

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition)
)
 of)
)
 MALCOLM S. SMITH, for a)
 Petition to amend the District)
 Boundary of property situate)
 at Kapaa, Island and County)
 of Kauai, State of Hawaii)
)

DOCKET NO. A79-465

DECISION AND ORDER

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition)	DOCKET NO. A79-465
)	
of)	FINDINGS OF FACT,
	CONCLUSIONS OF LAW,
MALCOLM S. SMITH, for a)	DECISION AND ORDER
Petition to amend the District)	
Boundary of property situate)	
at Kapaa, Island and County)	
of Kauai, State of Hawaii.)	
_____)	

FINDINGS OF FACT, CONCLUSIONS
OF LAW, DECISION AND ORDER

This matter, being a proceeding pursuant to Section 205-4, Hawaii Revised Statutes, as amended, and the Rules of Practice and Procedure and District Regulations of the Land Use Commission of the State of Hawaii, was initiated by the petition of Malcolm S. Smith, to amend the Land Use District Boundary of an approximately 4.75 acre portion of certain lands situate at Kapaa Homesteads, Kapaa, Island and County of Kauai, State of Hawaii, was heard by the Land Use Commission (hereinafter "Commission") on February 14 and 26, 1980, at Lihue, Kauai, Hawaii. This docket and Docket No. A-79-466 were consolidated for hearing.

The mandatory parties admitted to the proceedings were petitioner Malcolm S. Smith (Docket No. A79-465), petitioners William Mowry and Robert Keown (Docket No. A79-466), the Planning Department of the County of Kauai, and the Land Use Division of the Department of Planning and Economic Development, State of Hawaii.

An untimely request to appear as a public witness by Elizabeth Ann Stone was denied by motion adopted by the Land Use Commission. No other parties sought intervention.

The Land Use Commission, having duly considered the testimony, exhibits and other evidence presented, and the files and records in Docket No. A79-465 makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

PROCEDURAL MATTERS

1. The petition of Malcolm S. Smith was filed on September 7, 1979, to amend the Agricultural Land Use District Boundary of certain lands at Kapaa Homesteads, Kapaa, Kauai, by reclassifying approximately 4.75 acres thereof (hereinafter "subject property") into the Urban District.

2. A notice of hearing to be held in the State Building, Lihue, Kauai, on February 14, 1980, was duly published in the Honolulu Star-Bulletin and Garden Island News on January 11, 1980.

3. A prehearing conference on the petition was held at Lihue, Kauai on February 4, 1980, and was attended by the parties who submitted and exchanged exhibits and lists of witnesses for the proceeding.

DESCRIPTION OF THE SUBJECT PROPERTY

4. The petitioner in Docket No. A79-465 is Malcolm S. Smith, whose residence address is R.R.1, Box 424, Kapaa, Kauai, Hawaii 96746.

5. The subject property is a portion of that parcel located on Kawaihau Road at Kapaa Homesteads, Kapaa, Kauai, Hawaii, denoted as Tax Map Key 4-6-09-68, containing an area of approximately 4.75 acres.

6. The petitioner is the vendee of the subject property under an agreement of sale from Clementina S. Garcia dated December 29, 1978. Ms. Garcia has consented to the filing of this application.

7. The subject property is located on the north side of Kawaihau Road, across from the former Hawaiian Fruit Packers Cannery, and adjacent to the Puu Kaa residential subdivision on the west or mauka side.

8. The subject parcel is presently classified as "Agricultural" by the Land Use Commission. The area across Kawaihau Road is presently designated as "Urban" lands, as is the property abutting the subject property on the west or mauka side.

9. The subject property is presently used for the grazing of cattle, but because of the terrain of the site it will only support four or five head of cattle.

10. The petitioner is the owner of Macky's Wholesale Meats which operates a meat packing plant on approximately two acres of land adjacent to the subject property. However, no slaughtering is done at the aforesaid plant and the subject property is not necessary for grazing or other purposes in connection with the operation of the meat packing facility.

11. The uses of other property in the vicinity of the subject property include residential uses such as the Puu Kaa and Hulu Manu subdivisions, as well as commercial and industrial uses across Kawaihau Road.

12. The elevation of the subject property ranges from 225 to 250 feet above sea level.

13. Surface drainage of the parcel is to the rear or north side into a gulley or gullies.

14. Rainfall in the area of the subject property averages about 65 inches per year.

15. The United States Soil Conservation Service has classified the soil on the subject property as Puhi silty clay loam, and the Land Study Bureau has classified it as "C" soil on a scale from "A" to "E".

16. The Department of Health commented on the proposed boundary change, and stated that there may be odor and fly nuisances arising from the use of pasture lands in the area of the subject property. The Department of Agriculture has indicated to the Department of Planning and Economic Development that the subject property is not viable for agricultural uses.

PROPOSAL FOR DEVELOPMENT AND
NEED FOR GROWTH AND DEVELOPMENT

17. The petitioner proposes a 27-lot development on the subject property (R-6 zoning), with lots ranging from 5,500 to 7,800 square feet, averaging 6,200 square feet.

18. The lots will be offered for sale at \$32,000 to \$40,000 each, averaging \$35,000 per lot, depending on the

size and location and the costs of development. It is anticipated that there will be no problem selling the lots to local residents who will have first priority.

19. The petitioner is willing to coordinate the planning or traffic circulation, roads and access to Kawaihau Road with adjacent developments, in accordance with the concerns of the County of Kauai and the Hawaii Housing Authority.

20. Petitioner will supply information on the types of units in this development to the Hawaii Housing Authority as requested by the State of Hawaii.

21. The Kapaa Homesteads area, of which the subject property is a portion, is becoming a large bedroom community for residents of Kauai.

22. Petitioner Malcolm S. Smith is financially qualified and able to undertake the proposed development.

STATE AND COUNTY PLANS

23. The Kauai County General Plan designates the subject property as "Open" and "Park", and the County of Kauai zoning for this parcel is "Open". The petitioner will meet all of the park dedication requirements of the County of Kauai as contained in applicable ordinances.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

24. Kapaa High School and Kapaa Elementary School are located approximately 1.2 miles from the subject site,

and St. Catherine's parochial school is approximately one mile to the east, and Island School is approximately 2.5 miles distant.

25. Parks in the area include Kapahi Park located approximately .9 mile mauka from the subject property, and the parks associated with the Kapaa Schools located approximately .9 miles makai.

26. Water supply and storage facilities for domestic water are adequate for this development. Source and transmission facilities are presently inadequate, but funds for pump and transmission line improvements have been appropriated.

27. Disposal of waste water and sewage will be coordinated with other developments in the area and with the County of Kauai.

28. The County Department of Water does not intend to incorporate a well located across Kawaihau Road into its potable water system, and the owner of the well has indicated that the well will be capped or limited to use for irrigation purposes. This satisfies State Department of Health concerns that cesspools in these developments might contaminate the existing well.

29. Other urban amenities and infrastructure such as electricity, gas, telephone, police and fire protection can be provided to these developments without unreasonably burdening public agencies and utilities.

IMPACT ON RESOURCES OF THE AREA

30. The petitioner will contact the Office of Historic Preservation, Department of Land and Natural Resources, in the event that historic sites or artifacts are discovered on the subject property.

31. There are no rare or endangered species of flora and fauna on the subject property.

32. The potential for future agricultural use on the subject property is limited due to its incompatible location in relation to the housing in the area and the relatively small size of the parcel.

33. The subject property does not possess any historical, archeological, recreational or scenic value.

34. Although the projected development will not create any long term employment, the development will generate some temporary construction employment.

SCATTERIZATION AND CONTIGUITY
OF DEVELOPMENT

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

CONFORMANCE WITH INTERIM STATEWIDE LAND
USE GUIDANCE POLICIES AND DISTRICT REGULATIONS

36. The subject property will be characterized by "city-like" concentration of people, structures, streets, urban level of services and other related land uses.

37. The subject property is in a bedroom community and is in close proximity to businesses and employment facilities, and would generate new employment during construction of the proposed development.

38. Economic feasibility has been substantiated by the petitioner as well as the financial capacity to carry out the proposed development.

39. Basic services such as sewers, water, sanitation, schools, parks, and police and fire protection are available to service the proposed development or can be provided at reasonable cost.

40. The subject property constitutes a reserve area for urban growth based on a ten year or more projection.

41. The subject property 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.

42. The subject property is contiguous with the existing Kapaa Urban District and will maximize use of existing services.

43. The subject area is in close proximity to existing urban development.

44. The land use reclassification is reasonably necessary to accommodate growth and development.

45. There will be no significant and adverse effects upon agricultural, natural, environmental, recreational, scenic, historic, or other resources of the area.

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

CONCLUSIONS OF LAW

Pursuant to Chapter 205, Hawaii Revised Statutes, and the Rules of Practice and Procedure, and State Land Use District Regulations, the Commission concludes that the proposed boundary amendment conforms to the standards established for the Urban Land District by the State Land Use District Regulations and is consistent with Section 205-2, Hawaii Revised Statutes, and with the Interim Statewide Land Use guidance policies established pursuant to Section 205-16.1, Hawaii Revised Statutes, and by State Land Use District Regulation 6-1.


ORDER

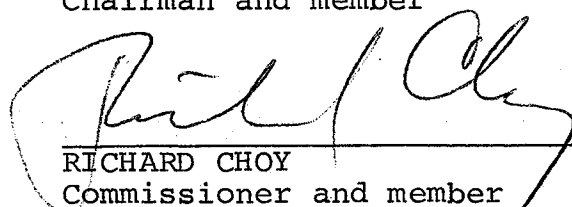
IT IS HEREBY ORDERED that the property which is the subject of the petition of Malcolm S. Smith in this Docket Number A79-465, approximately 4.75 acres, situate at Kapaa Homesteads, Kapaa, Island and County of Kauai, State of Hawaii, more particularly identified by Kauai Tax Map Key: 4-6-09-68, shall be and is hereby reclassified

from Agricultural to Urban and the Land Use District Boundaries are amended accordingly.

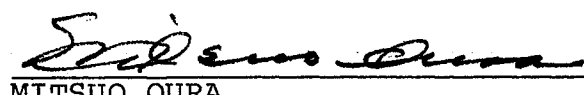
Done at Honolulu, Hawaii, this 15th day of October, 1980, per motion passed by the Commission on July 15, 1980.

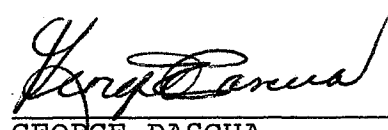
LAND USE COMMISSION
STATE OF HAWAII



C. W. DUKE
Chairman and member


RICHARD CHOY
Commissioner and member


SHINSEI MIYASATO
Commissioner and member


MITSUO OURA
Commissioner and member


GEORGE PASCUA
Commissioner and member


WILLIAM YUEN
Commissioner and member

A79-466 WM. MOURRY & RBRT. KEOWUN

Certificate of Boundaries
 No. 1
 SEC. 7

PARCELS 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

Owner of Parcel 48:
 Mrs. E. Young
 59
 Mrs. E. Young
 60
 Alfred L. Young & E. Young

32 State of Hawaii
 33 State of Hawaii



NOTICE: Owners, lessees and vendees names recorded on this map may not be current. Refer to Adm. Directive 24-68 Rev. 10/1/65, as amended by 877 Proceedings dated July 2, 1974.

TERRITORY OF HAWAII
 TAX MAP
 FOURTH DIVISION
 ZONE SEC. PLAT.
 4 6 09
 CONTAINING PARCEL
 SCALE 1" = 300'

A79-465 MALCOLM S. SMITH

Part of KAPAA HOMESTEADS, 4th SERIES, KAWAIIHAU, KAUAI

Div. No. 54
 Source: Tax Maps Bureau & Reg. Maps 2853
 by R. K. B. - J.L.C. July, 1956.

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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
Department of Planning & Economic Development
State of Hawaii
250 South King Street
Honolulu, Hawaii 96813

ANNETTE CHOCK, Deputy Attorney General
Department of Attorney General
Capital Investment Building
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BRIAN NISHIMOTO, Planning Director
Planning Department
County of Kauai
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Lihue, Hawaii 96766

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Office of County Attorney
County of Kauai
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Lihue, Hawaii 96766

LAWRENCE D. McCREERY
Attorney for Petitioner
P. O. Box 238
Kapaa, Hawaii 96746

DATED: Honolulu, Hawaii, this 30th day of October, 1980.


GORDAN Y. FURUTANI
Executive Officer