

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
) DOCKET NO. DR87-12
)
DONNA TING, HUNTON CONRAD,)
DAVID HAMILTON and WILLIAM) DONNA TING, HUNTON
STATTON) CONRAD, DAVID
) HAMILTON and
) WILLIAM STATTON
)
For a Declaratory Order Interpreting)
"accessory building and use" as set)
forth in Sections 205-2, 205-4.5(a))
(4) and (10), 205-5(6), Hawaii)
Revised Statutes and in Section)
15-15-03, Hawaii Administrative Rules)
)

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LAND USE COMMISSION
HONOLULU, HAWAII

DECLARATORY ORDER

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STATTON)	HAMILTON and
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(4) and (10), 205-5(6), Hawaii)	
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DECLARATORY ORDER

PETITIONER'S INTEREST

Petitioners are residents and the owners in fee simple of property on the island of Maui in the Kula Glen area. Their properties are near the site, consisting of 15.93 acres, where Up-Country Meats, Inc. proposes to construct a slaughterhouse which will be used to slaughter cattle and swine. It does not appear that the cattle and swine will be raised on the property proposed as the site of the slaughterhouse. In addition, the slaughterhouse operation apparently encompasses the processing and distribution of meat products. Dwight Joan, Sr. is the owner of the 15.93 acres.

The 15.93 acre parcel is located within the Agricultural District. The land is classified as having soils with an overall (master) productivity rating of Class C by the

Land Study Bureau's detailed land classification. The surrounding area supports various other agricultural activities and operations which exist with residential uses.

Up-Country Meats, Inc. is in the process of obtaining the necessary permits from county agencies for the construction of the slaughterhouse. Petitioners have filed a suit in the Circuit Court of the Second Circuit, which is Civil No. 87-0540(2) for an injunction to halt construction of the slaughterhouse. The suit is still pending.

Petitioners contend that the slaughterhouse is not a permitted use within the Agricultural district and filed for a Declaratory order pursuant to Section 91-8, Hawaii Revised Statutes (HRS) and Chapter 15, Subchapter 14, Hawaii Administrative Rules (HAR).

FINDINGS OF FACT

1. Petitioners filed a Petition for Declaratory Order and memorandum in support of its position on December 15, 1987.

2. On January 12, 1988, the Department of Business and Economic Development filed a Memorandum in Support of Petitioners' Position that a Slaughterhouse to Process Products Not Raised or Grown on the Site is Not a Permitted Use Within the Agricultural District.

3. On January 13, 1988, Petitioners filed a First Supplement to Petitioner's Petition for Declaratory Order.

4. On January 14, 1988, Up-Country Meats, Inc. and Dwight Joan, Sr. filed a Petition to Intervene and Memorandum In Support of Petition To Intervene. On this same date, they also filed a Motion to Dismiss Petition for Declaratory Order and memorandum in support of the Motion.

5. On January 15, 1988, Up-Country Meats, Inc. and Dwight Joan, Sr. filed a Response to First Supplement to Petitioner's Petition for Declaratory Order. On this same date, they filed a Memorandum in Response to Memorandum Filed by Department of Business and Economic Development in Support of Petitioner's Position that a Slaughterhouse to Process Products Not Raised or Grown on the Site is Not a Permitted Use Within the Agricultural District.

6. On January 18, 1988, Petitioners filed a Response to Petition to Intervene.

7. On January 18, 1988, the Commission received written testimony from David Morihara, Incoming President, Kula Community Association Board of Directors.

8. On January 19, 1988, Petitioners filed a Supplemental Verification to Petition for Declaratory Order. Up-Country Meats, Inc. and Dwight Joan, Sr. subsequently acknowledged that the Supplemental Verification satisfied their concerns that the Petition did not contain the required verification which was the basis for their Motion to Dismiss filed on January 14, 1988.

9. The Commission held action meetings on the Petition on January 19 and January 20, 1988 and February 9, 1988.

10. On January 19, 1988, the Commission admitted Up-Country Meats, Inc. and Dwight Joan, Sr., the Department of Business and Economic Development State of Hawaii, and the County of Maui as parties to the proceedings.

11. On January 19, 1988, Commissioner Himeno made a motion, which was seconded by Commissioner Tamaye, to issue a declaratory order stating that a slaughterhouse is a permissible use of the Agricultural District. However, at this time the Commission failed to obtain the minimum quorum necessary for action due to Commissioner Richard Choy's abstention, and Commissioner Toru Suzuki's incapacity due to a possible conflict in interest. The motion was deferred until January 20, 1988.

12. On January 19, 1988, Petitioners made an oral motion for a contested case proceeding on the Petition. This motion was made after Commissioner Tamaye had seconded the motion made by Commissioner Himeno.

13. On January 20, 1988, the County of Maui filed a Memorandum in Support of the Position of the County of Maui Relating to the Location of the Slaughterhouse in the Agricultural District of the Island of Maui.

14. On January 20, 1988, the Commission reconvened its meeting on the Petition and deferred action on this matter to February 9, 1988.

15. On January 20, 1988, Petitioners renewed their request for a contested case proceeding on the Petition. Petitioners also requested a proposal for decision be submitted prior to the decision being reached, and requested opportunity by the parties to file exceptions and present arguments on the proposed order.

16. On February 8, 1988, Petitioners filed a Request to Set Petition For Declaratory Order For Hearing.

17. On February 9, 1988, the Commission took action on the Petition. At this time, the Chairman, based on a written determination from the Ethics Commission, declared that Commissioner Toru Suzuki did not have a conflict in interest and was eligible to participate in the proceedings. On this same date, the Commission also denied Petitioners' requests for a contested case hearing and for the submission of a proposed decision and order.

POSITION OF THE PARTIES

County of Maui, by its Department of the Corporation Counsel, argued that the location of a slaughterhouse is a permitted use in the Agricultural district.

State of Hawaii, by its Department of Business and Economic Development, and through the Department of the Attorney General, supported Petitioners' contention.

Up-Country Meats, Inc. and Dwight Joan, Sr. argued against the Petitioners' contention.

JURISDICTION

Jurisdiction of the Commission to entertain the request of the Petitioners is clear even though a civil action is pending in circuit court. There appears to be no basis to support a refusal to issue a declaratory order on the grounds of pending litigation because the Commission is not a party to the civil suit. Moreover, the Commission is required under Section 91-8, HRS, to express its interpretations of the statutory provisions and its own rules as they apply to the interests of the Petitioners.

APPLICABLE LAW

The pertinent provisions of Section 205-2, HRS, are:

- (3) In the establishment of the boundaries of agricultural districts the greatest possible protection shall be given to those lands with a high capacity for intensive cultivation; and

. . .

Agricultural districts shall include activities or uses as characterized by the cultivation of crops, orchards, forage, and forestry; farming activities or uses related to animal husbandry, aquaculture, game and fish propagation; aquaculture, which means the production of aquatic plant and animal life for food and fiber within ponds and other bodies of water; wind generated energy production for public, private and commercial use; services and uses accessory to the above activities including but not limited to living quarters or dwellings, mills, storage facilities, processing facilities,

and roadside stands for the sale of products grown on the premises; wind machines and wind farms; agricultural parks; and open area recreational facilities, including golf courses and golf driving ranges, provided that they are not located within agricultural district lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B.

The pertinent provisions of Section 205-4.5, HRS, are:

(a) Within the agricultural district all lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B shall be restricted to the following permitted uses:

- (1) Cultivation of crops, including but not limited to flowers, vegetables, foliage, fruits, forage, and timber;
- (2) Game and fish propagation;
- (3) Raising of livestock, including but not limited to poultry, bees, fish, or other animal or aquatic life that are propagated for economic or personal use;
- (4) Farm dwellings, employee housing, farm buildings, or activity or uses related to farming and animal husbandry;

- . . .
- (10) Buildings and uses, including but not limited to mills, storage and processing facilities, maintenance facilities that are normally considered direct accessory to the above mentioned uses;

Section 15-15-03, HAR, provides:

As used in this chapter:

"Accessory building or use" means a subordinate building or use which is incidental to and customary with a permitted use of the land.

Section 15-15-25, HAR, provides:

§15-15-25 Permissible uses within the "A" agricultural district. (a) Permissible uses within agricultural district land classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B shall be those uses set forth in section 205-4.5, HRS.

(b) Permissible uses within the agricultural district land classified by the land study bureau's detailed land classification as overall (master) productivity rating class of C, D, E and U shall be those uses permitted in A and B lands as set forth in section 205-4.5, HRS, and also those uses set forth in section §205-2, HRS.

The interpretation advanced by Petitioners would require a slaughterhouse to process products raised or grown on the property in order to qualify as a permitted use within the Agricultural district. Petitioner's contention that the slaughterhouse is not such a service and use, either accessory, or related to animal husbandry as described within the statute and the rules, appears focused upon a narrow construction of the term, "animal husbandry." Moreover, they argue that the slaughterhouse is not such a building and use included in the term, "processing facilities." Their argument is based primarily on statutory construction. Few facts were presented and these were presented without detail.

After a review of the applicable provisions of the statute and the administrative rules, for the reasons discussed below, the Commission has determined that a slaughterhouse in this location is a permitted use within the Agricultural district as set forth in Sections 205-2 and 205-4.5, HRS.

(Reference is made to Section 205-4.5, although it pertains primarily to lands containing soil classified as overall (master) productivity rating class A or B by the Land Study Bureau's detailed land classification, because the pertinent language of Section 205-2 is similar.)

Chapter 205 does not contain any provision which expressly prohibits a slaughterhouse use on property located within the Agricultural district. However, the statute lacks definitions of such activities as forage, raising of livestock, and animal husbandry. There is also an absence of any guidelines to assist in the interpretation of such provisions of Section 205-2 as: "uses related to animal husbandry," and "services and uses accessory to the above mentioned activities including but not limited to living quarters or dwellings, mills, storage facilities, processing facilities, and roadside stands for the sale of products grown on the premises," as they apply to the use of land within the Agricultural district for a slaughterhouse. Moreover, there are no specific provisions requiring the slaughter of animals to be done on the same property upon which they are raised under Chapter 205, HRS, the rules of the Commission, or the ordinances of the County of Maui.

Generally, a logical, causal connection between such agricultural uses and activities as forage, raising of livestock, and animal husbandry, which are described in Section 205-2, and the use of land for the purpose of operating a

slaughterhouse appears to exist. It is more probable than not that the care and cultivation, or production of animals as used in an agricultural sense would mean propagation for economic or personal use, and consumption. Preparatory to use and consumption would include the activity of slaughtering the animals. Therefore, such activities as forage, raising of livestock, and animal husbandry would result in the need for the services of a slaughterhouse. Significantly, agricultural activities as identified appear to encompass a range of activities associated in the production of food. While it has been argued that the slaughtering of animals may be the opposite of raising, cultivating and producing them, it, nevertheless, appears unlikely that a slaughterhouse would not bear some relationship to animal husbandry. Moreover, it is also unlikely that a slaughterhouse would not bear some relationship to such activities as forage and raising of livestock. Therefore, a slaughterhouse appears to be included as a use which can be said to be agricultural in nature.

Such a conclusion appears to be reinforced under such statutory provisions as those "services and uses accessory to the above mentioned activities including but not limited to . . . processing facilities . . ." Section 205-2, HRS. In other words, the statute and the rules permit a processing facility as long as it relates to one or more of the permitted uses, i.e. "above mentioned activities." A processing facility would

appear to include a slaughterhouse as either a service or use accessory to such agricultural activities as forage, raising of livestock, and animal husbandry.

Much discussion centered on the meaning of "accessory use." As defined in the dictionary, "accessory" means:

n...la: a thing of secondary or subordinate importance (as in achieving a purpose or an effect...: an adjunct or accompaniment... b(1): an object or device that is not essential in itself but that adds to the beauty, convenience, or effectiveness of something else...

adj 1 of a thing a: aiding or contributing in a secondary or subordinate way...: supplementary or secondary to something of greater or primary importance...: additional... b: incidental to a main contract or some other obligation... Webster's Third International Dictionary, Unabridged, 11 (3rd ed. 1967)

Although a similar definition of the term can be found in the rules of procedure of the Commission at Section 15-15-03, HAR, neither this rule nor any other statutory provision set forth any standards as to what constitutes an accessory use to the activities of forage, raising of livestock, or animal husbandry. Petitioners, nevertheless, contend that this definition in the rules of the Commission, among others, states a limitation that the livestock to be processed by the slaughterhouse are required to be raised on the same property. Moreover, Petitioners argue that the slaughterhouse would neither be "incidental to" nor "direct accessory to" a

livestock and swinery activity on the particular site because the slaughterhouse would be the principal use of the property. Such a conclusion would preclude a broader interpretation of the term, "land," as it is used in the definition found in the rules of the Commission. Among other things, the opposition noted that "land" may include not only the property upon which the accessory use is located but the land and general areas supporting and surrounding the accessory use. In other words, "land" might include the fact that the property was situated in the Agricultural district.

More importantly, "accessory use" is not always associated with a primary use. McQuillan Municipal Corporations, Section 25.125, 3rd Ed. (1983) notes that:

...It has in some cases been said that accessory uses are to be confined to the lot on which the primary use is located, although in other cases this has not been regarded as a decisive factor. McQuillan, 377.

Apparently, for this reason, some jurisdictions have found it necessary to clarify their definitions of "accessory use" by adding limitations in language specifying express exclusion of commercial activities or express affirmation of confinement to the lot on which the primary use is located. Such specific limitations could have easily been included in the provisions of the statute, rules, or ordinances. However, the restrictions are absent from the provisions of the statute, rules, or ordinances. Consequently, the line of decisions

cited by Petitioners in support of their contention is not applicable. These decisions were made in connection with land located in the County of Hawaii, which has provided for such a specific limitation in its ordinance relating to a requirement that slaughter of animals be those produced on the premises. The ordinances of the County of Maui do not contain such a limitation. As such, these cases can be distinguished from the instant case.

It is clear that a slaughterhouse would be the normal processing facility for livestock. Although this jurisdiction has not interpreted "processing," other jurisdictions have construed "processing" to include a slaughterhouse operation. Langevin v. Superintendent of Public Buildings of Worcester, 369 N.E.2d 739 (Mass. 1977). While the meaning of the word, "processing facility," is undefined either by statute or rule, it is an established rule of statutory construction that the definition may be determined according to the ordinarily accepted meaning of the word. Hirasa v. Burtner, 68 Haw. Adv. Rpts. No. 9886 (July 11, 1985), Hawaii Consolidated Railway v. Borthwick, 34 Haw. 269, 272 (1937); see also Hawaiian Beaches v. Kondo, 52 Haw. 279, 474 P. 2d 538 (1970); Advertiser Publishing Co. v. Fase, 43 Haw. 154 (1959); Section 1-14, HRS. "So interpreted, the word 'processing,' at least, is plainly broad enough to include a slaughterhouse operation. See Webster's Third New Intl. Dictionary, 1808 (1971), where the first illustration of the word's approved usage given is

'[process]ing cattle by slaughtering them.'" Langevin, 369 N.E. 2d at 740. Therefore, a "processing facility" includes a slaughterhouse as proposed in this case.

While the Commission recognizes that §15-15-03, HAR, may be read as restricting a slaughterhouse to processing products grown on the property, it finds the more logical interpretation precludes such a limitation. Such an application would be a strict and narrow construction, resulting in a concern of unfairness to landowners holding small acreages. The mere raising of animals on the same property only appears to work to the benefit of a large landowner with the capability to conduct at the same time several agricultural activities on the land. Therefore, the Commission cannot conclude that the Legislature intended or that the courts would imply such a limitation.

CONCLUSIONS OF LAW

Sections 205-2 and 205-4.5, HRS, do not prohibit a slaughterhouse in this location within the Agricultural district.

A slaughterhouse in this petition is a permitted use within the Agricultural district.

ORDER

FOR GOOD CAUSE APPEARING, it is hereby ordered that the foregoing declaratory ruling be issued, addressing the subject matter of the Petition concerning a proposed slaughterhouse use within the Agricultural district.

DOCKET NO. DR87-12 - DONNA TING, HUNTON CONRAD, DAVID HAMILTON
AND WILLIAM STATTON

Done at Honolulu, Hawaii, this 18th day of May 1988,
per motions on March 9, 1988 and May 11, 1988.

LAND USE COMMISSION
STATE OF HAWAII

By *J. P. Tacbian*
TEOFILO PHIL TACBIAN
Chairman and Commissioner

By *Frederick P. Whittemore*
FREDERICK P. WHITTEMORE
Vice Chairman and Commissioner

By *Sharon R. Himeno*
SHARON R. HIMENO
Commissioner

By *Lawrence F. Chun*
LAWRENCE F. CHUN
Commissioner

By *Richard B. F. Choy*
RICHARD B. F. CHOY
Commissioner

By *Robert S. Tamaye*
ROBERT S. TAMAYE
Commissioner

By *Toru Suzuki*
TORU SUZUKI
Commissioner

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Revised Statutes and in Section)
15-15-03, Hawaii Administrative Rules)
_____)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Declaratory 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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State of Hawaii
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cert. CHRISTOPHER L. HART, Planning Director
Planning Department, County of Maui
200 South High Street
Wailuku, Hawaii 96793

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2103 Wells Street
Wailuku, Hawaii 96793

cert. CYNTHIA THIELEN, ESQ., Attorney for Petitioner
Brown, Johnston & Day
222 Merchant Street
Honolulu, Hawaii 96813

Dated: Honolulu, Hawaii, this 18th day of May, 1988.



ESTHER UEDA, Executive Officer

DOCKET NO. DR-12 - DONNA TING, HUNTON CONRAD, DAVID HAMILTON,
AND WILLIAM STATTON

A copy of the Land Use Commission's Declaratory Order
was served upon the following by regular mail on May 18, 1988.

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