

HAWAII COUNCIL OF ASSOCIATIONS  
OF APARTMENT OWNERS

P.O. Box 726  
Aiea, Hawaii 96701  
Telephone (808) 566-2122

**LATE TESTIMONY**

February 3, 2009

Rep. Robert Herkes, Chair  
Rep. Glen Wakai, Vice-Chair  
House Committee on  
Consumer Protection & Commerce

RE: Testimony in Support of HB1602 Re Appraisals  
Hearing: Wed., Feb. 4, 2009, 2 p.m., Conf. Rm. #325

Chair Herkes, Vice-Chair Wakai and Members of the Committee:

I am Jane Sugimura, President of the Hawaii Council of Associations of Apartment Owners (HCAAO).

We support the intent and purpose of this bill, which would require appraisers when acting as arbitrators to determine the fair rental value of a ground lease as defined in the bill, comply with USPAP, and urge you to pass it out of committee with amendments.

USPAP requires appraisers to consider the existing uses of the subject and adjacent properties and the character of the neighborhood in reaching conclusions about value. When they do not comply with USPAP standard and use a highest and best use standard, the value is artificially inflated which results in a value that exceeds fair rental value, which undermines the process in the lease that was clearly intended to determine fair rental values.

I am informed that when appraisers are selected to act as arbitrators in a rent renegotiation of a long-term ground lease, some if not all, do not feel that they are bound by USPAP because when acting as an arbitrator, they are not doing appraisal work. That position should not be tolerated and appraisers should be bound to comply with USPAP in any work they do relating to determining the value of real property whether their designation is an "appraiser" or an "arbitrator".

I suggest the following language for clarification:

09HB1602APPRAISERS.TSY.DOC

HB 1602 Re Appraisals  
February 3, 2009  
Page 2 of 2

1. Revise the last line of the bill at the bottom of page 1 by replacing "the value or rental of real estate" with "the fair rental value of a long-term ground lease".
2. By adding a new subsection "(b)" to read:

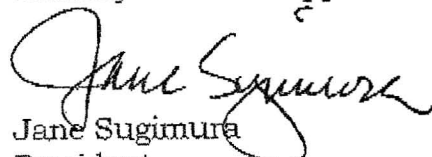
(b) For purposes of this section, "long-term ground lease" means any ground lease of real property:

- (1) Situated in the State;
- (2) Zoned by a county for commercial and/or industrial use;
- (3) That is subject to a lease with a term of ten years or more and an unexpired term of five years or more; and
- (4) Where the lessor is the owner, directly or indirectly of fifty thousand square feet or more of industrial and/or commercial property in the State.

For the purposes of this section, "lease" means a conveyance leasing privately owned land by a fee simple owner as lessor, or by a lessee as sublessor, to any person, for a term exceeding ten years in consideration of a return of rent or other recompense."

A draft of my suggested revisions are attached.

Thank you for the opportunity to testify.

  
Jane Sugimura  
President

Enclosure

09HB1602APPRAISERS.TSY.DOC  
02/03/09

A BILL FOR AN ACT

RELATING TO APPRAISALS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The purpose of this Act is to require a real estate appraiser to comply with the Uniform Standards of Professional Appraisal Practice when acting as an arbitrator to determine the fair rental value of a long-term ground lease.

Deleted: praiser in an arbitration  
Deleted: market  
Deleted: value of real estate.

SECTION 2. Section 466K-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) No person may practice as a real estate appraiser in this State unless that person has been licensed or certified to practice in accordance with this chapter and rules adopted by the director of commerce and consumer affairs pursuant to chapter 91.

All real estate appraisers who are licensed or certified to practice in this State shall comply with the current uniform standards of professional appraisal practice approved by the director when performing appraisals in connection with a federally or non-federally related real estate transaction.

A real estate appraiser shall comply with the Uniform Standards of Professional Appraisal Practice when acting as an arbitrator to determine the fair rental value of a long-term ground lease."

Deleted: praiser in an arbitration  
Deleted: market value of real estate."

(b) For purposes of this section, a long-term ground lease means land:

- (1) Situated in the State;
- (2) Zoned by a county for commercial and/or industrial use;

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(3) That is subject to a lease with a term of ten years or more and an unexpired term of five years or more; and

(4) Where the lessor is the owner, directly or indirectly of fifty thousand square feet or more of industrial and/or commercial land in the State.

For the purposes of this section, "lease" means a conveyance leasing privately owned land by a fee simple owner as lessor, or by a lessee as sublessor, to any person, for a term exceeding ten years in consideration of a return of rent or other recompense."

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: \_\_\_\_\_

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# LATE TESTIMONY

Committee on Consumer Protection and Commerce

RE: House Bill 1602

Dear Honorable Chair Herkes and Members of the Consumer Protection Commerce Committee:

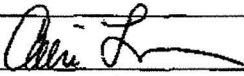


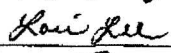

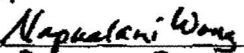


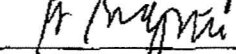
## PETITION:

We wish to support passage of House Bill 1602 which provides that real estate appraisers shall comply with the Uniform Standards of Professional Appraisal Practice (USPAP) when acting as an appraiser or arbitrator in an arbitration to determine the value or rental of real estate.

Ground lease issued over 30 years ago and longer provided that at rent renegotiation, if the parties were unable to mutually agree on a rent, that the parties were to appoint real estate appraisers to do an appraisal. The ground lessee's expectations were that the appraisers would provide an appraisal report showing how their valuation was established. This has not been the case because the appraisers/arbitrators would simply issue a one line decision setting forth their value with no explanation whatsoever as to how the value was established.

If House Bill 1602 is passed requiring appraisers to comply with the USPAP, those standards would require a clear explanation as to how the appraisers/arbitrators determined their value. Passage of the bill would provide for reasonable valuations in such rent renegotiations which may provide for more affordable ground rent increases.

We urge your approval of this bill.

Print Name	Signature	Address
Colin Lau		47-695 Hui Ulii St., Kaneohe
ROSALIND MOORE		3358 ALOHEA AVE., Hon., HI 96816
Misty Torres		3737 Manoa Rd, Hon, HI 96822
Lori Lee		3737 Manoa Road, Hon. HI 96822
Kass Bern		45507 Kaloeha St. Kaneohe HI 96844
Margaret Wong		1577 Nelson St. Honolulu, HI 96822
Darryl P. Wong		1936 Penick St. Hon. HI 96822
Alexander Wang		2359A Kamehameha Dr. Honolulu, HI 96822
Ernil Sugita		3737 Manoa Road. Hon. 96822

# LATE TESTIMONY

**JAMES W. Y. WONG**

3737 Manoa Road • Honolulu, Hawaii 96822 • (808)946-2966 • Fax: (808)943-3140

February 4, 2009

Honorable Representative Robert Herkes, Chair  
Members of Consumer Protection and Commerce  
Consumer Protection and Commerce

RE: House Bill 1602

Dear Honorable Chair Herkes and Members of the Consumer Protection Commerce Committee:

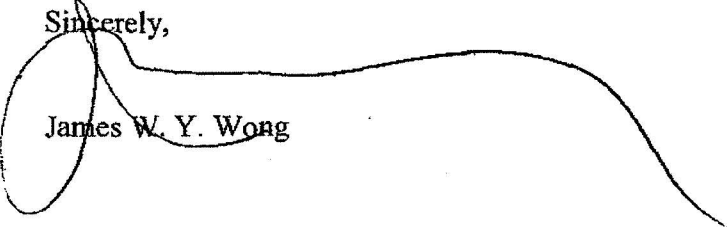
I wish to support passage of House Bill 1602 which provides that real estate appraisers shall comply with the Uniform Standards of Professional Appraisal Practice (USPAP) when acting as an appraiser or arbitrator in an arbitration to determine the value or rental of real estate.

I am a lessee of commercial real estate who was involved in ground rent arbitration with the ground lessor. The original ground lease provided that at rent renegotiation, if the parties were unable to mutually agree on a rent, that the parties were to appoint real estate appraisers to do an appraisal. I had always expected the appraisers would in fact provide an appraisal report showing how their valuation was established. That was not the case. Somewhere along the line, the courts determined that the process was to be an arbitration, and instead of providing an appraisal, the appraisers/arbitrators would simply issue a one line decision setting forth their value with no explanation whatsoever as to how the value was established.

If House Bill 1602 is passed requiring appraisers to comply with the USPAP, those standards would require a clear explanation as to how the appraisers/arbitrators determined their value. It's my belief that passage of the bill would provide for reasonable valuations in such rent renegotiations which may provide for more affordable ground rent increases.

The leasehold properties for which I am or was a ground lessee includes King University Plaza, Moiliili Plaza, University Plaza, Hale Anue, Waiakamilo Shopping Center, Waialae Plaza, Central Plaza, Waipahu Shopping Plaza, Kapolei Medical Park, Kailua Post Office, Windward Town & Country Plaza Phase 1 and 2, Windward Shopping Center (former Kailua Daiei property), Kapalama Shopping Center, and Kapalama Industrial leases.

Sincerely,

  
James W. Y. Wong

# LATE TESTIMONY

Re: HB 1602

Dear Chairperson Rep. Robert Herkes, Vice-Chairperson Glenn Wakai, and Members of the Consumer Protection & Commerce Committee,

Please pass HB 1602.

If this bill is passed, it would go a long way to help assure that when faced with the need to determine real estate values and/or real estate rental rates, both Buyers/Sellers and Lessors/Lessees will have a fair chance of obtaining a fair and reasonable valuation or rental rate.

This HB 1602 references the methodology for establishing real estate values and rental rates, when same are being determined via an arbitration.

Currently arbitrators feel that they do not have to follow any standards when they are required to arrive at a "Fair Market Value" or a "Fair Market Rental" for real estate. This bill will require appraisers to follow the national Appraisal Foundation's Uniform Standards of Professional Appraisal Practices (USPAP), whether or not an arbitration is involved.

This matter of determining real estate values and/or real estate rental rates, is far too important to be left to an individual's (or individuals) undocumented arbitrary opinion and decision.

The USPAP standards were established via Congress after the Savings & Loan industry fiasco of the 1980's, in an effort to require appraisers to value real estate on a fair and equitable basis, and supported by appropriate documentation.

Thank you.

Rick Krystoff