

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of) DOCKET NO. A80-481
)
THOMAS and TERE FEARON) THOMAS and TERE FEARON
)
To Amend the Agricultural Land Use)
District Boundary to Reclassify)
Approximately 1.0 Acre, TMK:)
7-6-03:38, at Holualoa, North)
Kona, County of Hawaii, into the)
Urban Land Use District)
_____)

DECISION AND ORDER

|

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Urban Land Use District)	

DECISION

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 Thomas and Tere Fearon who are requesting that the designation of the subject property be amended from Agricultural to the Urban District. The requested change consists of property comprising approximately 1.0 acre, situated in Holualoa, North Kona, Island and County of Hawaii. The property is more specifically identified as Tax Map Key No. 7-6-03:38.

PURPOSE OF PETITION

Petitioners' stated purpose for requesting the reclassification of the subject property from Agricultural to Urban is so that Petitioners can subdivide the subject property into two (2) single family residential lots, one consisting of 14,050 square feet and the other consisting of 29,510 square feet. The existing residential unit will be

located on the larger (mauka) lot and the Petitioner intends to eventually build another house on the smaller (makai) lot which is presently undeveloped.

THE PROCEDURAL HISTORY

The Petition was received by the Land Use Commission on March 7, 1980. Amendments to the Petition were received by the Land Use Commission on April 3, 1980. Due notice of the hearing on this Petition was published in the Hawaii Tribune Herald and The Honolulu Advertiser on July 4, 1980. Notice of the hearing was also sent by certified mail to all of the parties involved herein on July 7, 1980. No timely application for intervention or request to appear as witness was received by the Land Use Commission.

THE HEARING

The hearing on this Petition was held on August 6, 1980, in Kailua, Kona, Hawaii.

Thomas and Tere Fearon, the Petitioners herein, were represented by Roger Harris; the County of Hawaii was represented by Duane Kanuha; and the Department of Planning and Economic Development was represented by Ms. Esther Ueda.

The witnesses presented by the aforementioned parties were as follows:

Petitioner:

Thomas Fearon

William Crockett

County of Hawaii:

Duane Kanuha - Deputy Planning Director, County
of Hawaii Planning Department

Department of Planning and Economic Development:

Esther Ueda - Staff Planner

POSITION OF THE PARTIES

County of Hawaii - Approval.

Department of Planning and Economic Development -
Approval.

APPLICABLE REGULATION

Standards for determining the establishment of an Urban District are found under Part 11, 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 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."

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 introduced herein, makes the following findings of fact:

- 1. The subject property is owned in fee simple by Kaaihue Ranch which has executed an agreement of sale with Thomas and Tere Fearon, the Petitioners herein, and is located within the Holualoa 1st and 2nd Partition Lots, Mauka

Section, Holualoa, North Kona, Island and County of Hawaii, and consists of approximately 1.0 acre, more particularly described as Tax Map Key No. 7-6-03:38. The subject property lies mauka of, and fronts North Kona Belt Road (old Mamalahoa Highway), approximately 1 mile north of the intersection of Mamalahoa Highway and Hualalai Highway, and approximately 240 feet north of the Holualoa Community Center in Holualoa Village.

2. The existing State Land Use classification of the subject property is Agricultural. The subject property is separated from the existing Urban District by Mamalahoa Highway. Lands to the north, south and east of the subject property are within the State Agricultural District. The Urban District is in close proximity to the subject property and the surrounding Agricultural District lands include single family residential uses.

3. The County of Hawaii General Plan Land Use Pattern Allocation Guide Map designates the area the subject property is in for Low Density Urban Development. This designation permits residential uses at a maximum density of four (4) units per acre. The County zoning designation is Agricultural 1-acre (A-1a).

4. Presently there is one single family residential dwelling on the subject property. The portion of the subject property fronting Mamalahoa Highway is vacant, overrun with weeds and grass. The back portion of the subject property behind the dwelling has approximately 30 macadamia nut trees in cultivation for commercial purposes. The subject property was a portion of a 3-lot subdivision approved in April 3, 1979.

The other two (2) lots were each also 1+ acre in size. A subdivision for three (3) additional lots on the remainder of the original lot is pending.

5. Land uses surrounding the subject property include single family dwellings, commercial activities, the Holualoa Community Center, Inaba Hotel, Holualoa School, and other vacant parcels. Lands consisting of 15,000 square feet immediately west of the subject property, on the other side of Mamalahoa Highway, are designated Urban and are zoned by the County as Single Family Residential. Also, lands consisting of 10,000 square feet, 750 feet north of the subject property are designated Urban.

6. Petitioners' stated purpose for requesting the reclassification of the subject property from Agricultural to Urban is so that Petitioners can subdivide the subject property into two (2) single family residential lots, one consisting of 14,050 square feet and the other consisting of 29,510 square feet. The existing residential unit will be located on the larger (mauka) lot and the Petitioner intends to eventually build another house on the smaller (makai) lot which is presently undeveloped. Financial statements attached to the Petition indicate that Petitioners have the financial capability to fulfill the purpose set forth in the Petition regarding the use of the subject property.

7. The U.S.D.A. Soil Conservation Service Soil Survey Report (December 1973) classifies the lands of the subject property as part of the Honaunau Series, consisting of extremely rocky silty clay loam, 6% to 20% slopes. Rock

outcrops cover 25% to 50% of the surface of this soil type. Permeability is rapid, runoff is slow, and the erosion hazard is slight. This soil type is used primarily for pasture and wildlife habitat.

8. The Land Study Bureau's overall master productivity rating for agricultural use on the subject property is Class "C" or Fair. The subject property is not classified as Prime, Other Important or Unique agricultural lands under the Agricultural Lands of Importance to the State of Hawaii (ALISH) classification system. Petitioner has also stated that the present lot size and configuration make the pursuit of agricultural activities unfeasible.

9. The subject property lies outside the 100 year flood prone areas and is not subject to localized flooding, tsunami, unstable soil conditions, or other adverse environmental effects.

10. The subject property contains no known significant or endangered species of flora or fauna. The State Department of Land and Natural Resources has no record indicating the presence of significant historical, cultural, architectural and/or archaeological sites on the subject property. As the subject property is in an area known to contain a high density of archaeological sites, the Petitioner has agreed to have an archaeological reconnaissance survey conducted by a qualified archaeologist who will submit a final report to the State Department of Land and Natural Resources and to cooperate with the Department in regard to taking whatever steps are necessary to preserve significant archaeological sites.

11. The reclassification of the subject property will not unreasonably burden public agencies to provide necessary urban amenities, services and facilities because:

a. Access - Access for the lot fronting Mamalahoa Highway shall be through the existing driveway off Mamalahoa Highway. Access for the other lot with the existing dwelling shall be through a 50-foot access off Mamalahoa Highway. Petitioners have agreed to comply with the County's requirements regarding improvement of the access and to pay their pro rata share of the cost of improvements.

b. Sewage - Sewage needs of the subject property will be handled through a cesspool system.

c. Water - At present, water will not be available to the proposed subdivision unless the pumping system along Mamalahoa Highway is improved. The Petitioners have stated that they will contribute financially to a fund for the procurement of an additional booster pump.

d. Drainage - A sump drain at the bottom of the road on the southern boundary of the subject property will handle run-off.

e. Police and Fire Protection - Police protection will be provided from approximately 10 miles away and fire protection will be provided from approximately 8 miles away from the subject property.

12. The proposed reclassification of the subject property is in accordance with the objectives and policies of the State Plan which aim to "encourage urban developments

in close proximity to existing services and facilities" and "encourage future urbanization into easily serviceable more compact, concentrated developments in existing urban areas wherever feasible to maximize energy conservation."

13. Based on a review of the Petition, the evidence adduced at the hearing, and the policies and criteria of the Interim Statewide Land Use Guidance Policy, the County of Hawaii and the Department of Planning and Economic Development have recommended that the reclassification of the subject property be approved.

CONCLUSIONS OF LAW

Reclassification of the subject property, consisting of approximately 1.0 acre of land, situated in Holualoa, North Kona, Island and County of Hawaii, from Agricultural to Urban and an amendment to the district boundaries accordingly is reasonable, non-violative of Section 205-2 of the Hawaii Revised Statutes, and is consistent with the Interim Statewide Land Use Guidance Policy established pursuant to Section 205-16.1 of the Hawaii Revised Statutes, as amended.

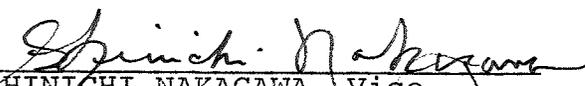
ORDER

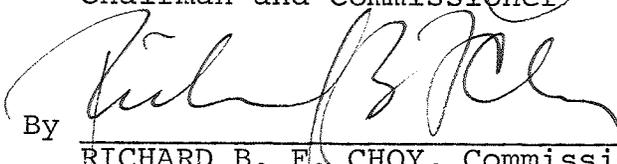
FOR GOOD CAUSE APPEARING, it is hereby ordered that the property which is the subject of the Petition in this Docket No. A80-481, consisting of approximately 1.0 acre, situated in Holualoa, North Kona, Island and County of Hawaii, identified as Tax Map Key No. 7-6-03:38, shall be and hereby is reclassified from Agricultural to Urban and the district boundaries are amended accordingly.

DONE at Honolulu, Hawaii, this 29th day of
October, 1980, per Motion on October 15, 1980.

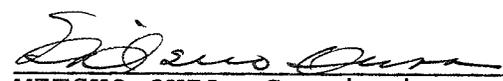
LAND USE COMMISSION
STATE OF HAWAII

By 
C. W. DUKE, Chairman and
Commissioner

By 
SHINIICHI NAKAGAWA, Vice
Chairman and Commissioner

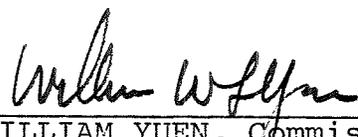
By 
RICHARD B. F. CHOY, Commissioner

By 
SHINSEI MIYASATO, Commissioner

By 
MITSUO OURA, Commissioner

By _____
GEORGE PASCUA, Commissioner

By 
CAROL B. WHITESELL, Commissioner

By 
WILLIAM YUEN, Commissioner

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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:

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
Penthouse, 850 Richards Street
Honolulu, Hawaii 96813

SIDNEY FUKU, Planning Director
Planning Department
County of Hawaii
25 Aupuni Street
Hilo, Hawaii 96720

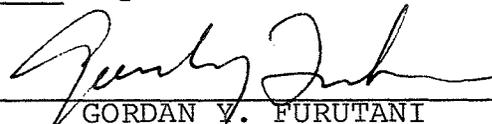
STEPHEN BESS, Corporation Counsel
Office of the Corporation Counsel
County of Hawaii
25 Aupuni Street
Hilo, Hawaii 96720

ROGER HARRIS
P. O. Box 10
Honolulu, Hawaii 96810

THOMAS & TERE FEARON
P. O. Box 4119
Kailua-Kona, Hawaii 96740

WILLIAM J. CROCKETT, General Partner
Kaaihue Ranch
P. O. Box 196
Holualoa, Hawaii 96725

DATED: Honolulu, Hawaii, this 31st day of October, 1980.



GORDAN Y. FURUTANI
Executive Officer