

**BUDGET AND FINANCE COMMITTEE**  
Council of the County of Maui

**MINUTES**

**November 29, 2011**

**Council Chamber, 8<sup>th</sup> Floor**

**CONVENE:** 1:33 p.m.

**PRESENT:** Councilmember Joseph Pontanilla, Chair  
Councilmember G. Riki Hokama, Vice-Chair (In 1:45 p.m.)  
Councilmember Gladys C. Baisa, Member  
Councilmember Robert Carroll, Member  
Councilmember Elle Cochran, Member (In 1:35 p.m.)  
Councilmember Donald G. Couch, Jr., Member  
Councilmember Danny A. Mateo, Member (In 1:39 p.m.)  
Councilmember Michael P. Victorino, Member  
Councilmember Mike White, Member (In 1:38 p.m.)

**STAFF:** Scott Kaneshina, Legislative Analyst  
Camille Sakamoto, Committee Secretary

**ADMIN.:** Jeremiah L. Savage, Deputy Director, Department of Finance  
Scott K. Teruya, Administrator, Real Property Tax Division, Department of Finance  
Adrienne N. Heely, Deputy Corporation Counsel, Department of the Corporation  
Counsel

**PRESS:** *Akaku: Maui Community Television, Inc.*

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CHAIR PONTANILLA: . . .(*gavel*). . . The Budget and Finance Committee meeting is now in session.  
The . . .date is November 29<sup>th</sup>, 2011. The time is 1:34. Good afternoon, Members.

COUNCIL MEMBERS: Good afternoon.

CHAIR PONTANILLA: Thank you for being here. At this time, the Chairman would like to introduce  
the Members that are present this afternoon. We do have Member Carroll.

COUNCILMEMBER CARROLL: Good afternoon.

CHAIR PONTANILLA: Good afternoon. Member Baisa.

COUNCILMEMBER BAISA: Good afternoon.

CHAIR PONTANILLA: Good afternoon. Member Couch.

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COUNCILMEMBER COUCH: Good afternoon.

CHAIR PONTANILLA: Good afternoon. Member Victorino.

COUNCILMEMBER VICTORINO: Good afternoon, Chair.

CHAIR PONTANILLA: Good afternoon. Excused at this time are Members Cochran, White, Chairman Mateo, and Mr. Hokama. Upfront. . .Members, we do have the Administration personnel--Deputy Corporation Counsel, Adrienne Heely.

MS. HEELY: Afternoon.

CHAIR PONTANILLA: Good afternoon. Deputy Director of Finance, Jeremiah Savage.

MR. SAVAGE: Good afternoon.

CHAIR PONTANILLA: Good afternoon. And Real Property Tax Administrator, Mr. Scott Teruya.

MR. TERUYA: Good afternoon.

CHAIR PONTANILLA: Good afternoon. And as always, supporting the Committee is Scott Kaneshina, as well as Camille Sakamoto. Members, we don't have anybody signed up for public testimony at this time, and there's no one in the gallery to provide public testimony. If there's no objections, the Chair would like to close public testimony.

COUNCIL MEMBERS: No objections.

CHAIR PONTANILLA: Thank you.

COUNCILMEMBER \_\_\_\_: . . .*(laughter)*. . .

CHAIR PONTANILLA: . . .*(laughter)*. . . This afternoon, Members, we have one item on the agenda--BF-71, Real Property Tax Appeals.

**ITEM BF-71: REAL PROPERTY TAX APPEALS (CC 11-239)**

CHAIR PONTANILLA: The purpose of the proposed bill is to amend the County's real property tax appeals process in response to the enactment of Act 106 (2011), to require taxpayers appeal, appealing real property tax assessments to first obtain a decision from the County board of review before the appeal is submitted to the State Tax Appeals Court. At this time, the Chair would like to recognize the Deputy Finance Director-- if you have any comments?

MR. SAVAGE: Thank you, Chair. The only comment that I do have is that we're in favor of this because we believe that it'll speed up the process because a lot of our appeals get caught up in

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the Tax Appeal Court--approximately three years, from my understanding. So by doing so, because we're quite caught up in all the appeal process down in our Department, we feel that we're gonna be able to process much sooner and we'll be able to figure out what our revenues are, for budgetary purposes, in the future.

CHAIR PONTANILLA: Thank you. Mr. Teruya, you got any comments?

MR. TERUYA: Good afternoon, Chair and Members. I think one of the reasons--a little history behind this, this bill is about two fiscal years, we were inundated with a large number of appeals, both at the local level and at State Tax Appeal Court. And the reason. . .what, what it lead to was approximately 26 to 30 million dollars in litigated claims that the County could not spend due to cases being held up in the State Tax Appeal Court. So. . .this past fiscal year, or this past legislative session we had proposed an amendment to the Legislature with the help of Chair Pontanilla and Finance Director Agsalog for this amendment. It was passed and signed by the Governor, I believe, somewhere in June of 2011. So. . .what we feel is. . .this will *definitely* assist the County in, in keeping the amount of money in litigated claims at its minimum. We feel that we can expedite the cases a lot quicker through the local board of review level. Furthermore, in the last 15 years that I have been with Real Property Tax, there's only one case to my knowledge that went actually before the judge. So I feel that even though it's at the local level, the board of review. . .because most cases are either sustained or at least stipulated at the local level, that we should be able to use this process as, as a way of getting through all of our appeals much quicker. Just for point of reference, to this date we, we have approximately 300 appeals still at the State Tax Appeal Court, with 200 of them already pending a decision by the judge. So we're probably down to about 97 cases. The amount of appealed funds in litigation is about 3.9 million dollars. Although you may think that is high, I will tell you at January 1 of 2011 we had 1,846 cases and 14.3 million dollars. So it's a *huge* amount that we have reduced it by--by about 10 million dollars. At the local level, we are down to. . .275 cases and a half-a-million dollars in litigated funds. Again, as a point of reference, in January of 2011, January 1 of 2011, we had 1,800 cases before the board of review, and about 11 million dollars in litigated funds. So quite substantial increase, uh, decrease in those numbers, that I believe is. . .is the work of the board of review and the staff. So, Chair, with that. . .we definitely support this bill that's before us and thank you for the time.

COUNCILMEMBER VICTORINO: Chair?

CHAIR PONTANILLA: Thank you. At this time, the Chairman like to recognize Member Cochran, as well as--

COUNCILMEMBER COCHRAN: Thanks.

CHAIR PONTANILLA: --Member White.

COUNCILMEMBER COCHRAN: Thank you, Chair.

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CHAIR PONTANILLA: Member Victorino?

COUNCILMEMBER VICTORINO: Thank you. And . . . Scott thank you and, and, and . . . Mr. Aagsalog for their diligence in getting this changed. Now so you and the Department feel with these changes it would not only expedite, but really we're bringing it back home where they'll be here first before they go anyplace else, and try to resolve the matter here on Maui with our board. . . our, with our board of appeals versus sending it to Oahu right away for the Tax Court.

MR. TERUYA: Yes, that is correct. You know although the taxpayer does have that ability to go to Tax Appeal Court after they go through the local level, in the last three years, we had 800 appeals go directly to Tax Appeal Court. And those are the ones that we have a difficult time, for the County, in adjudicating because you, you may have about six to one month, one year before they, the judge even sets up a court date. And once he sets up a court date, it's probably two years from there. So you're about three years behind. And when you have, you know, like these 300, 800 cases. . . you know, that's about four, eight. . . all depends on what's appealing. So I think even when we get to that point, we've usually either settled or worked on some type of stipulation between the County and the Appellant. So we feel that even at the local level we should be able to do that, but it *gives* us the ability to schedule the cases *sooner* than waiting for the judge to set something up.

COUNCILMEMBER VICTORINO: Well, I, and again I agree with you. And I think home rule, getting it done here instead of sending it someplace else, many times, again, you, you've said the expediency is there. And I also wanna put in a plug for the Governor and, and the Legislature because they recognized that and made the change very promptly. And he signed this bill on June 14<sup>th</sup>, 2011. So it was one of those that made good sense. And I think for once, you know, we got some cooperation from the State, and now we'll have the best of two worlds by having it here. On a, one more quick question--and this is a little bit off the matter, Mr. Chair, if you'll allow me?

CHAIR PONTANILLA: Sure.

COUNCILMEMBER VICTORINO: I really wanted to know, having those two. . . in fact at one point I think we had three appeal boards, right? You went up to three, right? Two or three, right? We gave you money for extra adjudication, right?

MR. TERUYA: Actually. . . I believe the bill. . . got tabled. We--

COUNCILMEMBER VICTORINO: . . . *(inaudible)*. . .

MR. TERUYA: We only have one board of review.

COUNCILMEMBER VICTORINO: Oh, okay.

MR. TERUYA: I think at one point the discussion was an amendment to the ordinance to *allow* for--

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COUNCILMEMBER VICTORINO: Right.

MR. TERUYA: --up to three, or two or three boards. I don't think that bill ever passed. But--

COUNCILMEMBER VICTORINO: Okay. Fine.

MR. TERUYA: --even if that bill does pass, it doesn't say that you *have to* have more boards.

COUNCILMEMBER VICTORINO: Yeah.

MR. TERUYA: It just gives you the ability *to* do it if you need. . .should decide to have more boards.

COUNCILMEMBER VICTORINO: It really was the additional staff that we allowed you to have that helped you . . .

MR. TERUYA: Yeah, it was, it was--

COUNCILMEMBER VICTORINO: --move this process along.

MR. TERUYA: It was two additional Property Technical Officers that helps us *dedicate* the staff time *to* work on the appeals.

COUNCILMEMBER VICTORINO: Well, that's, Mr. Chair, for once, you know I can say we had good results, you know. . .for what we had put together. Thank you, Mr. Teruya. Thank you.

CHAIR PONTANILLA: Thank you. Chair would like to recognize the presence of Chairman Mateo.

COUNCILMEMBER MATEO: Thank you, Chair.

CHAIR PONTANILLA: Members, any more questions for the Administration at this time?

COUNCILMEMBER COCHRAN: Chair?

CHAIR PONTANILLA: Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you, Mr. Teruya. And I guess the reason for most people wanting to go the State route is just to drag it out as long as possible? Is that or . . .*(laughter)*. . . or do they normally win and get the . . .or what, what's the . . .*(laughter)*. . .

MR. TERUYA: If, you know, I, I--

COUNCILMEMBER COCHRAN: . . .*(inaudible)*. . .

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MR. TERUYA: --really would not know why somebody would choose to do it other than . . .

. . . Most cases that go before the Tax Appeal Court level--either directly or they decide to move on after they have a decision from the board level--is normally your high-profile cases, your, your Commercial, Industrial, and Hotel properties. Why somebody chooses to go there? It just may be. . .may be. . .I don't know, their lawyer's opinion that they should, they should go there first. Um. . .at the Tax Appeal Court level, you know until the case is resolved, the County still must pay interest on, on the amount, should they win, on the difference. So I'm not sure the reason why to go directly, but that could be one of two different reasons why they wanna do it that way.

COUNCILMEMBER COCHRAN: Thank you. Thank you, Chair.

CHAIR PONTANILLA: Thank you. Any more questions, Members? Member Mateo?

COUNCILMEMBER MATEO: Chairman, thank you. And perhaps just to piggyback on Ms. Cochran's inquiry, the number of appeals that has been filed and, and dealt with locally versus the number of appeals that have been filed through the State. . .is there a difference in number in, in what gets approved?

MR. TERUYA: Um. . .really, no. Um. . .you know, it all depends on the nature of the appeal and what. . .what kind of evidence anybody has. When you go to Tax Appeal Court, I mean, you can't just file with the Tax Appeal Court saying that "it's too much money". When you go to Tax Appeal Court, you *must* provide evidence. So I think most of those cases--like I said, the Commercial, Industrial, Hotel properties--they have a private appraiser that has evidence before them where they feel that they have enough to go to court with. So, but as far as Tax Appeal Court and the local level, it's probably at least five-to-one cases. . .at, at the local level versus Tax Appeal Court.

COUNCILMEMBER MATEO: And, and is there, is there a certain category that files more consistently? Is it more Homeowners, is it business, is it Hotel, is it. . .you know, what is the classification that files most of the appeals?

MR. TERUYA: Predominantly, in the last two or three years, it is the Time Share category.

COUNCILMEMBER MATEO: Time Share?

MR. TERUYA: Yes. And it's both at the local level and at Tax Appeal Court level.

COUNCILMEMBER MATEO: And would you have an idea of what kind of monies is being held without, you know, our access at this point?

MR. TERUYA: Well, right now, you know, as I mentioned, since January 1 we've dealt with a lot of cases. You know, as I mentioned earlier, we had 1,800 appeals at Tax Appeal Court for

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14.4 million dollars in abeyance. And we're currently down to about 297 for 4.2 million dollars. Um. . .close to a year to this date, we had already gone through settling 200 of the cases at Tax Appeal Court. And I think the judge is still, we're still waiting for the conclusion of law, fact, findings of fact, and the order. That's taken one year already, even after the case has been completed. So there's 200 case, 201 cases pending coming off of our books. It's just, we just need to wait for the judge.

COUNCILMEMBER MATEO: Okay. Is there a reason why someone would wanna go to the State first versus--

MR. TERUYA: . . .*(laughter)*. . .

COUNCILMEMBER MATEO: --going to. . .I--

MR. TERUYA: I, I . . .*(sigh)*. . . I really don't know. It's really their personal preference. I, I--

COUNCILMEMBER COCHRAN: . . .*(inaudible)*. . .

MR. TERUYA: I don't know the motivation of bypassing the local level, other than I, I feel that. . .most of these cases that go to Tax Appeal Court level normally feel that they have enough evidence before them to go directly to court.

COUNCILMEMBER MATEO: Thank you. Thank you, Mr. Chair.

CHAIR PONTANILLA: Thank you. Member. . .Couch?

COUNCILMEMBER COUCH: Thank you. Mr. Teruya?

MR. TERUYA: Yes?

COUNCILMEMBER COUCH: If we were to pass this and, and everybody has to go through you first, how many. . .how many people do you think would fall through *that* system and still go to appeal it? Like you said, it turns out that. . .well, you said only one. . .got actually appealed. Is that correct?

MR. TERUYA: Yeah, you know, I think maybe we would have. . .you know, in the past three years we had 800 appeal directly to State Tax Appeal Court. I, I feel even if they filed it at the local level versus Tax Appeal Court, we'd still have to work on them anyway.

COUNCILMEMBER COUCH: Uh-huh.

MR. TERUYA: So it's not any *more* work for us. It's just that I think we can adjudicate them faster.

COUNCILMEMBER COUCH: Okay. Thank you, Chair.

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CHAIR PONTANILLA: Thank you. Chair would like to recognize the presence of Mr. Hokama.

VICE-CHAIR HOKAMA: Chairman.

CHAIR PONTANILLA: Members, any more questions for the Administration?

COUNCILMEMBER VICTORINO: No, recommendation?

COUNCILMEMBER COCHRAN: Recommendation?

CHAIR PONTANILLA: Okay. . .the Chair's recommendation is to defer. I have submitted a request for a discharge, County Communication 11-311, pending on the December 2<sup>nd</sup> Council agenda. And the reason is because the legislation will need to pass second and final reading by December 31<sup>st</sup>, 2011 to have an impact on the appeals process for tax years beginning on July. . .or after July 1<sup>st</sup>, 2012. The proposed bill needs to be considered for first reading at the December 2<sup>nd</sup> meeting, with a second and final at the December 16<sup>th</sup> meeting.

. . . Okay?

COUNCILMEMBER VICTORINO: No. . .no objections.

COUNCILMEMBER \_\_\_\_: No objection.

CHAIR PONTANILLA: No objections?

COUNCIL MEMBERS: No.

**COUNCIL MEMBERS VOICED NO OBJECTIONS.**

**ACTION: DEFER pending further discussion.**

CHAIR PONTANILLA: Thank you.

COUNCILMEMBER VICTORINO: . . .*(laughter)*. . .

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CHAIR PONTANILLA: . . .*(laughter)*. . . The . . .*(laughter)*. . . Budget and Finance Committee meeting for November 28<sup>th</sup> [*sic*], 2011 is now adjourned . . .*(gavel)*. . .

**ADJOURN:** 1:47 p.m.

APPROVED:

  
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JOSEPH PONTANILLA, Chair  
Budget and Finance Committee

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Transcribed by: Camille Sakamoto