

TAX APPEAL COURT
STATE OF HAWAII
FILED

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KATHLEEN HANAWAHINE

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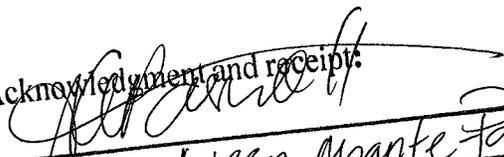
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IN THE TAX APPEAL COURT OF THE
STATE OF HAWAII

In the Matter of the Tax Appeal)
) CASE NO. 1TX 15-1-0243
) (and Consolidated Cases
 of) 16-1-0011 to 16-1-0012;
) 16-1-0014 to 16-1-0036;
) 16-1-0230 to 16-1-0231;
) 16-1-0235 to 16-1-0239;
 SCHUYLER E. COLE and MARILYN J.) 16-1-0246 to 16-1-0251;
 COLE,) 16-1-0268 to 16-1-0269)
)
 Taxpayer-Appellants.) TAXPAYER-APPELLANTS' REPLY
) MEMORANDUM IN SUPPORT OF
) MOTION FOR SUMMARY JUDGMENT
) FILED MAY 20, 2016, IN CASE NOS.
) 1TX16-1-0011 and 1TX16-1-0012;
) DECLARATION OF NATHANIEL A.
) HIGA; EXHIBIT "I"; CERTIFICATE OF
) SERVICE
)
) **Original Hearing:**
) **Date: July 18, 2016**
) **Time: 9:00 a.m.**
) **Judge: Gary W.B. Chang**
)
) **New Hearing:**
) **Date: October 17, 2016**
) **Time: 3:00 p.m.**
) **Judge: Gary W.B. Chang**
)
) Trial Week: March 13, 2017

2016 OCT 12 PM 2:54
KATHLEEN HANAWAHINE
CLERK

Acknowledgment and receipt:


Print Name: Arieen Abante Farroff
Date: 10/12/16

**TAXPAYER-APPELLANTS' REPLY MEMORANDUM
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
FILED MAY 20, 2016, IN CASE NOS. 1TX16-1-0011 and 1TX16-1-0012**

Taxpayer-Appellants, through their counsel, Chun Kerr LLP, a Limited Liability Law Partnership, as consolidated by Stipulation and Order Consolidating Cases and Designating Lead Case, filed herein on July 15, 2016 (the "Appellants"), hereby submit their Reply Memorandum¹ in Support of the MSJ.²

I. TAXPAYERS' BURDEN ON THE MSJ

Appellants, while admittedly bearing the burden on the MSJ, need not meet so onerous a burden as made out by the County. Opposition at 8-10. Under the Commerce Clause, where simple economic protectionism is effected by legislation, as is the case here, the County is not entitled to the "more flexible approach" taking into consideration whether "legitimate state objectives are credibly advanced." Bacchus Imps. v. Dias, 468 U.S. 263, 270 (1984) (noting that economic protectionism carries "a stricter rule of invalidity"). Id. Rather, in circumstances such as those present in this case, courts apply a "virtually per se rule of invalidity." Philadelphia v. New Jersey, 437 U.S. 617, 626 (1978) (noting the "evil of protectionism can reside in legislative means as well as legislative ends.")

¹ Prior to these cases being consolidated, Appellants filed two separate Motions for Summary Judgment in cases 1TX16-1-0011 and 1TX16-1-0012, both filed May 20, 2016 (collectively the "MSJ"). As the Appellee City and County of Honolulu (the "County") has filed a single substantive Memorandum in Opposition to the MSJ ("Opposition"), Appellants file a single Reply Memorandum.

² The MSJ was first set for hearing on July 18, 2016, but was continued to October 17, 2016, three months later, at the request of the County in its Motion for Pretrial Conference and Rule 56(f) Continuance filed June 2, 2016. In its Memorandum in Support of that Motion, the County cited, among others, its need for "ample time" to conduct discovery. At the hearing on that Motion on July 28, 2016, the Court granted a continuance of the hearing on the MSJ to October 17. We note that, since July 28, Appellants have been required to make their first installment of real property tax payments, but no discovery requests have been propounded by the County's attorneys.

With regard to equal protection challenges, the Court first must “ascertain the purpose or objective that the State sought to achieve” by review of the legislative history. Hasegawa v. Maui Pineapple Co., 52 Haw. 327, 330, 475 P.2d 679, 681 (1970). While an equal protection challenge is relatively deferential, it is not “toothless.” Schweiker v. Wilson, 450 U.S. 221, 234, (1981). As such, the United States Supreme Court has held that “if the constitutional conception of ‘equal protection of the laws’ means anything, it must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot constitute a legitimate governmental interest.” United States Dep’t of Agric. v. Moreno, 413 U.S. 528, 534 (1973) (finding that legislation discriminating against “hippies” was unconstitutional). Therefore, where the legislative history reveals a discriminatory purpose, as is the case here, the law fails.

The Privileges and Immunities Clause protects against state legislation that bears unequally on nonresidents. While the Privileges and Immunities Clause recognizes that “absolute equality is impracticable in taxation,” it does not allow inequality that result from “hostile discrimination.” Lunding v. N.Y. Tax Appeals Tribunal, 522 U.S. 287, 297 (1998). Moreover, unequal tax treatment is only justified by a “substantial reason for the discrimination beyond the mere fact that they are citizens of other States” Toomer v. Witsell, 334 U.S. 385, 396 (1948). No such justification exists in this case. See infra §§ III.B. & VI.

In the MSJ, Appellants have shown that the Residential A real property tax classification (“Res A”) provided for in Revised Ordinances of Honolulu (“ROH”) 8-7.1 was enacted with a discriminatory purpose and has a discriminatory effect. Under these circumstances, it is unconstitutional and must be struck down.

II. THE RES A CLASSIFICATION IS ILLEGAL

A. Res A Is Invalid Under the Text of ROH 8-7.1

The terms of the ROH require that property tax classifications be based on use, not value. ROH § 8-7.1(c)(1) and (2).³ The County attempts to redeem Res A by pointing to a proviso in subsection (c)(1) that states: “unless it qualifies for a different class as defined in this section.”

Opp. at 12. The full subsection reads:

(c) (1) Real property shall be classified, upon consideration of its highest and best use, into the following general classes, unless it qualifies for a different class as defined in this section:

- (A) Residential;
- (B) Hotel and resort;
- (C) Commercial;
- (D) Industrial;
- (E) Agricultural;
- (F) Preservation;
- (G) Public Service;
- (H) Vacant Agricultural; and
- (I) Residential A

ROH § 8-7.1(c)(1). The proviso referred to by the County does not override the requirement that real property be classified by “use.” In fact, to read the statute in this manner would contravene the basic tenants of statutory construction cited by the County. Opp. at 7 and 11 (giving effect to each provision). Rather, the section allows a property that would otherwise be classified by one use to be classified by another use. For example, subsection (e) classifies real property that would otherwise be classified as “agricultural” to be classified as “residential” where the property is “improved with a single-family dwelling.” ROH § 8-7.1(e). Subsection (f) affords a

³ The County’s references to statutory construction actually bolster Appellants’ argument: in order to give meaning to all aspects of the ordinance, it is impossible for the Res A classification to comply with the provision requiring that real property be classified “upon consideration of its highest and best use.” ROH 8-7.1(c)(1). The County does not, and cannot, offer a reading of the statute that both provides classification based on use and application of Res A.

similar classification to land otherwise classified as “preservation.” ROH § 8-7.1(f). In these subsections, the ROH provides guidance as to how to classify a property that has two uses. In contrast, Res A does not reclassify real property that has two uses, but creates a subset of real property that has one use: residential use. As such, Res A cannot be read in any other manner than as a violation of the ROH mandate that real property be classified by use.

B. Res A and Residential Uses are Identical Under Gardens at West Maui

The County cannot explain away Gardens at West Maui Vacation Club v. County of Maui. Opp. at 12-13. As discussed in the MSJ, the Court in Gardens at West Maui reasoned that time share units were subject to the Hotel/Resort classification because the use of the properties at issue was that of a transient, short-term visitor. It was irrelevant to the classification whether the short-term visitor was the owner, a paying tenant, or a friend or family member of the owner who was not paying rent – the use was the same. Gardens at West Maui, 90 Haw. 334, 343, 978 P.2d 772, 781(1999). The present case is identical in the application of the Gardens at West Maui concept of “use”: a dwelling has a “residential” use whether it is used by the owner, a paying tenant, or a friend or family member of the owner who is not paying rent. As such, Gardens at West Maui absolutely does stand for the proposition that each of the aforementioned circumstances constitutes the same residential “use” of real property.

C. The Validity of Home Exemptions or Classifications in Other Jurisdictions are Not at Issue in this Appeal

The legality of the home or residential exemption afforded by the County and in other jurisdictions (Opp. at 6-7) is not at issue in this appeal; only that residential use of a property with a home exemption and an assessed value of \$1 million or more cannot be classified differently and taxed at higher rates than residential use of a property without a home exemption or value appraised at below \$1 million. Similarly, what classifications exist or do not exist in

other jurisdictions are of no moment. Opp. at 5-6. The ROH is the law at issue here, which is clear by its terms that Residential A is an improper classification.

III. RES A IS DISCRIMINATORY UNDER THE COMMERCE CLAUSE

A. Official Comments and Letters From Public Officials are Relevant

One cannot make light of comments by a council member, acting in their official capacity as a representative of the County itself, in divining the discriminatory purpose of the legislation underpinning Res A. The County Council has only nine (9) members and floor debates and statements comprise a rich source of information behind the purpose of any ordinance. A comparison of the excerpts of hearings and meetings on the Residential A legislation (MSJ, Exs. C-F) to the committee reports cited by the County (Opp., Ex 11) demonstrates the importance of considering the information submitted by Appellants. The committee reports merely restate the ordinance provisions and record the ultimate actions taken.

Moreover, the County is incorrect that only committee reports are evidence of discriminatory purpose.⁴ Opp. at 14-15. Rather, it is often the comments of legislators that are the most relevant sources for determining discriminatory legislative intent. Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 465-68 (1981) (looking to a senator's and representatives' statements during floor debates as probative evidence of purpose); Village of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 268 (1977) ("The legislative or administrative history may be highly relevant, especially where there are contemporary statements by members of the decision-making body, minutes of its meetings, or reports."); Hunt v. Wash. State Apple Adver. Comm'n, 432 U.S. 333, 352 (1977) (pointing to a statement by a single state commissioner as strong evidence of discriminatory purpose); Boston Stock

⁴ In fact, under the County's logic, the Res A legislation has no purpose because there is none to be found in the Committee Reports. Opp. at Ex. 11.

Exchange v. State Tax Comm'n, 429 U.S. 318, 327-28 (1977) (consideration by the United States Supreme Court of a statement made by Governor Nelson Rockefeller confirming that the purpose of the New York transfer tax at issue was to “provide long-term relief from some of the competitive pressures from outside the State” and invalidating the law on dormant Commerce Clause principles). Here, statements made by Honolulu City Council members and the Honolulu Director of Budget and Fiscal Services are clearly relevant⁵ and clearly indicative of a discriminatory purpose designed to benefit local residents by levying a discriminatory tax to discourage nonresident investors from purchasing real property in Hawaii. MSJ at 9-10, Exs. C-F.

B. A Purpose to Aid Residents is Tantamount to Discrimination Against Nonresidents

The County admits that the purpose of the Res A legislation was to promote “local neighborhood preservation, continuity and stability.” Opp. at 19. However, the County cannot achieve its purpose through discriminatory tax schemes. Bacchus Imps. v. Dias, 468 U.S. 263, 271 (1984) (“[T]he Commerce Clause stands as a limitation on the means by which a State can constitutionally seek to achieve [its] goal.”). According to Mr. Koyanagi, Jr., the County sought to promote local neighborhood preservation by “inhibit[ing] displacement of . . . established, older neighborhoods by the forces of gentrification, such as the proliferation of expensive vacation homes for the use by our visitor population.” MSJ, Ex. F at 1. The County sought to combat the proliferation of vacation homes built by visitors by levying a tax on the “billionaires, who are coming into our state” and “are starting to buy Hawaii again.” MSJ, Ex. C at 5.

Furthermore, the County cannot justify the discriminatory nature of the Res A classification by

⁵ Moreover, while the County eschews Appellants’ reliance on a September 10, 2013 letter from Mr. Koyanagi Jr. to the Honolulu City Council (MSJ, Ex. F) as evidence of legislative intent, it relies upon that same letter as evidence of a rational basis later in the Opp. Opp. at 19, n.100.

casting it as beneficial for local neighborhoods as opposed to discriminatory against out-of-state residents. Bacchus, 468 U.S. at 273 (“It is irrelevant to the Commerce Clause inquiry that the motivation of the legislature was the desire to aid the makers of locally produced beverage than to harm out-of-state producers.”)

IV. RES A IS NOT FACIALLY NEUTRAL

The County repeatedly claims that the Res A classification is facially neutral because it applies equally to properties regardless of the owner’s state of residence. Opp. at 3, 13, 16. However, discriminatory laws do not discriminate against properties, they discriminate against people. As such, the relevant inquiry is whether the Res A classification applies equally to all taxpayers regardless of their state of residence. The answer is “No.” Because Res A incorporates the home exemption into its definition, it is obviously applicable to all nonresidents that own homes valued at \$1 Million or more. However, the same is not true of Hawaii residents. The Res A classification will not apply to many Hawaii residents who own properties valued at over \$1 Million. As such, while the ROH do not overtly state that the tax applies only to nonresidents, the “practical effect” of the classification is to create a tax that discriminates against non-residents. Complete Auto Transit, Inc. v. Brady, 430 U.S. 274, 279 (1977). Also, and as noted in the MSJ, the discrimination against non-residents is no less invidious because some Hawaii residents are also subject to the Res A classification. Id. at 278, n.7 (“[I]t is immaterial that local commerce is subjected to similar encumbrance.”). See also Bacchus, 468 U.S. at 271 (finding discriminatory tax even though it applied to some in-state commerce).

V. RES A RESULTS IN DISPARATE TREATMENT WITHOUT A RATIONAL BASIS

The County’s arguments fail to defeat Appellants’ showing that the Res A classification is a violation of the Equal Protection Clause. As outlined in the MSJ, the Res A classification,

by definition, creates a huge disparity in tax burden on taxpayers who are functionally identical (owning property valued at just under and just over \$1 Million and having no home exemption). This is the factual circumstance presented by the law. Appellants need not show that they actually own property valued at \$1,000,001.00 to support such an argument. The factual support is the text of ROH § 8-7.1 itself.⁶ Moreover, there are properties with assessed values that are relatively close to the \$1 Million mark. See e.g. Ex. I (Notice of Appeal for Case No. 1TX16-1-0246; tax assessed value of subject property: \$1,018,900.00). These cases establish that there is, in fact, disparate treatment of actual properties subject to Res A.⁷

Because Res A lacks a rational basis, it cannot be upheld. As noted above, the County has admitted that Res A was passed for the purpose benefiting local home owners by discriminating against out-of-state investment in real property located in Hawaii. See supra § III.B. Such discrimination cannot be a legitimate state interest under an equal protection analysis. Moreno, 413 U.S. at 534 (“[A] bare congressional desire to harm a politically unpopular group cannot constitute a legitimate governmental interest.”).

VI. RES A VIOLATES THE PRIVILEGES AND IMMUNITIES CLAUSE

As explained above, the Res A classification does in fact bear unequally on non-residents. See supra § IV. The Privileges and Immunities Clause entitles nonresidents “to be exempt from any higher taxes or excises than are imposed by a State on its own citizens.”

⁶ The County cites to United States v. Raines, 362 U.S. 17, 22 (1960) in support, which stands for the proposition that courts should not imagine “hypothetical cases” when considering constitutional questions. Appellants’ argument does not present a hypothetical case. Does the County seriously contend that in all of the City and County of Honolulu, there does not exist one property with no home exemption that has an assessed value of just over \$1 Million?

⁷ The County’s argument that “line drawing is constitutionally permissible” is not a correct statement of the law. Opp. at 20. While all tax legislation must draw lines, it does not follow that all line drawing is permissible. In fact, lines drawn without a rational basis are not permissible. Gardens at West Maui, 90 Haw. at 342, 978 P.2d at 780.

Travis v. Yale & Towne Mfg. Co., 252 U.S. 60, 78 (1920). Moreover, there is no “substantial reason for the discrimination beyond the mere fact that they are citizens of other States” (Toomer v. Witsell, 334 U.S. 385, 396 (1948)) because the County has admitted that the purpose of the Res A classification was to protect local neighborhoods from non-resident buyers. See supra § III.B. Therefore, the Res A classification must fail.

VI. CONCLUSION

For the foregoing reasons, Appellants request that the MSJ be granted.

DATED: Honolulu, Hawaii, OCT 12 2016.



RAY K. KAMIKAWA
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a Limited Liability Law Partnership
Attorneys for Taxpayer-Appellants
SCHUYLER E. COLE and
MARILYN J. COLE

IN THE TAX APPEAL COURT OF THE
STATE OF HAWAII

In the Matter of the Tax Appeal) CASE NO. 1TX 15-1-0243
) (and Consolidated Cases
 of) 16-1-0011 to 16-1-0012;
) 16-1-0014 to 16-1-0036;
 SCHUYLER E. COLE and MARILYN J.) 16-1-0230 to 16-1-0231;
 COLE,) 16-1-0235 to 16-1-0239;
) 16-1-0246 to 16-1-0251;
 Taxpayer-Appellants.) 16-1-0268 to 16-1-0269
)
) DECLARATION OF NATHANIEL A.
) HIGA
)
 _____)

DECLARATION OF NATHANIEL A. HIGA

I, Nathaniel A. Higa, hereby declare:

1. I am an attorney duly licensed to practice law in the State of Hawaii.
2. I am one of the attorneys for Taxpayer-Appellants, Schuyler E. Cole and Marilyn J. Cole (“Taxpayers”) herein.
3. I make this Declaration of my own personal knowledge and belief.
4. Attached hereto as Exhibit I is a true and correct copy of Taxpayer-Appellants Kevin A. Flanagan; Chelsey K. Flanagan, Clyde S. Kobatake, and Sarah Kobatake’s Notice of Appeal to Tax Appeal Court From 2016 Real Property Assessment Notice Issued by the Real Property Assessment Division of the City and County of Honolulu; Exhibit “A”, filed on January 14, 2016 (the “Notice of Appeal”). The City and County of Honolulu (the “County”) has admitted that the document attached as Exhibit A to the Notice of Appeal is the first page of Taxpayer-Appellants Kevin A. Flanagan; Chelsey K. Flanagan, Clyde S. Kobatake, and Sarah Kobatake’s 2016 Real Property Assessment Notice for the Subject Property for the tax

year 2016-2017, which was issued by the Real Property Assessment Division of the City and County of Honolulu. The County's admission appears in its Answer of Appellee City and County of Honolulu to the Notice of Appeal to Tax Appeal Court from 2016 Real Property Assessment Notice Issued by the Real Property Assessment Division of the City and County of Honolulu ("Answer") at paragraph 1.

I declare under penalties of perjury that the above is true and correct to the best of my knowledge.

DATED: Honolulu, Hawaii, OCT 12 2016.



NATHANIEL A. HIGA

OF COUNSEL:
CHUN KERR LLP
a Limited Liability Law Partnership

2016 JAN 14 PM 2:13

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Attorneys for Taxpayer-Appellants
Kevin A. Flanagan; Chelsey K. Flanagan;
Clyde S. Kobatake; and Sarah Kobatake

IN THE TAX APPEAL COURT OF THE
STATE OF HAWAII

In the Matter of the Tax Appeal	)	1 T.X. 16-1-0246	_____
)		
of	)	NOTICE OF APPEAL TO TAX	
	)	APPEAL COURT FROM 2016	
Kevin A. Flanagan; Chelsey K.	)	REAL PROPERTY ASSESSMENT	
Flanagan; Clyde S. Kobatake; and	)	NOTICE ISSUED BY THE REAL	
Sarah Kobatake	)	PROPERTY ASSESSMENT	
	)	DIVISION OF THE CITY AND	
Taxpayer-Appellants	)	COUNTY OF HONOLULU;	
	)	EXHIBIT "A" CERTIFICATE	
	)	OF SERVICE	
)		
)		

Honolulu, HI 96813
1515 Kalia Road, Room 300
Tel: 528-8200
Fax: 528-8200

175234

NOTICE OF APPEAL TO TAX APPEAL COURT FROM 2016 REAL PROPERTY
ASSESSMENT NOTICE ISSUED BY THE REAL PROPERTY ASSESSMENT
DIVISION OF THE CITY AND COUNTY OF HONOLULU

Comes now, Taxpayer-Appellants, Kevin A. Flanagan;
Chelsey K. Flanagan; Clyde S. Kobatake; and Sarah Kobatake
(collectively "Taxpayer"), by and through their attorneys Chun
Kerr LLP, a Limited Liability Law Partnership, and hereby give

notice of appeal to the Tax Appeal Court from the 2016 Real Property Assessment Notice issued by the Real Property Assessment Division of the City and County of Honolulu as more specifically identified herein.

I. JURISDICTION

1. The Tax Appeal Court has jurisdiction over this appeal pursuant to Hawaii Revised Statutes § 232-16 and Revised Ordinances of Honolulu § 8-12.1.

II. BACKGROUND

2. Taxpayer's address is 6149 Summer Street, Honolulu, Hawaii 96821.

3. The real property that is the subject of this appeal is land and improvements and is located at 44-667 Kaneohe Bay Drive, Kaneohe Hawaii 96744 (the "Subject Property") and is otherwise identified by Tax Map Key number (1)4-4-014:047(0000). The land area of the Subject Property is 23,607 square feet.

4. The assessed value of the Subject Property for the tax year 2016-2017 is \$1,018,900.00, as determined by the Assessor.

5. Taxpayer appeals the 2016 Real Property Assessment Notice for the Subject Property for the tax year 2016-2017 (the "Assessment"), a copy of the first page of which is attached hereto as Exhibit "A". Said Assessment was issued

by the Real Property Assessment Division of the City and County of Honolulu (the "Assessor").

6. The nature of the tax at issue in this tax appeal is the real property tax for tax year 2016 - 2017.

7. The total amount of the Assessment alleged for tax year 2016 - 2017 by the Assessor for the Subject Property is \$1,018,900.00, the entire amount of which Taxpayer contests for the reasons described below.

8. In accordance with Rule 3 of the Rules of the Tax Appeal Court, payment of \$100 is deposited herewith for costs.

III. GROUND FOR APPEAL

9. The Property was classified by the Director of Finance of the City and County of Honolulu or designate (the "Director") for real property tax purposes for the tax year in question as "Residential A" property. The amount of the Assessment was calculated using the Director's classification of the Property.

10. Residential A property constitutes a subset of "Residential" property, which properties are not subject to a Home exemption and which have assessed values at or exceeding \$1,000,000.00.

11. As such, the sole difference between non-owner occupied residential properties classified as "Residential" and those classified as "Residential A" is property value.

12. First, classification of the Subject Property into the Residential A class is illegal under the Revised Ordinances of Honolulu because the Residential A classification is based on the Subject Property's value as opposed to the Subject Property's zoning, actual use, or highest and best use.

13. Second, classification of the Subject Property into the Residential A class violates Taxpayer's rights under the Equal Protection clauses of the Constitution of the United States and the State of Hawaii because the classification results in an unequal tax burden on persons in the same class.

14. Because of the Subject Property's inclusion in the Residential A class, Taxpayer pays a significantly higher real property tax than similarly situated real property owners.

15. The discrepancy in tax burden levied on similarly situated taxpayers is the result of the creation of a classification that is based on value and not use.

16. For example, an owner of a rental property valued at \$999,999.00 will pay roughly \$3,500.00 in real property taxes while another owner of rental property valued at \$1,000,000.00 will pay \$6,000.00 in property taxes. This disparity will exist even if the properties are both single family residences located next to each other on the same street and being rented for the same monthly rent.

17. In addition, the differentiation between non-owner occupied residential properties worth equal to or more than \$1,000,000.00 and non-owner occupied residential properties worth less than \$1,000,000.00 is completely arbitrary. The creation of the Residential A classification is not tailored to be rationally related to a legitimate state interest.

18. Third, the Residential A classification results in a lack of uniformity in that it creates an arbitrary difference in the tax treatment of the owners of similarly situated properties as outlined above.

19. Fourth, the Residential A classification violates the Commerce Clause of the United States Constitution because it discriminates against non-residents by imposing the Residential A tax rate on all non-resident owners of real property valued at \$1,000,000.00 or more while it does not impose that same tax rate on all local owners of real property valued at \$1,000,000.00 or more.

20. The disparate treatment of non-resident real property owners constitutes discrimination that has an adverse impact on interstate commerce by providing a direct commercial and other advantage to local real property owners.

21. The increased tax associated with the Residential A classification also violates the Commerce Clause in that it is not fairly related to the Honolulu City and County's services

provided to the taxpayer. As noted above, the non-owner occupied real properties classified as "Residential A" as opposed to "Residential" differ only in their value. Because the uses of the properties are identical, there is no difference in the services provided.

22. Furthermore, the Residential A classification amounts to a protectionist measure enacted with the purpose to discriminate against non-residents seeking to invest in real property in Hawaii.

23. Fifth, the Residential A classification violates the Privileges and Immunities Clause of the United States Constitution because it results in the discriminatory treatment of citizens of other states as outlined above.

IV. PRAYER FOR RELIEF

WHEREFORE, Taxpayer prays that this Court enter judgment in Taxpayers' favor:

A. Finding that the Residential A classification is illegal as a violation of the Revised Ordinances of Honolulu, is a violation of the Equal Protection clauses of the United States and Hawaii Constitutions, lacks uniformity, is a violation of the Commerce Clause of the United States Constitution, and is a violation of the Privileges and Immunities Clause of the United States Constitution; and

B. Ordering a return of all real property taxes paid or to be paid for the tax year 2016-2017, together with interest as provided by law; or

C. In the alternative, ordering the re-classification of the Subject Property as Residential real property;

D. Ordering a refund of any and all excess amounts paid on, or with respect to, the Assessment, together with interest as provided by law;

E. Ordering a proportional adjustment to the remaining portion of the Assessment still due and payable; and

F. Ordering such other and further relief as the Court shall deem necessary and proper.

DATED: Honolulu, Hawaii, January 14, 2016.



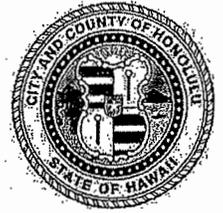
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Attorneys for Taxpayer-Appellants
Kevin A. Flanagan; Chelsey K.
Flanagan; Clyde S. Kobatake; and
Sarah Kobatake



QR code to
www.realpropertyhonolulu.com

2016 REAL PROPERTY ASSESSMENT NOTICE
CITY AND COUNTY OF HONOLULU
TAX YEAR JULY 1, 2016 TO JUNE 30, 2017



440140470000



002906

FLANAGAN, KEVIN A
6149 SUMMER ST
HONOLULU, HI 96821-2342

REAL PROPERTY ASSESSMENT DIVISION (RPAD)
842 Bethel Street Basement 1000 Uluohia Street #206
Honolulu, Hawaii 96813 Kapolei, Hawaii 96707

Telephone: (808) 768-3799
www.realpropertyhonolulu.com

This notice shows the Parcel ID, Property Class, Property Value, Exemption Amount and Net Taxable Value of your property.
Please contact our office if you have any questions concerning this notice.

Page 1 of 1

PARCEL ID (Tax Map Key)	SITE ADDRESS		LAND AREA
440140470000	44-667 KANEŌHE BAY DR		23607 SQ FT
FEE OWNER(S)	UNIQUE ID	LESSEE(S) / ASSIGNEE(S)	UNIQUE ID
FLANAGAN, KEVIN A/CHELSEY K	44014047000000011		
KOBATAKE, CLYDE S/SARAH	44014047000000211		
EXEMPTION TYPE		EXEMPTION AMOUNT AND NAME OF CLAIMANT	
2016 PROPERTY CLASS	2015 PROPERTY CLASS (IF DIFFERENT THAN 2016)	SPECIAL ASSESSMENT	
RESIDENTIAL A			
2015 PROPERTY VALUE	2015 EXEMPTION AMOUNT	2015 NET TAXABLE VALUE	
1053800	0	1053800	
2016 PROPERTY VALUE	2016 EXEMPTION AMOUNT	2016 NET TAXABLE VALUE	
1018900	0	1018900	
THIS IS NOT A BILL. TAX RATES ARE SET BY END OF JUNE 2016. YOUR FIRST HALF TAX BILL WILL BE MAILED ON JULY 20, 2016.			

IMPORTANT INFORMATION FOR TAXPAYERS

HOME EXEMPTION

Property owners who occupy their property as their principal home may be eligible for a home exemption, which reduces the taxable value of their property. Home exemption claims may be filed for online by visiting www.realpropertyhonolulu.com and clicking on "File A Homeowners Exemption". The claims may also be downloaded from the website, or picked up from one of the RPAD offices or any Satellite City Hall. The claims may be hand-delivered to the RPAD offices or to any Satellite City Hall, or may be mailed to the RPAD offices. For a receipted copy when mailing in the claim, enclose a stamped self-addressed envelope.

EXEMPTION STATUS REPORTING REQUIREMENTS

Each property owner who is receiving a real property tax exemption is required to report any change in the status, ownership, or use of the property. Failure to notify the RPAD within 30 days of such change in status, but no later than November 1st preceding the applicable tax year, may result in penalties for each year of infraction in addition to the back taxes owed.

APPEAL EVIDENCE - DOCUMENTS, DATA, AND OTHER SUPPORTING INFORMATION

In an effort to expedite the appeal process and to minimize your wait time for a Board of Review hearing date, the RPAD is requesting appellants to submit their evidence and supporting documentation with their appeal or shortly thereafter. If submitting separately from the appeal form, please include your name, Parcel ID (Tax Map Key), year of the appeal, contact information such as phone number, mailing address or email address, on any submission. During the appeal period of December 15 through January 15, please call the appeal hotline number of 768-7000 with any questions.

ALTERNATE ENERGY IMPROVEMENTS

Ordinance 15-23 amended Revised Ordinances of Honolulu Sec. 8-10.15, removing solar devices, including photovoltaic systems, from the alternate energy exemption.

For online services and additional real property tax information, please visit:

www.realpropertyhonolulu.com

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DATED: Honolulu, Hawaii, January 14, 2016.



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