REALTORS® ASSOCIATION OF MAUI, INC.

GAD GOVERNMENT AFFAIRS DIRECTORS

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TESTIMONY BF-45

Good morning and aloha Chair and members. My name is Lawrence Carnicelli, speaking 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 within planned developments and condominiums. 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 could result in some damaging unintended consequences to property owners, the affordable rental housing market and possibly expose the County to expensive litigious challenges.

The first oversight is the complete elimination of section 3.48.305(C)(2)(a) in its entirety, including definitions of each general class. This leaves a complete void in the code with no definition of what each general classification means when a property is in a condominium property regime.

We understand this changes tax classification consideration from actual use and replaces it with highest and best use. The intent of this change sounds good on its face. The highest and best use of a property might possibly be determined to be 'hotel' no matter what the use or zoning is. However, without a clear definition of what 'hotel' (or any classification for that matter) means in the code a property owner could appeal any determination other than one that matches the underlying zoning saying it was simply arbitrary.

By solely leaving the definition of highest and best use to an interpretation of the Department is possibly damaging and harmful to property owners. Without clear definitions homeowners are left blowing in the wind wondering what next year's determination of "highest and best use" will be. People deserve a method of tax collection that is clearly stated in the code and is definable. Also, without predictability and clarity of law the County is exposed to litigation.

Now, we are very aware there are thousands of properties that fall under MCC Chapters 19.12 and 19.32 which are legally allowed to operate transient vacation rentals in a variety zoning classes. These are roughly 14,000 condominiums that may LEGALLY rent for less than 180 days as defined per MCC 19.12.020(G). The proposed changes offer that no matter what the use is, the County might tax these properties at the hotel rates. In the apartment district they are known as the "Minatoya" properties. However, I'd like to mention that there is no Minatoya list. There is no actual record by the Planning Department. There is no actual record at the Department of Finance of which properties are Minatoya and not.

Without a proper and complete list and without a clear definition of the classification there is no way for the County to determine which condominiums should be placed in a hotel classification and taxed accordingly. In this case it seems as though we are putting the cart in front of the horse.

Lastly, I would like to bring to the discussion the impact these changes will have on the affordable rental housing market. We hear all of the time about how real estate investors are some kind of enemy. However, if you think about it, each tenant has an investor to thank for a place to live. And equally investors are supported by tenants. It is a symbiotic relationship. However, without some kind of an allowance for properties being rented to long term tenants these new tax increases will be paid for by the people that can afford it the least... tenants. By removing the self-declarative apartment definition and use you will place these long term rental properties into the hotel class and increase their taxes by nearly 50%. Which means either rents go up equally or worse yet, the property leaves the long term rental pool and becomes another vacation rental.

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