

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition)
) DOCKET NO. A76-425
 of)
)
 REX FINANCIAL CORPORATION for)
 a Petition to amend the)
 district boundary of property)
 situated at Kilauea, Island)
 and County of Kauai, State)
 of Hawaii.)
 _____)

DECISION AND ORDER

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DECISION

THE PETITION

This case arises out of a petition for amendment to the Land Use Commission district boundary classification filed pursuant to Section 205-4, Hawaii Revised Statutes, as amended, by the fee owners of the property who are requesting that their property district designation be amended from Agricultural to Urban. The property in question consists of approximately 35.72 acres and is situated at Kilauea, Island and County of Kauai, State of Hawaii. The Kauai Tax Map Key designation for the subject property is 5-2-04: por. 8.

THE PROCEDURAL HISTORY

The petition was originally received by the Land Use Commission on December 10, 1976. Due notice of the hearing was published in the Garden Island News and

the Honolulu Advertiser on April 13, 1977. Notice of hearing was also sent by certified mail to all of the parties to this docket on April 12, 1977.

A prehearing conference on this petition was held on May 13, 1977, for purposes of allowing the parties in this docket to exchange exhibits and lists of witnesses which were to be used or called during the hearing.

The hearing was held at Lihue, Kauai, Hawaii on May 18, 1977, and on that day concluded.

THE HEARING

The chairman of the Land Use Commission, Mr. Eddie Tangen, and five members, Mr. Stanley Sakahashi, Mr. Charles Duke, Mrs. Carol Whitesell, Miss Collette Machado and Mr. Shinsei Miyasato conducted the hearing on this petition on May 18, 1977, in Lihue, Kauai. The Petitioner, Rex Financial Corporation, represented by Walton D.Y. Hong, Esq., was present. The Department of Planning and Economic Development, State of Hawaii, was represented by Deputy Attorney General Gilbert Lee and Mr. Tatsuo Fujimoto. The Kauai County Planning Department was represented by Deputy County Attorney Michael Belles. There were no other parties seeking intervention.

The witnesses presented by the aforementioned parties were as follows:

Petitioner:

Geza Demeter - Chairman of the Board and
Chief Executive Officer of Rex
Financial Corporation.

Peter Taylor - Consulting Engineer

T. Jack Bennington - Agent for Rex
Financial Corporation

Michael Dyer - Consulting Real Estate
Broker

Kauai County Planning Department:

Curtiss Ako - Planner

Dennis Ikehara - From the University
of Hawaii Cooperative Extension
Service

Department of Planning and Economic Development:

James Kirchhofer - Chief Planner,
Department of Agriculture.

Dr. Paul Schwind - Planner

APPLICABLE REGULATIONS

Standards for determining the establishment of an Urban District is 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.

- (b) It shall take into consideration the following specific factors:
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, parks, 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, tsunami 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 and 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."

Requirements for amendments to district boundaries are found under Part VI, Section 6-1, of the State Land Use Commission's District Regulations. Said regulations provides in pertinent part that:

"REQUIREMENTS FOR BOUNDARY AMENDMENTS. No amendment of a land use district boundary shall be approved unless the Commission finds upon the clear preponderance of the evidence that the proposed boundary amendment is reasonable, not violative of Section 205-2 and consistent with the Interim Statewide Land Use Guidance Policies established pursuant to Chapter 205, HRS, or any State Plan hereafter enacted by the Legislature, which State Plan shall supersede the Interim Statewide Land Use Policies. Except when the Commission finds that an injustice or inequity will result, the Commission shall observe and comply with the Interim Statewide Land Use Guidance Policies set forth below:

- (1) Land use amendments shall be approved only as reasonably necessary to accommodate growth and development, provided there are no significant adverse effects upon agricultural, natural, environmental, recreational, scenic, historic, or other resources of the area.
- (2) Lands to be reclassified as an urban district shall have adequate public services and facilities or as can be so provided at reasonable costs to the petitioner.

- (3) Maximum use shall be made of existing services and facilities, and scattered urban development shall be avoided.
- (4) Urban districts shall be contiguous to an existing urban district or shall constitute all or a part of a self-contained urban center.
- (5) Preference shall be given to amendment petitions which will provide permanent employment, or needed housing accessible to existing or proposed employment centers, or assist in providing a balanced housing supply for all economic and social groups.
- (6) In establishing the boundaries of the districts in each county, the Commission shall give consideration to the general plan of the county.
- (7) Insofar as practicable conservation lands shall not be reclassified as urban lands.
- (8) The Commission is encouraged to reclassify urban lands which are incompatible with the interim statewide land use guidance policy or are not developed in a timely manner.

FINDINGS OF FACT

The panel of the Land Use Commission, after having duly considered the testimony given, the evidence presented, and the files and records, makes the following findings of fact and conclusions of law.

1. The Petitioner is a California corporation, with its principal place of business and mailing address at 14831 Maple Avenue, Gardena, California.

2. The subject parcel is situated at Kilauea, Island and County of Kauai, State of Hawaii, and contains an area of 35.72 acres, more or less. The subject parcel is identified by Kauai Tax Map Key 5-2-04: por. 8.

3. The Petitioner is the fee simple owner of the subject parcel.

4. The subject parcel is located on the eastern side of the present Kilauea Urban District, and is situated directly behind Kilauea School. It is bounded on the north (makai) and west by the Kilauea town residential areas, and on the east by a bluff line overlooking the Kilauea Stream. A pocket of approximately 2.9 acres (half-moon shaped) is situated north of the petitioned area (portion of TMK 5-2-4:58), and in addition, a 3,750 square foot parcel of property (TMK 5-2-4:20) is located within the southwest portion of the petitioned area, and both parcels, although located within the Agricultural District, are not included as part of Petition A-76-425.

5. The present County of Kauai General Plan designates the subject parcel as "Agricultural," and similarly, the County of Kauai zoning for the subject parcel is likewise "Agricultural." However, written testimony from Kauai County, indicates that a small portion of the subject property, approximately 2.4 acres along its eastern extremity, is designated as "Open" in the County General Land Use Plan.

6. The subject property is presently classified as "Agricultural" by the Land Use Commission. It is surrounded on three sides by the present Kilauea Urban District. Parcels of land located adjacent and contiguous to the northern and southwestern boundaries of the subject property are designated as "Agricultural," but are not included within the petition.

7. The State of Hawaii and County of Kauai policy and goal is to maintain agriculture as the primary activity for the Kilauea area.

8. The subject site is presently vacant and overgrown. It was used in the past for the growing of sugar cane by Kilauea Sugar Company, and subsequently for the growing of sorghum by Metcalf Farms until 1972. The subject parcel has been vacant and unused since that time.

9. Agricultural pursuits by Metcalf Farms on the subject site were not successful due to the use of large farm equipment in a small area, the need for heavy irrigation, dust and noise problems, and the wind carrying dust, noise, herbicide and pesticide to the surrounding urban residential areas.

10. The property is located at 300 feet elevation. From west to east, the property slopes from nearly level to a gentle slope of less than 10 degrees until the bluff line overlooking the Kilauea Stream.

11. The property drains in an easterly direction into the Kilauea Stream. Development of the proposed residential subdivision by the Petitioner will not cause any significant adverse drainage problems, as the drainage area of Kilauea Stream encompasses 4,000 acres while the subject site is only 35 $\frac{1}{2}$ acres.

12. Rainfall averages seventy-five (75) inches per annum. The soils on the subject site are classified as being in the Makapili (MeB) Series by the United States Department of Agriculture's Soil Conservation Service,

and "C" by the University of Hawaii Land Study Bureau.

13. The Petitioner proposes to develop the subject property into a residential subdivision of one hundred and sixty-nine (169) lots. The lots will range in size from 6,000 to 15,000 square feet.

14. The overall density of the development will be 4.6 to 4.7 lots per acre.

15. The projected selling prices for the lots, based on today's prices, will range from \$12,000.00 to \$20,000.00, the individual prices depending on the size and location of the various lots.

16. The projected market for the lots will be the residents of Kauai, and in particular, residents of the Northshore of Kauai. Sales of residential lots in the Kilauea area for earlier residential subdivisions have indicated that seventy percent (70%) of the purchasers are residents at the Northshore, fifteen percent (15%) residents of Kauai, and the remaining fifteen percent (15%) from the rest of the State of Hawaii and elsewhere.

17. Development would commence as soon as all necessary governmental approvals have been obtained. It is projected that fifty (50) lots would be placed on the market each year, commencing in January of 1979.

18. Presently, there is an estimate of two hundred and sixteen (216) lots vacant and/or available, and an estimate of one hundred and eighty (180) homes presently in the Kilauea area. Utilizing a three and one-half (3.5) per household figure, the present estimated

population of Kilauea is six hundred and thirty (630) persons. The full utilization of the vacant and/or available lots will increase this estimate to twelve hundred and six (1206) persons. The proposed one hundred and sixty-nine (169) lots will then project the total estimate to seventeen hundred and ninety-eight (1798) persons, an increase of almost three times the present population. (I. Tr. pp 116 to 126). However, it has not been shown when, if at all, homes will be built on these available lots.

19. The anticipated costs for all on-site and off-site developments would be around \$5,000.00 to \$6,000.00 per lot with an approximate total development cost of \$929,500.00.

20. The subject site abuts the existing Kilauea School. Should the development generate an anticipated increase of sixty (60) to eighty (80) new students, the capacity of Kilauea School would have to be enlarged to accommodate an additional forty (40) to fifty (50) students. There was no indication by the State Department of Education that this increase in capacity could not be accommodated.

21. Sewage disposal will be accomplished through the use of cesspools. Solid waste disposal would be through the use of the Hanalei Sanitary Landfill, carried out by the County of Kauai refuse workers, or taken out by the residents themselves. Written testimony indicates that additional refuse collection services will be required. In addition, the solid waste sanitary landfill in Hanalei is temporary and its service life will be shortened by

increases in refuse volume.

22. Kilauea park is located approximately 1,000 feet from the subject site, and will be available for use by the residents of the development. The Kilauea slippery slides, which is adjacent to the subject site, is owned by the Petitioner and is presently in the process of being dedicated to the County of Kauai or State of Hawaii as a park.

23. Adequate water is available for the proposed development. The Petitioner is willing to extend any necessary water lines to the subject site as may be required by the County of Kauai.

24. Police protection is presently available. Adequate fire protection will be available to the project site when the Princeville fire station is completed as expected within two years.

25. A projected motor vehicle increase of two hundred fifty to three hundred (250-300) vehicles per day resulting from the development would not cause an undue burden on the use of Kuhio Highway. The proposed subdivision will have access primarily from Kilauea Lighthouse Road and Kolo Road. The bridge along Kolo Road which crosses Kilauea Stream is of insufficient width to accommodate two lanes of traffic. The Kauai County has no plans presently to upgrade the bridge. Increased traffic resulting from urbanization will require considerable maintenance of Kolo Road, especially since the pavement is in poor condition.

26. Kilauea is becoming a bedroom community for the Northside of the island. This is a result of

increased employment on the Northshore, particularly at Princeville at Hanalei; the lack of moderately priced residential lots for sale on the Northshore; and the higher costs of residential homesites in other areas of the island. Many of the residents in Kilauea live in Kilauea but work in other areas such as Hanalei, Haena, Kapaa, and Lihue.

27. There is a demand for houselots in the price range proposed by the Petitioner, as shown by past sales. In three subdivisions, to-wit: Mahikoa (II and III), Kilauea Subdivision III, and Kilauea Subdivision Estates, a total of fifty-nine (59) residential lots were made available for marketing within the past year, of which fifty-four (54) lots have already been sold with an average price range of \$14,000.00 to \$16,000.00.

28. Of the fifty (50) residential lots in Kilauea Subdivision III, Mahikoa (II and III), and Kilauea Estates (Unit II), sold during the past year, twenty-three (23) are in the process of, or have commenced construction thereon.

29. Based on past sales experience for residential lots, there is a demand for approximately fifty (50) residential lots per year by predominantly local residents of Kilauea and Kauai.

30. Three proposed residential subdivisions (Puu Lani, Kilauea Estates, and Can Corporation) are the only other subdivisions planned or proposed, which would make a total of one hundred fifty-six (156) lots available over the next few years.

31. The Petitioner expects to have lots ready for sale by early 1979. The interim period would be required to complete and obtain all necessary governmental approvals, and to undertake and complete the required subdivision on-site and off-site improvements.

32. Based on past sales experience in the Kilauea area, the lots proposed for sale by the Petitioner will be ready for marketing about the time when the inventory of lots presently available, or to be made available in Kilauea area, according to County of Kauai's Exhibit "A", is depleted or limited.

33. In accordance with the economic law of supply and demand, having a ready supply of residential lots to meet the actual demand stabilizes lot prices and prevents them from becoming artificially inflated. Past sales experience in the Kilauea area has shown this to be true, as speculation is minimal due to a continual supply of residential lots to meet the demand.

34. The Petitioner has worked in the past in the development of a house and lot package with Beta Pacific, Inc., a local construction firm, which was offered to purchasers of lots who desired a house built on the property purchased. Petitioner is willing to continue to offer a house and lot package to prospective buyers. Based on today's prices, the cost of the houses would range from a low of \$25,000.00 for a house with 700-800 square feet of livable floor area, to a high of \$42,000.00 for a four-bedroom, two bath house. These prices include carpeting, appliances and car-port.

35. The subject site does not possess any historical, scenic, archaeological, or recreational significance.

36. As the property is not visible from the highway, no adverse effect on the view plane of the area will result.

37. Past experience has shown that the subject parcel, due to its location and size, was not suited for the agricultural pursuits of Metcalf Farms. However, the record shows that the soil on the subject property is classified as "C" lands by the Land Study Bureau and has good capacity for producing vegetable and orchard crops, and the testimony of Mr. Dennis Ikehara of the University of Hawaii Cooperative Extension Service substantiates this.

38. Simultaneously with the growth of new residences in Kilauea has been the growth of new commercial businesses. These businesses include a beauty shop, fix-it shop, mechanic shop, fertilizer manufacturer, boat builder, produce distributor, and gift shop. Development of additional residential lots is likely to result in additional business in the area.

39. The Petitioner is financially qualified and able to undertake the proposed residential subdivision.

40. The Petitioner is willing to observe all applicable federal, State and County statutes, laws, ordinances, rules and regulations.

CONCLUSIONS OF LAW

1. The requirements set forth in Section 205-4,

Hawaii Revised Statutes, as amended, have been met and complied with;

2. The standards set forth in Part II, Section 2-2, of the State Land Use District Regulations have been met and complied with, to-wit:

a) The subject parcel will be characterized by "city-like" concentration of people, structures, streets, urban level of services and other related land uses;

b) The subject parcel is in a bedroom community and is in close proximity to businesses and employment facilities, and would likely to generate new businesses and employment;

c) Economic feasibility has been substantiated by the Petitioner;

d) Basic services such as sewers, water, sanitation, schools, parks, and police and fire protection are or will be available;

e) The subject site has satisfactory topography and drainage for the proposed development, and is reasonably free from the danger of floods, tsunami and unstable soil conditions and other adverse environmental effects;

f) The subject site is contiguous with the existing Kilauea Urban District;

g) The subject area is surrounded on three sides by existing urban districts in the process of urban development;

h) The development of the subject site will not contribute towards scattered spot urban development and will not necessitate unreasonable investment in public supportive services.

3. The proposed development is consistent with the Interim Statewide Land Use Guidance Policy, to-wit:

a) The proposed land use reclassification is reasonably necessary to accommodate growth and development;

b) There will be no significant adverse effects upon agricultural, natural, environmental, recreational, scenic, historic, or other resources of the area;

c) Adequate public services and facilities are available or can be so provided at reasonable costs to the Petitioner;

d) The subject area is contiguous to an existing urban district, will not contribute towards scattered urban development, and will maximize use of the existing services;

e) The proposed development will make homesites at reasonable prices available to Kauai residents.

4. It appears reasonable, logical and desirable that the subject property be reclassified from the Agricultural District to the Urban District.

ORDER

FOR GOOD CAUSE appearing, it is hereby ordered that: the parcels of land situated at Kilauea, Island and County of Kauai, State of Hawaii, and more particularly identified by Tax Map Key: 5-2-04: por. 8, and containing a total area of 35.72 acres, more or less, be and the same is hereby reclassified from the "Agricultural" District to the "Urban" District classification.

DONE at Honolulu, Hawaii, this 14th day of November, 1977, per Motion on November 14, 1977.

LAND USE COMMISSION
STATE OF HAWAII

By *Stanley Sakagashi*
STANLEY SAKAGASHI, Chairman
and Commissioner

By *Charles Duke*
CHARLES DUKE, Vice Chairman
and Commissioner

By *James L. Carras*
JAMES CARRAS, Commissioner

By *Colette Machado*
COLETTE MACHADO, Commissioner

By *Shinsei Miyasato*
SHINSEI MIYASATO, Commissioner

By *Shinichi Nakagawa*
SHINICHI NAKAGAWA, Commissioner

By *Mitsuo Oura*
MITSUO OURA, Commissioner

By *Carol Whitesell*
CAROL WHITESELL, Commissioner

By *Edward Yanai*
EDWARD YANAI, Commissioner

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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:

HIDETO KONO, Director
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WALTON D. Y. HONG
Masuoka and Hong, Attorneys at Law
P. O. Box 1727
Lihue, Kauai 96766

Dated: Honolulu, Hawaii, this 14th day of November, 1977.


GORDAN Y. FURUTANI
Executive Officer
Land Use Commission