



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
Item #5
2/14/02

February 8, 2002

MEMORANDUM

TO: Montgomery County Planning Board

VIA: John A. Carter, Chief *JAC*
Community-Based Planning Division

Sue Edwards, I-270 Corridor Team Leader *SE*
Community-Based Planning Division

FROM: Karen Kumm Morris, Clarksburg Planner *KKM*
Community-Based Planning Division

SUBJECT: Application for Adequate Public Facilities Approval
Clarksburg Skylark Development District

RECOMMENDATION: Approval to transmit comments to the Montgomery County Council.

The proposed Clarksburg Skylark Development District meets the requirements of the District Legislation, as modified by the following conditions:

1. Provide the following improvements as shown on the approved Preliminary Plan No. 1-02033, to be included in the Clarksburg Skylark Development District:
 - a. Middle School Site: Grade site, stabilize, provide utilities up to the property line, and satisfy reforestation and stormwater management requirements.
 - b. M-NCPPC Local Park: Grade site, stabilize, provide utilities up to the property line, satisfy reforestation and stormwater management requirements, and construct two ball fields, one basketball court, a parking lot, and a tot lot, to park standards.
 - c. Community Center: Construct approximately a 2,000-square foot community meeting facility, fully furnished for public use located within the commercial center.
 - d. Greenway Trail: Construct paved greenway trail on property to be dedicated to M-NCPPC utilizing at grade street crossings.

- e. MD 27: Widen MD 27 to six lanes from Observation Drive in Germantown through the Brink Road intersection, and to four lanes through the A-305 intersection and continue two northbound lanes through the Skylark intersection.
- f. Relocated Newcut Road (A-302): Construct relocated Newcut Road as a two lane divided arterial between MD 27 and A-305 (Mid-County) intersection, and as a four lane divided roadway between A-305 and MD 355, utilizing bottomless arch culverts over streams.
- g. Mid County Arterial (A-305): Construct A-305 as a four lane divided arterial between MD 27 (Ridge Road) and Stringtown Road, including two roundabouts, one at the intersection of A-302 and the second at the intersection of Streets "W" and "BB." Construct the segment between the two roundabouts as a business district street in accordance with Department of Public Works and Transportation standards.
- h. MD 355 (Frederick Road): Construct a second left turn lane from northbound MD 355 to westbound MD 27.
- i. Turn lanes on MD 27 (Ridge Road) and Brink Road: Construct additional turn/approach lanes on MD 27 and Brink Road at the intersection, and construct a separate left turn lane from southbound MD 355 to eastbound Brink Road and a separate left turn lane from westbound Brink Road to southbound MD 355.
- j. Skylark Road: Widen/relocate existing Skylark Road from MD 27 to Piedmont Road, utilizing bottomless arch culvert at stream crossing. Widen existing Skylark Road by four to six feet, for a total roadway width of twenty-four feet, from Piedmont Road to the Greenway, and construct Relocated Skylark Road from the Greenway to MD 27.
- k. Foreman Boulevard: Extend Foreman Boulevard as a two lane arterial from its current terminus at Timber Creek Lane to A-305.

The infrastructure improvements listed above represent the requirements of the approved Preliminary Plan No. 1-02033.

- 2. Consider including the following additional infrastructure improvements in the Development District in order to provide improvements that are not solely the adequate public improvements required of a single development, as required by Chapter 14-3 (g) (2).
 - a. Construct two lanes of Stringtown Road that are not currently assigned to any adjacent development, (south side of Stringtown Road between the Highland's of Clarksburg and Clarksburg Village).
 - b. Provide road improvements along Skylark Road that include the County's participation in such improvements.
 - c. Upgrade the crossing of Mid County Highway over Little Seneca Creek from a culvert to a bridge in order to minimize environmental impacts and improve pedestrian safety and enjoyment along the Greenway Trail.

- d. On wooded Local Park along Newcut Road Extended, provide a large multi-age playground, natural surface loop trail, and picnic area.
 - e. Furnish the proposed privately maintained community meeting facility with a small kitchen, bathrooms and utilities.
3. Consider combining the Clarksburg Skylark Development District and the Clarksburg Village Development District into one district to improve coordination and administration.

BACKGROUND

The applicant, Clarksburg Skylark, L.L.C., proposes to form a development district in the Newcut Road Neighborhood of Clarksburg for the purpose of achieving a better coordination of public infrastructure, construction in a timely manner and a more attractive financing approach for the development. Creation of a development district is allowed under Chapter 14 of the Montgomery County Code. The purpose of a development district is to help enable a specific area of the County to meet its infrastructure needs through public financing of bonds payable by special taxing. A development district is a special taxing district that permits development to fund a Council approved list of infrastructure improvements using public financing rates rather than private market financing rates. It is recommended for areas where a significant amount of development is occurring.

In order to create a development district, a petitioner must submit a request to the County Council with the signatures of 80% of the affected property owners or request the Council to hold a public hearing. The Council then adopts an initial resolution in order for the request for a district to proceed through its procedural reviews. The Planning Board is requested by the Council to review the proposal for compliance with the Adequate Public Facilities (APF) Ordinance and the Annual Growth Policy (AGP) Requirements. The Executive is requested to review the financial aspects of the proposal to ensure that the amount of infrastructure financed by the District is within an acceptable level of tax burden per residence. The Executive is required to issue a Fiscal Report to the Council. Finally, the Council must hold a public hearing and adopt a resolution to form the development district. This formation process is outlined in Chapter 14, Article II, Section 14-5 through 14-9. See Attachment A.

Purpose of Planning Board Review

The enabling legislation in Sec. 14-7 requires the Planning Board to evaluate the proposed district for compliance with APF and AGP requirements and make its recommendations to the County Council. The Planning Board must make the following findings:

1. The proposed district will comply with all applicable zoning and subdivision requirements.

2. The proposed infrastructure improvements satisfy the Annual Growth Policy's adequate public facilities requirements.
3. Cost estimates are provided and reviewed.

Applicant's Proposal for the Clarksburg Skylark Development District

The applicant proposes to establish a development district which encompasses the property within Greenway Village and includes adequate public facilities that extend beyond the subject property as required by the approved Preliminary Plan No. 1-02033. See Exhibit E of the application, Attachment B. The applicant states that all proposed infrastructure improvements comply with the zoning and subdivision requirements under Section 50-35(k), and the infrastructure improvements meet the APF requirements established by the Planning Board in the approval of Preliminary Plan No. 1-02033.

FINDINGS

Conformance to General Provisions of Development Districts

Staff wishes to bring to the Planning Board's attention that the proposed development districts do not appear to conform to the legislative requirements of the Development District legislation, Chapter 14. The issue is that a single developer requests public financing through a development district for the purpose of financing the adequate public facilities requirement to serve a single development. Chapter 14-3 (g) (1) and (2) states,

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. (See Attachment A.)*

After conversations with the Council staff, the understanding is that development districts are not intended to provide financing for a single development's adequate public facilities. This means that additional infrastructure improvements beyond those required of a single development should be included in the Development District in order to comply with Chapter 14-3 (g) (1) and (2). Staff recommends that the Council consider the additional improvements listed as Condition 2 in this memo in order to conform to the legislation, so long as they can be found to be a financially acceptable tax burden.

The Council may also need to amend 14-3 (g) (1) and (2) in order to allow for a single developer to apply for a development district. However, this statute could be satisfied if the two proposed districts are combined into one development district as recommended by staff.

The role of the Planning Board is to make findings of conformance to the zoning and subdivision regulations and APF requirements. The Planning Board may also advise the Council on the best manner in which to establish the districts and recommend additional infrastructure improvements that should be considered in order to comply with the legislation.

Conformance to Zoning and Subdivision Requirements

The proposed development district conforms to the zoning and subdivision requirements. The proposed infrastructure improvements have been reviewed and approved by the Planning Board during their review of the Greenway Village Preliminary Plan No. 1-02033, February 7, 2002, and ZMA, G-735, which establishes the PD zoning for the subject property. These approvals determined that the proposed development meets all subdivision and zoning requirements.

Conformance to the Annual Growth Policy's Adequate Public Facilities Requirements

The proposed infrastructure conforms to the required APF improvements required by the approved Preliminary Plan No. 1-02033. The Transportation Planning Unit confirms this in their memo. See Attachment C.

Conformance to Providing Cost Estimates for Proposed Infrastructure Improvements

The applicant has provided cost estimates for all proposed infrastructure improvements. Staff has not evaluated the accuracy of the proposed estimates given that this is the responsibility of the Department of Public Works and Transportation. The cost estimates will be evaluated by the Executive in their Fiscal Report to the County Council. The cost estimates are used to determine what will be the cost of the bonds and the taxing rate per household by the Department of Finance.

COMMENTS

Clarksburg is presently in a jobs and housing moratorium due to lack of adequate public facilities for roads and schools. Staff has worked diligently to identify needed infrastructure as preliminary plans are reviewed. With each preliminary plan, the Planning Board has required development to meet APF requirements resulting in a comprehensive network of roads, and dedications for schools and parks. See Attachment D for the comprehensive network of public improvements provided by development.

The Clarksburg moratorium seems likely to continue for some time given the state of the County's budget and the Council's priorities. A development district represents a means to fund needed, additional public facilities so long as it is not used by a

development to solely fund their APF requirements, and the individual tax burden to residents is acceptable.

In addition to the Greenway Village and the Clarksburg Village preliminary plan approvals for 3,863 residential units, the Commission has received within the last year five other preliminary plan applications for residential development totaling another 1,683 residential units. Some of these applicants are also considering the possibility of applying for a development district as a means of financing their public improvements. The total number of development districts including the Town Center Development District, which has not yet been financially evaluated by the Executive, could be as many as eight separate districts. Consolidating all of these separate development districts into one Clarksburg Development District for the purposes of coordinating and administering the bonds, and tax collections would be desirable.

Public Comments

Staff has informed the Clarksburg Planning Committee of the proposed development district but has not received any comments or correspondence on the proposal. The understanding is that the Clarksburg Civic Association will provide comments directly to the Council at the time of the public hearing after the Executive prepares their fiscal report.

CONCLUSION

Staff finds that the proposed Clarksburg Skylark Development District meets the requirements of the zoning and subdivision regulations, the Adequate Public Facilities Ordinance, and has provided cost estimates.

Staff recommends that the Planning Board convey these findings to the County Council with the additional infrastructure recommendations and concerns regarding compliance with the general provisions of the legislation.

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Attachments

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Chapter 14. DEVELOPMENT DISTRICTS.

Article I. General Provisions.

§ 14-1. Short title.

§ 14-2. Purposes.

§ 14-3. Definitions.

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Article III. Financing a Development District.

§ 14-10. Special taxes and assessments.

§ 14-11. Special fund.

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§ 14-12. Bonds—Payment, sinking funds, reserve funds, pledges and other financial guaranties, proceeds.

§ 14-13. Resolution; investment of special fund or sinking fund; tax exemption.

§ 14-14. Form, terms and conditions of bonds.

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Article V. Miscellaneous Provisions.

§ 14-16. Administration of district; termination.

§ 14-17. Disclosure to buyers.

§ 14-18. Construction of chapter.

ARTICLE I. GENERAL PROVISIONS.**Sec. 14-1. Short Title.**

This Chapter may be referred to as the Montgomery County Development District Act. (1994 L.M.C., ch. 12, § 1.)

Sec. 14-2. Purposes.

(a) The purposes of this Chapter are to:

- (1) authorize the County to provide financing, refinancing or reimbursement for the cost of infrastructure improvements necessary for the development of land in areas of the County of high priority for new development or redevelopment by creating development districts in which special assessments, special taxes, or both, may be levied;
- (2) authorize the issuance of bonds or other obligations of the County that are payable from special assessments or special taxes collected, or tax increments created, in a development district;
- (3) specify the procedures to be followed in creating a development district, issuing bonds, and assessing and enforcing the collection of special assessments or special taxes in such a district; and
- (4) provide for the tax-exempt nature and form of the bonds.

(b) Development districts would be especially useful in achieving these purposes where:

- (1) an approved master plan recommends significant development in a specific area of the County;
- (2) the infrastructure needs necessary to serve that development include extensive and long-term facilities; and

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- (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 Annual 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.)

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

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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:

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- (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 Annual 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 Annual 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 Annual 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 Annual 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 Annual Growth Policy; and

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- (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.)

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.

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- (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.

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- (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.)

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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 Secretary 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.)

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.

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- (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.

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- (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.)



CLARKSBURG SKYLARK DEVELOPMENT DISTRICT

EXHIBIT E

List of Infrastructure Improvements

- I. Infrastructure Improvements (to be constructed solely by Clarksburg Skylark):**
1. **Skylark Road:** Widen/relocate existing Skylark from MD 27 to Piedmont Road, utilizing bottomless arch culvert at stream crossing. More specifically, widen existing Skylark Road by four to six feet, for a total roadway width of twenty-four feet, from Piedmont Road to the Greenway and construct Relocated Skylark Road from the Greenway to MD 27.
 2. **Middle-School Site:** Rough grade site, stabilize, provide utilities to property line, provide street fronting the site, provide reforestation, provide stormwater management for water quantity.
 3. **MNCPPC Local Park:** Rough grade site, construct ball fields, construct parking lot, construct basketball court, construct tot lot, provide reforestation, provide stormwater management for quantity and quality.
 4. **Community Center:** Construct approximately 2000 square foot community center/meeting facility, fully furnished to be available for public use located within the commercial center.
 5. **Greenway:** Construct paved greenway trails on property to be dedicated to MNCPPC, utilizing at grade road crossings.
- II. Road Improvements – to be constructed in accordance with Montgomery County transportation standards, including sidewalks, bike and pedestrian paths, street lighting and streetscape, stormwater management facilities, and where appropriate, curb and gutter (to be constructed on a participatory basis with the developer of Clarksburg Village Development District, each developer constructing its allocable share):**
1. **MD 27 (Ridge Road):** Widen MD 27 to six through travel lanes from Observation Drive in Germantown through the Brink Road intersection, and to four through travel lanes through the A- 305 intersection; continue two northbound travel lanes through the Skylark Road intersection.
 2. **Relocated Newcut Road (A-302):** Construct relocated Newcut Road (A-302) as a two lane divided arterial between between MD 27 and A-305 (Midcounty Arterial) intersection, and as a four lane divided roadway between A-305 and MD 355, utilizing bottomless arch culverts over streams.

3. **A-305 (Midcounty Arterial):** Construct A-305 as a four lane divided arterial between MD 27 (Ridge Road) and Stringtown Road, including two roundabouts, one at the intersection of A-302 and the second at the intersection of streets "W" and "BB," utilizing bottomless arch culverts over streams, and constructing segment between two roundabouts as a business district street in accordance with DPWT standards.
4. **MD 355 (Frederick Road):** Construct a second left turn lane from northbound MD 355 to westbound MD 27.
5. **Turn Lanes on MD 27 (Ridge Road) and Brink Road:**
 - Construct additional turn/approach lanes on MD 27 and Brink Road at the MD 27/Brink Road intersection.
 - Construct a separate left turn from southbound MD 355 to eastbound Brink Road and a separate left turn lane from westbound Brink Road to southbound MD 355.
6. **Foreman Boulevard:** Extend Foreman Boulevard as a two lane arterial from its current terminus at Timber Creek Lane to A-305 utilizing bottomless arch culvert over streams.



February 6, 2002

MEMORANDUM

TO: Karen Kumm-Morris, Clarksburg Planner
Community-Based Planning Division

VIA: Ronald C. Welke, Supervisor
Transportation Planning

FROM: Ki H. Kim, Planner
Transportation Planning

FEB 7 2002

SUBJECT: Transportation Review for Clarksburg Development District

This memorandum is Transportation Planning staff's Adequate Public Facilities (APF) review of the traffic impact from developments proposed in two development districts, the Clarksburg Village Development District and the Clarksburg Skylark Development District. The Clarksburg Village and the Greenway Village (formerly DeMaio Property) are the only developments included in each district. The Clarksburg Village and the Greenway Village developments have received APF approval with a condition to provide a package of similar roadway improvements.

SUMMARY OF FINDINGS

The following summarizes the findings of staff's review of the transportation improvements as related to the Adequate Public Facilities (APF) requirements for the Clarksburg Village Development District and the Clarksburg Skylark Development District:

1. The APF requirements for the Clarksburg Development District are met by implementation of a package of roadway improvements as proposed in the two development districts. The transportation improvement package was developed at the time of APFO review of the Clarksburg Village and Greenway Village developments.
2. Staff finds that the transportation improvements included in the two development districts are consistent with the APF requirements for the

Clarksburg Village and Greenway Village developments. The following is a list of the transportation improvements included in the development districts.

- (1) MD 27 (Ridge Road): Widen MD 27 to six through travel lanes from Observation Drive in Germantown through the Brink Road intersection, and to four through travel lanes through the A-305 intersection; continue two northbound travel lanes through the Skylark Road intersection.
- (2) Relocated Newcut Road (A-302): Construct A-302 as a two-lane business district street or arterial roadway between MD 27 and the A-305 (Midcounty Arterial) intersection, and as a four-lane divided arterial roadway between A-305 and MD 355, including two roundabouts.
- (3) Midcounty Arterial (A-305): Construct A-305 as a four-lane divided arterial between MD 27 and Stringtown Road, including two roundabouts.
- (4) MD 355 (Frederick Road): Construct a second left-turn lane from northbound MD 355 to westbound MD 27.
- (5) Turn lanes on MD 27 (Ridge Road) and Brink Road:
 - Construct additional turn/approach lanes on MD 27 and Brink Road at the MD 27/Brink Road intersection.
 - Construct a separate left-turn lane from southbound MD 355 to eastbound Brink Road and a separate left-turn lane from westbound Brink Road to southbound MD 355.
- (6) Foreman Boulevard: Extend Foreman Boulevard as a two-lane arterial from its current terminus at Timber Creek Lane to A-305.
- (7) Stringtown Road: Participate in the widening of Stringtown Road as a four-lane arterial where the Clarksburg Village Development District's property fronts Stringtown Road. (This applies only to the Clarksburg Village Development District.)
- (8) Skylark Road: Widen existing Skylark Road by four to six feet, for a total roadway width of 24 feet, from Piedmont Road to the Greenway and construct Relocated Skylark Road from the Greenway to MD 27, including a five-foot sidewalk on the south side. (This applies only to the Clarksburg Skylark Development District.)

3. Staff recommends that the following transportation improvements be included in the Clarksburg Village Development District:
 - (1) Stringtown Road: Participate in the widening of Stringtown Road as a four-lane arterial between the Clarksburg Village Development District's property and the Highland at Clarksburg property.
 - (2) Bridge Crossing over Little Seneca Creek: Construct a bridge on A-305 over Little Seneca Creek.
4. Staff notes that the transportation improvements proposed in the two development districts are the responsibility of the Clarksburg Village and Greenway Village developers under the Planning Board's APF requirements, and may not be eligible as Development District infrastructure improvements in accordance with the provision of the Montgomery County Code, Chapter 14-3 (g) (1) (2).

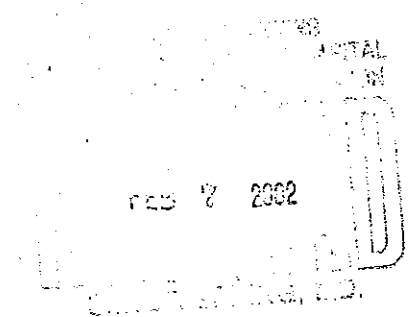
DISCUSSION OF TRANSPORTATION REVIEW

Clarksburg Village has received APF approval for 2,563 dwelling units, 20,000 square feet of retail and office space and 2,500 square feet of a day-care center with conditions including a package of roadway improvements. Greenway Village has received APF approval for 1,330 dwelling units, 89,000 square feet of retail space and 2,000 square feet of community space with conditions including a package of similar roadway improvements with Clarksburg Village. Since these two developments are the only developments in the two development districts and the two development district proposals include all roadway improvements conditioned upon approval of both Clarksburg Village and Greenway Village, the APFO review requirements for the two development districts are met.

Staff recommends that the Clarksburg Village Development District include additional transportation improvements on Stringtown Road to provide a continuous four-lane arterial from A-305 to Fredrick Road (MD 355). This improvement completes the widening of Stringtown Road to four lanes and thus, provides a more comprehensive transportation infrastructure in the Clarksburg area.

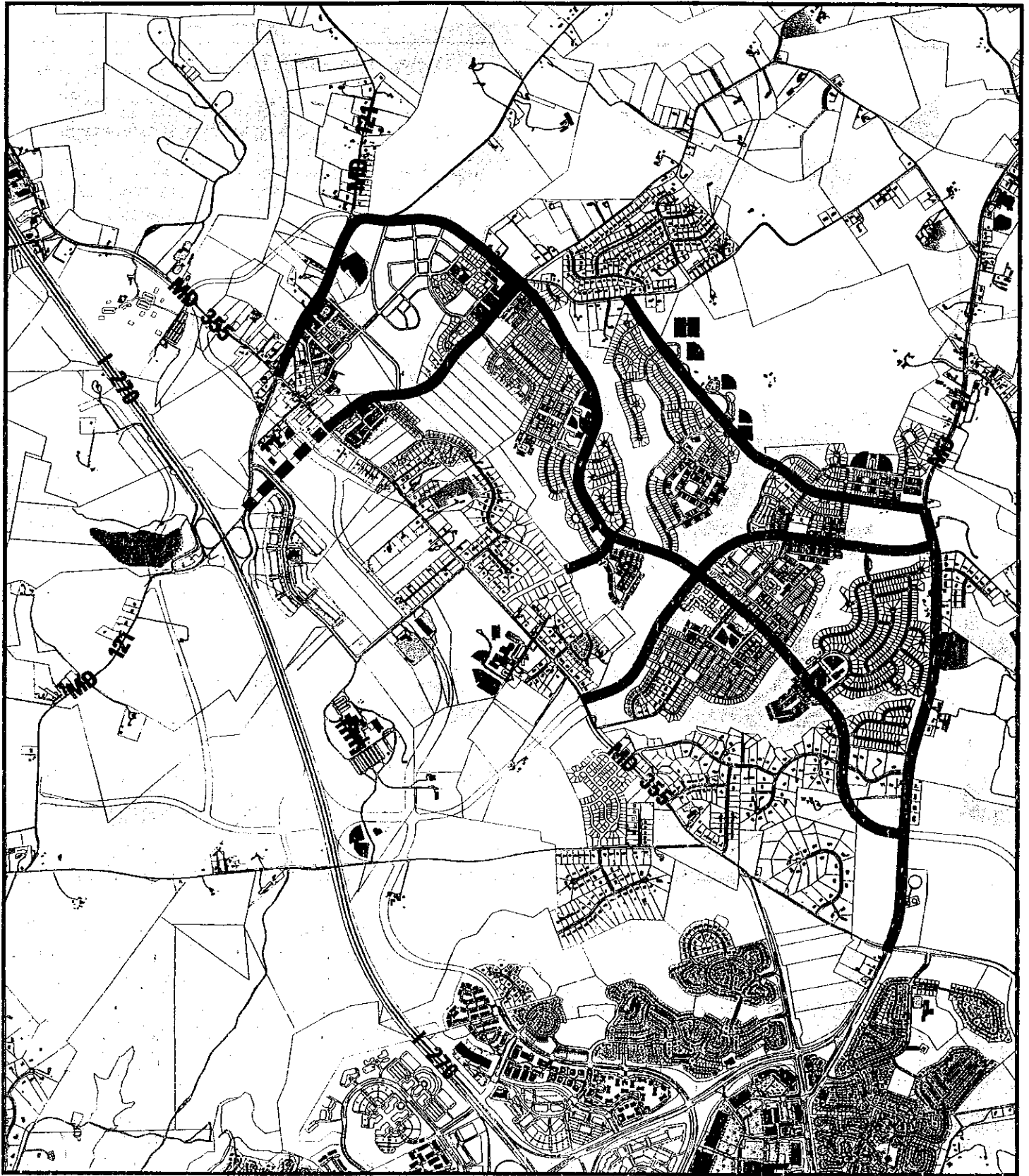
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Clarksburg Dev District



CLARKSBURG DEVELOPMENT ACTIVITY MAP

Private Sector Master Plan Roadway Improvements



-  **Private Sector**
(Approved and Under Review)
-  **Public Sector**

Attachment D