

MINUTES

BUDGET & FINANCE COMMITTEE

January 22, 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 Thursday, January 22, 2009, at 9:07 a.m., after which the following members answered the call of the roll:

Honorable Bill "Kaipo" Asing
Honorable Dickie Chang
Honorable Jay Furfaro
Honorable Daryl W. Kaneshiro

EXCUSED: Honorable Tim Bynum
Honorable Lani T. Kawahara
Honorable Derek S. K. Kawakami

Minutes of the January 7, 2009 Budget & Finance Committee Meeting.

Upon motion duly made by Councilmember Chang, seconded by Councilmember Furfaro, and unanimously carried, the Minutes of the January 7, 2009 Budget & Finance Committee Meeting was approved.

The Committee proceeded on its agenda items as follows and as shown in the following Committee report which is incorporated herein by reference:

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 CHAIR: Thank you. What we're going to do is we will be deferring this bill again for another committee meeting. I believe we had some...some of my committee members are working on amendments...that amendments probably were expressed by some of the people that spoke on this bill. So because of that and before I take a motion to defer, is there anyone here that wanted to speak on this bill today or to add any other comments to this bill? Please come up.

There being no objections, the rules were suspended.

MIKE DYER: Good morning, Mr. Chairman, committee members. Thank you for this opportunity to speak again on this issue since I've driven all the way down from the north shore. I'll take the opportunity to say that I...Mike Dyer for the record, sorry. I still support 2292, the idea that we reduce the threshold for tax appeals from 20% to 10%. I think it's important to support the taxpayer as much as possible. The bill that's before you for reforming the property tax bill in total was written, of course, by the Finance Department, in my opinion primarily for the Finance Department. This change from 20% to 10% is one small thing that we can do in this bill to support the taxpayer. The process of assessing the thousands and thousands of properties that the tax assessor has to do is a very inexact science and the property owner should have the ability to appeal because the dollar amounts involved, the difference between 20% and 10%, is a significant amount of money in a lot of cases. So thank you for this opportunity to speak.

Mr. Kaneshiro: Thank you, Mike. Any questions? Mr. Furfaro, go ahead.

JAY FURFARO: Yes, Mike, thank you very much for coming down from the north shore today to give testimony on this proposal and I do want to say that I've been able to meet with the Finance Department in-between the committee meetings here and have talked to them in terms of, you know, perhaps one of the other alternatives on this and we'll be looking at an amendment as such that Councilman Kaneshiro had spoken about, dealing with perhaps looking at the makeup of the Appeals Board and perhaps having someone from farming on that board, you know similar to what we do with our Planning Commission. We have two from labor, two from business, two from environmental and one at large. I was thinking in terms of an insurance person, farm activity or agriculture, CPA, real estate assessor, you know some composition of people that bring specific skills to the Appeal Board. Have you any comments on that?

Mr. Dyer: Well...yeah, I know pretty well a couple of people that are on the Appeal Board and my assumption, if I just stood back and knew who they were and you know friends of mine, I would say they would be the type of people you're talking about that would give a reasonable judgment on what's being appealed on property tax issues. My experience, however, for some reason has been different. I don't know how the Appeal Board is instructed, why it is that they rule in favor of the assessor 95% of the time. It's always puzzled me and I...it's...to me it's sort of like the case that if you went into a civil trial and the defendant...let's say the defendant would be analogous to the department...the assessor's department, that the defendant gets to pick the jury. The Finance Department, I assume, picks the jury in one way or other, in this case in the Appeal Board, and they do what you might expect they would do. They almost always rule for the department. I don't know why that is. Maybe picking somebody from the agricultural community, you know as you're proposing might change things, but there's something that I don't understand as a guy who appeals fairly often that you can go in with a very strong case and almost always lose anyway. I don't know why that happens, but it does. So, if you can come up with some way to change that. As you know I've been in support of having an impartial outside-the-department arbiter replace the review panel. The board is now suggesting by the year 2011 to increase the fees for appealing to \$100 per appeal. That means a significant amount of money is going to be coming in and I, you know, assume you pay the Appeal Board people, but it's probably a little per diem and travel and meals kind of a deal. But the typical appeal day that I've gone in for there's, you know, 10-15 appeals going on. That means once you...you know a few years down the road when you have \$100 per appeal coming in, you know if that figure stands up, there's a lot of money there and you can afford, in my opinion, to have a professional arbiter who's completely impartial come in. That's my personal opinion. If you can come up with something that gets us an Appeal Board that gets the taxpayer a fair hearing, I'm all for that. My experience has been it hasn't been that way.

Mr. Furfaro: Well you know I think in the kind of a...the dashboard of indicators here, if we look at the proposed tax bill and one of the things that is concerning there is the possibility of removing the cap that Councilmember Kaneshiro and I initiated or removing the circuit breaker that the Chair initiated. But I reviewed the appeals and with the cap, the appeals dropped from about 209 to less than a dozen and a half. Why is that? Because we have the cap. I mean it's a very significant piece and therefore, what I'm saying, if we get to some future point that we entertain that idea again, the fact of the matter is in today's economic system if we don't have a reduction in the amount you can appeal,

I think the County will be better to have a permanent appeal person over in Honolulu and I'll tell you why. Because here is something I'll read from and this drove the indication, Hawai'i home prices predicted to fall 30%. Okay? And this is...this was in the Advertiser by Andrew Gomes. No relation to Gomes, our Gomes, just want to point that out. But the National Economic Research Firm says Honolulu's housing market is set for one of the biggest falls by 2011. And that's why this bill is talking about being enacted in 2010 based on some of this information. Moody's Economic Forecast and we are aware of them, you can get information off Moodyeconomy.com. It says that the medium prices of Honolulu homes will bottom out in early 2011 after a 30.1% drop is predicted in the second quarter. The forecast for the County that included the island of O'ahu, the greater metropolitan area of Honolulu, Honolulu was the 13 worst out of 381 markets that were surveyed, just behind Phoenix, Las Vegas and Miami, all resort community types. It says, buckle up. We need to make sure that as these possibilities occur, you know there's going to be a flood of appeals because that certainly exceeds the 20% in the market right now. But if we don't improve, and I think the Chairman talked in terms of...nothing...the people that are there are very effective volunteers, but perhaps we need people with more specific criteria behind them and formal training to understand the moving parts and maybe upgrading the board and having an appeal process that is defensible is something that we should prepare for especially if we remove the cap. That is...that's what's driving my thinking here, Mike.

Mr. Dyer: No, I agree, yeah. When you remove...

Mr. Furfaro: I mean strategically we have to be prepared and I think it's really important that we revisit this tax piece.

Mr. Dyer: Yes, I agree. You know I think an argument could be made that you know we've already had a significantly greater drop in prices than are showing up in our assessments and that I read that article also and, you know, the future is really unknown, but our recent history indicates that we're certainly heading in that direction. And again, maybe upgrading the board would make the appropriate change, but you know Reggie Gage is on that board. I've know Reg for 30 years. He's , you know, a highly competent appraiser, realtor. Laverne Bessert is on that board. You know, that's why I...

Mr. Furfaro: But these are people that make up some of the skilled training that I am suggesting.

Mr. Dyer: Yeah.

Mr. Furfaro: Realtors, appraisers...

Mr. Dyer: Right, what...again, my experience has been the board almost invariably votes however many are there, 4-0, 5-0. It's usually three of them are there, 3-0. There doesn't seem to be much discussion. You know, nothing happens. So, you know...I don't know why it happens the way it does, but it does. I agree that if the 2% cap comes off, it'll change from the situation that we have right now, which is the people that are appealing and people that are extremely unhappy and disappointed with what goes on in the appeal process are many times second homeowners who are coming in all the way from the mainland, a lot of cases hiring an appraiser to verify their valuation, paying all this money to try to get fair treatment and still losing 95% of the time and these people are extremely unhappy when this happens. If you take that cap off and you get residents coming in because remember with releasing that cap all of a sudden all

the reality that's been going on underneath for the last what five years or something like that is going to spring into reality and this is going to be a big shock to a lot of folks that are probably...

Mr. Furfaro: Well I...you know and that's why I wanted to review the data and the fact of the matter is that it is another benefit for primary homeowners. They're not going in for these appeals because they have the cap. Whether the cap is 2%, it's tied to the consumer price index, or a new number that we come up with, the reality is it's predictable and it's staying within, you know, reasonable cost for them to keep their homes and that was the intent. I also think if this article from Moody is in fact halfway correct, we're going to have a number of absentee owners that are going to flood the appeal process as we find the economy continuing to slip. This is only the beginning, I believe, of the economy slipping, so.

Mr. Dyer: I agree. One interesting thing for me has been...yeah, I was...I've been involved in the property tax issue for quite a while because of the task force I was on. Walter Lewis, my friend Walter Lewis who came from the 'ohana side was one of the few guys that I know of who came in and has appealed a homesteaded property. Walter is paying close attention and even though it doesn't make any difference in his taxes, he's one of those guys who knows that, you know, my tax assessment has been going up. The department has still been keeping track of his market value on his property and he was watching it and he knew if that cap ever came off that his taxes were going to explode on him and he went in and appealed and lost, like almost everybody else does, and that's one of the reasons why Walter is in this fight right now on this side.

Mr. Kaneshiro: Okay, thank you. Any other questions for Mike, committee members? If not, thank you, Mike. Thank you for your input. Anyone else wanted to speak on this? Mr. Mickens.

GLENN MICKENS: Good morning. Thank you, Daryl. For the record Glenn Mickens. I just want to say that I do support Mike's proposal 100%. I think that the rate for the appeals from the public should be as low as possible to make it conducive for them to get their rates lowered. I presume that's what they're there for. I also think as Mike said that we need an arbitrator and not an appeals board. I believe an experienced arbitrator could have a far better understanding of the appeal than a board who may or may not have the experience that the arbitrator has. In fact, Jay, I guess you could answer that question of who does pick the board. Is that chosen by the mayor that picks...

Mr. Furfaro: Well and confirmation comes by the Council.

Mr. Mickens: By the Council, but the mayor is the one that picks it. Is that right?

Mr. Furfaro: Yes, correct.

Mr. Mickens: And as Mike pointed out, it seems like almost 100% of the time you go there for the appeal and the board's already...I don't know they...it sounds and I've never had to appeal any, but it sounds as though the board has their mind made up the way they're going to vote. They aren't listening to actually the facts of it. Where I think that...again, I think that they...an experienced arbitrator, somebody gifted in the tax department, real estate and everything would have a far better idea of what's going on. And lastly, I do believe that the 2% cap should...I heard your arguments, Jay, and you make some valid point, but I do believe that the 2% cap should stay on. I think the...

Mr. Kaneshiro: Glenn, we're not going to go there right now.

Mr. Mickens: Oh okay, okay.

Mr. Kaneshiro: That's not the subject matter.

Mr. Furfaro: I just want to clarify one thing.

Mr. Kaneshiro: Yes.

Mr. Furfaro: I'm quite the opposite. I'm not promoting its removal.

Mr. Kaneshiro: Right. What he used was an example.

Mr. Furfaro: Example if they do.

Mr. Mickens: Right, right.

Mr. Kaneshiro: So, we're not promoting that the 2% be cut off or it's still going to be ongoing. So I don't want to, as chair of this committee, get into those discussions, just to let you know.

Mr. Mickens: Right, right.

Mr. Furfaro: Thank you, Mr. Chair.

Mr. Mickens: Thank you, Daryl.

Mr. Kaneshiro: Because what this could lead to is as you know from history, that this could probably be on the front page as a proposal even though, you know, he used it as an example. So, I want to make it clear that I had allowed Mr. Furfaro to talk on the particular subject using that as an example for reasons of appeal and so forth.

Mr. Mickens: Yes, yes.

Mr. Kaneshiro: But that I'm...

Mr. Mickens: But I find his point was well...his point was well taken and I didn't mean to go into that direction, okay.

Mr. Kaneshiro: I just want to be clear as chair of this committee that...it's not a debate of whether it's going to be or not to be.

Mr. Mickens: Right, I got you.

Mr. Kaneshiro: Anything else you wanted to ask, Mr. Mickens?

Mr. Mickens: No, that's all, thank you.

Mr. Kaneshiro: Thank you. Any questions for Glenn? If not, thank you very much. Anyone else here wanted to speak on this item. If not, I'll call the meeting back to order.

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

Mr. Kaneshiro: Any comments by our committee members before I call for a motion to defer? Anyone wanted to make any comments on this tax appeal process?

BILL "KAIPO" ASING: I just wanted to make a few comments.

Mr. Kaneshiro: Okay, sure, go ahead, Mr. Chair.

Mr. Asing: You know comments on possibly the makeup of the Board, you know, putting some expertise on the board. You know, all boards and commissions were not intended with that purpose in mind. All boards and commissions were intended as members of the public who participate and get their information from staffing. That's where the information comes from. So, in this case the information comes from the tax appraiser. That's where all the information comes from. Now the board members, yeah, would be taking that information and the information from the person that is appealing and that member would take the information on both sides and make a judgment. So, that's the intent. The intent of boards and commissions was not to put experts on these boards in different areas. These are normal lay people but the information is already supplied and therefore, you need another panel of people and that's where the boards and commissions were. As an example, even in the Planning Commission, you don't need the experts. All of the information is there. If additional information is not available because they are not presented, then board members should ask for additional information and then the information is given and that's how the board is set up. So that's our system. That's the system that we have set up. I'd also like to stress the process in this particular case, I'm talking about the appeals case, is you go to this board first and if you do not agree, there is the next process, which is the courts, so you go to the tax court. So, it's a system and a process that has been set in place and I think it's a reasonable process that's been set in place. So, I just wanted to, you know, mention those comments. Thank you.

Mr. Kaneshiro: Thank you. Any other comments? Mr. Furfaro, go ahead.

Mr. Furfaro: Yes, I do appreciate the Chair's sharing with the public the process, but you know what we are hearing is the fact that many, many appeals don't seem to get satisfaction and the fact of the matter is in also looking at statistical information, I do know that many people in the past found themselves not going to the Appeals Board and I'm not talking about a number of people, I'm talking about a handful, but they'll go to the next step directly to the court with their appeal. And I have great faith in many of those individuals that do participate in volunteer work and they do have those particular skills. But I thought it was good in just this committee and as I offer this amendment when we have a full group, as you pointed out Committee Chair, I just thought it was a good time to have dialogue about those particular options and concerns. What I do want to reiterate and thank you, the only reason I brought up the current caps is government needs to think in terms of strategies that occur. If we do remove a cap as recommended by the Finance and Tax Office in their bill, we need to make sure that we understand what the potential impacts are. And that is why I brought that up and I think many people know that I was a supporter of the cap, but that's the consequence.

Mr. Kaneshiro: Right.

Mr. Furfaro: That's all I was trying to bring up and thank you for bringing us back to the main mission here on the appeals process.

Mr. Kaneshiro: Thank you, thank you. And as additional comment I just wanted to give an example that in 2008 we had, excuse me, roughly 208 tax appeals and out of that, half of it...half of the tax was refunded. So, it's not about 100% or anything like that. I just wanted to point that out that we do have a system that is working, but not to the satisfactory of everyone. So, with that, can I have a motion to defer?

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

CR-B&F 2009-01: on Bill No. 2297 A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO KULEANA LAND
[Approved.]

There being no further business, the meeting was adjourned at 9:35 a.m.

Respectfully submitted,



Wilma Akiona
Secretary

APPROVED at the Committee Meeting held on February 4, 2009:



DARYL W. KANESHIRO
Chair, Budget & Finance Committee

