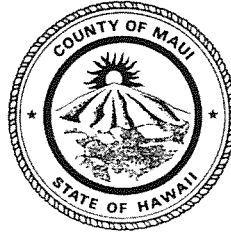


RECEIVED MAR 20 2017

ALAN ARAKAWA
Mayor



SCOTT K. TERUYA
Administrator
GERY MADRAGA
Assistant Administrator

COUNTY OF MAUI
DEPARTMENT OF FINANCE
REAL PROPERTY TAX DIVISION
BOARD OF REVIEW
70 E. KAAHUMANU AVENUE, SUITE A-16
KAHULUI, MAUI, HAWAII 96732
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March 20, 2017

Honorable Alan M. Arakawa
Mayor, County of Maui
200 S. High St., 9th Fl.
Wailuku, HI 96793

✓ Mike White
Chair, Maui County Council
200 S. High St., 7th Fl.
Wailuku, HI 96793

Danilo Agsalog
Director, Department of Finance, County of Maui
200 S. High St., 2nd Fl.
Wailuku, HI 96793

RE: Transmittal of 2016/2017 Annual Report of the Real Property Assessment
Division, Board of Review

Dear Honorable Mayor, Council Chair White and Director Agsalog:

Attached is our 2016/2017 Annual Report. We believe it to be extremely important and appreciate your consideration of the issues analyzed and recommendations therein.

I thank my fellow Board Members, Vice Chair, Bryan Esmeralda, Stephanie Stucky, Daren Suzuki, and Scott Innes for their wisdom, dedication and patience.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bruce Erfer".

Bruce Erfer, Chair

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COUNTY CLERK

COUNTY COMMUNICATION NO. 17-163

**REAL PROPERTY TAX BOARD OF REVIEW, MAUI COUNTY
YEAR END REPORT
2016/17**

INTRODUCTION

The Board respectfully submits its mandated year-end Report 2016/17 to the Council and Administration for its review and consideration. We strongly believe that what has been previously (and currently) proposed, if implemented, would significantly enhance the fairness and equity of our property tax system and would enable more citizens to receive deserved exemptions and classifications. We hope that the Council and Administration will fully consider the Board's recommendation.

SUMMARY OF 2016/17 APPEALS

For the tax year 2016/17, 758 tax appeals were filed and reviewed as summarized in the attached statistical synopsis, which includes comparisons with prior years. The number of appeals filed was 534 fewer than for 2015/16. However this is an anomaly as there were 509 more timeshare (land classification) appeals in 2015/16 than in 2016/17. The large number of timeshare appeals in 2015/16 was due to an appeal for all of the units in the Westin Kaanapali Villas. This issue presumably will be decided in the Courts. The number of appeals for 2016/17 does represent a 36% increase over the average number of appeals filed for the three years 2012/13, 2013/14, and 2014/15. About half of this increase was due to appeals from the land classifications of commercial and industrial--as assessments increased significantly. In these two categories there were 214 appeals in 2016/17, up from 96 in 2015/16, and 71 in 2014/15.

During the second half of calendar year 2016, and through March of 2017, the Board conducted twelve hearings, with 102 appeals presented. Hence, most appeals are not adjudicated by the Board and are "stipulated" where the applicant and the Department agree to an outcome.

Each appeal includes significant preparation and oral testimony by a County Assessor or the Tax Clerk Supervisor. Their preparation, knowledge, and interaction with the appellants is exceptional. Similarly, exceptional is the preparation and expertise of our Board Secretaries. These persons do an excellent job of enabling the Board to make its decisions based on well-organized information that supports a fair decision. The Real Property Tax Division is to be congratulated. Each Board decision must then be properly documented with Corporation Counsel over sight. We rely on our very competent Corporation Counsel to respond to our questions, both procedural and with regard to County Code. Hence, the time and effort expended by us, the Board members, is minimal compared to that of the administration.

OVERVIEW

The Board of Review wishes to make all parties aware that it has minimal flexibility when ruling on appeals for exemptions claimed by the appellant but denied by the County. The same strictly interpreted ordinances used by the County's Department of Finance are those which must be used by the Board. The Board has a bit more flexibility when ruling on property tax classifications other than "homeowner," and has significant flexibility when ruling

on the value of actual assessments. The Board assumes and accepts that this structure is the result of intentional policy.

Many denied exemptions result from owner relying on their accountants or attorneys. These professionals may not be aware of County requirements that enable an exemption, and may advise their clients in a manner that causes a loss of an exemption. For instance, placing ownership of a property into an LLC, or filing Hawaii non-resident income tax return, or transferring ownership of a property to a child, may result in the unintended loss of an exemption and an extreme financial burden.

The concerns and issues presented here are those which cause frustration and consternation for the Board, the Department, but most of all for the appellant—the taxpayer.

I. USE US TO REVIEW PROPOSED PROPERTY TAX LEGISLATION

Our Board of Review is an obvious group who should be utilized to review and comment on considered and then proposed property tax legislation. Yet, our expertise and unique perspective is sadly not sought in this regard.

II. RELYING ON HAWAII RESIDENT INCOME TAX RETURN TO DETERMINE RESIDENCY FOR HOME EXEMPTION

The Board strongly supports relying on the filing of Hawaii Resident Income Tax Returns to determine whether or not a person qualifies for a home exemption. Unfortunately, between reality and what is codified by the County are some bureaucratic gray areas, which often lead to frustration and appeals. The Board also realizes that obtaining a home exemption is a process, one where several specified requirements are to be met, and it is the applicant's responsibility to understand and meet these requirements. When not met, it is the Department's duty to deny the exemption.

Code states that the home exemption applicant "...files an income tax return as a resident of the State of Hawaii with a reported address in the County the year prior to the effective date of the exemption." The Board has an issue with the term "reported address." The State income tax form places no requirement on the location of the taxpayer's address with regard to residency status. The Department rejects exemptions where the address on the tax form is outside the County of Maui. The State tax form gives the taxpayer the choice of entering "present mailing or home address." We have had numerous appeals where the tax form address is outside the County, and almost always for what might be considered legitimate reasons. Appeals included addresses of CPAs, attorneys, children, businesses, spouses, and simply alternative addresses (where a person might reside or be employed for a few months each year). On more than one occasion, we have heard testimony that because persons have had mail stolen from their mailbox, they now have their mail sent elsewhere.

The Board believes the code is too restrictive by requiring the tax form [reported] address to be within Maui County. It has resulted in the denial of the home exemption for persons who are full-time residents by any and every other definition.

III. AMENDED TAX RETURNS & TIMING OF NOTICE

There is a seemingly unsolvable issue with the timing of when the Department receives information from the State regarding tax returns, due to systematic delays. It may result in retroactive removal of a home exemption for more than one year (due to an out of County address or a "misfiling" of a Non-Resident income tax form). Amended tax returns are not acceptable to the Department (although County Code is silent with regards to such amended returns). The timing within the "system" simply does not enable a mistake or oversight by the taxpayer to be corrected in a timely manner.

Again, it has resulted in the denial of the home exemption for persons who are full-time residents by any and every other definition.

With no apparent movement to resolve the above two bureaucratic issues, the Board often finds itself searching for ways to interpret the code to support a decision favoring the appellant, putting it at odds with the Department, and sometimes with its Corporation Counsel.

IV. A NEED FOR LIMITATION OF YEARLY TAX INCREASE

The Board recommends that the property tax imposed on individual properties be limited a 25% increase from one year to the next (unless there is a change of ownership, classification or improvements made to the property).

Time and time again the Board hears appeals where property tax increases are simply inordinate and unfair-often approaching 100% as it did with some commercial properties in 2015. While the County assessor staff may have valid reason to increase an assessment based on comparative sales, imposing a property tax increase to an individual or business in excess of 25% is simply unreasonable and should be limited. While a 25% limit may appear high, understand that the current limit is infinity. Please note that due to several recent sales of large commercial properties to investors at what would appear to be inflated prices (somewhat due to low interest rates and lower expectations on return of investment), we may continue to see some commercial property assessments (hence taxes) skyrocket without limit, which we saw the beginnings of in 2015.

V. A TROUBLING ISSUE – THE TIMING OF A PURCHASE

The timing issue for new buyers with respect to tax classification has troubled the Board for many years and has been presented in several year-end reports. Currently all buyers inherit the classification of the seller for the current tax year. Minimally, all buyers will pay at least half a year of property taxes based on the seller's classification. And, about half of all buyers are unable to make a change to the seller's classification (including the home exemption) for an additional year. The large variance in classification tax rates elevates the significance of this issue. The number of buyers who are financially deprived from this situation, probably equals the number of buyers who "profit." Hence, the results may be

revenue neutral for the County. But, the lack of fairness or equity for many new buyers manifests in frustration and disenchantment.

ISSUE: A December 31, 2016 classification deadline determines tax rates applied for the tax year of July 1, 2017 through June 30, 2018.

A property buyer must file for a change of classification (including home exemption) by December 31, for it to reflect in actual property taxes beginning the following July 1. A purchase made after the December 31 deadline will necessarily "inherit" the classification of the property at this year-end date, which will be reflected in the taxes during the next fiscal year. A buyer purchasing a property on January 1 will pay a full 18 months property taxes based on the seller's classification.

The Board denied an appeal from a Maui family who had properly secured a home exemption for numerous years, sold their house and purchased a new residence in February 2013, without the exemption in place. They were forced to pay the significantly higher "residential" tax rates through June 30, 2014. [Note that if the prior owners of the purchased property had a home exemption in place, then the new owners of the property would have received the benefits of this exemption whether qualifying or not.]

Consider also the buyer who profits from this situation. At the extreme, a buyer purchases a \$600,000 condominium in a "hotel and resort" zone on January 1, 2014. The seller lived in the condo full-time and had properly acquired a home exemption. The buyer immediately turns the condo into a short-term rental. For 18 months the buyer will pay taxes of \$1,722 based on the home exemption rather than \$8,460 that would be collected at the "hotel and resort" rate--a difference of \$6,738.

The Board is aware of the perspective of the Real Property Tax Division regarding this issue. Changes to ensure fairness and equity would first require a specific policy, and then Code amendments and administrative changes within the Division--resulting in tax rebates for some and tax bills for others. However, why should a Maui family have to give up their home exemption simply because they purchased another home and moved after the December 31 filing deadline?

The Realtors Association of Maui is cognizant of this issue and counsels its members to make buyers (and sellers) aware of this tax consequence, which may favor or penalize the buyer.

VI. MOLOKA'I & LANA'I VISITATION EXPENSE AND ALTERNATIVE

In 2014, 2015, and 2016 the Board avoided its annual trek to Molokai to hear appeals, basically by not scheduling the trip. Molokai property owners could attend a Maui hearing, or in one case, present his appeal via telephone conferencing. Trips to Molokai are extremely expensive in terms of not only air fares and rental vehicles, but in terms of taking up an entire day for the Board and for the Department employees who also make the trip. The number of travelers is limited to nine, by capacity of the Mokulele airplane; and not everyone wishes to travel such a small plane.

We are not the only County board or organization that faces traveling to Moloka'i (or Lana'i). It is time that modern, convenient teleconferencing transmission be established as an alternative to travel.

VII. SHORT-TERM RENTAL HOMES (STRH) TAX CLASSIFICATION (as appealed in 2014)

The situation caused by County Council's creation of the category STRH and not assigning it (via code) to a specific tax classification can only be described (in the nicest of terms) as bureaucratic shambles, and should never be repeated. The Department was left with determining the tax classification, and perhaps properly chose Hotel/Resort as the "highest and best use." This resulted in more than half of the 96 property owners granted short-term rental units to appeal this classification. The Board of Review ruled against the Department and chose the Commercial tax classification as proper for the appellants. [Coincidentally, this is the same classification later chosen and coded into lay by County Council.]

Neither the Department nor Corporation Counsel were pleased with the Board's decision, and formally requested that the Board reconsider, which it did, but concluded that its initial determination was proper and justifiable.

Presumably, the situation now persists with those not filing an appeal remaining in the Hotel/Resort Classification, while those who did appeal being granted the lower tax rate of Commercial. This may result in a significant expense for all parties in State Tax Court.

The lesson to be learned from this ordeal is that Council must assign a tax classification simultaneously with the future approval of categories of permitted uses of property.

The Board also points out what it considers to be an extreme inconsistency in tax classifications between permitted STRH and permitted TVR (transient vacation rentals). The Board cannot determine any difference in property use between these two categories, yet TVR are classified at the much lower tax rate of Commercialized Residential. **This anomaly must be recognized by Council and reconciled.**

Respectively submitted by Board Members:

Bruce Erfer, Chair

Bryan Esmeralda, Vice Chair

Stephanie Stucky

Daren Suzuki

Scott Innes

Attachment: Summary of Tax Appeals Filed

SUMMARY OF TAX APPEALS FILED

<u>Area</u>	<u>2011-12</u>	<u>2012-13</u>	<u>2013-14</u>	<u>2014-15</u>	<u>2015-16</u>	<u>2016-17</u>
Hana	75	10	13	15	11	6
Makawao-Pukalani-Kula	27	22	21	22	20	30
Paia-Haiku	17	7	24	45	63	40
Kihei-Makena	121	150	158	178	177	240
Wailuku-Kahului	58	53	141	25	95	169
West Maui	445	287	140	184	882	251
Lanai	6	14	4	69	35	10
Molokai	15	46	31	17	9	12
TOTAL	764	589	532	555	1,292	758
Total Taxable Parcel Count	71,101	71,234	71,515	71,907	71,992	72,421
Number of Board Hearings	14	7	8	10	10	12
Hours in Session	56	18	24	36	34	37
Appeals Filed with Tax Appeal Court	39	2	10	3	5	4

**SUMMARY OF BOARD OF REVIEW DECISIONS
By Tax Year Under Appeal**

	<u>2011-12</u>	<u>2012-13</u>	<u>2013-14</u>	<u>2014-15</u>	<u>2015-16</u>	<u>2016-17</u>
Sustained	47	59	134	38	52	54
Revised	33	25	42	93	80	48
Stipulations	662	288	290	301	499	589
Withdrawals	22	217	61	90	651	43
Pending Stipulations	0	0	1	23	7	1
Active	0	0	4	10	3	23
TOTAL	764	589	532	555	1,292	758

BOR Taxes in Dispute & Number of Appeals by Land Classification

Land Classification	2014 - 2015		2015 - 2016		2016 - 2017	
	# of Appeals	Taxes in Dispute	# of Appeals	Taxes in Dispute	# of Appeals	Taxes in Dispute
Residential	41	\$ 197,271	89	\$ 236,494	40	\$ 66,968
Commercialized Residential	0	0	0	0	0	0
Apartment	61	129,221	104	537,223	81	201,299
Commercial	63	362,300	61	2,376,245	139	3,012,075
Industrial	8	87,845	35	392,253	75	2,264,406
Agriculture	125	517,311	87	740,152	61	777,805
Conservation	5	888,527	5	903,326	8	1,073,489
Hotel/Resort	119	273,188	211	1,325,883	144	356,833
Homeowner	39	58,383	51	62,784	70	106,474
Timeshare	94	115,223	649	2,332,837	140	334,162
Total	555	\$ 2,629,269	1,292	\$ 8,907,195	758	\$ 8,193,512