



Committee: T&E
Committee Review: N/A
Staff: Glenn Orlin, Senior Analyst
Purpose: Final action – vote expected
Keywords: #Clarksburg, advance taking

AGENDA ITEM #2H
December 7, 2021
Action

SUBJECT

Optional Procedure for Condemnation of Land, Advance Taking, Subdivision Roads Participation (CIP Project No. 508000)

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

Council action is scheduled at this meeting.

SUMMARY OF KEY DISCUSSION POINTS

The Council has been requested to authorize the condemnation of portions of land necessary to construct improvements included in the Subdivision Roads Participation CIP project (No. 508000) at or near the intersections of MD 355 @ Clarksburg Road and Clarksburg Road @ Snowden Farm Parkway, in accordance with §49-50 of the Montgomery County Code (2014), as amended.

The Executive requested the advance taking of five properties from three owners. Since then, however, the Department of Transportation has settled on one of the properties, owned by GO Church. DOT's revised resolution, therefore, would allow for the advance taking of four properties from two owners. **Council staff recommends approval of the revised resolution.**

This report contains:

Executive's transmittal
DOT's revised resolution

© 1-5
© 6-7

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OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

MEMORANDUM

October 26, 2021

TO: Tom Hucker, President
Montgomery County Council

FROM: Marc Elrich, County Executive 

SUBJECT: Authorization of Optional Method for Condemnation of Land
Advanced Taking MD 355 @ Clarksburg Road & Clarksburg Road @ Snowden
Farm Parkway, CIP Project No. 508000

The Montgomery County Department of Transportation is preparing to begin the construction of improvements at the intersections of MD 355 (Frederick Road) @ Clarksburg Road and Clarksburg Road @ Snowden Farm Parkway as authorized under the Capital Improvements Project (CIP) No. 508000, Subdivision Roads Participation.

The MD 355 @ Clarksburg Road project is for the construction of improvements that include additional turn lanes, a 10-foot shared use path, a 5-foot sidewalk, curb and gutter, and storm water management. The limits of the project extend on Frederick Road from Spire to 700 feet north of Clarksburg Road and along Clarksburg Road from Frederick Road to Overlook Park Drive.

The Clarksburg Road @ Snowden Farm Parkway project is for the reconstruction and widening of Clarksburg Road. The project will include curbs, and gutters, drainage facilities, a shared use path, and sidewalks along Clarksburg Road. The limits of the project extend along Clarksburg Road from Catawba Manor Way to approximately 850 feet east of Snowden Farm Parkway. A portion of Snowden Farm Parkway will also be widened as it approaches Clarksburg Road.

The planned construction impacts 19 properties within the limits of the projects. Negotiations with property owners for the necessary acquisitions began in September 2020 and are ongoing. MCDOT staff has successfully negotiated the necessary acquisitions for 16 of the 19 properties. At this time, acquisitions from 3 properties remain. Construction of the projects is slated to

begin on or about June 15, 2021. 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 remaining 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. Ben Lewis Real Estate LLC (3 parcels) –
 - The acquisition along Account No. 02-00019431 consists of a fee simple area containing 186 square feet, and a temporary construction easement containing 241 square feet of land area.
 - The acquisition along Account No. 02-00021013 consists of a fee simple area containing 587 square feet of land area, and a temporary construction easement containing 578 square feet of land area.
 - The acquisition along Account No. 02-00028127 consist of a temporary construction easement containing 1,991 square feet of land area.

Contacts with the property owner include an initial offer letter, a couple of group meetings, several phone conversations, and multiple emails documented in contact logs. The property owner referred MCDOT staff to his agent/ real estate developer, Mr. Tom Brault, who has been the primary point of contact. The agent requested that MCDOT work in collaboration with the intended development of the properties. While MCDOT is agreeable to working collaboratively, the project schedule is considerably more advanced than the intended development, which at this point, consists of merely a concept plan. MCDOT staff was advised by the agent on or about April 2nd, 2021 that the County's purchase offer was conveyed to the property owner but that the owner rejected the offer. No counteroffer was conveyed.

2. Li Yan –

The acquisition along Account No. 02-00028572 consists of consists of 4,270 square feet in fee simple plus an additional 2,527 square feet in fee simple shown as "Apparent Prescriptive Easement", and a 6,450 square foot temporary construction easement.

Contacts with the property owner include an initial offer letter, many phone conversations and emails documented in contact logs. While MCDOT staff has made multiple good faith offers for the purpose of settlement only, the property owner's representative has continued to demand

more than 4 times the appraised value, and the County contends that its appraisal represents fair market value for the property rights needed. At this time, negotiations are at a standstill.

3. Go Church –

- The acquisition along Account No. 02-00018345 consists of 2,349 square feet in fee simple plus an additional 2,610 square feet in fee simple shown as “Apparent Prescriptive Easement” in fee simple, and an 8,553 square foot temporary construction easement.

Contacts with the property owner include an initial offer letter, many phone conversations and emails documented in contact logs. MCDOT staff has been negotiating with the property owner’s legal counsel on the terms of an Option Contract. However, at this time, the contract terms have not been fully negotiated.

RESOLUTION _____
INTRODUCED _____
ADOPTED _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By County Council

SUBJECT: Optional Procedure for Condemnation of Land, Advance Taking
CIP Project No. 508000

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 improvements contemplated by CIP No. 508000 at or near the intersections of MD 355 @ Clarksburg Road and Clarksburg Road @ Snowden Farm Parkway in accordance with §49-50 of the Montgomery County Code (2014), as amended.
 1. In order to meet the project 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

<u>OWNER</u>	<u>ACCT. #</u>	<u>MAP/ PARCEL</u>	<u>LIBER / FOLIO</u>	<u>FEE SIMPLE</u>	<u>TEMPORARY EASEMENT</u>
Ben Lewis Real Estate LLC	02-00019431	EW32/P911	27512/29	186	241
	02-00021013	EW32/P926		587	578
	02-00028127	EW32/P913		0	1,991
Li Yan	02-00028572	EW32/P182	48740/23	6,797	6,450
Go Church	02-00018345	EW32/P233	51033/441	4,953	8,553

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 as specified in Section 49-50, Montgomery County Code (2014), as amended, for the construction of the improvements contemplated by CIP No. 508000 at or near the intersections of MD 355 @ Clarksburg Road and Clarksburg Road @ Snowden Farm Parkway. 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 Gary Lee Sapperstein, MAI, SRPA, MRICS, 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

Selena Mendy Singleton, Esq.
Clerk of the Council

**COUNTY COUNCIL
 FOR MONTGOMERY COUNTY, MARYLAND**

By County Council

SUBJECT: Optional Procedure for Condemnation of Land, Advance Taking, Subdivision Roads Participation Project (CIP No. 508000)

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	02-00028127	EW32/P913		0	1,991
Li Yan	02-00028572	EW32/P182	48740/23	6,797	6,450

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 as specified in Section 49-50, Montgomery County Code (2014), as amended, for the construction of the improvements contemplated by CIP No. 508000 at or near the intersections of MD 355 @ Clarksburg Road and Clarksburg Road @ Snowden Farm Parkway. In furtherance of these actions, the County Council hereby:
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