

PUBLIC HEARING

DECEMBER 14, 2022

A public hearing of the Council of the County of Kaua'i was called to order by Luke A. Evslin, Chair, Finance & Economic Development Committee, on Wednesday, December 14, 2022, at 8:32 a.m., at the Council Chambers, 4396 Rice Street, Suite 201, Historic County Building, Līhu'e, and the presence of the following was noted:

Honorable Addison Bulosan
Honorable Bernard P. Carvalho, Jr.
Honorable Felicia Cowden
Honorable Bill DeCosta
Honorable Luke A. Evslin
Honorable Mel Rapozo

Excused: Honorable KipuKai Kualii

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

“Bill No. 2891 – A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO REAL PROPERTY TAX (*Tax Credit Residential Investor*),”

which was passed on first reading and ordered to print by the Council of the County of Kaua'i on November 16, 2022, and published in The Garden Island newspaper on November 30, 2022.

The following communications were received for the record:

1. Baldwin, Mark, dated December 12, 2022
2. DeLorenzo, Bill, dated December 10, 2022
3. Lindner, Jeffrey, dated December 13, 2022
4. Long, Cynthia, dated December 12, 2022
5. Long, Cynthia, dated December 13, 2022
6. Nolan, Jason, dated December 9, 2022
7. Sangenito, Danny, dated November 17, 2022

Committee Chair Evslin: Is there anyone in the audience wishing to testify? Please state your name for the record. You will have six (6) minutes for your testimony.

JASON NOLAN: My name is Jason Nolan. I wanted to make myself available to answer any questions. I provided written testimony. I am assuming you all read it. My family and I have been residents of Hawai'i for four hundred seventy-three (473) days. We have lived in a single-family home in Kalāheo for four hundred seventy (470) days, and I just learned that we are going to be

classified as Residential Investors, which after reading in Bill No. 2891 that taxing occupied homes at the higher Residential Investor tax class is counter to the purpose of the tax class, I could not help but think that we also fit into that category.

Committee Chair Evslin: Councilmember Cowden, do you have a question?

Councilmember Cowden: I was just going to explain to him that it is not our role to ask you questions, you should share your story.

Mr. Nolan: Okay. I could re-read the letter, if that would be helpful.

Committee Chair Evslin: Per our rules, we can ask clarifying questions, but if you could fully explain your situation.

Mr. Nolan: Okay, I will read the letter for the record. Bill No. 2891 seems an attempt to correct a default in Chapter 5A, Kaua'i County Code 1987, relating to real property tax that was caused by the passage of Ordinance No. 1130; however, Bill No. 2891 does not go far enough to protect all newly classified Residential Investor property owners who have erroneously been assigned to the new classification—I am one of those property owners—please allow me to explain. My wife and I purchased and moved into a home in Kalāheo in August of 2021, it is our only home, and we own no other real estate property, as such, with regard to taxation, we became residents of Hawai'i the day we landed on Kaua'i and closed on the home in August 28, 2021. Under the current legislation, our full-time residence will be re-classified as Residential Investor, because it has been assessed at above one million three hundred thousand dollars (\$1,300,000) for 2023, yet, we are still waiting to qualify for a home exemption despite having resided at the property for sixteen (16) consecutive months or four hundred seventy (470) days to be exact. After reading Bill No. 2891 that taxing occupied homes at the higher Residential Investor tax class is counter to the purpose of the tax class, I cannot help but also believe that taxing my family's home at the Residential Investor tax class is counter to the purpose of the tax class. It is essentially taxing us at the same rate as an Airbnb. My wife and I are residents of Kalāheo raising a family in a single-family home while patiently waiting to qualify for a home exemption, while I can understand the requirement to file a full year resident state income tax return, an N-11, prior to being able to qualify for a home exemption via P-3 application for the following tax year, I think being classified as residential status during that waiting period is the correct classification based on this context, and while I can appreciate that likely a few of your constituents share our predicament with regard to being reclassified as Residential Investors, that does not render the situation any less unjust or worthy of correction. If you agree, please use your elected powers to further refine the definition of the Residential Investor tax class, so that the makeup of the class accurately reflects its definition and purpose. Amending Bill No. 2891 to also allow for owner-occupied homes to be granted Residential tax class in a situation where the owners have not yet had the opportunity to file an N-11 and subsequent P-3 application, but meet all other requirements for the home exemption, would be one

possible solution. As your constituent, I humbly ask for your consideration, and I am grateful for your representation. *Mahalo.*

Committee Chair Evslin: Thank you for your testimony.
Councilmember Cowden, do you have a clarifying question?

Councilmember Cowden: I have a clarifying question. You might have said it, but I did not quite get it. You did not get that qualification because your taxes had a deadline, was that the problem?

Mr. Nolan: There is a long waiting period to qualify for a home exemption. You have to file a full year tax return and that happens in April of the tax year, but then, they do not accept the application...I do not think they start reading the application until September afterwards. We moved in August of 2021, we filed a part year return for 2021. Now, for 2022, which will be about five hundred (500) days later, we are going to file our first full year return, but we have to wait until September of this year to file a P-3 to get the Homestead for 2024, and it is an egregiously long wait to get Homestead. I understand, it is very similar to being a college student, and you have to wait a year to get out-of-state tuition, but other states, for instance, we moved from Texas, and you can qualify for a home exemption based on if you are in your home January 1st of that tax year, so it is essentially two and a half (2½) years to qualify depending when you move to Hawai'i.

Councilmember Cowden: Thank you.

Committee Chair Evslin: I have a clarifying question. In your testimony, I believe you said that you understand the rationale to not go to Homestead, but your request is to go to the Residential rate.

Mr. Nolan: Residential status. That seems like a fair medium, but then to have just received my tax appraisal notice and seeing it in red that we were now "investors"—it does not seem like that was the intent of the tax class. You folks even said it in Bill No. 2891, taxing residents living in homes is counter to the definition of a Residential Investor. My home is an investment, but it is not that kind of investment.

Committee Chair Evslin: Thank you. Are there any further clarifying questions? Councilmember DeCosta.

Councilmember DeCosta: Is this your only home? Do you own any other home in the states?

Mr. Nolan: No, this is it. We sold our home, moved here, closed on the house three (3) days after we moved to the island, and moved into the house—this is it.

Councilmember DeCosta: Thank you.

Committee Chair Evslin: Thank you for your testimony. Our next registered speaker is Mr. Lindner.

JEFF LINDNER: *Aloha, Councilmembers.*

Committee Chair Evslin: Please state your name and you will have six (6) straight minutes for your testimony.

Mr. Lindner: I submitted written testimony.

Council Chair Rapozo: You just need to state your name for the record.

Mr. Lindner: Jeff Lindner. I submitted written testimony with some contextual background. I am just going to read my written statements. Dear Councilmembers, it is appropriate you are trying to give homeowners a chance to resubmit information to the Real Property Division in order to obtain the lower tax rate of Residential classification. If a homeowner is entitled to the lower rate, the County should not make the process complicated, which results in the losing if a homeowner is entitled to the lower rate. The County should not make the process complicated, which results in the homeowner losing of the lower rate. At the same time, it would be good to apply a legal and fairness test on the Residential Investor tax classification itself. I submitted pages from a property tax appeal hearing of June 2021, I am recapping it the best I can, I am not a lawyer, and the Judge has not ruled or given any opinion on the case, but our submittal argues that the statute is ambiguous and therefore, causes doubt. The court has ruled "The rule of strict construction applies in tax cases, and if doubt exists as to the construction of a taxing statute, the doubt should be resolved in favor of the taxpayer. Real property tax classification rule provides the definition of Residential Investor. A Residential Investor is a classification for residential properties that do not qualify for the home exemption." Now, there is more to that, I am just going to address that first sentence. The County then interprets this to mean that the property will be classified as Residential Investor, if the property does not have a granted home exemption. There are two (2) other classifications, there is the home commercial that says that you have to have...there are two (2) other ones that says, you have to have it, this is language that says you only have to qualify. There are a lot of properties that qualify for home exemption and meet all the other requirements of the lower Residential rate, but are denied because the County's interpretation is, you have to actually have the home exemption. This confusion or doubt is persuasive, as you can see, even today, more things, who is in that, who is not in that, have to be brought up and mended or changed. I believe they changed the threshold three (3) times. I think it was two million dollars (\$2,000,000), one million dollars (\$1,000,000), and one million three hundred thousand dollars (\$1,300,000). Then the tax rate has been changed, it was just eight (8)...not that much more over Residential. Now, it is the highest rate other than Resort and another one. Additionally, we go on to argue that the imposition of a tax rate, higher than the prevailing rate, for others of the same class is equivalent to a tax extraction in the first instance. Therefore, the court will rule in favor of a taxpayer. By definition of the County rules, the rate only applies to residential properties. The statute created two (2) tax rates for the same property of class. Here

the County is imposing a special rate that is higher than the prevailing rate, so therefore the Residential Investor rate is an extraction. Also, for me, personally, in this current 2022, I was denied my homeowners exemption. The exemption was required to be filed by September 30th of this year, which I did. There was also the requirement of submitting 2021 tax returns. As I have filed an extension to October 15th, because other information that is needed to complete it...

Committee Chair Evslin: Mr. Lindner, you have thirty (30) seconds left.

Mr. Lindner: Anyway, I was denied because I did not have my taxes, and that just seems unreasonable where the Federal government says I have until October 15th that I asked them to go back and we submitted it after the fact, they said it was too late, and told me I should file my taxes earlier next year.

Committee Chair Evslin: Thank you for your testimony. Are there any clarifying questions Councilmembers? Councilmember Cowden.

Councilmember Cowden: If I heard you correctly, you are saying, you cannot file your taxes earlier, because you will not be receiving critical information for filing your taxes until after October 1st. So, you are saying the difference between September 30th and October 15th, those two (2) weeks are significant enough that you lost a whole year in this tax class.

Mr. Lindner: Right.

Committee Chair Evslin: Are there any further clarifying questions? Thank you, Mr. Lindner. Is there anyone else in the audience wishing to testify? Is there anyone on Zoom wishing to testify? Just to clarify, for those who testify, this is a public hearing, so there is no discussion, this will go to our next Committee Meeting, which is January 19th. Seeing no one else to testify, this public hearing is now adjourned.

There being no further testimony on this matter, the public hearing adjourned at 8:48 a.m.

Respectfully submitted,



JADE K. FOUNTAIN-TANIGAWA
County Clerk