MINUTES

COMMITTEE OF THE WHOLE
September 17, 2008

A meeting of the Committee of the Whole of the Council of the County of Kaua'i, State of Hawai'i, was called to order by Councilmember Ronald Kouchi, Chair, at the Historic County Building, Room 201, Līhu'e, Kaua'i, on Wednesday, September 17, 2008, at 10:08 a.m., after which the following members answered the call of the roll:

Honorable Jay Furfaro
Honorable Tim Bynum
Honorable Shaylene Iseri-Carvalho
Honorable Daryl W. Kaneshiro
Honorable Ronald Kouchi
Honorable Mel Rapozo
Honorable JoAnn A. Yukimura

The Committee proceeded on its agenda items out of order as follows and as shown in the following Committee reports which are incorporated herein by reference:

CR-W 2008-23: on Bill 2285 A BILL FOR AN ORDINANCE AUTHORIZING THE FORMATION OF A COMMUNITY FACILITIES DISTRICT, DESIGNATED AS COUNTY OF KAUA'I COMMUNITY FACILITIES DISTRICT NO. 2008-1 (KUKUI'ULA DEVELOPMENT PROJECT), INCLUDING THE TERM AND BOUNDARIES OF THE DISTRICT, THE FACILITIES AND INCIDENTAL EXPENSES TO BE FUNDED THEREBY AND THE MAXIMUM PRINCIPAL AMOUNT OF BONDS TO BE ISSUED FOR SUCH FACILITIES AND INCIDENTAL EXPENSES; AUTHORIZING THE LEVY OF A SPECIAL TAX ON PROPERTIES WITHIN SUCH DISTRICT AND THE RATE AND METHOD OF APPORTIONMENT FOR THE SPECIAL TAX; AND MAKING CERTAIN FINDINGS AND DETERMINATIONS REGARDING THE DISTRICT, AND AUTHORIZING CERTAIN FURTHER ACTIONS WITH RESPECT THERETO **[Approved.]**

Bill No. 2274, Draft 1 A BILL FOR AN ORDINANCE TO AMEND CHAPTER 5A, KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO REAL PROPERTY TAX **[This item was deferred pending a workshop.]**

RONALD KOUCHI, COMMITTEE OF THE WHOLE CHAIR: The next item is Bill 2274, Draft 1, the bill to amend Chapter 5A of the Kaua'i County Code, relating to real property tax. Can we have a motion to approve?

Councilmember Rapozo moved to approve Bill 2274, Draft 1, seconded by Councilmember Yukimura.

Mr. Kouchi: Moved and seconded. If there are no objections, I would like to suspend the rules.

There being no objections, the rules were suspended.

Mr. Kouchi: Do we have any public testimony? Barbara.

WILMA AKIONA, Council Services Secretary: Actually, Mr. Chair, Jeff Demma had signed up earlier. We do have one who had signed up.

Mr. Kouchi: Okay, then we'll take Jeff first and then Barbara, you'll be up after Jeff. I'm sorry.

JEFF DEMMA: Good morning, and Jeff Demma for the record, thank you. I want to just briefly review some testimony that I submitted on September 3 but draw it in context, based on the information we learned yesterday from the workshop, as well as just to summarize position based on some of the other testimony that was...well, some of the other discussion from yesterday. One, as I address this I'm speaking about our transient vacation rental small business owners and operators who are in legally zoned VDA zone or therefore comply as the non-conforming use under the new TVR ordinance and there was an interesting number yesterday, which is an estimate by the Hawai'i Authority of 10,000 small business owners that are out there doing business whether they are falling under the radar screen or be included in this net, I'm not sure. I do know that I speak on behalf of those that are in fact legally operating, that are fully compliant, that are registered with the State Department of Corporations, and that are collecting and paying all of their taxes, which I am one of those that is so. There was an assumption yesterday that perhaps the business owners are asking for special treatment or looking for a loophole or a kickback or somehow trying to get out from paying their fair share, and that is not anything that I have purported to deliver as part of my testimony. I think that a big picture concept, certainly looking at financial outlook and again looking at the drop in the DOW this morning of another 300 points, federal bailout of AIG of $85 billion loan, etc., we can draw as many possible references to our local economy, but the reality is that the County is addressing many of the same and similar concerns as other financial realities of island business organizations and residents. We're all trying to figure out how to balance financial requirements of receipts and disbursements, and looking to create a system of fairness for all property owners. We are not looking for a handout or a give back, nor are we asking to be treated with kid gloves. But instead we're looking for fairness and treatment that appears equitable and reasonable and is justifiable from a business perspective. I think that there's an opportunity to help create a system to encourage all TVR owners and businesses who for some reason have thought it was good to jump on the bandwagon and whether they've chosen to do so legally or not is a significant issue. And I think that in an effort to try and support and create a vital part of an ongoing revenue stream and a stable growing business opportunity in a sector of Kaua'i, I want to make sure that we survive and that we are treated in such a manner. I just want to point out finally that some of the issues that I raised which have to do specifically with the fact that the argument behind part of our bill proposed is the classification and the supposition that the business use of transient vacation rentals or resort category places a higher burden on infrastructure and County resources and something that I had specifically talked about was that as a small business owner trying to cover our overheads in the TVR business that we do not enjoy the same kinds of opportunities nor do I think we absorb the same kind or use of County resources as those classified as true hotels or resorts do and some of the examples that I gave were very simple...

Mr. Kouchi: Jeff.

Mr. Demma: Yes.

Mr. Kouchi: Your 3 minutes are up, so we'll call you back after everyone has had a chance and give you…

Mr. Demma: Is it possible just to spend 30 seconds more and finish this?

Mr. Kouchi: No, we really…the purpose of the rule is to try to ensure everybody who comes here…

Mr. Demma: Sure, I understand.

Mr. Kouchi: …gets a fair share and I think that you might have maybe more than 30 seconds or a few questions, you know, when you come back. So, you know, it might be a little longer with you.

Mr. Demma: Not a problem, thank you.

Mr. Kouchi: Thank you. Barbara?

BARBARA ELMORE: Thank you. My name is Barbara Elmore. I have two things to talk about. One is the testimony we just heard, which I'll get to. The other is just kind of a procedural suggestion. I think it would help put things in perspective if when people come up to testify, say they're for or against the 2% tax. It would be nice to know when they built their home, how much they paid for it, how much it has depreciated since then to put things in context. On the vacation rentals, there was expert testimony that there are 10,000 operators in the State of Hawai'i. I don't know how many are on Kaua'i, but I'm sure we have some because they did not want to come out in public when you were having your hearings. But there are, I think it's un…indisputed that there were 10,000 operators of vacation rentals that are not paying their taxes and not following the law. So, whether they're represented by the gentleman who just spoke is irrel…is irreverent…irrevelant, irrelevant. They are out there. And as far as the argument that vacation rentals are not true hotels or resorts, I'm asking why not? They take reservations; they take deposits; they take money for every day, every night that people stay in these units; they hand out keys just the same way hotels do; they give them directions to all the sightseeing sights on the island. So, to me that makes them a hotel or resort. Their neighbor next door who's raising a family in that neighborhood is not doing that. If they have visitors, it's family that come in and they don't charge them; they don't make reservations; they don't get deposits from their family members when they come in for visits; and they don't have new relatives come in every week or every two weeks. And they're making…they'll say, we're not making any money, we're just poor, we're not like a business, but they are if you look at the rates they're charging on the Internet and in the ads in the paper. They're making a lot of money and it goes…after their expenses, it goes into their personal income. Whether they report that to the federal government's another question. But I guess that's it. Thank you.

Mr. Kouchi: Thank you. Any questions for Barbara? If not, anyone else wishing to speak, please come forward and state your name for the record before you begin.

PAMELA SIHVOLA: Good morning. My name is Pamela Sihvola. I'm just handing out my comments from yesterday, and I would like to continue to urge you to postpone any decision regarding the property tax overhaul at this time for the various reasons that were presented yesterday and the reasons Jeff cited. I support Jeff's comments fully and I think that there has to be some consideration to really separate transient vacation rentals from the resort category and especially I'm talking about the small cottage and condominium owners and I just would like to cite a small example, a 1,000 square foot condominium in Po'ipū without an ocean view. Currently the property tax is $3715 and the proposed tax increase would be over $1630 and will take the tax to $5345 which is a 44% increase. So the question I have, since you are talking about equity...equitability, is it indeed your understanding and this is what you voted for, that a 44% increase in property tax is indeed your intention? And if that's not the case, then I hope that there will be some consideration for condominium owners and specifically I think what's really skewing the tax evaluation is the fact that for condominiums the value of land is considered absolutely miniscule compared to the building. For instance, in our current tax bill, the value of land is only 7.5% and the rest is the building. So, I think that there is a...sort of a hole in the proposed tax bill and I hope that you will somehow think about it from the perspective of, I am assuming, the hundreds and maybe thousands of condominium owners on-island and who are not on-island at the moment and indeed make this bill equitable to all, and just to again support Jeff, we do indeed want to carry our weight and contribute but in a fair way. Thank you.

Ms. Yukimura: Question.

Mr. Kouchi: Any questions? JoAnn?

Ms. Yukimura: In calculating your increase due to the proposed bill, did you use the 3:1 ratio in rates?

Ms. Sihvola: Indeed, I did, yes.

Ms. Yukimura: You did, okay, all right, thank you.

Ms. Iseri-Carvalho: Question.

Mr. Kouchi: Excuse me, Pamela. Do you have another question, Shaylene?

Ms. Iseri-Carvalho: Yes. I'm sorry, was it for your property that you were saying specifically that there's a 44% increase.

Ms. Sihvola: Yes, indeed yes.

Ms. Iseri-Carvalho: And you own a condo.

Ms. Sihvola: Yes, small, tiny, tiny, modest, the most modest, tiny, which I think a lot in old Po'ipū are.

Ms. Iseri-Carvalho: Okay and when you say 44%, what is the initial value and what is the proposed that you will pay should the tax bill be passed intact.

Ms. Sihvola: Well, I was indeed using the current year's evaluation and just calculating it per the proposed rates.

Ms. Iseri-Carvalho: Okay, so currently you pay how much?

Ms. Sihvola: $47…sorry, $3715 and…

Mr. Kouchi: Barbara, Barbara, yes, if you please, be respectful. They were when you were testifying.

Ms. Sihvola: And the proposed increase will take it up to $5345 and this is a 1,000 square foot condo. No ocean view.

Ms. Iseri-Carvalho: All right and is this…how long have you had this property?

Ms. Sihvola: Over 20 years. So, I mean, clearly we have made a commitment to the island and have contributed and indeed when Iniki hit, for 5 years the property was used for County employees, in fact, because it was in a sheltered place and was not damaged. So for 5 years we allowed County employees to rent it long-term and again, if there is a disaster it will be available for that purpose.

Mr. Kouchi: But this is an investment property. It's not a condominium that you use as your (inaudible).

Ms. Sihvola: Yes, I am here half of the year. It is not investment and indeed for the 20 years I calculated, the capital losses have pretty much wiped out. I mean, there is no capital gain if indeed, you know, it's going to be sold. So, it is a different category. It's not investment, it is a place of very, very special precious value other than monetary.

Mr. Kouchi: But it's not owner-occupied.

Ms. Sihvola: Half of the year it is.

Mr. Kouchi: Full (inaudible).

Ms. Sihvola: Not fulltime, no, no, it isn't and then when I'm not here, there are very, very few, very special selected people who indeed will rent it for vacation rental purposes and we are in a VDA and we have been registered for 20 years and have complied with all the laws.

Ms. Iseri-Carvalho: How often do you rent your condo?

Ms. Sihvola: Basically between December…pretty much between December and April.

Ms. Iseri-Carvalho: Okay, so about 4 months of the year?

Ms. Sihvola: Yeah, that's about it, yeah.

Ms. Iseri-Carvalho: Thank you.

Mr. Kouchi: Thank you.

Ms. Sihvola: Thank you.

Mr. Kouchi: Anyone else wishing to speak? Scott.

SCOTT MIJARES: My name is Scott Mijares. I originally wasn't going to testify, but I just can't help myself, I guess. The number one issue in America right now is the economy. That's no secret to anybody and I think the economy is also very important. It's on the minds of people here on this island and you know, what I'm hearing is we're putting obstacles in the way. We're not nurturing business. We're actually putting things in the way of businesses that are up and running, and it could be potentially harmful to the economy and I'm really concerned about that. And I think you should be too because when it all comes down to it, passing this bill if it doesn't help the economy, it's going to hurt the County and it's going to hurt the County's receivables. I think we need to look at this bill and for...with the TVR for instance, they're not really resorts. They don't enjoy the same cash flows that a resort has like a restaurant and a gift shop and all the other things. They're in a different category and they should be treated differently. I testified yesterday about home businesses. This bill does not address home businesses. I think it might be left to someone's discretion if you're operating a business out of your home, whether you lose your homestead exemption and automatically shift up into the commercial class, this could be the difference between having a successful home business or your home business going out of business. And so, right now I just ask that you all consider what the impacts of this bill as it is along with its amendments is gonna have on our economy because that's really what's going to be most important and it's going to affect the County's ability to raise additional capital. It's...I always say this, it's harder to start a business from scratch than it is to keep a business going. So, let's not let this...these little tiny boats sink to the bottom of the ocean. Let's keep them afloat and make it through these tough times. That's all I have to say.

Mr. Kouchi: Any questions? Just the one question I have is what would, in your opinion, be the appropriate place to locate the vacation rental properties?

Mr. Mijares: Well, that's already been decided. Hasn't the TVR areas have been set aside, correct?

Mr. Kouchi: Let me repeat my question. You have indicated that it's unfair from a taxation purpose, not a land use purpose, to place the vacation rentals in the resort category. My question is where would they be more appropriately placed?

Mr. Mijares: I don't know if there is a category in the current bill as it's being proposed. There's only four categories. Maybe there needs to be a subcategory or something in-between a residential class and a commercial class. That's something that needs to be examined, I think, to see what might be equitable given the fact that they don't have all the cash flows.

Mr. Kouchi: Improved residential, single-family residential is in the general category.

Mr. Mijares: Okay.

Mr. Kouchi: And the problem with the vacation rentals, in the current run up in the market that occurred, is that for those that were able to derive a better weekly income than a long-term rental also generated a better sales price because of the income the property could generate. Those sale prices in turn drove up market values which in turn drove up assessments for long-term residents and single-family neighborhoods and so by their commercial activity devastated the ownership or the bottom-line tax bill paid by residents of homes and long-term rental properties. So, what this bill is saying is that this is not an appropriate place for them to be in either. They shouldn't be in the residential area. They shouldn't be allowed to artificially drive up the residential market values for those long-term residents who are renting long term or who are owner-occupants of those homes. So I would ask you, where would be a more appropriate place for them to be put in than where we're suggesting and what would be the net impact on long-term residents about their placement in that category?

Mr. Mijares: Well, you said a lot there. So, what I gathered from your question...

Mr. Kouchi: Well, I said a lot because you seemed to imply that we've given no thought as to why we're doing what we're doing and we don't care about the economic impact, but it's also not just all about business, but it's about what happens to the people who are here on a long-term basis.

Mr. Mijares: Okay, I'll answer the question the best I can. If this bill causes 20, 30% of the vacation rentals to go out of business and your theory is correct that these real estate values have been driven up by these, then what's going to happen? Our tax base is going to be lowered. For the County to get the same amount of money, you're going to have to raise taxes anyway. But you're also going to miss out on the taxes that you collect from the TAT. You know, the County is going to suffer some losses. If these vacation rental businesses go out of business because the taxes are too onerous and the property values do actually come down, we're going to...you're going to have to raise taxes for everybody because you're happy with, you know...we have a good tax base for you to draw on. Are you prepared with the consequences that are going to happen? If property values do decline because that income from vacation rentals make it, you know, does...it reduces the value of property, I mean, these are the things that occur to me in my mind. What do we really want? What do we really want here?

Mr. Kouchi: What we'd like, because vacation renting the property is an election of an owner, is if you'd like to have a tax advantage, the best thing that you could do to have the best benefit for your taxes is to commit to the long-term rental program and I will gladly deal with the drop in revenue that would ensure that we'd have better housing for the long-term residents of this island because it'll cost a lot more money to build a brand new unit to put somebody from Kaua'i into as opposed to using current housing (inaudible).

Mr. Mijares: Okay and then if you are a renter and we have to make up that deficit from the lowered tax base, that increased amount of taxes passes through to the owner, which passes through to the renter.

Mr. Kouchi: There's not an increase. There's a decrease because there's a significant...

Mr. Mijares: How can we maintain a decrease when the tax base is dropping because the values are dropping because the vacation rental that...when you do the pencil and paper and you say this is...you just told me that the property values have gone up because we have vacation rentals. If we take that away, then your theory is that the values will drop. When the values drop, so does the tax base, so does the taxes collected at these rates. You'll have to raise the rates to maintain the same amount of collectibles.

Ms. Yukimura: Question.

Mr. Kouchi: JoAnn.

Ms. Yukimura: So, this is a very interesting and rich dialogue, and I think it's not our intention to want to drive vacation rentals that are legitimate out of business. However, and there's two things to answer this, so. One is if there is not the 3 to 1 ratio that will lessen the taxes on vacation rentals and that is still an option here, okay, because the resorts are rightfully saying, you know, maybe that's not an appropriate ratio for a place where you will have a lot of improvements. The other is...these vacation rentals may go out of business anyway if the gas, electricity, and other prices keep rising. And so are you using property taxes as an excuse...I mean, and they may go out anyway. I mean...

Mr. Mijares: How...how is the property tax going to help them? It's not go...it's going to just be another...another reason why they might shut down and stop contributing...

Ms. Yukimura: Right, but for us to continue to just hold back because we have to cover certain costs for the County because we're dealing with rising costs as well. You know, I mean, I think the bottom line here is we have to address the energy issue, all of us...all of us, but...but I mean...it may not be the property taxes that are really causing the problem.

Mr. Mijares: In my mind...

Ms. Yukimura: And if we hold back too much, excuse me, then we don't...the property taxes cover the commonwealth of the County and if we don't take care of that, (inaudible) is going to function well either.

Mr. Mijares: Right and it's the whole theory, you know, do you want a big piece of a small pie or a small piece of a bigger pie. If...if fuel costs are inhibiting people from visiting, if you were a visitor and you were deciding if you wanted to come to Kaua'i and you see that the airfares have increased, isn't it good for us, Kaua'i, to have choices? Not everybody can afford to stay in the Princeville at $500 a night or at the Hyatt or whatever that rate is. And if you can offset that increased cost of getting here by getting some more modest accommodations where you won't have to eat out of the restaurant every single night, where you won't have to, you know, tip someone every time they come and get your car, and all the other expenses associated with staying in a resort, you could come and you could actually afford to be here and spend money and feed our economy. And I think we're shutting the door on those people.

Mr. Furfaro: Excuse me, Scott. I want to interrupt as the Chairman of the Council. You are allowed to respond to Councilwoman Yukimura's question.

Ms. Yukimura: Well, it wasn't a question.

Mr. Mijares: What was the question? I think it was a question.

Council Chair Furfaro: You are not to add. That's my point, okay. Please, let's stay within the boundaries. Excuse me, Committee Chair.

Mr. Kouchi: Any other questions?

Mr. Mijares: Oh come one, somebody else.

Mr. Kouchi: If not, thank you.

Mr. Mijares: Thank you.

Mr. Kouchi: Anyone else who wishes to speak? Mike. Jeff, we'll get back to you after we go through everybody. You'll be the first called back for the second time.

MIKE DYER: Mr. Chairman, Council people, my name is Mike Dyer. I'd like to try, in three minutes, to summarize my feelings about the bill as it's currently constituted. I think the removal of the 2% cap is good...I'm going to do the goods first and the bad second. As Mr. Arruda pointed out yesterday, if you have one class, particularly your voting class capped for any extended period of time, you're really heading for trouble. It's unfair. It'll be...you know, the other classes will be aware it's unfair. It's eventually going to blow up in our faces. So that part's good. Setting productive ag lands at a fixed valuation is kind of a...I think takeoff on what our original task force did and that was to try to set land values for productive ag land. We chose to do it for all lands, but I think it's a good idea to set it and then have it go forward at a consumer price index basis for the productive ag lands. The bad, using the 3 to 1 ratio in all these calculations on what taxes are going to be for all the classes, I think, is misleading. If it isn't actually in the ordinance, I think that you're... you know, you're obviously trying to leave it open to not use the 3 to 1 ratio, I think, is misleading to say you're going to use it when you probably won't. You may use it the first year, but you may not use it the second year. The appeal process, to anyone who's been through it, is broken. There's nothing in this bill that does anything to amend that other than raising the cost of making an appeal to try to further discourage people from appealing. Accelerating the time in which the County can seize properties for delinquencies of taxes in the conditions that we're in to me seems kind of cold hearted and the bill reduces that time from three years to one year for a seizure. You may think that this doesn't happen, but while we were sitting in this meeting yesterday, one of my friends in Kīlauea who owns an ag parcel called me and said, I'm three years delinquent on my taxes and the County is taking me to court. What should I do? And this is a guy that could lose everything that he's had for 25 years if he isn't aware that the County can seize that property and sell it on the courthouse steps, take their, in this case $7500, and you know sell it cheap to somebody else and leave him on the street. And then finally, blocking new farms under 5 acres if they haven't...if they don't have five years of previous experience. As we heard from the Farm Bureau, from Jerry Ornellas, yesterday most of the farms on this island are under 5 acres. If you're saying a new farmer can't come in and start a new farm and get the special ag break unless he has five years' experience, you're just going to discourage small farms, which is what we're trying to encourage. Thank you.

Mr. Kouchi: Thank you, Mike. Any questions? JoAnn.

Ms. Yukimura: Your point about the 3 to 1. Do you...I mean it seems to me that it's quite appropriate for residential property. Do you feel that it's appropriate for resort and commercial?

Mr. Dyer: Yeah, I think so. I mean, we're trying to deemphasize land in all areas, you know, de-emphasize land for the resort areas too. We, in our task force, ran a lot of different ratios. The one that fit tax neutrality on all the things that Eric ran for us with his clever guys with the computers, we arrived at 3 to 1. It may not be exactly right, but it...to me it needs to be in the ordinance to provide some discipline to the County in setting rates. If it turns out that it isn't right, either too high or too low a ratio, then go back in and go through this process and debate what the ratio should be. But what we found was that it was a good ratio. It seemed to work for everybody. It changes things, but it still takes that land market variation thing out. I know the lady was talking about how land under her condo is insignificant, but if they really look at the market value of that land, it can be pretty significant. You know, we are trying to transfer things to buildings through the 3 to 1 ratio, but I think that's reasonable. That's were the services go. That's what this is all about.

Ms. Yukimura: Okay, thank you.

Mr. Kouchi: Any other questions?

Mr. Furfaro: I just...go ahead Councilwoman.

Ms. Iseri-Carvalho: Yes, just in reference in your statement, you say we may use that the first year and not the second, how did you conclude that?

Mr. Dyer: Well, I'm just guessing. Why not put it into the...since you're using the number all...through all the calculations, it implies you're going to use it. You'll probably use it...the first year maybe. But there's nothing in the ordinance that says you can't completely drop it the next year.

Ms. Iseri-Carvalho: I thought you had some information when you said...

Mr. Dyer: Well I...I see that Mr. Bynum is proposing an amendment that's going to put a 2 ¾ to 1 ratio on residential only. To me that's a real red flag that you're not intending to do the ratio on anything else. I'm sorry, I'm looking at it as a taxpayer.

Ms. Iseri-Carvalho: Okay. So, I mean, you weren't promised anything in a sense that you made it seem that there was some document or something that would require us to not use it the second year or any other time.

Mr. Dyer: Well...

Ms. Iseri-Carvalho: Or even the first year.

Mr. Dyer: True, even the first year. I don't know, the first year tax...you're going to set the tax rates 7 or 8 months from now, but you have complete control over the rates. This is just the ratio between the rates on land and buildings. You still can control your revenue. So, I'm leery of the fact that you're not willing to put the 3 to 1 ratio into the ordinance. That's all.

Mr. Furfaro: Mr. Kouchi?

Mr. Kouchi: Yes, Mr. Furfaro.

Mr. Furfaro: Thank you. So, I want to make sure it was...the bill came up...came to us the first time from the Administration without the 3 to 1, Mike.

Mr. Dyer: Correct.

Mr. Furfaro: You, I mean, I just want to make sure it didn't come to a…the narrative that came to us said it was 3 to 1, but when you started to read the 171 pages, it wasn't in there.

Mr. Dyer: That happened to me too…because I was reading all the projections and I read the ordinance and eh, wait a minute, it's not in there.

Mr. Furfaro: Yeah, but that was one of the reasons we had to re-post the meeting because we had information that wasn't actually contained in the bill. The other particular piece is, and I want to acknowledge what you said about the 2% cap, because quite frankly in today's economic condition it is probably not sustainable and the fact of the matter is, though, then you then say that perhaps we can reference the consumer price index for the ag lands going forward. You know, it's…the thing that I'm wrestling with is for predictability for taxpayers. Obviously if we have a period of time where, you know, we don't kind of have the dynamics that allow some protection there, depending on the economic trends, the reality is there isn't any predictability. But you do suggest that maybe for the ag lands and quite frankly I like a lot of parts of the bill that deal with ag and open resource lands, but I wanted to hear you state that again. You feel that once we get to that point we should then, for the growth on that tax we should turn to the consumer price index?

Mr. Dyer: Yeah, I think, you know, the ag section seems to be acceptable to the Farm Bureau and the ag community. Therefore, it's fine with me. I'm a Farm Bureau member, but I'm not actively farming right now. So I'm on the other side of the fence. I'm not going to get the special ag assessment on my land most likely. I'm going to be paying the big bucks. That's why the 3 to 1 ratio is important to me. Going up in ag land with the consumer price index for active farms as it's stated in this bill is fine with me. They need a break. They need every break they can get. This is a hard, hard time for these guys with fertilizer costs and all costs are going up. The markets, other than just our little local markets, are nowhere. We have no place to send things. That was part of the reason we got out of business we had. We couldn't go anywhere with any excess production that we had. So, yeah…

Mr. Furfaro: I want to restate my point. I like many parts on the ag and open and resource lands that are in the bill. But you know, I mean we certainly could have simplified this piece a lot easier if we were able to say, project through some rational assumptions that there is money that has been, excuse me for using the term, available to us through the category of the incremental changes that we would make in the resort category, quite frankly through the reassessment of the incremental ownership, bringing them to parity with the person next door that owns a whole condominium valued at $623,000 while the timeshare next door is only valued at $323,000. Well, we first…if we brought them up to parity and we were really looking for revenue neutral approaches, perhaps that adds up to $126 million of additional value which then could have been turned around, directed at resource land, farming, open space. I mean the whole bill is so complicated as a puzzle. I'm sorry, I mean I've been in business for 35 years. You know I've run $58 million companies that, I mean the…the rationale here at the same time trying to portray what is reasonable, fair and predictable. Now, I would look at it the other way if we didn't have what people reference as the surplus, Mike, because it's truly not a surplus, it's actually a reserve, but we do have a reserve. So, you know, why would we remove the cap without doing those other analytical parts and then finding out what we could truly credit to ag, open space, resource lands, which need protecting, quite frankly in many ways. It's very, very confusing at times and I think the solution that you just came up about protecting those ag and open lands with the consumer price index after we find out what we might have to be able to extend credits to is probably a better approach and then I would agree that perhaps for the growth we can look at something like consumer price indexes. And I'm hearing you concur with that?

Mr. Dyer: Yeah. That's in the bill: $75,000 if they qualify and increases to consumer price index. I don't know enough about the visitor industry to know whether they're being abused under this bill or not. It's not an area of expertise for me.

Mr. Furfaro: Well, it's the survival of the industry that we're talking about, not whether they were abused. I've heard Councilmembers say, well, you know, they've been getting away with this. That's not the truth. They have 35% increases in medical cost. They insure almost 70% of their people. Somebody said, well, they only have homes for half the group. But the other half of the group are transient, high school workers, college workers, and so forth that don't intend to make it, but there are 20-year employees, electricians, carpenters, front office people, accounting people, that do own homes and have been loyal employees. They're faced with energy costs to survive. They're faced with a reduction in airlines seats. It seems to me that there is an opportunity here with getting some more revenues from that increment of our business and then determine during what is going to be a very scary business climate, find out what we can credit to preserve lands, ag and fuel and fiber resources.

Mr. Dyer: Oh, you're the expert in that area. I'll defer to you.

Mr. Furfaro: Well, I know a little bit about it, so yeah. Thank you, Mike.

Mr. Kouchi: Anyone else wishing to speak? Mr. Nishida and then Mr. Mickens.

JAMES NISHIDA: James Nishida for the record. You know, I didn't read the tax bill but had some problems with the tax. I think they're trying to reconcile some of the problems that I thought historically had happened with that tax thing. First of all, the 2% cap is one really good thing in the rising market. This last time they went up, I heard of old long-time residents of Hanalei getting taxed...you know they're 80 years old and their tax bill is like $8,000. As soon as that guy dies, one letter comes from the Health Department saying that the person died and then the thing automatically, even the 2% not there anymore. You know, it doesn't work and then when that happened to us in the homestead, it was like I cannot believe this Tax Office is like vultures, you know. And then I was...that was the first...you know I was trying to hold on to my piece of land in total at that point. My brothers and...my brother, my sister said we going keep on this thing in total. But when that happened and I tried to go in, I went through the appeal process and then I realized that, you know, get other forces that are going on beyond our individual little thing. So, the 2% cap is one good thing in a rising thing, and you have to do something for guys like that old man, you know. But it's an emergency measure. You gotta do something about it. In exchange for that, you gotta really do something with this. I...you know, because we selling the land now...I did some research into my deed. In December of '09 my family going be on that property 90 years. Our farm has been in constant production since then. You know, we get no problem doing any kind of farm land, but we cannot exist like that anymore. You know, Wailua Homesteads going be 100 years old. The whole of Wailua Homesteads going be 100 years in 2014. When you're doing these things for the agriculture people, get other people that are there, like me, that are on land for a long time and this is what community is about. And to me what is missing in this piece is kind of...is some way of having these guys hold onto the land, maybe even cut some off for their family or whatever. I don't know how you going do that and I don't know whether the tax bill addresses it or not. But in addition to the ag, you know the farming piece of this, I think you need something for these long-time residents. I heard Councilman Kouchi talk about how part of the...what had happened in this last run up in housing was that these older...these houses that people had held onto, it made sense to get rid of them. The next time this goes up, you not going have that cushion. I looked around Wailua Homesteads, it's like any other place on the island. There aren't any more little pieces out there to develop.

Mr. Kouchi: That's your three minutes, if you want to come back a second time.

Mr. Furfaro: I have a question, if I can.

Mr. Kouchi: Okay.

Mr. Furfaro: Jimmy, you enjoy a home-occupancy cap right now?

Mr. Nishida: Yeah.

Mr. Furfaro: Okay, so...

Mr. Nishida: And one ag dedication.

Mr. Furfaro: Yes, okay, so let me ask you going forward, if the cap were set towards the consumer price index, which is currently 4.3% (I think) and our State people projected next year it might be a 3.5%, would you feel comfortable still having some predictability if your cap was tied to the consumer price index but was never lower than 2% each year.

Mr. Nishida: I guess, my problem with that...you know, I'm not sure because, you know, I'm not really...because we get some blank land, I no really...I cannot... if you ask me...

Mr. Furfaro: I'm only speaking about your home site.

Mr. Nishida: Yeah, I know, I know.

Mr. Furfaro: Only your home site.

Mr. Nishida: Yeah, so that blank land. I look at this as one...because we cannot sell yet because we haven't done the infrastructure, my tax bill is the total tax bill. So, I no really look at that individual...so I not really sure.

Mr. Furfaro: Okay.

Mr. Nishida: But any kind of cap, I think...you guys get one really big problem because you no more that rising assessments, all that money from the rising assessments coming in and I get no idea what you guys facing. That's why I see people coming up here and telling you, well you gotta hold back on that one or you know, get one problem with that one there or you should lower the taxes here or whatever. I mean, I don't know how big that rising assessment piece was in this and we know the assessments not going rise.

Mr. Furfaro: Well, this is, this is the problem with the sustainability on the 2%. When we had an 18% increase, 20% increase in property values, the 2% was relatively acceptable. It gave protection. Now we're at the 2.1% and basically from some of the testimony we heard yesterday, we may actually see values going down, okay? And quite frankly, we may also see double digit inflation going forward. People need predictability. Permanent residents, agricultural people, okay? My question again, could you see a 2% cap not being earmarked as a cap for a certain amount but rather having a flexibility based on the cost of the consumer price index?

Mr. Nishida: Well any kind of cap, I think...any kind of cap would probably be helpful.

Mr. Furfaro: And the second part to that question, if you qualified for a cap, would you be willing to dedicate your home with penalties for a period of time that if you sold for a profit, you would have to repay a larger portion of taxes?

Mr. Nishida: The other problem that...this is one personal...

Mr. Furfaro: See Jimmy, I just want to tell you because that part of it doesn't exist on the current cap.

Mr. Nishida: Yeah. The other problem with that is that I always...I never trusted...as soon as that thing happened with the Tax Department, I never trusted what going happen to apply to me because I cannot hold onto my land. I no make enough money. So, I gotta cut 'em off and let 'em loose. So, that screws up any kind of cap because I going have to sell. You know, I gotta subdivide, I gotta get rid of 'em. So, in my case, I no like...you know, long-term residents they need some kind of assurance.

Mr. Furfaro: Protection.

Mr. Nishida: Yeah.

Mr. Furfaro: Predictability.

Mr. Nishida: But in my case, I not sure how that going work because it's always been like one big problem. The ag dedication is 10 years. Now you talking about 5-year residency dedication and, you know, we not going sell anything in this next couple years, I think. You know what I mean. If we going sell 'em, it's gonna be really cheap. So, it makes it even harder when, you know, it's just restrictive. I always thought...

Mr. Furfaro: Okay, Jimmy, I can't let you have any more dialogue on a question.

Mr. Nishida: Yeah.

Mr. Furfaro: You can't necessarily at this time answer that question because you don't benefit from that presently. Thank you. Thank you, Mr. Kouchi.

Mr. Kouchi: Any other questions? If not, thank you. Glenn?

GLENN MICKENS: Thank you, Ron. For the record Glenn Mickens. I fully agree that the VR should definitely be in a VD area. I don't think there's any doubt with anybody that that's where they should be. But the point that Scott made is that there's a huge gap in this bill when people use their homes as a business such as architects or the people today who are using computers to do their work at home. So, you know, I don't know, and I don't know how you can possibly be able to go around and police all those people or even find those people doing this. I believe, you know, you got a huge bill here. Obviously as you're all pointing out, it's gigantic. The holes in it, the people you're trying to please, you're never going to please everybody, obviously. You're going to have to do a lot of work on this bill, I think, before it's ever finalized. I still approve of the 2% cap and as 13,000 people agreed with the 'Ohana Kaua'i Charter amendment, they too want this cap. And I would agree with Jay that if I were to move out of my house, I agree to the 2% cap and I leave the place early, I dedicate it for the 10 years I think you said JoAnn, for the 10 years, I'm more than willing to do that. And I think a big bulk of the older people on this island that own their home, owner-occupied, would be willing to do the same thing. Sure there's going to be maybe an emergency purpose and somebody has to move out of their house or something, but if there's going to be a penalty, I would be more than willing to pay that penalty. So, you know, again, I think you're going to have to do a lot of work on this bill. You're never going to please everybody, but I appreciate what you're trying to do. Thank you.

Mr. Kouchi: Thank you. Any questions? If not, Cheryl, were you coming up? And then Bruce, you haven't spoken on this.

CHERYL LOVELL-OBATAKE: Thank you, Mr. Chairman. For the records, my name is Cheryl Lovell-Obatake. I was here several meetings ago, and you were not present, with concerns regarding the page 77 on Charitable, Etc., Purposes and page 78 on the underlined (7). I still have not figured out what this intention was on this particular item (7). I did talk to Randy Wichman downstairs and he was unaware of this addition in this page and it deals a lot with the conservation easement and I had given some examples of...one example of a rock on submerged lands at Kalapakī and it has a TMK and it also has a general land class and the assessment. So, what I'd like to, I know that the Real Property Tax Division representative is here, some clarification on this particular (7) and its intentions or give me an example for this intention. Thank you.

Mr. Kouchi: Thank you. Any questions for Cheryl? If not, Bruce?

BRUCE PLEAS: Bruce Pleas for the record. Please take a look at this bill. Don't pass it. I mean, there's many questions, many things to work on. I'm going to start at the beginning and I won't get very far. CPI, it's tied to Honolulu, you're talking 3%, 4%, maybe it'll go down, maybe it'll go up, it's going to Las Vegas. I would feel much more comfortable with a 2% cap with a dedication, but also you need to write into that dedication in case of a medical emergency which could have happened to my family and that needs to be written there because that needs to be addressed, that they have to sell their property to keep their kid alive, that's something that would have to be written in. We go to a definition of usable or unsuitable for agricultural use. It says, incapable of growing crops or grazing livestock. Well, hydroponics can be grown on barren soil. That's a farming opportunity and so can algae for fuel production. These need to be taken into consideration.

Ms. Iseri-Carvalho: Bruce, can you just tell us what page you're...

Mr. Pleas: That's on page 10 of the non-draft 1.

Ms. Iseri-Carvalho: Okay.

Mr. Pleas: That's (inaudible) definitions. Public notice which is Section 5A-2.1 Notice of Assessments. It is the publication of public notice. It is the newspaper of general circulation. But general circulation where? It should be in the district of the assessments. Another one is Section 5A-3.1 Tax Bills, this is section D. Non-receipt of tax bill by the taxpayer shall not be a valid excuse for late or non-payment of taxes. Only if it's a registered letter. How can you fault somebody if they don't...if their P.O. Box is closed or something's wrong? I mean, that's just...right there. And then you go into Section 5A...well it's the foreclosure one. 5A-5.1 Collection of Delinquent Taxes, foreclosures from three years to one year. If you don't get your mail and in one year, you know, something may happen. I think one year in this day and age is just way too fast to foreclose on somebody because we're going to see a lot of foreclosures and I think people need a little bit of time. On the rates, as I brought this up before, you have the 3 to 1 ratio which is not defined in here and needs to be defined, but I still am not convinced that in the rates in 5,6...5A-6.2 how it's determined for how we get our rates is covered on the ratio. That still does need to be together. So, that's as far as I got. Thank you very much.

Mr. Kouchi: Thank you. Any questions for Bruce and what he's presented so far? If not, thank you. Anyone else who hasn't had a chance to speak for the first time and would like to speak? If not, Jeff, you were the first, so we'll give you a second chance.

Mr. Demma: Thank you again, Jeff Demma for the record. I would like to try and very quickly address some of the other issues that were raised by subsequent speakers. One of the main gist that I think I am concerned about as a business owner and not as a profiteer but literally in this economy losing bookings this year due to cancelled airlines and trying literally to cover the overhead of the mortgage, property taxes, and insurance, not to line my pockets, but I don't want to lose my property, the assertion that VDAs on their own are responsible or are the main reason for the run up in property values to me seems rather absurd. Looking at what's happened in our economy over the last decade, I don't think we can identify any one desirable market based on simple supply and demand where property values have not skyrocketed where it's made almost impossible for anyone working and living as a local resident to try and survive. One thing that I think I'm very concerned about is not the rate, it's not the land business ratio, it is simply the idea that a small business VDA-zoned TVR or an NCU TVR is treated the same and put in the same category as a resort hotel. I don't really know how that ultimately comes out in a formula approach to what percentage increase. I'm not even focused on that. I'm simply focused on the baseline concept of categorizing one business and making it analogous to another, and specifically what I had tried to raise in some of my previous testimony was the fact that as a small business owner where we are largely trying to cover our overheads, some people are doing better than others, some people may be making a huge profit, I am not. Energy is certainly a significant cost up by 46% over the same time last year. But some of the things that I said we do not enjoy that impacts our resources are the same density of rooms and occupants, the operating economies of scale, we don't have the ability to leverage our costs over cross multiple revenue streams including room rentals but also adding onto that restaurants, alcohol sales, retail shops and commercial leases, licensing of our name for sale of goods, wedding parties, spa offerings, lūʻau, commercial rental of meeting rooms and ballrooms or business facilities, and parking or other per diem charges like valet and overnight parking. The property that I, ironically, am talking about is sitting right across the street from Kaua'i Sands, the Coconut Marketplace, Kapa'a Sands, Wailua Bayview, Lae Nani, Lanikai, right next door to the new Courtyards at Waipouli development project and I know that that business has been island-owned and operated for many years and I acquired it from another island resident. I live here fulltime, I'm part of the business community here, and I really bristle to think that I am responsible for running that business and impacting the values in my neighborhood. So, those are all things that have led me to this analysis where I said, I believe there are significant flaws in just calling a TVR a resort and I respectfully request that some kind of accommodation or separate class or subclass be established to deal with that part of our business economy here on Kaua'i.

Mr. Kouchi: Thank you, Jeff.

Mr. Demma: Thank you.

Mr. Kouchi: Any questions? If not...JoAnn.

Ms. Yukimura: You may have told me before, but do you have a solar water heater on your house?

Mr. Demma: On my home, yes, but on the vacation rentals, I can't. When we talk about ironically capital improvements, I'd love to because I want to and I need to, but I can't afford it. It is purely a matter of balancing cash flow.

Ms. Yukimura: But if your energy costs have gone up 40%, which you just stated...

Mr. Demma: Right.

Ms. Yukimura: ...in your testimony, you might not be...you might not be able to not afford it.

Mr. Demma: I don't disagree with you, but something that we talked about yesterday was access to capital and cost of capital and right now in order for me to do that, I need to leverage from a finance standpoint and I'm having a difficult time qualifying for that financing. Ironically, even though I have the credit rating, the business standing, and the assets, I'm being told, in this market, I cannot qualify for it and it is a hurdle right now for me and I realize that it is and ultimately I will figure out how to finance it and I know I need to convert to solar, do flash heating systems, do something, but in one month to see an electrical bill for a 500 square foot one-bedroom go from $65 to $185 a month, it's a significant cost increase.

Ms. Yukimura: Well, I understand that and so...but you see you're saying don't tax us in real property taxes because my electric bill is going up 40% and it's like, then our...we're supposed to cover your electric bill going up and the opportunity here may be, if we look at it carefully, is the kind of tax break we might give and this, I say this very advisedly because we don't...we're concerned about being able to cover our County costs so that we can give everybody services, you know. But we might look at, and I'm not sure if there's an amendment, to give some energy tax credit that ultimately will get you out of this energy cycle and then allow us to get abundant property taxes.

Mr. Demma: Okay. So...I want to make sure I answer your question and the issues you raised. I'm not suggesting that these businesses should not be taxed. I'm simply saying that categorizing them and taxing them in the same classification as a much larger resort or hotel, I don't believe there's parity in terms of trying to create a system that's fair.

Ms. Yukimura: Okay.

Mr. Demma: And I also don't believe that the County owes me anything for my own energy inefficiencies. I have to figure how to manage that. I just mentioned that as unfortunately also one of the economic factors that we're all aware of, and also I think Courtyards at Waipouli is a fantastic project. In the short-term I've had to lower my rates by 20%. I've had people call and say, I'm canceling because I can't afford, after I lost my ATA or Aloha ticket, to rebook and I'm literally at a point this year where I am trying to manage basic cash flow and looking into '09, continuing to offer significant discounts just to get people and I'm working harder than ever, hallelujah, that's what business is all about, I'm just trying to figure out how to make ends meet and addressing this simple, single, in my mind, factor which is TVR equals resort, to me is where there's a troubling indicator. Not the rate, nothing else, it's just the fact that we're lumping everything into one category for tax purposes.

Ms. Yukimura: Okay, I got your point. Thank you.

Mr. Kouchi: Shay?

Ms. Iseri-Carvalho: Yes, how many TVRs do you manage?

Mr. Demma: It's one piece of property. It's a little over a quarter of an acre. Home was built in 1980. There's a 2-bedroom home and a 1-bedroom home that occupy the same...

Ms. Iseri-Carvalho: Property.

Mr. Demma: TMK. Right.

Ms. Iseri-Carvalho: In Kapa'a?

Mr. Demma: It's down actually in Waipouli.

Ms. Iseri-Carvalho: Waipouli?

Mr. Demma: Yeah.

Ms. Iseri-Carvalho: All right. Have you had the opportunity to calculate how much the increase in taxes would be?

Mr. Demma: Honestly, no, because when I read this and I started looking at these fundamentals, I wasn't concerned about how the rate would calculate out to my tax liability. I was more focused on this can't happen. So regardless of how it's going to calculate out, I really approached this saying, I believe it's flawed, that if I begin to even say, oh well it's okay, I can absorb that it's only an 8 or a 20 or a 15 or whatever it is. I was more concerned about the fact that once the bar is raised and the principle of that is changed, I will forever potentially be saddled with any other who knows what kind of additional amendments that might be proposed in the future related to additional resort development, I am now along for the ride, like it or not, and that's what scares me more than anything else.

Ms. Iseri-Carvalho: All right. Thank you (audible).

Mr. Kouchi: I wasn't...I wasn't going to say anything. I guess the quandary because, you know, the basic thought though is as we contemplated where TVRs would be permissible or not, the people who advocated that we should have diverse opportunities, as far as visitor accommodation choices, said TVRs should be permitted and to permit TVRs means to give them occupancy rules like a resort. And so it's interesting that we want to have you by use or occupancy treat us like a resort but when it comes time to taxation, then there's no logic for us to be a resort and that's where my conflict arises. But if you look at the law, to be permitted to run a TVR with the interval, the time intervals that you rent out TVRs, they are consistent with time interval rentals that are afforded to resort properties and so that's part of the conflict we're wrestling with as well. We bought into giving you that interval period to rent like a resort and so we thought this was being consistent with the prior testimony of there should be choices and part of the choices should be shorter intervals by which we are able to rent these and they should not all be all lumped in rentals.

Mr. Demma: I completely understand what you're saying and if I may respond to that concept because I don't disagree that the opportunity for an interval creates a different level of business economics. What I also find interesting, though, is the property values that are a couple hundred steps from the ocean, I think we will admit have a different business economic than something that's mauka up in Wailua Homestead where I live for example. My property that's down by the ocean is worth more, far more because it's a couple hundred steps from the ocean than it is because it has been run as an interval TVR. But what I was concerned about when I looked at the and talked to separately Councilmembers privately about why is this being done, everything comes back to use and the use was applied as how we absorb County resources and where my question is is if someone can assert that a small business TVR actually uses on a comparable basis the same kinds of resources that a resort does including that entire list of things that I mentioned, I'm finding that a very imbalanced argument because just based on interval, I am at this point with occupancy rates way down, I'm not making a huge markup to market value from long-term, but my mortgage is a significant six-figure that I gotta figure out how to cover and if I go long-term, I literally am hosed and I will have to sell that property at a huge capital loss and I'm not willing to do that. I'm living here. This is my home. I gotta figure out how to make ends meet whether I'm running a non-profit, doing community fund raising, or managing my business. I'm trying to figure out how do I do that and again, I go back to my biggest concern is raise the bar. It's a new permanent fixed cost infrastructure and while I totally agree with JoAnn and you, you're trying to figure out how to make parity when I understand the differences between timeshare and owner-occupied units in the same complex that have huge and significant difference in values, I look at that and think that's wrong. It shouldn't be that way. And I don't...I'm not suggesting that I want to be treated and have that timeshare owner's opportunity of a lower cost.

Mr. Kouchi: My question wasn't about that. It was just strictly on the TVRs and I got your answer. Thank you.

Mr. Demma: Sure, thank you.

Mr. Kouchi: Barbara?

BARBARA ELMORE: Barbara Elmore. It's really interesting to hear people talk out of the other side of their mouth now. The people that are wanting for a new category or something in-between resorts and residences, that's called special interest legislation. They're asking you to put them in a special class different from everybody else and I thought the idea of the tax bill was to be fair to everybody. So, please don't give them a new special category. The woman who was talking about her vacation rental, according to the notes I took, she's now paying $10 a day in taxes roughly and she might go up to $14 a day in taxes. And we know it's so easy to raise your room rate by $10 a day. None of you asked her the room rate she was charging, which I thought was interesting. It was a vital part of the picture, but nobody seemed to care what income she was getting per day, only about what taxes she might be paying. As far as the other reference to the illegal vacation rentals, it would be nice if the people who are legally operating a business would kind of police the ones that are giving them a bad name, but they don't seem to have any interest in policing them. Before I forget, I hope you have copies of the amendments available today. We haven't seen them yet, so...at least I haven't. There was talk about the survival of the resort industry and I think we need to keep in mind the survival of citizens who respect the zoning laws and the tax laws. They're the ones that are struggling for survival. They have maybe one job, one income to live on and that should be our focus, I think. People need to know that hard times call for changes. When the Great Depression hit, wealthy people were jumping off buildings because they could not stand losing money. Some people who one day were wealthy, the next day were standing in soup lines and that's because hard times came along and we're facing them now. And people need to realize there may come a time when I have to sell some of my property. Maybe I can just own one home. Maybe even John McCain might have to sell one of his eight homes if things get really bad. But people want to continue on as if things were still rosy and it's not that way. It's getting worse. They expect the County to protect their income stream as though it's the job of the County to make sure they can continue on as usual and I don't think that's the job of the County. I do think the County can cut some expenses and I do think even jobs could be cut. We could cut some of these outside consultants. There's such a thing called phone conferences where you can talk to people in Honolulu without having to buy their airfare and their hotel room and their meals and other expenses. Just pay 'em whatever the time it takes to telephone conference with you. There are lots of things that could be cut and it would be setting an example for the citizens that are struggling to see, well maybe the County's having a hard time too, but we don't see any sign of that. We see business as usual with all government offices and all government spending.

Mr. Kouchi: Thank you, Barbara.

Ms. Elmore: With all due respect, some of the people that came back were up here at the table for 20 minutes.

Mr. Kouchi: Everyone has 3 minutes to present their testimony and a second 3 minutes. Councilmembers have the opportunity to ask questions. If there are questions, we will extend. If there are no questions, we will proceed to the next speaker. Those are rules. Any questions? If not, thank you very much.

Ms. Elmore: Never are questions for me, thank you.

Mr. Kouchi: Anyone else wishing to speak a second time? Scott?

Mr. Mijares: Scott Mijares. One quick follow-up to my previous testimony. I didn't get to say it, but I think the...one of the flaws I see is if you have a cottage on your property, you have your home, you live there, and you have a small cottage, and that cottage represents 10% of your under-roof space or your land space or whatever, under this law, if I'm not mistaken, it takes your entire parcel and taxes it at the commercial rate. And that's, you know, something that I see as, you know, an inequity. The same goes for business. If you operate a business out of your garage, and your garage represents 10% of your under-roof space, your entire parcel would then fall into a commercial tax. So the impact is pretty heavy. It's hinged upon the total value of your parcel, not the total value of the area you're using to rent out or operate your business. So, this is the thing that I think, you know, might be a good compromise. Perhaps doing a pro-rated, you know, some sort of pro-rated adjustment so you don't take your entire parcel because otherwise, it really could put small businesses just out. And you know, unfortunately, when I'm sitting here I see...you know, the attitude is like, well we're doing this for you, but really a healthy economy helps you and it helps all of us. We really do need to have a healthy economy and other communities spend lots of money trying to incentivize their small businesses to get up and going because they know the benefits of that, getting more taxes into the system through a vital economy is much more healthy for everybody. That's it.

Mr. Kouchi: JoAnn?

Ms. Yukimura: Part of the healthy economy is a working infrastructural system. That's what government's part is too. So, that's part of our concern. But to your point about a compromise, I think one of the things that we had to think about in the bill was ease of administration and the compromise I think that was said, and maybe Real Property will correct me if I'm wrong, was that the homeowner would still get the $300,000 exemption of a homeowner, but the rates would then go to whatever the higher use was. I think they were thinking of that as a compromise and what you're saying is you think it's not enough of a compromise.

Mr. Mijares: You know, small businesses are the backbone of our economy. If you put more pressure on small businesses and it's unfair if you have only 10% of your property is being used to operate your business, but you want to tax 100% at the higher rate...

Ms. Yukimura: Well, let's say that...let's be clear. Commercial is not allowed in residential except as a home business. Home businesses are those under the Planning permit process that do not generate additional traffic, etc., and I believe I asked Real Property to check, I don't think there is a commercial rate if you have a home business.

Mr. Mijares: Is that...I didn't notice that distinction in the bill, though, yeah.

Ms. Yukimura: So, okay, but that's what you're concerned about. So if home business does not change the homeowner exemption or homeowner status, that's not...you're okay?

Mr. Mijares: That would be great. That doesn't jeopardize home business at all.

Ms. Yukimura: And we will check into that.

Mr. Mijares: Okay.

Ms. Yukimura: Thank you.

Mr. Mijares: Thank you.

Mr. Kouchi: Any other questions? If not, thank you. Anyone else who has not or has spoken one time and would like a second time? Mr. Rosa.

JOE ROSA: For the record, good morning again. For the record, Joe Rosa. I'm just...something came to my mind and it's based on humanitary. I've known of families that had to put up a cottage for their parents because they were...had to move out because the property...big property owner sold the property. Now, they put that cottage up for their parents, as I say as a humanitary thing, not for business, not for commercial or whatever, it was strictly to care for their parents who lost their place. Now, how will you classify that? But I know you're going to say, is it going to add to the sewer, is it going to add to the refuse collection, so how will you classify a property with a humanitarian cottage on that they're taking care of their parents. And I know I wouldn't rent my parents a cottage to stay in. So, that's my question.

Mr. Kouchi: Actually, you just need to show the long-term dedication is at or below the affordable guidelines that are set up and then you would be taxed at the lowest rate like the homestead class.

Mr. Rosa: So...

Mr. Kouchi: If you show that I choose not to charge rent that would be at the affordable guidelines, so it would be taxed like it was an owner-occupant.

Mr. Rosa: So, that's the kind of question I'm pretty sure a lot of people are wondering about too. So, that's why it might sound foolish, but it might be in a person's back of their minds. So, I wanted to know myself and I guess there's a lot of people out there because I look into the underdog people too. So, it's trying to keep your piece of property and not being evicted. Like I've lived on my property now for 42 years. From the start I said I'm going to live and die in this house and I've lived up to it for 42 years and I intend to stay there, the Lord permit, to live another 20 more years if it's at all possible so that I can harass Ron. Thank you.

Mr. Kouchi: No problem, neighbor. Thank you, Mr. Rosa. Anyone else who wants to speak for a second time? Please come forward, Bruce.

Mr. Pleas: Bruce Pleas for the record. I tried to cross reference while I was back there to Draft 1. Draft 1 5A-6.3(c)(1), this is your classification: Residential, (i) primary residence by its owner. Primary residence by its owner, what? Shouldn't that be primary residence occupied by its owner? We need a definition in that. In (3) it's general conservation land zoned with density, that's open-zoned land that's in County, but I also have my opinions on open-zoned land having any density. Let's see. The deletion of homestead in the Article 8, that's for the classifications, I'm against deleting homestead. I think that was a very good system we had going. Also for everybody to know, the circuit breaker bill is gone.

Ms. Yukimura: Where? Where? Excuse me, Bruce. What did you just refer to in terms of homestead.

Mr. Pleas: Okay…

Mr. Furfaro: He's referencing the tax category called homestead. Currently, we have 8 categories…

Ms. Yukimura: Right.

Mr. Furfaro: …which gives us the flexibility to incrementally identify rights. He is not happy with the removal of that category. Is that correct, Bruce?

Mr. Pleas: That's true. I…

Ms. Yukimura: Okay, but the homestead class is actually…it's really residential and…

Mr. Furfaro: No, everyone…JoAnn, everyone who lives in homestead right now has a home exemption. There are people who live in apartment and live in residential that may qualify for, but everyone currently in homestead category has a home exemption.

Ms. Yukimura: And that would continue with (c)(1), okay, Bruce?

Mr. Pleas: That is deleted in (c)(1).

Mr. Kaneshiro: He's reading from the older bill.

Ms. Yukimura: No. It's defined…a homestead class is a primary residence occupied by its owner, right? And that's actually (c)(1)(i).

Mr. Kouchi: Well, Bruce has said that he was reading off of the bill that wasn't Draft 1.

Mr. Kaneshiro: Yes, the older one.

Mr. Furfaro: So, you're reading off the old bill.

Mr. Pleas: I didn't cross reference that one.

Ms. Yukimura: Okay, I just want to clarify that the bill before us includes the homestead class. It's not called that, but it is that class.

Mr. Pleas: Okay, thank you.

Ms. Yukimura: And I see Belma nodding her head. It includes the long-term rental into that class which…the long-term affordable rental into that class, which actually makes the class bigger and gives benefits to landlords who are renting at an affordable rate, okay.

Mr. Pleas: Okay. Draft 1 Section 5A…

3-minute buzzer sounding.

Mr. Kouchi: No, you were interrupted, Bruce, several times (inaudible).

Mr. Pleas: Thank you. Section 5A-11.16.1 that's out of Draft 1, this is renewable energy production. The value of all improvements in the County used by a renewable energy producer to produce renewable energy shall be exempted from real property tax under this chapter. Does this include a home?

Ms. Yukimura: What page is that? I'm sorry. Or what was the section again?

Mr. Pleas: 5A-11.16.1.

Mr. Kouchi: He has different pages, so you just gotta go by the section.

Mr. Pleas: Yeah.

Ms. Yukimura: Okay, that's fine.

Mr. Pleas: That's in the new one. I don't believe it's been changed. But my question in this…in this renewable energy is, is this applicable to a home? Somebody puts photovoltaic up, will this apply to a home? Or is this just a facility, you know, an energy producing facility? Because I feel that if you have taken the time to spend money on your house for capital improvements to put in that that you should be eligible for this and that needs to be defined in there. And this is Draft 1 too, it's section 5A-12.10, this is the appeal…the appeal process, the cost…I believe the cost should be kept at the low end, so that everybody has the chance to appeal and go before the Board. And in closing, we have Draft 1, we have 11 amendments coming up, and I really hope that this Council looks as to whether these amendments will constitute a significant change in what is here. I think there's significant changes and questions that I have here that need to be looked at and I hope you look at them and I really do think again that we need some time to do this because there's just too many questions from too many different people for us to rush into this. Thank you.

Mr. Kouchi: Thank you. Any questions for Bruce? If not, anyone else wishing to speak for a second time? Anybody else who didn't speak who would like to speak now? If not, I'll call the meeting back to order.

There being no one wishing to speak, the meeting was called back to order, and proceeded as follows:

Mr. Kouchi: We'll take a 10-minute caption break and get back here at about quarter to.

There being no objections, the meeting was recessed at 11:34 a.m. The meeting was reconvened at 12:38 p.m., and proceeded as follows:

Mr. Kouchi: I'd like to call the Committee of the Whole back to order to briefly state that we have taken public testimony. We will return after the lunch break at 1:30 p.m. to have the Councilmembers address the issue, but I would also notify the public that it has become clear that there is more work that needs to be done on this particular matter. So the motion that will be entertained after lunch will be a motion to defer this item until we can post amendments that currently are being considered, and based on yesterday's workshop and some of the testimony today, additional items, I'd like to apologize, which I forgot to do at the start. I was absent when the Chair scheduled the workshop and had previous commitments and wasn't able to be there yesterday, but we will then follow the proper sunshine notice and we will have a workshop scheduled where we will notice all of the amendments that are being considered. So if any Councilmember wants their amendment to be considered and discussed in the workshop, you will need to have it ready before we post that notice. So, we anticipate having a workshop some time in October probably because there's some amendments that need to be processed before we get this matter back into the Committee, but I believe that there may be some councilmembers who have some comments that would go well into the lunch hour. So I'm going to recess the Committee of the Whole and we'll be back at 1:30 p.m.

There being no objections, the meeting was recessed at 12:40 p.m. The meeting was reconvened at 1:38 p.m., and proceeded as follows:

Mr. Kouchi: The Committee of the Whole is called back to order. Before opening it up, I did want to say that I've gotten some interesting emails, you know, and that's certainly one of the ways in which our constituents communicate with us and, you know, which is all fine but, you know, as we've discussed on other items that have been contentious in front of the Council, it's interesting how some people who'd like to get your support choose to phrase their position and one of the nastier emails that I've recently received was from Arnold Nurock and, you know, asserting that this was being rushed and this was in a cloak of secrecy and you know there's certainly been some other emails intimating some of those things and I just wanted to say before we ultimately get to deferring this matter that, you know, as we convened through the Committee of the Whole this Task Force Committee over 18 months ago and this started hitting onto the agenda in March or April of this year. And with the workshop that the Chairman convened yesterday, that was at least the fourth time that we've gone item by item through this matter. And so I certainly as the Committee Chair take offense to the accusation that I was trying to rush something through, one, and two, that this was something cloaked in secrecy so that we could prevail, essentially, a plague upon the people of Kaua'i and that couldn't be further from the truth and, you know, as it appears in listening to the concerns of my colleagues, you know it appears today isn't the day to do it, but, you know, to receive those kind of emails that make such wild accusations, you know, it takes all of our strength to remember that we're here to do the people's business and, you know, just because certain individuals choose to express themselves in ways that are very antagonistic, you know, you need to rise above it and you need to just look at the information that we have and make good decisions based on reason and fact and try to put some of the personalities on the side. But at the end of the day, each and every one of us are just still people. And you know, we'd like to, you know, be treated with the same civility that others would like to be treated with and it is disappointing and frustrating at times when that doesn't occur. But again, I'll be entertaining a motion to defer, but if any of the Councilmembers would like to say something before that motion is entertained, I'll open the floor up to discussion at this point. Tim.

Mr. Bynum: I just want to start by concurring with Councilmember Kouchi. For me, this whole tax discussion happened for over several years. There was a Tax Task Force that worked for over a year with public meetings, brought their proposals to the Council before I was on it, and it wasn't really given any serious consideration. There's nothing more fundamental that government does than take our money and it has to be done fairly and equitably across the board, and Mayor Baptiste convened this Committee and made a commitment to look at our total tax code and to try to do it with fairness and equity and I think that work happened over an 18-month period. Any Councilmember here had an opportunity to attend those meetings, to give input, to express their concerns and their ideas. Members of the community were involved in that. There was plenty of time as Councilmember Kouchi says it came here in March. We've had at least two public hearings, a workshop. We had discussion today with amendments. I have two amendments. I think that's typically what happens with bills here. People put forward the main proposal and I was prepared to vote today. I think that this needs to go into effect for next year. I know these are uncertain economic times and what better time to give a tax break to the homeowners on this island. And so I think what's undisputed is that the vast majority of middle class homeowners on Kaua'i would get a break from this bill whether they kept the 2% cap or not. You know, people buy properties and change happens. The 2% cap did give assurances to...does give assurances to people who stay put. But people might change. Young people come into the housing market. People move from 2-bedroom houses to larger houses. When they get older, they move from their large house into smaller houses and the way we are right now, every time that happens you lose the cap. And you can see that that difference between the same property in a middle class neighborhood here with the cap and without can be over a thousand dollars. So...and those people in essence are being penalized. There was that inequity. And this proposal would have removed the cap and it would have given the vast majority of homeowners a break still. We have an inequity that's been on the books for a long time in the timeshare industry where timeshares have their valuations fixed for up to 15 years and a condominium use with the same use right next door pays a different tax. That's not fair and this bill would have much...pays a much higher tax than that. This bill would have dealt with those issues. There's been lots of rhetoric about this bill over the last few months based on what I think is fear and trying to scare people that they're going to lose something, but most of that didn't tell them what they were going to gain. And so I...I've had the opportunity to speak with this...about this bill with hundreds of homeowners and people on Kaua'i. The resort industry had concerns and we had amendments to address their concerns and they were basically supportive. There would be a modest increase to the resort class, but they'd still have the lowest tax rate in the State of Hawai'i. There was a lot of concern about if they got this modest increase it would impact jobs, but we all know that what's impacting the job market here is much bigger forces than a modest tax increase. So, I'm very disappointed that we're not moving forward with this. I also heard a lot—this is my first term on Council—about well, you don't take on big issues in an election year. Well the way we're structured that means we don't take on big issues every other year. Maybe that's why we're so far behind on dealing with the big issues, in my opinion. So, I was ready to vote today. I'm not supportive of deferring. I'm supportive of us making the tough decisions as a lot of the other rhetoric says in this election year and I was prepared to make a decision today that I thought was the right thing and so.

Mr. Kouchi: Thank you. Before recognizing anybody else, I would say in fairness to, at the time Chair Asing that the Task Force proposal was actually taken very seriously and I can't speak about the other Councilmembers who served in the last term, but it was because of about a 20- or 30-minute presentation that Council Chair Asing had presented about why he did not think the Task Force Bill was good that we arrived at the compromise of shelving that bill, trying to work with the Department and instead of focusing on what was not working, how we could hopefully try to get to where things were working, but I just wanted to share with you, Tim, and maybe I didn't do a good job of that when we started down this path that it was really after a long discussion with Chair Asing that he decided not to make that presentation, that he'd support us going down the path of working with the Real Property Tax Department, the Finance Department, but you know, because of some extensive research that he had done on the Task

Force proposal and concerns that he had, so I certainly want to acknowledge that Chair Asing, you know, did take it seriously, put in a lot of work, but was trying to find a way to get something that he hoped would be positive for the people of Kaua'i. Do we need to break now because of that? We've lost the captioner, so we'll take a short recess.

There being no objections, the meeting was recessed at 1:47 p.m. The meeting was reconvened at 1:48 p.m., and proceeded as follows:

Mr. Kouchi: All right the meeting is called back to order. Further discussion on this matter? Ms. Yukimura.

Ms. Yukimura: Thank you. I want to say that the Task Force, the Real Property Tax Task Force was actually initiated by the County Council. I came back into politics in 2002 election and as you all know, assessments or assessed values were just skyrocketing and the Council in its efforts to address this did some quick short-term relief which over the two years, I think 2003 and 2004, included instituting the 2% cap without the 10-year dedication and a few...and the long-term rental larger cap and that kind of thing, but the whole intention was for a comprehensive tax package and that was to come through the task force. So this thing has been at work for a long time. And then the Task Force proposal, I think, it seemed like it sat with the Council for about a year and I'm sorry that there was so much delay then. And then the decision was made to receive it and to send it back to the drawing board and the product that we're looking at right now came from that internal County group that worked on it. And I do believe, as Councilmember Bynum has stated, that the package in general is a very good one and that it is tax relief in most cases with a slight increase for the resorts, still keeping it lower than the other resorts in other jurisdictions or other counties. So, it is a good bill. I would not pass it without the circuit breaker, which I think is a really important protection if we remove the cap because that would limit taxes to 3% of people's adjusted gross income and so it makes it...it ties it to income and for those who are on very limited income, they will have that protection. And for those who aren't on those limited incomes, it would still, with the $300,000 exemption for owner-occupants and with the 3 to 1 ratio, would balance things out and keep taxes under control but make sure that there's some equity within all...amongst all of the taxpayers in this County. And people feel that taxes are an imposition, but it really is about what enables the County to give all of the services that it provides from roads to police and fire and solid waste, all of these functions that are so essential not only to the well-working of the County, but to businesses and visitors. This is what keeps this island moving and we have to pay attention to those needs or we'll all self-destruct if we let our roads just deteriorate or our aging infrastructure not be replaced on a timely basis, those bills get bigger than ever and the services cannot be provided. So, we all have to do our share and we're trying to make the share reasonable and fair. And I believe this bill does approach that with a few amendments that we have to make. So, I'm sorry that we're deferring it too in one respect, but I hope that we'll still be able to continue working on it and that we'll be able to find a bill that we can support and pass and which will give fair, reasonable property taxes as well as revenues to this County so we can serve the people of this County.

Mr. Kouchi: Thank you. The intention is to keep working on it. As I said, we'll be scheduling a workshop after we feel we've had some adequate time for people to take some of the testimony of yesterday and today in case there are other amendments, and for those that have been submitted we'll have them available to the public. Further discussion? Ms. Iseri-Carvalho.

Ms. Iseri-Carvalho: Yes. I guess, I would start off by indicating that the words of the former colleagues who have made statements indicate that this was the workings of an internal County group. That in itself breeds, I believe, a cloak of secrecy. I was not aware of any of these meetings that had been happening except for the first time, I believe, in April or so that the tax group came over and set up an appointment. I actually went and actually raised my concerns with the committee, with Eric Knutzen, I believe Belma may have been here, Kim was here. I also went to the Chair because I was upset that we had not known about all of these meetings and I was told because of the Sunshine Law, Councilmember Yukimura and I believe Furfaro and Bynum was already attending that we could not be attending those meetings. And for that point, we waited until it became an open process. So, it is an elitist group and it's this very same elitist group that are forcing this, I believe, bill down our throats because we did not have the opportunity as they did in attending these meetings because of the Sunshine Law and the whole purpose of having the Sunshine Law is to have openness and the opportunity for members of the public to participate, not the elitist group to participate and make decisions on their own without also having the public make those kinds of comments. I can tell you there's been a lot of misinformation as far as taxes and Councilmember Bynum brings up fear, fear of a lot of statistics that we have seen. The time that the bill was being proposed about a year ago or so, the financial circumstances were a lot different than what we have today. We read about the Lehman takeover on Monday. Today we have a $35 billion takeover of AIG. It's constantly, business closures even on this island is happening on a weekly basis. It's just shocking to me how now all of a sudden because I want this bill, let's not have public input. I'm ready and prepared to vote because I was part of that elitist group. I recall, I would say, that back when I was doing the affordable housing policy, the very two councilmembers, Councilmember Yukimura and Bynum made a lot of noise when we actually had 17 meetings, public meetings, where the public always had an opportunity to comment on each portion of the bill. We had consultants that were here that everyone...we had...everyone could participate in, not an elitist group. And I really am so against this whole process where it does appear to the public that it is being shoved down their throat. If it's a good thing, then why rush it? I mean, why shouldn't people understand that it's a good thing? Why was not a single person who came up here, whether they were from the resort industry, whether they were from the Administration, whether they came from homeowners, whether they came from the main...any of the stakeholders that are involved, even the Hawaiian group, not a single person said they were ready and prepared to go forward with this bill and they were concerned of its passage, you know, after, I believe, four times that the public had an opportunity to comment. It's very disturbing to me.

I also received emails. There was this Mr. Hilke where it was stated here about, you know, talk about misinformation and inaccuracies, Councilmember Bynum tells on the floor that 26% is all that his taxes are going up. He says that's fine, okay, I understand that, walks away and then he goes back and checks and it's actually not 26%, it's at 163% increase. And did anybody, did Mr. Bynum come here and clarify to the public, I'm sorry I made a mistake. So all of these timeshare owners think that they're only going to get this 26% and now this person who actually came forward and said, hey, you know I'm reading in the paper I'm actually getting this much, can you tell me which is (inaudible)? And there's a response by Mr. Bynum saying, well, yeah, I was wrong, I guess I made a mistake, but it was only because people have given me misinformation. Well that's the whole point. There's misinformation going all around and why shouldn't it be the public to ask and get the opportunity to comment and find out on my taxes is it for real that I'm going to have this increase? Is it for real that it's going to have this much impact on my life?

It is, I believe, totally erroneous to say that the visitor industry is supportive of this bill at this point because that is not what their testimony says and in fact, after talking to many of them, that is not an accurate statement. They have not even had the ability to even put it in their budget. We had the Pono Kai owner here or the general manager saying, you guys are shoving this on, I hadn't even had time to assess how I'm going to put this in the budget. We had Mr. Costa here, who is a homeowner and he says, yeah, maybe I'll benefit as a homeowner, but you know, I also, as a general manager of a hotel that I got to take care of hundreds of employees.

Now with all the closures that are happening across the island, I need to realize what this impact is going to be. And so, you know, it's not so much can we pay for all of these things and let's impose all of these burdens on all these various groups. It's like government has to exercise physical integrity and responsibility. We need to tighten up our belts. We cannot, during the budget, consistently every time somebody asks for money, continue to approve it. I can say that I voted down a lot of things. If you don't come here with justification, I won't support it and that's happened time and time again. So, you know, it's unfortunate that there are these huge costs. We talked about the Police Department Building that has suffered for five years, that has not gotten the attention that it deserves, that had compromised, in my opinion, public safety despite the fact that the Administration knew about all of these issues and nothing was done. Now is that an essential project that should get funded? I believe so. But when you're talking about new positions, civil service positions that we're going to have to carry on for many, many years, I have some concerns. We had that raised at our last meeting when they were trying to take certain positions that are necessary and essential and trying to reallocate them, did not get the best qualified applicants. That's a concern of mine. So there's many concerns and in fact we even spoke with the Tax Administrator, John Herring, who mentioned that he is in no rush to pass this bill. He's the person that's going to be implementing this bill. He's saying based on the amendments that have been proposed, they substantially and materially alter the entire purpose of the bill. And in fact when we had their discussions with the Tax Committee, what was given to me was that they needed the bill to be passed in its entirety and not with any amendments and then we come up with 11 amendments and not a single tax person from the Administration has come here on the floor to explain to the people how we're going to make up all these differences with all these different cuts and pastes in the bill, not a single person from the Administration. Nobody knows what's going to happen. Nobody knows what's the impact.

I understand that there are some unknowns, but really when you're adding in all of these things about permanent home use and circuit breakers and new classification and construction exemptions and adding in floors of how much we can charge and assess, it begins to become very, very complicated and I believe, you know, as one person who was here, the Council Chair stated, it's a..."this whole bill is so complicated as a puzzle" and yet we have people who are here that understand it so thoroughly that they can vote on it today. It's ludicrous. I think we are not doing a benefit to the community by not having their input despite the fact that they were part of this elitist group that did not have other participants, did not have the public. How many times did the public have an opportunity to comment during the whole time that it was worked upon? And if this bill was worked upon for the past two years, then why wasn't the public aware of all the numerous changes? Why did the persons that were on the last committee, Mr. Nurock as well as Mr. Dyer, why are they coming up and testifying about the different flaws in the bill? Everyone has concerns. I don't care if you're an expert in the tax law, I mean the tax provisions or not, it's a very complex bill and just because I'm not smart enough to understand the 117 pages today doesn't...if I can understand it, it's amazing if there's so many people out there that can't.

For me, I think the one concern...major concern I have is that we impose a burden on the people who are hiring our local peoples who are not even homeowners. They're going to be impacted. There's loss of jobs. Goodfellow just laid off 100+ workers. It's happening all over the island. You know we have people that I know that work in...as a custodian, that work as a housekeeper, that work as a valet and they depend on that income. Now, if we impose so much of a burden on the visitor industry that they have to cut these kinds of positions, yeah we've given you, homeowner, a measly $300 or I don't know maybe let's even give you $1200, let's even give $100 a month. How much is that worth? Would you rather have $100 a month, you as a homeowner and a family member in your household loses a $20,000, $30,000, $40,000 job? It's ludicrous to think that we are ready to pass something of these kinds of ramifications when it will be directly impacting the quality of life of our residents. We're not fully understanding the financial impacts and so, I'm thankful, Committee Chair, for the opportunity to evaluate the bill. I'm thankful that you have recognized that all of the community members should have as much time as they need in order to assess the impacts of the bill and they can make an informed decision. Thank you.

Mr. Kouchi: Thank you. Further discussion?

Mr. Rapozo: I'll just add a little bit. Thank you, Mr. Chair, for deferring this bill. I think much has been said. I just have a lot of questions. That's plain and simple. I have a lot of questions that have gone unanswered. I think Shay touched on the economic conditions today are not the same. I mean it goes without saying. This bill has had a first reading, a public hearing, a Committee meeting, a workshop and then another Committee meeting, and I'm glad we're going to have another workshop because a workshop is really a workshop. It's an opportunity to have the Administration here. It's an opportunity to have an economist here. It's an opportunity to have the Tax Administrator here. So we can ask the specific questions and the information we received yesterday at the workshop was quite valuable, but not enough for me to make a determination one way or the other regarding this tax bill. I tell you what was disturbing was when I did meet with Mr. Herring yesterday and specifically asked him about the amendments and he had just received a copy of it as well. He had some serious concerns. He had no concern about waiting another year to implement the tax code. This is a major, major undertaking by this County. This is not a simple bill to put up a stop sign or a bus stop. This is a bill that will have lasting effects on many, many residents of this island and to pass it out in such a short period of time and we have seven councilmembers and if four of them understand it to the point they think it's a benefit to the people then it passes. That's how this system works. If four doesn't, then it doesn't pass and that's where we're at today. I think for the councilmembers that have participated in the process, then maybe they're more informed and then perfect, you know, vote. But for those of us that haven't been part of the process and I can tell you that I first found out about the committee...the Tax Committee when I was trying to introduce the Veterans Bill the last time...last year. And when Councilmember Yukimura came up and asked me to hold off because the Tax Committee was meeting and I wasn't aware of that and...simply wasn't aware. So, I did not know that there was quite an effort moving forward. And I know, I can see Councilmember Bynum and Yukimura smirking, but I didn't know. If I knew I can tell you I would have been there with the Veterans Tax Bill. It's...I just wasn't...I didn't know and so, as I look at the amendments today and picture this, when the existing bill we have today provides a cap, the proposed bill removes the cap, the amendments put it back. The current bill has a circuit breaker, the proposed bill takes it away, the amendment puts it back. We are back to where we started. Wouldn't it make more sense to amend the areas of the existing bill to benefit the target residents. I heard people come up in this meeting and say...the farmers came up and said I support with the amendments that benefit the farmers, and the next group, I support with the amendments that benefit the resort, and the residents will say I support as long as it benefits me. And we keep tossing out amendments; we just keep tossing out amendments. Okay, you know what? Sorry, group A, I understand your concern, we'll just draft an amendment to satisfy your needs. You, you need one too? We'll put one in too even if it goes back to the existing bill. That makes no sense. That's not what legislation is about. Legislation is making the best legislation with the information that we have. What did we hear? What did we hear yesterday? We heard historical information. We heard...well, I mean you don't need a scientist or any kind of expert to tell you that we're headed for some rough times economically, financially. Wouldn't it make sense to simply have that information before we partake on a journey that's going to affect the finances of this County? The IAL, Important Ag Lands studies in the process being done, that is going to have a major, play a major role in what kind of lands we have on this island, major role. It may change the way this island is...the lands are classified. It will. That'll play a major role in how we classify properties and we tax those properties. So why would we try to change the entire system today knowing that in a very short period of time and when I say short period in government, you know five years is a relatively short period of time because that's how long it takes to do the short things. Why would we think about tinkering with this now knowing very well and I've heard it several times, eh, if we mess up we can fix it, we can change it. No, let's get it done the right way the first time. This County will not go broke if we wait another year and I know Councilmember Yukimura talks about the infrastructural needs of this island and that's been here forever. We've never addressed that, but we have to...I asked a question real simply a couple of meetings ago, Mr. Kouchi, I don't think you were here. I asked the Finance Director what was the anticipated revenue from construction jobs going forward based on the permits that have been pulled out, but we didn't do that assessment. So we cannot sit here and tell the public we need your money and not tell you how much money we expect to get from new construction projects. You got some major projects coming up that are being built right now that's going to generate revenue that's not part of this bill, that's going to come and it ends up as a surplus. That's how we generate the surplus. Whether you call it a reserve, a surplus, what have you, the bottom line is we have not even...I haven't, anyway, received that information. What are we anticipating in the form of new revenue from construction projects not yet on the books? How can you come here and say that we need to do this for...for...to increase our funds when we don't even know what our situation is right now. How many of those projects will fall apart? Shay talked about the Goodfellow Brothers from 140 employees on September 11 of last year to 8 or 7 today. And that's a major red flag indicator and from what we heard yesterday from our expert, oh no, construction jobs are on the rise. Well, maybe in Honolulu, maybe in somewhere else, but not here. And if you guys don't know, just go take a ride. Drive around, talk story with the people that are in the trenches. They'll tell you. They'll tell you. They don't have to come here and testify. If we only listen to the people that come here and testify, wouldn't that be easy? I mean it would be devastating when we do the action. I'm just asking for some time to digest the information that we have yet to receive. We have not got...for me anyway, for my satisfaction. I just want to say, Mr. Chair, I appreciate...I know that you were anxious as well to provide the relief that some people desperately need. But there's some...and let me just say when you talk about fair and equitable, my property tax at my Wailua Houselots property will go to $54.80. Is that fair and equitable for me to pay $54.80 in one year? I don't think so. That's not fair. My trash pick up for one day cost more than that. So, you know, it's a complex system and not everybody's going to get the benefit but I think we need to know some hard information, some straight-line information on the economy, our anticipated revenues as well as our anticipated diminishing revenues from TAT. That was another answer the Finance Director couldn't answer. What is our antici...expected...what do we expect to lose in TAT based on the current trends of the hotel industry, the reduced flights, airline seats? That's going to come with a cost in TAT. What is that number? We don't know. We don't know that, we don't know how much construction will generate, but we ready to go and tinker with this real property tax. I think it's premature and I really think it's irresponsible, so. I appreciate the delay and I think we should take as much time as we need to so that it's a clear picture and not an opportunity for us to send this out as a trial basis and then fix it when it comes back broken. Thank you.

Mr. Kouchi: Thank you. Mr. Furfaro.

Mr. Furfaro: Yes, first of all, Mr. Kouchi, I want to thank you for chairing this Committee on probably one of the most important issues in our County and I want to share that there are many parts of this bill that I do support. I want to say that there are parts here that and excuse me, Councilwoman Iseri, but you know along the lines of elitist, I don't necessarily think of myself in that frame, but I am a very good analytical person when it comes to understanding process, forecasting, and it was difficult. I know many times I called and asked if I could participate and I wasn't the Chairman of the Council then, but I ended up making an appointment because I had guest come over to talk about the Kuleana Bill. And it is very difficult to work through that with only two people at a time, so I'm very glad we're going to be talking in terms of a workshop. You know my disappointment comes from the standpoint that, you know, Mr. Rapozo just brought up this surplus issue and I've said time and time again, you know that term is very difficult in the County. It is not a surplus in the sense that it's extra money. If this was a corporation, if this was an equity partnership, that's exactly what it would be. It would be ownership equity that we had left over. When we hear $17 million surplus but if I ask right now of the Finance Department how much of that surplus is directed from a surplus created by taxes. You'll be surprised that that number is only $1.4 million of the total. That's the only surplus and if you don't believe me, just read the last financial agreement that was given to us. That is the margin that we have in a down market and in a business environment that we don't have an understanding of CIP, energy investment, transportation. We tried to put the capital plan on the table yesterday. We know it's yet to be upgraded. So, you know, we're not able to make those kinds of decisions until we possibly have, you know, all of those moving parts, and I do want to compliment the people that worked on the Task Force. I really like a lot of the pieces that are going along in terms of the open space, ag lands, energy, and so forth, but we are making some major changes that possibly we need to make sure that people understand the reason behind the changes first. And I have one of my past presentations here and I just want to point out that in this narrative, you know, I've always said that I thought the Tax Task Force proposal was for the tax year 2009-2010. I've said that many times as the Finance Chairman. I also want to say that there are some things that we really discovered here and I don't want to necessarily use the term "opportunity" as it might be offensive to some of our resort people, but the repeal of the Transit Bill for timeshare is money that provides us an opportunity to decide how much we can reinvest in the strategic thinking of this County to preserve open space, to cultivate activities for farming, for ranching and so forth. And that should, in fact, be the first step. I have a slide I was going to ask to present, but I'll leave that for this particular time. But we need to look at the current position that we're in and very much say what is the future looking like for us. Quite frankly, the 2% cap cannot survive. It's not sustainable, but I've done a chart to say is the cost of living index feasible and we had dialogue with the farming community and yeah, this buys us a little bit more time at 4.8%, but it is not sustainable long-term. And that's why when we come out of this particular piece, we need to have a bill that recognizes quite frankly the economic tailspin we're in, the fact that we get $82 million from State and federal government year-to-year in grants and so forth that help operate this County which may not be there. We could in fact...I mean everybody was convinced the interest rates were going to drop first thing this morning. In fact, the federal government has decided to go nowhere because they've loaned billions. So, you know, we could be in for some very difficult times. I have some amendments in there as well, like putting a cap at the consumer price index, but not going below 2%. I have total confidence that Mr. Kaneshiro's approach to the agricultural piece is very appropriate. So, there's a lot of nice pieces there, but we are finding ourselves in the wrong statement. This is not about giving a tax break right now. This is about navigating the County through what will be some very, very difficult economic times and if there is relief, addition to what we've got at the cap, that is appropriate, but let's give ourselves the time to analyze this thing correctly. Let's realize that when we say surplus, $6 million of it is coming from the fact that we have income from other areas like the Transient Accommodation Tax and so forth that is shrinking. We had experts tell us that yesterday. Let's make sure that we also understand that some of the fees that we do project going forward, we're going to have to be more conservative on. Let's understand what our capital plan looks like and strategically has it been signed off by the Planning Department up to the Administration in front of this Council on some pretty serious items. But in the meantime, staying where we're at and looking at some of these opportunities to make corrections, make corrections is very feasible for me to be looking at this as a bill that's completed by next year. And I have enormous confidence that under Mr. Kouchi's leadership we will get there. Thank you, Mr. Kouchi.

Mr. Kouchi: Thank you. Mr. Kaneshiro.

Mr. Kaneshiro: Thank you, Chair of this Committee. When you go second to last, you keep checking off all what you were trying to say, so it puts me in a rather uncomfortable predicament. But as we were going down the list, I wanted to touch on very little of some of the amendments that were brought forth. There's amendments that we talked about on the appeal process and with those amendments there were also some comments made by some speakers on what we call and talked about the appeal process. So, we need to look at things like that. It'll give us some time to look at how can we better the process and that was one concern that was brought up by Mr. Dyer today. So, these are ongoing things that I think we need to address. The other, permanent home use, I would say also came up as a, again, like Mel said, you know we take out, we put it back in, we take out, we put it back in, but if you read it correctly, it does have a flooring of what we call a 2% flooring. It's floored at 2%. What really happens, you know, in reality if assessment values drop? If assessment values drop, you're not going to drop more than the 2% that we capped you at because that's what it's saying right here. It could drop to 12% as we have seen with the August figures that were presented to us by the indicators yesterday where single-family housing crisis dropped 12.1% just for August. So, in reality, you know, is there a big benefit to you if we look at how the cap and so forth comes into play? We need to address all of that. We need to look at it carefully because it's still a moving market according to how, you know, the economy plays and how sales go on this island.

You know, there's other issues as we move on and look at some of the other amendments that were brought in. The circuit breaker credit, have we done an analysis by the Administration to show what this would do to other tax areas?

Perhaps this may also cause, you know, increase in other areas. So, we need to do some analysis on that as we move along with amendments that are coming in.

Amendments about renewable energy production facility, currently there's no tax for it. I mean now we're saying that we may be...we have to tax some of that.

So, we need to take these and look at it and come out with figures, so...and when you look at the construction exemption, you know I believe in that. I believe if a hotel is down, they need to do some revitalization, we need to give them some construction exemption as was said yesterday by the economic indicators and others who spoke, in fact, Mr. Towill, I believe, spoke about how it really benefited Waikīkī. We need to look at the impacts if these are passed. If these amendments are passed, then how is it going to impact the other tax categories? And if we got to move on it today, I don't think we have an answer to that. And I appreciate the Chair of this Committee giving us some time to find some answers to some of those variables that are out there and, you know, many of these, again, floor amendments are good but in some way if you do good for one side, there's going to be some effect on the other side. So, we need to weigh all those issues out as best as we can and by getting the correct information from the Administration, we'll be able to come up, I think, with a very good bill and what I'm looking for is a bill that is passed by this Council that whoever's in Council whatever it is, don't have to see this bill for a long time and try to make some amendments on this bill again. Because as you can see just to amend this bill or just to put an amendment to the bill, even on the amendment that Mr. Furfaro and I did on the 2% cap, it took us quite some time to do it. And in the same time, by the time we passed it, the assessed values probably skyrocketed up maybe 30% or more when we started at 15%. So, you know, we realize that and we want to look at all those factors and we want to give the people of Kaua'i a bill that we can work with for a long time and be satisfied with in all areas, so. With that, thank you, Mr. Chair.

Mr. Kouchi: Thank you. Well, Daryl, when you go last, then all the checks are there, so can we have a motion to defer this bill pending a workshop being scheduled? After the workshop is held, then we'll have it back in Committee.

Upon motion duly made by Councilmember Rapozo, seconded by Councilmember Iseri-Carvalho, and carried by a vote of 6:1 (Councilmember Bynum voting no), Bill No. 2274, Draft 1 was deferred pending a workshop.

There being no objections, the meeting was recessed at 2:25 p.m. The meeting was called back to order by Vice Chair Furfaro at 3:23 p.m., at which time Committee Chair Ronald Kouchi was noted excused. The Committee then proceeded as follows:

CR-W 2008-24: on W 2008-8 Communication (9/11/2008) from Councilmember Shaylene Iseri-Carvalho, requesting that the Administrative Assistant be present to provide an update on the hiring of the federal lobbyist position.
[Received for the record.]

CR-W 2008-25: on W 2008-6 Communication (8/28/2008) from Councilmember Shaylene Iseri-Carvalho, requesting that the Director of Personnel Services provide an update on the hiring of the new positions established in the FY 2008-2009 Operating Budget.
[Received for the record.]

There being no objections, the meeting was recessed at 4:40 p.m. The meeting was called back to order by Vice Chair Furfaro at 5:39 p.m., and proceeded as follows:

CR-W 2008-26: on C 2008-263 Communication (08/11/2008) from the Director of Finance, requesting Council approval to dispose of various Purchasing Division Records which have been deemed to be water damaged and/or in various stages of deterioration due to mold and mildew as follows:

A) Contract Files: Dispose records dated prior to 4/19/1996.
B) Public Auction Files: Dispose records dated prior to 9/29/2006.
C) Bid Work Folders: Dispose records dated prior to 5/9/2002.
D) Informal Bid Files: Dispose records dated prior to 4/19/2007.
E) Purchase Orders: Dispose records dated prior to 4/7/2006 (which electronic copies are on file in their office).

[Approved.]

ES-352 Pursuant to Haw. Rev. Stat. §§92-4 and 92-5(a)(4), (6) and (8), and Kaua'i County Charter Section 3.07(E), the purpose of this executive session is for the Council to consult with legal counsel regarding claims and/or potential claims and all other claims and/or potential claims relating to permitting, construction, repair, removal, and/or maintenance of the seawall fronting the Pono Kai Resort in Kapa'a and related claims and/or potential claims arising therefrom. The briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

[Received for the record.]

Vice Chair Furfaro: Thank you. Anyone from the audience?

There being no objections, the rules were suspended.

GLENN MICKENS: For the record Glenn Mickens. Thanks, Jay. I'm not really beating on a dead horse, honest. I'm not beating on a dead horse, Mel. If you'll listen closely to what I'm saying, I think you'll possibly agree. I'd like to offer three comments today on the executive session request. I wish to congratulate you, Jay, on your statement that next week you expect to be able to consider the matter of making public County Attorney opinions on matters of general applicability. I believe that having such a requirement will enable citizens to much better understand the basis for many County determinations.

Second, I can understand why Councilmembers may be concerned about my citations that may indicate the Council is not conforming to legal requirements applicable to Council executive sessions. I've made it clear on a number of occasions that I do not intend to accuse the Council of wrongdoing. Rather I have presented legal provisions that seem to govern and have repeatedly asked the Council for its explanations why such provisions are not applicable. When I have been given any response at all it is that we have a reason, but we won't tell you. That is not a responsible position.

Third, at the last meeting, following my testimony, the Council Chair read at length from a recent opinion issued by the Office of Information Practices (OIP). As one member noted, that office is the agency appointed to resolve complaints about violations of the Sunshine Law. The opinion indicated that the Council action as to the matter involved complied with Section 92-5 of the Sunshine Law, but the opinion did not say that the Council was in compliance with Charter Section 3.07E, which OIP considers a companion to 92-5. As Chair Furfaro alluded to in footnote 1 and you guys were reading this OIP opinion, and Jay, you alluded to this, but I don't think you other members were alluding to footnote 1 in here because I think it has explanatory notes in it that you didn't read. It did not...let's see, where was I? Oh, footnote 1 of the OIP opinion of September 5, 2008, it said that "Section 92-71 H.R.S. allows the County to provide more stringent meeting standards without being in conflict with the Sunshine Law. Any more stringent County provisions, however, would be in addition to the requirements the Council must comply with under Sunshine Law." In other words, as Jay said, there does not need to be more interpretation but there does need to be more interpretation of the ambiguous language given before finality can be reached in this issue. I fully believe that. As the OIP explained in an opinion dated in January, the OIP considers itself without the authority to opine as to whether a conflict exists between a County Charter provision and the Sunshine Law. It's interesting that when the OIP rules on something favorable to the Council practices, the opinion is promenaded for all to see, but when the OIP rules against the Council as it did in the case of ES-177, JoAnn, the OIP is no longer treated as the agency to resolve the questions about violations of the Sunshine Law and the County sues OIP, Tim. That is trying to have it both ways.

Today's executive session was deferred previously and as Jay pointed out, it's deferred today and its qualification under 3.07E remains unclear and as no claim appears to have been asserted, the justification for considering the subject in an executive session remains unexplained. And I think, Mel, you and Shay both refused to go into executive session because of this. I know that the County Engineer sat here giving his rationale for it and I think you guys both were kind of blocking it, going into the thing. So, it hasn't been resolved yet. Anyway, I think, Jay, in your wisdom, I think you're going to be able to get some kind of finality to this thing at the end of the week by the next session anyway. But I appreciate, you know, you bringing this thing up, but I again, under that footnote 1, which is the thing that I think was confusing to you and is still confusing to me, there's things that OIP has said in their January thing that now say here that...that seems conflicting to me. I don't really understand it. They don't...I can understand they won't get into the local Charter, which I understand that. But when 92-71 is the Sunshine Law, part 5 I believe it is, then the...that goes down to 3.07E. So, I don't know how they can divorce one from the other. I'm not sure how that is.

Vice Chair Furfaro: So you went to the same law school as I did.

Mr. Mickens: Yeah, exactly, not Shay's law school or JoAnn's, okay. So, you're right.

Vice Chair Furfaro: You went to the school of baseball, you know, I went to the school of business and it's very important that, you know...You keep box scores in baseball too, don't you?

Mr. Mickens: Yes, yes.

Vice Chair Furfaro: So, so far, I'm batting one for one. (inaudible) opinion that's out that I share, that's not a matter of picking and choosing.

Mr. Mickens: Shay got back to one, no, three for three.

Vice Chair Furfaro: Okay and then also we have...we're going to have some discussion on the future agenda here coming up about a Council policy, so.

Mr. Mickens: Okay, good.

Vice Chair Furfaro: We're going to start that discussion.

Mr. Mickens: Okay, thank you.

Vice Chair Furfaro: Anybody else in the audience? Come right up.

ROLF BIEBER: More of the same from the Furfaro-Mickens school of law. Rolf Bieber for the record. I'm just going to read...This is from the testimony, page number two. It got to you earlier. Reference the ES-352 that has been deferred. Glenn Mickens requested an investigation by OIP into whether the Kaua'i County Council violated...

Vice Chair Furfaro: Excuse me.

Mr. Bieber: Yes.

Vice Chair Furfaro: First of all, I want to make...the item earlier today on the seawall itself was deferred. This item is being received. You just said it was being deferred. I think that's what I heard you say.

Mr. Rapozo: The executive session item is off.

Mr. Kaneshiro: Received.

Vice Chair Furfaro: It's off the agenda...

Mr. Bieber: It's off the agenda.

Vice Chair Furfaro: ...by receipt. By receiving it, it's off the agenda.

Mr. Bieber: My apology.

Vice Chair Furfaro: When the deferral...on the agenda item for Councilwoman Iseri and Mr. Rapozo on Pono Kai, that has been deferred, but the discussion on this item that references that is being received.

Mr. Bieber: Received. My apology. I misspoke. The Council...lost my place here. Glenn Mickens requested an investigation by OIP into whether the Council violated the Sunshine Law by meeting in executive session on agenda items July 30, 2008. The same attached footnote that he read to you earlier, Section 92-71 H.R.S. allows the County to provide more stringent meeting standards without being in conflict with the Sunshine Law. Any more stringent County provisions, however, would be in addition to the requirements the County must comply with under the Sunshine Law. What this means is that the Office of Information Practices recognizes two things: (1) that OIP has jurisdiction to make opinion concerning Hawai'i State Sunshine Law but does not as to make opinion concerning Kaua'i County Charter; (2) that indeed allowed through the Sunshine Law section 92-71, which I just read, allows the County to provide more stringent meeting standards, thus 3.07E, without conflict with the Sunshine Law. So what is the problem that needs correction? The problem that needs correction is for our County councilmembers to now play by all the rules, not just the rules of the State Sunshine Law. Our County Charter has given the public good fortune to expand on the Sunshine Law without conflict. Our leadership needs only follow the law and provide the public with due course and protection. The founders of our Kaua'i County Charter were wise to this and now the public is wise to it. We need only our County Council's wisdom to complete the circle. For the public, we all know that the council membership gets the final word in chambers without time limit, but I want the public to remember these key items when the Council has their say. Remember this, please: (1) there is no conflict between Sunshine Law and 3.07E, never has; (2) OIP can only comment and only has jurisdiction concerning State Law; (3) Sunshine Law allows for Kaua'i County Charter 3.07E, again no conflict; (4) OIP may not make opinion on Kaua'i County Charter 3.07E. The last Council meeting the Council said this, 3.07E does not support the State Sunshine Law. Please do not be confused by this. The statement is erroneous. 3.07E doesn't need to, nor was it ever intended to support the State Sunshine Law. 3.07E stands and it is written in the Charter and is allowed by State law because it is stronger, more precisely more stringent than the Sunshine Law.

Vice Chair Furfaro: (inaudible)

Mr. Bieber: It need not support anything but itself and the public. The converse, though, is true. The State Sunshine Law supports 3.07E. Yes, they are an excellent partnership if the players of the game abide by the rules without manipulating the language. As stated above, the Sunshine Law allows Kaua'i Charter to be more stringent, thus giving Council less reason for executive session, meetings behind closed doors. This is a good thing and there exists no argument whether there is violation at the State level. That is not the point. The real point is whether the County Council is in violation of its own Charter. The Charter is in compliance with the State, no doubt. But the Council is not in compliance with the Charter. Thus, it is breaking the law. It is time now for the Kaua'i County Council to comply with the law. The Council further said...

Vice Chair Furfaro: You know what? I'm going to sum it up right there. If you could sum it up...

Mr. Bieber: I have, I have t...

Vice Chair Furfaro: I've explained this last week and I'm not going to explain it every week. Now, here's the point where the confusion exists. The Office indicated to us, yeah, you need to comply to that, but you also need to comply to the State and the State said I have a right to talk about personnel matters and the State...so what if I don't go into executive session and I handle a personnel matter or disciplinary action or termination in the public? Am I now potentially going to lose my house because that individual has a right to sue me? Eh, my friend, I enjoy my house. And so, what my statement was to Mr. Mickens is, this is shared with the County Attorney, but...like it's kind of double exposure here, you know. This is what it says. It says in addition to and it deals with evaluating personnel, dismissals, discipline, contract labor negotiations, consulting with the Boards... Attorney on liabilities, investigative procedures, sensitive matters related to public safety and security. It says in addition to that, you gotta obey all of this. So, you know, I don't ... I don't know what kind of exposure I got here, but you know, for you to sit there and tell me, eh, in an effort to get the best information I can to you I'm breaking the law. I read that and the law says, hey, in addition to you gotta follow all of that. So, let's leave it kind of there. You have written testimony for us. I've given you a little bit more time. And if you want to sum it up in the next 30 seconds that's fine with me.

Mr. Bieber: Well, actually through 92-71 we're allowed more stringency and the Council must comply to the State Sunshine Law, and in fact, there's only one definition and that's through 23-06 and it's claims. No action shall be made...

Vice Chair Furfaro: In the Charter it is. In the State, there's eight items.

Mr. Bieber: We have to follow the Charter.

Ms. Iseri-Carvalho: And the State law.

Vice Chair Furfaro: And the State law. That's what...

Mr. Bieber: But the point is...is that we're allowed our Charter through the State law and so we must comply with our Charter.

Vice Chair Furfaro: Okay, I've given you the piece that I wanted to share with you. I need it to comply with both.

Mr. Bieber: Okay, thank you.

Vice Chair Furfaro: I'll go to...I'll give Mr. Bynum one question, I'll give Councilwoman Yukimura one question and I wanted to share that I did make this opinion public, so. Councilman Bynum.

Mr. Bieber: Thank you very much, Jay, I appreciate it, thank you.

Mr. Bynum: Mr. Bieber, I did read your testimony and if I concede your point without arguing the other thing, who is it that determines whether we're complying with the Charter? Who should I go to to determine if my actions are in compliance with the County Charter:

Mr. Bieber: Well, it's defined in the Charter itself. You can get yourself a copy of the Charter and look at it.

Mr. Bynum: And so the County Attorney has repeatedly assured us that we're in compliance with the County Charter. That's the person I need to listen to.

Mr. Bieber: Is the attorney here, maybe...

Vice Chair Furfaro: Why don't you make an appointment with him because it is his question and I would encourage you to do so.

Mr. Bieber: Okay.

Mr. Bynum: I just want to make that point because again, I wouldn't do something that I thought was violating the law, right. And so I go to the source that I have for legal advice under the Charter, which is the County Attorney, and they say, no problem.

Vice Chair Furfaro: Okay, let's go to Councilwoman Yukimura.

Mr. Bieber: Understood, thank you, Mr. Bynum.

Vice Chair Furfaro: Councilwoman.

Ms. Yukimura: Not a question, but one sentence. The Charter has to be...The Charter has to comply with State law.

Vice Chair Furfaro: It is subservient to State law. Councilwoman.

Ms. Iseri-Carvalho: Yes.

Vice Chair Furfaro: If you don't mind, I'm just going to say that's the last comment. Go ahead.

Ms. Iseri-Carvalho: Yes and I guess, from your statement, you said that the County Council is not abiding by the rules. We are choosing to receive this item. So, what rule are we violating on this item? We are receiving this item. Receiving means we are crossing it off the agenda. So what rules are we abiding because we can only talk about what's on the agenda. We cannot talk about all this vague issues that you've been talking about, but just based on Sunshine Law, we have this agenda posted, we're saying that we are going to receive that item. I believe that motion was taken before we had public testimony.

Mr. Bieber: This is deferred, so.

Ms. Iseri-Carvalho: It's not deferred.

Vice Chair Furfaro: No, it's not deferred.

Mr. Bieber: I'm sorry.

Mr. Kaneshiro: It's received.

Ms. Iseri-Carvalho: Deferred would be a different story.

Mr. Bieber: That was last time. Again, my apologies.

Ms. Iseri-Carvalho: We are receiving this item. So, your statements, all of the statements, I believe, have no relevance to this item because we are receiving it.

Mr. Bieber: Okay.

Ms. Iseri-Carvalho: Right? I mean wouldn't you agree with that?

Mr. Bieber: You are receiving it. Thank you very much for hearing my testimony.

Ms. Iseri-Carvalho: And I am correct, right?

Mr. Bieber: You are correct.

Ms. Iseri-Carvalho: Thank you.

Mr. Bieber: Thank you, thank you everyone for hearing me out.

Vice Chair Furfaro: And I shall get you some definitions because you seem to be active here. I will get you some definitions about approvals, receipts, deferrals.

Mr. Bieber: Yes and I appreciate that. Thank you.

Vice Chair Furfaro: Councilman Kaneshiro.

Mr. Kaneshiro: And the same goes to Mr. Mickens' testimony because Mr. Mickens also thought this was going to be deferred. But I did hear him say defer, but it's to be received.

(Inaudible)

Vice Chair Furfaro: I was referencing an earlier item that was deferred.

Mr. Kaneshiro: The earlier item.

Vice Chair Furfaro: The item was deferred. The executive session is received. It means it's wiped off the slate.

Ms. Iseri-Carvalho: That's right and discussion.

Vice Chair Furfaro: Okay, now I will call our meeting back together.

The meeting was called back to order, and proceeded as follows.

Vice Chair Furfaro: Is there any...oh, we have one more public testimony. Please come up.

There being no objections, the rules were suspended.

BRUCE PLEAS: Bruce Pleas for the record. I'd like to thank Glenn for sending this to OIP and getting some clarification.

Vice Chair Furfaro: We thanked him last week.

Mr. Pleas: Yeah, I would too because I just got this last week. And I thank you for receiving today's ES. And I think this really clears a lot of things up because now we have it in print where we're going. And there will be an ES coming up probably in the next week or two where I will make some comments concerning the Sunshine Law. It's not applicable to this one. But this is really clarification.

Vice Chair Furfaro: Well we'll wait till next week.

Mr. Pleas: That's why...I say...but this is a good clarification, thank you.

Vice Chair Furfaro: Thank you. Okay, may I call the meeting back to order.

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

Vice Chair Furfaro: Councilmembers. Councilwoman Iseri.

Ms. Iseri-Carvalho: Yes, I just wanted to again clarify (1) that the County Attorneys are the ones that prepare the posting. Neither of us councilmembers prepare the posting and neither does our County Clerk. It's the County Attorneys. They prepare the posting. It comes to our office and is placed on the agenda. Secondly, this was an item that was not requested to be placed on the agenda by any of us councilmembers. It was requested by the County Engineer and in fact, Councilmember Rapozo and I questioned the reasoning on having this on the executive session item and we brought this up, I believe, four times, but the County Engineer wanted the opportunity to justify to us the reasoning to allow us to go into executive session. That never happened and therefore, we are receiving this item. We are following the process. That's the process. So, give credit where credit is due and thank you, Mr. Bieber, for, you know, giving credit where credit is due. This is exactly what we have been listening. This is exactly what has taken place. This is the process that we go through in our reasoning, whether we're going into executive session or not on every single item. We exercise that same kind of scrutiny to determine if it's appropriate because we believe in transparency and openness. We are well aware of what the spirit and the letter of the Sunshine Law is there for as well as the Charter Section of 3.07E, so. Anyway, again, thank you, Council Chair, for that indulgence and hopefully they understand what transpired.

Vice Chair Furfaro: Okay, thank you.

Mr. Rapozo: Quick comment.

Vice Chair Furfaro: Mr. Rapozo, go right ahead.

Mr. Rapozo: It's just I know Mr. Pleas made a comment that he's so happy that it's in writing now and it's clarified everything, but it hasn't because we still had two testimonies that are not satisfied with what the OIP has ruled. So, I appreciate your comment and, you know, we went into extensive discussion last week regarding this and I thought it was made quite clear, but I guess to address Mr. Bieber's point and Mr. Mickens' point regarding the Charter versus the H.R.S., H.R.S. is quite clear that the Charter cannot conflict with H.R.S. So, if you just look at the Charter, and if you're following that Charter language, then it's in violation of H.R.S. It is because it's not allowing you to go into executive session for the items that H.R.S. has (inaudible). So I know you don't agree. The County Attorney had drafted the language, therefore, obviously they feel it's legal. So, you went through OIP. The County Attorney obviously by their actions are in agreement. I just hope we don't and I said this last week, I hope we don't have to go through this exercise every week. Thank you.

Vice Chair Furfaro: Did you have something, Mr. Kaneshiro?

Mr. Kaneshiro: No.

Vice Chair Furfaro: If not, I'm going to end the Committee meeting today. We need to call for a vote to receive.

Upon motion duly made by Councilmember Yukimura, seconded by Councilmember Iseri-Carvalho, and unanimously carried, ES-352 was received.

There being no further business, the meeting was adjourned at 6:12 p.m.

Respectfully submitted,

Wilma Akiona

Wilma Akiona
Secretary

APPROVED at the Committee Meeting held on October 15, 2008:

RONALD KOUCHI
Chair, Committee of the Whole