

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
)
COLONY ASSOCIATES)
)
To Amend the State Land Use District)
Boundary by Reclassifying Approxi-)
mately 39.459 Acres, TMK: 7-5-10:)
18 and 20, at Puaa 3rd, North Kona,)
Island and County of Hawaii, from)
the Agricultural District into the)
Urban District)
_____)

DOCKET NO. A81-505

COLONY ASSOCIATES

Orig.
This is to certify that this is a true and correct copy of the
Decision and Order on file in the office of the State Land Use
Commission, Honolulu, Hawaii.

_____ by _____
Date Executive Officer

DECISION AND ORDER

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FINDINGS OF FACT, CONCLUSIONS OF LAW,
DECISION AND ORDER

This proceeding was initiated pursuant to Chapter 205, Hawaii Revised Statutes, and the Rules of Practice and Procedure of the Land Use Commission, State of Hawaii, to amend the Land Use District Boundary of certain lands consisting of approximately 39.459 acres, Tax Map Keys: 7-5-10: 18 and 20, (hereinafter referred to as the "subject property") situated at Puaa 3rd, North Kona, Island of Hawaii, from the Agricultural District to the Urban District. The Land Use Commission, having heard the testimony and reviewed the documentary evidence at the hearing on July 22, 1981, in Kailua-Kona, Hawaii, and having duly considered the record, the proposed findings of fact and conclusions of law submitted by the parties, and the responses made thereto, hereby makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

PROCEDURAL MATTERS

1. Colony Associates, a Hawaii general partnership, (hereinafter "Petitioner") filed its petition on February 12, 1981, to amend the Land Use District Boundary at Puaa 3rd, North Kona, Island of Hawaii by reclassifying the subject property from the Agricultural District into the Urban District.

2. Petitioner is a Hawaii Partnership whose address is 76-6246 Alii Drive, Suite 230, Kailua-Kona, Hawaii 96740.

Mr. Michael J. MacFarland is the Managing Partner.

3. Pursuant to HRS Sec. 205-4(e)(1), the County of Hawaii Planning Department and the State Department of Planning and Economic Development (DPED) appeared as parties. No petitions for intervention were filed.

4. The Commission held a hearing on the petition on July 22, 1981, at 10:00 a.m. in the Resolution Room, Kona Hilton Hotel, Kailua-Kona, Island of Hawaii pursuant to a notice published in the Hawaii Tribune Herald and the Honolulu Advertiser on June 3, 1981, and served by mail on the parties.

DESCRIPTION OF THE SUBJECT PROPERTY

5. The subject property is located at Puaa 3rd, North Kona, Island of Hawaii, on the leeward slope of Mt. Hualalai, approximately 2 miles southeast from the urban core at Kailua Village. The subject property is comprised of two parcels, identified as Tax Map Keys: 7-5-10: 18 and 20, having a combined area of 39.459 acres.

6. The Petitioner is the owner in fee simple of Parcel 20 (7.044 acres), and is the vendee under a sub-agreement of sale of Parcel 18 (32.415 acres). The vendor under the sub-agreement of sale is Auto Imports of Hawaii, Inc., Harold H. Fukamizu, and Lillian K. Pedro. Fee simple title to Parcel 18 is held by Laddie F. Jose, Leonard Jose, Larry Jose and Lynn E. Jose.

7. Access to the subject property is available from the Hienaloli-Kahului Road ("old railroad right-of-way") which runs along the eastern boundary.

8. The subject property is now vacant and undeveloped. The terrain slopes downward from elevations above-mean-sea-level of 700 feet at the eastern (Mauka) border to 480 feet at the western (Makai) border. The average slope is approximately 6 percent.

9. The U. S. Department of Agriculture Soil Conservation Service (SCS), in its Soil Survey Report (December 1973), has classified the subject property in the Keaukaha, Punaluu, and Kainaliu Soil Series.

The Keaukaha soil consists of well-drained, dark brown muck about 8 inches thick, overlying pahoehoe lava bedrock, with rock outcrops occupying about 25 percent of the area. Approximately 60 percent of the subject property is in this soil group. Runoff is medium, and the erosion hazard is slight.

The Punaluu soil consists of well-drained, black peat approximately 4 inches thick overlying pahoehoe lava bedrock. Approximately 30 percent of the subject property is in this soil group. Runoff is slow, and the erosion hazard is slight.

The Kainaliu soil consists of well-drained, stony silty clay loams about 10 inches thick, overlying volcanic ash and fragmented Aa lava. Runoff is slow, and the erosion hazard is very slight.

10. Rainfall within the area ranges from 30 to 50 inches annually. Average temperature ranges from 72°F to 78°F. Prevailing winds blow onshore during the day and offshore at night.

11. The subject property is in an area of minimal flooding.

12. The subject property and adjacent lands are vacant, except for uncultivated grasses and trees; and are used only for seasonal grazing of livestock. Single family residences are scattered in the surrounding area, and some of the land mauka of Hienaloli-Kahului Road is in grazing or coffee cultivation.

13. The two parcels immediately to the north of the subject property, comprising an area of approximately 131 acres, were the subject of a boundary amendment petition by John A. Harvey, III (Docket No. A80-494). The Commission denied the proposed reclassification from Agricultural to Urban for a proposed residential subdivision of 386 lots.

14. The Kailua View Estates subdivision is located beyond John Harvey's lands, approximately 1,500 feet north of the

subject property. This 235 residential lot subdivision was reclassified from Agricultural to Urban by the Land Use Commission in February 1977 (Docket No. A76-412). Ninety single family dwellings have been constructed in this subdivision to date.

PROPOSAL FOR DEVELOPMENT

15. The Petitioner proposes to develop 140 condominium dwellings in four or six unit, two story "cluster" buildings. Each dwelling unit would be a two or three bedroom apartment home containing approximately 1,440 square feet of interior living space, and a 2-car garage. The Petitioner proposes to emphasize privacy in the development of an extensively-landscaped, park-like setting. The Petitioner proposes to construct substantial open space and recreational amenities, including a nine-hole "pitch and putt" golf course, a clubhouse, racquetball and tennis courts, swimming pools, and jogging paths.

16. The Petitioner estimates that the project will cost approximately \$34 million to develop.

17. The petitioner proposes to sell completed units in fee simple, and priced in the range of \$250,000 to \$300,000 each. The Petitioner intends to concentrate its sales efforts in Hawaii and California.

18. The Petitioner has the financial ability to complete the proposed development. The Petitioner represents that it can complete development and construction of the project within two years after securing all governmental approvals.

STATE AND COUNTY PLANS

19. The subject property is located in the Agricultural District, as shown on State Land Use District Boundary Map H-7 (Kailua-Hawaii).

20. The Land Use Pattern Allocation Guide Map (hereinafter "LUPAG Map") component of the County of Hawaii General Plan (hereinafter "General Plan") designates the subject property as

Orchard/Alternate Urban Expansion. The "Orchard" designation applies to those lands which, although rocky in character and content, may be used to grow macadamia nuts, citrus, and other similar agricultural crops. The "Alternate Urban Expansion" designation may accommodate urban development when designated urban areas are largely developed, or are developing too slowly. This designation may also be applied to potential urban areas which remain undeveloped because of inadequate infrastructure or demand, or areas where the urban form of the community has not yet been firmly established. Proposed urban-type uses in such areas should be evaluated to assure compliance with the goals, policies, and standards of the General Plan.

21. The Hawaii County zoning designation is Unplanned (U). This zoning designation applies to areas for which information to support a more specific district classification was insufficient when the initial zoning studies for the area were made in 1967.

22. The subject property is neither in the Kailua Village Special District, nor in a Special Management Area (SMA).

23. The "Draft Kona Community Development Plan" (1980) designates the subject property as Urban Reserve.

NEED FOR GROWTH AND DEVELOPMENT

24. During the decade 1970-1980, the population of the state increased 25 percent, while the population of Hawaii County grew by 45 percent (63,468 to 92,206), and the population of North and South Kona District increased 123 percent (8,836 to 19,707). The population of the North and South Kona District will continue to grow at a faster rate than that of the state as a whole.

25. The Petitioner's projects that 3,929 additional housing units must be built in North and South Kona by 1985 to satisfy anticipated demand.

26. The Hawaii State Plan indicates that housing should be

provided for all segments of the population: high, moderate and low income households. The need for housing for low and moderate income families in North Kona is especially acute.

27. The proposed development is intended to attract older, upper-income buyers whose children have grown, from among Hawaii residents and tourists. There is no comparable project in Hawaii County in which single-family detached units are clustered to allow both privacy and abundant open space, as well as substantial onsite recreational amenities. Petitioner believes that there is a pent-up demand for this type of project from wealthy households, notwithstanding the present slow condition of the housing market in North Kona.

28. Petitioner estimates that the construction of the project will create approximately 200 jobs, and 5 or 6 people will be employed full time upon completion of construction. The Petitioner estimates that the project will generate real property tax revenue in excess of \$400,000 annually.

29. The Hawaii Housing Authority (HHA) recommended that if it is inappropriate to require housing units affordable to low- or moderate-income families within the project itself, reclassification be conditioned upon the Petitioner contributing toward the development of moderate income housing. Petitioner has agreed either to make a reasonable financial contribution, or build fourteen "affordable units" within the project or another site.

IMPACTS ON RESOURCES OF THE AREA

Agricultural Resources

30. During the late 1800's, the property was under sugar cultivation; subsequently, until World War II, a portion of the property was utilized for growing bananas. At present, the land is overgrown with a dense stand of exotic trees, shrubs, grasses and herbs, and is used periodically for grazing.

31. The Land Study Bureau's overall master productivity ratings for the subject property are Class "C" (Fair) and "D" (Poor). The subject property is not considered "prime," "unique," or "other important agricultural land," and is therefore not classified on the State Department of Agriculture's Agricultural Lands of Importance to the State of Hawaii (ALISH) Map.

Archaeological Resources

32. The subject property is located within the Kona Field System. The likely presence of historical, cultural, architectural and/or archaeological resources on properties within this area makes all or a portion of the subject property eligible for placement on the National Register of Historic Places.

33. Chiniago, Inc. conducted archaeological reconnaissance surveys in March and December 1980. They discovered no prehistoric or aboriginal remains on the subject property which they attributed to the extensive disturbance of the land during the years of sugar and banana cultivation, and livestock grazing.

34. The State Department of Land and Natural Resources, Historic Sites Section, recommended that a qualified archaeologist be retained to conduct an archaeological reconnaissance if the subject property is developed. Petitioner has agreed to retain an archaeologist to monitor the initial clearing and grading of the site to insure that subsurface archaeological remains will not be disturbed.

Flora and Fauna

35. The Hawaiian bat and Hawaiian owl are the only rare or endangered animals known to live within the region of the proposed project. There are no known rare or endangered plants within the project area.

Ground and Off-Shore Water Quality

36. The Department of Land and Natural Resources (DLNR)

recommended precautionary measures be taken to minimize the adverse impacts of new urban-type developments on groundwater resources and off-shore water quality, such as control of erosion and runoff during site preparation and construction, and consideration of an alternative to the use of cesspools to minimize the growing danger of contamination of the groundwater basin.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Fire Fighting and Police Services

37. The County provides fire protection from Kailua, and police services from Captain Cook, approximately 3 and 9 miles away, respectively, from the subject property.

Schools

38. The State Department of Education (DOE) projected that 20 elementary and 28 higher-grade-level students would reside at the proposed development. DOE anticipates that it can accommodate the resulting enrollment increase without having to construct additional facilities.

Electricity

39. The Hawaii Electric Light Company, Ltd. has no overhead distribution facilities running adjacent to the proposed development. The petitioner must provide or pay for the construction of electric service facilities to the subject property.

Sewage Treatment and Disposal

40. Petitioner proposes to use cesspools until a County sewage disposal system becomes operational in the area.

41. The State Department of Health has recommended that a municipal-type sewage treatment system be constructed to serve the proposed development. Petitioner is willing to comply with State and County requirements for sewage disposal.

Solid Waste Disposal

42. The Petitioner will contract with private refuse collectors to dispose of solid waste at appropriate landfills near Kailua.

Roadway and Highway Facilities

43. Access to the proposed development will be from a single entrance off Hienaloli-Kahului Road, an unimproved 40-foot wide right-of-way. The County Department of Public Works will require the improvement of Hienaloli-Kahului Road to county standards, including vertical and horizontal curves and bridge crossings, from the Hualalai Road intersection to the subject property. Petitioner has agreed to build such improvements.

44. Hualalai Road serves as the primary link between the project area and destinations in Kailua and Holualoa. Hualalai Road has a right-of-way varying from 40 to 50 feet. The County has improved Hualalai Road to a pavement width of 20 feet, with 3-foot wide shoulders, from the intersection with Kuakini Highway to a distance of approximately 5,000 feet below the Hienaloli-Kahului Road junction. The County has authorized similar improvements for the remaining length of Hualalai Road, but has not released funds for construction.

45. The Petitioner projects that the traffic impact of the proposed development will be minimal. The State Department of Transportation has recommended that project development plans include lateral roadways for future interior circulation to adjacent parcels.

Drainage

46. Drainage on the subject property is good because of the permeability and slope of the land. The U.S. Army Corp of Engineers designates the area Zone "C," minimal flooding.

47. County ordinances and rules require that runoff in excess of that created on the property prior to development must

be contained onsite. Petitioner will construct a series of dry wells and a ponding area to preclude surface runoff to adjacent properties to comply with this requirement.

Recreational Resources

48. The proposed development will have a minimal impact on the use of public recreational resources of the area. The development will include intensive on-site recreational facilities for use by project residents, including a nine-hole "pitch and putt" golf course, swimming pools, racquetball and tennis courts, jogging trails, barbeques, and a clubhouse.

Water Services and Facilities

49. Petitioner estimates that the proposed development will require approximately 84,000 to 89,000 gallons of water per day.

50. The Hawaii County Department of Water Supply has granted the Petitioner a commitment to furnish 0.084 million gallons of water a day to the proposed 140-unit development, provided Petitioner constructs certain off-site improvements, or contributes to an improvement fund for the provision of these improvements.

51. There is no County water distribution system to the site; however, the County is presently installing a new 8" water main along Hualalai Road in conjunction with a road improvement project. Petitioner intends to use this water main to provide water to the proposed development, will install a pipeline from Hualalai Road to the project site, and will construct an on-site water system, in accordance with Department of Water Supply requirements.

SCATTERIZATION AND CONTIGUITY OF DEVELOPMENT

52. The proposed urban reclassification conforms to the LUPAG Map of the General Plan, which designates the area for "Alternate Urban Expansion."

53. Although the subject property is not contiguous to an existing Urban District, parcels 1,500 feet to the north and

2,000 feet to the west are classified for urban use. Rather than constituting "spot" urban development, the project will complement the planned land use pattern through the "in-filling" concept.

54. Urbanization of the subject property will not necessarily lead to further urbanization of agricultural lands in the area. A stream on the south end of the property is a natural barrier to further urban expansion to the south, and Hienaloli-Kahului Road is a natural boundary on the east.

COMPLIANCE WITH STANDARDS FOR DETERMINING DISTRICT BOUNDARIES

55. Reclassification of the subject property is reasonably necessary to accommodate urban growth and development projected for the Kailua-Kona area.

56. The subject property is located within 2 miles of an existing urban core at Kailua Village, and other land parcels within close proximity are in urban use. The closest Urban District is 1,500 feet from the subject property in the Kona View Estates Subdivision of 235 lots, with 90 homes constructed.

57. The topography of the subject property is suitable for the proposed use; drainage is good, and the site is not subject to flooding or tsunami inundation, unstable soil conditions, or other adverse environmental effects.

58. Public infrastructural support services and facilities are available to the proposed development, or can be so provided at reasonable cost.

59. The subject property is conveniently accessible to employment and service centers in the North Kona District.

60. The proposed development is in conformance with the Hawaii County General Plan. The Hawaii County Planning Department favors approval of the petition.

61. Petitioner has the financial ability and development capacity to complete the project.

RULING ON PROPOSED FINDINGS

Any of the proposed findings of fact submitted by Petitioner, or any other party to this proceeding, not included herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

CONCLUSIONS OF LAW

Pursuant to Chapter 205, Hawaii Revised Statutes, as amended, and the Rules of Practice and Procedure and District Regulations of the Land Use Commission, State of Hawaii, the Commission finds that the proposed boundary amendment conforms to the standards and guidelines established for the Urban District by the State Land Use District Regulations, is reasonable, is not violative of Section 205-2, Hawaii Revised Statutes, as amended, and is consistent with the Hawaii State Plan, as set forth in Chapter 226, HRS, as amended.

DECISION AND ORDER

IT IS HEREBY ORDERED that the property which is the subject of the petition of Colony Associates in Docket Number A81-505, consisting of approximately 39.459 acres of land situate at Puaa 3rd, North Kona, Island and County of Hawaii, State of Hawaii, more particularly identified as Hawaii Tax Map Keys: 7-5-10: 18 and 20, shall be and hereby is reclassified from the Agricultural District to the Urban District, and the Land Use District Boundaries are hereby amended accordingly, subject to the following condition:

Petitioner shall provide housing opportunities for low and moderate income Hawaii residents in any one or combination of the following manners prior to assigning or transferring (except by way of mortgage or assignment as security) its interest in the subject property:

1. To offer for sale, on a preferential basis, on its own or in cooperation with either or both the Hawaii Housing Authority or the County of Hawaii, ten percent (10%) of the townhouses, or if the property is developed on a single family lot or house and lot basis, lots or houses and lots to be developed on the subject property, to residents of the State of Hawaii of low and moderate family income as determined by the Hawaii Housing authority or County of Hawaii from time to time. The preferential-townhouses, lots or houses and lots shall be offered for sale at prices not exceeding prices that enable such purchasers to qualify for and obtain state-assisted financing (i.e., Act 105 or Hula Mae) or federally-insured or assisted financing (i.e., FHA Section 245 program) intended to encourage home ownership by low and moderate income families; or

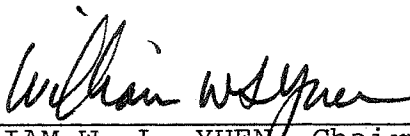
2. To pay to the Hawaii Housing Authority or County of Hawaii, for use in a housing assistance fund or for the benefit of low and moderate income residents of the State of Hawaii, a sum determined by the Hawaii Housing Authority or County of Hawaii to be equal to the cost of acquiring land for, developing and constructing a number of residential units equal to ten percent (10%) of the townhouses, lots, or houses and lots to be offered for sale on the subject property; or

3. To construct, either on or off the subject property (on land to be acquired by the Petitioner), a number of residential units for sale to low and moderate income residents of the State of Hawaii at the prices not to exceed the limitation described in subparagraph (1) above, of a standard to be approved by the Hawaii Housing Authority, equal to ten percent (10%) of the townhouses, lots or houses and lots to be offered for sale on the subject property.

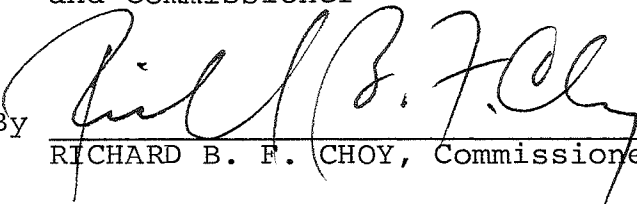
This condition may be fully or partially released by the Commission as to all or any portion of the subject property upon timely motion and provision of adequate assurance of satisfaction of this condition by the Petitioner.

Done at Honolulu, Hawaii, this 2nd day of March
1982, per motion on November 13, 1981.

LAND USE COMMISSION
STATE OF HAWAII

By 
WILLIAM W. L. YUEN, Chairman and
Commissioner

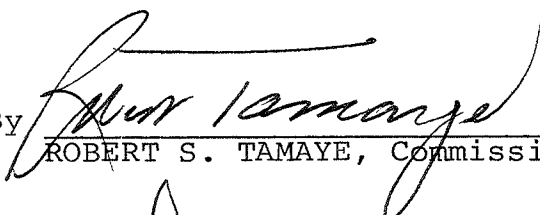
By 
CAROL B. WHITESELL, Vice Chairman
and Commissioner

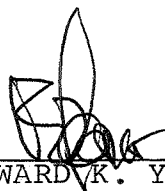
By 
RICHARD B. F. CHOY, Commissioner

By 
EVERETT L. CUSKADEN, Commissioner

By 
SHINSEI MIYASATO, Commissioner

By 
TEOFILO PHIL TACBIAN,
Commissioner

By 
ROBERT S. TAMAYE, Commissioner

By 
EDWARD K. 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
Department of Planning & Economic Development
State of Hawaii
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ANNETTE CHOCK, Deputy Attorney General
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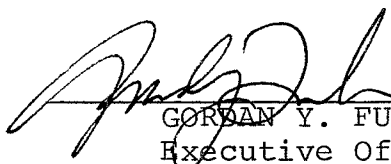
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DATED: Honolulu, Hawaii this 2nd day of March, 1982.


GORDON Y. FURUTANI
Executive Officer