

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of) DOCKET NO. A81-502
)
MARVIN J. ROEDER, JR., VIRGINIA) MARVIN J. ROEDER, JR.,
V. ROEDER, MARVIN J. ROEDER, SR.,) VIRGINIA V. ROEDER,
and ANTHONY D. AMATO) MARVIN J. ROEDER, SR.,
) and ANTHONY D. AMATO
)
To Amend the Agricultural Land Use)
District Boundary to Reclassify)
Approximately 2.27 Acres, TMK:)
7-3-7:34, at Kohanaiki, North)
Kona, Island and County of)
Hawaii, State of Hawaii, into)
the Urban Land Use District)
_____)

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 the Petitioners, Marvin J. Roeder, Jr., Virginia V. Roeder, Marvin J. Roeder, Sr., and Anthony D. Amato, 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 2.27 acres of land, situated at Kohanaiki, North Kona, Island and County of Hawaii, State of Hawaii. The subject property is more particularly identified as Tax Map Key No. 7-3-7:34.

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 4 parcels, approximately 1/2 acre each, and to construct 4 single-family dwelling units thereon for use by the Petitioners and their immediate family.

THE PROCEDURAL HISTORY

The Petition was received by the Land Use Commission on January 13, 1981. Due notice of the hearing on this Petition was published on February 27, 1981, 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 February 26, 1981. 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 April 3, 1981, in Kailua, Kona, Hawaii.

Marvin J. Roeder, Jr., Virginia V. Roeder, Marvin J. Roeder, Sr., and Anthony D. Amato, the Petitioners herein, were represented by Clifford H. F. Lum, Esq.; the County of Hawaii was represented by Duane Kanuha and Brian Nishimura; and the Department of Planning and Economic Development was represented by Mr. Abe Mitsuda.

The witnesses presented by the aforementioned parties were as follows:

Petitioner:

Marvin J. Roeder, Jr.

Gerald Park

County of Hawaii:

Brian Nishimura - Staff Planner

Duane Kanuha - Deputy Planning Director

Department of Planning and Economic Development:

Abe Mitsuda - Staff Planner

POSITION OF THE PARTIES

County of Hawaii - Approval.

Department of Planning and Economic Development -
Denial.

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, held by Petitioners under a vendee's interest pursuant to an Agreement of Sale, is located at Kohanaiki, North Kona, Island and County of Hawaii, and consists of approximately 2.27 acres, more particularly described as Tax Map Key No. 7-3-7:34. The sellers of the property under the Agreement of Sale, William and Masae Ishida, have consented to the filing of the subject Petition. The subject property is located on the west coast of the Island of Hawaii, approximately 6.5 miles north of Kailua-Kona. It is located on the makai side of Mamalahoa Highway, approximately 1.25 miles north of Palani Junction.

2. The Hawaii County zoning designation of the subject property is A-3a (agriculture, 3 acres). The Land Use Pattern Allocation Guide Map component of the County of Hawaii General Plan designates the area within which the subject property is located as Extensive Agriculture/Alternate Urban Expansion. The subject property is not within the County's Special Management Area.

3. There are presently 5 subdivisions (Kona Highlands, Kona Wonderview, Kona Crestview, Kona Palisades and Kona Acres) located to the north of the subject property which are located within the State Land Use Agricultural District as nonconforming subdivisions in regard to lot size. As of 1978, there were 1,750 lots existing in the 5 subdivisions with approximately 400 dwelling units completed. The lots in the 5 subdivisions range in size between 7,500 and 22,000 square feet. Another nonconforming subdivision, Kona Heavens, situated in the State Land Use Agricultural District, is located south of the subject property. The

Urban District nearest to the subject property is located approximately 2 miles away at Kealakehe.

4. The elevation of the subject property is approximately 1,600 feet above sea level. The slope in the area ranges from 6% to 20%. The subject property, however, is fairly level. The area within which the subject property is located has approximately 40 to 50 inches of rainfall annually.

5. "The Soil Conservation Service's Soil Survey of Island of Hawaii classifies the soil on the property as being of the Punaluu Series, which is characterized by extremely rocky peat. The capability classification for Punaluu soils is Class VII. Class VII soils have severe limitations that make them unsuited to cultivation; land use is largely restricted to pasture or range, woodland, or wildlife. Subclass VII's soil defines the soils on the property in greater detail. The 's' designation attributes the limitation to the soil being shallow, droughty and stony." The Master Productivity Rating of the property for agricultural use is Class D according to the Land Study Bureau's Detailed Land Classification which classifies land productivity on the scale of A through E with A having the highest potential.

6. The subject property is not included on the State Department of Agriculture's Agricultural Lands of Importance to the State of Hawaii Map. The subject property has not been used for agricultural activities for the last 25 years due to its "poor" soil qualities.

7. The reclassification of the subject property will not cause the loss of recreational facilities in the

area or affect any unique or unusual scenic amenities. The State Department of Land and Natural Resources, Historic Sites Section, states that the subject property is not a historic property listed on the Hawaii Register of Historic Places, or has been determined eligible for inclusion on the National Register of Historic Places. An archaeological reconnaissance conducted of the subject property has determined the absence of any archaeological or historic sites.

8. Petitioners' proposed use of the subject property is to subdivide it into 4 parcels, each comprising approximately 1/2 acre and to construct a single-family dwelling upon each parcel so that Petitioners and their immediate families may reside thereon. One single-family dwelling has already been constructed on the subject property. Construction of the second dwelling is scheduled to begin within 12 months after all necessary governmental approvals have been obtained. Construction of the third and fourth single-family dwellings are scheduled to begin approximately 18 months after all governmental approvals have been obtained. The Petitioners plan to build the dwellings themselves with subcontracting support as was done in the construction of the first structure. The evidence indicates that the Petitioners possess the financial capability to carry through their development plans.

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

- a. Access - Access from the proposed 4 lots will be through a single point on to Mamalahoa

Highway, which fronts the subject property, so as not to impede traffic flow. Mamalahoa Highway has a right-of-way width of 80 feet with a 22-foot-wide pavement.

b. Sewage - There is no sewage system presently in the area so sewage disposal will be in compliance with State Department of Health Regulations.

c. Police and Fire Protection - Fire protection will be provided from Kailua, Kona, approximately 6.5 miles away. The police station is located in Captain Cook, Kona, approximately 18 miles away.

d. Water - The County of Hawaii originally objected to the proposed reclassification in their written testimony on the basis of comments received from the County Department of Water which indicated that water would be available to the proposed development only if certain improvements were made to the existing water system. The improvements which were primarily required were indicated to be a booster pump, transmission line, reservoir and the development of an additional well source. The County Water Department further indicated that since funds were presently unavailable for these improvements, water commitments would not be granted unless developers were willing to contribute their pro rata share for the construction of the required water improvements.

During the course of the hearing on the subject Petition, testimony was adduced which indicated that negotiations between the Petitioners and the County Department of Water Supply had reached the stage where a schedule for contributions toward construction of water improvements was in the process of being finalized which would in turn grant Petitioners a water commitment from the County Department of Water Supply. On the basis of the additional information adduced at the hearing and on the basis of Petitioners' representations regarding their commitment to pay their pro rata share of the water improvements once the fund pool is established by the County of Hawaii, the County of Hawaii Planning Department has no objections to the reclassification of the subject property.

10. The Department of Planning and Economic Development objects to the subject Petition on the basis that (1) the reclassification to an Urban designation would amount to "spot zoning" rather than "directed" urban growth in view of the fact that the surrounding area is characterized by small farms intermixed with low-density residential lots as opposed to "city-like" concentrations of people, structures, streets, urban level of services and other related land uses and (2) the existence of other undeveloped and vacant Urban Districts in North and South Kona.

11. The County of Hawaii Planning Department recognizes that the subject property meets certain standards in establishing an Urban District in that "it possesses

satisfactory topography and drainage and is reasonably free from the danger of floods, tsunami, unstable soil conditions and other adverse environmental effects. The subject property is also reasonably close to the principal center of trading and employment facilities, namely Kailua Village." The County of Hawaii Planning Department recognizes also that the subject property is designated on the General Plan as Extensive Agriculture/Alternate Urban Expansion and is in an area which has 6 nonconforming subdivisions and is agriculturally less active than the mauka Holualoa area. Through testimony adduced at the hearing, the County is reasonably satisfied that the project is in close proximity to basic services including water and is satisfied that the development of this particular property can be controlled through applicable zoning ordinances and permit procedures.

12. 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 has recommended that the reclassification of the subject property be granted due to the particular facts involving this specific property.

CONCLUSIONS OF LAW

Reclassification of the subject property, consisting of approximately 2.27 acres of land, situated at Kohanaiki, North Kona, Island and County of Hawaii, State 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.

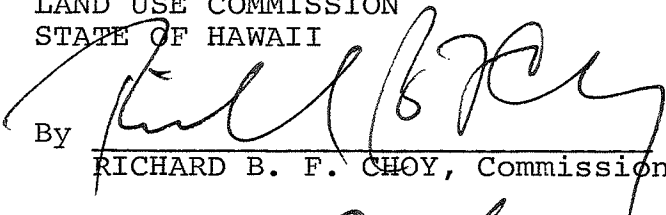
ORDER

FOR GOOD CAUSE APPEARING, it is hereby ordered that the property which is the subject of the Petition in this Docket No. A81-502, consisting of approximately 2.27 acres, situated at Kohanaiki, North Kona, Island and County of Hawaii, State of Hawaii, identified as Tax Map Key No. 7-3-7:34, shall be and hereby is reclassified from Agricultural to Urban and the district boundaries are amended accordingly.

DONE at Honolulu, Hawaii, this 27th day of July, 1981, per Motion on July 9, 1981.

LAND USE COMMISSION
STATE OF HAWAII


By


RICHARD B. F. CHOY, Commissioner


By


C. W. DUKE, Commissioner

By


SHINSEI MIYASATO, Commissioner


By


TEOFILO TACBIAN, Commissioner

By


ROBERT S. TAMAYE, Commissioner

By


EDWARD YANAI, Commissioner

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Land Use District)
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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 and Economic Development
State of Hawaii
250 South King Street
Honolulu, Hawaii 96813


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DATED: Honolulu, Hawaii, this 27th day of July, 1981.


GORDAN Y. FURUTANI
Executive Officer