

BUDGET AND FINANCE COMMITTEE

Council of the County of Maui

MINUTES

November 17, 2008

Council Chamber, 8th floor

CONVENE: 1:35 p.m.

PRESENT: Councilmember Joseph Pontanilla, Chair
Councilmember G. Riki Hokama, Vice-Chair
Councilmember Michelle Anderson, Member
Councilmember Gladys C. Baisa, Member (in 1:44 p.m.)
Councilmember Jo Anne Johnson, Member
Councilmember Danny A. Mateo, Member
Councilmember Michael P. Victorino, Member

EXCUSED: Councilmember Michael J. Molina, Member
Councilmember Bill Kauakea Medeiros, Member

STAFF: Lance Taguchi, Legislative Analyst
Michael Geers, Legislative Analyst
Yvette Bouthillier, Committee Secretary

ADMIN.: Frederick Pablo, Budget Director, Office of the Mayor
Kalbert L. Young, Director, Department of Finance (BF-131)
Scott Teruya, Acting County Real Property Tax Administrator, Real Property Tax
Division, Department of Finance
Milton Matsuoka, Captain, Department of Police (BF-130)
Michael Callinan, Sergeant, Department of Police (BF-130)
Jeff Hunt, Director, Department of Planning (BF-131)
Traci Fujita Villarosa, First Deputy Corporation Counsel, Department of the
Corporation Counsel

OTHERS: **Item 131:** Marty Herling, Maui Banyan Tree
Valerie Lewis, Maui by the Sea
Thomas Croly, Maui Vacation Rental Association
Dave DeLeon, REALTORS Association of Maui, Inc.
Hank Kline
Tanna Swanson, Maui Bed and Breakfast Association
Barbara Kline

BUDGET AND FINANCE COMMITTEE
Council of the County of Maui

November 17, 2008

Cherie Attix, Hale Hookipa
Others (5)

PRESS: Akaku: Maui Community Television, Inc.

CHAIR PONTANILLA: ...*(gavel)*... The Budget and Finance Committee meeting of November 17, 2008 is now in session. The Chair would like to recognize the Members that are here this morn...this afternoon. We do have Member Mateo, Member Anderson, Member Johnson, Member Hokama and Member Victorino. Excused at this time are Members Baisa, Medeiros and Molina. Upfront representing the Administration, we do have our First Deputy Corporation Counsel Traci Fujita Villarosa as well as our Budget Director Mr. Fred Pablo. And on the computer to my extreme right is Scott Teruya from the Real Property Tax Administration. Supporting the Committee this afternoon we do have Yvette Bouthillier who...who is our Committee Secretary as well as our Legislative Analysts Lance Taguchi and Michael Geers.

Members, before we, I take public testimony, if there's no objection, the Chair will separate the public testimony, taking the first item, have public testimony and then going into the second item, having public testimony. And the reason for my request is that, you know, we may have the Police Department here for a long time if we didn't separate both items.

So at this time, Members, the Chair would take public testimony. And for those of you that are providing public testimony on the first item which is BF-130, if you could come up forward. I know none of you signed up for public testimony. If anyone out there in the gallery that wanna provide public testimony for BF-130, if you can come up forward at this time. Seeing none coming forward, Members, the Chair would like to close public testimony for BF-130 if there's no objections.

COUNCILMEMBER VICTORINO: No objections.

CHAIR PONTANILLA: Thank you.

**ITEM NO. 130: AMENDING APPENDIX A OF THE FY 2009 BUDGET;
DEPARTMENT OF POLICE (ELECTRONIC
EXPLOITATION OF A CHILD PROJECT)
(C.C. No. 08-248)**

BUDGET AND FINANCE COMMITTEE
Council of the County of Maui

November 17, 2008

CHAIR PONTANILLA: Members, the first item on the agenda this afternoon is BF-130, amending Appendix A of the Fiscal Year 2009 Budget; Department of Police (Electronic Exploitation of a Child Project). The Department anticipates the grant from the State of Hawaii Department of the Attorney General, Edward Byrne Memorial Justice Assistance Grant Program for the Electronic Exploitation of a Child Project. This grant is for the period of October 1, 2008 through March 31, 2008. The total project cost is \$10,000. Eight thousand dollars represents 80 percent Federal funds and \$2,000 is the Maui County matching funds. The amendment request, \$10,000 for the project...but disregard that last item there. At this time, the Chair would like to call on the Budget Director for any opening comments. And also joining us upfront is Captain Milton Matsuoka. Director?

MR. PABLO: Thank you, Chair Pontanilla. And good afternoon, Members. The proposed bill is to add a grant which has been applied for by the...by the Maui Police Department. It's called an...it's called Electronic Enticement of...of a Child. The whole grant is for \$10,000. Eight thousand will be coming from Federal funds from the Justice Assistance grant, and 2,000 would be coming from the Maui Police Department as a...as a matching amount to...to get the grant. We have placed it in the bill for \$10,000 to cover any...any unanticipated increase in the grant. Here to explain any detailed questions you may have is Captain Milton Matsuoka. He's the head of the Investigative Division. Thank you.

CHAIR PONTANILLA: Captain Matsuoka, do you have any comments at this time?

MR. MATSUOKA: Good afternoon, everyone. I'd just like to add one more thing. This grant that we're getting through the Department of Justice is actually a second part. For some reason, they split the grant apart. The first part we actually purchased all of our computer equipment. And this second part is actually to help implement the...the program now that we have the equipment.

CHAIR PONTANILLA: Thank you. Members, any questions for the Department? Member Victorino.

COUNCILMEMBER VICTORINO: Thank you. And thank you, Captain, for being here today. How—and I guess just for my and the public's awareness—how prevalent is this electronic enticement here in Maui County? Because we see all the time in Oahu and again, because of the

BUDGET AND FINANCE COMMITTEE
Council of the County of Maui

November 17, 2008

mass media and the television and you...you get that kind of exposure. But how is it here on Maui? Have we seen many cases? Is it on the rise? You know, maybe can quickly give us kinda like a...a thought process in all...on this and how it's occurring here in Maui County.

MR. MATSUOKA: Well, definitely, you know, Maui County, we're smaller. We're not Oahu. But, again, to say that we don't have it here that would be not the right thing to say. Over the past, I would say, maybe three, four years we've actually had about six cases that have come out. And actually Detective Callinan here actually was involved in three of the cases that we just had the most recent ones where we got two people from Maui. And also the Attorney General's Office actually helped us on one where the guy came from Oahu to Maui. So it's...it's something that we see here, not as prevalent maybe as other jurisdictions but again, it's something that we do have here. And I think that anyone that has ever been on a chatroom and see, you know, people are out there looking for some vulnerable 13, 14 year old.

COUNCILMEMBER VICTORINO: And these monies will help continue the...the fight against this to...to...to be keeping your Department aware of what's going on out there and be able to hopefully intercede and catch these people before they hurt somebody? Is that what this...this money was purpose...its purpose for?

MR. MATSUOKA: Yeah. Most of this grant is, I believe, is for training to help our officers to be better prepared. Also to help them understand, I guess, the intricacies of the...the offense itself.

COUNCILMEMBER VICTORINO: And final question, Chair, if I may.

CHAIR PONTANILLA: Go ahead.

COUNCILMEMBER VICTORINO: How many officers are assigned to this particular section from the Maui Police Department?

MR. MATSUOKA: Well, right now one. But technically, all of us help out.

COUNCILMEMBER VICTORINO: I see.

MR. MATSUOKA: You know, when...when there's something that comes up, we grab guys and we help out, like I say, whenever something comes up. But right now we just have one.

BUDGET AND FINANCE COMMITTEE
Council of the County of Maui

November 17, 2008

COUNCILMEMBER VICTORINO: Just one. Okay. Thank you, Mr. Chair, for the opportunity.

CHAIR PONTANILLA: Thank you. Members, any more questions for the Department? Seeing none, the Chair would like to make his recommendation.

COUNCIL MEMBERS: Recommendation.

CHAIR PONTANILLA: Thank you. The Chair recommends the passage of the proposed bill, "A BILL FOR ORDINANCE AMENDING APPENDIX A OF THE FISCAL YEAR 2009 BUDGET FOR THE COUNTY OF MAUI AS IT PERTAINS TO THE DEPARTMENT OF POLICE", as well as the...on First Reading and the filing of County Communication No. 08-248.

COUNCILMEMBER VICTORINO: So moved.

COUNCILMEMBER JOHNSON: Second.

CHAIR PONTANILLA: Moved by Member Victorino, second by Member Johnson. Members, any more discussion? Seeing none, all those in favor, please say "aye".

COUNCIL MEMBERS: Aye.

CHAIR PONTANILLA: Opposed? Seeing none, motion is carried. Seven ayes, two excused, Members Medeiros and Molina. Thank you. Thank you, Captain.

VOTE:	AYES:	Councilmember Anderson, Baisa, Johnson, Mateo, Victorino, Vice-Chair Hokama, and Chair Pontanilla.
	NOES:	None.
	ABSTAIN:	None.
	ABSENT:	None.
	EXC.:	Councilmember Medeiros and Molina.

MOTION CARRIED.

BUDGET AND FINANCE COMMITTEE
Council of the County of Maui

November 17, 2008

ACTION: FIRST READING of proposed bill; and FILING of communication by C.R.

CHAIR PONTANILLA: Okay, Members, the second item, final item that we have on our agenda this afternoon is BF-131. At this time the Chair would like to receive public testimony from the people that have signed up prior to the meeting. For those of you that will be providing testimony, you'll have three minutes to provide your testimony, one minute to conclude. And, Members, as well as the gallery, before we start public testimony, if you could turn off your cell phones to the off position or silent mode. And those of you that are providing public testimony, if you can provide us your name and organization that you represent. The first person signed up for public testimony is Marty Herling.

...BEGIN PUBLIC TESTIMONY...

MR. HERLING: Hello, I'm Marty Herling. I own the Banyan Tree Bed and Breakfast which is a vacation rental in Makawao. And thank you for this opportunity to address all of you. So I just heard about this and I just was a little concerned about increasing my taxes in terms of a new classification if I were to fall into that as a vacation rental. Beyond...I can...I can understand removing a homeowners exemption. But to raise the classification to some kind of a hotel classification, I think would be very difficult for me personally. You know, I don't have a hotel. I have a limited amount of rooms which is seven rooms. And so, you know, I have to spread my cost across seven rooms. If I had 25 rooms as a hotel, I could better understand paying higher taxes. And we already pay about 11.42 percent in a transient vacation rental tax for people staying there. And ...*(Coughs)*... anyway, I just wanted to make my remarks known to everyone that it would be difficult to raise beyond removing a homeowners exemption for me.

CHAIR MATEO: Thank you, Mr. Herling.

MR. HERLING: Thank you very much.

CHAIR MATEO: Members, any questions for the testifier? Seeing none, next person who signed up for...*(clears throat)*...to provide public testimony is Valerie Lewis. Go ahead.

BUDGET AND FINANCE COMMITTEE
Council of the County of Maui

November 17, 2008

MS. LEWIS: Good afternoon. My name is Valerie Lewis. And I have the Maui By the Sea vacation rental in Paia. And I'm gonna read this letter and each of you I think have one of them. First, I would like to thank you for the support you have given me in the past regarding the permit for my vacation rental, Maui By the Sea. I'm very grateful for the opportunity you have given me to share my home and way of living with other people. I own and live on an oceanfront property located in Kuau. I did not buy this property. I could not afford it. I inherited it when my mother passed away in '99. At that time, the land assessment was \$500,000. This year it was over \$3 million.

I'm a single parent and this year my vacation rental is my only source of income. My income will not...will net out at around \$35,000 this year. If Committee takes away my home exemption which...which then disqualifies me from the circuit breaker, I would pay over \$6,700 of property tax instead of \$3,000. If you then change my tax category, my taxes will certainly increase to a point where it may no longer be financially possible to run a vacation rental for me. If you change your property tax to different classification, the small vacation rental will cease to exist. What will remain will be wealthy non-resident owners with true commercial condominium with three or four rentals on a property.

The economy is severely stressed and the Maui Committee should be doing everything in its power to encourage and support all of the businesses of Maui. Now is not the time to add additional financial burdens on any business. If the Committee is not willing to forego the proposed changes, then I would ask that these considerations be examined.

About the home exemption, is it fair to take away a home exemption from a homeowner living on the property, especially when a homeowner has been previously been granted a permit to legally do commercial business on a portion of that property?

About the reclassification, is it fair to tax the property with a primary residence not being used for commercial purposes at commercial rates? Is it fair to tax these properties the same way? One which has one rental versus one with three or four vacation rentals. One where the vacation rental occupies only a small portion of the property versus one that covers most of the property. One that is making \$30,000 a year versus one that is making \$100,000 a year.

BUDGET AND FINANCE COMMITTEE
Council of the County of Maui

November 17, 2008

In conclusion, by taking away the homeowner exemption and changing the classification you will put such large monetary burden on the vacation rental owners, you risk killing something that is unique and appreciated and that contributes to the economy of Maui. If our vacation...if our vacation rentals close not only you will not get the benefit of a higher property tax rate, but you will also lose the numerous other contributions made by these vacation rentals. And I would like to add that it will encourage people who never came forward to get a permit to keep doing business in the background without ever paying GE taxes, TAT taxes, income taxes and now new bed and breakfast taxes.

MR. TAGUCHI: Three minutes.

MS. LEWIS: Is it fair to add more taxes to the ones that came forward, did the right thing and are legal? Thank you.

CHAIR PONTANILLA: Thank you. Members, any questions for Ms. Lewis? Member Baisa.

COUNCILMEMBER BAISA: Thank you, Chair. Thank you, Ms. Lewis, for being here this afternoon. How many bedrooms do you have?

MS. LEWIS: I have just one bedroom.

COUNCILMEMBER BAISA: So you just can have like two guests at a time?

MS. LEWIS: Yes.

COUNCILMEMBER BAISA: Thank you very much for that. You know, there's a big difference between obviously one bedroom and two guests than six bedrooms and a lot of guests. So we need to keep that in mind. Thank you very much.

MS. LEWIS: Thank you.

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

MR. CROLY: Aloha, Committee. Aloha, Chair. I'm Tom Croly and I'm speaking on behalf of the Maui Vacation Rental Association. First, I'd like to thank the Planning Committee Members for eight months of work that has resulted in the B&B ordinance that now awaits full Council

BUDGET AND FINANCE COMMITTEE
Council of the County of Maui

November 17, 2008

approval. I'm hopeful this legislation can provide a process to effectively permit and regulate the B&B industry on Maui. I'm pleased that this...that the application for the ordinance has been broadened to include most Maui island homeowners who would like to rent out a part of their home to visitors.

The Committee today is charged with establishing a new property tax category for these homeowners. And if carelessly done, this action could discourage compliance with the new B&B ordinance and undo all the work of the Planning Committee.

Establishing a new tax category is necessary to clarify the tax status of those granted a permit to use a portion of their homes for visitors. But this action is a bit more complicated than it might seem because not all B&Bs make the same use of their properties. Some homeowners will choose to use as little as one bedroom for this use and that might represent only 10 percent of their property being used. And the rest of their property is being used as their primary residence. While other B&B owners may seek to use as many as six bedrooms for this use and as a result their property may be 70 percent in B&B use and only 30 percent in homeowner use.

The additional property tax in excess of homeowner rate that is applied to these homeowners should reflect the intensity of the commercial use on the property. These properties are not hotels and should not be taxed as such. Just as a real estate agent or an insurance agent may use a portion of their home for their business, this does not mean that the entire property should be taxed at a commercial rate.

As a result, a fairer system would be to establish not one, but two new tax categories today for B&Bs. One would be for smaller B&Bs using one to three bedrooms. The other would be for larger B&Bs using four to six bedrooms. We must first and foremost recognize that the primary use of these properties is as the full-time residence of their homeowners. So as a result, any additional property taxes assessed to these homeowners should be considered in relation to the proportion that's being used for visitor accommodations.

Now I do recognize that today we will not be setting property tax rates. But it is necessary to consider where in our property tax structure this new category is going to fall. In order to establish the, you know, just...just some perspective, we have homeowner rate at \$2 per thousand. We have improved residential rate at \$4.85 a thousand. I would put forth that the

BUDGET AND FINANCE COMMITTEE
Council of the County of Maui

November 17, 2008

rate that we're talking about for the B&Bs should fall somewhere in between here. These folks are homeowners, okay. And we are...we are recognizing that it's a more intense use.

Now when we start talking about, down the road, TVR taxation, that's where the...the rate should --

MR. TAGUCHI: Three minutes.

MR. CROLY: --fall somewhere between improved residential and the hotel rate 'cause those folks are not homeowners so therefore wouldn't be granted the...the homeowner rate down to \$2 per thousand. But there should be some additional taxation to reflect the more intensive use of their vacation rental. Again, they're not hotels.

I have submitted written testimony and given some suggestions on...on how this could best be done along with the chart to show what the implications on the actual taxes would be. But I do wanna just again caution that if we get too aggressive with this, we really will be undoing all the work that we've done to establish a bed and breakfast ordinance to encourage the folks that are out there that want to use a portion of their home to...to welcome visitors to come in and...and comply with this.

I've also submitted on behalf of MVRA another piece of written testimony that just makes the point that bed and breakfasts should not be treated like hotels. They are in no way hotels.

MR. TAGUCHI: Four minutes.

MR. CROLY: I thank you for your consideration.

CHAIR PONTANILLA: Thank you, Tom. Members, any questions for Mr. Croly? Member Baisa.

COUNCILMEMBER BAISA: Thank you, Chair. Mr. Croly, thank you for coming this afternoon. You're beginning...beginning to be a regular here.

MR. CROLY: Regular suspect.

COUNCILMEMBER BAISA: Yeah, thank you very much. And thank you for your help over the last nine months. Just for our information, can you kinda give us an idea of what the breakdown is in the bed and breakfast

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

November 17, 2008

industry in terms of sizes? We're talking earlier about one bedroom up to six bedrooms. What do you estimate that to be?

MR. CROLY: Right. As we look at our...our membership at MVRA, most of our...our members are in the one to two unit category. That is, they're using a cottage, or they're using a room in their home plus a cottage. That's the majority of...of our membership. There are some that are in the four and five category, very few that fall up in the six. When we did an overall average, it came out to about three. But what...who we really need to try to protect here are those ones and twos. If we get too aggressive with the taxation, we're really going to discourage those folks from wanting to "come play ball" by the rules that we've set up.

COUNCILMEMBER BAISA: Thank you very much for those numbers.

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

MR. CROLY: Thank you.

CHAIR PONTANILLA: The next testifier is Dave DeLeon.

MR. DELEON: Aloha, good afternoon. Thank you for this opportunity to testify on the proposed bill. And to say thank you to the Council Members who have spent so much time and energy on the proposed bed and breakfast ordinance. A great effort and we really appreciate it. We have one final piece that needs to be put in place before that works, however. And that final piece is a reasonable tax rate. While we realize today we're not...we won't be dealing with the tax rate per se, we'll be dealing with the mechanism that will put in the tax rate, I'd like to comment on that in this context.

I'd like to say...for starters that bed and breakfasts are...are, by definition, homeowners. They own their land. They live in the neighborhood that they affect. They're manage these small businesses and they spend the income they receive here in Maui County. They are families. They're husbands and wives and kids. They're not corporations and they should be taxed as such.

Bed and breakfasts establishments are not hotels. Most will be only one or two bedrooms, as...as spoke to earlier, in private homes or in cottages. They have the same impact as any other kind of residential use. By

BUDGET AND FINANCE COMMITTEE
Council of the County of Maui

November 17, 2008

contrast, hotels are large, public, commercial operations that have banquet halls and shops and restaurants and services hundreds, if not thousands, of people.

Bed and breakfasts are home-based businesses. Precisely as long-term rentals are home...home-based businesses. Or businesses such as accountants, insurance salesmen, seamstresses, computer specialists who operate out of their homes. They're all basically doing the same thing, they're doing a commercial use in a residential property. It's interesting that these other categories however don't seem to be triggering a special tax category for them.

Before signing off on the proposed new item 6 in...in the part of the ordinance that we're talking about, I'd like to point out that item 5 above it already handles the...the exemption issue for bed and breakfasts and all other commercial properties. Item 5 says that only that portion of the property that...that's used commercial use would be exempted from the...would be not available for the exemption. The rest of the property that's used as a resident should be used as the property as...should be qualified under the exemption. That's the existing law.

It's kind of interesting that bed and breakfasts are being singled out uniquely for a special tax category, when none of these other business activities are.

Lastly, a word of caution. And that's the same word that Tom just gave you. We spent a lot of time and energy over the last year trying to create a reasonable compromise with the bed and breakfast ordinance. And we've believe, we're at the point where...

MR. TAGUCHI: Three minutes.

MR. DELEON: Thank you, I'm almost done we reached the point where we...everybody didn't get every...everything everybody wanted. But that means probably we have a good bill that it kinda goes to the middle. We could lose that and just by setting a high tax rate here that would keep out those folks with the one and two bedrooms. People with larger units and larger income would be able to afford it 'cause it's based on your property tax. However, if you only have one or two rooms...the higher the margin goes away. You're not gonna be able to participate.

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

November 17, 2008

Our effort was to help these families thrive and to add to our local economy. And if they cannot participate, then they will...then our effort might be defeated. So we need to be able to look at that. Thank you.

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

MR. DELEON: Thank you.

CHAIR PONTANILLA: --Mr. DeLeon. ...*(Coughs)*... Excuse me. The next testifier is Hank Kline.

MR. KLINE: Thank you. Aloha, Council Members.

COUNCILMEMBER BAISA: Aloha.

MR. KLINE: I'm Hank Kline from Haiku. I would like to speak to you about making B&B taxation reasonable and fair to encourage compliance. We had a B&B bill for ten years and a very small percentage, 1 or 2 percent of operators, have become licensed. Why? Because the homeowner was denied their homeowners exemption. If you continue to take away your homeowners exemption, the County will continue to experience very low compliance, especially small B&Bs with one or two guest accommodations. Unreasonable taxation is now and will be the primary cause of non-compliance. Citizens are not going to be highly motivated to come forward to have their homeowners exemption taken away.

Please learn from history. Overly burdensome taxation will be the cause of many B&Bs not coming forward. If you want B&Bs to apply for a license, then taxation must be fair and reasonable. When the rules are not fair and reasonable, a significant percentage of otherwise good citizens ignore them. And the County loses GE and transient accommodation taxes. And then the County's gonna have to spend tax dollars on enforcement. And enforcement is time-consuming and expensive, as Mr. Hunt back there knows. It's very difficult. Ladies and gentlemen, your choices to make taxation fair and reasonable to maximize compliance. Or, if you were overzealous on taxation, you'll actually decrease tax revenues by decreasing compliance. And then their County will have to spend our tax dollars on enforcement trying to catch the operators you have taxed into hiding.

BUDGET AND FINANCE COMMITTEE
Council of the County of Maui

November 17, 2008

I hope to hear serious discussion by this Committee regarding the benefits versus the disadvantages of keeping the homeowners exemption and hope to see a vote to strike that paragraph from this bill. Personally, I would not feel good about losing my homeowners exemption for my home where I live. Thank you very much.

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

MR. KLINE: Thank you.

CHAIR PONTANILLA: Next testifier is Tanna Swanson.

MS. SWANSON: Aloha. My name is Tanna Swanson. Today I'm representing the Maui Bed and Breakfast Association. It may be a very small association; however, it is those that are legally permitted and have gone through this route for the last 10, 12 years, helped develop the bed and breakfast bill, have paid the taxes and have gotten permits. So this is that small group I represent today.

I addressed something in the B&B, I think the last time, and I wanted to just bring this up—I still don't have an answer. When the bed and breakfast bill was first made, we had no problem. And we never tried to ditch the bullet of paying our share of taxes. . .the agreement with the hotel association. . .but it came down to the law. Because we wanted to keep the properties non-transferable and we wanted to keep the license with the owner, and not the property, that became the stickler. And I haven't seen or heard that this issue has been resolved.

By placing the B&Bs in a separate tax category, are we then saying that it is something other than a residential home? Do those owners now have the right, as in any other business, to build good will and to have an equity value put to that good will that is later tangible, sellable? So it's almost like the County's saying now that they want their cake and eat it too. They wanna make the permits non-transferable so we have a business that we can build...equitable appreciation in, non-tangible equitable appreciation in. But we are not allowed to sell it. And I don't know of any other business that can't sell that good will. If you wanna keep us residential—and we completely understood that—then we should be taxed residential.

BUDGET AND FINANCE COMMITTEE
Council of the County of Maui

November 17, 2008

Now the homeowners exemption was something we voluntarily gave. We knew we were more than just a home, that we were running a home occupation basically in our homes. That was a \$50,000 deduction back in the day. That is now a \$300,000 loss. So it's a substantial difference. For example, in my case compared to my neighbor, I'm paying over \$2,500 more in tax, property taxes per year.

So we have to look at what is equitable, what's really going on out there and the ramifications. For instance, a lot of you don't know why there's a cap on six rooms. Where did that number come from? That's the national average, the national average, to break even on a bed and breakfast. So you have to understand that the little guys that are running one and two rooms really won't be able to afford much more than losing their homeowners exemption which is already the law right now.

The other issue I wanna bring up is the short-term rentals that are already outright permitted in resort-designated areas. Since they're not required to pull permits ...(end of tape 1A)... are they being taxed any differently? Will they be taxed any differently than a bed and breakfast if that tax category is developed? Is anyone policing their GE and TAT taxes since there's no permit being pulled? And are they going to be counted in the cap, who knows? But this is a tax issue we're here to discuss today.

And then we have the home occupation bill coming down the pipe. We're talking about taxing them differently. How many different tax categories are we going to end up with? Should we make just a home occupation tax category and put us all in there? I don't know. That's a decision this Council's gonna have to make or this Committee's gonna have to decide on and put it to Council. But these are just some of the points that roll around in my head. And I'm here to testify about. Thank you.

CHAIR PONTANILLA: Thank you, Ms. Swanson. Members, any questions for testifier at this time? Seeing none, thank you very much. The next testifier is Barbara Kline.

MS. KLINE: Aloha. I'm Barbara Kline. And first of all, I also would like to thank and congratulate the Planning Committee Members for their long hard work on the B&B ordinance. They crafted a good, fair, workable ordinance that will be coming before the full Council soon. And hopefully it will pass with ease.

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

November 17, 2008

Today I want to...address how B&Bs and hotels are different and B&Bs should not be taxed hotel rate. On my two acres in Haiku there's my home, my fruit orchards, my nourishing vegetable garden and my beautiful flower gardens. My B&B is a small one-bedroom cottage. I do not have any B&Bs in my home. My home is very special and important to me, just like yours. It's where we enjoy peace and quiet and where our domestic affections are centered.

B&Bs are not hotels and B&Bs should not be taxed like hotels. Here's why. I don't have restaurants on my land. I'm not a hotel. I don't have boutiques on my land. I'm not a hotel. I don't have...an art gallery on my land. I'm not a hotel. I don't have bellhops, concierge services, ballrooms, activity desks, spas, convention rooms. I also don't have commercial revenues from activities, liquor license, nor retail shoppers that bring a lot of income so that a hotel can afford to pay hotel tax rates. B&B operators do not have that kind of revenue. Hotels have a far greater impact than B&Bs. I think you get the picture.

B&Bs are not like hotels and should not be taxed the same. These are our homes where we and our families live. Mortgage brokers, realtors, insurance salespeople and many other Maui citizens utilize home offices to conduct their businesses but don't pay higher taxes. I think you should bear in mind that sometime down the road, you will be working on a TVR ordinance. And how will you differentiate the taxes for B&Bs and TVRs? The way you could do this is by allowing the B&B operators who enjoy their homes just like you, be entitled to a homeowners exemption. And the TVR operators not be allowed a homeowners exemption. That way you would have two categories of taxation.

A fair B&B tax rate would be much lower than the hotel tax rate. If you don't treat operators fairly with taxation, you will have wasted your time and energy crafting a B&B ordinance that will not invite compliance. When crafting a new tax category, please reflect on the difference of a B&B and a hotel. The difference is huge. Thank you very much for your consideration.

CHAIR PONTANILLA: Thank you, Ms. Kline. Members, any questions for the testifier this time? Seeing none, the last testifier to sign up prior to this item coming forward is Cherie Attix.

MS. ATTIX: Aloha, Council. My name is Cherie Attix. Thank you.

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

November 17, 2008

CHAIR PONTANILLA: Good afternoon.

MS. ATTIX: And I own and operate the Hale Hookipa in Makawao. Today's issue is an important one for those of us operating legal bed and breakfasts and TVRs. The permit that I worked so hard for I'm so grateful for is for me and my services. The permit goes with me and not with the house. I am unable to sell this permit. If the permit is not sellable, why would it be additionally taxable? Also, I have a time limit. I have a two-year permit. So, how does that work with...with structuring, changing taxes for two years. You know, it just seems like a mess. There's no restaurant, golf course, large parking lots or rooms for thousands of people on my...my lot. We're not hotels. We're residents of a community who're trying to stay afloat with a small business. With the downturn of our economy, the legal B&Bs are feeling the effect. I have been only half full for more than a couple months this year.

If our property tax rate is even doubled, trying to survive as a small business will be more than stressful. It will be impossible. What I see is that many folks will go deeper underground and it will only end up penalizing those folks who are legal. Small property owners who are trying to pay mortgages will not be able to pay additional property taxes.

As far as the homeowners exemption, I...I don't have it on mine. I'm considered a TVR because I live next door and that's fine with me. And I...I do live here. TVRs are not only people who don't live here. So...and as well I don't know if any portion of the accommodation tax stays on Maui but I kinda wondering about that?

CHAIR PONTANILLA: No, it doesn't.

MS. ATTIX: No, it doesn't. So maybe that would help us out. ...*(Chuckles)*... Anyway, thank you for your time today.

CHAIR PONTANILLA: Thank you. Members, any questions for the testifier at this time? Thank you, Ms. Attix.

MS. ATTIX: Thanks.

CHAIR PONTANILLA: Ms. Attix was the last person to sign up for public testimony this afternoon. Is there anyone out in the galley that would like to provide public testimony at this time? Seeing none, Members, if there's no objections, the Chair would like to close public testimony.

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

November 17, 2008

COUNCIL MEMBERS: No objections.

CHAIR PONTANILLA: Thank you.

...END OF PUBLIC TESTIMONY...

**ITEM NO. 131: BED AND BREAKFAST REAL PROPERTY TAX
CLASSIFICATION (C.C. NO. 08-249)**

CHAIR PONTANILLA: Members, again this item is BF-131, Bed and Breakfast Real Property Tax Classification. This proposed bill is to establish a land classification for parcels that have been authorized as Bed and Breakfast Home in accordance with Title 19 of Maui County Code. Just wanna make crystal clear before we start the discussion on this bill, if the proposed bill is enacted without revisions before December 31, 2008 it will only affect Fiscal Year 2010 real property taxes for properties that have received their Conditional Use Permit on or before December 31, 2008. And, Members, there are approximately 16 properties.

Second, properties receiving their permit after 12/31/08 will not be included in this new class for the Fiscal Year 2010 Budget, and therefore not subject to the rate that will be established in the Fiscal Year 2010 Budget deliberations. These properties will be taxed in Fiscal Year 2010 based on their classification as of January 1, 2009, (inaudible) homeowner, improved residential, agricultural, and so forth.

Members, couple weeks ago the Planning Department had forwarded to the Council the Bed and Breakfast bill. And when you read the Bed and Breakfast bill, there is a provision in there regarding home exemptions. And I just wanna point that out. At this time, the Chair would like to call on Mr. Young for comments as well as explanation regarding the proposed bill as being proposed.

MR. YOUNG: Thank you, Mr. Chair. Good afternoon, Members. The purpose of this proposed ordinance is to supplement the current proposed ordinance recently deliberated in the Council's Planning Committee on bed and breakfasts in the ag and rural zoning districts. This proposal specifically relates and would compliment that portions of the ordinance related to real property tax treatment for bed and breakfasts. The purpose

BUDGET AND FINANCE COMMITTEE
Council of the County of Maui

November 17, 2008

of this proposed ordinance is to foster more thorough discussion on this matter as it pertains to bed and breakfast tax rates and...real property taxes than what has occurred or what could have occurred in the Planning Committee.

This proposed ordinance will not set a tax rate. That will be the responsibility of the next sitting Council during the budget process for Fiscal Year '10. This ordinance will allow for the discussion to separate the bed and breakfast tax rate consideration so that they are not grouped into a classification with other properties that may not be appropriate for their use.

As you mentioned already, Mr. Chair, the bill as proposed affects only those bed and breakfasts qualified via Chapter 19 by December 31, 2008. So through the rest of this calendar year and will not affect those permitted after December 31, 2008. With me today is Mr. Scott Teruya. He is the Administrator for the Real Property Tax Division and can answer any questions on this matter; also is Mr. Jeff Hunt, the Director for the Department of Planning, if the Committee has any questions in any of those areas. With that, Mr. Chair, we are available for any questions.

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

COUNCILMEMBER JOHNSON: Yes, either Kalbert or Scott, you should be able to answer one of the questions that's been posed and the information that we received is allocating a portion of the property, let's say, that portion which would be specifically used for an activity that would be of commercial purposes. And then if the rest of it, let's say it was agriculture in nature and you're just using that as an example. That portion would get a different classification. How do you treat that currently? When you look at a property, irrespective of the homeowner exemption, just how do you segregate the use on the property by what is actually taking place on it?

CHAIR PONTANILLA: Department.

MR. TERUYA: Member Johnson, it's...sometimes it's difficult. And the reason why I say that is when an entire structure is used for short-term rental, it can be easily classified. If it's multiple uses within a building, it's very hard to allocate a value for just the room under a separate classification. That's why I said, for land we can easily separate land. But when you

BUDGET AND FINANCE COMMITTEE
Council of the County of Maui

November 17, 2008

separate building, we do it on the cost approach. How do you separate a value of just one room? So, if it's...if it's multiple structures, we can separate the structures separately. But within a structure, it's...we haven't figured out how to...how to do that yet.

UNIDENTIFIED SPEAKER: ...*(Inaudible)*...

MR. TERUYA: Yeah, the Code currently doesn't allow for that.

COUNCILMEMBER JOHNSON: Okay. And...and I guess because we've separated now, you know, we've expanded the definition to say that the homeowner—I'll just give you a for instance then. Let's say the homeowner is living in the principal dwelling and then they have an ohana which they rent out that has a single room. And the rest of the property is, let's say, just used for...I'll just say, maybe it's classified in rural. How would you tax that under this discussion that we're going through? How would that scenario play out?

MR. TERUYA: Okay. In your example, you're saying that someone lives in the male...main house?

COUNCILMEMBER JOHNSON: Right.

MR. TERUYA: Have they been granted a home exemption?

COUNCILMEMBER JOHNSON: Well, I'm just giving an example.

MR. TERUYA: Oh, okay.

COUNCILMEMBER JOHNSON: That they're living there and there would ordinarily have, let's say, used the homeowner exemption. But now because we've expanded the definition, now they're going to do short-term rentals in their ohana but the rest of the use is, let's say, rural.

MR. TERUYA: Okay.

COUNCILMEMBER JOHNSON: Not to get into the ag, --

MR. TERUYA: Okay.

COUNCILMEMBER JOHNSON: --you know, category.

BUDGET AND FINANCE COMMITTEE
Council of the County of Maui

November 17, 2008

MR. TERUYA: Currently if you have a home exemption, the entire property is classified as homeowner, yeah. If you do not have a home exemption, for instance, and the main...you live in the main house, it would be taxed as the underlying zoning. And predominantly, like in your case that you're talking about, in rural, it would be classified as PITT 500, or agriculture.

MR. YOUNG: And Ms. Johnson, if I could add.

COUNCILMEMBER JOHNSON: Yes.

MR. YOUNG: And Mr. Teruya might have to elaborate a little bit further. But this is an area where I would consider an inconsistency in the Code as it relates to tax classifications for bed and breakfast parcels versus transient accommodation or transient vacation rental parcels because under the current Code, there's a—I don't wanna—there is more of a definition for bed and breakfasts than there...and the TVRs are actually non-existent by definition in the Code. Because bed and breakfasts are defined in the current Code as owner-occupant in the dwelling that is being—you know, they live on property. They live in the same structure that they have rooms rented out. And there is definition in the Maui County Code that's...that tells you what a bed and breakfasts are. It even tells you how they are treated in regards to the homeowners exemption. There is no such definition for TVRs.

So this inconsistency I talk about is exactly like your example here because if you have someone living in the main house but they rent out the ohana unit, they—like Mr. Teruya mentioned—can qualify for the homeowners exemption and they get the homeowner rate but they have a...essentially a TVR rental out of the ohana. But if that same property was a bed and breakfast where they're renting out the same dwelling they're living in, the Code says that they don't get the homeowners exemption. So to me that's a—for lack of better—I...I would call that unfair treatment because it's essentially the same use of the property but for the fact that they...they don't live in the same dwelling. They may live on property.

I trust that the ordinance that moved through the Planning Committee somewhat resolves that inconsistency. This proposed ordinance would kinda tighten up in terms of giving a little bit more clarity in terms of how bed and breakfasts are gonna be treated, more specifically in the Code than currently, already exists.

BUDGET AND FINANCE COMMITTEE
Council of the County of Maui

November 17, 2008

COUNCILMEMBER JOHNSON: Yeah. And...and I think that, you know, we're trying to account for many different scenarios within one omnibus ordinance. And it's very difficult because each situation, even speaking to the number of rooms, where if the person lived in the ohana...unit and then rented out the main dwelling, it's just a different scenario. Do you think one of the other things—'cause I remember when people were complaining about their circuit breaker, I think, a while ago and we expanded to say, oh, the homeowner exemption is applicable to your entire property. Do you think that also was perhaps overkill in...in reacting to specific situations where people felt that they were being unfairly treated?

MR. YOUNG: Ms. Johnson, I would say that that part...granting the homeowners...granting the circuit breaker for the rent...when you can rent out the ohana unit is actually—okay, was quote, your word, "overkill". It actually creates another inconsistency in the Maui County Code because the Code currently says that the homeowners exemption is for owner-occupant use *exclusively* as the owner's residence. We interpret that to mean that, you know, that it's...it's essentially they're living there and exclusively that there is no other activity. You're not using it as a business enterprise except that we have these other areas of the Code that kinda make that a little bit more fuzzy. And one of which is the application in terms of how the circuit breaker credit is granted because in the example that you mentioned earlier, a TVR property where you're living in one, renting out the other of one dwelling on the same parcel will open you up—if you have the homeowners exemption—will open you up to the availability of the circuit breaker credit. And that is not afforded to, say, a bed and breakfast enterprise where you have one dwelling on a singular parcel where the owner-occupant is living there because they're not...they don't get the homeowners exemption. So, yeah, that types of inconsistency in that regards.

COUNCILMEMBER JOHNSON: And that was one of the scenarios posed in some of the written documentation, too, that we have is that the loss of the circuit breaker. And yet, I realize everybody's struggling but by the same token, I look at the individuals who are living on their property not doing transient vacation rentals or bed and breakfasts and then comparing that to somebody who maybe has a long-term rental in their ohana unit. And they're...they're struggling, you know, in their own right but without that potential for supplemental income.

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

November 17, 2008

So I think, Mr. Chair, it's...it's also a problem for us trying to manage many different situations. And even the scenario with one unit versus six units so we're...we're really...I mean, personally myself, I'm in a quandary because I recognize the loss of the homeowner exemption. And particularly for the person that is struggling and they're really having a rough time making it and maybe they just need that additional income that they might get from the rental of the ohana unit and that's their justification for doing it where they've got an illness or they have maybe a farming operation that's not going well. So, Mr. Chair, I...I really, you know, I...I have some mixed feelings about trying to legislate one way and then have it address all issues because I think that's what we're trying to do right now. And that...that is still a problem for me. But I thank the Administration for, I guess, trying to sort through some of this.

MR. YOUNG: Ms. Johnson, if I may, just to be clear, the part of this ordinance that relates to the homeowners exemption is already consistent with Chapter 19 for bed and breakfast.

COUNCILMEMBER JOHNSON: I see.

MR. YOUNG: So this doesn't take away anything that currently is already granted. Title 19 already specifically says for bed and breakfast that they are not entitled to the homeowners exemption.

COUNCILMEMBER JOHNSON: Right.

MR. YOUNG: So this is just, this section in Chapter 3 would make consistent to that language that already exists outside of the Tax Code in Title 19.

COUNCILMEMBER JOHNSON: Right. And I think it's because now we have TVRs that...that would otherwise have fallen into the, you know, or let's say, could've applied for a B&B permit where you stated the inconsistency with the TVRs now falling into this, you know, model that we've created. That...that I think is what we're...we're looking at as maybe some of that inconsistency where we haven't applied that. But thank you very much, Mr. Chair. It doesn't really help to resolve things in my mind but at least I'm asking questions. Thank you.

CHAIR PONTANILLA: Thank you. Mr. Hokama.

VICE-CHAIR HOKAMA: Chairman, I think the Department brought up a very good point historically why we have homeowners exemption because,

BUDGET AND FINANCE COMMITTEE
Council of the County of Maui

November 17, 2008

one, Council made a determined effort to protect that class of property owners that *exclusively* used their property for residential purposes, exclusively, okay. And while we can hear the whining and complaints about the difficulty of overtaxing B&B, the resident that has just a...his residence and is currently using his property just for that is also facing the same difficulties.

One thing that I think the Department needs to, maybe, help bring some comment or information forward is the general trend Statewide or almost anyone that uses mass appraisal, the highest and best use component in assessing property.

And for me, Chairman, we hear a lot about assessments what really, I think we should be hearing is what the County's actually asking them to pay in taxes. Assessment is only half of it. Until you add the rate, the assessment is just a number. What is the...the tax bill? That's our concern. And we don't hear about that number very often. And if we're gonna make adjustments in this category, then I think the Committee might wanna look at the whole picture of taxation and see how it balances off with the other categories. I think this is a good move on the Administration's part to at least bring the discussion of separating this component from the so-called homeowners category. I...to me, there's a big difference. And I don't like to bastardize zoning categories or taxation categories. And by not making the appropriate adjustment, that's what we're gonna do.

And when we talk about potential non-compliance in the future, then what motivates the true resident that only does it for residential purpose, to not do something else either? You know, it's interesting that we're always trying to justify why we should continue to not follow the law. And that disturbs me and—'cause that's not our island culture and that's not our island society style. You know, we always hear the word "pono", "pono". Well, bastardizing categories is not, to me, "pono".

I think the Department needs to give us information about how we can approach it. I think for B&Bs, we might want to look at a blend. Maybe take the difference between the homeowner and the resort. And I think if you use the current rates and you do your formula, would come out to something like five...\$5.00 and some change. Five ten versus improved residential, commercial, and then resort. 'Cause while I would agree, you know, this...the B&Bs don't have full amenities that the resorts have, neither do they go through the complete assessment that we do projects,

BUDGET AND FINANCE COMMITTEE
Council of the County of Maui

November 17, 2008

their share on infrastructure requirements, whether it be water, sewer, schools, roads. . . .so what is fair, Chairman? What is fair?

But I would ask the Department if they can give us some comment about highest and best use because whether, even for the resorts, you build one hotel room or a thousand, it is still assessed on the highest and best use. They don't do it one, one thousandth. They don't fractionalize it, Chairman. So I would ask the Department if they can give us, this Committee, some comment regarding some of the factors that they look at in assessing property so that we can have a good understanding of how we might wanna structure this category to be, as the word today used, "fair". And I hope they would give us the kind of, in fairness to all, all (inaudible) but not just for this one component. Because if we give them a break, somebody else is gonna make up the difference, Chairman.

CHAIR PONTANILLA: Department?

MR. YOUNG: Well, that's a very difficult answer, difficult question. I...I would just, I would start off by saying that the highest and best use, by definition the Department has to look at what is the highest available use that can be afforded to that property. Now if for bed and breakfasts for this discussion, as it relates to this ordinance, establishing another classification I think it's to the benefit of bed and breakfast because it...it essentially sets what we're gonna determine as its highest and best use classification. Short of any explicit definition, to me, highest and best use allows for the interpretation in the existing Code to determine what tax rate is applicable as highest and best use. And as it exists now, with the establishment of the bed and breakfast—since the ordinance...the Code already speaks to some definition for bed and breakfasts. It doesn't speak to anything for the TVR aspect. So our hope is that this proposed ordinance would...give a little bit more clarity and a little bit more fairness in terms of the highest and best use determination.

VICE-CHAIR HOKAMA: So at the appropriate time I'm...I'm assuming, Mr. Director, what you're telling the Committee is next calendar year you are able to propose a rate? Or a...or some type of consideration for this category if it moves forward?

MR. YOUNG: Chair Hokama, I'm...I'm not prepared to discuss what the Administration would offer as a rate, mostly because I haven't...you know, we have not discussed...the Department of Finance has not discussed this with the Mayor. It's really...the point of getting this

BUDGET AND FINANCE COMMITTEE
Council of the County of Maui

November 17, 2008

ordinance is preemptive for the Fiscal Year '10 Budget, to establish the classification. For all intents and purposes, it could be that the rate would likely be similar to, say, improved residential. Could be some place as, you know, between improved residential or homeowner. Could be between homeowner and hotel. There's a lot of, you know, the deliberative process for the Administration really has not occurred yet. Also, I would say that, again, the budget...the budget cycle or process will determine all the rates. And so I would also say that it's probably premature to presume that the homeowner rate is gonna stay at \$2.00. Or that any of the rates are gonna stay where they're currently at for Fiscal Year '09.

VICE-CHAIR HOKAMA: Or the exemption.

MR. YOUNG: Yes, right. Or the...or the homeowners exemption will be the same. So it is...I...I consider it premature. And I'm not willing or ready to offer up what the Administration would propose as the rate would be.

VICE-CHAIR HOKAMA: But you will propose a rate if this moves forward?

MR. YOUNG: As part of the Fiscal '10 Budget construction, we will be having that discussion—we, Department of Finance, will be having that discussion with the Mayor when it comes time to construct the Fiscal Year '10 Budget, yes.

VICE-CHAIR HOKAMA: So at this point in time, we...this Committee can just take it that you wish to have a category established at this point in time and not necessary you have some type of recommendation on potential rate parameters.

MR. YOUNG: Yes, Mr. Chair. The only...the only intent for this...bringing this proposal today is just really to establish the classification so that discussion can be relevant when it comes time to construct the budget.

VICE-CHAIR HOKAMA: Uh-huh. Okay, thank you for that. Chairman, I think it's important, you know, we've heard components of taxation that some of our businesses are doing, the B&Bs, like GET, TAT. The majority of those revenues that those...those property owners are paying—gosh, maybe...I have no guess but I would say at least maybe 90 percent is State...State money. We get a percentage of the TAT. ...(end of tape 1B)... as tax as part of an agreed upon formula through State statute. So, yes, we do get part of that. Not necessarily what they're...the amount

BUDGET AND FINANCE COMMITTEE
Council of the County of Maui

November 17, 2008

Maui is paying to the transient accommodation tax, but all of the taxes that I believe were mentioned early in testimony, is within the jurisdiction of the State coffers, the State General Fund. And unless we get those grants appropriation, that doesn't really help us. We (inaudible) our basic...is property tax.

So for me, Chairman, I think this...this afternoon, I am, you know, very supportive of, at this point in time, carving out the B&Bs because I think it's important for them to know exactly what we believe is their, would be their fair share down the road as well as be able to...tell the true property owner that's only doing exclusive residential uses why you get the rate that they're gonna get, including whatever we settle upon for the homeowners exemption. And I would think that in these times of changing valuations and lot of it going south, I would also think that the real property homeowners exemption is gonna be less than the current amount also, if what we read in the paper is at least half right regarding some of the numbers of the reduction per department.

So, Mr. Director, if this Council moved this through this calendar year, by the end of this term, your Department is ready to have it implemented for the next Fiscal Year on July 1, 2009? It's ready to go?

MR. YOUNG: Yes. In speaking with Mr. Teruya on the operational practicality and application of this ordinance, that discussion included a review with the Department of Planning to identify how many properties are we actually talking about. The Department of Planning has itemized that there are actually only 14 bed and...*permitted* bed and breakfasts and that's actually the number that would be affected by this ordinance, for...for conclusion of December 31, 2008 applicable for our Fiscal Year '10 Budget construction. Whatever happens after January 1st would not be affected because...and the reason for that is because real property tax certification for Fiscal Year '10 Budget construction will occur for properties through December 31, 2008.

VICE-CHAIR HOKAMA: Right. Yeah. You've already sent out your assessment notices, right?

MR. YOUNG: No, the assessment notices, again by Code, go out in March.

VICE-CHAIR HOKAMA: March.

BUDGET AND FINANCE COMMITTEE
Council of the County of Maui

November 17, 2008

MR. YOUNG: For the following fiscal year. So they'll go out in March of 2009 for billing that will take place in Fiscal Year '10.

VICE-CHAIR HOKAMA: Okay. Since, you know, you asking the...the Committee to consider this category, is there other parts of the Code associated with this potential new category since you've brought it up in your comments to one of the other Member's questions the need for have better conformity regarding the Code and property tax?

MR. YOUNG: Yes, Mr. Chair. There are...there are a number of areas in the current Code that we feel could be made a little bit more consistent or uniform. One of which, the most glaring in my mind, is the application of the circuit breaker credit. As it relates to this proposed ordinance before you, the discrepancy is how it relate...when you compare the current TVR treatment to the bed and breakfast treatment, which one...only one of which gets access to the circuit breaker credit.

VICE-CHAIR HOKAMA: ...(inaudible)...

MR. YOUNG: But looking at the larger picture of the circuit breaker, how it relates, not necessarily to this particular industry, but if you're long-term renting a...a...dwelling on your parcel, whether or not you get access to circuit breaker credit because you do—Mr. Chair Pontanilla can stop me if I get off the agenda item—but...

VICE-CHAIR HOKAMA: Okay. The question is basically, since we have this potential legislation, and let's say the Committee is willing to move it forward, wouldn't it be smart for us to put appropriate other potential amendments to the Code that makes it so that whatever we end up creating in taxation of a new category would have some conformity through the Code and not have already built-in conflicts?

MR. YOUNG: In that narrow, narrow discussion, Chair...

VICE-CHAIR HOKAMA: And...and you know what, 'cause we gotta follow how we've agendized this item.

MR. YOUNG: Yes, yes, thank you. In...in that regards, I would just say one would be if the current ordinance moving through the Planning Committee if it eliminates that...those inconsistencies between TVRs and B&Bs. Or if they...they can group the two to have similar treatment because I think

BUDGET AND FINANCE COMMITTEE
Council of the County of Maui

November 17, 2008

that's...looks like that's kinda the direction that the Planning Committee moved ordinance looks like it's moving if there could be similar treatment.

If we are gonna talk about creating different classifications within the B&B for, say, if you have two rooms rented versus six, you know, if we gonna—I...I don't know if the...if the Department or if the Division would be supportive of such a measure 'cause that...that's not consistent with how we treat it now. So I mean, for instance, we don't have, you know, hotel rooms with...you know, hotel properties with less than a hundred rooms versus more than a hundred—we don't do that.

VICE-CHAIR HOKAMA: Uh-huh.

MR. YOUNG: But if you are gonna...if Council is gonna move in that direction, there has to be a little bit more attention to the administrative operation of how that is going to occur. How...how is real property tax gonna be able to get those types of designations through on an operational basis? You...you have any, Mr. Teruya? You have any...

MR. TERUYA: Yeah. Chair Hokama, the...the Division's main concern is how to classify multiple uses. That is the most difficult thing as Ms. Johnson brought up. When you have separate structures that are...doing different...class...classes—I mean, it's easy to separate it. But within a building, it's extremely difficult to allocate value. So whether it's you...you itemize it and classify it separately, or it's gonna be it's just one specific tax rate, you know. Like in condominiums, you can do multiple things. You can be a homeowner sometimes, you can be apartment and you can be a hotel sometimes. But the Administrative Rules says that you'll get taxed at the *highest* applicable rate. So that's clear. But when you talk about these types of properties where you have multiple uses and multiple units, it's kinda leaving us to say how do you wanna do it? And it's...it's very difficult to administratively do that that the Code is somewhat silent, yeah.

VICE-CHAIR HOKAMA: I...I understand your dilemma. And just one...one last question, Chair, please.

CHAIR PONTANILLA: Go ahead.

VICE-CHAIR HOKAMA: One of the testifiers brought a...brought a very good question forward. And I would ask if you can answer it, would help everyone including the Committee. And that is regarding within the hotel

BUDGET AND FINANCE COMMITTEE
Council of the County of Maui

November 17, 2008

zoning categories, those that are not doing hotel but, you know, does a vacation rental or a B&B, how is it treated by Real Property Tax and Finance Department? And would they need to go through a process that is being considered for ordinance at this time? Or do they not need to do anything since they're in the right zoning category?

MR. TERUYA: Yes. For...for properties that are zoned hotel, that is an allowable use. So they don't have to get special permits. But whether they live in it or not, if they do not have a home exemption, they are taxed as hotel --

VICE-CHAIR HOKAMA: Highest rate.

MR. TERUYA: --rates. Right. Even if they do not rent, yes.

VICE-CHAIR HOKAMA: Okay. Thank you. Thank you, Mr. Chair.

CHAIR PONTANILLA: Thank you. Member Baisa.

COUNCILMEMBER BAISA: Thank you very much, Chair. During the discussions on the bill, of course, when the homeowner exemption...the loss of the homeowner exemption was discussed, the Members as well as most of the testifiers all acknowledged and understand that that is a likely consequence. And we didn't have a whole lot of testimony against losing the homeowner exemption. So I don't think that that's, you know, a major thing even though it is a lot of money.

But there was concern, of course, about how the new classification...rates would be set. My question is to...probably to Mr. Teruya. Is it possible that we can make accommodations 'cause I don't understand the mechanics of how you compute things or the kind of software you use or what is possible with it—I'm sure everything's possible nowadays with technology where it is, if you have it—to separate, like we have 14 permits are approved. Could we separate these into two categories, three and under, and above that?

MR. TERUYA: For our purposes, yes. I mean, it's just a matter of getting a list from Director Hunt as to what...how many units are...or how many bedrooms are being...being rented. But I don't...I wouldn't think that that is something that's equitable for other classes if you're gonna do that. Because like Director Young said, if you have hotel zoning and you're Maui Beach Hotel and you're Grand Wailea, you're talking about two

BUDGET AND FINANCE COMMITTEE
Council of the County of Maui

November 17, 2008

totally different properties but they're still classified as hotel. And apartment zoning, you know, you got apartments of six units. You got apartments of 200 units. But that's all in the same class. So I don't know if you're gonna create a whole set of worms and we're gonna have tons of categories, yeah, in other classifications as well.

COUNCILMEMBER BAISA: Well, unfortunately, I see this little different than a hotel because I...I do understand, you know, the difference between using your home and using a bedroom. And remember, we're trying to, with this ordinance, assist some of our homeowners who may be retired, may have an extra bedroom left over because their child has finally left the nest, and they are now living on a fixed income and trying to earn a little bit of income in order to pay their bills. To me, that's a rather different situation than the difference between Maui Beach and Grand Wailea. We're talking about a very tiny business in some cases. So, I...I don't see them as the same thing.

CHAIR PONTANILLA: Thank you. Members, any more questions for the Department? Member Mateo.

COUNCILMEMBER MATEO: Chairman, thank you. Mr. Young, perhaps you can just, you know, just tell me. Is...is the Administration anticipating some kind of explosion with B&Bs at this point to come up with a need to establish a new tax classification at this point for 14 properties? What is the Department's expectation?

MR. YOUNG: Mr. Mateo, actually the impetus for proposing this ordinance was largely in seeing the...the deliberative process that the Council engaged in the Planning Committee and understanding that there is some...likely to be some movement out with some further, you know, definition and a little more solidification in the Code as it relates to both TVR and B&Bs. And to get that part of the discussion that the Committee really didn't have the time to really get through which was the tax...tax area but to put forth that classification so that it is to the benefit of the B&B and TVR industry, if you will, or properties. Not that we expect that there will necessarily be any more or less parcels engaging in this type of enterprise as a result of the...the...the, you know, the Planning Committee's efforts. Just so that it would help—it...it...it's...we would...we would need it anyway. But the impetus being that since there is something moving through the Planning Committee, this, I think, will add that little bit more of benefit to that work that has already begun.

BUDGET AND FINANCE COMMITTEE
Council of the County of Maui

November 17, 2008

COUNCILMEMBER MATEO: Okay.

COUNCILMEMBER BAISA: Chair.

COUNCILMEMBER MATEO: Thank you, Chair.

CHAIR PONTANILLA: Member Baisa.

COUNCILMEMBER BAISA: Thank you, Chair. I just wanted to comment to help in everybody understanding that the proposed bill does...contain a cap on the number. And, of course, that may be, you know, changed as we go through the process. But right now it is at 400 total, cap. That includes all of Maui and Molokai and Lanai. Of course, Planning Commissions will do their own thing and set their own numbers.

CHAIR PONTANILLA: Thank you. I got a question for the Department. Based on Title 19 as well as 3.48, one of 'em do say that the home exemption will not be granted. As far as the tax rate though, how is the tax rate determined on the current B&Bs at this time?

MR. TERUYA: Chair Pontanilla, currently the Code on regarding B&Bs, B&Bs are only currently allowed or granted in residential and business areas. Predominantly they're falling in residential right now. Therefore, the current tax classification would be improved residential, which is \$4.85.

CHAIR PONTANILLA: And how was that determined?

MR. TERUYA: Yeah. It's...it's...it's based on this interpretation of the highest and best use right now under improved residential.

CHAIR PONTANILLA: Thank you. Members, any more questions for the Department at this time? Member Johnson. And after Member Johnson's question, we'll take our mid-afternoon break.

COUNCILMEMBER JOHNSON: Thank you, Mr. Chair. This just a short one. Because we're looking at bed and breakfast exclusively, which right now doesn't include very many properties, if we're looking at a wider category, let's say—it was brought up by one of the testifiers—home occupation in general where you're conducting an activity that is really not what your neighbor would be doing which is strictly residential, can we, through what's been proposed by you right now, not necessarily call this a B&B category but just call it a home occupation category? And then that way,

BUDGET AND FINANCE COMMITTEE
Council of the County of Maui

November 17, 2008

you know, the...the fairness that you're talking about in the expansion of this category would be something that we could or you could look at.

MR. YOUNG: Yes, Ms. Johnson. Actually I think that was actually a very good suggestion by the testifier. While the thought and impetus of this proposed legislation was largely out of...driven out of the efforts from the Planning Committee on this particular issue, if we're gonna start segregating out specific types of uses and if the Council is so inclined in regards to specifically creating a classification that was directed towards home occupation businesses, you know, I think that's something that the Administration could also be supportive of. Because I think for Department of Finance and real property tax purposes, I think that sounds logical as well. And the reason why it's called a B&B classification in this proposed ordinance only is because that's the...

COUNCILMEMBER JOHNSON: The Committee.

MR. YOUNG: Yeah. The contemporary discussion going on right now at this time. And if, you know, we wanna create a home occupation category, you know, that...I think we can be supportive of that. The one thing about that that we need to realize is that, we really haven't thought through like what would be entailed in the operation or application process, what the Real Property Tax Division would have to go through to determine which parcels are being used as a home occupation business and what...what does that mean. But I think we can do it.

The other thing is that if you group all these types of home occupation businesses, you know, we'll have to have some consideration that certain types of home occupation businesses maybe have different levels of impact, different levels of revenue streams. You know, somebody running a...I don't know...automotive garage, or it may be different from, say, an art gallery, might be different from a home bakery or, you know, et cetera, et cetera. So those are the things that I think would...would warrant further discussion.

COUNCILMEMBER JOHNSON: Yeah. And...and the only reason I bring that up, Mr. Chair, is because at some point in time, you know, if there are all these other uses and if we legitimize and decriminalize the activities that are taking place in our neighborhoods, I think it's...it's fair. I know that the IRS Tax Code basically says that portion of your dwelling or your residence that's used, I guess, for your activity, that's what you can deduct, you know, for your...on your filing of your taxes. So I know

BUDGET AND FINANCE COMMITTEE
Council of the County of Maui

November 17, 2008

that's not the discussion for today, but I just wanted to know what the position was because I would not wanna have an unintended consequence, too, that somebody that is a struggling farmer and placing them in a category that now says, oh, what's home occupation 'cause you have a little vegetable stand on the edge of your property. That we don't want either, you know, because in...in that case, I guess, it would be taxed as ag. But, you know, and has a whole 'nother definition of ag production. But I just wanna make sure that we're headed in the right direction. And I have no problem with moving this forward. At least creating a tax classification that could be expanded in the future. Thank you.

CHAIR PONTANILLA: Thank you. Members, it's 3 o'clock right now. We'll take a...ten minute...ten minute recess. So we'll stand in recess until 3:10.
...*(gavel)*...

RECESS: 3:00 p.m.
RECONVENE: 3:23 p.m.

CHAIR PONTANILLA: ...*(gavel)*... The Budget and Finance Committee meeting is now reconvened. Gotta apologize for the length of the break at this time. Members, are there any more discussion in regards to this item or any questions for the Department? If not, the Chair would like to make his recommendation.

COUNCIL MEMBERS: Recommendation.

CHAIR PONTANILLA: Because of the concerns that we have had, not only the Members but through public testimony, the Chair would like to at this time defer this item, if there's no objection.

COUNCIL MEMBERS: No objections.

CHAIR PONTANILLA: Thank you. Members, any more discussion on your committee...coming up committee meetings? If not, this meeting is adjourned. ...*(gavel)*...

ACTION: DEFER pending further discussion.

ADJOURN: 3:24 p.m.

BUDGET AND FINANCE COMMITTEE
Council of the County of Maui

November 17, 2008

APPROVED:


JOSEPH PONTANILLA, Chair
Budget and Finance Committee

bf.min:081117:rk

Transcribed by: Reinette Kutz

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

November 17, 2008

CERTIFICATE

I, Reinette Kutz, 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 11th day of December 2008, in Wailuku, Hawaii.


Reinette L. Kutz