Street".
Item	Water and Sewer Improvements
20" Water Main Ext (Item 2).	"The proposed 20" water main will provide service to all the adjoining properties as well as Clarksburg Town Center. It will extend from the intersection of Clarksburg Road and Rte 355, east along Clarksburg Rd to The Greenway Rd (K Street), south to Main Street, then east along Main Street to Piedmont Rd, A-305 relocated. It will follow Piedmont Rd south to the existing connection".

Source: Petition for Development District filed by Terrabrook Clarksburg, LLC, Exhibit C, Taxing District Primary Infrastructure.

**2. Did the infrastructure items in the developer's PAPF application differ from the infrastructure items in the developer's initial petition?**

The developer for the CTC Project did not make any changes to the infrastructure items proposed for development district financing between the initial petition and submission of the PAPF to the Planning Board. Exhibit G, which is attached to the PAPF application, is identical to Exhibit C, which is attached to the initial petition.

**3. What infrastructure items did the Planning Board recommend for funding by the CTCDD?**

The Planning Board modified the package of infrastructure improvements proposed for financing so that the infrastructure items to be financed by the CTCDD would have a regional benefit. (See the excerpt from the Planning Board's transmittal letter on page 1B-6 for an explanation of the Board's rationale.) To accomplish this, the Board recommended deleting infrastructure items that primarily served the CTC Project and recommended modifying the scope of other items. Specifically:

The Board recommended removing 5 items (3 transportation items and 2 "other" items) because these items did not provide a regional benefit. The items the Board recommended removing were:

- F Street (Item 4b);
- H Street (Item 4c);



*Appendix 1B. Fact Finding for the Clarksburg Town Center Development District*

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- Comus Road re-striping (Item 12);
- School/Ball field site grading (Item 3); and
- Public local park development across Piedmont Road (Item 14).

The Board recommended reducing the project scope of 3 items to include only that portion of the improvement that would provide a regional benefit.<sup>4</sup> The scope reductions suggested by the Board were for:

- The 20" Water Main Ext. (Item 2);
- Main Street (Item 4a); and
- Trails/Hiker Biker Path (Item 5).

The Board recommended leaving 9 items that the developer had initially proposed intact. In the Board's view, these items (plus the 3 modified items above) merited CTCDD funding because they would provide a regional benefit. These items included:

- The Civic Center (Item 1);
- K Street (Item 4d);
- Stringtown Road Improvements (Item 6);
- Piedmont Road (Item 7);
- Lowering MD 355 at Stringtown Road (Item 8);
- Route 355 Intersection Improvements (Item 9);
- Clarksburg Road Route 121 Road Improvements (Item 10);
- Red Grave Place [MD 355 to CTC boundary (Item 11)]; and
- Acquisition of rights-of-way (Item 13).

The Planning Board Chair explained the Board's role and its rationale in a March 22, 2001 letter to the Executive. It stated, in part:

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<sup>4</sup> The Board reduced the project scope of the 20" Water Main (Item 2) to include only the off-site portion. It reduced the project scope of Main Street (Item 4a) to reflect the Board's estimate of its regional service. It reduced the project scope of Trails/HikerBiker Path (Item 5) to include only the regional greenway trail through the public greenway park.

The Planning Board's role in reviewing the proposed Development District is limited to finding that the proposal meets the Adequate Public Facilities requirements of the development. Terrabrook's proposal meets this requirement and exceeds it by proposing additional non-APF regional benefits such as the Civic Building and the Greenway Trail System. The Planning Board did not support items on the applicant's original proposal which did not have a regional benefit in accordance with Sec. 14-3(g) which defines what type of improvement can be funded through a development district. The district legislation, I believe, is not intended as a funding source for infrastructure that serves only individual projects. The applicant was in agreement with the modified list of infrastructure improvements.<sup>5</sup>

Memoranda from the Community-Based Planning Division and Transportation Planning staff attached to the Planning Board's letter concluded that the proposed infrastructure "conformed to the required APF improvements" as well as the zoning and subdivision requirements. In a staff memorandum to the Planning Board, Community-Based Planning staff raised a concern that a comprehensive district with future developer involvement (which had originally been envisioned by Planning staff) could not be established under the County's bonding guidelines and the requirements of financial lenders. Staff reported, according to the Department of Finance, it would be possible to have a series of development districts based on separate applications and proposed infrastructure improvements that would add up to a more comprehensive coverage of the Clarksburg community. Community-Based Planning staff also stated:

The opportunity to coordinate needed infrastructure and timely construction of public facilities within Clarksburg can still be achieved by staff's continued comprehensive infrastructure review of every proposed preliminary plan. This traditional approach coordinates private sector improvements during preliminary plan review and identifies needed Capital Improvement Projects can help to ensure that needed infrastructure and timely construction is achieved. Clarksburg is currently in jobs and housing moratorium for APF transportation capacity and is establishing capacity primarily through privately funded transportation improvements.<sup>6</sup>

The memorandum from Transportation Planning staff stated:

Staff's review . . . indicates that the list of roadway improvements includes items that are not required for the APFO approval. The street construction of Main, F, H, & K (Greenway Road) Streets, mainly internal streets providing access to the fronting properties, are not identified as APF-required improvements.<sup>7</sup>

Transportation Planning staff also highlighted that there were other major developments under active subdivision and suggested expanding the proposed Clarksburg Development

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<sup>5</sup>Letter from William H. Hussmann to Douglas Duncan, March 22, 2001, p.2.

<sup>6</sup>Memorandum to Planning Board from Karen Kumm Morris, Clarksburg Planner, Community-Based Planning Division, March 2, 2001, p.5.

<sup>7</sup>Memorandum to Karen Kumm Morris, Clarksburg Planning, Community-Based Planning Division from Ki H. Kim, Planner, Transportation Planning, February 26, 2001, p.2.

District to include these developments so that the Development District would provide more comprehensive transportation infrastructure in the Clarksburg area.

**4. What infrastructure items did the Executive recommend that the development district fund?**

The Executive recommended adjusting the list of items recommended for district financing to reduce the tax burden on future homeowners and increase the level of “general benefit improvements”.

Specifically, the Executive recommended:

- Expanding the project scope for that part of Stringtown Road to be funded by the CTCDD to include:
  - One lane of a 2-lane segment of Stringtown Road to connect segments that were conditions of approval for other developments; and
  - A 25% share of Stringtown Road Extended from MD 355 to I-270.
- Affirming the inclusion of the Civic Center, but establishing a not-to-exceed District contribution of \$4.6 million and recommending that its timing be determined through the capital budget.
- Re-instating the full scope of 2 items the Planning Board had modified:
  - The portion of the 20” water main that traversed the CTC site (Item 2) as a primary funding priority; and
  - The Trails/Hiker Biker Path (Item 5) as a lower priority.
- Agreeing with the Planning Board’s recommendation to:
  - Remove 5 items, which were F Street (Item 4b), H Street (Item 4c), Comus Road Re-striping (Item 12), the School Ball Field Site Grading (Item 3), and the Public Local Parks (Item 14); and
  - Modify the scope of 1 item, which was Main Street (Item 4a), which the Executive recommended as a lower priority.
- Removing the Red Grave Place improvements between MD 355 and the CTC Project boundary (Item 11).

The rationale for the Executive’s recommendation explained in the Fiscal Report, transmitted to the Council, mirrored the approach the Executive used for the West Germantown Development District. The Report’s discussion of “General Benefit Improvements” stated, in part,

The Development District Act provides a clear benefit to petitioners of development districts in the form of a credit against the development impact tax . . . After accounting for costs of providing new capacity on Impact Tax roads (Stringtown Road, Piedmont Road, and MD 355), this credit is estimated at \$2.2 million (at current impact tax rates). As proposed by the developer, this initial list of infrastructure projects included “non-required” improvements that exceeded this credit, thus providing benefit to the other taxpayers in the Clarksburg impact tax area. However, in the context of growth “paying for itself,” the Executive believes that the Town Center District should fund general benefit improvements at a level higher than proposed by the developer. The adopted Clarksburg Master Plan recognizes that the policy area cannot be developed without significant funding of infrastructure from “non-typical” sources, such as development districts. The . . . total amount of infrastructure needed to support build-out of the Clarksburg area east of I-270 will cost \$500 million (unescalated), only \$74 million of which is now under consideration for financing through development districts currently under review.

The Executive recommends that improvements funded through a Town Center District should include contributions to some additional projects that will benefit not only residents of Town Center, but also residents outside the district.<sup>8</sup>

**5. What infrastructure items did the Council decide to fund through the development district?**

The Council approved 9 infrastructure items for CTCDD financing. **Exhibit B-2** (on the next page) lists these items, with the estimated cost, development district’s funding share, and estimated completion dates of each. They include:

- Four of the 12 transportation items proposed in the initial petition, including construction of 2 lanes of Stringtown Road and 2 lanes of Piedmont Road, improvements to Clarksburg Road, and the lowering of MD 355 at Stringtown Road;
- Two new transportation items recommended by the County Executive: financing of a 50% share of the Stringtown Road 800’ gap and a 25% share of Stringtown Road Extended from MD 355 to I-270;
- Two of the 4 “other” items proposed in the initial petition: financing for a portion of the Civic Center and financing for a “greenway trails” item; and
- WSSC’s 20” water main extension proposed in the initial petition.

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<sup>8</sup> Clarksburg Town Center Development District: County Executive’s Fiscal Report, October 17, 2002. Item D. General Benefit Improvements, no page number.

***Appendix 1B. Fact Finding for the Clarksburg Town Center Development District***

The Council also approved a list of 2 items that could be funded by the development district if cost savings were achieved. These items were listed in priority order, and their estimated cost totaled \$3 million. The listed improvements in priority order are:

- Clarksburg Square/Overlook Park Roads, at an estimated cost of \$2.9 million; and
- MD 355/MD 121 Intersection improvements, at an estimated cost of \$100,000.

**Exhibit B-2. Infrastructure Items Approved for CTC Development  
District Funding—Council Resolution 15-87**

	<b>Infrastructure Improvement</b>	<b>Estimated Cost (000s)</b>	<b>Cost Share funded by District</b>	<b>Est. Completion Date</b>
1	Civic Center	\$4,640 (not to exceed)	To be determined	To be determined
2	Stringtown Road 800' Gap	\$550	50%	June 2005
3	Stringtown Road Extended (MD 355-I-270)	\$1,600 (Not to exceed)	25%	June 2007
4	Stringtown Road (MD 355-Piedmont Road)	\$4,435	100%	June 2004
5	Piedmont Road	\$2,270	100%	Nov. 2003
6	Lowering MD 355 at Stringtown Rd.	\$905	100%	June 2004
7	Clarksburg Road (MD 355 to Piedmont Road)	\$1,340	100%	Nov. 2004
8	WSSC 20" Water Main.	\$779	100%	Dec. 2004
9	Greenway Trails	\$460	100%	Dec. 2005
	<b>Total Cost</b>	<b>\$16,979</b>		

Source: Council Resolution 15-87 Exhibit C, Clarksburg Town Center Development District Funded Improvements.

**6. How does the list of infrastructure items approved by the Council compare to the list recommended by the County Executive?**

The list of infrastructure items the Council approved for CTCDD funding is similar but not identical to the list the Executive recommended. Specifically:

***Appendix 1B. Fact Finding for the Clarksburg Town Center Development District***

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- The Council agreed with the Executive's recommendation to expand the number of Stringtown Road improvements and to re-instate the 20" water main and the Trails/Hiker Biker Path;
- The Council agreed with the Executive's recommendation to fund Main Street, K Street and the MD 355 Intersection improvements as a lower priority; however, the Council moved the Trails/Hiker Biker Path item to the primary list.

**Exhibit B-3** (on the next page) displays the item by item changes through the various phases of the development district approval process.

**Appendix 1B. Fact Finding for the Clarksburg Town Center Development District**

**Exhibit B-3. Infrastructure Items to be Funded by the CTCDD - Initial Petition to Final Approval**

Item # in Initial Petition	Improvement	Developer's Initial Petition (Exhibit C)	Developer's PAPF Application Exhibit G	Planning Board's Recommendation (Letter)	County Executive's Recommendation (Table D)	Is Item included in Res. 15-87? (Exh. C)
<b>TRANSPORTATION IMPROVEMENTS</b>						
4a	Main Street	Yes	Yes	Yes - Modified	Yes-Modified Lower priority	Yes – Modified Lower priority
4b	F Street	Yes	Yes	No	No	No
4c	H Street	Yes	Yes	No	No	No
4d	K Street	Yes	Yes	Yes	Yes-Lower priority	Yes Lower priority
6	Stringtown Road: MD 355 to Piedmont Road	Yes	Yes	Yes	Yes	Yes
	Stringtown Road: MD 355 to I-270	No	No	No	Yes	Yes
	Stringtown Road: 800' Gap	No	No	No	Yes	Yes
7	Piedmont Road	Yes	Yes	Yes	Yes	Yes
8	Lowering Route MD 355 at Stringtown Rd.	Yes	Yes	Yes	Yes	Yes
9	Route 355 Intersection Imps.	Yes	Yes	Yes	Yes-Lower priority	Yes – Lower priority
10	Clarksburg Road Route 121 Road Improvements	Yes	Yes	Yes	Yes	Yes
11	Red Grave Road/MD 355 to CTC	Yes	Yes	Yes	No	No
12	Comus Road Re-striping	Yes	Yes	No	No	No
13	Acquisition of rights-of-way	Yes	Yes	Yes	Included elsewhere	Included elsewhere
<b>Other Improvements</b>						
1	Civic Center	Yes	Yes	Yes	Yes	Yes
3	School Ball Field Site Grading	Yes	Yes	No	No	No
5	Trails/Hiker Biker Path	Yes	Yes	Yes-Modified	Yes-Initial scope Lower priority	Yes Initial scope
14	Public Local Parks	Yes	Yes	No	No	No
<b>Water and Sewer Improvements</b>						
2	20" Water Main Ext. (Item 2)	Yes	Yes	Yes-Modified	Yes-Initial scope	Yes Initial scope

Source: CTCDD Approval Documents.

**C. OLO's Review of the Regulatory Documents for the Clarksburg Town Center Project and the CTCDD Infrastructure Items**

At the request of Council staff, OLO conducted a review of the regulatory documents for the Clarksburg Town Center (CTC) Project to determine whether construction of each infrastructure item approved for CTCDD funding was also required to be provided by the developer of the CTC Project as a condition of regulatory approval.

This appendix presents a summary of the regulatory requirements for each infrastructure item. The information is based on OLO's review of portions of the regulatory record, other CTCDD decision documents, information from Project Description Forms (PDFs) in the Capital Improvement Program, and discussions with current and former Executive, Planning, and WSSC staff.<sup>9</sup>

Following an initial review of the Planning Board's CTC Project documents, OLO and Council staff met with Planning staff to solicit input about ambiguities in the language of the Board's Opinions and the regulatory record. The discussion of some of the items below reports the opinions, interpretations, and recollections of current Planning staff where OLO found the regulatory record was unclear or incomplete. The presentation of OLO's results follows the list of infrastructure items shown below.

<b>Item #</b>	<b>District Infrastructure Item</b>
1	Civic Center
2	Stringtown Road 800' Gap
3	Stringtown Road Extended (MD 355 to I-270)
4	Stringtown Road (MD 355 to Piedmont Road)
5	Piedmont Road
6	Lowering MD 355 at Stringtown Road
7	Clarksburg Road Route 121 Improvements
8	20" Water Main Extension
9	Greenway Trails

The presentation of each item begins with a description of the project scope approved for development district financing, followed by answers to 3 questions:

<sup>9</sup> Council and OLO staff held two meetings with Planning staff, one with the former Subdivision Coordinator and a second meeting with the current Chief of the Transportation Planning Division, the former Transportation Coordinator for the Transportation Planning Division, the current Transportation Planner for the Transportation Planning Division, the current I-270 Team Leader for the Community Planning Division and the current Associate General Counsel. Council and OLO staff also held one meeting with current Finance staff and follow-up discussions with DPS staff and the former OMB Coordinator for the Clarksburg Development Districts.



***Appendix 1C. Fact Finding for the Clarksburg Town Center Development District***

1. What developer obligations related to this CTCDD item did the Planning Board establish as a result of its regulatory approvals?
2. How do these developer obligations relate to the implementation of this development district infrastructure item?
3. According to the regulatory record, did the Planning Board establish these obligations to comply with site plan or APF requirements?

**Items Approved for CTCDD Funding That Were CTC Developer Obligations.** Exhibit C-1 presents OLO's conclusions about whether the 9 items approved for CTCDD funding were also required to be constructed by the developer as a condition of plan approval.

**Exhibit C-1. OLO's Analysis of CTCDD Infrastructure Items and Conditions of Approval in the CTC Project Regulatory Record**

#	CTCDD Infrastructure Items	Was construction of this item identified as a condition of approval at:		
		Project Plan	Prelim Plan	Site Plan Phase I
1	Civic Center	No	No	No
2	2a. Stringtown Road 800' Gap	No	No	No
	2b. Stringtown Road Extended (MD 355-I-270)	No	No	No
	2c. Stringtown Road (MD 355-Piedmont Rd)	No	Yes	Yes
3	Piedmont Road	No	Yes	Yes
4	Lowering Rte 355 at Stringtown Rd.	No	No	No
5a	Clarksburg Road Route 121 Road Imps – MD355 to Town Center Boundary	No	No	No
5b	Clarksburg Road Route 121 Road Imps – Town Center Boundary to Piedmont Road	No	No	Yes
6	Greenway Trails	Yes	Yes	Yes
7	20" Water Main Extension	No	No	No

Source: Council Resolution 15-87, County Executive's Fiscal Report Appendix B, and Planning Board CTC Project regulatory approval documents.

**Information from the CTC Project Regulatory Records About the Regulatory Basis for Imposing the Conditions.** For the 4 items that were identified as conditions of approval for the CTC Project, Council staff asked OLO to report what the regulatory record said about whether the Planning Board established these conditions to comply with site plan or APF requirements. The bullets below and **Exhibit C-2** (on the next page) summarize the results of OLO's review.

- None of the 3 transportation items listed in **Exhibit C-2** were items that Transportation Planning staff recommended as a condition of approval to comply with the requirements of the Adequate Public Facilities Ordinance (APFO). Transportation Planning staff conducted a (LATR) analysis at Project Plan that resulted in a limited number of required intersection improvements.<sup>10</sup> And, some of these improvements were recommended for lower priority funding.<sup>11</sup> However, the developer was not required to provide improvements to create staging ceiling capacity because a Clarksburg Policy Area did not exist at that time.
- The CTC Project regulatory record identifies the Greenway Trails as part of the amenity package the developer provided to justify Planning Board approval of the optional method zoning for the CTC Project.

In addition to the 4 items required as conditions of approval for the CTC Project, a 5<sup>th</sup> item, the MD 355 Lowering, was required as a condition of approval for a different subdivision, the Highlands at Clarksburg project. The letter from the State Highway Administration for this project states that the lowering of the over-vertical curve on MD 355 was required for safety reasons.

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<sup>10</sup> Current Transportation Planning staff report that the APF test for the CTC Project was conducted at the time of Project Plan. Since the Planning Board's Preliminary Plan review followed right after the Project Plan review, Transportation Planning staff used the results of the APF review which had been conducted for Project Plan, and no other APF test was done for the Planning Board's Preliminary Plan review. Transportation Planning staff did prepare another Transportation Planning Division memorandum for the Preliminary Plan which was dated August 3, 1995.

<sup>11</sup> According to a Transportation Planning staff memorandum dated August 3, 1995, the improvements identified at Project Plan to satisfy the APFO review requirements were: 1. Reconstruction of the southbound right turn-lane along MD 355 at MD 121 to provide a "free flowing" movement. 2. Construction of eastbound and westbound left-turn lanes along MD 121 at MD 355. 3. Construction of a northbound right-turn lane along MD 355 at Stringtown Road. 4. Restriping eastbound Comus Road to provide an exclusive left-turn lane at MD 355. 5. Providing safety improvements along A-260 (Stringtown Road) per conditions of Project Plan Approval. 6. Participation in the Gateway I-270 Office Park Road improvement – widening MD 121 to 4 lanes between I-270 northbound off ramp and the entrance to the Gateway I-270 Office Park – per conditions of Project Plan Approval. The developer proposed Items 1, 2, 3 and 4 for CTCDD funding in the initial petition submitted to the Council and later reviewed by the Planning Board as part of its PAPF review. The Planning Board recommended approval of Items 1, 2 and 3, which the developer packaged as MD 355 Intersection Improvements, as part of its PAPF review. The Executive recommended approval of this item as a lower priority and the Council approved this item as the second item on the secondary list of items to be funded if savings were realized from the primary list. The Planning Board recommended the removal of Item 4 as part of its PAPF review. Since it was not re-instated by the Executive or the Council, it was not recommended for CTCDD funding.

**Exhibit C-2. OLO's Analysis of CTCDD Infrastructure Items and Conditions of Approval in the CTC Project Regulatory Record**

#	CTCDD Infrastructure Items Identified as Conditions of Approval	Was construction of this item identified as a condition of approval at:			Regulatory Basis for Item as a Condition of Approval
		Project Plan	Prelim Plan	Site Plan Phase I	
2c	Stringtown Road (MD 355-Piedmont Rd.)	No	Yes	Yes	Master Plan
3	Piedmont Road	No	Yes	Yes	Subdivision Access
5b	Clarksburg Road Route 121 Road Imps. (CTC boundary to Piedmont Road)	No	No	Yes	Other transportation issues associated with the site plan
6	Greenway Trails	Yes	Yes	Yes	Site Plan Requirement Optional Method Zoning Amenity Package

Source: Council Resolution 15-87, County Executive's Fiscal Report Appendix B, and Planning Board CTC Project regulatory approval documents.

**CTCDD Item 1 - Civic Center**

**Project Scope Background.** Appendix B of the County Executive's Fiscal Report provides the following description of this item:

The developer's district petition and site plan include a "civic center" of approximately 20,000 square feet to accommodate public meeting rooms, a branch library, and office space for County and other public agencies. As a Planning Board condition under the "optional method" provisions of the RMX-2 zone, the developer is required to dedicate a site for such a center. The developer recommends District funding of \$4,640,000 for a 20,000 sq. ft. building. If the District does not fund this project, the developer does not commit to construct it, but the developer will dedicate the land pursuant to project plan approval conditions.<sup>12</sup>

More information about this project is available from PDF No. 710500, the Clarksburg Library. The project cost is \$13.852 million and the source of funds is "Development District". The fiscal note on the PDF states:

<sup>12</sup> Appendix B. Clarksburg Town Center Development District Fiscal Report, Infrastructure Projects Considered for District Funding, Civic Center/Library, p.1.

***Appendix 1C. Fact Finding for the Clarksburg Town Center Development District***

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As approved by Council Resolution #15-87 creating the Clarksburg Town Center Development District, the District will provide up to \$4,600,000 toward the construction cost of a permanent library in Clarksburg. Dedication of 30,000 square feet of land for a library site is an M-NCPPC subdivision requirement of the Town Center developer. Two additional development districts are proposed adjacent to the Town Center District. The County Executive recommends that if created, these two new districts fund the remaining cost of the library.

The Strategic Facilities Plan 2004-2009 prepared by the Department of Public Libraries provides program and service assumptions about the County's library facilities. It states that the primary service radius for Montgomery County Public Library (MCPL) branches ranges from 1.5 miles to 3 miles with an average of 2.5 miles, and that 80% of customers come from within that radius.<sup>13</sup> The Strategic Facilities Plan identifies Clarksburg as a growth area, and states:

This town is planned to grow substantially – from 2,000 to 37,000 people – between 2000 and 2025. It meets all of the criteria set for identifying future service. A 20,000 square foot facility is being planned to serve the area. The Department is working with the UpCounty Regional Services Center, the Department of Public Works and Transportation and the developer to finalize the site. Funding for the library is expected to come from development district funding and a PDF has been submitted for the FY05-10 CIP.<sup>14</sup>

**1. What developer obligations related to this CTCDD item did the Planning Board establish as a result of its regulatory approvals and where are the specific references to these obligations found in the regulatory record?**

The Planning Board's regulatory approvals for the CTC Project require the developer to dedicate land for a town square that includes a site for a civic building. The Board's Project Plan and Site Plan Opinions identify the town square as part of an amenity package that justifies granting optional method zoning for the project. The Preliminary Plan Opinion contains a condition that ties the Preliminary Plan to the Project Plan.

Project Plan. The Planning Board's Project Plan Opinion does not explicitly mention the Civic Center or Library, but mentions the town square. For example, Finding #5 in the Project Plan, "Is More Efficient and Desirable than the Standard Method of Development", states:

The Planning Board finds that the proposed project, as conditioned, will be more efficient and desirable than the standard method of development. This optional method project consists of a mix of uses which are recommended in the Master Plan. These uses are not permitted under the standard method of development. The amenities and facilities provided as part of the optional method of development foster the creation of a transit and pedestrian oriented town surrounded by open space. The greenway network of amenities provides a major

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<sup>13</sup> Strategic Facilities Plan 2004-2009, p.13.

<sup>14</sup> *Id.* at 26.

Appendix 1C. Fact Finding for the Clarksburg Town Center Development District

open feature. The town square, and the neighborhood squares provide amenities within the entire development.<sup>15</sup>

The Project Plan Staff Report makes reference to “land dedicated for a future civic building, (i.e. meeting rooms and library)” and 1 of the findings states that the County would construct a future building. Specifically:

- Finding #2 states, “the town square also provides land available for a future post office, library, senior center, and meeting rooms”.<sup>16</sup>
- Finding #5 states, “a site for a future civic building with a library and senior center to be constructed by Montgomery County is included”.<sup>17</sup>

Preliminary Plan. The Planning Board’s Preliminary Plan Opinion does not explicitly mention the Civic Center or Library; however, Condition #14 states that the Preliminary Plan “is expressly tied to and interdependent upon the continued validity of Project Plan No. 9-94004”.<sup>18</sup> And “each term, condition, and requirement set forth in the Preliminary Plan and Project Plan are determined by the Planning Board to be essential components of the approved plans and are, therefore, not automatically severable”.<sup>19</sup>

In a discussion of impact taxes in the Preliminary Plan Staff Report, staff states that the dedication of a site for a future building was part of an amenity package that was an appropriate contribution from the developer. The Planning staff states:

When attention is focused on total infrastructure to serve master planned development, the town center’s provision of land for the future school, greenway dedication and the land for a future community center and library must be included in the impact tax deliberations.<sup>20</sup>

Site Plan Phase I. The Planning Board’s Opinion for Site Plan Phase I Condition #39 states:

The applicant shall work with the County Executive staff to identify a suitable civic building to be located on the town square within the area to be dedicated for that use.<sup>21</sup>

<sup>15</sup> Montgomery County Planning Board Revised Opinion, Project Plan No. 9-94004, Clarksburg Town Center, June 12, 1995, p.10.

<sup>16</sup> Staff Report, Project Plan No. 9-94004, Clarksburg Town Center, March 22, 1995, p.24.

<sup>17</sup> *Id.*, p.33.

<sup>18</sup> Montgomery County Planning Board Revised Opinion, Preliminary Plan No. #1-95042, Clarksburg Town Center. March 26, 1996, p.6.

<sup>19</sup> *Id.*

<sup>20</sup> Memorandum to Montgomery County Planning Board from Joseph R. Davis re Preliminary Plan No. 1-95042, Clarksburg Town Center Project, September 22, 1995, p.7.

<sup>21</sup> Montgomery County Planning Board Opinion, Site Plan Review #8-98001, Clarksburg Town Center, March 3, 1998, p.7.

*Appendix 1C. Fact Finding for the Clarksburg Town Center Development District*

The Site Plan Staff Report refers to “a Town Square (with partial use for a future civic building)”.<sup>22</sup> The Site Plan Staff Report also provides an analysis of Conformance to the Project Plan Approval. It states:

[T]he conformance of the proposed site plan to the Project Plan conditions of approval were established, with conditions, above in Project Description: Prior Approvals. The site plan conforms to the list of Amenity Areas and Recreational Facilities that were part of the Project Plan by providing the following:

Amenity Areas: Town Square, land dedicated for future civic building (with Phase II), streetscape system, neighborhood squares and green area, greenway dedicated for public use, Greenway roadway, specialty planting areas along green way Road . . .<sup>23</sup>

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<sup>22</sup> Memorandum to Montgomery County Planning Board from Wynn E. Witthans, Clarksburg Town Center Phase I, January 22, 1998, p.10.

<sup>23</sup> *Id.* at 21.

**Exhibit C-3. Summary of Document References in CTC Project Regulatory Approvals to CTCDD Item 1 – Civic Center**

<b>Source Document</b>	<b>Project Plan</b>	<b>Preliminary Plan</b>	<b>Site Plan Phase I</b>	<b>Summary</b>
Planning Board Opinion 9-94004	Finding #5			Establishes dedication of town square site as part of amenity package to justify optional method zoning
Project Plan Staff Report	Findings #2 and #5			States project provides site for building to be constructed by Montgomery County
Planning Board Opinion 1-95042		Condition #14		Ties Preliminary Plan to continued validity of Project Plan
Preliminary Plan Staff Report		Text		States provision of land for a future community center must be included in impact tax deliberations
Planning Board Opinion 1-98001			Condition #39	Requires applicant to work with CE staff to identify suitable civic building to be located in town square
Site Plan Phase I Staff Report			Text	Establishes that site plan conforms to list of amenity areas and recreational facilities, including dedication of land for a future civic building

Source: CTC Project regulatory approval documents.

**2. How do these developer obligations relate to the implementation of this development district infrastructure item?**

The references to the civic building or town square in the Planning Board’s regulatory documents for the CTC Project show an interdependent relationship exists between the developer’s obligation and this development district item. The developer’s obligation was to dedicate a site for a future building, and the County’s obligation was to design and construct the building.

**3. According to the regulatory record, did the Planning Board establish these obligations to comply with site plan or APF requirements?**

The obligation to dedicate a site for the Civic Center/Library was a condition of approval to achieve compliance with the Zoning Ordinance's requirement for an amenity package under the Optional Method Zone. No regulatory basis exists for this development district item because construction of the building was not established as a condition of approval.

**Stringtown Road**

**CTCDD Item 2 – Stringtown Road 800' Gap**

**CTCDD Item 3 – Stringtown Road Extended**

**CTCDD Item 4 – Stringtown Road – MD 355 to Piedmont Road**

**Project Scope Background.** The project scope for the Stringtown Road infrastructure item changed from the initial petition for the CTCDD to the final resolution adopted by Council. Schedule C of the Developer's Initial Petition proposed financing for construction of a 2-lane segment between MD 355 and Piedmont Road,<sup>24</sup> but Resolution 15-87 contains 3 Stringtown Road items. They are:

- Stringtown Road 800' gap;
- Stringtown Road Extended (MD 355 - I-270).
- Stringtown Road (MD 355 – Piedmont Road).

The description of the Stringtown Road project in the County Executive's Fiscal Report expands the project scope proposed for development district financing in the initial petition to add a portion of the 800' gap and a pro-rata share of the Stringtown Road Extended project.

The language from Appendix B of the County Executive's Fiscal Report addresses these 3 items under 2 entries: Stringtown Road and Stringtown Road Extended (MD 355 to I-270). These entries are excerpted below:

Stringtown Road For the entire 0.9 mile segment of Stringtown Road between MD 355 and Piedmont Road, Town Center is required to build two lanes of the ultimate four-lane cross section, including segments not abutting Town Center. Under current staging requirements, the developer must begin work on segments of its two-lane improvements prior to two events – the issuance of 400<sup>th</sup> and 800<sup>th</sup> building permits. The first event is anticipated to occur in spring 2003. For the

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<sup>24</sup> Schedule C of the initial petition described this project as follows: "Construction of improvements easterly from Rte 355 to Piedmont Road, including the bike path, median and curb and gutter. This improvement will be constructed in two segments, the first within one half of the 105 foot R/W between MD 355 and the Greenway Rd (K Street) and the second within one half (60 feet) of the 120 foot R/W between Greenway Rd (K Street) to the Piedmont Road (A305)".



other two lanes, all but an 800-foot middle segment is the responsibility of two other subdivisions. (Clarksburg Village, a proposed development district, and Highlands of Clarksburg.) This 800-foot segment is a re-alignment onto land owned by another party, not currently proposed for subdivision.

The Town Center developer has proposed, and the Executive agrees, that in order to facilitate provision of full four lanes throughout, the other two lanes in this 800-foot segment (incremental cost \$1,100,000) should be constructed by the Town Center developer, funded 50% by Town Center District and 50% by the proposed Clarksburg Village District. The developer and DPWT have discussed mechanisms to assure that to the maximum extent feasible, all or most of the four lanes from MD 355 to Piedmont Road will be designed and constructed simultaneously with costs allocated among the respective developers. (Timing of Clarksburg Village's segment of the road along its frontage coincides with the adjacent half-section to be built by Town Center.) Primary responsibility for design and most of the construction would be assumed by the Town Center developer under agreements to be entered into with DPWT.

Stringtown Road Extended (MD 355 to I-270) As a new project for District funding, the Executive proposes that the Town Center District fund a share of the cost of this extension. A not-to exceed contribution of \$1,600,000 is recommended, based on an approximate 25% share of County G.O. bonds currently proposed for this project. Town Center is projected to account for 25% of the traffic on this new road link. This project is proposed for construction by County DPWT in FY06/07.<sup>25</sup>

According to the PDF No. 500403, Stringtown Road Extended, this project consists of design, right-of-way acquisition, and construction of a 2,400 foot extension of Stringtown Road westward from MD 355 to I-270 ramps at existing MD 121. It is a 4-lane arterial highway with a sidewalk on the south side, a bike path on the north side, and street trees and streetlights within 120' right-of-way.

**CTCDD Item 2 –  
Stringtown Road 800' Gap (50% Share)**

**Project Scope Background.** According to the County Executive's Fiscal Report, the scope of this item is one-half (1 lane) of a 2-lane segment of Stringtown Road located between the boundaries of the CTC Project and 2 other development projects. The project crosses land that is not currently planned for development. The 2-lane segment is one-half of an ultimate 4-lane road.

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<sup>25</sup> Appendix B. Clarksburg Town Center Development District Fiscal Report, Infrastructure Projects Considered for District Funding, Roads, p.3.

**1. What developer obligations related to this CTCDD item did the Planning Board establish as a result of its regulatory approvals and where are the specific references to these obligations found in the regulatory record?**

The Planning Board's approval documents for the CTC Project contain several references related to Stringtown Road (A-260) between MD 355 and A-305. Two of these references, which are directly related to this development district item, require the developer to dedicate a 120' right-of-way for Stringtown Road (Condition #2e in the Project Plan Opinion and 5(c) in the Preliminary Plan Opinion).

Other references establish requirements for the 2-lane segment of Stringtown Road, a portion of which parallels this development district item. For example:

- The Preliminary Plan Opinion requires the developer to agree to provide the necessary roadway improvements identified in the phasing section of the revised Transportation Planning Division memorandum dated September 26, 1995 (Condition 1(a)) and to construct 2 lanes of Stringtown Road in 2 segments, with the timing tied to the issuance of the 400<sup>th</sup> and 800<sup>th</sup> building permits.
- The Site Plan Opinion for Phase I (Condition #18) incorporates by reference a memorandum from the Transportation Planning Division that re-iterates the requirement to construct the northern half of Stringtown Road in 2 segments (Recommendations #2 and #6).
- Another condition of the Site Plan Opinion for Phase I (Condition #19) also requires the applicant to sign an APF agreement that addresses Stringtown Road and requires the developer to reimburse the County for costs incurred if the County exercises its powers of eminent domain to acquire right-of-way so that the developer can fulfill its obligations.

**Exhibit C-4. Summary of Document References in CTC Project Regulatory Approvals to CTCDD Infrastructure Item 2 – Stringtown Road 800’ Gap**

<b>Source Document</b>	<b>Project Plan</b>	<b>Prelim. Plan</b>	<b>Site Plan Phase I</b>	<b>Summary</b>
Planning Board Opinion 9-94004	Condition #2e			Requires 120’ right-of-way dedication and construction
Planning Board Opinion 1-95042		Condition #1a		Requires agreement with Planning Board to provide transportation improvements in revised memo from Transportation Planning dated Sept. 26, 1995
Planning Board Opinion 1-95042		Condition #5c		Requires 120’ right-of-way dedication
Planning Board Opinion 1-95042		Condition #16c		Establishes phasing for 2 lanes of Stringtown Road
Planning Board Opinion 1-98001			Condition #18	Requires conformance to Transportation Planning memo dated Jan. 20, 1998
Transportation Planning memo dated Jan. 20, 1998			Recs. #2 and #6	Re-iterates requirement to construct 2 lanes of Stringtown Road in 2 sections
Planning Board Opinion 1-98001			Condition #19	Requires developer to sign APF agreement and to reimburse County for costs if eminent domain is necessary

Source: CTC Project regulatory approvals.

**2. How do these developer obligations relate to the implementation of this development district infrastructure item?**

OLO's review of the regulatory record found:

- The Planning Board's Opinions do not explicitly address whether the requirement to provide a 120' right-of-way obligates the developer to acquire and dedicate a 120' right-of-way for the 800' segment of Stringtown Road that lies outside the boundaries of the CTC Project.
- None of the Planning Board Opinions for the Project Plan, Preliminary Plan, or Site Plan Phase I require the developer to construct this specific development district item (i.e., 1 lane of the 800 foot Stringtown Road gap) as a condition of approval.
- During the Board's consideration of the Project Plan, Planning staff proposed that the Planning Board establish the dedication and construction of Stringtown Road as a condition of approval; however, that language was not incorporated into the Planning Board's Project Plan Opinion.<sup>26</sup>

Current Planning staff indicate that the intent of the language in the Board's Opinions was to require the developer to acquire and dedicate land for a 120' right-of-way for the entire length of Stringtown Road, including the right-of-way for the 800' gap. This interpretation appears to be supported by Condition #19 in the Planning Board Opinion for Site Plan Phase I which requires the developer to sign an "APF agreement," including a requirement to reimburse the County for costs if the County uses its eminent domain powers.

**3. According to the regulatory record, did the Planning Board establish these obligations to comply with site plan or APF requirements?**

OLO's review found the Planning Board's regulatory record:

- Does not specify the underlying basis for requiring the developer to dedicate the 120' right-of-way for Stringtown Road;
- Does not identify improvements to Stringtown Road as one of the items required as a result of the LATR analysis conducted at Project Plan; and
- Does require the development to sign an "APF agreement" that specifically addresses Stringtown Road.

Current Planning staff indicate the land dedication would have been required for master plan compliance as a condition of Project Plan.

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<sup>26</sup> Condition #4 in a Revised Draft Opinion attached to the Project Plan Staff Report states, "A-260 Stringtown Road must be dedicated to a right of way of 120 feet and constructed as a four lane, divided arterial road as part of a participation agreement with MCDOT".

**CTCDD Item 3 –  
Stringtown Road Extended (MD 355 to I-270) (25% Share)**

**Project Scope Background.** According to PDF No. 500403, Stringtown Road Extended, this project consists of design, right-of-way acquisition, and construction of a 2,400 foot extension of Stringtown Road westward from MD 355 to I-270 ramps at existing MD 121. It is a 4-lane arterial highway with a sidewalk on the south side and a bike path on the north side, street trees and streetlights within a 120' right-of-way.

The current PDF indicates the total project cost is \$8.810 M and the sources of funds are: Impact taxes (\$5.614M or 64%), Development District (\$1.6M or 18%), Contributions (\$970K or 11%), Development Approval Payment (\$512K or 6%), Investment Income (\$104K, 1%), and Intergovernmental (\$10, <1%).

A fiscal note published in the PDF published in the FY04 Approved CIP states:

Impact tax for this project is assumed at 26.7 percent of the project cost within the Clarksburg Impact Tax Area. The Town Center Development District participation reflects a pro-rated share of what otherwise would be G.O. bond funded. Town Center Development District participation would not exceed \$1,600,000. The Impact Tax share of the project has been adjusted accordingly.

In that PDF, the general obligation bond funds were \$4,722M and the impact tax was \$1.906M.

- 1. What developer obligations related to this development district item did the Planning Board establish as a result of its regulatory approvals and where are the specific references to these obligations found in the regulatory record?**

The Planning Board's approval documents for the CTC Project require the developer to participate in improvements to Stringtown Road between the I-270 northbound off ramp and the entrance to the Gateway 270 Office Park. According to current Transportation Planning staff, the improvements this language refers to are at I-270 along MD 121, which is not the location of the Stringtown Road Extended improvements. Transportation Planning staff do not believe any of the regulatory approvals for the CTC Project require the developer to construct this item.

**CTCDD Item 4 –  
Stringtown Road From MD 355 to A-305**

**Project Scope Background.** According to the County Executive's Fiscal Report, "for the entire 0.9 mile segment of Stringtown Road between MD 355 and Piedmont Road, Town Center is required to build 2 lanes of the ultimate 4-lane cross section, including segments not abutting Town Center. Under current staging requirements, the developer must begin work on

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segments of its 2-lane improvements prior to 2 events – the issuance of 400<sup>th</sup> and 800<sup>th</sup> building permits. The first event is anticipated to occur in spring 2003”.<sup>27</sup>

Portions of this project are the subject of 2 Public Improvements Agreements (99-027 and 01-052) that the CTC Project developer and the County signed following the Planning Board’s preliminary plan approval. These agreements were finalized March 17, 1999 and September 14, 2001.

This project is also included in the 5 projects addressed in PDF. No. 500423, Clarksburg Town Center Development District: Roads. The total current cost estimate for all of the projects this PDF addresses is \$9.521 million and the source of funds is “Development District”.

**1. What developer obligations related to this CTCDD item did the Planning Board establish as a result of its regulatory approvals and where are the specific references to these obligations found in the regulatory record?**

The Planning Board’s Project Plan, Preliminary Plan, and Site Plan Opinions for the CTC Project require the developer to dedicate and improve this segment of Stringtown Road as a condition of approval. It is not clear from the Planning Board Opinions alone what the limits of these obligations are.

Project Plan. At Project Plan, the Board’s Opinion required:

- Dedication of a 120’ right-of-way (Condition #2e);<sup>28</sup> and
- Construction of safety improvements unless the applicant has executed a participation agreement with MCDOT before preliminary plan review (Condition #4).<sup>29</sup>

The Project Plan Staff Report presented the results of the LATR analysis. The Staff Report stated:

Several transportation improvements are proposed by the applicant to satisfy the requirements of local area review. The remaining issues include the need to construct a portion of A-305 (Mid County Highway), a portion of A-260 (Stringtown Road) with participation from Montgomery County, and additional improvements to A-121 (Clarksburg Road) near the intersection of I-270.<sup>30</sup>

<sup>27</sup> Appendix B. Clarksburg Town Center Development District Fiscal Report, Infrastructure Projects Considered for District Funding, Roads, p.3.

<sup>28</sup> Condition #2e. states, “A-260 must be dedicated to a right of way of 120 feet. At the preliminary plan, if determined that the property is not part of a participation agreement with MCDOT and other property owners, the safety improvements described in paragraph 4, will be made to Stringtown Road”.

<sup>29</sup> Condition #4, Dedication and Construction of A-260 (Stringtown Road), states, “If a participation agreement is determined necessary at preliminary plan, but does not occur before the necessary access points to the commercial area or part of the residential area from A-260 are needed, then the following improvements to existing Stringtown Road must be completed to increase safety as required by MCDOT. For safety purposes, the improvements at public streets A and H include 250-350 feet of bypass travel lanes at each access point”. pp.2-3.

<sup>30</sup> Staff Report, Project Plan No. 9-94004, Clarksburg Town Center, March 22, 1995, p.9.

Preliminary Plan Conditions. Two conditions in the Planning Board's Preliminary Plan Opinion contain explicit references to Stringtown Road. These conditions establish dedication and phasing requirements for Stringtown Road. Specifically:

- Condition #5c of the Board's Opinion requires dedication of a 120' right-of-way for Stringtown Road;

Condition 16 establishes a phasing plan for the project that:

- After the 400<sup>th</sup> permit, gives the developer the option of:
  - Constructing A-260 from MD 355 to the southern access road of the commercial site; or
  - Constructing A-260 from MD 355 to the northern access road of the residential development.
- After the 800<sup>th</sup> permit, requires the developer to start construction of the remaining section of A-260 to A-305.

Preliminary Plan Opinion. In addition to the conditions that address this segment of Stringtown Road, the text of the Planning Board's Preliminary Plan Opinion requires the applicant to construct 2 lanes of Stringtown Road to comply with the master plan guidance that alternative financing of transportation infrastructure will be required. The Opinion addresses Stringtown Road under Discussion and Findings. In part, it states:

To ensure that the Applicant funds its share of road infrastructure, as best can be determined at this time, staff recommended that the Applicant improve Stringtown Road (A-260) to County standards as a two lane road within the Master Plan Alignment, No. 2. as of August 25, 1995. .... The Planning Board concluded that the Stringtown Road improvement, which will be the responsibility of the applicant, represents the current best estimate of the Town Center's share of the Master Plan road infrastructure (as more particularly identified in revised traffic staff memo of 9/26/95.)

Planning staff report. The September 22, 1995 Planning staff memorandum indicates that staff previously identified Stringtown Road as an appropriate roadway that could serve as the Town Center's "pro-rata share" of the master planned roadway infrastructure. The Planning staff report indicates that the Planning Board reviewed the Planning Department's analysis, which was provided at a public meeting on August 3, 1995. The staff report stated:

Item #19 on the Planning Board's August 3, 1995 agenda was the review of the Planning Departments analysis and recommendations concerning the need for a more equitable distribution of road infrastructure improvements among the development projects in Clarksburg. Staff recommended that the Board require new development to participate in road infrastructure improvements. Staff suggested that staff's Scenario #III (c) be applicable to projects in this area. This

scenario would require developers to pay 50 percent of the construction costs of State and County roads situated between properties, and to pay 50 percent of the construction costs for the second two lanes of arterial or major roads that are situated within properties. The different scenarios studies by staff assumed that developers would construct all internal two lane streets located within their properties.

As part of its fact finding for this item, Council staff listened to the tape of the August 3 meeting and reviewed the Planning staff report.

Transportation Planning Division. A September 22, 1995 memorandum from the Transportation Planning Division, which was revised September 26, 1995, explains that the construction “should be for 2 lanes which will be used ultimately as the southbound lanes in accordance with the August 8, 1995 Alignment #2. The hiker/biker trail (eight feet) should be constructed along west side as A-260 is constructed, in accordance with the phasing recommendations as described above”.<sup>31</sup>

Site Plan. The Planning Board’s Opinion for Site Plan Phase I (8-98001) includes 3 general conditions that address 3 district items, including Stringtown Road (A-260), Clarksburg Road (121) and Piedmont Road (A-305).

- Condition 17 requires “conformance to cross section and other recommendations per DPW&T, DPS memos dated January 14 and January 15, 1998”.
- Condition 18 requires “conformance to MCPD Transportation Planning memorandum dated January 20, 1998 included in the Appendix”.<sup>32</sup>
- Condition 19 requires an APF agreement; it states:

APF agreement to be executed prior to the first record plat to reflect all road improvement conditions of the Preliminary Plan Approval i.e., dedication, and construction of required improvements pertaining to the construction of Stringtown Road (A-260), Clarksburg Road (A-121) and Mid-County Arterial (A-305). If acquisition of right of way becomes necessary for any of the road improvements, the applicant is required to provide, pursuant to Site Plan conditions 17 and 18, and the County exercises Eminent Domain to acquire these rights of way, the applicant will be responsible to reimburse the County for these reasonable costs.<sup>33</sup>

The Transportation Planning memorandum also addresses Stringtown Road.

<sup>31</sup> Memorandum from Ki H. Kim, Transportation Planner to Joe Davis, Coordinator re Preliminary Plan No. 1-95-042, Clarksburg Town Center Project, September 22, 1995, p.2.

<sup>32</sup> Montgomery County Planning Board Opinion, Site Plan Review #8-98001, Clarksburg Town Center, March 3, 1998, p.5.

<sup>33</sup> *Id.*



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- Recommendation #2 states: “Construction. Of the northern half of Stringtown Road (A-260) from Frederick Road (MD 355) to Greenway Road (the southern access road of the commercial site) . . . after the 400<sup>th</sup> building permit”.<sup>34</sup>
- Recommendation #6 states: “Reconstruction of the northern half of Stringtown Road (A-260) from Sta 33+50 to Midcounty Arterial (A-305) in accordance with DPS/DPWT requirements”.<sup>35</sup>

The January 15, 1998 Department of Permitting Services memorandum includes the following reference to Stringtown Road:

The applicant will be responsible for constructing public improvements per the DPW&T approved cross sections within one half (52.5 feet) of the 105 foot right of way between MD 355 and the Greenway Road and within one half (60 feet) of the 120 foot right of way between Sta. 33+50 to the Mid County Arterial (A-305), including the bike path, which will need to be partially located outside the right of way in a Public Improvements Easement.

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<sup>34</sup> Memorandum from Ki H. Kim, Planner to Wynn Witthans, re Clarksburg Town Center 1A-1B Site Plan 8-98001, January 14, 1998, revised January 20, 1998, p.2.

<sup>35</sup> *Id.*

*Appendix 1C. Fact Finding for the Clarksburg Town Center Development District*

**Exhibit C-5. Summary of Document References in CTC Project Regulatory Approvals to CTCDD Infrastructure Item 4 –Stringtown Road from MD 355 to Piedmont Road**

Source Document	Project Plan	Prelim. Plan	Site Plan Phase I	Summary
Planning Board Opinion 9-94004	Condition #2e			Requires dedication of a 120' right-of-way
Planning Board Opinion 9-94004	Condition #4			Requires safety improvements unless applicant executes MCDOT participation agreement before Preliminary Plan Review
Staff Report, Sept. 25, 1989	Text			Identifies construction of portion of A-260 as a County participation project as a remaining issue.
Planning Board Opinion 1-95042		Condition #5c		Requires dedication of 120' right-of-way
Planning Board Opinion 1-95042		Condition #16		Establishes phasing plan for 2 lanes of Stringtown Road
Planning Board Opinion 1-95042		Text		Requires improvement of Stringtown Road as 2 lane road to ensure Applicant funds it share of road infrastructure.
Planning staff report dated Sept. 22, 1995		Text		Cites Planning Board review of staff scenarios on August 3, 1995 which were developed to insure more equitable distribution of road infrastructure costs.
Transportation Planning memo, Sept 22, 1995				Requires construction of 2 lanes and a hiker biker trail.
Planning Board Opinion 1-98001			Condition #18	Requires conformance to Transportation Planning memo dated Jan. 20, 1998
Transportation Planning memo, Jan. 20, 1998			Recs. #2 and #6	Requires construction of 2 segments of Stringtown Road
Planning Board Opinion 1-98001			Condition #19	Requires developer to sign APF agreement and to reimburse County for costs if eminent domain is necessary

Source: CTC Project regulatory approval documents.

**2. How do these developer obligations relate to the implementation of this development district infrastructure item?**

The developer obligations the Planning Board established in its Preliminary Plan and Site Plan Opinions are identical to the scope of this development district infrastructure item. The obligation established in the Project Plan Opinion is more limited.

**3. According to the regulatory record, did the Planning Board establish these obligations to comply with site plan or APF requirements?**

In OLO's opinion, this item was not an APF requirement; however, the regulatory basis for this item is confused because of the ambiguous use of the terms "APF" and "AGP". For example, the Planning Board's regulatory approval documents also require the developer to sign an "APF agreement" and the Executive's Fiscal Report refers to this item as an "AGP Road". Although references in the regulatory record characterize this improvement as an AGP Road, it was not identified as an APF requirement as a result of the LATR test performed at Project Plan. Specifically, OLO's review of the Planning Board's regulatory decision documents found:

- This obligation was established to ensure that the developer provided his "fair share" of the master planned transportation infrastructure. (According to the former Subdivision Coordinator, Section 50-35(1) of the Subdivision Regulations, Relation to Master Plan, provided the Board's legal authority to impose this condition.)
- This item was not identified as a requirement to comply with the LATR analysis; however, a memorandum from the Transportation Planning Division characterizes this item as a condition of approval resulting from an APF review.

Key excerpts from the Preliminary Plan and Site Plan Opinions include the following:

Preliminary Plan. The text of the Planning Board's Preliminary Plan Opinion states, in part:

The Planning Department staff evaluated the transportation effects of the subject application as required by the Subdivision Regulations and as recommended in the Master Plan. First, the Board must determine that public facilities, including roads, will be adequate to support and service the area of the proposed subdivision. Staff evaluated the impact of the proposed development on nearby roads and intersections in accordance with the Local Area Transportation Review Guidelines. Necessary local area transportation review improvements for this project are identified in condition #2 for Project Plan No. 9-94004.

The second level of transportation review was based on the Master Plan recommendation that development districts, or alternative financing mechanisms, be implemented prior to new development, to ensure that road infrastructure be provided to support recommended Master Plan development . . .

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To ensure that the Applicant funds its share of road infrastructure, as best can be determined at this time, staff recommended that the Applicant improve Stringtown Road (A-260) to County standards as a two lane road within the Master Plan Alignment, No. 2, as of August 25, 1995 . . . The Planning Board concluded that the Stringtown Road improvement, which will be the responsibility of the applicant, represents the current best estimate of the Town Center's share of the Master Plan road infrastructure (as more particularly identified in revised traffic staff memo of 9/26/95).<sup>36</sup>

A Transportation Planning Division memorandum appended to the Preliminary Plan Opinion also addresses the basis for requiring this item as a condition of approval. It states:

Based on our July 28, 1995 memo, we would anticipate that, if the developer builds two lanes of A-260 from MD 355 to A-305 within the master planned alignment, this should represent his part of the total roadway construction cost for Clarksburg. Final determination of actual share would be determined by the County Council when the impact tax legislation is considered for Clarksburg.<sup>37</sup>

Site Plan. The January 20, 1998 Transportation Planning memorandum appended to the Planning Board's Site Plan Phase I Opinion, suggests this item was required as a result of an APF review and "to satisfy issues raised by DPWT, SHA and Planning staff". Specifically, the memorandum:

- Identifies construction of the northern half of Stringtown Road from Frederick Road to Greenway Road as one of "three roadway improvements . . . required as conditions of approval to satisfy the previously assess APFO review and the phasing requirements".<sup>38</sup>
- Lists the reconstruction of the other half of Stringtown Road as one of "four roadway improvements . . . recommended as conditions of approval to address transportation issues associated with the subject site plan".<sup>39</sup>
- Finally, it states, "The roadway improvements recommended as conditions for approval of the subject site plan have been developed to satisfy the project plan and the preliminary plan requirements and to address additional transportation issues which DPWT, SHA and staff consider are necessary to provide a safe and efficient roadway system for the subject site plan".<sup>40</sup>

<sup>36</sup> Montgomery County Planning Board Revised Opinion, Preliminary Plan No. #1-95042, Clarksburg Town Center, March 26, 1996, p.2.

<sup>37</sup> Memorandum from Ki H. Kim, Transportation Planner to Joe Davis, Coordinator re Preliminary Plan No. 1-95-042, Clarksburg Town Center Project, September 22, 1995, p.2.

<sup>38</sup> Memorandum from Ki H. Kim, Planner to Wynn Withans, re Clarksburg Town Center 1A-1B Site Plan 8-98001, January 14, 1998, revised January 20, 1998, p.2.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 5.

**CTCDD Item 5 - Piedmont Road**

**Project Scope Background.** The initial petition for development district financing included this item, which was described as follows:

This roadway extending south from Clarksburg Rd to Stringtown Rd. will be constructed as a 32 ft. two lane open section road within an eighty (80) foot wide right of way. An eight (8) foot wide bike path will extend along the westerly side to the full extent of the improved road. At the Stringtown Rd. intersection turn lanes and a median will be constructed to match the improvements proposed there.<sup>41</sup>

Appendix B of the County Executive's Fiscal Report describes this item as follows:

Piedmont Road is the third AGP required road proposed for district funding (\$2,385,000). It will be rebuilt to its ultimate two-lane width with bike lanes on both sides. The developer's target for construction start is November, 2002, a condition imposed by Planning Board staging when construction begins on lots to be accessed from this road.<sup>42</sup>

This project is also addressed in a Public Improvements Agreement (01-052) between the CTC Developer and the County, which was finalized on September 14, 2001. Item 6, Special Provisions, states, "applicant is to enter into an agreement with M-NCPPC regarding phasing the construction of A-305 and A-260. A-305 is to be constructed full width by the applicant between Clarksburg Road and A-260".

This project is also included in the 5 projects addressed in PDF No. 500423, Clarksburg Town Center Development District: Roads. The total current cost estimate for all of the projects this PDF addresses is \$9.521 million and the source of funds is Development District.

- 1. What developer obligations related to this CTCDD item did the Planning Board establish as a result of its regulatory approvals and where are the specific references to these obligations found in the regulatory record?**

The Planning Board's Project Plan, Preliminary Plan, and Site Plan Opinions all require the developer to dedicate and construct this item as a condition of approval.

Project Plan. The Planning Board's Project Plan Opinion requires the applicant to dedicate and construct this segment as a condition of approval. The requirement allows for the possibility that the scope of the required improvement would be reduced at preliminary plan. No evidence exists to show that the scope was reduced.

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<sup>41</sup> Petition of Terrabrook L.L. C. Schedule C, filed June 2000.

<sup>42</sup> Appendix B. Clarksburg Town Center Development District Fiscal Report, Infrastructure Projects Considered for District Funding, Roads, p.4

Condition 3 of the Planning Board's Project Plan Opinion states:

A-305 must be dedicated to a right of way of 80 feet and constructed as a two lane, open section arterial to replace Piedmont Road unless the scope of improvements are reduced at preliminary plan. Along that portion of A-305 near Stringtown Road, the required dedication shall be 40 feet from the current center line of Piedmont Road (along Hennigan, Purdum et al) which will allow for construction of A-305 to Stringtown Road at its current location. If the right-of-way is not available at the time of record plat for that portion of the property along this section, the applicant shall dedicate the full 80 feet along this portion of A-305. Construction will not be necessary until construction of single family detached units within the existing right of way for Piedmont Road has started.<sup>43</sup>

The March 22, 1995 Project Plan Staff Report Transportation Planning Division memorandum does not identify Piedmont Road as a LATR requirement.

Preliminary Plan. The Planning Board's Preliminary Plan Opinion requires the applicant to dedicate land for Piedmont Road. Condition 16e also references this segment. The language states:

The following phasing requirements are conditioned upon issuance of building permits for the subject preliminary plan: . . . (e) Construction of A-305 from A-260 to MD 121 must begin when the developer starts building any of the residential units on blocks 11, 12, 13, and the northern half of block 10.<sup>44</sup>

The Preliminary Plan Staff Report reported agreement with the applicant to construct 2 lanes of A-305. The language in the Staff Report states:

With regard to proposed road A-305, staff recommends that the applicant construct this two-lane arterial through the limits of the subject property. This is in accordance with the general requirement that developers construct roads that extend through their sites. The applicant has agreed to construct A-305 as recommended by staff.<sup>45</sup>

The Preliminary Plan Staff Report also references this segment in its recommendations about the phasing of the required improvements. Item #5 in the phasing plan states:

Construct A-305 from A-260 to MD 121 when any of the residential units located between A-305 and the first parallel residential street south of A-305 are built.<sup>46</sup>

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<sup>43</sup> Montgomery County Planning Board Revised Opinion, Project Plan No. 9-94004, Clarksburg Town Center, June 12, 1995, p.3.

<sup>44</sup> Montgomery County Planning Board Revised Opinion, Preliminary Plan No. #1-95042, Clarksburg Town Center, March 26, 1996, p.7.

<sup>45</sup> Memorandum to Montgomery County Planning Board from Joseph R. Davis re Preliminary Plan No. 1-95042, Clarksburg Town Center Project, September 22, 1995, p.7.

<sup>46</sup> *Id.* at 8.

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**Site Plan.** As noted earlier, the Planning Board's Opinion for Site Plan Phase I (8-98001) includes 3 general conditions that address 3 development district items: Stringtown Road (A-260), Clarksburg Road (121) and Piedmont Road (A-305).

- Condition 17 requires "conformance to cross section and other recommendations per DPW&T, DPS memos dated January 14 and January 15, 1998".
- Condition 18 requires "conformance to MCPD Transportation Planning memorandum dated January 20, 1998 included in the Appendix".
- Condition 19 requires an APF agreement; it states:

APF agreement to be executed prior to the first record plat to reflect all road improvement conditions of the Preliminary Plan Approval i.e., dedication, and construction of requirement improvements pertaining to the construction of Stringtown Road (A-260), Clarksburg Road (A-121) and Mid-County Arterial (A-305). If acquisition of right of way becomes necessary for any of the road improvements, the applicant is required to provide, pursuant to Site Plan conditions 17 and 18, and the County exercises Eminent Domain to acquire these rights of way, the applicant will be responsible to reimburse the County for these reasonable costs.<sup>47</sup>

The January 20, 1998 Transportation Planning memorandum incorporated into the Planning Board Opinion by reference, describes A-305 as a 2-lane, 24-foot open section roadway with 4-foot paved shoulders and a Class I bikepath on the west side within an 80 foot right-of-way between Clarksburg Road and Stringtown Road. The history of conditions of approval in this memorandum includes a condition from the Preliminary Plan requiring construction of A-305 to begin when the developer starts building any of the residential units on Blocks 11, 12, 13, and the northern half of Block 10, as numbered in the Preliminary Plan approval.

The January 15, 1998 Department of Permitting Services memorandum includes the following reference to Mid-County Arterial:

No improvements to Mid-County Arterial will be required under Phase I. Main Street will not be connected to existing Piedmont Road under Phase I. However, prior to approve of the record plats, the applicant must prepare a concept plan showing how the DPW&T approved cross section and public amenities will be accommodated within the right of way and any necessary Public Improvement Easement. We will also need to see a concept plan showing how a median at the intersection with Stringtown Road will be accommodated and its relationship to the median on the south side of the intersection of future Mid-County Highway.

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<sup>47</sup> Montgomery County Planning Board Opinion, Site Plan Review #8-98001, Clarksburg Town Center, March 3, 1998, p.5.

**Exhibit C-6. Summary of Document References in CTC Project Regulatory Approvals to CTCDD Infrastructure Item 5 – Piedmont Road**

<b>Source Document</b>	<b>Project Plan</b>	<b>Prelim. Plan</b>	<b>Site Plan Phase I</b>	<b>Summary</b>
Planning Board Opinion 9-94004	Condition #3			Requires right of way dedication and construction
Planning Board Opinion 1-95042		Condition #16e		Establishes phasing requirements
Planning Staff Report for 1-95042		Item #5		Establishes phasing requirements
Planning Board Opinion 1-98001			Condition #18	Requires conformance to Transportation Planning memo dated Jan. 20, 1998
Planning Board Opinion 1-98001			Condition #19	Requires developer to sign APF agreement and to reimburse County for costs if eminent domain is necessary
Transportation Planning memo, Jan. 20, 1998			Text	States improvement is needed to provide safe and efficient roadway system and references Preliminary Plan phasing requirements

Source: CTC Project regulatory approvals.

**2. How do these developer obligations relate to the implementation of this development district infrastructure item?**

The developer’s obligation to dedicate and construct Piedmont Road, which is established in the Planning Board’s Project Plan, Preliminary Plan, and Site Plan Opinions, is identical to the project scope for this development district infrastructure item.



**3. According to the regulatory record, did the Planning Board establish these obligations to comply with site plan or APF requirements?**

OLO's review of the regulatory record shows that the Planning Board imposed this obligation to provide access and a coordinated, safe, and efficient transportation network; however, the basis for this item is confused because of the ambiguous use of "APF" and "AGP". For example, the Planning Board's regulatory approval documents also require the developer to sign an "APF agreement" and the Executive's Fiscal Report refers to this item as an "AGP Road". Although references in the regulatory record characterize this improvement as an AGP Road, it was not identified as an APF requirement as a result of the LATR test performed at Project Plan. Specifically:

- The language in the Preliminary Plan Opinion suggests the road is needed to provide access and a coordinated transportation network.
- The language in the January 20, 1998 Transportation Planning memorandum suggests this improvement was needed to address transportation issues that DPWT, SHA, and Planning staff considered necessary to provide a safe and efficient roadway system for the subject site plan.
- This item was not identified as a requirement to comply with the LATR analysis; however, the language in Site Plan Condition #19 did require an "APF agreement".
- The language in Condition #19 also stated that the developer must reimburse the County for any costs incurred by the County if the County had to exercise its eminent domain powers to acquire right of way.

When Council and OLO staff met with current Planning staff, they indicated that they believed the regulatory basis for this requirement was Section 50-24, Required public improvements; however, none of the Planning Board Opinions makes an explicit reference to this section.

**CTCDD Item 6 –  
Lowering of MD 355 at Stringtown Road**

**Project Scope Background.** Appendix B of the County Executive's Fiscal Report included the following discussion of this item:

MD 355 Lowering. In accordance with State Highway requirements, any improvement of Stringtown Road east or west of MD 355 will necessitate lowering of the vertical curve on MD 355 just south of the Springtown Road intersection to improve stopping sight distance. The cost of this lowering is estimated at \$970,000. If as projected, Town Center's part of Stringtown Road precedes the Highlands project, the lowering will be implemented as part of Town Center's Stringtown Road project, funding for which is proposed by the Executive to be covered by the Town Center District. An alternative, preferred by the Town

Center developer, would be to allocate the cost of the lowering among the respective developers.<sup>48</sup>

**1. What developer obligations related to this CTCDD item did the Planning Board establish as a result of its regulatory approvals and where are the specific references to these obligations found in the regulatory record?**

OLO's review of the regulatory record for this item found:

- The Planning Board Opinions for the Project Plan and Site Plan require the applicant to construct a northbound right turn lane along MD 355 to Stringtown Road; however;
- The regulatory record does not contain an explicit requirement to lower MD 355 as a condition of approval.

Key excerpts from the regulatory record include the following:

Project Plan. The Planning Board's Project Plan Opinion required the developer to construct a northbound right turn lane at MD 355 and A-260 (Condition 2c).

A recommendation in a Transportation Planning Division memorandum appended to the Project Plan Staff report that would have required the developer to participate in an improvement to lower the intersection was not explicitly identified as a condition of approval in the Planning Board's Opinion.

Preliminary Plan. The Planning Board's Preliminary Plan Opinion incorporates the requirement to construct a northbound right turn lane at MD 355 and A-260 by reference. Under Discussion and Findings, the Opinion states that necessary LATR improvements for this project are identified in condition #2 for Project Plan No. 9-94004. The Opinion does not reference comments from the SHA because it was mailed 2 years before SHA provided its comments. (The letter from SHA for the CTC Project is dated December 8, 1997.)

Site Plan. Condition 18 of the Site Plan for Phase 1 incorporates conformance to a January 20, 1998 MCPD Transportation Planning memorandum by reference. That memorandum includes a "discussion on Maryland State Highway Administration's Concern," that states:

In order to provide a desirable sight distance on Frederick Road (MD 355) at Stringtown Road (A-260), the SHA recommended reduction of the over vertical curve along northbound Frederick Road (MD 355) in connection with the subject site plan. The applicant is required to provide a northbound right turn lane at this intersection. If at the time of this construction the SHA has taken an action to reduce the vertical curve or otherwise remedy the sight distance problem at the subject intersection, the applicant shall coordinate construction of the required

<sup>48</sup> Appendix B. Clarksburg Town Center Development District Fiscal Report, Infrastructure Projects Considered for District Funding, Roads, p.3.

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northbound right turn lane at this intersection with the SHA's construction project.<sup>49</sup>

Recommendation #3 from that memorandum, which requires construction of a northbound right turn lane along MD 355 at Stringtown Road after the 400<sup>th</sup> permit, deleted language that would have required the applicant to participate in a roadway improvement to reduce the curve.<sup>50</sup>

**Exhibit C-7. Summary of Document References in CTC Project Regulatory Approvals to CTCDD Infrastructure Item 6 – Lowering of MD 355 at Stringtown Road**

Source Document	Project Plan	Prelim. Plan	Site Plan Phase I	Summary
Planning Board Opinion 9-94004	Condition# 2c			Requires construction of northbound right turn lane at MD 355 and Stringtown Rd.
Planning Board Opinion 1-98001 Phase I Site Plan			Condition #18	Requires conformance to Transportation Planning memo dated Jan. 20, 1998
Transportation Planning memo, Jan. 20, 1998			Rec#3	Requires construction of northbound right turn lane at MD 355 and Stringtown Road after 400 <sup>th</sup> permit but deletes language requiring applicant to participate in roadway improvement to reduce over vertical curve
Transportation Planning memo, Jan. 20, 1998			Text	Requires applicant to ensure coordination of requirement to construct northbound right turn lane with future SHA improvement to reduce vertical curve

Source: CTC Project regulatory approvals.

**2. How does the developer obligations to construct a right turn northbound turn lane at MD 355 and to “coordinate construction of the required improvement with SHA’s construction project” relate to the implementation of this development district infrastructure item?**

When OLO and Council staff met to discuss this item with current Planning staff, they provided the following information about the obligation of the CTC developer and the implementation of the MD 355 lowering project.

- In the opinion of current Planning staff, the lowering of MD 355 was implied in the Planning Board’s requirement, as part of the Project Plan approval, that the developer

<sup>49</sup> Memorandum from Ki H. Kim, Planner to Wynn Withans, re Clarksburg Town Center 1A-1B Site Plan 8-98001, January 14, 1998, revised January 20, 1998, p.2.

<sup>50</sup> *Id.*

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provide a northbound right turn along MD 355 to Stringtown Road because it was physically infeasible to accomplish that improvement without also lowering the vertical curve before the intersection; and

- The lowering of MD 355 was an SHA requirement that was documented in a letter from SHA in the file for the CTC Project.<sup>51</sup> Typically, a SHA requirement would have been imposed as a requirement through Condition 11 in a Preliminary Plan Opinion, which contains boilerplate language that requires a developer to comply with “Access and improvements as required to be approved by MCDOT and MDSHA”.
- The Planning Board required the lowering of MD 355 as a condition of approval for a different project (i.e., Highlands at Clarksburg, and the developer recently completed that improvement).

Following this meeting, OLO and current Transportation Planning staff conducted more research. OLO compiled the chronology of the MD 355 lowering project that follows to better understand the relationship between the conditions of approval for the 2 projects and the inclusion of this item on the CTCDD infrastructure list.

**Regulatory Approvals for Highlands at Clarksburg Project.** In September 1997, Centex Homes submitted an application for the approval of a project plan and preliminary plan of subdivision for a parcel of land located at the intersection of MD 355 and Stringtown Road, adjacent to the CTC Project. In May 1999, MDSHA provided its comments on the review of the Traffic Impact Study prepared for the Highlands at Clarksburg project. It stated SHA would require a reduction of the over-vertical curve, in addition to other improvements.

In July 1999, the Planning Board approved the original Project Plan and Preliminary Plans for the 16-acre portion of the project zoned RMX. The approval included a condition that the project comply with MDSHA requirements.

**Public Improvements Agreement for CTC Project.** In February 1999, the Department of Permitting Services executed Public Improvements Agreement 99-027 with the CTC Project developer. This agreement required the CTC Project developer to install and complete “one-half of the ultimate roadway for Stringtown Road (A-260)” as shown on the plat. The Public Improvements Agreement required the developer to provide median, curb and gutter, 24 feet of roadway paving section, a 4-foot paved shoulder, a drainage ditch, a bikeway, a traffic signal conduit, storm drainage, monuments, sediment control measures, installation of all utility lines underground and street lights.

**Council Resolution and Planning Board Approval for the CTCDD.** In July 2000, the developer filed its petition to create the CTCDD. This petition requested development district funds for MD 355 lowering (\$477,786). In September 2000, the Council approved a resolution indicating its intent to consider creation of a CTCDD. In November 2000, the developer submitted the application for PAPF approval to Planning Board. In March 2001, the Planning Board sent a letter informing the County Executive of its approval of the PAPF application.

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<sup>51</sup> Transportation Planning Division staff provided copies of this memorandum and the 2 memoranda referenced below to OLO and Council staff.

**Revised Development Approvals for the Highlands at Clarksburg Project.** In April 2001, the Highlands at Clarksburg applicant was granted a 1-year extension to allow for a redevelopment proposal. In October 2001, the Planning Board conducted a public hearing on the revised Project Plan and Preliminary Plan applications. The Project Plan staff report identified the over-vertical curve on MD 355 as a Site Plan Review Issue. Planning staff stated the applicant had conducted several studies to assess the effect of lowering the curve on adjoining properties, especially the historic properties on the west side of MD 355. The M-NCPPC Park Archeologist had submitted a memorandum requesting that this historic site not be disturbed. MDSHA had recommended a cross section that would preserve the historic site.

In December 2001, the Planning Board mailed its Opinion approving Preliminary Plan 1-98009A, subject to 17 conditions, including Condition 10 which required access and improvements as required to be approved by MDSHA prior to issuance of access permits.

**Executive's Fiscal Review of the CTCDD.** Between March 2001 and October 2002, Executive staff met with the developer representatives and Planning staff to address issues associated with the establishment of the CTCDD.

On October 17, 2002 the Executive transmitted the Fiscal Report for the CTCDD to Council. The Executive portrayed the MD 355 Lowering as an improvement required by the Planning Board and as an improvement required for safety. (Note: The Executive did not request and the Planning Board did not provide specific details of the Planning Board's regulatory requirement.) The Executive recommended a revised cost estimate (\$970,000), which was more than twice the developer's initial cost estimate (\$477,786).

The discussion of the MD 355 Lowering in the Executive's Fiscal Report suggests the developer's cost estimate was based on the total project cost being shared by others. (The text states "An alternative, preferred by the Town Center developer, would be to allocate the cost of the lowering among the respective developers".) By comparison, the Executive's cost estimate reflected a contingency factor (of 20 to 30%) and the full project cost.

The Executive's rationale for allocating the full cost of the MD 355 Lowering to the CTCDD was based on the following set of assumptions and beliefs:

- That "any improvement of Stringtown Road east or west of MD 355 will necessitate lowering of the vertical curve on MD 355;"
- That the Town Center's part of Stringtown Road would precede the Highlands project;
- That the lowering would be implemented as part of Town Center's Stringtown Road project; and,
- That since the Executive proposed funding for Stringtown Road to be covered by the CTCDD, the full cost of MD 355 should be allocated to the CTCDD as well.

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*Appendix 1C. Fact Finding for the Clarksburg Town Center Development District*

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On October 28, 2002, the developers for CTC and Highlands met with M-NCPPC, DPWT and DPS staff to resolve conflicts in the conditions of approval for their respective preliminary plans.

**Council's Approval of the CTCDD.** In March 2003, the Council approved creation of the CTCDD, and the Executive proposed PDF No. 500423, Clarksburg Town Center Development District: Roads as an amendment to the Capital Improvement Program to implement the establishment of the CTCDD. This PDF provided for "acquisition of completed road improvements in the Clarksburg Town Center Development District that will be constructed by the developer and subsequently acquired by the County". The PDF indicated the programmed improvements were "Required Adequate Public Facility" (i.e., that they had been counted for the approval of new development). MD 355 Lowering was 1 of the 4 improvements the PDF identified for acquisition. The PDF authorized the appropriation and expenditure of \$9.5 million in CTCDD bond proceeds for this purpose.

**Private Agreement Between the CTC Project Developers and the Highlands at Clarksburg Developer.** In August 2003, developers for CTC and Highlands at Clarksburg signed an "Agreement to Share Roadway Construction Costs". This agreement stated (in part):

- Terrabrook had posted a bond for the Stringtown Road construction project;
- Terrabrook had acquired additional right-of-way from 2 property owners and dedicated amounts of property for Centex's new alignment;
- Centex agreed to pay Terrabrook \$25,000 for prorated right-of-way acquisition costs;
- Centex had engaged an engineer for MD 355 Improvements. The scope of these improvements includes lowering MD 355, a northbound right turn lane, and 2 through lanes; and
- Centex had submitted plans for SHA approval and will post construction bonds.

The agreement established Terrabrook's share of costs associated with the MD 355 Improvements at \$905,000, and capped Terrabrook's contribution at this amount. The agreement stated Terrabrook should have no involvement in elements of Route 355 project not directly or indirectly related to its responsibilities under the Development District of the Terrabrook development approvals.

**Highlands at Clarksburg Developer Obtains SHA Access Permit.** In October 2003, Centex posted a construction bond for MD 355 Improvements in the amount of \$1.1 million. This amount represented project costs of \$734,000 plus a 50% contingency factor. (This amount did not include the cost of a retaining wall.) In February 2004, SHA issued Permit No. 8439 to permit Centex to construct MD 355 Improvements. The permit scope included:

- A right in/right out entrance into the Highlands at Clarksburg project;

***Appendix 1C. Fact Finding for the Clarksburg Town Center Development District***

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- Improvements 700' south of Stringtown Road to include realignment and reconstruction of MD 355, full depth pavement widening, resurfacing, curb and gutter, sidewalk, storm drain systems, signing and pavement markings;
- Construction of a retaining wall to avoid impact to historic features;
- Construction of a 20' wide residential driveway to serve 5 lots; and
- Relocation of 2 existing residential driveways.

SHA confirmed for OLO that the approved plans included a northbound MD 355 right turn lane starting prior to the development's MD 355 entrance and continuing north to Stringtown Road.

**SHA Acquisition of MD 355 for Maintenance.** According to MDSHA before a developer improvement to a state road is accepted for maintenance, SHA's District Utilities office must send an approved final inspection memorandum to the Engineering Access Permits Division (EAPD). After EAPD receives this inspection memorandum, it releases the access permit and returns the surety. MDSHA reports that the access permit for Highlands at Clarksburg expired recently. EAPD sent an expiration notice to the permittee and the permittee sent a letter requesting an extension. EAPD reports the work is about 95% complete, with only 1 item remaining. EAPD states they will extend the access permit for 3 months, and they expect the work to be completed by late November 2007.

**3. According to the regulatory record, did the Planning Board establish these obligations to comply with site plan or APF requirements?**

In OLO's opinion, the intersection improvement to provide a northbound right turn lane along MD 355 to Stringtown Road was an APF requirement for the CTC Project. The requirement to lower MD 355 was not a condition of approval; however, the phasing of the CTC Project was tied to that improvement. The analysis that Transportation Planning staff conducted showed the intersection improvement was needed to comply with Section 50-35(k) of the County's subdivision regulations. Consistent with the Council's AGP guidance in place at that time, the analysis to determine the adequacy of transportation facilities used a LATR analysis only.

**CTCDD Item 7 - Clarksburg Road: MD355 to Town Center boundary and Town Center boundary to Piedmont Road  
(100% Share)**

**Project Scope Background.** Appendix B of the County Executive's Fiscal Report includes the following discussion of this item:

Clarksburg Road For Clarksburg Road, planned as an undivided 24-36-foot wide roadway, the developer has included improvement of approximately 800 feet on the south half of the road (in the Historic District) which is not along the frontage of the developer's property and which is not a condition of site plan approval. The developer believes that the cost of this segment (\$340,000) should be allocated to other parties, but the Executive proposes that it be accomplished by Town Center and be funded by that District. On the north half of Clarksburg Road, all but two 300-foot segments (out of 3400 feet) of the ultimate width will be constructed by subdivisions on the north side of the road. Turn lanes at the intersection of Clarksburg Road and MD 355 (\$100,000) are required of Town Center because of Local Area Review requirements, timed with issuance of the 800<sup>th</sup> building permit. The Executive concurs that this be District funded, but only if bond capacity remains after funding higher priority projects.<sup>52</sup>

This project is also addressed in a Public Improvements Agreement (01-052) between the CTC Developer and the County which was executed on September 14, 2001. Item #6, Special Provisions, states, "on Clarksburg Road between MD 355 and A-305, widen the existing pavement to twenty-five (25) feet from centerline and construct curb, gutter and sidewalk".

This project is also included in the 5 projects addressed in PDF No. 500423, Clarksburg Town Center Development District: Roads. The total current cost estimate for all of the projects this PDF addresses is \$9.521M and the source of funds is Development District.

**1. What developer obligations related to this CTCDD item did the Planning Board establish as a result of its regulatory approvals and where are the specific references to these obligations found in the regulatory record?**

OLO's review of the Planning Board's regulatory approval documents identified the following developer obligations:

- The Planning Board's Project Plan Opinion requires the developer to construct turn lanes at the intersection of MD 121 and MD 355 (Condition #2b);
- The Preliminary Plan Opinion requires the developer to dedicate an 80' right-of-way for Clarksburg Road (Condition #5a), and to start construction of the intersection

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<sup>52</sup> Appendix B. Clarksburg Town Center Development District Fiscal Report, Infrastructure Projects Considered for District Funding, Roads, p.2.



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improvements at MD 355 after the issuance of the 800<sup>th</sup> building permit (Condition 16a); and

- The Site Plan Opinion for Phase I requires the developer to execute an APF agreement prior to the first record plat to reflect all transportation improvements, including improvements to MD 121. It also requires the developer to reimburse the County for any eminent domain costs incurred (Condition #19).

Project Plan. The Planning Board's Opinion (Condition #2b) requires construction of an eastbound left turn lane and a westbound left turn lane along MD 121 at MD 355.

Preliminary Plan. The Planning Board's Preliminary Plan Opinion (Condition #5a) requires "Dedication of the following roads as shown on plan must be provided as follows: (a) Clarksburg Road (MD RT 121) for ultimate 80' right-of way".<sup>53</sup> Condition 16(d) requires the developer to start construction of the eastbound and westbound intersection improvements after the 800<sup>th</sup> building permit.

Site Plan Phase I. As noted earlier, the Planning Board's Opinion for Site Plan Phase I (8-98001) includes 3 general conditions that address 3 development district items: Stringtown Road (A-260), Clarksburg Road (121) and Piedmont Road (A-305).

- Condition 17 requires "conformance to cross section and other recommendations per DPW&T, DPS memos dated January 14 and January 15, 1998".

The January 15, 1998 Department of Permitting Services memorandum states in part:

*The applicant will be responsible for constructing public improvements per the DPW7T approved cross section within one half (40 feet) of the 80 foot right of way adjacent to the Town Center property (Sta 9+20 to Sta. 19+70).*

- Condition 18 requires "conformance to MCPD Transportation Planning memorandum dated January 20, 1998 included in the Appendix". The Transportation Planning memorandum, characterizes Clarksburg Road as one of 3 improvements "to satisfy the previously assessed APFO review and the phasing requirements". It states:

The applicant must construct its portion of the roadways as described above in accordance with the following descriptions of each roadway:

1. Clarksburg Road (A-27) shall be a three-lane, 38-foot wide closed section roadway with a six-foot Class I bikepath on the south side and a sidewalk on the north side, offset within an 80-foot right-of-way between Frederick Road (MD 355) and Street "M", transitioning to a symmetrical section between Street "M" and Greenway Road so as to preserve an existing hedgerow. Clarksburg Road shall taper to a 32-foot-wide, open section

<sup>53</sup> Montgomery County Planning Board Revised Opinion, Preliminary Plan No. #1-95042, Clarksburg Town Center. March 26, 1996, p.4.

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roadway with four-foot shoulders within an 80-foot right-of-way between Greenway Road and Midcounty Arterial (A-305).<sup>54</sup>

Earlier on page 2, Transportation Planning required the developer to reconstruct the southern half of Clarksburg Road along the CTC project's property frontage (station 8+10 to station 19+70); however, the memorandum deleted language requiring reconstruction of Clarksburg Road between Frederick Road and the Greenway Road.

- Condition 19 requires an APF agreement. (See page 1C-17 for this language.)

**Exhibit C-8. Summary of Document References in CTC Project Regulatory Approvals to CTCDD Infrastructure Item 7 – Clarksburg Road**

<b>Source Document</b>	<b>Project Plan</b>	<b>Prelim Plan</b>	<b>Site Plan Phase I</b>	<b>Summary</b>
Planning Board Opinion 9-94004	Condition #2b			Requires construction of eastbound left turn lane and westbound left turn lane along MD 121 at MD 355
Planning Board Opinion 1-95042		Condition #5a		Requires right-of-way dedication
Planning Board Opinion 1-95042		Condition #16d		Establishes phasing requirements
Planning Board Opinion 1-98001			Condition #18	Requires conformance to Transportation Planning memo dated Jan. 20, 1998
Transportation Planning memo, Jan. 20, 1998			Rec#5	Requires reconstruction of Clarksburg Road along specified property frontage for the CTC Project but not between Frederick Road and the Greenway Road

Source: CTC Project regulatory approvals.

<sup>54</sup> Transportation Planning staff memo, January 20, 1998, p.3.

2. **How do the developer obligation established by the Planning Board to “dedicate an 80’ right-of-way for Clarksburg Road,” “construct intersection improvements,” “sign an APF agreement”, and “reimburse the County for eminent domain costs” relate to the implementation of this development district infrastructure item?**

There are 2 elements to the Clarksburg Road improvements: the intersection improvements at MD 355 and MD 121; and the roadway improvements between MD 355 and A-305.

- The developer’s obligation to construct intersection improvements at MD 121 and MD 355 were not included in the project scope for Clarksburg Road, which the Council approved for “Primary List” development district funding (as recommended by the Executive). These intersection improvements were included on a “Secondary List” which the Council approved for development district funding if cost savings were realized. The intersection improvements at MD 355 and MD 121 had an estimated cost of \$100,000.

The Primary List of infrastructure items which the Council approved included 2 segments for improvements along Clarksburg Road:

- The limits of the first segment are from MD 355 to the (western) Town Center boundary with an estimated cost of \$290,000. According to the Executive’s Fiscal Report, the portion of MD 121 adjacent to the historic district was recommended to be funded as part of the development district even though it was not a developer obligation. This interpretation is consistent with the text in the Transportation Planning Division memorandum. As stated earlier, the language in this memorandum requires the developer to reconstruct the southern half of Clarksburg Road but deletes the qualifier “between Frederick Road (MD 355) and Greenway Road”.
- The limits of the second segment approved for CTCDD funding are from “Town Center boundary to Piedmont Road” at a cost of \$1,050,000. If the reference to the “Town Center boundary” refers to the western boundary, then this description matches the description in the DPS memorandum that states the developer is responsible for constructing this road adjacent to the Town Center property. This description is also similar to the language in the Transportation Planning Division memorandum which requires reconstruction “along the property frontage”. However, the limits of the reconstruction in the Transportation Planning Division memorandum (from station 8+10 to station 19+70) do not match the limits in the DPS memorandum (from station 9+20 to station 19+70.)

3. **According to the regulatory record, did the Planning Board establish these obligations to comply with site plan or APF requirements?**

Clarksburg Road Improvements from the western Town Center Boundary to Piedmont Road. The Planning Board’s regulatory record shows this improvement was included in the 4

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roadway improvements “recommended as conditions of approval to address transportation issues associated with the subject site plan”. Since this language suggests the basis for these improvements was broader than compliance with Section 50-35(k), in OLO’s opinion, this item was not an APF requirement.

When Council and OLO staff met with current Planning staff, they indicated that they believed the regulatory basis for this requirement was Section 50-24, Required public improvements; however, none of the Planning Board Opinions makes an explicit reference to this section.

Establishing the regulatory basis for this improvement is confusing because of the ambiguous use of “APF” and “AGP”. For example, the Planning Board’s regulatory approval documents require the developer to sign an “APF agreement” and the Executive’s Fiscal Report refers to this item as an “AGP Road”. Although references in the regulatory record characterize this improvement as an AGP Road, it was not identified as an APF requirement as a result of the LATR test performed at Project Plan.<sup>55</sup>

Intersection Improvements at Clarksburg Road (121) and MD 355. The Planning Board required the intersection improvements at MD 121 and MD 355 because the Transportation Planning Division’s analysis of LATR conditions concluded they were needed to comply with the APFO in Section 50-35(k). These improvements were recommended on the secondary list of infrastructure improvements for CTCDD funding.

Clarksburg Road Improvements from MD 355 to the western Town Center boundary. Since the Planning Board did not require these improvements as conditions of approval there is no regulatory basis for their imposition.

### **CTCDD Item 8 - 20” Water Main**

**Project Scope Background.** Appendix B to the County Executive’s Fiscal Report states:

A 20-inch WSSC water line extending 1.4 miles from MD 355 through Town Center to a point east of the Piedmont/Stringtown Road intersection is currently under construction by the developer (estimated cost \$827,000). In the original petition, the scope of this item was only for segments outside the district; costs of internal segments were included in individual road projects, several of which are no longer being considered for district funding. Over 50 percent of this water main has already been installed by the developer under permit from WSSC. This improvement will serve not only Town Center but will also provide areas outside the District with water supply and pressure. The Executive recommends this

<sup>55</sup> The FY96 AGP was in place when the Planning Board conducted its Preliminary Plan review. There was no Clarksburg Policy Area and there were no Clarksburg staging ceilings.

project for District funding. All other water and sewer lines in Town Center will be funded by the developer.<sup>56</sup>

**1. What developer obligations related to this CTCDD item did the Planning Board establish as a result of its regulatory approvals and where are the specific references to these obligations found in the regulatory record?**

The Project Plan Staff Report contains the only discussion of water service to the site. None of the Planning Board Opinions for the Project Plan, Preliminary Plan, or Site Plan include a requirement for a 20" water main as a condition of approval or specify the details of developer's obligation to provide water service for the CTC Project.

In the Project Plan Staff Report, Planning staff makes a finding that "the proposed development with conditions will not overburden the existing public services, nor those programmed for availability with each stage of construction".<sup>57</sup> Item 3, Water and Sewer, states:

A 16-inch water main exists in the right of way of Piedmont Road along the northeastern boundary of the site. WSSC records also indicate that a 16-inch water main exists within the right of way of MD 355 within 200 feet of the site. These water mains will be adequate to serve the proposed development.<sup>58</sup>

**2. How do these developer obligations established by the Planning Board relate to the implementation of this development district infrastructure item?**

The former Subdivision Coordinator for the Planning Department informed OLO and Council staff that documentation of the developer's obligation to provide a water line might be found in a memorandum from WSSC to the Planning Department in the CTC Project subdivision file. At Council staff and OLO's request, the current I-270 Coordinator in the Community Planning Division followed up on this suggestion. She reported that she was unable to find any documentation from WSSC in the CTC Project file.

The current I-270 Coordinator in the Community Planning Division did provide a copy of WSSC's adopted Capital Improvement Program. This information includes a PDF for the Clarksburg Town Center Water Main Project. The current project cost is \$1,045 million and the current funding sources are Contribution/Other (\$871,000) and Development District Bonds (\$174,000). The text of the PDF states, in part, "By County Council Action, the total project cost is the responsibility of the developer". Earlier versions of the PDF, which were published before the approval of the CTCDD, displayed the total funding for this project as Contribution/Other.

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<sup>56</sup> Appendix B. Clarksburg Town Center Development District Fiscal Report, Infrastructure Projects Considered for District Funding, WSSC Water Main, p.4.

<sup>57</sup> Staff Report, Project Plan No. 9-94004, Clarksburg Town Center, March 22, 1995, p.28.

<sup>58</sup> *Id.* at 31.

- 3. According to the regulatory record, did the Planning Board establish these obligations to comply with site plan or APF requirements?**

OLO's review of the regulatory record found no reference to address this question.

### **CTCDD Item 9 - Greenway Trails**

**Project Scope Background.** Appendix B of the County Executive's Fiscal Report included the following discussion of this item:

Pedestrian/bicycle trails located along major roads bordering Town Center (Clarksburg, Stringtown, and Piedmont Roads) are planned as part of the road projects and are reflected in those cost estimates. The trail along the east side of Overlook Park Road will be signed as a segment of the Clarksburg Regional Greenway system that ultimately will connect Little Bennett, Ovid Hazen Wells, and Black Rock Parks. In-park greenway trails as well as complementary park facilities in stream valleys to be dedicated to M-NCPPC are also required. Costs of the in-park Greenway trails are estimated at \$480,000 (pending Parks Department verification of scope and cost.) The Greenway trails are proposed by the Executive for District funding only if financial capacity is available after higher priority projects are fully funded. Additional trails, in areas not proposed for dedication as public parkland, will be built by the developer with non-District funds.<sup>59</sup>

- 1. What developer obligations related to this CTCDD item did the Planning Board establish as a result of its regulatory approvals and where are the specific references to these obligations found in the regulatory record?**

The Planning Board's Project Plan and Site Plan Opinions identify the greenway as a condition of approval, and the Preliminary Plan includes a condition that expressly ties the Preliminary Plan to the Project Plan.

Project Plan. In the Project Plan Planning Board Opinion, the greenway is mentioned in Condition 11 which states:

All amenities shown within each stage of development must be completed within that stage of development. The concept design for the greenway, the school/park, and other large play fields, must be completed before the approval of the first site plan. Construction of the amenities within the greenway must be finalized before the completion of Stage 3.<sup>60</sup>

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<sup>59</sup> Appendix B. Clarksburg Town Center Development District Fiscal Report, Infrastructure Projects Considered for District Funding, Trails and Bikeways, p.4.

<sup>60</sup> Montgomery County Planning Board Revised Opinion, Project Plan No. 9-94004, Clarksburg Town Center, June 12, 1995, p.6.

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Finding #5, "Is More Efficient and Desirable than the Standard Method of Development", also refers to the *greenway*. It states:

The Planning Board finds that the proposed project, as conditioned, will be more efficient and desirable than the standard method of development. This optional method project consists of a mix of uses which are recommended in the Master Plan. These uses are not permitted under the standard method of development. The amenities and facilities provided as part of the optional method of development fosters the creation of a transit and pedestrian oriented town surrounded by open space. The green way network of amenities provides a major open feature.<sup>61</sup>

The Project Plan Staff Report includes references to the dedication of the *greenway* as a condition of approval, with an additional requirement to provide a design for improvements.

- The Project Plan condition states "construction of the amenities" must be finalized before the completion of Stage 3, but it does not specify the scope of these improvements.
- The Project Plan's list of amenities includes 2 references to the *greenway*. One item is "greenway dedicated for park use" and a second item is "greenway roadways". Under Recreational Facilities, it lists "Greenway pathway and bicycle path (Class I)".
- Findings #2 and #5 also reference the *greenway*. For example, Finding #5, *Greenway Network*, states:

In accordance with the guidelines in the master plan, this development will dedicate the *greenway* for park use. In addition to this minimum requirement, the applicant will provide a design before the approval of site plan that incorporates additional tree planting, an informal trail, a commemorative park area for the family of John Clark, bikeways, and other landscape features that could only be achieved through the optional method of development.<sup>62</sup>

Preliminary Plan. The Planning Board's Preliminary Plan Opinion does not explicitly reference the *greenway*; however, Condition #14 states that the Preliminary Plan "is expressly tied to and interdependent upon the continued validity of Project Plan No. 9-94004". And "each term, condition, and requirement set forth in the Preliminary Plan and Project Plan are determined by the Planning Board to be essential components of the approved plans and are, therefore, not automatically severable".

In the Preliminary Plan Staff Report, staff suggests that dedication of land was an "adequate" contribution for the developer. Specifically, staff states:

When attention is focused on total infrastructure to serve master planned development, the town center's provision of land for the future school, *greenway*

<sup>61</sup> *Id.* at.10.

<sup>62</sup> Staff Report, Project Plan No. 9-94004, Clarksburg Town Center, March 22, 1995, p.32.

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dedication and the land for a future community center and library must be included in the impact tax deliberations.<sup>63</sup>

Site Plan Phase I. The Planning Board's Opinion for Site Plan Phase I refers to the greenway in Condition #37 and Condition #42.

- Condition #37 requires "landscape plans to include . . . detailed plans for greenway to include planting on steep slopes".<sup>64</sup>
- Condition #42 requires that the development program include "MCPD review and approval of path location within the Greenway Park prior to construction".<sup>65</sup>

The Site Plan Staff Report includes several references to the greenway.

- The discussion of Project Administration states: "PJ-11 The amenities proposed for the Phase I Site Plan need to be constructed in accordance with typical site plan phasing requirements; the design concept for the Greenway and adjoining areas has been reviewed and accepted by staff; the greenway amenities will be phased in with the Phase I Site Plan".<sup>66</sup>
- The analysis of Conformance to the Project Plan Approval states: "the conformance of the proposed site plan to the Project Plan conditions of approval were established, with conditions, above in Project Description: Prior Approvals. The site plan conforms to the list of Amenity Areas and Recreational Facilities that were part of the Project Plan by providing the following:

Amenity Areas: Town Square, land dedicated for future civic building (with Phase II), streetscape system, neighborhood squares and green area, greenway dedicated for public use, Greenway roadway, specialty planting areas along greenway road.

Recreation Facilities: Tot Lot, Multiage Play facilities, Picnic/sitting areas; tennis courts (possible with Phase II); bikeway system; greenway pathway and bicycle path (Class I); Nature trail; Nature areas near the Pond; swimming pools, wading pools; indoor fitness facility (in Phase II).<sup>67</sup>

(Note: See **Exhibit C-9** (on the next page) for a summary of these references.)

<sup>63</sup> Memorandum to Montgomery County Planning Board from Joseph R. Davis re Preliminary Plan No. 1-95042, Clarksburg Town Center Project, September 22, 1995, p.7.

<sup>64</sup> Memorandum to Montgomery County Planning Board from Wynn E. Withans, Clarksburg Town Center Phase I, January 22, 1998, p.7.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* at 20.

<sup>67</sup> *Id.* at 21.



**2. How do the developer obligations established by the Planning Board relate to the implementation of this development district infrastructure item?**

The language requiring a greenway established in the Planning Board's Project Plan, Preliminary Plan, and Site Plan Opinions appears to require the developer to dedicate the land, design the amenities, and construct the trails and park areas.

**3. According to the regulatory record, did the Planning Board establish these obligations to comply with site plan or APF requirements?**

The Greenway Trail system was a condition of approval to achieve compliance with the Zoning Ordinance's requirement for an amenity package under the Optional Method Zone. It is difficult to distinguish how the project scope of the item approved for development district funding relates to the overall greenway system established as a developer obligation for the CTC Project.

**Exhibit C-9. Summary of Document References in CTC Project Regulatory Approvals to CTCDD Infrastructure Item 9 – Greenway Trails**

<b>Source Document</b>	<b>Project Plan</b>	<b>Prelim. Plan</b>	<b>Site Plan Phase I</b>	<b>Summary</b>
Planning Board Opinion 9-94004	Finding #5			Establishes greenway as part of amenity package that justifies optional method zoning
Planning Board Opinion 9-94004	Condition #11			Establishes phasing for amenities and for concept plan for greenway
Planning Board Opinion 1-95042		Condition #14		Ties Preliminary Plan to continued validity of Project Plan
Planning Board Opinion 8-98001			Condition #37	Establishes landscape plans as a developer obligation to include detailed plans for the greenway to include plantings on steep slopes
Planning Board Opinion 8-98001			Condition #42	Requires MCPD review and approval of path location within Greenway Park prior to construction
Site Plan Phase I Staff Report			Text	Project administration address staff review of Greenway design concept and phasing of greenway amenities with site plan
Site Plan Phase I Staff Report			Text	Staff analysis of the conformance of the project plan identifies greenway as part of the amenity package

Source: OLO and CTC Project regulatory approvals.

**A. The Chronology of Approvals for the West Germantown Development District**

The West Germantown Development District (WGDD) is located in the southwest quadrant of the intersection of Clopper Road (Route 117) and Germantown Road (Route 118). The development district's boundaries are Clopper Road to the northeast, Scheaeffer Road to the southeast, and the South Germantown Recreation Park to the southwest.

The WGDD covers approximately 666 acres. It consists of 2 projects which were developed by 2 separate entities. The projects were marketed jointly under the name "Woodcliffe Park". Arcola Investment Associates<sup>1</sup> developed Arcola Woodcliffe Park, a 414-acre parcel with 816 units, including 714 single-family homes and 102 multi-family units. Artery Hoyles Mill, LLC<sup>2</sup> developed Artery Woodcliffe Park, a 252-acre parcel with 580 single-family homes.

**Petition to create development district**

Six land owners filed the initial petition to create the WGDD with the Council on June 21, 1996. They proposed a 717-acre development district that would have funded infrastructure to support the development of 1,606 residential units and a 114,000 square-foot commercial shopping center. The initial petition proposed that the development district encompass 3 subdivisions (Kings Crossing, Hoyles Mill Village, and Kingsview Village Center) and an additional tract known as the "Adrienne Wear Property". **Exhibit A-1** displays the owners and acreage of parcels initially proposed for the WGDD.

**Exhibit A-1. List of Property Owners Recommended in the Initial Petition for the WGDD**

	<b>Owners in the Initial Petition</b>	<b>Subdivision Name</b>	<b>Acres</b>
1	Arcola Investment Associates	Kings Crossing	414
2	West Germantown L.P.	Hoyles Mill Village	252
3	Adrienne Wear Property	Not under subdivision	5
4	GFS Realty	Kingsview Village Center	5 <sup>3</sup>
5	John N. and Mary S. Deoudes		14
6	Clopper Realty Joint Venture		9
7	Montgomery County		18
8	M-NCPPC		
	<b>TOTALS</b>		<b>717</b>

Source: Initial Petition Appendix A

The initial petition proposed that the County and Maryland National Capital Park and Planning Commission (M-NCPPC) participate in the development district because each entity

<sup>1</sup> A Virginia general partnership.

<sup>2</sup> A Maryland limited liability company.

<sup>3</sup> GFS Realty also had an option to purchase and additional 0.49 acre parcel.

owned land that was included in a preliminary plan of subdivision for the Kingsview Village Center. The petition gave the following reasons for seeking the financial participation of Montgomery County and M-NCPPC in the development district:

- The properties owned by the County and M-NCPPC were situated in the Kingsview Village Center Plan, where infrastructure improvements were required to proceed as a condition for the private developments;
- Certain improvements required as a condition of preliminary plan approvals would benefit a large number of County residents, “certainly well in excess of the number of new residents expected to purchase homes within the proposed District”;
- Existing regulatory approvals for developers of other surrounding properties who were not part of the petition required those developers to financially contribute to the infrastructure improvements required as a condition of the Petitioner’s preliminary plan approval;
- The Germantown Master Plan and the Planning Board, through various memoranda and transportation phasing plans, had required the construction of certain infrastructure improvements not required as a condition of the Petitioner’s preliminary plan approval (including the construction of a Park and Ride Lot);
- Certain improvements that were not required to be constructed immediately by any developer could be accelerated by funding them through a development district; and
- The County’s CIP program included improvements adjacent to the District (e.g., the relocation of MD 118) that could be coordinated with the proposed District infrastructure.<sup>4</sup>

#### **Final development district**

Compared to the initial proposal, the WGDD approved by the Council had 4 fewer property owners and covered 40 fewer acres. Property owners withdrew at different times for the following reasons:

- The Executive recommended that the County and M-NCPPC not participate in the district because “the cost of this type of financing is unacceptably high and neither the County nor M-NCPPC should contribute revenues required to support the funded infrastructure”.<sup>5</sup>

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<sup>4</sup> Montgomery County Council Petition for Development District. Attachment 3 to Memorandum to MCPB from Charles R. Loehr, dated August 2, 1996, p.4.

<sup>5</sup> Memorandum to Marilyn J. Praisner, President, Montgomery County Council from Douglas M. Duncan, County Executive, dated September 29, 1997, p.3.

**Appendix 2A. Fact Finding for the West Germantown Development District**

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- GFS Realty, the owner of the Kingsview Village Center, decided not to participate in the District because it was not ready to proceed with development of the Center. Later, GFS Realty asked the Council to create the Kingsview Village Center District.
- The owners of the Adrienne Wear Property asked to be excluded from the district in testimony presented to the Council on January 13, 1998.

**1. What were the dates for each step of the development district approval process?**

The Council's process to establish the WGDD spanned a 2-year period. It began July 30, 1996 when the Council adopted Resolution 13-636 signaling its intent to consider the creation of a district. The WGDD was created January 13, 1998 when the Council passed Resolution No. 13-1135. On August 4, 1998, the Council adopted Resolution 13-1398, authorizing the issuance of Special Obligation Bonds for West Germantown Infrastructure Improvements. **Exhibit A-2** presents dates for each step of the approval process for the WGDD.

**Exhibit A-2. WGDD Chronology**

<b>Step</b>	<b>Description</b>	<b>Date</b>
Step 1	Developer files initial petition to create a development district.	June 21, 1996
Step 2	Council holds public hearing on developer's initial petition.	July 23, 1996
Step 3	Council adopts 1 <sup>st</sup> resolution expressing intent to create a development district.	July 30, 1996
Step 4	Developers submit an application for provisional adequate public facilities (PAPF) approval to the Planning Board.	Oct. 4, 1996
Step 5	Planning Board acts on developers' PAPF application.	Nov. 6, 1996
Step 6	Executive submits Fiscal Report to Council.	Sept. 29, 1997
Step 7	Council holds public hearing.	Nov. 6, 1997
Step 8	Council adopts 2 <sup>nd</sup> resolution to create a development district.	Jan. 13, 1998
Step 9	Council adopts 3 <sup>rd</sup> resolution to specify bond conditions.	August 4, 1998

Sources: Council staff memorandum dated July 26, 1996 and Council resolutions.

**2. What were the dates of the regulatory approvals for the development projects that make up the WGDD?**

The WGDD consists of 2 development projects:

- A 414-acre parcel called Arcola Woodcliffe Park parcel, which was originally called “Kings Crossing;” and
- A 242-acre parcel referred to as Artery Woodcliffe Park parcel, which was originally called the “King Hargett” property and later called “Hoyles Mill Village”.

The earliest regulatory approvals for these properties were granted in 1988. On January 7, 1988, the developer’s preliminary plan application for Kings Crossing was deemed complete (Preliminary Plan 1-88006). On August 16, 1988, the preliminary plan application for the King Hargett property was deemed complete. These regulatory approvals preceded the adoption of a comprehensive Germantown Master Plan amendment.

**1989 Germantown Master Plan Recommendations**

In June 1989, the County Council, sitting as the District Council, approved the Germantown Master Plan. This Plan addressed the Kings Crossing and King Hargett properties as part of its recommendations for Analysis Area KI-2 in Kingsview Village. The Master Plan:

- Recommended that the area retain its R-200 zoning, and that it would be appropriate for rezoning to the PD-2 Zone;
- Called for development of Proposed Road A-297 from Schaeffer Road to Clopper Road, and the widening of Hoyles Mill Road;
- Called for measures to mitigate the environmental impacts of these improvements on Little Seneca Basin, because 3 tributaries of Little Seneca Creek drain to a section of Little Seneca Creek, which the State classifies as a Class IV stream; and
- Called for development in this area to be subject to special environmental protection measures set forth in an appendix to the Plan.

**Regulatory Approvals for Artery Woodcliffe Park (King Hargett)**

The Planning Board held hearings at 2 separate times on Preliminary Plan 1-88216 for the King Hargett property, which was filed August 16, 1988. The first hearing was held in December 1993. On January 11, 1994, the Planning Board mailed its Opinion, approving development of the property subject to 16 conditions.

*Appendix 2A. Fact Finding for the West Germantown Development District*

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Condition #1 limited development of the property to 459 units. That condition also required the issuance of building permits for the project to be phased with the required roadway improvements, as outlined in 2 memoranda from the Transportation Planning Division. Condition #16 made the approval valid until February 11, 1997.

In June 1994, the Planning Board took action to increase the development limits for the King Hargett Property pursuant to the FY94 Annual Growth Policy (AGP). Specifically, in addition to the 459 units previously approved dependent on certain roadway improvements, it approved 100 more units under the Limited Residential Development Option in the FY94 AGP. This brought the total development limit to 559 units.<sup>6</sup>

The Planning Board held a second hearing on Preliminary Plan 1-88216 on September 29, 1994. On November 23, 1994, the Planning Board mailed an Opinion that affirmed the development increases granted in June 1994 and authorized 10 more units, bringing the total development limit to 569 units.<sup>7</sup>

The developer of the King Hargett Property packaged the site planning for the property into 2 applications, which were filed simultaneously. The Planning Board heard both site plan applications in June 1995. On August 1, 1995, the Planning Board mailed Opinions approving Site Plan 8-95027 for Hoyles Mill Village, Section 1 and Site Plan 8-95030 for Hoyles Mill Village, Section 2.

On May 24, 1996, the developer submitted an application to revise his approved plan, Preliminary Plan Application 1-88216R. The developer requested a revised phasing plan and an extension of the preliminary plan validity period. The Planning Board held a hearing on this application in June. On July 2, 1996, the Planning Board mailed its Opinion approving the revised plan, subject to 16 conditions.

As noted previously on page 3, later that month, the County Council held a public hearing on the developer's initial petition for a development district, adopting a resolution affirming the Council's intent to create a development district on July 30, 1996.

In October, 1998, Artery Hoyles Mill LLC, the new owner of the property, filed an application to revise the approved Preliminary Plan (1-88216R) for the property. The Planning Board heard this application in January 1999 and mailed its Opinion approving revisions to the Preliminary Plan on May 5, 1999.

Subsequently, Artery Hoyles Mill filed applications to amend the approved Site Plans for the properties. The Planning Board heard these applications in January 1999 and mailed Opinions approving the revisions on February 26, 1999.

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<sup>6</sup> Montgomery County Planning Board Opinion Preliminary Plan 1-88216, King Hargett Property, January 11, 1994.

<sup>7</sup> Montgomery County Planning Board Opinion Preliminary Plan 1-88216 King Hargett Property, November 23, 1994.

In September 2001, the Planning Board heard the developer's application to amend the site plan for Section II (Site Plan 8-95030C, Hoyles Mill Village, Section II). The Board mailed the Opinion approving amendments to the Site Plan on September 27, 2001.

Subsequently, the developer filed applications to amend 2 approved preliminary plans (1-88216R and 1-01063) and 1 approved Site Plan (8-95030C) to address the impervious limits. The Planning Board heard these applications on April 21, 2005.

**3a. Did the Planning Board's preliminary plan and site plan approvals for the Artery Woodcliffe Park project occur before or after the Council created the development district?**

**Exhibit A-3** presents the chronology of regulatory approvals for the King Hargett property with the dates the Council adopted its resolutions to initiate and establish the WGDD. **Exhibit A-3** shows the following:

- An initial preliminary plan for the property was approved in January 1994, 2½ years before the Council adopted its 1<sup>st</sup> resolution to consider creation of a development district (July 1996) and 4 years before the Council adopted its 2<sup>nd</sup> resolution to establish the district (January 1998).
- Subsequently in 1994, the Planning Board approved a second preliminary plan to increase the development limits and in 1996 to revise the phasing and extend the validity period. Both of these preceded Council's 2<sup>nd</sup> resolution to create the development district, which was approved January 13, 1998.
- The Planning Board approved 2 site plans for the King Hargett property in August 1995, 1 year before the Council adopted its 1<sup>st</sup> resolution to consider creation of a development district (July 1996) and 2½ years before the Council adopted its 2<sup>nd</sup> resolution to create the district (January 1998).



**Exhibit A-3. Chronology of Regulatory for Artery Woodcliffe Park  
(King Hargett Property) Dec. 1993-Apr. 2005**

<b>Type Of Action</b>	<b>Document</b>	<b>Action/Event</b>	<b>Date</b>
Regulatory Review	Preliminary Plan 1-88216	Planning Board holds hearing on Preliminary Plan 1-88216 for King Hargett Property, filed August 16, 1988.	Dec. 9, 1993
	Preliminary Plan 1-88216	Planning Board mails Opinion approving Preliminary Plan for King Hargett Property, subject to 16 conditions. Condition #1 limits development to 459 units and provides for roadway improvements and building permit phasing as outline in Transportation Planning Division memo dated Dec. 3, 1993, revised on Dec. 8, 1993.	Jan. 11, 1994
Type of action unknown.	Preliminary Plan 1-88216	Planning Board actions on June 16, 1994 and June 30, 1994 approve 559 lots pursuant to FY94 AGP, including 459 approved dependent on certain roadway improvements and 100 under Limited Residential Development Option for the FY94 AGP (Planning Board Opinions mailed November 23, 1994 and July 2, 1996.)	June 16, 1994 June 30, 1994
Regulatory Review	Preliminary Plan 1-88216	Planning Board holds hearing on Preliminary Plan 1-88216, filed August 16, 1988.	Sept. 29, 1994
Type of action unknown.	Preliminary Plan 1-88216	Planning Board mails Opinion affirming development increases approved in June 1994 plus approval of 10 more units, bringing total development capacity to 569 units.	Nov. 23, 1994
Regulatory Review	Site Plan 8-95027	Developer's (Gateway Germantown LP) application for Site Plan 8-95027 is deemed complete.	Feb. 7, 1995
	Site Plan 8-95030	Developer's (Gateway Germantown LP) application for Site Plan 8-95030 is deemed complete.	Feb. 7, 1995
	Site Plan 8-95027	Planning Board holds hearing on Developer's (Gateway Germantown LP) application for Site Plan 8-95027.	June 1, 1995
	Site Plan 8-95030	Planning Board holds hearing on Developer's (Gateway Germantown LP) application for Site Plan 8-95030.	June 1, 1995
	Site Plan 8-95027	Planning Board mails Opinion approving Site Plan 8-95027 for Hoyles Mill Village Sec. 1 subject to 12 conditions.	Aug. 1, 1995
	Site Plan 8-95030	Planning Board mails Opinion approving Site Plan 8-95030 for Hoyles Mill Village Sec. 2 subject to 14 conditions.	Aug. 1, 1995
	Preliminary Plan 1-88216R	Planning Board holds hearing on developer's request to revise previous conditions of approval to propose a revised phasing plan and to request an extension of the validity period.	June 20, 1996
Development District	1 <sup>st</sup> Resolution	Developer files petition to establish "West Germantown Development District" with County Council.	June 21, 1996
Regulatory Review	Preliminary Plan 1-88216R	Planning Board mails Opinion approving Preliminary Plan 1-88216R for King Hargett Property pursuant to the FY94 AGP Alternative Review Procedures for Limited Residential Development, subject to 16 conditions.	July 2, 1996

**Exhibit A-3. Chronology of Regulatory for Artery Woodcliffe Park  
(King Hargett Property) Dec. 1993-Apr. 2005 (continued)**

<b>Type Of Action</b>	<b>Document</b>	<b>Action/Event</b>	<b>Date</b>
Development District	Petition #1	Council holds public hearing on Developer's petition	July 23, 1996
	Council's 1 <sup>st</sup> Resolution	Council adopts Resolution 13-636 stating its intent to create a development district. CE approved this resolution.	July 30, 1996
	Council's 2 <sup>nd</sup> Resolution	Council adopts Resolution 13-1135 to create WGDD.	Jan. 13, 1998
	Council's 3 <sup>rd</sup> Resolution	County Council adopts Res. 13-1398, Authorization of Special Obligations Bonds (West Germantown Infrastructure Improvements)	Aug. 4, 1998
Regulatory Review	Preliminary Plan 1-88216R	Developer's (Artery Hoyles Mill LLC) application to revise Preliminary Plan 1-88216R for King/Hargett Property is deemed complete.	Oct. 6, 1998
	Preliminary Plan 1-88216R	Planning Board holds hearing on developer's (Artery Hoyles Mill LLC) application to revise Preliminary Plan 1-88216R for King/Hargett Property.	Jan. 21,-1999
	Site Plan 8-95027A and 8-95030A	Planning Board holds hearing on Site Plans 8-95027A and 8-95030A, Hoyles Mill Village.	Jan. 21, 1999
	Site Plan 8-95027A and 8-95030A	Planning Board mails Opinion approving Site Plans 8-95027A and 8-95030A, Hoyles Mill Village, subject to 2 conditions. Condition #2 states that the conditions of approval that were part of the original approvals for Site Plan 8-95027 and 8-95030 remain in effect.	Feb. 26, 1999
	Preliminary Plan 1-88216R	Planning Board mails Opinion approving revisions to Preliminary Plan 1-88216R for King/Hargett Property subject to 2 conditions. Previous conditions of preliminary approvals as contained in Planning Board's Opinions dated 11-23-94 and 6-20-96 remain in effect.	May 5, 1999
	Site Plan 8-95030C	Planning Board holds hearing on Site Plan 8-95030C, Hoyles Mill Village Sec. II.	Sept. 13, 2001
	Site Plan 8-95030C	Planning Board mails Opinion approving Site Plan 8-95030C, Hoyles Mill Village Sec. II, subject to 5 conditions.	Sept. 27, 2001
	Preliminary Plan 1-88216R 1-01063 Site Plan 8-95030C	Developer's application to amend approved preliminary plans 1-88216R and 1-01063 and Site Plan 8-95030C to increase the impervious limit is deemed complete.	Date not available.
	Preliminary Plan 1-88216R 1-01063 Site Plan 8-95030C	Planning Board mails Opinion to approve developer's application to amend approved preliminary plans 1-88216R and 1-01063 and Site Plan 8-95030C to increase the impervious limit, per copy of staff report dated April 21, 2005. (Specific date not available.)	2005

Source: M-NCPPC DAIC

**Regulatory Approvals for Arcola Woodcliffe Park (Kings Crossing)**

In March 1995, the Planning Board held a hearing on the Preliminary Plan application for the Kings Crossing property (#1-88006). On March 21, 1995, the Planning Board mailed an Opinion approving the development of Kings Crossing subject to 16 conditions.

Condition #1 limited development to 816 units. That condition also required the issuance of building permits for the project to be phased with the required roadway improvements, as outlined in 3 memoranda from the Transportation Planning Division dated February 17, 1995, March 9, 1995, and March 10, 1995. Condition #16 made the approval valid until April 21, 1998.

In October 1995, the Planning Department deemed the property owner's site plan application for Kings Crossing to be complete (Site Plan 8-96011). On March 21, 1996, the Planning Board approved the Site Plan for Kings Crossing, subject to 15 conditions.

Subsequently, the property owner filed an application to amend the approved Site Plan (#81996011D). On February 10, 2006, the Planning Board mailed an Opinion approving Site Plan 81996911D, Kings Crossing Moderately Priced Dwelling Units (MPDUs), subject to 14 conditions.

**3b. Did the Planning Board's preliminary plan and site plan approvals for the Arcola Woodcliffe Park project occur before or after the Council's adoption of the resolution to create the development district?**

**Exhibit A-4** presents the chronology of regulatory approvals for the King Crossing's property and the dates the Council adopted its resolutions to initiate and establish the WGDD. **Exhibit A-4** shows the following:

- An initial preliminary plan for the property was approved in March 1995, 1 year and 4 months before the Council adopted its 1<sup>st</sup> resolution to consider creation of a development district (July 1996) and 2 years and 10 months before the Council adopted its 2<sup>nd</sup> resolution to establish the district (January 1998).
- The Planning Board approved a Site plan for the Kings Crossing (8-96011) property in March 1996, 4 months before the Council adopted a resolution to consider creation of a development district (July 1996) and 1 year and 10 months before the Council adopted a resolution to create the WGDD (January 1998).
- In February 2006, almost 10 years after the Council adopted its 2<sup>nd</sup> resolution to establish the WGDD (July 1996), the Planning Board approved a Site Plan amendment to permit development of MPDUs.

**Exhibit A-4. Chronology of Regulatory for Arcola Woodcliffe Park (King Crossing Property) March 1995-February 2006**

<b>Type Of Action</b>	<b>Document</b>	<b>Action/Event</b>	<b>Date</b>
Regulatory Review	Preliminary Plan 1-88006	Planning Department deems developer's Preliminary Plan Application for Kings Crossing to create 816 lots on 414 acres to be complete.	Jan. 7, 1988
	Preliminary Plan 1-88006	Planning Board holds hearing on Preliminary Plan application for Kings Crossing.	March 16, 1995
	Preliminary Plan 1-88006	Planning Board mails Opinion approving the Preliminary Plan for Kings Crossing, subject to 16 conditions. Condition #1 limits development to no more than 816 dwelling units and provides for the necessary roadway improvements and building permit phasing as outlined in Transportation Planning Division memos dated Feb. 17, 1995, March 9, 1995 and March 10, 1995.	March 21, 1995
	Site Plan 8-96011	Planning Department deems developer's Site Plan application for Kings Crossing to be complete.	Oct. 27, 1995
	Site Plan 8-96011	Planning Board mails Opinion approving the Site Plan for Kings Crossing, subject to 15 conditions.	March 21, 1996
Development District	Petition #1	Council holds public hearing on developers' initial petition for the WGDD.	July 23, 1996
	Council's 1 <sup>st</sup> Resolution	Council adopts Resolution 13-636 stating its intent to create a development district. CE approved this resolution.	July 30, 1996
	Council's 2 <sup>nd</sup> Resolution	Council adopts Resolution 13-1135 to create WGDD with note that GFS Realty and property owners for Kingsview wished to delay creation of district for Kingsview Village Center properties. District includes properties owned by Arcola Investment Associates, Artery Hoyles Mill LLC and Mr. and Mrs. Robert Sisson. It consists of 670.7 acres and 2 improvement areas.	Jan. 13, 1998
	Council's 3 <sup>rd</sup> Resolution	County Council adopts Res. 13-1398, Authorization of Special Obligations Bonds (West Germantown Infrastructure Improvements).	Aug. 4, 1998
Regulatory Review	Site Plan 81996011D	Developer's filed Site Plan application for Kings Crossing MPDUs is deemed complete.	Date not available.
	Site Plan 81996011D	Planning Board mails Opinion approving Site Plan 81996011D, Kings Crossing MPDUs, subject to 14 conditions.	Feb. 10, 2006

Source: M-NCPPC Development Approval Information Center.

**B. Evolution of Infrastructure Items Approved for Funding in the WGDD**

The process to create a development district incorporates multiple of lists of infrastructure items to be financed by the development district. Publication of these infrastructure lists occur when:

- The developer submits an initial petition to Council;
- The developer submits a provisional adequate public facilities (PAPF) application to the Planning Board;
- The Executive prepares his Fiscal Report; and
- The Council adopts the 2<sup>nd</sup> resolution.

This section examines how the lists of infrastructure items to be funded by the WGDD evolved. The source documents for this review include the developer's initial petition, the developer's PAPF application, the Planning Board's PAPF approval letter to the County Executive, the Executive's Fiscal Report, and the Council's resolutions.

**Exhibit B-3** (on pages 2B-12 and 2B-13) summarizes the developer's initial infrastructure funding requests, the recommendations made by the Planning Board and the Executive, and the items the Council approved for funding. The sections that follow provide more detail about the proposed improvements and the rationale for each recommendation.

**1. What infrastructure items did the developers propose for development district financing in their initial petition for a development district?**

The petition the developer filed for development district financing proposed 8 transportation improvements, 3 water and sewer improvements, and 2 "other improvements".

**Exhibit B-1** (on the next page) uses excerpts from the developers' initial petition to describe each of those items in more detail.

**Exhibit B-1. Items Proposed for District Financing – Owners’ Initial Petition**

<b>Item</b>	<b>Transportation Improvements</b>
Richter Farm Road (A-297)	“Includes construction grading of four lanes and paving of two lanes (or if the County participates in the District, paving of four lanes) from Clopper Road to MD Route 118 (with participation by other party, Kingsview Village) and participation in the reimbursement of construction costs from MD 118 to Great Seneca Highway”.
Schaeffer Road	“Construct pavement widening and half section roadway improvement along western side from Hoyles Mill Road to southern property line of Hoyles Mill Village”.
Hoyles Mill Road (A-298) and Kings Crossing Blvd	“Includes partial roadway construction and road widening of Hoyles Mill Road from Richter Farm Road to Schaeffer Road (per the Planning Board Opinion approving Site Plan 8-95030); full roadway construction of Kings Crossing Boulevard from Richter Farm Road to the park property; full roadway construction of A-298 as a two-lane arterial from Great Seneca Highway to a point where adjacent property owner construction commences; and right of way acquisition and construction for Hoyles Mill Road (per the Planning Board Opinion approving Preliminary Plan #1-95011)”.
Mateney Road	“Participation in the reimbursement of construction costs between Great Seneca Highway easterly to existing segment (per the Planning Board Opinion approving Preliminary Plan #1-88006)”.
Clopper Road (MD Route 117)	“Includes participation in construction of intersection improvements at Richter Farm Road and Hopkins Road including the construction of an eastbound acceleration/deceleration and a left-turn bypass lane on Route 117 at the intersection with Rt. A-297 and a left turn bypass lane on eastbound Route 117 at the intersection of Hopkins Road (per the Planning Board Opinion approving Preliminary Plan #1-88006); participation in the relocated MD Route 118 project, including reimbursement to the County for a portion of the intersection improvements incorporated into the County’s MD 118 Relocated project (as discussed per memorandum from Craig Hedberg to Bud Liem, dated July 11, 1995 per the Planning Board Opinion approving Preliminary Plan #1-88216); and the widening of MD Rt. 117 from MD Rt. 118 to Great Seneca Highway, with streetscape improvements (per the Planning Board Opinion approving Preliminary Plan #1-95011)”.
Great Seneca Highway	“Intersection improvements at MD Route 117, including right turn lane on northbound Great Seneca Highway to eastbound MD Rt. 117 (per the Planning Board Opinion approving Preliminary Plan #1-95011); and construction of acceleration lane from eastbound proposed A-297 to southbound Great Seneca Highway (per the Planning Board Opinion approving Preliminary Plan #1-88006)”.
Route A-270	“Construction of proposed A-270 to arterial road standards with 80 feet of right of way from MD Rt. 117 to site boundaries (per the Planning Board Opinion approving Preliminary Plan #1-95011)”.

**Exhibit B-1. Items Proposed for District Financing – Owners’ Initial Petition (continued)**

<b>Item</b>	<b>Water And Sewer Improvements</b>
Park and Ride lot -	“Dedication of 150 acre Park and Ride lot at the southwest corner of the intersection of MD Rt. 117 and proposed A-270 (per the Planning Board Opinion approving Preliminary Plan #1-95011), with County to fund all construction costs thereof”.
Hoyles Mill Wastewater Pumping Station	“(WSSC CIP Project No. S-84.21) and Force Main (WSSC CIP Project B No. S-84.22) – includes full construction”.
Interim Wastewater Pumping Station	“(WSSC CIP Project No. S-82.13) and Force Main (WSSC CIP Project No. S-82.14) - includes full construction”.
Outfall Sewer	“Includes construction of sanitary sewer outfall to the Hoyles Mill Wastewater Pumping Station (per WSSC authorization #96-1517A & #94-9988L.)
<b>Item</b>	<b>Other Improvements</b>
Stormwater management	“Offsite construction of stormwater facility for Kingsview Village Center”.
Local parks	“Includes construction of local parks, pedestrian walkways and bike paths on and adjacent to Kings Crossing, Hoyles Mill Village and Kings Village Center properties as referenced in the Planning Board Opinion approving Preliminary Plan #1-88216, #1-88006 and #1-95011 (with County to fund construction costs of Kings Village Center park.)”

Source: Petition for development District filed by West Germantown Development District Association, Inc. Arcola Investment Associates, West Germantown L.P., Schaeffer Road, L.L.C., GFS Realty, Inc., John N. & Mary S. Deoudes, Clopper Realty Joint Venture, LLC, Adrienne Wear, Schedule B, filed June 21, 1996.

A memorandum from Council staff to the full Council compared the infrastructure the petitioner proposed for funding in the development district application to infrastructure that would have been provided through the regulatory process. Council staff stated:

The development district application includes less of a contribution to public infrastructure cost than the current subdivision approvals call for, in at least two ways. First of all, while these developers must now construct all 4 lanes of Richter Farm Road within their properties as a condition of their respective subdivision approvals, the development district application would have them construct 2 lanes and grade the remaining 2 lanes.

Furthermore, of the \$13 million in road improvements proposed, virtually none of them are in the Germantown Impact Tax Program, which means that – without a development district—these developers would normally be expected to construct the \$13 million of improvements and pay their impact taxes. At current impact tax rates in Germantown, the 1,606 dwelling units and 114,000 square feet of retail space would generate approximately \$3.8 million in impact tax revenue.

However, development district payments are credited against impact tax payments, which means that the \$3.8 million revenue anticipated from these developments to fund impact tax roads would evaporate. All else being equal, half that cost would ultimately be absorbed by future impact tax payers in Germantown (in the form of slightly higher rates) and half would be absorbed by general County revenue.

Before proceeding with final approval of a district, the Planning Board and the Executive should compile a strict accounting of all the contributions from the developers that would be included in the district, with and without the district.<sup>8</sup>

At the end of the packet, Council staff noted that a benefit of the development district is that it would produce a more coordinated build-out than if each development were to proceed independently.

**2. Did the infrastructure included in the developer's PAPF application differ in any way from the list included in the developer's initial petition?**

The infrastructure list in the developer's PAPF application filed with the Planning Board was identical to the infrastructure list filed in the Council's initial petition; however, according to the developer, this infrastructure list had 1 less improvement than the aggregate lists of infrastructure requirements in the preliminary plan conditions for the projects in the proposed development district. In a cover memorandum for the PAPF application, the developer stated:

Attached as Exhibit "I" is a list of the proposed infrastructure improvements which the Petitioners of the District propose to construct or otherwise provide in connection with the development of the area. This list of infrastructure improvements is an aggregation of the previously approved preliminary plan conditions for King's Crossing (#1-88006), Hoyles Mill Village (#1-88216) and Kingsview Village Center (#1-95011), with one exception...

This change involves the paving of Richter Farm Road or A-297 from Clopper Road to MD 118. The preliminary plans (together with the preliminary plan of another developer who is not a Petitioner) require A-297 to have four (4) paved lanes. The Applicants propose grading four (4) lanes, but paving only two (2), as well as participating in the construction of A-297 from MD Route 118 to Great Seneca Highway<sup>9</sup>

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<sup>8</sup> Memorandum to County Council from Glenn Orlin, Deputy Council Staff Director, re Action – Resolution indicating the Council's intent to create a Germantown West Development District, July 26, 1996, p.3.

<sup>9</sup> Letter to Charles R. Loehr from Stephen Z. Kaufman and John R. Orrick, Jr. re Application for Adequate Public Facilities Approval West Germantown Development District, October 4, 1996, p.2.



**3. What infrastructure items did the Planning Board approve for funding through the development district?**

The Planning Board considered the developer's PAPF application at a public meeting held October 31, 1996 and transmitted its recommendation to the County Executive on November 6, 1996. The Planning Board added 2 intersection improvements and an elementary school to the list of infrastructure improvements proposed by the developer.<sup>10</sup>

The Board approved the Planning staff's recommendation to approve the adequate public facilities analysis subject to 5 conditions.

- Condition #3 required "all improvements shown in the development district application to be included";
- Condition #4 required "additional intersection improvements at Great Seneca Highway/A-297 and MD 118/A-297 as described in Transportation Planning Division Memorandum of October 22, 1996"; and
- Condition #5 required "a new elementary school as described in Montgomery County Public Schools Memorandum of October 14, 1996".<sup>11</sup>

The Planning staff report stated the role of the Planning Board was to identify the public facilities needed to support buildout of the development district, and that the AGP contained the criteria the Planning Board must use to evaluate adequacy. Planning staff stated that the transportation test was essentially the same as that used for subdivision review, but that the tests for schools, water and sewer, and police, fire, and health were more stringent than those applied at subdivision.

The Planning staff report also included memoranda from agency staff presenting the results of various facility analyses. Specifically:

- Planning Board staff's transportation analysis found the infrastructure proposed for the development district would be adequate with the addition of 2 intersection improvements;
- MCPS staff's school analysis concluded a new elementary school would be needed;
- WSSC staff's water and sewer analysis found additional facilities that were programmed and fully funded in the CIP would address the inadequacies of the existing facilities; and

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<sup>10</sup> The transportation items the Board added were intersection improvements at Great Seneca Highway/A-297 and MD 118/A-297 and a lower taper of A-297. The Board also expanded the scope of the local park improvement to require development district reimbursement of the project's professional service fees. In response to this addition, after the Board transmitted its recommendations to the Executive, the developer added an item to request reimbursement.

<sup>11</sup> Montgomery County Planning Board, Approved Minutes for October 31, 1996, Item #16, Adequate Public Facilities Review for West Germantown Development District, p.11.

- Executive staff found police, fire, and health facilities would be adequate.

A memorandum from the Transportation Planning Division to the Chief of Development Review dated October 22, 1996 concluded that:

The Development District meets the APFO review requirements with implementation of all roadway improvements as previously conditioned upon their subdivision approvals and the reduced A-297 construction including additional intersection improvements as described in this memo.<sup>12</sup>

On July 31, 1997, the Planning Board voted to remove the new elementary school from the list of public facilities necessary to support buildout of the development district. This action was based on a revised analysis from Montgomery County Public Schools that showed that existing and programmed school facilities would be adequate to support the development district growth, using the AGP guidelines. The Planning staff report explained that the original MCPS recommendation had considered only the capacity of schools serving the proposed development, whereas the Annual Growth Policy required the capacity of all schools in the cluster to be considered. Given this error in calculation, the applicant had asked the Planning Board to reconsider its recommendation.

**4. What infrastructure items did the Executive recommend that the development district fund?**

The Executive added infrastructure items for development district financing to ensure that the development district would be used to fund long term infrastructure items with a broader scope of needs than those required through the APFO. The specific "general benefit" items the Executive added were:

- Paving for an additional 2 lanes for 2 segments of Richter Farm Road, from MD 117 to Schaeffer Road, and from Schaeffer Road to MD 118 (Item 1);
- An enhanced scope of improvements for Leaman Farm Road (A-298) (No item number); and
- An enhanced scope of improvements for local parks (Item 13).

The Executive recommended removing 11 items that the developer had requested and the Planning Board had recommended for development district financing. These were a mix of

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<sup>12</sup> Memorandum to Charles R. Loehr, Development Review Division from Ki H. Kim, Transportation Planner, Transportation Planning Division dated October 22, 1996. The memorandum identifies the developments proposed for the development district are Kings Crossing, Hoyles Mill Village, and Kingsview Center, and states the developments have received APF approval with a condition to provide a package of roadway improvements. It goes on to state that the applicants of the development district "are now proposing a package of roadway improvements that are different from the conditions of their subdivision approvals, and the main difference involves construction of roadway A-297 as a two-lane roadway instead of a four-lane roadway".

items the Executive was not willing to fund (e.g., professional service fees, items removed to improve the overall affordability of the development district, and items the developer had identified as opportunities for County participation). The specific items the Executive recommended for deletion were:

- Reimbursement for the 4 lane portion of MD 118 to GSH (Item 1);
- Hoyles Mill Road and King's Crossing Boulevard (Item 5);
- Mateney Road (Item 6);
- Great Seneca Highway (Item 8);
- The Park and Ride Lot (Item 10);
- A-297 Lower Taper Extension (no item number);
- The contribution to the off-site stormwater management facility (Item 12);
- The Planning Board's request for professional services fees (Item 13a);
- The developer's request to be reimbursed for WSSC Review Fees (Item 13b);
- The Interim Pumping Station (Item 3); and
- The outfall sewer (Item 11).

The Executive's Fiscal Report presented the reasons for the Executive's modifications to the development district. It explained that the Executive's goal was to "find a plan that allows significant and valuable development to move forward while at the same time assuring the appropriate balance of benefits and risks". To achieve this goal, the Executive:

- Reduced the amount of required financing and tax burden on future homeowners in the district by one-third; and
- Added infrastructure items that he characterized as "general benefit improvements"(e.g., a major 4 lane arterial road through the development and 2 local parks).

The discussion of the inclusion of general benefit improvements in the Executive's Fiscal Report recapped the Council's intent to use development districts to fund long term infrastructure improvements to address a broader scope of needs and facility types than that required by the APFO review. The Executive stated that a second objective, consistent with the Council's concept, was to ensure that developers did not unduly benefit from development district financing and that overall costs to future homeowners did not increase.

In the Executive's view, the impact tax credit provided a clear benefit to the petitioners of the WGDD (estimated at \$2.9 million). Moreover, the list of infrastructure improvements proposed by the developers did not provide sufficient benefit to the other taxpayers in the Germantown impact tax area to balance this benefit. To correct this imbalance, the Executive recommended:

That any package of infrastructure improvements funded through a West Germantown Development District include general benefit improvements in an amount at least approaching the amount of impact tax credit received by the developers. Specifically, the County Executive recommends including in the infrastructure package the funding and construction of A-297 as a four-lane, rather than two-lane roadway from MD 117 to MD 118, the construction of transportation infrastructure that would support future County Government development adjacent to the Kingsview Village Center property, and the improvements to two local parks in the King's Crossing and Hoyle's Mill Village developments.<sup>13</sup>

To fit these general benefit improvements into the reduced amount of financing that the Executive had established to make the development district tax rates affordable for future homeowners, the Executive removed several items for district financing which the developers had originally proposed. The explanation in the Executive's Fiscal Report states:

Because the amount available for acquisition of infrastructure improvements is less than that originally proposed by the developers, the County Executive has worked with the developers to prioritize infrastructure items for financing through the district. A detailed list of infrastructure improvements recommended by the County Executive for financing through the development district and their most current cost estimates is presented at Table C. The Executive has insisted that A-297 be constructed at its four, rather than two-lane cross section consistent with the Master Plan for the Germantown West Policy Area, and that the local parks for King's Crossing and Hoyles Mill Village be improved at a standard consistent with other public use local parks implemented by M-NCPPC. These priorities are reflected in the recommended infrastructure list. To the extent that the items cost less than estimated at the time of the bond issue, the proceeds would be available to fund other infrastructure items that were not included.<sup>14</sup>

The Executive's Fiscal Report indicates that the Executive conducted his analysis pursuant to Section 14-8 of the Montgomery County Code, Chapter 14, Development District Act. The Fiscal Report included comments from WSSC and MCPS, a table of cost estimates, a calculation of impact tax credits, and cost estimates for the County Executive's recommended items. The Executive's Fiscal Report did not address the regulatory approvals the infrastructure items had received or the underlying basis for these approvals.

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<sup>13</sup> County Executive's Fiscal Report West Germantown Development District, September 29, 1997, p.11.

<sup>14</sup> *Id.* at 13.

**5. What infrastructure items did the Council decide to fund through the development district?**

The Council held a public hearing on the 2<sup>nd</sup> resolution to establish the WGDD on November 6, 1997. Subsequently, the Management and Fiscal Policy Committee held 2 worksessions on the proposed WGDD, followed by a full Council worksession on December 9, 1997.

The resolution the Council introduced for public hearing purposes divided the proposed development district into 2 areas, each with its own infrastructure list:

- Improvement Area I encompassed the King's Crossing and Hoyles Mill Village projects; and
- Improvement Area II encompassed the Kingsview Village Center project.

The resolution also presented 2 options for the list of infrastructure for Improvement Area I:

- Option A, the Developer's Option, proposed the development district fund 3 segments for Richter Farm Road (A-297) plus an outfall sewer; and
- Option B, the Executive's Recommended Option, proposed the development district fund a fourth segment of Richter Farm Road in place of the outfall sewer.

The infrastructure list for Improvement Area II consisted of 3 transportation improvements:

- A-298 Leaman Farm Road (Item 5) at an estimated cost of \$1.641 million;
- Clopper Road (MD 117) (Item 7) at an estimated cost of \$1,117 million; and
- A-270 Kingsview Village Avenue (Item 9) at an estimated cost of \$519,882.

The Council staff memorandum for the full Council worksession reported the following updates of issues that had been discussed previously:

- The developers accepted the Executive's infrastructure recommendations. Council staff stated, "most importantly, the developers agreed to fund the completion of all 4 lanes of Richter Farm Road (A-297) entirely through the district and agreed to fund an outfall sewer privately, rather than through the district".

**Appendix 2B. Fact Finding for the West Germantown Development District**

- Kingsview Village Center withdrew from the district because its primary developer, GFS Realty Inc., was not ready to proceed. Council staff stated that the area could be included in a later district, and that the deletion of GFS led to a minor change in the road improvement package required by the Planning Board. A memorandum from Transportation Planning stated, based on a review of the traffic impact study used in the last Planning Board discussion of the WGDD, a second eastbound left-turn lane along Richter Farm Road (A-297) at Great Seneca Highway was no longer needed.

Resolution 13-1135, which established the WGDD, identified 4 infrastructure items to be funded by the WGDD. The cost of the improvements was estimated at \$12.8 million, and the WGDD was expected to cover 100% of those costs.

The Council also approved a list of 13 items that could be funded if cost savings resulted. The items, which were listed in priority order, had an estimated cost of \$3.5 million.

**Exhibit B-2. Items Approved for WGDD Financing – Council Resolution 13-1135**

	<b>Item</b>	<b>Estimated Cost</b>	<b>% Cost funded by District</b>	<b>Est. Completion Date</b>
1a.	Richter Farm Road A-297 MD 117 to Schaeffer Road (2 lanes)	\$4,124,866	100%	Dec. 1999
1b.	Richter Farm Road A-297 – MD 117 to Schaeffer Road (additional 2 lanes)	\$1,100,000	100%	Dec. 1999
1c.	Richter Farm Road A-297 – Schaeffer Road to MD 118 (2 lanes)	\$1,791,098	100%	Dec. 2001
1d.	Richter Farm Road A-297- Schaeffer Road to MD 118 (additional 2 lanes)	\$364,949	100%	Dec. 2001
	Schaeffer Road (Item 4)	\$992,244	100%	Nov. 1998
	Local Parks (Item 13)	\$620,000	100%	Dec. 2003
	Hoyles Mill Wastewater Pumping Station/Force Main (Item 2)	\$3,838,020	100%	Dec. 1998
	<b>Total Cost</b>	<b>\$12,831,177</b>		

Source: Resolution 13-1135, Exhibit D, adopted January 1998.

**6. How did the list of infrastructure items that the Council approved compare to the list recommended by the Executive?**

The infrastructure items the Council approved for development district financing differed substantially from the list recommended by the Executive. Specifically, the Council:

- Affirmed the Executive's recommendation to add 2 additional lanes to each of the segments of Richter Farm Road which the developer had initially proposed for 2 lanes only (Items 1b and 1d);
- Affirmed the Executive's recommendation's to delete 11 items to improve the affordability of the development district and to reflect the County's decision not to participate (Items 1e, 2, 3, 5; 6, 8, 10, 11, 12, and 14); and
- Deleted 3 items that were no longer needed because of GFS Realty's decision to withdraw from the development district (Item 1f, A-298 Leaman Farm Road, and Item 9).

**Exhibit B-3** (on the next 2 pages) displays the item by item changes through the various phases of the district process.

**Exhibit B-3. Infrastructure Items to be Funded By the WGDD - Initial Petition to Final Approval**

<b>Item # in Initial Petition</b>	<b>Infrastructure Item</b>	<b>Developers' Initial Petition (Sch. B)</b>	<b>Developers' PAPF Application (Exh. I)</b>	<b>Planning Boards' PAPF Letter</b>	<b>County Exec's Fiscal Report (Table C)</b>	<b>Res. 13-1135 (Exh. D only)</b>
<b>Transportation Improvements</b>						
<b>1</b>	<b>Richter Farm Rd A-297</b>					
	1a. MD 117 to Schaeffer (construction grading of 4 lanes and paving of 2 lanes)	Yes	Yes	Yes	Yes	Yes
	1b. MD 117 to Schaeffer (paving of 2 additional lanes)	No	No	No	Yes	Yes
	1c. Schaeffer to MD 118 (construction grading of 4 lanes and paving of 2 lanes)	Yes	Yes	Yes	Yes	Yes
	1d. Schaeffer to MD 118 (paving of 2 additional lanes)	No	No	No	Yes	Yes
	1e. KC (Kings Crossing) and HMV (Hoyles Mill Village) contribution towards 4 lane portion from MD 118 to GSH (Great Seneca Highway)	Yes	Yes	Yes	No	No
	1f. Less KV (Kingsview Village) reimbursement for A-297	No	No	No	Yes	No
4	Schaeffer Road	Yes	Yes	Yes	Yes	Yes
5	Hoyles Mill Road and King's Crossing Blvd	Yes	Yes	Yes	No	No
N.A.	Leaman Farm Road (A-298)	Yes	Yes	Yes	Yes	No
6	Mateney Road	Yes	Yes	Yes	No	No
7	Clopper Road (MD 117)	Yes	Yes	Yes	Yes	No



**Exhibit B-3. Infrastructure Items to be Funded By the WGDD - Initial Petition to Final Approval (Continued)**

<b>Item # in Initial Petition</b>	<b>Infrastructure Item</b>	<b>Developers' Initial Petition (Sch. B)</b>	<b>Developers' PAPF Application (Exh. I)</b>	<b>Planning Boards' PAPF Letter</b>	<b>County Executive's Fiscal Report (Table C)</b>	<b>CC's Res. #13- 1135 (Exh. D only)</b>
<b>Transportation Improvements</b>						
8	Great Seneca Highway (GSH)	Yes	Yes	Yes-Modified	No	No
9	A-270 Kingsview Village Avenue	Yes	Yes	Yes	Yes	No
10	Park and Ride Lot	Yes	Yes	Yes	No	No
N.A.	A-297 Lower Taper Extension	No	No	Yes-Added	No	No
<b>Other Improvements</b>						
12	Contribution to Off-site Stormwater Management Facility	Yes	Yes	Yes	No	No
13	Local Parks	Yes	Yes	Yes	Yes	Yes
N.A.	Professional Services (Legal and Engineering)	No	No	Yes	No	No
N.A.	WSSC Review Fees <sup>15</sup>	Not initially	Not initially	No	No	No
N.A.	Elementary School	No	No	Yes/No <sup>16</sup>	No	No
<b>Water And Sewer Improvements</b>						
2	Hoyles Mill Wastewater Pumping Station/Force Main	Yes	Yes	Yes	Yes	Yes
3	Interim Pumping Station	Yes	Yes	Yes	No	No
11	Outfall Sewer	Yes	Yes	Yes	No	No

Source: Developers' initial petition filed June 21, 1996 (Schedule B), Developers' PAPF Application filed October 3, 1996, (Exhibit I), Letter from William H. Hussmann to Douglas M. Duncan dated Nov. 6, 1996, County Executive's Fiscal Report (Table C), and Council Resolution 13-1135 Exhibit D.

<sup>15</sup> According to the County Executive's Fiscal Report, the developers' requested reimbursement of WSSC Review fees at an estimated cost of \$400,000 after the Planning Board had submitted its recommendation to the Executive.

<sup>16</sup> The Planning Board's initial PAPF letter recommended an elementary school for development district financing. A follow-up letter subsequently recommended dropping this requirement.

**C. OLO's Review of the Regulatory Requirements for the Arcola and Artery Woodcliffe Park Projects and the WGDD Infrastructure Items**

At the request of Council staff, OLO conducted a review of Planning Board regulatory documents for the Arcola Woodcliffe Park and Artery Woodcliffe Park projects. OLO's review included the Planning Board's Preliminary Plan and Site Plan Opinions for the Arcola Woodcliffe Park and Artery Woodcliffe Park projects, plus Transportation Planning Division memoranda referenced in the Board's Opinions. OLO did not review plan drawings, signature set documents, or other agency letters in the subdivision file.

Council staff asked OLO to identify references to any of the infrastructure items approved for funding by the WGDD, and answer 3 questions which are listed below. **Exhibit C-1** (on the next page) presents a summary chart of the references, followed by a detailed review for each of the infrastructure items listed below.

<b>Item #</b>	<b>WGDD Infrastructure Item</b>
1	Richter Farm Road (A-297): <ul style="list-style-type: none"><li>• 2 lanes from MD 117 to Schaeffer Road</li><li>• 2 additional lanes from MD 117 to Schaeffer Road</li><li>• 2 lanes from Schaeffer Road to MD 118</li><li>• 2 additional lanes from Schaeffer Road to MD 118</li></ul>
2	Schaeffer Road
3	Local Parks
4	Hoyles Mill Wastewater Pumping Station/Force Main

The detailed presentations begin with a description of the project scope for development district infrastructure item, followed by answers to 3 questions:

1. What developer obligations related to this development district infrastructure item did the Planning Board establish as a result of its regulatory approvals and what are the specific references to these obligations in the regulatory record?
2. How do these developer obligations relate to the implementation of this development district infrastructure item?
3. What does the regulatory record show about whether the Planning Board established these obligations to comply with site plan or APF requirements?

**Exhibit C-1** summarizes the references to the WGDD Infrastructure Items in the regulatory approval documents. The requirements are summarized in the footnotes. They call for right-of-way dedication, provision of the facility, construction or participation in an agreement, and phasing.

**Exhibit C-1. References to WGDD Infrastructure Items in the Regulatory Approval Documents**

<b>Arcola Woodcliffe Park (Kings Crossing)</b>		
<b>WGDD Infrastructure Items</b>	<b>Are there references to this item in the conditions of approval for . . .</b>	
	<b>Preliminary Plan (1-88006)</b>	<b>Site Plan (8-96011)</b>
Richter Farm Road	Yes <sup>17</sup>	No
Schaeffer Road	No	No
Local Parks and Paths	No <sup>18</sup>	Yes <sup>19</sup>
Hoyles Mill Wastewater Pumping Station/Force Main	No	No
<b>Artery Woodcliffe Park (King Hargett)</b>		
<b>WGDD Infrastructure Items</b>	<b>Are there references to this item in the conditions of approval for . . .</b>	
	<b>Preliminary Plan (1-88216 and 1-88216R)</b>	<b>Site Plan (8-95027 and 8-95030)</b>
Richter Farm Road	Yes <sup>20</sup>	Yes <sup>21</sup>
Schaeffer Road	Yes <sup>22</sup>	No
Local Parks and Paths	No <sup>23</sup>	Yes <sup>24</sup>
Hoyles Mill Wastewater Pumping Station/Force Main	No	No <sup>25</sup>

<sup>17</sup> #1-88006 Recommendation #2 in a February 17, 1995 Transportation Planning Division memorandum requires the developer to participate in the construction of Richter Farm Road; Condition #3 requires all necessary roadway improvements.

<sup>18</sup> #1-88006, Condition #10 requires final delineation of the park boundary to be established at site plan.

<sup>19</sup> #8-96011 Condition #14 requires provision of paths and a play area.

<sup>20</sup> #1-88216 Condition #1 requires all necessary roadway improvements; 1-88216R Conditions #6a and 7 require the developer to construct a road or enter into a participation agreement.

<sup>21</sup> #8-95027 Sec. 1 and #8-95030 Sec. 2 Condition 1.c requires construction or participation in transportation improvements and compliance with the Germantown West Improvements/Development Phasing Program.

<sup>22</sup> #1-88216 Condition #1 requires all necessary roadway improvements.

<sup>23</sup> #1-88216 and 1-88216R Condition 5 requires establishment of final location.

<sup>24</sup> #8-95027 Sec. 1 and #8-95030 Sec. 2 Condition 1.c requires the development program to include phasing for construction of pedestrian pathways and recreation facilities.

<sup>25</sup> #8-96011 Condition #8 requires plan review; it does not address construction.

**WGDD Item #1 –  
Richter Farm Road (A-297)**

**Project Scope Background.** Richter Farm Road is a 4-lane arterial roadway within a 100' right-of-way. The initial petition filed by the developer proposed construction grading of 4 lanes and paving of 2 lanes from Clopper Road to MD 118, plus reimbursement of construction costs from MD 118 to Great Seneca Highway. The Executive modified the project scope to add paving of 2 additional lanes from Clopper Road to MD 118 and to delete the reimbursement of construction costs from MD 118 to Great Seneca Highway. The Council approved the list of infrastructure as modified by the Executive.

**1. What references to Richter Farm Road (A-297) are in the Planning Board Opinions for the Arcola Woodcliffe and Artery Woodcliffe Projects?**

The Planning Board's Opinions granting regulatory approvals for the Artery Woodcliffe and Arcola Woodcliffe project identify Richter Farm Road in multiple conditions of approval.

The conditions of approval for Arcola Woodcliffe Park Project obligate the developer to dedicate right-of-way and "provide the necessary roadway improvements between Clopper Road and Great Seneca Highway". The conditions of approval for the Artery Woodcliffe project require the developer to dedicate 100' right-of-way and either initiate construction or enter into a road construction participation agreement.

Below are excerpts from Preliminary Plan Opinions 1-88006, 1-88216, and 1-88216R and from Site Plan Opinions 8-95027 and 8-95030.

Arcola Woodcliffe Park. Conditions #1, #3, #5 and #6 in Planning Board's Opinion 1-88006, the Preliminary Plan approval for the Arcola Woodcliffe Park Project, address development district infrastructure item A-297. The relevant language states:

[T]he Montgomery County Planning Board finds Preliminary Plan 1-88006 to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) and approves Preliminary Plan 1-88006, subject to the following conditions:

- 1) Agreement with Planning Board to limit development to no more than 816 Dwelling Units and provide for the necessary roadway improvements and building permit phasing as outlined in Transportation Division memos dated 2-17-95 as revised 3-9-95 and new memo dated 3-10-95.
  
- 3) Dedication of all required rights-of-way (A-297) and other areas to accommodate other public facilities together with first record plat approval and recordation.

*Appendix 2C. Fact Finding for the West Germantown Development District*

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- 5) Final determination to the type of crossing structure for A-297 over the northern unnamed tributary of Little Seneca Creek to be approved at site plan.
- 6) Details of noise berms along A-297 will be revised and approved at site plan.

Condition #1 “obligates the developer to provide necessary roadway improvements and building permit phasing” as outlined in 3 separate Transportation Planning Division memoranda. These Transportation memoranda contain the following requirements related to A-297.

Recommendation #2, in the February 17, 1995 Transportation Planning memorandum, obligates the developer to “participate in constructing Richter Farm Road (A-297) as a 4-lane arterial between MD 117 and Great Seneca Highway”. The recommendations that follow require these construction improvements to be completed in 3 segments:<sup>26</sup>

- The first segment, between Great Seneca Highway and the Kings Crossing Property, must be under construction prior to the release of the first building permit (Recommendation #3).<sup>27</sup>
- The second segment, from the Kings Crossing Property west to Clopper Road (MD 117), must be under construction prior to release of the 551<sup>st</sup> building permit (Recommendation #5).<sup>28</sup>

Additionally, construction of an acceleration lane from eastbound A-297 to southbound Great Seneca Highway must also be under construction before release of the 551<sup>st</sup> building permit (Recommendation 6).<sup>29</sup> Finally, the applicant must agree to complete all roadway design work and have it approved by the Planning Board before the issuance of any building permits.

The March 9, 1995 Transportation Planning Division memorandum modified the phasing to allow the applicant to proceed with the first 44 dwelling units prior to the construction of any roadway improvements. (Condition #8).<sup>30</sup>

The Transportation Planning Division memorandum dated March 10, 1995 added 2 more conditions of approval; one of these related to Richter Farm Road. Condition #9 required the construction of an eastbound acceleration/deceleration lane and a left-turn bypass lane on

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<sup>26</sup> Recommendation 2 states, “the applicant shall participate in constructing Richter Farm Road (A-297) as a four-lane arterial between MD 117 and Great Seneca Highway with construction phasing requirements as described in the following conditions”.

<sup>27</sup> Recommendation 3 states, “Richter Farm Road (A-297) as a four-lane arterial between Great Seneca Highway and the Kings Crossing Property must be under construction prior to the release of the first building permit”.

<sup>28</sup> Recommendation 5 states, “the portion of Richter Farm Road (A-297) from the Kings Crossing Property west to Clopper Road (MD 117) must be under construction prior to the release of the 551<sup>st</sup> building permit”.

<sup>29</sup> The language states, “the applicant shall construct an acceleration lane from eastbound A-297 to southbound Great Seneca Highway for the full site development. This improvement must be under construction prior to the release of the 551<sup>st</sup> building permit”.

<sup>30</sup> Condition 8 states, “the applicant can proceed with the first 44 dwelling units prior to any roadway improvement conditions”.

**Appendix 2C. Fact Finding for the West Germantown Development District**

Clopper Road at its intersection with the proposed Richter Farm Road (A-297) prior to release of the 551<sup>st</sup> permit.

**Exhibit C-2. Summary of Document References in the Arcola Woodcliffe Park Project  
Regulatory Approvals to WGDD Item 1 – Richter Farm Road**

Source Document	Prelim. Plan	Site Plan	Summary
Planning Board Opinion 1-88006	Condition #1		Requires developer to provide necessary roadway improvements per Transportation Planning memos dated Feb. 17, March 9 and March 10, 1995.
Transportation Planning memo, Feb. 17, 1995	Rec. #2		Requires participation in construction of Richter Farm Road (A-297) as a 4-lane arterial between MD 117 and Great Seneca Highway.
Planning Board Opinion 1-88006	Condition #3		Requires developer to dedicate right-of-way for Richter Farm Road.
Planning Board Opinion 1-88006	Condition #5		Requires deferral to site plan of final determination of type of crossing structure.
Planning Board Opinion 1-88006	Condition #6		Requires details of noise berms along A-297 to be reviewed and approved at site plan.
Transportation Planning memo, February 17, 1995	Rec. #2		Requires developer to construct roadway subject to subsequent conditions.
	Rec. #3		Requires developer to start construction of roadway between Great Seneca Highway and King Crossing Property prior to release of first building permit.
	Rec. #5		Requires developer to start construction of A-297 between King Crossing Property and Clopper Road prior to release of 551 <sup>st</sup> building permit.
	Rec. #6		Requires construction of intersection improvement at Clopper Road and A-297 prior to release of 551 <sup>st</sup> permit.
Transportation Planning memo, March 9, 1995	Condition #8		Revises prior memo to permit development of 44 units prior to road construction.
Transportation Planning memo, March 10, 1995	Condition #9		Revises prior conditions to add requirement for more intersection improvements at Clopper Road and A-297 prior to release of 551 <sup>st</sup> building permit.

Source: Planning Board Opinions.

Artery Woodcliffe Park Project. Conditions of approval that address Richter Farm Road are found in the Planning Board Opinions granting preliminary plan and site plan approvals.

Preliminary Plan. Planning Board Opinion 1-88216, King Hargett Property, requires the developer to:

- Agree with the Planning Board to limit development and provide for the “necessary roadway improvements and building permit phasing” (Condition #1);
- Dedicate 100’ right-of-way for A-297 (Condition #6); and
- Enter into an easement agreement under certain circumstances (Condition #7).

The specific language states:

[T]he Montgomery County Planning Board finds Preliminary Plan 1-88216 to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) and approves Preliminary Plan 1-88216, subject to the following conditions:

1. Agreement with Planning Board to limit development to no more than 459 dwelling units and provide for the necessary roadway improvements and building permit phasing as outline in Transportation Planning Division memo dated 12-3-93 as revised 12-98-93.
6. Dedication for...70’ right of way for Schaeffer Road, 100’ right-of-way for A-297 and partial dedication for A-298 in accordance with preliminary plan drawing. Subject to Condition No. 7, dedication must be accomplished with recordation of the first record plat. On-site construction and phasing of A-297 to be in accordance with on-site phasing plan and may require participation by other projects...Future engineering and design of A-297 to be coordinated with recommendations of master plan.
7. If, prior to recordation of the first record plat (Condition No. 6), the final alignment of A-297 has not been determined, applicant shall enter into an easement agreement with the Planning Board providing for the placement of an easement as depicted on the preliminary plan. The purpose of the easement agreement is to provide for the no cost future dedication by applicant of the final alignment of A-297 within the easement area. When the final alignment is determined, the Planning Board shall release that portion of the area subject to the easement that does not fall within the alignment. Applicant shall have the right to reserve easements reasonably necessary for the development of the project not inconsistent with its intended use as an arterial roadway. If final alignment of A-297 is not decided, then at least 60 days prior to applicant’s notice to staff of the intended submission of a site plan application for Phase II per the on-site phasing plan, staff shall return the preliminary plan to the

Planning Board for the determination of the final alignment of A-297 within the easement area.

Planning Board Opinion 1-88216R, which was approved pursuant to the FY94 Annual Growth Policy Alternative Review Procedures for Limited Residential Development, has 2 conditions that address transportation improvements.

- Condition #1 requires the developer to:

Revise agreement with Planning Board to limit development to no more than 569 dwelling units as follows:

- a) Enter into agreement with Planning Board providing for the payment of the Development Approval Payment to the Montgomery County Department of Finance for 100 units as required pursuant to the FY94 AGP prior to receipt of building permits for the units.
  - b) Agreement with Planning Board to participate in the necessary roadway improvements as outlined in Transportation Division memo dated 12-8-93 (as revised for 469 units and further clarified in applicants letter to the Transportation Planning Division dated 7/11/95.
- Condition #6.a replicates the language in Condition #6 for 1-88216 above; however, Condition #6.b contains new language requiring a Road Construction Participation Agreement for a portion of A-297. It states:

Prior to release of building permits for Phase III, applicant with respect to A-297 to either initiate construction of (i.e. road "under construction") or enter into a Road Construction Participation Agreement to construct that portion of A-297 as \_\_\_\_ it is proposed to pass through Parcel 430 (as more specifically shown on the approved preliminary plan – between Blocks N and W). This requirement to complete A-297 is for the purpose of providing efficient circulation within the boundaries of the area of the project, not portions of A-297 that extend beyond this project to the east or west. The requirement to construct A-297 on Parcel 430 is predicated upon the availability of right of way, the acquisition of which (including cost thereof) is not the responsibility of the applicant.

- Condition #7 replicates the language of Condition #7 in Opinion 1-88216.

Site Plan. Planning Board Opinions 8-95027 and 8-95030 approved the site plans for the Hoyles Mill Village project, Sections 1 and 2 respectively. The Opinions included identical language that subject the approval to the submission of a Site Plan Enforcement Agreement, Development Program, and Homeowners Association Documents with 4 subconditions. Condition #1c addresses transportation improvements. The language states:



Site Plan Enforcement Agreement to include an element requiring each Applicant/Builder of a project or a portion of a project identified in Table I to construct or participate in the construction of each particular transportation improvement referenced in the Germantown West Improvements/Development Phasing Program ("Phasing Program") consistent with the terms and conditions imposed upon the project pursuant to its preliminary plan approval by the Planning Board. This requirement does not increase or decrease the responsibility of any Applicant with respect to the construction of a transportation improvement, each Applicant remains obligated to construct or participate in the cost of constructing an improvement consistent with the preliminary plan for the project ("Required Improvements"). The enforcement agreement shall provide that if an applicant/builder of another project identified on Table I, as may be amended from time to time, has undertaken construction of all or a portion of the Required Improvements attributable to Applicant at the time Applicant files for an initial building permit tied to such Required Improvements, Applicant must pay a pro rata share of all costs and expenses associated with the Required Improvements prior to or contemporaneous with an application for building permits.

The parties shall agree to appropriate formulas and calculations for determining pro rata share. The agreement may provide that the Planning Department should monitor pro rata payments and is authorized to withhold release of a building permit in the event a share has not been paid. The agreement shall provide that the Applicant will cooperate with other developers and not unreasonably delay respective development proposals, including dedication of right of way, provided that the requesting party provides appropriate reimbursement to the Applicant.

**Exhibit C-3. Summary of Document References in the Artery Woodcliffe Park Project Regulatory Approvals to WGDD Item 1 – Richter Farm Road**

<b>Source Document</b>	<b>Prelim. Plan</b>	<b>Site Plan</b>	<b>Summary</b>
Planning Board Opinion 1-88216	Condition #1		Requires developer to “provide for the necessary roadway improvements and building permit phasing as outline in Transportation Planning memos of Dec. 3, 1993, revised Dec. 8, 1993.
Planning Board Opinion 1-88216	Condition #6		Requires developer to dedicate 100’ right-of-way for Richter Farm Road; to ensure on-site construction and phasing of A-296 is in accordance with on-site phasing plan and to coordinate roadway engineering and design with master plan recommendations.
Planning Board Opinion 1-88216	Condition #7		Requires developer to enter into easement agreement if necessary.
Planning Board Opinion 1-88216R	Conditions #6a and #7		Requires developer to construct road or enter into participation agreement and to comply with conditions in Transportation Planning memo dated December 8, 1993. <sup>31</sup>
Planning Board Opinions 8-95027 and 8-95030		Condition #1c	Requires construction or participation in transportation improvements with no effect of prior obligation to construct or participate in the cost of construction. Requires compliance with Germantown West Improvements/Development Phasing Program. <sup>32</sup>

Source: Planning Board Opinions.

**2. How do these developer obligations relate to the implementation of this development district infrastructure item?**

The project scope approved for development district funding consisted of grading and construction of a 4-lane segment of Richter Farm Road from Clopper Road to MD 118. It did not incorporate reimbursement of costs for the segment from MD 118 to Great Seneca Highway, as the initial petition had requested.

Arcola Woodcliffe Park. The conditions of approval for the Arcola Woodcliffe Park project require the developer to “participate in the construction of Richter Farm Road as a 4-lane arterial between MD 117 and Great Seneca Highway”.

<sup>31</sup> OLO has not reviewed a copy of this memorandum.

<sup>32</sup> OLO has not reviewed a copy of this document.

Artery Woodcliffe Park. The conditions of approval for the Artery Woodcliffe Park project require the developer to dedicate land for Richter Farm Road and to initiate construction or sign a participation agreement. The conditions of approval reference the participation of other parties. The site plan conditions require the parties to agree to appropriate formulas and calculations for determining pro rata share, and state the agreement may provide that the Planning Department should monitor pro rata payments.

It is unclear how these developer obligations relate specifically to the implementation of Richter Farm Road as a development district infrastructure item. More information about the scope of improvements funded by the development district and the details of the Board's regulatory requirements are needed to define the relationship and draw conclusions about how the development district funds were used.

**3. What do the Planning Board Opinions cite as the legal basis for requiring Richter Farm Road as a condition of approval?**

The excerpts from Planning Board Opinions for the Preliminary Plan approvals for Kings Crossing (1-88006) and King Hargett (1-88216 and 1-88216R) reference Chapter 50 generally as the basis for the Planning Board's conditions that require an agreement to provide roadway improvements and dedicate rights-of-way.

The Transportation Planning Division memoranda cited in the Planning Board's Opinions are the Transportation APF Reviews for the project. The February 17, 1995 Transportation Planning memorandum states that sufficient staging ceiling exists and that the roadway improvements are needed to achieve compliance with the Local Area Transportation Review test. It concludes:

Staff concludes that, with implementation of all roadway improvements currently programmed in the Approved Road Program and proposed by the applicant in conjunction with the subject preliminary plan, all nearby intersections are anticipated to operate within an acceptable CLV or at an improved level over background conditions. Staff further concludes that there is sufficient staging ceiling capacity available in the current FY95 AGP Staging Ceiling to accommodate the subject preliminary plan.<sup>33</sup>

In the March 10, 1995 Transportation Planning memorandum, staff also stated there were limits to applying a project's impact to a transportation facility. As a result, staff chose not to assign the project's impact along MD 117 to the developer in this case. The specific language states:

As requested by the Planning Board, staff has further analyzed the traffic situation along Clopper Road west of MD 118 in connection with the subject development.

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<sup>33</sup> Memo from Ki Kim, Transportation Planning Division to Joe Davis, Development Review Division, February 17, 1995, p.3.

As concluded in our prior memorandum, trips from the project's second phase will utilize and would have an impact on MD 117. Under our LATR and PAR guidelines and standards, the project's impact must be carefully considered. We have analyzed the impact of the project at MD 117 and A-297 and have required that the applicant undertake several improvements to this intersection. These improvements will offer a diversion from MD 117 along A-297, ultimately connecting with both MD 118 and Great Seneca Highway. Its effect will be to reduce impacts to the MD 118/MD 117 and MD 117/Great Seneca Highway intersections.

We also considered the need for further improvements along MD 117. In doing so, we determined that, under our LATR guidelines, there are limits as to the extent that a project's impact to a transportation facility can be measured, studied, and applied. Such things as the project's size, the nature/type of development, and its geographic location (vis-à-vis major roads and employment centers) are considered when fashioning a position concerning a project's impact on nearby roads.

Staff determined that the project's impact on other intersections and links along MD 117 could not be assigned to the developer in this case. We do, however, find that safety concerns do need to be addressed and have offered conditions to this effect. We also want to alert the Board to other improvements to MD 117 that will be occurring over the course of the next few years.

The excerpts from Planning Board Opinions for the Site Plan Approvals for Hoyles Mill Village Sections 1 and 2 (8-95027 and 8-95030) do not contain any references to specific sections of the Zoning Ordinance.

**WGDD Item #2 –  
Schaeffer Road**

**Project Scope Background.** Schaeffer Road crosses the development district diagonally and intersects Clopper Road near the Clopper Road intersection with MD 118. The developers' initial petition requested development district funding to "construct pavement widening and half section roadway improvement along the western side from Hoyles Mill Road to the southern property line of Hoyles Mill Village". It is unclear if the item approved by the Council changed this scope or not.

**1. What references to Schaeffer Road are in the relevant Board Opinions for the Artery Woodcliffe Park and Arcola Woodcliffe Park Projects?**

The Planning Board regulatory approvals for the Artery Woodcliffe Park Project establish 3 conditions that address Schaeffer Road. The regulatory approvals for Arcola Woodcliffe Park do not contain any conditions of approval that address Schaeffer Road.

Preliminary Plan Opinions for Artery Woodcliffe Park. The Planning Board's Opinions granting regulatory approvals for the Artery Woodcliffe project identify Schaeffer Road in 3 conditions of approval in Preliminary Plan Opinions 1-88216 and 1-88216R. The language from both Opinions is identical.

- Condition #1 requires an agreement with the Planning Board to "provide for the necessary roadway improvements and building permit phasing as outlined in Transportation Planning Division memo dated 12-3-93, as revised on 12-8-93".
- Condition #6 requires dedication of a right-of-way.
- Condition #8 requires Schaeffer Road to be removed from the rustic roads program. (See Condition #6 on page 18 above for exact text for Condition #6.)<sup>34</sup>

Site Plan Opinions for Artery Woodcliffe Park Site Plans. Planning Board Opinions 8-95027 and 8-95030 approved the site plans for the Hoyles Mill Village project, Sections 1 and 2 respectively. As described earlier, (see the discussion of Richter Farm Road at page 4), each of these Opinions includes identical language that subjects the approval of the project to the submission of a Site Plan Enforcement Agreement, Development Program, and Homeowners Association Documents with 4 subconditions.

Condition #1c, which addresses transportation improvements, states that the Site Plan Enforcement Agreement must "include an element requiring each Applicant/Builder of a project or a portion of a project identified in Table I to construct or participate in the construction of each particular transportation improvement referenced in the Germantown West Improvements/Development Phasing Program ("Phasing Program") consistent with the terms and conditions imposed upon the project pursuant to its preliminary plan approval by the Planning Board". (See page 9 for the complete excerpt.)

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<sup>34</sup> The language for Condition 8 states, "Schaeffer Road must be removed from the rustic roads program by the County Council prior to site plan approval".

**Exhibit C-4. Summary of Document References in the Artery Woodcliffe Park Project  
Regulatory Approvals to WGDD Item 2 – Schaeffer Road**

<b>Source Document</b>	<b>Prelim. Plan</b>	<b>Site Plan</b>	<b>Summary</b>
Planning Board Opinion 1-88216	Condition #1		Requires developer to provide necessary roadway improvements per Transportation Planning memo dated December 3, 1993, as revised December 8, 1993. <sup>35</sup>
Planning Board Opinion 1-88216	Condition #6		Requires developer to dedicate right-of-way for Schaeffer Road.
Planning Board Opinion 1-88216	Condition #8		Requires developer to remove Schaeffer Road from the rustic road program.
Planning Board Opinion 1-88216R	Condition #1		Requires developer to make a Development Approval Payment (DAP) and participate in roadway improvements.
Planning Board Opinion 1-88216R	Condition #6a		Requires developer to construct road or enter into participation agreement and to comply with conditions in Transportation Planning memo dated December 8, 1993. <sup>36</sup>
Planning Board Opinion 1-88216R	Condition #8		Requires developer to remove Schaeffer Road from the rustic road program.
Planning Board Opinions 8-95027 and 8-95030		Condition #1c	Requires construction or participation in transportation improvements with no effect of prior obligation to construct or participate in the cost of construction. Requires compliance with Germantown West Improvements/Development Phasing Program. <sup>37</sup>

Source: Planning Board Opinions and staff memoranda.

**2. How do these developer obligations relate to the implementation of this development district infrastructure item?**

The developer obligations established in the regulatory approval documents for the Artery Woodcliffe Project require the developer to dedicate right-of-way and participate in improvements to Schaeffer Road.

<sup>35</sup> OLO has not reviewed a copy of this memorandum.

<sup>36</sup> OLO has not reviewed a copy of this memorandum.

<sup>37</sup> OLO has not reviewed a copy of this document.

More information is needed about the scope of improvements funded by the development district and the details of the development programs and agreements referenced in the Board's Opinions to determine the relationship between the developer's obligations and the development district infrastructure item and draw conclusions about how development district funds were used.

**3. What do the Planning Board Opinions cite as the legal basis for requiring Schaeffer Road as a condition of approval?**

The Planning Board Opinions for the Preliminary Plan approvals of the King Hargett project (1-88216 and 1-88216R) reference Chapter 50 generally as the basis for the Planning Board's conditions that require an agreement to provide roadway improvements and dedicate rights-of-way. In a recent meeting with Council and OLO staff, current Planning staff indicated that their recollection is that the underlying basis for this requirement was access (§50-24 of Chapter 50).

**WGDD Item #3 –  
Local Parks**

**Project Scope Background.** According to the developers' initial petition, the project scope for this item consisted of "construction of local parks, pedestrian walkways and bike paths on and adjacent to Kings Crossing, Hoyles Mill Village and Kings Village Center properties as referenced in the Planning Board Opinion approving Preliminary Plan #1-88216, #1-8806, and #1-95011 (with County to fund construction costs of Kings Village Center park.)"

**1. What references to local parks are in the relevant Board Opinions for the Artery Woodcliffe Park and Arcola Woodcliffe Park Projects?**

The Planning Board's Opinions granting regulatory approvals for the Artery Woodcliffe and Arcola Woodcliffe projects mention local parks and pathways in several separate conditions of approval. Below are excerpts from the Preliminary Plan Opinions 1-88006, 1-88216 and 1-88216R and from Site Plan Opinions 8-95027 and 8-95030.

Preliminary Plans for Arcola Woodcliffe Park. Planning Board Opinion 1-88006, Kings Crossing, requires the developer to dedicate rights-of-way for parks (Condition #10) and to defer determination of internal pedestrian and bikeway circulation to site plan

(Condition #14). The specific language for Condition #10 states, "Final location of recreation facilities including tot lot locations to be determined at site plan, and final delineation of Park area boundary dedication to be determined at site plan".

**Appendix 2C. Fact Finding for the West Germantown Development District**

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Site Plan for Arcola Woodcliffe Park. The Planning Board's Opinions granting regulatory approvals for the Arcola Woodcliffe (Kings Crossing) project mention local parks and pathways in 2 conditions of approval in Site Plan Opinion 8-96011.

- Condition #13 requires site and landscape plans to include locations and details for signs with a map of the path system located at the street entrances to the paths.
- Condition #14 addresses dedication of the local park. It states:

In regards to the park issues, the following issues shall be addressed prior to the release of signature set: the local park should be dedicated as a public park so that it is available to all are residents; the three park facility restriction lines near the local park noted as 150', 300' and 400' are to be removed and replaced with a 50' set-back from the Wear property; all pathways within the local park dedication area should be built to park standards; all Stormwater Management ponds shall be on homeowners' property; the developer will grade the local park site as noted on the site plan; the developer shall provide the paths and an open play area of 100' x 150' prior to the time the homes in the area of the park are completed; and dedication of the local and stream valley parks shall occur as shown on the plan after satisfactory completion of grading and recreation facility construction.

**Exhibit C-5. Summary of Document References in the Arcola Woodcliffe Park Project  
Regulatory Approvals to WGDD Item 3 – Local Parks**

<b>Source Document</b>	<b>Preliminary Plan</b>	<b>Site Plan</b>	<b>Summary</b>
Planning Board Opinion 1-88006	Condition #10		Established final delineation of Park boundary at site plan.
Planning Board Opinion 1-88006	Condition #14		Defer determination of internal pedestrian and bikeway circulation to site plan.
Planning Board Opinion 8-96011		Condition #13	Requires signing plan.
Planning Board Opinion 8-96011		Condition #14	Requires land dedication, replacement of park facility restriction lines, and provision of paths and play area.

Source: Planning Board Opinions.



**Appendix 2C. Fact Finding for the West Germantown Development District**

**Preliminary Plans for Artery Woodcliffe Park Project.** Planning Board's Opinions granting regulatory approvals for the Artery Woodcliffe project mention local parks in Condition #5 in Preliminary Plan Opinions 1-88216 and 1-88216R. The language from both Opinions is identical. Condition #5 states:

Final location of local park dedication to be coordinated with Park's Department prior to submission of site plan and finalized at site plan in. In addition, compliance with Condition No. 2 as referenced in Parks Department memo dated 12-6-93 is also required.

**Site Plans for Artery Woodcliffe Park Project.** Planning Board Opinions 8-95027 and 8-95030 approved the Site Plans for the Hoyles Mill Village project, Sections 1 and 2 respectively. The Opinions included identical language that subject the approval to the submission of a Site Plan Enforcement Agreement, Development Program, and Homeowners Association Documents with 4 subconditions. One of these subconditions, Condition #1a2) addressed the community wide pedestrian pathways and recreation facilities. The specific language states:

Community wide pedestrian pathways and recreation facilities must be completed prior to seventy percent occupancy of each phase of the development. Pathways between units must be completed prior to occupancy of adjacent units.

**Exhibit C-6. Summary of Document References in the Artery Woodcliffe Park Project  
Regulatory Approvals to WGDD Item 3 – Local Parks**

<b>Source Document</b>	<b>Prelim. Plan</b>	<b>Site Plan</b>	<b>Summary</b>
Planning Board Opinion 1-88216	Condition #5		Requires establishment of final location and references Parks Department memo dated December 6, 1993. <sup>38</sup>
Planning Board Opinions 8-95027 and 8-95030		Condition #1c	Requires Development Program to include phasing schedule for construction of pedestrian pathways and recreation facilities. References Site Plan Enforcement Agreement, Development Program, and Homeowner's Association Documents. <sup>39</sup>

Source: Planning Board Opinions and staff memoranda.

<sup>38</sup> OLO has not reviewed a copy of this memorandum.

<sup>39</sup> OLO has not reviewed copies of these documents.

**2. How do these developer obligations relate to the implementation of this development district infrastructure item?**

The description of this development district infrastructure item in the developer's initial petitions explicitly references the Planning Board's Preliminary Plan Opinions for Arcola Woodcliffe Park and Artery Woodcliffe Park, and the Planning Board's Site Plan Opinions for Artery Woodcliffe Park.

More details about the scope of the regulatory approvals and the development district infrastructure item are needed to define the relationship of these items and draw conclusions about how development district funds were used. It is unclear whether the Executive's recommendations to enhance the scope of local park improvements to be funded by the development district were reimbursements of prior regulatory approvals or were in addition to these regulatory approvals. The Executive's recommendations were ultimately approved by the Council for development district funding.

**3. What do the Planning Board Opinions cite as the legal basis for requiring local parks as a condition of approval?**

The excerpts from Planning Board Opinions for the Preliminary Plan approvals for Kings Crossing (1-88006) and King Hargett (1-88216 and 1-88216R) reference Chapter 50 generally as the basis for the Planning Board's conditions that require dedication of land for local parks.

The excerpts from Planning Board Opinions for the Site Plan Approvals for Hoyles Mill Village Sections 1 and 2 (8-95027 and 8-95030) do not contain any references to specific sections of the Zoning Ordinance.

**WGDD Item #4 –  
Hoyles Mill Wastewater Pumping Station Force Main**

**1. What references to the Hoyles Mill Wastewater Pumping Station and Force Main are in the relevant Board Opinions for the Artery Woodcliffe Park and Arcola Woodcliffe Park Projects?**

The Planning Board's Opinion granting preliminary plan approval for the Arcola Woodcliffe (Kings Crossing) project (1-88006) does not contain any references to the Hoyles Mill Wastewater Pumping Station/Force Main. The Planning Board's Opinion granting site plan approval (8-96011) mentions the Hoyles Mill pump station in 1 condition of approval. The regulatory approvals for the Artery Woodcliffe Park Project do not contain any references to this development district infrastructure item.

Site Plan for Arcola Woodcliffe Park Project. The language for Condition #8 (established in Site Plan Opinion 8-96011) states:

Prior to release of the first building permit, applicant to submit preliminary and final sewer plans for location and limits of disturbance for WSSC sewage pump station and gravity line within stream valley for review and approval by staffs of Environmental Planning Division and Department of Parks, in conjunction with WSSC review. Review of these plans to include filed location of plants of interest and consideration of methods to avoid disturbance of threatened and watchlist plant species near proposed pump station.

**Exhibit C-7. Summary of Document References in the Arcola Woodcliffe Park Project Regulatory Approvals to WGDD Item 4 – Hoyles Mill Wastewater Pumping Station Force Main**

<b>Source Document</b>	<b>Preliminary Plan</b>	<b>Site Plan</b>	<b>Summary</b>
Planning Board Opinion 8-96011		Condition #8	Require submission of location plans for pump station for review and approval by EPD and Parks staff.

Source: Planning Board Opinions.

**2. How do these developer obligations relate to the implementation of this development district infrastructure item?**

The condition of approval in the Planning Board Opinion (Site Plan Opinion 8-96011) for the Arcola Woodcliffe project (Kings Crossing) project requires the applicant to submit location plans for the Pumping Station for review by Planning Department staff. Neither the Planning Board's Preliminary Plan Opinion nor the Site Plan Opinion for the project addresses whether the provision of the Hoyles Mill Wastewater Pumping Station by the developer or another party was a condition of approval. More information is needed to determine whether this item was a condition of approval or to draw conclusions about how the development district funds were used.

**3. What do the Planning Board Opinions cite as the legal basis for requiring the Wastewater Pumping Station as a condition of approval?**

The Site Plan Opinion contains a general statement that "the Site Plan meets all of the requirements of the zone in which it is located" but it does not identify a specific section of the Zoning Ordinance that provides the authority of the Planning Board to require the developer to submit location plans for the Pumping Station for Planning Department review.

**A. The Chronology of Approvals for the Kingsview Village Center Development District**

The Kingsview Village Center Development District (KVCDD) is located in the southwest quadrant of the intersection of Clopper Road (Route 117) and Great Seneca Highway. The Kingsview Village Center Development District encompasses 28.5 acres. When the resolution to establish the development district was introduced, the proposed development district included properties owned by 5 owners, including Montgomery County and Maryland-National Capital Park and Planning Commission (M-NCPPC). After land exchanges that followed the introduction of the resolution, the proposed development district consisted of 4 property owners. GFS Realty Inc. acted as the development agent for these properties which are collectively referred to as the Kingsview Village Center.

No separate initial petition, no separate application for provisional adequate public facilities approval, and no separate Executive Fiscal Report exists for the KVCDD. However, these documents exist for the West Germantown Development District (WGDD); and, at the time each was filed, the petitioners for the WGDD included 3 of the 4 current property owners of the Kingsview Village Center.

The initial petition filed for the WGDD stated that the owners of the Kingsview Village Center contemplated “a mixed use project, including a 114,000 square foot retail shopping center and 208 residential units (48 single-family attached units and 160 multi-family units.)”<sup>1</sup>

**1. For each district, what were the dates for each step of the development district approval process?**

The Council’s process to establish the KVCDD spanned a 2-year period. It began in June 1996, when the Kingsview Village Center property owners filed an initial petition (with other owners) to establish the WGDD. The Council adopted Resolution 13-636 signaling its intent to consider the creation of the WGDD on July 30, 1996.

On May 19, 1998, the Council introduced Resolution 13-1377, Kingsview Village Center Development District. The Background section of Resolution 13-1377 recites the chronology for the approval of the WGDD including:

- The Council’s public hearing on the developers’ initial petition;
- The Council’s adoption of the 1<sup>st</sup> resolution expressing its intent to create a development district;
- The Montgomery County Planning Board’s review and approval of the developers’ application of provisional adequate public facilities approval;

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<sup>1</sup> Montgomery County Council Petition for Development District, West Germantown Development District Association, Inc., et al., Filed June 21, 1996, Schedule A.

*Appendix 3A. Fact Finding for the Kingsview Village Center Development District*

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- The County Executive's submission of a Fiscal Report; and
- The Council's public hearing on the final resolution to create the WGDD.

Following the Council's public hearing on the final resolution to create the WGDD, GFS Realty indicated that it wished to delay the creation of a development district for the Kingsview Village Center properties. This was noted in Resolution 13-1135, which the Council adopted on January 13, 1998.

Four months later, in May 1998, the attorney for GFS Realty transmitted a draft resolution for the creation of the KVCDD to the County Council's attorney. On May 19, 1998, the Council introduced this draft resolution for public hearing. According to a letter from GFS Realty's attorney, dated May 15, the draft resolution contained 2 versions of Exhibit D, the projected costs of the infrastructure improvements. One version proposed funding 100% of the infrastructure improvements through the development district; the other proposed development district funding for 90.5% of these improvements.

On June 16 and June 23, 1998 the Council held a public hearing on the final resolution to create the KVCDD. On July 6, 1998, the Council's Management and Fiscal Policy (MFP) Committee held a worksession on the resolution to create the KVCDD. On July 28, 1998, the Council adopted Resolution 13-1377 to establish the KVCDD. **Exhibit A-1** presents the key dates of the approval process.

**Exhibit A-1. KVCDD Chronology**

<b>Step</b>	<b>Description</b>	<b>Date</b>
Step 1	Developers (including property owners of Kingsview Village Center) file initial petition to create the WGDD.	June 21, 1996
Step 2	Council holds public hearing on developers' initial petition for the WGDD.	July 23, 1996
Step 3	Council adopts 1 <sup>st</sup> resolution expressing intent to create a WGDD.	July 30, 1996
Step 4	Developers submit an application for provisional adequate public facilities (PAPF) approval for the WGDD to the Planning Board.	Oct. 4, 1996
Step 5	Planning Board acts on developers' PAPF application for the WGDD.	Nov. 6, 1996
Step 6	Executive submits Fiscal Report to Council for the WGDD.	Sept. 29, 1997
Step 7	Council holds public hearing for the WGDD.	Nov. 6, 1997
Step 8	Council adopts 2 <sup>nd</sup> resolution to create the WGDD. The resolution includes language noting that the Kingsview Village Center properties wish to delay creation of a development district for their properties.	Jan. 13, 1998
Step 9	The attorney for GFS Realty, Inc. submits a letter and draft resolution for the creation of the KVCDD for introduction.	May 15, 1998
Step 10	Council introduces resolution for public hearing.	May 18, 1998
Step 11	Council holds public hearing on resolution to establish the KVCDD.	June 16 and June 23, 1998
Step 12	Council adopts resolution to create a development district.	July 28, 1998.
Step 13	Council adopts resolution to specify bond conditions.	Oct. 27, 1998.

Sources: Council resolutions and letters.

**2. What were the dates of the regulatory approvals for the development project(s) that make up each of the development districts?**

The KVCDD consists of a portion of 1 development project, Kingsview Village Center, a mixed use project that consists of a 114,000 square foot shopping center, a 150 space Park and Ride lot, a residential component (326 multi-family dwelling units), and an 8-acre park. The regulatory approvals for the Kingsview Village Center Project span 10 years, from 1994 to 2004.

Appendix 3A. Fact Finding for the Kingsview Village Center Development District

- Initial Preliminary Plan Application. In August 1994, Kingsview Village Consortium, M-NCPPC, and Montgomery County, filed a preliminary plan application to create 48 lots. The Planning Department deemed this application to be complete on August 12, 1994, and the Planning Board held a hearing on this development proposal on August 10, 1995.
- On February 12, 1996, the Planning Board mailed its Opinion approving Preliminary Plan 1-95011, Kingsview Village Center, subject to 14 conditions. Condition #14 stated the preliminary plan was valid until March 12, 1999. (See Appendix 3C for a discussion of this Opinion.)
- Revised Preliminary Plan Application. On June 10, 1999, GFS Realty and Elm Street Development submitted an application to revise the previous conditions of approval. The application requested a change in the residential unit types (from single-family attached to multi-family units), and an increase in the density from 208 to 326 units. The Planning Board held a hearing in August, 1999.
- On August 23, 1999, the Planning Board mailed Opinion 1-95011R that approved:

[T]he revision of Condition No. 1 [of the original Preliminary Plan] . . . subject to the following conditions:

- (1) Prior to MCPB release of building permits for the multi-family dwelling units, applicant to submit an amended Adequate Public Facilities (APF) agreement with the Planning Board to limit development to a maximum of 114,000 square feet of retail and office uses and 326 multi-family dwelling units
- (2) All other previous conditions of approval contained in the Planning Board Opinion dated 07-16-98 remain in full force and effect
- (3) Prior to the issuance of the Use and Occupancy permit of the twelfth (and last) multi-family building, acquisition of 100 feet of right of way and construction, by this applicant or others of the northern two lanes of Leaman Farm Road, an ultimate four-lane roadway, through the Phillips property so as to provide a continuous two-lane roadway between Great Seneca Highway and the Pleasants property, Preliminary Plan No. 1-90017.

The developer submitted the following site plan applications for the Kingsview Village Center Project:

- On November 11, 1997, the developer submitted an application to develop a mixed-use project with 10,255 square feet of office space and 103,745 square feet of retail space. On March 12, 1998, the Planning Board approved this application, subject to conditions.

- On March 5, 1999, the developer submitted an application for PD-11 zoning for 326 multi-family apartments and 3,600 square feet of other general and professional space.
- On May 27, 1999, the Planning Board approved this project, subject to conditions.
- On May 27, 2004, the developer submitted an amendment to the site plan. On August 2, 2004, this application was approved administratively.

**3. Did the Planning Board's preliminary plan and site plan approvals for the Kingsview Village Center Project occur before or after the Council's adoption of the resolution to create the KVCDD?**

**Exhibit A-2** presents the chronology of regulatory approvals for the KVC Project, with the dates the Council adopted resolutions to initiate and establish the WGDD/KVCDD. A review of these timelines shows the following:

- The preliminary plan for the KVC Project was approved in February 1996, 5 months before the Council adopted its 1<sup>st</sup> resolution signaling its intent to create a development district for West Germantown (July 1996) and approximately 2 years before the Council adopted its 2<sup>nd</sup> resolution to finalize the WGDD, including the notation that the Kingsview Village Center Project wished not to proceed (January 1998).
- The Planning Board's action to approve the original preliminary plan for the KVC Project preceded Council action to establish the KVCDD. The Planning Board's approval of the preliminary plan February 1996 occurred 2 years and 5 months before Council approval to establish the KVCDD in July 1998.
- The Planning Board's action to approve a revision to the original Preliminary Plan followed Council action to establish the KVCDD. The Council approved the KVCDD in July 1998 and the Planning Board approved revisions to the preliminary plan on August 23, 1999.
- The site plan approvals for the KVC Project occurred before and after Council actions to establish a CTC Development District.
  - The Planning Board's Site Plan approval for the retail and office portions of the project in March 1998 preceded the adoption of the Council's 2<sup>nd</sup> resolution to establish a development district (July 1998) by 4 months.
  - The Planning Board's Site Plan approval for the residential portion of the project in May 1999 followed the Council's adoption of the resolution to establish the development district (July 1998) by 10 months.



**Appendix 3A. Fact Finding for the Kingsview Village Center Development District**

**Exhibit A-2. Chronology of Regulatory Approvals and Development District Approvals for Kingsview Village Center Aug. 1994-Aug. 2004**

<b>Type Of Action</b>	<b>Document</b>	<b>Action/Event</b>	<b>Date</b>
Regulatory Review	Preliminary Plan 1-95011	Developer's application for Preliminary Plan for Kingsview Village Center (1-95011) is deemed complete.	Aug. 12, 1994
		Planning Board holds public hearing on Preliminary Plan application for Kingsview Village Center (1-95011).	Aug. 10, 1995
		Planning Board mails Opinion approving Preliminary Plan for Kingsview Village Center, subject to 14 conditions.	Feb. 12, 1996
Development District	Petition #1	Developer files petition to establish "West Germantown Development District" with County Council.	June 21, 1996
	Petition #1	Council holds public hearing on Developer's petition.	July 23, 1996
	Council's 1 <sup>st</sup> Resolution	Council adopts Resolution 13-636 stating its intent to create a development district. CE approved this resolution.	July 30, 1996
Regulatory Review	Site Plan 8-98013	Planning Department deems developer's site plan application for Kingsview Village Center (8-98013) to be complete.	Nov. 12, 1997
Development District	Council's 2 <sup>nd</sup> Resolution	Council adopts Resolution 13-1135 to create WGDD without Kingsview Village Center Properties.	Jan. 13, 1998
Regulatory Review	Site Plan 8-98013	Planning Board holds hearing on developer's site plan application for Kingsview Village Center.	Date not available
	Site Plan 8-98013	Planning Board mails Opinion approving Site Plan 8-98013 subject to conditions.	Mar. 12, 1998
Development District	Council's 2 <sup>nd</sup> Resolution	Council introduces Resolution 13-1377 to establish the KVCDD.	May 19, 1998
		Council holds public hearing.	June 16, 1998 June 23, 1998
		Council adopts Resolution 13-1377 to establish the KVCDD.	July 28, 1998
	Council's 3 <sup>rd</sup> Resolution	Council adopts Res. 13-1476 to authorize Special Obligation Bonds.	Oct. 27, 1998
Regulatory Review	Site Plan 8-99030	Planning Department deems application for 326 multi-family units and 3,600 SF of general/prof. space to be complete (8-99030).	Mar. 5, 1999
	Site Plan 8-99030	Planning Board mails Opinion approving Site Plan 8-99030, subject to conditions.	May 27, 1999
	Preliminary Plan 1-95011 R	Planning Department deems developer's application to revise Preliminary Plan 1-95011 to be complete.	June 10, 1999
	Preliminary Plan 1-95011 R	Planning Board holds hearing on Preliminary Plan application 1-95011R.	Aug. 5, 1999
	Preliminary Plan 1-95011R	Planning Board approves revisions to Preliminary Plan 1-95011R	Aug. 23, 1999
	Site Plan 8-98013	Planning Department deems developer's application to amend Site Plan 8-98013A to be complete.	May 27, 2004
	Site Plan 8-98013	Developer's application to amend site plan is approved administratively.	Aug. 2, 2004

Source: M-NCPPC DAIC

**B. A Review and Analysis of the Infrastructure Items Approved for Funding in the KVCDD**

This appendix provides information about the infrastructure items approved for funding by the KVCDD. Typically, the process to create a development district incorporates multiple lists of infrastructure items to be financed by the development district. Publication of these infrastructure lists occur when:

- The developer submits an initial petition to Council;
- The developer submits a provisional adequate public facilities (PAPF) application to the Planning Board;
- The Executive prepares his Fiscal Report, and
- The Council adopts the 2<sup>nd</sup> resolution.

For the KVCDD, the steps of this process were modified as described below. First, in October 1997, the resolution the Council introduced for public hearing to establish the WGDD divided the proposed development district into 2 areas, each with its own infrastructure list. **Exhibit B-1** displays the list of transportation improvements proposed for development district funding for Improvement Area II, which was the Kingsview Village Center.

**Exhibit B-1. Items Proposed for WGDD Improvement Area II**

Item	Estimated Cost	% Cost funded by District	Est. Completion Date
5 A-298 Leaman Farm Road	\$1,641,479	100%	Dec. 1999
7 Clopper Road (MD 117)	\$1,117,440	100%	Dec. 1999
9. A-270 Kingsview Village Avenue	\$519,882	100%	Dec. 1998

Source: County Council Resolution for the West Germantown Development District, Exhibit "D-2" "West Germantown Development District Improvement Area II District Funded Improvements". Introduced October 21, 1997. Appended to Memorandum to Management and Fiscal Policy Committee from Glenn Orlin, Deputy Council Staff Director, MFP Committee #3, November 24, 1997, at circle page 12.

**Exhibit B-2** summarizes the recommendations for the transportation items for the Kingsview Village Center properties at various points in the review process for the WGDD. The display shows that all of the Improvement Area II transportation improvements were supported at each point of the review process for the WGDD. Specifically, each item was:

**Appendix 3B. Fact Finding for the Kingsview Village Center Development District**

- Proposed in the developers' initial petition and PAPF application to the Planning Board;
- Recommended for approval by the Planning Board; and
- Recommended for approval by the County Executive.

**Exhibit B-2. Infrastructure Items to be Funded By the WGDD - Initial Petition to Final Approval**

<b>Item # in Initial Petition</b>	<b>Infrastructure Item</b>	<b>Developers' Initial Petition (Sch. B)</b>	<b>Developers' PAPF Application (Exh. I)</b>	<b>Planning Boards' PAPF Letter</b>	<b>County Exec's Fiscal Report (Table C)</b>	<b>Res. 13-1135 (Exh. D)</b>
<b>Transportation Improvements</b>						
N.A.	Leaman Farm Road (A-298)	Yes	Yes	Yes	Yes	No
7	Clopper Road (MD 117)	Yes	Yes	Yes	Yes	No
9	A-270 Kingsview Village Avenue	Yes	Yes	Yes	Yes	No

Source: Developers' initial petition filed June 21, 1996 (Schedule B), Developers' PAPF Application filed October 3, 1996, (Exhibit I), Letter from William H. Hussmann to Douglas M. Duncan dated Nov. 6, 1996, County Executive's Fiscal Report (Table C) and Council Resolution 13-1135 Exhibit D.

In May 1998, the attorney for GFS Realty submitted a draft resolution that the Council introduced for public hearing on May 19. The list of infrastructure items proposed for funding by the KVCDD included an additional item (i.e., A-297 Intersection Improvements) and updated cost estimates. **Exhibit B-3** displays the original and updated cost estimates for each item.

**Exhibit B-3. Infrastructure Items Proposed for WGDD Improvement Area II and the KVCDD**

<b>Infrastructure Item</b>		<b>Estimated Cost as of Jan 1998</b>	<b>Estimated Cost as of May 1998</b>	<b>Difference (Jan. 1998-May 1998)</b>
5	A-298 Leaman Farm Road (Item 5 in WGDD initial petition)	\$1,641,479	\$1,775,000	(\$133,521)
7	Clopper Road (MD 117) (Item 7 in WGDD initial petition)	\$1,117,440	\$650,000	\$467,440
9.	A-270 Kingsview Village Avenue (Item 9 in WGDD initial petition)	\$519,882	\$435,000	\$84,882
	A-297 Intersection Improvements (NEW ITEM)	Not Applicable	\$100,000	(\$100,000)
	<b>Total Cost</b>	<b>\$3,278,801</b>	<b>\$2,960,000</b>	<b>\$318,801</b>

Source: County Council Resolution for the West Germantown Development District, Exhibit "D-2" "West Germantown Development District Improvement Area II District Funded Improvements". County Council Resolution for Kingsview Village Center Development District. Appended to Memorandum to County Council from Michael E. Faden, Senior Legislative Attorney, Agenda Item #1(D), May 19, 1998, at circle page 12.

The draft resolution also contained 2 versions of the development district's proposed share of the costs. One version proposed the development district fund 100% of the costs; the other proposed the development district fund 90.5% of the costs of 3 items and 100% of the cost of the new item.

In testimony presented at the Council's public hearing on June 16, 1998, the attorney for GFS Realty explained this approach as follows:

Attached Exhibit "D" is divided into two options, which while consisting of the same infrastructure list, proposed differing funding percentages of the infrastructure costs through the Development District based upon discussions which GFS Realty, Inc. had with the County Executive's Department of Finance and Office of Management and Budget. The County Executive has indicated to GFS Realty, Inc. that it is considering these options and will respond with a recommendation within the next couple of weeks.<sup>2</sup>

<sup>2</sup> Linowes and Blocher LLP Testimony before Montgomery County Council Kingsview Village Center Development District, June 16, 1998. Appended to Memorandum to the Management and Fiscal Policy Committee from Michael Faden, Senior Legislative Attorney, MFP Item 3, July 6, 1998, at circle page 17.

The attorney for GFS added:

As an additional inducement to the County, the Petitioners have agreed that the Implementation Agreement to be entered into in connection with the Kingsview Village Center Development District will require the Petitioners to provide public benefit over and above what is being funded through the District. In the event that Exhibit "D-2" is chosen, the District will fund 90.5% of the infrastructure improvements while the County will directly fund 9.5% of the infrastructure improvements through its general funds; however, GFS Realty, Inc. has agreed to provide the following additional public benefits which aggregate over \$400,000: a Park and Ride lot located in the northeast corner of the development parcel, on a lot which will be owned by the County following the exchanges of land as described above, and the grading of the properties which will be owned by the County and the Maryland National Capital Park and Planning Commission, following the land exchanges. If, on the other hand, it is finally determined that Exhibit "D-1" is preferable to the County Executive and the Petitioners, whereby 100% of the cost of the public infrastructure listed on Exhibit D is being borne by the special taxes and assessments imposed on the private parcels, the private parties will effectively be providing over \$400,000 of public benefit due to the fact that the proportionate responsibility of the public sector property owners for construction of the necessary infrastructure is being assumed privately by the landowners whose properties are located within the District. In either event, the Petitioners will include within the District-funded improvements the construction of an additional turn lane southbound on Great Seneca Highway onto Route A-297.<sup>3</sup>

The attorney's testimony also stated his view that all the requirements of the County Code related to adequate public facility determinations and the fiscal report had been met. He said:

Notwithstanding the fact that the West Germantown Development District and the Kingsview Village Center Development District will be two separate districts, all of the requirements under the Montgomery County statute regarding Park and Planning determination of adequate public facilities and the fiscal report and recommendation of the County Executive regarding the required infrastructure were completed in connection with the West Germantown Development District process and serve as the basis for the current Resolution before you.<sup>4</sup>

At the MFP Committee meeting on July 6, County Executive staff reported the Executive recommended that the KVCDD "fund 90.5% of the three public road projects, Leaman Farm Road, Kingsview Village Avenue, and widening of Clopper Road, with the County to fund the remaining 9.5 percent (9.5%) out of general funds".<sup>5</sup>

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<sup>3</sup> *Id.* at circle page 18.

<sup>4</sup> *Id.* at circle page 17.

<sup>5</sup> Memorandum from John R. Orrick and Stephen Z. Kaufmann to MFP Committee, July 15, 1998.

***Appendix 3B. Fact Finding for the Kingsview Village Center Development District***

On July 28, the Council adopted Resolution 13-1377, which established the KVCDD and approved the list of infrastructure items. The cost of the improvements was estimated at \$2.960 million, and the Kingsview Village Development District was expected to cover 90.5% of 3 improvements and 100% of the A-297 road intersection improvement, as recommended by the County Executive. **Exhibit B-4** displays the information presented in Exhibit D attached to Resolution 13-1377.

**Exhibit B-4. List of Infrastructure Items Approved for KVCDD Financing – Council Resolution 13-1377**

<b>Item</b>	<b>Estimated Cost</b>	<b>% Cost funded by District</b>	<b>Est. Completion Date</b>
1. A-270 Kingsview Village Avenue	\$435,000	90.5%	Dec. 1999
2 A-298 Leaman Farm Road	\$1,775,000	90.5%	Dec. 1999
3 Clopper Road (MD 117)	\$650,000	90.5%	Dec. 1999
4 A-297 Road Intersection Improvements	\$100,000	100%	Dec. 1999
<b>Total Cost</b>	<b>\$2,960,000</b>		
<b>District Share</b>	<b>\$2,688,300</b>		

Source: Resolution 13-1377, Exhibit D, adopted July 28, 1998.

**C. OLO's Review of the Relationship of the Regulatory Requirements for the Kingsview Village Center and the Development District Infrastructure Items**

At the request of Council staff, OLO conducted a review of the Planning Board's regulatory documents for the Kingsview Village Center Project to determine whether construction of each of the infrastructure items approved for KVCDD funding was also required to be provided by the developer of the KVC Project as a condition of regulatory approval. Council staff asked OLO to address 3 questions:

1. What were the developer obligations established in the Planning Board's approval of the Preliminary Plan, based on a review of the language in the Board's Opinion?
2. What is the relationship between the developer's obligations and the KVCDD Infrastructure Items?
3. What was the regulatory basis for those items that were established as conditions of approval?

This appendix presents the results of OLO's review. It provides a summary of regulatory requirements in the Planning Board's Opinion, information about which district infrastructure items are referenced in the Board's Opinion, and a synopsis of the regulatory basis for the Board's conditions of approval.

**1. What were the developer obligations established in the Planning Board's approval of the Preliminary Plan, based on a review of the language in the Board's Opinion?**

The relevant developer obligations set forth in the text of the Opinion and the numbered conditions of approval required the applicant to:

- Dedicate right-of-way for Clopper Road (MD 117), Great Seneca Highway, Hoyles Mill Road (MD 298) and Proposed A-270 (Condition #4 in the Board Opinion);
- Construct Hoyles Mill Road (A-298) as a 2-lane arterial from Great Seneca Highway to a point where the Pleasants property begins construction to tie into Relocated MD 118, however, the timing of this improvement must follow public acquisition of the area north of Preliminary Plan 1-95011 and adjoining Preliminary Plan 1-90017 (Condition #1 in the Board Opinion, Recommendation #2 in the Transportation Planning memorandum, and Condition #14 in the Board Opinion);
- Construct a separate right turn lane on northbound Great Seneca Highway to eastbound Clopper Road (MD 117) (Condition #1 in the Board Opinion, Recommendation #3 in the Transportation Planning memorandum);

- Widen MD 117 (Clopper Road) by 24 feet of additional pavement width on the south side from a point where the MD 118 Relocated CIP project ends to Great Seneca Highway, with construction of a bike path and curb as recommended in the master plan. (referenced in the text of the Opinion “as required by SHA” and established in Condition #1 in the Board Opinion, Recommendation #4 of the Transportation Planning memo, and as Condition #9 in the Board Opinion, which requires “Access and improvements as required and approved by MDSHA and MCDOT”).
- Construct A-270 to arterial road standards with 80 feet of right of way (referenced in the text “as required by SHA” and established as Condition #9 in the Board Opinion, which requires “Access and improvements as required and approved by MDSHA and MCDOT”).

**2. What is the relationship between the developer’s obligations and the KVCDD Infrastructure Items?**

OLO’s review found the initial petition to establish the WGDD included explicit reference to Preliminary Plan Opinion 9-95011 for 3 of the 4 KVCDD infrastructure items. OLO did not obtain enough details about the regulatory requirements or the development district items to independently determine whether the regulatory requirements in the Planning Board’s Opinion were identical to the KVCDD Infrastructure Items.

The 3 KVCDD Infrastructure Items which were explicitly referenced the Planning Board Opinion are:

- A-270 Kingsview Village Avenue is comparable to Proposed A-270;
- A-298 Leaman Farm Road is A-298 Hoyles Mill Road; and
- Clopper Road.

**Exhibit C-1** on the next page displays excerpts from the descriptions for each item. The initial petition contained no references to improvements to A-297 Richter Farm Road, which is the 4<sup>th</sup> development district infrastructure item.



**Exhibit C-1. Excerpts of Transportation Infrastructure Items for tge WGDD – Improvement Area II**

Item	Transportation Improvements
Hoyles Mill Road (A-298) and Kings Crossing Blvd	“Includes . . . full roadway construction of A-298 as a two-lane arterial from Great Seneca Highway to a point where adjacent property owner construction commences; and right of way acquisition and construction for Hoyles Mill Road (per the Planning Board Opinion approving Preliminary Plan #1-95011)”.
Clopper Road (MD Route 117)	“Includes ... the widening of MD Rt. 117 from MD Rt. 118 to Great Seneca Highway, with streetscape improvements (per the Planning Board Opinion approving Preliminary Plan #1-95011)”.
Route A-270	“Construction of proposed A-270 to arterial road standards with 80 feet of right of way from MD Rt. 117 to site boundaries (per the Planning Board Opinion approving Preliminary Plan #1-95011)”.

Source: Petition for development District filed by West Germantown Development District Association, Inc. et al. Schedule B, filed June 21, 1996.

**3. What was the underlying basis for requiring each development district infrastructure item that the Planning Board as a condition of approval?**

OLO’s review of the regulatory record shows the Planning Board’s basis for its decision relied on:

- Transportation Planning’s administrative practices for the Adequate Public Facilities Ordinance, including the Council’s Annual Growth Policy;
- Regulations in the Section 50-24(b) of the subdivision ordinance that address road frontages and connectivity; and
- Requirements identified by SHA.

Synopsis of Planning Board Opinion 1-95011. The Planning Board Opinion addressed the application of the Annual Growth Policy guidelines in effect at the time. It stated:

Staging Ceiling Capacity. The plan was reviewed under the FY97 Annual Growth Policy (AGP). Evidence provided to the Planning Board confirms that sufficient staging ceiling capacity exists for both employment and residential development in the Germantown West Policy area.

Local Area Review. The public hearing included an extensive discussion of roadway dedications and improvements within the proposed site as well as on

bordering roads. Though staging ceiling capacity exists for this development, the Applicant must satisfy the AGP Local Area Transportation Review (LATR). Under LATR, certain intersections near a proposed development must operate at an acceptable level of service (LOS) in order for development to proceed.

Absent an acceptable LOS, an applicant must wait for scheduled public improvements to roads before development may occur. Alternatively, the applicant may construct roadway/intersection improvements to address the LOS and to mitigate the traffic impact of development.

The Opinion indicates the Planning staff and the applicants presented different traffic study results and offered different sets of recommended improvements for the Board's consideration. The Planning staff proposed the applicant be required to:

- Construct A-298 as a 2-lane arterial road from Great Seneca Highway to a point where the Pleasant's property begins construction to tie A-298 into Relocated MD 118;
- Construct a separate right turn lane on northbound Great Seneca Highway to eastbound MD 117 (Clopper); and
- Widen MD 117 with 24 feet of additional pavement width on the south side (from the ending point of CIP project relocated MD 118 to Great Seneca Highway) including construction of a bike path and curb as recommended by the master plan and required by the Maryland State Highway Administration (SHA).

The applicant(s) proposed to either:

- Comply with the SHA required construction of A-270 to arterial road standards with 80 feet of right of way;
- Widen MD 117 (Clopper Road) by 24 feet of additional pavement width, as required by SHA; and
- Dedicate 4 lanes of A-298 (Hoyles Mill Road) and provide access points to the sites shown.

Alternatively, the applicant(s) proposed to:

- Widen A-298 to 2 lanes from Great Seneca Highway to the western boundary of the site; and
- Construct A-270 to 80 feet of right of way.

The applicant stated that requiring construction of A-298 and widening MD 117 were cost prohibitive and unnecessary, and suggested that an earlier regulatory approval of a nearby

site which had resulted in modifications to the local road network had rendered the original basis for A-298 at 4 lanes invalid.

The Board approved the project subject to the transportation improvements proposed by Planning staff, with 1 modification. The Board cited Section 50-24(b) of the county code as the basis for requiring improvements to MD 117 and dedication of Great Seneca Highway. The Board acknowledged that the site is bordered by these 2 roads which are both publicly maintained and stated:

Section 50-24(b) of the Subdivision Regulations explains that for lots fronting on an existing State, County or municipally maintained road, a subdivider is required to show dedication for widening the existing right-of-way. In addition, a subdivider must provide such reasonable improvements (including sidewalks) to the road in front of such lots as necessary to serve the needs of the subdivision for access and traffic as required by the road construction code.

The Board also found that A-298 and A-270 were necessary to provide internal circulation and road connectivity, but that the applicant should not be required to underwrite the public acquisition costs for that portion of the right of way it did not control. Specifically, the Opinion stated:

Further consideration of the plan reflects the proposed alignment of A-298 (Hoyles Mill Road). As demonstrated on Exhibit 2, this road is an integral part of the internal development of this site and provides a necessary linking road connection. The Applicant suggested that traffic from the site and from other locations would not use A-298 as a connecting road. The Board is persuaded otherwise by the testimony and evidence presented. The Board finds no support for the suggestion that traffic will utilize a longer route along MD 117, around the site rather than a shorter route, through the site on A-298.

In addition, the Planning Board finds that both A-298 and A-270 are necessary for the internal circulation of the proposed development. As shown on Exhibit 2, A-270 provides the single access from this site to MD 117 (Clopper Road) and A-298 provides the single access to the site from Great Seneca Highway.

Notwithstanding, the Board agrees with the Applicant that it should not be required to underwrite public acquisition of that portion of the A-298 right of way adjacent to the site but not owned or controlled by the Applicant. Rather, the Board finds that the Applicant must complete construction of this portion of A-298 provided the land is acquired for public ownership.

Condition #1 explained the Board's modification as follows:

Prior to MCPB release of building permits, all necessary roadway design shall be approved and roadway improvements under construction as outlined in the Transportation Division memo dated August 3, 1995, with the exception of the

portion of proposed A-298 which is not owned or controlled by the Applicant, and will be acquired for public ownership by Montgomery County. Design and construction of A-298 in the area to be acquired for public ownership shall commence upon the later to occur of design and construction of the portion of A-298 controlled by the Applicant or conveyance to Montgomery County of the area to be acquired for public ownership.

In sum, for the 3 KVCDD Infrastructure Items with explicit references to the Planning Board's Opinion, OLO's review found:

- The Board's Opinion identified A-270 Kingsview Village Avenue as a SHA requirement and "necessary for the internal circulation of the proposed development". Staff did not explicitly identify this item as a requirement of its LATR analysis.
- The Board's Opinion identified A-298 Leaman Farm Road as necessary for the internal circulation of the proposed development and also stated that staff recommended it to "address unacceptable traffic conditions based on the LATR findings".
- The Board's Opinion and the Transportation staff memorandum identified Clopper Road (MD 117) as an SHA requirement. The Board's Opinion also identified it as a bordering, publicly maintained street and referenced requirements in 50-24(b) that apply to these types of streets. Staff did not explicitly identify this item as a requirement of its LATR analysis.

## Introduction

Over the years, the County has enacted numerous laws and regulations that have defined an array of public/private partnership arrangements designed to provide and fund public infrastructure. As a result, when the Council enacted the Development District Act in 1994, it created an infrastructure financing mechanism that was layered on top of:

- Longstanding exaction practices administered by the Planning Board;
- A (transportation) development impact tax administered by the County Department of Public Works and Transportation; and,
- A system development charge administered by the Washington Suburban Sanitary Commission.

This appendix examines select instances of how the County's implementation of the Development District Act related to some of the pre-existing strategies to provide or fund public infrastructure which preceded it. This appendix is organized as follows:

- **Part A** introduces the concepts of exactions and development taxes;
- **Part B** presents a brief history of the use of exactions and development taxes in Montgomery County;
- **Part C** examines the relationship between development district taxes and WSSC's system development charge; and
- **Part D** examines the relationship between development district taxes and impact taxes.

### A. Understanding Exactions – In-Kind Contributions and Development Taxes

*Regulation for Revenue: The Political Economy of Land Use Exactions* (1993) by Alan A. Altshuler and Jose A. Gomez-Ibanez analyzes the growing use of development exactions. The following overview highlights some of the authors' key points and themes, which provide useful background for a review of the County's development district law and its implementation.

#### 1. Definition and Use of Exactions

For the purposes of this discussion, an exaction is a mandate that a government imposes on a real estate developer in exchange for receiving a permit. Generally, exactions fall into 2 broad categories: in-kind or financial. Examples of in-kind exactions are a requirement to dedicate a right-of-way for a road and build it, to install a water line, or to build a moderately priced dwelling unit. Examples of financial exactions are impact fees or other development charges.

Since the mid-70's, governments' use of exactions has grown significantly: more communities impose exactions; they are used to address a broader range of purposes; and the contribution rates are higher. A nationwide survey of the use of exactions in 1985 by Elizabeth D. Purdum and James E. Frank found:

- Before 1960, fewer than 1 in 10 communities used exactions, and the most frequent uses were for road and drainage work, water and sewer lines, police stations and parks.
- By 1985, 9 of 10 of the communities used exactions. Of these, 88% imposed some type of land dedication requirement, 89% imposed build/install requirements, and 58% required cash payments.

Altshuler also analyzes the data from Purdum and Frank to understand how the use of exactions for different purposes grew between 1955 and 1985. He reports:

- Between 1955 and 1964, at least 20% of the responding communities had enacted exactions for police stations and parks;
- Between 1960 and 1969, at least 20% had exactions for roads, schools, water lines, water treatment facilities, sewage treatment facilities and solid waste;
- Between 1965 and 1974, at least 20% had exactions for affordable housing; and
- Between 1970 and 1979, at least 20% had exactions for open space and fire stations.

## **2. Approaches to Determining Exactions**

In theory, the amount or type of an exaction must closely relate to the impact of the development. As Altshuler states, “the explicit purposes of exactions must be to finance service capacity for future occupants or to alleviate negative project impacts on the wider community”.<sup>1</sup> While the requirement for a nexus might create an expectation that exactions are determined by formulas, in practice “. . . most exactions are negotiated, and judicial oversight is rare”.<sup>2</sup>

Altshuler reports that the Purdum and Frank study showed most exactions were flexible at least in part. He notes:

Only 14% of the communities with build/install requirements, 23% of those requiring land dedication, and 46% of those requiring cash payments relied purely on formulas. The majorities that did not were more or less evenly divided between those utilizing “standards with some flexibility” and those deciding case by case.<sup>3</sup>

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<sup>1</sup> Altshuler, Regulation for Revenue, p.51.

<sup>2</sup> *Id.* at 54.

<sup>3</sup> *Id.* at 36.

Altshuler reports that although courts have expressed interest in precise exaction rules, this appears to be an uphill battle because it directly contradicts a forty-year trend in zoning regulation to embrace more discretionary approvals. Until the early sixties, zoning was a system of precise, fixed regulations. Since then, however, communities have enacted regulatory systems where permission to develop is discretionary. Altshuler cites Susskind and McMahon who observe that this discretionary system of negotiated regulations requires “the city and the developer [to] bargain over the scope and character of each project and agree on the value, timing, and format of compensatory payments or actions for which the developer will be responsible”.<sup>4</sup>

### **3. The Institutional Dimension of Administering Exactions**

Governments typically codify mechanisms to impose exactions in subdivision and/or zoning ordinances which are often administered by independent, quasi-judicial citizen commissions. As a result, Altshuler observes, “local planning and land use regulation traditionally have been outside the mainstream of local decision making”. He continues:

When actually planning, local land use agencies have tended to ignore fiscal and other immediate considerations, preferring to articulate long term “feel good” visions. As exactions have come into fashion, though, it has become increasingly apparent, first, that land use regulation is about community objectives, not just the resolution of private conflicts; and second, that to be effective as a communal instrument it must be thoroughly integrated with fiscal, environmental, and public works policy making. Where exaction financing is well advanced, these ideas are now taken for granted, and this integration is often far advanced.<sup>5</sup>

### **4. How Exactions Differ from Taxes**

The underlying legal theory of exactions is that when a government reasonably determines that certain public needs are “... attributable to a development, a government can require a development to internalize these costs”. From this perspective, exactions are comparable to user fees, and legally there must be a close relationship or nexus between the fee and the development impact.

In contrast, a government can impose a tax to raise revenue for a general public purpose. In principle, there does not need to be a close relationship between the source of the revenue and what it is used for.

Many communities have established impact fees at levels that are designed to cover the cost of facilities to serve new growth, so that they can forego property tax increases (which would affect existing residents) to pay for these facilities. In Montgomery County, impact taxes and development district taxes are taxes, not fees. This means revenues from impact and

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<sup>4</sup> *Id.* at 56.

<sup>5</sup> *Id.* at 27.

development district taxes are not limited to paying for facilities to serve new development; instead, they may also be used to pay for infrastructure that provides a general benefit or serves a broader public need. In contrast, revenues from the WSSC system development charge must be used to pay for infrastructure that serves the development that pays it.<sup>6</sup>

## **5. Who Pays Exactions and Development Taxes**

Although exactions are collected from developers and builders during the development approval process, the limited evidence that exists suggests that these participants do not bear the ultimate cost. Instead, the costs of exactions are either passed back to the original landowner (in the form of a lower price for the land than the developer would have paid otherwise) or forward to the homebuyer or renter. According to Altshuler, “. . . the ultimate burden or incidence of exactions, like that of other taxes or fees, falls on the parties that are least able to evade them”.<sup>7</sup>

Altshuler identifies 4 exceptions to this generalization, where developers or landowners bear the burden of exactions. This occurs: shortly after the exactions are imposed; when significant variations exist among exactions locally; in communities with hot real estate markets; and, in communities committed to growth control.

In communities committed to growth management, he contends that permit shortages, not the exactions, create high prices for buyers and renters. He observes that developers with permits reap windfall profits which the government may be able to recapture, wholly or in part, by levying exactions. Altshuler reports that limited empirical evidence exists about exaction payments, but the few available studies support the view that exactions are passed on to property buyers or renters.

## **6. The Appeal of Exactions and Development Taxes**

According to Altshuler, the use of exactions has exploded since the '70s because they offer a politically viable way to raise revenue as well as an effective method to resolve debates about growth and development. He notes:

The great appeal of exactions is that they generate revenue for achieving publicly defined purposes without offending any organized blocs of voters. Although developers would prefer not to be saddled with exactions, they are generally few in number, not willing to offend officials who can deny their permits, and optimistic they can pass the costs onto the consumers. So long as they believe exactions play a role in moderating skepticism about growth, that their competition are bearing similar burdens, and that the market will support exaction costs and healthy profit margin, they are willing to go along.<sup>8</sup>

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<sup>6</sup> See Part C for more information about WSSC's systems development charge.

<sup>7</sup> *Id.* at 98.

<sup>8</sup> *Id.* at 9.



He also observes:

The great political appeal of exactions is that they seem free to nearly everyone involved in local affairs. They do not show up on anyone's tax bill, and while they are likely to drive up developer prices they remain imperceptible even to purchasers as a distinct cost item . . . So faced with criticism for growing infrastructure inadequacies, local officials find in exactions a uniquely attractive instrument to finance at least the portion of community investment requirements that plausibly can be attributed to new development. Perhaps even more significantly, they find in exactions a marvelously flexible instrument for crafting compromises.

Developers are less sanguine about exactions, because they like to keep their costs down. But they typically view exactions as just one cost item among many, and they often perceive the alternatives to be prolonged local controversy or outright rejection of their plans. Their primary concern is to make money. If the total regulatory package – zoning restrictions, building codes, environmental rules, and exactions – leaves them room to do so, they almost always are disposed to go along. If not, they are inclined to look elsewhere for opportunities, or to wait for another day, rather than to engage in public protest or litigation. Delays are likely to cost them more than anything they can hope to gain, and they generally have a continued need for the favorable exercise of regulatory discretion.<sup>9</sup>

His observations about exactions are equally applicable to impact taxes in Montgomery County.<sup>10</sup>

## **7. Alternatives to Exactions and Development Taxes**

Altshuler identifies 4 alternatives to exactions that localities can pursue to address citizens' concerns about development:

1. Reject new development and divert growth to other jurisdictions;
2. Seek assistance from other levels of government;
3. Raise local tax rates, user fees or both; or
4. Accept a decline in services by accepting growth without making a parallel investment in infrastructure.<sup>11</sup>

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<sup>9</sup> *Id.* at 126.

<sup>10</sup> They generally apply to development district taxes, except that these taxes do appear on a homeowner's tax bill.

<sup>11</sup> A modification to option 3 available to Montgomery County is to establish a special taxing district for a specific geographic area to raise revenues for a particular community facility or service. Practically speaking however, this approach is limited because currently any add-on property tax assessed in a district will count against the County Charter property tax yield limit.

**B. A Brief History of Exactions and Development Taxes in Montgomery County**

From the day of its creation in 1927, the Maryland-National Park and Planning Commission (acting in Montgomery County as the Montgomery County Planning Board) was authorized to require subdivision applicants to dedicate roadways. This had increased significance when the County's first zoning ordinance in 1928 required a minimum street frontage for each buildable lot. It was also customary for the Commission to receive additions to the stream valley park system by dedications of land. Montgomery County's exaction strategies vary by approach and type of facility.

**1. Parks, Open Space and Amenity Packages**

The County's earliest exactions for local parks and open space to support a particular project began in 1965 with the enactment of the Planning Neighborhood and Town Sector zones. These zones required land to be reserved for schools, playgrounds, local parks and conservation areas. These zones were the predecessors to the Planned Development and Planned Retirement Community zones.

In 1973, the County enacted 3 Central Business District (CBD) zones which created an option for higher density development in exchange for project amenities. The public sculptures, high-quality street trees and lighting, and well-designed public spaces in the Bethesda, Friendship Heights, Silver Spring, and Wheaton downtowns were provided through a combination of development exactions and public funds.

In 1989, the District Council created the RMX-2 zone, which is the zoning for the Clarksburg Town Center. Mirroring the approach in the CBD zones, the regulations for this zone establish maximum commercial and residential density limits. The regulations replaced specific development standards with a more flexible standard that allows "general commercial uses and higher density residential uses...provided that they are in accordance with the provisions of 59-C-10.3, as well as the density, numerical limitations, and other guidelines contained in the applicable master plan approved by the District Council. Since then the Transit Oriented Mixed Use zones took a similar approach.

**2. Roads and Schools**

In Montgomery County, new development has always been required to build the on-site streets in a new subdivision because they are needed for access to each property. During the past 30 years, the governing premise in this County has also been that new development should pay a share of the off-site transportation improvements needed to address the additional traffic generated by a development. This was first manifested during the 1970's with Planning Board conditions on individual subdivision approvals, and enhanced by the road clubs of the 1980's and, more recently, by development districts in Germantown and Clarksburg.

## Appendix 4B. A Brief Review of Exactions and Development Taxes in Montgomery County

We have no reliable estimates as to how much that new development has paid directly for these off-site transportation improvements, but roads in some areas — notably Germantown — were financed largely by exactions on new development. In Germantown, improvements to key segments of MD 118, MD 355, MD 117, Father Hurley Boulevard, Middlebrook Road, Wisteria Drive, and other roads were paid by forms of development exaction. Some of these costs were passed on explicitly to new homebuyers and tenants, and some were borne by developers.

*Road clubs (early 1980's).* Road clubs allowed multiple builders developing in a common area to share the cost of a road improvement required as a condition of subdivision approval. New homes were required to pay \$300 annually to cover the developer's principal and interest for major off-site road improvements. Two of the first road clubs were established in Germantown to build relocated MD 118 through what is now the Germantown Town Center.

*Transportation impact fee/tax (1986-present).* County Executive Gilchrist proposed impact fees on new development to fund master-planned improvements that would increase transportation capacity. He initially proposed fees in 3 areas: Germantown, Clarksburg, and Eastern Montgomery County (Fairland/White Oak and Cloverly). However, he retracted his proposal for fees in Clarksburg when Planning Board Chair Christeller argued that an impact fee there would generate premature development pressure. The Council enacted the impact fee law in April 1986, and it took effect that August.

The law has been revised many times in the past 2 decades. The fee rates were amended biennially to reflect construction cost inflation, updated master plans, and other policy changes. In 1998, State road improvements were dropped from the list of projects eligible to be funded. In 1990, the law was successfully challenged in the Maryland Court of Appeals, resulting in curative legislation which converted the fee to an excise tax. In the late 1990's Clarksburg was added as a third impact tax district. In 2001, the Council enacted a countywide impact tax law for the first time, setting the rates in Metro Station Policy Areas (MPSAs) at half the level as elsewhere; then-County Executive Duncan vetoed the bill, and the Council did not override his veto. Later in 2001, the Council enacted Mr. Duncan's version of a Countywide impact tax, which had the same general structure but with lower rates and an extended (2-year) phase-in period. Finally, in 2003, the Council raised the rates substantially; setting Clarksburg's residential rates 50% higher than the general rates and its non-residential rates 20% higher; tightened credit provisions;<sup>12</sup> implemented an automatic biennial inflation-based rate adjustment; and allowed future Councils to revise the rates by Council resolution (as opposed to legislation).

*Development Approval Payment (1993-present).* The Council approved an alternative review procedure proposed by then-Councilmember Adams as part of the FY93 Annual Growth Policy which allowed developments in certain MSPAs, as well as small residential subdivisions (no more than 100 units per subdivision) in most other policy areas, to meet their transportation adequate public facilities requirements by paying a Development Approval Payment (DAP) at building permit issuance. The DAP rates, established in Chapter 8 of the County Code, are virtually the same as the Construction Excise Tax rates adopted in 1991, which never took effect.

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<sup>12</sup> Bill 31-03, Transportation Impact Tax – Amendments, enacted on October 28, 2003, amended Section 52-55, Credits, to provide that a credit expires 6 years after it is certified by DPWT and to provide that DPWT must not certify a credit for any improvement to a State road with certain exceptions.

Appendix 4B. A Brief Review of Exactions and Development Taxes in Montgomery County

DAP revenue was to be used for transportation capacity improvements in rough geographic proportion to the location of the subdivisions making the payments, except that 20% of the revenue was diverted to the Housing Initiative Fund (HIF).

Over the years, very few MSPA developments opted to use this alternative review procedure, but it was frequently used for small residential subdivisions. The 2003 Growth Policy (which took effect in July 2004) discontinued the alternative review procedure for small residential subdivisions. It continued the MSPA procedure, but keyed its approvals to a doubled impact tax. Some DAP funds still trickle in as subdivisions approved under this procedure reach the building permit stage.

*Development Districts (1994-present).* The Council enacted a law in 1994 that created a process to review and approve development districts. The property owners in a district are assessed an annual property tax surcharge to pay the principal and interest on County bonds, the proceeds of which pay for the major infrastructure of the district. Three development districts have been established: West Germantown, Kingsview Village Center, and Clarksburg Town Center. Bonds have been issued for the first 2, but the County has not yet issued bonds for the Clarksburg Town Center district. Two other potential development districts in Clarksburg have not yet been approved.

Most, but not all, of the infrastructure funded by the development districts is transportation related. Of the \$38,369,000 for development district projects funded to date in the Capital Improvements Program, \$23,723,000 (61.8%) is for transportation projects.

*Expedited Development Approval Excise Tax (1998).* The Council enacted an alternative review procedure, commonly known as "Pay and Go", which allowed most development to meet its transportation adequate public facility requirements by paying an Expedited Development Approval Excise Tax (EDAET). The EDAET rates were higher in moratorium areas than in other areas. Several months after "Pay and Go" took effect, a new Council restricted its scope to residential development, and a few months later it was repealed altogether. Like DAP, EDAET payments are still received from subdivisions approved under "Pay and Go," but this revenue is diminishing rapidly.

*Recordation Tax increment (2002).* To generate more revenue for school capital projects, then-Councilmember Subin proposed increasing the recordation tax rate by about 57%, with the increment dedicated solely to the capital program of Montgomery County Public Schools and to Montgomery College's educational technology projects.

*Public school impact tax (2003).* Then-Councilmember Perez and Councilmember Andrews proposed the public school impact tax as a corollary to the Development Impact Tax for transportation facilities. Unlike the transportation impact tax, the school impact tax applies only to residential development, and its rates include an element of progressivity: a single-family detached home larger than 4,500 square feet pays a \$1 increment for each square foot above that level, with a maximum increment of \$4,000.

**3. Water and Sewer Facilities**

In 1993, the General Assembly approved legislation authorizing the Montgomery and Prince Georges County Councils to establish, and the Washington Suburban Sanitary Commission (WSSC) to impose, a System Development Charge. The General Assembly authorized this charge so that new development would pay for that portion of the Commission's Capital Improvement Program needed to accommodate growth in WSSC's customer base. The General Assembly established the System Development Charge a year before the Council enacted the County's Development District Act. The next section examines the coordination of these laws in practice.

**C. Coordinating Development District Taxes with WSSC's System Development Charge – A Chronology of the Clarksburg Town Center Water Main**

This section examines how the implementation of WSSC's system development charge and the County's development district tax were coordinated in practice. It provides a brief description of WSSC's capital programming responsibilities and its procedures for administering the System Development Charge. This overview is followed by a chronology of the Clarksburg Town Center (CTC) Water Main, an infrastructure item currently approved for CTC Development District funding.

This review shows that a disconnect exists between two different financial exactions that are each intended to pay for facilities required to serve growth: the Systems Development Charge and Development District bond revenues. If the Council does not address this disconnect for the CTC Water Main, the developer apparently could be reimbursed twice for the same project costs.

**1. Capital Programming and Implementation of Water and Sewer Facilities**

Washington Suburban Sanitary Commission (WSSC) is a state chartered, bi-county agency charged with planning, designing, constructing and operating water and sewer services for Montgomery and Prince Georges Counties. The responsibilities for water and sewer service decisions in Montgomery County are shared among the Montgomery County Council, the County Executive and the WSSC. Maryland Code Article 29, Title 7, sets forth the procedures for the WSSC Capital Improvements Program.

- As required by Section 7-104, before October 1 of each year, WSSC must prepare and submit a capital improvements program to the County Executive and County Council. The capital program must include all major projects.<sup>13</sup>
- As required by Section 7-105(a), the County Executive must "submit recommendations and suggested amendments about the WSSC Capital Improvement Program as an integral part of the comprehensive 6 year Capital Improvements Program required by the Montgomery County Charter". The County Executive makes recommendations to the Council by January 15 of each year.
- The County Council, as the County's fiscal authority, annually reviews and approves WSSC's operating and capital budgets.

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<sup>13</sup> Section 7-101(b) defines major projects to include sewer mains at least 15" in diameter, water mains at least 16" in diameter and sewerage or water pumping stations, force mains, and storage or other facilities.

**2. Authority and Requirements for WSSC's Systems Development Charge (SDC)**

The requirements for WSSC's system development charge are set forth in Section 6-113 of Article 29 and explained in WSSC's Water and Sewer Authorization Manual.

- Section 6-113(b), System development charge – imposition, provides that WSSC may impose a SDC payable by an applicant for new service. The charge is payable when an applicant files a plumbing permit application.
- Section 6-113(c) provides that the Montgomery and Prince Georges County Council shall meet annually to discuss and approve the amount of the system development charge. The Councils must base the charge on the actual cost of construction of WSSC facilities. The charge was phased in over a 3-year period.
- Section 6-113(e) provides that WSSC may only use the funds collected to:
  - Pay for new facilities where the need is directly attributable to the addition of new service (constructed after July 1, 1993); or
  - Amortize any bond issued in connection with the construction of those new facilities.

Besides authorizing the County Councils and WSSC to establish and administer a system of fees based on the amount of facility costs and payable at permit, the law also authorizes WSSC to enact procedures to coordinate the management of turnkey projects with the administration of the System Development Charge. According to WSSC's Budget Unit Coordinator, this provision was included at the request of the development community in response to a developer's desire to build a facility at his own expense so that he can maintain control over the timing of his development project.

Section 6-113(f) authorizes WSSC not only to establish a facility management system that allows a developer to design and install a facility, but also to establish procedures for accepting the facilities into the WSSC system and granting credits equal to the cost of constructing the facilities. Specifically:

- Section 6-113(f) authorizes WSSC to allow a developer to design and construct any on-site or off-site facilities "necessary for a project of the developer" as long as the facilities are:
  - programmed in the WSSC CIP and the Ten Year Water and Sewer Plan; and
  - designed, constructed, and inspected in accordance with WSSC's standards, laws, regulations, and written policies.

Appendix 4C. A Brief Review of Exactions and Development Taxes in Montgomery County

- Section 6-113(f)(2) requires that after WSSC approves facilities constructed by a developer under this subsection, WSSC must:
  - accept the facilities as part of the WSSC system; and
  - grant the developer a credit against any charge imposed under this section in an amount equal to the cost of constructing those facilities.

Two additional sections of the law address how these provisions should be implemented. Section 6-113(R)(3) requires the internal auditor of WSSC to review and approve the costs incurred by the developer. Section 6-113(R)(4) requires the WSSC and the developer to enter into an agreement incorporating the provisions of this subsection.

As a result of the SDC enabling legislation enacted in 1993, WSSC added 2 new CIP funding sources to fund projects to support new growth. As explained in WSSC's CIP,

- SDC "includes anticipated revenue from a System Development Charge and developer contributions;" and
- Contribution/Other is a source of funds for "projects funded by Applicants for growth projects where the County Councils directed that no WSSC rate-supported debt is used to pay for the project".<sup>14</sup>

WSSC's Water and Sewer Authorization Process Manual (accessible online at [http://www.wsscwater.com/dsg-permits/dsg\\_ws\\_manual.cfm](http://www.wsscwater.com/dsg-permits/dsg_ws_manual.cfm)) explains the implications of the SDC authorizing legislation. It states:

The 1993 legislation which authorized the WSSC to impose the System Development Charge also allowed for developers and others to construct the water and sewer facilities needed for their development, at their expense, subject to WSSC approval. Upon completion of construction the facilities are turned over to the WSSC for service and maintenance. To do this, the applicant must execute a Memorandum of Understanding (MOU) with the WSSC which covers the design and construction of the facilities in accordance with SOP PD-93-06. Under this agreement the applicant must pay all costs incurred by the WSSC for their construction. This would include plan review, supervision and inspection, and other costs incurred by the Commission. If the facilities to be constructed are in the Capital Improvements Program, the applicant will receive credits toward their Systems Development Charge for the eligible cost incurred by the applicant for the design and construction of the facilities in accordance with SOP CUS 94-03.<sup>15</sup>

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<sup>14</sup> WSSC Adopted Six-Year Capital Improvements Program Fiscal Years 2007-2012, June 21, 2006, p.5

<sup>15</sup> [http://www.wsscwater.com/dsg-permits/dsg\\_ws\\_manual.cfm](http://www.wsscwater.com/dsg-permits/dsg_ws_manual.cfm). Chapter 2, Water and Sewer Service Development, Part I., Construction by Applicant, accessed August 13, 2007.



WSSC's Manual also provides a Water and Sewer Service Staging Flow Chart that displays the key steps in the authorization and approval of a water and sewer service facility. (See [http://www.wsscwater.com/dsg-permits/dsg\\_ws\\_manual.cfm](http://www.wsscwater.com/dsg-permits/dsg_ws_manual.cfm).)

### **3. WSSC's Standard Operating Procedures to Implement the Systems Development Charge – PD-93-06 and ENG-04-01**

Following the establishment of the System Development Charge, WSSC updated and approved 2 related standard operating procedures to implement the law: PD-93-06 and SP ENG-04-01.

*PD-93-06, Procedure for Development a Memorandum of Understanding for the Construction of WSSC Systems by Others*, defines the procedural steps required to allow the construction of WSSC systems by others. Two key administrative concepts that this procedure establishes are a Memorandum of Understanding and a Turn-Key Project.

- Section 2.00, Definitions, Memorandum of Understanding (MOU) defines a MOU as “An agreement issued to cover design and construction of any water and/or sewerage system or facilities within the Sanitary District in Montgomery and Prince George’s Counties, Maryland, that will be constructed and financed by others . . .”
- Section 2.04, Definitions, Turn-Key Project states “All projects are to be handled under a turn-key concept. Under this concept, the Requestor will design and construct all facilities in accordance with Commission standards and technical criteria. The Commission will not accept or approve the facilities for operation until construction and testing of the facilities have been completed to the satisfaction of the Commission and all expenses have been paid.

*SP ENG-04-01, SDC Applicant Credits and Reimbursements*, is WSSC's current Standard Operating Procedure for the administration of System Development Charge (“SDC”) Applicant Credits and Reimbursements. This procedure establishes the following definitions and provisions for SDC Credit Agreements and SDC Credit Eligible Costs.

- Section 2.8, SDC Credit Agreement, defines this as “An agreement that summarizes the eligible costs considered for SDC Credit (As described in Section 3.6). The SDC Credit Agreement is appended to an SEP. The credit agreement is included in the MOU as Attachment A”.
- Section 3.6 provides that SDC is the “total eligible Project cost incurred and paid by the Applicant. The SDC Credit is subject to the general guidelines that (1) eligible costs will be the types of costs that WSSC would have incurred had WSSC designed and constructed the Qualified Project, and (2) the SDC Credit will not exceed the maximum amount mutually agreed upon in the SDC Credit Agreement. Eligible costs must be directly allocable to the Qualified Project.

Under SP-ENG-04-01,

- An applicant's SDC credits may not exceed 50% of the estimated total project cost during construction;
- After WSSC accepts a project and places it in service, the applicant must submit a written request for audit to WSSC's Internal Audit Manager, along with an itemized list of eligible costs;
- After WSSC's Internal Audit Section conducts a final audit to determine the actual total eligible project cost, WSSC makes the remaining SDC credits available to the developer up to the eligible project cost; and
- A developer has the option of applying the SDC credits against SDC charges for another project or requesting a cash payment.

Finally, Section 3.9 of SP ENG 04-01 provides that an "SDC Credit Agreement will not provide payment to the Applicant for costs the Applicant did not incur or for costs reimbursed to the Applicant from other sources".

#### **4. Chronology for the Clarksburg Town Center (CTC) Water Main Project**

In 1994, a year after the State enacted the SDC, the County Council enacted legislation authorizing the delineation of a special district and the imposition of special taxes and assessments to support new development. As explained in the Council staff's report, the Development District Act authorized the County to use development district revenues to cover the cost of bonds issued to finance infrastructure improvements located in a district. Section 14-3(g) explicitly identifies sewer and water systems among the types of public facilities eligible for development district funding. It does not provide any exclusions for water and sewer facilities programmed with SDC funds or developer contributions.

This section presents a chronology of the development planning, programming, construction, financing, and acquisition of the Clarksburg Town Center Water Main Project ("CTC Water Main") to examine how the authorization and capital programming of the CTC Water Main, the administration of the SDC, and the establishment of the CTC development district tax were related in practice. The chronology reflects:

- WSSC's project planning, capital programming, construction management, and SDC administration practices;
- The Planning Board's regulatory review and approval practices;
- The Executive's capital programming and development district implementation practices; and

*Appendix 4C. A Brief Review of Exactions and Development Taxes in Montgomery County*

- The Council's capital programming and development district approval practices.

*Initial Programming of the CTC Water Main Project.* On May 26, 1995, the County Council adopted Resolution 13-157, Budget Approval for the WSSC Fiscal Year 1996 Capital and Operating Budgets. The Approved WSSC Capital Improvements Program included Project W-46.13, Clarksburg Town Center Water Main. According to the Description and Justification section of the Project Description Form (PDF), this project was "added at the request of the Montgomery County Council, March 21, 1995; Clarksburg Master Plan, Stage II". The PDF stated that the project scope was developed in FY 1995 and that the preliminary cost estimate was a placeholder until WSSC completed a comprehensive cost estimate. The PDF displayed the funding source as "Contribution/Other".

The text stated that "100% of this project supports future growth". It indicated that the proposed main would provide service to the 1,300 residential units and to the 275,000 square feet of Commercial/Retail/Civic space within the Clarksburg Town Center tract.

*The Planning Board's Regulatory Approvals.* Between June 1995 and January 1998, the Planning Board issued 3 Opinions for the CTC Project:

- The Project Plan Opinion was mailed in June 1995;
- The Preliminary Plan Opinion was mailed in March 1996;
- The Phase I Site Plan Opinion was mailed in March 1998.

The regulations that form the basis for the Planning Board's development approval process require the Planning Board to make a finding about the adequacy of public water to serve the proposed development. Notwithstanding these regulatory requirements, none of the Planning Board's Opinions explicitly states that the site currently lacked public water service, or addresses who will be responsible for providing the public infrastructure necessary to serve the site.

Neither the Opinions nor the Planning staff reports contain any conditions requiring the applicant to install and construct a 20" water main, nor do they contain any statements that the County's approved capital program includes a proposed water main project that is designed to serve the CTC Project.

The Project Plan Staff Report contains the only mention of water service. It states that a 16" water main exists adjacent to the site, and makes a declarative statement that water service will be adequate to serve the CTC Project.<sup>16</sup>

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<sup>16</sup> The former Subdivision Coordinator suggested that there may have been a letter from WSSC in the Preliminary Plan Project file. At the request of Council and OLO staff, the current Chief of Development Review and the current Community Planning Coordinator for the I-270 Coordinator reviewed the CTC Project files. They reported that they did not find any letters from WSSC addressing the adequacy of water and sewer service in the CTC Project files; however, the Chief of Development Review reported that she did find comments from WSSC recorded in the minutes of a Development Review Committee meeting.

*Developer's Application to WSSC for an Extension Authorization.* In December 1995, Piedmont Land and Clarksburg Land Associates TA Clarksburg Town Center Venture, (the original owner of the CTC Project), filed an extension authorization application with WSSC's Development Services Group.

In December 1996, WSSC's Development Services Group approved this application subject to 18 conditions. WSSC's comments and additional conditions on the approved application state, in part:

The applicant proposes to design and construct the temporary facilities, the 20-inch water main from the existing 16-inch water line in Route 355 to the existing 16 inch water line in Piedmont Road (W-46.13 as shown in the WSSC's proposed FY98 CIP) and Part 4, under Memorandums of Understanding (MOU) with the Commission. Prior to commencement of design, the applicant will be required to pay a deposit for the total estimated WSSC cost of plan review. Prior to the commencement of construction, the MOU(s) must be approved and executed, and a deposit for the total estimated WSSC cost, including construction, supervision, and inspection, shall be paid to the Commission. Upon completion of construction, the facilities will be turned over to the Commission for service and maintenance. Approval is subject to the applicant complying with Standard Procedure PD-93-06, which includes provisions for a Memorandum of Understanding.<sup>17</sup>

*Execution of the CTC Water Main Project Memoranda of Understanding (MOU), the SDC Credit Agreements, and the Construction Contracts.* Following WSSC's approval of an authorization request, a developer executes a Memorandum of Understanding (MOU) with WSSC that addresses the design and installation of the project. The developer also executes an SDC Credit Agreement that summarizes the eligible costs considered for SDC Credit. The SDC Credit Agreement is included in the MOU as Attachment A.

According to current WSSC staff, WSSC and the developer executed Memoranda of Understanding for the CTC Water Main Project since this project was built by the Developer and was underway prior to July 1, 2000 when the System Extension Permit (SEP) process was enacted under Maryland law. Beginning in September 2001, following the Council's programming approval, WSSC executed 24 separate contracts with the developer to provide for the installation and construction of the CTC Water Main Project. **Exhibit C-1** on page 4C-11 lists the contracts with SDC Credit Agreements, and the SDC Credit Amounts established for each of these contracts, plus one contract that is expected to have an SDC Credit Agreement in the future.

*Petition for the Establishment of the CTC Development District.* In July 2000, the developer filed a petition to create the CTC Development District. This petition requested that the proposed CTC Development District fund the CTC Water Main at an estimated cost of \$326,951. This cost estimate accounted for segments outside the geographic boundaries of the

<sup>17</sup> WSSC Extension Authorization Report Number 96-1729A, approved 12-4-96, p.3.

CTC Project; the developer combined the costs for other segments with the costs of roads located within the geographic boundaries of the CTC Project. In September 2000, the Council adopted Resolution 14-648 indicating its intent to consider the creation of a CTC Development District.

*Planning Board's Provisional Adequate Public Facilities (PAPF) Review.* In November 2000, the developer submitted a PAPF application to the Planning Board. In March 2001, the Planning Board sent a letter to the County Executive with its recommended infrastructure improvements, including the CTC Water Main. The Planning Board recommended CTC Development District funding for the off-site portion of the CTC Water Main. The Planning Board's rationale for its recommendation was that the "improvements to be included in the Development District should serve the regional area, not just the residents of a single development".

*Executive's Fiscal Review.* Over the next 18 months, Executive staff managed the Executive's review of the CTC Development District petition. As described in the Executive's Fiscal Report, this was a collaborative effort led by staff in the Office of Management and Budget and Finance with input from Planning Department staff in the Community Planning Division and the developers.

The Executive's review for the CTC Water Main Project included:

- Consultation with WSSC staff to verify the cost estimate information submitted by the developer, as required in Section 14-8(a); and
- Consultation with Planning staff to determine whether the project was required as a condition of regulatory approval.

In June 2002, WSSC's Development Services Group notified the OMB Coordinator for Clarksburg that the cost estimate appeared reasonable and consistent with preliminary estimates developed by WSSC. In its letter, WSSC staff noted that over half of the water main had been installed, and provided information about other programmed projects in the area. The OMB Coordinator did not request and WSSC staff did not provide information about the CTC Water Main project's source of funds, nor did either staff raise concerns about the relationship between the use of the CTC Development District bond proceeds and WSSC's SDC credits.

In October 2002, the County Executive forwarded his recommendations for a CTC Development District to the County Council. His cover letter characterized the CTC Water Main as one of 3 projects originally proposed by the developer that would provide general benefit to the Clarksburg community at large. The Executive's cost estimate, which was \$779,000, reflected the total project cost. The Executive's Fiscal Report classified the CTC Water Main as "Not Required," based on information provided by Planning staff. A discussion under "Items for Future Evaluation" indicated that any WSSC systems development charge credits accruable to the district as an item for future evaluation should be handled as part of the implementation agreement.

#### Appendix 4C. A Brief Review of Exactions and Development Taxes in Montgomery County

*WSSC's Notice of Substantial Completion and Payment of SDC Credits.* In July 2001, WSSC issued a notice of substantial completion for one of the first 2 CTC Water Main contracts. Subsequently, the applicant submitted requests for audit of the first 2 contracts to WSSC's Internal Audit Manager. In January 2003, the Internal Audit Manager issued final audit reports and WSSC issued 2 checks totaling \$365,212 to the developer for SDC reimbursement.

*Establishment of the CTC Development District and Amendment of the Capital Project.* On January 13, 2003, the Executive forwarded his recommended amendments to the County's Approved CIP. On March 4, 2003, the Council approved Resolution 15-87, approving the creation of the CTC Development District.

On March 11, OMB staff forwarded a revised PDF for the CTC Water Main Project to the Council staff CIP Coordinator. The PDF amended the funding source for the CTC Water Main Project to show \$397,000 in Contribution/Other funds and \$382,000 in Development District Bonds. According to WSSC's Budget Unit Coordinator, the allocation of \$397,000 to Contribution/Other reflected the actual amount the developer had spent on the project to date; the allocation to Development District Bonds reflected the remaining costs at that time.

According to WSSC's Budget Unit Coordinator, this approach addressed WSSC's intention to use the Contribution/Other funding source to show that the Applicant was paying for the project, and it also met the Executive staff's desire to display development district bonds as an intended funding source. The Council Committee packet, prepared by Council staff, reiterated the information from the Executive's letter.<sup>18</sup> In June 2003, the Council approved the FY04 CIP including this PDF. For the next 3 fiscal years (from FY05 through FY07), the PDFs that were submitted by WSSC, recommended by the Executive, and approved by the Council continued to show these 2 sources of funds.<sup>19</sup>

*WSSC's Release for Service of Additional Capital Project Segments and Payments for SDC Credits.* Between March 2002 and March 2004, WSSC issued final releases for service for 4 additional contracts for the CTC Water Main, and in April 2005, the applicant submitted a request for audit to WSSC's Internal Auditor. The Internal Auditor was informed the developer would be submitting documentation to increase the authorized maximum eligible SEP amounts for 3 of the contracts. Although the Internal Auditor contacted the developer numerous times over the next 2 years, she did not receive any additional documentation. In May 2007, given the lack of response, the Internal Auditor notified the developer that she was placing the audit request in inactive status.

*Current Capital Project Status.* On May 24, 2007, the County Council adopted Resolutions 16-170 and 16-171 to approve the FY08 to FY13 Capital Improvements Program for WSSC. The Approved WSSC Capital Improvements Program includes Project W-46.13, Clarksburg Town Center Water Main. In FY08, the total programmed expenditure for this

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<sup>18</sup> WSSC staff indicate the Executive's transmittal letter and Council staff packet are the only documentation they have in the file to explain the change in funding source.

<sup>19</sup> WSSC staff reports that it continued to follow this practice in FY05, FY06, and FY07, but it did not follow this practice in FY08 or FY09. For these years, the source of funds is only Contribution/Other. WSSC staff does not have an explanation for why it reverted back to showing only Contribution/Other.

*Appendix 4C. A Brief Review of Exactions and Development Taxes in Montgomery County*

project is \$33,000 including \$3,000 in Planning and Design Fees, \$26,000 in Construction Costs, and \$4,000 in Other Costs. The Expenditure Detail (Report CIP230) in the CIP Budget Summary Schedules shows the total project cost is \$1.098 million. It shows all of the funds are scheduled to be expended in FY08.

The PDF in the approved FY08 CIP and the draft FY09 CIP revert to displaying the sources of fund for the CTC Water Main Project as Contribution/Other. The PDF indicates the project construction is 95% complete. WSSC's Budget Unit Coordinator anticipates WSSC will close out the capital project in FY10.

As of September 2007, WSSC's SDC Credit and Voucher data show:

- WSSC has issued a total of \$365,212 to the developer in SDC reimbursements for two audited contracts;
- WSSC has placed four contracts in inactive status. These contracts have a combined SDC Credit balance of \$98,696, which represents 50% of the authorized maximum eligible SEP amount; and
- WSSC has not received an audit requests for three contracts, which have a combined SDC Credit balance of \$91,809.50 (representing 50% of the authorized maximum eligible SEP amount).

If the remaining balance of \$190,505 is doubled, it equals \$381,010. This amount represents the additional amount WSSC has budgeted to refund to the developer based on its current SDC Credit Agreements. This amount, combined with the \$365,212 the developer has already received equals \$746,222. This amount is slightly less than the \$779,000 approved for acquisition of the CTC Water Main using CTC development district bond proceeds.

**Appendix 4C. A Brief Review of Exactions and Development Taxes in Montgomery County**

**Exhibit C-1. Status of WSSC's SDC Credits and Vouchers for the Clarksburg Town Center Water Main Project**

Contract Numbers	Audit Status	Authorized Maximum Eligible SEP Amounts	50% of Maximum Eligible SEP Amount Available as SDC Credit for Plumbing Permit Fees	WSSC Dates of Substantial Completion or Release for Service	Total requests for reimbursement submitted by the developer	Actual Eligible Costs	SDC Reimbursements Payments to Developer in Cash	Balance Remaining
DA1729C96	Audit Completed	\$177,642.00	\$88,821.00	Not available	\$213,473.00	\$172,621.00	\$172,621.00	\$0.00
DA1729E96	Audit Completed	\$199,333.50	\$99,666.25	July 17, 2001	\$251,761.00	\$192,591.00	\$192,591.00	\$0.00
DA1729I96	Request Submitted- On hold	\$20,823.59	\$10,411.80	March 27, 2002	\$70,936.50	On Hold		\$10,411.80
DA1729L96	Request Submitted- On hold	\$110,854.22	\$55,427.11	May 30, 2003	\$105,758.43	On Hold		\$55,427.11
DA1729M96	Request Submitted- On hold	\$26,244.88	\$13,122.44	Oct. 10, 2003	\$167,438.85	On Hold		\$13,122.44
DA1729N96	Request Submitted- On hold	\$39,468.55	\$19,734.28	March 3, 2004	\$232,299.49	On Hold		\$19,734.28
DA1729R96	No audit request submitted	\$92,636.00	\$46,318.00	Nov. 22, 2004	No audit request submitted			\$46,318.00
DA1729S96	No audit request submitted	\$44,299.00	\$22,149.50	Dec. 20, 2004	No audit request submitted			\$22,149.50
DA1729W96	No audit request submitted	\$46,684.00	\$23,342.00					\$23,342.00
DA3689C03	No audit request submitted	To be determined						
<b>Totals</b>		<b>\$757,984.74</b>	<b>\$378,992.38</b>		<b>\$1,041,667.27</b>	<b>\$365,212.00</b>	<b>\$365,212.00</b>	<b>\$190,505.13</b>

Source: WSSC Internal Audit and Permit Services Unit, August 2007.



**D. Coordinating Development District Taxes with the County's Transportation Impact Taxes**

The Executive's Fiscal Reports for the CTC Development District and the West Germantown Development District cited the structure of the County's development district law and impact tax law as a key justification for using development district proceeds to acquire infrastructure with a regional benefit.

This section of the appendix presents information about the implementation of these 2 laws in Clarksburg. It begins with a review of key sections of County law that define the current relationship between development districts and impact taxes. This overview is followed by information about the collection of transportation impact tax collections in the Clarksburg Impact Tax area between FY02 and FY07.

This review shows that if declarations for the three Clarksburg development districts were to be recorded in the County land records as of June 30, 2007, the district developers or homebuilders would be eligible for impact tax refunds totaling \$6.537 million, including \$2.514 million in cash refunds and \$4.023 million in adjustments to credit escrow accounts. This amount represents 55% of all Clarksburg impact tax payments collected between FY02 and FY07.

**1. The Relationship of Development District Act and Impact Tax Act in Montgomery County Code**

Four sections of the County Code (2 sections of Chapter 14 and 2 sections of Chapter 52) establish a set of related requirements for impact tax payments for properties that are part of a development district.

- One section of the law, Section 14-10(e), requires development district taxes to be credited against impact taxes or construction excise taxes that County law imposes;
- Another section of the law, Section 52-55(d), assigns the impact tax credit to the applicant of a development district;
- A third section of the law, Section 14-17(c) requires the Director of Finance to record a declaration that encumbers all of the real property in a development district before issuing any bonds; and
- Another section of the law, Section 52-54(a)(4) provides that a person who has paid a development impact tax and is eligible for a credit can also be eligible for a refund after the Director of Finance records a declaration that encumbers the property and states it is subject to a development district in the County land records.

Appendix 4D. A Brief Review of Exactions and Development Taxes in Montgomery County

The specific sections of the County Code are as follows:

*Section 14-10, Special Taxes and Assessments*, establishes financing requirements for the development district. It requires the Council's 3<sup>rd</sup> resolution to authorize the imposition of a special assessment at a rate that generates enough revenues to pay the principal and interest on the bonds and replenish the debt service reserve fund.

Sec. 14-10(e) establishes that the total amount of any development district tax must be credited against any impact tax or construction excise tax imposed in Chapter 52. It states:

- (e) The total amount of any development district special tax . . . paid under this Chapter must be credited against:
  - (1) the development impact tax and construction excise tax imposed under Chapter 52, as applicable; and
  - (2) Any other charge, fee or tax listed in the resolution adopted under Sec. 14-9 (including any front foot benefit charge, assessment, or tax imposed on construction) which is imposed by the County expressly to finance the costs of infrastructure improvements necessary to allow development.

*Section 52-55, Credits*, defines several circumstances when a property owner who pays a development impact tax is entitled to a credit. Subsection 52-55(d) states:

To the extent provided in Section 14-10(e), an applicant is entitled to a credit against the impact tax imposed by this Article for any development district special tax, special assessment, fee, or charge paid under Chapter 14 for property located in the development district for which a building permit is sought. In calculating the amount of the credit, a special tax, special assessment, fee, or charge imposed under Chapter 14 must be considered paid for a property when a declaration encumbering the property required under Section 14-17(c) has been recorded in the County land records.

*Section 52-54, Refunds*, addresses refunds of development impact taxes. Subsection (a) specifies 4 circumstances when a person who has paid a development impact tax may apply for a refund. As defined in Section 52-54(a)(4), one circumstance that qualifies a person for a refund of a development impact tax occurs when a property for which the impact tax has been paid is encumbered in the County land records as part of a development district, as required in 14-17(c). The language of Section 52-54(a)(4) states:

A declaration encumbering the property for which the development impact has been paid has been recorded in the County land records as required under Section 14-17(c) and the applicant is entitled to a credit under Section 52-55(d).

Section 14-17, *Disclosure to Buyers*, of the Development District Act establishes requirements for disclosure to buyers. Section 14-17(c) requires the Director of Finance to record a statement encumbering the property in a development district in the County land records before the County issues development district bonds. Section 14-17(c) states:

- (c) Before any bonds are issued under this Chapter, the Director of Finance must record among the land records of the County at the cost of the development district a declaration encumbering all real property located in the district and designating that property as subject to a development district. The declaration must terminate when the Director records a release stating that all bonds are fully repaid.

## 2. Impact Tax Collections Received from Clarksburg Development Projects

On May 1, 2001, the County Council enacted Bill 4-01, Impact Tax-Amendments to create a Clarksburg impact tax district and adopt tax rates and a transportation program for the district. On October 28, 2003, the County Council enacted Bill 31-03, Transportation Impact Tax – Amendments, to revise the transportation impact tax districts and rates. One part of this legislation replaced the transportation program in the Clarksburg Impact Tax district with 8 criteria to direct the use of impact tax funds.

Since the establishment of the Clarksburg impact tax district,

- The Department of Permitting Services has collected impact tax payments before it issues a building permit;
- The Department of Public Works and Transportation has administered the establishment and use of impact tax credits; and
- The Department of Finance has maintained the records to show the source and disbursement of revenues.

At OLO's request, the Department of Finance provided information about impact tax revenues and the Department of Permitting Services provided information about the types and sources of impact tax payments. **Exhibit D-1** summarizes the Department of Finance data for the Clarksburg Impact Tax District Account between FY02 and FY07. As of June 2007, the County has collected \$5.944 million in impact tax payments from building permits issued for several Clarksburg development projects. The County has used \$5.640 million in impact tax collections for the Stringtown Road Extended Capital Improvements Project, which is the only project that has used Clarksburg Impact Tax collections so far. The County has \$691,678 in impact tax payments for the Clarksburg Impact Tax District on hand.

**Exhibit D-1. Impact Tax Collections and Use for the Clarksburg Impact Tax District, FY02-FY07**

<b>Fiscal Year</b>	<b>Impact Tax Collections</b>	<b>Impact Tax Budgeted</b>	<b>Impact Tax Usage</b>
FY2002	\$176,555	\$0	\$0
FY2003	\$585,025	\$304,000	\$66,188
FY2004	\$1,618,099	\$286,000	\$398,341
FY2005	\$2,360,719	\$783,000	\$347,627
FY2006	\$4,449,554	\$3,128,000	\$2,562,250
FY2007	\$754,966	\$1,139,000	\$2,265,594
<b>Total Impact Tax Collections</b>	<b>\$5,944,918</b>	<b>\$5,640,000</b>	<b>\$5,640,000</b>
<b>Interest Income</b>	<b>\$386,760</b>		
<b>Total Collections and Interest Income</b>	<b>\$6,331,678</b>		
<b>Total Impact Tax Usage</b>	<b>\$5,640,000</b>		
<b>Total Impact Tax on hand</b>	<b>\$691,678</b>		

Source: OLO and Finance, August 2007.

**Exhibit D-2**, on the next page, displays data from the Department of Permitting Services about how various development projects in Clarksburg have paid the required impact tax. Under the law, a property owner may pay an impact tax due at building permit in cash or with a credit voucher.<sup>20</sup> The DPS data show:

- The value of impact tax contributions the County received between FY02 and FY07 totals \$11.854 million, including \$5.944 million in cash payments and \$5.909 million in credit vouchers; and
- Of these contributions, \$6.537 million (55%) are from properties in one of the 3 existing or proposed Clarksburg development districts and \$5.317 million (45%) are from properties that are not proposed to be in a development district; .

As explained above, County law provides that an applicant of a development district is eligible for a refund of impact taxes paid. This means that as of the end of FY07, the applicants of the Clarksburg development districts are eligible for refunds totaling \$6.537 million, including:

- \$1.798 million for the Clarksburg Town Center Development District applicant;
- \$2.492 million for the Clarksburg Skylark Development District applicant; and

<sup>20</sup> Under §52-55(b), a property owner must receive a credit for constructing or contributing to certain transportation improvements if the improvement reduces traffic demand or provides additional transportation capacity. A property owner who wishes to receive a credit must enter into an agreement before any building permit is issued. DPWT administers the credit certification program.

Appendix 4D. A Brief Review of Exactions and Development Taxes in Montgomery County

- \$2.247 million for the Clarksburg Village Development District applicant.

DPS reports that it would process a refund request according to how the original payment had been made. For example, since the applicant for the Clarksburg Town Center Development District paid its impact taxes in cash, DPS would authorize Finance to disburse a cash refund of up to \$1.798 million. On the other hand, since the applicant for the Clarksburg Skylark Development District paid \$545,000 in cash and \$1.947 million in credits, DPS would authorize Finance to disburse a cash refund of \$545,000, and DPS would authorize a \$1.947 million increase in the Clarksburg Skylark credit escrow account that it maintains.

DPS also reports that after the Director of Finance records the declaration for a district in the land records, DPS no longer collects impact taxes for properties in the district that are seeking a building permit.

**Exhibit D-2. Clarksburg Transportation Impact Tax Payments (Cash and Credit) for Development District Properties and Non-Development District Properties, FY02-FY07**

Clarksburg Subdivision Developments	Cash Payments Received for Impact Taxes Due	Credit Issued from Escrow Accounts for Impact Taxes Due	Total Value of Cash Payments and Credits Issued through FY07	Share of total value through FY07	Amount of Impact Tax Collections Eligible for Cash and Credit Refunds
Clarksburg Town Center	\$1,797,591.00	\$0	\$1,797,591.00	15%	\$1,797,591.00
Clarksburg Skylark	\$ 544,819.00	\$1,947,119.00	\$2,491,938.00	21%	\$ 2,491,938.00
Clarksburg Village	\$ 171,243.00	\$2,076,130.00	\$2,247,373.00	19%	\$ 2,247,373.00
<b>Subtotal for development districts</b>	<b>\$ 2,513,653.00</b>	<b>\$4,023,249.00</b>	<b>\$6,536,902.00</b>	<b>55%</b>	<b>\$ 6,536,902.00</b>
<b>Non-Development District Subdivisions</b>	<b>\$ 3,431,265.07</b>	<b>\$1,886,257.63</b>	<b>\$5,317,522.70</b>	<b>45%</b>	<b>\$0</b>
<b>TOTALS</b>	<b>\$ 5,944,918.07</b>	<b>\$5,909,506.63</b>	<b>\$ 11,854,424.70</b>	<b>100%</b>	<b>\$ 6,536,902.00</b>

Source: OLO and DPS, 2007.

**3. Impact Tax Refund Payments for the West Germantown Development District**

OLO obtained information from Finance and DPS about refunds for the West Germantown Development District to determine the amount and sources of funds for impact tax

Appendix 4D. A Brief Review of Exactions and Development Taxes in Montgomery County

refund requests. According to DPS, the County processed requests for \$1.3 million in impact tax refunds for the West Germantown Development District. Exhibit X displays the dates and amounts of impact tax refunds. According to Finance, the source of funds for these refunds, which were all cash disbursements, was the Germantown Impact Tax account. According to DPS, there were no refunds for subdivisions in the West Germantown District processed as adjustments to credit escrow accounts.

The \$1.3 million in impact tax refund payments understates the total development district offset against impact tax collections because it represents only that portion of impact taxes that the County collected before the Director of Finance recorded a declaration of the district. It does not include impact tax payments that DPS did not collect after the district was recorded. In 1997, the County Executive's Fiscal Report for the West Germantown Development District estimated the net impact tax credit at \$2.895 million. This estimate was based on FY97 impact tax rates and credits for improvements to Great Seneca Highway.

**Exhibit D-3 Impact Tax Refund Payments for the West Germantown Development District**

<b>Hoyles Mill Village/Woodcliffe Park</b>		
<b>Date</b>	<b>Payee</b>	<b>Amount</b>
Sept. 26, 2002	Artery Holyes Mill LLC	\$625,802
April 8, 2003	Artery Holyes Mill LLC	\$3,554
April 8, 2003	Toll Brothers	\$14,838
Subtotal for Hoyles Mill Village		\$644,194
<b>Kings Crossing</b>		
<b>Date</b>	<b>Payee</b>	<b>Amount</b>
Jan. 22, 2003	Richmond American	\$84,614
Jan. 22, 2003	Mid-Atlantic	\$2,492
Jan. 22, 2003	The Ryland Group	\$301,028
May 15, 2003	Ryan Homes	\$240,666
Feb. 3, 2004	NV Homes	\$44,172
Subtotal for Kings Crossing		\$672,972
<b>Grand Total for WGDD</b>		<b>\$1,317,166</b>

Source: DPS, September 2007.

MONTGOMERY COUNTY CODE  
Chapter 14

**Chapter 14. DEVELOPMENT DISTRICTS.**

**Article I. General Provisions.**

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§ 14-2. Purposes.

§ 14-3. Definitions.

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**Article II. Creating a Development District.**

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**Article III. Financing a Development District.**

§ 14-10. Special taxes and assessments.

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§ 14-12. Bonds—Payment, sinking funds, reserve funds, pledges and other financial guaranties, proceeds.

§ 14-13. Resolution; investment of special fund or sinking fund; tax exemption.

§ 14-14. Form, terms and conditions of bonds.

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§ 14-17. Disclosure to buyers.

§ 14-18. Construction of chapter.

**ARTICLE I. GENERAL PROVISIONS.**

**Sec. 14-1. Short Title.**

This Chapter may be referred to as the Montgomery County Development District Act. (1994 L.M.C., ch. 12, § 1.)

**Sec. 14-2. Purposes.**

- (a) The purposes of this Chapter are to:
  - (1) authorize the County to provide financing, refinancing or reimbursement for the cost of infrastructure improvements necessary for the development of land in areas of the County of high priority for new development or redevelopment by creating development districts in which special assessments, special taxes, or both, may be levied;
  - (2) authorize the issuance of bonds or other obligations of the County that are payable from special assessments or special taxes collected, or tax increments created, in a development district;
  - (3) specify the procedures to be followed in creating a development district, issuing bonds, and assessing and enforcing the collection of special assessments or special taxes in such a district; and
  - (4) provide for the tax-exempt nature and form of the bonds.
- (b) Development districts would be especially useful in achieving these purposes where:
  - (1) an approved master plan recommends significant development in a specific area of the County;
  - (2) the infrastructure needs necessary to serve that development include extensive and long-term facilities; and



- (3) the real estate market and the availability of land will permit significant development within the life of a development district. (1994 L.M.C., ch. 12, § 1.)

**Sec. 14-3. Definitions.**

In this Chapter the following words have the following meanings:

- (a) Adequate Public Facility means any infrastructure improvement required by the Planning Board as a condition of approving a preliminary plan of subdivision under Section 50-35(k) or identified in the Growth Policy as necessary for adequate public facilities approval in a development district.
- (b) Additional Public Facility Capacity means the provision of an infrastructure improvement not fully funded in the first 4 years of the County's then-applicable Capital Improvement Program.
- (c) Bond means a special obligation or revenue bond, note, or similar instrument issued under this Chapter or any other law if the indebtedness evidenced thereby will be repaid from revenue generated by special assessments, special taxes, fees, or charges levied under this Chapter, or special funds established under the Tax Increment Financing Act, in a development district.
- (d) Cost means the aggregate dollar cost of:
  - (1) building, rebuilding, or renovating any infrastructure improvement, and acquiring any land, structure, real or personal property, right, right-of-way, franchise, easement, or interest;
  - (2) machinery and equipment, including machinery and equipment needed to expand or enhance services in a development district;
  - (3) financing charges and interest before and during construction and, if the County Executive finds it advisable, for a limited period after completing construction; interest and reserves for principal and interest, including costs of municipal bond insurance and any other financial guaranty, and costs of issuance;
  - (4) extensions, enlargements, additions, or improvements;
  - (5) architectural, engineering, financial, and legal services;
  - (6) plans, specifications, studies, surveys, and estimates of costs or revenues;

- (7) administrative expenses necessary or incident to deciding whether to proceed with any infrastructure improvement; and
  - (8) any other expense necessary or incident to building, acquiring, or financing any infrastructure improvement.
- (e) Development includes redevelopment of underdeveloped land.
- (f) Development District means a special taxing district created for the purposes listed in Section 14-2.
- (g) Infrastructure Improvement means a school, police station, fire station, library, civic or government center, storm drainage system, sewer, water system, road, bridge, culvert, tunnel, street, transit facility or system, sidewalk, lighting, park, recreational facility, or any similar public facility, and the land where it is or will be located. Infrastructure Improvement does not include any improvement which:
- (1) primarily serves the residents or occupants of only one development or subdivision; or
  - (2) is the responsibility of a single developer under the Planning Board's site plan and adequate public facilities requirements.
- (h) Owner means a person or entity with legal title to property, or a contract purchaser of a property.
- (i) Special Assessment means a levy on property which is assessed in relation to any special benefit received from the construction of one or more infrastructure improvements to support development in a development district.
- (j) Special Benefit means any advantage or betterment accruing to real property as the direct result of any infrastructure improvement. The allocation of any additional public facility capacity to a development project is a special benefit.
- (k) Special Fund means an independent account in which special assessment, special tax, fee, charge, or tax increment payments received for a development district are deposited.
- (l) Special Tax means a property or excise tax levied in a development district, not based on any special benefit received, to pay for one or more infrastructure improvements to support development in that district.
- (m) Tax Increment Financing Act means the State Tax Increment Financing Act in Article 41 of the Maryland Code.

- (n) Tax Increment means for any tax year the amount by which the assessable base as of the January 1 before that tax year exceeds the original taxable value, as provided in the Tax Increment Financing Act. (1994 L.M.C., ch. 12, § 1; 2004 L.M.C., ch. 2; § 2.)

**Sec. 14-4. Powers of County.**

In addition to any power granted under any other law, the County may, subject to applicable state law and this Chapter:

- (a) create one or more development districts;
- (b) levy special assessments, special taxes, fees, or charges, in any development district; and
- (c) issue bonds and other obligations payable from:
  - (1) special assessments, special taxes, fees, or charges, levied in any development district; or
  - (2) special funds established under the Tax Increment Financing Act. (1994 L.M.C., ch. 12, § 1.)

**ARTICLE II. CREATING A DEVELOPMENT DISTRICT.**

**Sec. 14-5. Location.**

Any development district:

- (a) must be located entirely in the County, but may include land in any municipality;
- (b) need not consist of a contiguous geographic area unless otherwise required by State law;
- (c) should largely, if not entirely, consist of undeveloped or underdeveloped land; and
- (d) may be used to finance an infrastructure improvement located outside the district if the improvement is located in the County and related to the development or use of land in that development district. (1994 L.M.C., ch. 12, § 1.)

**Sec. 14-6. First Council Resolution.**

- (a) If a petition signed by at least 80 percent of the owners of real property and the owners of at least 80 percent in value of the real property, as shown by the latest assessment rolls, located in a proposed development district, is filed with the County Council, the Council must hold a public hearing after at least 15 days notice in two newspapers of

general circulation in the County. The petition must list the maximum number of housing units and the maximum nonresidential space that the signing property owners intend to build in the district.

- (b) Alternatively, the County Council, on request of the County Executive or on its own motion, may hold a public hearing after giving notice as required in subsection (a). The notice must:
  - (1) specify the proposed boundaries of the proposed district, and
  - (2) list the maximum number of housing units and the maximum nonresidential space expected to be built in the district.
- (c) After holding a hearing under subsection (a), the Council, by resolution approved by the Executive, may declare its intent to establish a development district consisting of a specified geographic area. In the resolution the Council must explain why intensive development of and public investment in that area during the term of the district will benefit the public interest.
- (d) If the Executive disapproves a resolution adopted under this Section within 10 days after it is adopted and the Council readopts it by a vote of six Councilmembers, or if the Executive does not act within 10 days after the Council adopts it, the resolution takes effect.
- (e) For the purposes of this Section, multiple owners of a single parcel of real property must be treated as one owner and a single owner of multiple parcels must be treated as one owner.
- (f) The adoption of a resolution under this Section does not:
  - (1) obligate the Council to create a development district; or
  - (2) limit a district to the area described in the resolution. (1994 L.M.C., ch. 12, § 1; 1996 L.M.C., ch. 1, § 1.)

**Sec. 14-7. Planning Board Review; Compliance with Adequate Public Facilities and Annual Growth Policy Requirements.**

- (a) After the Council has adopted a resolution under Section 14-6, one or more owners of land located in the proposed district may submit an application for provisional adequate public facilities approval, covering the entire proposed district, to the Planning Board. The application must:

- (1) explain how each development located in the proposed district will comply with all applicable zoning and subdivision requirements, including any action necessary under Section 50-35(k);
  - (2) identify any infrastructure improvement necessary to satisfy the Growth Policy's adequate public facilities requirements for a development district; and
  - (3) estimate the cost to provide each such improvement.
- (b) Within a reasonable time, the Board must jointly review for compliance with Section 50-35(k) and the Growth Policy all developments located in the proposed district as if they were one development. In that review, the Board must apply all otherwise applicable standards and procedures. The Board may conditionally approve an application if it finds that the proposed district will meet all requirements under Section 50-35(k) and any added requirements which apply to a district under the Growth Policy. The Board may condition its approval on, among other things, the creation and funding of the district and the building of no more than the maximum number of housing units and the maximum nonresidential space listed in the petition filed under Section 14-6 or any later amendment to the petition.
- (c) In the aggregate, the applications approved must commit the applicants to produce (through the funding of the proposed development district or otherwise) the infrastructure improvements needed to meet the applicants' adequate public facility requirements in the proposed district and any added requirements which apply to an applicant under the Growth Policy. In its approval, the Board must list those infrastructure improvements.
- (d) An applicant may withdraw a development from a district before the district is created under Section 14-9(c). An applicant must not withdraw a development after the district is created. If an applicant withdraws a development before the district is created, the applicant's provisional adequate public facility approval is cancelled. If any withdrawal would significantly impair the ability of the proposed district to finance the required infrastructure improvements, the Planning Board may modify or cancel any approval under subsection (b) and may attach new conditions to any previous approval.
- (e) (1) After a development district is created and the financing of all required infrastructure improvements is arranged, any development located in the district has for all purposes satisfied:
- (A) the adequate public facility requirements of Section 50-35(k);
  - (B) any added requirements which apply to a district under the Growth Policy; and

- (C) any other requirement to provide infrastructure improvements which the County adopts within 12 years after the district is created.
- (2) This subsection does not relieve any taxpayer from paying a generally applicable County tax, assessment, fee, or charge.
- (f) The County may reserve for its own use or transfer to other owners through regular development approval processes, or as otherwise provided by law, any additional public facility capacity attributable to improvements financed by the district which exceeds the capacity required for developments in the district. (1994 L.M.C., ch. 12, § 1; 2004 L.M.C., ch. 2, § 2.)

**Sec. 14-8. Executive Fiscal Report.**

- (a) After the Planning Board has acted under Section 14-7(b) but before the Council holds a public hearing under Section 14-9(a), unless otherwise provided in the resolution adopted under Section 14-6, the County Executive, after consulting the Superintendent of Schools with respect to school facilities and the Washington Suburban Sanitary Commission with respect to water and sewer facilities, must submit a report estimating:
  - (1) the cost of each infrastructure improvement listed by the Planning Board under Section 14-7(c); and
  - (2) (A) the amount of revenue needed to cover the district's share of all infrastructure improvements funded, fully or partly, by a district; and
    - (B) the estimated tax rate for each form of taxation available to the district that would produce the necessary revenue.

The Executive should compare these estimates to those submitted by the applicants under Section 14-7(a).

- (b) In this report the Executive should also recommend whether to create a district, its boundaries if one is created, which infrastructure improvements listed by the Planning Board the district should fully or partly fund, and alternative financing or revenue-raising measures. (1994 L.M.C., ch. 12, § 1.)

**Sec. 14-9. Second Council Resolution.**

- (a) The Council must hold a public hearing on the final resolution to create a development district not earlier than 45 days after the Planning Board has acted on all applications filed under Section 14-7 for that district.

- (b) (1) The Council must give notice of the hearing by:
  - (A) advertisement in at least two newspapers of general circulation in the County at least 21 days before the hearing; and
  - (B) notifying by mail the record owner of each property located in the proposed district at the address shown on the latest tax assessment roll.
- (2) Each notice mailed under this subsection must include:
  - (A) a copy of the proposed resolution to establish a district; and
  - (B) an estimated rate for any tax, assessment, fee, or charge proposed to fund infrastructure improvements for the district.
- (c) If the Council intends to use special obligation debt to finance the district, and the district was initiated by the Council under subsection 14-6(b), before the Council adopts a resolution under this Section the Council must receive a petition signed by at least 80 percent of the owners of real property and the owners of at least 80 percent in value of the real property, as shown on the latest assessment rolls, located in the proposed district.
- (d) After the public hearing, the Council by resolution approved by the County Executive may create a development district. If the Executive disapproves a resolution within 10 days after it is adopted and the Council readopts it by a vote of six Councilmembers, or if the Executive does not act within 10 days after the Council adopts it, the resolution takes effect.
- (e) A resolution adopted under this Section must:
  - (1) define the development district by specifying its boundaries and listing the tax account number of each property in the district;
  - (2) list each infrastructure improvement that will be financed by the development district, the estimated completion date and cost of that improvement, and the share of that cost which the County or another government agency will pay;
  - (3) create, and specify the amount or percentage of, a contingency account for unexpected cost overruns; and
  - (4) create a special fund for the development district.

- (f) A resolution adopted under this Section may also require that a building permit must not be issued for any listed development (or part of a development) in the district until the earlier of:
- (1) the date a specific infrastructure improvement begins construction; or
  - (2) a specific date. (1994 L.M.C., ch. 12, § 1; 1996 L.M.C., ch. 1, § 1.)

### ARTICLE III. FINANCING A DEVELOPMENT DISTRICT.

#### Sec. 14-10. Special Taxes and Assessments.

- (a) A resolution adopted under Section 14-9 must also authorize the imposition of a special assessment, special tax, fee, or charge, or any combination of them, in the development district at a rate designed to provide adequate revenues to pay the principal of, interest on, and redemption premium, if any, on the bonds and to replenish the debt service reserve fund, or create a special fund under the Tax Increment Financing Act. The resolution may reserve the Council's authority to adjust any rate schedule.
- (b) The resolution must provide, except when clearly inconsistent with state law, that:
- (1) any property which is fully developed before the development district is created is exempt from any special assessment, special tax, fee, or charge imposed under this Chapter; and
  - (2) the owner of any property exempt from payment under paragraph (1) which is later developed more intensively and benefits from any development capacity attributable to infrastructure improvements financed by the district must pay any tax, fee, or charge that it would have otherwise paid under this Chapter.
- (c) A special assessment or special tax must:
- (1) be levied and collected in the same manner, for the same period or periods, and with the same date or dates of finality as otherwise provided by law; and
  - (2) end when all bonds issued for the district have been paid in full.
- (d) The special assessments, special taxes, fees, charges, or tax increments authorized under subsection (a) must be payable as otherwise provided by law or (if state and County law are silent) as provided in the resolution adopted under Section 14-9, but not before any bonds are issued.



- (e) The total amount of any development district special tax, special assessment, fee, or charge paid under this Chapter must be credited against:
  - (1) the development impact tax and construction excise tax imposed under Chapter 52, as applicable; and
  - (2) any other charge, fee or tax listed in the resolution adopted under Section 14-9 (including any front foot benefit charge, assessment, or tax imposed on construction) which is imposed by the County expressly to finance the costs of *infrastructure improvements necessary to allow development*.
- (f)
  - (1) If a district has issued special obligation bonds under this Chapter, a taxpayer who did not sign a petition under Section 14-6(a), or that taxpayer's successor in interest, may defer any special ad valorem tax on real property imposed to support that debt until the Planning Board approves a development plan or plan of subdivision or resubdivision for that taxpayer's property.
  - (2) The Director of Finance and the taxpayer may agree on a payment schedule.
  - (3) The taxpayer must pay interest on any deferred tax at the rate set by law for unpaid real property taxes during each year that taxes are deferred. (1994 L.M.C., ch. 12, § 1.)

**Sec. 14-11. Special Fund.**

- (a) The resolution creating a special fund under Section 14-9 must:
  - (1) pledge to the special fund the proceeds of any special assessment, special tax, fee, or charge levied under Section 14-10 or the tax increment; and
  - (2) require that proceeds from any special tax, special assessment, fee, charge, or tax increment be paid into the special fund.
- (b) When any bonds authorized by this Chapter with respect to a development district are outstanding, funds in the special fund must be used in any fiscal year to pay the principal of, interest on, and redemption premium, if any, on the bonds and to replenish any debt service reserve fund established with respect to the bonds.
- (c) After the bonds authorized by this Chapter with respect to a development district are fully paid, further special assessments, special taxes, fees, or charges must not be levied and the district terminates by operation of law. If the County Council so determines, any balance in the special fund must be paid to the general fund of the County.

- (d) Any required infrastructure improvement fully funded in the first 4 years of the then-applicable Capital Improvements Program must not be funded with the proceeds of bonds issued under this Chapter, but must be constructed with other funds designated in the Capital Improvements Program. (1994 L.M.C., ch. 12, § 1.)

#### ARTICLE IV. ISSUING DEBT.

##### **Sec. 14-12. Bonds—Payment, Sinking Funds, Reserve Funds, Pledges and Other Financial Guaranties, Proceeds.**

- (a) If the resolution adopted under Section 14-13 so provides, the Executive must take all necessary actions to issue bonds under this Chapter.
- (b) Bonds must be payable from the special fund required under Section 14-11 and any other assets or revenues of the district pledged toward their payment.
- (c) If the resolution adopted under Section 14-9(c) provides for the issuance of bonds, the resolution must establish an adequate debt service reserve fund and may also authorize the Executive to:
- (1) establish sinking funds;
  - (2) pledge other assets in and revenues from the district towards the payment of the principal and interest; or
  - (3) arrange for insurance or any other financial guaranty of the bonds.
- (d) All proceeds received from any bonds issued must be applied solely towards:
- (1) costs of the infrastructure improvements listed in the resolution adopted under Section 14-9(d)(2);
  - (2) costs of issuing bonds; and
  - (3) payment of the principal and interest on loans, money advances, or indebtedness incurred by the County for any purpose stated in this Chapter. (1994 L.M.C., ch. 12, § 1.)

**Sec. 14-13. Resolution; Investment of Special Fund or Sinking Fund; Tax Exemption.**

- (a) In order to issue bonds, the County Council must adopt a resolution that:
- (1) describes the proposed infrastructure improvements and states that the County has complied with the procedures in this Chapter;
  - (2) specifies the maximum principal amount of bonds to be issued;
  - (3) covenants to levy special taxes, special assessments, or both, at a rate and amount sufficient in each year when any bonds are outstanding to:
    - (A) provide for the payment of the principal of and interest on the bonds, and the redemption premium, if any, on the bonds;
    - (B) replenish any debt service reserve fund established with respect to the bonds; and
    - (C) enforce the collection of all special assessments and special taxes as provided in Section 52-36, et seq., of the County Code and Section 14-808, et seq., of the Tax Property Article of the Maryland Code, or other applicable law; and
  - (4) specifies (to the extent not already controlled by state or County law) the basis of any special assessment, special tax, fee, charge, or tax increment in a development district, and any exemptions from a special assessment, special tax, or tax increment, subject to any change in law that does not materially impair the district's ability to pay principal and interest and maintain adequate debt service reserves;
  - (5) declares that:
    - (A) the construction of the infrastructure improvements financed by the bonds:
      - (i) creates a public benefit, and special benefits, if applicable, to the properties assessed in the development district; and
      - (ii) serves a public purpose; and
    - (B) the projected special assessment, special tax, fee, charge, or tax increment revenue will be sufficient to retire the bonds, taking into account the value of land in the district; and

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- (6) (A) prohibits acceleration of assessments or taxes because of any bond default;
  - (B) limits the maximum special assessment, special tax, fee, or charge applicable to any individual property in a development district; and
  - (C) prohibits any increase in, or extension of the term of, the maximum special assessment, special tax, fee, or charge applicable to any individual property because of any delinquency or default by any other taxpayer.
- (b) To the extent not otherwise required by state law, the resolution may specify, or may authorize the County Executive by executive order to specify as needed:
- (1) the actual principal amount of the bonds to be issued;
  - (2) the actual rate or rates of interest for the bonds;
  - (3) how and on what terms the bonds must be sold;
  - (4) how, when, and where interest on the bonds must be paid;
  - (5) when the bonds may be executed, issued, and delivered;
  - (6) the form and tenor of the bonds, and the denominations in which the bonds may be issued;
  - (7) how, when, and where the principal of the bonds must be paid within the limits in this Section;
  - (8) how any or all of the bonds may be called for redemption before their stated maturity dates; or
  - (9) any other provision not inconsistent with law that is necessary or desirable to finance an infrastructure improvement.
- (c) The special fund and any sinking fund or reserve fund established by the County to provide for the payment of the principal of or interest on any bonds issued by the County under this Chapter must be invested by the County fiscal officer having custody of the fund in the manner prescribed by Article 31, Sections 6 and 7 of the Maryland Code. Any fiscal officer having custody of the proceeds of the sale of any such bonds may invest the proceeds, pending their expenditure, as prescribed under Article 95, Section 22 of the Maryland Code.

- (d) To the extent provided in State law, the principal amount of the bonds, the interest payable on the bonds, their transfer, and any income derived from the transfer, including any profit made in the sale or transfer of the bonds, must be exempt from County taxation of any kind. (1994 L.M.C., ch. 12, § 1.)

**Sec. 14-14. Form, terms and conditions of bonds.**

- (a) Any bond may be in bearer form or in coupon form or may be registrable as to principal alone or as to both principal and interest. Each bond is a security as defined in Section 8-102 of the Commercial Law Article of the Maryland Code, whether or not it is either one of a class or series or by its terms is divisible into a class or series of instruments.
- (b) Each bond must be signed manually or in facsimile by the County Executive, and the seal of the County must be affixed to the bonds and attested by the Clerk of the Council. If any officer whose signature or countersignature appears on the coupons ceases to hold that office before the bonds are delivered, the officer's signature or countersignature is nevertheless valid and sufficient for all purposes as if the officer had remained in office until delivery.
- (c) Each bond must mature not later than 30 years after issuance.
- (d) All bonds must be sold in the manner, either at public or private sale, and upon the terms as the County Executive directs. Any contract to acquire property may provide that payment must be made in bonds. Any bond issued under this Chapter is not subject to Article 31, Sections 10 and 11 of the Maryland Code. (1994 L.M.C., ch. 12, § 1; 2006 L.M.C., ch. 33, § 1.)

**Sec. 14-15. Credit of County not Pledged.**

- (a) Any bond issued under this Chapter is not an indebtedness of the County within the meaning of Section 312 of the Charter.
- (b) Any bond issued under this Chapter must not pledge the full faith and credit of the County and must state that the full faith and credit of the County is not pledged to pay its principal, interest, or premium, if any. (1994 L.M.C., ch. 12, § 1.)

**ARTICLE V. MISCELLANEOUS PROVISIONS.**

**Sec. 14-16. Administration of district; Termination.**

- (a) The Executive must administer each district, prepare bond issues, collect taxes and revenues, and oversee construction of infrastructure improvements.

- (b) Construction of each infrastructure improvement listed in the resolution creating a district must begin promptly when bond proceeds or other funds are available. Unless otherwise authorized by law, bidding and construction of infrastructure improvements must follow the County's usual process for constructing capital improvements.
- (c) The County may contract with another public agency or (subject to competitive procurement laws) a private party, including the Revenue Authority or owners of property in a development district, to construct any infrastructure improvement when significant cost or time savings are likely to result.
- (d) If the County has not issued any bonds for a district created under this Chapter, or if all bonds issued to finance a district have been repaid, the Council may terminate the district by resolution approved by the Executive. If the Executive disapproves a resolution within 10 days after it is adopted and the Council readopts it by a vote of six Councilmembers, or if the Executive does not act within 10 days after the Council adopts it, the resolution takes effect. (1994 L.M.C., ch. 12, § 1.)

**Sec. 14-17. Disclosure to Buyers.**

- (a) A contract to sell real property must disclose to the initial buyer, and any later buyer during the life of any special assessment, special tax, fee, or charge authorized under this Chapter, the amount of any special assessment, special tax, fee, or charge which the buyer must pay. Any contract which does not disclose all items required by this Section is voidable at the option of the buyer before the date of settlement.
- (b) A notice in a contract of sale which substantially conforms to the following text complies with this Section:

Each year the buyer of this property must pay a special assessment or special tax imposed under Chapter 14 of the Montgomery County Code. As of (date of this contract of sale), the special assessment or special tax on this property amounts to (dollar amount in arabic numbers) each year. As of (date of each scheduled increase), the assessment or tax is scheduled to increase to (amount of each scheduled increase). For further information on this assessment or tax, the buyer can contact the County Department of Finance at (current telephone number).

If an increase in any special assessment, special tax, fee, or charge is likely to occur in the foreseeable future but the timing or amount of the increase is not certain when the contract is signed, the notice must also expressly disclose that fact.

- (c) Before any bonds are issued under this Chapter, the Director of Finance must record among the land records of the County at the cost of the development district a declaration encumbering all real property located in the district and designating that property as subject to a development district. The declaration must terminate when the Director records a release stating that all bonds are fully repaid.
- (d) The Director of Finance must indicate on the real estate tax bill for each property in a development district the amount of any special assessment or special tax imposed on the property. (1994 L.M.C., ch. 12, § 1.)

**Sec. 14-18. Construction of Chapter.**

- (a) This Chapter is necessary for the welfare of the County and its residents and must be liberally construed to achieve the purposes stated in Section 14-2.
- (b) The powers granted under this Chapter supplement any power conferred by any other law and do not restrict any other power of County government. (1994 L.M.C., ch. 12, § 1.)

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**Chapter 20A. SPECIAL OBLIGATION DEBT.****Sec. 20A-1. [Definitions; special obligation debt].**

- (a)
  - (1) In this section the following words have the meanings indicated.
  - (2) “*Costs*” means any expense necessary or incident to building, acquiring, or financing any public infrastructure improvement.
  - (3) “*Development district*” means a special taxing district or special assessment district that:
    - (i) is created to facilitate financing under this section for the costs of public infrastructure to serve proposed:
      - 1. new development; or
      - 2. redevelopment of commercial or industrial properties; and
    - (ii) the County Council designates as a development district.
- (b) Subject to the limitations under this section, the County Council may enact a law to provide for the issuance of bonds or other obligations to finance the costs of public infrastructure for a development district for which the principal, interest, and any premium shall be paid from special taxes, assessments, fees, or charges collected by the County in the development district.
- (c)
  - (1) Bonds or other obligations issued under this section may not constitute a general obligation debt of the County or a pledge of the County's full faith and credit or taxing power.
  - (2) Bonds or other obligations issued under this section may be sold at a private negotiated sale and are not subject to Article 31, §§ 10 and 11 of the Annotated Code of Maryland.
  - (3) With the exception of § 312 of the County charter, bonds or other obligations issued under this section shall be subject to the provisions of that charter.
  - (4) This section may not be construed to limit the power of the County to create development districts or issue special obligation bonds or other obligations under any other applicable law.
  - (5) The bonds and any other evidences of obligation issued under this section, their



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transfer, the interest payable on them, and any income derived from them, including any profit realized on their sale or exchange, shall be exempt at all times from every kind and nature of taxation by the state or by any of its political subdivisions, municipal corporations, or public agencies of any kind.

- (d) (1) Prior to the issuance of debt under this section, the County shall notify and consult with those organizations that rate the County's general obligation bonds in an effort to ensure, to the extent reasonably possible, that the County's general obligation bond ratings will not be adversely affected by the issuance of the special obligation debt.
- (2) (I) Except as provided under subparagraph (II) of this paragraph, bonds may not be issued under this section unless the County obtains a rating of investment grade for the bonds from at least one of the organizations that rate the County's general obligation bonds.
- (II) An investment grade rating is not required for bonds that are sold to not more than 35 purchasers, each of whom certifies to the County and the participating underwriter that the purchaser:
  - 1. has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of investment in the bonds; and
  - 2. is not purchasing for more than one account or with a view to distributing the bonds.
- (3) Bonds or other evidences of indebtedness issued under this section shall be treated as securities to the same extent permitted for special obligation debt issued under Article 24, § 9-1301 of the Code.
- (e) (1) Debt issued under this section:
  - (i) shall be used only to finance the costs of public infrastructure to serve the development district; and
  - (ii) shall be secured by revenues derived from the development district.
- (2) This subsection does not prohibit the financing under this section of public infrastructure that also provides benefits to the general public.
- (f) (1) Before the creation of a new development district established to finance special obligation debt under this section, the County Council shall provide public

notice of the creation of the proposed district by advertisement in at least two newspapers of general circulation in the County and at least one public hearing.

- (2) A new development district may not be created to finance special obligation debt under this section unless the proposed action is approved by:
  - (i) at least 80% of the owners of the real property located within the proposed development district, treating multiple owners of a single parcel as one owner and treating a single owner of multiple parcels as one owner; and
  - (ii) the owners of at least 80% of the assessed valuation of the real property located within the proposed development district.
  
- (g) A law enacted by the County Council under this section:
  - (1) shall specify the types of infrastructure and related costs that may be financed;
  - (2) shall require:
    - (i) reasonable disclosure in the real estate contract to buyers of real property within a development district of any special assessment, special tax, or other fee or charge for which the buyer would be liable due to development district financing under this section.
    - (ii) that a seller's failure to provide the disclosure required under item (i) of this paragraph renders the contract voidable at the option of the buyer before the date of settlement; and
    - (iii) that adequate debt service reserve funds be maintained;
  - (3) may not allow:
    - (i) acceleration of assessments or taxes by reason of bond default; or
    - (ii) an increase in the maximum special assessments, special taxes, or other fees or charges applicable to any individual property in the event that other property owners become delinquent in the payment of a special assessment, special tax, or other fee or charge securing special obligation debt issued under this section; and

- (4) may provide:
  - (i) for exemptions, deferrals, and credits; and
  - (ii) that a lien attaches to property within a development district to the extent of that property owner's obligation under any special obligation debt financing.
- (h) A development district created for purposes of development district financing under this section shall terminate when all debt attributable to the development district is repaid.
- (i) An encumbrance on property in a development district attributable to development district financing under this section shall:
  - (1) be recorded in the land records of the County; and
  - (2) have the same priority as County taxes under state and County law.
- (j) (1) This subsection applies only to:
  - (i) a special ad valorem tax that is imposed to support special obligation debt under this section; and
  - (ii) an owner of land in the development district who:
    - 1. did not approve of the creation of the district under subsection (f)(2) of this section; and
    - 2. elects to defer special taxes under this section effective on the date of finality next following the creation of the development district.
- (2) a person who is a successor in interest to an owner of land in the development district acquires the same rights and obligations under this subsection as the person's predecessor in title.
- (3) (i) Payment of special ad valorem taxes under this section shall be deferred until a development plan or a plan of subdivision or resubdivision is approved.
- (ii) the property owner and the County may agree to a payment schedule.

- (iii) deferred special taxes shall be subject to the interest rate applicable by law to unpaid County property taxes for each year of the deferral.
  - (iv) provisions for the deferral under this subsection shall be included in the law enacted by the County Council.
- (k) This section does not prohibit the County or the Montgomery County Planning Board from obtaining from developers appropriate infrastructure contributions to support proposed development as allowed by law in addition to those financed under this section. (1994, ch. 612, § 1; 1996, ch. 625, § 1.)

CORRECTED COPY

Resolution No:	<u>15-375</u>
Introduced:	<u>October 28, 2003</u>
Adopted:	<u>October 28, 2003</u>

**COUNTY COUNCIL  
FOR MONTGOMERY COUNTY, MARYLAND**

By: County Council

**SUBJECT:** 2003-5 Annual Growth Policy – Policy Element

**Background**

1. County Code Section 33A-15 requires that no later than November 1 of each odd-numbered year, the County Council must adopt an Annual Growth Policy (AGP) Policy Element to be effective until November 1 of the next odd-numbered year, to provide policy guidance to the agencies of government and the general public on matters concerning land use development, growth management and related environmental, economic and social issues.
2. On June 13, 2003, as required by Section 33A-15, the Planning Board transmitted to the County Council its recommendations on the 2003-5 Policy Element. On August 6, 2003, the Planning Board transmitted revised and expanded recommendations. The Final Draft Policy Element as submitted by the Planning Board contained supporting and explanatory materials.
3. On September 16 and 24, 2003, the County Council held public hearings on the Policy Element.
4. On September 22 and 29 and October 7, 14 and 27, 2003, the Council's Planning, Housing, and Economic Development Committee conducted worksessions on the recommended Policy Element.
5. On October 21 and 23, 2003, the Council conducted worksessions on the Policy Element, at which careful consideration was given to the public hearing testimony, updated information, recommended revisions and comments of the County Executive and Planning Board, and the comments and concerns of other interested parties.

**Action**

*The County Council for Montgomery County, Maryland, approves the following Resolution:*

The 2003-5 AGP Policy Element is approved as follows:

**Applicability; transition**

**AP1      Effective dates**

This resolution takes effect on July 1, 2004, and applies to any application for a preliminary plan of subdivision filed on or after that date. Any preliminary plan of subdivision for which a completed application was filed before July 1, 2004, is subject to all provisions of the previous Annual Growth Policy, as contained in Council Resolution 15-259. All provisions of Resolution 15-259 continue in effect until July 1, 2004.

## **AP2 Previous approvals**

If any preliminary plan of subdivision that was approved before July 1, 2004, is either modified or withdrawn and replaced by a new application for a subdivision plan at the same location or part of the same location, the Planning Board when it approves or re-approves a preliminary plan of subdivision after July 1, 2004, must retain any transportation improvement required in the previously approved plan.

## **Guidelines for the Administration of the Adequate Public Facilities Ordinance**

County Code Section 50-35(k) ("the Adequate Public Facilities Ordinance or APFO") directs the Montgomery County Planning Board to approve preliminary plans of subdivision only after finding that public facilities will be adequate to serve the subdivision. This involves predicting future demand from private development and comparing it to the capacity of existing and programmed public facilities. The following guidelines describe the methods and criteria that the Planning Board and its staff must use in determining the adequacy of public facilities. These guidelines supersede all previous ones adopted administratively by the Planning Board to the extent that these guidelines conflict with previous ones. They also supersede those provisions of the Adequate Public Facilities Ordinance that were specified to apply only until the County Council had approved an Annual Growth Policy.

The Council accepts the definitions of terms and the assignment of values to key measurement variables that were used by the Planning Board and its staff in developing the recommended Annual Growth Policy. The Council delegates to the Planning Board and its staff all other necessary administrative decisions not covered by the guidelines outlined below. In its administration of the APFO, the Planning Board must consider the recommendations of the County Executive and other agencies in determining the adequacy of public facilities.

The ceilings and directives described in this AGP are based primarily on the public facilities in the amended FY 2003-2008 Capital Improvements Program (CIP) and the Maryland Department of Transportation FY 03-08 Consolidated Transportation Program (CTP). The Council also reviewed related County and State funding decisions, master plan guidance and zoning where relevant, and related legislative actions. These ceilings and directives and their supporting planning and measurement process have been the subject of a public hearing and review during worksessions by the County Council. Approval of the ceilings and directives reflects a legislative judgment that, all things considered, these ceilings and procedures constitute a reasonable, appropriate, and desirable set of growth limits, which properly relate to the ability of the County to program and construct facilities necessary to accommodate growth. These growth limits will substantially advance County land use objectives by providing for coordinated and orderly development.

These guidelines are not intended to be used as a means for government to avoid its responsibility to provide adequate public facilities. Biennial review and oversight allows the Council to identify problems and initiate solutions that will serve to avoid or limit the duration of any moratorium on new subdivision approvals in a specific policy area. Further, alternatives may be available for developers who wish to proceed in advance of the adopted public facilities program, through the provision of additional public facility capacity beyond that contained in the approved Capital Improvements Program, or through other measures which accomplish an equivalent effect.

The administration of the Adequate Public Facilities Ordinance must at all times be consistent with adopted master plans and sector plans. Where development staging guidelines in adopted master plans or sector plans are more restrictive than AGP guidelines, the guidelines in the adopted master plan or sector plan must be used to the extent that they are more restrictive.

### **Guidelines for Transportation Facilities**

#### **TP Policy Areas**

##### **TP1 Policy Area Boundaries and Definitions**

For the purposes of transportation analysis, the County has been divided into 313 areas called traffic zones. Based upon their transportation characteristics, these areas are grouped into transportation policy areas, as shown on Map 1. In many cases, transportation policy areas have the same boundaries as planning areas, sector plan areas, or master plan analysis (or special study) areas. The policy areas in effect for 2004-5 are: Aspen Hill, Bethesda CBD, Bethesda-Chevy Chase, Clarksburg, Cloverly, Damascus, Derwood, Fairland/White Oak, Friendship Heights, Gaithersburg City, Germantown East, Germantown Town Center, Germantown West, Glenmont, Grosvenor, Kensington/Wheaton, Montgomery Village/Airpark, North Bethesda, North Potomac, Olney, Potomac, R&D Village, Rockville City, Shady Grove, Silver Spring CBD, Silver Spring/Takoma Park, Twinbrook, Wheaton CBD, and White Flint. The following are Metro Station Policy Areas: Bethesda CBD, Friendship Heights, Glenmont, Grosvenor, Rockville Town Center, Shady Grove, Silver Spring CBD, Twinbrook, Wheaton CBD, and White Flint. Detailed boundaries of the policy areas are shown on Maps 2-31.

The boundaries of the Gaithersburg City and Rockville City policy areas reflect existing municipal boundaries, except where County-regulated land is surrounded by city-regulated land. The boundaries of these municipal policy areas do not automatically reflect any change in municipal boundaries; any change in a policy area boundary requires affirmative Council action.

##### **TP2 Transportation Pipeline**

Planning staff must keep a record of all previously approved preliminary plans and other data about the status of development projects, and continuously update the pipeline number of approved preliminary plans, thus constantly keeping in view, and presenting to the Planning Board, the amount of capacity still available at any given time. The continuous updating must include all changes to the amount of development approved under outstanding preliminary plans, with the exception of those which result from the discovery of accounting errors. Such errors must be reported to the Council each year in May, and must be reported on a quarterly basis, or more frequently, to the Planning Board who may bring them to the attention of the Council if the Board judges them to be significant. The Planning Board should maintain a periodically updated queue list of applicants for preliminary plan of subdivision approval.

Under County Code §50-20(c), the Planning Board must set the period of validity for a finding of public facilities adequacy on a case-by-case basis for each subdivision, although the validity period for any subdivision must not be less than 5 years nor more than 12 years, not including any extension allowed under §50-20. In general, the Planning Board must set the validity period of a subdivision at 5 years unless:

- (a) for non-residential development, the subdivision is larger than 150,000 square feet and consists of more than one building; or
- (b) for residential development, the subdivision consists of more than 200 housing units.

### **TP3 Unique Policy Area Issues**

Because of the unique nature of the Georgetown Branch Trolley Project and the North Bethesda Transitway in comparison with other transportation systems which are normally used in calculating development capacity, it is prudent to approach the additional capacity from these systems in a conservative way, particularly with respect to the timing of capacity and the amount of the capacity recognized. Therefore, the capacity from the Georgetown Branch Trolley Project must not be counted until the actual system is constructed and operated, or at least until there is reasonable certainty as to its exact date of operation and amount of actual ridership. The initial capacity from the North Bethesda Transitway must not be counted until the project is fully funded in the first 5 years of either the County or State capital improvements program, and until the County Council has approved projected ridership.

To discourage sprawl development, no capacity for new development may be counted beyond the boundary of the Town of Brookeville existing on March 9, 1999, as a result of relocating MD 97 around Brookeville.

The Local Area Review for the Silver Spring CBD policy area must use the following assumptions and guidelines:

- All traffic limitations are derived from the heaviest traffic demand period, in Silver Spring's case, the p.m. peak hour outbound traffic.
- When tested during a comprehensive circulation analysis, the critical lane volumes for intersections in the surrounding Silver Spring/Takoma Park policy area must not be worse than the adopted level of service standards shown in Table 1 unless the Planning Board finds that the impact of improving the intersection is more burdensome than the increased congestion.
- The Planning Board and the Department of Public Works and Transportation must implement Transportation Systems Management for the Silver Spring CBD. The goal of this program must be to achieve the commuting goals for transit use and auto occupancy rates set out below.
- The County Government, through the Silver Spring Parking Lot District, must constrain the amount of public and private long term parking spaces.

The parking constraints and commuting goals needed to achieve satisfactory traffic conditions with these staging ceilings are as follows:

**Parking constraint:** A maximum of 17,500 public and private long-term spaces when all nonresidential development is built; (this maximum assumes a peak accumulation factor of 0.9, which requires verification in Silver Spring and may be subject to revision). Interim long-term parking constraints must be imposed in accordance with the amount of interim development. Long-term public parking spaces must be priced to reflect the market value of constrained parking spaces.

**Commuting goals:** For employers with 25 or more employees, attain 25 percent mass transit use and auto occupancy rates of 1.3 persons per vehicle during the peak periods, or attain any combination of employee mode choice that results in at least 46% non-drivers during the peak periods. For new nonresidential development, attain 30 percent mass transit use and auto



occupancy rates of 1.3 persons per vehicle during the peak periods, or attain any combination of employee mode choice that results in at least 50% non-drivers during the peak periods.

Progress towards achieving these goals should be measured annually by using scientific and statistically valid survey techniques.

To achieve these goals it will be necessary to require developers of new development in Silver Spring to enter into traffic mitigation agreements and the employers and certain owners to submit transportation mitigation plans under Chapter 42A of the County Code.

Each Annual Growth Policy must reflect the Annual Report of the Silver Spring Transportation Management District, which must include a report of the status of critical signalized intersections (as defined in the report of October 5, 1987). The Annual Growth Policy must include a projection of future traffic conditions based on intersection improvements in the proposed CIP and full achievement of the Transportation Management District goals. The Council will take this information into account in the decisions on the Growth Policy and the CIP.

In accordance with the amendment to the Silver Spring Sector Plan, subdivision applications for nonresidential standard method projects throughout the CBD may be approved for development or additions of not more than 5,000 square feet of gross floor area. However, if, for a particular use the addition of five peak hour trips yields a floor area greater than 5,000 square feet, that additional area may be approved for that particular use.

In the North Bethesda Transportation Management District, the goal is 39 percent non-driver mode share for residents of multifamily housing in the peak hour. In the Bethesda Transportation Management District, the goal is 37 percent non-driver mode share for workers and residents of multifamily housing. In the Friendship Heights Transportation Management District, the goal is 39 percent non-driver mode share for workers.

#### **TP4 Development District Participation**

Under Chapter 14 of the County Code, development districts may be created by the County Council as a funding mechanism for needed infrastructure in areas of the County where substantial development is expected or encouraged. The Planning Board may approve subdivision plans in accordance with the terms of the development district's provisional adequate public facilities approval (PAPF).

##### **TP4.1 Preparation of a PAPF**

The development district's PAPF must be prepared in the following manner:

One or more property owners in the proposed district may submit to the Planning Board an application for provisional adequate public facilities approval for the entire district. In addition to explaining how each development located in the district will comply with all applicable zoning and subdivision requirements, this application must:

- show the number and type of housing units and square footage and type of the non-residential space to be developed, as well as a schedule of proposed buildout in five-year increments;
- identify any infrastructure improvements necessary to satisfy the adequate public facilities requirements for development districts; and
- estimate the cost to provide these improvements.

##### **TP4.2 Planning Board Review**

The Planning Board must then review all developments within the proposed development district as if they are a single development for compliance with the Adequate Public Facilities Ordinance. The Planning Board must identify the public facilities needed to support the buildout of the development district after considering the results of the following tests for facility adequacy:

- Transportation tests for development districts are identical to those for Local Area Transportation Review. Planning Department staff must prepare a list of transportation infrastructure needed to maintain public facility adequacy.
- The PAPF application must be referred to Montgomery County Public Schools staff for recommendations for each stage of development in the proposed district. MCPS staff must calculate the extent to which the development district will add to MCPS's current enrollment projections. MCPS staff must apply the existing school adequacy test to the projections with the additional enrollment and prepare a list of public school infrastructure needed to maintain public facility adequacy.
- The PAPF application must be referred to the Washington Suburban Sanitary Commission for recommendations for each stage of development in the proposed district. Wastewater conveyance and water transmission facilities must be considered adequate if existing or programmed (fully-funded within the first five years of the approved WSSC capital improvements program) facilities can accommodate (as defined by WSSC) all existing authorizations plus the growth in the development district. Adequacy of water and wastewater treatment facilities must be evaluated using the intermediate or "most probable" forecasts of future growth plus development district growth, but only to the extent that development district growth exceeds the forecast for any time period. If a test is not met, WSSC must prepare a list of water and sewer system infrastructure needed to maintain public facility adequacy.
- The PAPF application must be referred to the County Executive for recommendations for each stage of development in the proposed district regarding police, fire, and health facilities. Adequacy of police, fire, and health facilities must be evaluated using the intermediate or most probable forecasts of future growth plus development district growth, but only to the extent that development district growth exceeds the forecast for any time period. Any facility capacity that remains is available to be used by the development district. If any facility capacity deficits exist, the County Executive must prepare a list of infrastructure needed to maintain public facility adequacy.

#### **TP4.3 Planning Board Approval**

The Board may conditionally approve the PAPF application if it will meet all of the requirements of the APFO and AGP. The Board may condition its approval on, among other things, the creation and funding of the district and the building of no more than the maximum number of housing units and the maximum nonresidential space listed in the petition.

For an application to be approved, the applicants must commit to produce the infrastructure improvements needed to meet APF requirements in the proposed district as well as any added requirements specified by the Planning Board. The Planning Board must list these required infrastructure improvements in its approval. The infrastructure improvements may be funded through the development district or otherwise. The development district's PAPF must be prepared in the following manner:

The Planning Board must not approve a PAPF application unless public facilities adequacy is maintained throughout the life of the plan. The timing of infrastructure delivery may be accomplished by withholding the release of building permits until needed public facilities are available to be "counted," or by another similar mechanism.

Infrastructure may be counted for public facilities adequacy, for infrastructure provided by the district, when construction has begun on the facility and funds have been identified and committed to its completion, and, for infrastructure provided by the public sector, when:

- for Local Area Transportation Review, the project is fully-funded within the first 4 years of the approved County, state, or municipal capital improvements program;
- for water and sewer facilities, the project is fully-funded within the first 5 years of the approved WSSC capital improvements program;
- for public school facilities, the project is fully-funded within the first 5 years of the approved Montgomery County Public Schools capital improvements program; and
- for police, fire, and health facilities, the project is fully-funded within the first 6 years of the relevant approved capital improvements program.

#### **TP4.4 Additional Facilities Recommended for Funding**

The County Executive and Planning Board may also recommend to the County Council additional facilities to be provided by the development district or by the public sector to support development within the district. These facilities may include, but are not limited to libraries, health centers, local parks, social services, greenways, and major recreation facilities.

#### **TP4.5 Satisfaction of APF Requirements**

As provided in Chapter 14 of the County Code, once the development district is created and the financing of all required infrastructure is arranged, the development in the district is considered to have satisfied all APF requirements, any additional requirements that apply to development districts in the AGP, and any other requirement to provide infrastructure which the County adopts within 12 years after the district is created.

### **TL Local Area Transportation Review (LATR)**

#### **TL1 Standards and Procedures**

To achieve an approximately equivalent transportation level of service in all areas of the County, greater congestion is permitted in policy areas with greater transit accessibility and usage. Table 1 shows the intersection level of service standards by policy area. Local Area Transportation Review must at all times be consistent with the standards and staging mechanisms of adopted master plans and sector plans.

Local area transportation review must be completed for any subdivision that would generate 30 or more peak-hour automobile trips. For any subdivision that would generate 30-49 peak-hour automobile trips, the Planning Board after receiving a traffic study must require that either:

- all LATR requirements are met; or
- the applicant must make an additional payment equal to 50% of the applicable transportation impact tax before it receives any building permit in the subdivision.

In administering the Local Area Transportation Review (LATR), the Planning Board must not approve a subdivision if it finds that an unacceptable peak hour level of service will result after taking into account existing roads, programmed roads, available or programmed mass transportation, and improvements to be provided by the applicant. If the subdivision will affect an intersection or roadway link for which congestion is already unacceptable, then the subdivision may only be approved if it does not make the situation worse.

The nature of the LATR test is such that a traffic study is necessary if local congestion is likely to occur. The Planning Board and staff must examine the applicant's traffic study to determine whether adjustments are necessary to assure that the traffic study is a reasonable and appropriate reflection of the traffic impact of the proposed subdivision after taking into account all approved development and programmed transportation projects.

For Local Area Transportation Review purposes, the programmed transportation projects to be considered are those fully funded for construction in the first 4 years of the current approved Capital Improvements Program, the state's Consolidated Transportation Program, or any municipal capital improvements program. For these purposes, any road required under Section 302 of the County Charter to be authorized by law is not programmed until the time for petition to referendum has expired without a valid petition, or the authorizing law has been approved by referendum.

If an applicant is participating in a traffic mitigation program or one or more intersection improvements to meet Local Area Transportation Review requirements, that applicant must be considered to have met Local Area Transportation Review for any other intersection where the volume of trips generated is less than 5 Critical Lane Movements.

Each traffic study must examine, at a minimum, the number of signalized intersections in the following table unless the Planning Board affirmatively finds that special circumstances warrant a more limited study.

Maximum Peak-Hour Trips Generated	Minimum Signalized Intersections in Each Direction
< 250	1
250 - 749	2
750 - 1,249	3
1,250 - 1,750	4
> 1,750	5

At the Planning Board's discretion, each traffic mitigation program must be required to operate for at least 12 years but no longer than 15 years. The Planning Board may select either trip reduction measures or road improvements (or a combination of both) as the required means of traffic mitigation.

The Planning Board has adopted guidelines to administer Local Area Transportation Review. To the extent that they are consistent with this Policy, the Planning Board guidelines may continue to apply or may be amended as the Planning Board finds necessary.

After consulting the Council, the Planning Board may adopt administrative guidelines that allow use of a "delay" or queuing analysis, different critical lane volume standards, or other methodologies, to determine the level of congestion in appropriate geographic locations such as in urbanized areas, around Metrorail stations, or in specific confined areas planned for concentrated development related to other forms of transit.

In administering Local Area Transportation Review, the Planning Board must carefully consider the recommendations of the County Executive concerning the applicant's traffic study and proposed improvements or any other aspect of the review.

To achieve safe and convenient pedestrian travel, the Planning Board may adopt administrative guidelines requiring construction of off-site sidewalk improvements consistent with County Code §50-25. To maintain an approximately equivalent transportation level of service at the local level considering both auto and non-auto modes of travel, the Planning Board may permit a reduction in the amount of roadway construction or traffic mitigation needed to satisfy the conditions of Local Area Transportation Review in exchange for the construction of non-automobile transportation amenities, such as sidewalks or bus shelters.

### **TL2 Metro Station Policy Area LATR Standards**

In each Metro Station Policy Area, the Planning Board, in consultation with the Department of Public Works and Transportation, must prepare performance evaluation criteria for its Local Area Transportation Review. These criteria must be used to accomplish: (a) safety for pedestrians and vehicles; (b) access to buildings and sites; and (c) traffic flow within the vicinity, at levels which are tolerable in an urban situation. The County Executive also must publish a Silver Spring Traffic Management Program after receiving public comment and a recommendation from the Planning Board. This program must list those actions to be taken by government to maintain traffic flow at tolerable levels in the Silver Spring CBD and protect the surrounding residential area.

### **TL3 Potomac LATR Standards**

In the Potomac Policy Area, only the areas contributing traffic to the following intersections must be subject to Local Area Transportation Review: (a) Montrose Road at Seven Locks Road; (b) Democracy Boulevard at Seven Locks Road; (c) Tuckerman Lane at Seven Locks Road; (d) Democracy Boulevard at Westlake Drive; (e) Westlake Drive at Westlake Terrace; (f) Westlake Drive at Tuckerman Lane; (g) Bradley Boulevard at Seven Locks Road; (h) River Road at Bradley Boulevard; (i) River Road at Piney Meetinghouse Road; and (j) River Road at Seven Locks Road.

## **TA Alternative Review Procedures**

### **TA1 Metro Station Policy Areas**

An applicant for a subdivision which will be built completely within a Metro station policy area need not submit any application or take any action under **TL Local Area Transportation Review** if the applicant agrees in a contract with the Planning Board and the County Department of Public Works and Transportation to:

- meet trip reduction goals set by the Planning Board as a condition of approving that subdivision, which must require the applicant to reduce at least 50% of the number of trips attributable to the subdivision, either by reducing trips from the subdivision itself or from other occupants of that policy area;
- participate in programs operated by, and take actions specified by, a transportation management organization (TMO) to be established by County law for that policy area (or a group of policy areas including that policy area) in order to meet the mode share goals established under the preceding paragraph;

- pay an *ongoing annual contribution or tax* to fund the TMO's operating expenses, including minor capital items such as busses, as established by County law; and
- pay double the applicable development impact tax without claiming any credits for transportation improvements.

## **TA2 Expiration of Approvals Under Previous Alternative Review Procedures**

Annual Growth Policy resolutions in effect between 1995 and 2001 contained Alternative Review Procedures that required any development approved under those procedures to receive each building permit no later than 4 years after the Planning Board approved the preliminary plan of subdivision for that development. Any outstanding development project approved under an Alternative Review Procedure is subject to the expiration dates in effect when that development project was approved, with the following 2 exceptions.

### **TA2.1 Certain multi-phased projects**

A multi-phased project located in the R&D or Life Sciences Center zone may receive some of its building permits later than 4 years after its preliminary plan of subdivision is approved if:

- when the Planning Board approves or amends a site plan for the development, it also approves a phasing schedule that allows an extended validity period, but not longer than 12 years after the preliminary plan of subdivision was approved; and
- the applicant receives the first building permit for a building in the development no later than 4 years after the Planning Board approves the preliminary plan of subdivision for the development.

### **TA2.2 Certain developments in I-3 zone**

Similarly, if the development is located in the I-3 zone, and a previously approved subdivision plan and site plan contains more than 900,000 square feet of office space and at least 40% of that space has been constructed by November 1, 2001, the Planning Board may approve an amendment to its site plan which allows an extended validity period, but not longer than 12 years after the preliminary plan of subdivision was approved.

## **TA3 Golf Course Community**

An applicant for a planned unit development in the Fairland-White Oak policy area that includes a golf course or other major amenity which is developed on a public/private partnership basis need not take any action under **TL Local Area Transportation Review** if the applicant pays to the County a Development Approval Payment, established by County law, before the building permit is issued. However, the applicant must include in its application for preliminary plan approval all information that would have been necessary if the requirements for Local Area Transportation Review applied.

The Planning Board may approve the application if:

- not more than 100 units, in addition to Moderately Priced Dwelling Units (MPDUs), are built in the first fiscal year after construction of the development begins, and
- not more than 100 units, in addition to MPDUs and the unbuilt remaining portion of all prior years' approved units, are built in any later fiscal year.

### **TA3.1 MPDU Requirements**

Any applicant for a subdivision under **TA3** must agree, as part of the application, that it will build the same number of MPDUs among the first 100 units that it would be required to construct at that location if the subdivision consisted of only 100 units, or a pro rata lower number of MPDUs if the subdivision will include fewer than 100 units.

**TA3.2 Requirement to Begin Construction**

Any applicant for a subdivision approval under **TA3** must agree, as part of the application, that it will not begin to construct any residential unit approved in the application later than 3 years after the plat is recorded or the site plan is approved (whichever occurs later).

**TA4 Corporate Headquarters Facility**

**TA4.1 LATR**

An applicant for a preliminary plan of subdivision need not take any action under Local Area Transportation Review if the applicant meets the following conditions:

**TA4.1.1 Jobs/Location**

The applicant must have employed an average of at least 500 employees in the County for the 2 years before the application was filed, and the applicant must seek to build or expand a corporate headquarters located in the North Bethesda Policy Area.

**TA4.1.2 Size/Use**

Any new or expanded building approved under this Procedure must not exceed 900,000 square feet, and must be intended primarily for use by the applicant and the applicant's affiliates or business partners.

**TA4.1.3 Traffic Information**

Each application must include all information that would be necessary if the requirements for Local Area Transportation Review applied.

**TA4.1.4 Mode Share Goals**

Each applicant must commit to make its best efforts to meet mode share goals set by the Planning Board as a condition of approving the subdivision.

**TA4.1.5 TMO Participation**

Each applicant must participate in programs operated by, and take actions specified by, the transportation management organization (TMO), if any, established by County law for that policy area to meet the mode share goals set by the Planning Board.

**TA4.1.6 TMO Payment**

If an applicant is located in a transportation management district, the applicant must pay an annual contribution or tax, set by County law, to fund the TMO's operating expenses, including minor capital items such as busses.

**TA4.1.7 Development Approval Payment Limits**

The applicant must pay the applicable Development Approval Payment (DAP) as provided in County Code §8-37 through 8-42, but not more than the DAP in effect on July 1, 2001.

**TA4.1.8 Eligibility**

An applicant may use this Procedure only if it met the criteria in **TA4.1.1** for number of employees and site location on November 1, 2003.

**TA5 Strategic Economic Development Projects**

An applicant for a preliminary plan of subdivision need not take any action under **TL Local Area Transportation Review** if all of the following conditions are met.

**TA5.1 Traffic information**

The applicant files a complete application for a preliminary plan of subdivision which includes all information that would be necessary if the requirements for LATR applied.

**TA5.2 Designation**

The County Council has approved the County Executive's designation of the development as a strategic economic development project under procedures adopted by law or Council resolution.

**TA5.3 Transportation Impact Tax Payments**

The applicant must pay double the applicable transportation impact tax without claiming any credits for transportation improvements.

**Public School Facilities**

**S1 Geographic Areas**

For the purposes of public school analysis and local area review of school facilities at time of subdivision, the County has been divided into 24 areas called high school clusters, as shown in Map 32. These areas coincide with the cluster boundaries used by the Montgomery County Public School system.

The groupings used are only to administer the Adequate Public Facilities Ordinance and do not in any way require action by the Board of Education in exercising its power to designate school service boundaries.

**S2 School Capacity Measures**

The Planning Board must evaluate available capacity in each high school cluster and compare enrollment projected by Montgomery County Public Schools for each fiscal year with projected school capacity in 5 years. If sufficient high school capacity will not be available in any cluster, the Planning Board must determine whether an adjacent cluster will have sufficient high school capacity to cover the projected deficit.



The Planning Board must use 100% of Council-funded capacity at the high school level and 105% of Council-funded capacity at the middle and elementary school level as its measures of adequate school capacity. This capacity measure does not count relocatable classrooms in computing a school's permanent capacity.

Council-funded regular program classroom capacity is based on calculations that assign 25 students for grades 1-6, 44 students for half day kindergarten where it is currently provided, 22 students for all day kindergarten where it is currently provided, and an effective class size of 22.5 students for secondary grades.

### **S3 Grade Levels**

Each cluster must be assessed separately at each of the three grade levels -- elementary, intermediate/middle, and high school.

### **S4 Determination of Adequacy**

After the Council has approved the FY 2005-2010 CIP, the Planning Board must recalculate the projected school capacity at all grade levels in each high school cluster. If the Board finds that public school capacity will be inadequate at any grade level in any cluster, but the projected enrolment at that level will not exceed 110% of capacity, the Board may approve a residential subdivision in that cluster during FY 2005 if the applicant commits to pay a School Facilities Payment as provided in County law before receiving a building permit for any building in that subdivision. If projected enrollment at any grade level in that cluster will exceed 110% of capacity, the Board must not approve any residential subdivision in that cluster during FY 2005.

After the Council in 2005 has approved the amended FY 2005-2010 CIP, the Planning Board again must recalculate school capacity. If capacity at any level is projected to be inadequate, the Board must take the actions specified in the preceding paragraph in FY 2006.

### **S5 Senior Housing**

If public school capacity is inadequate in any cluster, the Planning Board may nevertheless approve a subdivision in that cluster if the subdivision consists solely of multifamily housing and related facilities for elderly or handicapped persons or multifamily housing units located in the age-restricted section of a planned retirement community.

### **S6 Clusters in municipalities**

If public school capacity will be inadequate in any cluster that is wholly or partly located in Rockville, Gaithersburg, or Poolesville, the Planning Board may nevertheless approve residential subdivisions in that cluster unless the respective municipality restricts the approval of similar subdivisions in its part of the cluster because of inadequate school capacity.

### **S7 Development District Participants**

The Planning Board may require any development district for which it approves a provisional adequate public facilities approval (PAPF) to produce or contribute to infrastructure improvements needed to address inadequate school capacity.

### **Guidelines for Water and Sewerage Facilities**

In accordance with the Adequate Public Facilities Ordinance, applications must be considered adequately served by water and sewerage if the subdivision is located in an area in which water and sewer service is presently available, is under construction, is designated by the County Council for extension of service within the first two years of a current approved Comprehensive Water Supply and Sewerage Systems Plan (i.e., categories I, II, and III), or if the applicant either provides a community water and/or sewerage system or meets Department of Permitting Services requirements for septic and/or well systems, as outlined in the Adequate Public Facilities Ordinance. These requirements are determined either by reference to the Water and Sewerage Plan, adopted by the Council, or by obtaining a satisfactory percolation test from the Department of Permitting Services.

Applications must only be accepted for further Planning staff and Board consideration if they present evidence of meeting the appropriate requirements.

### **Guidelines for Police, Fire and Health Services**

The Planning Board and staff must consider the programmed services to be adequate for facilities such as police stations, firehouses, and health clinics unless there is evidence that a local area problem will be generated. Such a problem is one which cannot be overcome within the context of the approved Capital Improvements Program and operating budgets of the relevant agencies. Where such evidence exists, either through agency response to the Subdivision Review committee clearinghouse, or through public commentary or Planning staff consideration, a Local Area Review must be undertaken. The Board must seek a written opinion from the relevant agency, and require, if necessary, additional data from the applicant, to facilitate the completion of the Planning staff recommendation within the statutory time frame for Planning Board action. In performing this Local Area Review, the facility capacity at the end of the sixth year of the approved CIP must be compared to the demand generated by the "most probable" forecast for the same year prepared by the Planning Department.

### **Guidelines for Resubdivisions**

An application to amend a previously approved preliminary plan of subdivision does not require a new test for adequacy of public facilities if:

Revisions to a preliminary plan have not been recorded, the preliminary plan has not expired, and the number of trips which will be produced by the revised plan is not greater than the number of trips produced by the original plan.

Resubdivision of a recorded lot involves the sale or exchange of parcels of land (not to exceed a total of 2,000 square feet or one percent of the combined area, whichever is greater) between owners of adjoining properties to make small adjustments in boundaries.

Resubdivision of a recorded lot involves more than 2,000 square feet or one percent of the lot area and the number of trips which will be produced by the revised plan is not greater than the number of trips produced by the original plan.

**Timely Adequate Public Facilities Determination  
and Local Area Transportation Review under Chapter 8.**

**APF1 General.**

Except as otherwise provided by law, an adequate public facilities determination or local area transportation review conducted under Article IV of Chapter 8 (Buildings) must use the standards and criteria applicable under this Resolution when evaluating the adequacy of public facilities to serve the proposed development.

**APF2 Traffic Mitigation Goals.**

Any proposed development that is subject to requirements for a traffic mitigation agreement under Article IV of Chapter 8 and Chapter 42A-9A of the County Code must meet the traffic mitigation goals specified in paragraphs (1) or (4), as appropriate.

- (1) Subject to paragraph (2), the portion of peak-period nondriver trips by employees of a proposed development must be at least the following percentage greater than the prevailing nondriver mode share of comparable nearby land use:

<b>In Policy Areas With LATR CLV Standard of</b>	<b>Required Percentage Greater Than Prevailing Nondriver Mode Share</b>
1800 and 1600	100%
1550	80%
1500	60%
1475 and 1450	40%

LATR CLV standards for each policy area are shown on Table 1.

- (2) The portion of peak-period nondriver trips by employees calculated under paragraph (1) must not be less than 15% nor higher than 55%.
- (3) The applicant for a proposed development in a policy area specified under paragraph (1) is responsible for reviewing existing studies of nondriver mode share; conducting new studies, as necessary, of nondriver mode share; and identifying the prevailing base nondriver mode share of comparable land uses within the area identified for the traffic study. Comparable land uses are improved sites within the area identified for the traffic study for the proposed development that have similar existing land use and trip generation characteristics. As with other aspects of the traffic study required by Article IV of Chapter 8, selection of the comparable studies and land uses to be analyzed and determination of the prevailing base nondriver mode share are subject to review by the Planning Department and approval by the Department of Public Works and Transportation.
- (4) Proposed development in the Silver Spring CBD must meet the commuting goals specified under TP3.

- (5) In accordance with County Code Section 42A-9A, the applicant must enter into an agreement with the Director of the Department of Public Works and Transportation before a building permit is issued. The agreement may include a schedule for full compliance with the traffic mitigation goals. It must provide appropriate enforcement mechanisms for compliance.
- (6) As provided by law, these goals supersede traffic mitigation goals established under Section 42A-9A(a)(4).

**Issues to be Addressed in the Future**

Scheduling of items by the Planning Board under this Section may be reviewed and modified at the Board's regular work program meetings with the County Council.

**F1. Time Limits of a Finding of Adequate Public Facilities:** The Planning Board must examine the number, age, and other characteristics of projects in the pipeline of approved development and make recommendations for revising the time limits of a finding of adequate public facilities, including extension provisions.

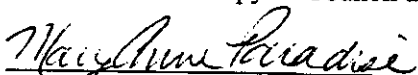
**F2. Adequacy of Police and Fire/Rescue Facilities:** The Planning Board, in cooperation with appropriate Executive branch agencies and after consulting the Council's Public Safety Committee, must consider potential options for testing the adequacy of public safety (police and fire/rescue) infrastructure.

**F3. Maximum Unmitigated Trip Level for Metro Station Areas:** The Planning Board must submit to the Council by February 1 an AGP amendment proposing a specific maximum number of unmitigated trips for each Metro Station Policy Area under the Alternative Review Procedure for Metro Station Policy Areas, considering its current number of jobs and housing units and its current congestion levels.

**F4. Annual Development Approval Report:** The Planning Board must submit to the County Council by September 15 each year an updated report listing and describing significant developments approved by that date or expected to be approved by the following July 1 that would impact road and school capacity. The report must include a prioritized list of road and intersection improvements based on current and projected congestion patterns and additional anticipated development.

**F5. Measuring the effect of ATMS:** The Planning Board, with the aid of the Executive and interested transportation professionals and citizens, must evaluate the effect associated with various Advanced Transportation Management System technologies, such as possible increase in intersection capacity or spreading of peak period volumes. A pilot study, perhaps funded as a public/private partnership, should be conducted in one or two selected corridors where these technologies are planned to be installed to quantify the incremental benefits of various technologies, such as automatic vehicle locators in transit vehicles, extended green time at signalized intersections for transit vehicles, real time traffic signal timing, video surveillance, and incident management. If the study identifies actions, the Planning Board should propose policy changes for Council approval, to be implemented in the Board's Local Area Transportation Review guidelines based on the study's findings.

This is a correct copy of Council action.



Mary Anne Paradise  
Acting Clerk of the Council

TABLE 1

## Local Area Transportation Review Congestion Standards by Policy Area

<u>PolicyArea</u>	<u>Critical Lane Volume Standard</u>
Metro Station Policy Areas	1800
Bethesda-Chevy Chase	1600
Kensington/Wheaton	1600
Silver Spring/Takoma Park	1600
North Bethesda	1550
Rockville City	1500
Aspen Hill	1500
Fairland/White Oak	1500
Derwood	1475
Cloverly	1475
Olney	1475
North Potomac	1475
Potomac	1475
R&D Village	1475
Clarksburg	1450
Gaithersburg City	1450
Germantown East	1450
Germantown Town Center	1450
Germantown West	1450
Montgomery Village/Airpark	1450
Damascus	1450
Rural Areas	1400

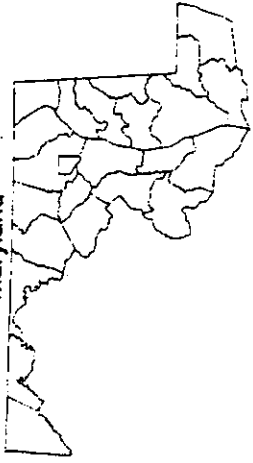
**Notes**

Rural areas are: Darnestown/Travilah, Goshen, Patuxent, Poolesville, and Rock Creek.

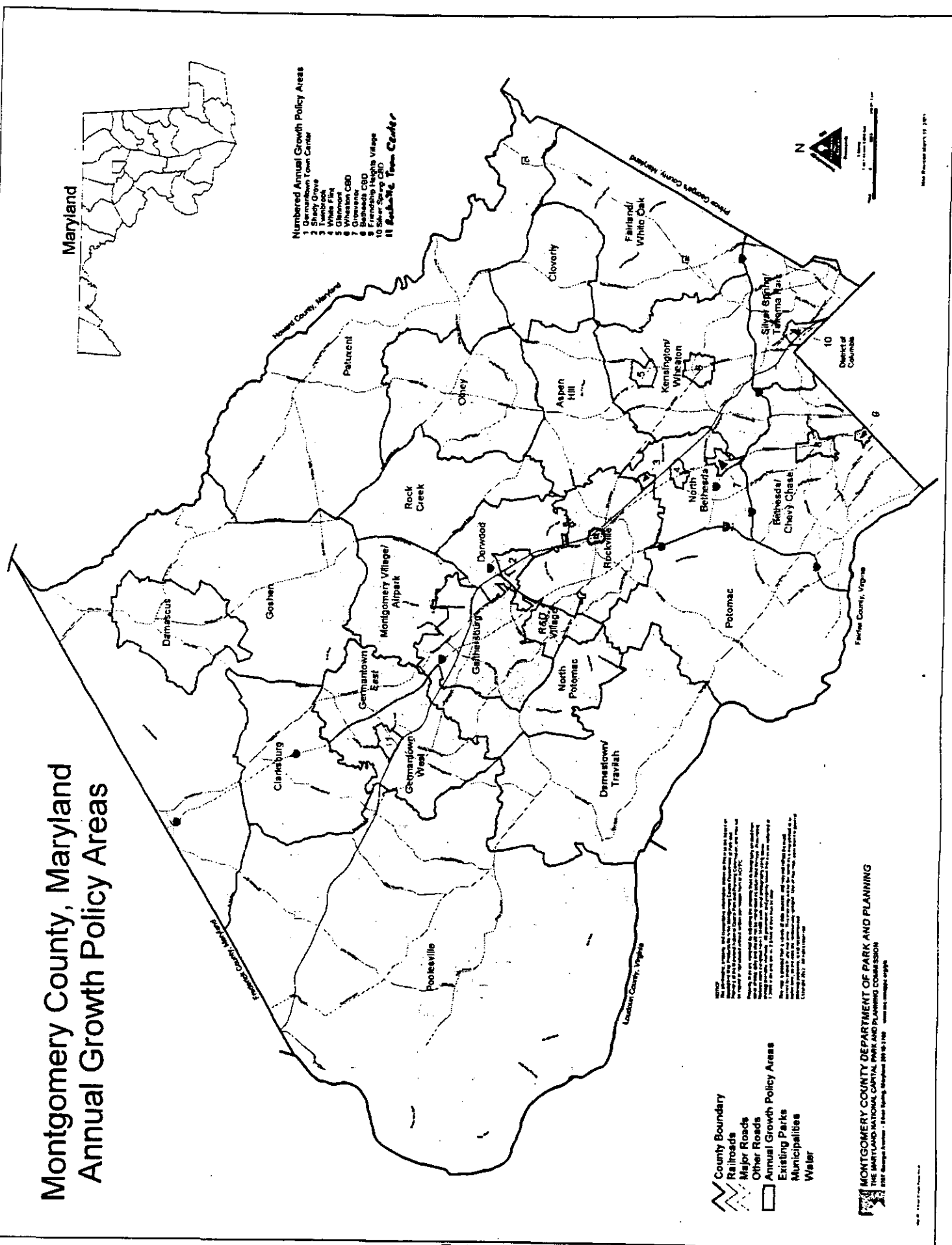
Potomac, Friendship Heights CBD and Silver Spring CBD have special LATR rules identified in their master plans or in the Growth Policy.

# Montgomery County, Maryland Annual Growth Policy Areas

Maryland



- Numbered Annual Growth Policy Areas**
- 1 Silver Spring Town Center
  - 2 Shady Grove
  - 3 Tumblebrook
  - 4 White Flint
  - 5 Clarendon
  - 6 Bethesda CBD
  - 7 Greenway
  - 8 Bethesda CBD
  - 9 Friendship Heights Village
  - 10 Silver Spring CBD
  - 11 **Rockville Town Center**

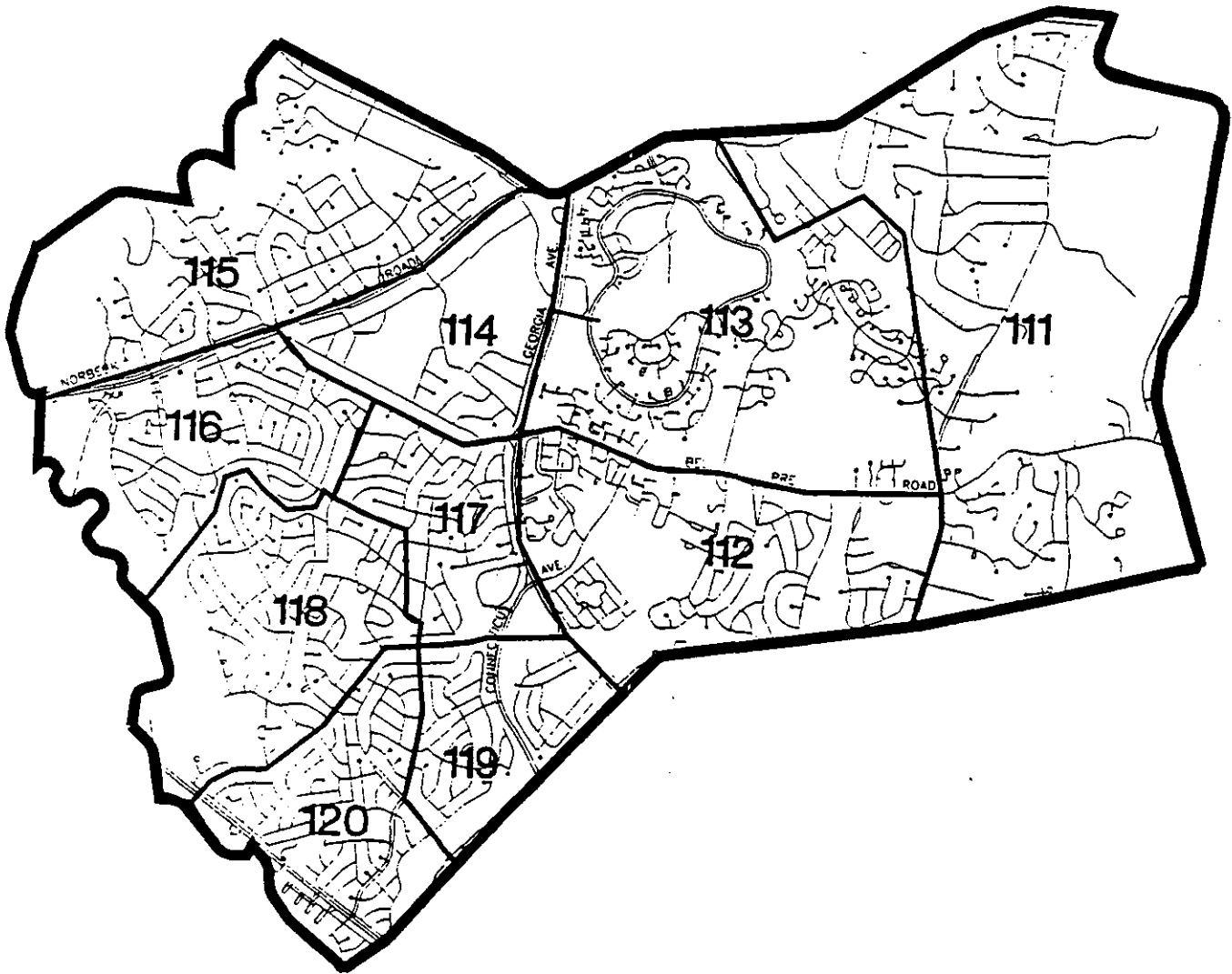


**NOTES:**  
 1. Annual Growth Policy Areas are shown as shaded areas on this map. They are intended to guide future development and growth in Montgomery County, Maryland. The boundaries of these areas are not intended to be rigid and may be modified as needed to reflect changes in land use patterns and growth trends. The boundaries of these areas are not intended to be rigid and may be modified as needed to reflect changes in land use patterns and growth trends. The boundaries of these areas are not intended to be rigid and may be modified as needed to reflect changes in land use patterns and growth trends.

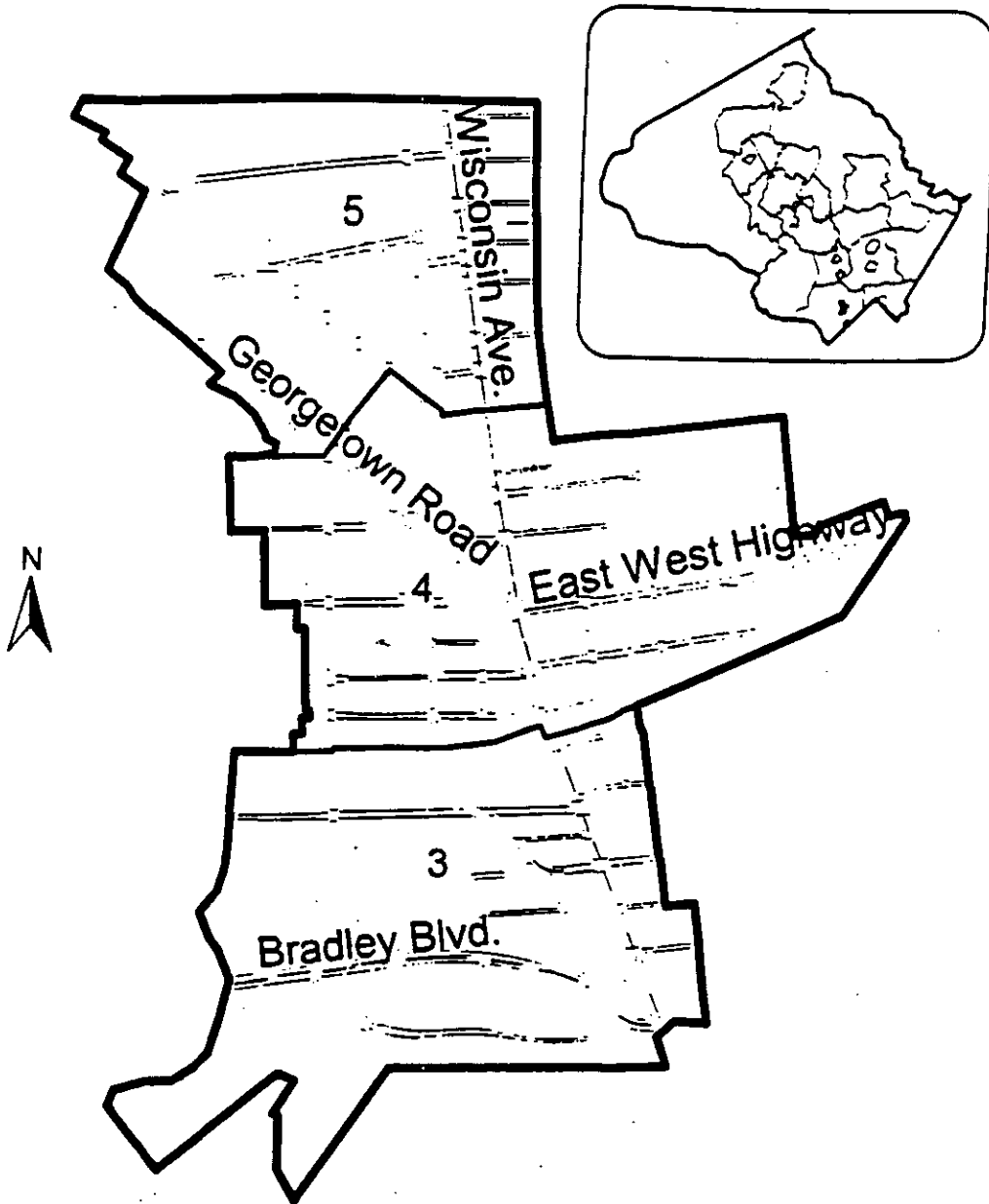
- County Boundary
- Railroads
- Major Roads
- Other Roads
- Annual Growth Policy Areas
- Existing Parks
- Municipalities
- Water

**MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING**  
 THE MARYLAND NATIONAL CAPITAL PARK AND PLANNING COMMISSION  
 1075 Georgia Avenue - Silver Spring, Maryland 20910-2100

# Aspen Hill



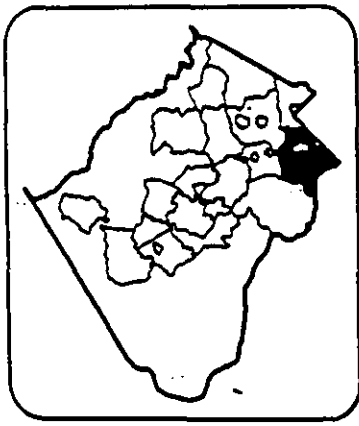
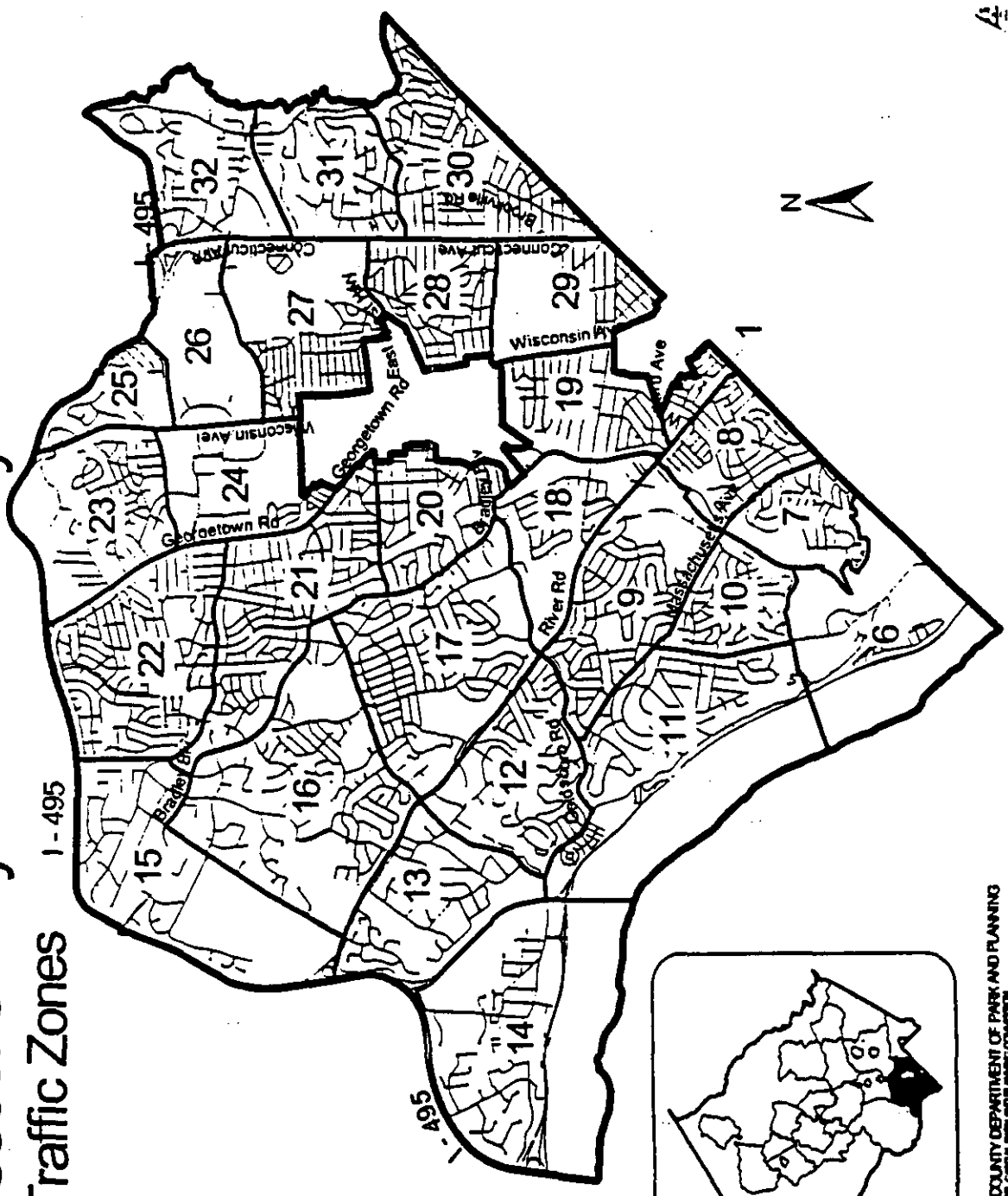
# Bethesda CBD Policy Area With Traffic Zones





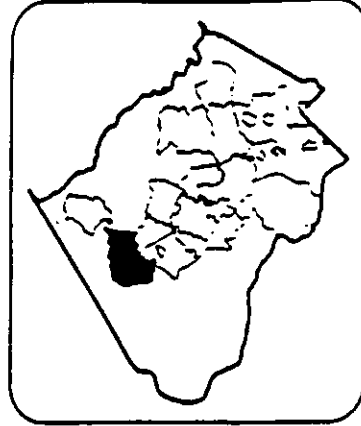
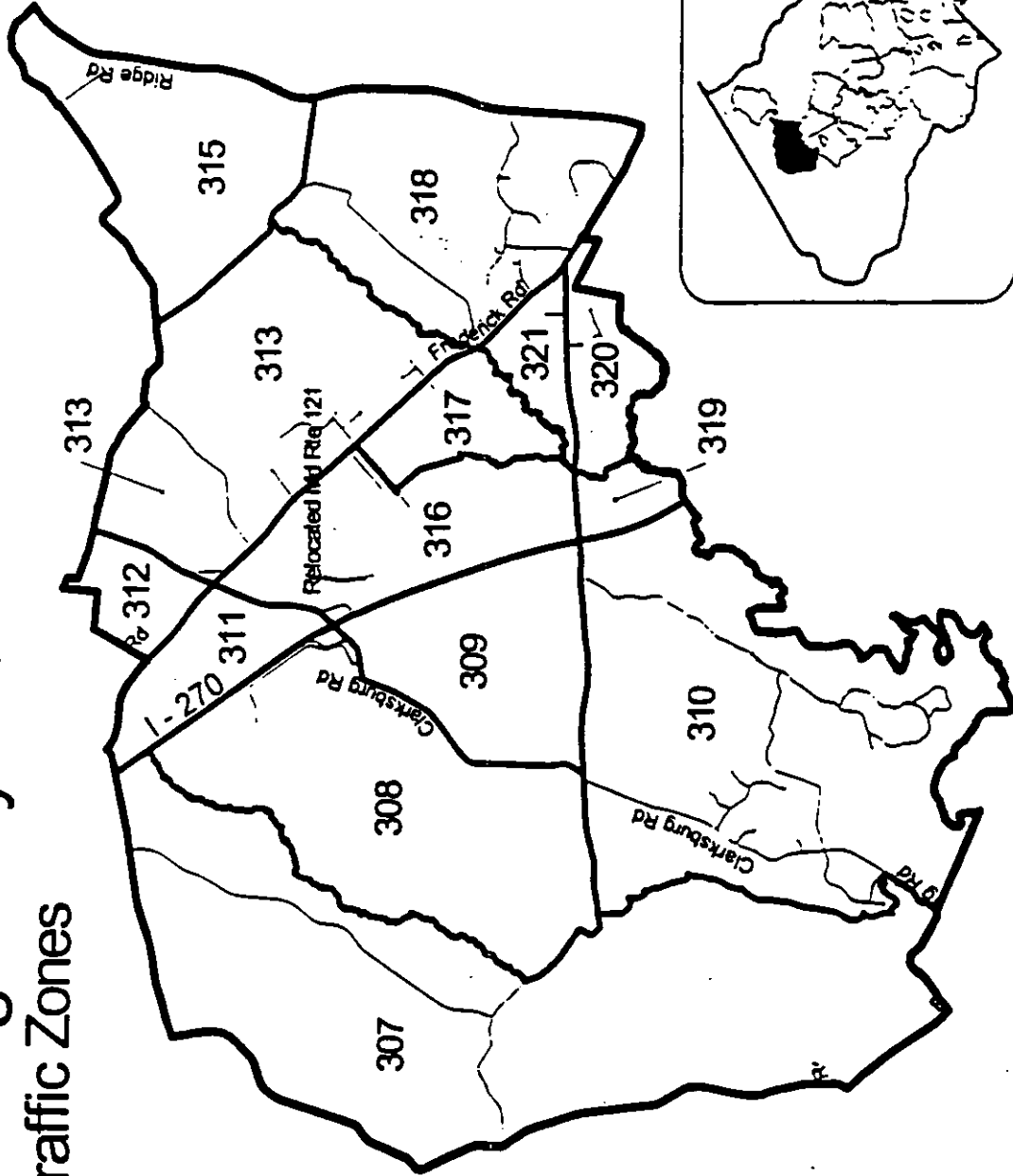
# Bethesda/Chevy Chase Policy Area

## With Traffic Zones 1-495

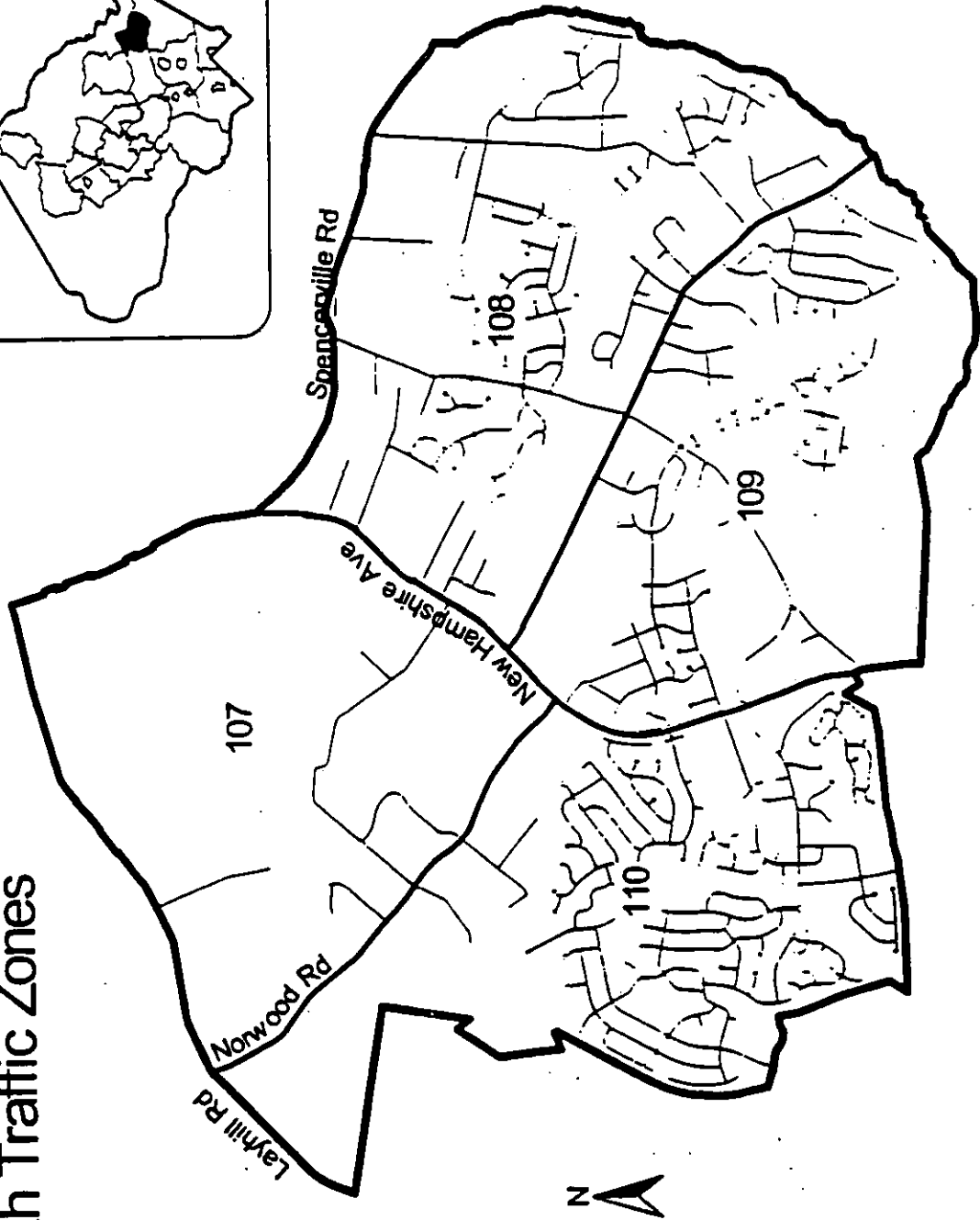
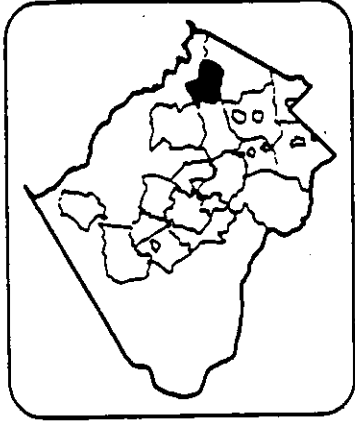



**MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING**  
 100 CALVERT STREET, SUITE 200, BETHESDA, MARYLAND 20814  
 TEL: 301-279-3000 FAX: 301-279-3001

# Clarksburg Policy Area With Traffic Zones



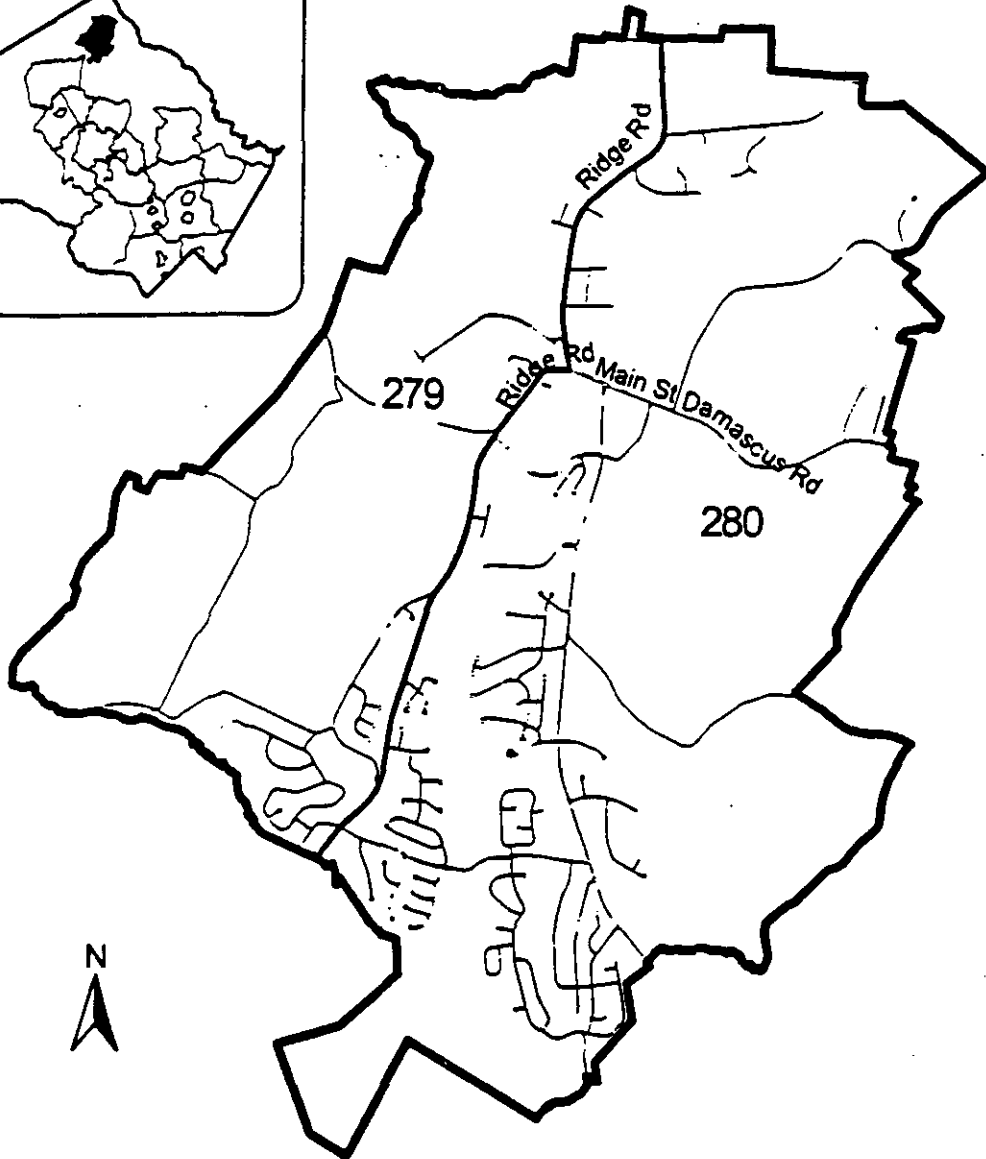
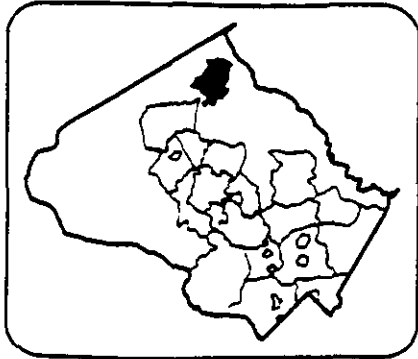
# Cloverly Policy Area With Traffic Zones



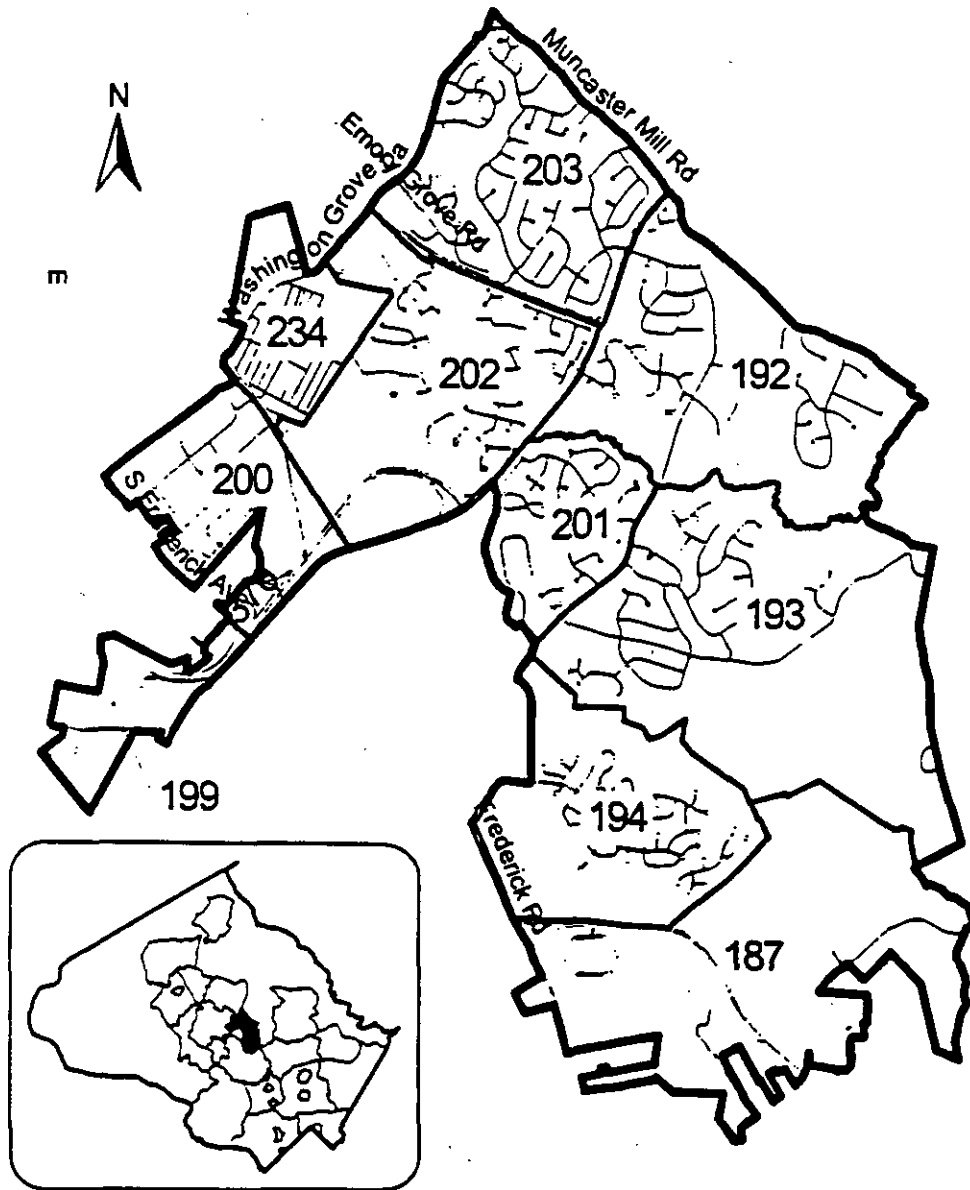
A

**MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING**  
 100 EAST WASHINGTON STREET, SUITE 200  
 ROCKVILLE, MARYLAND 20850  
 TEL: 301-231-7300 FAX: 301-231-7301

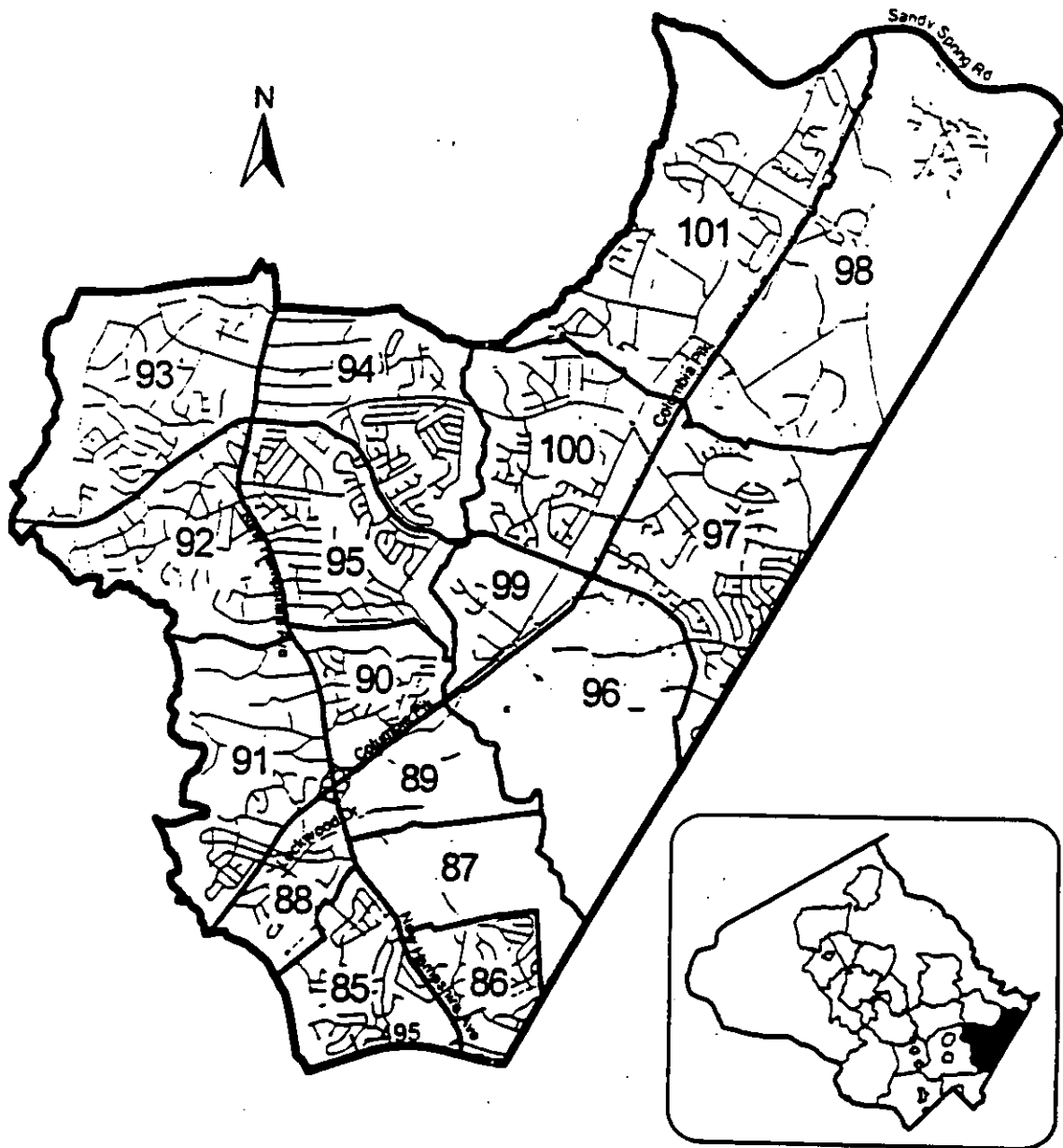
# Damascus Policy Area With Traffic Zones



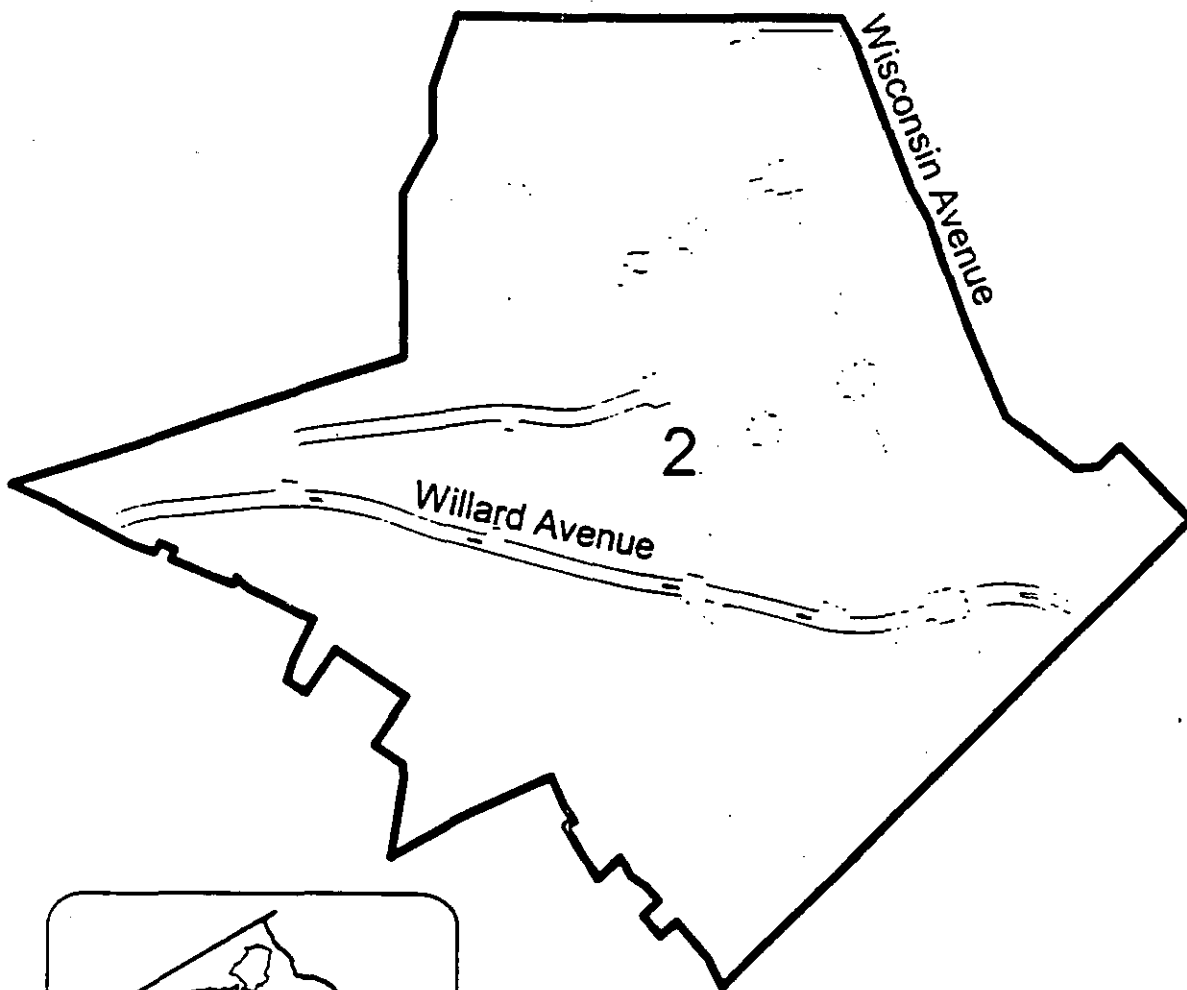
# Derwood Policy Area With Traffic Zones



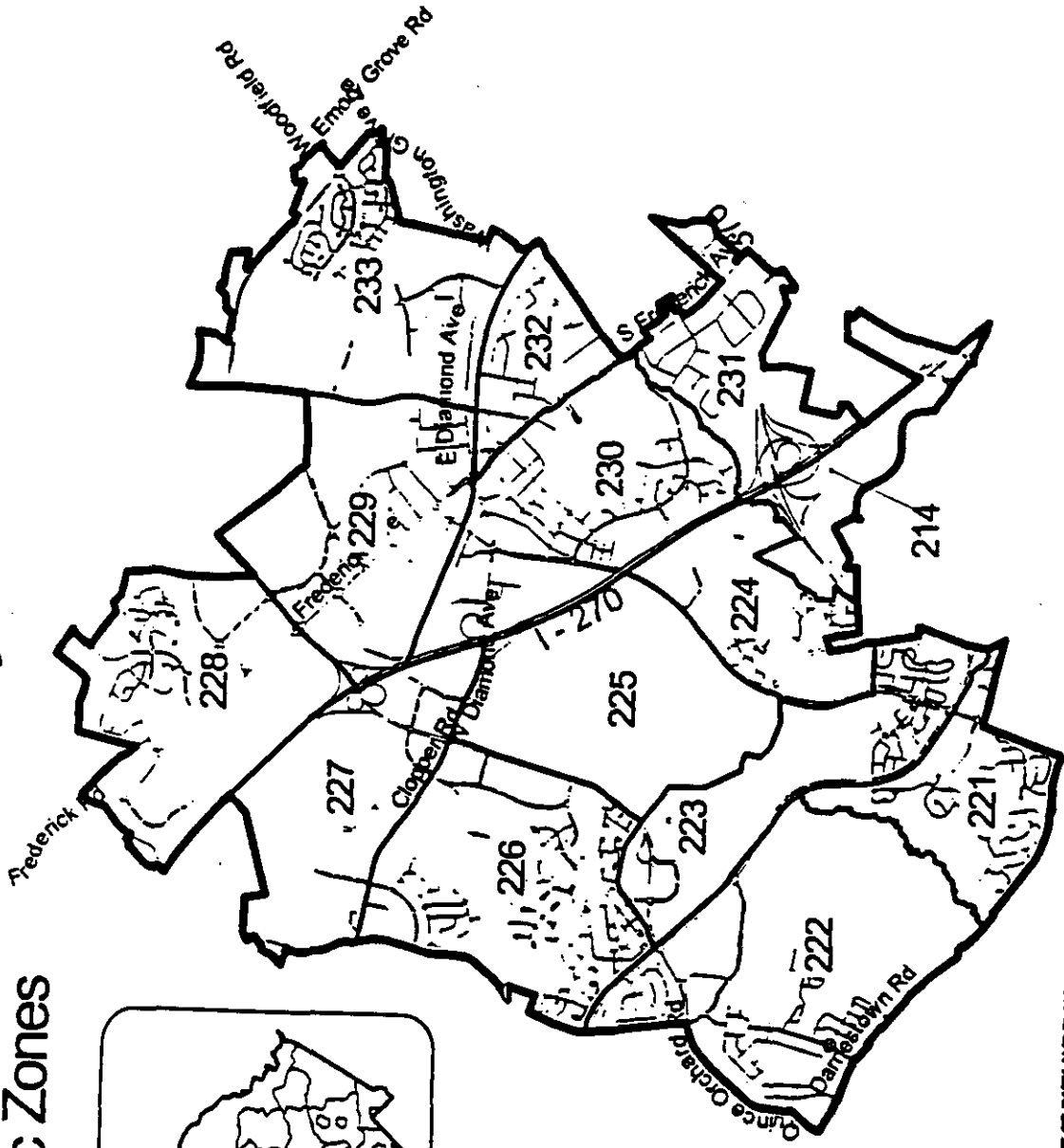
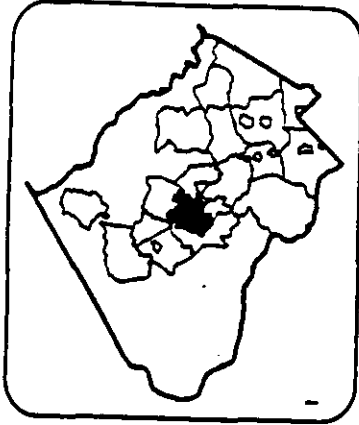
# Fairland/White Oak Policy Area With Traffic Zones



# Friendship Heights Policy Area With Traffic Zones



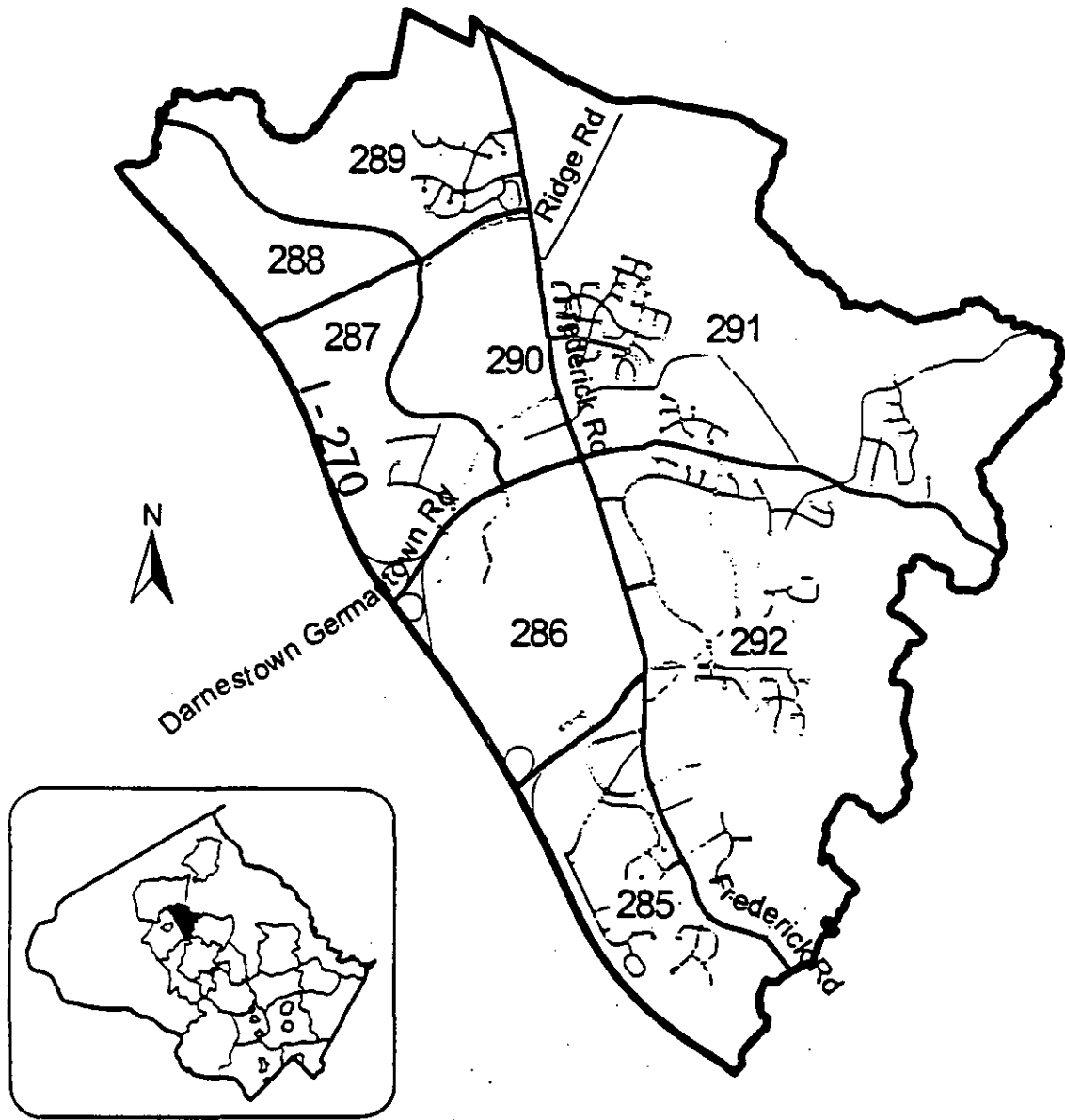
# Gaithersburg City Policy Area With Traffic Zones



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING  
11000 WOODBRIDGE DRIVE, SUITE 200, GAITHERSBURG, MD 20878  
301-287-2000

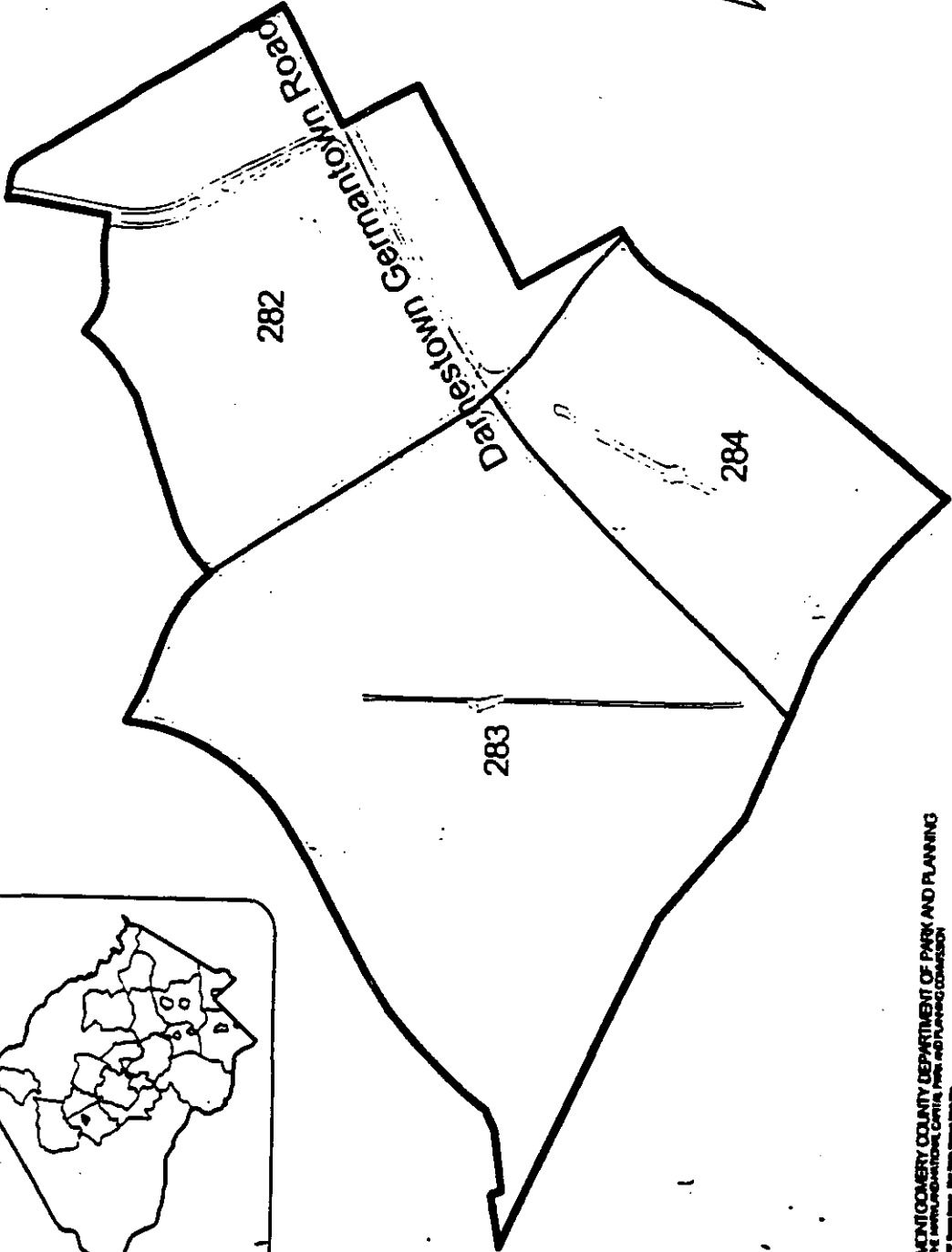
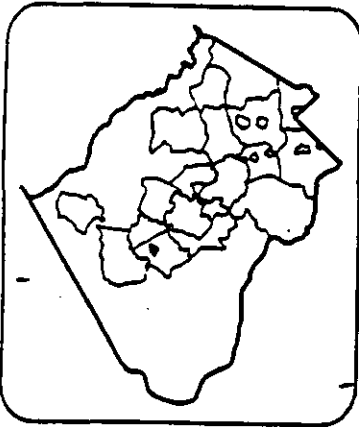


# Germantown East Policy Area With Traffic Zones



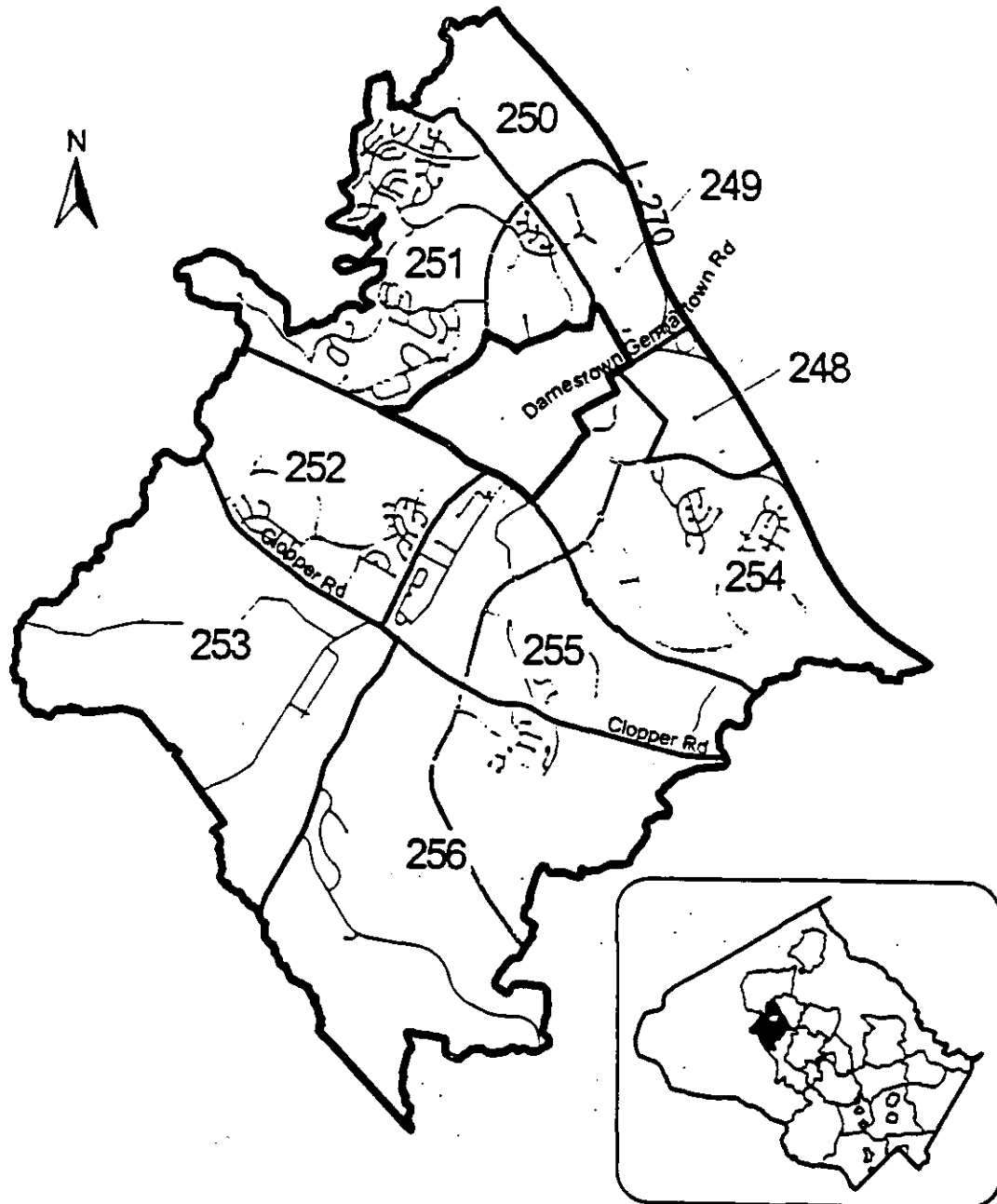
# Germantown Town Center Policy Area

## With Traffic Zones

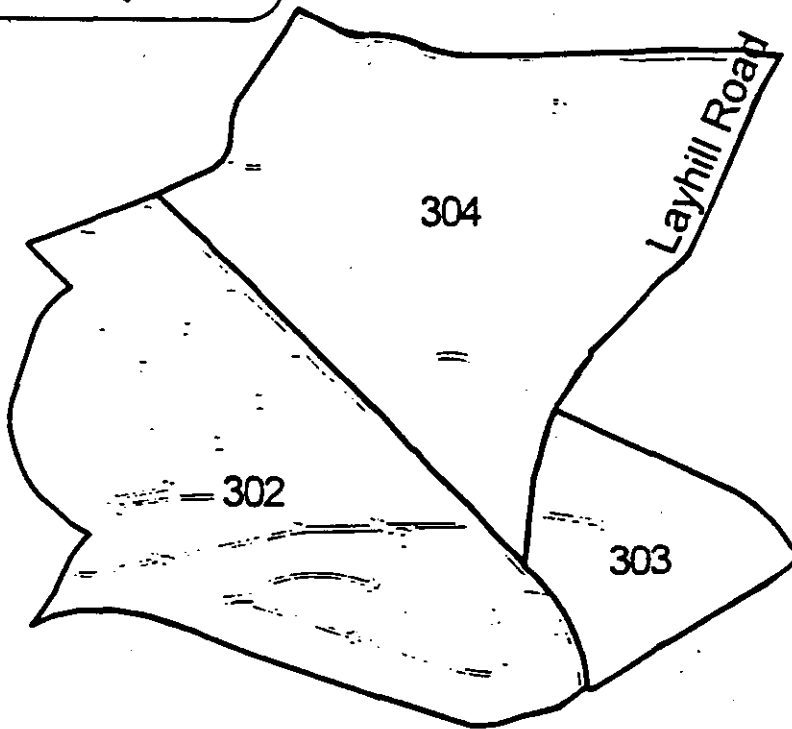
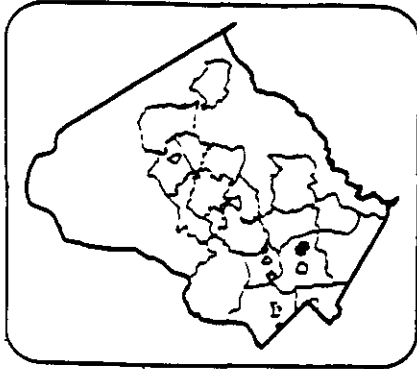



**MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING**  
 100 MONTGOMERY AVENUE, SUITE 200, GAITHERSBURG, MD 20878  
 TEL: 301-287-3000 FAX: 301-287-3001

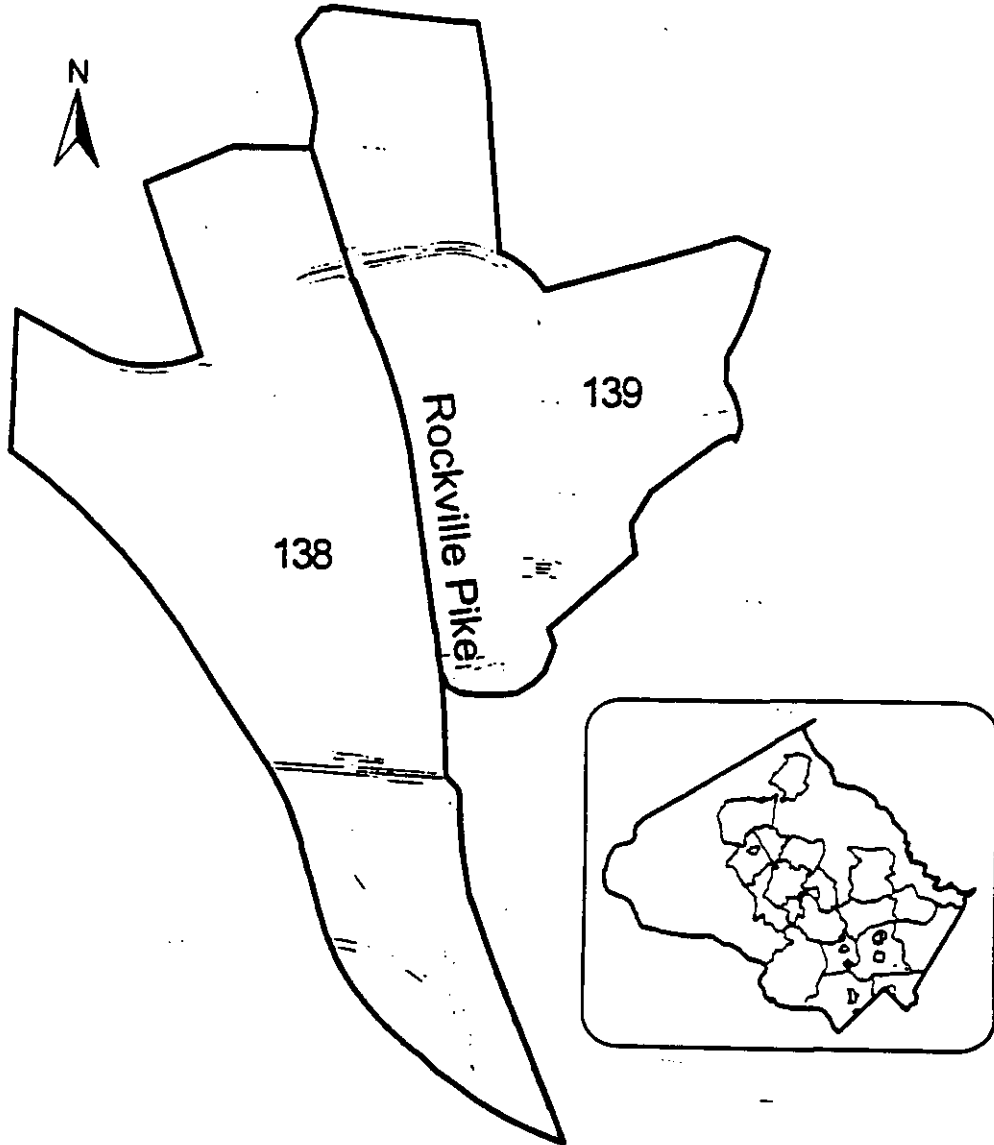
# Germantown West Policy Area With Traffic Zones



# Glenmont Policy Area With Traffic Zones

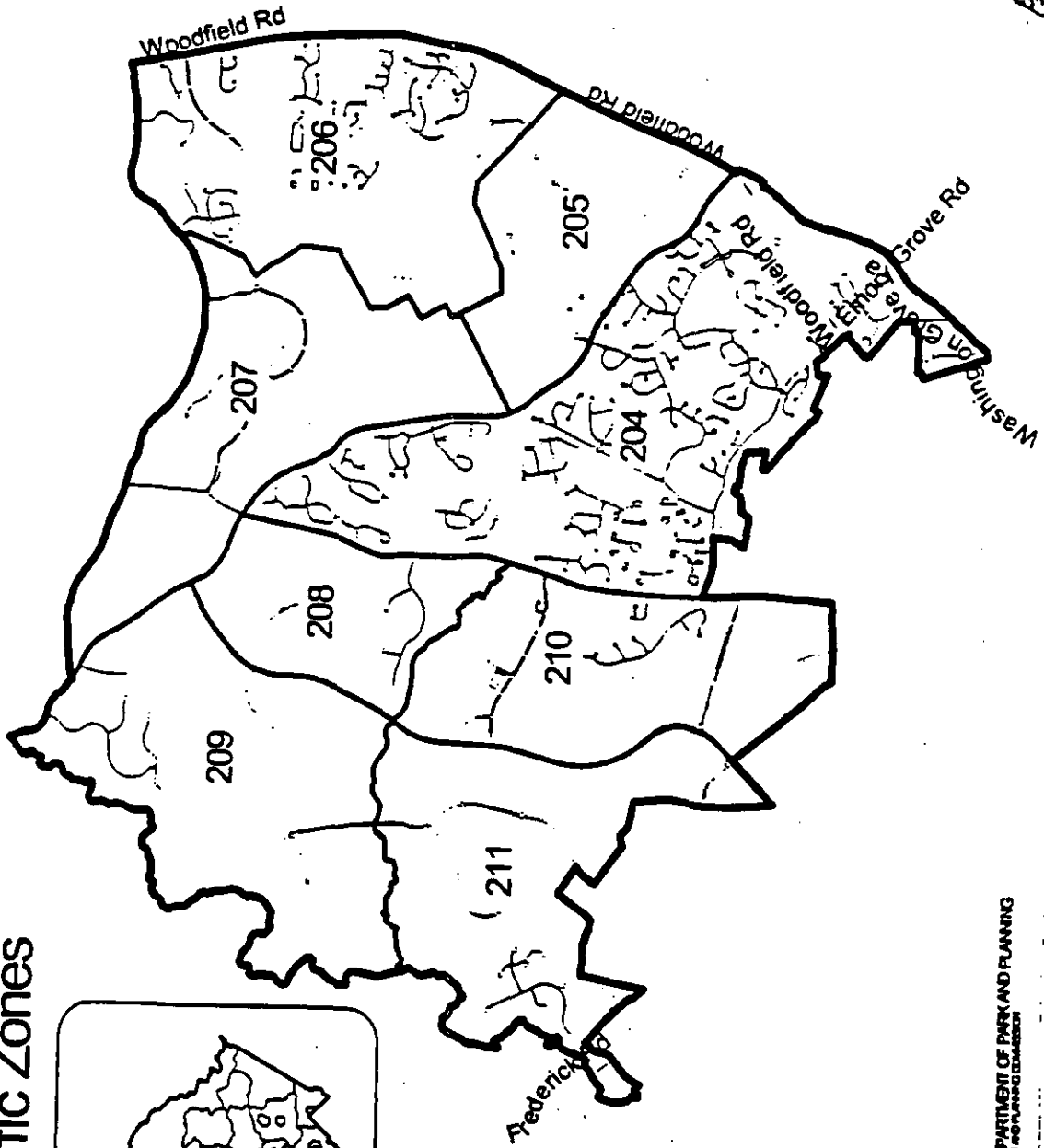
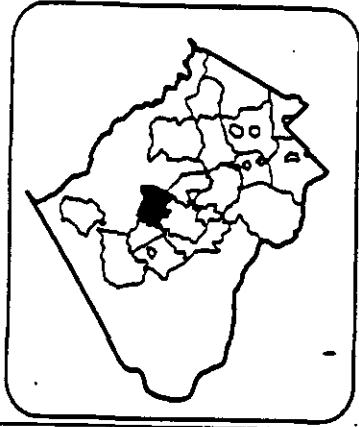


# Grosvenor Policy Area With Traffic Zones



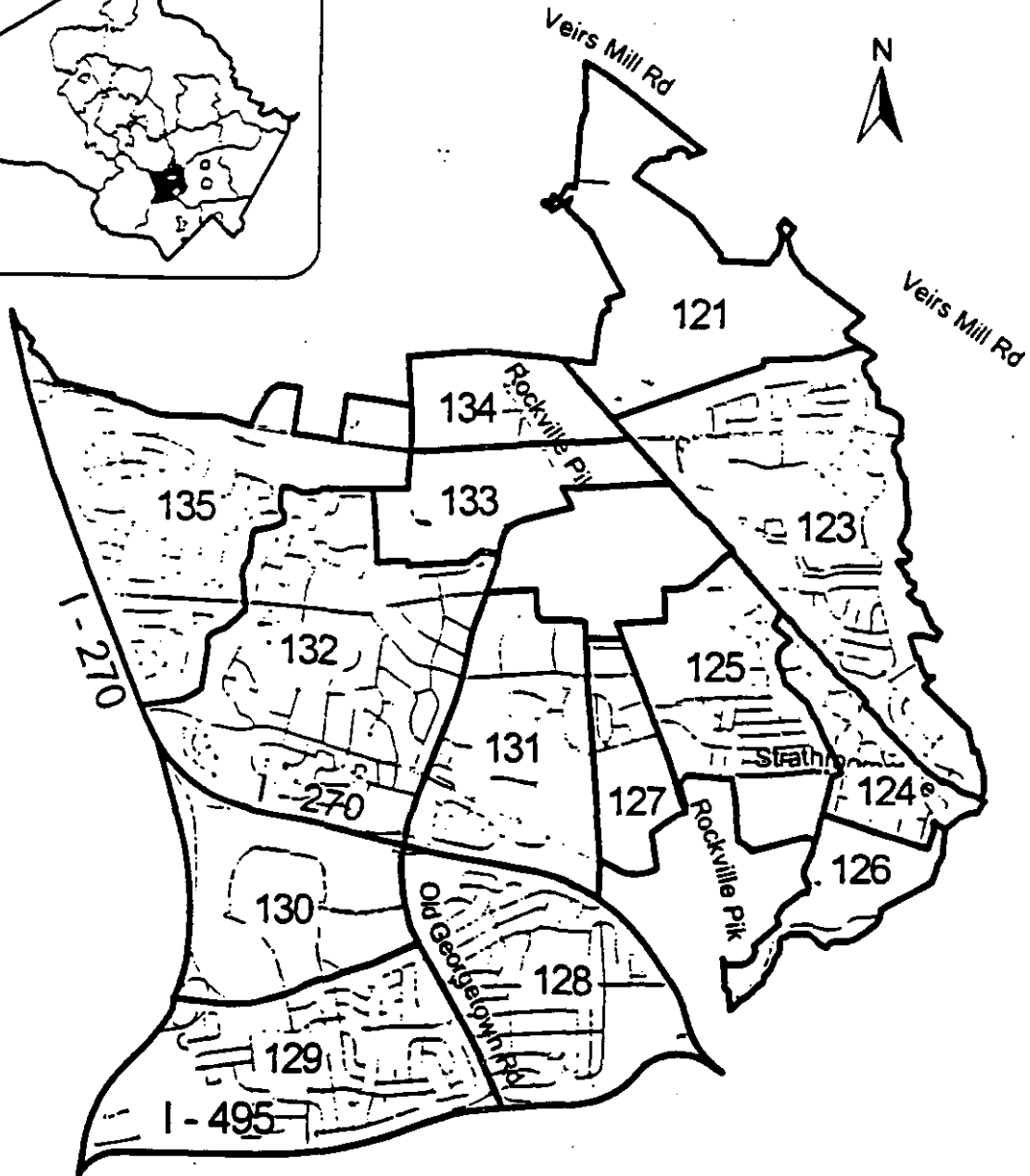
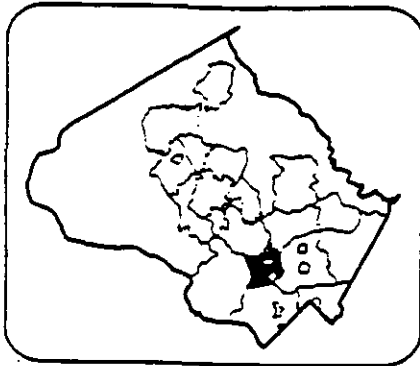


# Montgomery Village/Airpark Policy Area With Traffic Zones



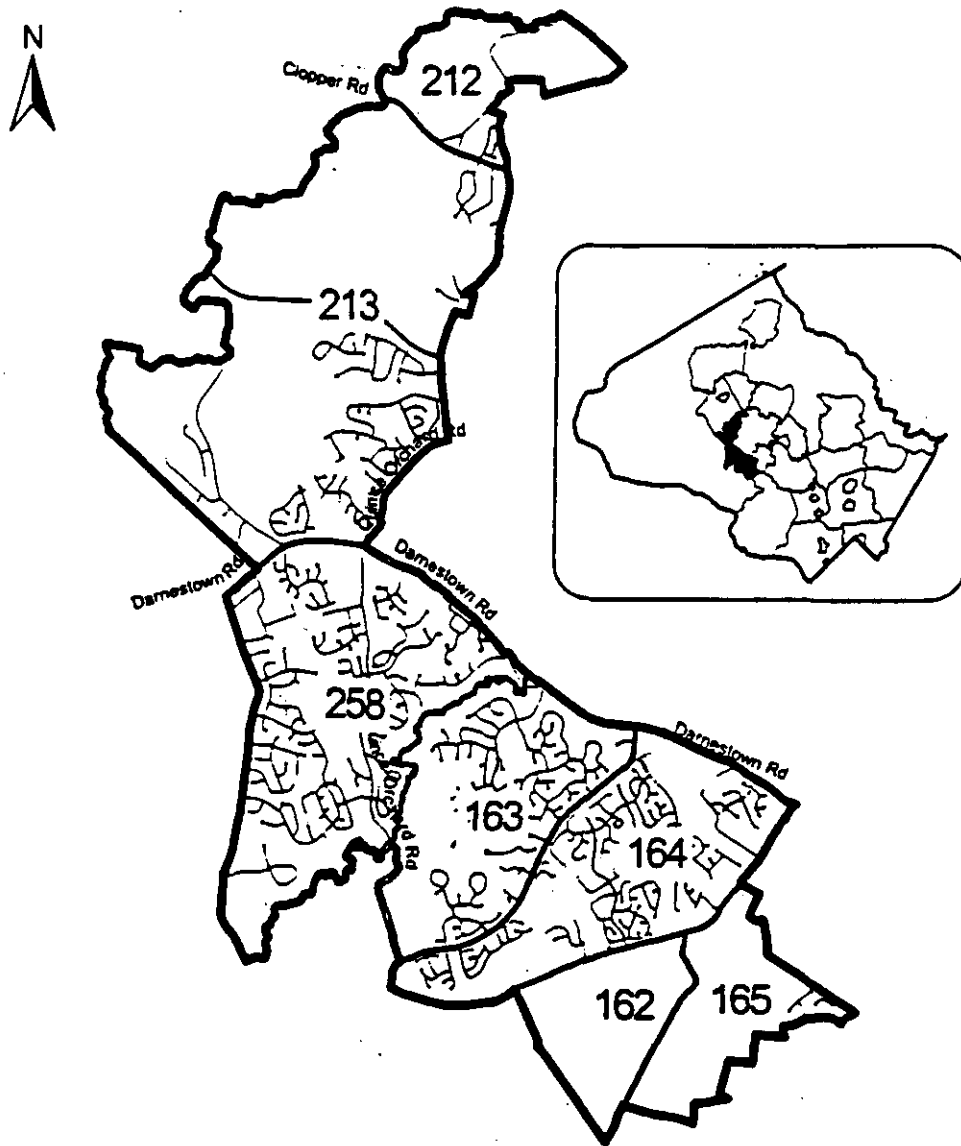
**MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING**  
 THE MONTGOMERY COUNTY CAPITAL PLAN AND PLANNING EXHIBIT  
 For more information, see the accompanying documents.

# North Bethesda Policy Area With Traffic Zones

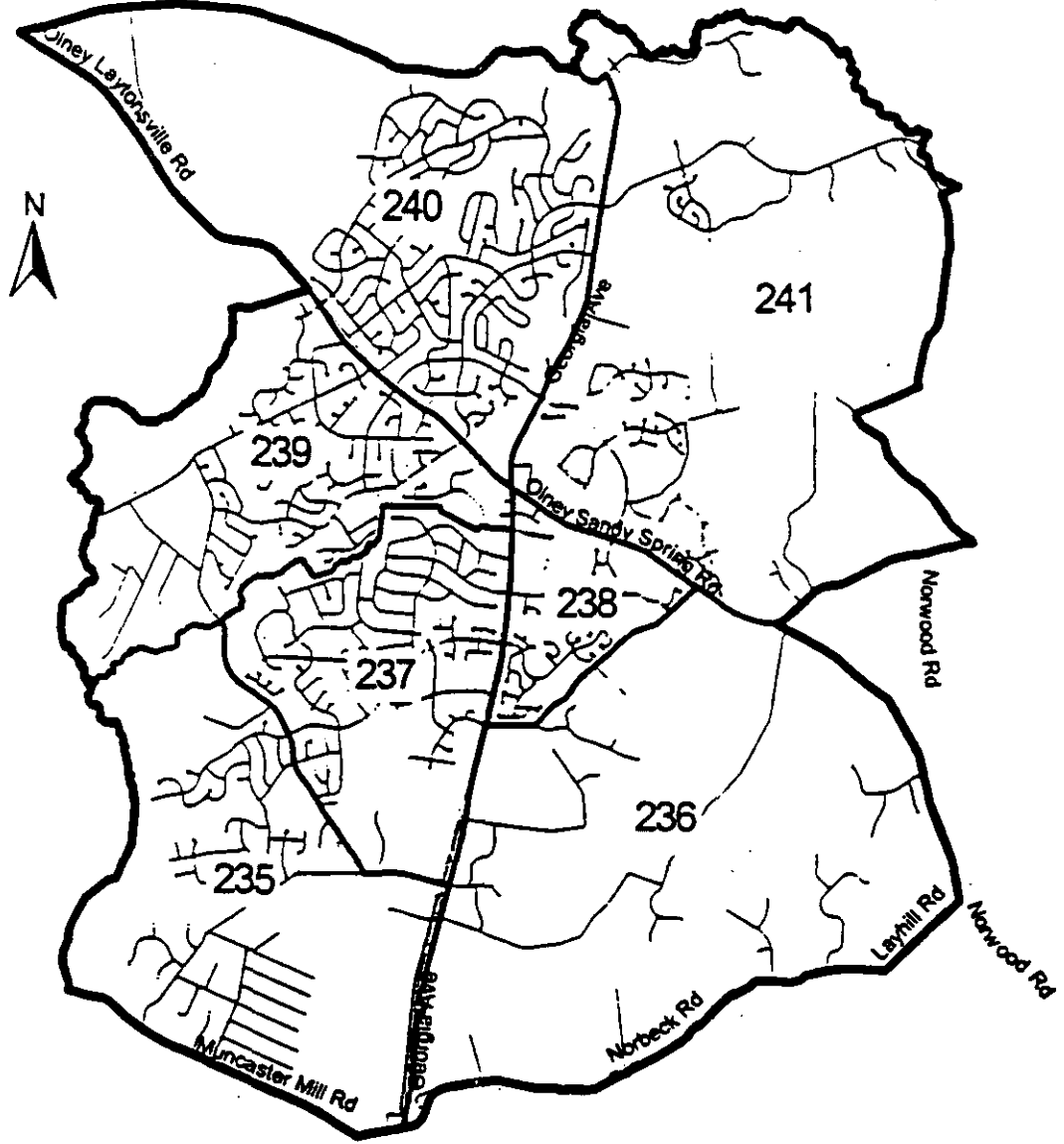




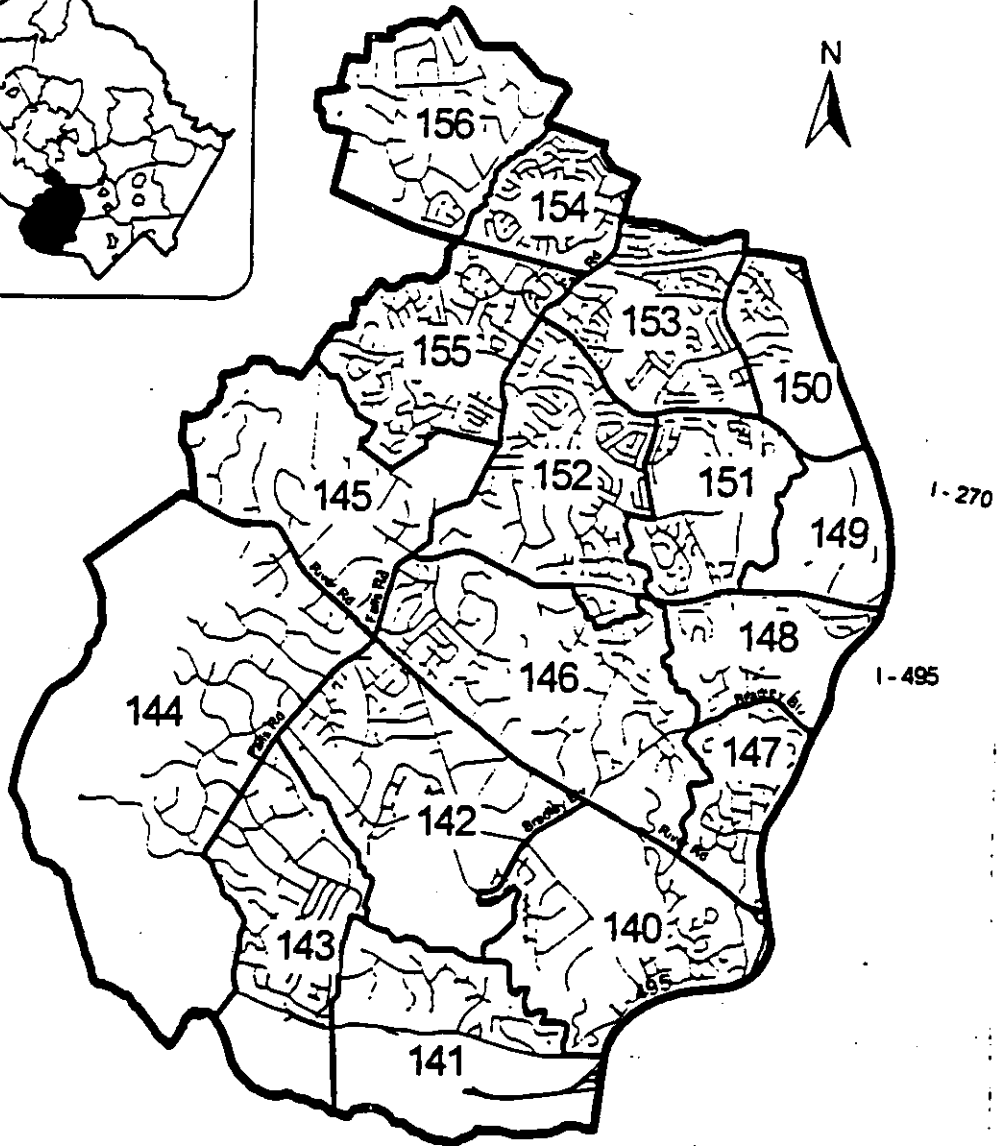
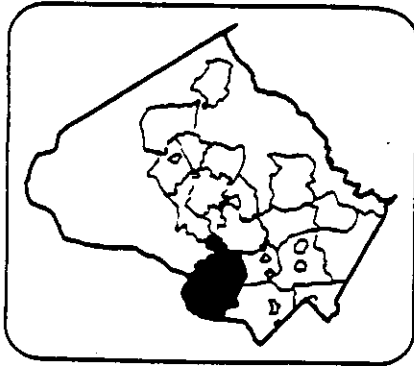
# North Potomac Policy Area With Traffic Zones



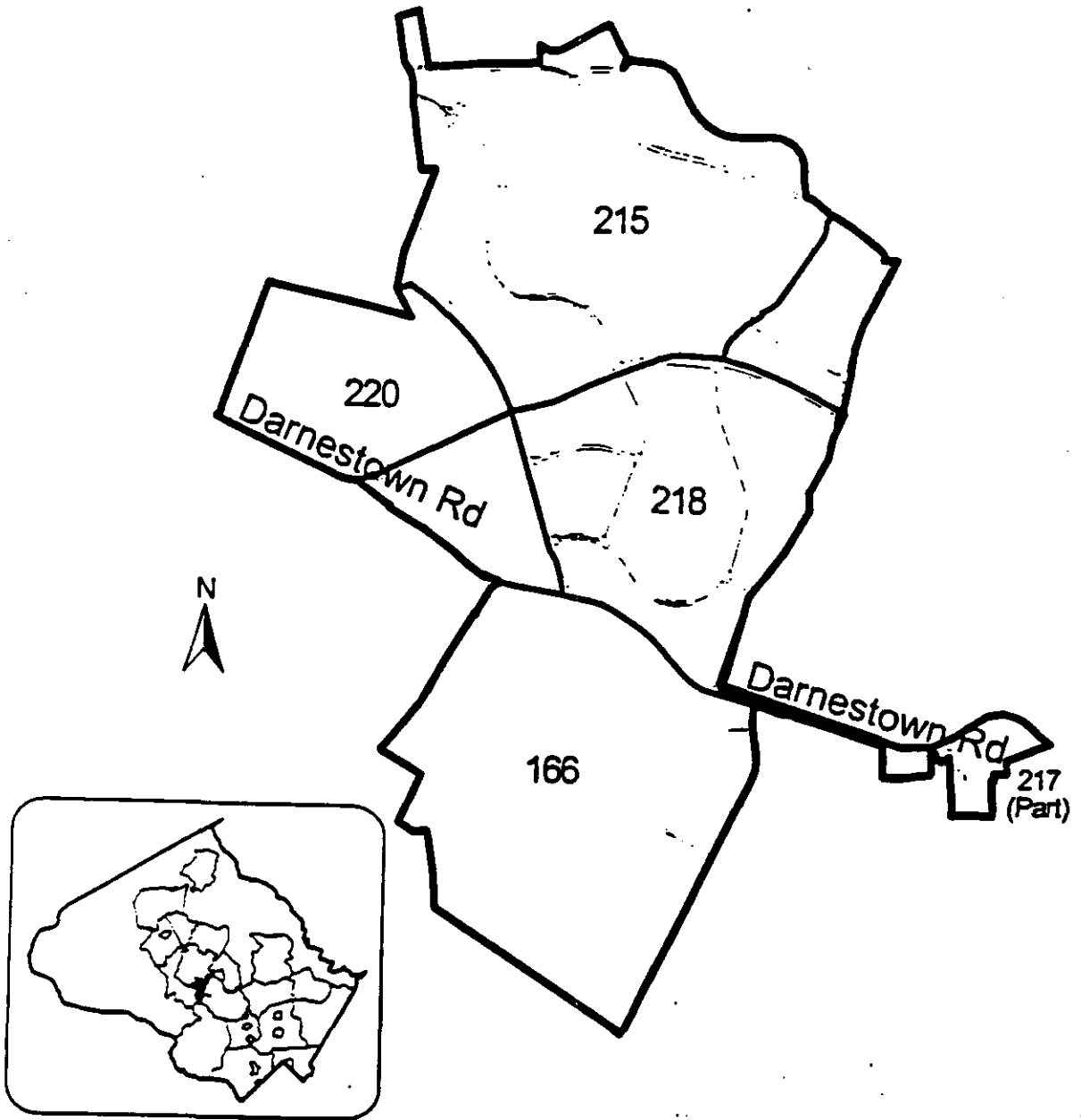
# Olney Policy Area With Traffic Zones



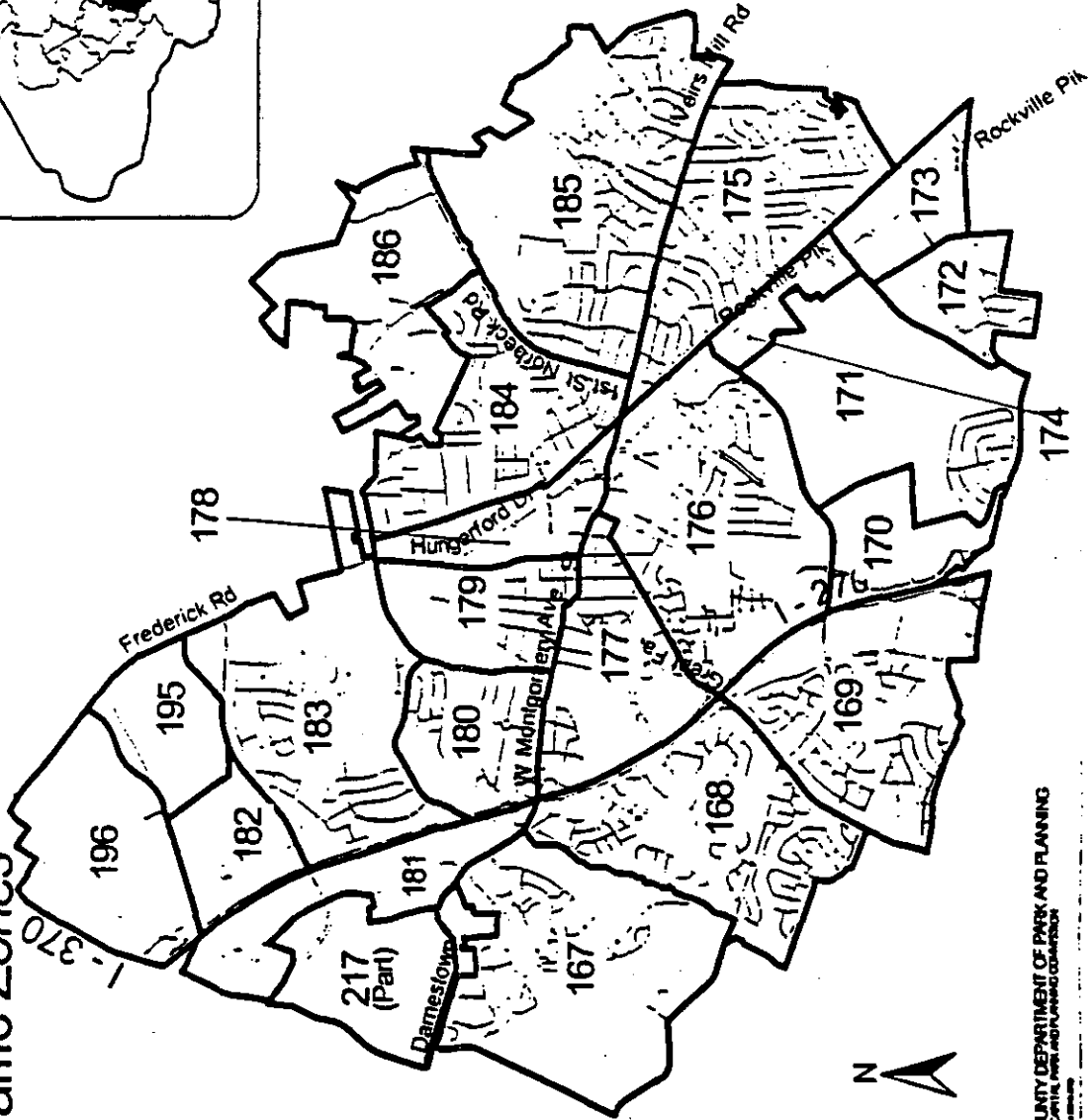
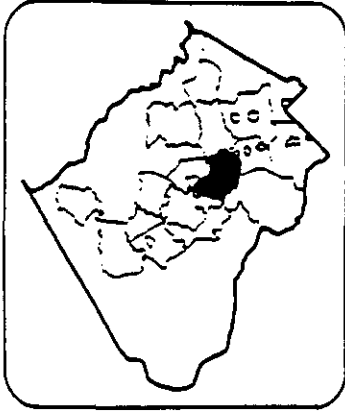
# Potomac Policy Area With Traffic Zones



# R & D Village Policy Area With Traffic Zones

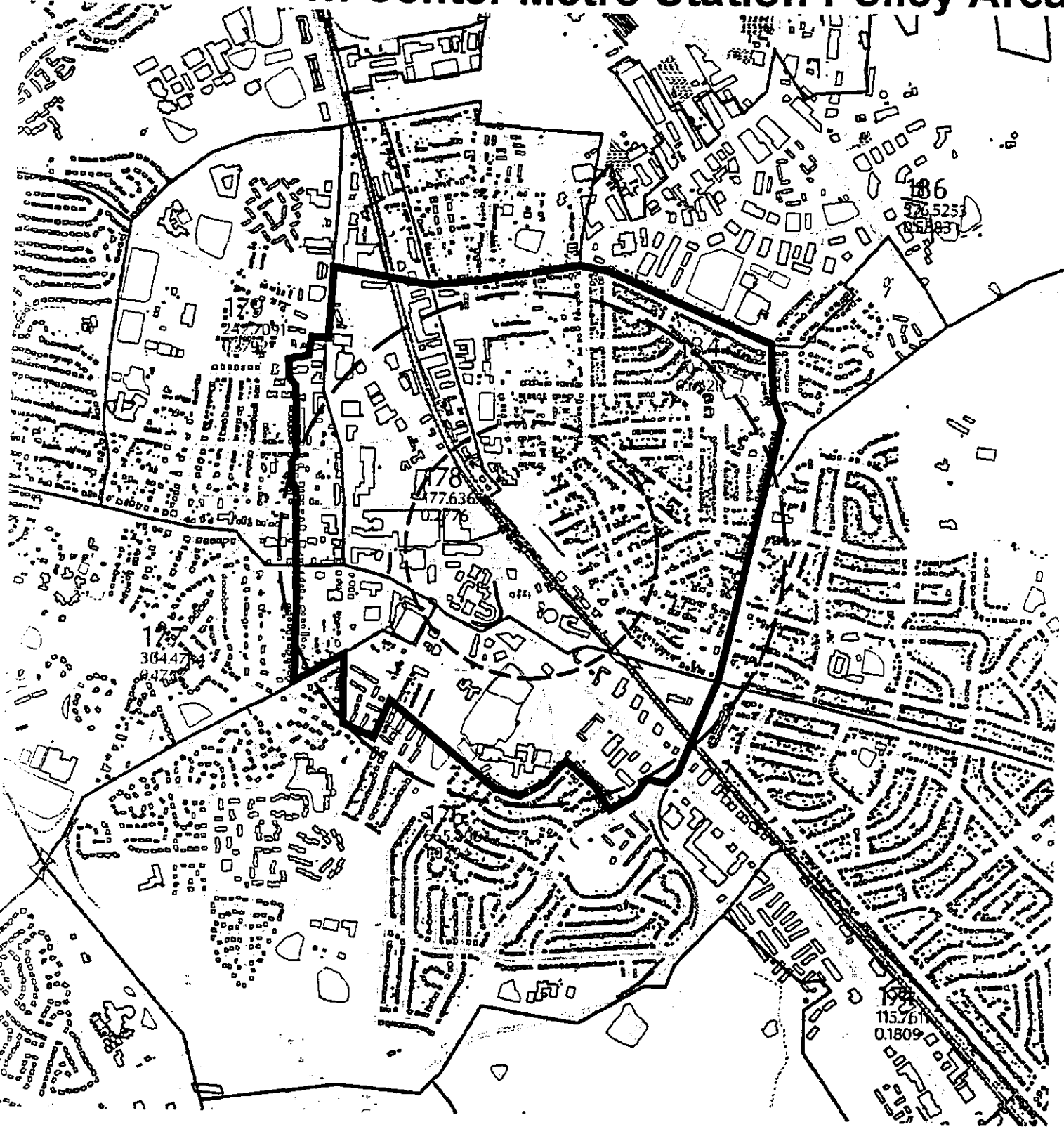


# Rockville Policy Area With Traffic Zones

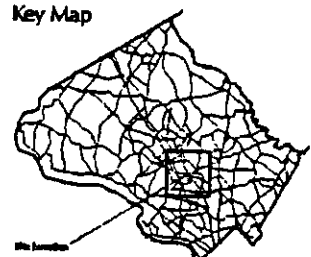


**MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING**  
 10000 ROCKVILLE PIKE, SUITE 200  
 ROCKVILLE, MARYLAND 20850  
 TEL: 301-771-2000 FAX: 301-771-2001  
 WWW.MONTGOMERYCOUNTY.GOV

# Rockville Town Center Metro Station Policy Area



- MSPA boundary
- 1/4 mile from Metro station
- 1/2 mile from Metro station



Planimetric / Orthophoto  
Source: Datas



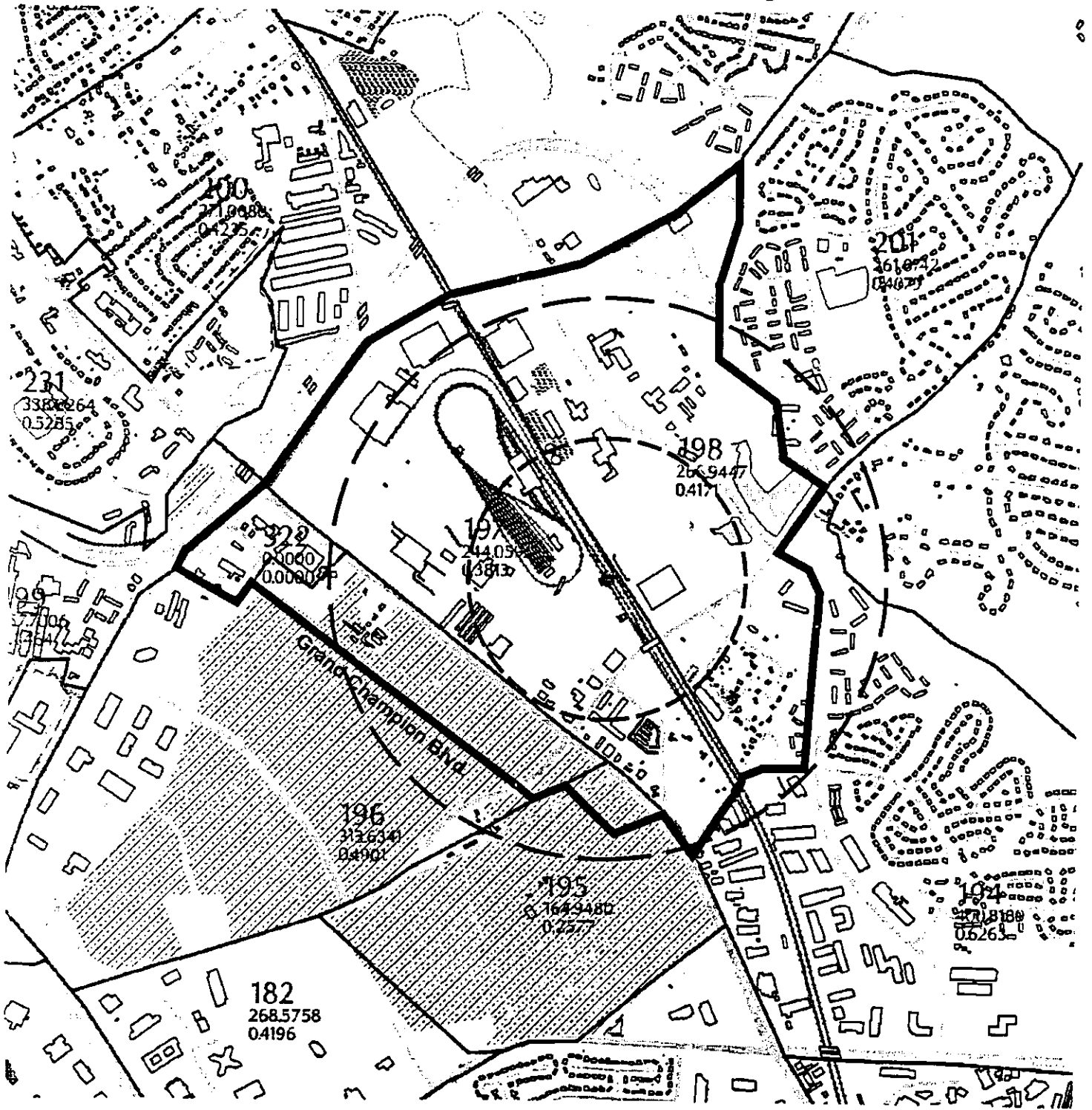
Research & Technology Center



1:9600

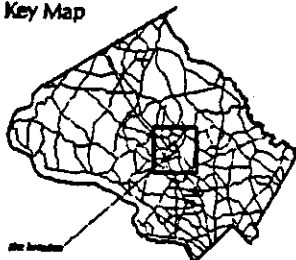
Revised 10/12/99

# Shady Grove Metro Station Policy Area

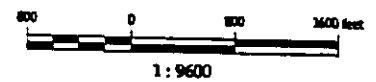


- MSPA boundary
- - - -** 1/4 mile from Metro station
- 1/2 mile from Metro station

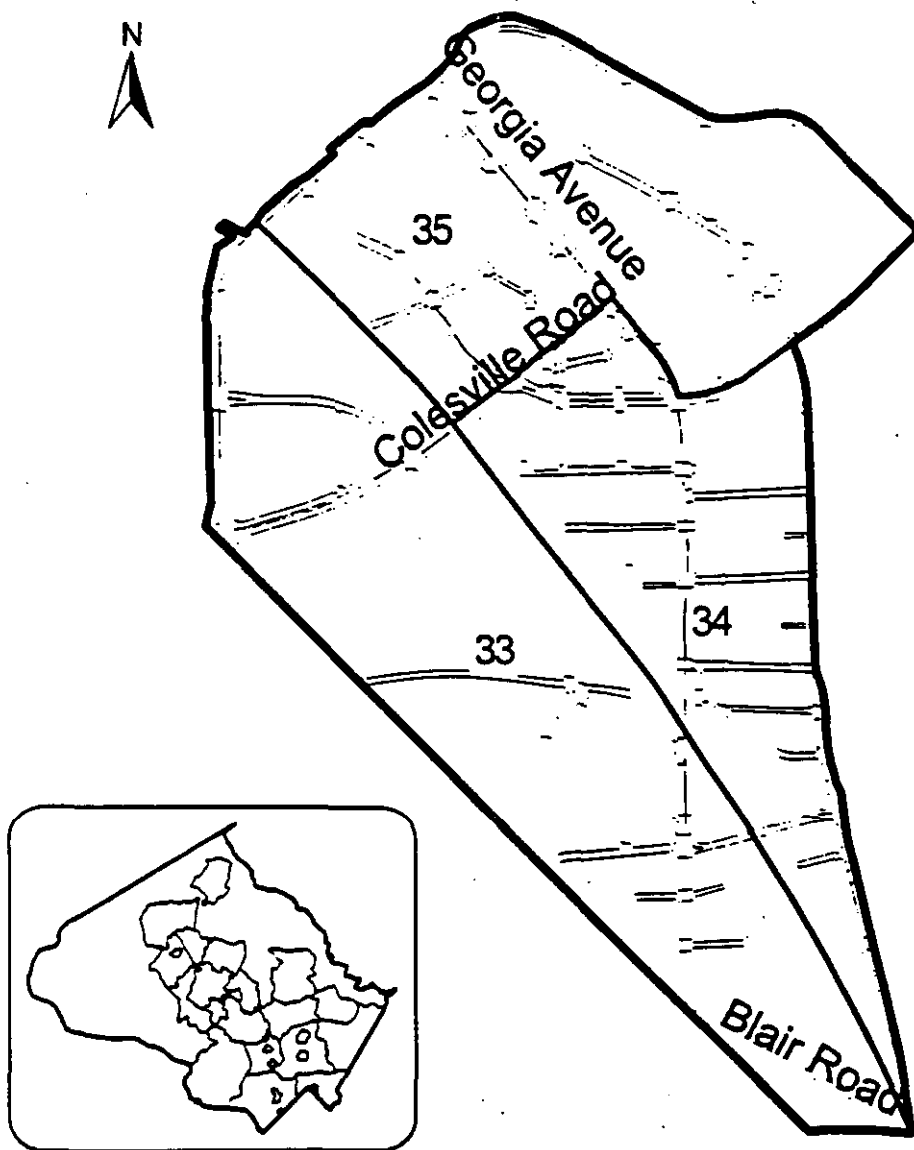
Key Map



Planimetric / Orthophoto  
 Success Dates  
 1980  
 1985  
 1990  
 1995

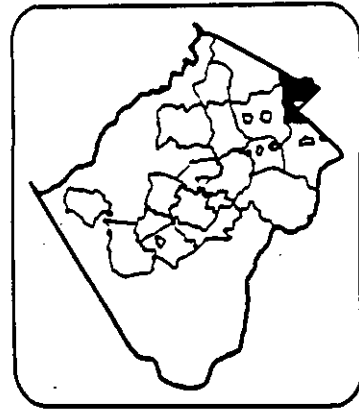
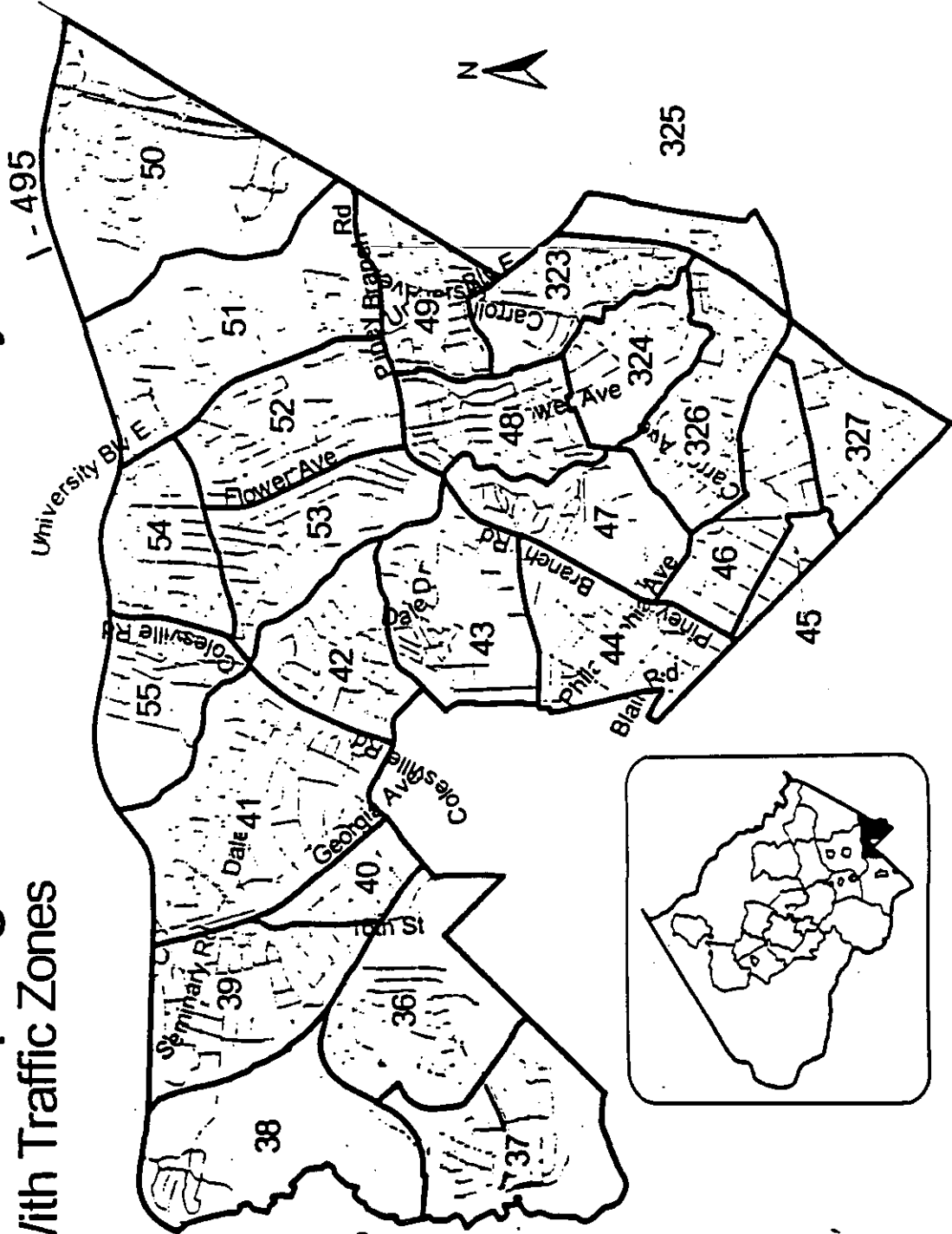


# Silver Spring CBD Policy Area With Traffic Zones



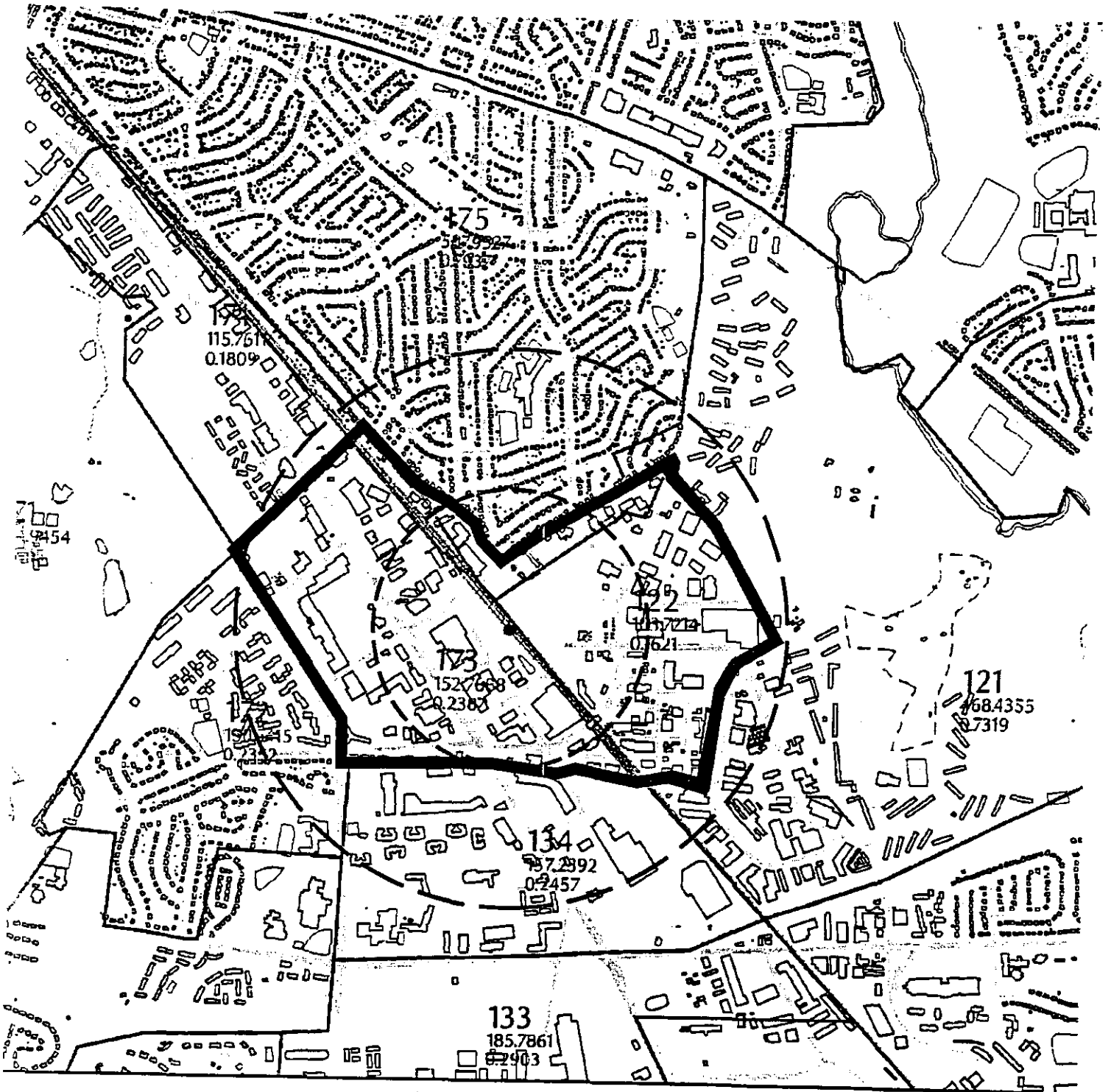





# Silver Spring/Takoma Park Policy Area With Traffic Zones



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING  
1200 NORTH MOUNTAIN VIEW DRIVE, SUITE 100, ROCKVILLE, MD 20850  
Tel: 301-287-2000 Fax: 301-287-2001

# Twinbrook Metro Station Area



-  MSPA boundary
-  1/4 mile from Metro station
-  1/2 mile from Metro station

Developed residential land near Metro.

Key Map



Planimetric / Orthophoto  
 Source Data  
 MICHIGAN  
 AERIAL  
 PHOTOGRAPHY

N

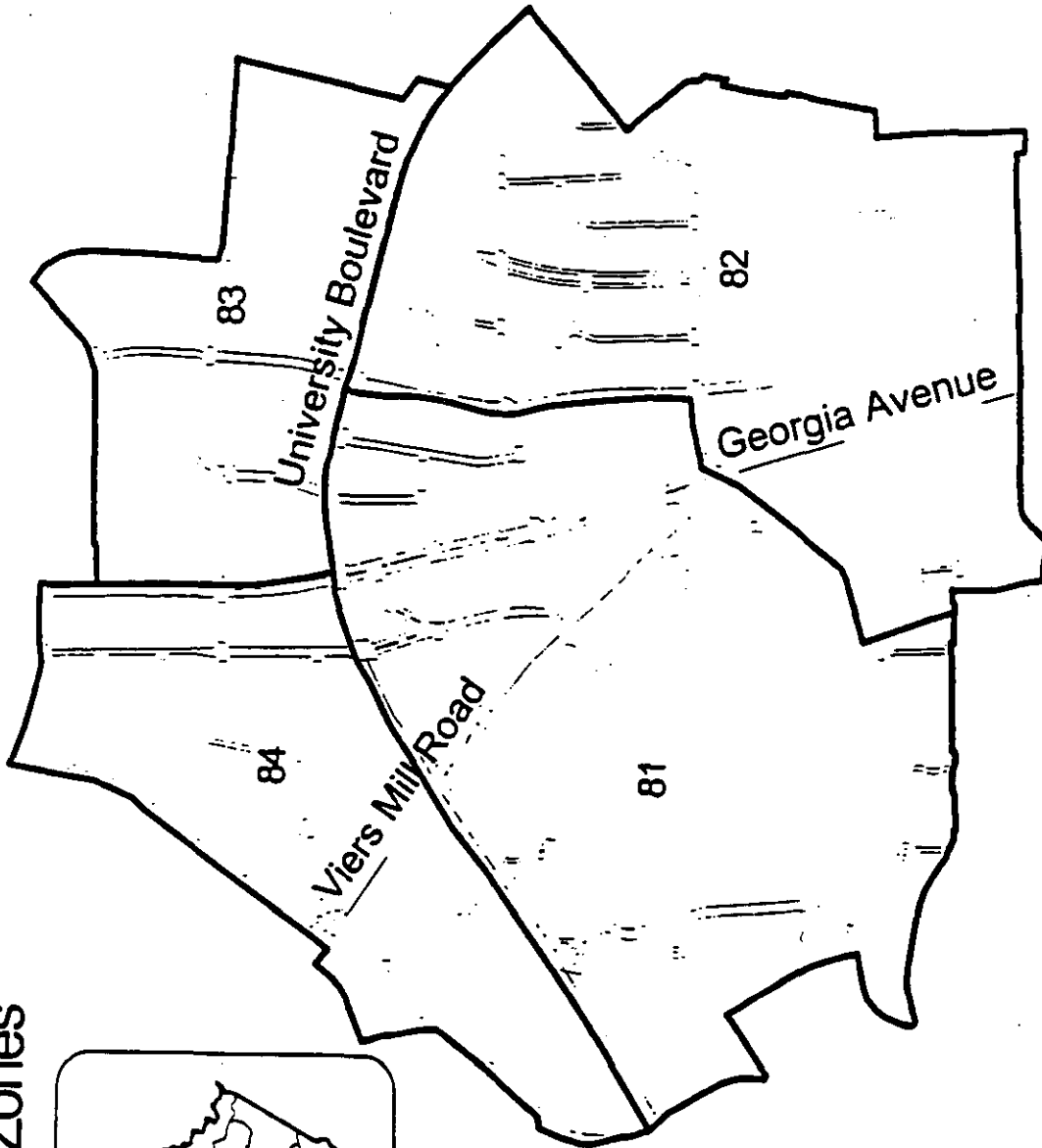
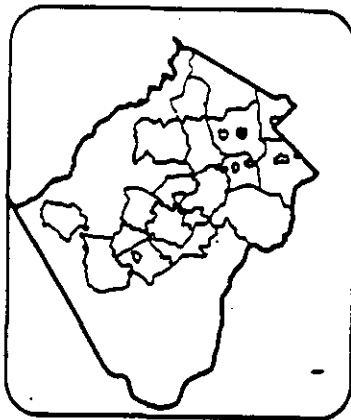


Research & Technology Center



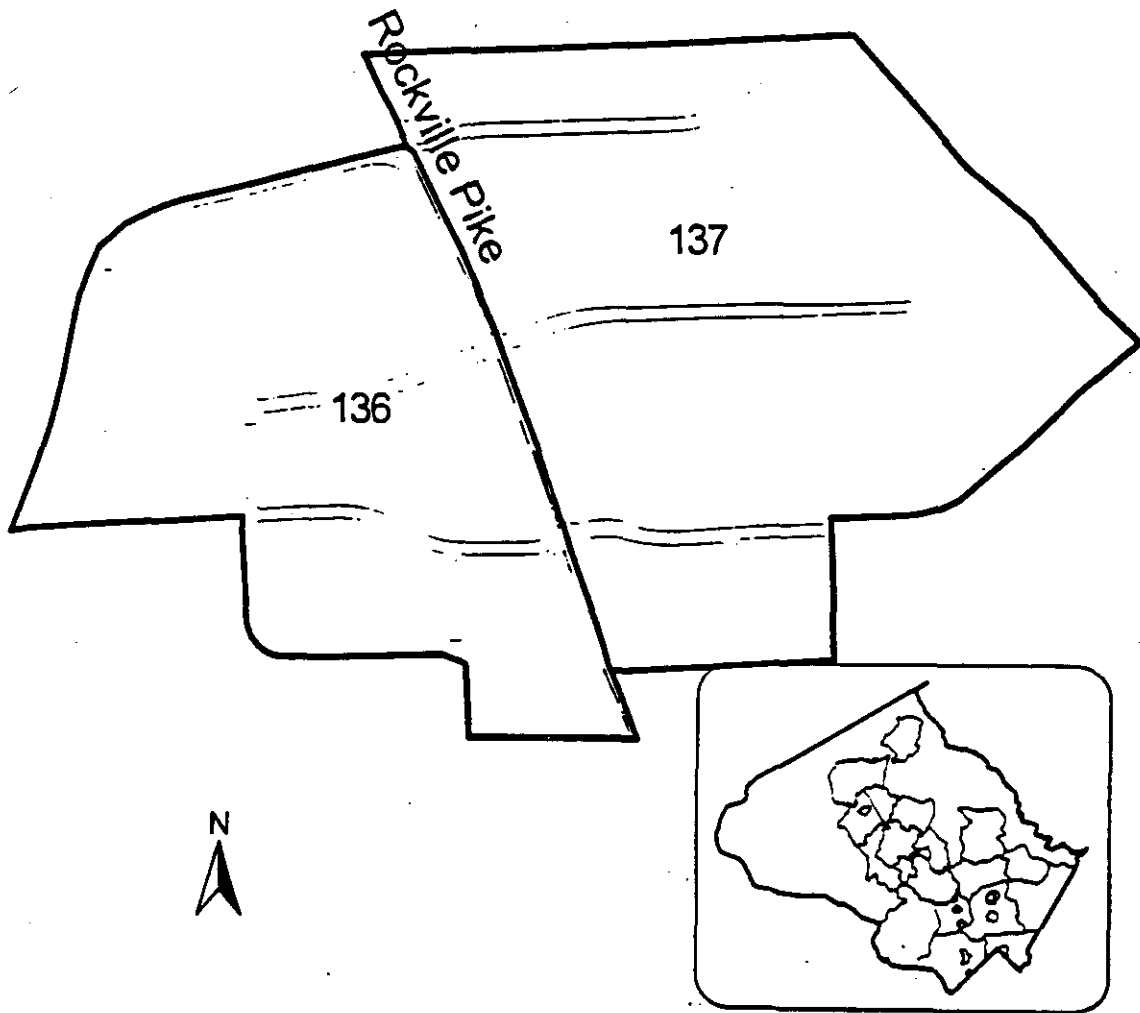
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# Wheaton CBD Policy Area With Traffic Zones



 MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING  
141 MARYLAND AVENUE, CAPITAL VIEW AND PLANNING COMPLEX  
BETHESDA, MARYLAND 20814

# White Flint Policy Area With Traffic Zones





# Appendix 8

Resolution No.: 13-216

Introduced: May 16, 1995

Adopted: July 11, 1995

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: County Council

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### Subject: Approval of [FY 95] FY 96 Annual Growth Policy

#### Background

1. County Code Section 33A-15 requires that no later than July 15 of each year, the County Council must adopt an Annual Growth Policy (AGP) Ceiling Element to be effective throughout the next fiscal year, providing policy guidance to the various agencies of government and to the general public on matters concerning land use development, growth management and related environmental, economic and social issues.

2. On May 15, [1994] 1995, in accordance with the requirements of Section 33A-15, the County Executive transmitted to the County Council his comments and recommendations on the [FY 95] FY 96 Annual Growth Policy Ceiling Element and [FY 94] FY 95 Annual Growth Policy Amendment based on the Final Draft Annual Growth Policy documents submitted by the Planning Board on May 1, 1994.

3. In addition, the Final Draft Annual Growth Policy Ceiling Element as submitted by the Planning Board contained supporting and explanatory materials [including forecasts for the most probable trends in population and households,] a set of recommended growth capacity ceilings for each policy area within the County, proposed guidelines for the administration of the Adequate Public Facilities Ordinance, and other background information relevant to the subject of growth policy.

4. In addition, the Final Draft Annual Growth Policy Amendment as submitted by the Planning Board contained recommendations for [amending the methodology for determining the adequacy of transportation facilities in Montgomery County] testing development districts for public facilities adequacy.

5. On [June 9, 1994] June 20, 1995, the County Council held a public hearing on the [FY 95] FY 96 Annual Growth Policy Ceiling Element and [FY 94] FY 96 Annual Growth Policy Amendment.

6. On [May 24, 1994] May 26, 1995, the County Council adopted the Capital Improvements Program for fiscal years [1995-2000] 1996-2001.

7. On [June 23, 1994, July 5, 1994, and July 12, 1994] June 27, 1995 the Council conducted a worksession[s] on the Annual Growth Policy, at which time careful consideration was given to the public hearing testimony, updated information, recommended revisions and comments of the County Executive and Montgomery County Planning Board, and the comments and concerns of other interested parties.

[8. The County Council reviewed the facts and assumptions underlying this Annual Growth Policy. This review included: 1) a detailed review by policy area of existing and projected transportation facilities and conditions; 2) a review of the methodology for determining the adequacy of transportation facilities, including pedestrian facilities; 3) a discussion of the de minimis rule; 4) a review of the Annual Report of the Silver Spring Transportation Management District; and 5) a review of issues related to the establishment of a Clarksburg policy area for FY 95.]

8. The Council recognizes efforts made by the Planning Board and the Executive to improve the consistency and reliability of the County growth management data base. These efforts have resulted in a reduction of errors from prior years. In this regard, the Council stresses the need for sustained administrative vigilance in assessing the validity of computer based systems and the reliability of data collection efforts. The Council recognizes that a quantitatively oriented system such as the Annual Growth Policy, though subject to limitations, can promote objectivity and fairness in land-use decision making.

#### **Action**

The County Council for Montgomery County, Maryland, adopts the foregoing background statement and approves the following Resolution:

The Planning Board's Final Draft [FY 95] FY 96 Annual Growth Policy Ceiling Element, [FY 94] FY 95 AGP Amendment, and comments and recommendations of the County Executive have been reviewed and amended by the County Council, so that the following constitutes the entire Annual Growth Policy for [FY 95] FY 96:

#### **I. Guidelines for the Administration of the Adequate Public Facilities Ordinance:**

The Montgomery County Subdivision Ordinance, County Code Section 50-35(k) ("the Adequate Public Facilities Ordinance or APFO"), directs the Montgomery County Planning Board to approve preliminary plans of subdivision only after finding that public facilities will be adequate to serve the subdivision. This involves predicting future demand from private development and comparing it to the capacity of existing and programmed public facilities. The following guidelines describe the methods and criteria that the Planning Board and its staff must use in determining the adequacy of public facilities. These guidelines supersede all previous ones adopted administratively by the Planning Board to the extent that these guidelines conflict with previous ones. They also supersede those provisions of the Adequate Public Facilities Ordinance which were specified to apply only until the County Council had approved an Annual Growth Policy.

The Council accepts the definitions of terms and the assignment of values to key measurement variables which were used by the Planning Board and its staff, and accepted by the Executive, in developing the recommended Annual Growth Policy. The Council delegates to the Planning Board and its staff all other necessary administrative decisions not covered by the guidelines outlined below. In its administration of the APFO, the Planning Board is directed to request and consider the recommendations of the County Executive and other agencies in determining the adequacy of public facilities.

Subdivision applications may be subject to two different types of test. One is called the Policy Area Transportation Review. The other is called the Local Area Transportation Review.

The Policy Area Transportation Review divides the County into policy areas. These are geographic areas for which the adequacy of public facilities is addressed on an area-wide basis, as follows:

- With regard to transportation, a staging ceiling may be established for each policy area.
- With regard to school facilities, a legislative determination will be made whether the school facilities for each cluster will be adequate.

The staging ceiling for a policy area is defined as the maximum amount of land development that can be accommodated by the existing and programmed public facilities serving the area, at an assigned level of service standard. The legislative directive concerning school policy areas reflects a determination whether additional development can be accommodated by the schools. The policy area staging ceilings and directives approved in this Annual Growth Policy [are to] remain in effect throughout [FY 95] FY 96 unless amended subsequently by the County Council after public hearing. However, the Planning Board may adjust the policy area staging ceilings, in accordance with the Board's administrative procedures, to reflect trip reduction programs, developer participation in capital improvement projects, or direction in this Resolution to adjust staging ceilings upon the occurrence of certain events.

Except for special circumstances which are described below (see discussions of "Ceiling Flexibility"), if a proposed subdivision is in a geographic policy area for which previously approved development (pipeline) exceeds the staging ceiling, or for which a negative school facility directive exists, then the Planning Board must find the public facilities to be inadequate.

The purpose of the Policy Area Transportation Review method for evaluating the adequacy of transportation facilities is to place the individual subdivision within the context of a comprehensive, countywide assessment, which takes account of, and properly allows for, the upstream and downstream traffic impacts of development in various geographic areas. Similarly, the purpose of the policy area directives concerning school facilities is to reflect the ability of the public school system to accommodate students from new development.

The policy area ceilings and directives described in this AGP are based primarily on the public facilities in the Approved [FY 95-00] FY 96 -01 Capital Improvements Program (CIP) and the Maryland Department of Transportation [FY 94-99] FY 95-00 Consolidated Transportation Program (CTP). The Council also reviewed related County and State funding decisions, master plan guidance and zoning where relevant, and related legislative actions. These ceilings and directives and their supporting planning and measurement process have



been the subject of a public hearing and review during worksessions by the County Council. Approval of the ceilings and directives reflects a legislative judgment that, all things considered, these staging ceilings and procedures constitute a reasonable, appropriate, and desirable set of interim growth limits, which properly relate to the ability of the County to program and construct facilities necessary to accommodate growth. These growth limits will substantially advance County land use objectives by providing for coordinated and orderly development.

These guidelines are not intended to be used as a means for government to avoid its responsibility to provide adequate public facilities. Annual review and oversight allows the Council to identify problems and initiate solutions that will serve to avoid or limit the duration of any moratorium on new subdivision approvals in a specific policy area. Further, alternatives may be available for developers who wish to proceed in advance of the adopted public facilities program, through the provision of additional public facility capacity beyond that contained in the approved Capital Improvements Program, or through other measures which accomplish an equivalent effect.

The administration of the Adequate Public Facilities Ordinance shall at all times be consistent with adopted master plans and sector plans. Where development staging in adopted master plans or sector plans are more restrictive than AGP guidelines, the guidelines in the adopted master plan or sector plan shall be used to the extent that they are more restrictive. More restrictive guidelines can be found in the Friendship Heights Sector Plan, and the Silver Spring CBD Sector Plan. The ceiling in the Potomac policy area is set at the zoning ceiling based on the policy in the Potomac Master Plan.

The ceiling in all rural areas is set at the zoning ceiling subject to guidelines for Local Area Transportation Review and guidelines for water and sewerage facilities. Rural areas are Clarksburg, Darnestown/Travilah, Goshen, Patuxent, Poolesville, and Rock Creek.

## **A. Guidelines for Transportation Facilities**

### **1. Policy Area Transportation Review**

#### **(a) Policy Areas; Establishment of Staging Ceilings**

##### **(1) Policy Areas - Boundaries and Definitions**

For the purposes of transportation analysis, the County has been divided into 292 areas called traffic zones as seen in Map 1. Based upon their transportation characteristics, these areas are grouped into transportation policy areas. In many cases, transportation policy areas have the same boundaries as planning areas, sector plan areas, or master plan analysis (or special study) areas. The policy areas in effect for [FY 95] FY 96 are: Aspen Hill, Bethesda CBD, Bethesda-Chevy Chase, Cloverly, Damascus,

Derwood/Shady Grove, Fairland/White Oak, Gaithersburg City, Germantown East, Germantown Town Center, Germantown West, Grosvenor, Kensington/Wheaton, Montgomery Village/Airpark, North Bethesda, North Potomac, Olney, Potomac, R&D Village, Rockville City, Silver Spring CBD, Silver Spring/Takoma Park, Twinbrook, Wheaton CBD, and White Flint.

Detailed boundaries of these policy areas are shown in the Planning Board's Final Draft AGP.

The boundaries of the Gaithersburg City and Rockville City policy areas reflect existing municipal boundaries, except where the cities are expected to annex properties in the near future or where County regulated land is surrounded by city regulated land. The boundaries of these municipal policy areas do not automatically change with any changes in municipal boundaries but will require affirmative Council action.

## **(2) Components of Policy Area Transportation Review**

There are two components to Policy Area Transportation Review: a countywide freeway test and a total transportation level of service test for each policy area.

The countywide freeway level of service is the average volume-to-capacity ratio for freeway segments, weighted by the vehicle miles of travel on those freeway segments. Freeways are defined as the following limited access highways: I-495, I-270, I-270 East and West Spurs, I-370, the Cabin John Parkway, and the Clara Barton Parkway. The countywide freeway level of service standard is 0.90 (D/E).

The total transportation level of service is computed for each policy area, and represents a statistical average of roadway and transit level of service over the whole policy area. The transit level of service includes transportation by rail, bus, walking and bicycling. The roadway level of service includes transportation by driving alone and carpools. These levels of service are calculated by the transportation planning model described below.

The standard for roadway level of service in each policy area is based on a policy that it is appropriate to permit greater roadway congestion to occur in areas in which greater transit accessibility and usage provides an alternative mode of travel for many travelers in the area. In that way, there is an approximately equivalent total transportation level of service for residents and employees throughout the County. The total transportation level of service standard is 0.585 (C-) in each policy area.

Table 6 shows the factors used in calculating the total transportation level of service: the regional transit accessibility index for each policy area, the average

congestion index standard for local roads, and the mode shares for transit and auto. It is based upon materials contained in the Final Draft FY 94 Annual Growth Policy Amendment.

- The **Regional Transit Accessibility Index** measures how well the transit network connects jobs and houses. The more houses and jobs that can be accessed by transit in the least time, the higher the regional transit accessibility index value.
- The **Average Congestion Index** for local roads is the average volume-to-capacity ratio for roadway segments on major highways, arterials, and selected primary residential streets, weighted by the vehicle miles of travel on those roadway segments.
- **Mode shares** are computed from the transportation planning model, validated by the most recent observed data. All facilities and programs intended to reduce the auto-driver mode share are periodically evaluated to determine actual results achieved.

### (3) Determination of Staging Ceilings

Through the use of a transportation planning model, the Planning staff has computed a balanced relationship between a programmed set of transportation facilities and a geographical pattern of jobs and housing units. Policy area ceilings have been established through an iterative process which assigns a hypothetical future land use pattern (i.e., jobs, and housing units derived from interim market projections) to the County, and tests its traffic impact through the use of this model. Through a process of repetitive trial and error, this land use pattern has been modified so that it produces a traffic volume and distribution that is equivalent to the average level of service standard for each policy area.

This iterative procedure has as an objective minimizing the difference between anticipated congestion levels and the automobile level of service standard on local roads in each policy area and on freeways countywide. If the level of service on local roads in a policy area is anticipated to exceed the level of service standard, the amount of future land use permitted is reduced in that policy area. In addition, the magnitude of the hypothetical future land use patterns in nearby policy areas is reduced to limit adverse "upstream/downstream" effects. If the level of service standard on freeways is anticipated to be exceeded, the magnitude of the hypothetical future land use patterns in nearby policy areas is reduced until the anticipated level of service on freeways is approximately equal to the level of service standard.

The allocation of transportation capacity between jobs and housing by the County Council reflects the General Plan's recommendations regarding the balance of jobs and housing. Attainment of that goal is often expressed by the ratio that describes the relationship between the number of employed residents per household to the number of jobs per household. Since the current jobs-to-housing ratio of existing and approved development is tilted towards jobs, allocations of new capacity as well as allocations of any reductions in capacity should generally favor housing. This may vary in policy areas with a significant staging ceiling deficit in jobs.

Some modifications to this approach may be made in specific policy areas to reflect the character of an area and its related development policies as set forth in the relevant master plan(s), the size and allocation of jobs and housing in the existing base and pipeline of development. Modifications may also be made to avoid or reduce the duration of any subdivision moratorium or to address specific equity considerations. The product of these adjustments is tested against the appropriate level of service in the transportation model to determine the specific ceiling allocation as described above. The staging ceilings established by this method are shown in Tables 1 and 2.

The Planning Board may adopt Policy Area Transportation Review guidelines and other technical materials to further document the procedures underlying the establishment of staging ceilings.

The transportation planning model takes into account all existing and approved development and all eligible programmed transportation CIP projects. For these purposes, "approved development" includes all approved preliminary plans of subdivision. "Eligible programmed transportation CIP projects" include all County CIP, State Transportation Program projects, and City of Rockville or Gaithersburg projects for which 100 percent of the expenditures for construction are estimated to occur within the first four years of the applicable programs.

Because of the unique nature of the Georgetown Branch Trolley Project and the North Bethesda Transitway in comparison with other transportation systems which are normally used in calculating development capacity, it is prudent to approach the additional capacity from these systems in a conservative way, particularly with respect to the timing of capacity and the amount of the capacity recognized.

- Therefore, the counting of capacity from the Georgetown Branch Trolley Project will not occur until the actual system is constructed and operated, or at

least until there is reasonable certainty as to its exact date of operation and amount of actual ridership; and

- The counting of the initial capacity from the North Bethesda Transitway will not occur until the County Executive has determined that construction will begin in two years; until 100 percent of the expenditures have been appropriated; and until the County Council has approved projected ridership. Upon completion of the first full year of operation, and in all subsequent years for which staging analyses are made, the staging ceiling calculations shall reflect the actual ridership achieved.

Planning staff shall keep a record of all previously approved preliminary plans and other data about the status of development projects, and continuously update the pipeline number of approved preliminary plans, thus constantly keeping in view, and presenting to the Planning Board, the amount of capacity still available under the adopted ceiling at any given time. The continuous updating shall include all changes to the amount of development approved under outstanding preliminary plans, with the exception of those which result from the discovery of accounting errors. Such errors shall be reported to the Council each year in May prior to the Council's adoption of the AGP, and shall be reported on a quarterly basis, or more frequently, to the Planning Board who may bring them to the attention of the Council if the Board judges them to be significant. (Tables 1 and 2 show the capacity remaining as of [June 9, 1994] March 31, 1995). The Planning Board should maintain a periodically updated queue list of applicants for preliminary plan of subdivision approval.

When the subdivision pipeline has risen to meet the ceiling, no more subdivisions shall be approved by the Planning Board in that policy area, except under certain special circumstances, which are outlined below.

**(b) Silver Spring CBD Policy Area Ceiling**

The Silver Spring CBD was established as a separate policy area in 1987. The boundaries of the policy area are shown in the Final Draft FY 95 Annual Growth Policy Ceiling Element.

The job and housing ceilings for this policy area must meet the following administrative guidelines:

- All traffic limitations are derived from the heaviest traffic demand period, in Silver Spring's case, the p.m. peak hour outbound traffic;

- The average level of service for the surrounding Silver Spring/Takoma Park Policy Area must not be worse than the adopted roadway level of service standard shown in Table 6, unless the Planning Board determines that the impact of improving the intersection is more burdensome than the increased congestion;
- The outbound traffic, including both local CBD traffic and through traffic, must not exceed the Silver Spring practical cordon capacity of 18,000 vehicles in the peak hour;
- The Planning Board and the Department of Transportation will implement Transportation Systems Management for the Silver Spring CBD; the goal of this program will be to achieve the commuting goals for transit use and auto occupancy rates set out below.

The County Government, through the Silver Spring Parking District, will constrain the amount of public and private long term parking spaces.

The staging ceilings as shown in Tables 1 and 2 meet these administrative guidelines.

[As of June 9, 1994, the remaining capacity for jobs is 4,655, of which 122 must be retail jobs in optional method development. As of June 9, 1994, the remaining capacity for housing is 4,183.] The parking constraints and commuting goals needed to achieve satisfactory traffic conditions with these staging ceilings are as follows:

- **Parking constraint:** A maximum of 17,500 public and private long-term spaces when all nonresidential development is built; (this maximum assumes a peak accumulation factor of 0.9, which requires verification in Silver Spring and may be subject to revision). Interim long-term parking constraints will be imposed in accordance with the amount of interim development. Long-term public parking spaces will be priced to reflect the market value of constrained parking spaces.
- **Commuting goals:** For employers with 25 or more employees, attain 25 percent mass transit use and auto occupancy rates of 1.3 persons per vehicle during the peak periods, or attain any combination of employee mode choice that results in at least 46% non-drivers during the peak periods; and

For new nonresidential development, attain 30 percent mass transit use and auto occupancy rates of 1.3 persons per vehicle during the peak periods, or attain any combination of employee mode choice that results in at least 50% non-drivers during the peak periods.

Progress towards achieving these goals should be measured annually by using scientific and statistically valid survey techniques.

To achieve these goals it will be necessary to require developers of new development in Silver Spring to enter into traffic mitigation agreements and the employers and certain owners to submit transportation mitigation plans as set forth in Chapter 42A, Article II, of the County Code.

Each Annual Growth Policy will reflect the Annual Report of the Silver Spring Transportation Management District, which must include a report of the status of critical signalized intersections (as defined in the report of October 5, 1987). The Annual Growth Policy must include a projection of future traffic conditions based on intersection improvements in the proposed CIP and full achievement of the Transportation Management District goals. The Council will take this information into account in the decisions on the Growth Policy and the CIP.

In accordance with the amendment to the Silver Spring Sector Plan, subdivision applications for nonresidential standard method projects throughout the CBD may be approved for development or additions of not more than 5,000 square feet of gross floor area. However, if, for a particular use the addition of five peak hour trips yields a floor area greater than 5,000 square feet, that additional area may be approved for that particular use.

**(c) Special Ceiling Allocation for Affordable Housing and Health Care Facilities**

The County's policy of balancing growth in each policy area with the supply of public facilities may have the effect of undermining other important County policies for the provision of: 1) a balanced and adequate housing supply, with emphasis on the availability of affordable housing for low and moderate income families; and 2) reasonably accessible health care facilities. This subsection provides a limited exception to policy area transportation review requirements to ensure that these policies are not undermined. The Planning Board may approve subdivision applications for affordable housing and health care facilities in any policy area with insufficient remaining capacity, according to the following guidelines:

**(i) Affordable Housing**

(1) An affordable housing development is defined as a housing development which is either owned by the Housing Opportunities Commission or by a partnership in which HOC is the general partner; or a privately-owned housing development in which 20% of the units are occupied by households at or below 50% of the area median income,

adjusted for family size, or 40% of the units are occupied by households at or below 60% of the area median income, adjusted for family size. Such a development must be certified by HOC as having met the definition of affordable housing and the owner of that development must agree with HOC to maintain the occupancy requirements for at least 15 years. These requirements include the provision of any MPDU's.

(2) Except as provided in paragraph (3), in a policy area with insufficient remaining capacity, the Planning Board may approve in each fiscal year not more than:

- (a) 125 units for projects owned or controlled by HOC;
- (b) 300 units for privately owned affordable housing developments; or
- (c) an aggregate of 300 units in a policy area with both HOC owned and controlled developments and privately owned affordable housing developments.

(3) The Planning Board must not approve additional housing units under this allocation in a policy area:

- (a) that in the fiscal year listed in the table below has been in a moratorium for new housing subdivision approvals for more than the number of consecutive years listed in the table below and the remaining capacity for the policy area is at least the number of housing units listed in the table below in deficit; and
- (b) the Planning Board has cumulatively approved 500 housing units in that policy area under this special ceiling allocation.

**Remaining Capacity Threshold in Housing Units  
by Length of Moratorium**

Year	4 years	5 years	6 years	7 years	8 years	9+ years
[FY 95	-2000	-1800	-1600	-1600	-1600	-1600]
FY 96	-2000	-1800	-1600	-1400	-1400	-1400
FY 97	-2000	-1800	-1600	-1400	-1200	-1200
FY 98 and beyond	-2000	-1800	-1600	-1400	-1200	-1000

In this chart, fiscal year means the period beginning July 15 and ending July 14 of the following calendar year.

Subject to the housing unit cap under paragraph (2), approvals under this special ceiling allocation may resume if the deficit in remaining capacity in the policy area has been reduced under the number of housing units listed in



the table above but only to the extent that transportation capacity has increased (as calculated from the housing unit point listed in the table above) due to a programmed transportation improvement that is either under construction or is funded for construction in the fiscal year for which the special ceiling allocation is requested from the Planning Board.

If the subdivision moratorium is eliminated in a policy area subject to this paragraph and is later reinstated, the calculation of the number of cumulative housing units approved under this special ceiling allocation starts at zero.

**(ii) Health Care Facilities - General**

(1) "Health care facility" and "medical service" have the meanings defined in Title 19 of the Health - General Article of the Maryland Code. "Health care facility" does, however, include kidney disease treatment facilities. It includes a medical office building and medical or dental clinic, as permitted in the zoning ordinance, provided that no general office space is leased or otherwise made available. It does not include home health care agencies.

(2) Assuming all other requirements for preliminary plan approval are met, and subject to all limitations of this subsection, the Planning Board may grant a special ceiling allocation for a health care facility if:

(a) a State certificate of need has been issued for a health care facility requiring such approval; or

(b) for facilities not requiring a certificate of need, a determination is made under this paragraph that:

(I) a need exists for the proposed health care facility due to an insufficient number of practitioners or facilities providing similar medical services presently available to existing or previously approved concentrations of population within the policy area and that the applicant reasonably can be expected to serve that specific need; and

(II) the needs to be served by the health care facility cannot be reasonably accommodated in existing or previously approved (but unbuilt) general office space within the policy area.

**(iii) Health Care Facilities - Procedures**

(1) Upon receipt of a request for a special ceiling allocation under subparagraph (ii)(2)(b), the Planning

Board must refer the request to: (1) the Office of Zoning and Administrative Hearings with procedural instructions for a hearing on the request, and (2) the Director of the Department of Health for the director's recommendation on the issue of need under subparagraph (ii)(2)(b)(I).

(2) The applicant must voluntarily consent to a deferral of its application before the Planning Board until after completion of proceedings before the hearing examiner. Requests must be considered on a first come, first served basis in the making of the request for the special ceiling allocation. The Director of Health must make its recommendation to the hearing examiner which shall become a part of the hearing record. The hearing examiner must transmit both the record and a recommendation to the Planning Board in accordance with the Board's procedural instructions. The Planning Board may rely on the record before the hearing examiner without need for further testimony. As with other subdivision issues, the applicant has the burden of producing evidence to support its request and the burden of proof on all applicable standards.

**(iv) Health Care Facilities - Findings**

(1) In making a determination of need under subparagraph (ii)(2)(b)(I), the following factors, among other relevant information, should be considered: (1) the recommendation of the Director of the Department of Health; (2) any state or local health plan for the area; (3) the type of medical service and number of practitioners providing the service who are located within the policy area or within a reasonable distance in contiguous policy areas; (4) the business plan of the applicant; (5) occupancy projections, including proposed lease or similar arrangements; and (6) any proposed acquisition or relocation of specialized medical equipment.

(2) In making a determination on the practicality of existing or planned general office space to reasonably accommodate the needs served by the proposed health care facility under subparagraph (ii)(2)(b)(II), the following factors, among other relevant information, must be considered:

(a) the certainty of suitable general office space becoming available within the time frame proposed by the applicant;

(b) the need for special construction (i.e sound proofing, lead lined walls or other facilities or construction not normally provided in general

office space), plumbing, electrical (i.e. dedicated lines for special equipment), or similar requirements for at least a majority of occupants;

(c) if otherwise suitable general office space is in close proximity to or is likely to serve (based on proposed lease or similar arrangements) other health care facilities, medical practitioners, or related services; and

(d) the likelihood that otherwise suitable general office space will be able to satisfy the needs identified under subparagraph (ii)(2)(b)(I), based on the current marketing plans of the owner of the general office space, cost to the practitioner or health care facility, or other market factors.

A negative finding under either item (a), (c), and (d), above, or an affirmative finding under item (b), above, is sufficient to satisfy the standard under subparagraph (ii)(2)(b)(II).

**(v) Health Care Facilities - Special Limitations**

(1) The Planning Board must not approve a preliminary plan for a medical office building or medical or dental clinic under this paragraph that is expected to produce more than 50 new or additional jobs.

(2) A health care facility must not be granted more than one special allocation under this paragraph.

(3) Not more than 50 jobs may be approved in a policy area, or 100 jobs, in the aggregate county-wide, in each fiscal year.

(4) The applicant must enter into an agreement with the Planning Board to maintain the development as a health care facility for a period of at least 15 years and to undertake appropriate traffic mitigation measures.

**(vi) Special Ceiling Allocations - General Requirements**

(1) Any development approved under this subsection must meet all zoning requirements and all other subdivision requirements, including standards for local area transportation review.

(2) Development approved under this subsection will be added to the pipeline.

(3) The next final draft annual growth policy must contain a list of all pending or approved development under this subsection.

**(d) Ceiling Flexibility for Developer Participation Projects**

Staging Ceiling Flexibility allows the Planning Board, after considering the recommendation of the County Executive, to approve a preliminary plan application which exceeds the staging ceiling. In allowing the staging ceiling to be exceeded, caution should be exercised to assure that the average level of service for the relevant policy area is not adversely affected. Except as otherwise expressly stated in this subsection, the same level of service criteria already established in the Annual Growth Policy shall be used in evaluating an application to be approved under these ceiling flexibility provisions.

In general, such approval above the staging ceiling shall be conditioned upon the planned and scheduled construction by either the applicant and/or the government, of some public facility projects, or other appropriate capacity measure, (such as the private operation of a transit program) which, if added to the approved CIP or CTP programmed facilities, will add capacity or its equivalent to the existing facility system and result in no lessening of the area-wide level of service.

In general, the capacity addition must be scheduled for completion at the same time or before the proposed development is to be completed. The application must also be approved under Local Area Transportation Review standards. The nature, design and scale of the additional project or program must receive prior approval from the relevant governmental agencies responsible for constructing or maintaining such facilities or programs. The recommendation of the Executive also will be evaluated carefully.

Both the subdivision plan and the necessary additional facilities must be in accordance with an adopted master plan or other relevant policy statement; the design of the facilities must be subject to mandatory referral to the Planning Board; and the applicant and the relevant public agency must execute an appropriate public works agreement prior to record plat approval.

The phrase "additional transportation facilities" means transportation facilities other than those on which the policy area staging ceilings of the current Annual Growth Policy are based.

**(i) Full-Cost Developer Participation**

In cases where the applicant agrees to pay for the full cost of all the additional necessary public facilities, and the relevant administering agency has agreed, the Planning Board may approve subdivision plans whose public facility needs exceed the net remaining capacity under the adopted staging ceiling.

Where the applicant commits to provide the full cost of a transit, para-transit or ridesharing program, such application may be deemed to have passed the staging ceiling test, insofar as transportation is concerned, if the Board finds, after reviewing recommendations of the County Executive, that the program will reduce the number of peak-hour, peak-direction automobile trips by as many trips as would be generated by the proposed development. After a preliminary subdivision plan has been approved on this basis, later applications may be credited for reduced trips generated by the new proposal.

**(ii) Partial-Cost Developer Participation**

Partial-cost developer participation is available for certain types of development projects under certain circumstances described below. In cases of proposed partial-cost developer participation, the Planning Board may approve subdivision plans whose public facility needs exceed the net remaining capacity only if the following criteria, standards and requirements set forth in paragraphs (1) and (2) below are met. Related guidance to the Planning Board is set forth in paragraph (5), including provisions relating to approval of, and participation by, other subdivision applicants. Procedures and requirements for executive and legislative action for partial-cost developer participation are contained primarily in paragraphs (3) and (4).

**(1) Eligible Project Criteria**

- (a) The project has a development staging plan beyond 4 years and enables the consolidation or expansion of an employer already located in the County or allows the establishment of facilities for a new employer. Employer facilities must be primarily for specific and defined employment needs of the employer and not for the sale or leasing of speculative office, industrial or retail commercial space. The employer's business plan, purchase or lease arrangements, staging plan, occupancy projections, and other relevant factors should be considered to determine the primary purpose of the proposed facilities;
- (b) The project has a development staging plan extending beyond 4 years and enables planned development of superior and integrated design and/or transit serviceability in zoning categories that expressly allow partial-cost developer participation as designated by the District Council;
- (c) The project is to be located in the Research and Development Village, including the County-owned

Life Sciences Center, as identified in the approved and adopted Master Plan; or

- (d) The project is to be located in the Germantown Town Center, as identified in the approved and adopted Germantown Comprehensive Master Plan.

**(2) Public-Private Participation Requirements**

- (a) Additional transportation facilities proposed to serve an eligible project must be sufficient, when combined with net remaining capacity, to provide policy area capacity for both the eligible project and other completed subdivision applications that have been filed earlier than that of the eligible project within the policy area.
- (b) The applicant for the eligible project agrees to condition subdivision approval on a staging schedule which will link the issuance of specific building permits receivable in each staging period to the execution of specific transportation construction contracts in the same staging period.
- (c) The applicant for the eligible project must construct or agree to pay all costs for all additional transportation facilities other than those facilities currently included for start of construction within the first six years of the adopted CIP or within the State Consolidated Transportation Program (CTP).
- (d) The applicant for the eligible project agrees to contribute transportation facilities and/or cash in a minimum amount of the greater of the following:
  1. A total of 35% of the cost of all additional transportation facilities, with the cost determined as of the date of execution of the construction contract; or
  2. A contribution of 100% of the costs of all additional transportation facilities other than those facilities currently included for start of construction within the first six years of the adopted CIP or within the adopted CTP; such costs are to be determined as of the date of execution of the construction contract for that transportation facility; or

3. Impact taxes, if applicable, at the date of issuance of building permit.
- (e) All applicants with residential components agree to be subject to special conditions with regard to school capacity, as described in Section B, Guidelines for Public School Facilities, below.
- (f) The applicant for an eligible project must execute a memorandum of understanding with the County Executive prior to Council action under paragraph (4)(b) specifying the private sector commitments under this paragraph. A separate participating subdivision applicant may also execute the memorandum of understanding. An applicant must agree in the memorandum of understanding that the public improvement agreement be made a condition of subdivision approval.

### **(3) Procedures and Action - Executive**

All formal requests for staging ceiling flexibility under this provision must be made in writing to the County Executive after the applicant has filed a complete subdivision application with the Planning Board. The County Executive must review the request and determine whether or not to recommend authorizing legislation and/or a CIP amendment. The following items, among other relevant factors, should be considered:

- (a) whether the proposed subdivision plan constitutes an eligible project and otherwise meets all requirements of this subsection;
- (b) whether the proposed additional transportation facilities are consistent with the Executive's transportation program in terms of timing, location, design and cost;
- (c) the effect of the proposal on County operating budget or capital programs;
- (d) the financial and managerial capability of the applicant to undertake all requirements of this subsection utilizing current estimates of rights-of-way, design, and construction costs, adjusted for inflation to the date expected for their payment;
- (e) the existence of unresolved transportation programming, fiscal, or other policy issues.

On not less than a quarterly basis, the County Executive must transmit to the Council and Planning Board all written requests for partial cost developer participation that were not recommended and a brief description of the reason. The Council may request the County Executive to reevaluate a request, provide greater detail, or initiate appropriate budgetary or legislative action.

**(4) Procedures and Action - County Council**

(a) All proposed CIP amendments and requests for legislative special capital improvement project authorizations must be considered by the Council in accordance with all applicable fiscal and legislative procedures. In addition to any other information required to be submitted under law, the County Executive should submit to the Council information describing:

1. the eligible project for which the facilities are necessary;
2. the proposed staging schedule for both the facilities and the project;
3. public facility programming issues;
4. the impact on the County's finances including the affordability of the proposed public facility program; and
5. a memorandum of understanding specifying, among other things, the private sector commitments under paragraph (2) above.

Before Council action, the Planning Board should comment on the public facility issues presented by the special capital improvement project legislation or CIP designation, the relationship between the additional transportation facilities and the proposed staging schedule, the effect on policy area ceilings, and any other relevant matters, as appropriate.

(b) For additional transportation facilities required under paragraph (2)(a), above, to be available for partial-cost developer participation under this subsection, the County Council must:

1. enact all authorizing legislation or resolutions that would be required under law for the facility; and



2. designate the additional transportation facilities in the CIP, as appropriate for partial cost developer participation or as being fully funded by the private sector.

Transportation facility projects remain subject to all necessary applicable appropriations and federal, state and local regulatory or other approvals.

- (c) Subsequent to any favorable County Council action, the County Executive, or designee, must execute a detailed public improvement agreement that formalizes the memorandum of understanding. The County Executive must periodically report to the Council on the status of public improvement agreements under this subsection and notify the Council of any material changes in circumstances affecting its legislative actions under the partial-cost developer participation provisions.

**(5) Planning Board Action; Other Subdivision Applicant Participation**

- (a) In its determination of whether transportation facilities are adequate to meet the needs of an eligible project, the Planning Board may count those facilities that have received favorable Council action under paragraph (4)(b), above, for both policy area ceilings and local area transportation review, without the need for those facilities to be shown in the Approved Road Program.
- (b) The Planning Board may similarly count these facilities and approve a subdivision plan with a completed application filing date that is earlier than that of the application of an eligible project if the applicant agrees to participate in the provision of additional transportation facilities, on a proportional trip generation or other agreed cost basis, and in accordance with the staging and public school requirements set forth in paragraph (2)(b) and (e), above. A public improvement agreement may include all participating subdivision applicants.
- (c) A non-participating applicant with an earlier application filing date than the eligible project may have its application approved within the same general time period as the eligible project if it meets normal local area transportation review requirements; however, it must be conditioned so that building permits will be approved only when building permits for the eligible project or

participating subdivisions are eligible for approval. A non-participating applicant remains subject to all local transportation area review and other regulatory requirements.

**(iii) Development District Participation**

Pursuant to Chapter 14 of the County Code, development districts may be created by the County Council as a funding mechanism for needed infrastructure in areas of the County where substantial development is expected or encouraged. The Planning Board may approve subdivision plans in accordance with the terms of the development district s provisional adequate public facilities approval (PAPF).

The development district's PAPF must be prepared in the following manner:

(1) One or more property owners in the proposed district may submit to the Planning Board an application for provisional adequate public facilities approval for the entire district. In addition to explaining how each development located in the district will comply with all applicable zoning and subdivision requirements, this application must:

- show the number and type of housing units and square footage and type of the non-residential space to be developed, as well as a schedule of proposed buildout in four-year increments;
- identify any infrastructure improvements necessary to satisfy the adequate public facilities requirements for development districts; and
- estimate the cost to provide these improvements.

(2) The Planning Board must then review all developments within the proposed development district as if they are a single development for compliance with the Adequate Public Facilities Ordinance. The Planning Board will identify the public facilities needed to support the buildout of the development district after considering the results of the following tests for facility adequacy:

- Transportation tests for development districts are identical to those for (i) Full-Cost Developer Participation, except that some portion of the needed facilities may be funded by the public sector. Existing staging ceiling capacity will only be considered to the extent that there is more than enough capacity to accommodate pending complete subdivision applications in the

- queue. If development districts cross policy area boundaries, staging ceiling capacity in one policy area must not be used as the basis for approving development located within another policy area. Planning Department staff will prepare a list of transportation infrastructure needed to maintain public facility adequacy.
- The PAF application will be referred to Montgomery County Public Schools staff for recommendations for each stage of development in the proposed district. MCPS staff must calculate the extent to which the development district will add to MCPS's current enrollment projections. MCPS staff must apply the existing school adequacy test to the projections with the additional enrollment and prepare a list of public school infrastructure needed to maintain public facility adequacy.
  - The PAF application will be referred to the Washington Suburban Sanitary Commission for recommendations for each stage of development in the proposed district. Wastewater conveyance and water transmission facilities will be considered adequate if existing or programmed (fully-funded within the first four years of the approved WSSC capital improvements program) facilities can accommodate (as defined by WSSC) all existing authorizations plus the growth in the development district. Adequacy of water and wastewater treatment facilities will be evaluated using the intermediate or most probable forecasts of future growth plus development district growth, but only to the extent that development district growth exceeds the forecast for any time period. If a test is not met, WSSC will prepare a list of water and sewer system infrastructure needed to maintain public facility adequacy.
  - The PAF application will be referred to the County Executive for recommendations for each stage of development in the proposed district regarding police, fire, and health facilities. Adequacy of police, fire, and health facilities will be evaluated using the intermediate or most probable forecasts of future growth plus development district growth, but only to the extent that development district growth exceeds the forecast for any time period. Any facility capacity which remains is available to be used by the development district. If any facility capacity deficits exist, the County Executive

will prepare a list of infrastructure needed to maintain public facility adequacy.

- (3) The Board may conditionally approve the PAPF application if it will meet all of the requirements of the APFO and AGP. The Board may condition its approval on, among other things, the creation and funding of the district and the building of no more than the maximum number of housing units and the maximum nonresidential space listed in the petition.

For an application to be approved, the applicants must commit to produce the infrastructure improvements needed to meet APF requirements in the proposed district as well as any added requirements specified by the Planning Board. The Planning Board must list these required infrastructure improvements in its approval. The infrastructure improvements may be funded through the development district or otherwise.

The Planning Board must not approve a PAPF application unless public facilities adequacy, as defined by the tests in (iii)(3), is maintained throughout the life of the plan. The timing of infrastructure delivery may be accomplished by withholding the release of building permits until needed public facilities are available to be "counted," or by another similar mechanism.

Infrastructure may be counted for public facilities adequacy when:

1. for infrastructure provided by the district, construction has begun on the facility and funds have been identified and committed to its completion; and
2. for infrastructure provided by the public sector:
  - For Policy Area Transportation Review, the project is fully-funded within the first four years of the approved County, state, or municipal capital improvements program;
  - For Local Area Transportation Review, the project is included in the most recent edition of the Approved Road Program;
  - For water and sewer facilities, the project is fully-funded within the first four years of the approved WSSC capital improvements program;

- For public school facilities, the project is fully-funded within the first four years of the approved Montgomery County Public Schools capital improvements program; and
  - For police, fire, and health facilities, the project is fully-funded within the first six years of the relevant approved capital improvements program.
- (4) The County Executive and Planning Board may also recommend to the County Council additional facilities to be provided by the development district or by the public sector to support development within the district. These facilities may include, but are not limited to: libraries, health centers, local parks, social services, greenways, and major recreation facilities.
- (5) Congruent with Chapter 14 of the Montgomery County Code, once the development district is created and the financing of all required infrastructure is arranged, the development in the district is now considered to have satisfied all APF requirements, any additional requirements that apply to development districts in the AGP, and any other requirement to provide infrastructure which the County adopts within 12 years after the district is created.

**[(iii)] (iv) Miscellaneous Provisions**

Further staging ceiling flexibility is not available in the Silver Spring CBD because traffic mitigation measures of the Transportation Management District have been relied upon to establish the ceilings for the Silver Spring CBD policy area.

**(e) Ceiling Flexibility - De Minimis Impacts**

The approval of preliminary plans which add only a few vehicle trips will be considered on a case-by-case basis by the Planning Board. In general, in policy areas with no ceiling balance (i.e., no remaining capacity), all land at one location for which zoning or other constraints permit no more than ten trips in total may receive approval of up to five trips. Non-residential plans submitted for the purpose of expanding structures which were completed prior to 1982, or which otherwise request additional development on land that was partially developed prior to 1982, may receive approval for additional development which adds no more than five trips. The term, "all land at one location," means all land that would be included in a determination of whether a project is a "significantly sized project" under the Planning Board's adopted guidelines for Local Area Transportation Review.

**(f) Amendment of Policy Ceilings**

From time to time, these staging ceilings may be amended by the Montgomery County Council, after public hearing, to reflect changing conditions such as additions to the Capital Improvements Program or the State's Consolidated Transportation Program, changing patterns of public facility usage, revised levels of public service, and other relevant criteria.

Policy area ceilings may also be amended by the County Council to resolve public policy conflicts and to accomplish a particular public policy objective.

**(g) Allocation of Staging Ceiling to Preliminary Plans of Subdivision**

The Planning Board allocates available staging ceiling capacity in a policy area based on the queue date of an application for preliminary plan of subdivision approval.

**(i) Assignment of queue date**

The queue date of a preliminary plan of subdivision is the date:

- (1) a complete application is filed with the Planning Board;
- (2) a traffic study is filed, if required to obtain a new queue date under paragraph (iv)(2); or
- (3) 6 months after the prior queue date if the prior queue date expires under subparagraph (iii)(1)(a) and the application does not require a traffic study.

**(ii) Calculation of available staging ceiling capacity**

The Planning Board determines whether there is adequate staging ceiling capacity available for a project by subtracting the capacity required by projects with earlier queue dates from the remaining capacity on Table 2 as updated periodically. Based on this calculation, the Planning Board may:

- (1) approve a project for which there is sufficient capacity;
- (2) approve part of a project for which there is sufficient capacity, leaving the remainder of the project in the queue until additional capacity becomes available;

- (3) deny an application for a project for which there is insufficient capacity; or
- (4) defer approval of a project and leave the project in the queue until sufficient capacity becomes available for all or part of the project. In situations where there is insufficient capacity, staff must not schedule a hearing on the application unless the applicant requests one.

If there is sufficient capacity for a project based on the queue date, the Planning Board must not deny an application based on pipeline (but not staging ceiling) changes while the queue date is in effect.

**(iii) Expiration of queue date**

- (1) A queue date for an application for preliminary plan of subdivision approval expires:
  - (a) 6 months after the queue date if there was sufficient staging ceiling capacity for the entire project on the queue date and the Planning Board has not approved the application or granted an extension of the queue date (see paragraph 2 below);
  - (b) 6 months after sufficient capacity becomes available for the entire project if a traffic study is not required under paragraph (iv)(1);
  - (c) 6 months after a traffic study is filed if required under paragraph (iv)(1); or
  - (d) on the applicant's failure to request background data, to submit a traffic study, or to submit a complete updated traffic study after notice that a study is incomplete, all within the time limits in subsection (iv).
- (2) The Planning Board may grant one or more 6-month extensions of a queue date if the applicant demonstrates that a queue date expired or will expire because of governmental delay beyond the applicant's control. The Planning Department may grant one 6-month extension of a queue date for Health Department approval of individual sewage disposal or wells. Any additional queue date extensions for Health Department approval may only be granted by the Planning Board.

**(iv) Traffic studies****(1) Required when sufficient capacity becomes available.**

The queue date of an application for which there is not sufficient staging ceiling capacity when the complete application is filed will expire when sufficient capacity becomes available, unless the applicant:

(a) requests background data from the Planning Board to prepare a traffic study within 1 month after capacity becomes available; and

(b) submits a traffic study within 1 month after receiving the background data. However, if the Planning Board provides the background data between June 1 and September 15, the study must be submitted by October 15.

**(2) Required to obtain a new queue date after expiration**

If the queue date of an application which includes a traffic study expires, an updated traffic study must be filed to obtain a new queue date.

**(3) Notice of incomplete traffic study**

The Planning Board must notify an applicant within 15 days after a traffic study is filed if the study is incomplete. An applicant must file a complete traffic study within 30 days of receipt of the notice that a study is incomplete.

**(v) Special Ceiling Allocation for Affordable Housing**

If an application for a preliminary plan approval that uses the special ceiling allocation for affordable housing is denied by the Planning Board after July 1, 1992, the applicant retains its original queue date and is subject to all other applicable provisions of this subsection.

**(2) Local Area Transportation Review (IATR)****(a) Establishment of Local Area Transportation Review Standards**

The transportation planning model used for Policy Area Review addresses the average level of traffic in the policy area. If this were the only test, an area with acceptable average level



of service could have one or more intersections, or roadway links, with unacceptably poor levels of service. It is necessary, therefore, that a local area test be applied to assure that new development is not allowed to cause such congestion.

To achieve an approximately equivalent transportation level of service in all areas of the County, greater congestion is permitted in policy areas with greater transit accessibility and usage. Table 7 shows the intersection level of service standards by policy area. Local Area Transportation Review shall, at all times, be consistent with the standards and staging mechanisms of adopted master plans and sector plans.

Local Area Transportation Review must be undertaken for subdivisions which would generate 50 or more peak hour automobile trips in either of the following circumstances:

- For the policy area, total approved development is within 5 percent of the policy area ceiling; or
- For the local area, the proposed development is located near a congested area.

In administering the Local Area Transportation Review (LATR), the Planning Board must not approve a subdivision if it finds that an unacceptable peak hour level of service will result after taking into account existing roads, programmed roads, available or programmed mass transportation, and improvements to be provided by the applicant. If the subdivision will affect an intersection, or roadway link for which congestion is already unacceptable, then the subdivision may only be approved if it does not make the situation worse.

The nature of the LATR test is such that a traffic study is necessary if local congestion is likely to occur. The Planning Board and staff will examine the applicant's traffic study to determine whether adjustments are necessary to assure that the traffic study is a reasonable and appropriate reflection of the traffic impact of the proposed subdivision after taking into account all approved development and programmed transportation projects.

For Local Area Transportation Review purposes, the programmed transportation projects to be considered are those included in the most recent edition of the County Executive's Approved Road Program (ARP). The Approved Road Program shall include only roads programmed in the current approved Capital Improvements Program and the Maryland Consolidated Transportation Program for which:

- (1) The County Executive has determined that construction will begin within two years of the effective date of the approved road program; and

- (2) In the case of the County CIP, 100 percent of the expenditure for contracts, have been appropriated.

For these purposes, roads required under Section 302 of the Charter to be authorized by law are not to be considered programmed until the time for petition to referendum has expired without a valid petition, or the authorizing law has been approved by referendum.

If an applicant is participating in a traffic mitigation program or one or more intersection improvements to meet Local Area Transportation Review requirements, that applicant will be considered to have met Local Area Transportation Review for any other intersection where the volume of trips generated is less than five Critical Lane Movements.

The Planning Board has adopted guidelines for the administration of Local Area Transportation Review. To the extent that they are consistent with these legislative guidelines, the Planning Board guidelines may continue to apply or to be amended as the Planning Board deems it necessary to do so.

After consultation with the Council, the Planning Board may adopt administrative guidelines that allow use of a "delay" or queuing analysis, different critical lane volume standards, or other methodologies, to determine the level of congestion in appropriate geographic locations such as in urbanized areas, around Metrorail stations, or in specific confined areas planned for concentrated development related to other forms of transit.

In its administration of Local Area Transportation Review, the Planning Board shall give careful consideration to the recommendations of the County Executive concerning the applicant's traffic study and proposed improvements or any other aspect of the review.

To achieve safe and convenient pedestrian travel, the Planning Board may adopt administrative guidelines requiring construction of off-site sidewalk improvements consistent with Section 50-25 of the County Code. To maintain an approximately equivalent transportation level of service at the local level considering both auto and non-auto modes of travel, the Planning Board may permit a reduction in the amount of roadway construction or traffic mitigation needed to satisfy the conditions of Local Area Transportation Review in exchange for the construction of non-automobile transportation amenities, such as sidewalks and bus shelters.

(b) Silver Spring CBD LATR Standards

In the area designated as the Silver Spring CBD Policy Area, the Planning Board, in consultation with the Department of Transportation, will prepare performance evaluation criteria for its Local Area Transportation Review. These criteria will be

used to accomplish: (a) safety for pedestrians and vehicles; (b) access to buildings and sites; and (c) traffic flow within the vicinity, at levels which are tolerable in an urban situation. The County Executive will publish a Silver Spring Traffic Management Program after receiving public comment and a recommendation from the Planning Board. This program will list those actions to be taken by government to maintain traffic flow at tolerable levels in the Silver Spring CBD, and protect the surrounding residential area.

(c) Potomac LATR Standards

In the Potomac Policy Area, only the areas contributing traffic to the following intersections will be subject to Local Area Transportation Review: (a) Montrose Road at Seven Locks Road; (b) Democracy Boulevard at Seven Locks Road; (c) Tuckerman Lane at Seven Locks Road; (d) Democracy Boulevard at Westlake Drive; (e) Westlake Drive at Westlake Terrace; (f) Westlake Drive at Tuckerman Lane; and (g) Bradley Boulevard at Seven Locks Road.

(d) Friendship Heights LATR Standards

Until a new sector plan is approved by the County Council, for analysis of properties located within the Friendship Heights Central Business District (as defined by the 1974 Friendship Heights Sector Plan) that have had preliminary plans of subdivision approved before July 1, 1993, any traffic trips from approved and/or built projects on certain properties in the District of Columbia which exceed the total of 2,329 new trips allocated to those same properties in the District of Columbia pursuant and subject to the August 30, 1973 statement of the Inter-Jurisdictional Policy Task Force on Friendship Heights (as set forth in Appendix "E" and referred to on pages 39-41 of the 1974 Friendship Heights Sector Plan), shall not be used in making a determination that local intersections are operating at adequate levels of service.

**(3) Alternative Review Procedures**

**(a) Metro Station Policy Areas**

An applicant for a subdivision which will be built completely within the Bethesda CBD, Wheaton CBD, Grosvenor, White Flint, or Twinbrook Metro station policy areas need not submit any application or take any action under **(2) Local Area Transportation Review (LATR)** if the applicant agrees in a contract with the Planning Board and the County Department of Transportation to:

(1) make its best efforts to meet mode share goals established by the Planning Board as a condition of approving that subdivision;

(2) participate in programs operated by, and take actions specified by, a transportation management organization (TMO) to be established by County law for that policy area (or a group of policy areas including that policy area) in order to meet the mode share goals established under paragraph (1);

(3) pay an ongoing annual contribution or tax to fund the TMO's operating expenses, including minor capital items such as busses, as established by County law; and

(4) pay a development approval payment (DAP), to be established by County law, over a multi-year period starting when the building permit is issued and indexed to reflect inflation in construction costs.

The Planning Board must conduct a comprehensive Local Area Transportation Review for each policy area in which it approves a subdivision under this procedure and should specify for inclusion in the Capital Improvements Program any transportation improvements needed to support that subdivision.

**(b) Limited residential development**

In fiscal years 1994, 1995, and 1996, an applicant for a residential subdivision need not take any action under (1) **Policy Area Transportation Review** or (2) **Local Area Transportation Review (LATR)** if the applicant pays to the County a development approval payment (DAP), to be established by County law, before the building permit is issued. However, the applicant must include in its application for preliminary plan approval all information that would be necessary if the requirements for Local Area Transportation Review applied.

This procedure may also be used, if the applicant reapplies for subdivision approval, for any residential subdivision with a preliminary plan of subdivision approved by the Planning Board before July 1, 1993. However, this procedure does not apply to a subdivision which has had a preliminary plan of subdivision approved by the Planning Board under the Special Ceiling Allocation for Affordable Housing, unless the subdivision is located in a large lot zone where Moderately Priced Dwelling Units (MPDU's) are not required.

The use of this procedure is subject to the following conditions:

(1) The procedure must not be used in any part of the County which is located in a rural area as defined in this Resolution.

(2) The procedure must not be used in any policy area which is exempt from the Special Ceiling Allocation for Affordable Housing or would be exempt from that Allocation if the Planning Board had approved at least 500 housing units in that policy area under that Allocation.

(3) Under this procedure, the Board must not approve:

(A) more than 100 units at any one location under common ownership and control, as defined in the Planning Board's LATR Guidelines; and

(B) more than 300 units in any policy area in each fiscal year.

(4) Any applicant for a subdivision approval under this procedure must agree, as part of the application, that it will build the same number of Moderately Priced Dwelling Units (MPDU's) among the first 100 units that it would be required to construct at that location if the subdivision consisted only of 100 units, or a pro rata lower number of MPDU's if the subdivision will include fewer than 100 units.

(5) Any applicant for a subdivision approval under this procedure must agree, as part of the application, that it will not begin to construct any residential unit approved in the application later than 3 years after the plat is recorded or the site plan is approved (whichever occurs later).

The Planning Board must report in the Final Draft AGP each year on the number of housing units approved and built under this procedure and should specify for inclusion in the Capital Improvements Program any transportation improvements needed to support those units.

## **B. Guidelines for Public School Facilities**

### **(1) Geographic Area**

For the purposes of public school analysis and local area review of school facilities at time of subdivision, the County has been divided into 21 areas called high school clusters as shown in Map 6. These areas coincide exactly with the cluster boundaries used by the Montgomery County Public School system.

The Council evaluates available capacity in each high school cluster and compared enrollment projected by Montgomery County Public Schools for each fiscal year with projected school capacity four years out.

If insufficient capacity is available, the Council determines whether an adjacent cluster or clusters has sufficient capacity to cover the projected deficit in school capacity. The Council's groupings are only for the administration of the Adequate Public Facilities Ordinance and are not in any way a required action by the Board of Education in exercising its power to designate school service boundaries.

### **(2) School Capacity Measure**

The Council uses 110 percent of Council funded program capacity as

the school capacity measure in the administration of the Adequate Public Facilities Ordinance. This capacity measure does not count relocatable classrooms in computing a school's permanent capacity.

Based on the approved [FY 95-00] FY 96 -01 CIP, the Council funded regular program capacity is a class size of 25 for grades 1-6, 44 for half day kindergarten where it is currently provided, 22 for all day kindergarten where it is currently provided, and an effective class size of 22.5 for secondary grades.

### **(3) Grade Levels**

Each of the three grade level clusters, namely elementary, intermediate/middle school, and high school are assessed separately as part of the Annual Growth Policy.

### **(4) Determination of Adequacy**

Using the approach outlined above, and assuming the approved [FY 95-00] FY 96 -01 CIP, the Council declares school capacity for school year 1998 to be adequate for anticipated growth during [FY 95] FY 96 in all high school clusters at all grade levels. Tables 3, 4, and 5 present the results of this analysis.

The Planning Board, in its review of preliminary plans of subdivision in [FY 95] FY 96, shall consider schools to be adequate for APFO purposes in all clusters.

### **(5) Affordable Housing**

Because school capacity is determined to be adequate under paragraph (4) of this subsection, the Special Ceiling Allocation for Affordable Housing may be invoked only with respect to transportation ceilings. The need for such a special ceiling allocation with respect to school capacity will be considered at such time that capacity is determined to be inadequate in a particular cluster.

### **(6) Ceiling Flexibility for Partial Cost Developer Participation**

When a subdivision with a residential component is approved for transportation capacity under the provisions of the Partial Cost Developer Participation subsection, the Planning Board may approve the subdivision for school facility adequacy if: (a) the subdivision is located in a school cluster area that has been designated as adequate for school capacity; and (b) the applicant agrees to condition his subdivision approval on a staging schedule, which will require the applicant to receive a subsequent APF approval for school capacity for all of the housing units that are scheduled in his staging plan to receive building permits after the end of the four year period used in calculating school capacity in this Annual Growth Policy. This does not imply any obligation on the part of the Council to provide public school facilities in accordance with any staging plan and the applicant may provide private resources for school sites and/or school construction in order to assure adequate school capacity.

**C. Guidelines for Water and Sewerage Facilities**

In accordance with the language of the Adequate Public Facilities Ordinance itself, both for policy areas with a staging ceiling and in those without one, applications shall be considered adequately served by water and sewerage if the subdivision is located in an area in which water and sewer service is presently available, is under construction, or is designated by the County Council for extension of service within the first two years of a current approved Comprehensive Water Supply and Sewerage Systems Plan (i.e., categories I, II, and III) or if the applicant either provides a community water and/or sewerage system or meets health department requirements for septic and/or well systems, as outlined in the Adequate Public Facilities Ordinance. These requirements are determined either by reference to the Water and Sewerage Plan, adopted by the Council, or by obtaining a satisfactory percolation test from the County Health Department.

Applications will only be accepted for further planning staff and Board consideration if they present evidence of meeting the appropriate requirements.

**D. Guidelines for Police, Fire and Health Services**

The Planning Board and staff shall consider the programmed services to be adequate for facilities such as police stations, firehouses, and health clinics unless there is evidence to believe that a local area problem will be generated. Such a problem is one which cannot be overcome within the context of the approved Capital Improvements Program and Operating Budgets of the relevant agencies. Where such evidence exists, either through agency response to the Subdivision Review committee clearinghouse, or through public commentary or planning staff consideration, a Local Area Review shall be undertaken. Such review shall seek a written opinion from the relevant agency, and will require, if necessary, additional data from the applicant, to facilitate the completion of the planning staff recommendation within the statutory time frame for Planning Board action. In performing this Local Area Review, the facility capacity at the end of the sixth year of the approved CIP shall be compared to the demand generated by the "most probable" forecast for the same year prepared by the Montgomery County Planning Department.

**E. Guidelines for Resubdivisions**

Applications to amend a previously approved preliminary plan of subdivision shall not require a new test for adequacy of public facilities in the following instances:

- Revisions to a preliminary plan which has not been recorded, if the preliminary plan has not expired and the number of trips which will be produced by the revised plan is not greater than the number of trips produced by the original plan.
- Resubdivision of a recorded lot involving the sale or exchange of parcels of land (not to exceed a total of 2,000 square feet or one percent of the combined area, whichever is greater) between owners of adjoining properties to make small adjustments in boundaries.

- Resubdivision of a recorded lot involving more than 2,000 square feet or one percent of the lot area if less than three years have passed since preliminary plan approval; or, if construction has begun on any portion of the preliminary plan, less than five years have passed since preliminary plan approval; or, if construction of an APF related road improvement required as a condition of the original preliminary plan is proceeding as scheduled, less than 10 years have passed since preliminary plan approval. In each case, the number of trips which will be produced by the revised plan must not be greater than the number of trips produced by the original plan.

**II. Timely Adequate Public Facilities Determination and Local Area Transportation Review under Chapter 8 - Buildings.**

- A. **General.** Except as otherwise provided by law, an adequate public facilities determination or local area transportation review conducted under Article IV of Chapter 8 must use the standards and criteria applicable under Section I. of this Resolution when evaluating the adequacy of public facilities to serve the proposed development.
- B. **Traffic Mitigation Goals.** Any proposed development that is subject to requirements for a traffic mitigation agreement under Article IV of Chapter 8 and Chapter 42A-9A of the County Code must meet the traffic mitigation goals specified in paragraphs (1) or (4), as appropriate.

- (1) Subject to paragraph (2), the portion of peak-period nondriver trips by employees of a proposed development must be at least the following percentage greater than the prevailing nondriver mode share of comparable nearby land use:

In Policy Areas With LATR CLV Standard of	Required Percentage Greater Than Prevailing Nondriver Mode Share
1800 and 1650	100%
1600	80%
1550	60%
1500 and 1525	40%

LATR CLV standards for each policy area are shown on Table 7.

- (2) The portion of peak-period nondriver trips by employees calculated under paragraph (1) must not be less than 15% nor higher than 55%.
- (3) The applicant for a proposed development in a policy area specified under paragraph (1) is responsible for: reviewing existing studies of nondriver mode share; conducting new studies, as necessary, of nondriver mode share; and identifying the prevailing base nondriver mode share of comparable land uses within the area identified for the traffic study. Comparable



land uses are improved sites within the area identified for the traffic study for the proposed development that have similar existing land use and trip generation characteristics. As with other aspects of the traffic study required by Article IV of Chapter 8 of the Code, selection of the comparable studies and land uses to be analyzed and determination of the prevailing base nondriver mode share are subject to review by the Planning Department and approval by the Department of Transportation.

- (4) Proposed development in the Silver Spring CBD must meet the commuting goals specified under Section I(A)(1)(b) of this Annual Growth Policy.
- (5) In accordance with Section 42A-9A of the Code, the applicant must enter into an agreement with the Director of the Department of Transportation prior to issuance of a building permit. The agreement may provide for a schedule for full compliance with the traffic mitigation goals. It must provide appropriate enforcement mechanisms for compliance.
- (6) As provided by law, these goals supersede traffic mitigation goals established under Section 42A-9A (a)(4) of the Code.

### III. Issues to be Addressed in the Future

In adopting the [FY 95] FY 96 Annual Growth Policy, the Council recognizes that not all aspects of a comprehensive approach to growth policy can be addressed within one year. To ensure that the policy making process continues to be developed and refined, the following matters are to be addressed by the Planning Board, Board of Education, and the County Executive during the next fiscal year or in the next (FY 96) AGP Policy Element for presentation to, and decision by, the County Council:

#### 1. During Fiscal Year 1995:

**(a) AGP Process Changes** - Council staff must prepare legislation to implement the Council's decision to codify major elements of the AGP in a legislative framework, allowing technical procedures to be formulated as administrative rules.

**(b) Pipeline Reform** - The Planning Board, with the aid of the Executive, must develop guidelines for (1) determining the time limits for findings of public facilities adequacy, and (2) permitting the transfer of staging ceiling among projects in the same policy area. During the FY 94 AGP worksessions, the Council concurred with the Planning Board's recommendation that the time limits of a finding of adequate public facilities, currently 12 years for all development types, more closely reflect the size and type of development approved. The Council also concurred with the Board's recommendation that the County permit the transfer of adequate public facilities approval from one project to another.

(c) **Adequacy of Public Facilities in Development Districts** - The Planning Board, with the aid of the Executive, must prepare an Annual Growth Policy amendment to address how development districts will meet the requirements of the Adequate Public Facilities Ordinance.

2. **For the FY 96 AGP Policy Element**

- (a) **Adequacy of Public School Facilities - Ceiling Flexibility** - The staffs of the Board of Education, the Executive, the Planning Board and the Council must continue to evaluate options for a potential ceiling flexibility provision in the APFO school test. The staff group must report its options and findings to the Council's Education Committee. If sufficient staff consensus exists on an option, Planning staff must include it in the Staff Draft of the next Annual Growth Policy to solicit public comment.
- (b) **Shady Grove Policy Area** - The Planning Board, with the aid of the Executive, must conduct appropriate analyses to allow the creation of a policy area in the Shady Grove Metrorail Station area, including the delineation of the policy area and the timing of its creation.
- (c) **Ceiling Flexibility - Partial-Cost Developer Participation** - The Planning Board should examine the utility of retaining this provision in the Annual Growth Policy.
- (d) **Extension of Metro Area Alternative Review Procedure** - The Planning Board should evaluate the possible application of the Alternative Review Procedure for Metro Station Policy Areas to other policy areas.
- (e) **Special Ceiling Allocation for Health Care Facilities** - The Planning Board should examine the utility of retaining this provision in the Annual Growth Policy.
- (f) **Ceiling Flexibility - De Minimis Impacts** - The Planning Board, with the aid of the Executive, must review the de minimis impacts provisions of Policy Area Transportation Review and Local Area Transportation Review, including issues related to outlots and consideration of pro rata contributions toward transportation infrastructure.
- (g) **Glenmont Policy Area** - The Planning Board, with the aid of the Executive, must conduct appropriate analyses to allow the creation of a policy area in the Glenmont Metrorail Station area, including the delineation of the policy area and the timing of its creation.
- (h) **Clarksburg Policy Area(s)** - The Planning Board, with the aid of the Executive, must conduct appropriate analyses to allow the creation of one or more policy areas within the Clarksburg Planning Area.

- (i) **Monitoring and Evaluating LATR Standards** - The Planning Board, with the aid of the Executive, and in consultation with the community, must monitor and evaluate congestion and pedestrian use at intersections higher than 1,525 Critical Lane Volume to determine whether the Local Area Transportation Review standards adopted in the FY 95 Annual Growth Policy should be adjusted further.

Specific scheduling of items to be undertaken by the Planning Board under this Section may be addressed or changed at the regular work program meetings with the County Council.

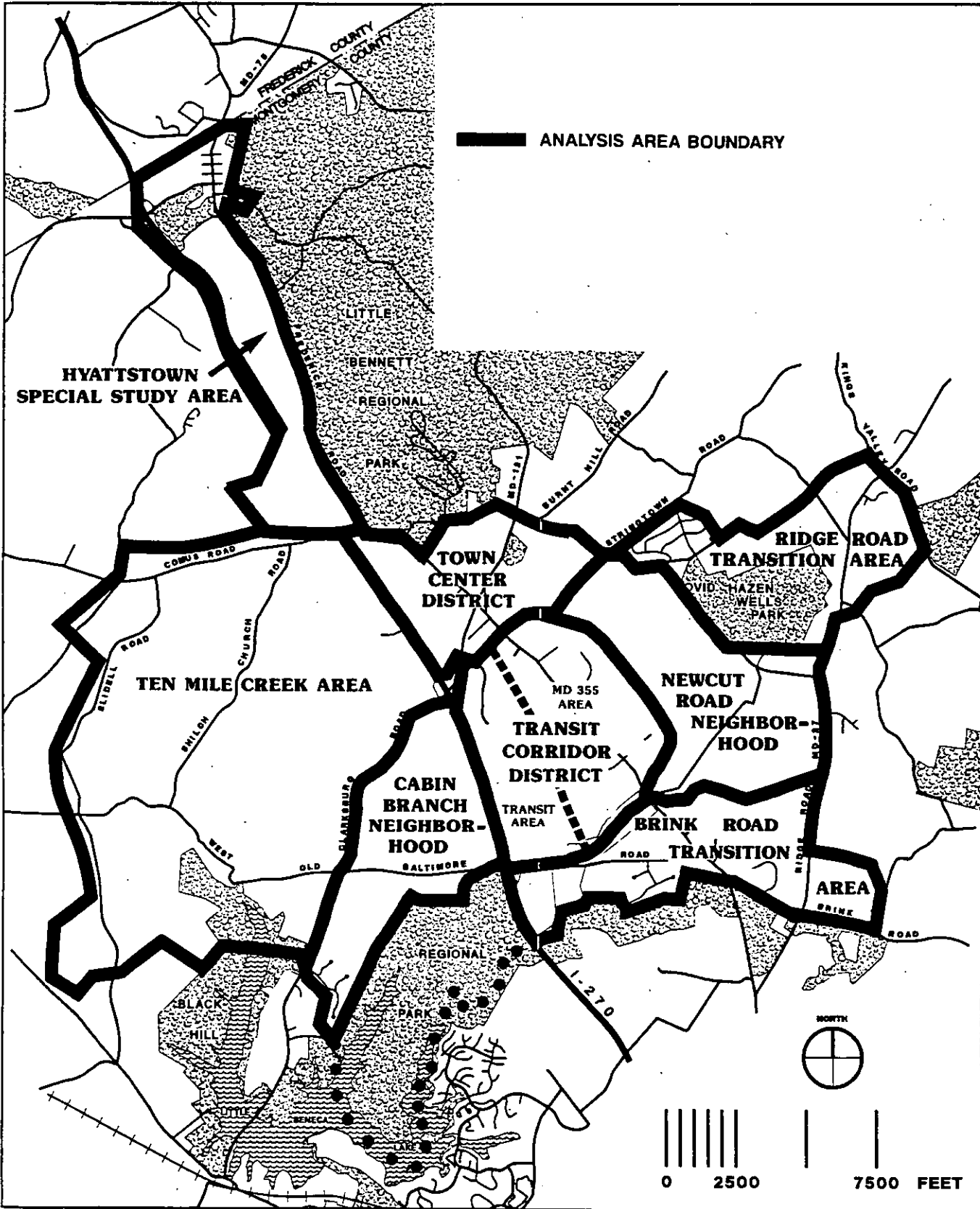
This is a correct copy of Council action.



Kathleen Freedman, CMC  
Secretary of the Council

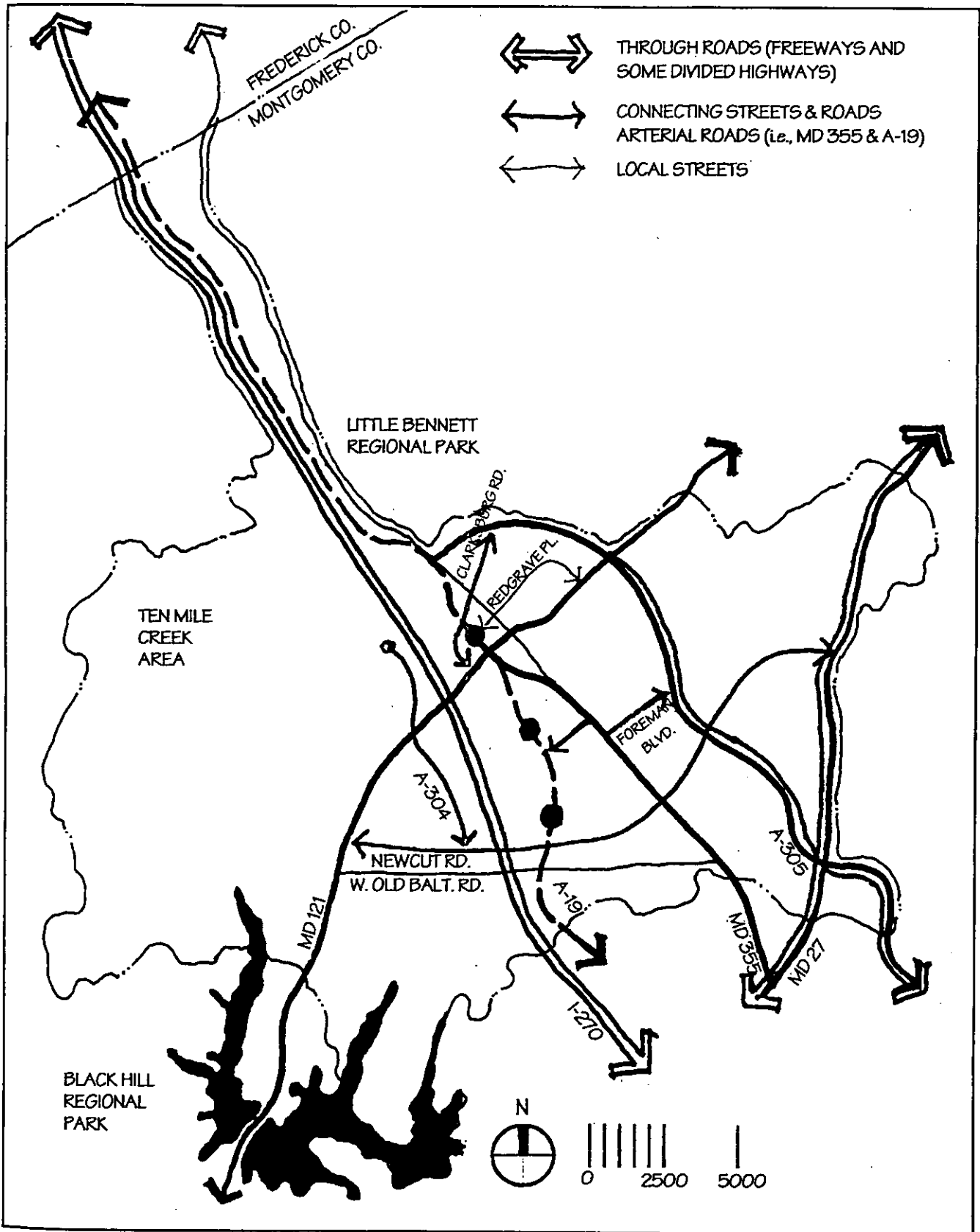
# Analysis Areas

Figure 18



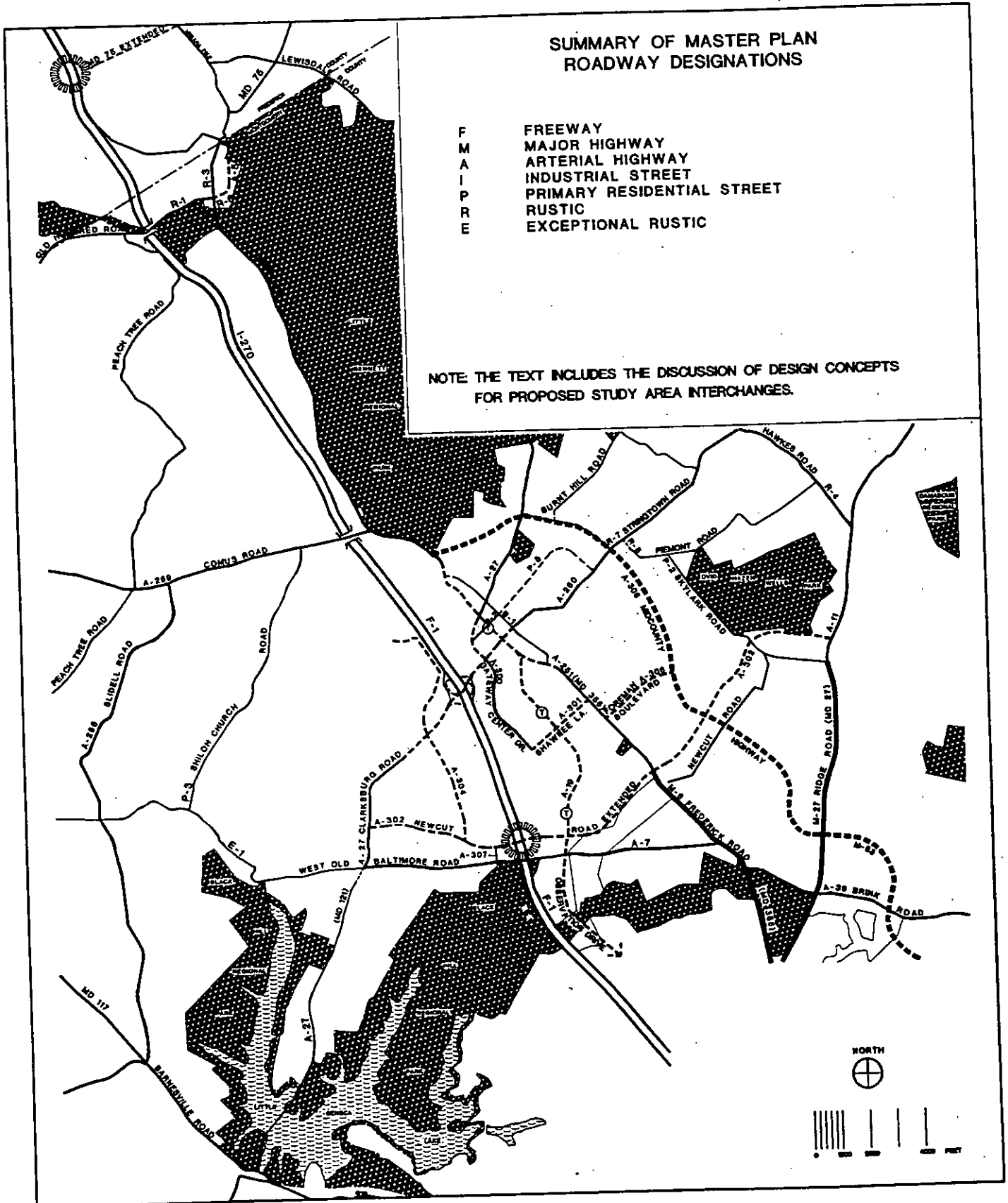
# Hierarchy of Roads and Streets

Figure 11



# Generalized Highway and Transit Plan

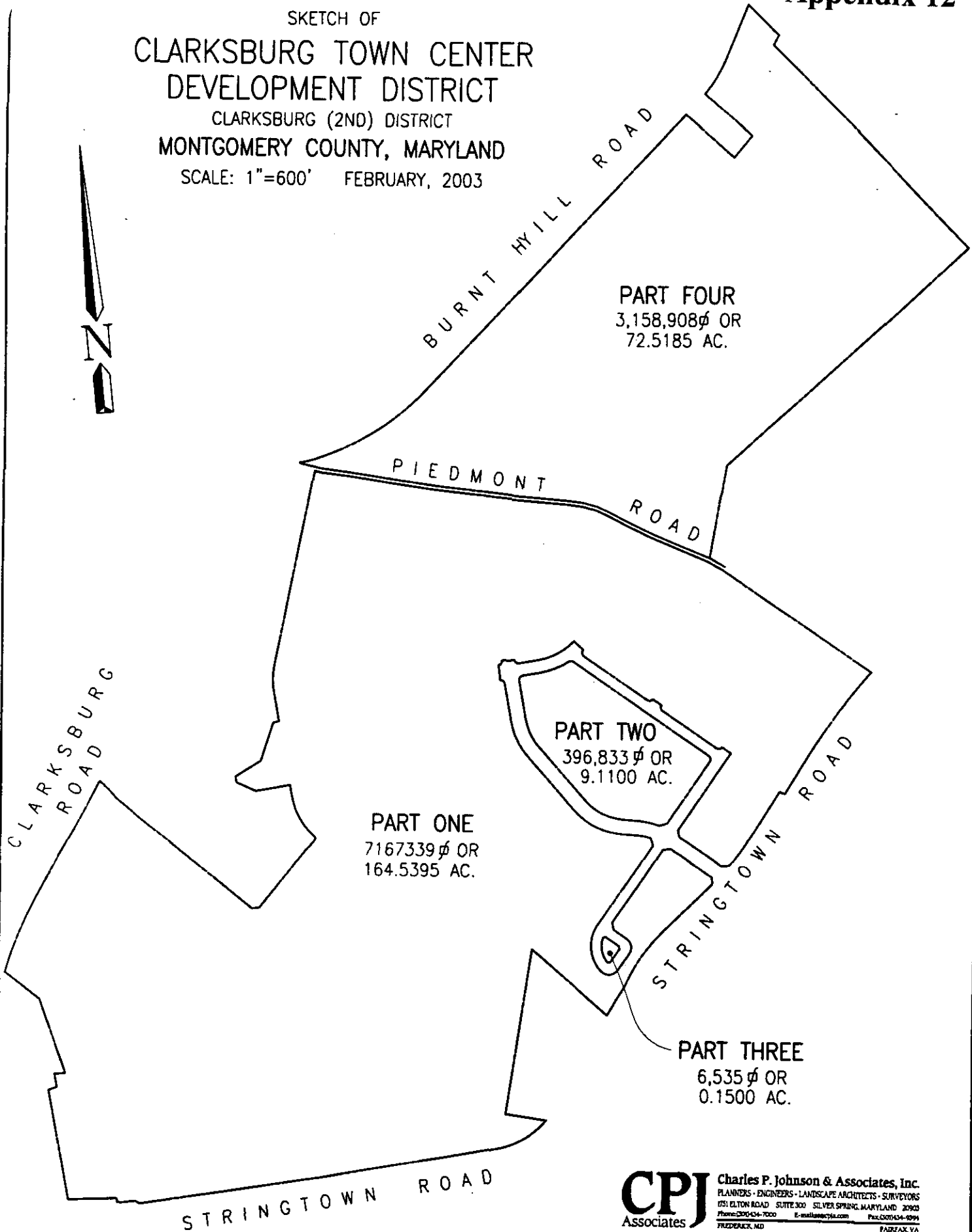
Figure 40



SKETCH OF  
CLARKSBURG TOWN CENTER  
DEVELOPMENT DISTRICT

CLARKSBURG (2ND) DISTRICT  
MONTGOMERY COUNTY, MARYLAND

SCALE: 1"=600' FEBRUARY, 2003



PART FOUR  
3,158,908 $\phi$  OR  
72.5185 AC.

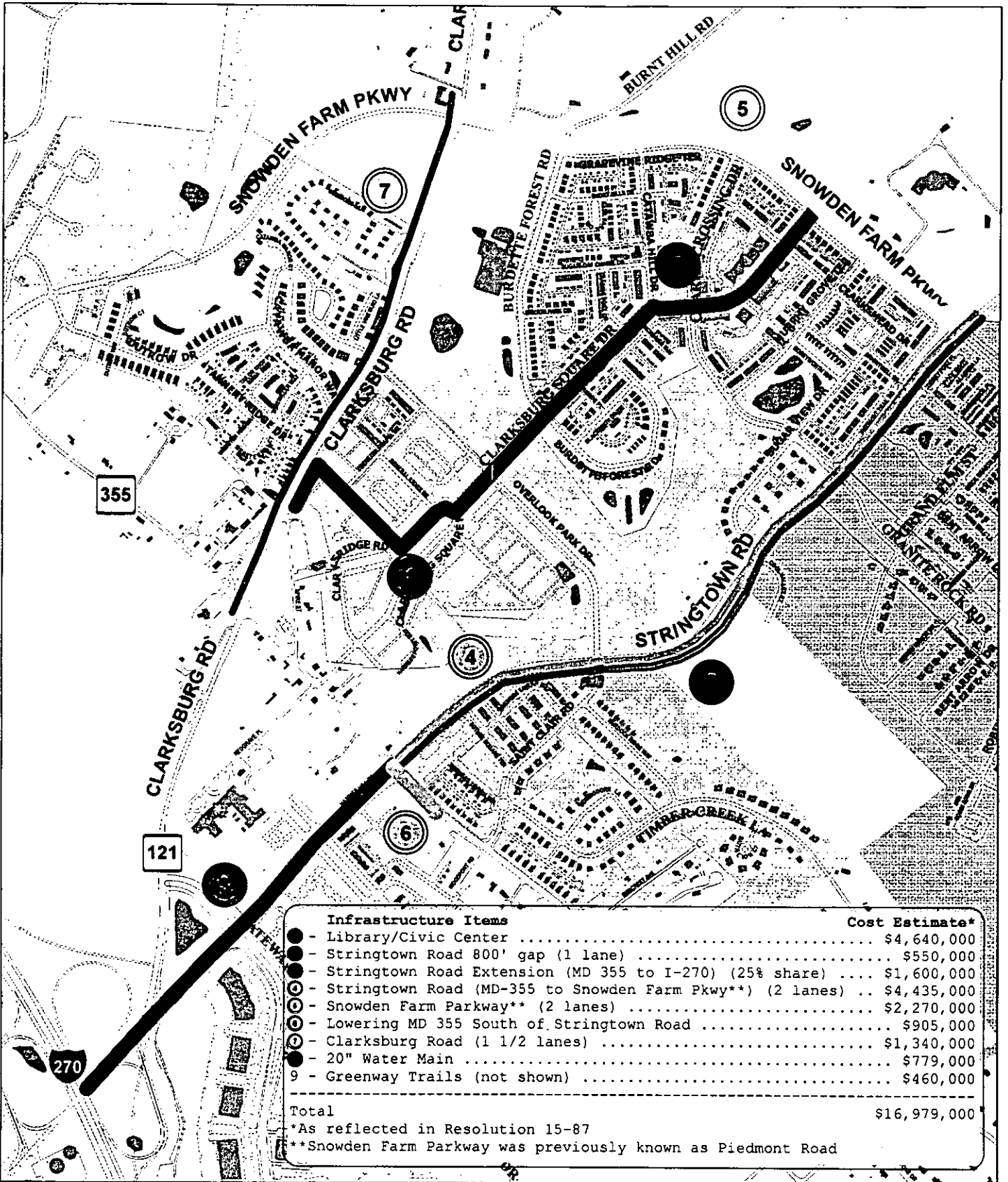
PART ONE  
7167339 $\phi$  OR  
164.5395 AC.

PART TWO  
396,833 $\phi$  OR  
9.1100 AC.

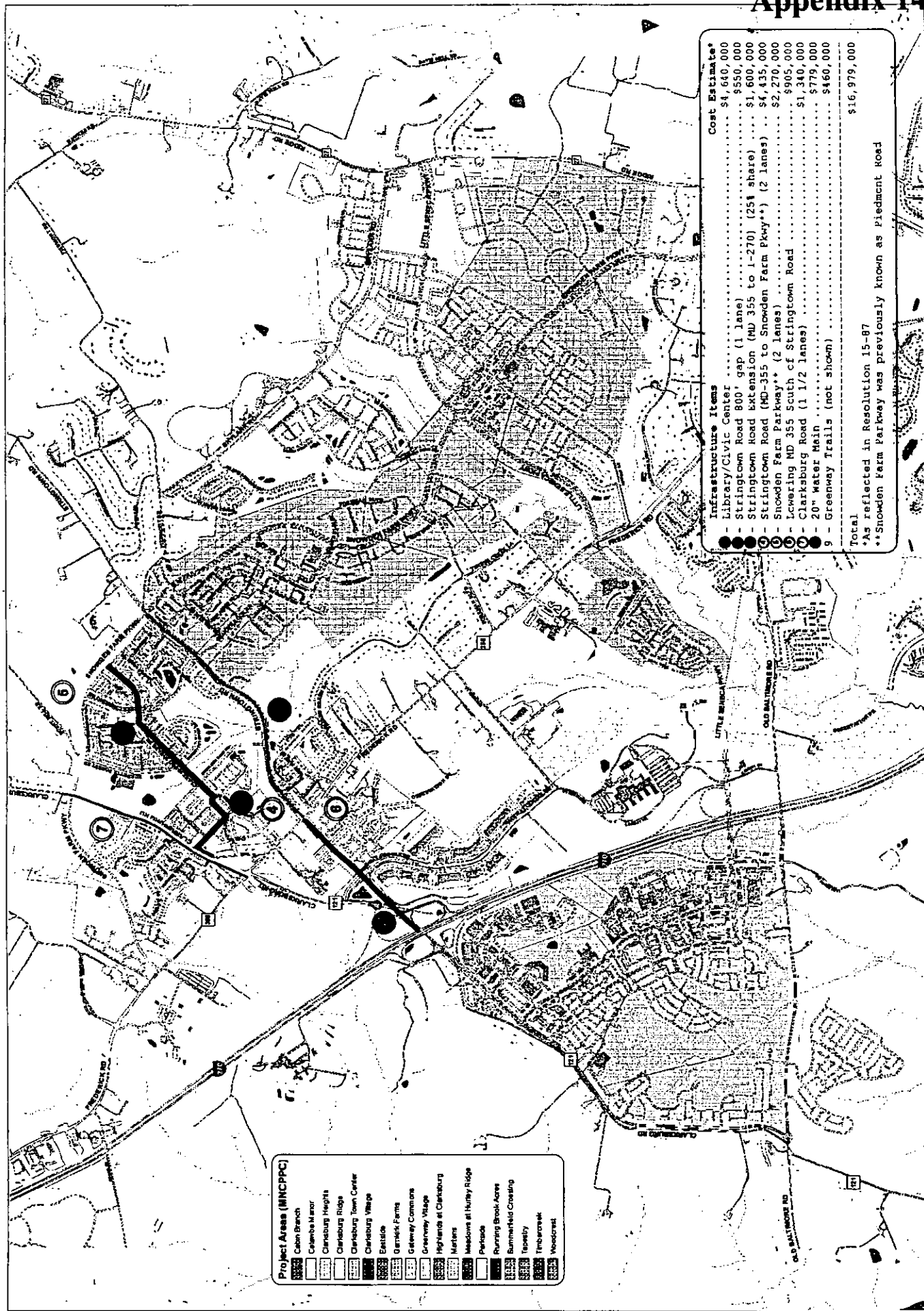
PART THREE  
6,535 $\phi$  OR  
0.1500 AC.

**CPJ** Charles P. Johnson & Associates, Inc.  
PLANNERS • ENGINEERS • LANDSCAPE ARCHITECTS • SURVEYORS  
1051 ELTON ROAD SUITE 300 SILVER SPRING, MARYLAND 20903  
Phone: 201-454-1000 E-mail: cpj@cpja.com Fax: 201-454-1099  
FREDERICK, MD FAIRFAX, VA

Infrastructure Items Funded by the Clarksburg Town Center Development District







- Project Areas (MNCPPC)**
- Cabin Branch
  - Calamba Manor
  - Clarksburg Heights
  - Clarksburg Ridge
  - Clarksburg Town Center
  - Clarksburg Village
  - Eastside
  - Garwick Farms
  - Gateway Commons
  - Greenway Village
  - Highlands at Clarksburg
  - Marlers
  - Meadows at Hurley Ridge
  - Parkside
  - Rolling Brook Acres
  - Summerfield Crossing
  - Tenacity
  - Timbercreek
  - Woodcrest

**Cost Estimate\***

Library/Civic Center	\$4,640,000
Stringtown Road 800' gap (1 lane)	\$550,000
Stringtown Road Extension (MD 355 to I-270) (25% share)	\$1,600,000
Stringtown Road (MD-355 to Snowden Farm Pkwy**) (2 lanes)	\$4,135,000
Snowden Farm Parkway** (2 lanes)	\$2,270,000
Lowering MD 355 South of Stringtown Road	\$905,000
Clarkburg Road (1 1/2 lanes)	\$1,340,000
20" Water Main	\$779,000
Greenway Trails (not shown)	\$160,000
<b>Total</b>	<b>\$16,979,000</b>

\*As reflected in Resolution 15-87  
 \*\*Snowden Farm Parkway was previously known as Piedmont Road

Department of Technology Services - GIS  
 Streets and Buildings  
 Street Centerlines  
 2003 Building Footprints  
 Hydrography  
 Street & Sidewalk  
 Lanes & Paths

Infrastructure Items Funded by  
 the Clarksburg Town Center Development District

Bayfield National Capital Park and Planning Commission  
 Other Map Layers  
 ■ Building  
 ■ Sidewalk  
 ■ Street  
 ■ Proposed

Date: 08/06/2007  
 Data Source: MNCPPC, DTSGIS, and DPS  
 Prepared by: Department of Planning Services





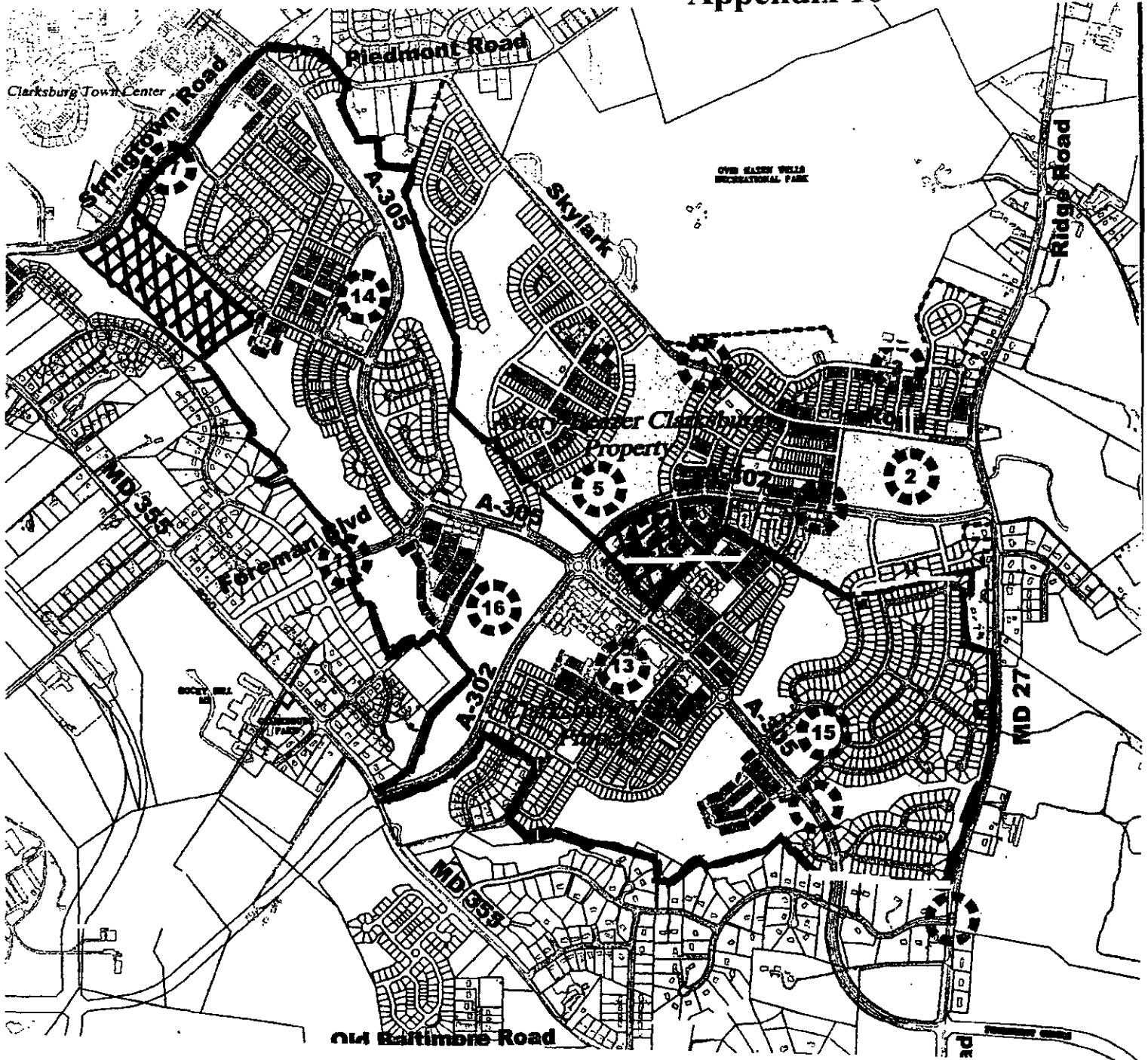
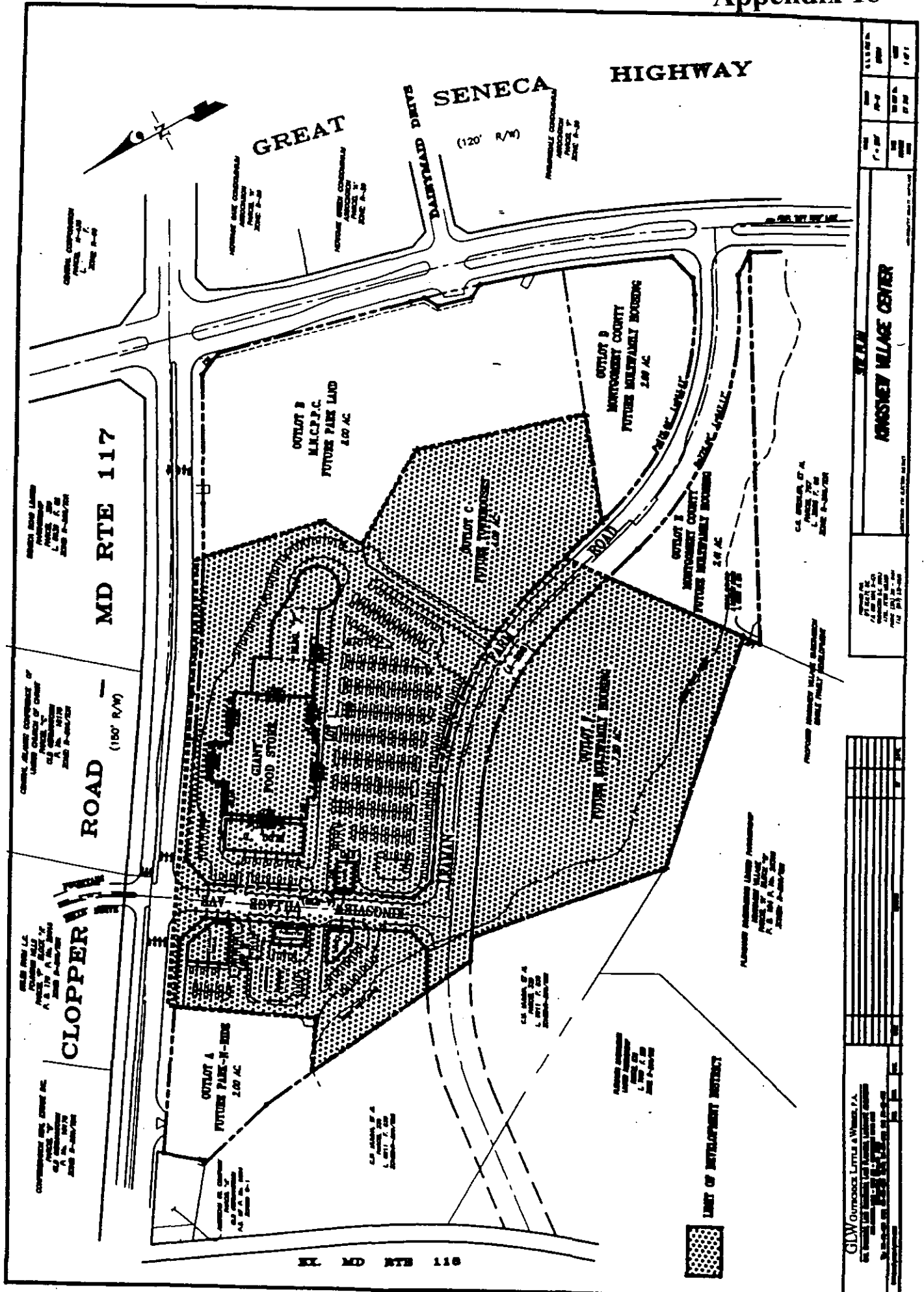


Exhibit B

- Current boundary for Clarksburg Village Development District
- ▨ Proposed additional land



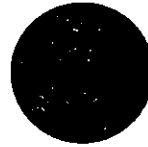


<p>CLM/Guidance Little &amp; Weiss, P.A.                  2000 North 10th Street, Suite 100                  Philadelphia, PA 19107                  Tel: 215-381-1111                  Fax: 215-381-1112</p>		<p>PROJECT NO. 100-000000-0000                  SHEET NO. 100-000000-0000                  DATE: 10/1/00</p>	
<p>PROJECT NAME: ANSNEY VILLAGE CENTER</p>		<p>SCALE: AS SHOWN</p>	
<p>DATE: 10/1/00</p>		<p>BY: [Signature]</p>	
<p>CHECKED BY: [Signature]</p>		<p>APPROVED BY: [Signature]</p>	

XX MD RTE 110



OFFICE OF INSPECTOR GENERAL



Thomas J. Dagley  
Inspector General

027389

MEMORANDUM

March 27, 2007

TO: Marilyn Praisner, President  
County Council

FROM: Thomas J. Dagley  
Inspector General

SUBJECT: Office of Inspector General Audit of Selected CIP Projects

This is to inform the County Council that the Office of Inspector General has initiated an audit of cost data and related information for selected Capital Improvements Program (CIP) projects included in the County Executive's Recommended FY07 Capital Budget and Capital Improvements Program dated January 2006.

Attached please find a copy of my memorandum to Tim Firestine, Chief Administrative Officer, explaining the audit objectives and CIP projects selected for review.

If you have any questions or comments, please do not hesitate to contact me.

Re: #0027  
cc: Council Members

RECEIVED  
MONTGOMERY COUNTY  
COUNCIL

2007 MAR 29 AM 8:13



*Bud. Fin. Econ. Dev.*



OFFICE OF INSPECTOR GENERAL

Thomas J. Dagley  
Inspector General

MEMORANDUM

March 27, 2007

TO: Tim Firestine  
Chief Administrative Officer

*Thomas J. Dagley*

FROM: Thomas J. Dagley  
Inspector General

SUBJECT: Audit of Cost Data and Related Information for Selected Capital Improvements Program (CIP) Projects

Reference is made to my memorandum, dated March 8, 2007, advising the Office of Inspector General (OIG) was initiating an examination of cost data and related information for selected CIP projects. The examination is a modification of an action plan published in our Four-Year Work Plan in August 2005 regarding supply management and facilities. In this regard, the OIG anticipates conducting additional examinations of CIP projects in fiscal year 2008.

Based upon information developed during the planning phase of this audit, we have identified two objectives for this audit: 1) evaluate the reliability of cost data, financial statements, and underlying support documentation provided to the Executive, Council, and staff in support of selected projects in the fiscal year 2007 CIP; and 2) determine if County policies and procedures are in place to provide adequate internal controls.

During the planning phase, we concentrated on reviewing CIP projects in the County Executive's Recommended FY07 Capital Budget and Capital Improvements Program (CIP), Fiscal Years 07-12, January 2006. We also reviewed the Approved FY 07 Operating and Capital Budgets, July 2006. As a result, we plan to include the following CIP projects in our methodology:

Transportation

- Clarksburg Town Center Development District: Roads (Project # 500423)
- Stringtown Road Extended (Project # 500403)



19-2

Montgomery College

- Rockville Science Center (Project # 036600)
- Germantown Child Care Center (Project # 956645)
- Takoma Park Campus Expansion (Project # 996662)

Montgomery County Public Schools

- Northwood High School (Project # 016545)
- Sherwood High School Addition (Project # 036507)

In a discussion with Paul Folkers, Assistant Chief Administrative Officer, it was agreed that we will work directly with MCG department directors, the College, and MCPS to obtain the data and information needed. For College and MCPS projects, I will send each agency head a separate memorandum. For reporting purposes, we anticipate issuing a separate report for each project category examined.

Charles Becker, Assistant Inspector General, is the manager for this audit. He will update you periodically as the audit progresses, and we will inform you of any significant findings in a timely manner.

Re: #0027

cc: Council Members



May 2007



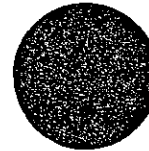
**MONTGOMERY COUNTY PLANNING BOARD**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**OFFICE OF THE CHAIRMAN**

May 18, 2007

Honorable Marilyn Praisner  
President  
Montgomery County Council  
100 Maryland Avenue  
Rockville, MD 20850

028624



Re: Clarksburg Development Districts

Dear President Praisner:

In your March 22, 2007 letter to the Planning Director, you asked whether the Clarksburg Town Center Advisory Committee ("CTCAC") report, *Clarksburg Development Districts - The Illegitimate Transfer of Private Financial Obligations to the Public*, accurately reflected the role of the Planning Board in the development districts, and for any other comments that might assist the Council in analyzing the CTCAC report. The Planning Board is pleased to provide this response.

2007 MAY 21 AM 11:22

RECEIVED  
MONTGOMERY COUNTY  
COUNCIL

In order to respond to your letter, and so that we could better understand the issues raised in the CTCAC report, the Board's staff compiled documents related to the Board's review of the proposed development districts under Chapter 14-7 of the Code. We have received several inquiries from other arms of County government for documents related to the establishment of the Clarksburg development districts, and in response to those requests, have made available the compiled documents.

Based on the documents our staff has reviewed, it is clear that development districts were considered to be a possible source of infrastructure financing from the time of the Clarksburg Master Plan, but that the extent to which the development districts would be used to fund required infrastructure remained unclear until the time that the Board performed adequate public facilities ("APF") review for the proposed development districts. In performing its APF review under Chapter 14-7, the Board recognized that the development districts might be used to finance infrastructure that developers were required to provide to meet APF requirements. But the Board viewed itself as having a limited role under Chapter 14. And though it discussed some policy implications of the development districts at its public hearings, the Board did not take a position on policy issues related to the development districts.

### **The Master Plan**

The Clarksburg Master Plan, which was adopted in June 1994, contains a separate section on "Development Districts or Similar Alternative Financing Mechanisms." It states:

Development District enabling legislation was passed by the State legislature in 1994. Separate enabling legislation at the local level is currently under review by the County Council.

A development district can briefly be described as a special taxing district that has the authority to finance public infrastructure improvements needed to support land development by issuing tax-exempt bonds and/or collecting special assessments, special taxes, or tax increments within the district. Property owners would initiate development district formation and make a commitment to finance costs in excess of County expenditures for the infrastructure needed to meet all adequate public facility requirements in the proposed district. The determination of adequate public facilities for a development district would be made by the Planning Board and County Council.

According to the enabling legislation currently under review by the County Council, development districts would largely consist of undeveloped or underdeveloped land. Development districts could potentially fund such infrastructure improvements as schools, police and fire stations, sewer and water systems, roads, transit facilities, parks, and recreation facilities. They are not intended, however, as a financing mechanism for infrastructure improvements that are considered the responsibility of a single developer under the Planning Board's site plan and adequate public facilities requirements.

Development districts are viewed as a valuable tool for providing joint public/private financing of public infrastructure required by new development in largely undeveloped areas.

Clarksburg Master Plan at pp. 204-205.

The Master Plan's discussion of development districts, which was based on recently passed State law and draft County legislation, seems to reflect, on the one hand, an expectation that development districts might be used to "finance costs in excess of County expenditures for the infrastructure needed to meet all adequate public facility requirements in

the proposed district.” But, on the other hand, it also reflects an expectation that development districts would not be used “as a financing mechanism for infrastructure improvements that are considered the responsibility of a single developer under the Planning Board’s site plan and adequate public facilities requirements.”

### **Preliminary and Site Plan Requirements**

At the time preliminary and site plans were reviewed for the Clarksburg Town Center, Clarksburg Village, and Greenway Village, as at the time of Master Plan, the Board knew that development districts were a potential infrastructure-funding source. But because certain of the development districts had not been proposed (let alone finalized), the Board did not know what, if any, facilities would be approved for inclusion in a development district.

For example, the Board’s order approving the Clarksburg Town Center contemplated the possibility that a development district might be used to finance unspecified infrastructure. The approval was conditioned on the provision by the developer of those facilities required to meet the APF tests then in force. These included not only projects that primarily served the development but also others that, while necessary for the development to proceed, were designed at a size sufficient to serve other users. Some projects, such as the civic center and library, were not included as part of the APF test.

In its March 26, 1996 order approving the Clarksburg Town Center preliminary plan, the Board noted the absence of a development district, and, therefore, required the developer to provide certain infrastructure projects beyond those strictly required for the Clarksburg Town Center. The Board pointed out that the Master Plan contemplated that the funding for capital improvements would have to come from a variety of sources, including government and private development. It further noted that

the Master Plan recommended that development in Clarksburg should occur in stages conditioned on the ability of private developers to fund a significant portion of the infrastructure improvements or the availability of other sources of revenues.

Finding that the estimated funding gap was approximately \$126 million, the Board accepted the staff’s estimate that the applicant’s share of the deficit was about 10 percent of the total, and made the improvement of Stringtown Road the responsibility of the applicant as representing the Town Center’s approximate share of the Master Plan road infrastructure.

The Board suggested that this contribution might be reevaluated if and when another funding mechanism was adopted, but concluded that “the infrastructure schemes proposed by the Master Plan are legislative in nature and will be determined by the Council, and may or may not grandfather development predating such legislation,” and “to anticipate the Council’s actions would be presumptive, and premature.” *Id.*

### **Review of Proposed Development Districts under Chapter 14-7**

The applications for APF approval of the Clarksburg Town Center, Clarksburg Village, and Greenway Village development districts, and the staff reports analyzing those applications, made clear that the developers sought to use the development districts to pay for the infrastructure needed to meet their APF requirements. The Board reviewed the proposed development districts to determine whether the facilities proposed by the applicant for inclusion in the districts served a regional purpose and met each development's APF requirements. The Board also discussed the issue of whether the facilities met Chapter 14-3(g)(2)'s definition of "infrastructure improvement," and questioned whether, absent a change in that definition, any of the facilities that were required to meet the applicant's APF requirements would qualify for inclusion in a development district.

In a March 22, 2001 letter to then-Council President Ewing reporting on the Board's findings with respect to the proposed Clarksburg Town Center development district, then-Chairman Hussmann transmitted the Board's recommendation that facilities included in the development district be limited to those that would serve "the regional area, not just the residents of a single development." Because the developer's application for adequate public facilities approval under Chapter 14-7 included improvements that it was required to provide under preliminary and site plan approvals, the Board also questioned whether the facilities that the developer was required to provide to meet APF and site plan requirements qualified for inclusion in the development district. Thus, the Board conditioned its "approval" of the development district on the amendment of

Chapter 14-3(g)(2), if necessary, to allow improvements to be the responsibility of a single developer so long as the proposed improvements serve a greater public benefit than a single development.

The Chairman's letter did not elaborate on this condition, but attached the staff memorandum, which was less qualified in recommending that it would be necessary for Chapter 14 to be amended to allow a single developer to be reimbursed for facilities that it was solely responsible for providing under APF or site plan requirements. It appears that the Board added the "if necessary" language to the less qualified language proposed by its staff based upon the assertion by the developer's representatives that the Board did not have the authority to condition its "approval" of the Clarksburg Town Center development district on the amendment of the law, and more generally in deference to the Council's role as the body responsible for ultimately determining what facilities could be included the development districts. Chairman Hussmann's letter concluded by saying that "[t]he Planning Board is pleased that development in the Town Center is going forward as the Master Plan envisioned."

Honorable Marilyn Praisner  
May 18, 2007  
Page 5 of 6

The Board raised similar issues in reviewing the proposed Clarksburg Village and Greenway Village development districts. In a March 15, 2002 letter to then-Council President Silverman, then-Chairman Holmes reported the Board's unanimous approval of the applications for those districts. The letter reflects that the Board was concerned about whether certain of the facilities proposed for inclusion in the development district complied with Chapter 14-3(g)(2), but that it viewed itself as having a limited role in answering that question:

The Planning Board also discussed at some length the issue of whether the proposed development plans complied with the legislation's statute 14-3(g)(2). The issue is whether or not a single developer can utilize public financing through a development district for the sole purpose of financing their adequate public facilities requirement for a single development. Our legal counsel has advised that the proposed development districts do not appear to comply with this statute. It is not the Planning Board's role as defined in Chapter 14 to make a finding on compliance with this legislation; therefore we are raising this as an issue for the Council to resolve in reviewing the applications.

Chairman Holmes's letter concluded by saying that "[t]he Planning Board is pleased that development in Clarksburg is proceeding as the Master Plan envisioned and that so much of the infrastructure and facilities are supplied by the private sector and other innovative financing mechanisms."

#### **Legal and Policy Considerations**

The CTCAC report argues that the reimbursement of developers, through a development district tax on residents, for facilities they were required to provide as a condition of subdivision or site plan approval usurps the Board's authority under the subdivision regulations and under the Regional District Act to administer those regulations. Because the Board does not generally consider who will fund dedications or improvements required under a preliminary or site plan – rather, the Board simply requires that the applicant provide the improvements without regard to the funding source – the Board disagrees. But there is at least one important exception to this general rule. In considering a violation compliance program, the Board is well within its authority to require that a developer, and not the residents of the subdivision, assume the costs for any facilities or amenities it agrees to produce in lieu of a fine or other penalties.

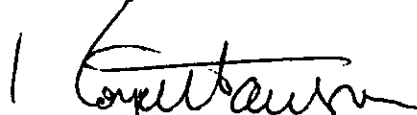
Whether reimbursing a developer through a development district for facilities that a single developer is obligated to provide under preliminary or site plan approvals makes good policy is another question. The Board does not think so.

The concept of development districts is not well suited to single-developer projects. Development districts are intended to facilitate the provision of infrastructure projects that benefit a larger community, and which, because of their scale or function, can rarely be provided (or even required) of a single developer. Such infrastructure should be provided, if feasible, through the cooperation of several developers, or through a fee or tax levied on the users or all property owners in the community that enjoys them. To levy a district tax on a single subdivision to pay for a facility that benefits a much wider community is difficult to defend as equitable. Similarly, it may be inequitable to require a developer to underwrite the full cost of a regional facility far larger than needed to meet the requirements of the subdivision(s) it is building. If a development district is to be used to finance infrastructure in Clarksburg, it would make the most sense to have a single district covering the entire planning area and to allocate costs for special or area-wide facilities across the entire area, with the exception of those facilities that are the result of a proffer associated with subdivision approval or associated with a compliance action.

The Board does not think there is a significant reason to be concerned that developers may have relied on development district financing to make their projects financially viable. This Board touched upon this issue during the March 2001 public hearing on the Clarksburg Town Center development district in an exchange about whether homes within the district would be sold at reduced prices. Then-Chairman Hussmann commented that the development district financing mechanism appeared to be a "pretty good deal" for the developer. The Town Center's representatives responded that the development district would also provide benefits for residents. But Chairman Hussmann expressed skepticism about whether the infrastructure costs would be subtracted from the home prices. Rather, he argued, the developers would sell the homes for what the market would bear. This concern appears to have been shared by County Executive Duncan, who commented in his October 17, 2002 memorandum to the Council regarding the creation of the Clarksburg Town Center development district that there was no concrete evidence that homes in the County's development districts were being sold at lower prices than those outside the districts.

The Board hopes that these comments will assist the Council in its review of the issues raised in the CTCAC report.

Sincerely,



Royce Hanson  
Chairman



**MONTGOMERY COUNTY PLANNING BOARD**  
 THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**OFFICE OF THE CHAIRMAN**

May 18, 2007

RECEIVED  
 MONTGOMERY COUNTY  
 COUNCIL  
 2007 MAY 24 AM 9:10

Honorable Marilyn Praisner  
 President  
 Montgomery County Council  
 100 Maryland Avenue  
 Rockville, MD 20850

Re: Clarksburg Development Districts

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In order to respond to your letter, and so that we could better understand the issues raised in the CTCAC report, the Board’s staff compiled documents related to the Board’s review of the proposed development districts under Chapter 14-7 of the Code. We have received several inquiries from other arms of County government for documents related to the establishment of the Clarksburg development districts, and in response to those requests, have made available the compiled documents.

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20-7

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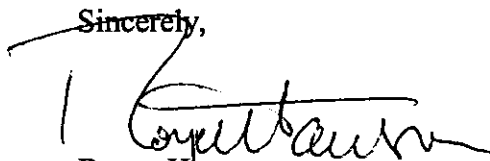
Whether reimbursing a developer through a development district for facilities that a single developer is obligated to provide under preliminary or site plan approvals makes good policy is another question. The Board does not think so.

The concept of development districts is not well suited to single-developer projects. Development districts are intended to facilitate the provision of infrastructure projects that benefit a larger community, and which, because of their scale or function, can rarely be provided (or even required) of a single developer. Such infrastructure should be provided, if feasible, through the cooperation of several developers, or through a fee or tax levied on the users or all property owners in the community that enjoys them. To levy a district tax on a single subdivision to pay for a facility that benefits a much wider community is difficult to defend as equitable. Similarly, it may be inequitable to require a developer to underwrite the full cost of a regional facility far larger than needed to meet the requirements of the subdivision(s) it is building. If a development district is to be used to finance infrastructure in Clarksburg, it would make the most sense to have a single district covering the entire planning area and to allocate costs for special or area-wide facilities across the entire area, with the exception of those facilities that are the result of a proffer associated with subdivision approval or associated with a compliance action.

The Board does not think there is a significant reason to be concerned that developers may have relied on development district financing to make their projects financially viable. This Board touched upon this issue during the March 2001 public hearing on the Clarksburg Town Center development district in an exchange about whether homes within the district would be sold at reduced prices. Then-Chairman Hussmann commented that the development district financing mechanism appeared to be a "pretty good deal" for the developer. The Town Center's representatives responded that the development district would also provide benefits for residents. But Chairman Hussmann expressed skepticism about whether the infrastructure costs would be subtracted from the home prices. Rather, he argued, the developers would sell the homes for what the market would bear. This concern appears to have been shared by County Executive Duncan, who commented in his October 17, 2002 memorandum to the Council regarding the creation of the Clarksburg Town Center development district that there was no concrete evidence that homes in the County's development districts were being sold at lower prices than those outside the districts.

The Board hopes that these comments will assist the Council in its review of the issues raised in the CTCAC report.

Sincerely,



Royce Hanson  
Chairman



## OFFICE OF THE COUNTY ATTORNEY

Isiah Leggett  
County Executive

Leon Rodriguez  
County Attorney

**MEMORANDUM**

July 26, 2007

TO: Isiah Leggett  
County Executive

Marilyn J. Praisner, President  
Montgomery County Council

VIA: Leon Rodriguez  
County Attorney

Marc P. Hansen  
Deputy County Attorney

FROM: Clifford L. Royalty  
Chief, Division of Zoning, Land Use, & Economic Development

RE: *Development Districts*

By letters to the Chief Administrative Officer and the County Executive, dated March 16, 2007, and March 20, 2007, respectively, the Clarksburg Town Center Advisory Committee, Inc. ("CTCAC"), and its counsel questioned the legality of the establishment and implementation of the Clarksburg Town Center development district ("the development district"). Attached to the letters is a ninety-eight page CTCAC report (titled "Clarksburg Development Districts – The Illegitimate Transfer of Private Financial Obligations to the Public") that synthesizes CTCAC's allegations. You have asked that we respond to the legal issues raised in the CTCAC report.<sup>1</sup>

<sup>1</sup> This memorandum does not undertake a policy analysis concerning the desirability or fairness of implementing a development district in Clarksburg or elsewhere.

The CTCAC report can be distilled to a concise list of legal issues that are described (though cryptically) in the March 16, 2007, letter from CTCAC's counsel and in a summary included with the report. Those issues are:

1. Whether the Clarksburg Master Plan and Hyattstown Special Study Area ("Clarksburg Master Plan") requires the creation of the development district to precede preliminary plan approval;
2. Whether Chapter 14 of the Montgomery County Code requires the creation of the development district to precede preliminary plan approval;
3. Whether the financing of infrastructure by the development district is inconsistent with the Regional District Act, the County's subdivision regulations, and the County's zoning ordinance;<sup>2</sup>
4. Whether the development district will finance the construction of infrastructure that is not an allowable "infrastructure improvement" within the meaning of Chapter 14;
5. Whether the County Executive may recommend that additional infrastructure be financed by the development district;
6. Whether the resolution creating the development district is invalid because the residents of the Clarksburg Town Center were not properly notified of the public hearing on that resolution;
7. Whether the procedures followed to obtain property owner approval of the development district complied with Chapter 20A of the Montgomery County Code.

#### **Summary of Response**

In addressing each issue, we will follow the above chronology.

As to Issue No. 1, we conclude that the Clarksburg Master Plan does not, and cannot, dictate the timing of the creation of the development district.

As to Issue No. 2, we conclude that Chapter 14 does not require the creation of the development district to precede preliminary plan approval.

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<sup>2</sup> The Regional District Act is codified at Article 28 of the Annotated Code of Maryland. The County's subdivision regulations and zoning ordinance are codified at Chapters 50 and 59, respectively, of the Montgomery County Code.

As to Issue No. 3, we conclude that the infrastructure financing methodology is not inconsistent with the Regional District Act or County law.

As to Issue No. 4, we tentatively conclude that the infrastructure (or improvements) proposed to be financed by the development district meets the definition of "infrastructure improvement" in Chapter 14.

As to Issue No. 5, we conclude that the County Executive is not precluded from recommending that additional infrastructure be financed through the development district.

As to Issue No. 6, it appears that the residents of Clarksburg Town Center were notified of the public hearing on the resolution creating the development district. Even if the notice was imperfect, we conclude that the Town Center residents are barred from asserting a claim as a consequence.

As to Issue No. 7, we conclude that the requirement for property owner approval was met and that Chapter 20A is a nullity.

### Background

The living history of Clarksburg is neither abbreviated, nor easily summarized. Because the purposes of our analysis are not furthered by recounting that history, we do not address it here.<sup>3</sup> The pertinent starting point for this analysis is Chapter 14 of the Montgomery County Code which is titled the "Montgomery County Development District Act." As its title implies, Chapter 14 ("the Chapter") is the legal apparatus upon which the development district was constructed. One of the express purposes of Chapter 14 is to:

authorize the County to provide financing, refinancing or reimbursement for the cost of infrastructure improvements necessary for the development of land in areas of the County of high priority for new development or redevelopment by creating development districts in which special assessments, special taxes, or both, may be levied.

§ 14-2(a)(1).<sup>4</sup>

The Chapter allows for the "issuance of bonds or other obligations of the County that

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<sup>3</sup> The chronology of the Clarksburg development is amply discussed in the Office of Legislative Oversight's Report Number 2006-3, "Fact-Finding Review of the Clarksburg Town Center Project."

<sup>4</sup> Unless otherwise indicated, section references are to the Montgomery County Code (2004), as amended.

are payable from special assessments or special taxes collected, or tax increments created, in a development district.” § 14-2(a)(2). The Chapter observes that development districts “would be especially useful . . . where . . . an approved master plan recommends significant development in a specific area of the County” and where “extensive and long-term” infrastructure is needed. § 14-2(b). The consequential phrase “infrastructure improvement” is defined to include:

a school, police station, fire station, library, civic or government center, storm drainage system, sewer, water system, road, bridge, culvert, tunnel, street, transit facility or system, sidewalk, lighting, park, recreational facility, or any similar public facility, and the land where it is or will be located.

§ 14-3(g)(1).

However, “infrastructure improvement” does not include an improvement that:

primarily serves the residents or occupants of only one development or subdivision; or

is the responsibility of a single developer under the Planning Board’s site plan and adequate public facilities requirements.

§ 14-3(g)(1) and (2).

Under Chapter 14, the creation of a development district can be initiated by filing with the Council a petition “signed by at least 80 percent of the owners of real property and the owners of at least 80 percent in value of the real property . . . located in a proposed development district . . .” § 14-6(a). After holding an advertised public hearing on the petition, the Council, “by resolution approved by the Executive, may declare its intent to establish a development district consisting of a specified geographic area.” § 14-6(c). For the purposes of this First Resolution, “a single owner of multiple parcels must be treated as one owner.” § 14-6(e). Once the First Resolution is adopted, “one or more owners of land located in the proposed district may submit an application for provisional adequate public facilities approval, covering the entire proposed district, to the Planning Board.” § 14-7(a). The application must “explain how each development proposed in the district” will comply with the law, “identify an infrastructure improvement necessary to satisfy the Growth Policy’s adequate public facilities requirements for a development district,” and “estimate the cost to provide each such improvement.” § 14-7(a)(1)(2) and (3). The Planning Board must then “jointly review for compliance with Section 50-35(k)<sup>5</sup> and the Growth Policy all developments located in the proposed district as if they were one development.” § 14-7(b). The Board “may conditionally approve an application if it finds that the proposed district will meet all requirements under Section 50-35(k) and any added

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<sup>5</sup> Section 50-35(k) of the County Code is known as the “adequate public facilities ordinance.”



requirements which apply to a district under the Growth Policy.” § 14-7(b). Chapter 14 further provides that:

[i]n the aggregate, the applications approved must commit the applicants to produce (through the funding of the proposed development district or otherwise) the infrastructure improvements needed to meet the applicants’ adequate public facility requirements in the proposed district and any added requirements which apply to an applicant under the Growth Policy.

§ 14-7(c).

After the development district is created, “and the financing of all required infrastructure improvements is arranged, any development located in the district” is deemed to have satisfied all public facilities requirements. § 14-7(e).

Once the Planning Board has acted, the County Executive must then submit a report “estimating . . . the cost of each infrastructure improvement listed by the Planning Board,” the “amount of revenue needed to cover the district’s share of infrastructure improvements funded, fully or partly, by a district,” and “the estimated tax rate for each form of taxation available to the district . . .” § 14-8(a)(1) and (2). In its report, the Executive “should also recommend whether to create a district, its boundaries if one is created, which infrastructure improvements listed by the Planning Board the district should fully or partly fund, and alternative financing or revenue-raising measures.” § 14-8(b).

The development district process then makes its way to the final phase which begins with a public hearing before the Council on a “final resolution” (also known as the “Second Resolution”) to “create” a development district. § 14-9(a). The Council must give notice of the hearing through an “advertisement in at least two newspapers of general circulation in the County . . .” and by “notifying by mail the record owner of each property located in the proposed district at the address shown on the latest tax assessment roll.” § 14-9(b)(1)(A) and (B). If the Council “intends to use special obligation debt to finance the district and the district was initiated by the Council” (as opposed to a property owner), before adopting the final resolution, the Council “must receive a petition signed by at least 80 percent of the owners of real property and the owners of at least 80 percent in value of the real property, as shown on the latest assessments rolls, located in the proposed district.” § 14-9(c). After the aforementioned public hearing, the Council may then create the development district “by resolution approved by the County Executive.” § 14-9(d).

The final (or “Second”) resolution must:

define the development district by specifying its boundaries and listing the tax account

number of each property in the district;

list each infrastructure improvement that will be financed by the development district, the estimated completion date and cost of that improvement, and the share of that cost which the County or another government agency will pay;

create, and specify the amount or percentage of, a contingency account for unexpected cost overruns; and

create a special fund for the development district.

*§ 14-9(e)(1)-(4).*

The final resolution must also:

authorize the imposition of a special assessment, special tax, fee, or charge, or any combination of them, in the development district at a rate designed to provide adequate revenues to pay the principal of, interest on, and redemption premium, if any, on the bonds and to replenish the debt service reserve fund, or create a special fund under the Tax Increment Financing Act.

*§ 14-10(a).*

All proceeds received from any bonds issued must be applied solely towards:

costs of the infrastructure improvements listed in the resolution adopted under Section 14-9(d)(2);

costs of issuing bonds; and

payment of the principal and interest on loans, money advances, or indebtedness incurred by the County for any purpose stated in this Chapter.

*§ 14-12(d)(1)-(3).*

Like the Clarksburg development as a whole, the development district has its own complex history. Before the bill that would become Chapter 14 was introduced by the County Council, the County's bond counsel opined, in a letter dated October 2, 1992, that the County lacked the authority to issue the bonds contemplated by the future Chapter 14. Bond counsel reasoned that the Express Powers Act does not authorize the County to issue such "special obligation bonds," i.e. bonds that will be paid for from taxes or fees collected within a

development district. Bond counsel concluded that:

the County does not have the power to issue bonds or other obligations payable from the special assessments or taxes collected in development districts to be created under the Proposed Legislation. A specific grant of power from the Maryland General Assembly is required to issue bonds or other obligations payable from such assessments or taxes.

(Correspondence dated October 2, 1992, from "Smith, Somerville & Case" to then County Attorney Joyce Reuben Stern, p. 3).<sup>6</sup>

That "specific grant of power" came in the form of House Bill 895 which the General Assembly enacted and which the County codified as Chapter 20A of the Montgomery County Code. The core purpose of Chapter 20A is to authorize the County to issue "bonds or other obligations to finance the costs of public infrastructure for a development district for which the principal, interest, and any premium shall be paid from" taxes, fees, and charges collected in the district. § 20A-1(b). Of particular relevance to CTCAC's allegations is Section 20A(f)(2) which states:

A new development district may not be created to finance special obligation debt under this section unless the proposed action is approved by:

at least 80% of the owners of the real property located within the proposed development district, treating multiple owners of a single parcel as one owner and treating a single owner of multiple parcels as one owner; and

the owners of at least 80% of the assessed valuation of the real property located within the proposed development district.

§ 20A-1(f)(2).

After Chapter 20A and Chapter 14 were enacted, the County proceeded with the creation of the development district, beginning with the "First Resolution" required by Chapter 14. (See Resolution No. 14-648).

### Discussion

#### 1. The Clarksburg Master Plan Does Not Control the Sequence of Development in Clarksburg

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<sup>6</sup> The letter opinion is literally signed "Smith, Somerville & Case."

In his March 16, 2007, letter, counsel for CTCAC states that, “[u]nder the Clarksburg Master Plan, creation of development districts . . . must precede, not follow, preliminary plan approval . . . .” Neither counsel for CTCAC, nor CTCAC, cites specific language in the Clarksburg Master Plan that supports that conclusion. CTCAC notes that the Master Plan recommends that each stage of development be initiated when “either . . . State and County enabling legislation for development districts or alternative financing mechanisms are in place.” (See CTCAC report, p. 32; Clarksburg Master Plan, pp. 192-193). Either of these triggers is sufficient under the Master Plan to allow the development to proceed. As is noted above, the first trigger, i.e. enabling legislation, was actuated.

Moreover, CTCAC places its comments regarding the Master Plan under the rubric “Master Plan Legal Requirements.” (See, e.g., CTCAC report, p. 28). Both the rubric and the conclusion of CTCAC’s counsel illustrate a more fundamental difficulty with CTCAC’s claim; the Clarksburg Master Plan, like all master plans, *recommends*, it does not *require*. See *West Montgomery County Citizens Association v. Maryland-National Capital Park and Planning Commission*, 309 Md. 183, 196, 522 A.2d 1328, 1334 (1987). The phrase “Master Plan Legal Requirements” is an oxymoron. The Master Plan does not, and cannot, require the development district to precede preliminary plan approval.

Insofar as CTCAC argues that the Master Plan recommendation is elevated to a legal requirement by virtue of § 50-35(l) (which requires that a preliminary plan “substantially conform to the applicable master plan”), CTCAC misses the mark. A preliminary plan may reference the development district, but it does not determine when, or if, a development district will be created. Chapter 14 governs the creation of a development district. And § 50-35(l) requires only “substantial,” not total, compliance with a master plan. Even if § 50-35(l) operated in the manner hypothetically suggested by CTCAC, a preliminary plan could, legally, vary from the master plan.

## 2. Chapter 14 Does Not Require the Development District to Precede Preliminary Plan Approval

CTCAC, though not its counsel, attempts to garner support from Chapter 14 for its argument that the development district must precede preliminary plan approval. The CTCAC report cites to § 14-7(b) which allows the Planning Board to “conditionally approve” an application for adequate public facilities review “if it finds that the proposed district will meet all requirements under Section 50-35(k) and any added requirements which apply to a district under the Growth Policy.” (CTCAC report, p. 47). CTCAC claims that “[r]eview for provisional approval, and actions under § 14-7(b), would be superfluous if subdivision approval had already been obtained under Chapter 50.” (CTCAC report, p. 47). But that is not so. The language that CTCAC quotes is removed from its context. Section 14-7(b) states that, in determining compliance with § 50-35(k) of the subdivision regulations and “the Growth Policy,” the Planning Board must review “all developments in the proposed district as if they were one development.”

The Planning Board is thus charged with reviewing the development district as a whole; some developments within the district (or portions of the district) may have obtained preliminary plan approval, while others may have not.<sup>7</sup> CTCAC also ignores § 14-2(a)(1) which expressly allows for the “reimbursement” of the costs incurred to provide infrastructure that has presumably been approved by the Planning Board. The term “reimbursement” obviously contemplates that the infrastructure was built before the development district was created.

More importantly, whatever underlying intent can be derived from Chapter 14, it is undisputed that the statute does not expressly require the development district to precede preliminary plan approval. Nor does the statute expressly preclude the preliminary plan approval from preceding the development district. By their actions, it is apparent that the County and the Planning Board have interpreted the law as allowing for the development district to follow plan review. Such an “administrative construction” of the law is compelling evidence of legislative intent. *Lussier v. Maryland Racing Commission*, 343 Md. 681, 684 A.2d 804 (1996).

There is no doubt that certain provisions of Chapter 14 impliedly assume that the development district will be created before construction begins. *See, e.g., §§ 14-5(c) and 14-16(b)*. But the plain language of Chapter 14 and the implementation of the Chapter lend no support to CTCAC’s claim that Chapter 14 *requires* the development district to come first. *See Sinai Hospital v. Department of Employment*, 309 Md. 28, 46, 522 A.2d 382, 381 (1987) (long standing administrative construction of a statute coupled with legislative acquiescence in that interpretation “gives rise to a strong presumption that the interpretation is correct.”)

### 3. The Infrastructure Financing Methodology is Not Inconsistent with State or County Law

As best we can glean from the documents that we have gathered, the Planning Board, pursuant to Chapter 14, recommended that the following improvements be funded by the development district:

1. All roadway improvements that are required to meet Adequate Public Facilities (Clarksburg Road, Stringtown Road, and Piedmont Road).
2. The 20-inch water main.
3. Acquisition of Rights of Ways for regional roadways.
4. The proposed Civic Building.
5. Street Construction – Part of Main Street from MD 355 to Public Street K and

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<sup>7</sup> Indeed, the Clarksburg Town Center development is proceeding in phases, each with its own site plan approval.

Public Street K (the Greenway Road).

6. Redgrave Place Connection to Main Street.
7. Regional Greenway Trail through public park.
8. MD 355 Intersection Improvements including intersection with Stringtown Road.

(Correspondence dated March 22, 2001, from William Hussman to Douglas M. Duncan).

Pursuant to § 14-8, as part of his fiscal report, the County Executive recommended the following modified "primary list" of improvements to be funded by the development:

1. Civic Center/Library.
2. Stringtown Road 800' Gap.
3. Stringtown Road (MD 355 – I270).
4. Stringtown Road (MD 355-Piedmont Road).
5. Piedmont Road.
6. Lowering MD 355 at Stringtown Rd.
7. Clarksburg Road:  
MD 355 to Town Cntr bdry  
Twn Ctr bdry to Piedmnt Road.
8. WSSC 20" Water Main.

("Clarksburg Town Center Development – County Executive's Fiscal Report," Table D).

The Executive also identified additional projects that could be funded by the development district if certain savings are realized. ("Clarksburg Town Center Development – County Executive's Fiscal Report," Table D). Through the Second Resolution, the Council approved for development district funding all of the improvements identified by the Executive in the "primary list." (Resolution No. 15-87, Exhibit C). The Council also added "Greenway trails" to that list. (Resolution No. 15-87, Exhibit C).

CTCAC argues that the financing of infrastructure through a development district is

precluded by the County's subdivision regulations and zoning ordinance. Offering little in the way of analysis, CTCAC states, repeatedly, that it would be "inconsistent with" the subdivision approvals "for a developer to later be reimbursed" for meeting the subdivision obligations imposed by the Planning Board.<sup>8</sup> (CTCAC report, p. 9, *et seq.*). CTCAC asserts a similar claim as to zoning approvals. (CTCAC report, p. 16). The CTCAC report implies that infrastructure that the developer was required to build as a condition of receiving preliminary plan and site plan approval cannot be funded by the development district.

In support of its argument, CTCAC alleges that the items on the Council-approved infrastructure list, excepting the "Civic Center," were required by the Planning Board to be provided as a condition of subdivision and site plan approval. (See, e.g., CTCAC report, pp. 76 and 83). That allegation appears to be untrue. According to the County Executive's fiscal report, in addition to the Civic Center, the Planning Board did not require the developer to construct, as a condition of preliminary plan approval, the "Stringtown Road 800' gap," Stringtown Road extended, Clarksburg Road from MD 355 to the Town Center boundary, and the WSSC 20" water main. (See "Clarksburg Town Center Development – County Executive's Fiscal Report," Table D). The remaining improvements (Item Nos. 4, 5, 6, and part of 7 from the above "primary list") do appear to have been required by the Planning Board as a condition of preliminary or site plan approval.<sup>9</sup> CTCAC seems to argue that infrastructure that a developer is obligated by the Planning Board to provide cannot be funded by the development district. (See CTCAC Report, p. 76). But the law does not so state and the legislative history reflects no such intent.

Neither Chapter 50 (the subdivision regulations), nor Chapter 59 (the zoning ordinance) govern the sources of funding for infrastructure. Chapter 50 creates a process for subdividing property and ensuring that infrastructure will be built to support any concomitant development. Chapter 50 generally requires that public facilities and improvements be constructed to support development. Certain provisions of Chapter 50 may require a developer to construct, provide, or, more often, dedicate certain facilities. *See, e.g., §§ 50-24(b) and (c) and 50-30(c)(1)*. But Chapter 50 does not govern the ultimate source of funding for that infrastructure, nor does it

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<sup>8</sup> In his March 16, 2007, letter, CTCAC's counsel frames the issue more narrowly and does not explicitly claim that reimbursement is prohibited. Also, CTCAC's counsel references an inconsistency between Chapter 14 and the Regional District Act only insofar as the Planning Board performs subdivision review under the Regional District Act. Therefore, we need not discuss the Regional District Act separately; that discussion is subsumed within the Chapter 50 discussion.

<sup>9</sup> Without more information from the Planning Board, we are unable to definitively determine what infrastructure the Planning Board required through subdivision and zoning review and what portion of that infrastructure is assignable to the different methods of review.

preclude the County, or a development district, from funding the infrastructure.<sup>10</sup> Likewise, Chapter 59 regulates the use of property, not the funding of infrastructure. Chapters 50 and 59 simply do not address infrastructure funding. Through Chapter 50 (and apparently Chapter 59), the Planning Board requires the dedication and provision of land and infrastructure as a condition of its land use approvals. But Chapters 50 and 59 do not prevent (or authorize the Planning Board to prevent) the County from funding that infrastructure through a development district or otherwise.

Chapter 14 clearly serves a different purpose than Chapters 50 and 59. Unlike those chapters, Chapter 14 is a funding vehicle; it is a mechanism for funding infrastructure.<sup>11</sup> And, insofar as Chapter 50 or 59 can be read to govern infrastructure funding, they have been amended by Chapter 14 which expressly states that it was intended to “supplement” not “restrict” the County’s “power.” § 14-18 (b); *see Haub v. Montgomery County, Maryland*, 353 Md. 448, 727 A.2d 369 (1999) (to the extent the provisions of two statutes cannot be harmonized the provisions of the most recently enacted statute govern).

Moreover, CTCAC’s implied interpretation of Chapters 50 and 59 would create a conflict with Chapter 14. As has been noted, Chapter 14 expressly acknowledges that “infrastructure improvements needed to meet the applicants’ adequate public facility requirements in the district” may be funded by the “proposed development district or otherwise.” § 14-7(c). Chapter 14’s definition of “Adequate Public Facility” includes “infrastructure improvement,” which, in turn, is defined to include facilities (like roads) that would typically be required through the County’s adequate public facilities ordinance. Chapter 14 also provides that, if a developer “withdraws a development before the district is created,” the developer’s “provisional adequate public facility approval is cancelled.” § 14-7(d). This provision is meaningful only if the development district is a source of funding for the facilities to be constructed pursuant to the “adequate public facility approval.”

Chapter 14’s legislative history offers additional interpretative guidance. Admittedly, that legislative history, when shorn of its context, is rife with ambiguities. However, it is evident

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<sup>10</sup> In its preliminary plan approval, the Planning Board obliquely expresses a desire to “ensure” that the developer “fund its share of road infrastructure . . .” (Planning Board Opinion, Preliminary Plan 1-95042, p. 2). Whatever its meaning, this reference is not reflective of the law or of any legal impediment to the funding of infrastructure through a development district. Indeed, the Planning Board acknowledges that it “does not generally consider who will fund dedications or improvements required under a preliminary or site plan . . .” (See Correspondence dated May 18, 2007, from Royce Hanson to Marilyn Praisner, p. 5).

<sup>11</sup> For example, Chapter 14 expressly authorizes the County to “provide . . . reimbursement for the cost of infrastructure.” § 14-2(a)(1).



from the memoranda drafted by Council staff and the tenor of the discussions at the Council's MFP committee that the Council understood that the development districts could, potentially, fund any public infrastructure. For example, according to the minutes of its March 22, 1993 worksession, the MFP Committee "[s]upported the concept of providing the authority to create development districts as a mechanism to fund public infrastructure." (p. 2, circle 85). That statement, and the discussions that flow therefrom, reflect no intent to exempt from "public infrastructure" facilities that the Planning Board requires a developer to construct. Likewise, Council staff reported that an "ad hoc working group" had recommended "an amendment to the Annual Growth Policy to specify what kinds of infrastructure improvements, in addition to those required to comply with the APFO, a development district should finance in whole or part." (See the Memorandum dated June 21, 1994, from Michael Faden to the County Council, p. 8). This statement, and the discussion within which it is contained, reflects a collective understanding that a development district could fund, at a minimum, infrastructure that the Planning Board required through its review under the adequate public facilities ordinance ("APFO"). An amendment to the Annual Growth Policy was considered to ensure that the development district could fund more than just the APFO facilities. Indeed, the Annual Growth Policy itself acknowledges that "APF" infrastructure may be funded through a development district. (See, e.g., Resolution No. 13-216, Approval of FY 96 Annual Growth Policy, pp. 21-23; 2003-5 Annual Growth Policy – Policy Element, pp. 5-7).

In a recent letter, CTCAC's counsel has elaborated upon the arguments contained in the CTCAC report. (See correspondence dated June 5, 2007, from David W. Brown to Leon Rodriguez, *et al.*). According to CTCAC's counsel, "CTCAC has never claimed that Development Districts cannot be utilized to pay for infrastructure improvements deemed by the Board necessary to satisfy adequate public facilities requirements . . ." though counsel concomitantly suggests that it "should be considered inappropriate" for a development district to fund "infrastructure that the Planning Board has decreed be funded by the developer . . ." (Correspondence dated June 5, 2007, from David W. Brown to Leon Rodriguez, *et al.*, pp. 7, and 10). Counsel does not explain how, or by what authority, such a Planning Board "decree" would preclude the development district from funding infrastructure required of a developer. And counsel's characterization of the Planning Board approval process illuminates the flaws in CTCAC's logic. As expressed by its counsel in the June 5 letter, CTCAC contends that, with respect to the Clarksburg Town Center, the Planning Board "imposed funding obligations" on the developer "that the developer accepted . . . in exchange for development approval." (Correspondence dated June 5, 2007, from David W. Brown to Leon Rodriguez, *et al.*, p. 8). Apparently, CTCAC's theory is that, by accepting the "funding obligations" allegedly imposed by the Planning Board, the developer "waived" any claim that the Planning Board should have "ensured that a financing mechanism" (other than, apparently, developer funding) was in place before the developer proceeded with construction. (Correspondence dated June 5, 2007, from David W. Brown to Leon Rodriguez, *et al.*, p. 6). CTCAC's theory has no basis in law or fact. Insofar as the Planning Board could be deemed to have imposed infrastructure "funding obligations" on the developer, there is no legal means by which the Planning Board could

preclude the County from paying for that infrastructure through a development district. The “waiver” of a claim by the developer has no bearing on what the County is authorized to do. Indeed, this issue has been put to rest by the Planning Board which has rejected CTCAC’s argument regarding infrastructure financing. In its May 18, 2007, letter, the Planning Board states:

The CTCAC report argues that the reimbursement of developers, through a development district tax on residents, for facilities they were required to provide as a condition of subdivision or site plan approval usurps the Board’s authority under the subdivision regulations and under the Regional District Act to administer those regulations. Because the Board does not generally consider who will fund dedications or improvements required under a preliminary or site plan – rather the Board simply requires the applicant provide the improvements without regard to the funding source – the Board disagrees.<sup>12</sup>

(Correspondence dated May 18, 2007, from Royce Hanson to Marilyn Praisner, p. 5).

CTCAC’s counsel has somehow convinced himself that the Planning Board “does not disagree” with CTCAC’s analysis. (Correspondence dated June 5, 2007, from David W. Brown to Leon Rodriguez, *et al.*, p. 8). CTCAC’s counsel is wrong. The Planning Board letter could not be plainer in rejecting CTCAC’s argument.

In construing a statute, the goal is to ascertain the intent of the legislative body that enacted the statute. Although the process of interpretation begins with the language of the statute, even the clearest language must be informed by legislative history and the need to avoid illogical results. *Kaczorowski v. Baltimore*, 525 Md. 628 (1987). Moreover, statutes are to be harmonized. *University System of Maryland v. The Baltimore Sun Company*, 381 Md. 79, 847 A.2d 427 (2004). And Chapter 14 itself states that it “must be liberally construed to achieve the purposes” of the development district. § 14-18(a). CTCAC manufactures a conflict in order to generate statutory disharmony. Chapter 14 simply does not conflict with Chapters 50 and 59; not by express language, not by operation, and not by implication. Accordingly, CTCAC’s interpretative gambit must be rejected.

#### 4. The Proposed Improvements May Be Financed by the Development District

In his March 16, 2007, letter, CTCAC’s counsel claims that “the development district as created . . . envisions taxpayer financing of numerous infrastructure items that do not meet the definition of ‘infrastructure improvement’ in Chapter 14 . . . .” Counsel does not specify what

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<sup>12</sup> The Planning Board excepts from its analysis facilities or amenities required through a “violation compliance program.” (Correspondence dated May 18, 2007, from Royce Hanson to Marilyn Praisner, p. 5). Because that exception is irrelevant to our analysis, we need not address it.

infrastructure improvements he is referring to. CTCAC argues, more explicitly, that all infrastructure improvements that are funded by the development district “must be for [the] general benefit,” rather than the “benefit of one development.” (CTCAC Report, p. 87). In support of this argument, CTCAC cites to the cover memorandum attached to the County Executive’s fiscal report and to § 14-3(g)(1) of the County Code. (CTCAC Report, p. 87). CTCAC removes both the memorandum and the law from their proper context.

Regarding the memorandum, CTCAC accurately quotes the Executive’s statement that 47% of the infrastructure costs “on the primary list are for projects that provide general benefit to the Clarksburg community at large.” (CTCAC Report, p. 87; See Memorandum dated October 17, 2002 from Douglas M. Duncan to Steven A. Silverman, p. 3). But that statement was describing or summarizing the fiscal report; the fiscal report states, repeatedly, that 47% of the infrastructure costs “would be for improvements beyond those required by the Planning Board.” (See “Clarksburg Town Center Development – County Executive’s Fiscal Report,” circles 9 and 12). Thus, the fiscal report itself does not state that no general benefit is derived from 53% of the infrastructure costs.

And, regardless of what the Executive intended, the issue that CTCAC raises ultimately derives from the County Code section that CTCAC cites. As is discussed above, Chapter 14 excludes from the definition of “infrastructure improvement” any improvement that “primarily serves the residents or occupants of only one development or subdivision or is the responsibility of a single developer under the Planning Board’s site plan and adequate public facilities requirements.” § 14-3(g)(1) and (2). CTCAC impliedly reads that provision as requiring all development district funded infrastructure to generate a “general benefit.” (CTCAC Report, p. 87). That phrase is not to be found in the law, though it may be descriptive of the Council’s intent in enacting the provision. The core legal issue that CTCAC touches upon is whether the foregoing language truly intends to exempt from development district funding any infrastructure that the Planning Board requires a single developer to provide.<sup>13</sup> On its face, the provision can

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<sup>13</sup> We are aware that the Planning Board has suggested that a single developer district is inconsistent with § 14-3(g)(2) and that an amendment to that section may be necessary. (See March 22, 2001, correspondence from William H. Hussman to Douglas M. Duncan, p. 1; March 5, 2002, correspondence from Arthur Holmes, Jr. to Steven A. Silverman, p. 4). The Planning Board expresses the opinion that development districts are “not well-suited to single-developer projects” because development districts fund infrastructure that benefits “a larger community” and such infrastructure, because of its “scale or function,” cannot be provided by a single developer. (Correspondence dated May 18, 2007, from Royce Hanson to Marilyn Praisner, p. 5). The Planning Board further opines that it would be “inequitable” to require a single developer to “underwrite the full cost of a regional facility . . . .” (Correspondence dated May 18, 2007, from Royce Hanson to Marilyn Praisner, p. 5). The Planning Board’s policy arguments identify no legal impediment to a single-developer district. And the Planning Board’s opinion ignores Chapter 14’s legislative history which acknowledges the possibility of a single-developer district.

be read in that fashion. However, when read in that fashion, the exclusion subverts the purposes of the law. The entire Clarksburg Town Center development district was created at the behest of successive single developers. As a consequence, a single developer went before the Planning Board to obtain all of the site plan and preliminary plan approvals for the Town Center. Excluding from development district funding all of the infrastructure that the Planning Board required that individual developer to provide would eviscerate both Chapter 14 and the development district and would be inconsistent with the provision of Chapter 14 that allows for infrastructure required by the adequate public facilities ordinance (and thus the Planning Board) to be funded by the development district. As has been noted, Chapter 14 is to be "liberally construed" to effect its purposes. § 14-18(a). As has also been noted, we are charged with ascertaining the intent of the Council and harmonizing the various provisions of Chapter 14. *University System of Maryland v. The Baltimore Sun Company*, 381 Md. 79, 847 A.2d 427 (2004). To do so, we read the infrastructure improvement exclusion as applying to infrastructure that serves a limited portion of the development district, like, for example, certain internal or tertiary residential roads that serve no through traffic.

Our reading of the law is supported by the legislative history of Chapter 14. For example, Council staff explained that § 14-3(g)(1) "is intended to exclude such items as internal streets and abutting sidewalks" and that § 14-3(g)(2) "is intended to exclude, among other things, intersection improvements that are needed by only one landowner." (Memorandum dated December 6, 1993, from Michael Faden to Management and Fiscal Policy Committee, p. 1).<sup>14</sup> The Planning Board and the County have apparently read the exclusion consistently with that legislative history (and more narrowly than CTCAC). As has been noted, those administrative interpretations are persuasive evidence of what the law intended.

##### 5. The County Executive May Recommend Additional Infrastructure for Development District Financing

CTCAC claims that "§ 14-8 does not provide for the Executive to add infrastructure improvements to those proposed by the applicant or . . . the Planning Board." (See CTCAC Report, p. 87). While it is true that § 14-8 does not "provide for" the Executive to supplement the Planning Board list, the provision does not preclude the Executive from doing so either. Section 14-8 requires the Executive to submit a fiscal report, but does not prohibit the Executive from including recommendations concerning infrastructure in the report. Section 14-8(b) states

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<sup>14</sup> Council staff also explained that §§ 14-3(g)(1) and (2) "do not mean that a single-property development district could never be created; they only require that that the infrastructure items funded by that district must serve a wider area or population, such as part of a regional road or transit system, or a school or library which draws from a larger area." (Memorandum dated June 21, 1994, from Michael Faden to the County Council, p. 3).

that the Executive “should” make certain recommendations in the report; that does not mean that the Executive cannot make other recommendations. The Executive has, reasonably, interpreted Chapter 14 as allowing the Executive to recommend additions to the Planning Board’s infrastructure list. CTCAC again seeks to generate a conflict rather than harmonize the law with the County’s administrative practice. Also, the Executive’s recommendation is just that, a recommendation. In the exercise of its Charter-granted authority, the Executive is free to offer a recommendation. And the Council is just as free to reject it. Since the infrastructure recommendation is not binding, it generates no legal consequences that would aggrieve CTCAC.

6. Lack of Actual Notice to All Property Owners Does Not Render the Second Resolution Invalid

CTCAC claims that some or all of the Clarksburg Town Center property owners did not receive notice of the hearing on the Second Resolution. (See CTCAC report, p. 90). That accusation is seemingly refuted by documentation maintained by Council staff. It does appear that the Council advertised the hearing and that the property owners were notified by mail of the hearing. Nevertheless, even if the notice was imperfect, that procedural irregularity would not necessarily give rise to a viable claim by property owners. There is no evidence that property owners were prejudiced by any lack of notice and any claim arising from that alleged procedural defect, having occurred in 2002, is stale. See *Schaeffer v. Anne Arundel County*, 338 Md. 75, 656 A.2d 751 (1995).

7. The Creation of the Development District Need Not Comply with Chapter 20A

As has been discussed, bond counsel opined, in 1992, that the County did not have the authority under the Express Powers Act<sup>15</sup> to issue the “special obligation” bonds that would fund improvements within the development district. Our office, and apparently the Maryland Attorney General, disagrees. The Express Powers Act confers upon the County the following powers:

(O) Assessments, Levy and Collection of Taxes

To levy and collect taxes for the organization, operation, maintenance of libraries, fire and ambulance services, and other municipal services and to authorize the purchase, sale, construction, maintenance, and operation of all real and personal property necessary or incidental to such services, **and to establish, modify, amend and abolish special taxing areas for any of the purposes enumerated in this article**, except that nothing herein contained shall be construed to permit the modification or abolition of existing special taxing areas performing municipal services, (other than furnishing fire protection or

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<sup>15</sup> Article 25A, § 5 of the Annotated Code of Maryland.

library service) and governed or administered by a citizen's committee or a commission elected or appointed independently of the county council.

(P) Bonds or Evidences of Indebtedness

**(1) To provide for the borrowing of moneys on the faith and credit of the county and for the issuance of bonds or other evidences of indebtedness therefor in such sums, for such purposes, on such terms and payable at such times, and from such taxes or other sources as may have been or may be provided by or pursuant to local law, subject to any limitations imposed by the charter adopted by the county and to the following limitations:**

- (i) The aggregate amount of bonds and other evidences of indebtedness outstanding at any one time shall not exceed 15 per centum upon the assessable basis of the county, except that (a) tax anticipation notes or other evidences of indebtedness having a maturity not in excess of 12 months, **(b) bonds or other evidences of indebtedness issued or guaranteed by the county payable primarily or exclusively from taxes levied in or on, or other revenues of, special taxing areas or districts heretofore or hereafter established by law,** and (c) bonds or other evidences of indebtedness issued for self-liquidating and other projects payable primarily or exclusively from the proceeds of assessments or charges for special benefits or services, shall not be subject to, or be included as bonds or evidences of indebtedness in computing or applying, said 15 per centum limitation.

(2) To provide for the issuance of bonds or other obligations payable as to principal and interest and premium, if any, solely from the funds or revenues received from or in connection with any system, project, or undertaking, all or part of which is financed from the proceeds of such bonds or obligations. Bonds or obligations issued under this paragraph do not constitute an indebtedness of the county or a pledge of its faith and credit or taxing power, may be sold at private (negotiated) sale, and are not subject to the limitations of paragraph (1) of this subsection, Article 31, §§ 10 and 11 of the Code, or any provision of the issuing county's charter. Nothing in this paragraph shall be construed as a limitation on the power of a county to issue revenue bonds under the provision of any other applicable law.

*Article 25A, § 5(O) and (P) of the Annotated Code of Maryland (emphasis added).*

We recognize that the courts generally construe such grants of power strictly against a governmental entity; the courts have stated, in pertinent part, that municipalities possess only those powers that are “granted in express words” or “necessarily or fairly implied in or incident

to the express powers granted.” *Rushe v. Hyattsville*, 116 Md. 122, 126, 81 A. 278, 279 (1911). However, we conclude that the power to issue “special obligation” bonds is expressly granted to the County by the above language (or, at a minimum, “fairly implied” by that language) particularly that which is highlighted.<sup>16</sup> Section (O) permits the County to establish “special taxing areas” (which is what a development district is) for any of the purposes described in the Express Powers Act (which includes the construction of infrastructure). Even more to the point, section (P)(1) allows the County to issue bonds or other “evidences of indebtedness” payable from taxes or “other sources.” That description easily encompasses a development district. Further, section (P)(1)(i)(b) excludes from debt limitations “bonds . . . payable primarily or exclusively from taxes levied in or on, or other revenues of, special taxing areas or districts . . . .” The exclusion would be unnecessary if the County did not have the authority to issue the bonds contemplated by the development district.

In reviewing HB 895, the Attorney General noted that bond counsel did not consider all of the language in the Express Powers Act and acknowledged the possibility that Chapter 20A could be a “nullity” because it was attempting to grant to the County authority that the County already had. (See Correspondence dated May 20, 1994, from J. Joseph Curran to The Honorable William Donald Schaefer).<sup>17</sup> In a subsequent opinion, citing to the Express Powers Act, the Attorney General recognized that a “charter county” has the “authority to issue general or limited obligation debt to finance road construction.” 89 Op. Att. Gen 107, 108 (2004) (emphasis added).

We conclude that Chapter 20A was unnecessary and, thus, as hypothetically described by the Attorney General, Chapter 20A is a nullity. The County has the authority to issue special obligation bonds under the Express Powers Act and is properly exercising that authority through Chapter 14.

In order to provide a comprehensive analysis, we will address CTCAC’s claim that Chapter 20A’s 80% requirement must have been met when the Second Resolution was approved by the Council.<sup>18</sup> As has been discussed, Chapter 14 requires the 80% property owner approval

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<sup>16</sup> We are aware that municipalities and other chartered counties have felt a need to secure special bonding authority from the State. *Md. Ann. Code art. 23A, § 44A; art. 24, § 9-1301*. We may have reached a different conclusion regarding county bonding authority than whoever advised those municipalities and counties. Nevertheless, the quality of our analysis is not trumped by the quantity of those who may disagree.

<sup>17</sup> The General Assembly is without power to enact a local law within the scope of a power granted to charter counties under the Express Powers Act (Art. 25A). *Art XI-A, § 4; Ritchmont Partnership v. Board of Supervisors of Elections*, 283 Md. 48 (1978).

<sup>18</sup> The reference to the Chapter 20A “80% requirement” is a shorthand description of § 20A-

at the First Resolution, but not at the Second Resolution, unless the development district was initiated by the Council (which the Town Center was not). If the district is initiated by the Council, the 80% approval must be obtained from the property owners at the time that the Council takes up the Second Resolution. The requirement of 80% approval at the Second Resolution was added to Chapter 14 in 1996, some two years after Chapter 14 and Chapter 20A were enacted. (See County Bill No. 25-95). Thus, at the time that Chapter 20A was drafted and enacted, Chapter 14 applied an 80% approval requirement only at the First Resolution.

Chapter 20A does not specify when, in the development district timeline, its 80% approval requirement must be met. Chapter 20A simply states that the district may not be created unless 80% of the property owners approve. Arguably, in the Chapter 14 timeline, that approval could come at the First Resolution or the Second. But Chapter 14's progenitor contained no 80% approval requirement at the Second Resolution when Chapter 20A was enacted. We have been informally advised that the drafter of Chapter 20A was mindful of the bill that would become Chapter 14. And the County Council's staff provided a draft of Chapter 14 to the County's delegation in the General Assembly before HB 895 (which became Chapter 20A) was enacted. (See December 9, 1993, memorandum from Ben Bialek to the County Affairs Committee; Correspondence dated May 20, 1994, from J. Joseph Curran to The Honorable William Donald Schaefer). In practice, the County has interpreted Chapters 14 and 20A as applying the 80% requirement to the First Resolution when the development district process is initiated by a private entity. In light of the County's prior practice, the legislative history, and the plain language of Chapter 14, we resolve any ambiguity by applying Chapter 20A's 80% requirement to the First Resolution.

Please contact us if you would like to discuss our opinion.

cc: Timothy L. Firestine, Chief Administrative Officer  
Kathleen Boucher, Senior Legislative Attorney  
Michael Faden, Senior Legislative Attorney  
Jennifer Barrett, Director, Department of Finance  
Joseph Beach, Director, Office of Management and Budget  
Thomas J. Dagley, Inspector General

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1(f)(2) which requires a development district to be approved by "80% of the owners of the real property located within the proposed development district" and by "the owners of at least 80% of the assessed valuation of the real property located within the proposed development district."





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OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Isiah Leggett  
County Executive

MEMORANDUM

July 26, 2007

TO: Marilyn Praisner, President  
Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Clarksburg Development Districts

2007 JUL 26 PM 4: 51

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COUNCIL

After reviewing the conclusions provided by the County Attorney's Office on legal issues concerning the Clarksburg development districts, I am forwarding to the Council my recommendations on what I believe are the next appropriate steps in the development district process for Clarksburg. A copy of the County Attorney's opinion is attached.

In a report dated March 20, 2007 titled "Clarksburg Development Districts - The Illegitimate Transfer of Private Financial Obligations to the Public", the Clarksburg Town Center Advisory Committee (CTCAC) challenges the authority of the County to create and implement development districts. The CTCAC argues specifically that the Clarksburg Town Center development district was created in violation of state and county law and that the development district is being used, improperly, to fund the developer's infrastructure obligations. CTCAC further argues that the notice and approval provisions of county law were not met when the Clarksburg Town Center development district was created. CTCAC concludes that the County is legally precluded from moving forward with the development districts.

A separate group, the Clarksburg Development District Advisory Group (CDDAG), was created by the previous County Executive and charged with recommending next steps in the development districts process. CDDAG released its report to the public in March of this year. The CDDAG report raises many of the same legal issues that were discussed in the CTCAC report, as well as a number of policy issues.

After a careful review of the legal issues raised, in the context of the development district law and the legislative history, *the County Attorney has determined that the Clarksburg Town Center development district was lawfully created and that the developer may be reimbursed for the costs expended to provide infrastructure.* The

County Attorney has further determined that the residents of Clarksburg Town Center were properly notified of the creation of the development district. A more in-depth legal analysis is in the attached opinion.

I have been briefed by the County Attorney's Office on the results of its review of the legal issues raised regarding the Clarksburg Town Center Development District by CTCAC, and also by County staff on its review of the numerous policy issues that were raised by the CDDAG. Because the three development districts are in different stages in the approval process, I have reviewed a number of options regarding the Clarksburg Town Center Development District and also a number of options regarding the proposed Clarksburg Village and Greenway Village development districts and have reached the conclusions expressed below.

### **Conclusions**

Given the conclusions of the County Attorney's Office, and these various options and considerations, we are faced with significant choices to make about how to proceed with the three existing or proposed development districts in Clarksburg. For all three districts, there are policy issues that are complex, but not insurmountable. I have heard from the community, and understand their concerns. I have reviewed a number of options regarding all three districts. All of the potential options available to me raise challenges and consequences of concern to the community and the developers. While this is a less than ideal situation, I believe we must now move forward.

### **Recommendations on Clarksburg Town Center**

I am convinced that the Town Center is key to the viability and success of the overall community and only by moving forward with the Clarksburg Town Center Development District can we ensure that the expected overall comprehensive development will occur in the foreseeable future. Key considerations in this conclusion are the County's ability to move forward as soon as possible with the Clarksburg Library, which otherwise might have to move to the back of the queue if funded through the usual CIP process. This could severely hamper the County's ability to attract viable commercial interests to the town center area.

Some minor modifications to the list of infrastructure approved in the second resolution passed by the County Council may be in order after a subsequent review. I believe that this adjustment can be implemented by amending the second resolution.

### **Recommendations on Clarksburg and Skylark (Greenway) Village**

For the Village districts, I am concerned that the option of recommending against the districts would have too many unacceptable outcomes in terms of desired infrastructure not being timely built. In addition we lack the necessary controls or limits associated with the private alternative of the developers themselves levying fees on homeowners. Instead, I believe we still have the opportunity to significantly shape the outcome of the review, taking into account concerns raised by the residents of those areas. I would like to explore a *down-sized* district that better responds to the legitimate concerns of the residents regarding the overall tax burden, but also provides sufficient financing for the developer-required infrastructure.

I have directed my staff to renew efforts to complete the Executive's Fiscal Report, after revisiting assumptions and other agency reviews to reflect the passage of time and the current status of development approvals and needed underlying infrastructure. Specifically, I have asked my staff to work with the developers to arrive at an infrastructure package that ensures the completion of unbuilt transportation infrastructure, as well as key amenities needed by the community such as the Clarksburg Library.

Achieving agreement with the developers on an updated infrastructure list to be funded will be challenging, but in order to ensure that we have a successful implementation of needed infrastructure, and an attractive, viable community of which we can all be proud, this is the most viable option.

### **Additional Recommendations**

A key concern of the citizens has been the amount of awareness and disclosure to potential homebuyers of additional taxes required in the development districts. I have asked the Office of Consumer Protection with the support and advice of the Office of the County Attorney to work with the development community in Clarksburg to ensure that the builders are appropriately disclosing potential development district taxes, in compliance with the development district law and through voluntary compliance if necessary. Disclosure must occur at each step of the buying process, from sales brochure to purchase contract, and must not be a surprise at the closing table. I urge the County Council to join in this effort to pass any additional measures necessary to ensure that this goal is met.

Marilyn J. Praisner  
July 26, 2007  
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In summary, I believe that given the findings of the legal review, I recommend that we move forward with the development district infrastructure financings in Clarksburg, but at the same time fully explore modifications in response to the community concerns expressed. I look forward to working with you as we move forward in this process.

**Attachment**

cc: Timothy L. Firestine, CAO  
Jennifer E. Barrett, Director, DOF  
Joseph P. Beach, Director, OMB  
Leon Rodriguez, County Attorney  
Catherine Matthews, UpCounty Regional Services Center  
Art Holmes, Director, DPWT  
Eric Friedman, Director, Consumer Protection