LATE

SB-2293
Submitted on: 1/30/2018 1:51:05 PM
Testimony for HOU on 1/30/2018 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Tiare Lawrence		Comments	Yes

Comments:

Aloha senators,

Appropriating money to negotiate with the owners to keep it affordable, when there is no sign that there is any interest in keeping units affordable, is a waste of time, money, and opportunity. The state should get serious about solutions to our housing crisis, and condemn the property in order to keep it affordable for ever. The company has received millions in tax breaks from the state and the county. The County of Maui has no idea what they're going to do with these 400+ residents who are going to be homeless in 2019. There are no beds for them and how much shelters, and a severe shortage of rentals. There is almost no possibility they will be able to find a rental for what they are able to pay now. County of Maui's housing department, and HHFdc have both said that they are trying to build an alternate site, but there are no solid plans at all, and both the department of housing, and the hhfdc has admitted that lack of build able land and infrastructure is a problem. Even if it cost $15 million to condemn the building, there is no way the state, the county, or an independent developer could build that many units for such a cost in such a short amount of time. Plus there's the added benefit but this could be affordable rentals forever.

Please consider making the following changes:

SB 2293

Page 1, lines 7-11

However, the owners of the Front street apartments recently exercised an option to remove the property from affordability requirements that were tied to the development of the property, and this change will allow them to begin renting available apartments....

change to

However, the owners of the Front street apartments recently have asserted that they have the power to remove the property from affordability requirements that were tied to the development of the property, and this change will allow them to begin renting available apartments....

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page 3, line 16

through at least 2027

change to

through at least 2051

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page 3, line 19 - 20

does not exceed eight per cent of the median family income for the area as

change to

does not exceed fifty to sixty per cent of the median family income for the area as originally proposed and approved

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page 5, line 7

at least 2027

change to

at least 2051

TESTIMONY OF THE FRONT STREET AFFORDABLE HOUSING PARTNERS

HEARING DATE/TIME: Tuesday, January 30, 2018
2:45 PM
Conference Room 225

LATE TESTIMONY

TO: Committee on Housing

RE: Testimony in Opposition to SB2293.

Dear Chair, Vice-Chair and Committee Members:

My name is William G. Meyer, III. I have been practicing law in Honolulu since 1979. I'm counsel for the Front Street Affordable Housing Partners ("FSAHP"), the leasehold owner and original developer of the property which is the subject of SB2293 (the "Subject Property"). FSAHP strongly opposes SB2293for the reasons set forth hereinbelow.

Background. FSAHP developed the Subject Property pursuant to IRC § 42 as an affordable housing project consisting of one hundred forty-two units (the "Project"). The Project features 19 garden apartment style residential structures, a tot lot, a basketball court and open and covered parking spaces. The Project is located on an 8.538-acre site on the block formed by Front, Wainee and Kenui Streets in the highly desirable town of Lahaina on Maui Island.

The Project was financed in part by federal and state tax credits with the vast majority of said tax credits coming from the federal government. The Subject Property involves a leasehold land interest with a long term ground lease (which expires in 2066) with 3900 Corp. as lessor. Minimum ground rent is contractually set through the remainder of the lease with incremental rent increases over time. A percentage rent is also payable in addition to the minimum ground rent. In consideration of receiving said tax credits, the Project and the Subject Property was made subject to significant use restrictions which prevented FSAHP from enjoying the highest and best value use of the Subject Property. In this regard, a Declaration of Land Use Restrictive Covenants (the "Regulatory Agreement") was imposed on the Subject Property (enforceable by the State of Hawaii, Hawaii Housing Finance and Development Corporation ("HHFDC")) which mandated that the Project be operated as an "affordable" apartment rental property reserved for families earning 50% (70 units) and 60% (71 units) or less of the area median income (AMI) as mandated in the US Department of Housing and Urban Development (HUD) for the area (Maui County) (the "Program").

Pursuant to the Program, and in accordance with IRC § 42, because FSAHP did not waive its right to apply for a Qualified Contract[1] in the Regulatory Agreement (or in any other Agreement) FSAHP was eligible to apply for a Qualified Contract after the initial 15 year compliance period. As per IRC § 42, if the allocating agency (HHFDC) cannot find a buyer during a one year period after a request for a Qualified Contract, then the restrictions for the Extended Use Period do not apply. In this case, since the Project is subject to a **15 year** compliance period, plus a **36 year** extended use period, as set forth in the Regulatory Agreement recorded in the Bureau on August 19, 2002 as Document No. 2002-144948 FSAHP was eligible and applied for a Qualified Contract on or about August 5, 2015. HHFDC accepted the application via communication on September 22,

[1] A "Qualified Contract" is a *bona fide* contract to acquire (within a reasonable period of time after the contract is entered into) the non low-income portion of a building for fair market value and the low-income portion of the building for an amount not less than the applicable fraction (as specified in the agreement between the State and the owner) of the sum of: (1) the outstanding indebtedness secured by, or with respect to the building, (2) the adjusted investor equity in the building, plus (3)other capital contributions not reflected in these Amounts; reduced by cash distributions from (or available for distribution) the project. IRC Section 42(h)(6)(F).

2015.[2] As a result, HHFDC had one year (until August 6, 2016) to enter into an arrangement whereby FSAHP's interest in the Project could be acquired at a price determined by the formula set forth in IRC § 42(h)(6)(F). That calculation yielded a Qualified Contract price of $15,395,813. When HHFDC did not find a bona fide offer at that price pursuant to the Program, the Regulatory Agreement, and IRC § 42 within the one year window period, FSAHP was, by federal law and Program rules, automatically freed from the restrictive use provisions of the Regulatory Agreement and was entitled to deal with the Property as it sees fit, subject only to a rent holding period of three years for existing tenants. There is approximately 1½ years left on the hold period. When the hold period expires, FSAHP is legally entitled to raise rents to market as FSAHP sees fit. Since August 2016, and as of January 29, 2018, 14 units have turned over and have been leased to non-restricted tenants.

No Tenants Will be Subject to Immediate Rent Increases. As noted above FSAHP may not increase rents above the Program restricted rents (annual increases in accordance with the tax regulations are permitted) for existing tenants for approximately another 1½ years. Thus there is no imminent threat to any tenants in the Project.

The Cost to the State/County of Maui to Acquire FSAHP's Interest is Likely to be Between Thirty-Five and Fifty Million Dollars. Because HHFDC did not exercise its rights under the Qualified Contract during the applicable window period, the Qualified Contract price of $15,395,813 is no longer applicable and any acquisition of FSAHP's interest must be at the prevailing market value. Depending on the applicable Cap Rate utilized the value of said interest will track the following subject to market price fluctuations:

Cap Rate	Value	Value/Unit
4.0%	$52,679,351	$370,981
5.0%	$42,143,480	$296,785
6.0%	$35,119,567	$247,321

The above numbers do not include the value of the fee simple interest in the Subject Property. FSAHP does not want to divest its interest in the Subject Property and therefore will vigorously oppose any eminent domain proceeding and in any such proceeding will seek to obtain the full market value of FSAHP's interest.

Passage of SB2293 is likely to Result in Costly and Protracted Litigation. When FSAHP entered into the Program it did so with the contractual expectation that if it fully complied with the Program and HHFDC did not exercise its rights under the Qualified Contract that the restrictions imposed on the Subject Property pursuant to the Program would expire and FSAHP could monetize its interest according to prevailing market conditions. FSAHP believes that SB2293 is an inappropriate and constitutionally infirm use of the power of eminent domain which violates FSAHP's expectancy interest and the underlying agreement between the parties. It is simply unreasonable for the state to provide public housing for a select group of residents in a highly desirable location is. Even assuming that an appellate court ultimately determines that the subject use of the eminent domain power is appropriate, the State/County of Maui will be required to pay the market price for FSAHP's interest in the Subject Property which, as noted above, is most likely between 35 and 50 million dollars or more, not including the value of the fee simple land. Such amount would be additional to legal fees incurred through protracted litigation.

SB2293 will have a Significant Chilling Effect upon Developers' Willingness to Enter Into Creative Solutions to Address Hawaii's Affordable Housing Needs. The subject legislation will send a message to potential low cost housing developers that the State of Hawaii cannot be trusted to stand behind contractual arrangements that it has made with affordable housing developers and that the State/County of Maui may simply invoke the power of eminent domain to, in effect, extend the restricted use of the property beyond the bargained for window period. In this regard, the subject legislation, if passed, is likely to exasperate the statewide

[2] 15 years is the period for which the property owner gets the tax credits. If, after 15 years, the owner doesn't get back its investment (adjusted for inflation), then the owner is not subject to the extended use restrictions.

affordable housing crunch even if it does act to keep the Subject Property in a low rental regime but at a price that is likely to be unaffordable to the State/County of Maui.

There are likely More Affordable Options Available to Address Affordable Housing Needs in the Vicinity of the Subject Property. Attached hereto collectively as Exhibit "A" find three maps which designate parcels of land (noted in red) that are currently owned by HHFDC which could be used more efficiently and economically to build affordable housing units at economies of scale which would be most beneficial to the State of Hawaii and the County of Maui.

Conclusion. For all of the above reasons, FSAHP strongly opposes the subject legislation and respectfully submits that the costs to the State and/or County of Maui to acquire FSAHP's interest in the Subject Property will result in a squandering of public resources with a minimal positive impact upon the availability of affordable housing in West Maui. In addition, the chilling effect that this legislation will have upon future affordable housing projects appears to make the proposed legislation counterproductive to the very goals it seeks to accomplish.

Respectfully Submitted,

/S/ William G. Meyer, III

On behalf of Front Street Affordable Housing Partners

William G. Meyer, III

LATE TESTIMONY

Testimony of Barbara Henny,
Co-chair of Front Street Apartment Tenants Group
Before the state Senate Committee on Housing
Jan. 30, 2018

Good afternoon, chair Will Espero and vice chair Breene Harimoto. I am Barbara Henny, co-chair of the Front Street Apartment Tenants Group. The Front Street Apartment Tenants Group supports Senate Bill 2293.

The Tenants Group estimates more than $40 million in public investment has been made to develop and maintain the 142-unit apartments in the past 16 years. We feel Front Street Apartments is an important housing resource for the state and Lahaina community and too much has been paid to let it go. More than 30 churches and nonprofit groups in Maui County and Oahu have joined to support us, and their numbers are growing. One of them includes the Tri-Isle Association of United Church of Christ, representing more than 20 churches in Maui County.

As important, our Front Street Tenants Group has received letters of support from the Filipino community of Ota Camp in Waipahu and Waiahole Community Association in Windward Oahu. Both Ota Camp and Waiahole serve as reminders of the good that can come out the state intervention to prevent mass evictions.

The Maui County Council unanimously passed a resolution on Dec. 5, 2018 to express their support for keeping the affordable housing for the tenants at Front Street Apartments.

Please know that without state intervention, such as through House Bill 2006, many of the 250 people living at Front Street Apartments will be homeless and homeless in the Lahaina, an area second only to Waikiki as an urban visitor destination in the state. The nonprofit homeless resource center says it is at capacity and the wait for affordable housing is two years.

We, the people at Front Street Apartments, are diverse in ethnicities - Filipino, Hawaiian, Chinese, Vietnamese, Portuguese, Korean, Chamorro, Japanese, African-American, and Caucasian. About 70 to 80 percent of the adults living at Front Street Apartments work, many at more than one job. They are the maids, waitresses, dishwashers, child-care providers, substitute teachers, condominium cleaners, cashiers, store clerks, taxi cab drivers, part-time construction laborers and landscapers. The remaining 20 percent are retirees living on a fixed income and the disabled — a Gulf War veteran fighting cancer, a woman on dialysis, woman raising her Down's Syndrome son, many single parents who are survivors of spousal abuse. They earn 50 to 60 percent of the median income of a Hawaii resident. In other words, they all virtually pay rent and some rely on government subsidies to make up a portion of the rental cost. Based on the schedule of rental prices in 2001, the building owner received roughly $1.3 million a year. In the past 16 years, that means the amount paid to the building owner is more than $20 million in personal rent and government subsidies. We know the financial plan to develop the 142-unit complex required close to $17-million loan.

We also know that the state and federal government gave up to $15.6 million in tax credits, and Maui County provided close to $5 million in benefits, including more than $2 million in total property tax exemptions for the past 16 years.

We have tried to talk with the building owner Front Street Affordable Housing Partners to explain its decision in detail as to why it has decided to stop operating our apartment complex at affordable prices. We haven't had a good explanation.

Initially, we were told through news sources that the Partners spokesman Adam Dornbush said it was because of the increase in ground lease rents from the landowner 3900 Corporation. But we found through our research that the ground lease prices were set in the early 2000s. (See document "FSAgroundlease,1999) and that the Partners agreed to the schedule of lease rent increases.

We continue to wonder what kind of developer would promise to provide a low-income development for 50 years, then would lobby less than seven years later to change tax rules to make it easier to sell the low-income property after 15 years in service.

The Partners broke off negotiations with the state after the 2017 legislative session and broke off negotiations earlier this year, according to state officials.

Many residents are worried sick what will happen to them if their rents are increased by more than 100, perhaps even 200 percent, by the deadline of August, 2019.

We cannot afford to wait any longer and hope the passage of Senate Bill 2293 will help to bring resolution to our plight. Please stand with us.

Barbara J. Henny
1802 Kenui Place
Lahaina, HI 96761
Tel: 808.667.9215

(END)

LATE TESTIMONY

Testimony of Joseph Pluta,
Vice President, West Maui Taxpayers Association
Speaking in Support of Senate Bill 2293
Before State Senate Committee On Housing
Jan. 30, 2018

I'm Joseph Pluta, vice president the West Maui Taxpayers Association, representing more than 2,000 members, most of whom are property owners. In December of 2018, the Association supported the Maui County Council's Resolution, asking the Hawaii Legislature and Gov. David Ige's administration to find a way to keep affordable housing for tenants at the Front Street Apartments. The resolution passed unanimously. In January, Maui Mayor Alan Arakawa announced his support for helping to keep Front Street Apartments as affordable housing as a low-income housing. The ball is now in your court to do something.

Our organization believes that if you are going to reduce the number of homeless, the first priority is to keep what low-income housing you have in service. It makes no sense to plan for future low-income housing, if you can't protect what you have in your low-income housing inventory.

We believe the state is in a crisis of houselessness and homelessness with little or no affordable housing in West Maui, a visitor destination second only to Waikiki, and that extraordinary measures may be necessary.

We want to do the good and right thing and prevent worsening the homeless situation in West Maui. It would be absolutely terrible to do nothing and allow low-income residents to be forced out of Front Street Apartments. Our organization of taxpayers also would like to note that the agreement with Maui County and the state called for the low-income project to be in service for 50 years rather than 15 years and that while an IRS rule in 2012 allows the conversion to market-priced rentals after the 15th year, the taxpayers have invested considerably in its development and would lose up to tens of millions in public investment.

Please note that a 2012 study, done by the U.S. Department of Housing and Urban Development's Office of Policy Development and Research, recommended that Housing Finance Agencies should place their highest priority on keeping low-income developments in high rent areas because "preserving these properties as affordable housing will almost always be less costly than investing in creating new affordable developments." The study said this investment may be the most cost-effective way to encourage or maintain some amount of economic integration and diversity. While not named specifically, Front Street Apartments fits into what HUD described as a high priority area for protection.(*"Affordable Housing at the 15-year Mark," U.S. Department of Housing and Urban Development's Office of Policy Development and Research. (800) 245-2691 for help accessing information you need. Submitted by ABT Associates Inc., Bethesda, MD August, 2012.*)

In launching the Fronts Street Apartments project, the developer SunAmerica asked for a number of concessions, including a waiver on park contributions, parking, and underground utilities, the rezoning of five parcels from residential to apartment, and a property tax exemption that has thus far amounted to more than $2 million.

Additionally, the federal and state government agreed to provide up to $1.2 million and $360,000 respectively in annual tax credits, totaling $15.6 million in the first 10 years.

The West Maui Taxpayers Association believes it makes sense to keep and maintain the Front Street Apartment property as a low-income apartment rental and that every effort should be made to maintain this as a housing resource.

Joseph Pluta,
Vice President,
Telephone: 661-7990