BUDGET AND FINANCE COMMITTEE
Council of the County of Maui

MINUTES

June 12, 2012

Council Chamber, 8th Floor

CONVENE: 1:35 p.m.

PRESENT:
Councilmember Joseph Pontanilla, Chair
Councilmember G. Riki Hokama, Vice-Chair
Councilmember Gladys C. Baisa, Member
Councilmember Robert Carroll, Member (Out 3:20 p.m.)
Councilmember Elle Cochran, Member
Councilmember Donald G. Couch, Jr., Member
Councilmember Danny A. Mateo, Member
Councilmember Mike White, Member (In 1:37 p.m.)

EXCUSED: Councilmember Michael P. Victorino, Member

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

ADMIN.:
Danilo F. Agsalog, Director, Department of Finance (Item BF-14(1))
Jeremiah L. Savage, Deputy Director, Department of Finance (Item BF-72)
Scott K. Teruya, Administrator, Real Property Tax Division, Department of Finance (Item BF-72)
Jeffrey T. Ueoka, Deputy Corporation Counsel, Department of the Corporation Counsel
Richard B. Rost, Deputy Corporation Counsel, Department of the Corporation Counsel (Item BF-76)

Seated in the gallery:
Mark Escudero, Administrative Assistant, Department of Finance (Item BF-14(1))

OTHERS:
Marty Herling (Item BF-72)
David DeLeon, Representative, Realtors Association of Maui (Item BF-72)
Cherie Attix (Item BF-72)
Catherine Clarke, Treasurer, Maui Vacation Rental Association (MVRA) (Item BF-72)
Thomas Croly, Representative, Maui Vacation Rental Association (MVRA) (Item BF-72)
Russell Murakami (Item BF-72)
Four (4) additional unidentified attendees

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

CHAIR PONTANILLA: . . .*(gavel)*. . . The Budget and Finance Committee meeting is now in session. Today is June the 2^{nd}, *[sic]* 2012 and the time is 1:35. Good afternoon, Members.

COUNCILMEMBER COUCH: Good afternoon.

CHAIR PONTANILLA: At this time, the Chair would like to introduce the Committee Members that are present this afternoon. We do have Member Carroll, Member Baisa, Member Cochran, Member Couch, Member Hokama, and Chairman Mateo. Excused at this time are Members Victorino and Member White. From the Administration, we do have from Corporation Counsel, Jeffrey Ueoka, and our Finance Director, Mr. Danny Agsalog. And supporting the Committee, we do have Scott Kaneshina as well as Camille Sakamoto. Members, we do have several people signed up for public testimony. For those of you that have signed up for public testimony, the Chair will give you three minutes to provide your testimony, one minute to conclude. At the three minute mark you'll be notified that you have one minute to conclude your testimony. Before we take public testimony, if all of us can turn our cell phones to the silent mode? Thank you. The first person to sign up for public testimony is Marty Herling.

. . .BEGIN PUBLIC TESTIMONY. . .

MR. HERLING: Hello, esteemed Council persons. My name is Marty Herling and I own the Banyan Tree…well, it's called the Banyan Tree Bed and Breakfast in Makawao town. And I originally was legalized in 2004, I think, for five years, and I just received another ten-year extension to my Conditional Permit. So, I'm here because I wanted to explain my ***particular*** situation in that ***originally*** when I started my process of getting legalized in the year 2000, I was directed by the Planning Department that because I was on Ag land, that I couldn't be a bed and breakfast, that I had to apply as a vacation rental. So, which is what I did. And then, as I say, I was legalized and I had to…I was forced to change my zoning to Rural, which I accomplished. So, I'm no longer…I was no longer Ag. Now, I'm in a situation where I ***am*** essentially a bed and breakfast. I have ***always*** lived on my property and I always ***will*** live on my property. I'm not an absentee owner. And I'm just ***concerned*** that if my property taxes are ***raised*** higher than what's called a designated bed and breakfast, I will be on an unequal playing field with those people. And essentially, I am exactly the same as what they are. So, that's where, that's the reason I'm here to, is to, you know, bring that idea up to you that this can be taken into consideration.

CHAIR PONTANILLA: Thank you. Members, any question? Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Mr. Chair. Thank you, Mr. Herling, for being here. You mentioned that you…did you get a Conditional Use Permit and a Special Use Permit?

MR. HERLING: Yes.

COUNCILMEMBER COUCH: And in it, it says that you're transient vacation rental use or does it say bed and breakfast …(*inaudible*)….

MR. HERLING: No, it's vacation rentals. It says vacation rental because they said I couldn't apply for the bed and breakfast at that time because I was Agricultural at that time. So, they directed me, I mean, the Planning Department directed me to take that ***avenue***. You know, I've always lived on the property. I don't take any homeowner's exemption ***anywhere*** and so, you know, I don't want to be--like I said I don't want to be on an uneven playing field, because I would've…I could've been a bed and breakfast as well but I was--I wasn't ***able*** to at the time. Not that I saw that there was any difference personally, but now there ***may be*** a large apparent difference.

COUNCILMEMBER COUCH: And the question I have for you is --

MR. HERLING: Yes.

COUNCILMEMBER COUCH: --would you be…do you qualify for a bed and breakfast? It wouldn't --

MR. HERLING: Well, the only qualification is --

COUNCILMEMBER COUCH: --would you be able to get a permit?

MR. HERLING: --is that I was approved for seven rooms. So, I think, your qualification for bed and breakfast now is ***six***. And so…and also I just went through $7,000 hiring a consultant to get a ten-year extension, and I certainly wouldn't want to go that--through that process again. You know, I just recently did that and so, you know.

COUNCILMEMBER COUCH: Well…

MR. HERLING: That was an expensive process for me to do.

COUNCILMEMBER COUCH: Right, you wouldn't qualify for bed and breakfast because you got seven rooms.

MR. HERLING: Yes And I was approved for seven rooms and I had made an agreement with my neighbor that we would ***limit*** my presence at seven rooms and no more than seven rooms.

COUNCILMEMBER COUCH: Okay, thank you. Thank you, Mr. Chair.

CHAIR PONTANILLA: Thank you.

MR. HERLING: Okay, thank you very much.

CHAIR PONTANILLA: You say you live…excuse me, Mr. Herling.

MR. HERLING: Yes, sir.

CHAIR PONTANILLA: You say you live in the property?

MR. HERLING: Yes.

CHAIR PONTANILLA: In the same dwelling your where you provide TVR services to your customers?

MR. HERLING: Well, I…when I became Rural, I was allowed to build an `ohana on the property. There's only one TMK. So, I was allowed to build an `ohana and it was directed that ***I*** could live in the `ohana, but that I could not use it for vacation rental purposes, which I do not. So, I live in that `ohana on the property.

CHAIR PONTANILLA: Okay, thank you.

MR. HERLING: Thank you.

CHAIR PONTANILLA: The next testifier is David DeLeon.

MR. DeLEON: Aloha and good afternoon. Dave DeLeon speaking for the Realtors Association of Maui. Just to be brief, as the previous speaker mentioned, this is going to be more complicated than it appears. These properties, I know that while there is some energy in the room to bring into a taxation rate of around a hotel, these are not hotels. They have a lot of limitations that hotels don't have. And one of the main ones is the owner cannot transfer the permit. So that that property…that business cannot be sold like a hotel can be. They can't even have ***parties*** on their property. And in the case that was pointed out to me--in the case of an agricultural property, they are required to ***farm*** and, you know, pretty significantly farm. And then we're going to tax them that Hotel rate to be a farm. So, we have to be very careful about this. I also want to express concern about…well, I know, I know that you could probably milk the higher-end of this class real easily. You know there's some folks out there that, you know, paying the Hotel rate won't make any difference to them at all. There's other folks that are local and working-class people that will have a major impact on. You know my first thought is what's going to happen to the folks on Lanai? We gave them special treatment in the zoning, but you can't really give them special treatment in the taxes and be fair. So, just want to leave those thoughts on the table. Mahalo.

CHAIR PONTANILLA: Thank you. Members, questions for Mr. DeLeon? Mr. Couch.

COUNCILMEMBER COUCH: Thank you. Thank you, Mr. DeLeon. The question I have is, you know, there, as you said, there was a energy to move towards Hotel rate, which I don't know that I could support, but what about Commercial rate since it is a commercial, doing a commercial. . .they're making money off of this.

MR. DeLEON: Our prospective on this was it'd be some kind of fixed rate, like Commercial, would be best. That way the owners would have a clue what their rate's gonna be at, rather than something that's arbitrary or decided by an administrator. Administrators come and go. Policy--good, comes and goes, but if it's set in law, it's set in law. So, I'd rather see a fixed rate like Commercial.

COUNCILMEMBER COUCH: Okay, thank you.

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

MR. DeLEON: Mahalo.

CHAIR PONTANILLA: Chair would like to recognize the presence of Member White.

COUNCILMEMBER WHITE: Hello, Chair.

CHAIR PONTANILLA: Next--hi. Next testifier is Cherie Attix.

MS. ATTIX: Aloha, Council members. My name is Cherie Attix. Thank you for the opportunity to speak on the proposed tax increase for Conditional Use Permits and STRs. Today I wanted to share specific information to try to get my point across about how out of proportion this proposed increase could possibly be. My property value this year is assessed at about $20 more than it was in 2004. In 2004, I paid $2,543 with no homeowner's exemption. If I was to be assessed this year, for example, at a highest and best use, my tax would be $4,897, and that would be a 49 percent increase in my property tax with less than $25 increase in my property value. I don't have a 49 percent increase in my room rates or in my occupancy rate. There is no way to cover a double increase in property tax. I'm not making a profit. Some months are still a scramble even after all these years in business. Now, unfortunately Hawaii has kind of a reputation on the world stage of being pro large business and not so pro small business. We are a community of both large and small businesses. We support our local community economies. My guests shop at Puk Sup or Rodeo General, not at the ABC stores, and they buy their gifts at galleries and not at Kmart. And I'm so passionate about supporting owner-run businesses in our community. I do as much as I can to help them. And I'm hoping that Maui County can help turn us around and become a pro small business community or at least equitable and fair. It would be nice if Maui could help small businesses thrive. I think helping small businesses who offer sensitive historical, environmental, or cultural experiences for visitors and kamaaina would go a long ways in improving our quality of life. Last week the Gomes family, descendants from Frank and Theresa Gomes, had their yearly luncheon at my home. They have a standing invite every year to gather at their grandparents' home to visit with each other and reminiscence of days gone by. Though their numbers are dwindling, they still hug me and hold my hands with tears in their eyes expressing their gratitude for my preservation efforts and for allowing them to come home once a year. My 1924 Historic and National registered home desperately needs more restoration funds. I do what I can. Instead of a tax break for preserving my heritage home, now it's possible that I would be being saddled with a 49 percent increase in my taxes. And on-island owners and operators of STRs or those with Conditional Use Permits work hand in hand with

B&Bs. We really are B&Bs, just with a different name. . .and especially those of us who interact with our guests daily and are onsite. I was thinking if you wanted to increase our rate, call us Commercialized Residential II or something. Set a fair rate, but please don't throw out the baby with the bath water. I ask you to please, please be fair in this. Thank you for your time.

CHAIR PONTANILLA: Thank you. Members, questions for Ms. Attix? Member White, followed by Member Couch.

COUNCILMEMBER WHITE: Hi, Cherie, thanks for coming today.

MS. ATTIX: Hi. Sure.

COUNCILMEMBER WHITE: Do you know what other Counties have done for heritage homes as far as taxes?

MS. ATTIX: You know, I'm doing a little research on that. I know Honolulu is working with…they have given some tax break to folks who have some businesses in commercial, I mean, sorry, commercial…they do commercial but they still get a property tax break. As far as homes, I'm not quite sure, but I'm starting to do research 'cause I'd really like to pursue this.

COUNCILMEMBER WHITE: Oh, I would assume, though, you would probably be able find homes that are currently being used for commercial businesses or office space.

MS. ATTIX: In Honolulu or in somewhere else you mean?

COUNCILMEMBER WHITE: Well, wherever there's that type of a heritage . . .*(inaudible)*. . .

MS. ATTIX: Yeah, yeah, I'm going to work with that. I know on Maui those of us who are used, using our heritage homes for any kind of commercial or business, we don't get a tax break.

COUNCILMEMBER WHITE: No, I understand that.

MS. ATTIX: We tried, you know.

COUNCILMEMBER WHITE: I'm just wondering if you had any information as to what…

MS. ATTIX: I'll look into that and I'll get back to you on that 'cause I'm kind of on that track right now.

COUNCILMEMBER WHITE: Okay. And, Chair, I would appreciate it if the Staff could take a look at that as well.

MS. ATTIX: Thank you.

CHAIR PONTANILLA: Yeah, we can have Staff. And we do have people from Real Property over here, maybe you can ask them that question--

COUNCILMEMBER WHITE: Oh, yeah, they may have--

CHAIR PONTANILLA: --when they come forward. Okay.

MS. ATTIX: Thank you.

COUNCILMEMBER WHITE: Thank you.

CHAIR PONTANILLA: Thank you. Members…Member Couch.

COUNCILMEMBER COUCH: Yes, thank you, Ms. Attix, for coming. You're, if I remember your property correctly, you have two TMKs that you have to deal with. And you're on one and the --

MS. ATTIX: Correct.

COUNCILMEMBER COUCH: --the other, the homes that are renting out are on another.

MS. ATTIX: Yeah, adjacent, uh-huh.

COUNCILMEMBER COUCH: When you say 49 percent, you're talking about, you're assuming a Hotel rate. Is that right?

MS. ATTIX: Yes, because as I said I was taxed one year at a Hotel rate --

COUNCILMEMBER COUCH: Okay.

MS. ATTIX: --and it wiped me out, yeah.

COUNCILMEMBER COUCH: Okay. Again, the same question, I guess, I asked Mr. DeLeon, would a Commercial…we're trying to not make as, a lot of different tax categories and rates because it's just more of a pain then anything. So, would something like a Commercial, since it is a commercial business, would that rate suffice? It's slightly--it's a little bit more. I think a dollar something more.

MS. ATTIX: Than the Commercialized Residential?

COUNCILMEMBER COUCH: Than Commercialized Residential, yeah.

MS. ATTIX: I personally don't understand why we would be taxed at Commercial instead of remaining Commercialized Residential. I just--I don't quite get that 'cause that's what we are. We're B&Bs if we're on-island owners/operators. Why not do a subcategory to that, then, if you feel that it's really necessary to tax us at another rate? I don't know. I mean I could figure it all out at the Commercialized rate. I'm not sure that…my history has been to have to deal with the Hotel rate so that's the one I was going off of.

COUNCILMEMBER COUCH: So, you're telling me…that's right--you stay--you essentially do a B&B type of purpose but because it's between boundaries…I mean two different TMKs and we don't have that fixed yet in the B&B ordinance, you have to go --

MS. ATTIX: Correct.

COUNCILMEMBER COUCH: --Conditional Use.

MS. ATTIX: Correct. And I'm fine with Conditional Use. I comply with everything. You guys see me . . .*(inaudible)*. . . wants to but . . .*(laughter)*. . .

COUNCILMEMBER COUCH: No, we saw you out. We saw you. Okay, thank you. Thank you, Mr. Chair.

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

MS. ATTIX: Thank you.

CHAIR PONTANILLA: Seeing none, thank you.

MS. ATTIX: Uh-huh.

CHAIR PONTANILLA: Next testifier is Catherine Clarke…Clarke.

MS. CLARKE: Aloha, Chair Pontanilla, and County Council members. I dropped this off and, I think, that you have it. This is actually the property owned by Janice Tower on which Ray Bane is the resident caretaker. The reason that I did this was just to show you that there are so many different types of vacation rentals. This is a Conditional Permit holder that has a long-term rental on the property in the bigger dwelling. Vacation rents the smaller dwelling. The smaller dwelling is occupied part of the year by the owner. It really is not a hotel. So, just…there are definitely those high-end properties that in some people's eyes might ***look*** more like a hotel, but they really don't have any of the same perks that a hotel does. In removing the Conditional Permit properties from Commercialized Residential it raises a of couple questions. How do you make the equation fair for the owner…owner-occupied Commercialized CP properties? In some cases, these properties have a Conditional Permit because they worked their way through the very difficult process when a CP was the ***only*** way to legally operate a vacation rental. It would be unfair to penalize the owner-occupied properties by moving them to a higher tax category than the B&Bs. And where do the other CP properties fall? This is an important question right now as owners are anxiously awaiting the posting of the STR application for an opportunity to apply for a permit. The STR market has considerable variety from small multi-use properties to large luxurious homes. But regardless of the size, they are very different from hotels. Most are owner-occupied for part of the year. Some of the properties are multi-use with both long- and short-term rentals. If you were to tax that long-term rental at a higher rate, you would in effect be pushing them to convert it to a short-term rental. There is no food and beveraging come to help pay the tax; no banquets; no weddings; no drinks by the pool; and no resort fees. What percentage of a hotel revenue comes from these other revenue streams? Since an STR does not ***have*** these income possibilities, would it be fair to discount the hotel rate by that percentage? STRs are not open to the public but the properties are for reserved guests only. Nobody will be wandering through and stop to have a drink at the bar. Owners can spend many years building their short-term rental occupancy and client list, but they cannot sell it with their property. Their permit is nontransferable. STR use ***is*** residential in nature. I encourage you to take all of these differences into account when you discuss the appropriate tax category for the Conditional Permit properties as well as the new STR properties. Thank you.

CHAIR PONTANILLA: Thank you. Members, questions for the testifier? Seeing none, thank you, again. The next testifier and the last testifier to sign up prior to the meeting is Thomas Croly.

MR. CROLY: Aloha, Chair. Aloha, Committee members. I'm Tom Croly and I'm speaking on behalf of the Maui Vacation Rental Association today. Today's measure would remove Short-Term Rental Permit holders and Conditional Permit holders from the Commercialized Residential tax classification and MVRA does support the intent of this action. Short-term rental use and bed and breakfast use are two different things. The bed and breakfast use requires the owner to live on the property. The Short-Term Rental Permit does not require that. So, they don't belong in the same tax category. So, we…we agree that they should be separated. However, there needs to be some further refinement to this measure to make sure that it is fair and consistent in the application of our Code. You've already heard from a couple of the exceptions to the rule, if you will, where we have Conditional Permit holders who do live on their properties. There's about four or five of them that are currently out there. And they don't fit the bed and breakfast permit for one reason or another. It may have been in the past that the zoning wasn't correct for them to be able to get a bed and breakfast. It might be the number of rooms, as in the case of Mr. Herling and the Old Wailuku Inn. But where the owners still live on their property, we believe that that should be recognized and that they should be taxed in the Commercialized Residential category like the bed and breakfast owners. In fact, I would assert that perhaps ***many*** other properties where the owner makes their full-time home and does some kind of commercial business on the property also belong in the Commercialized Residential tax category. Maybe people who rent out a cottage on a long-term basis but live there. Should the difference…should there be a difference as to how they're taxed versus someone renting out the cottage on the short-term basis? Maybe somebody who's running a little decorator business out of their, their home. I can think of one Conditional Permit nearby here that was approved that way. Should they be in the Commercialized Residential category? So, there's a broader discussion that needs to take place about who should be in the Commercialized Residential category. Clearly, it shouldn't be the short-term rentals with the off-island owners. They don't belong in that category. If this measure passes as proposed or with some kind of changes as suggested, that would leave the people that we're taking out of this tax category without one defined. And it's my understanding that then they would go to highest and best use. But perhaps another discussion has to take place about what is highest and best use. In real estate terms, highest and best use refers to how you can develop that piece of land. If you're allowed the property rights on that land to build so many structures so high, what kind of density, and so forth--that's what highest and best use is about. The properties that are granted Short-Term Rental Permits are ***only*** Residential properties and they're ***only*** allowed to be developed to a Residential standard.

MR. KANESHINA: Three minutes.

MR. CROLY: So, I'm not sure that, that the highest and best use would be…would be applicable at Hotel for these properties. But, more importantly, I think, everyone should ***know*** what they're getting into when they make application for a permit. Whatever this Council decides--having a category that they're specifically know that they're going to go in would be better than not knowing and letting the Finance Department make a call as to whether they arbitrarily put one property into its underlying zoning or another property into the Hotel category. I hope this Committee will discuss today what properties should be in the Commercialized Residential category and what of those that we take out, what the tax category should be for those. And the Maui Vacation Rental Association supports the properties where the owners don't live and use for short-term rental be put into the ***Commercial*** category and not the Hotel category. There's been a lot of interest in the Short-Term Rental Permits. I think we're going to have a very successful ordinance there, but it could be stymied by setting the tax rate too high at this, at this particular juncture. If we fill up all those permits and we get 400 people and the people know that they have something of great value, they may be more happy in the future to…or ***willing*** in the future, shall I say, to pay a higher tax rate. But right now while we're trying to get people into that process, let's not discourage them with an overly burdensome tax rate. Thank you.

CHAIR PONTANILLA: Thank you. Members, questions for the testifier? Seeing none, thank you, again, Tom. The last testifier is Russell Murakami.

MR. MURAKAMI: Hi, my name is Russell Murakami and I've been a long-time resident of Lahaina for the past 40-plus years. The reason I'm here is to ask the Council to consider and support a separate category for the short-term rental real property taxes because I'm afraid that when you--when--if you--while you're considering you might, it's so easy to lump it with the Hotel zoned properties. And I feel that's, that's not right. I feel it would be a mistake and unfair to compare a hotel property to the short-term rental property. Hotel zoned properties are larger in scale with higher density; therefore, creating far greater use of our County facilities--water, sewer, roads, sidewalks, County services, infrastructures, and others of which our property taxes support. Short-term rental homes' use of County infrastructures, facilities, and service often less than a regular residential property's, and these properties are not often booked 100 percent. Short-term rental homes, some of which will be limited by CC&Rs and homeowner's association rules, to only one rental per month are a completely different type of property as opposed to hotels. Short-term rentals are not allowed to have parties, have a very defined number of occupants for the property, have a renewal permit, and cannot build a business to be sold. Permits are not transferable. In some cases, short-term rental properties are mixed use with both long-term and short-term rentals on property. Short-term rental homes create additional business and tax revenues for the County of Maui as many of these people who rent these properties would otherwise not come. Short-term rental homes often pay additional 13.25 tax on revenues to the State of Hawaii of which some of these dollars come back to the County of Maui. I applaud the new ordinance as it provides for enforcement and penalties for illegal short-term rental homes that are not paying their fair share of taxes. The reason why people purchase these homes are for investment purposes for their future retirements and in hopes of leaving a better life for their children and grandchildren. The reason many homeowners attempt to rent their property is to offset some of the many expenses that are tied into home ownership--some of which are property taxes, water, sewer, trash, electricity, yard service, cable service, telephone, association dues, and cost to maintain their homes. Many of you will say that the rich should pay their fair share of taxes if they decide to rent their homes as short-term rentals. It may come to a surprise to many that the truth of the matter is --

MR. KANESHINA: Three minutes.

MR. MURAKAMI: --the rich do not rent their homes. They can afford not to rent and they don't like to have people sleeping in their beds or utilizing their homes. I ask the Council to consider and create a separate tax category that is fair, unlike the large landowners whose property values are under-assessed. I would also ask that the County be allowed to simplify the license renewal system, unlike the complicated application process. In ending, I would like to say thank you.

CHAIR PONTANILLA: Thank you. Members, questions for the testifier? Seeing none, thank you, again, for your testimony. Now, Members, Mr. Murakami was the last person signed up for public testimony. Is there anyone else in the gallery that want to provide public testimony at this time? Seeing none, without any objection, Members, the Chair would like to close public testimony.

COUNCIL MEMBERS: No objections.

CHAIR PONTANILLA: Thank you.

. . .END OF PUBLIC TESTIMONY. . .

CHAIR PONTANILLA: Members, we do have several items on the agenda this afternoon.

ITEM BF-14(1): SHORT TERM INVESTMENTS (CC 11-299 and CC 12-38)

CHAIR PONTANILLA: And the first item on the agenda this afternoon is BF-14, Short Term Investments. The Committee is in receipt of Short Term Investments for the County of Maui. Staff has provided you with the most recent report for the quarter ending March 31, 2012. At this time, the Chair would like to call on Mr. Agsalog for some comments.

MR. AGSALOG: Thank you, Mr. Chair and Members of the Committee, good afternoon. As you have mentioned, Mr. Chair, I have transmitted to you a report dated October 28, 2011, for the report between July 1, 2011 till September 30th, 2011, and that was transmitted to you on the November 1, I think, that is according to the signature of the Mayor, Alan Arakawa. And in that report, Mr. Chair, as required by the resolution, Council Resolution 99-26, the book value of our investment at that time, Mr. Chair, it was $298,418,479.86 with a corresponding earning total of $671,657.53. So, that's for the period ending September 30, 2011, Mr. Chair. If you would like me to enumerate the other two or you have questions on them now, I would take that, whichever you prefer, Mr. Chair.

CHAIR PONTANILLA: Yeah, if you could bring up December 31st as well as March 31st.

MR. AGSALOG: Thank you, Mr. Chair. Again, as required by the Council Resolution 99-26, the book value of our investment at the end of December 30, 2011, this is…I'm looking at a transmittal letter dated January 30, 2012 to you, and the book value, Mr. Chair, was $350,402,703.50. A corresponding earning value of $383,576.59. Similarly, Mr. Chair, the transmittal letter dated April 27, 2012 to you reporting to you the quarter ending March 31, 2012. Again, with the requirements for the Resolution 99-26, the book value of that particular investment, Mr. Chair, has gone down to $299,994,941.70 with a corresponding earning of $262,046.40. Mr. Chair, I would go period by period with you however you want me to answer questions this afternoon. And if I do not have the answer right away, Mr. Chair, I'd be more than happy to answer to you in writing. Thank you.

CHAIR PONTANILLA: Thank you. Thank you, Director. And, Members, the reason why we reviewing the short term investments is we had referrals during our Council meeting in regards to the short term investments, and these are the three items that were pulled from the referrals to the Budget and Finance Committee. I just have two questions, Mr. Agsalog. The first question is the fluctuation between the book value and the fluctuation in the income earned.

MR. AGSALOG: Thank you, Mr. Chair. The book value, as you know, most of this investment that we have are already appropriated to particular projects and they are…go up and down depending on our revenue incoming, collections, as well as our expenditures. Bear in mind, Mr. Chair, that there is a $22 million cash [*sic*] bond on this particular investment. And, in fact, I will be meeting with the people that have given us a cash [*sic*] bond tomorrow, and I don't know when they would require to replace this cash [*sic*] bond to a paper bond. So, the $22 million do not belong to us. We are holding it as cash for the project somewhere in Kihei. I think, if I'm not mistaken, is the Kihei Promenade. So that $22 million could be removed from the current investment now that we have, should we…should they decide to pull it and give us the paper bond. But, again, Mr. Chair, the fluctuation between the two, it's just the spend down that we have for projects that we complete because these are monies already appropriated. The only funds that we have there that is really constant are our funds that is…has been for the emergency funds, which is we do not touch unless an appropriation is being…request. And also when we settled a lot of our Trust Account, Mr. Chair, that also deplete our investments--such as litigated tax returns. Once we pay them, Mr. Chair, that is removed from our investments. So, a lot of moving parts in this particular investment, not because we have that amount of money invested. That's all our money. It is a hold for…held for some other projects or for a trust that we must pay should the litigated. . .is completed. So, if you want me to go line by line on that, Mr. Chair, I probably be able to or get a resource for you where those money came from--why is it big jump from one to the other. but that's how our investment is. And the second part of your question, Mr. Chair, is as, you know, a lot of our investment, they…we go as far as five years. Some of our interest-bearing account or the yield for those investments were higher should we have invested five year in maturity rates way back in 2007. We still carrying those yield until they mature. Therefore, we still have higher interest rates or earnings. However, Mr. Chair, as you know, the interest rate now is very, very low. So, new investment that we are investing, Mr. Chair, now are barely making any interest. So, that's what the big jump or dive in our earnings in our savings, Mr. Chair.

CHAIR PONTANILLA: Thank you. I really appreciate your comments, especially on the income earned, because, you know I am a board member for one of the credit unions and, you know, we face the same problem, yeah. And through our investment, it's basically investing in safe product. Members, any questions for the Director at this time regarding…we'll take up the book value first. And, Mr. Agsalog, if you could provide us the information in regards to what you mentioned about the projects that we receive monies from in regards to the book value, I would appreciate that. Members, any question? Mr. Hokama.

VICE-CHAIR HOKAMA: Chairman, I think, for the Committee, we more concerned about from the Director is our short-term portfolio philosophy. And if you could tell the Committee, Director, please, what is the current short-term directive for the County with the monies you have in the various accounts? And do you have a team that assists you in making appropriate timely adjustments to where the investments are?

CHAIR PONTANILLA: Mr. Agsalog.

MR. AGSALOG: Thank you, Mr. Chair, that's really a good question and I really appreciate it, because as when I came in on board as the Finance Director, I had a good conversation with our Mayor and the Administration. And the vision that I have seen…seeing that I'm new as a Finance Director was also…and also it's in our investment policy that safety is number one. And the second one is liquidity. And that by itself, Mr. Chair, I have been working with my team and I have also an Investment Committee, which we have increased the number. It used to be three people. Now we have five people in the Investment Committee, but due to the transition of personnel, the next meeting that we will have will be in about two weeks or so. But I can assure you, yes, I have some people that helping me out. Also in the transition of hiring new personnel, Mr. Chair, I have spent some money…my treasury money to pay for a financial advisor to help us make this investments in a more safe and liquid manner. So, yes, to answer the Councilman from Lanai, yes. I can assure you that we have a good team with it.

VICE-CHAIR HOKAMA: So, without telling us the names, can you tell us the positions that are part of this policy group, Mr. Agsalog?

MR. AGSALOG: Yes, sir. Mr. Chair?

CHAIR PONTANILLA: Go ahead.

MR. AGSALOG: Yeah, the original team member of the policy Committee is the Managing Director, the Finance Director, and the Deputy. They were the three. Of course, the Treasurer at the time. However, when I came on board, we looked at the structure and we have reorganized it. We wanted to, because of the Treasurer was a member at the time, we wanted to make the Treasurer as a staff to the Committee, and we added two positions--two members, which is the Budget Director and the Account Administrator. So, currently, Mr. Chair, the members of the policy Committee is the Managing Director, the Finance Director, the Deputy Director of Finance, the Accounts Administrator for our accounting, as well as the Budget Director. Now, the Treasurer will staff the Committee with a…we thought that it's a good structure just for the Treasurer to staff the Committee because we, the policy maker, the Investment Committee members should be making the policy and the Treasurer should be executing our vision.

VICE-CHAIR HOKAMA: And did you mention…are you outsourcing portions of the portfolio to an external management firm or something, Mr. Agsalog?

MR. AGSALOG: Mr. Chair?

CHAIR PONTANILLA: Go ahead.

MR. AGSALOG: No, these are all in-house. We have, however, a financial advisor in…helping us, especially in the transition of new personnel. Because of the process that we go in apprising or getting quotes from our brokers, we needed help from a financial advisor, which is already on board when we did our financial…our bond sale the year before. I kept him on board to help us work with our current brokerage that's already working with us so that the new personnel are able to learn from the process. But, no, we do not give a certain amount to outside or outsource it for them to invest. No, that's not true, Mr. Chair.

VICE-CHAIR HOKAMA: No, I'm happy to hear that because currently as you, I think, mentioned earlier to the Committee, the type of returns we're getting, for me, doesn't…wouldn't justify the need for us to pay somebody else a portion of our earnings when we already earning, to me, are levels--that I wanted to share with you this afternoon--that I would hope…you know, for me, to be very candid, Director, I expected ***better*** performances from where our funds are. And I find it interesting, again, you know, trying to support local institutions--First Hawaiian, Bank of Hawaii. The County has chosen to do a lot of Tennessee and Texas commercial or investment components. So, is there an advantage in Tennessee or something that makes us want to put County of Maui money in Tennessee institutions, Director? Can you kind of help us understand why we've taken this investment path with Tennessee entities?

MR. AGSALOG: Mr. Chair?

CHAIR PONTANILLA: Go ahead.

MR. AGSALOG: Thank you. Again, that's a very good question and I really appreciate it. When we do those security buys like that, we do look at diversification also. And, but with this Tennessee purchases that we have, if you look through the report . . .*(laughter)*. . . this report is really cumbersome even for me to go through it and I have the time to look at it. But, anyway, those Tennessee purchases were a holdover. When I came on board, those were already purchased. So, we are trying to ensure that the CD purchases are done locally. I would agree with the Councilman, Mr. Chairman, that if we buy CDs, it should be for locally. And we have done so with our local banks--without making an advisement. But a lot of those mainland banks that we did CDs are older…older CDs. They should be maturing pretty soon and they will not be repurchased with them. Tut I would rather have treasuries if we make those mature now. But they are…they were, at that time, a strategy that the…my predecessor did. Again, it's more of a strategy that every Director will have. For me, the CDs should be done here locally and we work with our banks here to do business in our community. As I mentioned earlier, security and liquidity is my important goal, because this money is for projects that we already planned for. And I agree that we should maximize our yield. However, in my own simple investment strategy, I want that money be available when we need it. So that's my charge, Mr. Chair, as the Director of Finance. I do not have to make too much interest rate. I will make it available for you when you need it and that's my main concern, Mr. Chair, as your Finance Director.

CHAIR PONTANILLA: Thank you. Just a fast question from the Chair. So, what I'm seeing here and, I think, most of them were negotiated maybe three, four years back, because I look at it and I see a whole bunch that's going to be maturing in 2012. So, going forward though and what I see is the drop in the interest ***rate***--big drops, you know, from 1-point whatever it was to like .04, .05, you know. And that's what we face in the financial market, especially a credit union trying to maintain the highest interest rate that we can get. The other question that I had, though, is that prior to you coming on board, we had invested $32 million in one of the bigger financial institution, and at that time we were locked in for a longer period, but the yield on a quarterly basis was over a million dollars. So, you know, although we were, I guess, not following the law, but we making more interest by doing so. And I understand that we got our $32 million back. So, I thought, you know, last year, you know, we were receiving really, really good returns on those investments. Anyway, Mr. Hokama, you can continue with your questioning.

VICE-CHAIR HOKAMA: I hope we are in conformance, Chairman.

CHAIR PONTANILLA: I know.

VICE-CHAIR HOKAMA: We cannot, as an entity, go to any investment that is longer than five years --

CHAIR PONTANILLA: Exactly.

VICE-CHAIR HOKAMA: --by State statute. So I'm sure Mr. Agsalog is well aware of it. I wanted to ask Mr. Agsalog though there is certain accounts which is interesting and not all of 'em, but you do show some where we…where we earn what I consider reasonable interest amounts. Then you have two additional subcategories. And maybe you can help the Committee understand that, yeah, Director, please. You have a category called Net Discount of Premium and there's times when as part of the actual interest earned there is a reduction or a loss under net discount. And then you also have another component where, again, the numbers fluctuate but under the component of Real Gain or Losses. And so, maybe you can help the Committee understand, you know, for some of this accounts where we have the net discount. And like I said maybe we got $120,000 interest, but then we have a $56,000 subtraction for net discount. So, maybe if you can help us understand that?

CHAIR PONTANILLA: Mr. Hokama, if you can refer a page.

VICE-CHAIR HOKAMA: Oh, okay. Again . . .*(inaudible)*. . .

MR. AGSALOG: Mr., I can…I can.

VICE-CHAIR HOKAMA: If you take the, you go take the newest report…

MR. AGSALOG: General…in general I can.

CHAIR PONTANILLA: Yeah, if you take the, by the page then at least, you know, the Members can follow, yeah.

VICE-CHAIR HOKAMA: . . .on page 19, which is the Federal Home Loan Coupon Notes.

MR. AGSALOG: Page 19?

VICE-CHAIR HOKAMA: Yeah.

MR. AGSALOG: In which report, Mr. Chair?

VICE-CHAIR HOKAMA: Yeah. This is your newest one, Director, April 27, and let's just go…and then I just flip this page out of, you know, so we got let's say Page 19. Okay, this is your report on investment earnings and interest booked. For the period at the bottom of the right hand sheet you show us earning about $80,000 worth of interest…79,444. Then you have a loss under net discount of $58,262. Then you get another realized gain component of $83. And so, if you can help us understand what is the difference…

MR. AGSALOG: Which report is that, Mr. Chair? The--

VICE-CHAIR HOKAMA: April--

MR. AGSALOG: On the middle of the…

VICE-CHAIR HOKAMA: Yeah, Page 19, Mr. Director.

CHAIR PONTANILLA: The April 27 report.

VICE-CHAIR HOKAMA: Yeah.

MR. AGSALOG: Okay.

VICE-CHAIR HOKAMA: And then at the bottom of the right hand side, Director, you get the period earnings.

NOTE: Silence.

MR. AGSALOG: . . . Of 21…21,265? Okay--

VICE-CHAIR HOKAMA: Right, but above that, yeah, you show us the breakdown how you reached that 21,000.

MR. AGSALOG: Yes.

VICE-CHAIR HOKAMA: Yeah?

MR. AGSALOG: Yes, sir.

VICE-CHAIR HOKAMA: So, if can maybe help us understand those three components that, you know, how we, after $80,000 worth of interest earned, we only end up with 21,000.

MR. AGSALOG: Okay, in that particular…in those…in just that column, Mr. Chair, the $79,444.45--that's the total earnings of that particular…that particular time period. The minus $58,262.29 represent amortization of what we paid as a premium. So, now, we paid premium when we bought a higher yielding instrument and we get an interest rate of 79,444, but you have to minus the amortized premium that we paid when we bought the instrument, Mr. Chair. So, giving us only an income of $21,265.61. As we buy instruments, especially bonds, we have called premium or discount, and we do that also when we sell our bonds. So depending on the time that we purchased that yield…that particular instrument that yield a higher rate, then we will have to pay a premium. Or it is yielding a lower rate, then we get a discount in the purchase of the instrument.

VICE-CHAIR HOKAMA: We do this for most of the purchases, Director, the premium--that we pay that premium gap for, regardless of where we invest our monies into?

MR. AGSALOG: It depends on the…it depends on the time that we purchase. Let's say we buy a T-Note that is expiring, and that has a life of five years, and we buy it in the middle, and if the rates when they created this is a little higher than--now that we only pay basis points, so there's a premium on that, because they'd still be paying at the original issuance rate.

VICE-CHAIR HOKAMA: And thank you for bringing that up. And so, Members, if you and the Director can then go to Page 13 of the same one. This is just on Treasurer Notes, yeah, Chairman.

CHAIR PONTANILLA: Uh-huh.

VICE-CHAIR HOKAMA: Page 13.

MR. AGSALOG: Page 13?

VICE-CHAIR HOKAMA: And this about that Treasury component which you just shared some thoughts, Mr. Director.

MR. AGSALOG: Yes, sir.

VICE-CHAIR HOKAMA: I'm just wondering, you know, we paid, obviously, big premium for this component, okay, because we're earned about 127,000 in interest. For this Treasury Note's premium, we put out $91,000. So, we gaining 35,000, 36,000 rounded off. Does it make sense for us to continue to pay for that premium 'cause I'm just wondering what would be our return if we didn't pay that 91,000 in premium? . . .*(laughter)*. . .

MR. AGSALOG: . . .*(laughter)*. . .

VICE-CHAIR HOKAMA: Would have been…would've still be the same 36,000 or could it have been more? Again I just, you know, just trying to help us understand how we're gonna approach investments, short term investment. How does the Council, then, support the Administrative efforts to get the maximum return for the County's dollars in this accounts and whether or not paying this premiums still makes sense for the County? Since, I mean, you show us you making money, but compared to the total interest we earn until we subtract the premium --

MR. AGSALOG: Yeah.

VICE-CHAIR HOKAMA: --you know, I would've liked to just keep the big number, Mr. Director.

ALL: . . .*(laughter)*. . .

MR. AGSALOG: Thank you, Mr. Chair. I just want to say that at that time that we purchased the instrument or the security, those were the only available investment that yield higher rates. So, we decided to pay premium. If you would create a new…they would have created a new T-bills…Treasury Bills or Treasury Notes, it would be at interest no…no more than 1.87. It would be at 21 basis point, ending at 21 percent of 1 percent. So, instead of creating or buying new notes we decided to buy the premium at that time. It's--it--it works out the same way. It's just at that time that was the most available investment that we had so we decided to pay the premium. But if we would…they would've created or issued the same Treasury Bills or Notes at that time, it would've been more than 1.8 or it would be more…it will be very close to 21 basis points, I would say, because that was the market rate at that time when we bought it.

VICE-CHAIR HOKAMA: Okay, okay. And I appreciate your comments, Director. Chairman, I'm happy to let the other Members ask their questions on this area.

CHAIR PONTANILLA: Okay. Members, any questions for the Director?

NOTE: Silence.

CHAIR PONTANILLA: Seeing none, Mr. Agsalog, did we pay any penalties in the last three quarters other than --

MR. AGSALOG: No, Mr. Chair--

CHAIR PONTANILLA: --not penalties but, you know, the premium that we pay is so huge.

MR. AGSALOG: Mr. Chair, as you have mentioned, we have not taken out any of our investment. . .not on the maturity date, except for the 32 million as you have mentioned--that I'm very happy to say that in cooperation with the Corp. Counsel and you guys were advised of the negotiation that we have done. So, no, we have not been penalized to an extent because we have withdrawn or taken our money before maturity. Our cash flow has always been in the ballpark, that we do not have to liquidate any of our investment in a timely manner. So, we--we've been very conservative in that, Mr. Chair.

CHAIR PONTANILLA: Thank you. And the financial advisor--I'm assuming that we hire a company that help the County invest their monies. How much do we pay 'em?

MR. AGSALOG: I think it's $2,000, Mr.--I cannot tell you the exact amount. I can give you that if you need it in writing. I will be able to provide that for you. I have retained him in a retainer and he is also working with us in preparation of floating the bonds since we are now almost ready to sell bonds. The market is very good in the rates. We have enough General Fund loan to our projects already. So, I have been having a discussion with my management team, the Managing Director, the Mayor, that we will execute a bond sale soon. So, with that, Mr. Chair, I'm very happy that we have our financial advisor on board, yes.

CHAIR PONTANILLA: And then you're going to refinance any of our…

MR. AGSALOG: Right now, Mr. Chair, yes, I'm glad that you asked me that because there is a discussion that I have also put on the table with my team, and we are thinking of doing some refinancing, including some of our higher interest rate State Revolving Funds. So, my thinking in that, Mr. Chair, is if we get lower interest rate from the State Revolving Fund and we give that back to the State, we can apply more again to afford them to lend it to us since the State Revolving Fund is based on the rates of a 20-year bond at the time that we sign the contract with them. So, it push them to re-loan this money to us or to, we can apply more for something like that. But it's in a discussion mode, Mr. Chair. If it is going to be economically feasible as far as our cost in carrying these loans, I think, we going to execute that way. But it is on the table, Mr. Chair.

CHAIR PONTANILLA: Thank you. Mr. Hokama.

VICE-CHAIR HOKAMA: Just real quickly. Director, in the Short Term Portfolio, do you keep any of…is there funds that you keep there that is part of our normal general ledger checking requirements--checking account requirements, whether it be for payroll? Is that kept also in the Short Term Portfolio accounts? Or, is that a totally separate?

MR. AGSALOG: No, it's in our cash account with Bank of Hawaii. Our. . .where we pay our payroll and all that, Mr. Chair, it's all cash here.

VICE-CHAIR HOKAMA: Okay. So, so, none of that is reported in this--this report, right, Mr. Director?

MR. AGSALOG: Uh . . .

VICE-CHAIR HOKAMA: 'Cause this is all cash, basically.

MR. AGSALOG: Yeah, this, this are cash equivalents.

VICE-CHAIR HOKAMA: Yeah.

MR. AGSALOG: But the…no, I have to get back to you.

VICE-CHAIR HOKAMA: Okay. Okay.

MR. AGSALOG: I don't want to misstate there, Mr. Chair.

VICE-CHAIR HOKAMA: Okay, yeah--

MR. AGSALOG: I'm so sorry, yeah.

VICE-CHAIR HOKAMA: No, no, I would prefer you be sure of the response, Director. Yeah.

MR. AGSALOG: Yeah, but because we have a big account with the Bank of Hawaii right now and, for me to misstate that, it's going to be a material thing. So, I, we can get back to you, yeah.

VICE-CHAIR HOKAMA: Okay, thank you, Director. And the last one, follow-up to Mr. Pontanilla--and I'm happy you're going to go to a bond float shortly. So, this financial advisor--this person would take the place of bond counsel and the underwriter's job that traditionally has been done on behalf of the County?

MR. AGSALOG: Mr. Chair?

CHAIR PONTANILLA: Go ahead.

MR. AGSALOG: No, this financial advisor is just helping us. In fact, he is the one that giving us a road map as far as the steps that we do. The bond counsel is…they do more than a financial advisor and he's not…the underwriters is not also the financial advisor. This person that we retained is to help us go through the road map and the steps in how we arrive to the bond sale, Mr. Chair. He is just our advisor as far as which one is better, competitive sales, or negotiated--that type of things. And he works with us in…he comes to my meeting and give his feedback into how we work with them. But, no, he doesn't take the place of the bond underwriter and the bond counsel.

VICE-CHAIR HOKAMA: Okay. Then, Chairman, maybe when appropriate after Mr. Agsalog holds his next short term policy review with his committee members and the Treasurer, maybe we can ask him to come back and give us an update on the adjustments that they would implement in our investment philosophy. And I'd be interested in if he can also at that meeting share with us what the advisor is giving them advice on since, you know, we've gone through a lot of bond floats. And, to me, the template is pretty much straightforward. So, I'd be interested in the improvements that Mr. Agsalog would be recommending for the upcoming current borrowing. Thank you.

CHAIR PONTANILLA: Thank you. And, yeah, I guess, you and I have gone through those investment companies and it's almost like cut and dry, but. Members, any more questions for the…oh, Member Mateo.

COUNCILMEMBER MATEO: Thank you, Mr. Chairman. Mr. Agsalog, perhaps just out of curiosity--you've got a five member team, the MD, yourself, the Deputy, the Budget Director, and Accounts individual. In terms of taking a look at the short term investments, does any of the team members has any practical or other training that, that helps in the guidance of looking at whatever investments the County should be considering? Or, is it just strictly driven by the financial advisor?

CHAIR PONTANILLA: Mr. Agsalog.

MR. AGSALOG: Thank you, Mr. Chair. The Investment policy Committee members are...they are the one that sets the policy as how we going to invest our money as a County. And for the expertise as you have asked, I can assure you that our Managing Director is very much aware of the global market. Our Deputy Director has a background that was in the retail side of investment. Our

Budget Director has been a CEO of a big corporation. And now, of course, our Account Administrator has also been in the financial market. So, all of them provides a strong financial background and I can assure you that their input will be incorporated in our policymaking in the Investment policy Committee. So, that I can sleep at night, that I have good people in my committee, Mr. Chair.

COUNCILMEMBER MATEO: Thank you. Thank you, Chairman.

CHAIR PONTANILLA: Thank you. I'm glad you can sleep at night . . .*(laughter)*. . .

COUNCILMEMBER MATEO: Yeah . . .*(laughter)*. . .

CHAIR PONTANILLA: Members, any more questions for the Finance Director? If not, I would like to thank you, Mr. Agsalog, for being here. Members, if there is no objections the Chair would like to defer this item.

COUNCIL MEMBERS: No objections.

CHAIR PONTANILLA: Thank you.

COUNCIL MEMBERS VOICED NO OBJECTIONS. (excused: MV)

ACTION: DEFER pending further discussion.

CHAIR PONTANILLA: And when Mr. Agsalog returns he can provide us more information in regards to your meeting that you're going to be having.

ITEM BF-72: REAL PROPERTY TAX LAND CLASSIFICATION (CC 11-314)

CHAIR PONTANILLA: Okay, Members, the next item on the agenda is BF-72, Real Property Tax Land Classification. The purpose of the proposed bill is to allow parcels that have been granted a Transient Vacation Rental Permit or a Conditional Permit to operate a transient vacation rental to be assessed at their highest and best use. At this time, if we can have the Real Property Tax Administrator, Mr. Scott Teruya; and the Deputy Director, Mr. Savage?

NOTE: Pause while they approached the floor.

CHAIR PONTANILLA: Gonna call on the Deputy first, if you have any opening comments.

MR. SAVAGE: Thank you, Chair. I do have a couple of comments. Again, I want to commend this Committee, including yourself, for taking a look at the legislation and bringing clarity so that our people down in Real Property Tax can correctly assess the values of the properties out there. The proposed bill amends existing Codes to remove parcels that either have Transient Vacation Rental Permits or a Conditional Permit to operate a transient vacation rental from the Commercialized Residential classification. I want to pause here and take a moment in time and just make a comment based on the testimony before this meeting--that I do acknowledge the fact that TVRs or trans vacation. . .rentals offer a diversity to our tourism industry. Because of ***this***, I want you to understand that there are few loopholes of why we're trying to bring this forward. The existing structure allows a parcel to increase the existing use contrary to its underlying zoning and further receive a tax deduction. For example, because the new ordinance of which has been passed, there is a cap on amount of vacation rentals that can exist in individual communities. There is sort of an incentive for those to go after these permits to be a TVR, regardless of their intent to use them for that use and get a lower rate.

COUNCILMEMBER COUCH: Mr. Chair, point of order?

CHAIR PONTANILLA: Mr. Couch?

COUNCILMEMBER COUCH: Thank you. I don't know if Mr. Savage is aware--the ordinance that we just passed was for short-term rentals, which is significantly different from TVR.

MR. SAVAGE: My apology. Yes.

COUNCILMEMBER COUCH: So, I don't know. Are you talking about short-term rentals or TVRs?

MR. SAVAGE: I'm talking about the TVRs. My--my apology.

COUNCILMEMBER COUCH: Okay, thank you.

CHAIR PONTANILLA: Okay.

MR. SAVAGE: Again, back to what I was saying for. . .for this particular thing, on short-term rentals. . .or trans vacation rentals. For this upcoming tax year, a parcel zoned for Apartment use, for example, would pay a rate of 6.2 per one thousand assessment. If this parcel receives a Conditional Permit to operate a TVR, the existing Code places them in Commercialized Residential and taxed at 4.5 per thousand. The existing structure would encourage owners to obtain a TVR Permit--whether or not they intend to use that parcel for short-term rental purposes--so they can benefit from a lower tax rate. The Commercialized Residential class was adopted in Fiscal Year 2011. And prior to this ordinance, TVRs were classified as Hotel/Resort. We believe this measure adds uniformity by classifying TVRs like they were prior to Fiscal Year 2011.

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

MR. TERUYA: No.

CHAIR PONTANILLA: No?

COUNCIL MEMBERS: . . .*(laughter)*. . .

CHAIR PONTANILLA: Thank you. Members, before you we do have a proposed bill, A Bill For An Ordinance Amending Section 3.48.305, Maui County Code, Relating To Real Property Tax Land Classification. And, you know, we've heard a lot of testifiers testifying this afternoon in regards to some of the concerns that they have in this proposed ordinance. First question that I have for, you know, Mr. Teruya or Mr. Savage, is in regards those TVRs with owner-occupant, right now they pay the Commercialized Residential rate. And with this legislation, it's going to be highest and best use. Is there any provision to allow home exemption for those that live in their transient vacation rental building?

MR. TERUYA: Chair, as far as I know, most of those who are receiving the TVRs normally ***don't*** live in their homes. From a recent transmittal from the Department of Planning, I received that there's about 13 TVRs out there. I do not know how many people live in their homes from that point, but if they were to apply for their permit--as far as Real Property Tax Code--there is nothing in the provision that would not allow them for a home exemption. But aside of that, I don't know what is hindering them as far as the Planning Department.

CHAIR PONTANILLA: So, how would you consider two separate buildings, `ohana and the main house where the main house is being used for TVR and the `ohana as for residence?

MR. TERUYA: Okay, as far as I know if somebody was to apply for a home exemption, we would grant it provided that they could give the information that is required from them from the real property tax side. If we receive a list from the Planning Department stating that somebody is a TVR, to our knowledge a TVR is not limited to having a home exemption. So, we also receive a list of B&Bs on an annual basis from the Planning Department and we have been instructed that TV…bed and breakfasts are not allowed the home exemption. So, if a TVR was to come forward and apply for a home exemption we would by process grant them a home exemption.

CHAIR PONTANILLA: Okay, thank you. One more last question before I open it up to the Members. In regards to historical buildings, is there a tax break of some kind when they maintain their home as a historical building?

MR. TERUYA: Not from the County's standpoint. Real property taxes. . .current ordinance allows people to get a historic residential exemption, which basically brings them down to a minimum tax. I know the City has got through clarifying some language in the TVR bill that makes it very clear as to what constitutes a TVR. I know there's proposed legislation right now. Currently, they're paying the minimum tax, which is $300 in the City; and the proposal that, I believe, is before the City Council is that they're going to be proposing to be assessed like a percentage of fair market value.

CHAIR PONTANILLA: Thank you. Members, questions? Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Mr. Chair. I guess, I have a real concern with what Mr. Teruya just said about it doesn't….there's nothing that prohibits homeowner's exemption for

TVRs. Are you talking about the ones that were given a Conditional Use Permit as a transient vacation rental, 'cause it's my understanding that aside from those, the TVRs are in condominium units.

MR. TERUYA: I'm not aware that they are in condominium units other than if a Conditional Permit was to be passed on to Real Property Tax, that made it very clear that they are not to receive exemptions. That would be the only time that we wouldn't allow the exemption.

COUNCILMEMBER COUCH: If there's a condominium unit that is a TVR, which is almost 9,000 units like that, they don't get the homeowner's exemption. Is that right?

MR. TERUYA: They ***can*** receive a home exemption in a condominium.

COUNCILMEMBER COUCH: Well, I'm reading 3.48.305(C), which talks about condominiums. Number 2, it says, and just correct me if I'm wrong--2(a), classification upon consideration of its actual use into one of the general classes as follows, (i) says Homeowner. Only those units owned and occupied as a principal home and for which a home exemption claim was filed and granted shall be classified as Homeowner. That tells me that they're occupied as principal home, so it's not a TVR. So it, right there it says that they can't be given a homeowner's exemption if they're a TVR. Maybe I'm reading that wrong.

MR. TERUYA: I think--

COUNCILMEMBER COUCH: Corp. Counsel, maybe you can help me on that.

MR. TERUYA: There are two different things with TVRs, is--what might be better for me to understand is a TVR the ***entire*** unit, or a ***unit***, a bedroom in a unit? Because you can't rent your entire out, but you can rent ***a*** bedroom out and just not be getting the exemption for the portion that is being used for that commercialized portion.

COUNCILMEMBER COUCH: ***Typically***, and it's my understanding and, again, correct me if I'm wrong, maybe it's the Planning Department or possibly your Department…these are condo units that are fully enclosed bedroom, one or two bedrooms, and living room, and a kitchen, and one or two bathrooms, or any combination thereof--that the whole unit is taken out and rented to somebody.

MR. TERUYA: Oh--

COUNCILMEMBER COUCH: The owner doesn't live there . . .*(inaudible)*. . .

MR. TERUYA: In that example, yes, you would not get a homeowner exemption. Correct.

COUNCILMEMBER COUCH: Okay.

MR. TERUYA: But my understanding is if, in a TVR, I think, one of the testifier had mentioned before in a home…in a house and a cottage --

COUNCILMEMBER COUCH: Yeah, yeah. I'm talking about--

MR. TERUYA: --but that could, that could also be a condominium unit as ***well***.

COUNCILMEMBER COUCH: I. . .I'm. . .I see what you're talking about.

MR. TERUYA: Yeah.

COUNCILMEMBER COUCH: Okay. ***However***, the part of that…that I was just reading says when a property is subdivided into condominium units…so that --

MR. TERUYA: I understand what you're saying.

COUNCILMEMBER COUCH: --classifies under there.

MR. TERUYA: Yeah, okay. That what you're saying is under that Code, the highest and best use--if a portion of it is being used for short-term rental, then you are correct, that it should be Hotel and Resort.

COUNCILMEMBER COUCH: Well, it--that's what it says right now, yeah, and that's what we're trying to work on at this point. Okay, 'cause my concern is that you said TVRs can have homeowner's exemption. And that's…that doesn't seem…viable under this…Code.

MR. TERUYA: Yeah, because…let's, for example, on an Agricultural lot that has a home and a cottage, if he has a TVR permit to rent the main home and live in the cottage, from Real Property standpoint you can receive a home exemption.

COUNCILMEMBER COUCH: If it's condominiumized?

MR. TERUYA: Oh, maybe not if the condominium--

COUNCILMEMBER COUCH: Okay.

MR. TERUYA: --just a subdivided lot, yeah.

COUNCILMEMBER COUCH: Right, right. We don't--

MR. TERUYA: Yeah.

COUNCILMEMBER COUCH: --I…I think somebody said there's 13 --

MR. TERUYA: Yeah.

COUNCILMEMBER COUCH: --of those, maybe.

MR. TERUYA: Yeah.

COUNCILMEMBER COUCH: So, it's not worth…a lot of the time, to split that hair. That…that I can understand. It's the --

MR. TERUYA: Yeah.

COUNCILMEMBER COUCH: --9,000 units that are in apartment-type condominium buildings that…

MR. TERUYA: Okay.

COUNCILMEMBER COUCH: …that's what I thought you were referring to. The other question is, you know, along with B&Bs…you know this is what we're trying to do, is break out B&Bs. And I understand why…what the thinking was back about Commercialized Residential--is that these people are doing some sort of commercial activity in a Residential area. My concern is…in the B&B ordinance we ***require*** them to be living on-site, so it must be their primary residence. I know you take out valuations and you have in--when you do your tax valuations, you have some valuation at one rate and then some valuation at another rate. I've seen some with four or five different rates--I'm sorry, ***valuations***. Is there a way that you can do that with the rates as well? And my…and I'm leading to…what I'm leading to is saying, okay, let's say 50 percent of this residence is this person's primary residence, they ***have to*** live there. So, can you take 50 percent of the valuation and give them 50 percent of the exemption for homeowner's and give them the homeowner's rate for that section and then for the other section that is the commercial portion give that a Commercial rate? So, you have two ***rates*** on a piece of property. Do you have the flexibility in your software or your procedures to have separate rates on a single piece of property?

MR. TERUYA: Chairman?

CHAIR PONTANILLA: Go ahead, Mr. Teruya.

MR. TERUYA: I believe we can do that. That would create a lot of cleanup in our Maui County Code. The current ordinance reads that if you have been granted a home exemption, that you're a classified Homeowner. So, then that would be amended in the sense that…if you have a home exemption, the entire parcel is Homeowner. So what you're saying is just to separate that out, we would treat other properties that have potentially homeowner and a rental, we would split that out as well?

COUNCILMEMBER COUCH: Potentially. And even ***further*** is, you know, there's home occupations that are allowed, at this point, in the Code, but we're potentially going to look at home-based businesses in the next year or so --

MR. TERUYA: Yeah, I think what you're proposing --

COUNCILMEMBER COUCH: --and that's going to be another…

MR. TERUYA: Yeah, what you're proposing can be done. It would be just a little ordinance revisions to mean ***exclusively*** for the homeowner or, like you said, basically splitting apart parcels like multi-zoned parcels to have different PITTS for different classes.

COUNCILMEMBER COUCH: Okay. And, Mr. Chair, this may be…may be a broader solution to some things that are coming up and also things that we already have, in that instead of having yet another classification, like Commercialized Residential, you have, you know, the homeowner portion where they're, we require them to ***live*** as their primary residence, give them the homeowner's exemption and that percentage of the exemption, of course; and then the commercial side, make it Commercial. And so, it's a mixed use kind of situation. Then we don't have to have yet another category or two or three categories. That's, and I think it might be worth this body's ***time*** to look into that a little bit more and so it's much cleaner in the long run. Then, we can handle all the situations that can or cannot come up in the future.

CHAIR PONTANILLA: Okay. Mr. Hokama, followed by Member Baisa.

VICE-CHAIR HOKAMA: You know, Chairman, it always comes down to then how many staff are you going to authorize to ensure implementation is done well and to put integrity in the taxation program? You're gonna have the few that will comply and do the right thing. You're gonna have most of them cheating to get the maximum tax benefit, okay. It's just the way it is, okay, in my experience with taxation and on this County. So, I would rather do maybe something more simplified like the City and County of Honolulu. If you living on the property, I don't mind--well, maybe I do, but I'm willing to have them have the homeowner's exemption, but everything, ***everything*** is on the highest and best use. 'Cause I still think we're being fair to give them that exemption amount and not spending time and arguing over whether or not it's 50 percent of the property, 75 percent of the property, 10 percent of the property, that is in one category or the other. That's wasted exercise for me. I would rather you just give 'em the home exemption and then we tax ***everything*** under highest and best use. And I think we can make it work much cleaner--just like the City does it with Oahu taxpayers.

CHAIR PONTANILLA: Okay. Ms. Baisa.

COUNCILMEMBER BAISA: Thank you very much, Chair. This, of course, takes me back to the days when we were first looking at the proper tax category for the B&Bs and we were talking about Commercialized Residential. And I still have a concern because I was, it was explained to me that the reason why we were going to do this was because people were earning income in their homes. And, to me, earning income in your home is earning income in your home.

UNIDENTIFIED SPEAKER: Right.

COUNCILMEMBER BAISA: I don't see any difference between whether I have somebody renting my bedroom or if I'm conducting my real property tax business or my making widgets in my bathroom or whatever . . .*(laughter)*. . . I'm doing, you know, earning income in your home is earning income in your home. And if that's the ***standard*** then, I think, we should apply it to everybody. And it bothers me that we have picked on a sector--because they're no different from anybody else earning business in their home. So, if we're going to tax people by earning business in their home, then we should tax everybody. I like the idea of keeping it clean--homeowner is Homeowner. If you live there, well, you should be entitled to ***some*** kind of consideration--whether that's a home exemption or whatever, 'cause we all need a home, and if you live there you live there so you get it. And the other part, of course, can be Commercial. And I have a concern about highest and best use because what I've been hearing--and it's disturbing to me--was that this would be considered…just because you have a STR or whatever you have, you might be taken to the Hotel category. I think that's extreme. I think we can find something a little less and, for me, Commercial sounds kind of, you know, like it's not the ***best*** thing but it's certainly clean--commercial is Commercial--you making money. So, Homeowner, Commercial, I could live with. But out and out highest and best use, going to the extent of a hotel, I cannot support. Thank you.

CHAIR PONTANILLA: Thank you. Corporation Counsel.

MR. UEOKA: Thank you, Chair. I'm not sure how it would play in, but 3.48.450 reads, Section B(6): no such exemption shall be allowed for any real property that is classified as Commercialized Residential. It's referring to the homeowners, I believe.

CHAIR PONTANILLA: Thank you. Mr. Couch.

COUNCILMEMBER COUCH: And thank you. ***That*** would be something we would have to tweak as well.

COUNCILMEMBER BAISA: We can fix it.

COUNCILMEMBER COUCH: I mean, this may not get done today, but it, this is…it's a good discussion that we're having. And while I understand what Mr. Hokama is saying and I tend to agree with him, for the most part, on that…the only thing that we have to be careful of, if that's case, then people who have a main home and an `ohana who are renting their `ohana long-term would then fall under his category as well. Right now, I believe, they're getting homeowner's exemption all the way around…if, if I'm not mistaken.

CHAIR PONTANILLA: Mr. Teruya.

MR. TERUYA: Yeah, if you have a home exemption, your entire parcel is classified as home. I--just for the Committee's information, several years ago, I know, we had talked with the Chair about possibly introducing new…splitting up the Hotel and Resort category to become two categories--one of Hotel and one of Resort, to separate the 30 real hotels versus the short-term rentals. So, I know, that was in the works as well. I think Chairman Pontanilla has asked for me to expound on whether or not that would still be something that the Committee would want to consider. So that…if you guys ever want to pursue that route, that would be a consideration.

CHAIR PONTANILLA: Mr. White.

COUNCILMEMBER WHITE: Thank you, Chair. Mr. Teruya, how many condominiums are in the Hotel category because they're being used as short-term rentals? My recollection, it's somewhere in the neighborhood of 9,000.

MR. TERUYA: I think we--it was a very, ***very*** high number in comparison to the certified total.

NOTE: Silence.

MR. TERUYA: …Chair, I don't have that on me right now, but if I come across it I'll bring it up.

CHAIR PONTANILLA: Okay, good.

COUNCILMEMBER WHITE: Okay, thank you. My concern, Chair, is that we have…somewhere way over 5,000…my recollection is we have about 9,000 units that are condominiums. They're owned by individuals that are used as short-term rentals. They don't ***have*** the ability, like hotels do, to go out and do other business. They have their…their condominium. They have the use of a pool. They sometimes have restaurants in the complexes. They sometimes have retail, but ***generally*** it's…it's pretty limited because they're all on the hook. And you don't make money very easily in hotel food and beverage because most of us are unionized and the labor rates are, in some cases, double of what they are in a stand-alone restaurant. My concern with this is that if we…and I realize that this, the bill is just simply removing them from the Commercialized Residential, but I'm comfortable removing them from Commercialized Residential because I do think that needs to be limited to those people whose homes are occupied by the owners and used as a B&B or something of the sort. And I would prefer wrapping some of these Conditional Use Permits that are essentially operating as a B&B into this language so that they're--they continue to be looked at as B&Bs. But my feeling is that if you own a home that you're renting out, I have a real tough time differentiating your use from that of a condominium such as Puamana. And a lot of these guys, I mean, all these guys are paying the $9 rate now. There's ***9,000*** of them, so how do we create this--if we're creating a new class by moving them into another, either the Commercial or some other rate, I'm not sure we're being fair to the 9,000 that are already paying the higher rate. So, and some of these, you know, yeah we've got some—we've got some very small operators. But we've also got some really big operators that are, you know, renting homes for--I saw one, a 12…12-day period over Christmas. The minimum rental was $47,000. So, you know, it's hard for me to start shedding some, you know, shedding tears--

COUNCIL MEMBERS: . . .*(laughter)*. . .

COUNCILMEMBER WHITE: --for those guys. So, that's…that's my feeling.

CHAIR PONTANILLA: Thank you . . .*(laughter)*. . . You want to comment, Mr. Teruya? . . .*(laughter)*. . .

MR. TERUYA: Yeah, the Hotel/Resort category has 10,144 parcels in that, and I would, it would be very obvious that it would about 9,000-something units in the Hotel/Resort. Also, if you have the Hotel/Resort underlying zoning and ***choose*** not to do it for short-term rental, you still must pay the Hotel tax rate. Yeah. And that is similar to the City and County of Honolulu.

COUNCILMEMBER WHITE: If I --

CHAIR PONTANILLA: Go ahead, Mr. White.

COUNCILMEMBER WHITE: --could ask a follow-up. The…but if you are a condominium in a non-Hotel zone and you're using it as a rental, you're still going to be paying the $9, right, because if you're a condominium you simply go straight to highest and best use.

MR. TERUYA: That is provided that the response is coming back that you ***are*** using it for a short-term rental. Because in Apartment, it is self-declaration as to what is the ***use***.

COUNCILMEMBER WHITE: Uh-huh.

MR. TERUYA: I think we talked about this numerous times--

COUNCILMEMBER WHITE: Yeah.

MR. TERUYA: --that in the Apartment, once you condominiumize, the owner must declare what is the use for the ***year***. And if you choose not to rent it, then they can claim Apartment. So, even though you could short-term rental or not, those are really up to the owner to declare what is the actual use.

COUNCILMEMBER WHITE: Yeah, and, Chair, as you know, that--that's something that needs to be tightened up too. Thank you.

CHAIR PONTANILLA: Thank you. Mr. Couch.

COUNCILMEMBER COUCH: Thank you. And I agree with Mr. White on that--that does need to be tightened up. Notwithstanding Mr. White's $47,000 ***home***…that he found--

CHAIR PONTANILLA: Rental.

COUNCILMEMBER COUCH: That seems huge. We've got a lot of…as we had a testifier come up and say, you know, most of the time it's somebody who's just renting out their home…oh, I forgot what he said. But it wasn't the big, huge, high-end homes. The issue is what is the ***difference*** between somebody sleeping there for one week versus somebody sleeping there for six months--other than it's the same person for that long a time? So, the ***use*** seems to be the same--people are getting paid to have somebody stay there for a certain amount of time, whether it's a month, on a monthly basis, on a daily basis. So, my concern is it's ***not*** way up in the Hotel category 'cause you don't have the amenities that hotels or, you know, if you look at the condos that are doing, most of these have the pool right there and then a lot of them have restaurants. Some of 'em even have gift shops and what not, where you can't do that in these other single-family home situations. So, I can see going into Commercial and I still like the idea of…and doing the, you know, homeowners for the percentage. We do that already for a few other things, it's my understanding…in the valuation side. So, I don't see how the difference between rate and valuation would make a difference or how much extra--I mean, let me ask Mr. Teruya. Would there be a requirement for extra staff if we did something like that for the B&Bs or any future home-based occupations?

MR. TERUYA: To be clear, what was . . .*(inaudible)*. . .

COUNCILMEMBER COUCH: If we were to say, you know, 50 percent of your home is used for your primary residence and then the other 50 percent or 60-40 or whatever the percentage is, breaking out those percentages and determining those percentages…how many more staff would you need to do something like since you appear to be already doing something like that?

MR. TERUYA: Yeah. You figure there's 26,000 Homeowner units in the County of Maui. And I really doubt that there's a very large amount of properties that are being used for mixed purposes. How much? I don't know, though. So, it would just be a renewal of your Homeowner application to say what you are doing it for. I would believe that most people who are using a portion of their home or their `ohana as a separate unit have already declared that they are renting that portion. So, it's not like we would do any more other than possibly breaking it out into separate PITTS. So I, how much more people? It really wouldn't be able to do it until we actually did the study and to determine how much work it would really be.

COUNCILMEMBER COUCH: And currently, and if I may follow-up, Mr. Chair. Currently there is a cap on B&Bs, which is 400; and there is a cap on short-term rentals, which 400. So, at the ***most-*** -and we're only talking about B&Bs at this time…at the most it's 400 at this point…out of your 26,000.

CHAIR PONTANILLA: Until you bring your home-based business.

COUNCILMEMBER COUCH: Well, yeah, when we start going to the home-based business then there's going to be a few more but by then --

CHAIR PONTANILLA: That's going be in the thousands.

COUNCILMEMBER COUCH: Yeah . . .*(laughter)*. . . But, and those people are…are declaring that portion on their IRS tax forms already. They're getting their tax breaks on there. So, the number's already, I mean, all we have to do is say, okay, let's see your Schedule C, I believe, and that breaks out the percentages right there. They can just put it right in and there's your verification. So, I don't see any extra time on that. Thanks.

CHAIR PONTANILLA: Okay, Mr. White.

COUNCILMEMBER WHITE: Thank you, Chair. I would be a little uncomfortable with going down that road until we had a chance to run some numbers because I think this. . .this favor that he might think he is doing for people is actually gonna put 'em in a ***much*** more difficult bind --

CHAIR PONTANILLA: Like the farmers?

COUNCILMEMBER WHITE: --then you know by…by possibly charging them 50 percent at a, you know, at a Commercial ***value*** and Commercial rate. I don't know what so, you know…I think what the Council did a couple of years ago--establishing the Commercialized Residential--is a reasonable balance between Commercial and Residential or Commercial and Homeowner. And I'm not sure…I'm not sure I'm comfortable doing much to increase or change the Commercial Residential because they…what I've learned is that when you have a Commercialized Residential property, you can no longer mortgage it. You're then in the ballgame of having to get--any kind of financing you want is basically a business loan at the business rates. So, by doing a B&B, they're giving up a heck of a lot. And I don't know whether that also applies to the TVR. I think it's easier to stay under the radar with your lender as a TVR maybe--or a STR than others. But, anyway, I'd just being real hesitant to go down the road of changing the mix until we have, until somebody runs some numbers on it to see what the impact is on specific properties.

CHAIR PONTANILLA: Okay. Any more discussion? Mr. Couch.

COUNCILMEMBER COUCH: Thank you. And to answer, Mr. White, actually somebody did…a person who has a six-bedroom B&B, one of the first, has been begging me to say look, let's split it like that, not so much on ***his*** portion. He says the people with one- and two-bedrooms are the ones that are ***most affected*** by this. The one with one or two and sometimes maybe three…anything over that, then they can handle whichever way you want to go. But the people with one- and two-bedrooms are affected most and would be better served by splitting the percentages.

COUNCILMEMBER WHITE: Okay, but the question is when Mr. Teruya has his people evaluate that, is the ***living room*** that's used by the visitors and the ***dining area*** used by the visitors and the parking area used by visitors--is that all put into the mix or not? I'm just saying…before you jump into that, you gotta be careful because, you know, it could be determined that the commercial ***use*** applies to everything except the owner's bedroom and bathroom. So, I'm just…I'm just saying be careful what you ask for.

CHAIR PONTANILLA: Thank you. Members, any more discussion? Member Cochran.

COUNCILMEMBER COCHRAN: Thank you, Chair. And everyone knows my thoughts about STRs and what have you. But, you know, I'm just looking at the comments in regards to, you know, we're not a hotel; we don't have the amenities of a hotel, no swimming pool, no gift shop, no this and that. But ***that's*** the idea of ***creating*** this--is because it ***diversifies*** the transient vacation ***experience*** for people. People come over here and they want a van full of wind surfers and they want to do some camping. They want to rent a dog or, you know while, they want to have more of a home life type atmosphere, not a hotel, glitz and glam. So, I think--

COUNCILMEMBER COUCH: . . .*(inaudible)*. . .

COUNCILMEMBER COCHRAN: You can rent dogs.

ALL: . . .*(laughter)*. . .

COUNCILMEMBER COCHRAN: So, I think--

ALL: . . .*(laughter)*. . .

COUNCILMEMBER COCHRAN: --you know, there's a purpose for this and it's about transient vacation rental, period. And that is…that is what a hotel does. So, for me, highest and best use in that category works. So, I just wanted to have comments on that. Yes, you can rent a dog.

CHAIR PONTANILLA: Thank you . . .*(laughter)*. . . Any more questions, Members? Chair is going to…oh, Mr. Hokama.

VICE-CHAIR HOKAMA: Chairman, I'm gonna hope you consider deferring this. I think there's some good discussion and we need time to kind of price out certain options that maybe Real Property and the Deputy, Mr. Savage, can help us with. But I just want to say this also, yeah, you know, some of the differences. I'm ***hoping***, you know, if we can find a way to help property owners that want to do long-term rentals, then I'm willing to consider some other type of advocacy to assist that. 'Cause, for me, long-term rental, in my opinion, you trying to take care a ***resident***, okay. Short-term rental you trying to take care a bloody visitor. Yeah? So, for me, there's a difference. If you want to help take care our own, I'm willing to give additional consideration. And I hope we don't lose that in the formulation of this taxation policy. Thank you.

CHAIR PONTANILLA: Thank you. And, Mr. Hokama, you are right when they…in my neighborhood, you know, there's a lot of rentals and it's all long-term. And the reason why it's long-term, our forefathers looked at that as a means of affordable housing for our people. Again, affordable housing for people. You know, I like the idea in looking at the City and County of

Honolulu, providing that home exemption…and not necessarily the highest and best use. But we can still consider the highest and best use in that case for Maui. That's something that we can talk about and, you know, like Mr. Teruya had said, you know, I'm willing to work with our Real Property Tax guys to come out with a fair ordinance in the transient vacation rentals. It is my hope that in the next couple of meetings we have some kind proposal that, hopefully, will be fair to every TVR operator here in Maui County. And, Mr. Teruya, just one question. I know Launiupoko have a lot of TVRs and in discussion with you, majority of the TVRs already pay highest and best use.

MR. TERUYA: In that particular subdivision…first of all, we gotta determine whether or not we're talking about legal or illegal transient vacation rentals because --

ALL: . . .*(laughter)*. . .

CHAIR PONTANILLA: Legal ones . . .*(laughter)*. . .

MR. TERUYA: --in the sense that, I mean, if they are ***legal*** then, yes, they are paying the Hotel because they would have to have a Conditional Use Permit. But under the current bill, well, once you have a transient vacation rental permit, then now you're in Commercialized Residential rate.

CHAIR PONTANILLA: Okay, thank you.

MR. TERUYA: So, you know, I would just offer--any time you guys look for, even like the long-term rentals credits, so forth, you don't necessarily always have to look at creating a new classification. You can always look at it as an exemption form as well.

CHAIR PONTANILLA: Okay, good. Good. Ms. Baisa.

COUNCILMEMBER BAISA: Chair, before we leave this, I just wanted to share a question with everybody that I got from a constituent in Hana and I felt it was a good question. He says: what is the tax rate on plain rental homes? For example, houses for rent for more than 181 days. Should the rates be any higher for a rental of less than 180 days? I think it's a good question. You know, that 180, 181. What's the difference? And that's essentially his question. Who drew that line? Okay . . .*(laughter)*. . .

CHAIR PONTANILLA: That's what it says in the County Code.

COUNCILMEMBER BAISA: I understand, but it could've been 190 or 200.

CHAIR PONTANILLA: Yeah, well that's true, too.

COUNCILMEMBER BAISA: Yeah . . .*(laughter)*. . .

CHAIR PONTANILLA: Members, any more questions for Mr. Teruya or Mr. Savage at this time? If not, Chair is going to defer this item. And, Mr. Teruya, if you could or even, Staff, take a look at the City and County's proposal or get copies of it, so we can take a look at it and see, you know, how it fits, if it does fit for Maui County? Members, with that said, if there's no objections, the Chair would like to defer this item.

COUNCIL MEMBERS: No objections.

CHAIR PONTANILLA: Thank you. And thank you, again, Mr. Teruya and Mr. Savage.

COUNCIL MEMBERS VOICED NO OBJECTIONS. (excused: MV)

ACTION: DEFER pending further discussion.

CHAIR PONTANILLA: Okay, the last item…before we take the last item, the Chair is going to call for a ten-minute recess…reconvene at 3:30. Meeting in recess. . . .*(gavel)*. . .

RECESS: 3:20 p.m.

RECONVENE: 3:32 p.m.

ITEM BF-76: REAL PROPERTY TAXES PAID PENDING APPEAL (CC 12-24)

CHAIR PONTANILLA: . . .*(gavel)*. . . The Budget and Finance Committee meeting is now reconvened. Members, the last item for today is BF-76, Real Property Taxes Paid Pending Appeal. The purpose of the proposed bill is to provide for payment of interest on the amount of taxes refunded to a taxpayer when the taxpayer receives a final determination from the Real Property Tax Review Board that is wholly or partially in favor of the appealing taxpayer; and to ensure that all earnings, derived from tax overpayment made by property taxpayers who file appeals, are property refunded or credited. This afternoon we do have from Corporation Counsel, Richard Rost. Richard, you want to make any opening comments?

MR. ROST: Thank you, Mr. Chair. Just very briefly this proposed change to the County Code came out of a case where the County was sued for not refunding these, the interest earned on successful tax appeals. We were required to do that under a Supreme Court case from decades before that essentially no one was aware of. And after we were sued, we were forced to pay out a substantial amount of money and now we're changing the County Code to conform to that Supreme Court decision.

CHAIR PONTANILLA: Thank you. Mr. Hokama.

VICE-CHAIR HOKAMA: Chairman, again, your, the Council's Policy Committee did take up an item that Corporation Counsel Rost just made mention to. And so, since this is what I consider housekeeping, if you would be open to a motion, I would like to make a motion that we move this forward for first reading, subject to print, and have the Council deal with it at the Council level, Chairman. Thank you.

CHAIR PONTANILLA: Thank you. Before I do that, Members, any more questions regarding this thing…regarding this proposal? Mr. White.

COUNCILMEMBER WHITE: Thank you, Chair. My only question is, you know, as we--as we heard in the first item, the amount of return that is generated by the County is very, very small. And my concern is the wording says that you shall pay interest based on the average rate of return earned on County investments. Then it says "rounded down to the nearest quarter percent". And when you look at some of those returns, and they range, I think, from about 1.5 down to .65 or something like that. And I'd just…my question is if we're taking…if we're taking the rate down by what could be 30 percent, are we then running a foul of the intent of the Supreme Court decision, because we're simply not paying what we're generating? We're not paying at a rate that's close to what we're generating.

CHAIR PONTANILLA: Mr. Rost.

MR. ROST: Thank you, Mr. Chair. Yes, Councilmember White, I would be somewhat concerned about that because the Hawaii Supreme Court case did say essentially you've got to disgorge everything you earn because it's an unjust enrichment for the County to retain that money. I don't know how…this was drafted by now Judge Heely, I believe. I don't know who…why the quarter percent reduction was put in this. It's conceivable that it's simply negligible, that it's de minimis to round down by such a small percentage, but I don't know what would happen if that was challenged.

COUNCILMEMBER WHITE: So, if we were to follow the intent of the Supreme Court decision, it should be that we pay the average…pay back at a rate equal to the average that we have generated.

MR. ROST: For whatever we earned on that amount, correct.

COUNCILMEMBER WHITE: Chair, and I would…I support moving this forward, but I think we need to be careful with the --

CHAIR PONTANILLA: Yes.

COUNCILMEMBER WHITE: --rate.

CHAIR PONTANILLA: You know, Chair's intent is to move forward and then maybe if, Corporation Counsel, if you can follow up on Mr. White's question?

MR. ROST: Yes, we can take a look into that.

CHAIR PONTANILLA: Okay.

COUNCILMEMBER COUCH: By the way, Mr. Chair, for the record I second his motion.

CHAIR PONTANILLA: Okay.

VICE-CHAIR HOKAMA: He neva accept 'em.

COUNCIL MEMBERS: . . .*(laughter)*. . .

CHAIR PONTANILLA: I never accept it yet.

COUNCILMEMBER COUCH: . . .*(inaudible)*. . .

CHAIR PONTANILLA: Jeez…you quick, yeah? . . .*(laughter)*. . .

COUNCILMEMBER COCHRAN: Jumping, again.

CHAIR PONTANILLA: Okay, any more questions for Mr. Rost at this time, or Mr. Ueoka? If not, the Chair's recommendation is to pass on first reading, A Bill for an Ordinance Amending Chapter 3.48, Maui County Code, Relating to Real Property Tax; and file County Communication No. 12-24.

VICE-CHAIR HOKAMA: So moved, Chairman.

COUNCILMEMBER COUCH: Second.

COUNCILMEMBER WHITE: Second.

CHAIR PONTANILLA: Moved by Member Hokama, seconded by Member Couch. Any more discussion, Members? Seeing none, all in favor of the motion, please say "aye".

COUNCIL MEMBERS: Aye.

CHAIR PONTANILLA: Any opposed? Seeing none, motion is carried--seven "ayes"; two "excused", Member Victorino and Member Carroll.

VOTE: AYES: Chair Pontanilla, Vice-Chair Hokama, and Councilmembers Baisa, Cochran, Couch, Mateo, and White.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Carroll and Victorino.

MOTION CARRIED.

ACTION: Recommending FIRST READING of proposed bill and FILING of communication.

CHAIR PONTANILLA: Members, that's all we have for this afternoon for Budget and Finance. I want to say thank you to the Members. Thank you to Staff; and thank you to our two attorneys here, Mr. Ueoka and Mr. Rost. The meeting of the Budget and Finance Committee is now adjourned. . . .*(gavel)*. . .

ADJOURN: 3:37 p.m.

APPROVED:

Joseph Pontanilla

JOSEPH PONTANILLA, Chair
Budget and Finance Committee

bf:min:120612:df

Transcribed by: Delfey Fernandez

CERTIFICATE

I, Delfey Fernandez, hereby certify that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED this 3rd day of July 2012, in Wailuku, Hawaii.

Delfey Fernandez