



OAHU REAL PROPERTY TAX ADVISORY COMMISSION
CITY AND COUNTY OF HONOLULU
530 South King Street, Room 202
Honolulu, Hawaii 96813

MINUTES OF THE COMMISSION'S FOURTH MEETING:
October 12, 2017

Members Present: Dennis Oshiro, Chair
Nathan Okubo, Vice-chair
Shannon Alivado
Clayton Chun
Scott Higashi
Leonard K.P. Leong
Mark K. Murakami

Others Present: Todd Swisher, Commission Aide, Office of Council Services
Randall Young, Office of Council Services
Mark Segami, Council Media and Communications
Steven Takara, Real Property Assessment Division Administrator
Keith Yamashita, Real Property Appraisal Officer (BFS)
Tom Yamachika, Tax Foundation of Hawaii

1. CALL TO ORDER

The meeting was called to order at 10:31 a.m. by Chair Oshiro.

2. APPROVAL OF MINUTES: SEPTEMBER 14, 2017

Chair Oshiro asked if there were any corrections to the draft minutes as circulated. Hearing none, and with no objections, the minutes of the September 14, 2017 meeting were approved.

3. ORAL TESTIMONY ON AGENDA ITEMS

Chair Oshiro called for oral testimony on all agenda items. With no other speakers having registered, Chair Oshiro introduced Tom Yamachika, President of the Tax Foundation of Hawaii and Vice-chair of the 2014 Oahu Real Property Tax Advisory Commission. Mr. Yamachika recounted his service both as Vice-chair of the Commission and as Chair of its Exemptions subcommittee. He drafted the Exemptions subcommittee portion of the final report. He noted that while not many of the recommendations of the 2014 Commission were adopted, a few were, including the graduated tax rate for the Residential A classification. Because exemptions have political constituencies, there was pushback on his subcommittee's recommendations.

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CITY AND COUNTY OF HONOLULU

Chair Oshiro asked if there were any questions for Mr. Yamachika. Commissioner Murakami asked how the 2014 Commission balanced the worthiness of exemptions against the City's need for revenue. Mr. Yamachika explained that his subcommittee examined the policy rationale of each exemption. They found there were a number of exemptions that sounded like they would benefit nonprofits doing public-oriented work but which lacked a criteria for ensuring that the entity involved would be a nonprofit. They also scrutinized exemptions that benefitted other entities besides nonprofits, including for-profit companies (e.g. for-profit childcare centers).

Commissioner Alivado asked if Mr. Yamachika had any recommendations regarding timeshares and vacation rentals on Oahu. Mr. Yamachika stated that the City needs to have a consistent policy with regard to vacation rentals. He suggested that the City coordinate with other policymakers and decide whether these types of rentals were something the City wants to allow, and if so, under what conditions. His impression is that the State is more interested in collecting Transient Accommodations Tax, while the City has to contend with zoning and enforcement.

Chair Oshiro thanked Mr. Yamachika for his thoughts. Mr. Yamachika wished the Commission luck with its work and noted that the the City's property tax laws are the result of the political process. The Commission can make a contribution by looking for ways to make the system more consistent and understandable to the taxpayer.

4. NEW BUSINESS

a. Subcommittee Meeting Reports

1. Classifications Subcommittee – September 15th

2. Classifications Subcommittee – October 5th

Vice-chair Okubo reported on the substance of two meeting of the Classifications subcommittee held on September 15th and October 5th, respectively. The subcommittee focused on the Real Property Assessment Division's (RPAD's) recommendations, beginning with broadening the application of Residential A to Country, P-1, and P-2 residential parcels. This change would affect around 300 properties. The subcommittee also discussed the treatment of timeshares, whereby certain timeshares in Waikiki are taxed at the Residential rate rather than the Hotel and Resort rate. Possible approaches include RPAD's recommendation to repeal this treatment of Waikiki timeshares and creating a new timeshare classification, as Maui has done. Next, the subcommittee looked at whether owners of historic homes dedicated for preservation should pay a higher minimum tax, as proposed by Bill 52 (2017). The subcommittee also discussed the Kakaako industrial zone limited development exemption. Vice-chair Okubo noted that other areas of the City suffering from inadequate infrastructure, such as Mapunapuna, are not currently eligible for an exemption. Finally, the subcommittee discussed how the real property tax code can be used to support affordable housing opportunities. Property owners could be incentivized to rent to low-income individuals in exchange for a tax break. Implementing and monitoring such a program could, however, be a burden on the City.

Commissioner Alivado asked if there was an assessment as to how much revenue broadening Residential A to Country, P-1, and P-2 zoned residences would generate. RPAD Administrator Steven Takara stated that they would expect around \$1 million in additional revenue.

b. Subcommittee Proposals and Ideas

Chair Oshiro observed that a number of proposals were being discussed in the Commission's subcommittee, inspired by the RPAD's recommendations, pending legislation, and other sources. He noted that the list of topics listed on the meeting agenda is not exhaustive and that other topics may be discussed at future meetings. For the purposes of discussion, proposals were listed under the subcommittee or heading with which they have had the closest association.

1. Classifications Subcommittee (Commissioners Leong, Murakami, and Okubo)

A) Transit-oriented development (TOD)

Chair Oshiro explained that Bill 19 (2017), presently before the Council, would add a TOD class. TOD had also been brought up by Commissioners at various points in earlier meetings. Commissioner Alivado referred to the definition of TOD in Bill 19 (2017), which is found in the City's Land Use Ordinance. Administrator Takara could not recall if TOD had been defined as along the track of the rail or just around the stations. Keith Yamashita of RPAD explained that the Department of Planning and Permitting has been responsible for TOD. Commissioner Alivado asked if the new classification would be taxed at a higher rate than Residential or other zoning, to which Administrator Takara replied that, at least historically, rates tend to be higher for newly created classifications. Mr. Yamashita explained that the classification would accommodate mixed uses among properties in the TOD zone. Commissioner Higashi noted that classification within mixed use zoning usually involves the determination of highest and best use, unless parcels are "condominiumized"/dedicated to residential use. In response to a question from Commissioner Alivado, Steven Takara stated that he believed the intent of the TOD classification would be to exclude residential uses. Commissioner Murakami noted that in effect, then, the TOD rate would be generically non-residential within TOD zones.

B) Residential A

Chair Oshiro gave the criteria for Residential A and noted that the classification first went into effect in tax year 2014. For tax years beginning July 1, 2017, a two-tiered tax rate is operative. Chair Oshiro noted the RPAD's recommendation regarding the broadening of the definition of Residential A and referred to a handful of bills before the Council proposing to repeal, restrict, or replace the classification. Members of the Commission had also previously raised the possibility of changing the valuation threshold associated with Residential A's tiered tax rate.

Vice-chair Okubo asked if the 300 properties in Country, P-1, and P-2 zones being used as residences would be eligible for a home exemption, excluding them from Residential A. Administrator Takara stated that owners of these properties had not taken a home exemption. Commissioner Alivado referred to written testimony submitted by previous Oahu Real Property Tax Advisory Commission member Natalie Iwasa, which suggested indexing the Residential A threshold to the median sale price on Oahu, so as to prevent the hot housing market from pushing households into the higher rate. Administrator Takara commented that the median sale price is not City data, a distinction Commissioner Higashi dubbed a "market-based number versus an assessment number." Commissioner Higashi noted that, as a result, City revenue would be vulnerable to swings in the market. Administrator Takara suggested that there could be a steep drop-off in properties close to the threshold. Mr. Yamashita explained that if the threshold were to be raised to, say, \$1.3 million, around half of properties would fall out of the Residential A classification, potentially forcing the City to tax other properties at higher rates to obtain equivalent revenue. Commissioner Chun asked if there had been a lot

of change in the number of properties that exceeded the threshold since Residential A was first enacted. Mr. Yamashita and Administrator Takara affirmed that more properties have been added every year, from 8,000 or so in the first year to 10,800 or so in the most recent year.

Commissioner Murakami referred to Ms. Iwasa's contention, elsewhere in her testimony, that tax increases associated with Residential A were being passed on to tenants, making rentals less affordable. Commissioner Murakami asked if there was any data on the impact of Residential A on affordability. Mr. Yamashita replied that while RPAD does not have that data, their reasoning has been that the market dictates what rent can be charged, such that a tax increase cannot automatically be passed on to a renter. A renter being over-charged could move elsewhere. Administrator Takara provided a historical note about a homeowner vs. non-homeowner class in 2010 that lasted one fiscal year. It had no threshold, leading to arguments that the tax was being passed to the tenant even at lower values, which was one motivation for the classification's repeal. Administrator Takara stated that a threshold above \$1 million should not impact the rental market in the same way.

Commissioner Alivado brought up Bill 48 (2017), which substitutes a "luxury apartment unit" classification for Residential A. Administrator Takara noted that the assessed value threshold in the bill is left blank. In his analysis, the bill seems to target luxury apartment units built after the start of 2010. Without a specific dollar value, RPAD cannot calculate the bill's fiscal impact. In response to a question from Commissioner Alivado, Administrator Takara stated that RPAD could provide an analysis to the Commission if given specific criteria. Commissioner Higashi offered that the dollar threshold may have been left blank because there is no consensus on what threshold would constitute "luxury." The bill may be reacting to units built in Kakaako that are perceived as expensive. Commissioner Murakami noted that the new classification would apply to fewer properties than Residential A (i.e. a subset of high value apartment units). Administrator Takara reported that the City derives a total of \$49 million from Residential A, a sum that may not be fully offset by replacement classifications.

C) Timeshare

Chair Oshiro summarized RPAD's recommendation that Section 8-7.1(c)(4) of the Revised Ordinances of Hawaii 1990, which classifies certain timeshare units in Waikiki as Residential, be repealed. Maui County employs a separate timeshare classification.

Commissioner Murakami asked if a separate timeshare rate had been proposed before. The RPAD representatives could not recall such a proposal.

D) Vacation rental and bed and breakfast

Chair Oshiro explained that Bill 61 (2017), presently before the Council, would establish new transient vacation and bed and breakfast classifications. Additionally, the neighbor island counties, particularly Maui, have taken different approaches to these types of units. Commissioner Alivado asked what the RPAD representatives knew of Maui's system, including the zoning of bed and breakfasts there. Administrator Takara noted that Bill 61 (2017) seems to apply to both legal (i.e. with nonconforming use certificates) and illegal units and would require clarification. His impression, based in part on a conversation with Maui Corporation Counsel, was that Maui's classification system is complex. For instance, Maui taxes on actual use, be it legal or illegal. RPAD would be willing to study the matter further.

E) Commercial

Chair Oshiro noted that the idea of distinguishing between large and small businesses for real property tax purposes had been brought up in the Classifications subcommittee. Administrator Takara asked if the basis for differentiation was the size of the business or its value. Chair Oshiro stated that he believed it was size that had been discussed, but that no threshold number had been offered. Commissioner Murakami likened the proposal to the two-tiered tax rate for Residential A. Chair Oshiro invited Mr. Yamachika to give his input and Mr. Yamachika noted that the Small Business Administration has criteria for classifying small versus larger businesses. Commissioner Alivado observed that the City may not have the expertise to make such a certification itself, to which Administrator Takara agreed. Commissioner Chun stated that there were distinctions between commercial and residential properties, in the sense that with commercial properties it is common practice to pass on taxes to tenants. Administrator Takara affirmed that it would be hard to guarantee that tax relief would be felt by the small business. Mr. Yamachika explained the process by which his organization gives their nonprofit exemption certificate to their landlord and then receives a reduction in their rent. A mechanism of this kind for small businesses may be practicable.

2. Exemptions and Minimum Tax (Commissioners Alivado, Chun, and Higashi)

A) Affordable housing

Chair Oshiro noted that Bill 59 (2017), presently before the Council, proposes, among other things, exemptions for affordable housing and for construction work associated with affordable housing. He also referred to the fact that Hawaii County's real property classification scheme includes an 'Affordable Rental Housing' class. Commissioner Alivado noted that the 'Affordable Rental Housing' rate on Hawaii was \$6.15 per \$1,000 of assessed value, versus \$3.50 per \$1,000 of assessed value for Residential on Oahu; however, their housing market is different. Commissioner Alivado then asked for clarification regarding the Department of Budget and Fiscal Service's position on the construction exemption. Mr. Yamashita of RPAD stated that the exemption is intended as an incentive to build affordable housing. The incentive expires three years after issuance of a building permit, or upon issuance of either a certificate of completion or any certificate of occupancy.

B) Leprosy

Chair Oshiro noted that RPAD has recommended that the exemption for persons with leprosy be repealed. According to the Division, persons with leprosy might be better covered under an existing exemption for persons who are totally disabled. Administrator Takara stated that there were only three current claimants under the provision and that, due to antiquated language regarding medical treatment, new claimants are unlikely. The criteria for the provision would therefore need to be revised or else added onto the disability exemption. Vice-chair Okubo asked what the net result would be of transferring the claimants from the leprosy exemption to the disability exemption, to which Administrator Takara responded that the exemption is \$25,000 under both provisions. The change could be characterized as "housekeeping."

3. Housekeeping

Chair Oshiro noted that two additional topics did not fit neatly under either subcommittee and could best be described as "housekeeping."

A) Deposits for appeals

Chair Oshiro noted that the RPAD has recommended that deposits for appeals filed to the board of review be set at \$50 regardless of tax year. Currently, deposits are \$50 for 2017 and beyond and \$35 for tax years prior to 2017. Administrator Takara stated that the intention of the bill that set the deposit fee was for the fee to be uniformly \$50, but it was determined, through legal interpretation of language concerning the bill's effective date, that the fee increase would not apply to filings for prior tax years. RPAD's administrative expense is the same regardless of the tax year in question. Correcting the issue would make it easier for RPAD to process filings and would provide clarity to the appellant.

B) Removal of dedication for residential use upon sale or transfer

Chair Oshiro noted that the RPAD has recommended that the dedication of certain property for residential use be removed upon the sale or transfer of the dedicated property. According to the RPAD, the current automatic transfer creates difficulties in the areas of compliance and enforcement. Administrator Takara explained that the issue relates to condos within mixed use zoning that petition for a five-year residential dedication in order to pay the lower Residential rate. Should a property owner sell within the dedication period, the buyer enjoys the lower rate while being held to restrictions on the use of the property. This creates confusion for the buyer, who may be subject to rollbacks if they deviate from residential use.

Administrator Takara also suggested that a buyer who is not aware that they needed to renew the dedication could be hit with a tax increase when the seller's dedication lapses and the property is reclassified based on highest and best use. Administrator Takara noted that condo units can change hands frequently, making it difficult for RPAD to track new owners and provide notice, including reminders that dedications will lapse. Should the automatic transfer of the dedication be removed, RPAD would likely process more applications. In response to a question from Vice-chair Okubo, Administrator Takara stated that RPAD would allow the seller to break the dedication without seeking a rollback or other penalties. Administrator Takara believes it would be cleaner for the residential dedication to be removed upon transfer and for the new owner to apply. Mr. Yamachika summarized the theoretical underpinnings of the dedication and expressed his agreement with RPAD's position that a new buyer should make their own agreement rather than inherit obligations to which they did not agree.

Vice-chair Okubo noted that there are potential timing dilemmas for new owners who buy shortly before the deadline for applying for the dedication. Administrator Takara agreed and noted that the same dynamic applies to the home exemption and its relationship to Residential A. However, RPAD needs to adhere to certain deadlines for budget purposes. Commissioner Murakami asked whether an individual owner of a condo in mixed use zoning whose residential dedication lapses would fall into Hotel and Resort or Residential A class. Mr. Yamashita of RPAD clarified that the residential dedication can apply to long-term renters (i.e. more than 30 days), not just owners. Administrator Takara stated that in the case of a unit valued at over \$1 million, it may be reclassified to Residential A if the owner moves out and rents the unit.

Chair Oshiro closed discussion of the proposals listed on the agenda and noted that discussion would continue in subcommittee meetings. The goal will be for subcommittees to draft provisional recommendations in time for posting with the full Commission's November meeting agenda.

5. ANNOUNCEMENTS

The next meeting will be held on Thursday, November 9, 2017 at 10:30 a.m.

Administrator Takara noted that he had sent Commission Aide Todd Swisher a request to discuss Bill 79 (2017), Bill 80 (2017), and Bill 91 (2017). The Commission Aide stated that he had distributed PDFs and hard copies of the bills to the Commission, but, because the bills were not listed on the meeting agenda, it would be best for them to be reviewed in subcommittees before being taken up by the full Commission.

Administrator Takara also noted, and the Commission Aide affirmed, that the Agricultural Development Task Force plans to meet on November 7th to review agriculture-related real property tax measures before the Council. The Commission Aide stated that, in deference to the Task Force, no agriculture-related measures had been placed on the current meeting's agenda.

6. **ADJOURNMENT**

Hearing no objections from the six Commissioners present, Chair Oshiro adjourned the meeting at 11:55 a.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Todd Swisher", written in a cursive style.

Todd Swisher
Commission Aide

