

RPTR Committee

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Sent: Thursday, October 16, 2025 2:21 AM
To: RPTR Committee
Cc: Thomas M. Cook
Subject: Maui County Special Committee on Real Property Tax Reform
Attachments: MauiCountyRealPropertyTaxCommittee.pdf

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Resend of my submission in pdf format, better formatting. I am copying Tom Cook as he is the Maui County Council member for the Wailea area.

Regards, Bob Rinninsland

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**WRITTEN SUBMISSION TO THE MAUI COUNTY SPECIAL COMMITTEE ON
PROPERTY TAX REFORM**

To: Members of the Maui County Special Committee on Property Tax Reform

From: Robert G. Rinninsland, Wailea Palms Unit 2502.

Re: Maui County Property Tax Administration/Wailea Palms Case Study/General Principles of Property Tax Administration.

I. Introduction

I started coming to Maui in 1987. We bought our Wailea Palms unit 2502 in 1995. Wailea Palms has its own specific history with respect to its Maui County property tax classification which most likely illustrates specific statutory construction issues within Maui County Property Tax Administration the committee has been tasked to address. The immediate issue for Wailea Palms condominium units is the classification as Non-Owner Occupied or Apartment under MCC 3.48.305 B 2 which provides that “Real property improved with a dwelling that would not be classified as “owner-occupied”, “hotel and resort”, “time share”, “TVR-STRH”, “commercial”, “industrial”, “commercial”, or “long-term rental”, must be classified as “non-owner occupied”, or 3.48.305 B 3 which provides that “Multi-dwelling unit improvements containing five or more dwellings that would not be classified “short-term rental” must be classified “apartment.

Without subjecting you to a read of all the pertinent documentation for Wailea Palms, a summary of the relevant Wailea Palms documentation and related input is as follows:

1. Wailea Palms was constructed and registered as an Apartment, long term residential condominium complex pursuant to its original Hawaiian Condominium Public Report Registration Number 2454 originally filed on March 12, 1990, as supplemented by related follow up Public Reports and other documentation. All 120 units withing Wailea Palms have their own individual TMK's. For example, our Unit 2502's TMK is RP 2-2-1-008-083-0010-000

- 2. Exhibit B of Registration Number 2454 describes Wailea Palms as consisting of 15 multi-dwelling residential buildings plus one recreation/maintenance building. The Residential buildings are described as two floor multi-dwelling residential buildings with eight apartments each, having four apartments on the first floor and four apartments on the second floor.**
- 3. Exhibit G of Registration Number 2454 in pertinent part lists as an encumbrance to title of a Wailea Palms apartment that Certification of Long-Term Residential Use dated November 7, 1990, filed as Document 91-004301**
- 4. Exhibit M of Registration Number 2454 restricts the use of the Wailea Palms apartments to permanent or temporary residential usage subject to applicable zoning ordinances of the County of Maui. In addition the Wailea Palms apartments are not to be used as time share units as defined in Chapter 514E Hawaii Revised Statutes as amended. Wailea Palms documents have always prohibited transient accommodation and any leases less than 180 days.**
- 5. Up through the 2021-2022 financial year, Wailea Palms apartments were generally classified as Apartments by application of actual use standards that governed Maui County property tax classification during that period. Effective for the financial year 2021-2022, Wailea Palms apartments have been generally classified Non-Owner Occupied which reflects application of the highest and best use theory generally used for property tax appraisal to actual tax classification. This approach was apparently approved by the County in its 2019 property tax administrative review which resulted in Ordinances 5159 and 5160.**
- 6. Relevant Maui County real property tax provisions to the Wailea Palms and similar cases, are 3.48.305 B 2 and 3 cited above and the relevant provisions of the Maui County Code definitional section 19.04.040 defining “dwelling unit”, “apartment” “multi-dwelling unit”, “long term residential” and “occupancy”. In addition the concept of what is property itself, and ownership of property must be considered.**
- 7. As with any legal reform initiative, “legislative history” is also relevant as it provides the backdrop of how the current law was developed as well as guidance for any changes to the law or the administration thereof. You may not agree with all the points I make in this regard, but I bet I have it essentially correct. My take on the legislative history then goes (briefly) something like this.**

- A. At least through 2021, Maui County classified real property for property tax purposes according to actual use which was determined by reference to yearly reports to the County through say, the individual site managers. Wailea Palms files have those reports for each unit therein indicating use as Apartment, Long Term Rental, Principal Residence etc. Property tax for the individual TMK's was assessed accordingly.**

- B. Maui County Ordinances 5159/ 5160, effective for the 2021-2022 year amended Section 3.48.305 of the Maui County Code in pertinent part to provide for Non- Owner-Occupied classification for "Units occupied by the owner for personal use where transient vacation rental use is prohibited by the comprehensive zoning ordinance or units occupied by a lessee for a term of at least six consecutive months or more."**

- C. The internal Maui County documentation, in the form of a November 2, 2020, transmittal letter to the Mayor, stated that the amendment enacted by Ordinance 5160 were not to apply to properties where transient accommodations are not permitted.**

- D. Ordinance 5160's validity was challenged in a legal proceeding to this court by non-residents who used their condominiums as part time residences and who saw a nearly 50 % increase in property taxes.**

- E. Maui County's argument in support of Ordinance 5160 was that it had an interest in "tax parity" to match low intensity use with commercial use**

- F. The Court noted that the focus of Ordinance 5160 was on condominium complexes that allowed transient vacation use. The Court thus noted that part time residences in zoning which prohibited transient vacation use could still qualify for lower rates consistent with the actual use of the property. In fact the County's own Real Estate Appeals Board stated the issue properly in its 2021-22-year end review submitted to the County in which the Board (in discussing Ordinance 5160 at the time) stated.**

"The Board opposes Ordinance 5160 as it affects a certain population of property owners who live here part-time and do not intend to rent out their property either short-term or long-term. They are being treated unfairly by the County as they have no ability to vote in our County elections. The Board

knows it would be more equitable to tax property owners on their declared use and not on its potential use or highest and best use. For a short-term rental, the County mandates you to get a Short-term Rental (STR) permit. These part-time owners do not want to get one because they are not interested in being a short-term rental. There were 157 appeals of this sort and the Board had no choice but to sustain all of these appeals for which Ordinance 5160 changed their classification Non-Owner Occupied to Short-Term Rental”

- G. Note here whether it was Non-Owner Occupied as the lower rate vis a vis STR or Non-Owner Occupied as the higher rate vis a vis Apartment the issue of actual versus a hypothetical highest or best use was the same.
- H. Ordinance 5160 did have a robust actual use reporting process which Wailea Palms adhered to for 2021, with our Site Manager and our Managing Agent, DMI, doing the work.
- I. Ordinance 5160 was voided by the Hawaiian court and repealed by Ordinance 5346.
- J. Ordinance 5493, effective January 1, 2023, is the current provision applicable to Wailea Palms property tax classification. The language of Ordinance 5493 with respect to the definitions of property tax classification categories is essentially the same as Ordinance 5159 which was the companion ordinance to Ordinance 5160. Ordinance 5159 with the Ordinance 5493 language was dealt with by the Hawaiian Supreme Court in West Maui Resort Partners LP SCAP-22-0000587, SCAP-23-0000139 decided April 23, 2024. The Court noted the language of Section 3.48.305A provided in pertinent part that except as otherwise provided in subsection B, real property must be classified upon consideration of its highest and best use, into the following general classes....2. Non-Owner Occupied, 3. Apartment.
- K. The Court noted that the wording EXCEPT THAT in the statute exempted the categories in Subsection B from a highest and best use analysis to determine property tax classification.

II. Issue:

The issue for Maui County is proper administration of its property tax provisions in a manner that addresses all the possible facts and circumstances, for example, the Wailea Palms situation. The good news is Maui County is not alone in this endeavor as administration of property tax is a national phenomenon carried out by local jurisdictions. And Maui County has guidance from the Hawaiian Supreme Court as noted above. Finally Maui County can rely on general property tax administration principles accepted throughout the United States.

Property tax administration comes down to statutory interpretation within the context of generally accepted property tax valuation and classification principles. It is incumbent on the County to be familiar with these principles and apply them in an intellectually honest way to real property on Maui.

Taking these points in order:

1. As the Hawaiian Supreme Court stated in the West Maui Resort Partners case,

“The fundamental starting point for statutory interpretation is the language of the statute itself. Second, where the statutory language is plain and unambiguous, our sole duty is to give effect to its plain and obvious meaning. Third, implicit in the task of statutory construction is our foremost obligation to ascertain and give effect to the intention of the legislature which is to be obtained primarily from the language contained in the statute itself. Fourth where there is doubt, doubleness of meaning, or indistinctiveness or uncertainty of an expression used in a statute, an ambiguity exists.”

2. Relevant concepts to the application of the Maui County Code as generally accepted throughout the United States and for which authority can be provided assuming the committee does not already have such authority, are as follows:

- A. Multi dwelling unit improvements refer to enhancements made to residential buildings that contain multiple separate housing units, such as apartments or condominiums. These improvements can increase property value, enhance living conditions, and improve energy efficiency. Improvements means all structures, buildings, fixtures, fences, and water rights erected upon or affixed to land, whether or not title to such land has been acquired. Apartments are considered multi-dwelling unit improvements

- B. Non-owner occupied refers to a 1–4-unit structure that is rented out for investment purposes and where the owner does not occupy the building (think in Maui for example, Kehalani Affordable Apartments (Wailuku), Hale O Pi’ikea (Kihei))

- C. **Highest and best use approach is to be used to value a particular real property parcel while actual use is to be used to classify a particular real property parcel. Examples of this can be found all over the United States including the city of Honolulu and the counties of Kuai and Hawaii.**

III. Application of Generally Accepted Real Property Tax Administration Principles such as definitions from zoning and real estate, the distinction between a dwelling and an improvement, and the nature of multi-unit buildings

1. **The multi-dwelling unit classification refers to a building or complex containing multiple separate housing units for residential inhabitants. Apartments are a common example of individual dwelling units within a larger multi-dwelling unit structure. An “improvement” in real estate refers to structures or buildings added to a property to increase its value or functionality. Therefore, constructing or renovating an apartment building including the apartments themselves, would be considered a multi-dwelling unit improvement.**
2. **The County must avoid taxing a hypothetical transaction to, say, those who do not rent their apartment units as a basis for taxation. Non-owner occupied is generally defined in real property administration circles as renting by an owner to a non-owner on some continuing basis as opposed to occupying the unit themselves. Taxation of hypothetical transactions is counter to any generally accepted taxation regime principles.**
3. **The County cannot effectively eliminate a property tax classification such as Apartment by drawing a direct statutory relation between property tax classification in denying that a separately appraised unit could be included in a multi-dwelling building. Property appraisal is distinct from property classification.**
4. **Furthermore, ownership of a condominium apartment within a condominium complex does not give the condominium owner any fee simple ownership of the real property on which the condominium complex sits. The condominium owner’s fee simple ownership is limited to the specific apartment unit plus the associated percentage of the common elements. There is no improvement of the real property with a dwelling (singular) with respect to an individual apartment owner because there is no ownership of the real property. Accordingly an application of a Maui County Code section such as B 2 above to a condominium apartment owner is non-sensical. Rather the plain meaning of B 3 to apartments as multi-dwelling unit**

improvements to a multi-dwelling unit with five or more dwellings that do not permit TVR-STRH is the correct application of the Maui County Code.

5. The Hawaiian case of Harrison v Casa De Emdeko, Inc. is instructive. While the case focuses on assessments for common elements rather than the specific definition of an apartment as an “improvement”, it highlights that court’s recognize apartments as units within larger structures with expenses related to those structures being shared among the units.

IV Conclusion

I trust this submission will be useful to the Committee. I am not sure a major revamping of Maui County real property tax law is necessary. Rather an effort to integrate the current judicial guidance available and a refreshment of the generally accepted property tax administration principles and procedures may suffice. Do not tax highest and best use of a given property unless it corresponds to actual use. Look at amending or deleting 3.48.305 B 2 to remove the Non-Owner-Occupied presumption. Alternatively you can benchmark to the other Hawaiian county documents which look to actual use in fairly straightforward property use categories.