



OFFICES OF THE COUNTY EXECUTIVE


Isiah Leggett
County Executive

Timothy L. Firestine
Chief Administrative Officer

MEMORANDUM

March 15, 2011

TO: Thomas J. Dagley, Inspector General

FROM: Timothy L. Firestine, Chief Administrative Officer 

SUBJECT: **Interim Report – Hoyles Mill Wastewater Pumping Station and Force Main CIP Projects (West Germantown Development District)**

Overview

The purpose of this memorandum is to respond to the report referenced above which was issued by the Inspector General (IG) on March 11, 2011.¹ The report makes the unsupported allegation that developers who constructed the Hoyles Mill Wastewater Pumping Station and Force Main in the West Germantown Development District (WGDD) received “double payments” for that completed infrastructure from the County and the Washington Suburban Sanitary Commission (WSSC). Without setting out any legal basis for this assertion, the IG demands that the County institute legal action to recover these “questionable” payments.

¹ The Inspector General released this report without giving the Executive Branch a reasonable opportunity to respond as is required under §2-151 (k)(2) of the County Code. The Inspector General asked for Executive Branch comment on this report on February 11—i.e. in the midst of preparing the County Executive’s Recommended FY12 Operating Budget which must be submitted, under the County Charter, to Council by March 15. The Executive Branch asked for 25 working days in which to respond. This reasonable request was denied *de facto* by the Inspector General when he released his report to Council on March 11, 2011 and then to the public on March 14, 2011. Mysteriously, the full report was also leaked to the Washington Examiner in February and was the subject of an editorial on February 28, 2011.

What the IG asserts as “double payments” were in fact the result of a statutory foundation designed to reduce the cost of housing to residents of the WGDD. The County made payments in accordance with County Law and County Council Resolutions, from bond proceeds to developers for infrastructure financed by taxes imposed on property owners in the WGDD. WSSC granted credits against and reimbursements of SDC charges in accordance with State law and its published policies.

In making his report, the IG failed to fairly represent the underlying legal, procedural, and policy basis for the actions of the Montgomery County Government (MCG) and WSSC. A clear understanding and explanation of that legal and policy basis for actions would have been an appropriate starting point for the IG’s investigation. The IG failed to note in his report that documentation was provided showing that all actions by MCG and WSSC were thoroughly discussed, coordinated, and vetted well in advance, including the involvement of both County and WSSC legal counsel, as far back as 1996 -- fully 15 years ago. The IG failed to note that MCG and WSSC actions were contemplated by and were in accordance with the Development District Law and the County Council’s Resolutions. A 2007 report issued by Council Staff and the Office of Legislative Oversight (OLO) relating to “Implementation of the Development District Act” noted that County law did not preclude financing of water and sewer infrastructure items with development district bonds even though the items were eligible for SDC credits and reimbursements. The report expressly raised this as a policy issue for Council to consider.² Although Council subsequently amended the Development District Law, it did not make any changes relating to infrastructure items that are eligible for SDC credits and reimbursements.

Without establishing any actual misconduct or improper actions, the IG recommends a review by the agencies involved, and recommends recovery of questionable payments or reimbursements made to the developers. Given the actual factual and legal basis for the actions by MCG and WSSC, we believe there is no basis for additional review, and any attempt at recovery would be inappropriate and fruitless.

Clear Legal Foundation for Actions by MCG and WSSC

To provide a more understandable overview of the events leading up to the actions by the Department of Finance and WSSC that are the subject of the IG’s investigation, I am providing

² See page 91 of the 2007 report entitled “Implementation of the Development District Act, An Analysis of Issues Raised by the Clarksburg Town Center Advisory Committee”.

the following outline of the key County Council actions, and legal and policy documents supporting the subject disbursements³:

1. Seeking ways to address the increasing costs of infrastructure associated with development, and desiring to encourage growth and economic activity in the County, the County Council in June 1994 enacted Bill No. 44/46-92 creating Chapter 14 of the County Code to provide an alternative financing mechanism for infrastructure to support growth. This mechanism requires the County to issue bonds to pay for infrastructure, and to levy taxes on benefitting development to pay the debt service on the bonds.
2. Section 14-10 (e) of the County Code provides that “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.” (See Attachment 1 - Chapter 14 prior to changes by Bill 36-07.) This provision indicated Council’s intent that infrastructure charges such as the SDC be credited in Development Districts.
3. On July 30, 1996 the County Council, in Resolution No. 13-636 after holding a public hearing on a petition to create the Germantown West Development District, determined that “Intensive development of and public investment in that area during the term of the district will benefit the public interest because certain public facilities and development will be provided in a more timely and coordinated fashion within the district.” (See Attachment 2 - County Council Resolution No. 13-636.)
4. On January 13, 1998 in Resolution No. 13-1135, after a public hearing, the County Council created the West Germantown Development District, approved a list of infrastructure to be financed by the District totaling \$12,831,177. The Resolution provided that any cost savings from that list of infrastructure be applied to a second list of additional improvements totaling \$3,516,923,⁴ and authorized the imposition of benefit assessments and ad valorem taxes on the real property located in the District. (See Attachment 3 - County Council Resolution No. 13-1135.)

³ In its response to the IG report dated March 9, 2011, WSSC sets out the legal basis for its granting of credits against and payments in reimbursement of the System Development Charges.

⁴ The IG fails to acknowledge much less explain how his theory of inappropriate “double payments” to developers can be reconciled with the requirement in Resolution No. 13-1135 that the County must use any cost savings to fund other infrastructure improvements from the second or “B” list.

5. Resolution No. 13-1135 authorized the County to enter into an Implementation Agreement with the owner or developer of any property located in the District to address . . . “the handling of System Development Charge (SDC) credits accruing to properties located in the District” This provision clearly contemplated that properties in the development district would receive SDC credits.
6. In a third resolution (No. 13-1398) on August 4, 1998 the County Council authorized the issuance of the development district bonds and ratified and confirmed the terms of the prior resolutions except where modified to enable the issuance of the bonds.

In summary, the County’s payments for the infrastructure were authorized by Chapter 14 of the County Code, and by County Council Resolution No. 13-1135 which created the Development District and specified the infrastructure to be financed. Similarly, WSSC’s granting of System Development Charge (SDC) Credits and reimbursement of SDC charges paid up to the credit amount approved, which were anticipated by the County, were authorized by State law and WSSC published policies.

County and WSSC Followed County Council Policy on Credits of SDC Charges

The IG repeatedly characterizes the WSSC’s issuance of System Development Charge credits and reimbursements as “payments” to support his characterization of double payments for infrastructure. This is despite the fact that the IG was clearly informed that WSSC’s actions were envisioned in the Development District Law and resolution and constituted County policy, which the County Council did not change several years ago when this same appearance issue was brought to the Council’s attention by the 2007 Council Staff/OLO report referenced above.

The County Council’s policy on crediting infrastructure fees and charges against Development District taxes dates back to the original formation of the County’s Development District Law, Chapter 14 of the County Code, and was in place long before the WGDD was formed and before WSSC entered into agreements with the developers on the Hoyles Mill Wastewater Pumping Station and Force Main.

Rationale for SDC Credits in Conjunction with Development District Financing of Infrastructure

A key point of confusion for the IG is his belief that the developers’ receipt of SDC credits and reimbursements as well as payments from bond proceeds for infrastructure constitutes a double payment for the infrastructure. This is not the case. The two infrastructure financing mechanisms are indeed complex, especially when both are present. But the actions by both County agencies were appropriate.

The County's Development District Law and the resolutions implementing the WGDD are predicated on a basic premise that the costs of development are passed on to the eventual buyers of a home, first through the contractual price of finished building lots sold to builders, and then to the eventual buyer in the price of the home. We are not aware of any study that examines this concept, but it is an accepted premise in all of the County's discussions of the amount of various taxes and charges related to development – a general acceptance that such costs will eventually be passed on to home buyers.

The WSSC System Development Charge is one such charge, like the transportation impact tax, the schools impact tax and various other exactions on development. These exactions are typically charged at time of permit, collected by the government to pay for the costs of infrastructure that the government provides. The collections typically are segregated in a separate account, and programmed as a funding source on capital projects that the government is building. In cases when the needed infrastructure is provided by a developer, a credit is given against the charge or tax, because the developer is incurring those costs of the infrastructure, and presumably passing those costs along to home buyers as described above. If the charge or tax is also collected, and also presumably passed along to a home buyer, then the home buyer would pay twice for the infrastructure. This is the basic rationale for credits against infrastructure exactions when the infrastructure is provided by means other than the government paying for it and funding the costs with a collected pool of exactions.

It should be noted that the financing of infrastructure through such government exactions represent an either/or approach: EITHER the developer provides the infrastructure through its own financing sources, typically by borrowing from a bank⁵, OR the government pays for the infrastructure from the collected exactions.

In the case of the Hoyles Mill Wastewater Pumping Station and Force Main, the developers proposed to provide the infrastructure, and entered into a Memorandum of Understanding with WSSC to do so in accordance with WSSC procedures. Because the infrastructure was provided by the developers, e.g. not built and paid for by WSSC from collected System Development Charges, then the properties that would otherwise have paid those charges instead received credits. The credits represented the fact that WSSC did not have to pay for the infrastructure from its funds, but the infrastructure was provided by the developers and the costs passed along to the properties benefitting from the infrastructure. If the properties had not received credits, a double burden would have been placed on the properties, with both

⁵ In the case of the WGDD, the developers borrowed funds through County issued bonds instead of financing the development costs associated with providing public infrastructure with private financing.

the costs incurred by the developer building the infrastructure and the costs of the WSSC exaction (SDC) passed along to the home buyers.

Pursuant to WSSC's procedures regarding SDC credits, credits were granted initially only up to an amount that is 50% of the initial estimated costs of the infrastructure. Following its approved policy, after the 50% threshold was reached, WSSC resumed collecting SDC charges at the time of plumbing permit, and after the final audit of costs, refunded those collected SDC charges back to the builders or developers, in accordance with their own internal contractual arrangements. These reimbursements were not payments for infrastructure in the sense that WSSC was using collected SDC charges to build and pay for infrastructure that it was providing, but simply reimbursements of SDC charges collected.

It is a wholly separate matter, and a separate policy decision made ultimately by the County Council, to finance the costs of the infrastructure through a development district. The development district financing is in lieu of the aforementioned bank financing. It is a financing mechanism introduced in the early 1990's to assist developers with the costs of financing infrastructure. Rather than borrowing from a bank, the developer petitions the County for a development district. Instead of the developer passing the costs of the bank financing to the builder and home buyer through the lot and home prices, the costs of financing are passed to the home buyer by the government, through the issuance of bonds to raise capital, and the taxation of properties to pay the debt service on the bonds. The development district process does involve payments to developers for infrastructure due to the very nature of the government providing the financing for that infrastructure. And those payments are passed along to home buyers in the form of taxes on their properties. The alternative would be that the costs of this infrastructure, if paid through private financing, would typically show up in the buyers' mortgage payments, because the cost of the infrastructure would be reflected in the price of the homes.

There is no dispute that the properties and homebuyers are paying for the development district financed infrastructure via the development district taxes. Had the developers/builders not received the SDC credits, or reimbursements for SDC charges paid after the 50% cost threshold, then we believe the home buyers would have been charged twice for the same infrastructure. Thus, the payments for infrastructure by the County were proper due to the development district, and the reimbursements of SDC credits by WSSC were proper due to the infrastructure costs not being incurred by WSSC. The Inspector General's basic premise of double payments is simply incorrect.

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WSSC Issued Credits - Not Payments for Infrastructure

The IG repeatedly mischaracterizes WSSC as making payments for infrastructure. This is not the case, and WSSC's issuance of credits and reimbursements was legal and proper in accordance with WSSC's Standard Procedure CUS 94-03 which states:

If WSSC authorizes the Developer to design and construct a Qualified Project, or requires eligible private funding from the developer of WSSC's design and construction costs, the properties identified as served by the Project will receive credit and/or be subject to SDC Payments which may be reimbursed to the Developer up to the total eligible amount.

SDC credits against the ledger amount may be granted following WSSC receipt of eligible private funding or after construction of the Qualified Project by the Developer has commenced. However, in the latter case until such time as the actual total eligible amount is determined, SDC credits against the ledger amount shall not exceed 50% of the estimated total eligible costs, as cited in the MOU.

The actions of WSSC to grant credits against SDC charges up to the 50% threshold, and then reimburse for SDC payments made after the final audit determining the eligible amount of credits, was fully consistent with the WSSC procedures in place at that time, and were not payments for infrastructure (See Attachment 4 - Standard Procedures of the Washington

Suburban Sanitary Commission CUS 94-03). The concept of WSSC System Development Charge credits and reimbursements is not complex, nor is it hidden from view or found only in complicated procedures or MOUs. The proper characterization of WSSC credits and reimbursements of the System Development Charge can be found on the WSSC's website under its Glossary of Terms. (See Attachment 5 – WSSC Web Site Glossary.) A clear representation of the WSSC disbursements as credits and reimbursements would have brought considerable clarity to the IG's report, properly focused the issue on the County's policies, and avoided wasted use of scarce County resources in developing this response.

The IG proceeds in his report to raise numerous ancillary issues which do not pertain directly to the basic issue of legal and proper actions by WSSC and MCG. Nevertheless, we will address those issues below.

Finance Representative Unwilling to Provide Assignment

The IG notes in his report on page 3 that the documentation "revealed" that the County Representative was unwilling to provide an assignment letter assigning the SDC credits to the developers. We contend that the County had no legal basis for signing such an assignment, nor

was one necessary, as the Development District Law and the Council Resolution for the Development District acknowledged that the SDC credits properly accrue to the “properties located in the District.” (See Attachment 6 - Bond Counsel letter dated March 14, 2011.) The IG also implied that the WSSC audit and payment activities occurred “as a result of this disagreement . . .” However, there is no factual basis for this statement by the IG. WSSC’s audit procedures, credits, and cash payments are a usual part of WSSC procedures as noted above. WSSC also addressed this point in its response.

Issue Already Reviewed by OLO and Council

The IG notes on page 3 that the relationship between development district financing and WSSC’s issuance of SDC credits was reviewed by Council and OLO Staff in a 2007 report on the implementation of the Development District Law. After a thorough public review of that report, the County Council did not take up this issue, or choose to make any change to current law relating to this issue when it amended the Development District Law (Chapter 14) in 2008.

Documentation Supporting County Payments for Infrastructure

In 2002, the County’s Department of Finance proceeded to issue development district bonds in accordance with the Council Resolutions, and in 2002 and 2003 made payments from bond proceeds for the Hoyles Mill Wastewater Pumping Station and Force Main after the infrastructure was deemed to be substantially complete and then subsequently when the infrastructure was approved by WSSC for final acceptance.

On page 4 of his report, the Inspector General notes that the OIG was not provided various detailed financial records that supported the reimbursements for infrastructure. While the Department of Finance did not provide purchase orders and invoices for the payments which occurred in 2002 and 2003 – nine and eight years ago respectively, the Department did provide all available summary supporting documentation for the payments requested that had been retained in Department of Finance records, including the AIA form G702, detailed spreadsheets listing the invoices and charges by line item, **and approval sign offs for each payment by WSSC staff** confirming that the items met the test of either “substantial completion” or “final acceptance” in accordance with the terms of the Implementation Agreement. The IG’s failure to acknowledge the detailed records provided by the Department of Finance provides a misleading impression that no records were kept, and is an inappropriate omission.

Additional relevant information about the County’s payments for the Hoyles Mill Wastewater Pumping Station and Force Main were provided to the IG but were not included in his report. These are: 1) the County provided very detailed itemized preliminary cost estimates (bid estimates) for the infrastructure prepared by an engineering firm in June 1996 and updated

in February and April of 1997; 2) these same cost estimates were reviewed by WSSC in September 1997 and found to be “reasonable and consistent with the preliminary estimates developed by WSSC”; 3) each payment request was reviewed and signed by a WSSC representative to confirm either “substantial completion” or “final acceptance” in accordance with the terms of the Implementation Agreement; 4) the County was acquiring completed infrastructure, not contracting out for the building of infrastructure; and 5) any savings related to the infrastructure items (costs less than the amount specified in the Council’s Resolution) would be reapplied to items on the “B List” of infrastructure items (also included in the Council Resolution) thus resulting in the same dollar amount of infrastructure being financed and paid for with bond proceeds.

Allocation of SDC Credits on a pro-rata Basis

The IG draws attention on pages 5 and 6 of his report regarding the Department of Finance’s request that WSSC grant SDC credits allocated on a pro-rata basis across all units developed by Arcola and notes that he found that this practice was not well understood by MCG personnel. In fact, it appears that it is the IG’s failure to understand the purpose of the allocation request that is consistent with the report’s failure to clearly represent the basis of the SDC credits granted by WSSC. The Department of Finance sought to have the credits allocated across all units on a pro-rata basis for the simple purpose of achieving an equal benefit from the SDC credits for all properties in the District, given that the infrastructure costs were being financed through taxes levied on all properties in the District. Achieving a pro-rata sharing of SDC credits was sought by Finance in order to ensure that the SDC credits were not used up by the first properties that went through the permit process, causing later properties to pay SDC charges which would then be passed along to homeowners in the price of their homes. Finance sought equal and fair treatment of all properties in the district in regard to SDC charges because all properties were sharing in the costs of the infrastructure provided. After some experience with the even allocation approach, the Developer proposed an alternative method of achieving the same objective by amending agreements with the builders. Finance concurred with the 2001 amendment to WSSC’s MOU with Arcola to allow SDC credits to follow WSSC’s normal policy.

Finance’s requirement of pro-rata sharing of SDC credits across all units developed by Artery and Arcola was included in the County’s Implementation Agreement with the Developers, thus binding the Developers to the approach. The developers used vouchers and modified contracts with builders to comply with this requirement.

Developers Not Reimbursed Costs by Both WSSC and MCG

On page 7 of his report, the IG states that his extensive interviews with WSSC, MCG, and Montgomery County Council staff have not clarified why the developers were reimbursed the same or similar costs by both WSSC and MCG. In fact, MCG staff were unable to clarify the rationale behind a double reimbursement because it simply did not occur. In various meetings and interviews, Executive staff made numerous attempts to explain to the IG that SDC credits and reimbursements were not payments to developers for infrastructure. Despite these efforts, and the extensive documentation supporting the credits in County Law, County Council Resolutions, and WSSC Standard Procedures, the IG's report does not reflect a clear grasp of this basic concept.

IG Recommendation

In his final statement of the report, the IG makes two recommendations. These recommendations are without logic or factual support. First, the IG recommends that WSSC and MCG "conduct a thorough review of all fiscal, ethical, and legal accountability issues associated with the . . . projects, to ensure accountability in government and developer actions, and to ensure that County taxpayer's (sic) who reside in the WGDD and pay the annual special tax are protected from any unnecessary or unreasonable payments." MCG and WSSC personnel, including various available current and former legal counsels of the respective agencies, have conducted such a review, and found no basis for concluding that "questionable" or "double payments" had occurred.

Secondly, the IG recommends "that WSSC and MCG jointly assess and seek recovery of the full amount of all questionable payments or reimbursements made to the developers or their representative." This recommendation is of great concern, because it implies wrongdoing and potential financial loss without any actual findings or basis in his report for such an assertion. **The County and WSSC have found that all payments and reimbursements made to the developers or their representative were legal and proper, as outlined above.** Therefore, no attempt at recovery is appropriate.

Attachments:

Attachment 1 - Chapter 14 prior to changes by Bill 36-07

Attachment 2 - County Council Resolution No. 13-636

Attachment 3 - County Council Resolution No. 13-1135

Attachment 4 - Standard Procedures of the Washington Suburban Sanitary Commission

Attachment 5 - WSSC Web Site Glossary

Attachment 6 - Bond Counsel letter dated March 14, 2011

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cc: County Council Members

Jerry N. Johnson, General Manager, WSSC

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Chapter 14. DEVELOPMENT DISTRICTS.

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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;

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- (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.

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- (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.

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- (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.)

Attachment 2

Resolution No. 13-636
Introduced June 25, 1996
Adopted July 30, 1996

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: County Council

Subject: Germantown West Development District

Background

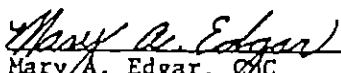
1. Chapter 14 of the County Code, which is the development district law the County Council enacted in 1994, establishes a procedure by which the Council by resolution may create a development district.
2. Under §14-6 a petition to create a development district must be signed by at least 80% of the property owners in the proposed district and the owners of 80% of the property in the proposed district by value.
3. On June 21, 1996, a group of property owners in Germantown West filed with the Council a petition to establish a development district in that area as provided in County Code §14-6. This is the first petition filed under the law.
4. As required by §14-6(a), the Council held a public hearing on this petition, after due notice, on July 23, 1996.

Action

The County Council for Montgomery County, Maryland, approves the following resolution:

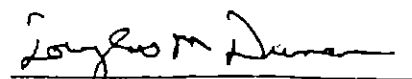
As authorized by County Code §14-6(b), the County Council intends to create a development district in the area of Germantown West specified in the petition filed with the Council on June 21, 1996. Intensive development of and public investment in that area during the term of the district will benefit the public interest because certain public facilities and development will be provided in a more timely and coordinated fashion within the district. As authorized by County Code § 14-7 through 14-9, the Council intends that a significant evaluation of the proposed district be initiated culminating in a second resolution that will determine how or whether the district will be created.

This is a correct copy of Council action.



Mary A. Edgar, CMC
Secretary of the Council

APPROVED:



Douglas M. Duncan
County Executive

Attachment 3

Resolution No.: 13-1135
Introduced: October 21, 1997
Adopted: January 13, 1998

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: County Council

Subject: West Germantown Development District

Background

1. Chapter 14 of the Montgomery County Code, which is the development district law the County Council enacted in 1994 (the "Act"), establishes a procedure by which the Council by resolution may create a development district.
2. Under §14-6 of the Act, a petition to create a development district must be signed by at least 80% of the property owners in the proposed district and the owners of 80% of the property in the proposed district by value.
3. On June 21, 1996, a group of property owners in West Germantown filed with the Council a petition containing sufficient signatures to establish a development district in that area as provided in § 14-6 of the Act. The petition was amended on July 30, 1997.
4. As required by §14-6(a) of the Act, the Council held a public hearing on this petition, after due notice, on July 23, 1996. On July 30, 1996, as required by §14-6(b) of the Act, the Council adopted Resolution No. 13-636 stating its intent to create a development district in the West Germantown area, finding that intensive development of and public investment in that area during the term of the proposed district will benefit the public interest. This resolution was approved by the County Executive.
5. As required by §14-7 of the Act, on October 25, 1996, as amended on July 31, 1997, the Montgomery County Planning Board reviewed and approved the application filed by the Petitioners for the West Germantown Development District, finding that the proposed development district complies with all applicable zoning and subdivision requirements under Section 50-35(k) and that the proposed district satisfies the Adequate Public Facilities requirements of the Annual Growth Policy for a development district, subject to certain conditions.

6. As required by §14-8 of the Act, on September 29, 1997, the County Executive issued a fiscal report evaluating the proposed West Germantown Development District, in which the County Executive estimated the cost of each infrastructure improvement listed by the Planning Board under §14-7(c) of the Act, and the amount of revenue needed to cover the District's share of all infrastructure improvements and the estimated tax rate for each form of taxation available to the District that would produce the necessary revenue. The Executive's fiscal report recommended the creation of a development district, with certain modifications to the proposed infrastructure items to those which had originally been submitted in the petition filed by the property owners, and certain funding and revenue-raising measures to fund those improvements.
7. As required by §14-9 of the Act, the Council held a public hearing on the final resolution to create a development district, after (due) public notice, on November 6, 1997. After further notice to the public and the petitioners, as required by §14-9 of the Act, the Council held a second public hearing on January 13, 1998.
8. After the November 6 public hearing, Petitioner GFS Realty, Inc., indicated its intention to delay the creation of the development district for its property and the properties of Clopper Realty Joint Venture and John N. & Mary S. Deoudes, other Petitioners for which it acts as development agent, which properties had been proposed to be included in the Development District. Accordingly, the Development District created by this resolution will include only those properties owned by Arcola Investment Associates, Artery Hoyles Mill, L.L.C. and Mr. and Mrs. Robert Sisson (the owners of the property formerly owned by Petitioner Adrienne Wear).

Action

The County Council for Montgomery County, Maryland, approves the following resolution:

- A. The West Germantown Development District (the "District") is hereby created in an unincorporated area of Montgomery County, encompassing approximately [699] 670.7 acres more specifically described in attached Exhibit "A". [The District consists of two improvement areas, designated as West Germantown Development District Improvement Area I and West Germantown Development District Improvement Area II. Exhibit "A" also describes each of these Improvement Areas. In order to create West Germantown Development District Improvement Area II, portions of property owned by petitioners John N. & Mary S. Deoudes, Clopper Realty Joint Venture, and GFS Realty, Inc. (as fee owner for one parcel and beneficiary under a recorded Deed of Trust for a second parcel), must be exchanged with portions of property owned by Montgomery County and the Maryland National Park and Planning Commission, with the final

ownership of the properties as indicated on Exhibit "B". After these land exchanges, the properties owned by Montgomery County and the Maryland National Park and Planning Commission are not included in the District. If these land exchanges do not occur, West Germantown Development District Improvement Area II is not included in the District, and the District boundaries must be adjusted accordingly.] The description of each property included in the District is attached at Exhibit "B". A list of the current tax account number of each property [(including the properties now owned by Montgomery County and the Maryland National Park and Planning Commission) which will be] located in the District is enclosed on attached Exhibit "C".

- B. The specific infrastructure improvements that will be financed by the [West Germantown Development] District [Improvement Area I are listed in attached Exhibit "D -1" and the specific infrastructure improvements that will be financed by the West Germantown Development District Improvement Area II] are listed in attached Exhibit "D [-2]", [in each case] including the estimated cost related to each improvement, the estimated completion date of each improvement, and the share of that cost which will be financed through the District. All of these improvements are either located in the District, or are outside the geographic boundaries of the District but are reasonably related to the development or use of land in the District. To the extent that any cost savings are realized in the construction of any infrastructure improvement listed on Exhibit "D [-1]", those cost savings may be applied to the construction of additional infrastructure improvements listed on Exhibit "E", [as determined by the owners of the properties located in West Germantown Development District Improvement Area I in their discretion] in the order listed on Exhibit "E". Each additional infrastructure improvement [potentially to be financed by the District] listed on Exhibit "E" is either located in the District or is outside of the geographic boundaries of the District but is reasonably related to the development or use of land in the District. [To the extent that any cost savings are realized in the construction of any infrastructure improvement listed on Exhibit "D - 2", those cost savings must be applied to reduce the special benefit assessments on the properties located in West Germantown Development District Improvement Area II.]
- C. The estimated cost of the infrastructure to be financed by the District includes a contingency for unexpected cost overruns, which amounts to 10% of the estimated aggregate cost of the infrastructure.
- [D. The construction of the improvements to the local parks in West Germantown indicated on Exhibit "D - 1" by the District is conditioned on the receipt by the County and remission to the District, or receipt by property owners in the District, of contributions to the Route A-297

(Richter Farm Road) improvements by a developer, Pleasants Investments Limited Partnership, the owner of the Kingsview Village subdivision adjoining West Germantown Development District Improvement Area I, as evidenced by a Site Plan Enforcement Agreement entered into by Pleasants Investments Limited Partnership with the Montgomery County Planning Board as of July 17, 1995.]

[E] D. Under §14-11 of the Act, a special fund is hereby created for the District and designated the "West Germantown Development District Special Fund." Any special assessments, special taxes, fees, or charges levied under §14-10 of the Act for properties located in the District are pledged to the West Germantown Development District Special Fund, and the proceeds from any such special tax, special assessment, fee, or charge must be paid into the West Germantown Development District Special Fund. Any bonds which the County Council authorizes to be issued by or for the District must be repaid [through the proceeds of] from funds in the West Germantown Development District Special Fund, together with any other assets or revenues of the District pledged to secure their repayment, and those funds and other assets or revenues [may] must also be used to replenish any debt service reserve fund established for those bonds. [When sufficient funds are available in the West Germantown Development District Special Fund to repay the amount of any bonds issued by or for the District, when due or payable, either at maturity, or at some earlier date set by resolution of the County Council, the funds in the West Germantown Development District Special Fund must be applied to pay off the outstanding principal and interest owing on the bonds, and any balance remaining may be used as a credit against any future County tax obligations of any owner of any property located in the District.]

[F] E. The County Council may by resolution impose on all properties located in [each of the Improvement Areas in] the District the following special assessments and taxes sufficient to pay the principal of, interest on, and any redemption premium on the bonds to be issued under separate resolution of the Council, and to replenish the debt service reserve fund for the bonds:

1. a benefit assessment on undeveloped property, in [an] a rate or amount set by the Council], sufficient to satisfy an appropriate portion of the debt service requirements for the bonds to be issued under separate resolution of the Council]; and
2. an [increased] ad valorem tax on all real property located in the District [at a tax rate not to exceed 82 cents per \$100 of assessed value of property located in West Germantown Development District Improvement Area I and cents per \$100 of assessed

value of property located in West Germantown Development District Improvement Area II], with the specific rate [to be] set by the Council [after it adopts a resolution authorizing the issuance of bonds to finance the District improvements] annually, which will be in addition to [the normal] existing County ad valorem [property tax for] taxes on properties located in the West Germantown area[; and].

- [3. a benefit assessment on commercial property, whether developed or undeveloped, in an amount set by the Council in the resolution authorizing the issuance of bonds for the District.]

[G] E. The County Council may increase the rate of any tax or rate or amount of any assessment imposed in this resolution to the extent an increase is needed to [satisfy the annual debt service requirements] pay the principal of, interest on, and any redemption premium on the bonds to be issued [by or] for the District and to replenish the debt service reserve fund for the bonds. The original and any later resolution setting the rate of a tax or rate or amount of any assessment must limit the maximum special tax or assessment applicable to each individual property in the District and must prohibit any increase in or extension of the term of the maximum special tax or assessment applicable to any individual property because of delinquency or default by any other taxpayer. The Council may also decrease the rate of any such tax or rate or amount of any assessment to the extent that debt service requirements for the bonds are reduced in later years. The [exact] maximum tax rates set by the Council must be listed in a declaration filed in the Land Records of Montgomery County, which declaration must encumber all real property located in the District and designate that this property is subject to a development district. This declaration and the obligation of the property owners [in each Improvement Area] in the District to pay all benefit assessments, special taxes, and [increased] ad valorem taxes takes effect when the County issues the bonds with respect to the improvements located in [each respective Improvement Area] the District as authorized by §14-12 of the Act, and terminates when the Director of Finance records a release stating that all such bonds have been fully repaid.

G. The total amount of the development district special taxes and assessments paid by the owners of the properties located in the District must be credited against any Development Approval Payment charges assessed against the property owners.

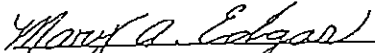
H. Any property which is fully developed before the District is created is exempt from any special assessment, special tax, fee or charge imposed by this and any later resolution, and the owner of any property exempt from

payment under this paragraph which is later developed more intensively and benefits from any development capacity attributable to infrastructure improvements financed by the District must pay any special assessment, tax, fee or charge that it would otherwise have paid [hereunder].

- I. The County may enter into an Implementation Agreement with the owner or developer of any property located in the District to address the [withdrawal] disbursement of funds from the West Germantown Development District Special Fund, the mechanics for reimbursements from other sources for infrastructure costs, the handling of System Development Charge (SDC) credits accruing to properties located in the District, and other matters as each owner or developer and the County may agree.

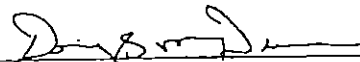
- J. Before any bonds are issued to finance infrastructure improvement related to the District, the County Council must adopt one or more bond resolutions as provided in §14-13 of the Act.

This is a correct copy of Council action.



Mary A. Edgar, CMC
Secretary of the Council

APPROVED:



Douglas M. Duncan
County Executive

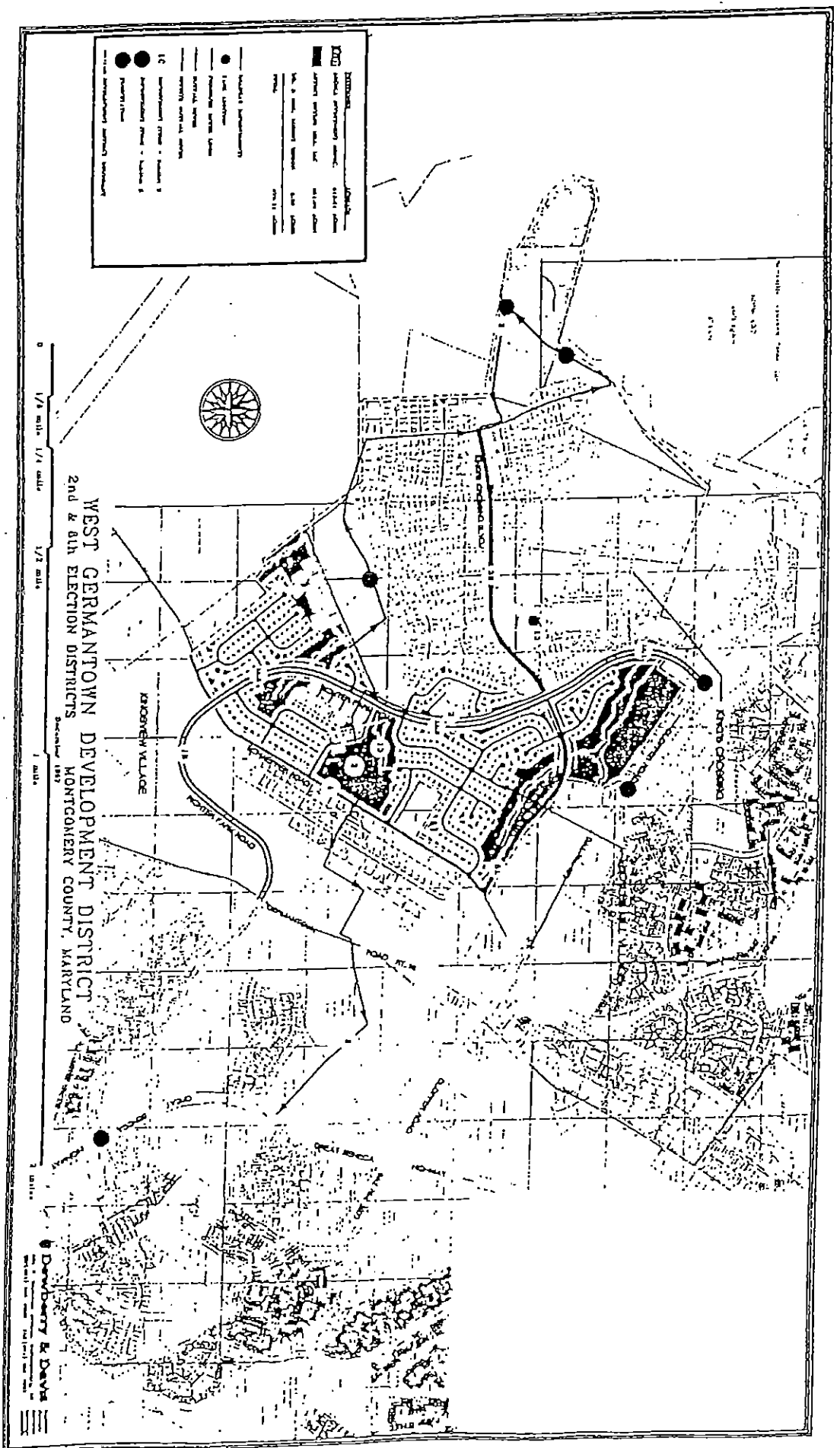


EXHIBIT "B"

LEGAL DESCRIPTION OF THE LANDS COMPRISING THE
WEST GERMANTOWN DEVELOPMENT DISTRICT

SITUATED ON HOYLES MILL ROAD AND SCHAEFFER ROAD
DARNESTOWN (6TH) ELECTION DISTRICT
MONTGOMERY COUNTY, MARYLAND

BEING all those lands conveyed by the following five (5) instruments recorded among the Land Records of Montgomery County, Maryland:

- 1) by deed to Arcola Investment Associates dated April 15, 1996, recorded in Liber 14054 at Folio 293;
- 2) by deed to John E. Threlfall dated October 24, 1985, recorded in Liber 6960 at Folio 406;
- 3) by deed to Greenberg Germantown Limited Partnership dated January 18, 1990, recorded in Liber 9169 at Folio 500;
- 4) by deed to Greenberg Germantown Limited Partnership dated January 17, 1990, recorded in Liber 9169 at Folio 505;
and
- 5) by deed to Greenberg Germantown Limited Partnership dated January 18, 1990, recorded in Liber 9169 at Folio 512,
more particularly described by the following mathematical compilation of individual surveys provided by Dewberry & Davis and Greenhorne and O'Mara using bearings and distances reconciled to the meridian of Washington Suburban Sanitary Commission:

BEGINNING at an iron pipe found at the beginning of the twenty-seventh or South 49° 28' 07" East, 366.18 feet deed line of lands described in said Liber 14054 at Folio 293 said pipe also lying at the southwesterly corner of Parcel C of a subdivision of land known as Seneca View Estates, a plat of which is recorded among the aforesaid land records in Plat Book 174 at Plat 19527; thence running with said deed line and the southerly line of said plat

- 1) South 49° 28' 07" East, 366.18 feet to an iron pipe found set in the ground on the outline of the land described in said Liber 9169 at Folio 512; thence running with the

lines of said deed and in accordance with a survey made by Greenhorne & O'Mara, Inc.

- 2) South 49° 29' 12" East, 308.20 feet to a found iron bar; thence.
- 3) North 35° 25' 39" East, 426.97 feet to a found stone; thence
- 4) South 55° 31' 53" East, 1,402.68 feet; thence
- 5) South 26° 04' 52" East, 165.42 feet to a found pipe; thence

LEGAL DESCRIPTION
WEST GERMANTOWN DEVELOPMENT DISTRICT
PAGE 2

- 6) South 26° 01' 57" West, 656.71 feet to an iron pipe found near the northerly side of Hoyles Mill Road; thence along said Hoyles Mill Road
- 7) South 83° 04' 22" East, 363.00 feet; thence
- 8) South 43° 57' 11" East, 194.24 feet; thence
- 9) South 40° 04' 33" West, 6.58 feet to the centerline of Hoyles Mill Road; thence with said centerline by the following three (3) lines
- 10) South 43° 48' 24" East, 402.99 feet; thence
- 11) 130.60 feet along the arc of a curve deflecting to the left having a radius of 500.00 feet and a chord bearing and distance of South 51° 19' 15" East, 130.23 feet; thence
- 12) South 58° 48' 14" East, 919.84 feet to a point of intersection between the centerline of pavement for Schaeffer Road and Hoyles Mill Road; thence running with the centerline of Schaeffer Road by the following three (3) lines
- 13) South 59° 58' 07" West, 23.20 feet; thence
- 14) 546.84 feet along the arc of a curve deflecting to the left having a radius of 1100.77 feet and a chord bearing and distance of South 45° 44' 13" West, 541.23 feet; thence
- 15) South 31° 30' 19" West, 572.00 feet; thence leaving Schaeffer Road
- 16) North 58° 29' 41" West, 691.48 feet to a found iron bar; thence
- 17) South 31° 30' 19" West, 377.50 feet; thence
- 18) South 58° 29' 41" East, 691.48 feet to a point in Schaeffer Road; thence with said road
- 19) South 31° 30' 19" West, 1,385.12 feet to a point in or near the centerline of said road, said point lying on the outline of the land described in said Liber 9169 at Folio 500; thence running with the remaining road frontage of said deed and also with a portion of the frontage of said Liber 9169 at Folio 505, by a single course

- 20) South 31° 05' 44" West, 954.62 feet; thence continuing with the outline of said Liber 9169 at Folio 505 and still with Schaeffer Road
- 21) 267.03 feet along the arc of a curve deflecting the right having a radius of 599.97 feet and a chord bearing and distance of South 43° 50' 45" West, 264.83 feet; thence
- 22) South 56° 35' 46" West, 431.61 feet; thence
- 23) 212.58 feet along the arc of a curve deflecting to the right having a radius of 1,074.95 feet and a chord

LEGAL DESCRIPTION
 WEST GERMANTOWN DEVELOPMENT DISTRICT
 PAGE 3

- bearing and distance of South 62° 15' 41" West, 212.23 feet; thence
- 24) South 67° 55' 36" West, 331.46 feet; thence leaving Schieffer Road
- 25) North 37° 44' 09" West, 1,260.90 feet to found iron bar with cap marked "KCI"; thence
- 26) South 49° 15' 18" West, 236.89 feet to a found concrete monument; thence
- 27) North 52° 14' 19" West, 218.15 feet to a found concrete monument; thence
- 28) South 64° 48' 15" West, 85.91 feet to a found concrete monument; thence
- 29) North 37° 44' 33" West, 607.11 feet to intersect the third or South 65° 05' 42" West, 2,733.73 feet deed line of the land described in said Liber 14054 at Folio 293; thence running with a portion of said deed line and in accordance with a survey by Dewberry & Davis, the following twenty-seven lines
- 30) South 65° 05' 41" West, 3.19 feet to a planted stone found near a corner post in the existing fence line, said stone also standing at or near the 5th or North 37° 43' 00" West, 1639.99 feet deed line of the lands of Maryland-National Capital Park and Planning Commission (M-NCP&PC) as recorded among the aforesaid land records in Liber 3585 at Folio 228; thence with the line between said Liber 14054 Folio 293 and said lands of M-NCP&PC
- 31) North 37° 34' 44" West, 1,029.37 feet to a 1½-inch iron post (4 feet tall) found standing at the end of the last mentioned 5th deed line of Liber 3585 at Folio 228; thence still with said lands of M-NCP&PC
- 32) South 89° 50' 32" West, 1,049.48 feet to a point, said point also lying at the end of a line drawn North 89° 50' 32" East, 1,342.98 feet from a concrete monument found at the end of the 6th or South 89° 48' 50" West, 2,393.46 feet deed line of previously mentioned Liber 3585 at Folio 228 (Part One); thence

- 33) North 00° 45' 03" West, 1,615.35 feet; thence
34) North 81° 47' 06" West, 1,847.30 feet to an iron pipe
found set in the ground on the southeast side of a small
stream, said pipe also lying at the end of the South 79°
24' 17" East, 562.29 feet line of a conveyance to
Montgomery County, Maryland from Clifford C. Fink
recorded among the aforesaid land records in Liber 3957
at Folio 290; thence running with the South 26° 50' 44"
West, 80.38 feet line of said deed, reversed

LEGAL DESCRIPTION
WEST GERMANTOWN DEVELOPMENT DISTRICT
PAGE 4

- 35) North 24' 31' 06" East, 89.15 feet to a point lying 15 feet south of the existing centerline of pavement of Hoyles Mill Road; thence running parallel, concentric and 15 feet southerly of said centerline by the following four (4) lines
- 36) North 55' 44' 12" West, 208.73 feet; thence
- 37) 150.03 feet along the arc of a curve deflecting to the left having a radius of 970.00 feet and a chord bearing and distance of North 60' 10' 03" West, 149.88 feet, thence
- 38) North 64' 35' 54" West, 364.64 feet; thence
- 39) 95.74 feet along the arc of a curve deflecting to the right having a radius of 610.00 feet and a chord bearing and distance of North 60' 06' 07" West, 95.65 feet; thence departing Hoyles Mill Road and running across said road to a point lying 15 feet northerly of the centerline of pavement thereof
- 40) North 34' 23' 40" East, 30.00 feet; thence running parallel, concentric and 15 feet northerly of the said centerline by the following five (5) lines
- 41) 272.88 feet along the arc of a curve deflecting to the right having a radius of 580.00 feet and a chord bearing and distance of North 42' 07' 38" West, 270.37 feet; thence
- 42) North 28' 38' 56" West, 78.58 feet; thence
- 43) 168.58 feet along the arc of a curve deflecting to the right having radius of 170.42 feet and a chord bearing and distance of North 00' 18' 38" West, 161.79 feet; thence
- 44) North 28' 01' 40" East, 56.54 feet; thence
- 45) 113.14 feet along the arc of a curve deflecting to the left having a radius of 233.87 feet and a chord bearing and distance of North 14' 10' 06" East, 112.04 feet to a point; thence leaving Hoyles Mill Road
- 46) North 77' 45' 44" East, 232.14 feet to a point at the end of the 18th or S 50' E, 717.75 feet deed line of Parcel

One of a conveyance of land to Rockville Crushed stone from James Boyd Maughlin, Jr. recorded among the aforesaid land records in Liber 3209 at Folio 432; thence running with the 19th through 22nd line of said deed by the following four (4) bearings and distances

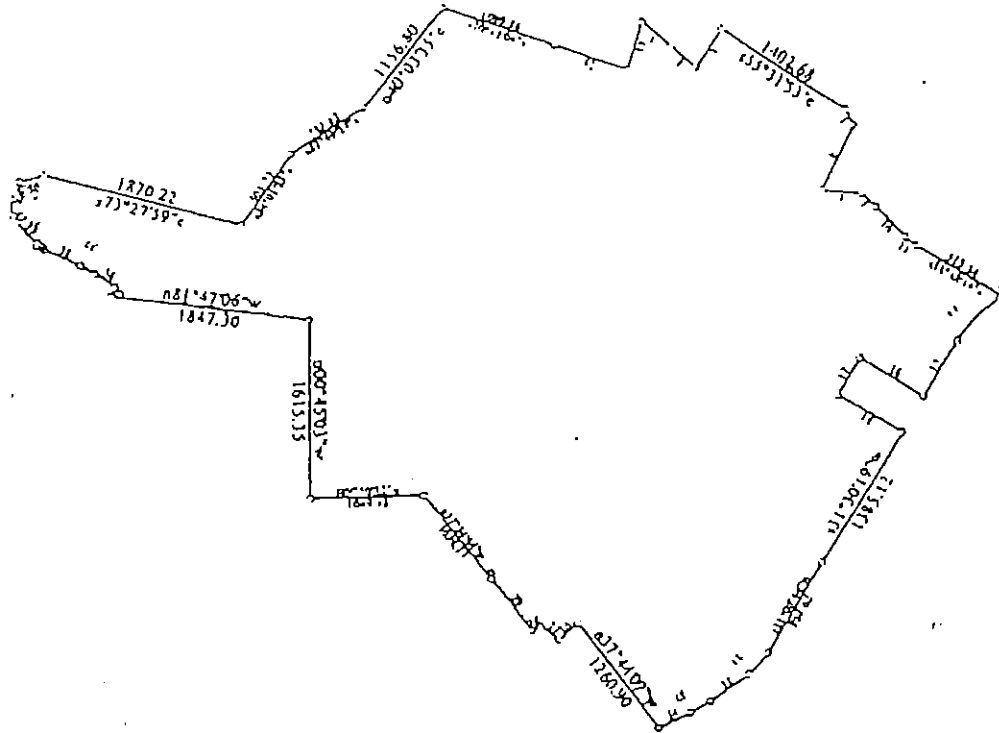
- 47) South 73° 27' 59" East, 1,870.22 feet; thence
- 48) North 34° 01' 25" East, 805.75 feet to a planted stone found; thence
- 49) North 57° 49' 29" East, 783.62 feet; thence

LEGAL DESCRIPTION
WEST GERMANTOWN DEVELOPMENT DISTRICT
PAGE 5

- 50) North 40° 03' 35" East, 1,156.80 feet; thence with a portion of the southerly line of the lands of Montgomery County, Maryland as recorded among the aforesaid land records in Liber 4783 at Folio 622, and also running with the following three (3) lines of the lands now or formerly belonging to Albert Brodsky et al per deed recorded among the aforesaid land records in Liber 3609 at Folio 639
- 51) South 70° 12' 04" East, 1,090.86 feet to a planted stone; thence
- 52) South 69° 51' 32" East, 726.52 feet to a planted stone; thence
- 53) North 17° 59' 23" East, 461.92 feet to the point of beginning, containing 29,218,660 square feet or 670.768 acres of land.

NOTE:

THIS MATHEMATICAL COMPILATION IS NOT INTENDED TO SUPERSEDE AN ACTUAL SURVEY DEVISED FOR THE PURPOSE OF CONSOLIDATING THE FIVE (5) MEMBER PARCELS. THIS DESCRIPTION DOES NOT SUPERSEDE THE INDIVIDUAL CERTIFIED SURVEYS USED, NOR DOES THIS DOCUMENT PURPORT TO MEET STATE REQUIREMENTS WHICH REGULATE LAND SURVEYORS IN THE PERFORMANCE OF BOUNDARY SURVEYS AND THE PREPARATION OF ASSOCIATED LEGAL DESCRIPTIONS.



Title: West Germantown Development District

Date: 12/11/97

Scale: 1 inch = 1625 feet

File: HOYL.DES

Tract 1: 670.769 Acres: 2714503.3 Sq Meters: Closure = s07.5140w 0.02 feet: Precision = 1/1357335: Perimeter = 28538 feet

001=s49.2807e 366.18	019=s31.3019w 1385.12	037=Lt. R-910.00, Arc=110.03 Brg=n00.1000w, Chd=146.11
002=s49.2912e 308.20	020=s31.0544w 954.62	038=n64.3554w 364.64
003=n35.2539e 426.97	021=Lt. R-577.33, Arc=74.01 Brg=n71.3041w, Chd=364.83	039=Lt. R-610.00, Arc=95.74 Brg=n60.0607w, Chd=91.63
004=s55.3153e 1402.68	022=s56.3546w 431.61	040=n34.2340e 30.00
005=s26.0452e 165.42	023=Lt. R-1074.95, Arc=212.38 Brg=n21.1341w, Chd=212.33	041=Lt. R-510.00, Arc=112.88 Brg=n42.0731w, Chd=210.37
006=s26.0157w 656.71	024=s67.5536w 331.46	042=n28.3856w 78.58
007=s83.0422e 363.00	025=n37.4409w 1260.90	043=Lt. R-110.42, Arc=161.51 Brg=n60.1131w, Chd=161.79
008=s43.5711e 194.24	026=s49.1518w 236.89	044=n38.0140e 56.54
009=s40.0433w 6.58	027=n52.1419w 218.15	045=Lt. R-233.17, Arc=113.14 Brg=n161.006w, Chd=112.64
010=s43.4824e 402.99	028=s64.4815w 85.91	046=n77.4544e 232.14
011=Lt. R-500.00 Brg=n31.1013w, Chd=130.23	029=n37.4433w 607.11	047=s73.2759e 1870.22
012=s58.4814e 919.84	030=s65.0541w 3.19	048=n34.0125e 805.75
013=s59.5807w 23.20	031=n37.3444w 1029.37	049=n57.4929e 783.62
014=Lt. R-1100.73, Arc=141.24 Brg=n43.4413w, Chd=341.23	032=s89.5032w 1049.48	050=n40.0335e 1156.80
015=s31.3019w 572.00	033=n00.4503w 1615.35	051=s70.1204e 1090.86
016=n58.2941w 691.48	034=n81.4706w 1847.30	052=s69.5132e 726.52
017=s31.3019w 377.5	035=n24.3106e 89.15	053=n17.5923e 461.92
018=s58.2941e 691.48	036=n55.4412w 208.73	

Exhibit "C"OWNERS OF PROPERTIES IN PROPOSED
WEST GERMANTOWN DEVELOPMENT DISTRICT

<u>TAX PARCEL NUMBER(S)</u>	<u>OWNER NAME</u>	<u>OWNER ADDRESS</u>
06-03141130	Arcola Investment Associates	6525 Belcrest Road, Suite 300 Hyattsville, MD 20782 Attn.: Sami Totah
06-02365497	3184708 Greenberg-Germantown	8720 Georgia Avenue, Suite 100
06-00396204	3184710 Limited Partnership	Silver Spring, MD 20910
06-02019088	3184721	Attn.: Paul Greenberg
396204	3184732	
2019088	3184743	
3183896	3184754	
3183908	3184798	
3183910	3184801	
3183921	3184812	
3183932	3184823	
3183943	3184834	
3184311	3184845	
3184322	3184856	
3184333	3184867	
3184344	3184878	
3184355	3184880	
3184366	3184891	
3184388	3184903	
3184390	3184914	
3184402	3184925	
3184413	3184936	
3184424	3184947	
3184435	3185372	
3184446	3185383	
3184457	3185394	
3184468	3185406	
3184470	3185417	
3183954	3185428	
3183965	3185430	
3183976	3185441	
3183987	3185213	
3183998	3185224	
3184003	3185235	
3184014	3185246	
3184060	3185257	
3184071	3185268	
3184025	3185270	
3184036	3185281	

with a copy to:

Artery Properties, Inc.

4733 Bethesda Avenue, Suite 400
Bethesda, MD 20814-5228
Attn.: Richard M. Aronoff

3184047	3185292
3184058	3185304
3184162	3185315
3184173	3185326
3184184	3185337
3184195	3185348
3184207	3185042
3184218	3185053
3184220	3185064
3184231	3185075
3184242	3185086
3184253	3185097
3184264	3185100
3184275	3185111
3184286	3184958
3184297	3184960
3184481	3184971
3184492	3184982
3184504	3184993
3184515	3185007
3184526	3185018
3184537	3185463
3184548	3185474
3184550	3185485
3184561	3185496
3184572	3185508
3184583	3185510
3184594	3185521
3184606	3185532
3184617	3185543
3184628	3185554
3184630	3182265
3184641	3185576
3184652	3185587
3184663	3185598
3184674	3185601
3184685	3185612
3184696	3185122
3184082	3185133
3184093	3185144
3184105	3185155
3184116	3185166
3184127	3185177
3184138	3185188
3184140	2865497
	2841606

06-01923815

Mr. and Mrs. Robert Sisson

14415 Hoyles Mill Road
Boyd's, MD 20841

EXHIBIT "D"WEST GERMANTOWN DEVELOPMENT DISTRICT
DISTRICT FUNDED IMPROVEMENTS

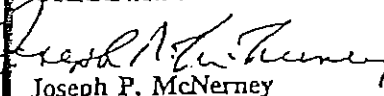

(Numbers Refer to Item Numbers in Petition)	Estimated Cost	Estimated Completion Date	% Funded by District
TRANSPORTATION IMPROVEMENTS			
1 Richter Farm Rd. A-297 MD 117 to Schaeffer (2 lanes)	\$4,124,866	12/99	100%
Additional 2 lanes MD117 to Schaeffer	1,100,000	12/99	100%
Richter Farm Rd A-297 Schaeffer to MD118 (2 lanes)	1,791,098	12/01	100%
Additional 2 lanes Schaeffer to MD118	364,949	12/01	100%
4 Schaeffer Road	992,244	11/98	100%
Subtotal Transportation Improvements	\$8,373,157		
OTHER IMPROVEMENTS AND COSTS			
13 Local Parks	\$620,000	12/03	100%
WATER AND SEWER			
2 Hoyles Mill Wastewater Pumping Station/ Force Main	\$3,838,020	12/98	100%
TOTAL CONSTRUCTION FUNDS REQUIRED	\$12,831,177		

EXHIBIT "E"

**DISTRICT FUNDED IMPROVEMENTS IF COST SAVINGS RESULT
(IN ORDER OF PRIORITY)**

DESCRIPTION	ESTIMATED COST	ESTIMATED COMPLETION DATE (IF FUNDED BY DISTRICT)	PERCENT FUNDED BY DISTRICT (IF FUNDED)
12" Outfall Sewer	\$ 488,526	Nov-98	100%
15" Outfall Sewer	\$ 530,480	Nov-98	100%
18" Outfall Sewer	\$ 376,104	Nov-98	100%
Clearing, Grading for Force Main Installation	\$ 615,445	Nov-98	100%
Lloydes Mill Road - Richter Farm Road to Schaeffer Road	\$ 283,012	Aug-99	100%
Clopper Road - Acceleration, Deceleration and Left Turn Lane onto A-297	\$ 121,161	Aug-99	100%
Clopper Road - Left Turn and Bypass Lane at Hopkins Road	\$ 49,818	Aug-99	100%
Great Seneca Highway (S) - Right Turn Lane to West Clopper Road	\$ 100,000	Jun-02	100%
Great Seneca Highway (S) - Acceleration Lane from Eastbound A-297	\$ 32,715	Jun-02	100%
Great Seneca Highway (N) - Second Left Turn Lane to West A-297	\$ 79,626	Jun-02	70%
Great Seneca Highway (S) - Second Right Turn Lane to West A-297	\$ 74,731	Jun-02	70%
Kings Crossing Boulevard - A-297 to Park Property	\$ 675,305	Aug-99	100%
Kings Crossing Boulevard Blasting - A-297 to Park Property	\$ 90,000	Aug-99	100%
TOTAL	\$ 3,516,923		

STANDARD PROCEDURES
OF THE
WASHINGTON SUBURBAN SANITARY COMMISSION

ORIGINATOR & POSITION	SP NUMBER	APPROVE BY/DATE	EFFECTIVE DATE	PAGE	1
 Joseph P. McNerney Director Customer Affairs Bureau	CUS 94-03	 Commission December 14, 1994	February 1, 1995	OF	6

SUBJECT
SDC DEVELOPER CREDITS AND REIMBURSEMENTS

PURPOSE

- 1.0 Define procedures for the issuance of a System Development Charge (SDC) Credit earned either through private design and construction of an approved Capital Improvement Program (CIP) Project or through eligible private funding of WSSC's costs to design and construct a CIP Project.
- 1.1 Describe how the SDC Credit due a Developer will be determined.
- 1.2 Describe when SDC credit and reimbursement will occur.

DEFINITIONS

- 2.0 Systems Development Charge (SDC) - A fee paid to the WSSC at the time of application for a plumbing permit intended to cover the cost of building CIP Projects needed to accommodate growth.
- 2.1 Developer - Any firm, corporation, partnership, joint venture, municipality, agency, person or persons whom WSSC has authorized to design and construct a Project eligible for SDC credit or whom WSSC has required to provide eligible private funding of the Commission's costs to design and construct such a Project.
- 2.2 Memorandum of Understanding (MOU) - An agreement made pursuant to provisions of Standard Procedure # PD-93-06 entitled "Procedure for Developing a Memorandum of Understanding for the Construction of WSSC Systems by Others" between the WSSC and a Developer which covers the Developer's design and construction of a CIP Project and which identifies the estimated total Developer costs eligible for SDC credit and/or reimbursement.
- 2.3 Qualified Project - Any CIP facility, or CIP line necessary to serve the Developer's property, which is designed and constructed by and at the sole expense of a Developer pursuant to an MOU or other agreement, or which is constructed by WSSC, but the Developer is required to provide eligible private funding of WSSC design and construction costs.

WSSC STANDARD PROCEDURES

PAGE 2 OF 6

- 2.4 Qualified Properties - The specific properties which WSSC identifies as served by a Qualified Project, as defined in Section 3.1.
- 2.5 Eligible Private Funding - Payment required by and made to WSSC by a Developer to cover certain WSSC costs to design and construct a CIP Project needed to accommodate growth.
- 2.6 SDC Credit - A dollar value which is credited to a Developer against SDC payable in connection with Qualified Properties and which equals either the total eligible costs as defined in Section 3.5 incurred by the Developer in the Developer's design and construction of a Qualified Project or the amount of eligible private funding made by the Developer to cover WSSC costs to design and construct a Qualified Project.
- 2.7 SDC Ledger - The record of SDC credit authorized for a Developer and the amount(s) of SDC credit issued or reimbursed to the Developer for fixtures covered by plumbing permits obtained in the course of developing Qualified Properties associated with a Qualified Project.
- 2.8 Credit Voucher - The document (Attachment "A"), executed by the Developer, which serves as the instrument to obtain SDC credit associated with an application for permit to install plumbing fixtures. Each Credit Voucher may apply only to a single application for plumbing permit and shall
- identify the Qualified Project from which credit is derived; and
 - specify the Qualified Property for which the credit is requested; and
 - be signed by the Developer or its authorized agent, be duly notarized; and
 - show the amount to be credited in lieu of SDC payment

PROCEDURES

- 3.0 A Developer shall declare a desire to design and construct a CIP Project eligible for SDC credit as an element of its written application for WSSC service filed with the Water and Sewer Reports Section. For projects that are already authorized, the Developer may request an authorization amendment to allow the Developer to design and construct a CIP Project eligible for SDC credit.
- 3.1 When a Developer has requested that it be permitted to design and construct a CIP Project, the Water & Sewer Reports Section shall prepare a map as part of its engineering report or its authorization amendment. The map will identify the Qualified Properties to be served by the CIP Project which the Developer has requested to design and construct. A similar map will be prepared when the service requested will require the construction of a CIP Project by WSSC.
- 3.2 If WSSC authorizes the Developer to design and construct a Qualified Project, or requires eligible private funding from the Developer of WSSC's design and construction costs, the properties identified as served by the Project will receive credit and/or be subject to SDC Payments which may be reimbursed to the Developer up to the total eligible amount. The Service Applications & Records

Section will also establish a Developer's SDC Ledger following execution of a MOU covering Developer design and construction of the Qualified Project or WSSC receipt of eligible private funding of the Qualified Project from the Developer.

3.3 The SDC Ledger will reflect the total amount of eligible private funding received from the Developer. If the Developer is designing and constructing the Qualified Project, the Ledger will initially reflect the Developer's SDC credit based upon the estimated total eligible costs agreed upon in the MOU. The Developer's initial Ledger credit amount will be adjusted to reflect the actual total eligible costs for the Qualified Project, as determined by the WSSC's Internal Audit Manager (as discussed in Sections 3.5, 3.6 and 3.7), after the Qualified Project has been accepted and placed in service by WSSC.

3.4 SDC credits against the ledger amount may be granted following WSSC receipt of eligible private funding or after construction of the Qualified Project by the Developer has commenced. However, in the latter case until such time as the actual total eligible amount is determined, SDC credits against the ledger amount shall not exceed 50% of the estimated total eligible costs, as cited in the MOU.

3.5 When a Developer is designing and constructing a Qualified Project, SDC Credit is the total eligible Project cost incurred and paid by the Developer, 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 original or amended MOU. Eligible costs must be allocable to the Qualified Project. Examples include, but are not limited to

- Direct labor and indirect costs;
- Professional and consultant services;
- Construction costs; and,
- Interest costs for funds used during design and construction, at an average interest rate not to exceed the rate paid by WSSC on short-term construction (currently ALEX) notes outstanding during the period beginning with the start of design and ending when the Qualified Project is placed in service.

Examples of costs that are not eligible costs unless mutually agreed upon in the original or amended MOU include, but are not limited to

- Area wide planning not directly related to the Qualified Project;
- Bonus payments for completion of construction;
- Costs outside the scope of the Qualified Project;
- Site acquisition costs (WSSC will acquire any needed off-site rights-of-way);
- Facilities capital cost of money;
- Fines and penalties;
- Federal and state income taxes; and
- Personal injury compensation or damages.

WSSC STANDARD PROCEDURES

- 3.6 The Developer will submit a written request for audit to WSSC's Internal Audit Manager, after the Qualified Project built by the Developer has been placed in service. Along with the request, the Developer must submit an itemized listing of eligible Qualified Project costs, incurred and paid, supporting the total amount of SDC Credit claimed.
- 3.7 In compliance with Article 29 § 6-113(f)(3), of the Annotated Code of Maryland, WSSC's Internal Audit Manager shall review and approve the costs incurred by the Developer. The Internal Audit Manager will strive to initiate the audit within 90 days of the Developer's request, if the request includes the required itemized cost listing. The Internal Audit Report will be the formal document that communicates the final results of the audit to WSSC and the Developer. When an audit is complete, prior to the final Internal Audit Report, the Internal Audit Manager will issue to the Developer an unsigned DISCUSSION DRAFT to allow the Developer an opportunity to discuss with Internal Audit any concerns the Developer has with the proposed SDC Credit. Subsequently, the Internal Audit Manager will issue to the Developer its final Report on the SDC Credit to be provided the Developer.
- 3.8 SDC credits against a Developer's SDC Credit balance will be issued by WSSC upon presentation of a complete and fully executed Credit Voucher presented at the time of plumbing permit application. The application must be made in connection with a Qualified Property served by the Qualified Project (being) built by the Developer, or funded by the Developer as described in Section 2.5. Also, the amount specified in the Credit Voucher shall not exceed the calculated SDC for plumbing fixtures covered by the permit application. Credit Vouchers reflecting and specifying an amount in excess of calculated SDC for the requested permit will not be accepted. Pending verification that a sufficient credit balance remains to cover the Credit Voucher Amount, issuance of the requested plumbing permit will held in abeyance. Insofar as possible, Credit Vouchers will be considered on a "first come-first served" basis. For applications for plumbing permit accompanied by a Credit Voucher for which a Developer's credit balance has been exhausted, the credit voucher and the associated application will be returned to the applicant.
- 3.9 In conformance with Section 3.12, SDC payments received in association with applications for plumbing permits for Qualified Properties will be identified as eligible for reimbursement to the Developer who has constructed or funded (as described in Section 2.5) the Qualified Projects serving those Qualified Properties.
- 3.10 For those situations where more than one Qualified Project serves a Qualified Property, SDC reimbursement payments shall be made in proportional shares to the Developers who have built or funded the Qualified Projects. A proportional share is calculated based upon a Qualified Project's actual (estimated) eligible costs or funding expressed as a percentage of the sum of all actual (estimated) eligible costs and/or funding of Qualified Projects serving the Qualified Property.

- 3.11 At the conclusion of each calendar quarter, the Service Applications & Records Section will determine the total SDC receipts eligible for reimbursement made for each previously identified Qualified Property. Only those SDC payments filed in association with plumbing permits under which all covered work has received an approved final inspection are eligible for reimbursement.
- 3.12 Based upon the quarterly reconciliation, the Service Applications & Records Section will prepare and forward to the General Accounting Section a Payment Request to be made to the appropriate Developer in an amount equal to the sum of qualifying SDC payments not yet reimbursed, and a memorandum recommending reimbursement of SDC payments and identifying the maximum amount recoverable. The memorandum shall be accompanied by a statement detailing eligible plumbing permits.
- 3.13 Following review of the recommended reimbursement, the General Accounting Section will forward the Payment Request and supporting documentation to the Disbursements Accounting Section which will issue payment to the Developer.
- 3.14 When a Developer has designed and constructed a Qualified Project, the sum of SDC Credits and Reimbursements pursuant to this procedure will be made only to the maximum determined by Internal Audit and agreed to by the Developer, subject to the maximum amount established in the MOU and only to the Developer identified in the MOU.
- 3.15 If the Developer wishes to transfer its right and title to any remaining SDC credit from a Qualified Project, the Developer shall notify the Service Applications & Records Section of the requested transfer. Such notification shall be in writing and shall identify the single entity to receive the entire remaining balance of SDC credit from a Qualified Project. The Service Applications and Records Section will acknowledge the credit transfer and forward the written request for inclusion in the Qualified Project's MOU as an amendment. Thereafter, all Qualified Project SDC credits or reimbursements will be issued to the last designated entity in the MOU as amended.
- 3.16 Notwithstanding any other provision of this Procedure, SDC Credit or reimbursements for costs identified in Section 3.3 of this Procedure are limited to SDC transactions for Qualified Properties served by the Qualified Project within a twenty year period, or until the sum of credits and reimbursements equals the total approved SDC Credit. The twenty year period will commence the day WSSC receives private eligible funding from the Developer or the Commission's Internal Audit Manager makes its final Report to a Developer under Section 3.7 of this Procedure. At the conclusion of the twenty year period, the Service Applications & Records Section will close the SDC Reimbursement Ledger and will provide written notification of exhaustion or termination of the SDC Credit to the last designated recipient.
- 3.17 In the event an issued Plumbing Permit expires or is cancelled by the owner or plumber, no SDC reimbursement to the Developer will be approved for that permit. In such cases, any Credit Voucher will be voided and the credit amount added to the Developer's outstanding Ledger balance.

WSSC STANDARD PROCEDURES

Distribution List:MASTER VOLUME LIST:

General Manager's Office
Internal Audit Office
Secretary's Office
Human Resources Division

Other Distribution:

Commissioner's Office
Administration Branch
Planning, Programs and Policy Branch
Operations Branch
General Counsel's Office
Budget & Financial Planning Office
Communications Office
Construction Bureau
Customer Affairs Bureau
Finance Bureau
Planning & Design Bureau
Accounting Division
Customer Services Division
Financial Operations Division
Project Development Division
Code Enforcement Section
General Accounting Section
Service Applications & Records Section
Water & Sewer Reports Section

Glossary of Development Services Process Terms and Abbreviations

TERM	DEFINITION
Applicant	A firm, corporation, municipality, agency, person(s) who owns or develops property and who seeks water or sewer service provided by systems or facilities within the Sanitary District.
Capital Improvements Program (CIP)	WSSC's Capital Improvements Program is a 6 year projected program of capital improvements for all major water and sewer systems and facilities as defined in Article 29§ 7-101 of the Maryland Annotated Code.
Construction Services Fee	A fee to recover WSSC costs to provide construction inspection services, final project testing, and the processing of the release for service.
Contamination Data Base Search Fee	A fee to recover WSSC costs of providing a Contamination data base search for an Applicant.
Delegation of Authority	Delegation of authority to perform various functions from the Commission to the General Manager and sub-delegated to staff, as set forth in a document and modified from time to time as appropriate.
Development Services Process (DSP)	The new process of extending the WSSC water or sewer system. The old process was called DAP (Development Authorization Process).
Engineering Agreement	A bilateral agreement between the Applicant of a Non-SEP project and WSSC, when WSSC is to provide design services. The agreement enables WSSC to recover any costs incurred if the Applicant decides to not proceed with the construction of the project.
Extra Review Fee for Additional Reviews of Unsigned Drawings	To recover WSSC costs of reviewing design drawings more than two times. These are a result of inadequate submissions or changes in the drawings. The fee would not be charged if the changes are made as a result of a WSSC requested modification to the drawings.
Extra Review Fee for Minor Revisions	A fee to recover WSSC costs of reviewing changes to approved design drawings.
Extra Review Fee for Splitting Signed Drawings	A fee to recover WSSC costs of reviewing and processing the splitting of signed drawings into two or more separate projects.
Facilities	Water and sewage pumping stations, storage structures, and treatment facilities and their appurtenances.
Feasibility Review Fee	For certain SEP projects, WSSC will review a Feasibility Study prior to the initiation of the design phase. The fee will recover WSSC costs for the review.
Feasibility Study Preparation Fee	For Non-SEP projects, this fee will cover the cost of WSSC's preparation of the Feasibility Review Study, which is similar to the Authorization Report previously prepared under the DAP.

Glossary of Development Services Process Terms and Abbreviations

TERM	DEFINITION
Hydraulics Modeling Fee	A fee to recover the costs of WSSC modeling the water and sewer systems for a development. There will not be a revision fee. If the Applicant changes what was originally sized, the new modeling would be subject to the entire fee. If the resizing is for a multipart development and several parts have already been completed, the completed parts would be considered existing for the calculation of the new fee.
Letter of Findings	This correspondence will state all pertinent information for the proposed development and specifies WSSC contact's name, phone number and job number, and will set forth any conditions that must be met prior to service being provided. Information will include the availability of Water and Sewer, the need for a "Feasibility Review" for SEP projects, and the need to obtain a "Planning Assistance Package" required prior to Phase 2.
Maintenance Bond	A security payable to WSSC as a guarantee of funds for the correction of any construction and material deficiencies found during the life of the bond. The security shall be in an amount equal to one half the amount of the Performance Security. The security may be provided in the form of a certified check, a cash deposit, a certificate of deposit, an irrevocable letter of credit from a financial institution acceptable to WSSC and in a form acceptable to WSSC, a bond executed by a surety company authorized to do business in the State of Maryland, or any other form of security acceptable to WSSC.
Major Project	Projects for the construction of larger diameter water and/or sewer mains, force mains, and/or facilities included in the CIP as defined in Article 29§ 7-101 of the Maryland Annotated Code.
Memorandum of Understanding (MOU)	A bilateral agreement between the Applicant and WSSC for the design and construction of water and/or sewer facilities. The MOU is required for the applicant to construct facilities that WSSC will, upon satisfactory completion, take over for maintenance and operation.
Modifications Booklet	A booklet compiling all changes to the <u>General Conditions and Standard Specifications, Standard Detail</u> , and applicable Special Provisions that pertain to the construction of SEP projects.
Non-SEP Job	A WSSC designed and constructed extension, usually to alleviate residential health hazards, or to provide service to a single-family residence, or to construct a major project.
Offsite Extensions	Water or sewer mains constructed beyond the limits of the Applicant's property.
Partial Release for Service Fee	A fee to recover WSSC costs of processing a release of a portion of a project prior to final Release for Service.
Payment Security	A security payable to WSSC to guarantee payment to the utility contractor, subcontractors, and suppliers that provide labor, materials, or construction equipment for the construction of the subdivision lines. This security shall be in an amount equal to the amount of the performance security. The security may be provided in the form of a certified check, a cash deposit, a certificate of deposit, an irrevocable letter of credit from a financial institution acceptable to WSSC and in a form acceptable to WSSC, a bond executed by a surety company authorized to do business in the State of Maryland, or any other form of security acceptable to WSSC.

Glossary of Development Services Process Terms and Abbreviations

TERM	DEFINITION
Performance Security	A security payable to WSSC to guarantee completion of construction of subdivision lines. This security shall be payable to WSSC in an amount designated by WSSC, taking into account potential cost escalation. The security may be provided in the form of a certified check, a cash deposit, a certificate of deposit, an irrevocable letter of credit from a financial institution acceptable to WSSC and in a form acceptable to WSSC, a bond executed by a surety company authorized to do business in the State of Maryland, or any other form of security acceptable to WSSC.
Physical Acceptance Date	In instances where Substantial Completion is issued with outstanding punch list items, WSSC will establish the Physical Acceptance Date once all items have been completed. This date will signify that all contractual requirements at the site have been met.
Planning Assistance Package Fee	A fee for the preparation of an information package on all existing WSSC water and sewer systems in the vicinity of the project.
Release of Liens	A form acceptable to WSSC, signed by the utility contractor and the Applicant and notarized, stating that the utility contractor, and all subcontractors and suppliers, have been paid.
Re-Test Fee	A fee to recover WSSC costs when additional project testing is needed as a result of initial testing failures.
Review for System Integrity Fee	A fee to recover WSSC costs incurred for the preliminary and final review and approval of the Applicant's design submission.
Substantial Completion	The point in the construction phase when a project is ready to be used for its intended purpose. All testing is complete and the system or facility is ready to be placed into service.
System Development Charge (SDC) Credit	Costs paid by the Applicant to construct WSSC systems or facilities may entitle the Applicant to a credit or reimbursement of the System Development Charges imposed by WSSC for properties served by the project. The System Development Charge Credit Agreement (SDCCA) or the MOU shall indicate how such credits towards SDC will be determined. See Standard Procedure CUS 94-03.
System Extension Permit (SEP)	A WSSC-issued permit for extensions to WSSC System. Replaces the MOU for systems projects. The permit is required for the applicant to build water and sewer systems that WSSC will, upon satisfactory completion, take over for maintenance and operation.
Systems	Water and sewer pipes.
Transfer of Ownership Fee	A fee to recover WSSC costs of processing a change in ownership of a project prior to the issuance of the SEP.
Turnkey Project	A project where the Applicant will design and construct all systems, facilities, or connections in accordance with WSSC standards and technical criteria, and will transfer the same to WSSC for operation and maintenance when the construction and testing has been completed to the satisfaction of WSSC and all conditions set forth in the SEP or MOU are met.

Attachment 6

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March 14, 2011

Ms. Jennifer Barrett
Director of Finance
Montgomery County, Maryland
101 Monroe Street, 15th Floor
Rockville, Maryland 20850

Dear Ms. Barrett:

You have asked me to respond to several questions in connection with the Inspector General's Report issued on March 11, 2011 regarding the Hoyles Mill Wastewater Pumping Station and Force Main (the "IG Report"). As you know, I have acted as bond counsel to the County in several capacities since 1985. Specifically, I advised the County in connection with the adoption of the State and County laws authorizing the creation of development districts and acted as bond counsel in connection with the creation of the West Germantown Development District (the "District") and the issuance of special obligation bonds which financed infrastructure to be constructed in the District, including the Hoyles Mill Wastewater Pumping Station and Force Main (the "Improvements").

County Payments

First, you have asked that I address the legal authority for the payments made by the County for the Improvements. Section 14-2 of the County Code¹ provides that the one of the 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 the County. The process set forth in Chapter 14 provides the mechanism by which the infrastructure to be financed by the issuance of special obligation bonds is identified and the costs to be financed are determined. Once the County Council declares its intent to establish a development district (Section 14-6(b)) and the developers complete the application process for provisional adequate public facilities approval with the Planning Board (Section 14-7), the County Executive must complete the fiscal report described in Section 14-8 which, among other things, must estimate the cost of each infrastructure improvement listed by the Planning Board and recommend which infrastructure improvements the district should fully or partly fund. The County Council then may by resolution, create a district and such resolution must

¹ References to sections of Chapter 14 are to those sections as were in effect when the District was created and the West Germantown bonds were issued.

list each infrastructure improvement that will be financed by the district, the estimated completion date and cost of that improvement and the share of that cost which the County or another governmental agency will pay. In order to issue bonds, the County Council must adopt another resolution under Section 14-13 describing the proposed infrastructure improvements, the maximum amount of bonds to be issued and other details of the bonds. Section 14-12 provides that all proceeds received from any bonds issued must be applied towards "the costs of the infrastructure improvements listed in the resolution adopted under Section 14-9(d)(2)" and bond issuance costs.

Pursuant to the authority of Chapter 14, the County Council adopted Resolution 13-636 on July 30, 1996, declaring its intent to create the District. Thereafter, the County Executive issued his fiscal report dated September 29, 1997 (the "Fiscal Report"), wherein he recommended that several infrastructure improvements be financed, including the Improvements. Specifically, he recommended that a bond issue of approximately \$19.9 million be undertaken to fund \$15.5 million in infrastructure improvements. The Improvements were included on the list of recommended infrastructure. The Fiscal Report also recommended that the majority of the proceeds of the bonds should be used to acquire substantially completed improvements that are advance-funded and constructed by the developers.

Upon receipt of the Fiscal Report, the County Council adopted Resolution No. 13-1135 on January 13, 1998 (the "Second Resolution"). The Second Resolution created the District and listed in Exhibit D the infrastructure improvements to be financed, including the estimated cost of each improvement and the share of that cost which would be financed through the District. To the extent that any cost savings were realized in the construction of the infrastructure improvements listed on Exhibit D, the Second Resolution authorized those cost savings to be applied to the construction of additional infrastructure improvements listed on Exhibit E. The Second Resolution also authorized the County to enter into an Implementation Agreement with the owner or developer of any property located in the District to address the disbursement of funds and the mechanics for reimbursements from other sources for infrastructure costs. The Improvements are listed on Exhibit D of the Second Resolution, with an estimated cost of \$3,838,020 and 100% of such costs to be funded by the District. Subsequently, the County Council adopted Resolution 13-1398 on August 4, 1998 (the "Bond Resolution"). The Bond Resolution authorized up to \$20,000,000 of bonds to be issued to finance infrastructure improvements in the District, including the Improvements.

Pursuant to the authority of the Second Resolution, the County entered into an Implementation Agreement dated April 1, 2002 with Arcola Investment Associates, Artery Hoyles Mill, LLD and Woodcliffe Development District, LLC (collectively, the "Developers"). Article III set forth the procedures whereby the County would purchase the Improvements from the Developers. The purchase price was to be paid to the Developers after substantial completion and final acceptance. The total maximum purchase price for the Improvements was \$3,838,020, the amount that was authorized by the Second Resolution and the Bond Resolution. I understand that, pursuant to the

Implementation Agreement, the County paid a total of \$3,715,602.50 for the Improvements.

As set forth above, the County's payment of bond proceeds to the Developers pursuant to the Implementation Agreement to pay for the Improvements was authorized by Chapter 14 and the Council resolutions. The financing of the costs of the Improvements was recommended in the Fiscal Report and subsequently authorized by the County Council in the Second Resolution and the Bond Resolution. In accordance with the Second Resolution, the County entered into the Implementation Agreement, whereby the County agreed to purchase the completed Improvements. The payments made under the Implementation Agreement represented the purchase price for completed improvements and were made within the maximum amounts authorized by the County Council. As such, those payments were legal and proper in all respects.

WSSC Payments

Second, you asked me to address the legal authority for the WSSC payments referenced in the IG Report. While we did not (and do not) represent WSSC in connection with the District or otherwise, throughout the course of the District financing, we discussed the relationship between the District financing and existing WSSC charges, credits and reimbursements and included provisions in several documents to address these issues.

Specifically, the Second Resolution authorized the County to include in the Implementation Agreement "the handling of System Development Charge (SDC) credits accruing to properties located in the District." Pursuant to the Second Resolution, the Implementation Agreement included provisions regarding the allocation of SDC Credits. We understood at the time we did the District financing that the Developers (or their builders) would be eligible for SDC Credits and/or reimbursements for SDC's that were paid relating to lots within the District. We included these provisions in the Implementation Agreement to ensure that the SDC Credits were allocated pro-rata across all of the units in the District, in order to ensure that all residents in the District would get the benefit of the credits.² We further understood that the SDC credits would be available to the Developers (or their builders) because they were providing the Improvements and financing the Improvements through the District, thereby alleviating the need for WSSC to collect SDC's to fund the Improvements. We did not see the credits or reimbursements as payments for the Improvements, but as offsets to ensure that the Developers (and ultimately the homeowners) would not pay for the Improvements twice; first through the SDC's and later through the special taxes levied in the District to repay the bonds.

² The IG Report notes that the Implementation Agreement included the pro-rata concept even after the WSSC MOU was amended to remove the pro-rata concept. My recollection is that this was intentional. We were aware of the amendment to the MOU, but wanted to require the Developers to use the pro-rata method to ensure fairness to all District residents. We felt that the Implementation Agreement was an appropriate document to memorialize the Developers agreement to do this.

March 14, 2011

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The IG Report also suggests that the County should have provided an assignment letter to WSSC, which letter would have assigned the County's rights in the SDC credits to the Developers. We are not aware of any legal basis for the County to claim "ownership" of the credits or reimbursements of SDC charges paid by the Developers (or their homebuilders), County law, the Second Resolution and WSSC procedures clearly provide that the property owner has the right to receive the credits. The reimbursements arise because a portion of the SDC was paid when the plumbing permit was issued. Clearly the County did not pay the SDC, so it is not eligible for the reimbursement. Therefore, the County did not have any rights in the credits or the reimbursements that could be assigned to the Developers or any third party.

Please contact me if you need any additional information or have any other questions.

Sincerely,



Cheryl O'Donnell Guth

COG:clj

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