

MINUTES

**BUDGET & FINANCE COMMITTEE**  
**January 7, 2009**

A meeting of the Budget & Finance Committee of the Council of the County of Kaua'i, State of Hawai'i, was called to order by Councilmember Daryl W. Kaneshiro, Chair, at the Historic County Building, Room 201, Lihu'e, Kaua'i, on Wednesday, January 7, 2009, at 9:06 a.m., after which the following members answered the call of the roll:

Honorable Bill "Kaipo" Asing  
Honorable Tim Bynum  
Honorable Dickie Chang  
Honorable Jay Furfaro  
Honorable Daryl W. Kaneshiro  
Honorable Lani T. Kawahara  
Honorable Derek S. K. Kawakami

The Committee proceeded on its agenda item as follows:

Bill No. 2292      A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A,  
KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO  
REAL PROPERTY TAX APPEALS  
[This item was deferred.]

DARYL W. KANESHIRO, BUDGET & FINANCE COMMITTEE CHAIR:  
Thank you. At this time, what I'd like to do is...is there anyone in the public here that wanted to speak on this bill? Let me...let me just give you some procedures on this bill as we move on this bill and work in committee. There are or there were an amendment that has just been circulated. So we're not going to move on the amendment today as I have gotten a deferral request from the Administration. But I would also like to make that amendment public so people can at least see the amendment, but we won't have you comment on that at this point. So, if you want to, just to let you know, we will circulate the amendment, but I won't take public comment on that amendment because it...like I said it's just being circulated and if you would like to comment on any part of the bill, you're welcome to do so at this point. So, do we have any person that signed up to comment on the bill or make testimony?

WILMA AKIONA, SECRETARY: No we don't.

Mr. Kaneshiro:                      If not, I see Mr. Mickens raising his hands, so  
Mr. Mickens, you're up.

There being no objections, the rules were suspended.

GLENN MICKENS:                      Thank you, Daryl. For the record, Glenn Mickens.

BC, HŌ'IKE VIDEOGRAPHER: Turn the mike on.

Mr. Mickens:                              Oh. Okay? Thanks BC. Good morning and Happy  
New Year to all you councilmembers, the new faces on the Council. You have a  
copy...

JAY FURFARO:                              What about the old faces?

Mr. Mickens: Oh yeah, you old faces...

Mr. Furfaro: Happy New Year.

Mr. Mickens: You old faces too, yeah, a few old faces.

Mr. Kaneshiro: Thanks Glenn...for recognizing the old faces.

Mr. Mickens: Okay, cowboy. You have a copy of my testimony and I'll be waiting to see the amendments that you're talking about, Daryl, as I'm sure everybody will, all this comment on this part of the bill. For the viewing public, Bill 2292 provides opportunities for some important corrections to be made in our real property tax law to make its terms fairer to our citizens...citizen taxpayers.

The economic turmoil we're now experiencing has as one of its effects a decline in the value of real property, which had soared from speculative investments and aggressive mortgage financing.

Assessments of market value of real property is not an exact science. Today's market with its sharply reduced sales volume and great increases in the length of time properties are on the market and large growth in mortgage foreclosure transactions make determination of value much more difficult than usual and risks of errors much higher.

The testimony offered by public witness on the December 17<sup>th</sup> public hearing of this bill identified some of the problems of this environment and the need for changes in the law to make the application of the law fair to taxpayers, and I'm sure that's probably what some of your amendments are going to do.

The ability to appeal an unjust assessment is a fundamental taxpayer right. At present our law requires an increase in assessment of more than 20% over the prior assessment before an appeal is allowed. In this time of declining values, such an increase is unlikely. But even a continuance of an existing assessment amount could be an overassessment. There should be no barriers in my estimation to appeals other than a perceived error. There are also abuses in the methods now used to process appeals. The public hearing testimony identified how this could be improved.

Finally, it is vital that the Council act on the bill in a timely manner and I'm sure you will and make the bill effective on adoption as the 2009 assessments will be announced by March 15<sup>th</sup> and taxpayers will have only 3 weeks after that to file an appeal.

So again, thanks, Daryl, and I'll be waiting to see the amendments. You did say you were going to pass them out today?

Mr. Kaneshiro: Yes, I'll...I'll have some circulated, but again I won't take comments on the amendments because of...

Mr. Mickens: Okay, the Administration, you said, asked for a deferral on it.

Mr. Kaneshiro: For a deferral so they'll have some time to also review the amendments.

Mr. Mickens: Okay. Thank you, Daryl.

Mr. Kaneshiro: So just to let the public know. Are there any questions for Mr. Mickens? If not, thank you, Mr. Mickens. Anyone else wanted to give public testimony? Go ahead and come up, Mike. Again as mentioned, we will defer this bill, okay. So...

MICHAEL DYER: Good morning, Mr. Chairman, Committee members. My name is Mike Dyer. I'm in support of the proposed amendment to decrease the percentage of difference in assessment from 20% to 10%. The 10% of some of the values in the taxes that we're talking about around here is very significant money. An appeal that I lost last year, that difference is in excess of \$800 and it's very, very frustrating to do an appeal and do all the work and all the research and then go in there and go through the whole process and in effect win but lose because you...you know miss by that necessary percentage. So, I...I think that this is a very appropriate amendment to that particular portion of Chapter 5A. Thank you.

Mr. Kaneshiro: Thank you. Any questions for Mike?

BILL "KAIPO" ASING, COMMITTEE VICE CHAIR: Yes, I have.

Mr. Kaneshiro: Mr. Asing, go ahead.

Mr. Asing: You want to explain "win but lose."

Mr. Dyer: I'm sorry?

Mr. Asing: You want to explain your "win but lose."

Mr. Kaneshiro: But lost.

Mr. Dyer: You can actually...under the current situation if you succeed but you succeed by less than the 20% margin, the assessor will still be found to have prevailed automatically. If you succeed by 18%, you'll lose; 19%, you lose.

Mr. Asing: Maybe your perception and my perception might be different, but I...

Mr. Dyer: I'm willing to hear...

Mr. Asing: I...no, I understand, I understand what you're saying.

Mr. Kaneshiro: Any questions? Mr. Bynum, go ahead.

Mr. Bynum: So, if you had an assessment...if you challenged an assessment and you said that it's incorrect, they agreed it was incorrect, but it didn't meet the threshold, the taxes stay the same?

Mr. Dyer: Exactly.

Mr. Bynum: They don't adjust them to what they agreed to?

Mr. Dyer: No. It's a lose.

Mr. Bynum: Oh, maybe that's something we should address.

Mr. Dyer: Well, that's what...that's what the 20% is all about.

Mr. Bynum: Right, right, right.

Mr. Dyer: First of all, you can't submit anything that doesn't exceed a request in the amount of 20% less than what the assessor is calling for.

Mr. Bynum: So you have to believe going in that the difference is more than 20%.

Mr. Dyer: Yeah and you may go in and prove that, you know that he's wrong by 19%, and you'll still lose.

Mr. Bynum: I didn't know that. Thanks for sharing that.

Mr. Kaneshiro: Okay. Thank you. Any other questions for Mr. Dyer? If not, thank you very much.

Mr. Asing: I...I...

Mr. Kaneshiro: Yes, sir, Mr. Asing.

Mr. Asing: You want to explain the problems as you see it? What is the problem with the system? I mean, the system has been there for years and I guess maybe you feel that the system is not working and if it isn't working, what isn't working?

Mr. Dyer: Mr. Chairman, is your question concerning the whole system or just this particular, the appeal process?

Mr. Asing: The appeal...well, the appeal process, yes.

Mr. Dyer: Okay. I'm assuming we're going to be discussing different points of Chapter 5A as time goes on, but right now we're talking about the appeal process. Well, first of all, to appreciate the problems with the appeal process I think someone has to have observed or have gone through the appeal process. Over the last several years I've gone through this process many times, sometimes more than two or three times a year for myself or for clients. The...I feel that the appeal process is stagnant, very strongly against the taxpayer and I think it's written into the ordinance that the presumption is that the assessor is correct and that the taxpayer is wrong. And um...first of all, that presumption, you know, would be equivalent to a presumption of guilt rather than a presumption of innocence if we were in a court situation. So, when you go into an appeal, first of all it's hard to know what the case is against you. All you've gotten is a number from the Tax Office of what the valuation of your property is. You...if you're in my situation, I'm a realtor so I have a fairly good idea of what's going on in the market around my area and I can get into MLS every easily and find out what the sales have been and I can, you know, I can...you know, it's my job. I make my living by figuring out what the actual value of properties are, so I have a big advantage over the average taxpayer going into an appeal. When I go into an appeal, you know kind of as a professional in real estate, and I see the situation that a homeowner or



Mr. Asing: I mean that's...you know, because it's a process, the process is in place. If it's not working, then something is wrong with the panel. Is that correct?

Mr. Dyer: In my opinion, that's correct, but I'm not sure what the problem is there.

Mr. Asing: Well, then...

Mr. Dyer: I wrote a letter that you may have read that suggested that the panel be replaced by an arbiter or arbiters that are chosen from a, you know, selection of arbiters and just bring in an arbiter to hear the assessor's case, hear the taxpayer's case and just rule. Not a steady, you know appointed seated panel that goes on for years at a time.

Mr. Asing: Thank you.

Mr. Kaneshiro: Thank you. Lani, you had a question, go ahead.

LANI T. KAWAHARA: Yeah, thank you. Thanks for coming in and I'm glad you're here because I have questions for you. When...in your experience when representing people with tax appeals, what is the value of their properties average?

Mr. Dyer: On the average?

Ms. Kawahara: Mm-hm of the people you represent and that do appeals, yeah.

Mr. Dyer: Most of the time it's agricultural acreage and in my area in Kilauea the average value in the current market, I mean from the standpoint of what I think sells...things will sell for, is around \$500,000 or \$600,000 per parcel. The assessor will have higher values and that right now because we had a run-up in values and they went up fast, but they've been coming down, in my opinion, quite slowly.

Ms. Kawahara: Okay and the 500/600 thousand is just on the land and not the building.

Mr. Dyer: Land only.

Ms. Kawahara: Okay.

Mr. Dyer: Yeah, again because the houses are...yeah, buildings are set by a formula. You don't generally have people coming in and appealing on their house value. That's pretty well set.

Ms. Kawahara: Okay, okay, I didn't know that. Thank you. The other thing is what is the acreage, average acreage of that land?

Mr. Dyer: 2 or 3 acres.

Ms. Kawahara: Just 2 or 3 acres?

Mr. Dyer: Yeah.

Ms. Kawahara: Okay.

Mr. Kaneshiro: Mr. Bynum, you had a question for Mike.

Ms. Kawahara: Thank you.

Mr. Bynum: So, if the proposal changed it to 10%, would...in your experience, would you have been more successful on the number of your appeals just based on that percentage?

Mr. Dyer: Well, I've never lost one on the percentage because I know...you know I understand the percentage. It's the...it's the average landowner going in that will lose on that. Yeah, I know I'm going to lose if I don't have a clear 20% under the current system.

Mr. Bynum: Maybe I can ask the department this, but I'm...after your testimony I'm curious as to how many appeals fell between the 10 and 20 percent and basically they lost. You know, how much would it change based on past experience if we made this change?

Mr. Dyer: Yeah, that would be a good question. I mean you wouldn't be able to tell how many people like myself just would look at it and say you know, I know I'm losing money, but I don't have enough to appeal.

Mr. Bynum: Right, right.

Ms. Kawahara: If I could address your question. I think they are going to be preparing a list.

Mr. Kaneshiro: Can you address the Chair, please, if you have a question...

Ms. Kawahara: Oh I'm sorry. Sorry

Mr. Kaneshiro: ...that you wanted to ask.

Ms. Kawahara: I wanted to ask a question.

Mr. Kaneshiro: Okay.

Ms. Kawahara: Okay.

Mr. Kaneshiro: Go ahead. Are you done with yours, Mr. Bynum?

Mr. Bynum: Yeah, yeah, yup.

Mr. Kaneshiro: Okay, Lani.

Ms. Kawahara: I think...I think maybe the Finance Committee or Finance Department is compiling a list of the tax appeals and there...I think we can pull out the success rate from there.

Mr. Kaneshiro: All right. Any questions for Mike? Any other questions for Mike?

Ms. Kawahara: I have another question.

Mr. Kaneshiro: You have another question for Mike?

Ms. Kawahara: Yes.

Mr. Kaneshiro: Go ahead, Lani.

Ms. Kawahara: Okay. Does...just because I'm not sure...I don't know what the actual law is, can you go either to the...this local...our board for tax appeal or go straight to the State?

Mr. Dyer: I've never gone straight to the State, but my understanding is that you can go straight to the State and a lot of people do.

Ms. Kawahara: Okay. Okay.

Mr. Dyer: If they can afford it. I mean to do that...

Ms. Kawahara: It's more expensive.

Mr. Dyer: You basically have to get an attorney and...but you know if the values are big enough, it's worth getting an attorney and going to Honolulu.

Ms. Kawahara: Does it make a difference? Could I ask you what the values of the houses in general are on the properties that are doing the appeals?

Mr. Dyer: Well, in my area there's really a wide range you know and as you know on the North Shore there are, you know, million-dollar houses on small lots and on acreage, and there are very modest houses, so. And the modest houses on acreage I think are the people that really get hurt. I mean that's where it's really painful if you're just a guy who's living in a little two-bedroom, one-bath house on a piece of land and having a garden and stuff and your land has gone up, you know, during this run-up period to 500 and 600 thousand. You're talking about serious money for people like that.

Ms. Kawahara: Okay, good. Thank you. So that's a moderate...moderate value owners would be affected.

Mr. Dyer: Definitely.

Ms. Kawahara: They would...they would...they would be...okay, thank you.

Mr. Kaneshiro: Thank you, Mike. I believe there's no other questions. Do you have any question, Mr. Asing?

Mr. Asing: I have one more.

Mr. Kaneshiro: Go ahead.

Mr. Asing: Spurred one more question in my mind. Then, Mike, are you saying that you feel that the Property Tax Department is overassessing properties on the North Shore in the ag zoned areas. Would that be a correct statement?

Mr. Dyer: No, I think that would be too general. I think it really goes to specific parcels in specific areas. You know again, there are people that are probably very happy with their assessments because again it is an average. You know, if they know what they think their value is and they look at what their neighbors are selling for, you know you can figure it out. It's the people that fall on the higher side that feel like their...they've got a problem. So, you know it's...it's not everything that's high. Some are low. You can't...

Mr. Asing: Well, I'm talking about the...because you're making reference more to the ag zoned lands and that's the reason I used the term ag zone.

Mr. Dyer: Yeah, I think in the ag zone, you know again on the average...you can ask John, I would guess that by mass appraisals about half the properties are going to be, you know, too high. And if you...and particularly now because the market has slowed down so much, there's so little data that, you know, it's hard to do apprai...even fee appraisers, you know, are having a hard time now because they don't have enough to go on. You may go a whole year and only have one or two sales to go on and how do you get value on that? You know, so I don't think...you know it goes to the individual property. Some are high and some are low in my opinion.

Mr. Asing: Thank you.

Mr. Kaneshiro: Thank you. Question again Lani?

Ms. Kawahara: Yes, please, thanks. I think O'ahu has it down to 10%, but do you...can you help me? I think they do a different way of assessing the values than we do here.

Mr. Dyer: I'm not familiar with O'ahu's system, I'm sorry.

Ms. Kawahara: Okay, okay because they have the same percentage, but my understanding is they do the assessing in a different way.

Mr. Asing: I don't believe you can compare O'ahu and Kaua'i because they have a different system and you're not going to be comparing apples with apples when you do that.

Mr. Kaneshiro: Okay. One more question?

Mr. Bynum: One more, sorry.

Mr. Kaneshiro: Mr. Bynum.

Mr. Bynum: So, it's...I assume that the type of...there's not an expectation that the County of Kaua'i is going individually assess each and every property. I mean that's not practical. Is that correct?

Mr. Dyer: I'd say that's correct.

Mr. Bynum: And so, I would think that's the reason for this system, that every municipality has to do their best effort to do assessments and work on average. And as you've indicated, the average will, you know, sometimes be to someone's advantage, maybe at other times to a disadvantage and that's why it's important to have a good and proper appeals process because it's inevitable that it won't be perfect. Is that a correct statement?

Mr. Dyer: Yes, I agree with that.

Mr. Bynum: So, so this...your basis of your testimony is that changing this to 10% would be a significant improvement from what we have now.

Mr. Dyer: That's correct.

Mr. Bynum: Okay, thank you very much.

Mr. Kaneshiro: Thank you. Okay, thank you Mr. Dyer.

Mr. Dyer: Thank you.

Mr. Kaneshiro: We'll get you off the hot seat for now. Anyone else wanting to make public testimony on this bill? Okay? Mr. Taylor.

KEN TAYLOR: Chair and members of the Council, my name is Ken Taylor. First I'd like to say Happy New Year to all of you. I haven't seen you this year...

Councilmembers: Happy New Year.

Mr. Taylor: So I hope it's going to be a great, great year and we're getting off to a good start. A couple issues that I have that I'd like you to consider. On the first page of this bill the paragraph right above Section 2 where it says, owners of single-family transit vacation rentals must provide 24/7 days a week...

Mr. Kaneshiro: Can I...I think you're on the wrong bill.

Mr. Taylor: On the wrong one?

Mr. Kaneshiro: We're on the tax appeal bill right now, Mr. Taylor.

Mr. Taylor: I'm sorry?

Mr. Kaneshiro: We're on the tax appeal bill right now. We're not on transient vacation rentals.

Mr. Taylor: I'm sorry. I thought we were...

Mr. Kaneshiro: So, I'm taking testimony on the tax appeal bill.

Mr. Taylor: I'll be back. Thank you.

Mr. Kaneshiro: Thank you.

Mr. Taylor: Sorry for the misunderstanding.

Mr. Furfaro: That's all right. Happy New Year.

Mr. Kaneshiro: Happy New Year. Anyone else wanted to speak on this particular item? If not, I would like to call this meeting back to order and I'll open it up for some discussion with committee members.

There being no one else wishing to testify, the meeting was called back to order.

Mr. Kaneshiro: At this time, Mr. Furfaro.

Mr. Furfaro: Thank you, Chairman Kaneshiro. I want to thank you for the postponement. I do want the Administration to note that we do want to make a thorough evaluation of this piece. Being the introducer of the original 10% consideration, we have had the public hearing on that original bill.

Mr. Kaneshiro: Right.

Mr. Furfaro: The two amendments that I have introduced are in a packet for all the members. Those amendments deal with the use of disclosure when the appraisal evaluation is actually done, giving a period of time where both the applicant as well as the department can have some common times for disclosure. It also makes a reference to the potential change to use arbitration and Mr. Chairman, I did ask the staff to put into your packets the American Arbitration International Rules on arbitration that have been used in other areas. I do want to point out that the City and County of Honolulu is currently at 10%. At one time, and this is confirmed in a discussion that I've had with Lowell Kalapa, it was as little as 5%. But I do not believe at this point the arbitration rules that I made available to all the members were actually made available to Finance and Legal. So may I ask if you could forward these over as part of their evaluation.

Mr. Kaneshiro: Okay.

Mr. Furfaro: Thank you, Mr. Chair.

Mr. Kaneshiro: Thank you, Mr. Furfaro. And again, you know, the proposed amendments are in your packet. So I do not want to address or have discussion on this amendment at this point. I usually won't do this, but I gave Mr. Furfaro the opportunity to at least get the amendments out. Perhaps, it's a new procedure of being open or more open to the public. But if...I would like to caution my members that because the bill is not on the...the amendment is not on the floor officially that we...we just move on to defer this bill and then later on have it back after we get comments from the Administration. So, at this point I will take any other comments on the bill as written, as proposed. So, anyone else wanted to make comments or have some discussion on the bill before I do call for a deferral? If not, members, I would need a motion to defer.

Upon motion duly made by Councilmember Furfaro, seconded by Councilmember Kawakami, and unanimously carried, Bill No. 2292 was deferred.

There being no further business, the meeting was adjourned at 9:33 a.m.

Respectfully submitted,

*Wilma Akiona*

Wilma Akiona  
Secretary

APPROVED at the Committee Meeting held on January 22, 2009:



DARYL W. KANESHIRO  
Chair, Budget & Finance Committee