

MFP ITEM 2
October 10, 2005
Update

MEMORANDUM

TO: Management and Fiscal Policy Committee
FROM:  Michael Faden, Senior Legislative Attorney
SUBJECT: **Update:** Development districts in Clarksburg

Finance Department and Office of Management and Budget staff and attorneys Jack Orrick and Steve Kaufman are expected to attend this update session. Attached are materials from the Finance Department and attorneys for the Clarksburg developers which explain the current status of the one approved and 2 proposed development districts in the Clarksburg area, and the infrastructure improvements that those districts may fund. A third district, in the Cabin Branch area west of I-270, has been discussed informally but has not been formally proposed.

The legislative amendments discussed in the memo on ©5-8 from Mr. Orrick and Mr. Kaufman have not all been endorsed by either Executive branch or Council staff, but are included to give this Committee a forecast of potential issues when amendments to the development districts law come before you. At this point the Committee does not need to make any recommendation on these or any other amendments to the law. However, the Committee may want to discuss the question, raised on ©5-6, of who in the Executive branch is responsible for preparing the Executive's fiscal report.

October 6, 2005

TO: Marilyn J. Praisner, Chair
Management and Fiscal Policy Committee

FROM: Timothy L. Firestine, Director
Department of Finance

SUBJECT: Update on Development Districts in Clarksburg

As requested by Council staff, I have attached information regarding the status of Development Districts in Clarksburg. As you are aware, the Clarksburg Town Center district has been formed and the list of infrastructure to be funded has been approved by the County Council. We are not able to structure and issue the bonds until the development plans are finalized. The other two districts have been under review. In a recent meeting with the developers of Greenway Village and Clarksburg Village, the developers confirmed their interest in proceeding with development districts. We will work toward completing the Executive's Fiscal Report by the end of this year.

I want to clarify that, since no bonds have been issued for development districts in Clarksburg, no development district taxes have been levied on any property owners. Also, in our meeting the developers confirmed that none of the planned infrastructure has been held up by the lack of development district funding, which is proposed to be used to fund County projects or to reimburse developers for infrastructure once it is built.

My staff and I will be present at the worksession on Monday to answer questions.

cc: Beverley Swaim-Staley

Attachments:

Development Districts Update October 2005
Approved infrastructure list for Clarksburg Town Center

DEVELOPMENT DISTRICTS

UPDATE – OCTOBER 2005

General

1. No bonds have been issued and no development district taxes have been levied anywhere in Clarksburg
2. No infrastructure improvements have been delayed related to development district issues

Clarksburg Town Center

1. District formed by Resolution No. 15-87 in March 2003.
2. Delays occurred due to change in ownership
3. All County and Underwriter legal and financing staff attended meeting in November 2003 expecting kick-off of financing
4. Developer not ready – outstanding development plan issues
5. Developer informed County of reductions in # of units and non-residential sq. footage
6. Developer requested consideration of increase in tax burden per sfd home from \$1200 to \$1500
7. Developers (Newlands) have not supplied requested due diligence information to move forward with financing
8. Outstanding approvals affect unit count and non-residential – must be resolved before bonds can be structured
9. Current development issues would need to be resolved and approvals obtained prior to structuring and issuing bonds

Clarksburg Skylark and Clarksburg Village (Districts not formed)

1. Resolution No. 14-1009 in October 2001 initiated review process
2. Planning Board approved application March 2002
3. OMB, Finance, DPWT worked through 2003 to develop infrastructure package that would meet various objectives
4. Proposal made to developers, some negotiation occurred, more information was needed on costs of enhanced improvements
5. Petition to amend districts received July 2004
6. Executive Fiscal Report has not been issued and infrastructure list has not been recommended
7. Developers on 9-23-05 restated and affirmed interest in proceeding with development districts
8. Plan now underway to issue Executive Fiscal Report by end of calendar year 2005

Outstanding Issues Related to Chapter 14 – Development District Law

1. Amendments to Ch 14 and Ch 52 needed to clarify County Council intent on Schools Impact Tax credits
2. Further review needed on credits against Transportation Impact Taxes
3. Outstanding issues on consent requirements, disclosure requirements
4. Other technical changes agreed to by parties

**CLARKSBURG DEVELOPMENT DISTRICTS
STATUS OF COMPLETED INFRASTRUCTURE**

CLARKSBURG TOWN CENTER DEVELOPMENT DISTRICT¹

Infrastructure Requirement	Estimated Cost	Status of Completion
Civic Center Library	\$4,640,000	Not Paid – This is contribution towards future library
Stringtown Road 800 Ft. Gap (one of two additional lanes on south side of roadway)	\$550,000	Not paid – Road has not been constructed
Stringtown Road Extension (Md. 355 – I-270)	\$1,600,000	Not Paid - Contribution towards future road construction
Stringtown Road (Md. 355 – Piedmont Road (Snowden Farm Parkway)) – two lanes on north side of roadway	\$4,435,000	Partially completed – two lanes between Md. 355 and Overlook Park Drive completed, other two lanes completed by 12/31/05. Plans from Overlook to Piedmont Road not yet approved.
Piedmont Road (Snowden Farm Parkway)	\$2,270,000	Completed
Lowering Md. 355 at Stringtown Road	\$905,000	Contribution to be paid to Centex when work is completed – not completed yet
Clarksburg Road	\$1,340,000	Not completed
WSSC 20-Inch Water Main	\$779,000	Substantially Completed
Greenway Trails	\$460,000	Not completed
Clarksburg Square / Overlook Park Roads (B List Item)	\$2,900,000	Grading completed on Overlook Park Dr. – part of paving to be completed later this year
Md. 355 / Md. 121 Intersection (B List Item)	\$100,000	Not completed

¹ Based on Resolution 15-87 adopted March 4, 2003.

**CLARKSBURG DEVELOPMENT DISTRICTS
STATUS OF COMPLETED INFRASTRUCTURE**

**CLARKSBURG VILLAGE (CV) / CLARKSBURG SKYLARK (CS)
DEVELOPMENT DISTRICT¹**

Infrastructure Requirement	Estimated Cost	Status of Completion
Improvements to Md. Rt. 27 (Joint)	\$2,266,841	Completed - Observation Drive to Rt. 355. Substantially Completed Rt. 355 to Brink Road
Improvements to Md. Rt. 27 (Joint)	\$4,407,804	In Design- Second two phases between Brink Rd and Skylark Road
Skylark Road (CS)	\$3,150,000	Substantially Completed – Md 27 to Greenway; second half to commence this fall
Stringtown Road – construction of two lanes along Clarksburg Village Frontage (CV)	\$1,244,000	Not completed
Construction of A-302 (Newcut Road Between Md. 27 and Md. 355) ² (Joint)	\$4,700,000	In Design – Md 27 to A-305
Construction of Mid-County Arterial (A-305) Stringtown Road to Md. 27 ²	\$22,948,000	Approx. ½ of road graded - from Stringtown Road to end of Phase 1 of Clarksburg Village / Clarksburg Skylark; Approx. ¼ of road has been paved.
Construction of Forman Blvd. (Joint)	\$1,850,000	Not completed
School Improvements / Local Parks (Joint)	\$3,380,000	Not completed
Greenway Trails (Joint)	\$5,614,000	Not completed

¹ Represents list of infrastructure in petition submitted by Developers to County Council – Final Executive recommendations are still pending.

² Items which include additional public benefit since they provide additional capacity over needs of developments

MEMORANDUM

TO: Michael Faden
Montgomery County Council

FROM: John R. Orrick, Jr. and Stephen Z. Kaufman

DATE: October 3, 2005

RE: Legislative Amendments to County Code Ch. 14 - Development Districts

We have discussed with staff representatives of the County Executive's Department of Finance and the County Council of the need for certain amendments to Chapter 14 of the Montgomery County Code ("Ch. 14") dealing with development districts. We are summarizing below the most significant changes to this statute which have come out of these discussions.

- **Elimination of Initial Public Hearing by Law Unless Specifically Requested.** Ch. 14 requires the County Council to adopt an initial Resolution following the filing of a petition to establish a development district for the purpose of determining if the establishment of the development district will benefit the public interest. A public hearing must be held in connection with the consideration of this initial Resolution. Since the particulars of the development district have yet to be reviewed by representatives of the Planning Board or the County Executive, our experience in the three districts created by the County to date is that this public hearing serves no meaningful purpose with respect to the task of the County Council to determine whether the potential establishment of the development district is in the public interest. Such a hearing could be held where a request for same was made by any member of the public or County government by a specified date after introduction of the initial resolution by the County Council. We believe that eliminating the requirement of the public hearing where *no members of the public or no members of County government have requested same* will expedite what is already a very lengthy process, and given the requirements in Ch. 14 that a public hearing be held prior to the adoption of the authorizing Resolution by the County Council, will not deprive any member of the public or of County government of the right to be heard prior to the action being taken to actually create the district by the County Council.
- **Inclusion of a Time Obligation for Consideration of Development District by County Executive and Establishment of Dedicated Staff Position.** As alluded

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to previously, the primary concerns that the development community has with the current process for creation of development districts under Ch. 14 is the uncertainty associated with the time for consideration of development district applications. While admittedly some delays associated with the development districts created to date and those pending have been due to changes in developer plans and sales of interests within developments for which development districts have been proposed, the lack of any required time period in Ch. 14 for the County Executive to make recommendations in its County Executive Fiscal Report creates tremendous uncertainty for the development community. Further, it has been our experience that the lack of a dedicated staff position or department within the County Executive Branch to issue the County Executive's Fiscal Report has led to a lack of certainty within the County Executive Branch as to the actual delegates to prepare the County Executive Fiscal Report. For example, currently members of the staff of the Office of Management and Budget have been tasked with reviewing the recommended infrastructure list, while members of the Department of Finance have reviewed the overall financing plan. The actual preparation of the County Executive's Fiscal Report, however, has not been clearly delegated to either Department. We suggest that at a minimum, the County Executive be asked to report to the County Council within a fixed period of time after receiving the supporting information from the developers as to its progress in issuing the County Executive Fiscal Report and that a specified County Department or staff position be tasked with the preparation of this report.

- **Authorization for Subdistricts Within a Development District.** Due to the Internal Revenue Service requirements for spending bond proceeds within a 3-year period of time following bond issuance and the County's policy of using development district financing primarily to acquire substantially completed infrastructure, often times infrastructure for a large development cannot be financed through a single series of bonds, but must be financed through two or more series over a period of several years. Having the authority to create subdistricts within the boundaries of a single development district would facilitate the issuance of series bonds to finance discrete portions of the infrastructure at or near the time such portions can be acquired while maintaining the expectation that the entire development will be subject to the development district financing. Subdistricts can also be used in instances where multiple developers are participating in the construction of common infrastructure but are proceeding at different paces with respect to construction of their developments.

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- **Authority for Prepayment of Special Taxes.** Ch. 14, unlike the Maryland State enabling statute adopted for Counties and municipalities, does not contain any express authorization for a property owner to prepare special taxes and special assessments imposed under the law, which may be attractive to the developer of a community for some of the affected properties.
- **Clarification of Availability of Credits for County Impact Taxes.** Ch. 14 currently provides for a credit against all County development impact taxes and construction excise taxes imposed under Ch. 52 of the Montgomery County Code. Amendments to Ch. 52 last year have added additional development impact taxes for school construction and have modified the procedures for obtaining a credit against transportation impact taxes. Since the developers are being requested by the County to construct additional infrastructure over and above that required by the APF approvals for their projects as “additional public benefit” and the County Executive’s Fiscal Report for each of the three established development districts (*i.e.*, Clarksburg Town Center Development District, as well as West Germantown and Kingsview Village Development Districts) have each indicated that one of the primary reasons for requiring this additional public benefit is the foregone collection of County development impact taxes, the availability of the credit in Ch. 14 for all development impact taxes should be preserved and harmonized with revised Ch. 52.
- **Clarification of Developer Obligations to County With Respect to Reimbursement of County Expenses.** Ch. 14 is silent with respect to the obligation of the developers/property owners to reimburse the County for the extra costs incurred by the County for consultants and professionals engaged to evaluate a development district petition and structure the development district financing. In the three districts created to date, the County has asked for reimbursement from the developers for certain costs, but there are no guidelines issued with respect to what types of expenses can be reimbursed. We had suggested in lieu of an unlimited expense reimbursement, that the developers be required to pay a filing fee at the commencement of the development district process which could be utilized by the County to fund its expenses in processing development district petitions.
- **Additional Amendments.** Certain additional amendments to Ch. 14 may be desirable. These include the following:

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- Adding provisions to address how an established development district may be modified to incorporate additional property after the adoption of the original County Council Resolution which establishes the district;
 - Adding an express reference that the provisions of Ch. 11B of the Montgomery County Code relating to County procurement does not apply to the financing, acquisition or construction of infrastructure improvements financed, or the hiring of consultants or other professionals to provide services to the County, in connection therewith with the issuance of bonds under Ch. 14;
 - Adding requirements for disclosure to home purchasers in lot reservation contracts; sales brochures, and other sales materials in addition to the existing requirement for disclosure in the real estate contract of sale.
- **Technical Corrections.** Several provisions of current Ch. 14 need to be amended to clarify or remove language which does not reflect current County policy or established law with respect to the funding of infrastructure through development districts.