

**Bill 2-25 Taxation-Payments in Lieu of Taxes – Affordable Housing
Testimony of Vince Biase
March 11, 2025**

Good afternoon, Council President Stewart and Councilmembers. I am Vince Biase with the law firm of Lerch, Early and Brewer on behalf of a number of clients with interest in Bill 2-25. I am here this afternoon to express our strong support for the Bill and to recommend several important revisions for your consideration.

Bill 2-25 is an important piece of legislation that will make a critical difference in whether certain residential projects, particularly multi-family projects, pencil out and actually proceed to construction. As you know, for the past five years the industry has confronted labor and supply shortages; increasing material costs; and a lack of available equity for financing. These factors have caused many to put their projects on hold. Unfortunately, this economic uncertainty has only worsened. A reprieve from property taxes for 15 years will change the bottom line of many pro formas and could prove to be the difference between a project being put on ice or moving forward. Thus, we applaud your efforts to help ensure that needed housing in the County will be constructed.

Our recommended revisions to the Bill for your consideration are as follows:

First, the Bill applies to vacant “commercial” buildings, but the companion legislation, ZTA 25-03, restricts commercial to retail or office. We recommend that the PILOT apply to any nonresidential building. There is no reason that residential development should not be encouraged on the site of a vacant hotel or health club any more than on the site of a vacant office or retail building.

Second, the Bill should not require a property be vacant at the time of application for the entitlement if the project is not availing itself of the expedited review provided by ZTA 25-03. Generally speaking, most entitlement processes take approximately two years and no public policy is served by having buildings sit vacant during this period. An owner who has determined that his or her site is no longer viable for nonresidential use will strategically time their pursuit of entitlements to coincide with the anticipated vacancies. We recommend that the vacancy requirement apply at the time an owner makes application for the PILOT.

Third, for purposes of clarity, we recommend the addition of language providing that the PILOT applies to any residential project where the qualifying vacant commercial property is part of a larger assemblage.

Finally, there needs to be a mechanism by which projects relying on the PILOT are assured that the PILOT program will remain valid, comparable to Section 52-24A(g) regarding the sunset provisions provided for the WMATA PILOT program.

We appreciate your consideration of these recommendations. We will submit in writing a more detailed discussion of our proposed recommendations. Thank you.

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March 24, 2025

The Honorable Kate Stewart, President
and Members of the Montgomery County Council
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Re: Bill 2-25; Testimony on behalf of Promark Partners

Dear President Stewart and Members of the County Council:

I am submitting written testimony on behalf of several clients with significant interest in Bill 2-25. On Tuesday, March 11, 2025, I had the opportunity to testify before the County Council during the public hearing on this important legislation. I appreciate the opportunity to further elaborate on my comments with written testimony in support of Bill 2-25 and to propose several revisions that will strengthen the bill to support new housing development throughout the County. With these revisions, Bill 2-25 will help ensure certain residential projects, particularly multifamily developments, can move forward amid ongoing economic challenges in the commercial market.

Over the past five years, the real estate development industry has faced considerable difficulties, including labor and supply shortages, rising material costs, and limited access to financing. These factors have led many developers to put their projects on hold, and unfortunately, economic uncertainty continues to worsen today. The proposed 25-year property tax reprieve offered by Bill 2-25 is pivotal to the viability of new residential development. By providing this relief, the Council can help ensure that much-needed new housing is delivered throughout the County to strengthen existing communities and benefit County residents.

To further strengthen Bill 2-25 and maximize its impact, we are respectfully recommending the following revisions:

I. Application to Non-Residential Uses

First, Bill 2-25 currently applies to vacant “commercial” use, but the companion legislation, ZTA 25-03, restricts the definition of commercial properties to “office” and “retail” uses. An “Office”, as defined in Section 3.5.8. of the Zoning Ordinance, is “a room, set of rooms, or a building where the business of a commercial or industrial organization or of a professional person is conducted.” As defined in Section 3.5.11. of the Zoning Ordinance, “Retail Sales and Service”, is limited to Combination Retail, Retail/Service Establishments, Rural Antique Shop, Rural Country Market, and Vape Shop uses.

We recommend broadening the PILOT eligibility to include any non-residential uses and buildings, such as vacant health clubs, hotels, and other service or hospitality uses. Similar to office, these uses have also experienced significant economic challenges. Service and hospitality related uses, along with retail uses, started suffering economically during the “Great Recession,” and unfortunately, these economic challenges only worsened during the pandemic. The adverse impact on the County of allowing any of these non-residential uses to remain vacant is the same, irrespective of the specific use. The County will experience the same tax losses and communities will endure inactivated, vacant storefronts. Many of these underutilized properties could serve as prime candidates for conversion into residential developments, alleviating pressure on the County’s housing shortage. Additionally, allowing a broader range of uses and vacant properties to qualify will help address housing needs throughout multiple communities, particularly those that would benefit greatly from new housing development but have a relatively lower concentration of vacant office space, as compared to other non-residential vacant space.

Although there may be policy reasons why the conversion of these other uses should not be subject to expedited review (and thus should not be included in ZTA 25-03), there is no reason why vacant service and hospitality related uses should be excluded from Bill 2-25.. Expanding the scope of the PILOT to all non-nonresidential uses will create more housing opportunities regardless of whether planning staff deems that a conversion to housing warrants an expedited development review process.

II. Vacancy at Time of Building Permit Application

Second, as presently drafted, Bill 2-25 suggests that eligible properties must be at least 50% vacant at the date of an application to either the Department of Permitting Services or Planning Department. As drafted, the legislation suggests that a property would qualify for a PILOT if it is 50% vacant at *either* the time the entitlement application is filed or subsequently, at the time the building permit application is filed. Assuming this is the intent of the legislation, we strongly support maintaining this optionality. The entitlement process in Montgomery County—from intake review through final approval and permitting—generally takes about two

years to complete. Requiring properties to be vacant during this extended period does not serve a meaningful public policy objective and may instead encourage premature vacancies that negatively impact existing businesses and communities. Allowing a building to qualify for the vacancy requirement at the time of building permit provides greater flexibility and ensures that buildings are not left unused while awaiting approval for redevelopment. Encouraging continued occupancy until construction is imminent helps sustain local economic activity and mitigates potential safety and maintenance issues associated with long-term vacancies. Allowing a more expedient transition from underutilized commercial uses to new housing, will provide for a more stable redevelopment process and limit unnecessary vacancies that do not serve the public interest.

III. Application to Assemblage

Third, to avoid ambiguity, Bill 2-25 should explicitly state that the PILOT program applies to any residential project where a qualifying vacant commercial property is part of an assemblage. Many redevelopment projects require assembling multiple parcels to develop a residential building. Limiting the application of the PILOT to a single parcel will preclude needed residential development in instances where the parcel is too small to adequately accommodate a residential building or will artificially restrain the residential footprint in instances where a larger residential building is more appropriate. Without clear language specifying that properties involved in assemblages qualify, developers may hesitate to pursue residential redevelopment efforts. Clarifying the eligibility of such projects will promote more comprehensive planning, improve efficiency in land use, and allow for the construction of better-integrated residential communities.

IV. Sunset Provision

Finally, Bill 2-25 should include a “sunset” provision or mechanism that ensures stability and predictability for projects relying on the PILOT program. Due to the significant time and cost associated with the development review process, housing developers need assurance that the PILOT program will remain valid throughout the life of a project. We recommend incorporating language similar to Section 52-24A(g), which includes sunset provisions in the WMATA PILOT program. Section 52-24A(g) reads as follows:

Sunset. A qualifying development is eligible and includes all buildings within its preliminary plan so long as the preliminary plan’s approval occurs before December 31, 2032. For single buildings not part of a multi-building preliminary plan, the building is eligible so long as the sketch or site plan approval occurs before December 31, 2032

By including a similar provision with defined timeframes, Bill 2-25 can provide long-term security for new housing development and encourage continued participation in the program. Without a similar sunset clause, housing developers may be hesitant to rely on PILOT benefits, leading to uncertainty in financing and delaying much-needed residential construction. Ensuring

predictability in tax incentives will allow developers to secure funding with greater confidence, ultimately resulting in more timely and efficient housing production. This will also prevent mid-project disruptions caused by unexpected policy shifts, reinforcing Montgomery County's commitment to a stable development environment.

In conclusion, we support Bill 2-25 and appreciate the County Council's efforts to facilitate residential development amid challenging economic conditions. The recommended revisions outlined above will strengthen the bill's effectiveness, increase the number of viable projects, and provide greater certainty for the development of new housing in the County.

Thank you for your time and consideration reviewing these written comments to the PILOT Bill. I appreciate the opportunity to contribute to this important discussion and look forward to Bill 2-25 advancing to support new housing development in Montgomery County.

Respectfully submitted,



Vincent G. Biase