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 SIXTH MEETING: November 30, 2017

Members Present:	Dennis Oshiro, Chair Nathan Okubo, Vice-chair Shannon Alivado Clayton Chun Scott Higashi Leonard K.P. Leong Mark K. Murakami
Staff and Guests:	Todd Swisher, Commission Aide, Office of Council Services Randall Young, Office of Council Services Mark Segami, Council Media and Communications Raul Villanueva, Senior Adviser to Councilmember Fukunaga Steven Takara, Real Property Assessment Division Administrator Steven Hunt, Real Property Assessment, Kauai Scott Teruya, Real Property Tax Division Administrator, Maui Lisa Miura, Acting Real Property Tax Administrator, Hawaii Stan Sitko, Real Property Tax Division, Hawaii

1. CALL TO ORDER

The meeting was called to order at 10:35 a.m. by Chair Oshiro. The Chair welcomed Real Property Assessment Division (RPAD) Administrator Steven Takara, as well as his counterparts for the three other counties: Steven Hunt (Kauai), Scott Teruya (Maui), Stan Sitko (Hawaii), and Lisa Miura (Hawaii). Administrator Takara informed the Commission that these guests were on Oahu for a meeting of county real property tax administrators and had requested to attend the Commission's meeting when they learned of it.

Chair Oshiro noted that while this meeting was schedule to be the Commission's last, the Commission requested and was granted an extension of its December 1st deadline by Council Chair Ron Menor. The report will now be due by the end of the first week of January (January 5th). Chair Oshiro announced that instead of approving the final report at this meeting, the Commission would continue its discussions and set a new timetable for finishing its work.

2. APPROVAL OF MINUTES: NOVEMBER 30, 2017

Chair Oshiro asked if there were any corrections to the draft minutes as circulated. Commissioner Alivado asked for two changes: replacing the Real Property Assessment Division with "author of the rationale" in item 3 on page 1 and correcting a typo on page 5. Hearing no objections, the minutes of the November 30, 2017 meeting were approved as amended.

3. **ORAL TESTIMONY ON AGENDA ITEMS**

Chair Oshiro called for oral testimony on all agenda items. No one came forward to speak.

Chair Oshiro then invited the visiting real property tax administrators to speak at any time during the remainder of the agenda.

4. **Report of the 2017 Oahu Real Property Tax Advisory Commission**

a. Review of Chair's Introduction to the Report

Chair Oshiro noted again that the original intention of the meeting was to review and approve the Commission's final report. The review would have begun with the introduction to the report, which, as Chair, is his responsibility. In the introduction, the Chair will give an overview of the process, explain the Commission's general approach, and offer advice to future iterations of the Commission. Chair Oshiro stated that, because of the extension the Commission received, he would need to revise the introduction. Hearing no objections, he stated that the Commission would defer the item. Chair Oshiro announced that a draft of the introduction would be circulated to commissioners within the next few weeks in order to solicit their feedback.

c. Review of Recommendations of the Exemptions and Minimum Tax Subcommittee

The next scheduled item was to be the 'Review of Recommendations of the Classifications Subcommittee.' Chair Oshiro moved to push this item back in the agenda in favor of starting with a 'Review of Recommendations of the Exemptions and Minimum Tax Subcommittee.' Hearing no objections, the order of the agenda was changed. The review of the recommendations of the Exemptions and Minimum Tax subcommittee was structured such that the Chair stated each recommendation, asked members of the subcommittee to explain the recommendation, and then opened the floor up to questions and discussion.

Recommendation #1: No repeal of agricultural dedication using calculation of agricultural production rates.

Commissioner Alivado explained that the subcommittee had decided to leave this topic in the report despite the recommendation to not go forward with the repeal because the matter had been discussed at length and the input of the Council's Agricultural Development Task Force (ADTF) had been sought. As detailed in the minutes of the Commission's November 9, 2017 meeting, the ADTF asked RPAD for more data in order to assess the impact repeal would have on Oahu farmers. In response to an inquiry from Commissioner Murakami, Commissioner Alivado confirmed that the recommendation concerned the use of the agricultural production rate factor and not the full repeal of the agricultural dedication program. Administrator Takara gave additional background on the information the ADTF requested of RPAD. RPAD prepared a comparison of assessed values and tax liability using the current agricultural production rate calculation versus a simple percentage (i.e. the effect of repeal) for several differently situated farm properties on Oahu. This data was forwarded to the ADTF and to the Mayor's Agricultural Liaison. The data shows that assessments would generally increase after repeal of the agricultural production rate provision, but most farm properties would still pay minimum tax.

Commissioner Alivado asked for the neighbor island administrators to talk about their own approaches to assessing the value of agricultural land. Steven Hunt of Kauai reported that they are going through some revisions as a result of a two-year project with their ag working task force. They used to include a soil rate component in their dedication applications. This put stress on their one ag inspector and led to data quality issues. They have simplified the process by going to a use tax, which features two rates: diversified ag and pasture. Their minimum dedication is ten years, and there is a twenty-year option with lower rates.

Scott Teruya of Maui stated his impression that agriculture is a challenge for International Association of Assessing Officers (IAAO) members across the country. He has worked with four ag working groups since 2001. Maui County is working towards adopting Honolulu's approach, taking highest and best use value and then applying a percentage. He stated that the agricultural production data is archaic and can create inconsistencies. He sees real property officials as being experts in assessing values, with rates better left to lawmakers.

Lisa Miura reported that Hawaii County has approximately 11,000 properties in either a non-dedicated or dedicated agricultural program. Values are low on the East Hawaii side, with higher values in West Hawaii. Going to a percentage-based rate was attractive to the County but farmers commented that no matter what the value of their land may be, they will only make so much money growing, say, papaya. Hawaii County has an ag subcommittee that is looking at moving away from ag production rates; the last time they updated their rates, in 2008, it did not take because farmers would have had to pay more despite making less. The County does not have good enough data to come up with a reliable number. In the name of sustainability and supporting farmers, the County's leadership has not gone to a percentage-based system. The ag subcommittee is considering a system in which either a production rate or percentage-based calculation would be applied, whichever is cheaper.

Commissioner Alivado asked Mr. Hunt of Kauai whether an annual report was required for participants in the 20 year ag dedication program. Mr. Hunt reported that annual reports are not required to be submitted, although the County would like farmers to do so. Kauai County sends out letters one year in advance notifying farmers that their existing dedications are coming up for renewal, so they know that if a renewal is not recorded, their land will go to market value. Due to new Government Accounting Standards Board rules, the County must, in their Comprehensive Annual Financial Reports (CAFRs), account for the tax abatements given to farmers. Mr. Teruya noted that almost all the people participating in the ag dedication on Maui are doing so for periods of 20 years, with the few still on 10 year dedications doing so on a year-to-year basis. There is no standing renewal, as farmers have opposed such bills.

Recommendation #2: Amend the deposit to $50 for all appeals regarding a contested real property tax assessment.

Commissioner Alivado characterized the issue as housekeeping and stated that the intent was to apply a more uniform deposit fee. Commissioner Murakami asked a process question regarding what to do with proposals on which the Commission had a consensus. Commission Aide Todd Swisher offered that the Commission is not bound by any particular procedure and so could take whatever approach it would like. As one possibility, he noted that in the original script for the meeting the Commission Chair would have led a review of the report, asking for motions to amend after each section and then calling for a final vote on approval of the amended report, rather than up or down votes on each recommendation. Chair Oshiro asked if there were any strong feelings on procedure. Hearing none, he stated that the Commission would postpone a vote until the final draft of the report would be available.

Administrator Takara asked if the neighbor island administrators could share their deposit amounts. Maui's is $75, Kauai has a tiered rate ($25 for homeowners, $75 for all others), and Hawaii County's is $50 across the board, which is what is being proposed for Honolulu.

Recommendation #3: Allow RPT exemption for persons with leprosy to be included in ROH Section 8-10.8 ("Exemption--Persons with impaired sight or hearing and persons totally disabled").

There was general agreement on this recommendation.

Recommendation #4: No repeal of ROH Section 8-10.35 affecting Central Kakaako.

Vice-chair Okubo noted that his subcommittee had discussed (though he had not participated in the discussion, due to a conflict) the issue as well and had recommended a sunset for the exemption. Commissioner Higashi noted that the provision already has a sunset, so doing nothing would allow the program to run its course. Commissioner Alivado cited testimony from a number of persons who support the exemption but acknowledged the RPAD's concerns regarding equity and how the exemption is applied (or not applied) to neighboring properties. The exemption requires renewal every two years, up to ten years, and there is an appeal process in the event an application is rejected. Commissioner Higashi noted the unintended consequences relating to the exemption legislation's delineated boundaries, which he suggested could be addressed through a legislative fix if the Council so wished. Administrator Takara thanked the Commission for its consideration.

Recommendation #5: Amend ROH Section 8-7.5(d) to require recordation of all residential use dedications.

Commissioner Higashi noted that this was another area that both subcommittees took up. The Classifications subcommittee had earlier recommended cancelling the dedication upon sale or transfer, while the Exemptions and Minimum Tax subcommittee preferred recordation. He stated that both subcommittees seemed to want to assure that the buyer, who may or may not be aware of the dedication, still has the opportunity to access it. The Commission had not resolved which would be the best approach, and Commissioner Higashi wondered how the RPAD could provide an equitable transition. Administrator Takara asked what would happen to existing dedications on record. For instance, would owners have to record upon renewal? Would they be forced to do the recordation during their current dedication period? The residential use dedication is five years. Commissioner Higashi suggested that individuals would record the dedication now, with an expiration date provided along with the dedication.

Administrator Takara asked the neighbor island administrators to weigh in on their recordation procedures. Mr. Hunt reported that Kauai County no longer has the program, but when they did it carried a ten-year requirement, with rollback taxes due if the property was sold within that period. This amounted to a lien on the property and had problematic implications. Eventually Kauai County shifted to a classification based on actual use, in which the value would be based on highest and best use but residents could pay the lower residential rate. The County uses surveys to track changes in use as properties are sold or transferred. Mr. Teruya reported that Maui has only a handful of residential use dedications, each being a ten year dedication with rollback provisions. Every dedication requires recordation at the Bureau of Conveyances for public notice. The very next day after the Commission's meeting the Maui

County Council would be voting on a switch to a highest and best use system. Ms. Miura reported that Hawaii County has a non-speculation program with a ten-year requirement. They do the recordations for every dedication themselves and charge property owners for the expense. In response to a question from Commissioner Alivado, Ms. Miura stated that the charges were minimal relative to the amount of money that would be saved on taxes.

Commission Murakami asked what is currently happening with existing dedications in Honolulu when owners sell or transfer. Administrator Takara confirmed that owners are released from their dedications and do not face any rollbacks or other penalties. The City does not pursue rollbacks with new owners. Administrator Takara noted that while recordation sounds like a good idea, he had questions regarding unintended consequences. He has spoken with Title Guaranty and he thinks there may be a solution outside of recording that would not involve a bill. Vice-chair Okubo expressed a wish that the recording be as simple as possible for the taxpayer, so that they can take care of it themselves and not involve lawyers or other professionals. Commissioner Higashi noted his subcommittee's intention to make the new buyer aware of the dedication through a title search and said he did not know what other equitable approaches there might be. Commissioner Higashi asked if, were a bill to be passed, the City would be able to develop a simple form for taxpayers. Mr. Teruya noted that Maui County works with the Bureau of Conveyances and does online filings in their office. They pass charges onto the taxpayer. During escrow, buyers work out whether they will continue the dedication and be subject to its provisions or cancel it to avoid liability for rollbacks. Vice-chair Okubo noted that there are circumstances where there is no escrow (e.g. individual to individual, off the market), so there needs to be a simple way to record and then release. Commissioner Murakami noted that forms currently exist for other dedications, such as the ag dedication, and that these dedications used to be recorded. Administrator Takara suggested it might be advantageous to have a recordation requirement apply to the City's other dedication programs. RPAD would have to weigh the usefulness of the requirement, especially with regard to the historic residential and historic commercial programs. In response to a question from Commissioner Murakami, he clarified that at the moment he did not foresee a problem with such a requirement.

Chair Oshiro asked if the Commission would like to resolve the conflict between the subcommittees' recommendations regarding the residential use dedication. Vice-chair Okubo stated that he supported the Exemptions and Minimum Tax subcommittee's recommendation to do a recordation, provided that the recording be made as easy as possible for taxpayers. Commissioner Alivado suggested the subcommittees work together on the language, in light of discussion at the meeting.

Chair Oshiro noted that the Exemptions and Minimum Tax subcommittee had provided commentary on several bills pending before the Council and asked if members of the subcommittee would summarize this commentary. Commissioner Alivado asked for clarification regarding a request that the Commission take a position on all real property tax-related bills before the Council. Vice-chair Okubo explained that Council Chair Menor had made the request. As far as which bills should be assigned to which subcommittee, Vice-chair Okubo asked for a refresher on the bills. Commission Aide Todd Swisher noted that RPAD had included ten bills in its briefing and the Commission had looked at seven others that were subsequently introduced. Commissioner Murakami stated that he would defer to the Chair and the Commission Aide to determine assignments and send them by email. Commissioner Alivado suggested that the Exemptions and Minimum Tax should be assigned the five bills they had already reviewed.

Relating to Bill 61 (2017), Commissioner Alivado asked if, while they were on-hand, the neighbor island administrators could comment upon their counties' approaches to transient vacation units (TVUs) and bed and breakfasts (B&Bs). Administrator Takara interjected that the Honolulu City Council had recently adopted four resolutions proposing amendments to the Land Use Ordinance relating to TVUs and B&Bs. Commission Aide Todd Swisher agreed to provide information on these resolutions to the commissioners. These proposals have not been introduced to the Council in bill form and so would likely not make the cutoff for the Commission's review. Turning to the neighbor islands, Mr. Teruya reported that Maui County was on the verge of separating hotel and resort from short-term rentals, a new classification. The new class is a big bucket and applies to any use less than 180 days. In response to a question from Chair Oshiro, Mr. Teruya replied that the Maui County Council will set the rates. He observed that short-term rentals were more volatile than the hotel market, so one rate did not make sense.

Mr. Hunt reported that Kauai went to a tax on use in the 2014 assessment year. Short-term rentals on the island could be divided into three buckets: the visitor destination area, with legal, permitted uses; properties outside the visitor destination area that have nonconforming use certificates and are permitted to do vacation rentals (an entitlement that runs with the property); and the renegades who are operating illegal short-term rentals. The County is picking up the latter through surveys, website searches, and reporting by neighbors, and officials are subjecting violators to the higher vacation rental rate. The County does their classifications and taxing on a year-to-year basis, so there is nothing that gives people rights to continue to operate a vacation rental just because they have been taxed on that basis once. That leaves issues of compliance to other County agencies, who may shut violators down and have Real Property Assessment return them to the residential rate. Ms. Miura reported that Hawaii County is easier on the TVUs but that, in contrast to Honolulu, they pick up all structures, whether the structures are permitted or not. A TVR bill is making its way through the County legislative process. If a homeowner resides on a property that also includes a short-term rental, they receive a homeowner exemption only on the portion they reside in, but they are not eligible for the residential rate and must instead pay a higher rate. For owners who misrepresent their properties as B&Bs, they pay the higher rate at full market value.

Ms. Miura noted that there was not a large tax incentive, as far as Transient Accommodations Tax is concerned, for the counties to track vacation rentals. No one in Hawaii County who uses their home for commercial purposes is eligible for the homeowner exemption rate. Mr. Teruya further noted that Maui County's legislation inserted language stating that advertising on a vacation rental website would be automatic disqualification for a homeowner exemption. Administrator Takara noted that Honolulu has used web ads in successful defense of their decision to remove a home exemption. Mr. Hunt noted that Senate Bill 704 HD2, currently before the State Legislature, touches on the TVU issue. He observed that there is a push-pull between the State and counties in this area. Administrator Takara agreed that the State Legislature is likely to revisit the TVU/B&B issue in their upcoming session. Commissioner Alivado asked Mr. Hunt if owners who had been challenged had fought the higher rates. Mr. Hunt explained that it depended on the level of documentation. The County has grown in the sophistication of the evidence they use. He noted that tenants sometimes sublet spaces for short-term rentals, which becomes a civil matter between the landlord and the tenants. Overall enforcement has been resource-intensive, especially during the initial push. After that it is a matter of monitoring compliance and dealing with sale/transfers.

b. Review of Recommendations of the Classifications Subcommittee

Chair Oshiro opened a review of the recommendations of the Classifications Subcommittee. He noted that the recommendations had not been updated since they were posted, in draft form, along with the agenda of the Commission's November 9, 2017 meeting. He asked if the subcommittee wished to discuss the recommendations further. Vice-chair Okubo noted that the subcommittee's initial recommendations with regard to the Central Kakako industrial zone limited development exemption and the residential use dedication had already been discussed. By his accounting, there were four other proposals from the subcommittee, two recommendations and two ideas for consideration:

Recommendation #1: Recommend redefining "Residential A" in ROH §8-7.1((i) to include parcels in the P-1, P-2, and Country zoning districts.

Recommendation #2: Recommend housekeeping amendments to ROH §8-7.1 to address issue of ambiguity raised by Judge Gary Chang (Tax Appeal Court) when interpreting this provision of the ROH.

Commissioner Murakami stated that this proposal would need to be taken off the agenda owing to the fact that Judge Chang has not yet issued a written opinion. Commissioner Murakami had asked Administrator Takara for a transcript of the proceedings, but Corporation Counsel indicated that they were not comfortable releasing the transcript until such time as the written opinion was issued. Without being able to review what the perceived ambiguity was, the Commission cannot render a judgment. Administrator Takara stated that the matter is still considered "in litigation" and thanked the Commission for their understanding.

Consideration #1: Consider treating all condominium units used for time share use the same by repealing ROH §8-7.1(c)(4).

Vice-chair Okubo stated that he would be willing to convert this to a recommendation but was not sure how the rest of his subcommittee felt.

Consideration #2: Consider amending ROH §8-7.6 to broaden the definition of "low-income rental housing", or otherwise using the real property tax rates, assessments, exemptions, or credits, as tools to incentivize owners of residential units to increase the pool of residential units being rented at affordable rental rates.

Vice-chair Okubo and Commissioner Murakami were both interested in the tools the other counties use to incentive affordable housing from a use, as opposed to a development, perspective. Mr. Teruya reported that Maui County offers an income-based affordable housing exemption. He noted, however, that he has not seen one affordable housing project not go to market after the 10 year affordability period runs its course. He encouraged Honolulu to look at incentives for long-term rentals. Commissioner Murakami asked if, outside of developers, there are any programs that would incentivize "mom and pop" landlords to rent at an affordable rate. Mr. Teruya stated that the issue had come before the Maui County Council on multiple occasions and that the current recommendation is to give the landlords a home exemption if they meet affordability requirements. He observed that the long-term rental would have to be tied to an affordability threshold and would have to address the gap between market rates and HUD's rates.

Mr. Hunt reported that Kauai County has a similar program for low- and moderate-income housing, which involves regulatory requirements, such as a ten-year requirement for affordable/employee housing and a 30-70 year requirement for properties benefitting from federally-funded low interest loans. If property owners rent at the affordable rates set by HUD, they get an exemption for the entire property and pay the minimum tax. Kauai also has another program for individual, one-off rentals called the "long-term affordable rental." The program includes both on and off-site rental housing and involves filing an application every one to three years. Some landlords want to go to month-to-month after the first year, but the County requires a commitment of whole year increments. The current affordability threshold is 90% of Area Median Income and there is an adjustment for whether or not utilities are included. In response to a question from Commissioner Murakami, Mr. Hunt stated that Kauai does not verify the income of tenants and instead pays attention to the rental rate. Rather than copying HUD's model, with this program Kauai County aimed to increase their stock of low-income and gap housing. Around 1,400 properties participate and annually submit a copy of the lease and application. According to Mr. Teruya, Maui County requires that a long-term lease be recorded at the Bureau of Conveyances. In response to a question from Commissioner Alivado, Mr. Hunt clarified that qualifying property owners get the lower homestead tax rate as a benefit for participating. However, the differential between market rent and the County's affordable rent is larger than the tax savings.

Ms. Miura reported that Hawaii County is similar to Maui County in that they have a low-to-moderate income program. There is a newer program for senior housing projects, in which the County reviews financials and tenants are selected based on income. In the case of affordable rentals, Hawaii County's program is similar to Kauai County except that rather than using median income, they base affordability on HUD's recommendations (e.g. 75% of HUD rate, which is by bedroom). However, Honolulu and Hawaii counties are challenging HUD on how they derive their monthly rental numbers. Twelve hundred parcels (1,400 units) participate in the program. In terms of benefits, participants receive a 3% cap on assessed value every year, as well as the lower homeowner tax rate. The program requires annual paperwork, which has proven to be a burden on County staff.

Commissioner Alivado asked the neighbor island administrators about their experience with "tiny homes." Mr. Hunt reported that in Kauai County taxation of these homes is based on use, so if they are in a vacation area, they will be taxed as vacation rentals. On the other hand, if they participate in the long-term affordable rental program, they get the homestead tax rate. They do not receive the homeowner exemption if they are renting. Like Hawaii County, Kauai also offers a 3% cap on value for properties that stay in the program. Ms. Miura reported that Hawaii County has experience with tiny homes, since Puna has many. If a home is on wheels, it falls under the jurisdiction of the motor vehicle department, which taxes the home based on weight. The real property division taxes the land. Mr. Teruya reported that Maui County likewise must determine whether the tiny home is personal or real property.

d. Approval of the report

Chair Oshiro asked that the approval of the report be deferred until the Commission's next meeting. Hearing no objections, the item was deferred.

Chair Oshiro then asked commissioners to review their calendars and consider a final meeting in three weeks' time. However, at least two commissioners reported having conflicts. Vice-chair Okubo asked if a full Commission meeting would be necessary, given that commissioners could work on the report over email, the Commission not being a board bound by the State's Sunshine Law. Commissioner Alivado cited written testimony submitted by Natalie Iwasa prior to the meeting requesting that the public be able to comment on a draft of the report. Commissioner Murakami suggested setting an earlier deadline for the report and then posting it ahead of a meeting in early January. Commission Aide Todd Swisher stated that he would check the availability of meeting space during the week of January 1st-5th and suggested that the Chair could set a meeting time at a later date. Chair Oshiro asked commissioners what the internal deadline for the work of the subcommittees should be. Vice-chair Okubo suggested that the subcommittees work off the Exemptions and Minimum Tax subcommittee's write-up to jointly produce a final report. Commissioner Murakami recommended Friday, December 22nd as a good deadline to have the final written report in draft form. That would give the Commission and the public a week or more to review the document before the January meeting. Hearing no objections, Chair Oshiro declared the December 22nd deadline adopted. The date of the next meeting will be determined, subject to the availability of meeting space.

5. ADJOURNMENT

Hearing no objections from the other commissioners, Chair Oshiro adjourned the meeting at 11:59 a.m. The Chair thanked the neighbor island administrators for their willingness to share their expertise.

Respectfully submitted,

Todd Swisher

Todd Swisher
Commission Aide