

PUBLIC HEARING

JANUARY 16, 2020

A public hearing of the Council of the County of Kaua'i was called to order by Luke Evslin, Chair, Finance & Economic Development Committee, on Thursday, January 16, 2020, at 1:36 p.m., at the Council Chambers, 4396 Rice Street, Suite 201, Historic County Building, Lihu'e, and the presence of the following was noted:

Honorable Arthur Brun
Honorable Mason K. Chock
Honorable Felicia Cowden
Honorable Luke A. Evslin
Honorable KipuKai Kualii
Honorable Arryl Kaneshiro

Excused: Honorable Ross Kagawa

The Clerk read the notice of the public hearing on the following:

“Bill No. 2767 – A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO REAL PROPERTY TAXES,”

which was ordered to print by the Council of the County of Kaua'i on December 4, 2019, and published in The Garden Island newspaper on December 13, 2019.

The following communications were received for the record:

1. 4157136617, dated January 7, 2020
2. Bonte, Melissa, dated January 8, 2020
3. Carroll, Brennan, dated January 6, 2020
4. Diamond, Caren, dated December 4, 2019
5. Dillberg, Dustin, dated January 14, 2020
6. Fischer, Gary, dated December 16, 2019
7. Freeman, Elizabeth, dated January 14, 2020
8. Garrison, Diane, dated January 14, 2020
9. Imperato, Carl, dated January 15, 2020
10. Joshi, Rakesh, dated January 5, 2020
11. Kaaumoana, Makaala, dated January 16, 2020
12. Newman, Doug and Anne, dated December 23, 2019
13. Ono, Karen, dated January 13, 2020
14. Ono, Karen, dated January 15, 2020
15. Perriello, Mark, dated January 14, 2020
16. Sedgwich, Steve, dated January 13, 2020

The hearing proceeded as follows:

SCOTT K. SATO, Deputy County Clerk: We received sixteen (16) pieces of written testimony; five (5) in support, six (6) opposed, and five (5) providing comments, and have seven (7) registered speakers. The first registered speaker is Joan Levy, followed by Judy Mahon.

Committee Chair Evslin: Thank you, Joan, you can come up. To clarify for everyone in the audience today a public hearing is just an opportunity for us to hear from you folks. There will be no deliberation on our end. In fact, our rules prohibit us for making opinions or even asking questions. This is our opportunity to listen to you. Everyone will have three (3) minutes to testify. If you have more than that to say at the end, after everyone was given an opportunity to speak for their first three (3) minutes, you can come back and have another three (3) minutes. Joan, can you state your name for the record?

JOAN LEVY: Joan Levy. I came home from a month of medical treatments in Mexico to find a letter from the County saying that my house was changed from Homestead Residential to Commercial Use, which tripled my tax, because I sometimes participate in home exchange. I was shocked and I am appalled at how I see the County overstepping their region to what I consider my personal choices, which do not affect anyone else...so much so that even if though Kaua'i has been my home for twenty-six (26) years, I have been considering selling my house and leaving Kaua'i. I am just so shocked at how I am being treated. To categorize home exchange where I trade houses with another person who lives somewhere else with no money exchanged on the occasional trip...and lately my case for medical treatment reasons, for a week or so at a time while I continue living most of the rest of the year alone in my house with no rentals of any kind, as the vacation rental businesses is neither right nor just. How can the County justify asking me to pay the same commercial tax rate as people who run a profit making vacation rental business all year long? This is beyond the beyond. For my personal occasional income less home exchanges—how can it adversely affect my neighborhood when I am off-island and someone else is in my home for a week or so? How can this unjust demand on me possibly improve the problems we have with Kaua'i's dire lack of affordable housing? I understand it is a real problem and I understand that you are also trying to address that, which I appreciate. The person who comes into my home on a home exchange, one thing that makes it really nice is that they are committed to taking care of my house, because I am committed to taking care of their house. It is a very personal exchange, it is not like a business and it is a membership organization. This is just plain wrong and I ask the Council to do what you can to right this wrong. Please remove home exchanges from any kind of vacation rental taxation or commercial real estate tax status. Please return my home and anyone else on-island who happens to be participating in home exchanges to residential homestead tax status. Thank you.

Mr. Sato:
Julie Simeona-Chong.

The next speaker is Judy Mahon, followed by

JUDY MAHON: *Aloha*, Councilmembers. For the record, my name is Judy Mahon. I am speaking today to voice my displeasure of the pending Bill No. 2767. The Bill seeks to adjust tax classification for commercialized home use and to exclude properties used for vacation rentals from the assessment cap for the home exemption property. The stated purposes is to equitably distributed that cost of County infrastructure...I am the homeowner and operator of a property that is my primary full-time residence and legally permitted and zoned Homestay. The Planning Department initiated the application process, which mandated a zoning classification change and nonconforming use permit. A public hearing to obtain the Planning Commission permit approval was held and our application passed the process to obtain the appropriate permit. To operate a homestay was extremely difficult and costly. It also resulted in an increase in our tax for our property. As conditional of the approval, we are required to maintain a Homestay exemption on our property. We have complied with every stipulation of the permit and continue to do so. Bill No. 2767 strips us of the Homestay exemption rendering the Planning Department requirement null and void. It also renders our approval permit null and void and this is not an equitable situation. We do not use our permit to the allowed capacity and have never had a complaint of noise or neighborhood interruption of any sort. We maintain our property meticulously and have served as a home for visiting local families from other islands, as well as for small inter-island businesses to housed employees while on Kaua'i. A small legally permitted homestay operation like ours is not contributing to infrastructure deterioration any more than a family of four (4) might. The main difference is that our guests are not here every day of the year, we provide off-street parking for our guests, we need only to look at some recent projects to determine that a much higher impact of infrastructure is without question caused by massive development, which you can find on our south side. Certainly have much matched any definition of affordable housing. As stated in numerous County opinions that homestay operations reduce housing for local families—why then are the approved projects targeted at absentee ownership and speculation for immediate entry into the vacation rental market. Hundreds of new units all priced beyond reach of many local families are being built, many of them rent it at a much higher capacity and occupancy rate than the simple home; one-bedroom homestay. I would like to just say illegally rented properties are far more detrimental to the quality of life and to deteriorate our infrastructure simply because they do not pay their fair share of taxes. Targeting legally permitted properties zoned Homestay properties such as ours places an unfair, inequitable tax burden on your island residents that choose to operate in compliance with the rules agreed to by the County when the applications were approved.

Committee Chair Evslin: Ms. Mahon, you can come back.

Ms. Mahon: I just want to say, for this reason, I am against this Bill and I thank you for your time.

Mr. Sato: Next speaker is Julie Simeona-Chong, followed by Amy Frazier.

JULIE SIMEONA-CHONG: *Aloha*, Councilmembers. My name is Julie Simeona-Chong. I am here to offer feedback for Bill No. 2767 as it applies to our

homestay permit issued in 2015. The primary concern I have and correct me if I am wrong but the Bill proposes to remove the assessment cap essentially taking away a homeowners exemption or the value of it for any real properties offering vacation rental or hotel uses. A homeowner's exemption is one of the requirements and conditions of our homestay permit issued in 2015 and this Bill would directly contradict that permit. The County's website lists four hundred forty-one (441) permitted vacation rentals outside the visitor designation area (VDA). Of those four hundred forty-one (441) properties, only fifteen (15) are permitted homestays, meaning they are primary residences with owner home exemption deductions. It appears that this Bill is singling out fifteen (15) properties out of all the hotel rooms, vacation rentals in the VDA, and transient vacation rentals (TVRs), not to mention vacation rentals that are not permitted to address the island's need to help cover a yearly budget for infrastructure. I recognize the need for funds to operate our infrastructure, but to do so in a way that is equitable and fair. One (1) out of every three (3) people on Kaua'i is a visitor according to recent statistics in 2018, so this implies that a third of the infrastructure costs can be allotted to tourism, while two-third to our local population. Can we find a way to divide that budget across the board, because visitors and residents alike enjoy those public services and conveniences? Thank you.

Mr. Sato:
Smoky Bayless.

The next speaker is Amy Frazier, followed by

AMY FRAZIER: I am Amy Frazier, I spoke previously about the Bill, and shared our story how this is going to impact us. This is a recap, we are owner-occupants, we have a one-bedroom detached TVR on our property, and to be clear, we do not have a TVR, nor do we rent our owner-occupant home, which is the majority of our property. My concern is just the very basic concern, which is we are going to be charged at a TVR rate for a home that we are not allowed to rent, nor do we rent. That to me is basic unfairness. I will happily pay the TVR rate on the TVR portion of our property, but I think as every other owner-occupant on the island, I am afforded the owner-occupant rate. The whole reason we had the Commercialized Home Use rate is because when our County switched to a use tax system there was not a way within our software to proportion it out the tax bill. The previous County Council created Commercialized Home Use because we did not have the resources to properly define usage, even though we are on a usage tax system. They created this as a place as a compromise. We have been bounced around since we bought our home ten (10) years ago from our initial rate to the TVR rate to having a cap to not having a cap to being thrown into commercialized home use and then to be thrown back in the TVR rate. Our taxes have already gone up four hundred percent (400%) and this will take us up to six hundred fifty percent (650%) for an owner-occupant majority situation. I read this article the other day, I thought it was interesting...I do not know if I am going to run out of time, but they ranked all fifty (50) States in Hawai'i from the lowest to the highest property taxes. Hawai'i has the lowest. Average homeowner in Hawai'i pays about one thousand dollars (\$1,000) a year. New Jersey has the highest at a per capita rate of three thousand dollars (\$3,000) per year in the Nation. I already exceed that in the Commercialized Home Use rate. I already exceed the national average for owner-occupant situation. To me, it is just basic fair and go back to the problem, which is the Finance Department does not have the right tools

to appropriately charge use based on use, but we have a use tax-based system. That is the big problem here.

Mr. Sato:
Diane Garrison.

Next speaker is Smoky Bayless, followed by

SMOKY BAYLESS: Good afternoon. Thank you in advance for listening to the comments. As you all know being those in charge for making improvements and trying to see the big picture and effect positive change is always going to be unintended consequences to any action within a closed system like this beautiful island of Kaua'i. I listened to my wife, she spoke on December 4th to you all and two (2) things I got out of the transcriptions from that meeting was that you all are trying to make the classification of taxation equitable amongst those that have TVRs; and number two, you wanted to fairly and/or equitably distribute the County cost of services that those TVRs may cost the County. Let us talk first about equity. We have two hundred eighteen (218) people who are going to be affected by this Bill and if we actually go back to the basics of property taxation, for the reason that is our family is paying...for all intent and purposes, fifty (50) times more than the average Homestead rate on this island. If we count the transient accommodation clients or renters that come in and stay on our property, we are essentially the wear and tear factor of a family of five (5). For a family of five (5) in our town versus a family of five (5) in a different part of Kaua'i, are we actually getting fifty (50) times more services or are we actually causing fifty (50) times more wear and tear? If this Bill passes we will be at about one hundred times the average for the Homestead and clearly that is not fair. That would not be fair to anyone in this room. That is one unintended consequences of this Bill if it were to pass. As all TVR people that have a permit, we pay seven hundred fifty dollars (\$750) a year to the County—that is over fifty percent (50%) of what the average Homestead property tax payment that an average family on Kaua'i pays. We pay that. We also pass-through the transient accommodation tax and the General Excise Tax (GET) tax, we pay the Hawai'i State taxes on every penny that we make. We provide directly and indirectly to the County of Kaua'i through those four (4) means to support the programs and to support the infrastructure costs. This Bill would take it to a level that we would no longer be able to afford to stay on the island. Thank you so much for your attention. I do really appreciate this and I understand the difficulty of your position and I would not want to have your jobs. Thank you.

Mr. Sato:
by Carol Peacock-Williams.

The next speaker is Diane Garrison, followed

DIANE GARRISON: Good afternoon. My name is Diane Garrison. I am here to voice the affect this Bill will have on my husband and I. We are residents of Kaua'i since I retired fifteen (15) years ago and have had an association with Kaua'i since we were newlyweds. We are in our home nine (9) months a year. We took our home out of full-time vacation rental by the previous owner and rent only two (2) months a year. This is a benefit for an island over used by tourists. Perhaps commercialized home use is the best description of our tax class despite the TVR license. Being outside the Vacation Designated Areas (VDA), we do not have full control of our land. Our NCU permit requires that we use the land for agricultural

purposes, rather than for having permission to build a swimming pool to enhance our vacation market ability. We are in complete agreement with this restriction. Being here full time we can produce and share food crops. This is a benefit for an island without sufficient emergency food supply. Perhaps the land should not be classified as TVR, but should be in a hybrid tax classification. Our permit is grandfathered, so we cannot give it up and later reapply. Perhaps it would give us more options if we were able to temporarily suspend our permit, but have it remained registered as a valuable addition to our land. Putting everyone who has a TVR license into a TVR tax classification is easy to administer, but far from fair. It is not a uniformed tax class. Owners who vacation renting full-time are not overly concerned about property taxes, as they can be deducted from rental income and also offset other income the investor has. In our case, removal of the cap and increase of the tax rate will quickly cause expenses to exceed rental income eventually forcing out of our home. There are possible remedies offered by the sponsors of the Bill, but they do not make economic sense in our case. We would sell our house and downsize. The buyer would almost certainly be an off-island investor who would vacation rent full-time. The replacement home we buy would be a moderately priced home, which might have otherwise gone to an other island family. I am guessing and so far there is proof that we are not the only residents in the similar situation and that there are unintended consequences to this Bill. Thank you.

Mr. Sato:
followed by Bill Cowern.

Next speaker is Carol Peacock-Williams,

CAROL PEACOCK-WILLIAMS: Hi, my name is Carol Peacock-Williams. My husband Joe Williams and I are both retired and we live full-time in Lihue. We built our energy efficient home, our house, to be as affordable as possible fifteen (15) years ago. The two (2) of us are not a resort. If we decide to swap our house or do a home exchange with another couple once or twice a year...we started doing home exchanges when our daughter was highly encouraged by her school and counselor to go and visit as many colleges on the mainland as we could, ten (10) of them. We scheduled a summer to go and visit as many colleges as we could. The only way we could afford to do this was with home exchanging and that is when we joined home exchange. Now we do home exchanges to visit our daughter in California, which is the only way we can afford to do this. House swapping or home exchange points are not rent money. Points cost nothing. We are given these points on home exchange. By the way because of this possible bill passing and our Homestead exemption being taken away, we have ended our membership with HomeExchange.com as of December 30th and I have a printout proving that of December 31st, but yes, we are still in the commercial category, which is higher than Homestead. If this Bill passes, it would put us in the highest resort tax category according to the tax office here. Our house would go up so much, it would be unaffordable for us. We are retired, keep this in mind. We do not work. We collect social security, that is it. I do not even collect it yet, just my husband does. I actually read to children on-island and promote literacy. I would hate to have to leave and stop doing that on Read Across Kaua'i Day. Kaua'i is not Honolulu and it should not be taxing homeowners in the same way. I know Honolulu has done this, but we should not. If this Bill passes it could run existing homeowners off of Kaua'i, just as ourselves. This is not good for the economy. My husband is already talking about wanting to move, but I do not. Also, with so many

homeowners affected by the way most of them do not even know about this, I just heard about this meeting this morning...this could go into a class action lawsuit very easily. Is that what the County of Kaua'i wants? Thank you.

Mr. Sato:

Our last registered speaker is Bill Cowern.

BILL COWERN: I am Bill Cowern, from Lāwa'i. I must admit that I did not expect to see you folks again, but here we are. For history, we opened our units in 1992. We are still operating exactly the same way we did then...we were not causing infrastructure problems back then. I cannot believe we are contributing a whole lot more today. I do not understand the infrastructure issue, but since then we probably went and tried to get a permit four (4) or five (5) times. Between 1992 and 2008 when the TVR law was passed, we came in again and tried to get a permit, and they said, "No, you are exempt from the TVR law; you are not a TVR, you are a bed and breakfast. You not only need a permit, but we do not have anything to give you." We went away. 2015 rolls around. Out of the blue we get a cease-and-desist, get fined, get maliciously prosecuted in State Court—all of which was thrown out, because they were charging us for violating the TVR law, which they obviously clearly exempted us from. Now it seems to me that we are being thrown right back in again, "Now when we want to tax you, you are a TVR," right? I do not think this is reasonable at all. We do not add to infrastructure, we got two (2) people who stay home every day instead of going to work, right? I got maybe two (2) or three (3) kind that might leave each day. Other people who run home businesses have far more impact on the traffic on this island. People who are hair dressers or people who are attorneys, or people who are CPAs; there are a number of home businesses with people arriving to their house ten (10) or twelve (12) times a day. That is far more than we ever see happening from our property. I just believe that this needs to be looked at a little harder.

Committee Chair Evslin: Is there anyone else in the audience wishing to testify who has not sign up? Is there anyone who wants to testify for a second time? Seeing no further public testimony, this public hearing is adjourned.

There being no further testimony, the public hearing adjourned at 2:01 p.m.

Respectfully submitted,



SCOTT K. SATO
Deputy County Clerk

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