

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of ) DOCKET NO. A80-495  
 )  
ROBERT and LINDA McINTOSH ) ROBERT and LINDA McINTOSH  
 )  
To Amend the Agricultural Land Use )  
District Boundary to Reclassify )  
Approximately 2.5 Acres, TMK: )  
7-8-05:42, at Puuloa, Keauhou, )  
North Kona, Hawaii, into the Urban )  
Land Use District )  

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DECISION AND ORDER

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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 Robert and Linda McIntosh who are requesting that the designation of the subject property be amended from the Agricultural to the Urban District. The requested change consists of property comprising approximately 2.5 acres of land, situated at Puuloa, Keauhou, North Kona, Island and County of Hawaii. The subject property is more particularly identified as Tax Map Key No. 7-8-05:42.

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 3 parcels for single-family residential purposes.

THE PROCEDURAL HISTORY

The Petition was received by the Land Use Commission on August 22, 1980. Due notice of the hearing on this Petition was published on October 31, 1980, in the Hawaii Tribune Herald and The Honolulu Advertiser. Notice of the hearing was also sent by certified mail to all parties involved herein on October 30, 1980. No timely application to intervene as a party or appear as a witness was received by the Land Use Commission.

THE HEARING

The hearing on this Petition was held on December 11, 1980, in Kailua, Kona, Hawaii.

Robert and Linda McIntosh, the Petitioners herein, were represented by Roy Takeyama, Esq.; the County of Hawaii was represented by Deputy Planning Director, Duane Kanuha; and the Department of Planning and Economic Development was represented by Tatsuo Fujimoto.

The witnesses presented by the aforementioned parties were as follows:

Petitioner:

Robert McIntosh

County of Hawaii:

Duane Kanuha - Deputy Planning Director

Department of Planning and Economic Development:

Tatsuo Fujimoto - Chief, Land Use Division

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 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."

#### 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 is located at Puuloa, Keauhou, North Kona, Island and County of Hawaii, and consists of approximately 2.5 acres, more particularly described as Tax Map Key No. 7-8-05:42. The Petitioners presently hold a 55-year lease from Bishop Estate, the owner of the property, which has consented to the filing of the subject Petition and the subdivision of the subject property into three (3) lots. The subject property is situated on Puuloa Road, approximately 3,000 feet from Kuakini Highway and is

located approximately 7 miles from the town of Kailua-Kona and approximately 3 miles from the Keauhou Resort Area.

2. The subject property is currently within the State Land Use Agricultural District. The Land Use Pattern Allocation Guide Map component of the County of Hawaii General Plan adopted as Ordinance 439 in December 1971, designates the area for Low Density Urban Development. Said designation permits residential use at a maximum density of 4 units per acre. The County zoning for the subject property is unplanned (U). The subject property is not situated within the Special Management Area.

3. The subject property abuts the Puuloa I residential subdivision which is in the State Land Use Urban District and is zoned as Single Family Residential with a 15,000 square foot minimum lot size (RS-15) by the County of Hawaii.

4. The subject property is presently covered with trees and shrubbery and is presently lying fallow. The subject property fronts Puuloa Road for approximately 800 feet and generally slopes toward the ocean from Puuloa Road. The subject property ranges between 1,020 feet and 1,070 feet elevation. The annual rainfall for the subject property is between 30 and 40 inches.

5. According to the Soil Survey Report published by the U. S. Department of Agriculture, Soil Conservation Service (December 1973), the soil of the subject property is classified as Punaluu extremely rocky peat with six (6) to twenty (20) percent slopes. This classification consists of well-drained, thin organic soils over pahoehoe lava bedrock. The surface layer is extremely rocky peat about four

(4) inches thick with rock outcrops occupying forty (40) to fifty (50) percent of the surface. The pahoehoe lava is very slowly permeable, although water moves rapidly through the cracks. These soils have a capability subclass rating of VIIIs which indicates severe limitations, mainly because of shallow, droughty or stony conditions, that made them unsuited to cultivation and that restrict their use largely to pasture or range, woodland, or wildlife.

The Land Study Bureau's overall master productivity rating for the area is "E" which is very poor. The subject area has not been classified on the State Department of Agriculture's Agricultural Lands of Importance to the State of Hawaii map.

The property is vacant of any structure and is not being used for any agricultural use.

The Department of Agriculture commented that the subject property is not being utilized for agricultural purposes and is not well-suited for cultivation.

6. The Petitioners are requesting the Urban classification so they can subdivide the subject property into three (3) lots for single-family residential purposes. According to the preliminary subdivision plan, the subject 2.5-acre parcel will be subdivided into three (3) lots consisting of .91 $\pm$  acre, .81 $\pm$  acre and .80 $\pm$  acre. The Petitioners propose to construct their dwelling on one of the parcels and to sell the remaining two (2) parcels. The unimproved lots will be sold for approximately \$100,000.00 each. In the event the lots are sold as a house and lot package, the price will range from approximately \$250,000.00 to \$300,000.00. The proposed development should be completed

within two (2) years following final governmental approval. The Petitioners' financial statement further indicates that they have the resources to fulfill the development of the subject property as proposed.

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

a. Access - The proposed subdivision will be serviced by Puuloa Road which has a right-of-way width of 40 feet and a pavement width of 16 feet, 6 inches. Puuloa Road provides access to Kuakini Highway which is 3,000 feet north of the subject property.

b. Sewage - Sewage disposal will be by cess-pool as presently utilized by the residents of the abutting Puuloa I subdivision.

c. Water - Water will be available from a 6-inch waterline presently running along Puuloa Road.

d. Electrical and Telephone Service - Electrical and telephone service connections are readily available to the subject property.

e. Schools - The Konawaena Elementary and High School complex is located approximately 8 miles from the subject property.

f. Police and Fire Protection - Services are available from the Captain Cook stations located approximately 10 miles away.

8. A walk on survey was conducted on the subject parcel and no archaeological or historical remains were found



therein. The report of the survey states that because of the rocky terrain and scarcity of soil deposit it is improbable that the property was historically used for agricultural purposes. As such, no agricultural features such as rock clearance mounds or planting areas were observed on the site.

9. There are no significant effects of the proposed development upon the environment, agriculture, recreational resources, scenic resources, endangered species of flora or fauna, or any other resources.

10. Based on a review of the Petition, the evidence adduced at the hearing, and the provisions of Chapter 205, Hawaii Revised Statutes, the County of Hawaii and the Department of Planning and Economic Development have recommended that the reclassification be approved.

#### CONCLUSIONS OF LAW


Reclassification of the subject property, consisting of approximately 2.5 acres of land, situated at Puuloa, Keauhou, North Kona, Island and County of Hawaii, from Agricultural to Urban and an amendment to the district boundaries accordingly is reasonable and non-violative of Section 205-2 of the Hawaii Revised Statutes.

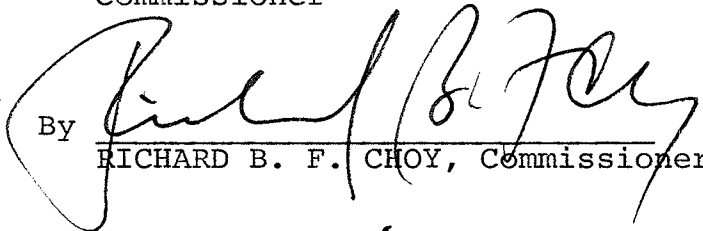
#### ORDER

FOR GOOD CAUSE APPEARING, it is hereby ordered that the property which is the subject of the Petition in this Docket No. A80-495, consisting of approximately 2.5 acres, situated at Puuloa, Keauhou, North Kona, Island and County of Hawaii, identified as Tax Map Key No. 7-8-05:42, shall be and hereby is reclassified from Agricultural to Urban and the district boundaries are amended accordingly.

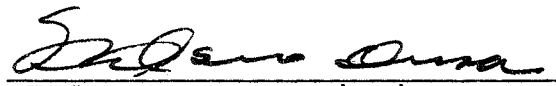
DONE at Honolulu, Hawaii, this 6th day of  
May, 1981, per Motion on April 9, 1981.

LAND USE COMMISSION  
STATE OF HAWAII

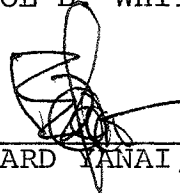
By   
C. W. DUKE, Chairman and  
Commissioner

By   
RICHARD B. F. CHOY, Commissioner

By   
SHINSEI MIYASATO, Commissioner

By   
MITSUO OURA, Commissioner

By   
CAROL B. WHITESELL, Commissioner

By   
EDWARD YANAI, Commissioner

By   
WILLIAM YUEN, 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  
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  
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Office of the Corporation Counsel  
County of Hawaii  
25 Aupuni Street  
Hilo, Hawaii 96720

ROY TAKEYAMA, Attorney for Petitioner  
Suite 223  
33 South King Street  
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, this 8th day of May, 1981.

  
\_\_\_\_\_  
GORDAN Y. FURUTANI  
Executive Officer