

MINUTES

FINANCE & ECONOMIC DEVELOPMENT COMMITTEE

July 6, 2022

A meeting of the Finance & Economic Development Committee of the Council of the County of Kaua'i, State of Hawai'i, was called to order by KipuKai Kualii, Vice Chair, at the Council Chambers, 4396 Rice Street, Suite 201, Lihu'e, Kaua'i, on Wednesday, July 6, 2022, at 4:59 p.m., after which the following Members answered the call of the roll:

Honorable Mason K. Chock
Honorable Felicia Cowden
Honorable Bill DeCosta
Honorable KipuKai Kualii
Honorable Bernard P. Carvalho, Jr., Ex-Officio Member
Honorable Arryl Kaneshiro, Ex-Officio Member

Excused: Honorable Luke A. Evslin

The Committee proceeded on its agenda item, as shown in the following Committee Report, which is incorporated herein by reference:

CR-FED 2022-04: on Bill No. 2861 A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, SECTIONS 5A-3.4, 5A-6.1, 5A-6.4, 5A-12.1, 5A-12.3, 5A-12.7, AND 5A-12.8, KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO REAL PROPERTY TAXES (**Approved.**)

The Committee proceeded on its agenda item as follows:

Bill No. 2862 A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, SECTION 9.2, KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO REAL PROPERTY TAXES (**This item was Deferred to August 3, 2022.**)

Councilmember Chock moved to approve Bill No. 2862, seconded by Councilmember DeCosta.

Committee Vice Chair Kualii: Members, this is the Real Property Tax bill related to removal of imparted value on golf course valuations. At first reading, we had very lengthy discussions on the value of a golf course in relation to the larger picture of it being a public works benefit to the community. Councilmember Cowden had expressed her interest in looking into the matter further. Councilmember Cowden, I am not sure how your discussions have been, but I would like to open the

floor to you, if you have any further questions as it relates directly to this proposal. My hope would be to focus on this particular Bill as it relates to Real Property Taxes and Valuation, and entertain any floor amendments, if there are any to offer. If you are working on a separate proposal or effort regarding how golf courses are defined or treated regarding other aspects of the benefit to the community, I would like us to hold off on that discussion until the appropriate time when a proposal regarding those merits are directly before us. However, I would like to give you some time to give us an update on your end, as I believe you were strongly opposed at first reading. The Department of Finance is also available to answer any further questions. We look forward to hearing from you and can open the floor to questions and answers with the Department of Finance. Councilmember Cowden.

Councilmember Cowden: If I could ask the Department of Finance a simple question. The goal with yourselves in removing this clause about imparted value, you have never used it in the past, right? So far it has not influenced how anyone has been taxed, is that correct?

There being no objections, the rules were suspended.

MIKE HUBBARD, Real Property Tax Manager (*via remote technology*): That is correct.

Councilmember Cowden: Let us say id we waited a month to make this decision, it is not going to impact your fall taxes. If we waited a month, it is not going to hurt your process. It is not likely it will be used. It is not likely there will be a lawsuit in the next month. A delay will not hurt. Is that correct?

Mr. Hubbard: I do not think that is necessarily correct, Councilmember Cowden. We do have several lawsuits in front of us at State Tax Court dealing directly with golf courses, and it would put us directly at risk going in front of the same Judge who made a previous decision as you see from City and County of Honolulu's testimony, which may be in front of you.

Councilmember Cowden: Where is that testimony? Do we have something about a golf course lawsuit? Do we have a lawsuit here? Who is suing? Do we have golf courses suing us?

REIKO MATSUYAMA, Director of Finance (*via remote technology*): We do have some golf courses that have appealed.

Councilmember Cowden: When did that happen?

Ms. Matsuyama: Those appeals are unresolved.

Councilmember Cowden: When did that happen? That has never been mentioned in all our conversations.

Ms. Matsuyama: It has been ongoing for a while. We are willing to entertain, whatever the Council decides, if that is the direction that the

Council wants to go. As far as additional work on our side, I do not think we have any other outreach, unless you have any questions for us that would happen during the deferral period.

Councilmember Cowden: I do not have questions for you. I have work I want to do with the Administration. I want to circulate a paper; can I do that? It is not an amendment; it is just information (See Attachment 1).

Committee Vice Chair Kualii: It is part of her update and questions.

Councilmember Cowden: Please do not laugh. This is really important to me. My concern is not so much about a golf course, but what is underneath the golf course, which is typically flood mitigation processes, detention basins, things that are built right into it, and have gone through a long process. I will read this since the Department of Finance is not looking at it. You folks have heard this from me, but we need County Code provisions that: one, clarify the nature of the connection between golf courses and the adjacent, surrounding, or related individual properties, or overall development projects, which often involve a master plan and various permit proceedings that include public input, and two, acknowledge the additional functions and services golf courses may provide, including: essential land management, wastewater, and flood management functions, including retention and detention basins; preservation of open space and public views; and natural habitat for flora and fauna, including native and endangered species. I want to emphasize mostly flood mitigation factors, so in looking to where I could put this in a more appropriate place in the Code, because it really is not a piece for the Department of Finance. What I learned is that this is not anywhere in there. There is no acknowledgment in our Code of this really essential feature and commitment that is underneath these golf courses. We are seeing what is happening when planned development basically sells out, they basically sold the sellable inventory on top of it; it is a form of land banking. It is a form of wanting to sell the land underneath the golf course as if it is just open land or open space when in reality, it is a commitment to these flood management strategies. Even as we had the Hanalei hillside in the last year or so, that came from a water tunnel that was underneath the golf course that we had forgotten about, and that water that is coming down helped flood the entire hillside. What I want to do in the next month is to work to find another place in the Code where we can codify this, because I want to respect the Department of Finance that they are concerned about lawsuits. This is the first time in this whole discussion that it has been acknowledged that there are pending lawsuits, even though we have talked about this a handful of times. What happens when you take out that term "imparted value"? It separates the golf courses Tax Map Key (TMK), so it is no longer tied with what is around it, and I want to make sure that we protect the Code somewhere else, and I am only asking for a month. Why do I have to do it now instead of later? What I have learned is if I just say "yes" to this, on this one piece where we have this protection that is intended there as "imparted value," we take it away, it makes it quick. We do have golf course parcels right now that are wanting to be built on, wanting to be utilized in a different way, and they are part of a whole master plan and not the one TMK, so one (1) golf course might have seven (7) or eight (8) TMKs underneath it, and I think we need to be very careful. We have had tremendous impacts of floods. We talk about more concentrations of rain, so this is not about the

game of golf, and it is not about a piece of tax, it is about protecting our community, and I am asking for a month.

Councilmember DeCosta: I am going to ask to defer.

Councilmember Cowden: Okay. Are you moving to defer?

Committee Vice Chair Kualii: Before we do that, let us make sure no one else has questions. Does anyone have questions based on what she stated?

Councilmember Chock: Yes, I do. Just a question to Councilmember Cowden. My understanding is that you want to work on a different section or area of the Code that is not related to this section here that we are currently looking at for this Bill, correct?

Councilmember Cowden: I had this in the section of the Code, and I was advised not to put it in there, so I am saying, if I cannot put it in there, let me put it somewhere else before I let go.

Councilmember Chock: So, you want to defer this Bill for a month in order to introduce another bill to run concurrent with this, correct?

Councilmember Cowden: Yes. Even if we can start that other bill, I want to make sure we can start that other bill, so that I have the commitment from the Administration that we are going to take care of our flood mitigation. I have brought this up on a number of different bills...

Councilmember Chock: Do you know where you want to put this in the Code?

Councilmember Cowden: I have a meeting coming up with the Department of Public Works, Engineering Division. We had one (1) meeting and it was pushed to another one that is next Monday where we will be looking at that, because it belongs in the Public Works section, and this is for protection.

Councilmember Chock: Okay. Chair, I have a question for Reiko and Mike. I know that there are some items on appeal. Will the deferral of this Bill have any impact on those items or those appeals? My question is, is there a timing-related issue to this Bill?

Ms. Matsuyama: Mike, do you know if it is going to affect...I would just say to start, what Councilmember Cowden is asking for is really outside the scope of this Bill, as Councilmember Chock was kind of alluding to, so to tie up one with another...Mike, maybe you can answer the timing question.

Mr. Hubbard: We do not have any State Tax Court hearings scheduled in the next month, so I do not think there will be a direct impact, but it does not necessarily mean that we will not be engaged in discussions with potential settlements with the golf course representation.

Committee Chair Kualii: Are there any further questions from the Members?

Council Chair Kaneshiro: I have a question, even though I am not on the Committee.

Committee Vice Chair Kualii: That is okay.

Council Chair Kaneshiro: I just wanted to clarify again, what is the nexus of holding up this Bill in order to put information that is going to be in a completely separate section? If this information is not going to get incorporated into the Bill or has no intention of being in the Bill, then why hold up this Bill to put forward a separate bill?

Councilmember Cowden: The guidance that I have been getting, and I will own that from people very deep in the golf industry, is that there is a trend across the nation to be doing exactly this, and they interpret differently than the way we are interpreting that court case. The lawyers that are working with the golf industry are happy to talk to the County Administration. I would say they are eager to talk to the Administration, but this is a strategy when you separate that imparted value, it starts to create a whole big trend of development, so when they are interpreting it that way on O'ahu, and that was not a Supreme Court decision that this is laying waste to these commitments in these master plans. As soon as we let go of that, it makes it even easier for these lawsuits to take possession of the land. The way I see it, even if we lost a lawsuit, the amounts that we spend on these intensive floods and these problems are very significant.

Council Chair Kaneshiro: I am trying to understand the different pieces, because this Bill is related to property assessments and their assessed value. What you are talking about is zoning and uses on the golf course, which would be more like a planning type or comprehensive zoning type activity, so I am trying to understand.

Councilmember Cowden: Thank you for that question. I will answer it. The imparted value very much ties the golf course to the value of the land, so it is an anchor point into exactly what this is. If my Public Works efforts do not pan out, I may still want to pursue my amendment to this Bill, so I want to have this meeting to see if I can fix it, and if I cannot, then I want to amend this Bill back to the way that I had it. I tend to really like to work with the Administration, so I asked if they are okay with it, and they said, "No, not really." It is not their first choice. Our job is to check and balance, is to push on that. While I want to work with what is convenient and easy for the betterment of a lawsuit, this is too important, so if we can move this out a month, I do not see that it would hurt, and I am going to try another way, so that these folks can have this change in this Bill the way they want it. I do not want to give up unless I can get this somewhere else. That is why it is related.

Committee Vice Chair Kualii: Are there any further questions from the Members?

Councilmember DeCosta: Reiko, I am feeling Councilmember Cowden wants more time; she wants to make sure that this is okay. We always tend to rush things all the time, so she is asking for some time to look a little deeper. I see where the Chair and the Vice Chair are going with this, so it might be a separate bill. I want to ask Reiko, can we assist Councilmember Cowden with her idea and train of thought, and still pass this Bill or can we not? I want to make sure you are okay with it.

Councilmember Cowden: I am saying clearly, I am not okay with it because we can pass this Bill, but when we do not have this protection elsewhere, it is a positive move for the other team that would be moving to separate the commitment of the golf course from the land around it.

Councilmember DeCosta: Reiko, can you help us in this scenario to help Councilmember Cowden feel more at ease with what is happening with your Bill versus her concern? How will we address that? Are these two (2) separate items or can we fold it into one?

Ms. Matsuyama: No, definitely not fold it into one. I do not feel like this Bill would be providing the protections that Councilmember Cowden is desiring. Hopefully, her meeting with the Department of Public Works, Engineering Division goes well and that is the direction that separate track needs to take. Again, we are at the mercy of the Council in terms of the timing that you folks decide.

Councilmember Cowden: If we pass this Bill the way it is, where it takes that imparted value off, it exposes the chess piece for those wanting to take the land; even if they do not see it that way, the industry sees it that way.

Councilmember Cowden moved to defer Bill No. 2862 to the August 3, 2022 Committee Meeting, seconded by Councilmember DeCosta.

Councilmember Cowden withdrew the motion to defer Bill No. 2862 to the August 3, 2022 Committee Meeting to allow public testimony. Councilmember DeCosta withdrew the second.

LONNIE SYKOS: For the record, Lonnie Sykos. Thank you, Councilmember Cowden, for trying to get this delayed. For myself, I am in utter disagreement with the Administration about what the outcome of this Bill is. This Bill appears to have been written by the golf course industry. It makes no sense to me as a taxpayer. Going back in history, the number one issue about golf courses is it is a commercial activity, it is a business, it is no different than owning a McDonald's. It sells golfing experience like McDonald's sells Big Mac experience. Thus, this whole effort of, how do we keep the price of the golf course low from the perspective of giving money to the County in order to make it attractive to the investor and to the golfer, but that is none of your business, it is not your *kuleana* to make profit for golf courses and the developers. First off, in this Bill, there is no method for assessing the value of the golf course. As I read the Bill, the Director has complete subjective control over the process. Also, the other party can cancel their agreement after five (5) years—the County as well. Do any of you know anything about developing a golf course? It is

like developing a farm. It is not like, "I bought this piece of land and next week I will have a golf course on it"; it takes years of planning, then it takes a great deal of time to organize the fact that you have massive amounts of material to bring in. None of the dirt and sand here is suitable—it is all imported—I hauled barges of it, thousands of barges of sand for golf courses in my life. I think this Bill is really flawed, because there is no mechanism to determine the value of the golf course, this is a completely subjective decision by the Director, so that is not going to turn out well. We are either going to get sued for over-charging, or we are going to under-charge and not collect the revenue that we could be collecting for golf courses. I think this needs to be rewritten. I think this is just flawed, so please delay, do not approve this today until it has been reviewed.

Committee Vice Chair Kualii: Do you have a clarifying question?

Councilmember Cowden: I have a clarifying statement. I have a final statement.

Committee Vice Chair Kualii: Okay. Is there anyone else wishing to testify? Seeing none.

There being no further testimony, the meeting was called back to order, and proceeded as follows:

Committee Vice Chair Kualii: Are there any final questions from the Members for Ms. Matsuyama and Mr. Hubbard? None. Is there anyone with discussion? Unless you have a deferral motion.

Councilmember Cowden: My discussion piece is, he brought up the business of golf, which is something that minimizes the cost of the land maintenance, so this, for me, is not about the game of golf, it is about the commitment underneath the game of golf.

Council Chair Kaneshiro: I was going to ask if a deferral needed to be August 3, 2022 or if it could be within two (2) weeks?

Councilmember DeCosta: I was thinking the same, two (2) weeks.

Councilmember Cowden: No, I want August 3, 2022, because there is not a place where there is coding in there. When I looked where we could put the code, we have Section 19 about golfing that is really just specific to our public Wailua Golf Course, so I think it is going to take a little bit of effort to look at it. It is going to be a whole new space. It is not like you will go in and change a few lines. When I asked the Department of Public Works where it was, we did not find that, so it will take a little bit of effort from the Department of Public Works, and I want to give us a month to do it. Plus, in two (2) weeks we are going to be at the National Association of Counties (NACo) Conference.

Committee Vice Chair Kualii: Councilmember DeCosta.

Councilmember DeCosta: I was going to move to defer for two (2) weeks to give you time.

Councilmember Cowden: I am not going to be here; I will be at the NACo Conference.

Councilmember Cowden moved to defer Bill No. 2862 to the August 3, 2022 Committee Meeting, seconded Councilmember DeCosta.

Committee Vice Chair Kualii: Roll call vote.

The motion to defer Bill No. 2862 to the August 3, 2022 Committee Meeting was then put, and carried by the following vote:

FOR DEFERRAL:	Chock, Cowden, DeCosta	TOTAL – 3,
AGAINST DEFERRAL:	Kualii	TOTAL – 1,
EXCUSED & NOT VOTING:	Evslin	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Committee Vice Chair Kualii: My vote is not necessary. You have three (3) votes, it will be deferred.

There being no further business, the meeting was adjourned at 5:29 p.m.

Respectfully submitted,

Jessica Young
Council Services Assistant I

APPROVED at the Committee Meeting held on July 20, 2022:


KIPUKAI KUALII
Vice Chair, FED Committee

We need County Code provisions that: (1) clarify the nature of the connection between golf courses and the adjacent, surrounding, or related individual properties or overall development projects, which often involve a master plan and various permit proceedings that include public input, and (2) acknowledge the additional functions and services golf courses may provide, including: essential land management and wastewater and flood management functions, including retention and detention basins; preservation of open space and public views; and natural habitat for flora and fauna, including native and endangered species.

Handout from
CM Cowden
07-06-22
BM.2862