

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of) DOCKET NO. A82-526
LIBBIE, INC.) LIBBIE, INC.
To Amend the Conservation Land Use)
District Boundary to Reclassify)
Approximately 1.262 Acres, TMK:)
3-5-24: portion of 1, at Waialae)
Nui, City and County of Honolulu,)
Island of Oahu, State of Hawaii,)
into the Urban Land Use District)

DECISION AND ORDER

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ORDER

THE PETITION

This matter arises from a Petition for an amendment to the Land Use Commission district boundary filed pursuant to Section 205-4 of the Hawaii Revised Statutes, as amended, and Part VI, Rule 6-1 of the Land Use Commission's Rules of Practice and Procedure and District Regulations by Libbie, Inc., which is requesting that the designation of the subject property be amended from the Conservation to the Urban District. The requested change consists of property comprising approximately 1.262 acres of land, situated at Waialae Nui, Island of Oahu, State of Hawaii. The subject property is more particularly identified as Tax Map Key No. 3-5-24: portion of 1.

PURPOSE OF PETITION

Petitioner's stated purpose for requesting the reclassification of the subject property from Conservation to Urban is so that Petitioner can develop the subject property into a private recreational area consisting of two (2) tennis courts, a pavilion and a partially covered lanai. These proposed recreational facilities are intended to be

used in conjunction with adjacent residential developments also proposed by the Petitioner. These include five (5) single-family dwellings comprising the Waialae Pinnacle development on Lot 2, and an unspecified use of Lot 1.

PROCEDURAL HISTORY

Initial Hearing

The Petition was received by the Land Use Commission on January 13, 1982. Due notice of the hearing on this Petition was published on April 19, 1982, in The Honolulu Star-Bulletin. Notice of the hearing was also sent by certified mail to all parties involved herein on April 14, 1982. No timely application to appear as a party was received by the Land Use Commission. Applications to appear as witnesses were received by the Land Use Commission from Barbara Marumoto on May 12, 1982, from Welcome S. Fawcett on May 14, 1982, and from Dale Bordner on May 18, 1982.

On May 20, 1982, a prehearing conference was held to identify the exhibits to be submitted and witnesses to be introduced by each party.

The initial hearing on this Petition was held on May 25, 1982, in Honolulu, Hawaii.

Libbie, Inc., the Petitioner herein, was represented by Mr. Brian Gray; the City and County of Honolulu was represented by Steven S. C. Lim, Deputy Corporation Counsel; and the Department of Planning and Economic Development was represented by Mr. Tatsuo Fujimoto, Chief, Land Use Division.

The witnesses presented by the aforementioned parties were as follows:

Public Witnesses:

Welcome S. Fawcett
Senator Steve Cobb
Carol Greenwell

Petitioner:

Herbert Minakami - Chief of Planning and
Engineering for the Board
of Water Supply
Winston Lum - Captain, Fire Prevention Divi-
sion, Honolulu Fire Department
John Derby
Tim Lyons
Larry Wicklund
Linda Morrison
Alan Switzer
Herbert Kikukawa - District Forester, Division
of Forestry, Department of
Land and Natural Resources
Libbie Kamisugi
Brian Gray

City and County of Honolulu:

Verne Winqvist - Planner, City Department of
General Planning

Department of Planning and Economic Development:

Daniel Yasui - Staff Planner

By letter dated August 8, 1982, Petitioner was notified by the Land Use Commission that the State Supreme Court ruling on July 16, 1982, in Civil No. 59261, Pearl Ridge Estates Community Ass'n. v. Lear Siegler, Inc., et al., had mandated that the Land Use District boundary amendment process involving the reclassification of Conservation District lands comply with the Environmental Impact Statement provisions of Chapter 343, Hawaii Revised Statutes. Petitioners were asked to file an environmental

assessment with Land Use Commission. On September 9, 1982, Petitioner submitted an Environmental Assessment to the Land Use Commission. On December 1, 1982, a Negative Declaration was issued by the Land Use Commission and filed with the Office of Environmental Quality Control. On December 22, 1982, notice of the reopened hearing was sent to all parties involved herein.

Reopened Hearing

The reopened hearing was conducted on January 12, 1983, in Honolulu, Hawaii.

POSITION OF THE PARTIES

City and County of Honolulu - Denial.

Department of Planning and Economic Development - Denial.

APPLICABLE REGULATION

Standards for determining the establishment of an Urban District are found under Part II, Section 2-2(1) of the State Land Use Commission's District Regulations. Said regulation provides in pertinent part that:

- (1) "U" Urban District. In determining the boundaries for the "U" Urban District, the following standards shall be used:
 - (a) It shall include lands characterized by "city-like" concentrations of people, structures, streets, urban level of services and other related land uses.
 1. Proximity to centers of trading and employment facilities except where the development would generate new centers of trading and employment.
 2. Substantiation of economic feasibility by the petitioner.
 3. Proximity to basic services such as sewers, water, sanitation, schools,

parcs, and police and fire protection.

4. Sufficient reserve areas for urban growth in appropriate locations based on a ten (10) year projection.
- (c) Lands included shall be those with satisfactory topography and drainage and reasonably free from the danger of floods, tsunani and unstable soil conditions and other adverse environmental effects.
 - (d) In determining urban growth for the next ten years, or in amending the boundary, lands contiguous with existing urban areas shall be given more consideration than non-contiguous lands, and particularly when indicated for future urban use on State or County General Plans.
 - (e) It shall include lands in appropriate locations for new urban concentrations and shall give consideration to areas of urban growth as shown on the State or County General Plans.
 - (f) Lands which do not conform to the above standards may be included within this District:
 1. When surrounded by or adjacent to existing urban development; and
 2. Only when such lands represent a minor portion of this District.
 - (g) It shall not include lands, the urbanization of which will contribute towards scattered spot urban development, necessitating unreasonable investment in public supportive services.
 - (h) It may include lands with a general slope of 20% or more which do not provide open space amenities and/or scenic values if the Commission finds that such lands are desirable and suitable for urban purposes and that official design and construction controls are adequate to protect the public health, welfare and safety, and the public's interests in the aesthetic quality of the landscape.

FINDINGS OF FACT

The Panel of the Land Use Commission, after having duly considered the record in this docket, the testimony

of the witnesses and the evidence adduced herein, makes the following findings of fact:

1. The subject property, held by Petitioner as vendee under an Agreement of Sale with Bishop Estate, is located at Waialae Nui, City and County of Honolulu, State of Hawaii, and consists of approximately 1.262 acres, more particularly described as Tax Map Key No. 3-5-24: portion of 1. The subject property, located approximately 1.6 miles from Kalaniana'ole Highway, is situated atop Waialae Nui Ridge, at an elevation of approximately 1,340 feet. Access to the subject parcel is via Halekoa Drive and Aha Aina Place.

2. The subject property is located within the State Land Use Conservation District. Lands to the south of the subject property are situated in the Urban District and consist of single-family residences. All other lands immediately surrounding the subject property are currently undeveloped and lie within the Conservation District. Situated just northeast of the subject parcel, within the Conservation District, is a Board of Water Supply water reservoir tank.

3. The subject property lies within the General Subzone of the Conservation District. The boundaries for this General Subzone encompass: (1) lands with topography, soils, climate, or other related environmental factors that may not be normally adaptable or presently needed for Urban, Rural, or Agricultural use; and (2) lands suitable for farming, flower gardening, operation of nurseries or orchards, grazing; including facilities accessory to these uses when said facilities are compatible with the natural

physical environment. At present, the subject property is vacant and undeveloped. Vegetation on the property consists of various grasses, Koa and Ironwood trees.

4. The current City and County zoning designation of the subject property is P-1 Preservation. Under the proposed City and County East Honolulu Development Plan, the subject property is designated Preservation. There is no adopted Detailed Land Use Map (DLUM) for the subject area. The subject property is not located within the Special Management Area (SMA) nor is it classified under the State Department of Agriculture's Agricultural Lands of Importance to the State of Hawaii (ALISH) classification system.

5. The slope of the subject property ranges between 0 to 20 percent. According to the Flood Insurance Study for Oahu prepared by the Federal Insurance Administration, the subject parcel is not situated within any flood plain, but rather within Zone C which is within an area of minimal flooding.

6. According to the U.S.D.A. Soil Conservation Service, Soil Survey, the soil of the subject property is classified as Lahaina silty clay, 7 to 15 percent slopes, severely eroded (LaC3). The Lahaina soil series consists of well-drained soils on the uplands of the islands of Lanai, Maui, Molokai and Oahu. These soils developed in material weathered from basic igneous rock. Elevations range from 10 to 1,500 feet.

In a representative profile the surface layer is dark reddish-brown, silty clay about 15 inches thick. The subsoil is about 45 inches thick and is dusky-red and dark reddish-brown subangular blocky silty clay and silty clay loam. The Lahaina silty clay, 7 to 15 percent slopes,

severely eroded (LaC3), exhibits erosion of the surface layer and subsoil. The runoff is medium and erosion hazard is severe for these soils. These soils are used for raising sugarcane and pineapple.

7. As the subject property and surrounding lands are not currently used for agricultural purposes, it not anticipated that reclassification of the subject parcel will have any detrimental effect upon agricultural activities in the area.

8. The subject property supports no known rare or endangered species of flora or fauna. According to the State Department of Land and Natural Resources, the subject property is not situated on any historic properties listed on the Hawaii Register or the National Register of Historic Places, or determined eligible for inclusion on the National Register of Historic Places.

9. In response to the City and County of Honolulu's request for comments upon the subject Petition, the Board of Water Supply has recommended denial of the subject request. It is the Board of Water Supply's position that "the subject parcel is in a prime recharge area which contributes to the island's ground water supply and, therefore, should be preserved." This area is defined by the 50-inch isohyet.

10. The subject property serves as the entrance to the vast Conservation District at Waialae Nui. The mauka forest reserve is utilized for various public recreational purposes and public access to these mauka lands for recreational purposes is desirable. Because of the subject property's physical location atop Waialae Nui Ridge, it is

visible from surrounding areas. The subject site serves as open space to nearby residences and possesses a scenic viewpoint of East Honolulu. It is the Department of Planning and Economic Development's position that the nature of the proposed project will infringe upon the open space nature of the area and may pose audio and visual nuisances to surrounding areas.

11. The Petitioner's stated purpose for requesting the reclassification of the subject property from Conservation to Urban is so that Petitioner can develop the subject parcel into a private recreational area consisting of two (2) tennis courts, a pavilion and a partially covered lanai. These proposed recreational facilities are intended to be used in conjunction with adjacent residential developments also proposed by the Petitioner. These include five (5) single-family residences comprising the Waialae Pinnacle development on Lot 2, and an unspecified use of Lot 1. The Petitioner has represented that one tennis court will be for the exclusive use of Lot 1 and the other court will be shared by residents of Lot 1 and the Waialae Pinnacle project (Lot 2). Access to the proposed recreational facilities will be by way of a pedestrian pathway from the roadway to the recreation center.

Excluding land costs, the Petitioner has estimated that the site development cost will be approximately \$70,000. To demonstrate its financial capability to undertake the proposed development, the Petitioner submitted an unaudited financial statement reflecting total assets of \$924,864 and total liabilities of \$924,864. Mrs. Libbie Kamisugi, a witness for the Petitioner, has represented that she is willing to fund the

proposed project if the Petitioner's financial capabilities to build the recreational facilities are in question.

12. The Petitioner has represented that no water facilities or sewage disposal systems will be developed on the subject property. Also, there are no access roads planned to the proposed recreational facility. Due to the nature of the proposed use, it is not anticipated that there will be any impact upon public educational facilities. The reclassification of the subject property, however, will affect the ability of certain public agencies to provide the necessary urban amenities, services and facilities as follows:

a. Drainage - The Petition states that storm runoff from the property currently sheetflows to Aha Aina Place and Waialae Nui Stream and that the storm drainage system along Halekoa Drive is designed to accommodate runoff from Aha Ana Way, Aha Maka Way and Aha Aina Place. The City Department of Public Works, however, has stated that storm runoff from the proposed tennis court area drains to the the North, away from Aha Aina Place.

The Petition also states that the existing drainage pattern will be maintained and that "although the site is a sloping, grassy knoll, there has been no evidence of any erosion or slides in the area." While these conditions may apply at present, the Petitioner has not assessed the resulting drainage conditions if the proposed development were constructed. The proposed

facilities, the tennis courts in particular, may create impervious surfaces which will add to the amount of water runoff during storm conditions. This potential drainage hazard is enhanced due to the high elevation of the site above surrounding properties. The soils of the subject property and those of adjacent areas are susceptible to severe erosion as the Lahaina silty clay, 7 to 15 percent slopes, severely eroded (LaC3) exhibits severe erosion hazard.

b. Fire Protection - The Fire Chief has stated that the fire protection of the proposed site would not conform to fire protection standards. In a letter to the Department of Planning and Economic Development, the Fire Chief stated that the Waiialae Fire Station would require a response time of 8 to 10 minutes to reach the subject property whereas the standards they must meet are 4 to 5 minutes.

13. It is the Department of Planning and Economic Development's position that the Petitioner has not adequately demonstrated the need for the proposed reclassification. Although the site was chosen over a previous site to reduce noise and visual impacts upon adjacent and existing residences, this in itself would not warrant the reclassification. Also, the Petitioner has not sufficiently justified the need to reclassify the Conservation land for the sole purpose of meeting the private recreational needs of six proposed residences. As the Petitioner has not adequately demonstrated a need for the proposed reclassification, the Department of Planning and Economic Development stands by the policy of the Land

Use Commission's Rules of Practice and Procedure and District Regulations, Part VI, Rule 6-1(7) which states, "Insofar as practicable conservation lands shall not be reclassified as urban lands."

14. Based on a review of the Petition, the evidence adduced at the hearing, and the provisions of Chapter 205, Hawaii Revised Statutes, the City and County of Honolulu and the Department of Planning and Economic Development have recommended that the reclassification of the subject property be denied.

15. The Hearing Officer finds that the concerns expressed by the City and County of Honolulu and the Department of Planning and Economic Development to be supported by the credible evidence adduced during the course of this proceeding.

CONCLUSIONS OF LAW

Reclassification of the subject property, consisting of approximately 1.262 acres of land, situated at Waialae Nui, City and County of Honolulu, Island of Oahu, State of Hawaii, from the Conservation District to the Urban District and an amendment to the district boundaries accordingly would not be in conformance with Section 205-2 of the Hawaii Revised Statutes, and the Rules and Regulations of the Land Use Commission in that the Petitioner has failed to satisfy Land Use Commission Regulation 6-1(7) which requires that: "Insofar as practicable conservation lands shall not be reclassified as urban lands."

ORDER

FOR GOOD CAUSE APPEARING, it is hereby ordered that the Petition's request to reclassify the subject property, consisting of approximately 1.262 acres, situated at Waialae Nui, City and County of Honolulu, Island of Oahu, State of Hawaii, identified as Tax Map Key No. 3-5-24: portion of 1, be denied and that the subject property remain in the Conservation District.

DONE at Honolulu, Hawaii, this 9th day of May, 1983, per Motion on April 14, 1983, and May 6, 1983.

LAND USE COMMISSION
STATE OF HAWAII

By William W. L. Yuen
WILLIAM W. L. YUEN,
Chairman

By Winona E. Rubin
WINONA E. RUBIN,
Commissioner

By Teofilo Phil Tacbian
TEOFILO PHIL TACBIAN,
Commissioner

By Robert S. Tamaye
ROBERT S. TAMAYE,
Commissioner

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Island of Oahu, State of Hawaii,)
into the Urban Land Use District)
_____)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Land Use Commission's Decision and Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

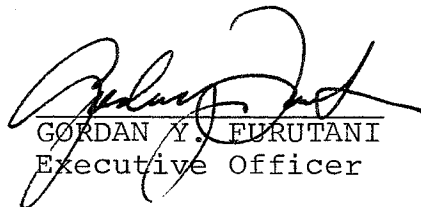
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JAMES A. STUBENBERG
Attorney-at-Law
Suite 1411
1188 Bishop Street
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, this 9th day of May, 1983.


GORDAN Y. FURUTANI
Executive Officer

~~DOCKET NO. A82-539 - GROVE FARM PROPERTIES, INC. (KAUAI)~~

A certified copy of the Land Use Commission's Decision and Order was served by regular mail to the following on May 9, 1983:

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