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TESTIMONY BF-45

My name is Lawrence Carnicelli, testifying as the Government Affairs Director for the REALTORS Association of Maui on Committee Report BF-45.

As you know committee report BF-45 seeks to make changes to the tax classifications while also eliminating planned developments and condominiums classifications based on actual use. While we understand and don't necessarily oppose the intent of this measure, we feel as though there are some oversights within this bill that will negatively affect the affordable rental housing market. Therefore above all else this is a local long-term affordable rental measure. Simply put, if you raise taxes on the landlords they will pass that through and raise rent on tenants.

In addition to negatively impacting affordable rental housing there are some potential damaging unintended consequences to property owners and possibly expose the County to expensive litigious challenges.

Possible Loss of 2,599 Affordable Rentals

In the Director of Finance communication to the committee he states that "2,599 units could move from Apartment class to Hotel/Resort class." There is no clear delineation by the department as to how many of these units are long-term tenants and how many of them are second home owners. It is very easy to assume that a majority of them are long-term tenants.

New 3.48.370 Dedication for Long-Term Residential Use – *Reality vs. Intent*

The addition of the new 3.48.370 "Dedicated for Long-Term Residential Use" chapter sounds wonderful on its face. However, here is what it forces an owner go through:

- 1) Register a lease with the State Bureau of Conveyances
 - 2) Petition the Director of Finance for 'dedicated use'
 - 3) Forfeit any right to change use for 10 years
 - 4) Agree to retroactive penalties fines and taxes as a lien on the property
- OR...
- A) Raise rent
- OR...
- B) Evict tenant and do vacation rentals

We would suggest a protection of tenants as exemption in chapter 3.48 Article IX or add it to 3.48.305(B)

NOT "Highest and Best" for Assessment

In the Director of Finance communication to the committee he states that: "Highest and best use is an appraisal term requiring that property be appraised as though it were being put to its most profitable and legal use." It is also more simply defined as "the highest value that can be gotten from the property."

However, the Director then gives 3 examples of how the department will NOT be using highest and best practices but will be using actual use determinations based on the opinion of the Director, which could change.

Example 1: Iao Parkside is zoned industrial but developed as a residential condominium project. It is legal to have apartments in industrial zoning. The buyers and sellers (the market) in Iao Parkside mostly use units as a home or long term rental therefore the highest and best use is apartment.

Example 2: Harbor Lights is zoned hotel but is developed as a residential condominium project. It is legal to have apartments in hotel zoning. The buyers and sellers (the market) in Harbor Lights use units as a home or long term rental therefore the highest and best use is apartment.

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Example 3: *Kaanapali Alii is zoned hotel and is located in a resort area with hotels. It is developed as a residential condominium project. It is legal to have apartments in hotel zoning. Most buyers and sellers (the market) in Kaanapali Alii use units as short term rentals (83%). The highest and best use of units in Kaanapali Alii is hotel. If an owner does not rent their unit, it is an unintended use and an underutilization of the land and improvement."*

"New" 3.48.305(B)(5) Short Term Rentals

Unless classified as "time share," "commercial," or "commercialized residential," units occupied by transient tenants for periods of less than six consecutive months, excluding properties granted a short-term rental home permit, transient vacation rental permit, conditional permit allowing transient vacation rental use, or bed and breakfast permit, shall be classified as "hotel and resort" and the real property tax shall be adjusted to taxes at the "hotel and resort" tax rate for the applicable tax year.

Again, this new language is based on actual use not on highest and best use. We do not necessarily disagree with the intent of this new language. However, what we are looking for is clarity, consistency and predictability from the Real Property Tax Division as a basic property right.

Additionally, there is no mechanism given how the Department is going to determine if a unit is occupied for less than six months by a transient tenant.

Other County's Long-Term Rental Programs without Analysis

We appreciate the Chair asking for the other county's long term rental programs and/or policies. We also appreciate the Department providing the documentation for Honolulu's Residential Use Dedication (which includes a list of projects impacted), County of Hawaii's Affordable Rental Housing Program and Kauai's Long-Term Affordable Tenant Occupied Program. *The fact that Maui is the only county without something similar shows us that Maui is behind the curve in trying to help incentivize landlords when it comes to affordable rentals.* Analysis as to the effectiveness of these programs is needed rather than just the forms and/or ordinances if we are truly going to create something to help our Maui families.

Elimination of General Classifications Harmful

This legislation complete eliminate section 3.48.305(C) in its entirety. What that does is remove definitions of each general class. The need for class definitions impacts condominium property regimes more so than any other category due to the multiple types of uses that can happen on that type of property. One complex could have Owner Occupants, Long-Term Tenant, Commercial Operations, Short-Term Vacation Rentals and Time Share all within the same building. Additionally our consultation with counsel has indicated this may possibly leave the county vulnerable to litigation and also RPT appeals.

125 Small Businesses Affected

In the Director of Finance communication to the committee he states: "About 125 units will move from Commercial class to Hotel/Resort class." These are typically small business owners. Many condominium complexes have separate TMK's for the spaces they rent to local small business owners. Examples would be Island Surf Building in Kihei whose entire first floor is dedicated to storefront retail small businesses.

121 Units Move Down... Retroactive?

In the Director of Finance communication to the committee he mentions that 121 units will be moving from Hotel/Resort class to Apartment class. We are wondering if these 121 property owners will get the benefit of a retroactive reclassification or at least a reclassification regardless of passage of this legislation.

BF-42 in Conflict with BF-45

While we do understand that BF-45 can be fixed should BF-42 pass, we did want to point out that there are conflicts between the two pieces of legislation that need to be addressed.

Mahalo for the opportunity to testify.