

BF Committee

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To: BF Committee
Cc: Mike White; Robert Carroll; Stacy S. Crivello; Alika A. Atay; Elle Cochran; Donald S. Guzman; Kelly King; Riki Hokama; Yukilei Sugimura
Subject: Budget and Finance Committee - BF-79, BF-42, BF-45

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To: Chair Hokama and the Budget and Finance Committee Members
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It seems that we just had this discussion last week. At the time there was agreement that the STR properties were not the same as the hotels or condos. The industry agreed that some additional tax was warranted, but not the rate of the hotel/resort category, as the STRH properties were much more restricted than hotels or condos. A compromise was the commercial category. I'm not sure what's changed since that discussion.

WHAT ARE OTHER AREAS DOING?

It's interesting to look at the direction that other areas across the country take on this topic. Owners and guests of short-term and vacation rentals in Texas recently racked up another win at the 3rd Texas Court of Appeals. On Aug. 22, the Austin court joined a growing list of state appellate courts to hold that **renting your home out for short periods of time does not magically transform it into a commercial enterprise that is incompatible with residential neighborhoods**. The court's holding was clear: "If a vacation renter uses a home for the purposes of eating, sleeping, and other residential purposes... this use is residential, not commercial, no matter how short the rental duration." An owner's "receipt of rental income from either short- or long-term rentals in no way detracts from or changes the residential characteristics of the use by the tenant."

STRH is a RESIDENTIAL USE

In 19.65, Short term rental use is defined as a "residential use". They are not a hotel, they are not a resort, they are not similar to a condo property. In the zoning definitions, "hotel or motel" specifically **excludes** bed and breakfast and short term rental homes.

I am not an expert on our tax code. To look at this in simple terms, it seems that these bills are attempting to tax short term rental homes based on the "use", and ignores the underlying zoning. What if this same logic was applied to Kaahumanu Center, Foodland, or the McDonalds restaurants in Kahului? They are zoned industrial but their activity is commercial. They are paying tax based on the underlying zoning, not on the use. So if you're saying that the activity taking place dictates the tax, with no regard to the underlying zoning, then all of these businesses should listen to this meeting and file appeals to pay commercial which is a lower rate.

And then it would follow that everyone operating a home business, would be taxed at commercial also. They are bringing more people to the neighborhoods than a short term rental home does, and yet there is no increase in their property tax. They are being taxed at underlying zoning. And while I agree with that, it clearly shows the unfairness of higher tax for the short term rental homes.

Repeatedly during these discussions we hear "we need to pay attention to zoning". But in this one case, it's being totally ignored.

STRH COMPARED TO CONDO

A question that comes up is whether the commercial tax category for STR properties is fair to the condos that are renting short term (without a permit requirement), and paying hotel/resort tax when they declare their use as a short term rental. There are significant differences between condos and STR homes. If they are bundled together in one tax category, will the STRH homes be able to do everything that the condos can? Of course not.

- Condos have many units sharing a property, giving each unit a much smaller piece of land, which helps to keep their tax in line. Most individual condo units have a very low land value. As an example, the gorgeous Wailea Beach Villas. A unit in this property can rent for as much as a single family home in Wailea. Using #512 as an example, their land value is \$252,200. And even A201 the prime unit at the very front of the property has a land value of only \$331,200. The rental rates for this unit vary between \$2500 and \$4500/night. Then compare it to a single family home just down the beach where the land portion of property values is in the \$7,000,000 to \$9,000,000 range. If one of these homes had an STR permit, the nightly rental rate would be the same as A201 at the Beach Villas. If the earning ability is equal, is it really fair that they would pay so much more tax? On the land portion of the property it could be as much as THIRTY TIMES HIGHER.
- An STR can be shut down for being a bad neighbor, but a condo cannot. No matter how frequently they party or disrupt their neighbors, the condo will not lose their right to vacation rent. STR homes must abide by a strict set of rules.
- Condos can build a business complete with website, and returning clients that can be sold when they sell their unit. The STR permit is non transferable, and has NO value beyond the current owner. STR owners are not building a business to be sold in the future, and they are not acquiring any development rights. The STR properties are only asking for the right to let somebody sleep in their home for less than 180 nights at a time.
- Condos do not have to provide their complete building permit history or meet specific health and safety standards in order to rent. They can put up an ad, and start immediately, regardless of the safety of their specific unit. STR properties go through an intense health and safety approval, and are checked to be sure that all building is in compliance.
- Condos do not go through a permitting process and pay an annual permit fee.
- Condos do not need the \$1,000,000 liability policy naming the County of Maui as an additional insured that is required of an STR. This alone can be an expense of \$1400 to \$2200 per year.
- Condos do not need to abide by specific rules. Vacation rental Guests in a condo can invite other guests for dinner. STR guests cannot. Condos can have their extra guests park along the street or elsewhere. STR guests cannot (all parking is on the property).
- When we have inquiries for wedding or family reunion groups, we book them into condos, as these properties can allow the group to gather by the pool and socialize together. The guests would be unable to stay in multiple STR homes, as the rules would not allow them to gather at one of the homes.
- STR's are restricted to lower occupancy than condos or hotels. In general a single hotel room can allow up to four guests, a one bedroom condo can allow up to four guests, but a one bedroom STR home can only allow 2 guests. Each reservation for an STR home is restricted to ONE RENTAL AGREEMENT. The rooms cannot be rented individually.
- Most STR homes have one or two vehicles for the entire dwelling. This is unlike a condo property that might have hundreds of cars going in and out each day.

I agree with the restrictions that have been placed on the STR homes. It is critical that they not be an impact to their neighbors. But I also feel it's important to show that they are not the same as condos or hotels, and therefore should not be taxed the same.

WHY APPLY FOR A PERMIT? IT ONLY BRINGS GREATER EXPENSE, AND FEW BENEFITS.

A hotel tax rate is one of the deterrents to owners making application. With a property that rents in the lower price ranges, hotel tax makes their STR unviable. If we truly wanted to treat everyone the same, every short term rental property/condo/hotel would pay "x" nights of rent for their property tax. Of course this doesn't fit the current system, but to ask the elderly gentleman in Paia to rent for 55 nights just to pay property tax doesn't really make this "the same as hotels or condos".

What about basic fairness? It's easy to target the good guys, as they've come forth and made the County aware of who they are. The illegal rentals continue to operate, with much lower taxes/expenses, and the good guys get zapped again.

Would it be fair for a one, two or three bedroom STRH home to be taxed at the hotel / resort or condo rate, when a property such as 355 Haiku Road with 11 bedrooms has the commercial tax rate defined in their ordinance?

Beyond the numbers, I wanted to paint a bit of a picture of the benefit of these homes for the north shore. When the homes are full, the restaurants are full, and people are shopping and going to yoga in Paia, Haiku and Makawao. The existence of these homes employs people such as me and the staff that I employ. It has provided jobs for budding entrepreneurs - the gardeners, maintenance crews and housekeeping crews. And even smaller, the high school student that does grocery shopping for guests that arrive late in the evening. All of these people can work in their community without driving to Kahului or the south/west sides. The housekeepers can plan their schedules to be home when the children come home from school. If we're serious about the concept of "complete community", "a place that meets your daily needs within a short trip of where you live or work", then the north shore towns need jobs such as these within their communities. If the property tax goes up, that's simply less money for the STR owners to pay to service providers.

AG PROPERTIES

Finally, let's consider the ag properties. On one hand, we are requiring them to be farming, and on the other hand this proposed ordinance is saying that they're a "hotel or condo". Which one is it?

We recognize that the STR properties need to pay something. We are asking that the "something" be reasonable, and request that they remain in the commercial category. Please don't make this another "rich man's bill", where only the large luxurious homes can afford to have an STRH permit.