

# **Clarksburg Development Districts: An Advisory Report**

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Presented by  
The Clarksburg Development District Advisory Committee

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## Executive Summary

The historic town of Clarksburg is growing at a tremendous rate and will quickly reach an end-state populace of approximately 40,000. This amounts to nearly a 4000% increase in a short time. This growth was targeted and planned by Montgomery County under the guidance of Maryland's Planning Act of 1992 and Montgomery County's General Plan to develop Clarksburg as the final employment and residential center along I-270 and provide a suitable transition between higher-density development further south and more rural areas to the north of Clarksburg. The Planning Act affirmed the need to conserve environmental resources; protect resource areas; direct rural growth to existing population centers; and to address funding mechanisms in order to achieve its objectives.

The 1994 Clarksburg Master Plan was created to allow huge increases in density and population while protecting existing resources in response to the Planning Act, the General Plan, and the existing community of Clarksburg. The Master Plan addressed the need to conserve environmental resources, maintain water quality, and limit the overall impact of new development through staged, carefully detailed and orchestrated development of the "new transit- and pedestrian-oriented town" which would spring from the farmlands of northern Montgomery County. Each portion of the new town was placed into a stage within the Master Plan; each stage had requirements to be met before it could open and begin to develop.

Throughout the Master Planning process, it was stated that development in Clarksburg should not be allowed to proceed unless there was financing available first. This clearly did not happen, and indeed, other issues have now arisen in Clarksburg as detailed in other sections of this report. The County bears no small part of responsibility for those "other issues" - and now expects the same homeowners directly affected by those issues to pay not only for the privilege of enduring those mistakes (through the development districts) but also – in Clarksburg Town Center - for the ongoing maintenance and upkeep of the main gathering civic space for the town of Clarksburg (through increased HOA fees). The County has further burdened the Clarksburg Town Center homeowners with the cost of some of the items listed in the Compliance Plan presented to the Planning Board, which is clearly in conflict of applying penalties against developers for their noncompliance with County regulations and undermines the Planning Board's authority.

Infrastructure and civic spaces play a pivotal role in the development of any town, providing the skeleton which shapes the place and the quality of life that residents will experience. When a town is artificially grown, these play a particularly crucial role, as is the case with Clarksburg. The appropriate shape of infrastructure and civic spaces, and the overall town patterns of development are addressed in 8 of the 10 overall guiding policies in the Clarksburg Master Plan. Staging of development was considered so crucial that it was made Policy #10: *development be staged to address fiscal concerns and to be responsive to community building and environmental protection objectives.*

Financial concerns continue to dominate development discussion in Clarksburg for the developers, the County, and most importantly the residents, who arguably occupy two roles (that of County Taxpayer and that of homeowner directly affected by development). To meet the huge projected costs of future development in Clarksburg, alternative financing vehicles were discussed in the Master Plan. The vehicles could include developer contributions, land dedication, excise taxes, impact taxes, and development district payments, among other choices. Due to the need for alternate financing vehicles and the need to rezone properties to significantly increased density (and therefore higher-profit developments), there was a correspondingly higher expectation of developer cost-participation than had been the case previously in Montgomery County. The need for completion of the infrastructure before or concurrent with development was indispensable: without it, and without financing for it, new residential development (and particularly higher-density residential development) was proscribed.

Development Districts have been advanced by developers as the prescribed vehicle to meet the alternate financing requirement outlined in the Master Plan. However, the Master Plan noted:

*They are not intended, however, 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. (204)*

All new subdivisions in Clarksburg have been subject to the Adequate Public Facilities Ordinance and the Adequate Growth Policy, as well as applicable Montgomery County Code (Chapters 50 and 14 particularly). As a condition of approval, the Montgomery County Planning Board imposed additional infrastructure and land dedication requirements on the developers of Clarksburg Town Center, Clarksburg Village, and Arora Hills (Greenway Village). These requirements were set forth, detailed, and expected of developers independent of any prescribed financing vehicle. However, it is clear, from the subdivision code to the Master Plan, that any alternative financing vehicles (including development districts) were to have been secured *prior* to any development approvals. It is therefore indicative by inference that whatever alternatives were in place at the time of application and approval were acceptable not only to the Planning Board and County Council, but also to the developers who came forward.

The proposal of development districts to fully fund – and therefore reimburse – the developers for required infrastructure items detailed as a condition of development approval in Clarksburg is incredible. It amounts to a shifting to private citizens of developer obligations, obligations which were accepted willingly as a prerequisite of development approval. This is questionable under Montgomery County code. The particular manner in which this shift has been attempted in Clarksburg is beyond belief, and should not be tolerated or condoned by any County official or agency.

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## **1.0 Introduction**

Montgomery County designated Clarksburg the “last frontier” of development along the I-270 corridor with the intent to grow a corridor enclave roughly the size of Rockville. Clarksburg is a 250-year-old town that was still composed primarily of farmland and rural homesteads as recently as 2003.

Existing infrastructure and public facilities are completely inadequate to meet the needs of this new "transit- and pedestrian-oriented" town. From the planning and workgroup sessions for the 1994 Clarksburg Master Plan until now, the Clarksburg community at-large has voiced concern regarding funding equity, the timing, and the cost of adequate infrastructure and has consistently maintained the need to avoid "undue tax burden" on any Clarksburg citizens.

Development Districts have been proposed by developers as a solution to the question of funding civic and infrastructure needs created by such tremendous growth. However, as currently proposed, development districts place little or no financial burden on those who will profit most from the development and corresponding growth of Clarksburg; rather they place it fully on the citizens who made that development viable.

### **1.1. Group Charge**

The Clarksburg Development District Advisory Council (CDDAC) is composed of Clarksburg residents and was formed to review existing Development District legislation and application of that legislation in Clarksburg and provide recommendations on implementation to the County Executive. The full charge of the Committee is attached in Appendix A.

### **1.2 Group Representation**

The Clarksburg Development District Advisory Committee is composed of residents representing each of the three proposed districts – Arora Hills (Greenway Village); Clarksburg Town Center; and Clarksburg Village. County officials from various agencies participated in group meetings on an as-needed basis. While the group repeatedly expressed the desire to meet with County Council members, the opportunity was not made available to this advisory committee.

Clarksburg homeowners who were appointed to the committee by the County Executive include Amie Bryson, Lynn Fantle, Greg Fioravanti, Jorge Hernandez-Fujigaki, Elizabeth Forrest, Dave McDermott, Julie Neafach, and Susan Schottland.

County employees who were of particular assistance were Jennifer Russel, Clarksburg Ombudsman; Catherine Matthews, Director, Upcounty Government Center; Sue Edwards, I-270 Corridor Team Leader, Community-Based Planning, Jennifer Barrett and Michael Coveyou, Department of Finance; and Scott Reilly, Assistant Chief Administrative Officer.

## 2.0 Development District Issues

### 2.1 History of Development District Concept in Clarksburg

Prior to the adoption of the 1994 Clarksburg Master Plan, the Office of Planning Implementation analyzed the potential fiscal impact of development in Clarksburg and provided the County Executive with

*information designed to help the Planning Board, the Executive, and the Council decide how the master plan should be implemented and specifically, whether the master plan should include a staging element, and what type it should be*

in order that the Executive might evaluate issues associated with plan implementation, as required by the Regional District Act.<sup>1</sup> Primary among the findings was the need to address the source, timing and nature of monies for necessary infrastructure or, in their absence, the shape development should and would be allowed to assume. While it was assumed that “in general, these projects are expected to be bond-funded using County General Obligation Bonds,”<sup>2</sup> there was also recognition that the Master Plan as envisioned would require re-zoning “throughout” the planning area to facilitate the higher densities and mixed-use that was desired in order to successfully blend the existing historic Clarksburg with the new development by creating a small-town scale (rather than traditional suburban), look, and feel to the newer areas.

Two options were discussed: the aim was to allow the proposed higher-density projects to go forward if revenue sources were available; absent the funding, “only limited areas” were to be allowed to rezone into higher (more profitable) densities, in order to limit the possibility of “fiscal competition with other areas of the County,” to avoid magnification of the strains of an artificially imposed explosive growth rate. Possible revenue sources to fund the “gap” between the cost of necessary infrastructure and the projected available funding included Construction Excise Taxes; Impact Taxes; a development district payment; and from property and income taxes from the new developments. The average single-family detached home was projected to be valued below \$300,000; townhouses were projected to be priced lower than \$200,000. Corresponding revenue projections were thus significantly lower than those realized today, with even condominiums typically priced and assessed above \$200,000.

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<sup>1</sup> *Fiscal Impact Analysis: Clarksburg Master Plan and Special Study Area*, Montgomery County Government Office of Planning Implementation, July 1993, p.6-7.

<sup>2</sup> *Fiscal Impact Analysis: Clarksburg Master Plan and Special Study Area*, Montgomery County Government Office of Planning Implementation, July 1993, p. 9.

## 2.2 Status of Development District Enabling Legislation

Legislation pertaining to development districts is present at both the State (Chapter 20A) and County (Chapter 14) levels. State Chapter 20A-1 (f) reads:

*(1) Before the creation of a new development district established to finance special obligation debt under this section, the County Council shall provide public notice of the creation of the proposed district by advertisement in at least two newspapers of general circulation in the County and at least one public hearing.*

*(2) A new development district may not be created to finance special obligation debt under this section unless the proposed action is approved by:*

*(I) at least 80% of the owners of the real property located within the proposed development district, treating multiple owners of a single parcel as one owner and treating a single owner of multiple parcels as one owner;*

*and*

*(ii) the owners of at least 80% of the assessed valuation of the real property located within the proposed development district*

No development district in Clarksburg has complied with these requirements. In the case of Town Center, extant owners of real property in CTC during October 2002 – March 2003 were not properly notified, did not join the petition to create a development district, and in no way gave implicit or explicit approval of the district. Chapter 20A-1 (k) continues:

*This section does not prohibit the County or the Montgomery County Planning Board from obtaining from developers appropriate infrastructure contributions to support proposed development as allowed by law in addition to those financed under this section.*

The Planning Board has the ability and authority to impose infrastructure requirements independent of development district financing at the time of proposal or approval – and the Board distinctly did so when approving development in Clarksburg. No preliminary plan or other approvals in Clarksburg make reference to the particular necessity of development district placement for any reason whatsoever. Further, “appropriate infrastructure contributions to support proposed development” connotes a requisite financial contribution on the part of a developer as a consequence of the ability to fully utilize land for profit in Montgomery County.

Development Districts are additionally governed in Montgomery County by Chapter 14, which is clearly based on the state statute.

**§14-6 First Council Resolution**

*(a) If a petition signed by at least 80 percent of the owners of real property and the owners of at least 80 percent in value of the real property, as shown by the latest assessment rolls, located in a proposed development district, is filed with the County Council, the Council must hold a public hearing after at least 15 days notice in two newspapers of general circulation in the County . . .*

*(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*

**§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 district, to the Planning Board. The application must:*

- (1) explain how each development located in the proposed district will comply with all applicable zoning and subdivision requirements, including any action necessary under Section 50-35(k);*
- (2) identify any infrastructure improvements 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*

*(c) In the aggregate, the applications approved must commit the applicant to produce (through 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.*

**§14-9 Second Council Resolution**

*(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*

It is clear throughout Chapter 14 that the intent is to initiate development district creation early in the development process, prior to any plan approvals. Following the logical sequence delineated in Chapter 14 would create no duplicate APFO or AGP approvals; the requirements for approval (developer obligations) would be set clearly by the Planning Board apart from those obligations to be paid by the residents of a district.

Absent district creation prior to early plan approvals, the practical effect is to shift developer obligations from private developers to individual homeowners. It is further clear that issues may be created during the lag between district initiation and creation unless the initial applicant has taken, and will take no action to initiate the sale or transfer of land to builders or homeowners between first and second resolution.

Under Chapter 14, the Council and the Montgomery Planning Board are intended to work in concert during the initiation, creation and placement of a development district. There is no possible manner in which that can occur if the Council and the Board intend the same costs and obligations to be borne by different parties. Further, it is not credible that the Planning Board would impose few or no financial obligations for infrastructure improvements upon a developer, but instead shift them wholly to private citizens.

Clarksburg Town Center:

On September 26, 2000, the County Council adopted Resolution 14-648 (the first resolution), under §14-6(b) stating the intent to create a development district in Clarksburg Town Center. A petition was filed with the signature of the only owner of real property at that time, the developer. It is important to note that this resolution did not create, nor did it obligate the County Council to impose, a development district for Town Center.

On March 22, 2001, the Chairman of the Montgomery County Planning Board found that the district proposed for Town Center met AGP and APFO requirements and conditioned approval of the proposed district as follows:

*1. Amend Chapter 14-3(g)(2), if necessary, to allow for improvements to be the responsibility of a single developer so long as the proposed improvements serve a greater public benefit than a single development.*

*2. Proposed improvements to be included in the Development District should serve in the regional area, not just the residents of a single development.*

The concern of the Planning Board regarding single-development benefit has been consistently that infrastructure items included in a development district must serve the greater public good and not be the responsibility of a single developer. Chapter 14 was not modified as recommended to allow Board approval of the district.

On October 29, 2002, Resolution 15-87 (Clarksburg Town Center Development District second resolution) was introduced into the County Council. This resolution created the

CTC Development District upon approval, in March, 2003. Per §14-9, a petition signed by at least 80% of the owners of real property, as shown on the latest assessment rolls, should have been received. No property owner other than Terrabrook joined this petition; Terrabrook did not comprise 80% of the owners at that time.

Clarksburg Village/Arora Hills:

Clarksburg Village and Clarksburg Skylark (Arora Hills) developers petitioned the Council jointly to include their properties in a development district in July 2001. Resolution 14-1009, adopted October 2, 2001, authorized the intent to create a Development District in the Newcut Road area of Clarksburg as specified by the petitions filed with the Council on July 17, 2001. The Council stated the intent at that time to jointly consider the petitions jointly.

Clarksburg Village and Arora Hills properties have been further encumbered by a “private infrastructure district” discussed later in this report.

### **2.3 Master Plan Staging**

The Master Planning process revealed a strong desire within both the County and community to control the impact of development on the existing community, especially regarding environmental and traffic issues. The environmental impact was of particular gravity, as most of Clarksburg was then, as now, served by well and septic systems. The adopted 1994 Master Plan strongly emphasized the need to minimize the impact of planned future development on Clarksburg by designating a phased development plan in the form of staging areas. Each stage would be “triggered” by the completion of a sequence of particular events, detailed and specific to each stage, called “staging triggers.” Until the triggers were all met, the stage was not initiated, or open.

Development in Clarksburg Town Center, Arora Hills, and Clarksburg Village was triggered by compliance with the specific staging triggers detailed in the Master Plan,<sup>3</sup> and was allowed to move forward only once all Implementing Mechanisms were in place. Unlike other County master plans, the 1994 Clarksburg plan specifically set itself apart, relying on AGP, APFO, zoning code, and financing mechanisms for enforcement of its vision rather than seeking incremental rezoning of large parcels.

*After a stage has been triggered, individual developments within that stage can proceed once public agencies and the developer have complied with all of that stage’s implementing mechanisms and the traditional regulatory requirements of that property’s zoning.<sup>4</sup>*

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<sup>3</sup> “All staging triggers must be met to initiate this stage of development,” Table 19-20, p. 195-196.

<sup>4</sup> *Clarksburg Master Plan and Hyattstown Special Study Area*, June 1994, p. 193.

Among the stages' available financial implementation mechanisms, development districts are only one possible alternative, however, *all financing* — including Development District funding — was *required under the Master Plan to be implemented before any development in Stage Two or Three could be initiated*. Absent a Development District, development could proceed using "alternative infrastructure financing mechanisms" which might include developer funding, County funds, or other fees or taxes, such as impact taxes or construction excise taxes, assessed at the time of building permit.

After each stage triggered but before progressing further to approvals,<sup>5</sup> each development within that stage was required to:

- 1) Meet all regulatory requirements of the applicable zone
- 2) Comply with existing Annual Growth Policy
- 3) Meet Adequate Public Facilities Ordinance
- 4) Achieved the implementation of necessary financial mechanisms

### **2.3.1 Triggers and Implementation**

To initiate a stage, the Clarksburg Master Plan required that either State or County enabling legislation for development districts or alternative infrastructure financing mechanisms be in place. These “triggers” would open a portion of Clarksburg to potential development. All triggers were required to have been met before any development could potentially begin (in any form) within a given stage.

After the staging triggers had been met, the Master Plan provided for implementation mechanisms. These mechanisms took the form of requirements to be met before approvals could be issued. Implementation<sup>6</sup> of financing mechanisms was required before development could proceed within either Stage Two or Stage Three.

No development in Stage Two or Stage Three has met all requirements for staging triggers and implementation mechanisms.

## **2.4 Disclosure**

Disclosure to home buyers within the three existing Development District areas presents numerous ethical and legal compliance issues. The method of disclosure of the Development District to prospective homeowners varied widely and was dependent upon type and time frame of home purchase (from a builder or as a resale; before or after the passage of first or second resolution).

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<sup>5</sup> *Clarksburg Master Plan and Hyattstown Special Study Area*, June 1994, p. 195-196.

<sup>6</sup> *Implementation of a development district would be the passing of a third resolution and issuance of the related bonds; the reason for this requirement was, again, to avoid overburdening either the taxpayers or the community during development.*

## **Clarksburg Town Center**

In the Clarksburg Town Center Development District, the earliest purchasers received no notice or disclosure regarding a Development District; they moved into Town Center a full year or more before Council resolution 15-87 creating the district was adopted. Approximately 100 families had moved into Town Center before the resolution was passed by Council in 2003. Clarksburg Town Center is designated as a Stage Two property in the 1994 Master Plan, which carries an explicit requirement that any financing, including a development district or any alternative financing, be implemented prior to any development. The Town Center Project Plan (1997) asserts compliance with the specific Master Plan requirements regarding staging, although clearly the requirements were not met.

Some later disclosures to buyers noted that the development was 'proposed' to be located within a special taxing district which 'may' be created. Resale home buyers did not receive even this minimal information. In many cases, disclosure was reported by residents as misrepresented and misleading. Initial purchasers of Clarksburg Town Center properties after August 2003 received more extensive disclosure documentation, however, some of these listed 'TBD' as the amount of tax; resale buyers continue to lack adequate disclosure and as late as December 2006 were receiving no disclosure whatsoever about the existence of a Development District. This is particularly disturbing for those home buyers who purchased at the upper edge of their budgetary constraints and are now faced with potential tax ranging from a low of \$1300 to a high of nearly \$3000 on top of ever-increasing state property taxes, with the likelihood of that tax increasing at a rate of 2% per annum.

## **Clarksburg Village and Arora Hills (Greenway Village)**

In the Arora Hills and Clarksburg Village Development Districts, disclosure from builders was not made to prospective home buyers when the initial contract was signed, but rather at closing or afterward. Disclosure took the form of verbal notice and an annexed document. The annexed document contained a legal notice that a Development District had been petitioned for by the developers, although additional information was minimal and misleading. In Arora Hills, the amount to be assessed to homeowners was listed as an annual tax amount 'TBD', with an annual assessment typically falling between the amounts of \$900-\$1200 (which gave the impression to homeowners under that this amount was capped at \$1200). During one of the CDDAC meetings with the developer, the potential amount was quoted as significantly higher – capped at \$1500 annually with potential for increase by a further 2% each year.

Disclosures again varied widely – builders used different agreements in different neighborhoods at different times. While the wide variety of disclosures used may have constituted 'legal' disclosure, practical or fair disclosure (at the time of contract signing, with full financial and comparative disclosure) was not achieved by any builders or the developer. It was nearly impossible for homeowners to be fully aware of their future financial obligations without a close examination of the land records post-settlement, wherein they would find the lien placed by the developer. Few homeowners were

knowledgeable enough to seek out such information independently, and those who did [were confronted with a lien they knew little and could determine less about.](#)

### **Financial Implications of Disclosure Issues**

Important financial information (e.g., a specific amount of obligation) was rarely made to homeowners, and is still lacking in most Clarksburg transactions. This issue arises from poor implementation of development district law, inattention to the staging principles of the Master Plan, inattention to development status in Clarksburg by the Council and Planning Board staff, and the manner in which developers petitioned the County Council. The lack of a known amount, early in the development and home buying processes, leads to the potential for abuse of development district provisions by developers to cover costs or add 'hidden' opportunities for profit at the home buyers' expense. The price of homes located within potential development districts in Clarksburg are not now and never were adjusted to be lower than comparable units located elsewhere in Clarksburg but outside a potential development district.

This 'blank check' approach to fund infrastructure would have certainly dissuaded many buyers if disclosure had been properly made -- and is likely to discourage future buyers of resale homes in the development district areas. Given the nature and manner in which disclosure was (not) made to homeowners, residents were not only properly notified, but rather mislead, and not fully informed about the nature of Development Districts. The late, undefined notice essentially assured that consumers would neither understand, nor have time to properly understand, their obligations. This may lead some residents into dire financial straits, because the additional obligation for a development district tax was not included in any calculations during the home buying process. Furthermore, lack of disclosure also potentially violates a variety of consumer protection laws.

There are further complaints about the disclosures used (past or present) in all three Development Districts. While some do appear to provide adequate legal notice, none of the disclosures provide any comprehensive information regarding the proposed districts. There has been little, if any, discussion with prospective home buyers throughout Clarksburg as to the nature of the districts. Several homeowners called the County Finance Department to find out more information about the development district before closing, but were unable to obtain any information beyond the nebulous mention contained in their documents. As a result, one homeowner stated that "the Development District was added to a list of things in my contract that I didn't like [the amount of information available about] but could nothing about, unless I was willing to walk away from buying a home that I wanted and had already invested considerable time and effort to pursue."

### **2.5 Private Infrastructure Option**

In the Arora Hills and Clarksburg Village Development Districts, closing documentation included an "annex" document notifying buyers of the proposed Development District. In that document was a provision that should the Development District not be created, the developer privately reserved the right to create a private taxation district in the same

amount range. This was another issue ‘forced’ on buyers due to the timing of the disclosure, giving buyers no time to research validity or reasonably understand any options available to them. Prospective homeowners were lead to believe that it was a ‘meaningless disclosure’ as they would be required to pay this fee/tax in any event.

Addition of the Intent to Create a Private Taxation District clause was not disclosed to County officials until well after the annex document’s use had already begun by the developer (at least 18 months later.) While seemingly under no explicit obligation to inform the county of this particular clause, in fact this constitutes an "alternative financing method" as mentioned in the Master Plan, and should have received the approval of the County Council or MNCPPC to satisfy the requirements of a Stage Three development (as Arora Hills and Clarksburg Village are). Further, inclusion of this impacts the County financing methods and supports a pattern of behavior by developers – why would this ‘clause’ be necessary, if developers expected approval of the Development District and/or had sought its implementation as envisioned, well before any development took place?

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.

In the event that developers attempt to create ‘private tax districts’, it has been stated to the Committee that Developers could issue liens against property titles. Based on wording listed in disclosure statements, it is legally questionable whether this could be enforced, but rather was used to gain homeowner ‘compliance’, and it appears to be an ‘insurance option’ for developers to secure as much profit and capital as possible.

The developers of Clarksburg Village and Arora Hills (Elm Street and Artery, respectively) have created a situation where the residents of those areas are forced – without full, open, and timely disclosure – to pay for additional infrastructure fees well in excess of other County residents (including Clarksburg areas outside of districts, and other County areas outside of Clarksburg) – and essentially with a ‘blank check’ at settlement.

## **2.6 Intent of Development Districts**

Development districts are seemingly intended to provide multiple benefits: to developers, local government, and homeowners – by allowing the funding of infrastructure improvements necessary for new residents and commercial districts in a timely and transparent manner. County government and developers are said to benefit by having a designated funding mechanism to finance necessary improvements, while homeowners receive more ‘livable’ communities at time of move in (rather than waiting

for improvements to ‘catch up’ after residents have moved in) and lower home prices as a result.

Development districts as proposed in Clarksburg, do not fulfill either the objectives of development district legislation or those of the Clarksburg Master Plan.

It is widely perceived that, instead of properly disclosing the Development Districts and fees – and discounting home prices as a result – developers instead charged a premium price for their homes, charging what the market would bear, then ‘hid’ the additional infrastructure costs/fees until closing or after (as described in previous sections).

In Clarksburg, it is apparent that there has been little, if any, benefits to residents through the use of alternative financing of any sort, including Development Districts – instead, it would appear to have the opposite effect on properties, particularly within the proposed districts. Adding \$1500+ annually to residents property tax bills for the next 26 years is equivalent to increasing assessed home values by approximately \$150,000 – and yet, property values will drop because the tax burden is not equal throughout Clarksburg. One resident in Clarksburg Town Center noted that “Why would anyone buy an NV home in Town Center, if there is a Development District versus buying the same home in Clarksburg Ridge, which is, literally, across the street and has no Development District planned, so homeowners will pay substantially less in property taxes?”

## **2.7 Inequity of Neighborhood Financial Contribution: Utilization/Impact Taxes versus Development Districts**

The Clarksburg Planning area identifies approximately 18 new communities. In order to receive approval to develop these parcels, the Planning Board required developers to build “general infrastructure.” After the adoption of the Master Plan, the County Council drafted and passed Chapter 14 as way to fund general infrastructure throughout the County. In the absence of approved development districts, general impact taxes were imposed and repeatedly increased in Clarksburg as a way to equalize the contributions between communities that would be placed into development districts and those which would not.

Under Chapter 14 of Montgomery County Code, a developer, neighborhoods of property owners, or a builder can petition to place property into a development district. As of August 2006, there are three developers that have filed these petitions in Clarksburg. The developer for Clarksburg Town Center is awaiting the County Council’s third and final approval of the petition process after which bonds can be issued. In Clarksburg Village and Arora Hills, developers have reached first resolution, the intent to create the Districts.

The method in which development districts are progressing in the Clarksburg area – where some new communities are included in a district and other new developments directly adjacent are not – has created an “us vs. them” climate wherein neighborhood residents are comparing their additional contributions via development districts to neighboring new communities where residents are not required to contribute. It is quite

apparent that all communities will directly benefit from infrastructure improvements currently scheduled to be completely funded via development districts by residents in those districts. Construction of much of this “non-district” development may even have been approved by the County, contingent upon the existence of ‘required’ infrastructure that would be provided by other, larger communities within the proposed Development Districts. Certainly, impact taxes were expected to contribute to the general infrastructure for Clarksburg, yet the collection of such has been severely lacking.

It is apparent that neither the County Council nor Park and Planning took a holistic view of Clarksburg when processing development documents and allowing petitions to be brought forth for development districts. Impact taxes were expected to minimize some of the discrepancy between communities and be correspondingly higher in non-district communities; instead, they have magnified the level of inequity. It appears that the few communities proposed to be within development district regimes are expected to fund the majority of infrastructure improvements for the entire town of Clarksburg – despite the reality that new development outside of the districts was equally contingent on infrastructure being in place early in the development process.

Another example of financial inequity results when Clarksburg is compared to the rest of Montgomery County. The development district concept, in conjunction with the “Clarksburg surcharge” of transportation and school impact taxes, encourages residents to ‘pick apart’ what they pay for versus what others receive from the County via regular property taxes. Why are residents of Clarksburg targeted to pay additional impact taxes/development district fees for building a school or a library well in excess of what other County residents pay – when those other residents receive those services through usual property taxes? Clarksburg residents continue to pay County property taxes at a similar, if not higher rate, than their fellow County residents.

Correspondence between CDDAC members and County Council members has revealed that there is an impression among members of the Council that the higher impact tax (Clarksburg Surcharge) is a functional way for other developments in Clarksburg to pay equitably. This is **clearly** not the case. Even allowing for an impact taxes refund to homeowners in any created development districts, there would still be a larger financial burden borne by the property in the district.

An analysis of impact tax burden vs. development district tax borne by a single-family detached home shows the disparity. The transportation impact tax in Clarksburg (post 2004 revision) for a single family detached home was a one- time \$8250 fee for all permits issued, irrespective of development district status. The potential amount of a Clarksburg Village development district fee of \$1500 annually for 26 years which equals an additional payout of \$39,000 in taxes, without inclusion of the projected 2% annual escalation. Subtracting any impact tax refund to the homeowner reduces this to \$30,750 – \$22,000 more than a Clarksburg resident not living in. A development district will pay for a nearly identical new home.

## **2.8 Requirements of Developer versus Community Desires**

There is a gap between developer requirements – which are issued by the Planning Board as a precondition for development and “additional amenities” desired by the community. Developer requirements include infrastructure construction and improvements, such as utilities and roads – not only within the community, but bordering, or even outside of the community; these requirements might include land dedication or construction of particular community amenities as well. It is important to note that while developers are required to build infrastructure improvements as part of their approved plans, in Clarksburg, “additional amenities” were often promised in an accelerated fashion. This has not yet occurred in any higher-density development in Clarksburg; the pools and community playground facilities (or lack thereof) have received particular attention in the press due to this discrepancy. The lack of development district disclosure adds immeasurably to the feelings of resentment and anger over missing community amenities and infrastructure as a result.

One Arora Hills homeowner noted the option of choosing the exact same single family home from the same builder in the Clarksburg Ridge development (located in Clarksburg but not in an existing/proposed development district) for \$10,000 less – but specifically chose Arora Hills for the amenities, such as bike paths, that were to be included in the community – without mention of a Development District or private tax district. When adding cost of the Development District/private tax to the price of the home, simple math determines the true cost of those ‘bike paths’ – assuming the later cap rate and no impact tax refund of  $\$1500 \times 26 \text{ years} = \$39,000$  in addition to the \$10,000 price premium, for a total of at least \$49,000 per house.

In Clarksburg Town Center, residents who were misled by the developer and builders on not only the nature and location but also disposition of some neighborhood amenities has been well-documented. ‘Minor’ changes by the developer and County planning staff made major differences to residents, some of whom had also (as the Arora Hills homeowner above) chosen Town Center for the additional, accelerated amenities. Within the community, this was widely viewed as a business practice designed to maximize the number of lots that could be developed and sold for profit. The consistency with which these types of issues occurred placed a portion of the citizens of Clarksburg in the unenviable position of paying premium prices for communities that resembled the most average suburban developments elsewhere in the County, and even higher prices than their Clarksburg neighbors who had chosen properties outside of proposed districts.

## **2.9 Economic Impact**

It is likely that final approval of the proposed development districts would have a significant impact on the local economy. At a time when the local community is attempting to attract and grow commercial and employment centers, millions of dollars would be removed from the local economy and paid to non-local developers who had already profited from the development of their land. It can be reasonably surmised that additional disposable income in the pockets of Clarksburg residents would benefit local businesses directly; the removal of those dollars from the area for nearly three decades will stifle growth long-term.

A rough estimate using an average assessment of \$1200 per household in a development district, multiplied by the approximate number of households in the proposed Development Districts – 1300 in Arora Hills, 2300 in Clarksburg Village, and 1200 for Clarksburg Town Center for a total of 4800 households, it can be concluded that the amount of loss to the local economy would be at least \$5,760,000 annually.

This amount would be removed from the income of local residents and unavailable to the local economy while directly benefitting developers who had been relieved of their financial obligations. Multiply this amount by 26 years, and the total impact of direct taxes/fees can be estimated to be at least \$149,760,000 over the lifetime of the districts. This figure alone – which is exclusive of general taxes and other taxes/fees paid by Clarksburg homeowners such as water/sewer improvement fees – would seem to bear further examination by the County. There has been, to date, no public audit of the proposed development district costs.

This situation is further exacerbated if private tax districts are allowed in some communities. If this occurred, the monies paid by homeowners to developers would not be tax deductible, therefore increasing the impact substantially.

There will be additional direct impacts as well. Several homeowners have expressed to committee members that the Districts will create financial hardship for them – a hardship they were not able to predict when buying their homes. Those homeowners who might have financed with "interest only" or more exotic mortgages in order to afford the premium prices charged for homes in a 'hot' market are particularly vulnerable. The additional burden will likely result in some homeowners being forced to either sell their homes or face foreclosure, and others will simply sell – if they can – to avoid the disproportionate tax burden. It is questionable that financial institutions would have approved mortgages for some buyers had they been calculating eligibility inclusive of development district taxes during the mortgage approval process. Mortgage calculations inclusive of the district taxes have been impossible in Clarksburg to date as a result of the districts' status.

## **2.10 Impact Fees and Multiple Taxation**

Considerable confusion exists over the taxation structure being used to fund infrastructure improvements at all levels: County, developer, and homeowner. In addition to Development Districts, there are several other taxes and fees that Clarksburg residents pay that ultimately result in multiple and duplicate tax/fee structures to pay the cost of the same infrastructure improvements.

The impact tax is a one-time fee assessed against the builder as part of the permitting process, which is then passed directly to residents in the price of the home. Impact taxes are designated to be spent in the local area where the fees are collected (in other words, funds received from Clarksburg should be spent in Clarksburg). Effective March 1, 2004, the law was revised to separate school impact taxes from transportation impact

taxes; the law was also changed to charge Clarksburg residents a 50% surcharge over other “general” new development in the County for both the school and transportation impact taxes. The transportation impact tax for residents was set to range from \$1500 per unit (for a multifamily-senior unit) to \$8250 per unit (single family detached). These taxes are intended to mitigate the “impact” of new development, and effectively should be set high enough to cover the genuine impact to the County. However, application of this tax appears to overlap with the stated purpose of the development districts, as each is designated for local transportation improvements.

In order to offset this multiple taxation for the same service, by law, if a development district is established then impact taxes within the development district are to be refunded. However, this leads to a conflict between builders and the residents of any development district as to the disposition of the refund. It is CDDAC’s belief that after final approval of any development district refunds should be provided to current property owners under the law. However, at least one CDDAC member has been told that they are routinely given to builders, as they paid the initial fee. This disregards the probability that such a tax was passed along to residents as part of the cost of a home. This would provide a financial incentive – at taxpayer expense – for builders to press for creation/establishment of districts under current County laws.

As noted previously, the surcharge in impact taxes alone, specifically in Clarksburg, unfairly burdens Clarksburg residents. All residents (new or long-term) in other parts of the County expect and receive the benefit of new libraries, roads/transportation projects and schools – without Development Districts or higher impact taxes. Targeting homeowners in one area of the County to shoulder this financial burden is unacceptable.

## **2.11 Transparency and Process Management/Stewardship**

The funding mechanism and relationship between impact taxes and development districts is not widely understood by citizens. The relationship between County-mandated requirements for developers as prerequisite for development and developer responsibility to County agencies and residents for those requirements is also confusing. The process for notification and community input is notably flawed or disconnected from those processes used by County offices and agencies as a result. The extensive and lengthy time often spent in Clarksburg to place a development district seems to benefit not developers, County or homeowners, but rather to exacerbate the situation. The situation the average homeowner experiences in the proposed district areas is difficult to understand and it has been nearly impossible to communicate any community concerns to the right agency or representative in a timely fashion.

In order to be equitable and fair to all parties, the development district process needs to first be complete before homeowners arrive in a proposed district; failing early introduction, the process must include all property owners in an equitable and transparent fashion. It must include full disclosure for residents and developers up front. Such disclosure would not merely state that a district has been proposed, but also list the items that are included in that district; further it must include the full amount that a homeowner might expect to pay, annually and over the life of the district. Homeowners must have

the information and ability to understand their full financial obligation before signing a purchase contract. Comprehensive disclosure of this nature would not only allow potential home buyers to completely understand and analyze their obligations, it would also assure them that their tax dollars were being directed to projects that clearly benefit the local community.

## **2.12 Change in Economic Conditions**

When development district legislation was created in Montgomery County, the idea was advanced that funding mechanisms were necessary to ensure new development would ‘pay for itself’. A variety of taxes and fees were under discussion in the county to meet that end; development districts were thought to ensure that developers would pay for promised infrastructure improvements in an accelerated manner. In addition to development district taxes, impact fees and water/sewer private front-foot fees.

Montgomery County has recently experienced an unprecedented surge in housing prices. Due to this economic upturn, it is certain that developers were able to charge builders a higher amount per lot and that this amount was passed on to buyers. Depending upon the date of initial acquisition for various tracts of land in the Clarksburg area, this surge likely provided developers with a substantial profit per lot; the surge also likely served as an economic incentive to maximize the number of units in any given development. The County experienced a correspondingly large rise in income related to the surge of property taxes due to increased property assessments (even though property taxes have slightly decreased on a per-dollar-value percentage of assessed value). Development districts in Clarksburg have not been reconsidered or modified in view of the new economic circumstances; this would be an appropriate action for the Council to take going forward in Clarksburg.

## **3.0 Improving the Development District Process**

The members of CDDAC have come up with a number of ‘lessons learned’ that can be applied not only to the existing/proposed development districts in Clarksburg, but also to any future development districts elsewhere in the County. These are intended only as starting point for future discussion.

### **3.1 Revisit the Law, Disclose Properly, Simplify**

There seems to be no logical reason why all Clarksburg/County residents are not expected to pay an equal, clear and fully-disclosed amount toward any County service or infrastructure that is open to the public. Tax equity among all County residents is the first and foremost item to consider. It is wrong to penalize any particular group of residents for having had the misfortune to have chosen the ‘wrong’ neighborhood, particularly when hard information is not readily available to the public.

Requirements for approval by the Planning Board placed on developers should be a funding matter that is implicit upon developers; and that any resulting home costs should

have be included up-front in the price of the home (as many homeowners in Clarksburg believe was the case) or included in impact taxes – removing the need for a separate funding mechanism which appears designed to maximize developer profit at the expense of taxpayers. Any additional up-front cost (‘developer risk’) is simply a portion of the cost of doing business. Developers approaching the Board for plan approval are aware of County requirements before development begins; the costs and associated risks are known in advance. Unfortunately for residents, development districts – particularly those created post-plan approval – can lead to residents being taken advantage of, whether intentionally or through benign neglect by County agencies.

CDDAC proposes that development district laws – in their current iteration and implementation – simply do not work. The code which sanctions the districts needs to either be completely reassessed and rewritten - or eliminated.

An important issue raised by citizens is that of political campaign contributions by developers and their legal representatives to elected members of the County Council. It is a matter of public record that some County Council members have received more than half of their campaign contributions from those interests. This can create an environment for collusive behavior at constituent expense - potentially allowing developers, builders and their legal representatives to exert significant influence over members of the County Council.

Due to conflict of interest, any elected official who has received significant funds from developers or their legal representatives – or who otherwise has business interests with them – should excuse him or herself from debate and voting on any development district regulations.

Given the large number of outstanding issues relating to development districts and their implementation in Clarksburg, it is suggested that all of the laws and implementation processes be comprehensively reviewed or be completely overhauled to ensure equity for all parties involved. Such a review would include revisiting all policies, procedure for approvals of site plans for compliance with the applicable statutes, and ensuring that taxpayers are paying an equitable share of any infrastructure costs – in a fully disclosed manner – along with the County and any developers. Any existing loopholes should be closed to eliminate the temptation for developers to manipulate the development process at taxpayer expense – part of the reason why these laws were enacted in the first place.

### **3.2 Inclusive Tax Zone/District to Replace Development Districts**

Creation of a single, inclusive tax zone/district should have been used for all ‘new development’ areas within Clarksburg, inclusive not only of the three proposed development districts, but all areas of new development in Clarksburg. This would have addressed the inherent inequity between large new communities and smaller new communities adjacent or nearby.

### **3.3 Community Input**

Better and more extensive community input is needed throughout the process regarding the inclusion of improvements/services in any development district. This would begin to ensure that government and developers benefitting from development districts are practicing ‘good stewardship’ of taxpayer dollars, and identify projects to be funded with the agreement of the community.

### **3.4 Increase Transportation Impact Tax**

While Clarksburg has an impact tax 50% higher than any other area in Montgomery County – and this applies to both school and transportation impact taxes – the inclusion of transportation projects being proposed within the development districts suggests that impact taxes are not high enough to offset new development costs in the area. It is suggested that the impact tax structure for Clarksburg be revisited to better meet these costs.

### **3.5 Disposition of Impact Tax**

The disposition of the impact tax in the event of final approval of a development district is of great importance to taxpayers within the proposed districts. Although these taxes were paid by builders, they were passed along to home buyers as part of the purchase process. Any refund of impact taxes to developers or builders is unfair to residents for two reasons: homeowners would pay a second tax (development district) for the same infrastructure improvements that they had already paid for when purchasing their home (impact tax in purchase price); any refund would create a windfall to builders at taxpayer expense.

### **3.6 Reduce County Property Tax in Development Districts**

County areas not included in development districts are not assessed ‘extra’ for school building/construction, road improvements, or other County services provided; one equitable solution is to deduct the amount of development district tax, it would be fair to reduce the amount of County taxes paid in the development district areas equal to the direct subsidy being provided to the County for the period of the development district’s existence. It is noted that tax laws would need to be amended to provide this relief to taxpayers.

### **3.7 Revisit and Enforce Developer/Builder Obligations**

Poor disclosure or nondisclosure regarding development districts and premium upcharges to homeowners in areas that may have been misrepresented by builders as containing ‘extra amenities’ indicate that the developer/builder community is obligated to at least partially, if not fully, offset the costs of the development districts.

Some improvements have been delayed or modified beyond any reasonable expectation, creating hardship and long-term inconvenience in the community. Some projects have ‘started’, but not completed in a timely fashion. We propose that any laws currently tied to the ‘starting’ of infrastructure projects be changed to the ‘completion’ of such projects instead.

#### **4.0 Additional Concerns**

##### **4.1 Private Infrastructure Company**

One unresolved issue, in the case of Clarksburg Village and Arora Hills, is the ‘private Development District’ clause that was inserted into homeowner contracts without the knowledge or consent of appropriate County agencies. Developers should never be allowed to create their own, private ‘tax districts’, and all applicable State and County laws should be enforced to prevent developers/builders from doing so.

##### **4.2 Potential for Litigation**

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. It is of course desirable for all parties that the above issues be resolved through discussion and negotiation.

##### **4.3 Questionable Intent**

If the Development District is functionally a "financing vehicle" for development, why are only select Montgomery County taxpayers, and indeed, only select parts of communities being asked to provide this? If the County taxpayers agree to assist developers in some fashion, the burden is rightfully spread equally throughout the county, as other obligations such as libraries, schools, roads, parks, etc. have been traditionally distributed.

This is, simply put, a matter of equity to all Montgomery County taxpayers. It affects especially those property owners who are longstanding county residents. These residents comprise the majority in the proposed districts and are now faced with dramatically increased tax payments. These residents have paid for infrastructure, schools, libraries, parks, beautification, and other Countywide necessities constructed in other sections of the County for many years. The present lack of equitable treatment for Clarksburg homeowners due simply to the location of their homes is untenable. There is no viable excuse regarding the location of the homes in new communities; plan approval and subdivision approval each carry certain inherent and overt obligations that were placed

on and agreed to by the developers long before any district was proposed. A direct payment for reimbursement of financial and development obligations would be simply additional profit for the developer, taken from the pockets of Montgomery County citizens.

## 5.0 Summary

The Clarksburg Master Plan was intended to provide a skeleton for development of the new town as it grows to an end-state of 40,000 residents. Growth was planned by Montgomery County to shape Clarksburg as the final employment and residential center along I-270 while meeting the needs of conservation and protection of the environment, directed growth, and the funding and timing of development.

The Plan proposed deliberate stages for development of the town with the intent to manage growth, maintain infrastructure and services, and minimize the environmental impact where it was most crucial. Alternative financing was specifically required to be in place before any development was allowed to proceed.

No Development District in Clarksburg has been implemented prior to the sale of homes; no district has yet complied with the Master Plan staging requirements and been implemented prior to Preliminary Plan; no Planning Board approvals in Clarksburg have ever included a requirement for a Development District, and no findings of AGP or APFO adequacy have been contingent upon a district. The approval of every developer's plans in Clarksburg has included requirements that were imposed on the developer independent of any public financing; one plan approval indicated specific infrastructure items that were allowed to be included in a district, but it was not mandatory, indicating that the remaining infrastructure obligations belonged to the developer alone.

Of the proposed Development Districts in Clarksburg, one has reached second resolution, in Clarksburg Town Center; two have reached first resolution, Clarksburg Village and Clarksburg Skylark (Arora Hills). All districts either had or will have homeowners living in the district before the district had been created under County law, yet no homeowner in Clarksburg has approved or joined a petition to create a district. The time lag between first and second resolution has created serious questions regarding the districts in Clarksburg.

Disclosure regarding the districts to prospective home buyers, perhaps as a consequence of delayed creation/implementation, has been at best incomplete; at worst, it has been non-existent. For property owners in Clarksburg Village and Arora Hills, there has been a very disturbing addition of an 'annex document' regarding the Private Infrastructure District the developer intends to create if the County does not provide Development District reimbursement for items that were either required as a condition of approval or required as a consequence of development.

Alternative financing in Clarksburg was never intended to supplant County contributions to public improvements. Such financing, including Development Districts, was intended to accelerate infrastructure and amenities that might otherwise be delayed; however, this did not occur, and many residents see the imposition of a vehicle such as a Development District as little more than a subsidy to the developers as a result. Further, the inconsistent nature in which financial obligations would be imposed has created a division in the community, an "us-versus-them" mentality.

Properties within proposed districts have not experienced any tax relief in the form of reduced tax assessments; rather, they generally pay higher taxes than those properties located outside of proposed districts, even without the imposition of a Development District tax. For some homeowners, the Development District tax would be a burden heavy enough to force them to sell their homes and leave Clarksburg.

Development Districts as proposed in Clarksburg will shift the cost of developer obligations from the developers' pocketbooks to private citizens by releasing developers from the full provision of roads, sewers, and land dedication as required for approval by the Planning Board. The County must hold developers accountable to the requirements imposed upon them by the Board and by the Council via zoning regulations. If the County does not, the citizens of Clarksburg cannot reasonably be expected to bear those obligations – they were never intended to be public, but rather a “payment” for the privilege to develop land in Montgomery County.

## **Appendix A – Group Charge**

The Clarksburg Development District Advisory Committee was formed in June, 2006.

The charge of CDDAC includes the following:

The members of the Committee shall education themselves as to the mechanics of the Development District concept. Such efforts shall include, but not be limited to the history of the concept, the status of the districts, the financial basis for establishment of same and actions taken to date to initiate districts. Some effort should be taken to measure the level of knowledge that current residents in all three pending districts have of the concept.

The group shall review previously identified infrastructure projects for Town Center and discuss with developer representatives proposed infrastructure improvements to support Development Districts of Clarksburg Village and Arora Hills. Input, in the form of recommendations about improvements, as well as priorities desired by the residents would be appropriate in this instance. Task force members will be encouraged to seek such input from other community members.

The members of the Task Force will investigate and research, with the assistance of appropriate staff, mechanisms utilized in the region and the national development community for funding infrastructure improvements. Benefits and risks will be evaluated with “Best Practices” as the highlight of such an effort.

The Task Force shall seek input and reactions from other community members within the three proposed districts to add to the fabric of their knowledge, prior to making a recommendation to the County Executive on the Development District concept.

The CDDAC will prepare a set of recommendations to convey to the County Executive regarding appropriate next steps to take relative to the implementation of Development Districts in all three areas (Clarksburg Town Center, Arora Hills, Clarksburg Village).