



**Committee:** Directly to Council  
**Staff:** Glenn Orlin, Senior Analyst  
**Purpose:** To introduce agenda item – no vote expected  
**Keywords:** #OakDrive, sidewalk, advance taking

AGENDA ITEM #4E  
April 13, 2021  
**Introduction**

## SUBJECT

Optional Procedure for Condemnation of Land, Advance Taking for Oak Drive/MD 27 Sidewalk Project (CIP Project No. 501908)

## EXPECTED ATTENDEES

None

## BACKGROUND

The Department of Transportation (DOT) is preparing to begin the construction of a sidewalk along segments of Oak Drive and Kingstead Road in Damascus as authorized under the Phase 1 of the Oak Drive/MD 27 Sidewalk project. The project includes the construction of a 5-foot wide sidewalk with a 5-foot wide green buffer between the road and sidewalk along a 4,200-foot segment of Oak Drive, and along a 350-foot segment of Kingstead Road.

The planned construction impacts 24 properties along the west side of Oak Drive and on the south side of Kingstead Road in Damascus. Negotiations with property owners for the necessary acquisitions began in August 2020 and are ongoing. To date, the County has been unable to reach a settlement with two (2) property owners, who own a total of four (4) properties. Construction of the project is slated to begin as soon as advance take is granted. To maintain the DOT's construction schedule, authorization from the County Council is sought to obtain immediate possession of the remaining property interests pursuant to County Code section 49-50. Authorization to commence Advance Taking procedures does not terminate the County's efforts to reach an amicable agreement with the subject property owners.

Council action is tentatively scheduled for April 20, 2021.

### **This report contains:**

Executive's April 5 transmittal memorandum	©1-2
Draft adoption resolution	©3-4

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OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich  
County Executive

MEMORANDUM

April 5, 2021

TO: Tom Hucker, Council President

FROM: Marc Elrich, County Executive 

SUBJECT: Authorization of Optional Method for Condemnation of Land  
Advanced Taking Oak Drive Sidewalk CIP Project No. 501908

The Montgomery County Department of Transportation is preparing to begin the construction of a sidewalk along segments of Oak Drive and Kingstead Road in Damascus as authorized under the Capital Improvements Project (CIP) No. 501908, Oak Drive/MD 27 Sidewalk. The project includes the construction of a 5-foot wide sidewalk with a 5-foot wide green buffer between the road and sidewalk along a 4,200-foot segment of Oak Drive, and along a 350-foot segment of Kingstead Road.

The planned construction impacts 24 properties along the west side of Oak Drive and on the south side of Kingstead Road in Damascus. Negotiations with property owners for the necessary acquisitions began in August 2020 and are ongoing. To date, the County has been unable to reach a settlement with two (2) property owners, who own a total of four (4) properties. Construction of the project is slated to begin as soon as advance take is granted. Accordingly, in order to maintain the County's construction schedule, it is necessary for the County to seek authorization from the County Council to obtain immediate possession of the remaining property interests pursuant to County Code section 49-50 (Optional method of condemnation of land for streets and roads).

Authorization to commence Advance Taking procedures will not terminate the County's efforts to reach an amicable agreement with the subject property owners. However, due to construction time constraints, formal authorization to commence Advance Taking procedures is being requested at this time.

The following is a status report of the County's negotiation efforts to date with the owners of the properties subject to the proposed Advance Taking:

1. Samuel & Kathy Brake (2 properties) -
  - The acquisition along Account No. 12-01780648 consists of two (2) fee simple areas containing 531 square feet, and 405 square feet of land area, respectively, and a temporary construction easement containing 3,502 square feet of land area.
  - The acquisition along Account No. 12-00939427 consists of a fee simple area containing 1,049 square feet of land area, and a temporary construction easement containing 1,064 square feet of land area.

Contacts with the property owners include an initial offer letter, one (1) site visit, phone conversations, and multiple emails documented in contract logs. The property owner retained the representation of Ms. Patricia A. McKenzie, Esq. To date, we have received only 1 email from attorney McKenzie acknowledging receipt of a proposed Option Contract sent by PAS staff. Despite multiple emails and calls from PAS staff, Ms. McKenzie has not offered any response to the proposed Option Contract. Consequently, staff has been unable to reach an amicable agreement with the property owners.

2. Sharon Ray & Phyllis Mills (2 properties) -
  - The acquisition along Account No. 12-03690834 consists of a 272 square foot temporary construction easement.
  - The acquisition along Account No. 12-00939438 consists of a 1,744 square foot fee simple area, and two (2) temporary construction easements containing 688 square feet and 3,070 square feet of land area.

Contacts with the property owners were limited as the owners were nonresponsive to several certified letters, and an attempted site visit. Upon receipt of a letter left at the property for the owner, PAS staff received a call explaining that they were to be represented by Ms. Patricia A. McKenzie, Esq. Despite continued efforts by PAS staff to contact Ms. McKenzie, PAS staff has received only one (1) email from her in which she acknowledged receipt of a proposed Option Contract. Several calls have been made to Attorney McKenzie's office but have been unsuccessful in reaching her. Consequently, staff has been unable to reach an amicable agreement with the property owners.

RESOLUTION \_\_\_\_\_  
INTRODUCED \_\_\_\_\_  
ADOPTED \_\_\_\_\_

**COUNTY COUNCIL  
FOR MONTGOMERY COUNTY, MARYLAND**

**By County Council**

**SUBJECT:** Optional Procedure for Condemnation of Land, Advance Taking  
CIP Project No. 501908

In accordance with Article III, Section 40A, Maryland Constitution and Section 49-50,  
Montgomery County Code (2014), as amended.

**BACKGROUND**

- I. The Council has been requested to authorize the condemnation of portions of land necessary to construct a sidewalk along the west side of Oak Drive and along the southside of Kingstead Road in Damascus in accordance with §49-50 of the Montgomery County Code (2014), as amended for Phase 1 of the Oak Drive/MD 27 Sidewalk Project (CIP 501908).
1. In order to meet the construction schedule, as authorized by the Montgomery County Council, the County must acquire the properties referenced below in a timely manner.
  2. The County has been unable to complete negotiations to acquire the necessary property interests with the Property Owners listed below.

**RIGHT OF WAY IN SQUARE FEET**

<b><u>OWNER</u></b>	<b><u>ACCT. #</u></b>	<b><u>MAP/ PARCEL</u></b>	<b><u>LIBER / FOLIO</u></b>	<b><u>Fee Simple</u></b>	<b><u>TEMPORARY EASEMENT</u></b>
<b>Brake, Samuel J &amp; Kathy S</b>	<b>12-01780648</b>	<b>FX31/P761</b>	<b>4989/55</b>	<b>532 / 405</b>	<b>3,502</b>
<b>Brake, Kathy &amp; Brake, Samuel J</b>	<b>12-00939427</b>	<b>FX31/P703</b>	<b>50522/478</b>	<b>1,049</b>	<b>1,064</b>
<b>Ray, Sharon Ann</b>	<b>12-03690834</b>	<b>FX21/P619</b>	<b>43077/173</b>	<b>0</b>	<b>272</b>
<b>Ray, Sharon A Mills, Phyllis A</b>	<b>12-00939438</b>	<b>FX21/P618</b>	<b>15061/550</b>	<b>1,744</b>	<b>688 / 3,070</b>

## ACTION

- I. The County Council finds that there is an immediate need to take possession of those portions of the properties listed above and approves the Resolution authorizing the condemnation of land under the optional method for condemnation of land for streets or roads specified in Section 49-50, Montgomery County Code (2014), as amended for the construction of a sidewalk along the west side of Oak Drive and on the south side of Kingstead Road as contemplated by Phase 1 of the Oak Drive/MD 27 Sidewalk Project (CIP 501908). In furtherance of these actions, the County Council hereby:
1. Guarantees the payment of any amount above the estimated fair market value later awarded by a jury; and
  2. Appoints Thomas A. Weigand, MAI Maryland Certified General Appraiser, to appraise the fair market value of the property.
  3. Orders the County Attorney to acquire the listed property under this procedure.
- II. Montgomery County will take immediate possession of the listed property upon filing petitions of advance taking in the Circuit Court for Montgomery County, Maryland and depositing with the Court the fair market value of the property, as determined by the appraiser appointed above. The County may abandon these proceedings at any time prior to payment of the fair market value of the listed property into the Court.
- III. The County Attorney is hereby directed to take all necessary steps to acquire the property.

THIS IS A CORRECT COPY OF COUNCIL ACTION

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Selena Mendy Singleton, Esq.  
Clerk of the Council