

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A81-506
	)	
NORMAN L. GREENWELL and THE ROMAN	)	NORMAN L. GREENWELL
CATHOLIC DIOCESE OF HONOLULU	)	and THE ROMAN CATHOLIC
	)	DIOCESE OF HONOLULU
To Amend the Agricultural Land Use	)	
District Boundary to Reclassify	)	
Approximately 1.00 Acre, TMK:	)	
8-1-05: portion of 24, at Onouli	)	
1st, South Kona, Island and	)	
County of 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 the Petitioners, Norman L. Greenwell and The Roman Catholic Diocese of Honolulu 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 1.00 acre of land, situated at Onouli 1st, South Kona, Island and County of Hawaii. The subject property is more particularly identified as Tax Map Key No. 8-1-05: portion of 24.

PURPOSE OF PETITION

Petitioners' stated purpose for the reclassification of the subject property from Agricultural to Urban is to enable Petitioner Roman Catholic Diocese of Honolulu,

after acquiring the subject property from Co-Petitioner, Norman L. Greenwell, to develop a religious educational facility for religious education of school children during the public school one-hour-a-week release period.

#### THE PROCEDURAL HISTORY

The Petition was received by the Land Use Commission on March 12, 1981. Due notice of the hearing on this Petition was published on July 6, 1981, in The Honolulu Advertiser and the Hawaii Tribune Herald. Notice of the hearing was also sent by certified mail to all parties involved herein on June 29, 1981. Although no timely application to intervene as a party or appear as a witness was received by the Land Use Commission, during the hearing on the subject Petition, a Michael Matsukawa, Esq., requested and was permitted to testify as a public witness on the subject Petition.

#### THE HEARING

The hearing on this Petition was held on August 10, 1981, in Kailua-Kona, Hawaii.

Norman L. Greenwell and The Roman Catholic Diocese of Honolulu, the Petitioners herein, were represented by Robert D. Triantos, Esq., and Robert W. Carlsmith, Esq.; the County of Hawaii was represented by Duane Kanuha, Deputy Planning Director; and the Department of Planning and Economic Development was represented by Daniel Yasui, Land Use Division Planner.

The witnesses presented by the aforementioned parties were as follows:

Petitioner:

Hubert F. Richards  
Steven Hicks  
Father Edward Fleming  
Father Ralph Sylva

County of Hawaii:

Duane Kanuha - Deputy Planning Director  
Brian Nishimura - Staff Planner

Department of Planning and Economic Development:

Herbert Watanabe

POSITION OF THE PARTIES

County of Hawaii - Denial.

Department of Planning and Economic Development -  
Approval with conditions.

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 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, the evidence adduced herein, and the report of the Hearing Officer, makes the following findings of fact:

1. The subject property, owned in fee simple by Petitioner Norman L. Greenwell, is located at Onouli 1st, South Kona, Island and County of Hawaii, and consists of approximately 1.00 acre, more particularly described as Tax Map Key No. 8-1-05: portion of 24. The subject property is situated approximately 2,000 feet mauka of the intersection of Mamalahoa Highway and Konawaena School Road, and approximately 50 feet mauka of Konawaena High and Intermediate Schools. To the east and south of the subject property is pasture land and to the north is a residential subdivision containing lots of approximately one-half acre. The subject property is located approximately two (2) miles from the principal urban centers of South Kona, Kealakekua and Captain Cook. The property in question was previously the subject of a special permit application docketed as SP 78-289 which was denied by the Land Use Commission on April 19, 1978. An appeal was filed in this matter and is currently pending before the Third Circuit Court as Civil No. 5231.

2. According to Land Use District Map H-8 (Kealakekua), the subject property is situated within the

State Land Use Agricultural District. A portion of the subject property abuts Urban District lands to the north, across Konawaena School Road. Adjacent lands to the east, south and west of the subject property are designated agricultural. However, the subject property is neither characterized by city-like concentrations of people or facilities, nor is it reasonably proximate to centers of employment. The proposed amendment would not generate employment, and will lead to scattered spot urban development.

3. The subject property is also designated Agricultural on the County of Hawaii General Plan and is designated for Low Density Urban Development on the County of Hawaii General Plan's Land Use Allocation Guide Map component (LUPAG). Hawaii County's zoning designation of the subject property is Agricultural 20-acre (A-20a). Property to the west of the subject property is zoned for residential and one- to five-acre agricultural uses. Lands in the vicinity of the subject property are in school, residential and pasture uses. The site is not presently used for the cultivation of crops, but is being grazed along with adjacent lands. The subject property does not lie within the County's Special Management Area (SMA).

4. The subject property receives approximately 60 inches of rainfall annually and has a slope ranging between 6% to 20%.

5. The U.S.D.A. Soil Conservation Service, Soil Survey, classifies the soils of the subject property as Honaunau extremely rocky silty clay loam (HRD).

The Honaunau soil series consists of moderately well drained silt loams that formed in volcanic ash. These soils have a surface layer of very dark brown silt loam about 6 inches thick. The subsoil is dark brown to dark reddish brown silt loam about 20 inches thick. Rock outcrops occupy 25 to 50 percent of the surface. These soils are used for pasture and wildlife habitat.

The Land Study Bureau designates the area as having an overall master productivity soil rating for agricultural use as Class "B" or Good. This is the highest rating given to any soil on the Island of Hawaii.

The subject property is not listed on the State Department of Agriculture's Agricultural Lands of Importance to the State of Hawaii (ALISH) Map.

The State Department of Agriculture commented that they support the reclassification for the proposed use since the subject area is adjacent to an Urban District; is only one acre in size; and that the remainder of the property will continue to be used for cattle pasture.

6. The subject property is situated within the Kona Field System (site #6601). This site has been determined eligible for inclusion on the National Register of Historic Places.

7. Petitioner Greenwell intends to subdivide a one-acre building site which he will convey to the Roman Catholic Diocese of Honolulu which will use the property to construct a building to be used for the religious education of school children during the public school one-hour-a-week release period. The Church presently utilizes a church hall located three miles from Konawaena School, beyond a



child's safe walking distance from the schools participating in the early release program. The Church presently uses buses to transport students to and from the church hall. Petitioners desire to build classrooms nearer to the Kona-waena Educational Complex to afford the participating students the full benefit of the one-hour release program.

Testimony during the hearing indicated that between 150 to 300 students would utilize the religious facilities. The stated use of the proposed facility of one hour per week for nine months of the year does not demonstrate adequate need for the proposed facility.

Petitioner Roman Catholic Diocese of Honolulu has represented that it is solvent and has the necessary funds to develop the religious classroom facility and related improvements and that said improvements would be completed within five (5) years of all required zoning approvals. Petitioners failed to submit the statement of their financial condition as required by Rule 6-2(2)(c) of the Commission's Rules of Practice and Procedure and District Regulations.

8. The reclassification of the subject property will unreasonably burden public agencies to provide necessary urban amenities, services and facilities because:

a. Access - Petitioners propose to obtain access to the subject property through a 50-foot easement owned by the State of Hawaii which extends mauka from the Konawaena High School Road. The present roadway fronting the subject property within the easement consists of an 8-foot wide paved roadway. Petitioners represent they

will improve or repair that portion of the easement bordering their property in accordance with governing County standards. The Petitioners have further represented that they would work with the Department of Education to alleviate concerns over pedestrian traffic on the roadways. Petitioners have failed to adduce evidence that the State would permit an assignment of the easement to Petitioner Roman Catholic Diocese of Honolulu for the proposed use.

b. Sewage - Sewage needs for the classroom facilities will be handled through the use of a cesspool.

c. Drainage - Petitioners will comply with drainage requirements of the Hawaii County Department of Public Works and Planning Department.

d. Police and Fire Protection - The police and fire stations servicing the subject property are located one-half mile away in Captain Cook.

e. Electrical and Telephone Services - Electrical and telephone services are available to the subject property.

9. The County of Hawaii is opposed to the Petition primarily on the basis that water needs have not been adequately addressed by the Petitioners and as such would create a burden on public facilities. The County Department of Water Supply has stated that the subject property is not within the service limits of their existing system. The Department of Water Supply has further commented that water availability to the subject area would be subject to the following improvements:

1. Booster pump and transmission line improvements along the Mamalahoa Highway are required to increase flow capacities. Funds are presently not available and no construction timetable is set.
2. Due to the rapidly increasing consumption and water commitments in Kona, an additional source will have to be developed to supplement the existing sources. Only limited State appropriations are available; however, no time schedule is set for construction.
3. Other booster pump, transmission line and reservoir improvements to meet the subdivision requirements will be imposed.

The Department of Water Supply would have no objections only if the foregoing improvements were provided by the Petitioner pursuant to the Department of Water Supply's Rules and Regulations.

The County Planning Department's objection to this project is further premised on applicable planning principle which was set forth in their written testimony as follows:

As presented in the State Land Use District Regulations, one of the factors in considering an Urban re-districting is that the subject property must be in "Proximity to basic services such as sewers, water, sanitation, schools, parks, and police and fire protection." (Emphasis added) In this particular case, the provision of water for the proposed development is still uncertain. Until such time that reasonable assurance can be given that water will be available to accommodate the proposed development, it is felt that this boundary amendment should be denied.

It is determined that the granting of this particular request will be contrary to the objectives of the State Plan which state to "Encourage urban developments in close proximity to existing services and facilities," and to "Promote design and location of housing development taking into account the physical setting, accessibility to public facilities and services, and other concerns of existing communities and surrounding areas." The granting of this boundary amendment request would also be in conflict

with the priority directions listed in the State Plan which state to "Encourage restriction of new urban development in areas where water supply is insufficient for both agricultural and domestic uses," and to "Encourage urban growth primarily to existing urban areas where adequate public facilities are already available or can be provided with reasonable public expenditures."

....

The General Plan also expresses the concerns regarding the provision of adequate infrastructures, prior to urbanizing a given area. In this light, the General Plan's Land Use and Single Family Residential elements state to "Zone urban-type uses in areas with ease of access to community services and employment centers and with adequate public utilities and facilities." The General Plan also states that "Zoning requests shall be reviewed with respect to General Plan designation, district goals, State Land Use District, compatibility with adjacent zoned uses, availability of public services and utilities, accesses, and public need," and that "Areas shall have basic improvements and amenities necessary for immediate use." (Emphasis added)

Based on the above and the current water situation, it is determined that this request is not warranted at this particular time.

#### CONCLUSIONS OF LAW

Reclassification of the subject property, consisting of approximately 1.00 acre of land, situated at Onouli 1st, South Kona, Island and County of Hawaii, from Agricultural to Urban and an amendment to the district boundaries would not be consistent nor in conformance with Chapter 205 of the Hawaii Revised Statutes and Regulation 2-2(1)(a) and (b)3 of the Land Use Commission's Rules of Practice and Procedure and District Regulations in that the provision of basic services, particularly water, is not presently available to the subject property from a primary source other than the County water system. That the Petitioner has further failed to establish that Petitioner will provide the required water improvements such as a booster pump,

transmission line and the additional well source, or its fair share thereof. Petitioner Greenwell proposed to obtain a waiver of the County water requirements because he would provide the water source for all water requirements needed by the improvements constructed by Petitioner Roman Catholic Diocese of Honolulu. Petitioner Roman Catholic Diocese of Honolulu has in turn represented that it would construct whatever water improvements are necessary for the religious facility to insure that the quality of water and the capacity for fire fighting needs are in accordance with governing County standards. Petitioner Greenwell, however, will be drawing the water which will be provided to the proposed religious facility from the County waterline. His proposed solution would merely be a subterfuge to increase the use of County water on the existing parcel without obtaining County approval and paying its share of water source development in the area.

DOCKET NO. A81-506

NORMAN L. GREENWELL AND THE ROMAN  
CATHOLIC DIOCESE OF HONOLULU

ORDER

FOR GOOD CAUSE APPEARING, it is hereby ordered that the Petition in this Docket No. A81-506, consisting of approximately 1.00 acre, situated at Onouli 1st, South Kona, Island and County of Hawaii, identified as Tax Map Key No. 8-1-05: portion of 24, requesting a reclassification from the Agricultural District to the Urban District is hereby denied.

DONE at Honolulu, Hawaii, this 8th day of April, 1982, per Motion on January 19, 1982.

LAND USE COMMISSION  
STATE OF HAWAII

By William W. Yuen  
WILLIAM W. L. YUEN, Chairman

By Shinsei Miyasato  
SHINSEI MIYASATO, Commissioner

By Richard B. F. Choy  
RICHARD B. F. CHOY, Commissioner

By Everett L. Cuskaden  
EVERETT L. CUSKADEN, Commissioner

By Teofilo Phil Tacbian  
TEOFILO PHIL TACBIAN, Commissioner

By Robert S. Tamaye  
ROBERT S. TAMAYE, Commissioner

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) DOCKET NO. A81-506  
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District Boundary at Onouli 1st, South )  
Kona, Hawaii from the Agricultural )  
District into the Urban 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  
250 South King Street  
Honolulu, Hawaii 96813

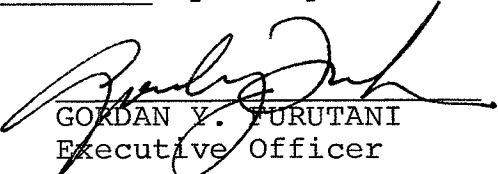
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DATED: Honolulu, Hawaii this 5th day of April, 1982.

  
GORDAN Y. FURUTANI  
Executive Officer