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# ORIGINAL

M I N U T E S  
BUDGET AND FINANCE COMMITTEE  
COUNCIL OF THE COUNTY OF MAUI  
WAILUKU, MAUI, HAWAII  
JUNE 1, 2010

APPROVED:

  
Committee Chair

Transcribed by: Tonya McDade, CSR, RPR, CRR, CBC  
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1        CONVENE:    1:34 p.m.

2        PRESENT:    Councilmember Joseph Pontanilla, Chair  
3                    Councilmember Danny A. Mateo, Vice-Chair  
4                    Councilmember Gladys C. Baisa, Member  
5                    Councilmember Jo Anne Johnson, Member  
6                    (in 1:35 p.m.)  
7                    Councilmember Sol P. Kaho`ohalahala, Member  
8                    (in 1:45 p.m.)  
9                    Councilmember Bill Kauakea Medeiros, Member  
10                   Councilmember Michael J. Molina, Member  
11                   (in 1:39 p.m.)  
12                   Councilmember Wayne K. Nishiki, Member  
13                   Councilmember Michael P. Victorino, Member

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

16        ADMIN:        Frederick Pablo, Budget Director, Office of  
17                    the Mayor  
18                    Agnes Hayashi, Deputy Director, Department of  
19                    Finance  
20                    Scott Teruya, Administrator, Real Property  
21                    Tax Division, Department of Finance  
22                    Marcy Martin, Property Technical Officer,  
23                    Department of Finance  
24                    Brian T. Moto, Corporation Counsel,  
25                    Department of the Corporation Counsel

26        OTHERS:    Item 1:    Paul Laub  
27                    Judy Fox  
28                    Barak Laub  
29                    Steve Tenney  
30                    Katherine Smith  
31                    Raymond Sievers  
32                    G. Sherley Blodgett  
33                    Darryl Canady  
34                    Bert Blodgett  
35                    David DeLeon, REALTORS® Association  
36                    of Maui  
37                    Penny Munroe, President, Nai`i  
38                    Properties Inc.; and Director,  
39                    The Condominium Council of Maui  
40                    Carol Reimann, Maui Hotel & Lodging  
41                    Association  
42                    Tom Donovan, Vice President, General  
43                    Manager, Ritz Carlton Kapalua  
44                    Fred T. Roseberry  
45                    Krishna Narayan

- 1 Robert Ehrlich, President, Ironwoods  
Homeowners Association
- 2 Jim Besaw
- 3 Lora Yadao
- 4 Pat Sullivan, President/Principal  
Broker, Sullivan Properties
- 5 Sara Gadarian
- 6 Blackie Gadarian
- 7 Pam English, Development Manager,  
Maui Land & Pineapple Company,  
8 Inc.
- 9 Larry Ness
- 10 Brett Fahnestock, Board President,  
Southpointe at Waiakoa; and  
11 General Manager, Polo Beach  
Club, Makena
- 12 Bertram Sugimoto
- 13 Zeke Kalua, Executive Director, West  
Maui Taxpayers Association
- 14 Arthur Tabanao
- 15 Clyde D. Wagner
- 16 Lisa Howard, Regional Manager,  
Hawaii First Inc.
- 17 Pamela Tumpap, President, Maui  
Chamber of Commerce
- 18 Susan Malaga
- 19 Larry Armstrong
- 20 Laurie S. Lowson
- 21 Robert Reader, Wailea Pointe Village
- 22 Christine Conlon-Kemp
- 23 Others (10)

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

19 -----  
20 ITEM NO. 72: REAL PROPERTY TAX LAND CLASSIFICATION  
(MISC)

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

1 COUNCILMEMBER BAISA: Good afternoon.

2 CHAIR PONTANILLA: Good afternoon. Member  
3 Medeiros.

4 COUNCILMEMBER MEDEIROS: Aloha and good  
5 afternoon, Chair.

6 CHAIR PONTANILLA: Good afternoon. Member  
7 Nishiki.

8 COUNCILMEMBER NISHIKI: Good morning. Good  
9 afternoon.

10 CHAIR PONTANILLA: Good afternoon. Chairman  
11 Mateo.

12 VICE-CHAIR MATEO: Good afternoon.

13 CHAIR PONTANILLA: Good afternoon. And  
14 Mr. Victorino.

15 COUNCILMEMBER VICTORINO: Aloha and good  
16 afternoon, Chair.

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

25 Members, we do have a number of people that

1 are -- have signed up for public testimony this  
2 afternoon. At this time the Chair would like to  
3 recognize the presence of Member Johnson.

4 COUNCILMEMBER JOHNSON: (Inaudible).

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

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

23 The revisions related to condominium units are  
24 meant to ensure the condominiums are classified similar  
25 to all non-condominiumized properties.

1 Non-condominiumized properties are not allowed to claim  
2 a lower use of the property. They are classified at the  
3 highest and best legal use. The homeowner exemption and  
4 Circuit Breaker credits will still apply to all  
5 condominium units, but if the unit is not eligible for  
6 the homeowner rate, it will be classified according to  
7 its highest and best use. Properties will not be  
8 classified at the Timeshare class unless they are  
9 subject to a Timeshare Plan as defined in Hawaii Revised  
10 Statute 514E.

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

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

25 ...BEGIN PUBLIC TESTIMONY...

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

13          Let's think about going to a restaurant. So  
14          you and I, we go into the restaurant and we sit down, we  
15          just want a salad. It's a new place, it's really fancy,  
16          but we just want a salad. We order a salad. And the  
17          bill comes, it's 450 bucks. We say, well, what's this.  
18          Say, well, we're a fancy place. You coulda ordered the  
19          filet mignon with the -- with the three kinds of  
20          champagne and four kinds of wine, and so, therefore,  
21          that's our highest and best menu. So that's why it's  
22          \$450.

23          Now, that's what highest and best use is. So  
24          what would actually happen under highest and best use?  
25          When you have long-term rentals in these condos, and

1       then you jack up the tax rate, somebody's gonna have to  
2       pay. So you're gonna reduce the long-term housing  
3       stock. The cheaper housing stock is gonna be raised.  
4       And I think what we're looking for now is longer-term,  
5       lower-priced housing stock.

6                So let's go on to unimproved property, the  
7       3,000 waterless properties Upcountry. We have 3,000  
8       waterless properties that are -- that are trying to get  
9       meters that can't get meters because, somehow, there's  
10      not water. However, isn't it the kuleana of the County  
11      to get them water so that they can have those properties  
12      and actually use those properties? So if the concept is  
13      they can't use those properties, but we're gonna raise  
14      their taxes, isn't that inverse condemnation? So  
15      inverse condemnation in where you can't use it -- or  
16      we're not paying you for it; in fact, we're gonna charge  
17      you because you cannot use it. I don't think that's  
18      fair.

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



1       should we reduce their taxes? I think we oughta think  
2       in those terms. Thank you.

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

5               (Applause).

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

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

1 We have to encourage the people who are our steady  
2 customers to come in and -- and utilize this.

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

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

25 CHAIR PONTANILLA: Thank you. Members, any

1 questions for the testifier?

2 (Applause).

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

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

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

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

21 The final thing that I -- I guess I take kind  
22 of personally is I was on Baby Beach yesterday in  
23 Lahaina, and I was sitting in the same spot that I  
24 realized I was sitting in 20 years ago. I mean, this is  
25 great to think that, you know, someday -- and I was

1 looking around and I saw the kids -- that someday my  
2 kids will be here in the exact same spot, hopefully, God  
3 willing. And owning a home on Maui is really, really a  
4 dream, 'cause it's not just your dream, you can pass it  
5 onto your kids. And, hopefully, someday, I'll be able  
6 to take care of my father's home and that will go on to  
7 my children. And so I -- I -- what I'm saying is I take  
8 this very personally.

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

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

20 (Applause).

21 CHAIR PONTANILLA: Seeing none -- seeing none,  
22 Steve Tenney, followed by Katherine Smith.

23 MR. TENNEY: Mr. Chairman, Members of the  
24 Committee, I appreciate the opportunity to speak to you  
25 today. And I'm concerned about the highest and best

1 use.

2 We have a condominium at Paki Maui over in  
3 West Maui. And we, until this point, had it in vacation  
4 rental. But we had to pull it out of vacation rental in  
5 January because of our representative, Aston Hawaii, who  
6 was handling all the rentals, invoked a clause that  
7 says, if we're losing money, we get to collect the  
8 difference from the people in the rental program. At  
9 one point, they were taking up to 80 percent of the  
10 available revenue. So we decided to pull it out of  
11 short-term rental and put it into long-term rental. And  
12 what you're doing now is -- we're out of the starting  
13 gate and now we're gonna get a penalty for trying to do  
14 something that, you know, we really need to do.

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

21 CHAIR PONTANILLA: (?) That's it?

22 MR. TENNEY: Thank you.

23 CHAIR PONTANILLA: Thank you. Member Johnson?

24 COUNCILMEMBER JOHNSON: Yes. I -- I take it  
25 that your property is in the Hotel-zoned classification?

1 MR. TENNEY: Yes, it is.

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

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

7 MS. SMITH: I'm Katherine Kamaemae Smith. I'm  
8 a full-time resident of Maui at the Kapalua Golf Villas.  
9 I'm against the proposed tax hike for condominiums.

10 The proposed legislation tries to milk a cash  
11 cow while the cow is sick. And no can. Mainland people  
12 trying to protect their primary residence in Oregon are  
13 more than willing to let their beach house in Maui go to  
14 the bank. And so there's very little leverage here.

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

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

23 I agree with Dave DeLeon that the County  
24 Council can do a good thing by legislating an appeal  
25 process that works. I'd like to see you do that.

1                   And as for cheaters, 3.5 percent of the  
2                   Kapalua condos are occupied by resident owners. We all  
3                   know each other. And if the County records show more  
4                   residents at the Kapalua condos, I say, "Go get 'em."  
5                   And ask the AOA resident managers to certify that the  
6                   resident owners are who they are and get an affidavit  
7                   from them. They know 'em. They're the people who come  
8                   down to the mailboxes every day. And if that sets up  
9                   some conflict of interest, you can ask any resident  
10                  owner in the condominium complex 'cause they'll be happy  
11                  to tattle on the others.

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

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

18                  (Applause).

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

21                  MS. SMITH: (Inaudible).

22                  COUNCILMEMBER JOHNSON: You touched on a very  
23                  important thing, which is our inability oftentimes to do  
24                  enforcement. I know that we've had the conversation  
25                  amongst ourselves before about the whole situation of

1       whether people in some complexes are doing short-term or  
2       long-term rentals.  Would you -- if we can, you know, I  
3       guess approach it from the perspective that you're  
4       talking about, do you think it would be fair if we  
5       required the individual in a condominium unit to have  
6       some kind of a certified or attested-to document  
7       certifying that they were not in any rental pool or  
8       something of that sort?

9               MS. SMITH:  I think that's very reasonable.

10              COUNCILMEMBER JOHNSON:  Okay.  All right.  
11       Thank you.

12              MS. SMITH:  Uh-huh.

13              CHAIR PONTANILLA:  Thank you.  Any more  
14       questions?  Member Nishiki?  Excuse me, again.  Don't  
15       run away too fast.  Mr. Nishiki?

16              COUNCILMEMBER NISHIKI:  Yeah.  Thank you,  
17       Katherine.  We, at one time, had asked a specific  
18       condominium and asked their board of directors if they  
19       could pretty well police and let the County know.  
20       Because you seem concerned that three percent of you  
21       will be penalized.

22              MS. SMITH:  Yeah.

23              COUNCILMEMBER NISHIKI:  But the response from  
24       this specific condominium was that, you guys do the job.  
25       What is your take on you people being more responsible



1 and policing your group of bandits that perhaps are  
2 cheating?

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

12 COUNCILMEMBER NISHIKI: Thank you.

13 CHAIR PONTANILLA: I got a question for you.

14 MS. SMITH: Yes, sir.

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

17 MS. SMITH: Oh.

18 CHAIR PONTANILLA: One?

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

23 CHAIR PONTANILLA: A wild guess?

24 MS. SMITH: I'm just representing myself. I'm  
25 sorry.

1 CHAIR PONTANILLA: Do you have a wild guess  
2 how many AOA?

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

4 CHAIR PONTANILLA: Okay. Thank you.

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

7 CHAIR PONTANILLA: Okay. Thank you.

8 MS. SMITH: Uh-huh.

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

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

18 There's a lot of people who have worked very  
19 hard. And a lot of the different owners, all the way up  
20 western Maui area, in -- in a lot of cases, some people  
21 that have retired 20, 30 years ago found themselves  
22 unable to sustain themselves, even with the maintenance  
23 costs of these buildings, being that they're 35 years  
24 old. And a lot of these properties have fallen in  
25 default. A lot of 'em are -- are hanging by threads.

1 And we're faced with many owners having to sell at very  
2 cheap prices just to get away from the -- from their  
3 burden. And if you set it up this tax situation to put  
4 the higher rates on everybody, it's definitely going to  
5 kill 'em.

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

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

23 From our standpoint, I would rather pay the  
24 money than to be caught and have a heavy fine, or worse,  
25 who knows. And anybody that knows don't wanna get

1 involved with lawyers. You try desperately not to. So  
2 if you raise these taxes, people have already -- and if  
3 you look in the newspapers, you see how many  
4 foreclosures. And looking at Kaanapali Beach, I don't  
5 know if that's a timeshare that's foreclosed upon, but  
6 they have two sheets -- two or three pages in the  
7 newspaper. And if you change this tax setup, you're  
8 gonna see a lot more -- a lot worse things. And it's  
9 devaluating our properties.

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

15 Thank you.

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

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

21 MR. SIEVERS: Yes.

22 COUNCILMEMBER BAISA: You know, cheaters are  
23 something we talk about a lot and say, oh, well, if you  
24 go after 'em to pay more, they're gonna cheat. What do  
25 you think is a hefty enough fine to be a deterrent?

1                   MR. SIEVERS: Hefty enough? I would consider  
2                   \$1,000 more than I'd like to pay for being dishonest.

3                   COUNCILMEMBER BAISA: Good.

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

13                  COUNCILMEMBER BAISA: Very --

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

16                  COUNCILMEMBER BAISA: Thank you.

17                  MR. SIEVERS: Yeah.

18                  COUNCILMEMBER BAISA: I received a lot of  
19                  Email over the weekend. And somebody even suggested  
20                  10,000. Thank you.

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

23                  MS. BLODGETT: My name is Sherley Blodgett. I  
24                  live at Hale Ono Loa. Our condominium has 67 units; 10  
25                  percent are classified as homeowner, 25 percent are

1 long-term or owner's second home, 45 percent are Hotel  
2 and Resort, and the remaining 20 percent are in  
3 foreclosure. By necessity, our association has had to  
4 approve a cash flow assessment to each owner for those  
5 units in foreclosure where no dues are being collected.  
6 This is passed on to each owner. With the current real  
7 estate market, it is unknown as to how long we will have  
8 to endure this assessment. Further, you're unable to  
9 sell the unit.

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

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

24 You want people to live here. You want our  
25 businesses to have employees. We want people to live

1 here long-term. We feel they're just as important as  
2 the vacation people. We need them there in our  
3 restaurants, to service us, we need them in the hotels,  
4 to take care of our vacation people. And, therefore, we  
5 ask you not to use the highest use rate.

6 Thank you.

7 CHAIR PONTANILLA: Thank you. Members,  
8 questions --

9 (Applause).

10 CHAIR PONTANILLA: -- for the testifier?  
11 Seeing none, thank you very much. Darryl Canady,  
12 followed by Bert Blodgett.

13 MR. CANADY: Good afternoon, Chair and Council  
14 Members. I'm Darryl Canady from the Island of Molokai.

15 And I wouldn't have been here to discuss this  
16 item with you, but I'm also serving on the Urban Design  
17 Review Board, and, thank goodness, it met this morning.  
18 So I had the time while I'm here, paying my \$200  
19 round-trip airfare, to come in front of you and discuss  
20 this very serious problem that is being faced all over,  
21 but especially on Molokai because we only have the one  
22 hotel, the old Hotel Molokai. We have five condominium  
23 complexes. There is not a new one there. We -- the  
24 oldest -- the newest old one is over 30 years old. We  
25 have only seven units on the entire island that are

1 Timeshare. And if this goes through, it will literally  
2 tear apart the resort business on Molokai. It is  
3 already torn apart greatly because of the lack of people  
4 that we have coming. This is like gambling with the  
5 pistol at your head, twirling the -- the chamber and  
6 seeing -- and clicking it and seeing if you're gonna  
7 kill yourself. It is a serious problem that we cannot  
8 handle on Molokai or here.

9 Thank you.

10 CHAIR PONTANILLA: Thank you. Members, any --  
11 (Applause).

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

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

19 COUNCILMEMBER VICTORINO: Chairman --

20 CHAIR PONTANILLA: Excuse me.

21 COUNCILMEMBER VICTORINO: -- I cannot hear.

22 CHAIR PONTANILLA: Can you talk directly into  
23 the mic?

24 COUNCILMEMBER VICTORINO: Please.

25 MR. BLODGETT: As to the unfairness --



1 CHAIR PONTANILLA: Thank you.

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

13 Thank you.

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

16 COUNCILMEMBER NISHIKI: Yes.

17 CHAIR PONTANILLA: Member Nishiki?

18 COUNCILMEMBER NISHIKI: Where do you live?

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

20 COUNCILMEMBER NISHIKI: Hale Ono Loa?

21 MR. BLODGETT: Hale Ona [sic] Loa.

22 COUNCILMEMBER NISHIKI: Yeah. Thank you.

23 CHAIR PONTANILLA: Thank you. Any more  
24 questions, Members? Seeing none, thank you. Dave  
25 DeLeon, followed by Penny Munroe.

1                   MR. DeLEON: Good afternoon and aloha. I'm  
2                   Dave DeLeon, speaking on behalf of Maui's 1,300 licensed  
3                   professional realtors. On May 7, (inaudible) Board of  
4                   Directors of the REALTORS® Association of Maui voted  
5                   unanimously to oppose the proposed bill 'cause it would  
6                   be unfair to condominium owners who are not using their  
7                   units at the highest and best use, because it would have  
8                   a serious negative impact on the -- on the condo market  
9                   already in decline, and because the bill will not  
10                  achieve its stated goals.

11                  What are the stated goals in this bill? Chair  
12                  Pontanilla, at the beginning of the meeting, said that  
13                  it is to stop cheating. How would it do that? By  
14                  eliminating the option to be taxed at the Apartment  
15                  rate, in properties with Hotel or Timeshare uses, but it  
16                  does absolutely nothing to stop taxpayers from declaring  
17                  themselves as homeowners. In fact, it is our contention  
18                  that, if given the choice between being taxed at a  
19                  homeowner's rate of 2.50 or a Timeshare rate at 14, or  
20                  even at the Hotel rate, it's eight -- \$8.30, many more  
21                  are going to opt for the homeowner's rate, whether  
22                  that's true or not. A lot of people are stressed  
23                  economically and they're gonna do what's necessary. The  
24                  game of cat and mouse with the Tax Department will  
25                  definitely continue under this bill.

1           There are other ways of achieving this  
2           purpose. And you heard some of that today from some of  
3           the earlier testifiers. And there's a lady gonna be  
4           following me from the Condo Association who will make it  
5           even clearer that the condominium associations could  
6           stand ready to self-police in this matter. And that  
7           could be done in a variety of ways, but it needs to be  
8           constructively worked out.

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

23          We are seriously concerned about the legal  
24          implications of using State-controlled use like  
25          Timeshare to set highest and best use. And the Chair

1       said that will not be done in this bill. I'd like to  
2       see it in the Code. It needs to be put in the bill that  
3       Timeshare's not gonna be used.

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

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

11              MS. REVELS: Three minutes.

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

23              Thank you.

24              CHAIR PONTANILLA: Thank you, Mr. DeLeon.

25              (Applause).

1 CHAIR PONTANILLA: Members, questions for the  
2 testifier? Member Baisa?

3 COUNCILMEMBER BAISA: Yes. Thank you, Chair.  
4 And thank you, Mr. DeLeon, for being here this  
5 afternoon. For the benefit of those of us who are not  
6 familiar with the Minatoya opinion, could you explain?

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

11 Basically, in -- in around -- in the early  
12 1980s, the County Council changed the zoning for a  
13 number of properties that were in the -- in the  
14 Apartment District. They had previously been allowed to  
15 be acting as, say, motels or condotels. That was  
16 removed. And there was a -- a lot of noise in the  
17 community about that. In 1991 -- that -- that happened  
18 in 1991. I'm sorry. In 2001, Deputy Corporation  
19 Counsel Richard Mina -- Minatoya -- toya -- wrote an  
20 opinion that, basically, said that those properties  
21 that, basically, got grand -- grandfathered the right to  
22 short-term on those properties. The problem with the  
23 Minatoya opinion is, it's just that, it's just an  
24 opinion. It's not codified. It's not zoning. We  
25 counted at least 28 properties in Kihei alone that are

1 affected by it. We're talking about thousands of units  
2 here.

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

12 COUNCILMEMBER BAISA: So --

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

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

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

21 COUNCILMEMBER BAISA: Chaos?

22 MR. DeLEON: Chaos. I mean, in that  
23 marketplace, in the condo marketplace, yes. 'Cause  
24 that's -- it's based on short-term. You take away the  
25 short-term of those thousands of units, you've got

1 chaos.

2 COUNCILMEMBER BAISA: Okay. Thank you very  
3 much.

4 CHAIR PONTANILLA: Thank you. Members, any  
5 more questions for Mr. DeLeon? Member Johnson?

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

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

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

23 MR. DeLEON: Which classification are you  
24 talking about?

25 COUNCILMEMBER JOHNSON: Well, if I'm looking

1 at doing like a short-term rental, when -- I think a  
2 while ago, a survey was sent out --

3 MR. DeLEON: Uh-huh.

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

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

11 COUNCILMEMBER JOHNSON: Yeah.

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

15 COUNCILMEMBER JOHNSON: Yeah.

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

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

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

24 COUNCILMEMBER JOHNSON: All right.

25 MR. DeLEON: Uh-huh.



1 COUNCILMEMBER JOHNSON: I just --

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

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

7 MR. DeLEON: Thank you.

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

10 MR. DeLEON: Thank you.

11 CHAIR PONTANILLA: Penny Munroe, followed by  
12 Carol Reimann.

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

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

1 timeshare.

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

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

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

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

23 Both of these projects face the same problem,  
24 how to get enough funds from a dwindling group of  
25 owners. It's my firm belief that any increase in the

1 property tax rates at this time will seriously impact  
2 our condominium and community association owners. If  
3 they cannot pay their mortgage or association fees, they  
4 will not pay their property taxes.

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

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

20 MS. REVELS: Three minutes.

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

25 We respectfully request a -- that a decision

1 be deferred until the Council can work with business and  
2 community organizations to find alternatives. Thank you  
3 for your kind attention and consideration.

4 (Applause).

5 CHAIR PONTANILLA: Thank you.

6 COUNCILMEMBER VICTORINO: Chair?

7 CHAIR PONTANILLA: Members --

8 (Applause).

9 CHAIR PONTANILLA: Mr. Victorino?

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

13 MS. MUNROE: We have.

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

17 MS. MUNROE: I have?

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

21 MS. MUNROE: It is.

22 COUNCILMEMBER VICTORINO: And is it because  
23 we've come off a -- such an inflationary period where  
24 condos -- as well as homes -- but let's stick with  
25 condos because that's what we're -- we're discussing --

1 just went out of sight with pricing and a lot of buyers  
2 may have gotten in above their head?

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

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

7 MS. MUNROE: Well, I --

8 COUNCILMEMBER VICTORINO: 10 --

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

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

12 MS. MUNROE: I -- I -- I'd say that that's --  
13 30 percent, fair.

14 COUNCILMEMBER VICTORINO: 30 percent, okay.

15 MS. MUNROE: Yeah.

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

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

24 COUNCILMEMBER VICTORINO: Okay. Thank you.  
25 Thank you, Mr. Chair.

1 MS. MUNROE: You're welcome.

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

4 MS. MUNROE: Thank you.

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

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

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

20 As we've all seen in the news lately, the  
21 visitor industry has been experiencing some very  
22 promising increases in visitor counts, occupancy and  
23 spending. These increases provide us with a false sense  
24 of security. The visitor industry has a very long way  
25 to go until we have recovered from the recent economic

1 slump. We -- we continue to offer substantial discounts  
2 in order to attract visitors to our island. Our  
3 recovery will be a very slow, gradual one.

4 We understand that there are approximately  
5 9,200-plus condo units in the Hotel Resort real property  
6 tax classification. If many of them were to enter the  
7 short-term rental market, it would glut the market at a  
8 time when the industry is still vulnerable.

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

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

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

25 CHAIR PONTANILLA: Thank you. Members, any

1 questions for the testifier? Member Baisa?

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

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

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

16 MS. REIMANN: Exactly.

17 COUNCILMEMBER BAISA: Or being out --

18 MS. REIMANN: Out. (Inaudible).

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

21 MS. REIMANN: No.

22 COUNCILMEMBER BAISA: Okay. Thank you very  
23 much.

24 MS. REIMANN: Thank you.

25 CHAIR PONTANILLA: Thank you. Members, any



1 more questions? Member Nishiki?

2 COUNCILMEMBER NISHIKI: What does 10 percent  
3 represent in numbers?

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

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

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

23 COUNCILMEMBER NISHIKI: Thank you.

24 CHAIR PONTANILLA: Thank you. Ms. Reimann,  
25 since you're so familiar with numbers, do you know how

1 many AOA type of organization here on Maui, as well as  
2 homeowner's association?

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

6 CHAIR PONTANILLA: The only reason --

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

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

14 MS. REIMANN: Correct.

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

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

24 CHAIR PONTANILLA: Uh-huh. Thank you. Member  
25 Medeiros?

1                   COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman.  
2                   Ms. Reimann, thank you for your testimony. I -- I just  
3                   wanted to follow up on Member Nishiki's inquiry about  
4                   the long-term rentals. So long-term would be more than  
5                   180 days, because 180 and below is the short-term  
6                   rentals, the TVRs. So if someone, a long-term renter  
7                   rents the unit for a year or more, that means the condo  
8                   owner doesn't use their unit, then?

9                   MS. REIMANN: Correct.

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

12                  MS. REIMANN: Short-term.

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

16                  MS. REIMANN: Correct.

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

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

21                  MS. REIMANN: Thank you.

22                  CHAIR PONTANILLA: Donovan, followed by Fred  
23                  Roseberry.

24                  MR. DONOVAN: Aloha. Good afternoon. Tom  
25                  Donovan, the Vice President, General Manager of the

1 Ritz-Carlton Kapalua. Thank you. I have -- I'm on both  
2 sides of the fence because I have the hotel side as well  
3 as the residences, the timeshare, everything that goes  
4 with it. It's very interesting complex.

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

21 I just think by going out there and saying --  
22 you know, I have a -- a -- 82 units of -- of residences,  
23 okay, they're not timeshare, 82 wholly-owned residences.  
24 By saying all 82 are gonna get taxed the same way,  
25 whether they're using it for their own personal use or

1       they're renting it out short-term, really puts an un --  
2       unfair burden on those people that are just coming to  
3       use their condo for three, four, five months out of the  
4       year and it sits vacant the rest of the time because  
5       they don't wanna rent that unit. For those people that  
6       are renting it out for a week or two weeks at a time, I  
7       -- I think that should be a different tax base. And I  
8       think there's a way to self-police this where it doesn't  
9       have to be across the board for everyone paying the same  
10      tax purposes there.

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

14                CHAIR PONTANILLA: Thank you. Member Johnson?

15                COUNCILMEMBER JOHNSON: Yes.

16                (Applause).

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

22                MR. DONOVAN: Uh-huh.

23                COUNCILMEMBER JOHNSON: -- do the people who  
24      are in the rental pool get a consistently higher price  
25      than the people that are not in the rental pool? Or

1 because they could use it in the rental pool, when they  
2 go to sell it, is the price the same? So let's say  
3 they're asking \$1 million --

4 MR. DONOVAN: Okay.

5 COUNCILMEMBER JOHNSON: -- for their property.  
6 If the people just close the door and they maybe use it  
7 a couple times a year, are they gonna get a lower price  
8 than the other guy that consistently rents it out and  
9 has a rental income?

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

12 COUNCILMEMBER JOHNSON: Yeah. Actually --

13 MR. DONOVAN: I don't --

14 COUNCILMEMBER JOHNSON: -- selling it.

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

17 COUNCILMEMBER JOHNSON: Okay. Because the  
18 sale is predicated on best and highest use.

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

1 price.

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

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

7 COUNCILMEMBER JOHNSON: Okay.

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

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

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

25 COUNCILMEMBER JOHNSON: Okay. And -- and on

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

8 MR. DONOVAN: I have not seen that.

9 COUNCILMEMBER JOHNSON: Okay. All right.

10 MR. DONOVAN: (Inaudible).

11 COUNCILMEMBER JOHNSON: Thank you.

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

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

16 MR. DONOVAN: Sure.

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

24 MR. DONOVAN: Sure.

25 COUNCILMEMBER BAISA: You know, it would



1 appear to me -- and I'd like your opinion -- that if  
2 this would help in some way to prevent this lumping of  
3 everybody together, might it not be worth the effort on  
4 behalf of the -- on behalf of the (inaudible) to play  
5 ball with us.

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

10 COUNCILMEMBER BAISA: Yes.

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

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

25 MR. DONOVAN: Absolutely.

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

3 MR. DONOVAN: Aloha.

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

6 (Applause).

7 CHAIR PONTANILLA: -- Krishna Narayan.

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

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

21 And, number two, the County can foreclose on  
22 real property when real property taxes have not been  
23 paid. It's my understanding -- and I have been told  
24 there has been no County real property tax foreclosure  
25 in the last 10 to 15, and probably 20 years -- there are

1 many millions of dollars that can be collected simply by  
2 the County filing a real property foreclosure action.

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

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

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

19 There are a couple of other things that the  
20 State can do that will help the County. Number one,  
21 Hawaii is a state that has tax deeds; they do not have  
22 tax liens. You cannot go buy a tax lien. I think that  
23 should be changed. I think there should be tax liens.  
24 We should change it to a tax lien state. The County can  
25 sell the lien to an investor, like me, who will pay the

1 County the money, the County gets the money, and then,  
2 later on, if the taxes are not paid, I can foreclose on  
3 the unit and the County does not have to go through the  
4 cost of the foreclosure unit. But that does require a  
5 State change.

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

8 MS. REVELS: Three minutes.

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

16 Thank you. I appreciate it.

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

20 VICE-CHAIR MATEO: Chairman?

21 COUNCILMEMBER VICTORINO: Chair. Chair.

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

23 VICE-CHAIR MATEO: Chairman, just for  
24 clarification for Mr. Roseberry, the County did have a  
25 foreclosure sale a week ago.

1 MR. ROSEBERRY: Oh.

2 VICE-CHAIR MATEO: So --

3 MR. ROSEBERRY: They did?

4 VICE-CHAIR MATEO: So pick up "The Maui News"  
5 and read.

6 MR. ROSEBERRY: Well, I don't get it daily. I  
7 only get it on Sunday, so I -- sorry about that. I  
8 didn't know. But I have been told that there was never  
9 -- had ever -- well, this was a couple, three months  
10 ago. I was told there was no foreclosure action, and,  
11 in fact, they were gonna have to go to other counties to  
12 find out how to do it. But the corporate counsel should  
13 be able to take care of that without any trouble.

14 VICE-CHAIR MATEO: Thank you.

15 MR. ROSEBERRY: Thank you.

16 CHAIR PONTANILLA: Thank you. Krishna  
17 Narayan, followed by Robert Ehrlich.

18 MR. NARAYAN: Good afternoon. My name is  
19 Krishna Narayan. I live in West Maui. And my family  
20 and I actually moved here a year ago. We established,  
21 in 2008, actually, a software development company. It's  
22 always been our long-term goal to move to Hawaii. 2009  
23 was a very difficult time to move given all the economic  
24 situations.

25 We have a condo. And we are very appreciative

1 that the proposal here keeps the homestead exception.  
2 So thank you for that. I know a lot -- not a lot of  
3 people have thanked you for things today, so let me just  
4 say thank you for that first.

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

6 One, I think more time needs to be set --  
7 needs to be taken to look at these considerations and  
8 these problems. A lot of good testimony today in terms  
9 of not rushing into something.

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

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

25 CHAIR PONTANILLA: Thank you. Members,

1 questions for the testifier? Seeing none, thank you  
2 again.

3 (Applause).

4 CHAIR PONTANILLA: Robert Ehrlich, followed by  
5 Jim Besaw.

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

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

17 It seems to me that the best use approach is  
18 gonna be unfair to 88 percent of the owners of the  
19 Ironwoods who choose not to rent, who are owners who  
20 come here for four to six months a year at the -- you  
21 know, during the wintertime, during the summertime. And  
22 they're gonna be unfairly penalized, as that gentleman  
23 just flippantly stated, because 10 percent or 12 percent  
24 of the owners chose to use short-term rentals. It seems  
25 to me that the real issue here is how do we really get

1 the homeowners who are renting and who are not  
2 identifying them as renters on their tax identification  
3 forms to enforce. And I think that's really the issue.

4 I -- I heard from Penny earlier who said  
5 something about having the owners who file their  
6 affidavits. I know I personally sign an affidavit under  
7 penalty of perjury. And when you do that, I think you  
8 have to sit back and really think about the  
9 representation that you're making when you are signing a  
10 declaration under penalty of perjury.

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

20 Thank you.

21 CHAIR PONTANILLA: Thank you. Member Johnson?

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

24 MR. EHRLICH: Yes. I forgot to mention that.  
25 We are zoned Apartments.



1 COUNCILMEMBER JOHNSON: You're zoned  
2 Apartment, okay.

3 MR. EHRLICH: Yes.

4 COUNCILMEMBER JOHNSON: All right. Thank you.

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

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

10 MR. EHRLICH: Thank -- good afternoon.

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

14 MR. EHRLICH: Yes.

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

18 MR. EHRLICH: No, no. The other 12 percent --

19 COUNCILMEMBER MEDEIROS: Uh-huh.

20 MR. EHRLICH: -- may rent their units for  
21 short-term rentals.

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

25 MR. EHRLICH: That is correct.

1                   COUNCILMEMBER MEDEIROS: I see. Thank you for  
2                   that information. Mahalo, Mr. Chairman.

3                   CHAIR PONTANILLA: Thank you. Member Nishiki?

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

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

9                   COUNCILMEMBER NISHIKI: (Inaudible).

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

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

23                  MR. EHRLICH: We require anyone who comes into  
24                  our property to sign in with our general manager. And  
25                  it's required to identify yourself as a -- a guest of an

1 owner or a renter, if you're a renter. And so that's  
2 where I arrived at the 12 percent. That's actually what  
3 I think it is. It's somewhere between 10 and 12 percent  
4 of the owners who actually may rent their units for  
5 short-term rentals.

6 COUNCILMEMBER NISHIKI: Okay. Thank you very  
7 much.

8 CHAIR PONTANILLA: Thank you. Member Baisa?

9 MR. EHRLICH: Thank you.

10 COUNCILMEMBER BAISA: Yes. Thank you.

11 CHAIR PONTANILLA: Excuse me.

12 COUNCILMEMBER BAISA: Mr. -- hang on --

13 CHAIR PONTANILLA: Mr. Ehrlich.

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

16 MR. EHRLICH: Sorry.

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

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

25 COUNCILMEMBER BAISA: You have a cap of one

1 percent of the valuation?

2 MR. EHRLICH: Yes.

3 COUNCILMEMBER BAISA: Thank you very much.

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

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

8 MR. EHRLICH: Yes.

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

12 MR. EHRLICH: I'm sorry?

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

15 MR. EHRLICH: Yeah.

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

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

20 COUNCILMEMBER BAISA: (Inaudible).

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

23 COUNCILMEMBER BAISA: (Inaudible).

24 MR. EHRLICH: If the 10 percent were renting  
25 their unit, I thought I was under the impression that

1 that would be kind of a broad brush for the entire  
2 complex. If I'm wrong, that's good news.

3 CHAIR PONTANILLA: Okay. Thank you.

4 COUNCILMEMBER VICTORINO: (Inaudible).

5 CHAIR PONTANILLA: The next testifier is Jim  
6 Besaw --

7 MR. EHRLICH: Thank you.

8 CHAIR PONTANILLA: -- followed by Lora Yadao.

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

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

19 One is the affidavit or declaration. I see no  
20 reason why a manager would have a problem signing a  
21 declaration if somebody was gonna send in that form to  
22 declare a residency. The manager's not gonna lie for  
23 somebody and -- and have a potential liability himself.  
24 So that's the first thing that should solve most of that  
25 problem.

1           The other thing that -- that you have already  
2           is a penalty. If one does not pay your property taxes,  
3           it's a pretty severe penalty. And if you discover that  
4           somebody has not been paying their -- their proper  
5           property taxes for the last five years, then they have  
6           to pay all of those back -- excuse me -- (cough) --  
7           those back issues or back payments. That's gonna be a  
8           severe penalty. I think people will think twice before  
9           they decide to cheat and -- and get caught five years  
10          down the road, or 10 years or whatever.

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

16           If we wanted to take this a few steps further,  
17          you could pretty much declare any condo in Maui a long  
18          -- or short-term rental because that's its highest and  
19          best use. You can take that condo and say, you know  
20          what, if you rent that condo out short-term, you can  
21          make 100,000 a year. Economically speaking, that's the  
22          highest and best use for that condo. I choose to think,  
23          as somebody said, my highest and best use is to live  
24          there by myself and not have somebody break my furniture  
25          or whatever.

1           I also would like to argue in favor of those  
2           of us who don't live here full-time. We have a -- a  
3           much less burden on the -- the infrastructure of Maui.  
4           We use the facilities less, the roads less. We don't  
5           pollute the air. And we -- we just use all those  
6           facilities less. And, therefore, from my -- if I wanna  
7           argue this point, I'd say that we should have less of a  
8           tax than those who live here full-time. I'm not  
9           advocating that, but I'd just like to argue that to --  
10          to put me in the category of somebody who rents their  
11          unit full-time is not fair.

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

18           MS. REVELS: Three minutes.

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

24           CHAIR PONTANILLA: Thank you. Questions?  
25          Member Johnson?

1                   COUNCILMEMBER JOHNSON: Yes. Do you -- do you  
2 know what your zoning is?

3                   MR. BESAW: It's Hotel/Condo.

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

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

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

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

21                   COUNCILMEMBER JOHNSON: Okay. Thank you.

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

24                   COUNCILMEMBER VICTORINO: (Inaudible).

25                   CHAIR PONTANILLA: Member Victorino?



1 COUNCILMEMBER VICTORINO: Yeah. Thank you.

2 CHAIR PONTANILLA: Excuse me.

3 MR. BESAW: Yes.

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

9 MR. BESAW: Southern California.

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

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

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

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

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

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

24 COUNCILMEMBER VICTORINO: Okay. And what is  
25 your house worth?

1 MR. BESAW: I don't think that's relevant.

2 COUNCILMEMBER VICTORINO: Okay. Well, what  
3 kinda taxes you pay?

4 MR. BESAW: One percent.

5 COUNCILMEMBER VICTORINO: 'Cause it's --  
6 it's -- it's relevant -- and you're -- you're getting --  
7 and I guess the question I'm trying to get to is this,  
8 sir. And I'm not trying to play the devil's advocate,  
9 but I will 'cause I have talked to some of these people  
10 in the past. And I -- I want you guys to understand  
11 there's a couple of dynamics you guys bring to Hawaii.  
12 You been here -- for 20-something years, you been coming  
13 here. And we appreciate that. And for the longest  
14 time, nobody came to see us about anything except the  
15 regular everyday people that were struggling to survive  
16 here, that saw their homes escalate out of sight because  
17 of all the new people coming here. And now we're trying  
18 to find some equity in this. Okay. Equity all around,  
19 sir, for those who live here and for those who come here  
20 and enjoy here. Okay. So I just wanted to make sure  
21 that when I'm asking you these questions, it's not  
22 (inaudible) it's relevant or not because it's something  
23 I'm asking 'cause I really wanna know. Because I can  
24 tell you what my tax is. I can tell you what my son tax  
25 is every year. And he lives in Nevada. And he pays

1       \$8,000 for his homeowner's. And I pay \$800 a year for  
2       my homeowner's. That was the question, sir. So I'm  
3       just trying to get some clarity because when I go  
4       someplace else, if I wanna live there, I understand the  
5       tax structure there, then I understand that that's what  
6       I've got to pay because I choose to live there. I have  
7       no choice. I live here. I have no place else but one  
8       to live, right here. And that's all we're trying to get  
9       now, is some fairness. This best use is being brought  
10      up because too many people for the longest time did take  
11      -- when Polo Beach was built, was it built for rental  
12      purposes?

13                 MR. BESAW: I believe it was.

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

17                 MR. BESAW: That's correct.

18                 COUNCILMEMBER VICTORINO: That is correct?  
19      Okay. Thank you. That's all I needed to know.

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

23                 COUNCILMEMBER VICTORINO: Thank you.

24                 MR. BESAW: I respectfully disagree with you,  
25      sir.

1 COUNCILMEMBER VICTORINO: No. That's okay.  
2 And that's -- that's all part of it. Thank you, sir.

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

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

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

22 Besides hurting us, this new tax would also  
23 hurt the families we help. Our current tenants are a  
24 Maui Police Department officer and his wife who's  
25 expecting their first child. Before that were a single

1 mom who worked in the hotel industry and her small  
2 child. None of us are getting rich out of this  
3 arrangement; we're just getting by.

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

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

15 Thank you so much for your time today.

16 CHAIR PONTANILLA: Thank you. Members,  
17 questions?

18 (Applause).

19 CHAIR PONTANILLA: Member Johnson? Excuse me.

20 COUNCILMEMBER NISHIKI: Yeah.

21 CHAIR PONTANILLA: Ms. Yadao.

22 MS. YADAO: No quick escape.

23 CHAIR PONTANILLA: Member Johnson, followed by  
24 Member Nishiki.

25 COUNCILMEMBER JOHNSON: Yeah. I -- I just

1 wanted to find out, what -- do you know what your zoning  
2 is?

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

6 COUNCILMEMBER JOHNSON: Okay.

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

10 COUNCILMEMBER JOHNSON: And is it on the makai  
11 side?

12 MS. YADAO: It is.

13 COUNCILMEMBER JOHNSON: Okay.

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

15 COUNCILMEMBER JOHNSON: Okay. Thank you.

16 MS. YADAO: Thank you.

17 CHAIR PONTANILLA: Thank you. Member Nishiki?

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

22 MS. YADAO: That --

23 COUNCILMEMBER NISHIKI: -- something that --

24 MS. YADAO: I recall that being asked of me a  
25 couple of years ago when one of our owners wanted to

1       refinance, and their lender was requiring it. And then,  
2       all of a sudden, that, apparently, became commonplace,  
3       that people seeking to purchase a condo in our complex,  
4       their lender was wanting that information, or people who  
5       were current owners wanting to refinance needed to  
6       provide that information. So a lot of your AOAOs are  
7       already going to have that kind of information available  
8       to you and -- and I'm sure would be very happy to  
9       provide it if -- if they don't already, especially in  
10      light of what we've heard today.

11                COUNCILMEMBER NISHIKI: Thank you very much.

12      Thank you --

13                CHAIR PONTANILLA: Thank you.

14                COUNCILMEMBER NISHIKI: -- Mr. Chairman.

15                CHAIR PONTANILLA: Thank you. Members --

16                COUNCILMEMBER NISHIKI: Yeah.

17                CHAIR PONTANILLA: -- any more questions?

18      Member Victorino?

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

25                MS. YADAO: Right. It was the --

1 COUNCILMEMBER VICTORINO: Right.

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

3 COUNCILMEMBER VICTORINO: In Honokowai?

4 MS. YADAO: Uh-huh.

5 COUNCILMEMBER VICTORINO: And the first house  
6 is where you guys live and then you rent this place  
7 (inaudible)?

8 MS. YADAO: Correct.

9 COUNCILMEMBER VICTORINO: Okay.

10 MS. YADAO: The condo we originally lived  
11 in --

12 COUNCILMEMBER VICTORINO: Right.

13 MS. YADAO: -- when we first got married. We  
14 fixed it up and lived in it for a few years. And then,  
15 with my husband's landscaping equipment, we needed a  
16 bigger place. So we were able to -- to get the house  
17 and rent this out. But we had to use the equity in the  
18 condo to -- to get it. So --

19 COUNCILMEMBER VICTORINO: Right.

20 MS. YADAO: -- we're maxed out. We're not  
21 living large by any stretch of the imagination.

22 COUNCILMEMBER VICTORINO: I can -- I can -- I  
23 can relate to that because where I'm at today is only  
24 because I bought one house and then bought another one  
25 and sold to get to where I'm at today. So I understand



1       that part. What I wanted to ask you is in -- in --  
2       in -- you mentioned about living there for a few years.  
3       While you were living there, what was the percentage of  
4       residential or long-term rentals that you noticed that  
5       were there while you were there?

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

9               COUNCILMEMBER VICTORINO: Owner-occupied.

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

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

25              CHAIR PONTANILLA: Thank you. Next testifier

1 is --

2 (Applause).

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

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

17 I represent a -- a lot of people at the Sands  
18 of Kahana. And there's actually 50 -- 52 individual  
19 owners that own there and there's 144 timeshare owners.  
20 And that has not changed since the year 2000. And so  
21 for the highest and best use, if you're going to then  
22 change it to the highest and best use, at \$14 per  
23 thousand, the people that are at -- using it on an  
24 infrequent basis, whether it's four months or six  
25 months, they're gonna be severely affected by the

1       fourteen-dollar per thousand. So my recommendation  
2       would be somehow that the private and public sector get  
3       together and work something out and make it all work.

4               CHAIR PONTANILLA: Thank you. Members,  
5       questions for the testifier? Just for class --  
6       clarification, the Timeshare rate is \$14. And unless  
7       you're exempt, you know, right now, we not looking at  
8       \$14 as highest and best use for the category that we  
9       looking at. Again, early, I made the statement that  
10      through HRS Statute 514E, unless you're a timeshare,  
11      then you'll be at the Timeshare rate. So I -- I just  
12      wanna clarify that.

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

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

19             MR. SULLIVAN: Unless you're designated.

20             CHAIR PONTANILLA: Yeah.

21             MR. SULLIVAN: See, what my understanding was,  
22      that if the project was a Hotel zone and you had a  
23      timeshare in there, then the whole project would then be  
24      considered taxed at the Timeshare rate. But that's not  
25      correct?

1 CHAIR PONTANILLA: No, that's not right.

2 MR. SULLIVAN: Okay.

3 CHAIR PONTANILLA: Thank you.

4 MR. SULLIVAN: Then I stand --

5 CHAIR PONTANILLA: Okay.

6 MR. SULLIVAN: -- corrected.

7 CHAIR PONTANILLA: Members, we're gonna take a  
8 10-minute recess and then, when we get back, we'll have  
9 Sara Gadarian as the next testifier. This meeting is in  
10 recess. ... (gavel) ...

11 RECESS: 2:59 p.m.

12 RECONVENE: 3:12 p.m.

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

17 MS. GADARIAN: You get the soft --

18 (Laughter.)

19 COUNCILMEMBER JOHNSON: Destroying County  
20 property.

21 COUNCILMEMBER VICTORINO: (Inaudible).

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

25 Sara Gadarian. We have had a condominium at

1 Maui Eldorado for 35 years and lived in it full-time for  
2 30 years until we moved down to our machine shop in  
3 Lahaina. So we have just recently rented out the  
4 condominium to a lovely couple who work here in the  
5 visitor industry. And, fortunately, they are able to  
6 pay the rent. And just as another individual testimony,  
7 that it comes out okay for us, including our common  
8 element and the cost of the unit at taxes at the current  
9 value of 200 a month. If this is enacted, it's in a  
10 Hotel zone category, they would have a direct -- we  
11 would have a direct impact of another \$250 a month based  
12 on what units are paying, one-bedroom units are paying  
13 at the Maui Eldorado. So that is an indication of one  
14 person's impact. And they are a long-term rental. And  
15 it would be an impact on them being able to stay as  
16 tenants in our condominium.

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

23 That's our personal side of the -- the issue.  
24 Thank you.

25 CHAIR PONTANILLA: Thank you. Members,

1 questions for the testifier? Seeing none, thank you  
2 again. Blackie Gadarian, followed by Pam English.

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

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

1 of course, (inaudible) the place. (Inaudible) and he's  
2 gotta pass it on. So those families get it.

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

11 MS. REVELS: Three minutes.

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

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

24 MS. REVELS: Four minutes.

25 MR. GADARIAN: It would be nice if we turned

1 all you people around so I can see your Council faces  
2 when they grimace or laugh or fall asleep. Thank you.

3 CHAIR PONTANILLA: Thank you.

4 (Applause).

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

7 MR. GADARIAN: (Inaudible).

8 CHAIR PONTANILLA: You're done.

9 MR. GADARIAN: (Inaudible).

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

13 Thanks for giving us the opportunity for  
14 further discussion on the proposed changes to the real  
15 property tax classifications bill. We understand that  
16 the proposed bill will help with enforcement of the Tax  
17 Code classifications, especially as it relates to  
18 condominium units. We'd like to offer some suggested  
19 revisions to make the bill clearer by addressing some  
20 concerns of interpretation if the bill passes.

21 Since Timeshare is regulated by the State with  
22 no associated specific County zoning, we suggest that  
23 language remain to clarify when a parcel will be  
24 considered Timeshare. The Chair's already stated this  
25 will be applied only when subjected to a Timeshare Plan.



1 And this -- our suggested language will clarify this.

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

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

21 Thank you.

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

25 MS. ENGLISH: Thank you.

1                   CHAIR PONTANILLA: Larry Ness, followed by  
2 Brett Fahnestock.

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

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

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

25                   (Applause).

1                   CHAIR PONTANILLA:  -- Fahnestock, followed by  
2                   Bertram Sugimoto.

3                   MR. FAHNESTOCK:  Mr. Chairman and Council  
4                   Members, thank you for allowing me to testify today.  My  
5                   name is Brett Fahnestock.  I volunteer as the Board  
6                   President at Southpointe.  (Clears throat.)  Excuse me.  
7                   I've got a little cold.  And I'm -- also work as a  
8                   General Manager of the Polo Beach Club in Makena.  And  
9                   I'm speaking on behalf of both of the organizations,  
10                  but, mostly, on behalf of Southpointe at Waiakoa.

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

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

25                  If this bill passes and it does what it seems

1       like it'll do, it'll have a very negative impact on  
2       Southpointe. And so I hope that you reconsider this.

3                   And what's -- I live in the condo world.  
4       Being a manager of Polo Beach Club and -- and being the  
5       Board President at Southpointe, all of my day, most of  
6       the time, besides my family time, is -- is dealing with  
7       condominium things. And when I heard about this bill, I  
8       thought to myself, I had no idea there were that many  
9       people being dishonest. I don't mean to sound naive,  
10      but when you live in the condo world every day and  
11      that's all you do -- I mean, when I get home, I have 20  
12      Emails from Southpointe. When I go to work, I have 20  
13      Emails from Polo Beach Club. My phone has Emails. I  
14      deal with attorneys and condos constantly. And so when  
15      this bill came down the pike that there are this  
16      tremendous number of people being dishonest, I thought  
17      to myself, I've never had anybody approach me and say,  
18      you know, please be sure that you -- you know, if  
19      anybody ever asks you, that you -- my unit's being  
20      utilized this way. Nobody ever has. And at -- at Polo  
21      Beach Club, every -- when a unit changes hands, if  
22      there's any kind of financing, I'm required to fill out  
23      this document that states how many units are in the  
24      rental pool and how many units are considered second  
25      homes. So, I mean, I provide that information to those

1       because I'm required to do that for -- to that -- that's  
2       part of my responsibility. So I -- I don't really know  
3       -- there -- I know -- just like in -- in various laws,  
4       there are people who -- who don't follow the rules, but  
5       there's gotta be a solution.

6               MS. REVELS: Three minutes.

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

22              Thank you.

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

25              (Applause).

1 CHAIR PONTANILLA: Member Victorino?

2 COUNCILMEMBER VICTORINO: Yeah. Thank you.

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

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

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

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

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

8 Beach is more of the short-term kind of vacation

9 renters?

10 MR. FAHNESTOCK: That's correct.

11 COUNCILMEMBER VICTORINO: Okay. Just so that

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

13 MR. FAHNESTOCK: Sure.

14 COUNCILMEMBER VICTORINO: -- let me start with

15 just Southpointe real quick.

16 MR. FAHNESTOCK: Right.

17 COUNCILMEMBER VICTORINO: Okay. You said

18 there's 30 foreclosures for the month of June.

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

20 COUNCILMEMBER VICTORINO: I mean August. I'm

21 sorry. I apologize.

22 MR. FAHNESTOCK: I just did six at noon.

23 COUNCILMEMBER VICTORINO: Six at noon today?

24 MR. FAHNESTOCK: Today.

25 COUNCILMEMBER VICTORINO: Okay. Of these

1 foreclosures, can you give me an idea, because you're --  
2 you're intricately [sic] involved in this, are there --  
3 are -- these guys have owned these units for 30 years,  
4 20 years -- or, no, it cannot be 30. I forget how long.  
5 It's been, what, about 15 years that's been in place?

6 MR. FAHNESTOCK: In 1992.

7 COUNCILMEMBER VICTORINO: 1992, so --

8 MR. FAHNESTOCK: Yeah.

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

11 MR. FAHNESTOCK: You bet.

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

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

22 COUNCILMEMBER VICTORINO: Okay.

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

25 COUNCILMEMBER VICTORINO: And thank you. And,

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

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

15               COUNCILMEMBER VICTORINO: Okay.

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

18               COUNCILMEMBER VICTORINO: Okay. And -- and  
19      so -- just so that, again, we're trying to find some --  
20      some -- and it's not only cheaters now. And -- and I  
21      think that word "cheater" has been used so many times  
22      because that's like the only reason we're doing this.  
23      No. We're really trying to try to get something that it  
24      will be fair and equitable. And you've seen long-term  
25      units like Southpointe, like that other lady talked



1 about, turned into short-term rentals because of this  
2 phenom of this aspiration of -- of prices. And people  
3 bought in there with the idea of renting it out, and now  
4 they can't make it, and they're just walking away. So  
5 we're stuck with the -- like you, the laundry that has  
6 to be cleaned out. That's correct?

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

9 COUNCILMEMBER VICTORINO: Sure.

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

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

25 MR. FAHNESTOCK: Okay.

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

8                   MR. FAHNESTOCK: Okay.

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

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

14                  MR. FAHNESTOCK: Thank you.

15                  CHAIR PONTANILLA: Bertram Sugimoto --  
16                  (Applause).

17                  CHAIR PONTANILLA: -- followed by Zeke Kalua.

18                  MR. SUGIMOTO: Good afternoon, Mr. Chairman.  
19                  Good afternoon, Council Members. I'll make this brief.

20                  I was born and raised in Honolulu. I lived  
21                  there all my life. I own a condo in Iao Gardens, two  
22                  blocks away. I have a homeowner's exemption. And I'm  
23                  very happy with that law. So, actually, I have no  
24                  complaints. But I am the principal broker of a real  
25                  estate company that manages over 15 associations on

1 Maui. Over half of those associations have at least 15  
2 percent foreclosure rates from long-term owners. These  
3 long-term owners will not benefit from any increase we  
4 propose.

5 And I'm sorry that -- that the times are hard.  
6 We're all hoping for a better day. But this is not the  
7 solution. Thank you.

8 CHAIR PONTANILLA: Thank you. Members --  
9 (Applause).

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

12 COUNCILMEMBER BAISA: Good afternoon.

13 MR. SUGIMOTO: Yes.

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

22 MR. SUGIMOTO: I manage three condominiums in  
23 Wailuku. If I mentioned their names, you would know  
24 exactly what I'm saying. A lot of these people are  
25 homegrown. They just -- the economy was overwhelming to

1       them. They either lost their jobs or they got a cut in  
2       pay and they cannot afford to live where they live.

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

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

12              MR. SUGIMOTO: Thank you.

13              CHAIR PONTANILLA: Thank you. Member  
14      Victorino?

15              COUNCILMEMBER VICTORINO: Yeah.

16              MR. SUGIMOTO: Yes.

17              COUNCILMEMBER VICTORINO: Mr. Sugimoto?

18              MR. SUGIMOTO: Yes.

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

25              MR. SUGIMOTO: Yes.

1 COUNCILMEMBER VICTORINO: -- it's West Maui --

2 MR. SUGIMOTO: It's Central Maui.

3 COUNCILMEMBER VICTORINO: -- it's Central

4 Maui.

5 MR. SUGIMOTO: Wailuku, yes.

6 COUNCILMEMBER VICTORINO: Right. Right,

7 right. Oh, yeah. I -- I know exactly which ones you

8 manage. Okay. My question to you, again -- the same

9 question I asked the other gentleman -- these particular

10 individuals that you're referring to --

11 MR. SUGIMOTO: Yes.

12 COUNCILMEMBER VICTORINO: -- that are getting

13 foreclosed on, were they long-term owners, they've owned

14 for the last 10, 12, 15 years, or are they all more in

15 the last three or four years buying in?

16 MR. SUGIMOTO: There's a -- mixed. Half of

17 'em were long-term owners who live there and some of 'em

18 were investors --

19 COUNCILMEMBER VICTORINO: Okay.

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

21 COUNCILMEMBER VICTORINO: Okay. Okay. Okay.

22 So thank you for that. And of those long-term owners,

23 do you know if they were also caught up in the phenom

24 called refinancing?

25 MR. SUGIMOTO: Well, their equity was upside

1 down.

2 COUNCILMEMBER VICTORINO: Yeah.

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

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

7 MR. SUGIMOTO: Yes.

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

10 MR. SUGIMOTO: Yes.

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

17 MR. SUGIMOTO: Thank you.

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

20 MR. KALUA: Afternoon, Chair, Members of the  
21 Committee. Please excuse my attire. I was attending  
22 the planning of my friend's funeral, so I didn't have a  
23 chance to go home and dress appropriately. My name is  
24 Zeke Kalua, Executive Director for the West Maui  
25 Taxpayers Association.

1           Members of the Committee, we came to you  
2           probably about two and-a-half, three weeks ago to ask  
3           for more time. And it seems like within the last 48  
4           hours, there's been all kinda Email blasts about,  
5           basically, coming to the County Council today or lose  
6           your investment. And that's probably a very unfair way  
7           to say how the Emails went out.

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

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

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

1       myself.

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

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

23                   As far as the self-policing, to me, it sounds  
24       like the beginning of our resolution. I mean, and  
25       that's what we need to do. And I think that, you know,



1       rather than try and put pressure on AOAOs to give you  
2       all of this information right away, maybe we could set a  
3       mandate from the County that, by the 31st of November,  
4       you know, everyone in every one of these AOAOs needs to  
5       specifically designate what it is that they do with  
6       their unit. Just tossing up ideas.

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

13             MS. REVELS: Three minutes.

14             MR. KALUA: When you think about it, if  
15      somebody's gonna be worried about paying \$5,000 in  
16      taxes, but they're only gonna get fined 600 bucks,  
17      there's incentive to cheat. You know, maybe we  
18      shouldn't be looking at fining their money, maybe the  
19      fine should be way more severe. Maybe it should be  
20      three days in jail. I mean, you know, it doesn't look  
21      pretty, but, you know, we've gotta be -- we've gotta get  
22      the understanding out there that cheating is not gonna  
23      be tolerated. And as long as we -- we put,  
24      quote-unquote, "wimpy penalties out there", that's  
25      exactly what we're gonna get. You know, when -- we're

1       gonna have all of your staff and all of the  
2       Administration working twice as hard to get the  
3       justification that we need to get to prevent things like  
4       this from coming to the forefront. Maybe the \$14 is  
5       (inaudible) for timeshare, maybe it's not.

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

10              MS. REVELS: Four minutes.

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

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

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

18              COUNCILMEMBER BAISA: Yes. Thank you, Chair.  
19       And thank you, Zeke, for being here this afternoon. I  
20       know that you're affiliated with the West Maui Taxpayers  
21       Association. And it would appear to me that you would  
22       be a body that would be very instrumental or very  
23       important in conveying information. Have you had the  
24       opportunity to meet with your Members to discuss this in  
25       the intervening time?

1 MR. KALUA: No.

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

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

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

8 MR. KALUA: (Inaudible).

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

16 MR. KALUA: Uh-huh.

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

1 MR. KALUA: Uh-huh.

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

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

18 COUNCILMEMBER BAISA: Thank you very much.

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

21 MR. KALUA: Chair?

22 CHAIR PONTANILLA: Seeing none --

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

25 CHAIR PONTANILLA: Go ahead.

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

13                 CHAIR PONTANILLA: Thank you.

14                 MR. KALUA: Thank you.

15                 (Applause).

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

18                 MR. TABANAO: My name is Arthur Tabanao. And  
19                 I live at the Maui Eldorado. I'm a resident there.

20                 Part of the house rules for our association is  
21                 that each guest must register. And the Outrigger, who  
22                 runs the front desk, actually does that. So we would  
23                 have that information on who's short-term, who's  
24                 long-term, and who's a resident and who's, you know,  
25                 just there as a snowbird.

1 I didn't have much to say, but I have an  
2 analogy I want to share. Let's say an SUV is going down  
3 the highway, and one of the police stop him because he  
4 was going 25 miles over the speed limit, he was given  
5 \$150 fine. And this information got back to the Members  
6 of the Council. And over a six-month period, maybe a  
7 year period, they noticed that there were a lot of SUVs  
8 speeding on the highways. So amongst themselves, they  
9 decided to pass an ordinance. We're gonna fine all SUVs  
10 in Maui County, while, on a yearly basis, adding to  
11 their registration cost, \$150. And that seems to me  
12 what's happening here.

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

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

17 COUNCILMEMBER JOHNSON: Just one  
18 clarification.

19 MR. TABANAO: Yeah.

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

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

24 COUNCILMEMBER JOHNSON: You get my point?

25 MR. TABANAO: Yeah. Yeah, I understand.

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

3                   MR. WAGNER: Ladies and Gentlemen of the  
4 Council, thank you for being here and putting your  
5 attention to this issue today and taking your time  
6 and -- and your energy. My name is Dave Wagner. I'm a  
7 real estate broker here on the island. My company also  
8 manages vacation rentals of condominiums. They're  
9 30-day minimum, but they fall in that category of  
10 short-term because they're less than six months.

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

25                   Anybody from California that can verify that?

1 Is that correct?

2 UNIDENTIFIED SPEAKERS: (From the audience.)  
3 (Inaudible).

4 MR. WAGNER: I'm wrong?

5 UNIDENTIFIED SPEAKERS: (From the audience.)  
6 (Inaudible).

7 CHAIR PONTANILLA: Excuse me. Sir! Sir!  
8 Please address the Council.

9 MR. WAGNER: I'm sorry.

10 CHAIR PONTANILLA: Thank you.

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

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

24 We already whack 'em -- these nonresident  
25 condo owners, we already whack 'em, you know, over



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

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

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

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

25 You've heard all the different sides today.

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

15 I had a woman come and sit in my office about  
16 six months ago and say, here, here's the deed to my  
17 condo, I can't afford it anymore. And come to find out,  
18 she had lived here for most of her life, school teacher,  
19 retired, took her whole savings and bought a condo at  
20 Hale Ono Loa, that we talked about earlier. And because  
21 of the assessments and because of buying the lease fee  
22 was unable to make her payments anymore. And she said,  
23 please don't ruin my credit, too. And I have to tell  
24 you, as the managing agent, that was not in my job  
25 description when I got hired. And I think that you're

1 all aware now that there's a lot more effects of this  
2 tax, that we do need to come to together.

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

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

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

24 And I agree that something does have to be  
25 done. I mean, it's a business and we have an economy

1 here that's been hit very hard. And whether they're  
2 visitors or, you know, part-time residents, if they  
3 can't make their maintenance fees anymore, we're going  
4 to have to take that action. As many of you know, there  
5 was a big article in the paper on nonjudicial  
6 foreclosures. And, you know, as Sherley Blodgett said,  
7 I have 15 that we're doing in that condo right now. And  
8 four of that 15 my association owns and we can't even  
9 sell 'em because the delinquencies are so high. You  
10 know, we're lucky if we can get 'em rented and even make  
11 some of that money back. Every month, when I go to pay  
12 that Association's bills, I have to decide what's the  
13 most urgent, the resident manager's wages, the  
14 insurance, you know, to --

15 MS. REVELS: Three minutes.

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

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

1 on this island. Thank you for your time.

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

4 (Applause).

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

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

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

18 Currently, many industries are alarmed by this  
19 bill, as expressed today. We are concerned because the  
20 suggested change would unfairly tax many condominium  
21 owners at a higher rate for a use they are not currently  
22 doing. Those who would be affected include long-term  
23 rental units, owners who use their condos as second  
24 homes and vacant units. Raising their taxes to the  
25 highest and best use for owners who do not qualify for a

1 homeowner's exemption may require owners to  
2 significantly increase their long-term rental rate to  
3 make up the difference, raising the rent for many local  
4 residences -- residents. It may force owners into  
5 short-term rentals to cover the higher expense, equating  
6 to fewer long-term rentals for hundreds of residents and  
7 adding a flood of new rental units in a short-term  
8 rental pool that is already down during this economy,  
9 when we are struggling to fill our current inventory.  
10 Or it may push owners over the edge, which has been  
11 stated so many times already, and have them walk away  
12 from the property altogether, increasing the liability  
13 and burden on other property owners in the association.

14 Additionally, higher foreclosures will bring  
15 property values down and decrease the real property tax  
16 revenue derived from individual units.

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

19 The number of units in foreclosures continues  
20 to grow. And it is no longer shocking to see over eight  
21 pages of foreclosures in "The Maui News," with many of  
22 them being condominium properties. A jump from, say, an  
23 Apartment rate to a Hotel/Resort rate per thousand of  
24 assessed value is a huge hit, 66 percent increase. To  
25 go from that rate to a Timeshare rate is over a hundred

1 and -- is 180 percent raise in taxes. It's astronomical  
2 and it's outrageous. These owners, like everyone else,  
3 cannot sustain more hits. And many of these properties  
4 are owned by seniors operating on a fixed income.

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

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

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

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

21 MS. TUMPAP: Thank you. Aloha.

22 (Applause).

23 CHAIR PONTANILLA: Susan Malaga, followed by  
24 Larry Armstrong.

25 MS. MALAGA: Good afternoon, Ms. -- Mr. Chair

1 and Members of the City Council -- or of the County  
2 Council. My name is Susan Malaga. I am a full-time  
3 resident of Maui and have been for the last two  
4 and-a-half years. My husband and I have owned property  
5 here on Maui for about six or seven years. I'm here to  
6 represent myself, although I happen to also be the  
7 president of a -- the homeowner's association of a small  
8 complex with 36 condos in the Kapalua area.

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

17 Many people, like me, started as part-time  
18 residents and have now become full-time residents. That  
19 will no longer occur. As many have already stated, the  
20 condo resale market is already stagnant, if nonexistent.  
21 The proposed changes will ensure that it will remain  
22 stagnant long after the overall economy improves. Both  
23 full-time and part-time owners who do not rent do  
24 contribute a considerable amount to the overall  
25 viability of Maui's economy through purchases and as



1 well as other expenses while they are here on -- on  
2 island.

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

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

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

25 Thank you for your time. I really appreciate

1 your interest in this important matter. Thank you.

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

4 MS. MALAGA: Thank you.

5 (Applause).

6 CHAIR PONTANILLA: Larry Armstrong, followed  
7 by Laurie Lowson.

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

12 One of the -- one of the Members talked about  
13 the -- in the newspaper, there was an article about the  
14 County foreclosing for -- for tax purposes. And I read  
15 the article. And I thought one thing that was  
16 interesting, there were 300 properties that were up for  
17 foreclosure, and all -- there were eight that went to  
18 auction. And so what I read into that is that 292  
19 people, when they got the message that somebody cared,  
20 they jumped up and paid their back real estate taxes.  
21 The -- the -- the point that I think I'm making is that  
22 I feel that when the Government does their job, the  
23 people react appropriately and they do what they're  
24 supposed to do.

25 Also, as I sat back in the audience, I was

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

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

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

21 I -- I will make Mr. -- I'm picking on  
22 Mr. Victorino. My friend Marion follows Shawn  
23 Victorino, and bigtime fan. And so I can be a fan. The  
24 -- I will make a standing offer, Mr. Victorino. If you  
25 envision what your house would be worth if all the

1 tourists left, I will buy your house for that price  
2 tomorrow. And because --

3 MS. REVELS: Three minutes.

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

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

21 MS. REVELS: Four minutes.

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

24 CHAIR PONTANILLA: Sir --

25 MR. ARMSTRONG: I -- and I -- if I may --

1 CHAIR PONTANILLA: Can you --

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

3 CHAIR PONTANILLA: -- conclude, please?

4 MR. ARMSTRONG: -- stay here long enough to  
5 hear the first person talk that's in favor of this bill.

6 CHAIR PONTANILLA: Thank you. Members, any  
7 questions for the testifier? Seeing none, thank you  
8 very much. Laurie Lawson.

9 (Applause).

10 CHAIR PONTANILLA: Members, Ms. Lawson is the  
11 last person to sign up for public testimony. If anyone  
12 else would like to provide public testimony, you can  
13 come forward as soon as Ms. Lawson is completed.

14 MS. LAWSON: Good afternoon. Thank you for  
15 the opportunity to speak. I, like Larry, did not plan  
16 on speaking today, so -- but I've just heard too many  
17 things, I have to speak up. My name is Laurie Lawson.  
18 I'm a realtor. I have lived here since 1977. I was  
19 previously President of the REALTORS® Association of  
20 Maui, I'm currently its treasurer. But I'm not speaking  
21 for them; I'm speaking as an individual.

22 My husband Mack and I live and own in a  
23 condominium. We do get the owner-occupant rate. And we  
24 are very grateful for that. Even though, at times, we  
25 have laughed and thought it was maybe a little low,

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

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

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

24 Pohailani, I am actually President of the  
25 association there. And the property is zoned Hotel and

1 Apartment, and it also has 14 units that were allowed to  
2 be time-shared, which are currently now long-term  
3 rentals because the timeshare disappeared when the lease  
4 rent -- when the period of the lease was renegotiated.

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

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

18 MS. REVELS: Three minutes.

19 MS. LOWSON: -- one bath.

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

24 CHAIR PONTANILLA: Thank you. Members,  
25 questions for the testifier? Member Medeiros?

1                   COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman.  
2                   And good afternoon. I just wanted to know, since you  
3                   present several different condominiums that you own or  
4                   you're part of the association -- I think a big factor  
5                   in ownership of condominiums seems like lately is the  
6                   maintenance fee -- what is the maintenance fee for the  
7                   condos that you're involved with?

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

11                  COUNCILMEMBER MEDEIROS: Uh-huh.

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

19                  COUNCILMEMBER MEDEIROS: Uh-huh.

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

24                  COUNCILMEMBER MEDEIROS: Uh-huh. Thank you  
25                  for sharing that information. Because I know a lot of



1 people, their maintenance fees have risen exponentially  
2 over the past few years. And that seems to be a major  
3 component of people falling into financial trouble,  
4 is -- you know, that's -- like, say, the last one you  
5 mentioned, that -- that's somebody's rent or mortgage,  
6 just the maintenance fee. So I -- I'm just concerned  
7 that maintenance fee have gotten to a point where it's  
8 so expensive and --

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

11 COUNCILMEMBER MEDEIROS: Right.

12 MS. LOWSON: (Inaudible).

13 COUNCILMEMBER MEDEIROS: And I realize --

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

16 COUNCILMEMBER MEDEIROS: Right. Yeah, the  
17 amenities --

18 MS. LOWSON: The water --

19 COUNCILMEMBER MEDEIROS: -- increases --

20 MS. LOWSON: Amenities, yeah.

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

23 MS. LOWSON: Uh-huh.

24 COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman.

25 CHAIR PONTANILLA: Thank you. Members, any

1 more questions for the testifier? Seeing none, thank  
2 you again.

3 MS. LOWSON: Thank you.

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

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

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

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

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

21 MR. READER: Yes, Ms. Johnson. It's zoned  
22 Hotel/Condo. And 80 percent of the owners there use the  
23 Apartment rate. So the high majority of these owners  
24 would be affected by this increase if the highest and  
25 best use were used there.

1           There -- there is some concern about the  
2           application or -- or the discretion of the director to  
3           apply that, if it were to become law. And I think  
4           that's why we're requesting it be kept in Committee or  
5           deferred and not voted on until we could understand that  
6           intent.

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

10          MR. READER: Thank you for your time today.

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

16          MS. CONLON-KEMP: Yes.

17          CHAIR PONTANILLA: -- door. Thank you.

18          MS. CONLON-KEMP: My name is Christine  
19          Conlon-Kemp. I've provided some written testimony, but  
20          I want to make a clarification 'cause, earlier, there  
21          were some questions in regards to maintenance fees at  
22          condominiums. I have been involved in the condominiums  
23          since 2000. I own two on island. Actually, they're  
24          side by each. My husband lives in one and I live in the  
25          other. And I know people may look and find that a

1 little strange, but they're small. They're about 500  
2 square feet of living space. We have two TMK numbers.  
3 And so, consequently, we can only claim one owner's  
4 exemption. Although, perfectly honestly, both are used  
5 for people who that is their primary residence.

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

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

25 CHAIR PONTANILLA: Thank you. Members, any

1 questions for the testifier? Member Baisa?

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

5 MS. CONLON-KEMP: Yes.

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

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

20 COUNCILMEMBER BAISA: Thank you.

21 COUNCILMEMBER VICTORINO: Chair?

22 CHAIR PONTANILLA: Thank you. Member  
23 Victorino?

24 COUNCILMEMBER VICTORINO: Thank you. And --  
25 and -- and -- and thank you very much, you know, for

1 your -- your clarification on the maintenance fee, and  
2 especially the -- and this is what the challenge is  
3 being faced by many associations, the delinquency  
4 compounded with aging infrastructure.

5 MS. CONLON-KEMP: Yes.

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

10 MS. CONLON-KEMP: Yes.

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

17 MS. CONLON-KEMP: Astronomically.

18 COUNCILMEMBER VICTORINO: Especially in the  
19 area of flood.

20 MS. CONLON-KEMP: Yes.

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

25 MS. CONLON-KEMP: Yes. I can tell you, 'cause

1 I am on the Board, last year, to renew a policy, it  
2 increased by 52 percent.

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

13 MS. CONLON-KEMP: No.

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

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

18 COUNCILMEMBER VICTORINO: Sure.

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

20 COUNCILMEMBER VICTORINO: Sure.

21 MS. CONLON-KEMP: -- comment? I -- also, I  
22 try to provide my time in the community, I know many  
23 others do, and contribute. We wanna be part of the  
24 community. We wanna support the MACC and the Hui that  
25 has programs for children and the arts. And we wanna

1 support the Humane Society. I see a lot of people who  
2 are in my economic strata who no longer can do that.  
3 And, you know, as we tax people at a certain level,  
4 where they have to make that decision between their home  
5 and providing for the community, that's something else  
6 to consider, too.

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

9 MS. CONLON-KEMP: Thank you.

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

12 (Applause).

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

17 COUNCIL MEMBERS: No objections.

18 ...END OF PUBLIC TESTIMONY...

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



1 Administrator Teruya to provide us with some opening  
2 comments -- or some comments.

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

13 CHAIR PONTANILLA: Thank you. Mr. Teruya?

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

24 The proposal before you brings uniformity and  
25 fairness. All properties not condominiumized all -- are

1 already classified based on the highest and best use.  
2 As a point, a single-family home on Hotel-zoned land is  
3 used -- that is used for a second home is already  
4 classified as Hotel and Resort. So this bill eliminates  
5 two separate rays -- ways of classifying properties.

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

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

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

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

20 The chart is there for you to reference.

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

25 Next point: Condominiums without the home

1 exemption zoned Agriculture would be classified as  
2 Agriculture instead of Apartment, which are -- they are  
3 currently classified.

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

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

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

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

22 The Minatoya opinion is an opinion that was --  
23 a short opinion that was written back in 2001, July --  
24 and dated July 30, 2001, by then Deputy Corporation  
25 Counsel Richard Minatoya. And -- and this was when

1 James Takayesu was Corporation Counsel. It is an  
2 opinion regarding -- really about the zoning law in the  
3 County of Maui, and, in particular, whether transient or  
4 short-term rentals were permitted within the Apartment  
5 Zoning District. So it's really an opinion that deals  
6 with land use issues and zoning issues. It was never  
7 written with taxation in mind. And it's not really a  
8 tax opinion. And it's certainly -- when writing this  
9 opinion, Mr. Minatoya could not have foreseen the kinds  
10 of issues that are being discussed today.

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

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

20 Having said that, opinions do have  
21 consequences in the sense that -- to the extent that  
22 they are followed by Government agencies like the  
23 Department of Planning. They -- they can influence or  
24 shape governmental decisions. And, of course, the  
25 longer an opinion remains extant, the more people and

1 the more agencies would have relied upon them in -- in  
2 many cases.

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

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

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

22 COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman.  
23 Mr. Moto, I -- I'd like to ask, with your describing and  
24 clarifying for us the Minatoya opinion, in opinions that  
25 have done -- have been done by the Corporation Counsel,

1 I -- I wanna know -- and you said it does not have the  
2 -- the force of law.

3 MR. MOTO: Correct.

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

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

13 COUNCILMEMBER MEDEIROS: Right.

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

17 COUNCILMEMBER MEDEIROS: Right. Okay.  
18 Because I asked that because if a -- a new opinion on  
19 the same item is provided, doesn't it make it confusing  
20 that there are other existing opinions on the same item?  
21 Would -- so the new opinion would not supersede or  
22 replace the previous opinion on the same item? If there  
23 was -- if you made an opinion on the same item that  
24 Mr. Minatoya did, would your opinion supersede or  
25 replace Mr. Minatoya's opinion?

1           MR. MOTO: It could because it -- opinions are  
2           opinions of the Corporation Counsel.

3           COUNCILMEMBER MEDEIROS: Oh.

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

6           COUNCILMEMBER MEDEIROS: Right.

7           MR. MOTO: -- retract this.

8           COUNCILMEMBER MEDEIROS: Yeah.

9           MR. MOTO: (Inaudible).

10          COUNCILMEMBER MEDEIROS: It was just a general  
11          question.

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

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

16          CHAIR PONTANILLA: Member Johnson, followed by  
17          Member Molina.

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

1 whenever we pass such a law?

2 MR. MOTO: Yes.

3 COUNCILMEMBER JOHNSON: Okay. Thank you.

4 CHAIR PONTANILLA: Thank you. Member Molina?

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

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

17 CHAIR PONTANILLA: Department?

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

22 And the other points that were not mentioned  
23 was that the majority of the revenue change on the plus  
24 side, so the additional revenue, actually comes from a  
25 handful or less than -- or 11 specific projects.



1 COUNCILMEMBER MOLINA: Uh-huh.

2 MR. YOUNG: So -- and I don't know if the 11  
3 projects that are -- that result in the revenue change  
4 are representative of the people testifying today, but  
5 this analysis done by the Division indicates that the --  
6 the actual impact is isolated to specific circumstances  
7 or scenarios on condominiumized properties and is not  
8 broad-based. It's specific largely to those  
9 condominiumized properties in the Hotel-zoned District.

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

1 something, you know, the Department is open to reaching  
2 out and getting the word out.

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

6 COUNCILMEMBER MOLINA: Uh-huh.

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

22 So I do commend the Chair for taking on the  
23 concept to bring up the discussion because it's -- it is  
24 rooted in several issues that the Council has had to  
25 deal with on real property tax that you -- you folks

1 have asked many a times why this and not that, why does  
2 it apply here and not there. This is one of those  
3 examples. So I think the Division has had the  
4 opportunity to speak with and work with several  
5 organizations, just in the short period of time since  
6 this was introduced. Of course, the Department is  
7 always open --

8 COUNCILMEMBER MOLINA: Okay.

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

21 COUNCILMEMBER MOLINA: All right. Thank you,  
22 Mr. Director. And I certainly appreciate your  
23 explanation because I wanna make sure that the  
24 impression not -- out there is that the Council or the  
25 County's not just picking on a certain category, and

1 that there are reasons why this is being brought up for  
2 consideration. Thank you, Mr. Director. Thank you,  
3 Chair.

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

6 COUNCILMEMBER VICTORINO: And I --

7 CHAIR PONTANILLA: -- Member Baisa.

8 COUNCILMEMBER VICTORINO: -- don't have a  
9 question. I -- I have a request. If -- if it is  
10 possible that we get the -- you mentioned 11 properties  
11 or 11 complexes that would be affected. I would like to  
12 know -- and I think all of us would like to know -- what  
13 11 specifically. If you can give (inaudible) in  
14 writing, not today, I think that's very important to  
15 understand. And that may relax some of these people who  
16 think they are being caught up in a whirlwind which  
17 they're maybe not being a part of, you know. So,  
18 anyhow, if you would, I would appreciate it. Thank you,  
19 Mr. Chair.

20 CHAIR PONTANILLA: Thank you. Member Baisa?

21 COUNCILMEMBER BAISA: Thank you, Chair. That  
22 was my request.

23 CHAIR PONTANILLA: Okay. We'll get that  
24 information --

25 COUNCILMEMBER VICTORINO: Thank you.

1 CHAIR PONTANILLA: -- from the Real Property  
2 Tax people. Members, I -- I know some of you have  
3 appointments this afternoon. I -- I just would like to  
4 thank each and every one of you for being here this --  
5 this afternoon. And, remember, this came out -- out of  
6 our Fiscal Year 2011 Budget deliberations. And -- and I  
7 think Member Johnson was the one that pointed out to us  
8 that it should be referred to Committee. And here we  
9 are. Member Johnson?

10 COUNCILMEMBER JOHNSON: Yeah. I just wanna  
11 thank you, Mr. Chair, and, also, the Administration,  
12 because what we're looking at is what is equitable and  
13 what is uniform. And right now, we have a non-uniform  
14 application of a law that is creating an inequity and,  
15 as Mr. Young stated, a loophole. And so it's unfair. I  
16 do appreciate the comments that the people made today  
17 about helping us to garner the revenues that currently  
18 people are taking a homeowner exemption from or for  
19 which they're not legally entitled to. That's one part  
20 of the problem. I wanna thank you personally for  
21 bringing this into Committee because it's about being  
22 equitable. And right now, if there's non-uniform  
23 treatment of people for similar issues -- we've been  
24 taken to court for a lot less than that, so I -- I seek  
25 some kind of answer and guidance. But everybody is

1 entitled to be treated equally. And in doing so, it may  
2 displease some people and it may please others. But I  
3 -- I applaud you for taking this issue on. Thank you.

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

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

8 CHAIR PONTANILLA: Okay.

9 COUNCILMEMBER NISHIKI: -- it's rather  
10 lengthy.

11 CHAIR PONTANILLA: Thank you, Mr. Nishiki.

12 COUNCILMEMBER NISHIKI: Thank you.

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

18 ACTION: DEFER pending further discussion.

19 ADJOURN: 4:35 p.m.

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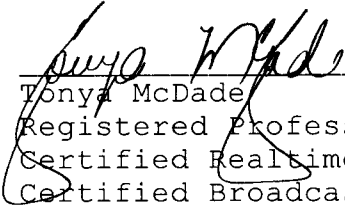
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CERTIFICATE

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