

III.D.



DATE: July 27, 2009
TO: Mike Herring, CA
FROM: Mike Geisel, DPPW

SUBJECT: North Outer 40 Trust Fund

In August of 2000, Chesterfield passed Ordinance #1652 thereby establishing the North Outer Forty Trust Fund. Initially, the concept was that developers within the 40 corridor between the eastern City Limits and Chesterfield Parkway East would contribute to the City's trust fund in lieu of the standard contribution to the County's Route 40 (Interstate 64) Corridor Trust Fund (No. 553). Prior to this time, there was some disagreement about what improvements within this corridor that either the State or County might actually construct with Trust Fund monies. It was thought that this arrangement might provide additional control over the timing and actual design of the road improvements themselves. Unfortunately, I don't think creating our own Trust Fund accomplishes either of those things.

First, the improvements will actually occur on State or County maintained roadways. Any proposed improvement must be permitted by the respective agency. If the improvement is not consistent with their long term plans, the improvements would not be permitted.

Secondly, the funds that would be generated from development within the City's trust fund area are inadequate to fund the necessary ultimate improvements. Accordingly, any improvements to be constructed would necessarily require assistance from the State, County, or other source.

Finally, Ordinance #1652 contains three different mechanisms by which funds would be returned to the developers if improvements are not funded within ten years. While the ten year period can be re-started if plans, surveys or improvements are initiated, It remains a serious concern.

As of this date, the City's North Outer 40 Trust Fund has a balance of \$352,320.34. Accordingly, **it is my recommendation that the North Outer 40 Trust Fund be dissolved and all funds within same would be transferred to St. Louis County's Route 40 (Interstate 64) Corridor Trust Fund (No. 553).** It should be noted that the trust fund's geographic areas are very similar. Any expenditure of funds from the County's trust fund would necessarily be within their trust fund boundaries, clearly benefitting the City of Chesterfield.

Michael Herring
North Outer 40 Trust Fund
July 27, 2009
Page two

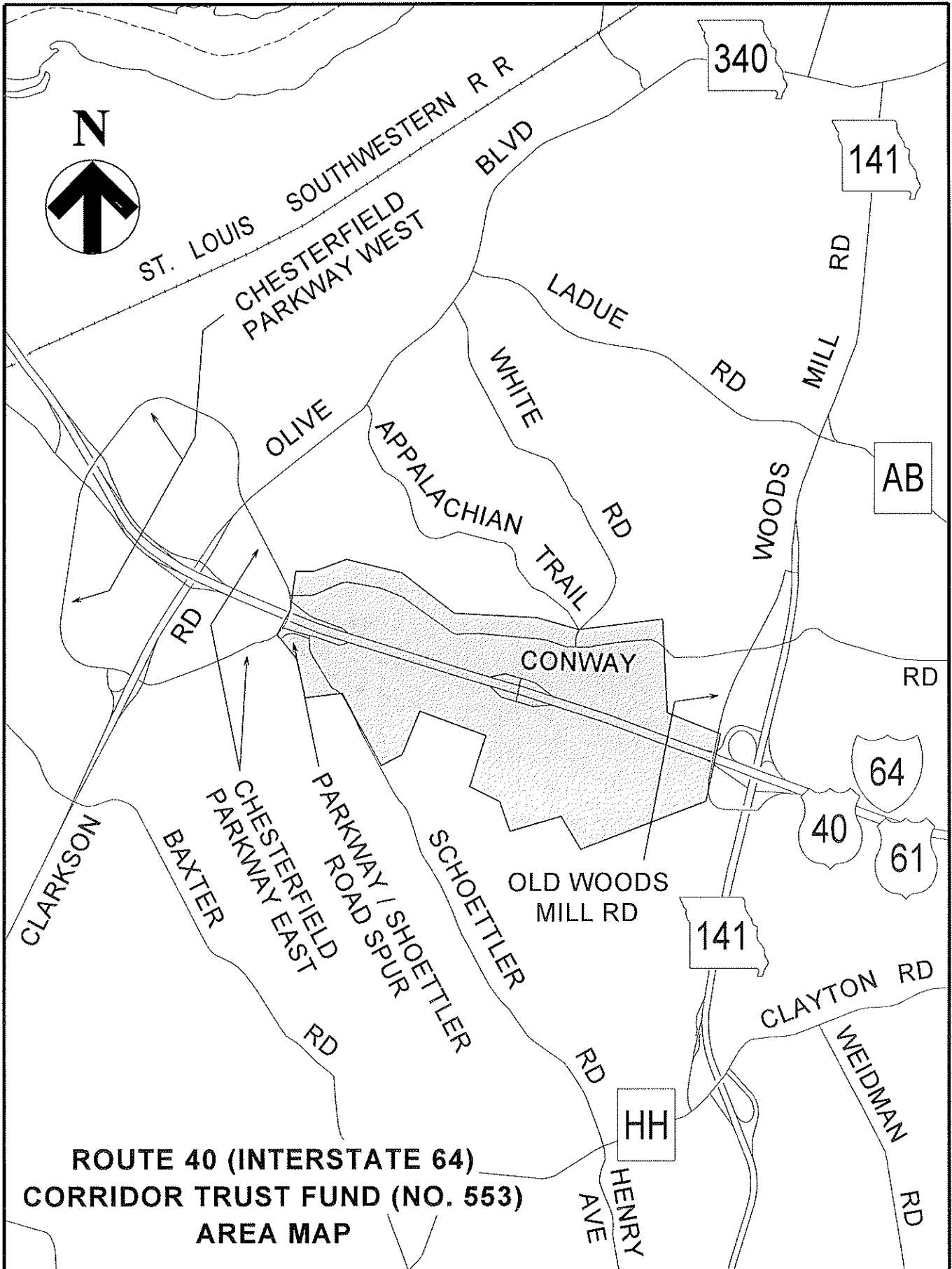
I request that the Planning and Public Works Committee consider this recommendation and if they concur, we can draft appropriate legislation to terminate the Trust Fund for full Council action. If you have any questions or require additional information, please let me know.

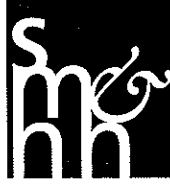
attachments

Cc Rob Heggie, City Attorney
Kelly Vaughn, Director of Finance and Administration

*oh'd
fisse
7/27/09*

→ Mike Basil





STEWART, MITTLEMAN, HEGGIE & HENRY L.L.C.
ATTORNEYS AT LAW

March 23, 2006

[Handwritten signature]
3/24/06
cc: Mike based
Lobby Simpson

Mr. Michael G. Herring
City Administrator
City of Chesterfield
690 Chesterfield Parkway West
Chesterfield, Missouri 63017

Re: North Outer Forty Trust Fund

Dear Mike:

Several weeks ago we discussed several questions regarding the terms of this Trust Fund. The questions are as follows:

1. When does the North Outer Forty Trust Fund terminate?
2. To whom does the money revert upon termination?
3. What are the limitations on the area for improvements and use of the funds?

Timeframe for disbursement and reversion of funds:

In 2000, the City approved ordinance 1652 which established the North Outer Forty Trust Fund. This ordinance required developers in the trust area to contribute money to an account for use in repairing the road contained in the trust area. The trust will terminate upon several conditions stated in section (h) of the ordinance, at which time the money left in the fund will be disbursed first to developments that made advances to the fund and then per rata to the depositors listed in section (a).

The conditions upon which the trust can be terminated as follows:

1. "when all the improvements as set out in this ordinance have been completed or upon prior approval of the City Council."
2. "Ten years after receipt of the first proceeds, if no disbursements under paragraph (e) [funds spent by the Public Works Department on surveys, plans

Allan F. Stewart*††
Mark D. Mittleman
Robert M. Heggie*
Deborah C. M. Henry
Lynn R. Huson
Ruth Kraus

PARALEGAL
Jennifer Cooksey

OF COUNSEL
Joseph R. Niemann

and specifications, or approval of such plans and specifications done by others that are necessary for projects in the trust area] or (f) [funds spent by people who reconstruct roadway improvements in accordance with Department of Public Works surveys, plans and specifications, or funds spent by the City reconstructing the roadway] are made during the last five (5) years of said period.”

3. “Ten years after any disbursement under paragraph (e) [see description in 2], if no further disbursements under paragraphs (e) or (f) are made during the last five (5) years of said period.”
4. “Ten years after any disbursement under paragraph (f) [see description in 2], if no further disbursements under paragraphs (g) [any development which advanced funds to the trust must be reimbursed by the trustee in the amount above the required contribution amount] or (f) are made during the last five (5) years of said period.”

According to the timeframe provided for in the ordinance, if the City does not take any action with the funds by 2010 (10 years after the year the ordinance passed), it will have to disburse the trust funds to the contributors. However, one way to restart the 10-year statute of limitations would be to either use funds for actual road repairs or improvements to the trust area, or to at least prepare surveys, plans or specifications related to future repairs or improvements. If funds are spent, then the statute of limitations is reset for another ten years. For example, if the City uses trust funds for a survey of the trust area in 2007, then the City has 10 years, until 2017, before it must disburse the remaining trust funds. Ideally improvements could be planned and begun before 2010.

Limitations on area:

Section 1 limits the current trust area to the area depicted in Exhibit A of the Ordinance, but provides for the addition or deletion of property by the City Council as needed. Section 5 states “[I]n no event will the funds received under this ordinance be used to make improvements to Conway Road.” Other than this constraint, the ordinance does not appear to impose any other area restrictions.

Limitations of use of funds:

Section 1 outlines the approved uses of funds in the trust. These uses include the, “improvement, engineering, right-of-way acquisition and construction of storm sewers, paving, sidewalks, grading, clearing, and other necessary road improvements in the designated area....” Section 2 notes that zoning ordinances for each development need not specify what type of “infrastructure road improvements are to be accomplished with the funds contributed by the individual project,” and

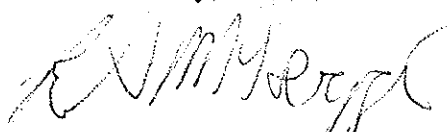


“improvements will be provided pursuant to the City Subdivision Ordinance or miscellaneous regulations of the Zoning Ordinance for single lot developments” unless specified.

Section 3 outlines the process by which the City will review requests for development and determine what improvements to the trust area are necessary. The section lists five major improvements already contemplated by the City. However, the list is preceded by the word “includes” which seems to indicate that it is a list only of contemplated improvements, and not limited to these improvements. In reading these sections together, it appears that the City has wide discretion in how it spends the funds as long as the improvements are within the broad topic list in section 1.

Please call if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "R. M. Heggie". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

Robert M. Heggie

RMH



Bill No. 1819

Ordinance No. 1652 -

**AN ORDINANCE TO ESTABLISH THE "HIGHWAY 40
ROAD TRUST FUND" AND PROVIDING FOR ITS
ADMINISTRATION AND DISBURSEMENT**

WHEREAS, the City of Chesterfield has experienced an increase in the applications for commercial developments in office buildings within the City of Chesterfield and in particular along a Highway 40/64 area between the Timberlake Parkway and the Chesterfield Parkway, and

WHEREAS, as part of the request for the development, the City has reviewed the current road capacities in conjunction with numerous traffic studies, which have been prepared to show the impact to the traffic flow as a result of various levels of development from the addition of new office buildings along the Highway 40 Corridor and the Outer Roads, which service this section for east bound and west bound traffic; and

WHEREAS, it appears that there are measures available which will lesson the impact of the additional cars and improve the roadway and intersection congestions, which would include the re-signalization of the traffic lights at the intersection of North Outer 40 and the Chesterfield Parkway; an additional left hand turn lane at the intersection of North Highway 40 and the Chesterfield Parkway; improvements to the South Outer Forty as it relates to an additional acceleration and channelization as well as other eventual intersection improvements, which will be needed at the Timberlake Manner Parkway and North Outer 40 Road and other possible improvements; and

WHEREAS, in order to accommodate the development of this area, the City has estimated the costs and considered ways in which to pay for the costs necessitated by the overall development of this entire area so that the costs are not born by any individual development, which individually may not cause the need for a particular improvement but which collectively has significant impact to the transportation issues at this location; and

WHEREAS, the City of Chesterfield has considered the positions of the Missouri Department of Transportation and St. Louis County, relative to the use of traffic generation assessment funds to make these needed improvements; and

WHEREAS, the City Council has determined improvements will be necessitated for the proper development of all parcels along Highway 40 and North Outer 40 as well as improvements needed to South Outer 40 in order to disburse the added traffic, with the stated intention that the trust funds shall not be used for improvements to Conway Road, nor shall they be used to limit or permit access from Schoettler Road to the Parkway or to limit access from Schoettler Road to Highway 40 between the Parkway and Timberlake; and

WHEREAS, the Council of the City of Chesterfield concludes that it is in the best interest of the City to establish a mechanism whereby the future improvements to the outer roads and the inner connection of property for access to Highway 40 and possible relocation of the State Highway which could include the construction, grading, paving, etc. can be accommodated and therefore, the City hereby this adopts this Ordinance.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHESTERFIELD, ST. LOUIS COUNTY, MISSOURI AS FOLLOWS:

Section 1. The City hereby establishes a trust account to be known as the "Highway 40 Road Trust Fund" to be held by the City Finance Director (trustee) for the improvement, engineering, right-of-way acquisition and construction of storm sewers, paving, sidewalks, grading, clearing, and other necessary road improvements in the designated area as established by the attached plan area as designated on Exhibit "A". The "Highway 40 Trust Area" shall be the area designated on said plan, subject to further additions or deletions by the City Council in consideration of any particular planned district, rezoning or special procedure permit request in the future and which may have impact on this transportation area.

Section 2. All sums received shall be deposited in the trust fund in accordance with the terms of each planned district, as established in the zoning ordinance approved by the City Council for each individual development. Said zoning conditions may or may not spell out specifically what infrastructure road improvements are to be accomplished with the funds being contributed by the individual project. Where no specific improvement is required, improvements will be provided pursuant to the City Subdivision Ordinance or miscellaneous regulations of the Zoning Ordinance for single lot developments.

Section 3. The City shall, in conjunction with its review of each request for development, rezoning or planned district zoning, or special procedure permits, determine whether the proposed development will need to make specific improvements to the identified traffic project needs as contemplated in the plan, which includes the re-signalization of the traffic lights at the intersection of North Outer 40 and Chesterfield Parkway; a third left hand turn to be made at the intersection of North Outer 40 and the Chesterfield Parkway, the channelization and acceleration lane requirements on South Outer 40 at Schoettler Road; intersection improvements at Timberlake Manner Parkway and North Outer Forty Road and the relocation of the West Bound Highway 40 slip ramp at Chesterfield Parkway, all as directed by the Department of Public Works. The City shall submit its determination of the needed improvements to the City Planning Commission, which shall recommend an appropriate condition to the ordinance for consideration by the City Council as a condition for approval of any particular development, and/or to impose a traffic generation assessment on the development payable to the trust fund.

Section 4. It is the determination of the City Council of the City of Chesterfield that the improvements as noted above shall be necessitated by the development of the area within the trust fund. Accordingly each development within the trust area shall be required to contribute a sufficient sum to make the improvements in accordance with the directions of the Department of

Public Works in conjunction with the Missouri Department of Transportation and contribute such funds as necessary for said improvement. The funds each development shall contribute will be based upon a calculation by a dollar amount per measurable unit, which shall be parking spaces and/or loading spaces in accordance with the rate set below. The number of required parking and loading spaces to be determined by the Chesterfield Planning Commission. On January 1st of each year, these rates may be increased to account for inflation and construction costs. Said rate of inflation to be used shall be the percentage change for the construction cost index for the St. Louis area, from December of a given to December of the following year, as published in the engineering news record to determine what the rate increase should be. The contributions attributable to each development shall be made in accordance with the following:

- a. contributions to the trust fund herein established shall be made prior to the issuance of each building permit as follows:

| | <u>Rate of as 1/1/2000 per parking space</u> |
|----------------------------------------------|----------------------------------------------|
| Single family dwelling | \$ 707.95 |
| Apartments/Retirement Community Condominiums | \$ 283.18 |
| General office/research centers | \$ 432.61 |
| Motel/hotel | \$ 865.29 |
| General retail/medical offices/nursing homes | \$1,297.89 |
| Hospital/Bank | \$2,595.87 |
| Loading space | \$2,123.84 |

Such sums shall be collected by the Department of Planning and disbursed to the City Finance Director.

- b. The City Finance Director shall hold such funds in interest bearing account, certificates of deposit, or the like. All interest earned shall accrue to the trust fund.

c. Additional properties may be made subject to the terms of this trust by appropriate ordinance provisions without notice to or consent of the present developers or the successors or assigns.

d. The trust fund shall be disbursed as follows and in no other order. Each category of disbursement below shall be fully made before any funds are applied to the succeeding category,

(1) On order of the Director of Public Works in accordance with Paragraph (e) below.

(2) For the purpose of reconstructing the roadway described herein, in accordance with paragraph (f) below.

(3) For the purpose of reimbursing advances, in accordance with paragraph (g) below.

(4) On termination of the trust, in accordance with paragraph (h) below.

e. The Department of Public Works may prepare such surveys, plan and specifications, or approve such plans and specifications as are prepared by others, as are necessary for any project within the area, the expenses of which shall be paid for the trust fund on order of the Director of Public Works.

f. (1) Any person may reconstruct or have reconstructed the roadway improvements contemplated herein upon approval of contracts between such persons and contractors for this purpose by the Director of Public Works as to form and content. Any such contract shall provide for work to be done in accordance with surveys, plans and specifications approved by the Department of Public Works, and further provide for inspection of such work and enforcement of contract terms by the City of Chesterfield. The contract may provide for

payments for work performed from this trust fund in such manner and amounts as may be approved by Director of Public Works.

(2) Alternatively, the City of Chesterfield may on its own, at any time apply all or parts of the trust funds to reconstruction of the roadway herein described. Funds shall be disbursed in such cases as directed by the authority reconstructing the roadway.

g. In accordance with this ordinance, any development which is required or agrees to advance funds to the trust fund for trust fund purposes shall be reimbursed by the trustee with respect to the funds advanced for a particular portion of the development in accordance with the amount of future receipts received which are in excess of their allocated contribution and which was used pursuant to d(2) & (3) above. Such reimbursement shall be limited, however, to actual receipts and neither the trustee, City of Chesterfield, nor any agency thereof shall be responsible for the repayment beyond amounts actually so received in the future pursuant to payments and to this trust fund. Repayment shall in no event exceed repayment of the amount so advanced plus interest equal to the prevailing market rate at the nearest whole percent of municipal bonds at the time such repayment commences. Notwithstanding any of the provisions of this or any other paragraph, the trustee may accept any donation of funds made without rights to repayment and apply the same to any trust purpose.

h. The trust shall terminate and the funds shall be disbursed.

(1) When all the improvements as set out in this ordinance have been completed or upon prior approval of the City Council.

(2) Ten years after receipt of the first proceeds, if no disbursements under paragraphs (e) or (f) are made during the last five (5) years of said period;

(3) Ten years after any disbursement under paragraph (e), if no further disbursements under paragraphs (e) or (f) are made during the last five (5) years of said period;

(4) Ten years after any disbursement under paragraph (f), if no further disbursements under paragraphs (g) or (f) are made during the last five (5) years of said period. Distribution upon termination shall be made: first, to repay any advances made under paragraph (g); second, any remaining funds shall be distributed per rata to the person's depositing funds herein under paragraph (a) or any such persons duly nominated assignee. It is the duty of the person making the payments or the entity thereof to communicate any relevant information of change in name, address, or corporate status to the trustee in writing; third, any share mailed to a contributor by certified mail to the person and address of record according to the trustee's records and returned to the City as being undeliverable and otherwise remaining for any reason at the end of the periods set out above shall be transferred to the City general fund for use on city roads.

Section 5. If in conjunction with developments occurring within this designated Trust Fund area, the developer obtains written confirmation in a form agreeable to City, from St. Louis County, that the TGA funds due the County shall be used to make specific identified improvements at such times as directed by the City for this Trust area, the City will give credit to the developer to the extent that the County TGA funds are used for said improvements against any amounts due under this ordinance. If the City and County do not agree upon what improvements are to be paid for from the Trust money or as the timing of said improvements, then the developer shall pay the funds due under this ordinance as directed by the City. Deposit

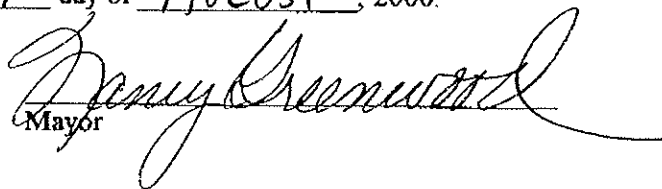
to the City into this trust fund shall satisfy any sums due City or County TGA. In no event will the funds received under this ordinance be used to make improvements to Conway Road.

Section 6. Additional properties may be made subject to the terms of this trust by appropriate provision.

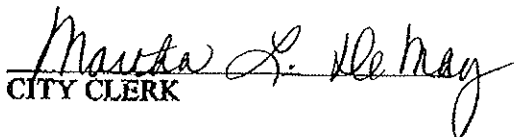
Section 7. As used herein, "City Finance Director", "Director of Public Works", "City Attorney", "Director of Planning" and like designations means and includes the legal successors to the pertinent functions of such officers.

Section 8. This ordinance shall be in full force and effect from and after its passage and approval.

Passed and approved this 7TH day of AUGUST, 2000.


Mayor

ATTEST:


CITY CLERK

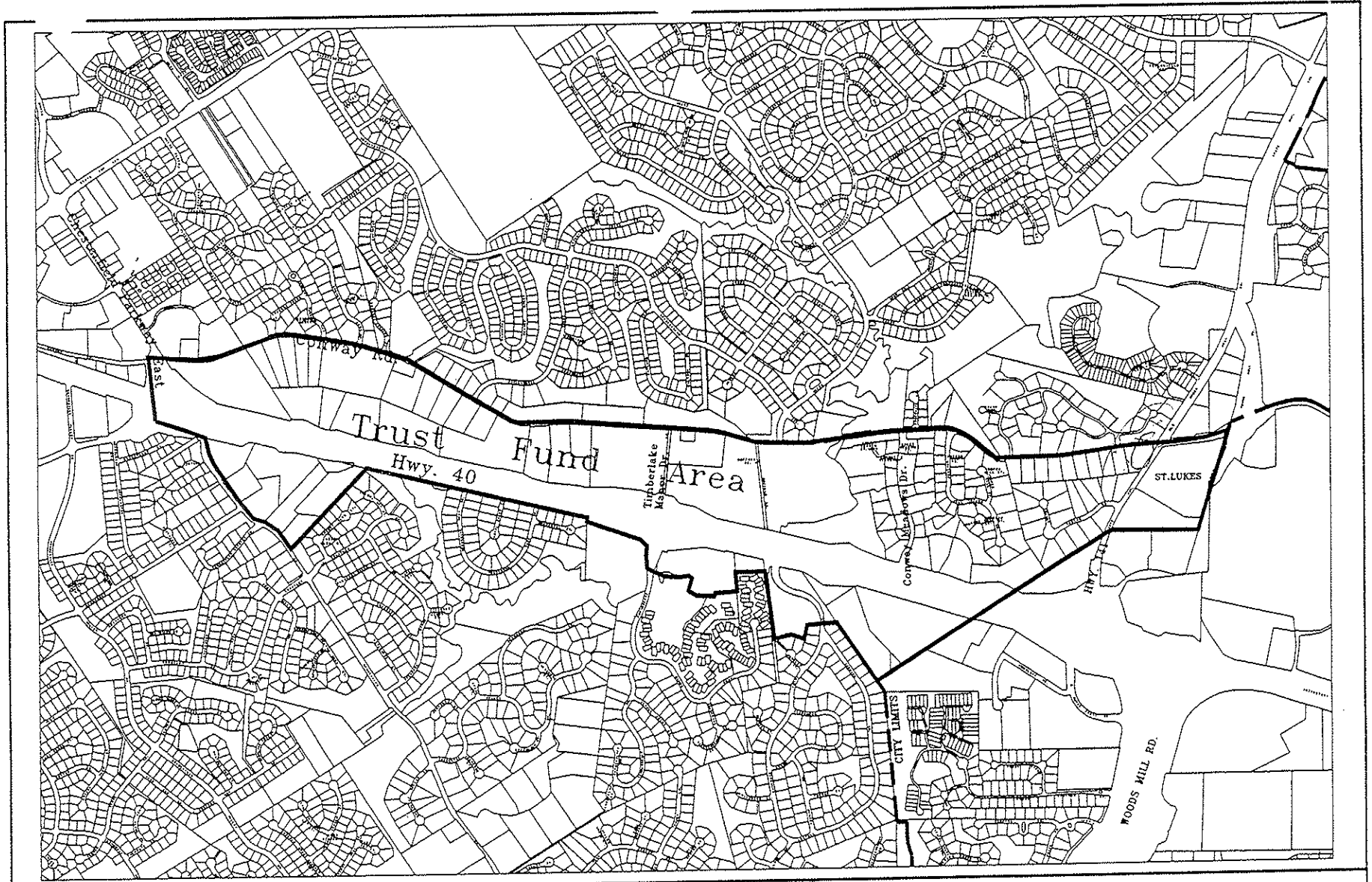


EXHIBIT A
HIGHWAY FORTY
TRUST FUND