

Testimony of William Kominers

Bill No. 22-24

(December 3, 2024)

Good afternoon Council President and members of the Council. My name is Bill Kominers. I am attorney with the law firm of Lerch, Early & Brewer in Bethesda and I am here as an individual to speak strongly in support of Bill No. 22-24. This Bill makes good economic sense, enhancing the opportunity for construction with its jobs, and occupancy with its benefits to homeowners and businesses.

In preparing to testify on this Bill, I went back 13 years to look at my testimony and the Council Staff Reports on Bill 26–11. Bill 26-11 moved the payment of the Impact Tax from building permit to the current schedule.

Bill 22-24 has a number of benefits.

1. Bill 22–24 is a good successor to Bill 26–11 for the same reasons that Bill 26-11 was a good start. Bill 22–24 makes good economic sense. This Bill puts the resources of a builder (that means money) first into building the building, and then makes payment for the impacts (schools and roads) when those impacts actually occur – with occupancy of the building. What could be more logical? This approach fulfills the intent of the Impact Tax by having that tax collected at the time that the impacts are likely to occur. At the time a building permit is issued, no impact is created. Only when a building, home, or apartment is occupied does actual, physical impact occur to the road network or school system. Correlating the payment of the Impact Tax with the real time implementation of the impact is more appropriate and better fulfills the underlying basis for the Impact Tax.

2. Delay in the payment of the Impact Tax will likely allow more approved building projects to proceed. This is because the shift in time of payment of the Impact Tax reduces the upfront cost, and thereby allows greater borrowing to be used for the actual project itself. This significantly increases a builder's ability to secure construction financing and proceed with a project.

3. This greater ability to finance projects will increase the ultimate likelihood of payment of the Impact Tax, because more projects will actually be able to be built. Without this shift in time of payment, many projects may not be able to go forward. No project at all means no Impact Tax at all. Thus, Bill 22-24 will actually

increase the opportunity to collect a greater amount of Impact Tax revenue.

4. The County never gets revenue from the project that is not built. There is neither Impact Tax, nor long-term revenue. With this proposed delay in payment of the Impact Tax, the County receives both. That sounds like a win/win.

5. The Bill will cause a simple, one-time delay in the immediate revenue stream. But in reality, the long-term result will be a much greater revenue return to the County. The project that can now be built, because of the lower upfront cost, will generate real estate tax and other revenue to the County for its entire useful life. The Impact Tax revenue is not lost, only delayed. The short term revenue loss (the Impact Tax payment delay) should be more than offset by the long-term revenue gain (the ability to build the project and generate tax revenue over the 40 year life of the building). That seems like a good investment decision – spend a little but gain a lot.

6. This time shift in payment of Impact Tax has a very positive effect on construction. Because of the lengthy construction time for multi-family and non-residential projects, the benefit in the eventual cost of the product to the ultimate consumer is even greater. A construction period range of 18+ months means that the cost of the upfront payment of Impact Tax must be financed for that much longer. This results in a higher cost throughout the construction period and therefore a higher cost of borrowing and generates a higher cost of the ultimate product, in the form of higher rents and prices. Delaying the Impact Tax until the time of occupancy ameliorates this difficulty by reducing borrowing costs and incurring the tax cost at the time that there is revenue with which it may be paid.

Summary. This Bill sends a very positive message about Montgomery County and the Council's efforts to address the current economic challenges -- to encourage and facilitate the creation of homes, and businesses, and jobs. In addition, the Bill supports the underlying principle of the Impact Tax, the nexus of the payment of the tax to the creation of the actual impact.

I urge you to act quickly to enact this Bill; it does what is needed and is fair.

Thank you for your consideration. I am available to answer any questions that you might have.