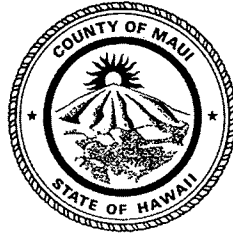


ALAN ARAKAWA  
Mayor



**SCANNED**

SCOTT K. TERUYA  
Administrator  
GEBY MADRIAGA  
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  
(808) 270-8054 Fax (808) 270-7884  
[www.mauipropertytax.com](http://www.mauipropertytax.com)

October 25, 2016

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

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

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

RE: Transmittal of 2015/2016 Annual Report of the Real Property Assessment  
Division, Board of Review

Dear Honorable Mayor, Council Chair White and Director Agsalog:

Attached is our 2015/2016 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, Bernice Lu, Stephanie Stucky, Bryan Esmeralda, and Daren Suzuki for their wisdom, dedication and patience.

Sincerely,

Bruce Erfer, Chair

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COUNTY COMMUNICATION NO. 16-293

**REAL PROPERTY TAX BOARD OF REVIEW, MAUI COUNTY**  
**YEAR END REPORT**  
**2015/16**

**INTRODUCTION**

The Board respectfully submits its mandated year-end Report 2015/16 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 2015/16 APPEALS**

For tax year 2015-16, 1292 property tax appeals were filed and reviewed as summarized in the attached statistical synopsis, which includes comparisons with prior years. The number of appeals filed were more than double that of the filings in each of the prior three years. However, the great majority of this increase was in the Timeshare classification with 649 appeals filed in 2015-16. None of these 649 appeals were heard by the Board.

During the second half of calendar year 2015, the Board conducted ten hearings, with 132 appeals presented. Excluding the Timeshare appeals, about four-fifths of all filed appeals were not adjudicated by the Board and were "stipulated" or are "pending stipulation" where the appellant and the Department agree to an outcome. A small amount of (non-Timeshare) appeals were withdrawn by the appellant--basically agreeing to the initial assessment or tax classification. We believe that almost all of the Timeshare appeals were withdrawn.

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 oversight. 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, 2015 classification deadline determines tax rates applied for the tax year of July 1, 2016 through June 30, 2017.

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 and 2015 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  
Bernice Lu, Vice Chair  
Bryan Esmeralda  
Stephanie Stucky  
Daren Suzuki

Attachment: Summary of Tax Appeals Filed

**SUMMARY OF TAX APPEALS FILED**

<u>Area</u>	<u>2010-11</u>	<u>2011-12</u>	<u>2012-13</u>	<u>2013-14</u>	<u>2014-15</u>	<u>2015-16</u>
Hana	78	75	10	13	15	11
Makawao-Pukalani-Kula	35	27	22	21	22	20
Paia-Haiku	40	17	7	24	45	63
Kihei-Makena	223	121	150	158	178	177
Wailuku-Kahului	196	58	53	141	25	95
West Maui	981	445	287	140	184	882
Lanai	28	6	14	4	69	35
Molokai	56	15	46	31	17	9
<b>TOTAL</b>	<b>1,637</b>	<b>764</b>	<b>589</b>	<b>532</b>	<b>555</b>	<b>1,292</b>
Total Taxable Parcel Count	70,365	71,101	71,234	71,515	71,907	71,992
Number of Board Hearings	23	14	7	8	10	10
Hours in Session	92	56	18	24	36	34
Appeals Filed with Tax Appeal Court	686	39	2	10	3	5

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

	<u>2010-11</u>	<u>2011-12</u>	<u>2012-13</u>	<u>2013-14</u>	<u>2014-15</u>	<u>2015-16</u>
Sustained	148	47	59	134	38	52
Revised	63	33	25	42	93	80
Stipulations	1,217	662	288	290	301	499
Withdrawals	209	22	217	61	90	651
Pending Stipulations	0	0	0	1	23	7
Active	0	0	0	4	10	3
<b>TOTAL</b>	<b>1,637</b>	<b>764</b>	<b>589</b>	<b>532</b>	<b>555</b>	<b>1,292</b>

**BOR Taxes in Dispute & Number of Appeals by Land Classification**

<b>Land Classification</b>	<b>2013 - 2014</b>		<b>2014 - 2015</b>		<b>2015 - 2016</b>	
	<b># of Appeals</b>	<b>Taxes in Dispute</b>	<b># of Appeals</b>	<b>Taxes in Dispute</b>	<b># of Appeals</b>	<b>Taxes in Dispute</b>
Residential	42	\$ 101,422	41	\$ 197,271	89	\$ 236,494
Commercialized Residential	0	0	0	0	0	0
Apartment	94	443,180	61	129,221	104	537,223
Commercial	75	68,840	63	362,300	61	2,376,245
Industrial	49	403,764	8	87,845	35	392,253
Agriculture	91	784,346	125	517,311	87	740,152
Conservation	8	1,054,241	5	888,527	5	903,326
Hotel/Resort	130	1,843,574	119	273,188	211	1,325,883
Homeowner	32	42,774	39	58,383	51	62,784
Timeshare	11	20,450	94	115,223	649	2,332,837
<b>Total</b>	<b>532</b>	<b>\$ 4,762,591</b>	<b>555</b>	<b>\$ 2,629,269</b>	<b>1,292</b>	<b>\$ 8,907,195</b>