GO Item 1
October 24, 2011
Worksession

MEMORANDUM

TO: Government Operations and Fiscal Policy Committee

FROM: Michael Faden, Senior Legislative Attorney
Glenn Orlin, Deputy Council Staff Director

SUBJECT: **Worksession:** Bill 26-11, Taxation – Development Impact Taxes - Payment

Bill 26-11, Taxation – Development Impact Taxes - Payment, sponsored by Councilmember Riemer, Council President Ervin, and Councilmembers Berliner, Floreen, Leventhal, Navarro, and Rice, was introduced on September 13, 2011. A public hearing was held on October 4.

Bill 26-11 would require the transportation and school development impact taxes, and the associated transportation mitigation and school facilities payments, to be paid before a use and occupancy permit is issued, rather than before a building permit is issued as current law provides.

Hearing testimony The County Chamber of Commerce and various representatives of the building industry supported the Bill, arguing that deferring the impact tax payments will reduce builders' carrying costs and ease their ability to secure financing (see selected testimony, ©31-34). They asserted that this will increase the likeliness that approved subdivisions will proceed more quickly to realization, generating greater employment in the building and building-support sectors and thus the County's overall economy. The only testimony opposing the Bill was by Robert Dyer, who termed the Bill "corporate welfare" which lets developers profit at taxpayers' expense. He argued that funds allocated to transportation and schools would be paid more slowly, requiring needed projects to be deferred.

Experience elsewhere Since the County first implemented impact taxes in 1986, they have been collected just before the building permit is issued. All major Maryland jurisdictions charge impact fees or taxes at building permit; 4 small counties charge it later, the latest being Charles County, where they are paid in 10-year installments after occupancy permit (see list on ©27).[1]

[1]Thanks to Scott Kennedy of the Office of Policy Analysis, Maryland Department of Legislative Services, for compiling this information.

According to Duncan Associates, a Florida firm that routinely surveys states and local governments about their impact fee/tax programs, of the 28 states that have authorized local governments to charge impact taxes, 14 require the charge at building permit, while 5 others require it at certificate of occupancy: Arkansas, California, Illinois, New Hampshire, and Rhode Island. In the Virginia jurisdictions that do not have impact taxes but rely on proffer zoning instead, the proffer payments are made after final inspection and before certificate of occupancy. The other 9 states allow their local governments to charge the tax or fee anytime during the development process, from as early as subdivision approval to as late as certificate of occupancy.

Executive recommendations On October 17 the County Executive transmitted detailed comments on this Bill (see Executive memo, ©13-15). He recommended enactment of this Bill with the following amendments:

- for single-family residential development, **defer payment** of impact taxes (and similar Payments) **to the earlier of final inspection or 6 months after the building permit is issued;**
- for multi-family residential and non-residential development, **defer payment** of impact taxes (and similar Payments) **to the earlier of final inspection or 12 months after the building permit is issued;**
- **sunset the later payment dates in 2 years**. This would require the Council to enact another bill in late 2013 to extend the deferrals or make them permanent;[2] and
- **make the Bill an Expedited Bill, taking effect on December 1** (the Executive's memo did not specify that date, but Executive staff told us that they will need that much time to get ready to implement it).

Revenue analysis Council staff asked the Department of Permitting Services (DPS) to estimate the average time between the issuance of building and occupancy permits for various types of construction. The results of DPS' analysis are reported in the OMB fiscal and economic impact statement starting on ©16:

Single-family residential	158 days (about 5 months)
Multi-family residential	224 days (about 7½ months)
Office	366 days (about 12 months)
Retail	200 days (about 6½ months)

Finance Department staff's revenue loss/transfer projections for this Bill are based on these time differentials, assuming that the Bill would take effect on February 1, 2012, 91 days after its potential enactment in early November.

After reviewing the initial fiscal impact statement, Council staff, working collaboratively with OMB and Finance staff, identified some needed corrections and revisions, one of which was to extend the analysis through FY18, the end of the next Capital Improvements Program.[3] *The*

[2]This temporary 2-year deferral would also be consistent with other 2-year suspensions or extensions of other building-related requirements, such as SRA 11-01, which extended for another 2 years the validity period of certain adequate public facilities determinations and preliminary subdivision plans, effective April 1, 2011.

[3]One significant revised assumption is that the payment at occupancy permit would be governed by the impact tax rate in effect at that time, rather than the rate in effect when the building permit was issued, if the rate was revised in the meantime. As you know, under County Code §§52-57(g) and 52-90(f) the impact tax rates are revised every

revenue projections in this packet, therefore, supersede those in the attached fiscal impact statement. This staff group ultimately asked Finance staff to produce several scenarios reflecting possible modifications to this Bill, and the data for each scenario were vetted by the staff group. Each scenario was compared to a Baseline representing no change in the current law. In total, 5 scenarios generated by Finance staff are:

Scenario 1: Bill 26-11 as introduced, assumed to take effect February 1, 2012, 91 days after enactment in early November (©28).
Scenario 2: Scenario 1 with a 2-year sunset (©28).
Scenario 3: Scenario 1 as an expedited bill, effective November 1 (©29).
Scenario 4: Scenario 1 with a 6-month payment deferral for single-family residential buildings and a 12-month deferral for multi-family residential and non-residential buildings (©29).
Scenario 5: Scenario 1 with a 2-year sunset, an expedited bill effective December 1, and with a 6-month payment deferral for single-family residential buildings and a 12-month deferral for multi-family residential and non-residential buildings (©30). *This scenario incorporates the Executive's recommendations.*

The revenue forecasts were based on what could be referred to as "pure" revenue projections: those based purely on the current forecasts of growth in each major land use sector, the current impact tax rates with biennial inflation adjustments, and a factoring-down of transportation impact tax revenue because of credits. The forecasts do not reflect the timing of School Facilities Payments, which would also be affected by this Bill; to date only about $6,000 of these Payments has been collected.

The forecasts also do not assume any additional growth in residential or non-residential construction because of the delayed payments, although that is one of the sponsors' objectives. All would agree that this is nearly impossible to estimate. OMB's October 4 transmittal noted that, at least as of that time, the Executive Branch had not heard from any developer that deferring the impact tax payment would make a difference as to whether a development project would move forward, and they did not know of any statistical or empirical data, locally or nationally, demonstrating that delaying tax payments would have a measurable effect.

Council staff is comfortable not including a "plug amount" of revenue for development that might be generated or accelerated because of this measure, as long as everyone recognizes that the revenue forecasts below are, in this way, slightly-to-moderately conservative. Logic dictates that a version of this Bill would have to be enough of an incentive for at least a handful of developments to proceed to construction, even if their carrying costs are only reduced by a few months.

The key results of this joint staff analysis are:

- This Bill as introduced would reduce projected impact tax revenue in the current fiscal year (FY12) by $12.3 million ($9.9 million for schools, $2.4 million for transportation),

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odd-numbered year to reflect construction cost inflation or deflation. The Council can also increase or decrease the rates by resolution at any time. This Bill does not affect the actual rates that will be charged.

and over the FY13-18 period by another $7.7 million ($6.1 million for schools, $1.1 million for transportation).

- One amendment -- adding a 2-year sunset date -- would render the bill virtually revenue neutral by the end of FY15. There is a slight net increase in revenue, because some deferred payments would be made after a biennial inflation adjustment.[4]

- A November 1 effective date would reduce the negative impact on revenue in FY12 by about $4.8 million, since some permits issued this winter would reach the occupancy (payment) stage before the end of the fiscal year, rather than in FY13. This means, of course, that the negative revenue impact in FY13 would be increased by about $4.8 million. Revenue in FYs14-18 would not be affected by a different effective date.

- Setting the deferral period to no later than a time certain — 6 months after the building permit is issued for single-family residential buildings, 12 months for everything else — would have nearly the same revenue impact as collecting the tax at occupancy permit.

- The Executive's recommendation, which includes all the individual changes mentioned above (except that the Expedited Bill would take effect on December 1), would reduce projected impact tax revenue in FY12 by $8.9 million ($7.1 million for schools, $1.8 million for transportation) and in FY13 by $3.6 million ($3.2 million for schools, $0.4 million for transportation), but these losses would be recouped in FYs14-15.

These "pure" forecasts are a good way to estimate the Bill's fiscal impact on the County. However, because of the year-to-year volatility of building activity and the unpredictability of when transportation impact tax credits will be exercised, the actual impact tax revenue that materializes is often very different than forecast. In several recent years, revenue from impact taxes was overestimated, leading to the need to supplant impact tax revenue with General Fund advances, which ultimately are reimbursed with funds that otherwise could be used for other projects in the CIP. Starting with the Approved FY11-16 CIP, therefore, the Council initiated the practice of conservatively estimating impact tax revenue. At CIP Reconciliation, if actual revenue proves to be somewhat higher, the Council is able to program the additional amount.

The differences between the "pure" forecast for the baseline, Bill 26-11 as introduced, the Bill with amendments proposed by the Executive, and the amounts actually programmed, are shown below (in thousands of dollars):

School impact tax	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY12-18
Baseline	14,291	14,960	16,824	17,794	19,241	19,838	21,606	124,553
Bill 26-11	4,369	15,826	14,985	17,500	17,722	18,248	19,879	108,531
Executive rec.	7,145	11,711	18,031	26,983	19,241	19,838	21,606	124,555
Now programmed	14,480	10,890	11,520	12,100	13,350	-	-	-

[4]Finance Department staff was not asked for other sunset scenarios. However, a 3-year sunset would reach virtual revenue neutrality at the end of FY16, a 4-year sunset at the end of FY17, and a 5-year sunset at the end of FY18. In each case there would be lower revenue in earlier years and commensurately larger revenue in the later years.

Transp. impact tax	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY12-18
Baseline	3,156	3,194	3,444	3,495	3,697	3,727	3,969	24,681
Bill 26-11	789	3,441	3,066	3,131	3,344	3,361	3,573	20,705
Executive rec.	1,410	2,839	3,811	5,231	3,697	3,727	3,968	24,683
Now programmed	6,743	4,373	4,080	4,120	4,410	-	-	-

Total impact tax	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY12-18
Baseline	17,446	18,154	20,268	21,289	22,938	23,565	25,573	149,234
Bill 26-11	5,158	19,267	18,050	20,631	21,066	21,609	23,453	129,236
Executive rec.	8,555	14,550	21,842	32,214	22,938	23,565	25,574	149,237
Now programmed	21,223	15,263	15,600	16,220	17,760	-	-	-

From these projections, we find that even the conservative assumption for FY12 is too high: the Council programmed $21,223,000 in impact taxes this year, and only $17,446,000 is anticipated with no change in the law. If Bill 26-11 as introduced is adopted, the result will be a projected programming shortfall this fiscal year of $16,065,000. The Executive's proposal results in a shortfall of $12,668,000. The shortfall could be made up with a combination of sources:

- The FY12 G.O. Bond reserve stands at **$12,979,000.** Whatever is taken from this amount will not be available for supplemental appropriations for the balance of the fiscal year.
- The final FY11 School Impact Tax revenues collected were about $14,398,000, this is $2,438,000 higher than had been anticipated at CIP Reconciliation. The final FY11 Transportation Impact Tax revenues collected were about $4,637,000, this is $1,313,000 *less* than had been anticipated at CIP Reconciliation. Thus there is a net additional **$1,125,000** available for programming in FY12.
- Any balance left after using these two resources would have to be covered by either deleting or deferring spending from FY12 or by infilling with cash advances from the General Fund reserve.

For FYs13-16, however, the aggregate impact tax revenue assumptions used in the CIP are less in each year than the revenue projected under the baseline, Bill 26-11 as introduced, or the Executive's proposal. Therefore, no projects would need to be deferred in these years.[5]

Council staff recommendation: **Enact the bill with the Executive's proposed amendments.** Doing so accomplishes the same objectives as this Bill as introduced while giving the Council the option of revisiting this issue in 2 years when, hopefully, the building industry will have sufficiently recovered. Placing a time-certain on the payments assures that impact tax revenue for school and transportation infrastructure is not unduly delayed. Expediting the effective date to December 1 will move the potential positive effects of this bill 2 months sooner

[5]However, some minor adjustments in the mix of G.O. bonds and impact taxes in particular projects will be needed. Note that the programmed amounts for the transportation impact tax are slightly *higher* than Bill 26-11 or the Executive's recommendation in most years, while the programmed amounts for the school impact tax are well lower than either option. The CIP will need to be amended to shift some G.O. bond offsets from school projects to transportation projects. These shifts would not affect the total funding available for each project, but only the mixture of those funds.

while still giving DPS time to adjust its procedures. *If the Committee approves these changes in principle, Council staff will work with the County Attorney to draft the necessary amendments.*[6]

Finally, the Executive's amendments result in a smaller revenue shortfall in FY12. This could be covered by a small unprogrammed surplus of FY11 impact tax collections and a large portion of the FY12 G.O. Bond reserve, and thus avoid having to dip into the General Fund reserve. This will leave a small balance in the G.O. Bond reserve for the most critical supplemental appropriation requests.

This packet contains:

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[6]These amendments will also give staff an opportunity to address several technical payment issues raised by the County Attorney, most of which would be resolved by the revised payment deadlines in the Executive's amendments. The critical fact assuring ultimate payment of the tax is that, under County Code §52-50(j), the County has a lien on any property for which the impact tax was not paid when due, identical to the lien for nonpayment of property taxes.

Bill No. 26-11
Concerning: Taxation - Development Impact Tax - Payment
Revised: 8-17-2011 Draft No. 3
Introduced: September 13, 2011
Expires: March 13, 2013
Enacted: ______
Executive: ______
Effective: ______
Sunset Date: ______
Ch. ____, Laws of Mont. Co. ______

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Riemer, Council President Ervin, and Councilmembers Berliner, Floreen, Leventhal, Navarro and Rice

AN ACT to:

(1) require any development impact tax to be paid before a use and occupancy permit is issued;
(2) require any transportation mitigation payment or school facilities payment to be paid before a use and occupancy permit is issued; and
(3) generally amend the law governing development impact taxes.

By amending
Montgomery County Code
Chapter 52, Taxation
Sections 52-47, 52-49, 52-50, 52-51, 52-54, 52-55, 52-56, 52-59, 52-89, 52-93, 52-94

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Section 1. Sections 52-47, 52-49, 52-50, 52-51, 52-54, 52-55, 52-56, 52-59, 52-89, 52-93, and 52-94 are amended as follows:

52-47. Definitions.

In this Article the following terms have the following meanings:

* * *

Applicant means the property owner, or duly designated agent of the property owner, of land on which a [building] <u>use and occupancy</u> permit has been requested for development.

* * *

Development means the carrying out of any building activity or the making of any material change in the use of any structure or land which requires issuance of a [building] <u>use and occupancy</u> permit and:

(1) Increases the number of dwelling units; or

(2) Increases the gross floor area of nonresidential development.

Development impact tax means a pro rata per unit or per square foot of gross floor area tax imposed before a [building] <u>use and occupancy</u> permit is issued for development which is intended to defray a portion of the costs associated with impact transportation improvements that are necessary to accommodate the traffic generated by the development.

* * *

Property owner means any person, group of persons, firm, corporation, or other entity with a proprietary interest in the land on which a [building] <u>use and occupancy</u> permit has been requested.

* * *

<u>*Use and occupancy permit* means a use and occupancy permit issued by the Department of Permitting Services under Chapter 8.</u>

52-49. Imposition and applicability of development impact taxes.

(a) A development impact tax must be imposed before a [building] use and occupancy permit is issued for development in the County.

(b) An applicant for a [building] use and occupancy permit must pay a development impact tax in the amount and manner provided in this Article, unless a credit in the full amount of the applicable tax applies under Section 52-55 or an appeal bond is posted under Section 52-56.

* * *

52-50. Collection of development impact taxes.

* * *

(b) [Applicants] Each applicant for [building permits] a use and occupancy permit for development that is not exempt from the development impact tax must supply to the Department of Permitting Services for each requested [building] use and occupancy permit:

(1) The number and type of dwelling units for residential development; and

(2) The gross floor area and type of development for nonresidential development.

The applicant must submit for inspection relevant support documentation as the Department requires.

(c) The Department of Permitting Services must not issue a [building] use and occupancy permit for development that is not exempt from the development impact tax unless:

(1) the applicant has paid the applicable development impact tax;

(2) the applicant is entitled to a credit under Section 52-55 in the amount of the applicable development impact tax; or

(3) an appeal has been taken and a bond or other surety posted under Section 52-56.

(d) When a person applies to a municipality in the County for a [building] <u>use and occupancy</u> permit for a building or dwelling unit, the applicant must show that all payments due under this Section with respect to the building or unit have been paid. The Director of Finance must promptly refund any payment made for any building or part of a building for which a [building] <u>use and occupancy</u> permit is not issued by the municipality.

* * *

(k) If, within 10 years after a [building] <u>use and occupancy</u> permit is issued, any person changes the use of all or part of a building to a use for which a higher tax would have been due under this Article when the [building] <u>use and occupancy</u> permit was issued (including a change from a status, use, or ownership that is exempt from payment to a status, use, or ownership that is not so exempt), the owner of the building must within 10 days after the change in status, use, or ownership pay all additional taxes that would have been due if the building or part of the building had originally been used as it is later used. If the building owner does not pay any additional tax when due, each later owner is liable for the tax, and any interest or penalty due, until all taxes, interest, and penalties are paid.

52-51. Calculation of development impact tax.

(a) The Department of Permitting Services must calculate the amount of the applicable development impact tax due for each [building] <u>use and occupancy</u> permit by:

(1) determining the applicable impact tax district and whether the permit is for development that is exempt from the tax under Section 52-49(f);

(2) verifying the number and type of dwelling units and the gross floor area and type of nonresidential development for which each [building] use and occupancy permit is sought;

(3) determining the applicable tax under Section 52-57; and

(4) multiplying the applicable tax by:

(A) the appropriate number of dwelling units; and

(B) the gross floor area of nonresidential development.

(b) If the development for which a [building] use and occupancy permit is sought contains a mix of uses, the Department must separately calculate the development impact tax due for each type of development.

(c) If the type of proposed development cannot be categorized under the definitions of nonresidential and residential in Section 52-47, the Department must use the rate assigned to the type of development which generates the most similar traffic impact characteristics.

(d) The Department must calculate the amount of the development impact tax due under this Article in effect when the [building] use and occupancy permit application is submitted to the Department, or before a [building] use and occupancy permit is issued by a municipality.

(e) A [building] use and occupancy permit application, or if the property is located in a municipality with authority to issue [building] use and occupancy permits, a request to determine the amount of the impact tax, must be resubmitted to the Department if the applicant changes the project by:

(1) increasing the number of dwelling units;

(2) increasing the gross floor area of nonresidential development; or

(3) changing the type of development so that the development impact tax would be increased.

The Department must recalculate the development impact tax based on the plans contained in the resubmitted [building] <u>use and occupancy</u> permit application.

52-54. Refunds.

(a) Any person who has paid a development impact tax may apply for a refund of the impact tax if:

(1) the County has not appropriated the funds for impact transportation improvements of the types listed in Section 52-58, or otherwise formally designated a specific improvement of a type listed in Section 52-58 to receive funds, by the end of the sixth fiscal year after the tax is collected;

(2) the [building] <u>use and occupancy</u> permit has been revoked or has lapsed because construction did not start; or

(3) the project has been physically altered, resulting in a decrease in the amount of impact tax due.

* * *

52-55. Credits.

(a) (1) A property owner is entitled to a credit if the owner, before July 1, 2002, entered into a participation agreement, or a similar agreement with the state or a municipality, the purpose of which was to provide additional transportation capacity. A property owner is also entitled to a credit if the owner receives approval before July 1, 2002, of a subdivision plan, development plan, or similar development approval by the County or a municipality that requires the owner to build or contribute to a transportation improvement that provides additional transportation capacity. The Department of Transportation must calculate the credit. The credit must equal the amount of any charge paid under the participation agreement. The Department may give credit only for [building] <u>use and occupancy</u> permit applications for development on the site covered by the participation agreement.

* * *

(b) A property owner must receive a credit for constructing or contributing to an improvement of the type listed in Section 52-58 if the improvement reduces traffic demand or provides additional transportation capacity. However, the Department must not certify a credit for any improvement in the right-of-way of a State road, except a transit or trip reduction program that operates on or relieves traffic on a State road or an improvement to a State road that is included in a memorandum of understanding between the County and either Rockville or Gaithersburg.

(1) If the property owner elects to make the improvement, the owner must enter into an agreement with a municipality or the County, or receive a development approval based on making the improvement, before any [building] <u>use and occupancy</u> permit is issued. The agreement or development approval must contain:

(A) the estimated cost of the improvement, if known then;

(B) the dates or triggering actions to start and, if known then, finish the improvement;

(C) a requirement that the property owner complete the improvement according to applicable municipal or County standards; and

(D) any other term or condition that the municipality or County finds necessary.

(2) The Department of Transportation must:

(A) review the improvement plan;

(B) verify costs and time schedules;

(C) determine whether the improvement is an impact transportation improvement;

(D) determine the amount of the credit for the improvement that will apply to the development impact tax; and

(E) certify the amount of the credit to the Department of Permitting Services before that Department or a municipality issues any [building] <u>use and occupancy</u> permit.

* * *

52-56. Appeals.

After determination of the amount of the development impact tax or credit due, an applicant for a [building] <u>use and occupancy</u> permit or a property owner may appeal to the Maryland Tax Court to the extent permitted by state law or, if the Maryland Tax Court does not have jurisdiction, to the Circuit Court under the Maryland Rules of Procedure that regulate administrative appeals. If the appealing party posts a bond or other sufficient surety satisfactory to the County Attorney in an amount equal to the applicable development impact tax as calculated by the Department of Permitting Services, the Department or municipality must issue the [building] <u>use and occupancy</u> permit if all other applicable conditions have been satisfied. The filing of an appeal does not stay the collection of the development impact tax until a bond or other surety satisfactory to the County Attorney has been filed with the Department of Permitting Services.

52-59. Transportation Mitigation Payment.

(a) In addition to the tax due under this Article, an applicant for a [building] use and occupancy permit for any building on which an impact tax is imposed under this Article must pay to the Department of Finance a Transportation Mitigation Payment if that building was included in a preliminary plan of subdivision that was approved under the Transportation Mitigation Payment provisions in the County Subdivision Staging Policy.

* * *

52-89. Imposition and applicability of tax.

(a) An applicant for a [building] use and occupancy permit for a residential development must pay a development impact tax for public school improvements in the amount and manner provided in this Article before a [building] use and occupancy permit is issued for any residential development in the County unless:

(1) a credit for the entire tax owed is allowed under Section 52-93; or

(2) an appeal bond is posted under Section 52-56.

* * *

52-93. Credits.

* * *

(b) If the property owner elects to make a qualified improvement, the owner must enter into an agreement with the Director of Permitting Services, or receive a development approval based on making the improvement, before any [building] use and occupancy permit is issued. The agreement or development approval must contain:

(1) the estimated cost of the improvement, if known then,

(2) the dates or triggering actions to start and, if known then, finish the improvement.

(3) a requirement that the property owner complete the improvement according to Montgomery County Public Schools standards, and

(4) such other terms and conditions as MCPS finds necessary.

(c) MCPS must:

(1) review the improvement plan,

(2) verify costs and time schedules,

(3) determine whether the improvement is a public school improvement of the type listed in Section 52-91(d),

(4) determine the amount of the credit for the improvement, and

(5) certify the amount of the credit to the Department of Permitting Services before that Department or a municipality issues any [building] use and occupancy permit.

* * *

52-94. School Facilities Payment.

(a) In addition to the tax due under this Article, an applicant for a [building] use and occupancy permit for any building on which a tax is imposed under this Article must pay to the Department of Finance a School Facilities Payment if that building was included in a preliminary plan of subdivision that was approved under the School Facilities Payment provisions in the County Subdivision Staging Policy.

* * *

Section. 2. Effective date.

This Act takes effect 91 days after it becomes law. The development impact tax imposed under Article VII and XII of Chapter 52, as amended by Section 1 of this Act, applies to any building for which an application for a use and occupancy permit is filed on or after that date. However, an applicant need not pay the tax before receiving a use and occupancy permit for development if the applicant paid the tax before receiving a building permit for the same development.

Approved:

____

Valerie Ervin, President, County Council		Date

Approved:

____

Isiah Leggett, County Executive		Date

This is a correct copy of Council action.

____

Linda M. Lauer, Clerk of the Council		Date

LEGISLATIVE REQUEST REPORT

Bill 26-11

Taxation – Development Impact Taxes - Payment

DESCRIPTION: Requires any development impact tax, and the associated transportation mitigation and school facilities payments, to be paid before a use and occupancy permit is issued, rather than before a building permit is issued.

PROBLEM: Requiring impact taxes to be paid before a building permit is issued can cause cash flow difficulties for builders since the payment comes well before the building is sold or leased.

GOALS AND OBJECTIVES: To mitigate cash flow hardships that builders encounter without reducing impact tax payments to the County.

COORDINATION: Department of Permitting Services, Department of Finance

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Michael Faden, Senior Legislative Attorney, 240-777-7905; Glenn Orlin, Deputy Council Staff Director, 240-777-7936

APPLICATION WITHIN MUNICIPALITIES: Taxes and payments apply County-wide.

PENALTIES: Not applicable.

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANUM

October 17, 2011

TO: Valerie Ervin, County Council President

FROM: Isiah Leggett, County Executive

SUBJECT: Bill 26-11, Development Impact Taxes – Payment

As Council considers Bill 26-11, Development Impact Taxes – Payment, I would like to ensure that you are fully informed regarding the potential consequences of the bill as it is currently drafted. You have already received the Fiscal and Economic Impact Statement (FEIS) prepared by my staff. I have attached a copy of that analysis to this memorandum.

In 2009, I requested introduction of Bill 4-09, Development Impact Taxes – Payment, which would have provided a temporary, modest impact tax payment deferral as part of my economic relief package. The County Council at that time chose not to proceed with Bill 4-09. Bill 26-11 has some significant differences from the bill that I proposed two years ago. These differences are critical and I believe should be made clear for your consideration.

Most importantly, I want to stress that the current fiscal situation is materially different from where we were two years ago. We had all hoped that the economic recovery would have begun by now and that the County's fiscal picture would be brighter. We also were not confronted with potential downgrading of our bond ratings and therefore, were not focused on reducing our general obligation debt service. And, we had not made the significant reductions in the operating budget that we have had to make for the last three years, reducing many programs, eliminating 10% of our workforce and requiring our employees to go without pay increases. As the County Council considers Bill 26-11, I want to be sure that you are fully aware of the immediate impact upon the County's cash flow and the significant differences in circumstances from when you considered my proposal two years ago.

The attached FEIS indicates that there are potentially significant fiscal implications to the current bill that will make the development of an already difficult FY13-18 CIP even more difficult. While there may be some relatively minor adjustments to this analysis, based on different assumptions, the FEIS suggests that in the first year and a half of the bill's implementation (FY12 and FY13), the County could lose as much as $17 million in impact tax revenues for school and road construction. We are likely to be dealing with a very difficult fiscal picture for the foreseeable future, and we must pare back the amount of General Obligation bonds that we issue in order to comply with recently revised and approved fiscal policies. We have represented to the public and the rating agencies that we would adhere to these policies. Therefore, it is important that Council understand that we will not be able to fund all of the many worthy projects that are going to be requested, either by County Government departments or by independent agencies such as Montgomery County Public Schools, Montgomery College and Maryland-National Capital Park and Planning Commission.

A list of the road and school projects that are currently funded by the impact tax revenue is shown in Attachments 3 and 4 of the FEIS. The Council will have to reprogram funds in FY12, FY13 or FY14 from other projects or programs in order to make up the revenue loss to these projects. Alternatively, the Council may choose to delay these projects.

There are also several key differences between Bill 26-11 and Bill 4-09 that are important to the Council's consideration. As originally proposed, Bill 4-09 required that a deferral agreement be signed by the applicant at the time the building permit is issued. This type of agreement would have required the placement of a lien on the property to protect the County from non-payment of deferred taxes or the transfer of the property to another owner prior to payment of the impact tax. There is no such protection for the County in the current legislation other than the ability to deny the issuance of the use and occupancy permit if impact taxes are not paid at that stage. This may trigger concerns as property sales approach settlement. Furthermore, as outlined in the FEIS, there are enough loopholes and unpredictability in this mechanism to cause concern about the collection of impact taxes. For these reasons, I urge the Council to include some of the protections that were included in Bill 4-09.

Bill 4-09 required payment at a time certain after the issuance of the building permit. This provided for a definite time period within which the County would be assured of payment. The open ended and unpredictable nature of the use and occupancy permit brings a level of uncertainty to a significant revenue stream that will make it more difficult to plan and implement construction projects tied to the impact tax. For residential single family detached and attached homes, I recommend that you amend Bill 26-11 to require that the impact tax be paid either six months after issuance of the building permit or at the time of final inspection (which with residential properties usually occurs shortly before the use and occupancy permit is issued), whichever occurs first. For commercial properties and multi-family high-rise properties, I recommend that you amend Bill 26-11 to require that the impact tax be paid either twelve months after issuance of the building permit or at the time of final inspection, whichever occurs first. Payment as a condition of final inspection protects the County's ability to collect since the County still has a clear leverage point with the builder.

Bill 4-09 would have sunset after 10 months, which Executive staff later agreed to extend to two years. If that agreement had been implemented, Bill 4-09 would have allowed for the deferral of impact tax payments for 12 months for any building with a permit issued within a two year period. As a result, within three years after adoption of the bill, the County would have recouped all revenues and the revenue stream would have gone back to normal. I recommend that Bill 26-11 be amended so that it sunsets two years after enactment. In two years, if warranted by the economic situation, the Council may repeal the sunset.

Finally, in order to mitigate the potential impact of builders holding off on seeking building permits until the effective date of this legislation, I urge the Council to make Bill 26-11 expedited legislation. The Department of Permitting Services has seen that builders' decisions are very much influenced by the commencement date of legislation that is either favorable or unfavorable to their cost of doing business. By making this expedited legislation, the time period between enactment and implementation is minimized and, therefore, the potentially negative effect on building permit activity is minimized.

I appreciate your effort to assist me in the revitalization of the County's economy. I look forward to working with you to develop legislation that achieves your goals while also preserving a critically important revenue stream.

Attachment

c: Joseph Beach, Finance Director
Kathleen Boucher, ACAO
Jennifer Hughes, OMB Director
Arthur Holmes, DOT Director
Diane Jones, DPS Director
Steve Silverman, DED Director

OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Jennifer A. Hughes
Director

MEMORANDUM

October 4, 2011

TO: Valerie Ervin, President, County Council

FROM: Jennifer A. Hughes, Director

SUBJECT: Council Bill 26-11, Taxation- Development Impact Taxes- Payment

The purpose of this memorandum is to transmit a fiscal and economic impact statement to the Council on the subject legislation.

LEGISLATION SUMMARY

Bill 26-11 requires that any development impact tax, and the associated transportation mitigation and school facilities payments, be paid before a use and occupancy permit is issued, rather than before a building permit is issued.

FISCAL AND ECONOMIC SUMMARY

The Department of Finance estimates that revenues collected in FY12 will be reduced by $13.4 million from the baseline forecast of $16.8 million for both transportation and school development impact taxes. (Note: The revenue impacts for the transportation development impact tax exclude Rockville and Gaithersburg and include residential and only office and retail categories for the non-residential sector because these were the only data available from the Department of Permitting Services regarding number of days from issuance of permit to issuance of use and occupancy permit.)

The Department of Finance estimates that revenues collected for FY13 will be reduced by $3.8 million from a baseline forecast of $17.5 million. For FY12 and FY13, the total reduction in revenues attributed to the enactment of Bill 26-11 is approximately $17.2 million. Most of that reduction occurs in FY12 and is based on the assumption that no permits will be issued between October 1, 2011 and February 1, 2012 because those applying for the permits will wait until the new legislation takes effect. This delay is likely to occur because the new legislation is more financially beneficial and the time between the issuance of a building permit and the issuance of the occupancy and use permit span two fiscal years. See Attachment 1 for the Department of Finance's revenue impact summary.

These estimates were based on the following assumptions:

1. Information provided by County Council staff assumes that the bill will be enacted on February 1, 2012. Based on this date, the Department of Finance assumes that there will be no permits issued between October 1, 2011 and February 1, 2012. As a result of the time lag between October and February, there could be no revenues collected over that five-month period.

2. The Department of Permitting Services provided the length of days between the issuance of a building permit and the issuance of the use and occupancy permit as follows:
   - Residential (excluding multi-family units) ....158 days
   - Multifamily housing..224 days
   - Office ....366 days
   - Retail..200 days

The revenue loss would significantly affect impact tax funded school and transportation projects in the Capital Improvements Program (CIP). In FY12, the estimated reduction in schools and transportation impact taxes represents 77 and 34 percent, respectively, of the FY12 programmed impact tax revenues. [Funding Detail by Revenue Source (CIP260P2) attachments 3 and 4] The Council would have three options:

- In order to keep the current impact tax funded projects on schedule, General Fund resources would have to be advanced, which would negatively affect the County's cash flow.

- In order to protect the General Fund, the impact tax funded projects could be modified, either by delaying or reducing the scope of projects.

- Or the impact tax funded projects could be modified by replacing the impact tax revenues with another funding source such as General Obligation Bonds. This option would also have negative effects on other parts of the CIP as funds are shifted to fill the gap created by the deferred revenue. At this point, we do not anticipate having this amount of excess bonds in other projects to transfer to schools and transportation projects, and our FY12 set aside is only $12.97 million. If impact taxes are replaced with current revenue, there would be a negative impact on cash flow and fund balance.

There are logistical issues with the proposed bill as well that could potentially increase the fiscal impact of the proposed bill. Under Chapter 59 of the County's Zoning Code, there are several situations where a use and occupancy permit is not required. These exceptions from the use and occupancy permit or certificate requirement do not correspond to exemptions from the impact tax and could possibly create unintended additional or new exemptions from the tax.

Additionally, since this bill also applies to residential properties, the possibility exists that this change could create a collection issue. It is possible that families would be allowed to move into a home before the use and occupancy permit was actually issued and the impact tax was paid. At that point it becomes more difficult to collect the impact tax as the leverage over the builder, who is responsible for the payment of the impact tax, would be eliminated.

The economic impact of this bill is very difficult to quantify since it would rely on a variety of assumptions regarding the investment behavior of builders and developers out of context of the realities of the current economic landscape. Anecdotally, the Executive Branch has not heard from the building community, particularly commercial developers, that deferral of the collection of impact fees to the time of use and occupancy permit would have an effect on a particular project's ability to move forward, or otherwise effect the timing associated with launching a project. As you know, our Department of Economic Development routinely works with builders and developers to ensure that obstacles to their projects are minimized. Additionally, the members of the building community that are advocating for the deferral of these payments have not made Executive staff aware of any statistical or empirical data, from either a local or national perspective, which suggests that a delay in the payment of required impact taxes will pave the way for developments to be constructed.

The attached information (attachment 2) from the Department of Finance provides a broad economic analysis of the current and projected Montgomery County real estate market.

The following contributed to and concurred with this analysis: Steve Silverman, Department of Economic Development, Adam Damin, Office of Management and Budget, Reginald T. Jetter, Department of Permitting Services, David Platt, Department of Finance, and Michael Coveyou, Department of Finance.

JAH:ad

Attachments

c: Kathleen Boucher, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Arthur Holmes, Jr., Director, Department of Transportation
Joseph F. Beach, Director, Department of Finance
Diane Schwartz Jones, Director, Department of Permitting Services
Steve Silverman, Director, Department of Economic Development
Amy Wilson, Office of Management and Budget

FISCAL YEAR	2012	2013
School Impact Taxes		
Baseline	$14,290,616	$14,959,568
Estimated Revenues (Bill 26-11)	$3,237,160	$11,510,975
Difference (Revenue Loss)	($11,053,456)	($3,448,593)
Transportation Impact Taxes (1)		
Baseline	$3,155,720	$3,194,468
Estimated Revenues (Bill 26-11)	$850,358	$2,843,734
Difference (Revenue Loss)	($2,305,363)	($350,734)
TOTAL		
Baseline	$17,446,336	$18,154,036
Estimated Revenues (Bill 26-11)	$4,087,518	$14,354,709
Difference (Revenue Loss)	($13,358,818)	($3,799,328)

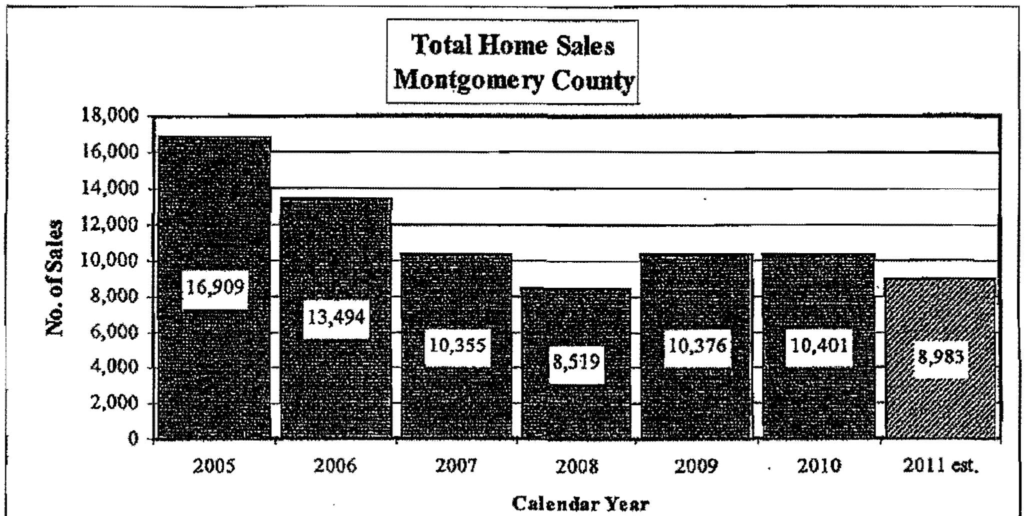
NOTE: (1) Non-Residential Transportion Impact Tax Include Office and Retail Only

ECONOMIC IMPACT ANALYSIS
BILL 26-11 TAXATION – DEVELOPMENT IMPACT TAXES – PAYMENT

The purpose of Bill 26-11, Taxation – Development Impact Taxes – Payment, is to reduce a builder's carrying costs and thus encourage new construction. The challenge is to determine the economic impact of the legislation, i.e., how much new construction activity would occur as a result of enacting Bill 26-11 (Bill). Council staff recognizes the difficulty in estimating the net economic impact to the County. As a backdrop, this economic impact analysis presents the current status of the real estate market in Montgomery County that will assist in determining the net economic impact. This analysis includes description of sales of existing homes, average sales price of an existing home, new residential construction both single family homes and multifamily residences, and an analysis of construction costs.

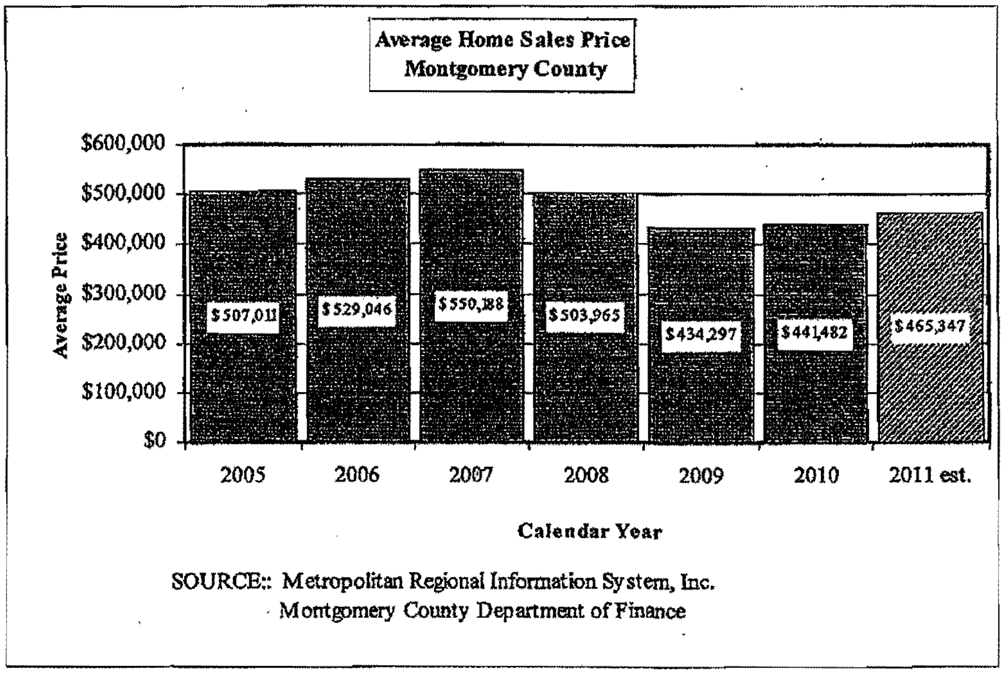
Residential Real Estate Market

Based on sales of existing homes in Montgomery County through August, the Department of Finance (Finance) estimates that sales will decrease 13.6 percent in calendar year 2011. That decline follows an increase of 21.8 percent in 2009, largely attributed to the federal first-time home-buyers credit, and a modest 0.2 percent increase in 2010.



SOURCES: Metropolitan Regional Information System, Inc.
Montgomery County Department of Finance

However, average sales prices for existing homes are expected to increase 5.4 percent in 2011, based on data through August. That increase follows an increase of 1.7 percent in 2010 and decreases of 8.4 percent and 13.8 percent in 2008 and 2009, respectively.

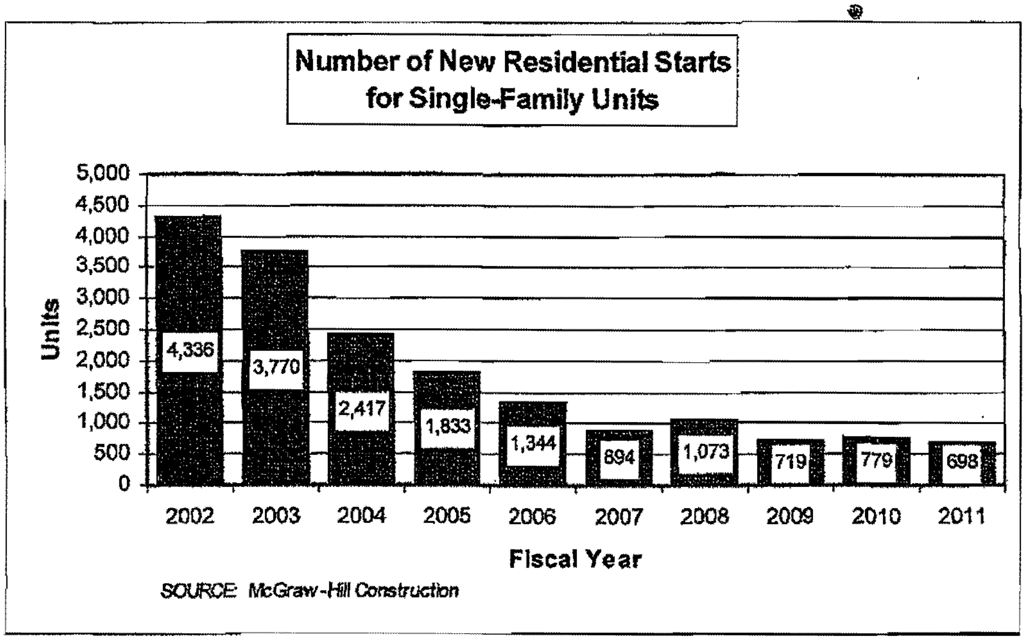


Based on both sales and price data, the housing market in Montgomery County continues to remain weak in 2011 and the outlook for 2012 and beyond suggests continued stress in the number of existing home sales with slight improvement in sales prices.

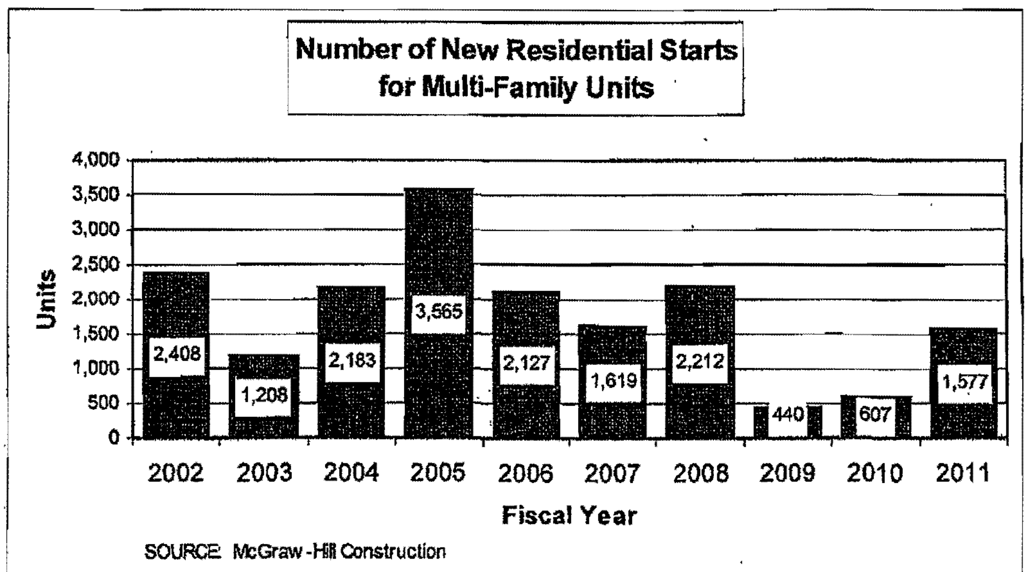
Finally, the amount of inventory of existing homes for sale has remained fairly constant between 2009 and 2011 – a four-month supply of homes for sale. That inventory-to-sales ratio is below the peak of a 7.5 month supply in 2008 but above the ratio of a one-month supply during the housing boom between 2001 and 2005.

Construction Activity

The number of new residential construction starts (units) increased in fiscal year (FY) 2011 from 1,386 units to 2,275 units – an increase of 64.1 percent. However, that figure includes both single-family residential units and multi-family residential units. The number of single-family units started FY2011 was nearly 700 compared to nearly 780 the year before. Over the past five fiscal years, the number of new single-family units started average 833 per year. That number is down significantly from an average of 3,000 units per year during the housing boom period between 2001 and 2006.

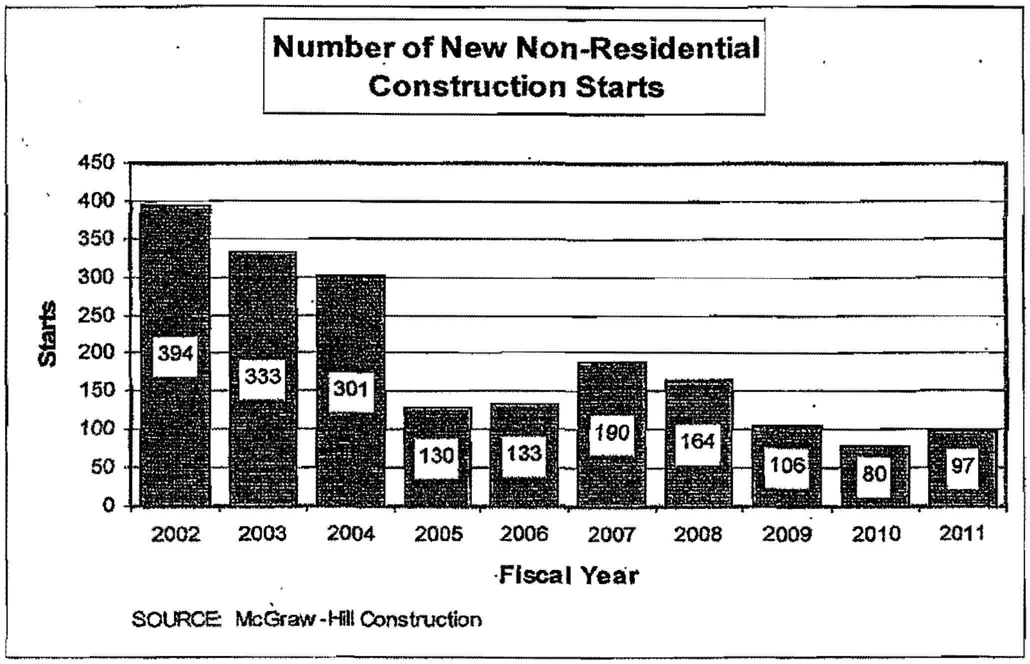


The number of new multi-family units started exhibited much volatility over the past ten years. From a peak of 3,565 units in fiscal year 2005 to a low of 440 units in fiscal year 2009, there exists no clear pattern, or construction cycle, of construction starts for multi-family housing in Montgomery County.



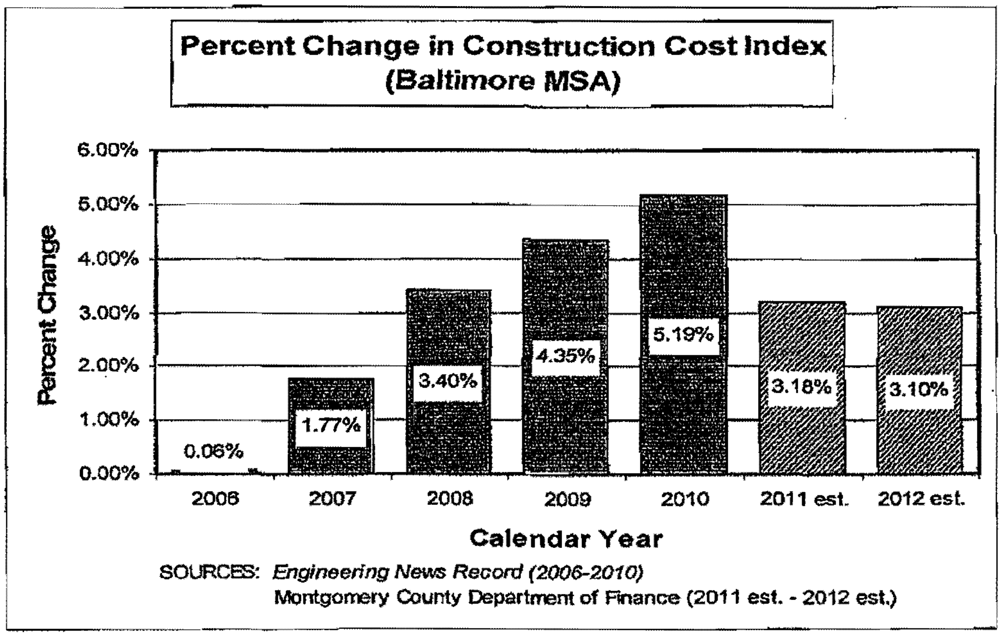
The number of new non-residential construction starts (projects) increased slightly from 80 projects in FY2010 to 97 projects in FY2011. Over the past ten fiscal years, non-residential construction can be divided into three distinct cycles: FY2002-

FY2004, when an annual average rate of 343 projects was started; FY2005-FY2009, when an annual average rate of 145 projects was started, and FY2010-FY2011 when less than 100 projects per year were started. Over the past three fiscal years, construction new single-family units and new non-residential projects were at their lowest during the past ten fiscal years. This dramatic slowdown in new construction reflected a weak demand for new residential and non-residential property.



Construction Costs

Finally, the Department of Finance estimated the future construction costs using the construction cost index developed by *Engineering News Record* for the Baltimore region – there is no index for the Washington region. Based on that estimation, construction costs are expected to increase slightly above 3.00 percent in calendar 2011 and 2012. Those percentages are down from the 4.35 percent in 2009 and 5.19 in 2010.



Given this backdrop in residential and non-residential construction, especially during the past three fiscal years, the economic impact of Bill 26-11 is difficult to determine with any specificity. If the demand for housing and non-residential property in Montgomery County improves, that improvement may not occur in the very near term.

Funding Detail by Revenue Source, Department/Agency and Project ($000s)

Impact Tax

Project		Total	Thru FY10	Rem. FY10	6 Year Total	FY11	FY12	FY13	FY14	FY15	FY16	Beyond 6 Years
General Services												
500434	Rockville Town Center	5,782	5,782	0	0	0	0	0	0	0	0	0
509974	Silver Spring Transit Center	1,802	0	1,802	0	0	0	0	0	0	0	0
Sub-Total		**7,584**	**5,782**	**1,802**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Transportation												
500100	Greencastle Road	988	988	0	0	0	0	0	0	0	0	0
500119	Bethesda Bikeway and Pedestrian Facilities	0	0	0	0	0	0	0	0	0	0	0
500151	Woodfield Road Extended	1,746	484	500	762	762	0	0	0	0	0	0
500311	Montrose Parkway West	17,568	16,917	651	0	0	0	0	0	0	0	0
500401	Nebel Street Extended	1,195	112	-112	1,195	1,195	0	0	0	0	0	0
500403	Stringtown Road Extended	5,199	5,199	0	0	0	0	0	0	0	0	0
500516	Father Hurley Blvd. Extended	3,192	2,985	0	207	0	207	0	0	0	0	0
500717	Montrose Parkway East	12,894	717	0	12,177	0	4,583	2,783	1,988	2,823	0	0
500719	Chapman Avenue Extended	5,386	0	0	5,386	823	1,215	1,423	1,925	0	0	0
500722	State Transportation Participation	100	0	0	100	100	0	0	0	0	0	0
500724	Watkins Mill Road Extended	5,006	0	5,006	0	0	0	0	0	0	0	0
500905	Falls Road East Side Hiker/ Biker Path	5,277	0	0	3,143	0	0	0	0	1,130	2,013	2,134
501110	Metropolitan Branch Trail	2,330	0	0	2,330	0	0	0	0	0	2,330	0
501202	White Flint Traffic Analysis and Mitigation	685	0	0	685	0	117	167	167	167	67	0
507017	Intersection and Spot Improvements	0	0	0	0	0	0	0	0	0	0	0
508000	Subdivision Roads Participation	0	0	0	0	0	0	0	0	0	0	0
509274	Robey Road	258	258	0	0	0	0	0	0	0	0	0
509321	Norbeck Road Extended	4,602	4,602	0	0	0	0	0	0	0	0	0
509337	Facility Planning-Transportation	1,895	570	44	1,281	660	621	0	0	0	0	0
509922	North Bethesda Trail	337	0	337	0	0	0	0	0	0	0	0
509942	Briggs Chaney Road East of US 29	917	743	174	0	0	0	0	0	0	0	0
509944	Valley Park Drive	211	174	37	0	0	0	0	0	0	0	0
509954	Germantown Road Extended	651	651	0	0	0	0	0	0	0	0	0
Sub-Total		**70,437**	**34,400**	**6,637**	**27,266**	**3,540**	**6,743**	**4,373**	**4,080**	**4,120**	**4,410**	**2,134**
Revenue Source Total		**78,021**	**40,182**	**8,439**	**27,266**	**3,540**	**6,743**	**4,373**	**4,080**	**4,120**	**4,410**	**2,134**

Funding Detail by Revenue Source, Department/Agency and Project ($000s)

Schools Impact Tax

Project		Total	Thru FY10	Rem. FY10	6 Year Total	FY11	FY12	FY13	FY14	FY15	FY16	Beyond 6 Years
Public Schools												
016505	Thomas W. Pyle MS Addition	0	0	0	0	0	0	0	0	0	0	0
016506	Westland MS Addition	0	0	0	0	0	0	0	0	0	0	0
016519	Redland MS - Improvements	0	0	0	0	0	0	0	0	0	0	0
016545	Northwood High School	2,000	2,000	0	0	0	0	0	0	0	0	0
026503	Seven Locks ES Addition/Modernization	2,300	0	0	2,300	0	2,300	0	0	0	0	0
026504	Travilah ES Addition	0	0	0	0	0	0	0	0	0	0	0
036503	Roscoe Nix ES (Northeast Consortium ES #16)	7,644	7,644	0	0	0	0	0	0	0	0	0
056502	Bethesda-Chevy Chase HS Addition	0	0	0	0	0	0	0	0	0	0	0
056503	William B. Gibbs, Jr. ES (Clarksburg #8)	3,344	1,594	1,750	0	0	0	0	0	0	0	0
056504	Fields Road ES Addition	212	212	0	0	0	0	0	0	0	0	0
056516	*MCPS Affordability Reconciliation*	0	0	0	0	0	0	0	0	0	0	0
066513	Schools Impact Tax Substitution	0	0	0	0	0	0	0	0	0	0	0
076501	Fallsmead ES Addition	0	0	0	0	0	0	0	0	0	0	0
076510	MCPS Funding Reconciliation	0	0	0	0	0	0	0	0	0	0	0
086500	East Silver Spring ES Addition	6,105	4,300	890	915	915	0	0	0	0	0	0
086501	Takoma Park ES Addition	0	0	0	0	0	0	0	0	0	0	0
086502	Poolesville HS Laboratory Upgrades and Addition	1,175	0	1,175	0	0	0	0	0	0	0	0
096500	Brookhaven ES Addition	0	0	0	0	0	0	0	0	0	0	0
096501	Fairland ES Addition	0	0	0	0	0	0	0	0	0	0	0
096502	Fox Chapel ES Addition	2,404	0	2,404	0	0	0	0	0	0	0	0
096503	Harmony Hills ES Addition	2,467	0	0	2,467	2,467	0	0	0	0	0	0
096504	Jackson Road ES Addition	4,309	0	2,381	1,928	1,928	0	0	0	0	0	0
096505	Montgomery Knolls ES Addition	650	0	0	650	650	0	0	0	0	0	0
096506	Rock View ES Addition	2,000	0	0	2,000	2,000	0	0	0	0	0	0
096508	Whetstone ES Addition	2,000	0	0	2,000	0	2,000	0	0	0	0	0
116503	Bradley Hills ES Addition	2,000	0	0	2,000	0	2,000	0	0	0	0	0
116504	Clarksburg Cluster ES (Clarksburg Village Site #1)	2,000	0	0	2,000	0	0	2,000	0	0	0	0
116506	Clarksburg/Damascus MS (New)	27,450	0	0	27,450	0	0	0	2,000	12,100	13,350	0
116507	Darnestown ES Addition	2,000	0	0	2,000	0	2,000	0	0	0	0	0
886536	Future Replacements/Modernizations	690	0	0	690	0	0	0	690	0	0	0
916587	Rehab/Reno.Of Closed Schools- RROCS	698	698	0	0	0	0	0	0	0	0	0
926575	Current Replacements/Modernizations	27,615	1,315	2,400	23,900	0	6,180	8,890	8,830	0	0	0
Sub-Total		**99,063**	**17,763**	**11,000**	**70,300**	**7,960**	**14,480**	**10,890**	**11,520**	**12,100**	**13,350**	**0**

Timing of Impact Fee/Tax Payments in Other Maryland Jurisdictions

Anne Arundel – "before the issuance of a building permit for the improvement, a mobile home park construction permit, or a zoning certificate of use for a change of use" (Anne Arundel County Code, §17-11-206)

Calvert – at the time the building permit is issued, or for new residential construction or a change of use to residential use, the excise tax can be paid in three installments, with the first installment paid at the time the building permit is issued (Calvert County Code §136-14)

Caroline – at the time the lot is initially sold or transferred (Caroline County Code §§166-36, 166-43)

Carroll – before a building permit may be issued (Carroll County Code §102-6)

Charles – collected annually over a period of 10 years at level amortized payments of principal and interest in the same manner as general ad valorem taxes unless otherwise provided by ordinance [first assessed on the first property tax bill after the use and occupancy permit is issued] (MD Code, Art 66B §14.05(f); see also Charles County Code §249-5)

Dorchester – at the same time a building permit is paid for (Dorchester County Code §144-33)

Frederick – development impact fees – paid prior to the issuance of a building permit/zoning certificate (Frederick County Code §1-22-4); building excise tax – before the issuance of a building permit (Frederick County Code §1-8-74)

Harford – at the time of application for a building permit (Harford County Code §123-59)

Howard – school facilities surcharge – at the time a building permit is issued (Howard County Code §20.142); building excise tax – at the same time a building permit is paid for (Howard County Code §20.505)

Prince George's – school facilities surcharge – at the time a building permit is issued (PG County Code §10-192.01); public safety surcharge – at the time a building permit is issued (PG County Code §10-192.11)

Queen Anne's – either paid before issuance of building permit or zoning certificate or promissory note executed obligating payment upon the earlier of (1) within 18 months of the issuance of the building permit or zoning certificate or (2) the issuance of the certificate of occupancy (Queen Anne's County Code §18:3-7)

St. Mary's – condition of issuance of building permits (St. Mary's County Code §223-4.5)

Talbot – before issuance of a building permit or zoning certificate (Talbot County Code §64-14)

Washington – before issuance of building permit (Washington County Building Excise Tax Ordinance §5.01)

Wicomico – before issuance of a building permit or zoning certificate (Wicomico County Code §130-9)

Scenario 1: Bill 26-11 as Introduced

	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY12 - 18	FY13 - 18
School Impact Taxes									
Baseline	$14,290,616	$14,959,568	$16,824,031	$17,794,337	$19,241,175	$19,837,543	$21,605,645	$124,552,915	$110,262,299
Estimated Revenues	$4,369,305	$15,826,231	$14,984,806	$17,500,054	$17,722,393	$18,248,351	$19,879,441	$108,530,581	$104,161,276
Difference	($9,921,310)	$866,663	($1,839,226)	($294,283)	($1,518,782)	($1,589,192)	($1,726,204)	($16,022,334)	($6,101,023)
Transportation Impact Taxes									
Baseline	$3,155,720	$3,194,468	$3,443,852	$3,495,037	$3,696,892	$3,727,076	$3,967,962	$24,681,007	$21,525,287
Estimated Revenues	$788,930	$3,441,109	$3,065,610	$3,131,057	$3,344,027	$3,361,038	$3,573,421	$20,705,190	$19,916,260
Difference	($2,366,790)	$246,641	($378,243)	($363,980)	($352,865)	($366,039)	($394,541)	($3,975,817)	($1,609,027)
TOTAL									
Baseline	$17,446,336	$18,154,036	$20,267,884	$21,289,374	$22,938,067	$23,564,619	$25,573,607	$149,233,923	$131,787,586
Estimated Revenues	$5,158,236	$19,267,340	$18,050,415	$20,631,111	$21,066,420	$21,609,388	$23,452,862	$129,235,772	$124,077,536
Difference	($12,288,101)	$1,113,304	($2,217,469)	($658,263)	($1,871,647)	($1,955,230)	($2,120,745)	($19,998,151)	($7,710,050)
FY12-FY13		($11,174,797)							

Scenario 2: Bill 26-11 with a 2-Year Sunset

	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY12 - 18	FY 13 - 18
School Impact Taxes									
Baseline	$14,290,616	$14,959,568	$16,824,031	$17,794,337	$19,241,175	$19,837,543	$21,605,645	$124,552,915	$110,262,299
Estimated Revenues	$4,369,305	$15,826,231	$17,494,737	$26,180,444	$19,241,175	$19,837,543	$21,605,645	$124,555,080	$120,185,774
Difference	($9,921,310)	$866,663	$670,705	$8,386,107	$0	$0	$0	$2,165	$9,923,475
Total Transportation Impact Taxes									
Baseline	$3,155,720	$3,194,468	$3,443,852	$3,495,037	$3,696,892	$3,727,076	$3,967,962	$24,681,007	$21,525,287
Estimated Revenues	$788,930	$3,441,109	$3,610,253	$5,450,581	$3,696,892	$3,727,076	$3,967,962	$24,682,802	$23,893,872
Difference	($2,366,790)	$246,641	$166,401	$1,955,544	$0	$0	$0	$1,795	$2,368,585
TOTAL									
Baseline	$17,446,336	$18,154,036	$20,267,884	$21,289,374	$22,938,067	$23,564,619	$25,573,607	$149,233,923	$131,787,586
Estimated Revenues	$5,158,236	$19,267,340	$21,104,990	$31,631,024	$22,938,067	$23,564,619	$25,573,607	$149,237,882	$144,079,646
Difference	($12,288,101)	$1,113,304	$837,106	$10,341,650	$0	$0	$0	$3,959	$12,292,060
FY12-FY13		($11,174,797)							

Scenario 3: Bill 26-11 with a November 1, 2011 Effective Date

	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY12 - 18	FY 13 - 18
School Impact Taxes									
Baseline	$14,290,616	$14,959,568	$16,824,031	$17,794,337	$19,241,175	$19,837,543	$21,605,645	$124,552,915	$110,262,299
Estimated Revenues	$8,336,193	$11,898,477	$14,984,806	$17,500,054	$17,722,393	$18,248,351	$19,879,441	$108,569,714	$100,233,522
Difference	($5,954,423)	($3,061,091)	($1,839,226)	($294,283)	($1,518,782)	($1,589,192)	($1,726,204)	($15,983,201)	($10,028,777)
Transportation Impact Taxes									
Baseline	$3,155,720	$3,194,468	$3,443,852	$3,495,037	$3,696,892	$3,727,076	$3,967,962	$24,681,007	$21,525,287
Estimated Revenues	$1,617,067	$2,612,972	$3,065,610	$3,131,057	$3,344,027	$3,361,038	$3,573,421	$20,705,190	$19,088,123
Difference	($1,538,653)	($581,496)	($378,243)	($363,980)	($352,865)	($366,039)	($394,541)	($3,975,817)	($2,437,164)
TOTAL									
Baseline	$17,446,336	$18,154,036	$20,267,884	$21,289,374	$22,938,067	$23,564,619	$25,573,607	$149,233,923	$131,787,586
Estimated Revenues	$9,953,260	$14,511,449	$18,050,415	$20,631,111	$21,066,420	$21,609,388	$23,452,862	$129,274,905	$119,321,645
Difference	($7,493,077)	($3,642,587)	($2,217,469)	($658,263)	($1,871,647)	($1,955,230)	($2,120,745)	($19,959,018)	($12,465,941)
FY12-FY13		($11,135,664)							

Scenario 4: Bill 26-11 with a 6-Year Deferral for Single-Family Residential and a 12-Month Deferral for Multi-Family Residential and Non-Residential

	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY12 - 18	FY 13 - 18
School Impact Taxes									
Baseline	$14,290,616	$14,959,568	$16,824,031	$17,794,337	$19,241,175	$19,837,543	$21,605,645	$124,552,915	$110,262,299
Estimated Revenues	$3,990,546	$15,070,600	$14,632,642	$16,769,601	$17,281,156	$17,804,812	$19,409,401	$104,958,758	$100,968,212
Difference	($10,300,070)	$111,032	($2,191,390)	($1,024,736)	($1,960,020)	($2,032,731)	($2,196,244)	($19,594,157)	($9,294,088)
Transportation Impact Taxes									
Baseline	$3,155,720	$3,194,468	$3,443,852	$3,495,037	$3,696,892	$3,727,076	$3,967,962	$24,681,007	$21,525,287
Estimated Revenues	$788,930	$3,176,955	$3,378,081	$3,455,750	$3,692,622	$3,707,063	$3,938,102	$22,137,505	$21,348,575
Difference	($2,366,790)	($17,513)	($65,771)	($39,287)	($4,270)	($20,013)	($29,860)	($2,543,503)	($176,712)
TOTAL									
Baseline	$17,446,336	$18,154,036	$20,267,884	$21,289,374	$22,938,067	$23,564,619	$25,573,607	$149,233,923	$131,787,586
Estimated Revenues	$4,779,476	$18,247,555	$18,010,723	$20,225,351	$20,973,778	$21,511,875	$23,347,504	$127,096,263	$122,316,786
Difference	($12,666,860)	$93,519	($2,257,161)	($1,064,023)	($1,964,289)	($2,052,743)	($2,226,103)	($22,137,660)	($9,470,800)
FY12-FY13		($12,573,341)							

Scenario 5: Bill 26-11 with a 2-Year Sunset, a December 1, 2011 Effective Date, and 6-Year Deferral for Single-Family Residential and a 12-Month Deferral for Multi-Family Residential and Non-Residential (Executive Recommendation)

	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY12 - 18	FY13 - 18
School Impact Taxes									
Baseline	$14,290,616	$14,959,568	$16,824,031	$17,794,337	$19,241,175	$19,837,543	$21,605,645	$124,552,915	$110,262,299
Estimated Revenues	$7,145,308	$11,710,932	$18,031,169	$26,983,201	$19,241,175	$19,837,543	$21,605,645	$124,554,973	$117,409,665
Difference	($7,145,308)	($3,248,636)	$1,207,138	$9,188,864	$0	$0	$0	$2,058	$7,147,366
Transportation Impact Taxes									
Baseline	$3,155,720	$3,194,468	$3,443,852	$3,495,037	$3,696,892	$3,727,076	$3,967,962	$24,681,007	$21,525,287
Estimated Revenues	$1,410,033	$2,838,901	$3,810,980	$5,230,885	$3,696,892	$3,727,076	$3,967,962	$24,682,729	$23,272,696
Difference	($1,745,688)	($355,567)	$367,127	$1,735,848	$0	$0	$0	$1,722	$1,747,409
TOTAL									
Baseline	$17,446,336	$18,154,036	$20,267,884	$21,289,374	$22,938,067	$23,564,619	$25,573,607	$149,233,923	$131,787,586
Estimated Revenues	$8,555,341	$14,549,834	$21,842,149	$32,214,087	$22,938,067	$23,564,619	$25,573,607	$149,237,702	$140,682,362
Difference	($8,890,996)	($3,604,203)	$1,574,265	$10,924,713	$0	$0	$0	$3,780	$8,894,775
FY12-FY13		($12,495,198)							

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ATTORNEYS

Testimony of William Kominers

Bill 26-11

(October 4, 2011)

Good afternoon President Ervin 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 to speak strongly in support of Bill 26-11. This Bill makes good economic sense. The sponsor and co-sponsors are to be commended for being proactive in enhancing the opportunity for construction with its jobs, and occupancy with its benefits to homeowners and businesses.

I have some brief comments about the benefits of this Bill.

1. The Bill better 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 justification 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 implementation of a project. 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 likelihood of payments of the Impact Tax later on (at the time of occupancy), because the project will actually be able to go forward. Without this shift in time of payment, many more projects will not be able to proceed at all. No project at all means no Impact Tax at all. Bill 26-11 will increase the opportunity for the County to collect a greater amount of Impact Tax revenue.

4. This time shift in payment of Impact Tax has a very positive and desirable affect on non-residential and multi-family construction. Because of the lengthy construction time for these projects, the benefit in the eventual cost of the product to the ultimate consumer is even greater than with shorter term construction. A construction period range of 18+ months means that the cost of the up front Impact Tax

must be financed for that much longer. This results in a higher cost of borrowing and a higher cost of the ultimate product in the form of higher rents, and sales prices. Delaying the Impact Tax until the time of occupancy ameliorates this difficulty by incurring the cost at the time that there is revenue with which it may be paid.

5. Payment of the Impact Tax is assured with this Bill. Non-residential and multi-family buildings have always required a certificate of occupancy. This was an easy step by which to track the payment of the Impact Tax and to ensure that payment is made prior to the utilization of the structure. In recent years, the County has created a requirement for an occupancy certificate for one family residential. This can now provide a similar tracking mechanism for payment of tax. Therefore, there is now no impediment to the ability to assure that the tax is paid before the building is used.

6. The result of the Bill will be a simple one-time delay in the revenue stream, with very little, if any, long-term adverse effect. In 2009, the County Executive proposed Bill 4-09, providing for a similar twelve month deferral of Impact Taxes as a part of his 11-point stimulus package. That Bill did not move forward at that time. Bill 26-11 should move forward quickly.

Summary. This Bill sends a very positive message to the State and the Country about Montgomery County and your efforts to address the current economic conditions. With this Bill, Montgomery County proactively addresses a problem for a suffering industry. The result will be to encourage and facilitate both the creation of jobs, and the creation of homes and offices and businesses -- this will have a long term benefit to the County. In addition, the Bill supports the underlying principle of the Impact Tax, by connecting the payment of the tax to the creation of the actual impact. This supports the philosophy of fairness in Montgomery County and better supports the reasoning behind the Impact Tax as a whole.

I urge you to act quickly to enact this Bill. It does what it needs to do.

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

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Testimony on Bill 26-11- Impact Tax payment
Bob Spalding, Development Director
Miller and Smith
October 4, 2011

We want to thank the Councilmembers for introducing the bill. Bill 4-09 was requested by the Executive, but struggled when there was no easy way to ensure payment before occupancy permits. DPS' implementation of an occupancy permit in April creates the easy way to ensure payment after building permit.

The concept of paying a tax at a fair time is not a foreign concept. The vast majority of Montgomery County residents pay their County income tax through payroll withholding. We pay the gas tax when we buy a gallon of gas and not years of gas tax when we buy a car.

As the bill recognizes, the occupancy permit is the fair time for the impact tax to be collected because it is at the time of the impact. The occupancy permit is the closest point to when the impact occurs. Making the payment at a fair time should be reason enough for the change. However, there are real benefits to the County and the taxpayers.

The current payment at building permit is large direct cost for the taxpayer but is a very small opportunity cost for the County. The impact taxes are typically paid from a construction revolver in our loans. The revolver is replenished by sales proceeds. By moving the impact tax payment to occupancy permit, it reduces the amount of time that we are paying interest on the impact tax. More importantly, it frees up the loan capacity to build houses at a faster pace.

In a townhome neighborhood, if we get seven building permits at a time, we pay a total of $233,540 ($33,220 per home) in impact taxes. If we complete the homes in four months, we pay another $3,448 at 4.5% in interest. This reduces our cash available to build homes and pay workers for four months by $236,988. In a struggling business climate where cash-on-hand is critical, the proposed change helps. Virginia passed a similar bill for proffer payments in the entire Commonwealth in March and it has been helping our recovery there.

The proposal also helps the County in a counterintuitive way by accelerating total revenue payments after a brief lag. Moving the impact tax payment decreases interest income a small amount but can generate a greater return. This bill succeeds if only one more townhome in the whole County receives an occupancy permit each year.

The County earned 0.22% on its investments last year. If the County is projected to receive $16 million impact tax and the average delay in payment is six months, this equals $17,600 in interest. If just one new townhome pays its $33,220 in impact taxes one year early, the County has more impact tax money than it does under the current system.

Some say that this change will delay CIP projects. However, the County's FY10 *Comprehensive Annual Financial Report* states that the County already has a mechanism to avoid such delays. On page 82 it states that the General Fund loans CIP projects funds to "cover construction payments, due primarily to the timing of reimbursements from Federal, State and other agencies, and to lag time between programming and collection of certain impact taxes." This internal loan is repaid by the impact tax payments.

The impact tax already is a prepayment for County services. On a $300,000 townhome in Clarksburg, the $33,220 in impact taxes equals eleven and a half years of County property tax ($2,877/year) that a homeowner pays to live in a $300,000 existing or resale townhome. This is an opportunity to make the prepayment of taxes fairer.

While we are focused on impact taxes, I noticed that the code-required annual reporting of impact tax revenue isn't included in the Comprehensive Annual Financial Report. The impact tax annual reports do not appear to be available on-line. It seems odd that the impact taxes are not part of the comprehensive report. A more comprehensive picture would be presented if the annual report includes a list of credits for transportation improvements that are being provided by the private sector to meet the goal of increased transportation capacity.

Thank you for proposing this bill and the opportunity to comment. We support it and look forward to its passage.