MINUTES
BUDGET AND FINANCE COMMITTEE
COUNCIL OF THE COUNTY OF MAUI
WAILUKU, MAUI, HAWAII
JUNE 1, 2010

APPROVED:

[Tonya McDade, CSR, RPR, CRR, CBC]
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CONVENE: 1:34 p.m.

PRESENT: Councilmember Joseph Pontanilla, Chair
Councilmember Danny A. Mateo, Vice-Chair
Councilmember Gladys C. Baisa, Member
Councilmember Jo Anne Johnson, Member
(in 1:35 p.m.)
Councilmember Sol P. Kaho'ohalahala, Member
(in 1:45 p.m.)
Councilmember Bill Kauakea Medeiros, Member
Councilmember Michael J. Molina, Member
(in 1:39 p.m.)
Councilmember Wayne K. Nishiki, Member
Councilmember Michael P. Victorino, Member

STAFF: Gayle Revels, Legislative Analyst
Yvette Bouthillier, Committee Secretary

ADMIN: Frederick Pablo, Budget Director, Office of
the Mayor
Agnes Hayashi, Deputy Director, Department of
Finance
Scott Teruya, Administrator, Real Property
Tax Division, Department of Finance
Marcy Martin, Property Technical Officer,
Department of Finance
Brian T. Moto, Corporation Counsel,
Department of the Corporation Counsel

OTHERS: Item 1: Paul Laub
Judy Fox
Barak Laub
Steve Tenney
Katherine Smith
Raymond Sievers
G. Sherley Blodgett
Darryl Canady
Bert Blodgett
David DeLeon, REALTORS® Association
of Maui
Penny Munroe, President, Nai‘i
Properties Inc.; and Director,
The Condominium Council of Maui
Carol Reimann, Maui Hotel & Lodging
Association
Tom Donovan, Vice President, General
Manager, Ritz Carlton Kapalua
Fred T. Roseberry
Krishna Narayan
Robert Ehrlich, President, Ironwoods Homeowners Association
Jim Besaw
Lora Yadao
Pat Sullivan, President/Principal Broker, Sullivan Properties
Sara Gadarian
Blackie Gadarian
Pam English, Development Manager, Maui Land & Pineapple Company, Inc.
Larry Ness
Brett Fahnestock, Board President, Southpointe at Waikoa; and General Manager, Polo Beach Club, Makena
Bertram Sugimoto
Zeke Kalua, Executive Director, West Maui Taxpayers Association
Arthur Tabanao
Clyde D. Wagner
Lisa Howard, Regional Manager, Hawaii First Inc.
Pamela Tumpap, President, Maui Chamber of Commerce
Susan Malaga
Larry Armstrong
Laurie S. Lowson
Robert Reader, Wailea Pointe Village
Christine Conlon-Kemp
Others (10)

PRESS: Akaku: Maui Community Television, Inc.
Ilima Loomis, The Maui News

ITEM NO. 72: REAL PROPERTY TAX LAND CLASSIFICATION (MISC)

CHAIR PONTANILLA: ...(gavel)... The Budget and Finance Committee meeting for June 1st, 2010, is now in session. The Chair at this time would like to introduce the Members that are present this afternoon. We do have Member Baisa.
COUNCILMEMBER BAISA: Good afternoon.

CHAIR PONTANILLA: Good afternoon. Member Medeiros.

COUNCILMEMBER MEDEIROS: Aloha and good afternoon, Chair.

CHAIR PONTANILLA: Good afternoon. Member Nishiki.

COUNCILMEMBER NISHIKI: Good morning. Good afternoon.

CHAIR PONTANILLA: Good afternoon. Chairman Mateo.

VICE-CHAIR MATEO: Good afternoon.

CHAIR PONTANILLA: Good afternoon. And Mr. Victorino.

COUNCILMEMBER VICTORINO: Aloha and good afternoon, Chair.

CHAIR PONTANILLA: Good afternoon. Supporting the Committee, we do have our support staff, Gayle Revels, who is the Legislative Analyst, as well as Yvette Bouthillier, who is the Committee Secretary. From the Administration, we have Corporation Counsel, Brian Moto, Deputy Director from the Finance Department, Agnes Hayashi, as well as Scott Teruya, Real Property Tax Administrator.

Members, we do have a number of people that
are -- have signed up for public testimony this afternoon. At this time the Chair would like to recognize the presence of Member Johnson.

COUNCILMEMBER JOHNSON: (Inaudible).

CHAIR PONTANILLA: And I think I forgot to say that Member Molina and Member Kahoʻohalahala are excused at this time. We do have a number of people that have signed up for public testimony this afternoon. So we'll take testimony first and then go into deliberation on the proposal that's before us. But before Chair accept public testimony, Chair would like to make a short comment.

Members, before we start public testimony, I want to clear up some confusion about what this bill does. The purpose of the revised proposed bill is to combine the improved Residential and unimproved Residential land classifications into one classification entitled Residential, delete the consideration of actual use for properties subdivided into condominium units, and make some housekeeping changes to Section 3.48.150 and 18.16.320 to make them consistent with the newly created Residential land classification.

The revisions related to condominium units are meant to ensure the condominiums are classified similar to all non-condominiumized properties.
Non-condominiumized properties are not allowed to claim a lower use of the property. They are classified at the highest and best legal use. The homeowner exemption and Circuit Breaker credits will still apply to all condominium units, but if the unit is not eligible for the homeowner rate, it will be classified according to its highest and best use. Properties will not be classified at the Timeshare class unless they are subject to a Timeshare Plan as defined in Hawaii Revised Statute 514E.

So, Members, basically, that -- that's what the bill does. This -- that is be -- before you this afternoon. At this time the Chair would like to take public testimony, but, before we take public testimony, if everyone could turn off their cell phone or put it on the silent mode.

For those of you that are providing public testimony this afternoon, you have three minutes to provide your testimony. Chair will give you one minute to conclude. And if you can state your name, organization that you represent, the Chair, as well as the Committee, would appreciate that. Okay. The first person to testify this afternoon is Mr. Paul Laub, followed by Judy Fox.

...BEGIN PUBLIC TESTIMONY...
MR. LAUB: Aloha, everybody. I'm Paul Laub.

And the first part I wanna talk about is highest and best use. I want you to think a minute about driving down the road, and you're going 45 miles an hour, and a cop pulls you over and says I -- I know you're within the speed limit, that's fine, but, however, I happen to know that this car can do 90 miles an hour, and, therefore, I'm gonna tax you -- I mean, I'm gonna write you up for 90 miles an hour, even though you weren't going that, because I know that it could've done that. And you maybe never have gone that in your whole life; however, that's highest and best speed.

Let's think about going to a restaurant. So you and I, we go into the restaurant and we sit down, we just want a salad. It's a new place, it's really fancy, but we just want a salad. We order a salad. And the bill comes, it's 450 bucks. We say, well, what's this. Say, well, we're a fancy place. You coulda ordered the filet mignon with the -- with the three kinds of champagne and four kinds of wine, and so, therefore, that's our highest and best menu. So that's why it's $450.

Now, that's what highest and best use is. So what would actually happen under highest and best use? When you have long-term rentals in these condos, and
then you jack up the tax rate, somebody's gonna have to pay. So you're gonna reduce the long-term housing stock. The cheaper housing stock is gonna be raised. And I think what we're looking for now is longer-term, lower-priced housing stock.

So let's go on to unimproved property, the 3,000 waterless properties Upcountry. We have 3,000 waterless properties that are -- that are trying to get meters that can't get meters because, somehow, there's not water. However, isn't it the kuleana of the County to get them water so that they can have those properties and actually use those properties? So if the concept is they can't use those properties, but we're gonna raise their taxes, isn't that inverse condemnation? So inverse condemnation in where you can't use it -- or we're not paying you for it; in fact, we're gonna charge you because you cannot use it. I don't think that's fair.

So, anyway, I think that if the County wants more money through taxes, they should put forth the effort, put the horse in front of the cart, provide the ability of the people to get their water meters. 3,000 people, that's a lot of money, we could tax 'em. And, frankly, if we don't provide them with water and they can't use their property, should we tax 'em at all or
should we reduce their taxes? I think we oughta think
in those terms. Thank you.

CHAIR PONTANILLA: Thank you. Members, any
questions --

(Applause).

CHAIR PONTANILLA: -- for Mr. Laub at this
time? Seeing none, thank you. Judy Fox, followed by
Barak Laub.

MS. FOX: Yeah. I'm Judy Fox. And I live at
Pacific Shores, which is not zoned vacation rental, but
is zoned long-term -- long-term rental. And there are a
number of people in my complex -- and, actually, there
are some people in Maui Vista, next door, which, also --
which, actually, is vacation rental -- who have chosen
not to use their place as rental properties. They do
not qualify because -- for homeowner exemption because
they have another home in the states, but they come over
every single year. They add value to our island. They
go to the restaurants. They give to charity, many of
them donate their time. They are wonderful. 90 percent
of 'em are very high environmentally. They are just
wonderful people. And I'm afraid that you're gonna kick
out all the snowbirds if you end up taxing them out of
their place. And I think it's very important that we --
in this economy, we just can't keep sending people away.
We have to encourage the people who are our steady customers to come in and -- and utilize this.

And the other thing that I have found -- we have found in -- at Pacific Shores is, even though we're not zoned for vacation rental, there are a number of condos in the association who are, in fact, using them as vacation rentals. And we think it is up to the County to come back to these people and tell them that they really are not zoned for this and cannot continue to have vacation rentals on those properties because of the fact that they're overutilizing the facilities, for that very -- for the reason that they can do it.

And -- and I'm not even sure they're paying the 15 percent tax because they're not zoned to pay the 15 percent tax. So I have a feeling, if anything, they're paying the four percent tax. And I think that it's time -- I think that's where you need to go get the money, is where there are people who are actually utilizing -- and some of them are using the Net or whatever, to rent those places. And I think that's where you need to go get the money. But I think that to kick out the snowbirds -- I'm not a snowbird anymore, thank God. I am now a legal resident of Hawaii with a homeowner exemption. Thank you.

CHAIR PONTANILLA: Thank you. Members, any
questions for the testifier?

(Applause).

CHAIR PONTANILLA: If not, the next testifier is Barak Laub, followed by Steve Tenney.

MR. BARAK LAUB: Hi. I'm Barak. And thank you for hearing me today.

I was talking with my dad about this on the way over. He used the water thing as it could be inverse condemnation. I think it's just wrong. There are thousands of people who are, unfortunately, constrained and unable to build their homes. And it seems like we're punishing them for something they have no control over.

About the highest and best use, it's also simply not fair. It's punishing people for being tenants for sometimes medium and semi-long terms, taking away affordable and semi-affordable housing because they're giving housing to the community and not renting it out. I feel like we should be rewarding these people for providing something we really need.

The final thing that I -- I guess I take kind of personally is I was on Baby Beach yesterday in Lahaina, and I was sitting in the same spot that I realized I was sitting in 20 years ago. I mean, this is great to think that, you know, someday -- and I was
looking around and I saw the kids -- that someday my
kids will be here in the exact same spot, hopefully, God
willing. And owning a home on Maui is really, really a
dream, 'cause it's not just your dream, you can pass it
onto your kids. And, hopefully, someday, I'll be able
to take care of my father's home and that will go on to
my children. And so I -- I -- what I'm saying is I take
this very personally.

And I know that a lot of these people who have
these homes, who they're trying to build, they're trying
to make it so they can live here, so, someday, their
kids can also live in these same houses. And if their
rent goes up -- or if their rates go up, they might not
be able to pay it. They might have to give up this
dream before they even have a chance to get it off the
ground. And that scares me. I'm just asking that you
please don't do that. Thank you.

CHAIR PONTANILLA: Thank you. Members,
questions for the testifier?
(Applause).

CHAIR PONTANILLA: Seeing none -- seeing none,
Steve Tenney, followed by Katherine Smith.
MR. TENNEY: Mr. Chairman, Members of the
Committee, I appreciate the opportunity to speak to you
today. And I'm concerned about the highest and best
We have a condominium at Paki Maui over in West Maui. And we, until this point, had it in vacation rental. But we had to pull it out of vacation rental in January because of our representative, Aston Hawaii, who was handling all the rentals, invoked a clause that says, if we're losing money, we get to collect the difference from the people in the rental program. At one point, they were taking up to 80 percent of the available revenue. So we decided to pull it out of short-term rental and put it into long-term rental. And what you're doing now is -- we're out of the starting gate and now we're gonna get a penalty for trying to do something that, you know, we really need to do.

I think this thing is very unfair, it's draconian. And my competition is right across the street. So if I have to pay an additional $1,700 a year in taxes, and my competitors, who are right across the street, get to pay the lower apartment rate, I just don't think that's fair at all.

CHAIR PONTANILLA: (?) That's it?

MR. TENNEY: Thank you.

CHAIR PONTANILLA: Thank you. Member Johnson?

COUNCILMEMBER JOHNSON: Yes. I -- I take it that your property is in the Hotel-zoned classification?
MR. TENNEY: Yes, it is.

COUNCILMEMBER JOHNSON: Okay. Thanks. That's all I needed clarification on.

CHAIR PONTANILLA: Thank you. Members, any more questions for the testifier? Seeing none, Katherine Smith, followed by Raymond Sievers.

MS. SMITH: I'm Katherine Kamaemae Smith. I'm a full-time resident of Maui at the Kapalua Golf Villas. I'm against the proposed tax hike for condominiums. The proposed legislation tries to milk a cash cow while the cow is sick. And no can. Mainland people trying to protect their primary residence in Oregon are more than willing to let their beach house in Maui go to the bank. And so there's very little leverage here.

And those who cheat the County are also cheating their condominium neighbors, those of us who live here. We have to fork up the maintenance fees for these people who are not chipping in.

And increasing the stakes just doesn't help. It leads to bigger court cases. So if any of you are lawyers, you might like that, but I don't think it does any good. I think it makes things worse.

I agree with Dave DeLeon that the County Council can do a good thing by legislating an appeal process that works. I'd like to see you do that.
And as for cheaters, 3.5 percent of the Kapalua condos are occupied by resident owners. We all know each other. And if the County records show more residents at the Kapalua condos, I say, "Go get 'em."

And ask the AOAO resident managers to certify that the resident owners are who they are and get an affidavit from them. They know 'em. They're the people who come down to the mailboxes every day. And if that sets up some conflict of interest, you can ask any resident owner in the condominium complex 'cause they'll be happy to tattle on the others.

So I thank you for being here and make -- to make the hard decisions, Council People. There aren't very many who would like to be in your shoes. Thank you very much.

CHAIR PONTANILLA: Thank you. Members, any questions for the testifier?

(Applause).

CHAIR PONTANILLA: Excuse me. Katherine. Katherine, question. Member Johnson?

MS. SMITH: (Inaudible).

COUNCILMEMBER JOHNSON: You touched on a very important thing, which is our inability oftentimes to do enforcement. I know that we've had the conversation amongst ourselves before about the whole situation of
whether people in some complexes are doing short-term or
long-term rentals. Would you -- if we can, you know, I
guess approach it from the perspective that you're
talking about, do you think it would be fair if we
required the individual in a condominium unit to have
some kind of a certified or attested-to document
certifying that they were not in any rental pool or
something of that sort?

MS. SMITH: I think that's very reasonable.
COUNCILMEMBER JOHNSON: Okay. All right.
Thank you.
MS. SMITH: Uh-huh.
CHAIR PONTANILLA: Thank you. Any more
questions? Member Nishiki? Excuse me, again. Don't
run away too fast. Mr. Nishiki?
COUNCILMEMBER NISHIKI: Yeah. Thank you,
Katherine. We, at one time, had asked a specific
condominium and asked their board of directors if they
could pretty well police and let the County know.
Because you seem concerned that three percent of you
will be penalized.
MS. SMITH: Yeah.
COUNCILMEMBER NISHIKI: But the response from
this specific condominium was that, you guys do the job.
What is your take on you people being more responsible
and policing your group of bandits that perhaps are cheating?

MS. SMITH: You know, the board members at our place are trying to do their fiduciary responsibility. They take 514B very seriously. I think that they wanna work with all of the agencies that apply to the running of the AOAO. And I don't think you would get any -- you know, have any problems with having the board members comply with whatever you wanted to do as long as it was something that was, you know, reasonable. And I think getting documentation is reasonable.

COUNCILMEMBER NISHIKI: Thank you.

CHAIR PONTANILLA: I got a question for you.

MS. SMITH: Yes, sir.

CHAIR PONTANILLA: As far as AOAO, how many organizations do you have on Maui?

MS. SMITH: Oh.

CHAIR PONTANILLA: One?

MS. SMITH: No. I'm -- I just belong to my own homeowner's association because I live at the Golf Villas, and that's it, the Association of Apartment Owners for the Kapalua Golf Villas. I -- I'm not --

CHAIR PONTANILLA: A wild guess?

MS. SMITH: I'm just representing myself. I'm sorry.
CHAIR PONTANILLA: Do you have a wild guess how many AOAO?

MS. SMITH: Oh, there are lots of 'em.

CHAIR PONTANILLA: Okay. Thank you.

MS. SMITH: Every -- I would think that every building, every -- every entity has its own association.

CHAIR PONTANILLA: Okay. Thank you.

MS. SMITH: Uh-huh.

CHAIR PONTANILLA: Next testifier is Raymond Sievers, followed by G. Sherley Blodgett.

MR. SIEVERS: Aloha, Mr. Chairman and the Board. We are -- my wife and I are -- well -- we're owners at the Hololani Resort, which is on the Hotel area. And we also have a small condo, with a partner, for 20 years, at the Valley Isle. Both buildings would be affected by your new plans for taxations. And we feel that that's very unfair.

There's a lot of people who have worked very hard. And a lot of the different owners, all the way up western Maui area, in -- in a lot of cases, some people that have retired 20, 30 years ago found themselves unable to sustain themselves, even with the maintenance costs of these buildings, being that they're 35 years old. And a lot of these properties have fallen in default. A lot of 'em are -- are hanging by threads.
And we're faced with many owners having to sell at very cheap prices just to get away from the -- from their burden. And if you set it up this tax situation to put the higher rates on everybody, it's definitely going to kill 'em.

And we have probably -- in our major building, there's 63 units. And I know that there's probably only four of us that live here constantly all year round. We have maybe six of 'em that are six-monthers, that come here, that are retired, and do not rent their units.

The units that are in a rental system, I'm sure everybody pays their due process of the GET tax and everything. And -- and when they say what about the responsibility, most of these organizations in these independent buildings -- I'm talking about Valley Isle or Hololani, have an in-house rental that manages all those short-term rentals and has to file their taxes. And I really don't see that, in most legitimate organizations that do this, or with major rental companies -- such as Maui Lodgings or Chase 'N Rainbows, that they run a legitimate business. And I don't think there's any cheaters.

From our standpoint, I would rather pay the money than to be caught and have a heavy fine, or worse, who knows. And anybody that knows don't wanna get
involved with lawyers. You try desperately not to. So
if you raise these taxes, people have already -- and if
you look in the newspapers, you see how many
foreclosures. And looking at Kaanapali Beach, I don't
know if that's a timeshare that's foreclosed upon, but
they have two sheets -- two or three pages in the
newspaper. And if you change this tax setup, you're
gonna see a lot more -- a lot worse things. And it's
devaluating our properties.

So I wish that they would consider a better
way to go on this approach because the appeals process
is gonna be a nightmare. If -- if you -- especially if
you raise these taxes. 'Cause that money that you want
is gonna be tied up forever.

Thank you.

CHAIR PONTANILLA: Thank you. Members,
questions for the testifier? Member Baisa? Excuse me.
We got a question. Member Baisa?

COUNCILMEMBER BAISA: Yes. Thank you for
being here this afternoon. I have a question for you.

MR. SIEVERS: Yes.

COUNCILMEMBER BAISA: You know, cheaters are
something we talk about a lot and say, oh, well, if you
go after 'em to pay more, they're gonna cheat. What do
you think is a hefty enough fine to be a deterrent?
MR. SIEVERS: Hefty enough? I would consider $1,000 more than I'd like to pay for being dishonest.

COUNCILMEMBER BAISA: Good.

MR. SIEVERS: So, I mean, it doesn't have to be five thousand or ten thousand dollars, but I think, generally speaking, if the -- if the Board considers this thing, to put a -- or some kind of a notice out to the -- the main rental people warning that this could be a problem. And I would think that would jar everybody. 'Cause, after all, places like, let's say, Chase 'N Rainbows, they have a license. They don't wanna jeopardize their license over a little tax money.

COUNCILMEMBER BAISA: Very --

MR. SIEVERS: So I -- I think that's something that's considered.

COUNCILMEMBER BAISA: Thank you.

MR. SIEVERS: Yeah.

COUNCILMEMBER BAISA: I received a lot of Email over the weekend. And somebody even suggested 10,000. Thank you.

CHAIR PONTANILLA: Thank you. Next testifier, G. Sherley Blodgett, followed by Darryl Canady.

MS. BLODGETT: My name is Sherley Blodgett. I live at Hale Ono Loa. Our condominium has 67 units; 10 percent are classified as homeowner, 25 percent are
long-term or owner's second home, 45 percent are Hotel
and Resort, and the remaining 20 percent are in
foreclosure. By necessity, our association has had to
approve a cash flow assessment to each owner for those
units in foreclosure where no dues are being collected.
This is passed on to each owner. With the current real
estate market, it is unknown as to how long we will have
to endure this assessment. Further, you're unable to
sell the unit.

We are lucky enough to have a two-bedroom in
that association that we live in, have a homeowner
exemption because we live here, but we have an
apartment.

Many voices you won't here today are the
thousands of renters who are employees of businesses on
this island. These renters will not be aware of or
experience the impact of the proposed changes until
later this year when we have to pass on to those renters
the additional amount that the County is requiring us to
pay. Under current rates per thousand, this would be an
increase of 80 percent on just property tax that we
would have to pass on to our renter, which equals $270
per month. That is per month.

You want people to live here. You want our
businesses to have employees. We want people to live
here long-term. We feel they're just as important as the vacation people. We need them there in our restaurants, to service us, we need them in the hotels, to take care of our vacation people. And, therefore, we ask you not to use the highest use rate.

Thank you.

CHAIR PONTANILLA: Thank you. Members, questions --

(Applause).

CHAIR PONTANILLA: -- for the testifier?

Seeing none, thank you very much. Darryl Canady, followed by Bert Blodgett.

MR. CANADY: Good afternoon, Chair and Council Members. I'm Darryl Canady from the Island of Molokai. And I wouldn't have been here to discuss this item with you, but I'm also serving on the Urban Design Review Board, and, thank goodness, it met this morning. So I had the time while I'm here, paying my $200 round-trip airfare, to come in front of you and discuss this very serious problem that is being faced all over, but especially on Molokai because we only have the one hotel, the old Hotel Molokai. We have five condominium complexes. There is not a new one there. We -- the oldest -- the newest old one is over 30 years old. We have only seven units on the entire island that are
Timeshare. And if this goes through, it will literally
tear apart the resort business on Molokai. It is
already torn apart greatly because of the lack of people
that we have coming. This is like gambling with the
pistol at your head, twirling the -- the chamber and
seeing -- and clicking it and seeing if you're gonna
kill yourself. It is a serious problem that we cannot
handle on Molokai or here.

Thank you.

CHAIR PONTANILLA: Thank you. Members, any --

(Applause).

CHAIR PONTANILLA: -- questions for the
testifier? Seeing none, thank you again. Bert
Blodgett, followed by David DeLeon.

MR. BLODGETT: Chairman, Ladies and Gentlemen
of the Council, Bert Blodgett. My wife spoke recently.
And I'd like to express my opinion as to, again, the
unfairness --

COUNCILMEMBER VICTORINO: Chairman --

CHAIR PONTANILLA: Excuse me.

COUNCILMEMBER VICTORINO: -- I cannot hear.

CHAIR PONTANILLA: Can you talk directly into
the mic?

COUNCILMEMBER VICTORINO: Please.

MR. BLODGETT: As to the unfairness --
CHAIR PONTANILLA: Thank you.

MR. BLODGETT: -- of this highest rate
taxation. You have a homeowner's association which is
different than the condo -- condominium AOAO. The
homeowners, likewise, who have a B&B here, the house,
three-bedroom, they rent a bedroom, they gonna all be
taxed at the highest rate, or are they gonna be
homeowners renting out a bedroom? Are you gonna class
'em all as a vacation -- vacation rental? I think it's
totally unjust. You oughta look at this and evaluate
'em on an individual and avoid this lumping together at
the highest rate.

Thank you.

CHAIR PONTANILLA: Thank you. Members, any
questions for the testifier?

COUNCILMEMBER NISHIKI: Yes.

CHAIR PONTANILLA: Member Nishiki?

COUNCILMEMBER NISHIKI: Where do you live?

MR. BLODGETT: I live at Hale Ona [sic] Loa.

COUNCILMEMBER NISHIKI: Hale Ono Loa?

MR. BLODGETT: Hale Ona [sic] Loa.

COUNCILMEMBER NISHIKI: Yeah. Thank you.

CHAIR PONTANILLA: Thank you. Any more
questions, Members? Seeing none, thank you. Dave
DeLeon, followed by Penny Munroe.
MR. DeLEON: Good afternoon and aloha. I'm Dave DeLeon, speaking on behalf of Maui's 1,300 licensed professional realtors. On May 7, (inaudible) Board of Directors of the REALTORS® Association of Maui voted unanimously to oppose the proposed bill 'cause it would be unfair to condominium owners who are not using their units at the highest and best use, because it would have a serious negative impact on the -- on the condo market already in decline, and because the bill will not achieve its stated goals.

What are the stated goals in this bill? Chair Fontanilla, at the beginning of the meeting, said that it is to stop cheating. How would it do that? By eliminating the option to be taxed at the Apartment rate, in properties with Hotel or Timeshare uses, but it does absolutely nothing to stop taxpayers from declaring themselves as homeowners. In fact, it is our contention that, if given the choice between being taxed at a homeowner's rate of 2.50 or a Timeshare rate at 14, or even at the Hotel rate, it's eight -- $8.30, many more are going to opt for the homeowner's rate, whether that's true or not. A lot of people are stressed economically and they're gonna do what's necessary. The game of cat and mouse with the Tax Department will definitely continue under this bill.
There are other ways of achieving this purpose. And you heard some of that today from some of the earlier testifiers. And there's a lady gonna be following me from the Condo Association who will make it even clearer that the condominium associations could stand ready to self-police in this matter. And that could be done in a variety of ways, but it needs to be constructively worked out.

Others say that the purpose of this bill is to raise revenue. The Council's Budget Committee was told this would raise $6 million. That's a lot of money to come out of one class of property owners. There's a real, very real, question about the -- the impact that this measure would have on real property values, tax values. Will it truly generate 6 million or will it lose money over the long haul? We respectfully suggest that the more money -- the more -- that more money could be made -- made available by repairing a dysfunctional County Real Property Tax appeal system. Instead of addressing that process, this action will cause yet another spike in appeals, freezing more of the County's resources.

We are seriously concerned about the legal implications of using State-controlled use like Timeshare to set highest and best use. And the Chair
said that will not be done in this bill. I'd like to see it in the Code. It needs to be put in the bill that Timeshare's not gonna be used.

About the -- we also have concern about the deletion of the Use definitions in the Tax Code and about the legal issues facing the so-called Minatoya Apartment-zoned properties.

This -- this proposal -- this proposed action was proposed by tax administrators who have a linear view of the world --

MS. REVELS: Three minutes.

MR. DeLEON: -- how to -- how to increase tax income. We come on -- we count on this Council to measures such proposals against the weight of possible negative consequences that could result from them. We ask that you measure this well. Please consider this bill's implications on an already serious damaged condo real estate market. Think about what happens if the Minatoya opinion is thrown out. Think about doubling taxes on property owners who are already struggling. We ask that you seriously weigh this negative -- the negative consequences of this proposal before you act.

Thank you.

CHAIR PONTANILLA: Thank you, Mr. DeLeon.

(Appplause).
CHAIR PONTANILLA: Members, questions for the testifier? Member Baisa?

COUNCILMEMBER BAISA: Yes. Thank you, Chair.

And thank you, Mr. DeLeon, for being here this afternoon. For the benefit of those of us who are not familiar with the Minatoya opinion, could you explain?

MR. DeLEON: For your information, I'll -- I will explain it, but, also, you have it in written form, in the written testimony that I submitted, that's included with my testimony.

Basically, in -- in around -- in the early 1980s, the County Council changed the zoning for a number of properties that were in the -- in the Apartment District. They had previously been allowed to be acting as, say, motels or condotels. That was removed. And there was a -- a lot of noise in the community about that. In 1991 -- that -- that happened in 1991. I'm sorry. In 2001, Deputy Corporation Counsel Richard Mina -- Minatoya -- toya -- wrote an opinion that, basically, said that those properties that, basically, got grand -- grandfathered the right to short-term on those properties. The problem with the Minatoya opinion is, it's just that, it's just an opinion. It's not codified. It's not zoning. We counted at least 28 properties in Kihei alone that are
affected by it. We're talking about thousands of units here.

And you heard the lady earlier talk about the Pacific Shores. Well, there are a lot of other folks who are gonna feel the same way. My apartment is Apartment-zoned, how come you're taxing me Hotel? And if that -- if you end up in court over that, Minatoya likely will get blown out. And if you end up with that, then you got thousands of properties that are gonna be stressed, more than you have now 'cause they're not gonna be able to short-term like they do now.

COUNCILMEMBER BAISA: So --

MR. DeLEON: Be very careful about where you tread on this.

COUNCILMEMBER BAISA: So when you talk about a possible negative impact of this law, rather than bringing in money, that it might just go the other way, it's that kind of thing that you're referring to?

MR. DeLEON: We're -- we're looking at a potential for real estate chaos.

COUNCILMEMBER BAISA: Chaos?

MR. DeLEON: Chaos. I mean, in that marketplace, in the condo marketplace, yes. 'Cause that's -- it's based on short-term. You take away the short-term of those thousands of units, you've got
CHAIR PONTANILLA: Thank you. Members, any more questions for Mr. DeLeon? Member Johnson?

COUNCILMEMBER JOHNSON: Yes, Dave. I -- I know you're familiar with this. And if I take the reverse and I say that somebody is on a zoned property that doesn't permit short-term rentals, but they're renting out short-term, if -- if, let's say, you've got a condominium association, their bylaws and governing documents basically say you're not supposed to be renting out short-term, but, then, they are, how -- how do you address that? Because --

MR. DeLEON: Well, the condominium association can report it to the Zoning Enforcement, and it could also take legal individual action against the individual.

COUNCILMEMBER JOHNSON: Okay. And do -- are you aware of any properties currently that fall into this classification? 'Cause I know that what they did was, some of them filled out questionnaires and --

MR. DeLEON: Which classification are you talking about?

COUNCILMEMBER JOHNSON: Well, if I'm looking
at doing like a short-term rental, when -- I think a while ago, a survey was sent out --

MR. DeLEON: Uh-huh.

COUNCILMEMBER JOHNSON: -- about real property tax. And some of the people were renting out less -- I guess they were renting out for a shorter period than six months.

MR. DeLEON: I think about half of the -- the long-term contracts on this island right now are month-to-month.

COUNCILMEMBER JOHNSON: Yeah.

MR. DeLEON: You're kidding yourself if you think most of the long-term contracts on this island are six months.

COUNCILMEMBER JOHNSON: Yeah.

MR. DeLEON: That's -- that's not what's happening on this island.

COUNCILMEMBER JOHNSON: Okay. So would you see that, also, as an enforcement issue?

MR. DeLEON: Well, if you're gonna go after the long-term guys that are short -- renting for less than six months, you got -- you got a much bigger problem than you think.

COUNCILMEMBER JOHNSON: All right.

MR. DeLEON: Uh-huh.
COUNCILMEMBER JOHNSON: I just --

MR. DeLEON: That is something we've talked to this Council about repeatedly, we've not gotten a response to.

COUNCILMEMBER JOHNSON: Yeah. We're -- we're doing our best. Thank you.

MR. DeLEON: Thank you.

CHAIR PONTANILLA: Thank you. Members, any more questions for Mr. DeLeon? Seeing none, thank you.

MR. DeLEON: Thank you.

CHAIR PONTANILLA: Penny Munroe, followed by Carol Reimann.

MS. MUNROE: Good afternoon. My name's Penny Munroe. I am President of Nai'a Properties, Incorporated, and a director sitting on the board of an educational nonprofit organization, the Condominium Council of Maui.

I have been in the property management business for 15 years and have seen the ups and downs of association fiscal matters. There are -- there appears to be a misconception about condominium and community association owners, what the uses are and how they impact County revenues. The mixed use of these associations range from owner-occupied, second home, long-term rental, short-term rental, commercial, and
timeshare.

It has been implied that some people believe that condominium owners are persons of wealth. Nothing could be further from the truth. While the second homeowner may have greater income, it does not mean that the vast majority of units are in the same category.

Let me share with you the tale of two different condominium projects.

The first is a wholly investor-owned property. As of May 2010, the delinquency rate is 25 percent with two foreclosures. The unit owners have experienced declining short-term rentals and have just imposed a special assessment to infuse cash to be able to just pay for the basic needs.

The second project is comprised of 42 percent owner-occupied units and 58 percent long-term rental units. As of May 2010, the delinquency rate is 57.7 percent, with 12 foreclosures. The board, based on cash flow projections, will be out of funds to pay their bills July 2010. Unlike the previous project, a special assessment will drive the paying owners into bankruptcy or foreclosure.

Both of these projects face the same problem, how to get enough funds from a dwindling group of owners. It's my firm belief that any increase in the
property tax rates at this time will seriously impact
our condominium and community association owners. If
they cannot pay their mortgage or association fees, they
will not pay their property taxes.

The other concern is the long-term owner will
convert usage to short-term, leaving resident families
with no place to live and placing a bigger burden on the
visitor industry by increasing vacancy rates. If these
families are displaced, they may no longer be able to
get to the jobs they currently hold, and another burden
is placed on the County and State Governments'
decreasing dollars.

The question is how to ensure owners are
truthfully informing the County of the use of their
unit. There has been a suggestion that each property
owner sign a declaration under penalty of perjury
stating the use of the unit. Another option is to get
the management companies involved, since they know
better than anyone else how the unit is being used.

MS. REVELS: Three minutes.

MS. MUNROE: Given the current economic
conditions and that any significant turnaround is not
expected until 2012, any additional burden on taxpayers
will negatively impact the County and State revenues.

We respectfully request a -- that a decision
be deferred until the Council can work with business and
community organizations to find alternatives. Thank you
for your kind attention and consideration.

(Applause).

CHAIR PONTANILLA: Thank you.

COUNCILMEMBER VICTORINO: Chair?

CHAIR PONTANILLA: Members --

(Applause).

CHAIR PONTANILLA: Mr. Victorino?

COUNCILMEMBER VICTORINO: Thank you. And
thank you for being here. You know, we've had our
discussion.

MS. MUNROE: We have.

COUNCILMEMBER VICTORINO: Yes, we have. You
said, in the last 15 years, you've been -- you've seen
the ups and downs in this industry.

MS. MUNROE: I have?

COUNCILMEMBER VICTORINO: Yes. Well, I -- can
I say safely, in your opinion, is this the worst you
ever seen it?

MS. MUNROE: It is.

COUNCILMEMBER VICTORINO: And is it because
we've come off a -- such an inflationary period where
condos -- as well as homes -- but let's stick with
condos because that's what we're -- we're discussing --
just went out of sight with pricing and a lot of buyers
may have gotten in above their head?

    MS. MUNROE: I'd say that that's partially
fair.

    COUNCILMEMBER VICTORINO: Okay. When you say
partially, what kind of partial?

    MS. MUNROE: Well, I --

    COUNCILMEMBER VICTORINO: 10 --

    MS. MUNROE: -- don't think --

    COUNCILMEMBER VICTORINO: -- 20, 30? What's
your best guess?

    MS. MUNROE: I -- I -- I'd say that that's --
30 percent, fair.

    COUNCILMEMBER VICTORINO: 30 percent, okay.

    MS. MUNROE: Yeah.

    COUNCILMEMBER VICTORINO: Okay. That's fair
enough for me. And -- and, again, the last question I
have for you is, your -- your -- your feeling is that we
should all sit down a little bit and discuss this matter
and try to find a better resolution than is being
offered at this time?

    MS. MUNROE: I believe that we can do that if
we will all come together as private and public sector.

    COUNCILMEMBER VICTORINO: Okay. Thank you.

Thank you, Mr. Chair.
CHAIR PONTANILLA: Thank you. Members, any more questions? Seeing none, thank you very much.

MS. MUNROE: Thank you.

CHAIR PONTANILLA: The next testifier is Carol Reimann, followed by Tom Donovan.

MS. REIMANN: Good afternoon, Chair, Council Members. My name is Carol Reimann and I represent the Maui Hotel and Lodging Association. I am here to testify in regard to the highest and best use real property tax proposal for condominium properties.

From the perspective of the visitor industry, we are concerned about some of the consequences of this proposal. The proposal would cause a large influx of short-term rental units into a struggling visitor industry market. If many owners were forced to pay a higher property tax rate, they will therefore be forced to put their units into the short-term rental market in order to pay these taxes.

As we've all seen in the news lately, the visitor industry has been experiencing some very promising increases in visitor counts, occupancy and spending. These increases provide us with a false sense of security. The visitor industry has a very long way to go until we have recovered from the recent economic
slump. We -- we continue to offer substantial discounts in order to attract visitors to our island. Our recovery will be a very slow, gradual one.

We understand that there are approximately 9,200-plus condo units in the Hotel Resort real property tax classification. If many of them were to enter the short-term rental market, it would glut the market at a time when the industry is still vulnerable.

Highest and best use would force owners to increase the amount of rent they charge for long-term rental units, as we've heard from many other testifiers today, or force them to remove their units from the long-term rental market. These are units that are rented out to local working residents. And would negatively affect our resident housing market.

In summary, this proposal will, basically, push condo owners to seek the highest and best use from their units. With thousands of condo units in Maui, this would result in a large influx of short-term rentals into a fragile marketplace and the displacement of long-term rentals. Is this what we really want?

We ask that this proposal be considered a little more thoroughly before action is taken. Thank you for the opportunity to testify.

CHAIR PONTANILLA: Thank you. Members, any
questions for the testifier? Member Baisa?

COUNCILMEMBER BAISA: Ms. Reimann, thank you for being here this afternoon. I think the thing that stands out the most in your testimony is the allegation about long-term renters being in these units and being affected. Can you tell me how widespread that -- that -- that is? Do you know?

MS. REIMANN: Well, we did a quick survey just within the last couple days, and we found about 10 percent of the units that we -- or the condo properties that we surveyed had long-term rental units in their properties. So about 10 percent.

COUNCILMEMBER BAISA: So charging higher taxes could have a undesired affect of long-term renters having to pay more rent?

MS. REIMANN: Exactly.

COUNCILMEMBER BAISA: Or being out --

MS. REIMANN: Out. (Inaudible).

COUNCILMEMBER BAISA: -- which doesn't help at all.

MS. REIMANN: No.

COUNCILMEMBER BAISA: Okay. Thank you very much.

MS. REIMANN: Thank you.

CHAIR PONTANILLA: Thank you. Members, any
more questions? Member Nishiki?

COUNCILMEMBER NISHIKI: What does 10 percent represent in numbers?

MS. REIMANN: Well, if you take the 9,200 units that are currently in the market, if you -- if we could extrapolate that, that would be like 900 units. But I'm not saying that we should do that because we just did a quick and dirty survey. I think more information is needed and we need to dive a little deeper.

COUNCILMEMBER NISHIKI: Let me ask you this. Many people depend upon Government to -- to do their dirty work. And -- and -- and -- and, obviously, when Government comes out with something that perhaps affects them, then we get the repercussions as we are today. Where does private industry stand in its hand to really work this out?

MS. REIMANN: Well, I think the condo folks came out in droves today to say that they're willing to come to the table and help with the self-regulation. And -- and I think they're ready to help out and meet you halfway.

COUNCILMEMBER NISHIKI: Thank you.

CHAIR PONTANILLA: Thank you. Ms. Reimann, since you're so familiar with numbers, do you know how
many AOAO type of organization here on Maui, as well as homeowner's association?

MS. REIMANN: I would have no idea. I think the condo folks here, maybe the Maui Condo Council representative here, might have a better idea.

CHAIR PONTANILLA: The only reason --

MS. REIMANN: I could tell you how many hotel properties.

CHAIR PONTANILLA: -- I ask is that, you know, like Member Nishiki had noted, that if every association or homeowner's -- homeowner's association and association of apartment owners would come forward, you know, because we really don't know the numbers here --

MS. REIMANN: Correct.

CHAIR PONTANILLA: -- on Maui. And if we're talking about hundreds, then it might be an issue. But, again, you know, I -- I guess all of us here, you know, are listening.

MS. REIMANN: Right. Well, it's new territory. But I'd say, you know, going through the homeowner's associations or property management firms would be far easier than tracking down each individual person.

CHAIR PONTANILLA: Uh-huh. Thank you. Member Medeiros?
COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman.

Ms. Reimann, thank you for your testimony. I -- I just wanted to follow up on Member Nishiki's inquiry about the long-term rentals. So long-term would be more than 180 days, because 180 and below is the short-term rentals, the TVRs. So if someone, a long-term renter rents the unit for a year or more, that means the condo owner doesn't use their unit, then?

MS. REIMANN: Correct.

COUNCILMEMBER MEDEIROS: So they would have to give it up to long-term? They would -- they would --

MS. REIMANN: Short-term.

COUNCILMEMBER MEDEIROS: -- rent it for long-term and give up their chance to use the condo, then?

MS. REIMANN: Correct.

COUNCILMEMBER MEDEIROS: Okay. Thank you for that information. Mahalo, Mr. Chairman.

CHAIR PONTANILLA: Thank you. Members, any more questions? Seeing none, thank you again.

MS. REIMANN: Thank you.

CHAIR PONTANILLA: Donovan, followed by Fred Roseberry.

MR. DONOVAN: Aloha. Good afternoon. Tom Donovan, the Vice President, General Manager of the
Ritz-Carlton Kapalua. Thank you. I have -- I'm on both sides of the fence because I have the hotel side as well as the residences, the timeshare, everything that goes with it. It's very interesting complex.

One of the things I wanted to talk to you about today is, obviously, what Carol was bringing up, was taking some further time to look at this. One of the things that I think has come up, and I think a really strong way of looking at it, is this self-policing by the association boards. It's -- it's not a secret that if you're in an association, 50 units in there, and 25 units rent them short-term, and 25 units do not rent, they keep it for their own use, which many of our condos do, that those short-term renters do use more of the services of those associations. Those associations, I think, would be very willing to bring to the table who is renting short-term and who is not renting it -- not renting it out to people. And that way, we could really come up with a great number for this.

I just think by going out there and saying -- you know, I have a -- a -- 82 units of -- of residences, okay, they're not timeshare, 82 wholly-owned residences. By saying all 82 are gonna get taxed the same way, whether they're using it for their own personal use or
they're renting it out short-term, really puts an un-
unfair burden on those people that are just coming to
use their condo for three, four, five months out of the
year and it sits vacant the rest of the time because
they don't wanna rent that unit. For those people that
are renting it out for a week or two weeks at a time, I
-- I think that should be a different tax base. And I
think there's a way to self-police this where it doesn't
have to be across the board for everyone paying the same
tax purposes there.

So I came to tell you about that. I'd love
you to look at that a little more and, hopefully, come
up with a little bit better solution.

CHAIR PONTANILLA: Thank you. Member Johnson?
COUNCILMEMBER JOHNSON: Yes.

(Claruse).

COUNCILMEMBER JOHNSON: I wanna find out, too,
because, I guess, the other -- the other issue that's
arisen in past conversations -- and -- and if you don't
know how to answer this, I understand -- but many times
when people go to sell their property --

MR. DONOVAN: Uh-huh.

COUNCILMEMBER JOHNSON: -- do the people who
are in the rental pool get a consistently higher price
than the people that are not in the rental pool? Or
because they could use it in the rental pool, when they
go to sell it, is the price the same? So let's say
they're asking $1 million --

MR. DONOVAN: Okay.

COUNCILMEMBER JOHNSON: -- for their property.

If the people just close the door and they maybe use it
a couple times a year, are they gonna get a lower price
than the other guy that consistently rents it out and
has a rental income?

MR. DONOVAN: You mean in terms of selling it
at the end?

COUNCILMEMBER JOHNSON: Yeah. Actually --

MR. DONOVAN: I don't --

COUNCILMEMBER JOHNSON: -- selling it.

MR. DONOVAN: I don't think that's gonna
dictate the price of the sale in terms of those condos.

COUNCILMEMBER JOHNSON: Okay. Because the

sale is predicated on best and highest use.

MR. DONOVAN: Well, the -- the sale is -- is
predicated on what that real estate is worth. Whether
it's to the person that's going to buy the condo just to
say, I want the million dollar condo for my availability
whenever I come to Maui, I wanna live in it full-time,
or I wanna put it into a rental program, whichever the
-- the value that that buyer sees in it in terms of the
price.

COUNCILMEMBER JOHNSON: Okay. So you're saying that it doesn't have any bearing, then, whatever the use is?

MR. DONOVAN: Again, I'm not a real estate expert.

COUNCILMEMBER JOHNSON: Okay.

MR. DONOVAN: But in terms of what I've seen, no. Because it -- it really does come down to what that -- that buyer sees in the value of that property in terms of what dictates that price.

COUNCILMEMBER JOHNSON: Okay. But you haven't seen -- because you're not in the real estate side, you haven't seen a dramatic disparity if a property is located in a certain place, it's just that's what the traffic will bear if people wanna live there?

MR. DONOVAN: Absolutely. Now, I've been in -- in -- on COA boards now for about eight years. I was in Vail, Colorado for four years doing that in -- in a resort community, and now I've been in this resort community doing the same thing. So in terms of that experience, I have not seen it where a rental unit goes for a higher price than a very similar unit that's not in the rental program.

COUNCILMEMBER JOHNSON: Okay. And -- and on
the converse, I know that, at times, different people
have said, oh, I don't wanna go into those units because
there's continuously people coming in and out of them,
it's very noisy. So from a residential quiet
perspective, have you seen prices be maybe negatively
impacted because there's a continual turnover over
short-term rental?

MR. DONOVAN: I have not seen that.

COUNCILMEMBER JOHNSON: Okay. All right.

MR. DONOVAN: (Inaudible).

COUNCILMEMBER JOHNSON: Thank you.

CHAIR PONTANILLA: Thank you. Members, any
more questions for the testifier? Member Baisa?

COUNCILMEMBER BAISA: Thank you, Mr. Donovan,
for being here.

MR. DONOVAN: Sure.

COUNCILMEMBER BAISA: Earlier, it was brought
up the subject that we had asked a condo association if
they would be willing to help us with identifying, you
know, who's short-term, who's long-term, what's going
on. And we were told, oh, well, that's too much work
and we don't wanna do it. But I heard you say you would
be willing to.

MR. DONOVAN: Sure.

COUNCILMEMBER BAISA: You know, it would
appear to me -- and I'd like your opinion -- that if
this would help in some way to prevent this lumping of
everybody together, might it not be worth the effort on
beheart of the -- on behalf of the (inaudible) to play
ball with us.

MR. DONOVAN: It's not very difficult to do.
So I -- you know, and -- and, again, people might have
other opinions, but I do know that when you're looking
at 100 condos --

COUNCILMEMBER BAISA: Yes.

MR. DONOVAN: And, again, 50 are renting
short-term, 50 are not. Well, the 50 that are not
renting, they -- you know, they will use different
services. And the 50 that are renting short-term are
using, you know, a little more services. So I think
when you talk to a whole -- a whole association group, I
think that I'd be in favor of it. Now, again, I still
don't think that might be ideal for some of the people
sitting here, but at least it makes it fair and balanced
as opposed to all 100 are gonna pay for this best use
practice. And I think we can easily come up with a way
to say who's short-term and who's not.

COUNCILMEMBER BAISA: Thank you very much. I
really appreciate your -- your explanation. Thank you.

MR. DONOVAN: Absolutely.
CHAIR PONTANILLA: Thank you, Member Baisa. Members, any more questions for the testifier?

MR. DONOVAN: Aloha.

CHAIR PONTANILLA: Thank you very much. Fred Roseberry, followed by --

(Applause).

CHAIR PONTANILLA: -- Krishna Narayan.

MR. ROSEBERRY: Aloha, Chair and Council Members. My name is Fred Roseberry. I'm an owner of a condo unit in Lahaina Roads, have been for many years. I echo all of the sentiments that have been set forth and I would agree with 'em. However, I think the main purpose that the Council is looking for is to help solve a financial problem. It can be done in other ways. There are two ways that are in the County Council prerogative here in Maui, and there are at least two or three ways that do require State action.

Number one, like Mr. DeLeon pointed out, need to streamline the appeals process. If you don't streamline it, you have an appeal, the money's tied up.

And, number two, the County can foreclose on real property when real property taxes have not been paid. It's my understanding -- and I have been told there has been no County real property tax foreclosure in the last 10 to 15, and probably 20 years -- there are
many millions of dollars that can be collected simply by the County filing a real property foreclosure action.

Now, number one, I think the filing of the action will produce dollars right off the bat. I don't think you're gonna have to go to court, but maybe. But if you do go to court, you're ahead of any mortgage or lender. So you can take over and sell the -- the condo, even in this market, to recover the real property taxes.

And, number two, if you do that, there are a lot of mortgages that do not impound real property taxes. And if there's a threat of a real property foreclosure lien by the County, you're gonna find these lenders coming up with some money real quick. And they're gonna charge back their lenders -- back their borrowers.

Those are in the prerogatives within the County of Maui's prerogative. They can do -- do that with no further modification to any State law.

There are a couple of other things that the State can do that will help the County. Number one, Hawaii is a state that has tax deeds; they do not have tax liens. You cannot go buy a tax lien. I think that should be changed. I think there should be tax liens. We should change it to a tax lien state. The County can sell the lien to an investor, like me, who will pay the
County the money, the County gets the money, and then, later on, if the taxes are not paid, I can foreclose on the unit and the County does not have to go through the cost of the foreclosure unit. But that does require a State change.

And, number two, the interest rate that the State allows is horrible. Eight percent.

MS. REVELS: Three minutes.

MR. ROSEBERRY: Texas has 20 percent. So if -- if the State law was changed -- also, I think the State law would -- should be changed to allow tax -- County tax liens to be a prior lien ahead of mortgages, even if the mortgage is subsequently recorded, or -- or prior recorded. And I think that'll produce millions of dollars for the County.

Thank you. I appreciate it.

CHAIR PONTANILLA: Thank you. Members, questions for the testifier? Seeing none, thank you again.

VICE-CHAIR MATEO: Chairman?

COUNCILMEMBER VICTORINO: Chair. Chair.

CHAIR PONTANILLA: Oh, I'm sorry. Mr. Mateo?

VICE-CHAIR MATEO: Chairman, just for clarification for Mr. Roseberry, the County did have a foreclosure sale a week ago.
MR. ROSEBERRY: Oh.
VICE-CHAIR MATEO: So --
MR. ROSEBERRY: They did?
VICE-CHAIR MATEO: So pick up "The Maui News" and read.
MR. ROSEBERRY: Well, I don't get it daily. I only get it on Sunday, so I -- sorry about that. I didn't know. But I have been told that there was never -- had ever -- well, this was a couple, three months ago. I was told there was no foreclosure action, and, in fact, they were gonna have to go to other counties to find out how to do it. But the corporate counsel should be able to take care of that without any trouble.
VICE-CHAIR MATEO: Thank you.
MR. ROSEBERRY: Thank you.
MR. NARAYAN: Good afternoon. My name is Krishna Narayan. I live in West Maui. And my family and I actually moved here a year ago. We established, in 2008, actually, a software development company. It's always been our long-term goal to move to Hawaii. 2009 was a very difficult time to move given all the economic situations.
We have a condo. And we are very appreciative
that the proposal here keeps the homestead exception.

So thank you for that. I know a lot -- not a lot of people have thanked you for things today, so let me just say thank you for that first.

I think a couple of points I'd like to make.

One, I think more time needs to be set --

needs to be taken to look at these considerations and these problems. A lot of good testimony today in terms of not rushing into something.

Point number two, the market out there is abysmal. And anything you can do to keep people in their condos or attract people who do have money in the marketplace that do wanna invest in Hawai'i by perhaps even lowering the tax rates, and publicizing that, I think it would be very beneficial. It's counterintuitive. It's something that nobody's doing in the country right now. And, obviously, this is an asset that people want and will attract people to come here. So I'd encourage you to maybe think about that, also.

I think the last point to make is moving everything to one level doesn't make any sense whatsoever, for a variety of reasons that have been stated today. But more so, it penalizes people more than it helps.

CHAIR PONTANILLA: Thank you. Members,
questions for the testifier? Seeing none, thank you
again.

(Applause).

CHAIR PONTANILLA: Robert Ehrlich, followed by
Jim Besaw.

MR. EHRLICH: Thank you, Mr. Chairman, Council
Members. My name is Robert Ehrlich and I'm the
President of the Ironwoods Association -- Homeowner's
Association in Kapalua.

And interestingly enough, from all of the
testimony here, I think we have a little bit of
uniqueness to our particular complex. 85 to 90 percent
of our owners are second family homes. We have
approximately, I think, 12 percent of the owners who
actually rent, and they rent short-term. There are no
long-term rentals in our project.

It seems to me that the best use approach is
gonna be unfair to 88 percent of the owners of the
Ironwoods who choose not to rent, who are owners who
come here for four to six months a year at the -- you
know, during the wintertime, during the summertime. And
they're gonna be unfairly penalized, as that gentleman
just flippantly stated, because 10 percent or 12 percent
of the owners chose to use short-term rentals. It seems
to me that the real issue here is how do we really get
the homeowners who are renting and who are not identifying them as renters on their tax identification forms to enforce. And I think that's really the issue. I -- I heard from Penny earlier who said something about having the owners who file their affidavits. I know I personally sign an affidavit under penalty of perjury. And when you do that, I think you have to sit back and really think about the representation that you're making when you are signing a declaration under penalty of perjury.

So I think, you know, while this is a very important issue, it's a budget issue that you have to meet for your County, I think it takes a little bit more thinking, as other witnesses testified. Perhaps this is something that associations can participate in. I welcome the opportunity to be a part of that on an ongoing basis. So I -- I think there is more discussions, more opportunities to find other ways to get the monies that are needed for this Budget.

Thank you.

CHAIR PONTANILLA: Thank you. Member Johnson?

COUNCILMEMBER JOHNSON: Do you know what the zoning is for the Ironwoods?

MR. EHRLICH: Yes. I forgot to mention that. We are zoned Apartments.
COUNCILMEMBER JOHNSON: You're zoned Apartment, okay.

MR. EHRlich: Yes.

COUNCILMEMBER JOHNSON: All right. Thank you.

CHAIR PONTANILLA: Thank you. Members, any more questions? Member Medeiros, followed by Member Nishiki.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Good afternoon.

MR. EHRlich: Thank -- good afternoon.

COUNCILMEMBER MEDEIROS: You -- you mentioned in your testimony that possibly 80 to 85 percent were second home -- these were their second homes?

MR. EHRlich: Yes.

COUNCILMEMBER MEDEIROS: So is that meaning that the rest of the percentage, that's their primary home and they live there full-time?

MR. EHRlich: No, no. The other 12 percent --

COUNCILMEMBER MEDEIROS: Uh-huh.

MR. EHRlich: -- may rent their units for short-term rentals.

COUNCILMEMBER MEDEIROS: Okay. So -- and -- and the higher percentage is just that that's their second home, they don't rent it?

MR. EHRlich: That is correct.
COUNCILMEMBER MEDEIROS: I see. Thank you for that information. Mahalo, Mr. Chairman.

CHAIR PONTANILLA: Thank you. Member Nishiki?

COUNCILMEMBER NISHIKI: Yeah. The affidavit of perjury was your Association's way of tracking short-term from long-term? Is that what you signed? What -- what did you sign?

MR. EHRLICH: No. I was -- I was referring --

COUNCILMEMBER NISHIKI: (Inaudible).

MR. EHRLICH: I'm sorry. I was referring to a personal declaration under perjury that I signed for some business disclosures, that I was just saying I think it raises the level of consciousness to the person who's signing that affidavit to take a little bit more real conscious decision as to whether they're gonna be truthful or not.

COUNCILMEMBER NISHIKI: Yeah, I -- I got it. Thank you. And -- and in your association, there is -- right now, as we speak, aside from what you've revealed to us, 15 percent are vacation rentals. Does that have to be represented in a document to the association? How did you get that information?

MR. EHRLICH: We require anyone who comes into our property to sign in with our general manager. And it's required to identify yourself as a -- a guest of an
owner or a renter, if you're a renter. And so that's where I arrived at the 12 percent. That's actually what I think it is. It's somewhere between 10 and 12 percent of the owners who actually may rent their units for short-term rentals.

COUNCILMEMBER NISHIKI: Okay. Thank you very much.

CHAIR PONTANILLA: Thank you. Member Baisa?

MR. EHRLICH: Thank you.

COUNCILMEMBER BAISA: Yes. Thank you.

CHAIR PONTANILLA: Excuse me.

COUNCILMEMBER BAISA: Mr. -- hang on --

CHAIR PONTANILLA: Mr. Ehrlich.

COUNCILMEMBER BAISA: -- a second. Just one last question.

MR. EHRLICH: Sorry.

COUNCILMEMBER BAISA: In your testimony, you mentioned that many of you, this is a second home for you, which tells me you have a home somewhere else. Comparatively, what are the property taxes like where you have another home and here on Maui?

MR. EHRLICH: Well, I live in the state of California at -- when I'm not here in Maui. And are -- we have a cap of one percent of the valuation.

COUNCILMEMBER BAISA: You have a cap of one
percent of the valuation?

MR. EHRLICH: Yes.

COUNCILMEMBER BAISA: Thank you very much.

MR. EHRLICH: You're welcome. Thank you.

CHAIR PONTANILLA: Thank you. Mr. Ehrlich, just to clarify, you say your -- Ironwoods is in the Apartment-zoned area?

MR. EHRLICH: Yes.

CHAIR PONTANILLA: Yeah. And -- and your highest and best use, again, would be apartments, it's not gonna change.

MR. EHRLICH: I'm sorry?

CHAIR PONTANILLA: If -- if you are zoned Apartment, then it -- it remains Apartment --

MR. EHRLICH: Yeah.

CHAIR PONTANILLA: -- unless if you're a homeowner --

MR. EHRLICH: Well, I was referring to that best use --

COUNCILMEMBER BAISA: (Inaudible).

MR. EHRLICH: -- approach or application. And if --

COUNCILMEMBER BAISA: (Inaudible).

MR. EHRLICH: If the 10 percent were renting their unit, I thought I was under the impression that
that would be kind of a broad brush for the entire complex. If I'm wrong, that's good news.

CHAIR PONTANILLA: Okay. Thank you.

COUNCILMEMBER VICTORINO: (Inaudible).

CHAIR PONTANILLA: The next testifier is Jim Besaw --

MR. EHRLICH: Thank you.

CHAIR PONTANILLA: -- followed by Lora Yadao.

MR. BESAW: Mr. Chair, Members, my name is Jim Besaw. I live in a condo about six months of the year at the Polo Beach Club in Makena. And I do not rent my unit. I -- I enjoy the time I'm here and I enjoy not having to have to work with renters.

If I may digress a little, I'd like to -- to mention or talk about the -- the cheaters. I had no idea there were that many cheaters on this island. And I think we already have two things, a lot of 'em have been discussed already.

One is the affidavit or declaration. I see no reason why a manager would have a problem signing a declaration if somebody was gonna send in that form to declare a residency. The manager's not gonna lie for somebody and -- and have a potential liability himself. So that's the first thing that should solve most of that problem.
The other thing that -- that you have already is a penalty. If one does not pay your property taxes, it's a pretty severe penalty. And if you discover that somebody has not been paying their -- their proper property taxes for the last five years, then they have to pay all of those back -- excuse me -- (cough) -- those back issues or back payments. That's gonna be a severe penalty. I think people will think twice before they decide to cheat and -- and get caught five years down the road, or 10 years or whatever.

So with that out of the way, I'm here, of course, to disagree with the potential for my unit to be considered a -- a rental unit, short-term or timeshare. I think it's a -- that broad brush that other people mentioned is patently unfair.

If we wanted to take this a few steps further, you could pretty much declare any condo in Maui a long -- or short-term rental because that's its highest and best use. You can take that condo and say, you know what, if you rent that condo out short-term, you can make 100,000 a year. Economically speaking, that's the highest and best use for that condo. I choose to think, as somebody said, my highest and best use is to live there by myself and not have somebody break my furniture or whatever.
I also would like to argue in favor of those of us who don't live here full-time. We have a -- a much less burden on the -- the infrastructure of Maui. We use the facilities less, the roads less. We don't pollute the air. And we -- we just use all those facilities less. And, therefore, from my -- if I wanna argue this point, I'd say that we should have less of a tax than those who live here full-time. I'm not advocating that, but I'd just like to argue that to -- to put me in the category of somebody who rents their unit full-time is not fair.

And I think the other thing that you're doing here is you are actually promoting people who wanna cheat to get away from paying this higher taxes, especially if it's not fair. You will overburden the Tax Appeals Board, which is already overburdened. I think you open up for --

MS. REVELS: Three minutes.

MR. BESAW: -- for -- for lawsuits and protests and bad P.R. And -- and as somebody else has mentioned, you also further repress the already rather economic housing market. So I'd suggest we take a better look at this. Thanks for your time.

CHAIR PONTANILLA: Thank you. Questions?

Member Johnson?
COUNCILMEMBER JOHNSON: Yes. Do you -- do you know what your zoning is?

MR. BESAW: It's Hotel/Condo.

COUNCILMEMBER JOHNSON: Okay. So you would be in the Hotel class?

MR. BESAW: Yes. But I'm not personally. And that's my argument.

COUNCILMEMBER JOHNSON: Yeah. Yeah. I just wanted to make sure 'cause some of the people, you know, are, I guess, assuming they're gonna automatically go into the highest class, but it's predicated upon zoning. So that's why the Chair had mentioned earlier. So if you're in the Hotel zone classification, then you're correct.

MR. BESAW: I -- I might also argue that there should be a grandfather consideration. I -- I've lived in -- or I've owned this condo for 25 years. And I've been enjoying this lower tax rate because I don't rent my unit. To now force me into that because I happen to buy in a place that other people rent is not fair.

COUNCILMEMBER JOHNSON: Okay. Thank you.

CHAIR PONTANILLA: Thank you. Members, any more questions?

COUNCILMEMBER VICTORINO: (Inaudible).

CHAIR PONTANILLA: Member Victorino?
COUNCILMEMBER VICTORINO: Yeah. Thank you.

CHAIR PONTANILLA: Excuse me.

MR. BESAW: Yes.

COUNCILMEMBER VICTORINO: Yeah. Thank you. I thought it was an interesting dynamic that you said that maybe you should get a reduction 'cause you're here five months out of the year. Back where you come from -- and where do you come from, sir?

MR. BESAW: Southern California.

COUNCILMEMBER VICTORINO: Southern California. Do they give you a discount if you're not there for five months, six months?

MR. BESAW: No. But they don't charge me more for -- for living there six months of the year.

COUNCILMEMBER VICTORINO: Okay. Your -- your tax base there -- what is your tax base there?

MR. BESAW: Like the other man said, it's one percent.

COUNCILMEMBER VICTORINO: What is one percent? Give me -- give me an amount that you pay a year for your -- for your --

MR. BESAW: That would be relative to what my house is worth.

COUNCILMEMBER VICTORINO: Okay. And what is your house worth?
Mr. Besaw: I don't think that's relevant.

Councilmember Victorino: Okay. Well, what kinda taxes you pay?

Mr. Besaw: One percent.

Councilmember Victorino: 'Cause it's -- it's relevant -- and you're -- you're getting -- and I guess the question I'm trying to get to is this, sir. And I'm not trying to play the devil's advocate, but I will 'cause I have talked to some of these people in the past. And I -- I want you guys to understand there's a couple of dynamics you guys bring to Hawaii. You been here -- for 20-something years, you been coming here. And we appreciate that. And for the longest time, nobody came to see us about anything except the regular everyday people that were struggling to survive here, that saw their homes escalate out of sight because of all the new people coming here. And now we're trying to find some equity in this. Okay. Equity all around, sir, for those who live here and for those who come here and enjoy here. Okay. So I just wanted to make sure that when I'm asking you these questions, it's not (inaudible) it's relevant or not because it's something I'm asking 'cause I really wanna know. Because I can tell you what my tax is. I can tell you what my son tax is every year. And he lives in Nevada. And he pays
$8,000 for his homeowner's. And I pay $800 a year for my homeowner's. That was the question, sir. So I'm just trying to get some clarity because when I go someplace else, if I wanna live there, I understand the tax structure there, then I understand that that's what I've got to pay because I choose to live there. I have no choice. I live here. I have no place else but one to live, right here. And that's all we're trying to get now, is some fairness. This best use is being brought up because too many people for the longest time did take -- when Polo Beach was built, was it built for rental purposes?

MR. BESAW: I believe it was.

COUNCILMEMBER VICTORINO: Okay. So you knew when you went in that they were going to do it for rental purposes?

MR. BESAW: That's correct.

COUNCILMEMBER VICTORINO: That is correct?

Okay. Thank you. That's all I needed to know.

MR. BESAW: But I'd like to maintain I should be taxed on what I use it for, not what it could be used for.

COUNCILMEMBER VICTORINO: Thank you.

MR. BESAW: I respectfully disagree with you, sir.
COUNCILMEMBER VICTORINO: No. That's okay.

And that's -- that's all part of it. Thank you, sir.

CHAIR PONTANILLA: Thank you. Any more questions? Seeing none, Lora Yadao, followed by Pat Sullivan.

MS. YADAO: Hi. I'm Lora Yadao. And I'm way out of my comfort zone, so thank you for bearing with me today.

I'd like to put a face on who the highest and best use condo designation will hurt. I work at an elementary school in Lahaina, and my husband is a landscaper. We live in a modest plantation house off Lahainaluna Road. Neither of us has a pension. The Honokowai condo we rent out to long-term tenants is, basically, our retirement plan. It was our first home and we bought it before condo prices skyrocketed. We could have it in short-term rental, but that would not be helping our community the way renting it out long-term does. We don't even break even in the current economy. I've had to get a second job to make up the difference.

Besides hurting us, this new tax would also hurt the families we help. Our current tenants are a Maui Police Department officer and his wife who's expecting their first child. Before that were a single
mom who worked in the hotel industry and her small
child. None of us are getting rich out of this
arrangement; we're just getting by.

Please consider the other options such as
enforcing the higher rate currently in effect for
short-term rentals and perhaps instituting fines for
those who do not comply.

The AOAOs have the information you need. They
routinely have to supply that to lenders who request it.
So the information is readily available for you. And
we've seen a real willingness -- excuse me -- for people
to share that. I think that would help to rectify
a situation without further hurting the people who are
already hurting.

Thank you so much for your time today.

CHAIR PONTANILLA: Thank you. Members,
questions?

(Applause).

CHAIR PONTANILLA: Member Johnson? Excuse me.
COUNCILMEMBER NISHIKI: Yeah.
CHAIR PONTANILLA: Ms. Yadao.
MS. YADAO: No quick escape.
CHAIR PONTANILLA: Member Johnson, followed by
Member Nishiki.

COUNCILMEMBER JOHNSON: Yeah. I -- I just
wanted to find out, what -- do you know what your zoning
is?

MS. YADAO: It's Hotel/Condo. Apparently,
back in the seventies, it was an actual active vacation
destination --

COUNCILMEMBER JOHNSON: Okay.

MS. YADAO: -- single use place. And they
never changed the designation. So it does -- this would
impact it (inaudible).

COUNCILMEMBER JOHNSON: And is it on the makai
side?

MS. YADAO: It is.

COUNCILMEMBER JOHNSON: Okay.

MS. YADAO: It's on the makai side, yeah.

COUNCILMEMBER JOHNSON: Okay. Thank you.

MS. YADAO: Thank you.

CHAIR PONTANILLA: Thank you. Member Nishiki?

COUNCILMEMBER NISHIKI: Yeah. Lora, can I ask
you, then, the AOAO has sent to you and asked you
whether you rent your unit long-term or short-term, is
that --

MS. YADAO: That --

COUNCILMEMBER NISHIKI: -- something that --

MS. YADAO: I recall that being asked of me a
couple of years ago when one of our owners wanted to
refinance, and their lender was requiring it. And then, all of a sudden, that, apparently, became commonplace, that people seeking to purchase a condo in our complex, their lender was wanting that information, or people who were current owners wanting to refinance needed to provide that information. So a lot of your AOAOs are already going to have that kind of information available to you and -- and I'm sure would be very happy to provide it if -- if they don't already, especially in light of what we've heard today.

COUNCILMEMBER NISHIKI: Thank you very much.

Thank you --

CHAIR PONTANILLA: Thank you.

COUNCILMEMBER NISHIKI: -- Mr. Chairman.

CHAIR PONTANILLA: Thank you. Members --

COUNCILMEMBER NISHIKI: Yeah.

CHAIR PONTANILLA: -- any more questions?

Member Victorino?

COUNCILMEMBER VICTORINO: Yeah. And thank you, Ms. Yadao, for being here. I don't wanna make you out of your comfort zone. So don't cry now. Okay? Sometimes, you know, people cry. And I don't want them to do that. I want to ask you, on -- on this second -- you live in Lahaina and you own another place.

MS. YADAO: Right. It was the --
COUNCILMEMBER VICTORINO: Right.

MS. YADAO: It's in Honokowai, the condo.

COUNCILMEMBER VICTORINO: In Honokowai?

MS. YADAO: Uh-huh.

COUNCILMEMBER VICTORINO: And the first house

is where you guys live and then you rent this place

(inaudible)?

MS. YADAO: Correct.

COUNCILMEMBER VICTORINO: Okay.

MS. YADAO: The condo we originally lived

in --

COUNCILMEMBER VICTORINO: Right.

MS. YADAO: -- when we first got married. We

fixed it up and lived in it for a few years. And then,

with my husband's landscaping equipment, we needed a

bigger place. So we were able to -- to get the house

and rent this out. But we had to use the equity in the

condo to -- to get it. So --

COUNCILMEMBER VICTORINO: Right.

MS. YADAO: -- we're maxed out. We're not

living large by any stretch of the imagination.

COUNCILMEMBER VICTORINO: I can -- I can -- I

can relate to that because where I'm at today is only

because I bought one house and then bought another one

and sold to get to where I'm at today. So I understand
that part. What I wanted to ask you is in -- in -- in -- you mentioned about living there for a few years. While you were living there, what was the percentage of residential or long-term rentals that you noticed that were there while you were there?

MS. YADAO: Let me think for a minute. Honestly, when we lived there, I've -- it was mostly owner-occupied.

COUNCILMEMBER VICTORINO: Owner-occupied.

MS. YADAO: With just a -- a few -- a small percent of long-term renters. And then when prices skyrocketed a few years ago, then people started to buy it and use it for short-term rentals and -- you know, instead. So that percentage has changed now due -- due to that occurrence over the last couple years. But when we first moved in, it really seemed to be mostly people that lived there and owned with a few long-term rentals.

COUNCILMEMBER VICTORINO: Thank you very much, because you are addressing what we are looking at. I wanted them to hear that because you've been around a long time and you've seen the change and you're one of those that have been a -- a face behind the change. And now we are forced to make other changes because of what has occurred. Thank you very much.

CHAIR PONTANILLA: Thank you. Next testifier
(Applause).

CHAIR PONTANILLA: -- Pat Sullivan. Members, I'm looking at the time. Pat Sullivan will be the last testifier before we take a short break. And when we get back, the testifier will be Sara Gadarian. So, Pat.

MR. SULLIVAN: Good afternoon, Chairperson and Council Members. Pat Sullivan. I've had a real estate company for 30 years in Lahaina. And presently, I have about 150 vacation rental units that I do. And I would have to agree with Penny Munroe's statement about working with Government as well as working with the private sector to try to come up with a plan that will work. Because I think there's enough people here that have commented to the extent that there needs to be a practical way to approach this.

I represent a -- a lot of people at the Sands of Kahana. And there's actually 50 -- 52 individual owners that own there and there's 144 timeshare owners. And that has not changed since the year 2000. And so for the highest and best use, if you're going to then change it to the highest and best use, at $14 per thousand, the people that are at -- using it on an infrequent basis, whether it's four months or six months, they're gonna be severely affected by the
fourteen-dollar per thousand. So my recommendation
would be somehow that the private and public sector get
together and work something out and make it all work.

CHAIR PONTANILLA: Thank you. Members,
questions for the testifier? Just for class --
clarification, the Timeshare rate is $14. And unless
you're exempt, you know, right now, we not looking at
$14 as highest and best use for the category that we
looking at. Again, early, I made the statement that
through HRS Statute 514E, unless you're a timeshare,
then you'll be at the Timeshare rate. So I -- I just
wanna clarify that.

MR. SULLIVAN: So, just for my understanding,
then, the $14 for the other 52 owners that are in there
that are either doing vacation rentals or are
owner-occupants or --

CHAIR PONTANILLA: Unless you're designated as
a Timeshare.

MR. SULLIVAN: Unless you're designated.

CHAIR PONTANILLA: Yeah.

MR. SULLIVAN: See, what my understanding was,
that if the project was a Hotel zone and you had a
timeshare in there, then the whole project would then be
considered taxed at the Timeshare rate. But that's not
correct?
CHAIR PONTANILLA: No, that's not right.

MR. SULLIVAN: Okay.

CHAIR PONTANILLA: Thank you.

MR. SULLIVAN: Then I stand --

CHAIR PONTANILLA: Okay.

MR. SULLIVAN: -- corrected.

CHAIR PONTANILLA: Members, we're gonna take a 10-minute recess and then, when we get back, we'll have Sara Gadarian as the next testifier. This meeting is in recess. ...(gavel)...

RECESS: 2:59 p.m.

RECONVENE: 3:12 p.m.

CHAIR PONTANILLA: ...(gavel)... The Budget and Finance Committee meeting is now reconvened. Members, the next testifier is Sara Gadarian, followed by Blackie Gadarian.

MS. GADARIAN: You get the soft --

(Laughter.)

COUNCILMEMBER JOHNSON: Destroying County property.

COUNCILMEMBER VICTORINO: (Inaudible).

MS. GADARIAN: Well, start with the soft approach and then get this -- the hard approach from the man in orange.

Sara Gadarian. We have had a condominium at
Maui Eldorado for 35 years and lived in it full-time for 30 years until we moved down to our machine shop in Lahaina. So we have just recently rented out the condominium to a lovely couple who work here in the visitor industry. And, fortunately, they are able to pay the rent. And just as another individual testimony, that it comes out okay for us, including our common element and the cost of the unit at taxes at the current value of 200 a month. If this is enacted, it's in a Hotel zone category, they would have a direct -- we would have a direct impact of another $250 a month based on what units are paying, one-bedroom units are paying at the Maui Eldorado. So that is an indication of one person's impact. And they are a long-term rental. And it would be an impact on them being able to stay as tenants in our condominium.

One thing that -- hearing this, I suggest that the Council do a survey of the number of condominiums that are there. I'm not sure that you have had your staff do a survey or investigation of the number condominiums and how each category would be affected monetarily before you enact this change.

That's our personal side of the -- the issue.

Thank you.

CHAIR PONTANILLA: Thank you. Members,
questions for the testifier? Seeing none, thank you again. Blackie Gadarian, followed by Pam English.

MR. GADARIAN: A hard act to follow. I'm not one of those with the strange strategic statistics to put out. I'm just one of the (inaudible) that makes noise in all your parking lots in the middle of the night working.

One of my questions to the world, or anybody, has been, you speak of highest and best use. Looking around here and there, I find from some advice that highest and best use means everybody tear down this house and put up a 12-story hotel, and then the County would be wallowing in money, if that's what the County wants. Now we get to the part about the great golden bird that flies in for two weeks or a month or three months of the year and owns the place, absentee owner. Let's get him. What we do is forget that they're paying their taxes all year round, they only come here some months a year. They don't use our roads when they're gone. They don't use our sewer facilities, things like that. And we wanna -- nobody hit them. Now I was born as a (inaudible), which I call myself. I know all kinds of people in condos around the west side and Kihei. I see families, two, two families, living in condos, working three jobs, trying to afford living here. And,
of course, (inaudible) the place. (Inaudible) and he's
gotta pass it on. So those families get it.

Up and down Kihei, there's loads of workers,
people like me, plumbers, mechanics, restaurant help. I
drink with 'em, too, but I know how they are. Two or
three jobs and prices keep going up. That's not too
swift. I know that you keep thinking, well, we can get
a hunk of the -- again, the golden bird that comes here
every year, we can get a hunk of him every time. Why
not have a --

MS. REVELS: Three minutes.

MR. GADARIAN: -- turnstile at the airport
where you -- where you charge 'em a couple hundred bucks
just to enter Maui? Maybe you'll get it then. I didn't
give you a bunch of statistics because I don't know any.
All I know is, down here on the ground, (inaudible), the
old congressman, I forget his name, in the Federal
Government once said, "Don't tax him, don't tax me, tax
that fellow behind the tree." And that's about the way
we're all yelling here, us up here, about taxes. Thank
you.

And, furthermore, it would be nice if
(inaudible) Councils --

MS. REVELS: Four minutes.

MR. GADARIAN: It would be nice if we turned
all you people around so I can see your Council faces
when they grimace or laugh or fall asleep. Thank you.

CHAIR PONTANILLA: Thank you.

(Applause).

CHAIR PONTANILLA: Members, questions for our
testifier? Pam English, followed by Larry Ness.

MR. GADARIAN: (Inaudible).

CHAIR PONTANILLA: You're done.

MR. GADARIAN: (Inaudible).

MS. ENGLISH: Aloha, Chair and Members of the
Committee. My name is Pam English with Maui Land and
Pineapple Company.

Thanks for giving us the opportunity for

further discussion on the proposed changes to the real

property tax classifications bill. We understand that

the proposed bill will help with enforcement of the Tax

Code classifications, especially as it relates to

condominium units. We'd like to offer some suggested

revisions to make the bill clearer by addressing some

concerns of interpretation if the bill passes.

Since Timeshare is regulated by the State with

no associated specific County zoning, we suggest that

language remain to clarify when a parcel will be

considered Timeshare. The Chair's already stated this

will be applied only when subjected to a Timeshare Plan.
And this -- our suggested language will clarify this.

Additionally, we suggest language be added to acknowledge cases where recorded restrictions exist that would prohibit TVR even though the underlying zoning would allow such use. For instance, a case where CC&Rs in a condominium project prohibit TVR uses.

Specifically, we respectfully request your consideration of the addition of the following to the proposed revised ordinance in Paragraph B. And you have this, I highlighted it on my letter to you. Number 3, a parcel shall only be classified as Timeshare when the parcel is subject to a Timeshare Plan as defined in Section 51 -- 514E-1, Hawaii Revised Statutes, as amended. And, 4, a parcel that allows occupancy by transient tenants for a period of less than six consecutive months but is restricted by recorded documents that prohibit occupancy by transient tenants for periods of less than six consecutive months shall be classified at the appropriate rate without regard to its highest and best use.

Thank you.

CHAIR PONTANILLA: Thank you. Members, any questions for the testifier? Seeing none, thank you again.

MS. ENGLISH: Thank you.
CHAIR PONTANILLA: Larry Ness, followed by Brett Fahnestock.

MR. NESS: Mr. Chairman and Members, my name's Larry Ness. I've owned two condominiums, one bought 10 years ago and one bought three years ago. You can guess which one is upside down.

On our newest complex, we're only about a year and-a-half into our board. And I can speak from experience that we are experiencing people that are going into foreclosure. We're having people not pay their -- their maintenance fees, of which you can only have about -- $3,600 is all we can attach as far as maintenance fees as far as AOAO's concerned. I'm worried that -- with this particular bill, that others will go into foreclosure and that our association will be in jeopardy, as well as some of the others that are lacking money coming in. If that was to happen, there would be assessments and this thing could spiral out of control where -- I don't know what's gonna happen to some of our units. And I respect (inaudible) -- you guys would reconsider this amendments. Thank you.

CHAIR PONTANILLA: Thank you. Members, any questions for the testifier? Seeing none, thank you again. Brett --

(Applause).
CHAIR PONTANILLA: -- Fahnestock, followed by
Bertram Sugimoto.

MR. FAHNESTOCK: Mr. Chairman and Council

Members, thank you for allowing me to testify today. My
name is Brett Fahnestock. I volunteer as the Board
President at Southpointe. (Clears throat.) Excuse me.
I've got a little cold. And I'm -- also work as a
General Manager of the Polo Beach Club in Makena. And
I'm speaking on behalf of both of the organizations,
but, mostly, on behalf of Southpointe at Waiakoa.

Southpointe at Waiakoa is a 346-unit complex
in Kihei, 15 acres. And, according to the County
website, we are partially zoned as Hotel. How that came
about, I -- I don't really know, but -- and it would --
this bill, if passed without revisions, would create
extreme hardship on Southpointe.

Before I came here today, I was down on the
courthouse steps with our attorney from Southpointe as
we foreclosed on six units. And that means the
association is taking over those units. And we're going
to own them temporarily and try to -- to utilize those
units so the association can continue to function. We
have 30 units that we have on the docket for foreclosure
in the month of August. And so it's a difficult time.

If this bill passes and it does what it seems
like it'll do, it'll have a very negative impact on
Southpointe. And so I hope that you reconsider this.

And what's -- I live in the condo world.

Being a manager of Polo Beach Club and -- and being the
Board President at Southpointe, all of my day, most of
the time, besides my family time, is -- is dealing with
condominium things. And when I heard about this bill, I
thought to myself, I had no idea there were that many
people being dishonest. I don't mean to sound naive,
but when you live in the condo world every day and
that's all you do -- I mean, when I get home, I have 20
Emails from Southpointe. When I go to work, I have 20
Emails from Polo Beach Club. My phone has Emails. I
deal with attorneys and condos constantly. And so when
this bill came down the pike that there are this
tremendous number of people being dishonest, I thought
to myself, I've never had anybody approach me and say,
you know, please be sure that you -- you know, if
anybody ever asks you, that you -- my unit's being
utilized this way. Nobody ever has. And at -- at Polo
Beach Club, every -- when a unit changes hands, if
there's any kind of financing, I'm required to fill out
this document that states how many units are in the
rental pool and how many units are considered second
homes. So, I mean, I provide that information to those
because I'm required to do that for -- to that -- that's part of my responsibility. So I -- I don't really know -- there -- I know -- just like in -- in various laws, there are people who -- who don't follow the rules, but there's gotta be a solution.

MS. REVELS: Three minutes.

MR. FAHNESTOCK: And I think we can -- you know, if -- if 514B can be created, that big thick condominium law can be created, and we can go by all these rules for condos, there's gotta be a way that we can clarify who's using their unit in what way. I don't know voluntarily if it will really work. I mean, I would love to say that it would, but people are gonna be dishonest. If they're -- if they are dishonest, they're gonna continue to be dishonest, unless there's a consequence. So -- but I think if we sit down and -- and there's some bill passed to force managing agents or managers to -- or boards to -- to give you the documents you need, tell you who's using it for what, I think you'll get that information. I really do. I -- we certainly can work together to try to make it happen.

Thank you.

CHAIR PONTANILLA: Thank you. Members, questions for the testifier?

(Applause).
CHAIR PONTANILLA: Member Victorino?

COUNCILMEMBER VICTORINO: Yeah. Thank you.

And thank you, Mr. Fahnestock, for your testimony, yeah.

Let me ask you -- because you're talking two different

-- I -- I -- I really call different dynamics as far as

condos. Am I correct that Southpointe is a lot more of

what I call long-term renters, owner-occupants and Polo

Beach is more of the short-term kind of vacation

renters?

MR. FAHNESTOCK: That's correct.

COUNCILMEMBER VICTORINO: Okay. Just so that

I -- I -- just so I can separate the two --

MR. FAHNESTOCK: Sure.

COUNCILMEMBER VICTORINO: -- let me start with

just Southpointe real quick.

MR. FAHNESTOCK: Right.

COUNCILMEMBER VICTORINO: Okay. You said

there's 30 foreclosures for the month of June.

MR. FAHNESTOCK: August. Coming -- we just --

COUNCILMEMBER VICTORINO: I mean August. I'm

sorry. I apologize.

MR. FAHNESTOCK: I just did six at noon.

COUNCILMEMBER VICTORINO: Six at noon today?

MR. FAHNESTOCK: Today.

COUNCILMEMBER VICTORINO: Okay. Of these
foreclosures, can you give me an idea, because you're --
you're intricately [sic] involved in this, are there --
are -- these guys have owned these units for 30 years,
20 years -- or, no, it cannot be 30. I forget how long.
It's been, what, about 15 years that's been in place?


COUNCILMEMBER VICTORINO: 1992, so --

MR. FAHNESTOCK: Yeah.

COUNCILMEMBER VICTORINO: -- yeah. I was
pretty close.

MR. FAHNESTOCK: You bet.

COUNCILMEMBER VICTORINO: 'Cause I've had
in-laws -- my brother-in-law had a place there. I -- I
know I've had family that lived there. And -- and --
and now have, you know, moved this side and bought homes
here, but -- so of these foreclosures, are these newer
owners or owners that were there for long periods of
time?

MR. FAHNESTOCK: No. I'd say almost all of
them are people that bought in the last two to three
years when it was high, you know.

COUNCILMEMBER VICTORINO: Okay.

MR. FAHNESTOCK: And they -- they just walked
away from it, many of 'em, yeah.

COUNCILMEMBER VICTORINO: And thank you. And,
again, I'm trying to make a point here because even
though they think I'm mean and really not thinking of
them, I am really thinking of everybody. Because,
really, what I'm trying to get to is -- this has been a
phenom because there's cause of great inflation, of
great expansion or -- or acceleration of prices. People
bought here, and then it plummeted all around, and now
they're here and they're walking away. These are not
the long-term residents that were there for many years,
are they?

MR. FAHNESTOCK: No. No. We're about 50
percent at Southpointe owner-occupied, and the other 50
bought 'em to rent 'em. And so we're seeing both sides
of that.

COUNCILMEMBER VICTORINO: Okay.

MR. FAHNESTOCK: People walking away from it,
though.

COUNCILMEMBER VICTORINO: Okay. And -- and
so -- just so that, again, we're trying to find some --
some -- and it's not only cheaters now. And -- and I
think that word "cheater" has been used so many times
because that's like the only reason we're doing this.
No. We're really trying to try to get something that it
will be fair and equitable. And you've seen long-term
units like Southpointe, like that other lady talked
about, turned into short-term rentals because of this
phenom of this aspiration of -- of prices. And people
bought in there with the idea of renting it out, and now
they can't make it, and they're just walking away. So
we're stuck with the -- like you, the laundry that has
to be cleaned out. That's correct?

MR. FAHNESTOCK: And I wanted to just clarify
one thing.

COUNCILMEMBER VICTORINO: Sure.

MR. FAHNESTOCK: I don't see people at
Southpointe renting as -- in our house rules, it says
you cannot. But one of the things that's going to be a
question with this is that -- my understanding is, is
that zoning would override something we have in our
house rules. That our house rules say, you know,
because nine board members decide to say you can't rent
vacation rentals here, the zoning, in my understanding,
will override. So that house rule is not really a
valid -- so we don't see that at Southpointe because
people think they can't vacation rental. But my
understanding is that they would be able to if they ever
forced the issue. Does that make sense?

COUNCILMEMBER VICTORINO: Yeah, that makes
sense. And --

MR. FAHNESTOCK: Okay.
COUNCILMEMBER VICTORINO: -- I will ask the Department, when I get a chance, later on. I think you guys -- a part of that parcel from Southpointe, it was part of the Maui Lu -- or the zoning that Maui Lu got. And I think that's why you got a portion that is Hotel zoning and a lot of it that is not. So -- and I may be incorrect. And we'll check on that later for you.

MR. FAHNESTOCK: Okay.

COUNCILMEMBER VICTORINO: Okay. Thank you, Mr. Chair. Thank you, sir.

CHAIR PONTANILLA: Thank you. Members, any more questions for the testifier? Seeing none, thank you again.

MR. FAHNESTOCK: Thank you.

CHAIR PONTANILLA: Bertram Sugimoto --

(Appause).

CHAIR PONTANILLA: -- followed by Zeke Kalua.

MR. SUGIMOTO: Good afternoon, Mr. Chairman.

Good afternoon, Council Members. I'll make this brief. I was born and raised in Honolulu. I lived there all my life. I own a condo in Iao Gardens, two blocks away. I have a homeowner's exemption. And I'm very happy with that law. So, actually, I have no complaints. But I am the principal broker of a real estate company that manages over 15 associations on
Maui. Over half of those associations have at least 15 percent foreclosure rates from long-term owners. These long-term owners will not benefit from any increase we propose. And I'm sorry that -- that the times are hard. We're all hoping for a better day. But this is not the solution. Thank you.

CHAIR PONTANILLA: Thank you. Members --

(Appraise).

CHAIR PONTANILLA: -- any questions for the testifier? Excuse me. Member Baisa has a question.

COUNCILMEMBER BAISA: Good afternoon.

MR. SUGIMOTO: Yes.

COUNCILMEMBER BAISA: Thank you for being here. Question about the -- not the place you live, but the places that you -- you manage. Those folks that are having a hard time and that would be affected by an increase in taxes, are they long-term, people that we -- that we would consider people who have been working here and have been in the community for a long time and have jobs here?

MR. SUGIMOTO: I manage three condominiums in Wailuku. If I mentioned their names, you would know exactly what I'm saying. A lot of these people are homegrown. They just -- the economy was overwhelming to
them. They either lost their jobs or they got a cut in
pay and they cannot afford to live where they live.

I get served every week with foreclosure
notices from banks. That's not a happy thing. And if
you -- the implication here is you're gonna increase
their cost of living, we're gonna have more
foreclosures. That's the reality.

COUNCILMEMBER BAISA: Thank you very much. I
think that's really important for us to consider because
we don't really wanna cause more grief in this community
than we already have. Thank you.

MR. SUGIMOTO: Thank you.

CHAIR PONTANILLA: Thank you. Member

Victorino?

COUNCILMEMBER VICTORINO: Yeah.

MR. SUGIMOTO: Yes.

COUNCILMEMBER VICTORINO: Mr. Sugimoto?

MR. SUGIMOTO: Yes.

COUNCILMEMBER VICTORINO: Okay. I -- I wrote
it down so fast, I couldn't even read my own writing, so
I apologize. Thank you for that clarification as far
as, you know, you're saying in Central Maui. So we're
not -- so that people understand, it's not only South
Maui --

MR. SUGIMOTO: Yes.
COUNCILMEMBER VICTORINO: -- it's West Maui --

MR. SUGIMOTO: It's Central Maui.

COUNCILMEMBER VICTORINO: -- it's Central Maui.

MR. SUGIMOTO: Wailuku, yes.

COUNCILMEMBER VICTORINO: Right. Right, right. Oh, yeah. I -- I know exactly which ones you manage. Okay. My question to you, again -- the same question I asked the other gentleman -- these particular individuals that you're referring to --

MR. SUGIMOTO: Yes.

COUNCILMEMBER VICTORINO: -- that are getting foreclosed on, were they long-term owners, they've owned for the last 10, 12, 15 years, or are they all more in the last three or four years buying in?

MR. SUGIMOTO: There's a -- mixed. Half of 'em were long-term owners who live there and some of 'em were investors --

COUNCILMEMBER VICTORINO: Okay.

MR. SUGIMOTO: -- that just wanted to rent.

COUNCILMEMBER VICTORINO: Okay. Okay. Okay. So thank you for that. And of those long-term owners, do you know if they were also caught up in the phenom called refinancing?

MR. SUGIMOTO: Well, their equity was upside
down.

COUNCILMEMBER VICTORINO: Yeah.

MR. SUGIMOTO: They owed the bank more than they could pay it.

COUNCILMEMBER VICTORINO: Okay. So, in other words, if they bought a number of years ago --

MR. SUGIMOTO: Yes.

COUNCILMEMBER VICTORINO: -- then you know and I know they must have refinanced through the years?

MR. SUGIMOTO: Yes.

COUNCILMEMBER VICTORINO: Okay. That's what I wanted clarification. Again, it's not trying to hurt nobody, but I want the facts on the table so everybody understands what specifically is going on. Thank you, Mr. Sugimoto, for your information. Thank you, Chairman.

MR. SUGIMOTO: Thank you.

CHAIR PONTANILLA: Thank you. Next testifier is Zeke Kalua, followed by Arthur Tabanao.

MR. KALUA: Afternoon, Chair, Members of the Committee. Please excuse my attire. I was attending the planning of my friend's funeral, so I didn't have a chance to go home and dress appropriately. My name is Zeke Kalua, Executive Director for the West Maui Taxpayers Association.
Members of the Committee, we came to you probably about two and-a-half, three weeks ago to ask for more time. And it seems like within the last 48 hours, there's been all kinda Email blasts about, basically, coming to the County Council today or lose your investment. And that's probably a very unfair way to say how the Emails went out.

The representation in the -- the gallery today is only from a small majority of the people who are basically concerned, because of the lack of knowledge that's out there in the community right now.

I have been forward and backwards with this issue ever since it first came up. And I don't even understand it completely myself. I think it's -- it's -- it's incumbent on us to try and get as much information out there as possible. And that's why we've asked in the past for the deferral and why some people today have asked for the deferral.

Chair, you made a good point by bringing up exactly who it's gonna be affecting at the beginning of the meeting. Unfortunately, I still don't believe that there's been enough time for enough people to digest that today. And that's why some of the people that were here at the podium today stood corrected. I may even, by the end of this hearing, be one of those people
myself.

I would hate to have to ask for more time, but
if it -- if it please the will of the Committee, is it
possible that we could defer the vote with the interest
of trying to educate, not necessarily trying to say that
what you have in front of you is good or bad? And I --
I just -- I'm not asking that in the form of a question,
but maybe just for consideration sake.

There are a lot of people that have
investments, you know what I mean. And just like, oh,
Mrs. Yadao, who come up here earlier and said, you know,
they're -- they're not living it rich. You know, when
times are good, they may have refinanced with the
interest of trying to better themselves, you know. It
was -- it was a good time about five years ago.
Unfortunately, mortgages have gone upside down, interest
rates have gone down, the ability to finance, refinance
or sell properties have been just all over the map. So
where we're at today is not so much in a position where
we're looking for pity, but I think a lot of people just
need to really understand who is going to be affected
and how they're going to be affected.

As far as the self-policing, to me, it sounds
like the beginning of our resolution. I mean, and
that's what we need to do. And I think that, you know,
rather than try and put pressure on A0A0s to give you all of this information right away, maybe we could set a mandate from the County that, by the 31st of November, you know, everyone in every one of these A0A0s needs to specifically designate what it is that they do with their unit. Just tossing up ideas.

I think fines are gonna be representative of whether or not people are gonna cheat. You know, about -- about a year ago, a mother who was pregnant with her second child killed the 18-year-old riding his bike home from work. Killed him. And because she was pregnant at the time, she got 18 months in jail.

MS. REVELS: Three minutes.

MR. KALUA: When you think about it, if somebody's gonna be worried about paying $5,000 in taxes, but they're only gonna get fined 600 bucks, there's incentive to cheat. You know, maybe we shouldn't be looking at fining their money, maybe the fine should be way more severe. Maybe it should be three days in jail. I mean, you know, it doesn't look pretty, but, you know, we've gotta be -- we've gotta get the understanding out there that cheating is not gonna be tolerated. And as long as we -- we put, quote-unquote, "wimpy penalties out there", that's exactly what we're gonna get. You know, when -- we're
gonna have all of your staff and all of the
Administration working twice as hard to get the
justification that we need to get to prevent things like
this from coming to the forefront. Maybe the $14 is
(inaudible) for timeshare, maybe it's not.

Now, maybe we're used to only getting
increases that are of a smaller nature, that maybe,
eventually, one day, will be as high as $14. But, you
know, I think that's really what the --

MS. REVELS: Four minutes.

MR. KALUA: -- (inaudible) part is.

And sorry for being long, but, you know, it's
just like the education, in this room, there's so much
to say and not enough time to say it. And we need that
time. It's too important.

CHAIR PONTANILLA: Thank you. Members,

questions for the testifier? Member Baisa?

COUNCILMEMBER BAISA: Yes. Thank you, Chair.

And thank you, Zeke, for being here this afternoon. I
know that you're affiliated with the West Maui Taxpayers
Association. And it would appear to me that you would
be a body that would be very instrumental or very
important in conveying information. Have you had the
opportunity to meet with your Members to discuss this in
the intervening time?
MR. KALUA: No.

COUNCILMEMBER BAISA: Would you be able to if you had more time?

MR. KALUA: I believe, if we -- I -- I would hate to give you an estimated time, but anything's possible. Anything is possible.

COUNCILMEMBER BAISA: I'm -- I'm trying --

MR. KALUA: (Inaudible).

COUNCILMEMBER BAISA: I'm trying to determine, like do you meet on a monthly basis or you meet ad hoc, or how do you meet? So that, you know, if we said, okay, every association, you need to meet with your Members and explain this to them before we pass this, then we would certainly expect that to be done because --

MR. KALUA: Uh-huh.

COUNCILMEMBER BAISA: -- you know, we have to decide one way or another. And we wanna feel that when we do it that the public has had ample opportunity. And, you know, after a meeting like this, and people watch it on television, they will be much better informed, as well as we will be, too, as to what this is all about. So, you know, at some point, we have to say, okay, you've all had a chance to talk about it, now what.
MR. KALUA: Uh-huh.

COUNCILMEMBER BAISA: So what's your reaction to that?

MR. KALUA: You know, I -- I would say in any -- any additional time we can get from this day forward will be very instrumental in getting the word out. And an Email could be taken in so many different ways. I mean, just by pushing the caps lock button, it could send the wrong message. And that's -- and that's why -- that's why I think, you know, a little bit more time would be very appreciative. I think all of the interested parties, you know, have come to the table. Some have met with you Council Members. And to me, it seems like the dialogue is going towards a good resolution. You know, it's not necessarily leading to litigation or anything like that. So a little bit more time, I think, would be good.

COUNCILMEMBER BAISA: Thank you very much.

CHAIR PONTANILLA: Thank you. Members, any more questions for the testifier?

MR. KALUA: Chair?

CHAIR PONTANILLA: Seeing none --

MR. KALUA: Chair, could I say just one more real quick thing?

CHAIR PONTANILLA: Go ahead.
MR. KALUA: About six years ago, I was afforded the opportunity to do a purchase money mortgage right here in Happy Valley. And it was old apartments that were condominiumized. And the owner himself lived in Lahaina, but he was long-term renting 12 units over there. He definitely couldn't qualify for the homeowner's exemption, but the intent to rent to people like myself was very genuine. In my position, I was offered -- afforded the opportunity to buy. So not everybody out there is cheating, I guess, is the best way to put it. And that's why time is a good thing to have.

CHAIR PONTANILLA: Thank you.

MR. KALUA: Thank you.

(Applause).

CHAIR PONTANILLA: Next testifier is Arthur Tabanao, followed by Clyde Wagner.

MR. TABANAO: My name is Arthur Tabanao. And I live at the Maui Eldorado. I'm a resident there. Part of the house rules for our association is that each guest must register. And the Outrigger, who runs the front desk, actually does that. So we would have that information on who's short-term, who's long-term, and who's a resident and who's, you know, just there as a snowbird.
I didn't have much to say, but I have an analogy I want to share. Let's say an SUV is going down the highway, and one of the police stop him because he was going 25 miles over the speed limit, he was given a $150 fine. And this information got back to the Members of the Council. And over a six-month period, maybe a year period, they noticed that there were a lot of SUVs speeding on the highways. So amongst themselves, they decided to pass an ordinance. We're gonna fine all SUVs in Maui County, while, on a yearly basis, adding to their registration cost, $150. And that seems to me what's happening here.

And I would hope that you don't follow through with this. Thank you.

CHAIR PONTANILLA: Thank you. Members, any questions for the testifier? Member Johnson?

COUNCILMEMBER JOHNSON: Just one clarification.

MR. TABANAO: Yeah.

COUNCILMEMBER JOHNSON: We don't get any of the fines in Maui County, so your analogy doesn't work.

MR. TABANAO: No. I didn't mean that you would, but the County -- yeah.

COUNCILMEMBER JOHNSON: You get my point?

CHAIR PONTANILLA: Thank you. Clyde Wagner, followed by Lisa Howard.

MR. WAGNER: Ladies and Gentlemen of the Council, thank you for being here and putting your attention to this issue today and taking your time and -- and your energy. My name is Dave Wagner. I'm a real estate broker here on the island. My company also manages vacation rentals of condominiums. They're 30-day minimum, but they fall in that category of short-term because they're less than six months.

By the way, I wanted to start first by saying that there seems to be a misconception of taxes in California. I'm a little bit familiar with California taxes. They are capped at one percent. Which may seem like a high rate relative to the rates we're talking about for condominiums here in Maui, but, guess what, in California, your assessed value is frozen at about the -- the price that you paid for the property. So that one percent could translate to one-tenth of a percent and be way, way less than most people pay in Hawaii. So let's just not go forward on the basis that, gee, California charges one percent, so we're cheaper, so we're -- we're a better deal. No, it's not that way. California charges less to the vast majority of people.

Anybody from California that can verify that?
Is that correct?

UNIDENTIFIED SPEAKERS: (From the audience.)

(Inaudible).

MR. WAGNER: I'm wrong?

UNIDENTIFIED SPEAKERS: (From the audience.)

(Inaudible).

CHAIR PONTANILLA: Excuse me. Sir! Sir!

Please address the Council.

MR. WAGNER: I'm sorry.

CHAIR PONTANILLA: Thank you.

MR. WAGNER: Okay. Maybe I'm -- maybe I'm off on that. I'm sorry. I -- I have a misunderstanding.

I will say that we are the only tax jurisdiction in my -- in my awareness, that I've ever heard of or seen, or paid taxes in -- and I've paid taxes in a number of them -- where we penalize people for not being residents. We whack 'em because they don't live here full-time. I've been a resident of Hawaii for 37 years, so it -- it's great for me. I should be in favor of this bill because it stands to reason that if the other guy pays more, then there's less for me to -- less burden for me. But -- but I -- I oppose this bill because I believe it's a bad bill.

We already whack 'em -- these nonresident condo owners, we already whack 'em, you know, over
double for being nonresidents. And we already whack 'em over triple if they are nonresidents and rent their unit out to somebody. So -- and then, of course, you get to the timeshare and we whack 'em like five times or -- or more. But to treat the second-home condo owner the same as you treat the guy who rents out his second home just isn't fair.

I agree with the dire predictions that have been made by some people who have testified by the real -- REALTORS® Association of Maui, and others. And I think there are better ways to accomplish what you're trying to do in terms of enforcement, getting the cheaters, so to speak. And -- and thank you for listening.

CHAIR PONTANILLA: Thank you. Members, question for the testifier? Seeing none, thank you again. Lisa Howard, followed by Pamela Tumpap.

MS. HOWARD: Chairman and Council Members, I wanna thank you for listening to all of us today. And I think that -- oh. My name is Lisa Howard. And I'm the Regional Manager for Hawaii First. And we're a managing agent, we manage condominium associations and homeowner associations. I'm across the state, but I am the manager for the Island of Maui. And I wanna thank you.

You've heard all the different sides today.
And you've heard many of my owners, from Sherley Blodgett and her husband that are seniors, have lived here most of their life and retired, to Lora Yadao up there, the school teacher who's lived here, too. And one of my other owners that wanted to testify today, but wasn't able, he's in the Army and he had to get back to base. And I'm here for those people as well as some of the people as Chair Victorino [sic] has addressed, people that have moved here and bought and bought at high times, and, you know, helped turn this economy, as well as maybe some of the real estate, upside down. I speak for all of those owners because, right now, no matter what's to blame or who's to blame, as a managing agent, I have to deal with this every day.

I had a woman come and sit in my office about six months ago and say, here, here's the deed to my condo, I can't afford it anymore. And come to find out, she had lived here for most of her life, school teacher, retired, took her whole savings and bought a condo at Hale Ono Loa, that we talked about earlier. And because of the assessments and because of buying the lease fee was unable to make her payments anymore. And she said, please don't ruin my credit, too. And I have to tell you, as the managing agent, that was not in my job description when I got hired. And I think that you're
all aware now that there's a lot more effects of this
tax, that we do need to come to together.

And, also, as Lora said, as the managing
agent, every time there's a sale in one of my condos,
I'm required to tell them how much is owner-occupied,
how much is the delinquency. And two years ago, when
they asked me that, I could just tell them on the phone,
or fill out some paper and not even sign it. Today,
they're requiring my financials. And they're requiring,
in some instances, that I actually go and get it
notarized, that I'm not lying about this. Because these
lenders are now not wanting to sell units that the
associations cannot prove they can maintain as property.

So as many of the owners spoke -- and even one
of my other owners that lives in a pretty wealthy
association is upside down. We're -- we're seeing that
across the board.

And so I come to the Board, as Zeke did, and
ask you to please defer the vote today, that we take a
look at this. And as a managing agent and a responsible
party for the owners on this island, you know, whoever
they are, that there is a different way that we can do
this.

And I agree that something does have to be
done. I mean, it's a business and we have an economy
here that's been hit very hard. And whether they're
visitors or, you know, part-time residents, if they
can't make their maintenance fees anymore, we're going
to have to take that action. As many of you know, there
was a big article in the paper on nonjudicial
foreclosures. And, you know, as Sherley Blodgett said,
I have 15 that we're doing in that condo right now. And
four of that 15 my association owns and we can't even
sell 'em because the delinquencies are so high. You
know, we're lucky if we can get 'em rented and even make
some of that money back. Every month, when I go to pay
that Association's bills, I have to decide what's the
most urgent, the resident manager's wages, the
insurance, you know, to --

MS. REVELS: Three minutes.
MS. HOWARD: -- keep those people covered or,
you know, what other -- the electrician that had to fix
or the plumber for the sewage leak.

So I wanna thank you all for your time. It's
a very difficult decision, but I want you to know as the
regional manager of Hawaii First and the managing agent
on this island, I, along with Maui Condo Council, would
be more than willing to give my time to help figure out
and help figure what the plan would be. And I just
wanna let you know, we're in excess of about 250 AOAOs
on this island. Thank you for your time.

CHAIR PONTANILLA: Thank you. Members, any
questions for the testifier?

(Applause).

CHAIR PONTANILLA: Thank you again. Pamela
Tumpap, followed by Susan Malaga.

MS. TUMPAP: Good afternoon, Chair Pontanilla
and Members of the Committee. I'm Pamela Tumpap,
President of the Maui Chamber of Commerce, an
organization comprised of approximately 800 members who
employ nearly 20,000 people here on Maui and who care
deeply about Maui, the economy and this community.

We are here today to share our misgivings with
the proposed amendment to Section 3.48.305 of the Maui
County Code to tax condominium owners at the highest and
best use of their respective properties unless the
owners qualify for a homeowner exemption.

Currently, many industries are alarmed by this
bill, as expressed today. We are concerned because the
suggested change would unfairly tax many condominium
owners at a higher rate for a use they are not currently
doing. Those who would be affected include long-term
rental units, owners who use their condos as second
homes and vacant units. Raising their taxes to the
highest and best use for owners who do not qualify for a
homeowner's exemption may require owners to significantly increase their long-term rental rate to make up the difference, raising the rent for many local residences -- residents. It may force owners into short-term rentals to cover the higher expense, equating to fewer long-term rentals for hundreds of residents and adding a flood of new rental units in a short-term rental pool that is already down during this economy, when we are struggling to fill our current inventory. Or it may push owners over the edge, which has been stated so many times already, and have them walk away from the property altogether, increasing the liability and burden on other property owners in the association. Additionally, higher foreclosures will bring property values down and decrease the real property tax revenue derived from individual units.

If we think that those who own condominiums can easily afford to pay more, we need to think again.

The number of units in foreclosures continues to grow. And it is no longer shocking to see over eight pages of foreclosures in "The Maui News," with many of them being condominium properties. A jump from, say, an Apartment rate to a Hotel/Resort rate per thousand of assessed value is a huge hit, 66 percent increase. To go from that rate to a Timeshare rate is over a hundred
and -- is 180 percent raise in taxes. It's astronomical and it's outrageous. These owners, like everyone else, cannot sustain more hits. And many of these properties are owned by seniors operating on a fixed income.

There is also great concern over the definitions and that categories like Hotel and Timeshare would need to be clearly defined so it is not left where we have the -- the -- the definition open to a departmental interpretation.

In these economic times, we need fair, reasonable and solid solutions to avoid negative unintended -- unintended consequences. We, therefore, cannot agree with this proposal. We find too many holes in it and see great potential for challenges with this draft bill.

We appreciate the opportunity to share our thoughts and to testify.

CHAIR PONTANILLA: Thank you. Members, any questions for the testifier? Seeing none, thank you very much.

MS. TUMPAP: Thank you. Aloha.

(Applause).

CHAIR PONTANILLA: Susan Malaga, followed by Larry Armstrong.

MS. MALAGA: Good afternoon, Ms. -- Mr. Chair
and Members of the City Council -- or of the County Council. My name is Susan Malaga. I am a full-time resident of Maui and have been for the last two and-a-half years. My husband and I have owned property here on Maui for about six or seven years. I'm here to represent myself, although I happen to also be the president of a -- the homeowner's association of a small complex with 36 condos in the Kapalua area.

I believe that the proposed tax changes would destroy the second home market for condominiums. I have many friends and neighbors who own second homes on Maui who do not rent and receive no income from their property. These individuals have many options as to where they might buy a second home anywhere in the United States. Excessive property tax will be a strong deterrent to mainlanders purchasing on Maui.

Many people, like me, started as part-time residents and have now become full-time residents. That will no longer occur. As many have already stated, the condo resale market is already stagnant, if nonexistent. The proposed changes will ensure that it will remain stagnant long after the overall economy improves. Both full-time and part-time owners who do not rent do contribute a considerable amount to the overall viability of Maui's economy through purchases and as
well as other expenses while they are here on -- on island.

As far as how we might police abuses, I believe that if it were required by law that association managers or the boards would report abuses of the property tax laws. We've discussed this by our board in the past, but, because it's not been a requirement of associations to do that, we have left that up to the County.

I am also aware of, in some cases, homeowners say that they are permanent residents, full-time residents of Maui. And we have not seen them here in years. They rent their units. It seems like an easy way to look at those would be to compare property tax records with Hawaii income tax filings. Perhaps you already do that, I don't know. But when I see people's units who are being rented and they say they live here full-time, and I know they live on the mainland, you're losing a lot of income just by not comparing records that the -- I assume the County would already have.

I know this is a difficult issue, everyone is looking for money in different spots, but I do think it would behoove all of the residents, full-time and part-time, to work together to try to find a solution.

Thank you for your time. I really appreciate
your interest in this important matter. Thank you.

CHAIR PONTANILLA: Thank you. Members, any questions for the testifier? Seeing none, thank you.

MS. MALAGA: Thank you.

(Applause).

CHAIR PONTANILLA: Larry Armstrong, followed by Laurie Lowson.

MR. ARMSTRONG: Yes, my name is Larry Armstrong. I came here today bound and determined not to say anything. As I sat in the audience, I didn't last very long.

One of the -- one of the Members talked about the -- in the newspaper, there was an article about the County foreclosing for -- for tax purposes. And I read the article. And I thought one thing that was interesting, there were 300 properties that were up for foreclosure, and all -- there were eight that went to auction. And so what I read into that is that 292 people, when they got the message that somebody cared, they jumped up and paid their back real estate taxes.

The -- the -- the point that I think I'm making is that I feel that when the Government does their job, the people react appropriately and they do what they're supposed to do.

Also, as I sat back in the audience, I was
fantasizing a little bit. I'm kinda prone to that
sometimes. And -- and I was envisioning what it would
be like if this Committee was proposing to increase the
taxes on homes, not condominiums, homes, in Maui by
three times or four times what they are today.

Mr. Victorino, somehow he volunteered that his
taxes were $800. Mr. Victorino, I can tell you that, by
my mathematical reckoning, your house must be about 10
feet by 10 feet, or you're not paying appropriate tax on
that property. So maybe -- maybe we're talking about
the wrong people here today. And I'm not proposing that
we jump on homeowners, but I can't understand why this
Committee is jumping on me because I own a condominium.

This economy, in my opinion, runs on two basic
things. One is, it runs on sugar cane. And we are in
the process of taking water away from the sugar cane
growers, so they're gonna go away pretty quick. And
that's gonna leave the tourists. And if we run the
tourists out of here, then I think we have a real
problem trying to support the economy of Maui.

I -- I will make Mr. -- I'm picking on
Mr. Victorino. My friend Marion follows Shawn
Victorino, and bigtime fan. And so I can be a fan. The
-- I will make a standing offer, Mr. Victorino. If you
envision what your house would be worth if all the
tourists left, I will buy your house for that price tomorrow. And because --

MS. REVELS: Three minutes.

MR. ARMSTRONG: -- as much as you say you sound like you don't want me here, basically, tourists and people like me support this economy, willingly, but we support this economy.

I had just -- I had a thought. About 30 years ago, I owned a duplex, for whatever reason I never could figure out. And I had to put about $1,400 a month into that condominium to support it. And then the Government came along and wanted to get the rich people like me that had all of this real estate. So they said I couldn't write that stuff off anymore. So I said to hell with it, and I sold the duplex. And I think so did a lot of other people. And the rents went up into the sky over the next five to 10 years. So you're playing with fire. And -- and I -- and as long as you realize it, I guess that's okay. But I -- I really hope that we don't go to the point to where we --

MS. REVELS: Four minutes.

MR. ARMSTRONG: -- turn this economy upside down.

CHAIR PONTANILLA: Sir --

MR. ARMSTRONG: I -- and I -- if I may --
CHAIR PONTANILLA: Can you --

MR. ARMSTRONG: -- I would just like to --

CHAIR PONTANILLA: -- conclude, please?

MR. ARMSTRONG: -- stay here long enough to

hear the first person talk that's in favor of this bill.

CHAIR PONTANILLA: Thank you. Members, any

questions for the testifier? Seeing none, thank you

very much. Laurie Lowson.

(Applause).

CHAIR PONTANILLA: Members, Ms. Lowson is the

last person to sign up for public testimony. If anyone

else would like to provide public testimony, you can

come forward as soon as Ms. Lowson is completed.

MS. LOWSON: Good afternoon. Thank you for

the opportunity to speak. I, like Larry, did not plan

on speaking today, so -- but I've just heard too many

things, I have to speak up. My name is Laurie Lowson.

I'm a realtor. I have lived here since 1977. I was

previously President of the REALTORS® Association of

Maui, I'm currently its treasurer. But I'm not speaking

for them; I'm speaking as an individual.

My husband Mack and I live and own in a

condominium. We do get the owner-occupant rate. And we

are very grateful for that. Even though, at times, we

have laughed and thought it was maybe a little low,
without a doubt. We do own two additional condos. We have both of them in long-term rental to people who live here and work here. As near as we can tell, they're paying the maximum amount of rent that they can afford. We have negative cash flow on both properties. And we're just barely, with the real estate market where it is, squeaking by ourselves.

The -- the one is Kapalua Golf Villa. It is zoned A2, but, thanks to the Minatoya decision, it would qualify under the Hotel rate. So it would double. So our real property tax would double because that's what the Minatoya decision allows, it allows to be vacation rented. So as near as we can tell, that would double the -- the real property tax rate for that.

The second condominium I own by -- on my own. I was living in it in 1981, when it went into foreclosure, the last time the real estate market tanked. Well, two times ago when the real estate market tanked. And I have a long-term tenant in that. And they are paying as much as, I'm sure, they can possibly pay. They work in the service industry. I have a negative cash flow on that of about $220 a month, with real property taxes where they are.

Pohailani, I am actually President of the association there. And the property is zoned Hotel and
Apartment, and it also has 14 units that were allowed to be time-shared, which are currently now long-term rentals because the timeshare disappeared when the lease rent -- when the period of the lease was renegotiated.

So with those that were -- are actually allowed to be Timeshare, would those long-term units be turned into Timeshare rate? And would the long-term rentals in the Apartment-zoned, that can be Hotel rented, would they also go to the Hotel rate?

Our delinquency rates at Pohailani are skyrocketing. Every month -- I mean, it's pretty much classified information, but I can tell you they're almost tripling on a monthly basis because people just cannot afford it. And long-term owners and renters, it's -- it's just become in -- unaffordable. And there are people who live and work here, families, two kids, two bedrooms --

MS. REVELS: Three minutes.

MS. LOWSON: -- one bath.

Thank you very much. I do ask that you defer the decision on this and give it more thought and -- and try and find out more information about what's really going on.

CHAIR PONTANILLA: Thank you. Members, questions for the testifier? Member Medeiros?
COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman.

And good afternoon. I just wanted to know, since you present several different condominiums that you own or you're part of the association -- I think a big factor in ownership of condominiums seems like lately is the maintenance fee -- what is the maintenance fee for the condos that you're involved with?

MS. LOWSON: Well, the Pohailani is $675 a month. And it's because it's -- it's got a lot of space. It's wide open space.

COUNCILMEMBER MEDEIROS: Uh-huh.

MS. LOWSON: And it's low density. And just to keep -- there's two swimming pools. It's a older property. The buildings are wood and they're, basically, falling apart around us. It's, you know, 32 years old. The Golf Villas is about 950 a month. And, you know, that's -- it -- it -- again, it's a older property --

COUNCILMEMBER MEDEIROS: Uh-huh.

MS. LOWSON: -- and it needs repairs. And the one we live in is about $1,600 a month, and it is an oceanfront property. And because of the ocean and the salt spray, it has constant repair.

COUNCILMEMBER MEDEIROS: Uh-huh. Thank you for sharing that information. Because I know a lot of
people, their maintenance fees have risen exponentially over the past few years. And that seems to be a major component of people falling into financial trouble, is -- you know, that's -- like, say, the last one you mentioned, that -- that's somebody's rent or mortgage, just the maintenance fee. So I -- I'm just concerned that maintenance fee have gotten to a point where it's so expensive and --

MS. LOWSON: Well, I mean, they have to maintain the property.

COUNCILMEMBER MEDEIROS: Right.

MS. LOWSON: (Inaudible).

COUNCILMEMBER MEDEIROS: And I realize --

MS. LOWSON: The -- four -- four pools at some of the --

COUNCILMEMBER MEDEIROS: Right. Yeah, the amenities --

MS. LOWSON: The water --

COUNCILMEMBER MEDEIROS: -- increases --

MS. LOWSON: Amenities, yeah.

COUNCILMEMBER MEDEIROS: -- right, the maintenance fee. But thank you for sharing that.

MS. LOWSON: Uh-huh.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman.

CHAIR PONTANILLA: Thank you. Members, any
more questions for the testifier? Seeing none, thank you again.

MS. LOWSON: Thank you.

CHAIR PONTANILLA: Sir, if you wanna provide public testimony, then come forward. And once you're done, if you could sign up with the secretary out in the front. Please state your name.

MR. READER: Thank you, Mr. Chair. Robert Reader, testifying on behalf of the Board of Directors at Wailea Pointe Village. We did send written testimony to everyone. I hope they received that.

I just wanted to go on record stating our opposition to this, and reiterating our request for some more time so that we can understand the intent and the interpretation of the bill, how it might apply to the property at Wailea Pointe. Thank you.

CHAIR PONTANILLA: Thank you. Members, any questions for the testifier? Member Johnson?

COUNCILMEMBER JOHNSON: What's the zoning at Wailea Pointe?

MR. READER: Yes, Ms. Johnson. It's zoned Hotel/Condo. And 80 percent of the owners there use the Apartment rate. So the high majority of these owners would be affected by this increase if the highest and best use were used there.
There -- there is some concern about the
application or -- or the discretion of the director to
apply that, if it were to become law. And I think
that's why we're requesting it be kept in Committee or
deferred and not voted on until we could understand that
intent.

CHAIR PONTANILLA: Thank you. Members, any
more questions for the testifier? Seeing none, thank
you very much.

MR. READER: Thank you for your time today.

CHAIR PONTANILLA: Thank you. Is there anyone
out in the audience that wanna provide public testimony
that haven't signed up? Please come forward. Again,
please state your name. And once you're done, if you
could sign up with the secretary out in the front --

MS. CONLON-KEMP: Yes.

CHAIR PONTANILLA: -- door. Thank you.

MS. CONLON-KEMP: My name is Christine
Conlon-Kemp. I've provided some written testimony, but
I want to make a clarification 'cause, earlier, there
were some questions in regards to maintenance fees at
condominiums. I have been involved in the condominiums
since 2000. I own two on island. Actually, they're
side by each. My husband lives in one and I live in the
other. And I know people may look and find that a
little strange, but they're small. They're about 500
square feet of living space. We have two TMK numbers.
And so, consequently, we can only claim one owner's
exemption. Although, perfectly honestly, both are used
for people who that is their primary residence.

I did wanna share some information about
maintenance fees. And I know there was concern about
condominiums and maintenance fees and that they're the
average price, maybe, of someone's mortgage. Condo fees
in this association that I'm in, the Milowai, Maalaea,
has remained the same for a period of about 10 years.
And then they had to go up. They started to go up for
two reasons. One, we have delinquencies and the -- oh,
sorry. One, we have delinquencies and the owners have
to cover those expenses that are not being paid by the
people who are delinquent. The second reason is we have
an aging property. It's 30 years old. And although we
felt we had very good reserves, and we meet the State
requirements, prices and costs of things have gone up,
like replacement of an elevator wood or -- or these type
things that you would see on a 30-year-old property.

So I wanted to share those things with
Council -- and, Chair, thank you -- to -- to have you
have a better understanding about condominiums.

CHAIR PONTANILLA: Thank you. Members, any
questions for the testifier? Member Baisa?

COUNCILMEMBER BAISA: Yes. Thank you for being here. Are you also seeing these foreclosure problems?

MS. CONLON-KEMP: Yes.

COUNCILMEMBER BAISA: A lot of 'em, or is it mild at this point?

MS. CONLON-KEMP: In our particular building, we're -- we're blessed to have fewer. But up and Hauoli Street, there are many. One of the saddest situations in our building was a gentleman who's retired and has been in our building for quite some time. And he has a fixed income and he just can't afford it. He came to the association and said, you know, I can't pay my maintenance fees, I'm going try to sell this property, it's gonna have to be a short sale, if there's anything left over, you know, we -- I will pay you back. And, you know, this sort of thing's heart-wrenching. But, yes, we see -- we see these situations.

COUNCILMEMBER BAISA: Thank you.

COUNCILMEMBER VICTORINO: Chair?

CHAIR PONTANILLA: Thank you. Member Victorino?

COUNCILMEMBER VICTORINO: Thank you. And -- and -- and -- and thank you very much, you know, for
your -- your clarification on the maintenance fee, and especially the -- and this is what the challenge is being faced by many associations, the delinquency compounded with aging infrastructure.

MS. CONLON-KEMP: Yes.

COUNCILMEMBER VICTORINO: And requirements by many agencies such as Fire, Public Works, and other things that you guys are being mandated to make changes or you get fined.

MS. CONLON-KEMP: Yes.

COUNCILMEMBER VICTORINO: The other part of that is, I think you also have had a tremendous increase, especially in the last three or four years, in the over type -- overlaying types of coverages for insurance and other fees which have gone up astronomically.

MS. CONLON-KEMP: Astronomically.

COUNCILMEMBER VICTORINO: Especially in the area of flood.

MS. CONLON-KEMP: Yes.

COUNCILMEMBER VICTORINO: Which you cannot even get because, right now, the National Flood Program has expired and Congress has not redone it. Is -- that has also exacerbated the problem?

MS. CONLON-KEMP: Yes. I can tell you, 'cause
I am on the Board, last year, to renew a policy, it increased by 52 percent.

COUNCILMEMBER VICTORINO: Thank you. So, you know, it's a big world, Mr. Chair, out there. And -- and -- and I'm thankful that you guys are clarifying. So those who think I don't like them, I have a very keen awareness of what goes on around me, probably better than even you may have. Because I work -- many of my constituents own condominiums, so I'm very aware what goes on out there. So I just want people to understand that I'm trying to look for something. And I'm not agreeing with everything --

MS. CONLON-KEMP: No.

COUNCILMEMBER VICTORINO: -- but I agree with you. Thank you for your help in giving us a clarification.

MS. CONLON-KEMP: May -- may I also --

COUNCILMEMBER VICTORINO: Sure.

MS. CONLON-KEMP: -- make one other --

COUNCILMEMBER VICTORINO: Sure.

MS. CONLON-KEMP: -- comment? I -- also, I try to provide my time in the community, I know many others do, and contribute. We wanna be part of the community. We wanna support the MACC and the Hui that has programs for children and the arts. And we wanna
support the Humane Society. I see a lot of people who
are in my economic strata who no longer can do that.
And, you know, as we tax people at a certain level,
where they have to make that decision between their home
and providing for the community, that's something else
to consider, too.

COUNCILMEMBER VICTORINO: Thank you for
that -- for that clarification.

MS. CONLON-KEMP: Thank you.

CHAIR PONTANILLA: Thank you. Is there anyone
else out --

(Applause).

CHAIR PONTANILLA: -- there that wanna provide
public testimony at this time? Seeing none coming
forward, if there's no objection, Members, the Chair
would like to close public testimony.

COUNCIL MEMBERS: No objections.

...END OF PUBLIC TESTIMONY...

CHAIR PONTANILLA: Thank you. Members, I
understand that some of the Members do have time
constraints, so the Chair is gonna go up to 4:30 and --
and defer this matter. But before we do that, if I can
have the Department provide us with some comments in
regards to the proposed bill that's before us. And if I
can have either Director Young or Real Property Tax
Administrator Teruya to provide us with some opening comments -- or some comments.

MR. YOUNG: Thank you, Mr. Chair. Good afternoon, Members. Department only says that we did take a look at the proposed ordinance, and the Real Property Tax Division has done a statistical -- a statistical review of the impact. I believe the information has been handed out to you. I'd like to present Mr. Teruya, the Real Property Tax Administrator, and Ms. Marcy Martin, the Property Technical Officer for the Real Property Tax Division to go over the statistical information.

CHAIR PONTANILLA: Thank you. Mr. Teruya?

MR. TERUYA: Okay. Thank you, Chair. First of all, I wanted to just mention that the purpose of the proposed bills has three separate issues. As Chair Pontanilla mentioned, one is to combine both Improved and Unimproved Residential to Residential; number two, to delete the consideration of actual use for property subdivided into condominium units; and, three, to make housekeeping changes to Section 3.48.150 and 18.16.320 to make them consistent with their newly-created Residential class -- land classification.

The proposal before you brings uniformity and fairness. All properties not condominiumized all -- are
already classified based on the highest and best use.

As a point, a single-family home on Hotel-zoned land is
used -- that is used for a second home is already
classified as Hotel and Resort. So this bill eliminates
two separate rays -- ways of classifying properties.

The -- the handout that was handed to you, I'm
just gonna go point by point as -- as mentioned.

And to be clear, only properties subject to a
Timeshare Plan, as defined by the Hawaii Revised
Statutes 514E, will be classified Timeshare.

Point two: Condominiums with a home exemption
would not be affected by the proposed ordinance.

Point three: If the proposed ordinance had
been implemented for the Fiscal Year 2010-2011, the
revenue impact would have been $8.5 million. If the
proposed ordinance had been implemented for the Fiscal
Year '11, 85 percent, 22,730 units of the 26,701 total
condominium units, will not be affected -- or would not
have been affected.

The chart is there for you to reference.

Next point: If the proposed ordinance had
been implemented for Fiscal Year '11, 1.5 percent or 406
units would have been classified to a lower
classification.

Next point: Condominiums without the home
exemption zoned Agriculture would be classified as Agriculture instead of Apartment, which are -- they are currently classified.

If the proposed ordinance had been implemented for Fiscal Year '11, 13 percent, or 3,565 units, would have been reclassified to a higher -- highest and best use classification. Most of those units would have moved from Apartment to Hotel/Resort. And the -- the figure is on the back of the -- that page.

So that's as a recap of what is handed out to you. And I'm available for any questions that you guys may have.

CHAIR PONTANILLA: Thank you. Before I ask the Members to ask questions of the Department, if I could have Mr. Moto, if you could, kinda provide us with some information regarding this Minatoya -- ruling -- the Minatoya ruling.

MR. MOTO: Good afternoon, Mr. Chairman and Members. The -- during the meeting, because of references to that opinion, I had my secretary provide me with a copy. I had not read it in quite a while.

The Minatoya opinion is an opinion that was -- a short opinion that was written back in 2001, July -- and dated July 30, 2001, by then Deputy Corporation Counsel Richard Minatoya. And -- and this was when
James Takayesu was Corporation Counsel. It is an opinion regarding -- really about the zoning law in the County of Maui, and, in particular, whether transient or short-term rentals were permitted within the Apartment Zoning District. So it's really an opinion that deals with land use issues and zoning issues. It was never written with taxation in mind. And it's not really a tax opinion. And it's certainly -- when writing this opinion, Mr. Minatoya could not have foreseen the kinds of issues that are being discussed today.

The opinion, at least since I've been Corporation Counsel, has never been retracted.

Opinions, just as background, are unusual things. They are simply that, opinions of an attorney. They do not have the force and effect of law. Courts are not bound by them. In fact, courts routinely ignore opinions of Corporation Counsel, because they -- they're not bound by them and they -- they're not really binding or controlling upon judicial decisions.

Having said that, opinions do have consequences in the sense that -- to the extent that they are followed by Government agencies like the Department of Planning. They -- they can influence or shape governmental decisions. And, of course, the longer an opinion remains extant, the more people and
the more agencies would have relied upon them in -- in many cases.

I have not spoken with the Department of -- of Planning about the Minatoya opinion anytime recently. So exactly how it's been applied and what the consequences are I cannot tell you because I -- I would have to look into that.

You know, in a nutshell, to make things very similar, what Mr. Minatoya concluded in that opinion was that certain Apartment-zoned properties and -- and certain units within properties were -- were grandfathered, essentially, so as to allow them to continue transient vacation rental operations, even though, as you know, the Apartment Zoning District was amended years ago to prohibit such transient uses. So, basically, this opinion describes which ones were essentially grandfathered.

CHAIR PONTANILLA: Thank you. Members, at this time the Chair is gonna go as long as four -- you know, before 4:30 -- or up to 4:30 with Q&A before we adjourn. Member Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Mr. Moto, I -- I'd like to ask, with your describing and clarifying for us the Minatoya opinion, in opinions that have done -- have been done by the Corporation Counsel,
I -- I wanna know -- and you said it does not have the -- the force of law.

MR. MOTO: Correct.

COUNCILMEMBER MEDEIROS: So if there's opinion like this one that has been in existence for a while, and there's a new opinion on the same matter, does the previous opinion still retain its life?

MR. MOTO: Strictly speaking, no. Although, having said that, the fact of the matter is that, as a practical matter, to the extent that people, parties, whether it's in Government or outside Government, have relied upon certain interpretations --

COUNCILMEMBER MEDEIROS: Right.

MR. MOTO: -- I'm -- it may give rise to claims or litigation when people realize that there's gonna be a change in Government approach or policy.

COUNCILMEMBER MEDEIROS: Right. Okay.

Because I asked that because if a -- a new opinion on the same item is provided, doesn't it make it confusing that there are other existing opinions on the same item? Would -- so the new opinion would not supersede or replace the previous opinion on the same item? If there was -- if you made an opinion on the same item that Mr. Minatoya did, would your opinion supersede or replace Mr. Minatoya's opinion?
MR. MOTO: It could be because it -- opinions are opinions of the Corporation Counsel.

COUNCILMEMBER MEDEIROS: Oh.

MR. MOTO: Having said that, I will say that -- I have, you know, no -- no plan and -- and -- to --

COUNCILMEMBER MEDEIROS: Right.

MR. MOTO: -- retract this.

COUNCILMEMBER MEDEIROS: Yeah.

MR. MOTO: (Inaudible).

COUNCILMEMBER MEDEIROS: It was just a general question.

MR. MOTO: I was not working on this particular matter. And --

COUNCILMEMBER MEDEIROS: Okay. I appreciate that clarification. Mahalo, Mr. Chairman.

CHAIR PONTANILLA: Member Johnson, followed by Member Molina.

COUNCILMEMBER JOHNSON: Yeah. And -- and just to address simply this one issue, 'cause we're not gonna have time to get onto the other discussion, if Council felt that there was some ambiguity in that particular opinion because it had been applied as law, if we sought to clarify it, either to consolidate that opinion or to actually disagree with it, we would then pass a law which would, at this point in time, take effect, or
whenever we pass such a law?

MR. MOTO: Yes.

COUNCILMEMBER JOHNSON: Okay. Thank you.

CHAIR PONTANILLA: Thank you. Member Molina?

COUNCILMEMBER MOLINA: Thank you, Chair. For the Department. And I'll keep it very short and concise. We heard today not one individual from -- from the public in support of this proposal, but, at the same time, thank you for providing this information to clarify why you're looking at making this reclassification, if you will.

And of the 26,701 units you mentioned, it mentions here 22,730 would not be affected. So we're looking at just under 4,000 units would generate eight and-a-half million dollars. Am -- am I correct in my understanding of this?

CHAIR PONTANILLA: Department?

MR. YOUNG: Mr. Molina, provided that the rates are -- are the same as they have been passed by Council for Fiscal Year '11. This analysis was done on that assumption.

And the other points that were not mentioned was that the majority of the revenue change on the plus side, so the additional revenue, actually comes from a handful or less than -- or 11 specific projects.
MR. YOUNG: So -- and I don't know if the 11 projects that are -- that result in the revenue change are representative of the people testifying today, but this analysis done by the Division indicates that the -- the actual impact is isolated to specific circumstances or scenarios on condominiumized properties and is not broad-based. It's specific largely to those condominiumized properties in the Hotel-zoned District.

COUNCILMEMBER MOLINA: Okay. Thank you. And, finally, you've heard a couple of folks mention the possibility of working with the Department to look at some form of, I guess, maybe, better understanding. And in your analysis here, has the Department networked with industry reps in helping formulate this proposal? And if not, is the Department open to working with industry representatives to, again, better express this information? 'Cause it seems like there may have been some misunderstanding. You know, we -- all the Members of the Council receive tons and tons of Emails. And, of course, just today alone, you saw how much people testified. And a few of 'em mentioned that there's a lot of people may -- who may not have been informed or not really clear on what's being proposed. So I just, basically, wanna get you folks on record if this is
something, you know, the Department is open to reaching out and getting the word out.

MR. YOUNG: Well, I would say, from the Department -- first of all, the Department is not the one that proposed this ordinance.

COUNCILMEMBER MOLINA: Uh-huh.

MR. YOUNG: However, the Real Property Tax Division did work with the Chair's office to construct an -- an ordinance to look at this issue. And I would characterize it as an issue. Because what we're talking about here is a special treatment for condominiumized properties that is unlike and unapplied to other properties. So it is -- I don't wanna call it a loophole, but it -- it's a part of the Tax Code that only applies to condominiumized properties. And it's -- condominiumized properties are, in fact, treated differently in the Tax Code compared to other properties. So it is an issue that the County has been aware of. Real Property Tax Division has had to deal with it since time in memoriam. And there are issues that have developed -- that have developed.

So I do commend the Chair for taking on the concept to bring up the discussion because it's -- it is rooted in several issues that the Council has had to deal with on real property tax that you -- you folks
have asked many a times why this and not that, why does it apply here and not there. This is one of those examples. So I think the Division has had the opportunity to speak with and work with several organizations, just in the short period of time since this was introduced. Of course, the Department is always open --

COUNCILMEMBER MOLINA: Okay.

MR. YOUNG: -- to working in the future. I -- I think that the overall goal of the Council -- it's not -- I -- I don't -- I don't wanna look at this -- in my personal opinion, I don't wanna look at this as a revenue-generating item because I look at it as more as a look at how to correct the issues or improve upon the open issues that exist in the Code. So I don't look at it as a revenue area. We did ask to do the analysis to see if there's an actual revenue effect. And this analysis does conclude that there would have been a revenue effect if it was in place and if the Council set the tax rates that they did for 11.

COUNCILMEMBER MOLINA: All right. Thank you, Mr. Director. And I certainly appreciate your explanation because I wanna make sure that the impression not -- out there is that the Council or the County's not just picking on a certain category, and
that there are reasons why this is being brought up for
consideration. Thank you, Mr. Director. Thank you,
Chair.

CHAIR PONTANILLA: Thank you. Member
Victorino, followed by --

COUNCILMEMBER VICTORINO: And I --
CHAIR PONTANILLA: -- Member Baisa.
COUNCILMEMBER VICTORINO: -- don't have a
question. I -- I have a request. If -- if it is
possible that we get the -- you mentioned 11 properties
or 11 complexes that would be affected. I would like to
know -- and I think all of us would like to know -- what
11 specifically. If you can give (inaudible) in
writing, not today, I think that's very important to
understand. And that may relax some of these people who
think they are being caught up in a whirlwind which
they're maybe not being a part of, you know. So,
anyhow, if you would, I would appreciate it. Thank you,
Mr. Chair.

CHAIR PONTANILLA: Thank you. Member Baisa?
COUNCILMEMBER BAISA: Thank you, Chair. That
was my request.

CHAIR PONTANILLA: Okay. We'll get that
information --
COUNCILMEMBER VICTORINO: Thank you.
CHAIR PONTANILLA: -- from the Real Property Tax people. Members, I -- I know some of you have appointments this afternoon. I -- I just would like to thank each and every one of you for being here this -- this afternoon. And, remember, this came out -- out of our Fiscal Year 2011 Budget deliberations. And -- and I think Member Johnson was the one that pointed out to us that it should be referred to Committee. And here we are. Member Johnson?

COUNCILMEMBER JOHNSON: Yeah. I just wanna thank you, Mr. Chair, and, also, the Administration, because what we're looking at is what is equitable and what is uniform. And right now, we have a non-uniform application of a law that is creating an inequity and, as Mr. Young stated, a loophole. And so it's unfair. I do appreciate the comments that the people made today about helping us to garner the revenues that currently people are taking a homeowner exemption from or for which they're not legally entitled to. That's one part of the problem. I wanna thank you personally for bringing this into Committee because it's about being equitable. And right now, if there's non-uniform treatment of people for similar issues -- we've been taken to court for a lot less than that, so I -- I seek some kind of answer and guidance. But everybody is
entitled to be treated equally. And in doing so, it may
displease some people and it may please others. But I
-- I applaud you for taking this issue on. Thank you.

CHAIR PONTANILLA: Thank you. Thank you,
Member Johnson. Members, any more discussion? If --

COUNCILMEMBER NISHIKI: I will have mine at a
later date because --

CHAIR PONTANILLA: Okay.

COUNCILMEMBER NISHIKI: -- it's rather
lengthy.

CHAIR PONTANILLA: Thank you, Mr. Nishiki.

COUNCILMEMBER NISHIKI: Thank you.

CHAIR PONTANILLA: With no further discussion,
then the Chair is gonna adjourn this meeting. And be
sure, Members, we're gonna bring it up again. So the
Budget and Finance Committee meeting for June 1st is now
adjourned. ...(gavel)...

ACTION: DEFER pending further discussion.

ADJOURN: 4:35 p.m.
CERTIFICATE

I, TONYA MCDADE, do hereby certify that the electronically-recorded proceedings contained herein were, after the fact, taken by me in machine shorthand and thereafter was reduced to print by means of computer-aided transcription, and that the foregoing represents, to the best of my ability, a true and accurate transcript of the electronically-recorded proceedings had in the foregoing matter.

I further certify that I am not an employee nor an attorney for any of the parties hereto, nor in any way concerned with the cause.

DATED this 24th day of June, 2010.

Tonya McDade
Registered Professional Reporter
Certified Realtime Reporter
Certified Broadcast Captioner
Hawaii Certified Shorthand Reporter #447