Agenda Item 13
July 12, 2011
Public Hearing

MEMORANDUM

TO: County Council

FROM: MF Michael Faden, Senior Legislative Attorney
GO Glenn Orlin, Deputy Council Staff Director

SUBJECT: **Public Hearing:** Bill 22-11, Special Taxing District – Clarksburg Area

Bill 22-11, Special Taxing District – Clarksburg Area, sponsored by Councilmembers Floreen and Rice, was introduced on June 21, 2011. A Government Operations and Fiscal Policy Committee worksession will be scheduled at a later date.

Bill 22-11 would create a Clarksburg Area Special Taxing District, consisting of the Clarksburg Village and Arora Hills subdivisions. Precise boundaries will be inserted in the Bill before it is acted on. This special taxing district was recommended by the Clarksburg Infrastructure Working Group as an alternative to the private infrastructure charge which was attached to the deeds of properties in these subdivisions. For a fuller discussion, see the Working Group report excerpt on ©12.

The Bill would authorize the levy of an ad valorem property tax to fund transportation infrastructure improvements that are specified in an implementing resolution, to be introduced later, and authorize the issuance of a certain type of bond to finance certain transportation infrastructure improvements. This Bill is based on Bill 50-10, enacted on November 30, 2010, which created a similar special taxing district in White Flint.

Council staff inserted more general language in the Bill's long title (purpose clause) to give the Council added leeway to restructure the financing mechanism or otherwise amend the Bill as necessary.

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Bill No. 22-11
Concerning: Special Taxing District - Clarksburg Area
Revised: 6-15-11 Draft No. 1
Introduced: June 21, 2011
Expires: December 21, 2012
Enacted: ______
Executive: ______
Effective: ______
Sunset Date: None
Ch. _____, Laws of Mont. Co. ______

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Floreen and Rice

AN ACT to:
(1) establish a Clarksburg Area Special Taxing District;
(2) authorize the levy of an *ad valorem* property tax to fund certain transportation infrastructure improvements;
(3) authorize the issuance of a certain type of bond to finance certain transportation infrastructure improvements;
(4) generally authorize a Clarksburg Area Special Taxing District; and
(5) generally amend or supplement the laws governing the use of infrastructure financing districts and similar funding mechanisms.

By adding
Montgomery County Code
Chapter 68D, Clarksburg Area Special Taxing District

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets**]**	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets**]]**	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

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

Sec 1. Chapter 68D is added as follows:

Chapter 68D. Clarksburg Area Special Taxing District.

68D-1. Definitions.

For purposes of this Chapter, the following terms have the meanings indicated:

Bond means a special obligation or revenue bond, note, or other similar instrument issued by the County that will be repaid from revenue generated by ad valorem taxes levied under this Chapter.

Cost means the cost of:

(1) the construction, reconstruction, and renovation of any transportation infrastructure improvement, including the acquisition of any land, structure, real or personal property, right, right-of-way, franchise, or easement, to provide a transportation infrastructure improvement for the District;

(2) all machinery and equipment needed to expand or enhance a transportation infrastructure improvement for the District;

(3) financing charges and debt service related to a transportation infrastructure improvement for the District, whether the charge or debt service is incurred before, during, or after construction of the transportation infrastructure improvement, including the cost of issuance, redemption premium (if any), and replenishment of debt service reserve funds for any bond that finances a transportation infrastructure improvement for the District;

(4) reserves for principal and interest, the cost of bond insurance, and any other type of financial guarantee, including any credit or liquidity enhancement, related to a transportation infrastructure improvement for the District;

(5) architectural, engineering, financial, and legal services related to providing a transportation infrastructure improvement for the District;

(6) any plan, specification, study, survey, or estimate of costs and revenues related to providing a transportation infrastructure improvement for the District;

(7) any administrative expense incurred by the County necessary or incident to determining whether to finance or implement a transportation infrastructure improvement for the District; and

(8) any other expense incurred by the County necessary or incident to building, acquiring, or financing a transportation infrastructure improvement for the District.

District means the Clarksburg Area Special Taxing District created under Section 68D-2.

Transportation infrastructure improvement means:

(1) the construction, rehabilitation, or reconstruction of a road, street, or highway that serves the District, including any:

(A) right–of–way;

(B) roadway surface;

(C) roadway subgrade or shoulder;

(D) median divider;

(E) drainage facility or structure, including any related stormwater management facility or structure;

(F) roadway cut or fill;

(G) guardrail;

(H) bridge;

(I) highway grade separation structure;

(J) tunnel;

(K) overpass, underpass, or interchange;

(L) entrance plaza, approach, or other structure that is an integral part of a street, road, or highway;

(M) bicycle or walking path;

(N) designated bus lane;

(O) sidewalk or pedestrian plaza;

(P) streetscaping and related infrastructure; including placing utilities underground; and

(Q) other property acquired to construct, operate, or use a road, street, or highway; and

(2) a transit facility that serves the needs of the District, including any:

(A) track;

(B) right-of-way;

(C) bridge;

(D) tunnel;

(E) subway;

(F) rolling stock;

(G) station or terminal;

(H) parking area;

(I) related equipment, fixture, building, structure, or other real or personal property; and

(J) service intended for use in connection with the operation of a transit facility, including rail, bus, motor vehicle, or other mode of transportation.

68D-2. Creation; Boundaries.

(a) The Clarksburg Area Special Taxing District consists of the Clarksburg Village and Arora Hills subdivisions.

(b) The properties in the District are shown on the list attached as Attachment A, which is incorporated in this Section. *Attachment A to follow.*

68D-3. Levy of Tax; Limits.

(a) Each tax year the County Council may levy against all the assessable real and personal property in the District a sum on each $100 of assessable property that does not exceed an amount sufficient to cover the costs of transportation infrastructure improvements that have been identified in a Council resolution approved under Section 68D-4.

(b) Under Section 9-1302 of Article 24, Maryland Code, the limit in Charter Section 305 on levies of ad valorem taxes on real property to finance County budgets does not apply to revenue from any tax imposed under this Chapter.

(c) The tax imposed under this Chapter must be levied and collected as other County property taxes are levied and collected.

(d) The tax imposed under this Chapter has the same priority, bears the same interest and penalties, and in every respect must be treated the same as other County property taxes.

(e) Paying the tax imposed under the Chapter does not entitle any person to claim a credit against any other tax that the County imposes, including the development impact tax for transportation improvements imposed under Section 52-49 or the development impact tax for public school improvements imposed under Section 52-89.

68D-4. Transportation Infrastructure Improvement Resolution.

(a) After holding a public hearing, the Council may approve a resolution that lists each transportation infrastructure improvement that would be entirely or partly paid for by a tax imposed under Section 68D-3.

(b) The resolution must indicate the estimated cost, including a contingency amount, for each listed improvement.

(c) The Council may amend the resolution after holding a public hearing.

(d) The Council must present the resolution and each amended resolution to the Executive for approval or disapproval. If the Executive disapproves a resolution within 10 days after it is transmitted to the Executive and the Council readopts the resolution by a vote of 6 Councilmembers, or if the Executive does not act within 10 days after the resolution is transmitted, the resolution takes effect.

(e) Before the Council holds a public hearing under subsection (a) or (c), the Executive should transmit to the Council:

(1) a list of recommended transportation infrastructure improvements to be entirely or partly paid for by a tax imposed under Section 68D-3;

(2) the estimated cost, including a contingency amount, for each listed improvement; and

(3) an estimated tax rate for each tax to be imposed under Section 68D-3.

(f) Before the County loans or advances any funds to the District that the District is required to repay to the County, the Council must adopt a repayment plan in a resolution under this Section, or as part of an approved Capital Improvements Program resolution, that specifies:

(1) each transportation infrastructure improvement for which funds would be advanced;

(2) the amount of funds advanced which the District must repay;

(3) the expected rate of interest, if any, the District must repay;

(4) the time period during which the District is expected to repay the amount due; and

(5) any other principal term of repayment.

Any repayment plan adopted under this subsection is binding on the District and the County, except as later modified in a Council resolution.

68D-5. District Fund.

(a) The Director of Finance must establish a separate fund for the proceeds collected from any tax imposed under this Chapter. The proceeds of any tax imposed under this Chapter must be pledged to and paid into this fund.

(b) The Director of Finance must use this fund only to pay the cost of any transportation infrastructure improvement related to the District.

(c) If in any fiscal year a balance remains in the fund, the Director of Finance may use the balance to:

(1) pay the cost of any transportation infrastructure improvement for the District;

(2) create a reserve to pay the future costs of any transportation infrastructure improvement for the District;

(3) pay bond-related obligations or retire bonds then outstanding; or

(4) pay into a sinking fund required by the terms of bonds which finance the cost of any transportation infrastructure improvement for the District that may be incurred or accrue in later years.

68D-6. Issuing Bonds.

(a) Before the County issues any bond payable from ad valorem taxes levied under Section 68D-3, the Council must adopt a resolution authorizing the issuance of bonds that meets the requirements of this Section.

(b) Each resolution under this Section must:

(1) describe the types of transportation infrastructure improvements and related costs to be financed; and

(2) specify the maximum principal amount of bonds to be issued.

(c) Each resolution may specify, or authorize the Executive by executive order to specify:

(1) the actual principal amount of 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 principal of, and 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 any or all of the bonds may be called for redemption before their stated maturity dates;

(8) the nature and size of any debt service reserve fund;

(9) the pledge of other assets in and revenues from the District to pay the principal of and interest on the bonds;

(10) any bond insurance or any other financial guaranty or credit or liquidity enhancement of the bonds; and

(11) any other provision consistent with law that is necessary or desirable to finance any transportation infrastructure improvement that has been identified in a Council resolution approved under Section 68D-4.

(d) (1) The County must covenant to levy ad valorem taxes against all assessable real and personal property in the District at a rate and amount sufficient in each year when any bonds are outstanding to:

(A) provide for the payment of the principal of, interest on, and redemption premium if any, on the bonds;

(B) replenish any debt service reserve fund established with respect to the bonds; and

(C) provide for any other purpose related to the ongoing expenses of and security for the bonds.

(2) The County further must covenant, when any bond is outstanding, to enforce the collection of all ad valorem taxes under this Chapter as provided by applicable law.

(e) All proceeds received from any issuance of bonds must be applied solely towards costs of the transportation infrastructure improvements listed in the resolution adopted under Section 68D-4, including the cost of issuing bonds and payment of the principal of, interest on, and redemption premium if any, on the bonds.

(f) The bonds issued under this Chapter:

(1) are special obligations of the County and do not constitute a general obligation debt of the County or a pledge of the County's full faith and credit or the County's general taxing power;

(2) may be sold in any manner, either at public or private sale, and on terms as the Executive approves;

(3) are not subject to Sections 10 and 11 of Article 31, Maryland Code; and

(4) must be treated as securities to the same extent as bonds issued under Section 9-1301 of Article 24, Maryland Code.

(g) To the extent provided by law, the bonds, their transfer, the interest payable on them, and any income derived from them, including any profit realized on their sale or exchange, must be exempt at all times from every kind and nature of taxation by the State of Maryland and any county or municipality in Maryland.

(h) The bonds must be payable from the fund required under Section 68D-5 and any other asset or revenue of the District pledged toward their payment. When any bond is outstanding, the monies in the fund are pledged to pay the costs of any transportation infrastructure improvement funded entirely or partly by the proceeds of the bonds, including the costs of issuing the bonds and payment of the principal of, interest on, and redemption premium if any, on the bonds. In addition to ad valorem taxes, the bonds may be secured by any other asset in or revenue generated in the District.

(i) Any ad valorem tax imposed under this Chapter must not be accelerated because of any bond default.

68D-7. Expiration of district.

Any special taxing district created under this Chapter expires by operation of law 30 days after the cost of all transportation infrastructure improvements identified in a Council resolution approved under Section 68D-4, including all outstanding bonds and cash advances made by the County, have been paid.

LEGISLATIVE REQUEST REPORT

Bill 22-11

Special Taxing District – Clarksburg Area

DESCRIPTION:	Creates a Clarksburg Area Special Taxing District, consisting of the Clarksburg Village and Arora Hills subdivisions.
PROBLEM:	Need to fund certain transportation improvements benefiting certain subdivisions in Clarksburg.
GOALS AND OBJECTIVES:	To create a special taxing district as an alternative to private infrastructure charges in certain subdivisions.
COORDINATION:	
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Michael Faden, Senior Legislative Attorney, 240-777-7905
APPLICATION WITHIN MUNICIPALITIES:	Applies only in certain subdivisions in Clarksburg.
PENALTIES:	Not applicable.

Option 4: This is the same as Option 2, except that the retail rate has been increased by a factor of 6, and then all of the other tax rates have been proportionately scaled back to collect only enough money to support about $33 million in bond proceeds.

Option 5: This option also increased the retail rate by a factor of 6 initially, and then scaled back all of the other tax rates to support $25 million in bond proceeds for AH/CV. If these same tax rates were applied to CTC, they would generate enough funds to support about $6.75 million, only $750,000 more than the option in Table 1.

A special taxing district would be implemented with enabling legislation and an initial resolution, and later annual resolutions setting the tax rates, all approved by the Council.

Recommendations

In this section, votes are shown in parentheses as (Yes-No-Abstain). The votes of each member, by issue, are shown in Table 5.

1. Establish a special taxing district for Arora Hills and Clarksburg Village (6-5-0). A slim majority favors establishing a special taxing district to pay for a share of the transportation projects that are conditions of Elm Street's (Clarksburg Village) and Clarksburg Skylark's (Arora Hills, also known as Greenway Village) subdivision approvals. The rates would be set to generate the balance of what Elm Street and Clarksburg Skylark need to get $25 million in benefit, beyond the other recommendations listed below. For example, if the combination of recommendations #4-6 (below) were to generate $10 million in benefits for Elm Street and Clarksburg Skylark, then the special district tax would be set to generate the $15 million balance. If they were to generate $5 million in benefits, then the tax would be set to generate $20 million.

Those favoring the taxing district point to the fact that the tax would be about 40% less than the private infrastructure charge that Elm Street and Clarksburg Skylark would levy otherwise to recoup some of their expenditures. The tax would be lower because bonds issued by the County would have a lower debt service than the interest on private loans carried by the developers, so the cost reduction can be passed on to the homeowners. Furthermore, mortgage financing may be more costly for future homebuyers because their purchase mortgage loans would be second mortgages, rather than first mortgages subject to a higher tax lien. It is also more likely that at least a portion of a special district tax would be deductible from Federal income taxes, while this would not be the case with a private infrastructure charge.

Those opposing the taxing district believe that since it is likely the developer's home prices and impact tax credits accounted for their development costs, it is unfair for the developer to pass on any of his costs again to the homebuyer through a special district tax. Instead, he should be entirely responsible for footing the bill. Furthermore, since the AH/CV developers have not specified the $25 million of spending for which they would be reimbursed by the special tax, concerns exist about whether together the special tax proceeds and impact tax credits will create overlapping reimbursements.