

"Federation Corner" column
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Clarksburg II - the development district mess

by Wayne Goldstein

First, there was Clarksburg I, when we learned in July 2005 that site plans for Clarksburg and other projects had not been properly approved, inspected or changed. The Clarksburg Town Center Advisory Committee (CTCAC) overcame tremendous opposition from M-NCPPC and others to tell the story of what they had discovered. They were initially motivated to fix what they believed was wrong with the altered site plan for Clarksburg Town Center. Over the course of a year, changes were made to procedures to ensure that such mistakes would not happen again. Most, but not all, improper plans were corrected. Some, but not enough, fines were assessed.

Now comes Clarksburg II. If it is as bad as CTCAC and others say, then it is much worse than Clarksburg I, both because it involves more of the government and because it would show that no lasting lessons were learned from Clarksburg I. Last week, CTCAC released its study: "Clarksburg Development Districts - The Illegitimate Transfer of Private Financial Obligations to the Public." The same week, The Clarksburg Development District Advisory Committee (CDDAC), a group authorized by County Executive Duncan in April 2006, also released its report: "Clarksburg Development Districts: An Advisory Report."

These two studies encompass about 125 pages. There is no easy way to explain what has occurred with this issue in the fifteen years since 1992 when work began on the Clarksburg Master Plan. Given that Montgomery County was emerging from the worst business downturn in a century, worse for the county than the Great Depression, the county was extremely cautious about the commitments it was willing to make to fund new infrastructure. One result of this caution was explicit requirements that the new town of Clarksburg would not be built for a long time unless and until those developers wanting to do so in the near future would take significant responsibility to build the infrastructure.

According to the CTCAC report: In 1993, the then-chair of the County Council PHED Committee requested that the staging plan for developing Clarksburg reflect that owners of property can proceed without delay if the owner is ready to "develop and ready to fund the necessary infrastructure..." The Clarksburg Master Plan stated that development districts "are not intended as a financing mechanism for infrastructure improvements that are considered the responsibility of a single developer under the Planning Board's site plan and adequate facilities requirements."

Interestingly, the CDDAC report quoted from the same page of the Clarksburg Master Plan, as both CTCAC and CDDAC came to many of the same conclusions. Both groups operated separately from one another and kept their discussions and determinations confidential prior to releasing their reports.

What is a development district? It is a method for a community to agree to tax itself to pay for infrastructure. While this could mean any infrastructure, for Clarksburg, these two groups claim it does not include basic infrastructure such as roads, sewers, parks, especially if such infrastructure was made the complete responsibility of the developer when the Planning Board approved a project. Clarksburg residents believe that development districts were only meant to be used in Clarksburg for those communities that wanted a fancy clubhouse and other more luxurious amenities than those provided by the developer, and were willing to pay for it.

Both CTCAC and CDDAC have detailed what they believe are either unlawful or improper efforts by the developers of three of the Clarksburg communities to require new residents to pay for infrastructure that they believe is the sole responsibility of the developers. The CDDAC report states: "In a CDDAC meeting, David

Flanagan, of Elm Street Development, the Clarksburg Village developer, told members that the cost of their "general infrastructure" is already in their contracts and that homeowners will pay him one way or another. He told CDDAC members that residents can either pay for it through the Clarksburg Village Development District (which is tax deductible) and he (the developer) would get more money back; or they could pay for it in the form of a private bond which he would get, which is not tax deductible, and he would receive a smaller repayment."

These Clarksburg residents have concluded that their community will have to pay more than other county residents both through a one-time transportation impact tax as high as \$8250 for some that is added onto the price of their homes and through an additional development district tax for 26 years that could also exceed \$2000 per year for some to pay for transportation and other infrastructure. In addition, those who chose to buy homes in the three Clarksburg communities in question paid a premium because of the extra amenities that were to be provided to those communities. It would seem that if one were to have to pay a development district tax to get amenities, then the price of the homes in that community should be less to adjust for that substantial annual burden.

However, since 2000, the County Council has written and passed legislation and even begun the approval process for one development district that would allow certain Clarksburg developers to be reimbursed for basic infrastructure by the county, which would then issue the bonds that the Clarksburg residents would have to repay. CDDAC has initially calculated that the eventual 4800 residents of Arora Hills, Clarksburg Village and Clarksburg Town Center could pay as much as \$150 million over a 26-year period in development district taxes in addition to regular property taxes.

One conclusion of CDDAC is that: "It is possible that without resolution of the above issues - to the satisfaction of the County, developers, and homeowners - that either developers, the County, or past and present homeowners within the proposed Development District will feel that they have no recourse but to pursue litigation. Litigation could include, but is certainly not limited to: violation of consumer protection laws; violation of County and State subdivision and development district laws; nondisclosure; disputes over amounts/location/ timeliness of infrastructure and/or amenities either built or to be built; disposition of impact tax refunds; equitable collection of taxes, etc."

In its summary and its Call to Action, CTCAC states: "Even when a development is eligible for development district creation, Chapter 14 establishes that development districts are not to be utilized to fund a developer's infrastructure obligations... Apart from all apparent reasons why a development district could not even be lawfully proposed or implemented for Clarksburg Town Center, Clarksburg Village, or Clarksburg Skylark [Arora Hills], the County Council would still be required to comply with Chapters 20-A and 14 in creating any such districts. Council's prior actions relative to Clarksburg development districts are inconsistent with both the State and County Development District enabling legislation. Council's failure to adhere to procedural requirements under Chapter 14 renders the Town Center District legally insufficient on that basis alone."

"Moving forward with Clarksburg Development Districts would unlawfully transfer to the public greater than \$60 Million in private infrastructure improvement obligations. To remedy this situation, the following action must be taken: Dissolution of current resolutions for Clarksburg Development Districts (Clarksburg Town Center, Clarksburg Village, and Clarksburg Skylark), and removal from the CIP of all Clarksburg Development District entries. Thorough, independent investigation and fact-finding to verify and publicly report on development district implementation. Commitment by the County to ensuring enforcement of existing infrastructure improvement obligations as previously approved by the Planning Board. Full review and amendment to, if not repeal of, Chapter 14..."

The County Council has responded to CTCAC's report. "Montgomery County Council President Marilyn Praisner said today that the County will 'carefully and seriously' look at a report released Tuesday by the

Clarksburg Town Center Advisory Committee (CTCAC) that questions whether developers should be paying more for infrastructure improvements in the emerging new upcounty community or if the improvements should be paid for through development districts. On Thursday, March 22, Praisner requested Steve Farber, the Council staff director, and Karen Orlansky, the director of the Council's Office of Legislative Oversight, to form a joint staff team to analyze the report. 'I want to be sure that the Council receives a thorough analysis of the facts and allegations in this report,' said Praisner. She asked that the team's study address 'all issues raised by the report, including County history regarding development districts'."

How and if the development district mess gets fixed will surely take many strange twists and turns in the coming months.