PUBLIC HEARING ON B16-834, "HOMEOWNERS ASSOCIATION COMMON AREA REAL PROPERTY TAX EXEMPTION AND RELIEF ACT OF 2006"

Before the
Committee on Finance and Revenue
Council of the District of Columbia

The Honorable Jack Evans, Chairman

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Room 120, John A. Wilson Building

Testimony of
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Good afternoon, Chairman Evans, and members of the Committee on Finance and Revenue. I am Sherryl Hobbs Newman, Deputy Chief Financial Officer for the Office of Tax and Revenue. I am pleased to present testimony today on Bill 16-834, the "Homeowners Association Common Area Real Property Tax Exemption and Relief Act of 2006."

The Office of Tax and Revenue ("OTR") strenuously opposes enactment of Bill 16-834. The bill would exempt from real property, recordation, and transfer taxation certain common area or open space real property which is part of a planned unit development ("PUD") or within the jurisdiction of a homeowners association ("HOA") or other property owners association. Section 5 of the proposed bill would also forgive these taxes retroactively for the period of October 1, 2005 through the effective date of the act and require that any payments made for such period be refunded.

OTR has many concerns regarding Bill 16-834. First, as a matter of policy, the proposed bill does not serve the best interests of the taxpayers of the District of Columbia ("District") because it does not provide a worthwhile real property tax exemption for District taxpayers. The reason is that, in

most instances, there is only a nominal real property tax on the common or open area of a PUD or HOA. Current policy is to assess the entire parcel including such areas at a flat rate of $1,000 in market value resulting in a tax of only $8.80 for taxable year 2007 for each such common or open area within a residential development. This amount of tax is not substantial enough to warrant the enactment of an exemption from real property tax or the large administrative costs of implementing and administering the exemption, abating taxes assessed back to October 1, 2005, and refunding any such taxes that were previously collected.

Second, there is no provision in the bill that explicitly requires that any exemption from real property, transfer, or recordation tax for such common or open areas should only be applicable after the developer of the PUD or HOA has committed the property to the PUD or HOA, for no consideration, in perpetuity and has done so irrevocably so that the property cannot be developed for profit. Thus, an easement, covenant, deed, declaration or other instrument reflecting all of these important legal elements needs to be recorded in the name of the PUD or HOA.

Under OTR's current administrative policy, these conditions are generally met before the real property is eligible for the nominal rate of real property tax. These same conditions should be met before the proposed exemption is granted under Bill 16-834. In fact, it appears that the retroactivity feature of the bill rewards taxpayers who have appropriately incurred regular real property tax on these common or open areas by granting them refunds for their failure to meet these qualifying conditions. It also provides a refund of recordation and transfer tax which have been appropriately incurred absent already existing exemptions from these taxes.

Third, there is no provision in the bill to ensure that a party (developer) who goes through this process and receives the proposed exemption would never develop the common or open area for profit or, at a later date, extinguish or modify the PUD or HOA. Additionally, there is no provision in Bill 16-834 that, if this occurred, the District would be able to recoup the taxes that had previously been exempted.

Fourth, there are over 188,000 parcels of land in the District. It would be administratively infeasible for OTR to identify all those properties which operate within a PUD or HOA and to insure that the appropriate easement,

deed, declaration, or other instrument, has been filed. Thus, if enacted, the bill should require an application procedure by which affected taxpayers apply to OTR for the exemption.

Fifth, the bill is also discriminatory because it does not include common or open areas of condominium associations. While we oppose the bill, if enacted, it ought to allow for similar treatment for such areas of condominium associations.

Sixth, the bill, if enacted, should also require that taxpayers file a claim for refund of tax, interest, penalties, fees and other related charges. Otherwise, as written, the bill's refund feature might operate in a discriminatory manner because OTR would be unable to identify many of the persons that have paid this tax for the period beginning October 1, 2005 through the date of enactment of this bill. Also, filing a claim puts the District on notice so that it may take timely action to process the refund.

Seventh, the real property tax exemption should not be effective until the first month following the date on which a properly completed application for

exemption has been filed as provided by D.C. Official Code § 47-1009(b)(2)(A). While proposed new section 47.831.1(c) provides that

> [a[ssessment of any open space or common area parcel shall cease upon the date on which [the appropriate document] is recorded in the land records of the District…

conformance with the effective date provision of Code § 47-1009(b)(2)(A) would be in line with current practice and much more administrable.

Eighth, there are two technical matters. The first is a technical correction as there is an error in Sec. 2 (a) in that it states the table of contents is amended

> by adding a new section designation 47-832.1 to read as follows: …

Yet, the new section is described as "47-831.1." (Emphasis added.) D.C. Code

§ 47-831.1 is the correct statute to amend rather than D.C. Code § 47-832.1 which deals with subdivisions made during the first half of a year. This error should be corrected.

The other technical matter is that the current Integrated Tax System ('ITS") in OTR does not allow for the entry of a "$0" property value and, therefore, OTR cannot "stop" the assessment without modifying ITS and inputting a use code designated for properties by this proposed legislation. This will cost $8,000 per year to track and update the HOA exemption program.

For all of the above reasons, we strongly recommend that the Council not enact this bill.

Fiscal Impact of Bill 16-834

The Fiscal impact of Bill 16-834 is at least $56,000 in tax refunds for the affected period, October 1, 2005 until the enactment of the bill, $60,000 per year as a result of enacting the tax exemptions, $15,000 in administrative costs this year to process the refunds, and $8,000 per year thereafter to track and update the HOA exemption program. If enacted, OTR requests that money be appropriated to fund the above costs.

For these reasons, OTR believes that the Council should not approve this bill.

Thank you, Chairman Evans, for the opportunity to comment on this bill. I would be happy to answer any questions you or other Council members might have at this time.