

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of ) DOCKET NO. A81-508  
 )  
MADELINE LESLIE ) MADELINE LESLIE  
 )  
To Amend the Agricultural Land Use )  
District Boundary to Reclassify )  
Approximately 7.3 Acres, TMK: )  
8-5-02:5, at Kealia 1st, South )  
Kona, Island and County of Hawaii, )  
into the Rural 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 Madeline Leslie who is requesting that the designation of the subject property be amended from the Agricultural to the Rural District. The requested change consists of property comprising approximately 7.3 acres of land, situated at Kealia 1st, South Kona, Island and County of Hawaii. The subject property is more particularly identified as Tax Map Key No. 8-5-02:5.

PURPOSE OF PETITION

Petitioner's stated purpose for requesting the reclassification of the subject property from Agricultural to Rural is so that Petitioner can subdivide it into 6 parcels. Petitioner will retain possession of the lot comprising approximately 2 acres upon which her residence and a

commercial store are located. Petitioner will convey the remaining 5 acres, consisting of approximately 1 acre apiece, to each of her five children. Petitioner intends to make a stipulation in the conveyance documents which will preclude her children from reselling the property and thereby insuring that the property will only be passed on to their children, thereby keeping the land in the family.

#### THE PROCEDURAL HISTORY

The Petition was received by the Land Use Commission on April 6, 1981. Due notice of the hearing on this Petition was published on July 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 July 27, 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 September 2, 1981, in Kailua-Kona, Hawaii.

Mrs. Madeline Leslie, the Petitioner herein, was represented pro se; the County of Hawaii was represented by Mr. Duane Kanuha, Deputy Planning Director; and the Department of Planning and Economic Development was represented by Mr. Daniel Yasui, Land Use Division Planner.

The witnesses presented by the aforementioned parties were as follows:

#### Petitioner:

Mrs. Madeline Leslie

Milton Leslie

County of Hawaii:

Duane Kanuha - Deputy Planning Director

Department of Planning and Economic Development:

Daniel Yasui - Land Use Division Planner

POSITION OF THE PARTIES

County of Hawaii - Approval.

Department of Planning and Economic Development -  
Approval.

APPLICABLE REGULATION

Standards for determining the establishment of a Rural District are found under Part II, Section 2-2(4) of the State Land Use Commission's District Regulations. Said regulation provides in pertinent part that:

- (4) "R" Rural District. In determining the boundaries for the "R" Rural District, the following standards shall apply:
  - (a) Areas consisting of small farms; provided that such areas need not be included in this District if their inclusion will alter the general characteristics of the areas.
  - (b) Activities or uses as characterized by low density residential lots of not less than one-half (1/2) acres and a density of not more than one single-family dwelling per one-half (1/2) acre in areas where "city-like" concentration of people, structures, streets, and urban level of services are absent, and where small farms are intermixed with the low density residential lots.
  - (c) Generally, parcels of land not more than five (5) acres; however, it may include other parcels of land, which are surrounded by, or contiguous to this District and are not suited to low density residential uses or for small farms or agricultural uses.

### 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, owned by the Petitioner herein for the past 20 years, is located at Kealia 1st, South Kona, Island and County of Hawaii, and consists of approximately 7.3 acres, more particularly described as Tax Map Key No. 8-5-02:5. The subject property is situated along the mauka side of Mamalahoa Highway, approximately 1 mile north of Hookena Elementary School, and adjacent and south of the Kealia House Lots Subdivision. The property extends eastward from Mamalahoa Highway in a configuration of two fingers. The Fujiwara Store (a neighborhood commercial store) and a single-family dwelling are situated on the subject property. The store is owned and operated by the Petitioner and the dwelling serves as her residence. The remainder of the subject property is vacant and unimproved.

2. As reflected on Land Use District Map H-9, the subject property is situated within the State Land Use Agricultural District. The subject property abuts lands classified as rural to the north and west and lands classified as agricultural to the south and east. The subject property has been classified Agricultural since 1964. The general area is characterized by single-family dwellings and small farms. Agricultural activities pursued in the area include coffee growing and ranching.

3. The County of Hawaii's General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates the subject

area for low density urban. The property is presently zoned Agricultural 5-acre (A-5a) by the County of Hawaii. The Kealia House Lots Subdivision which is situated adjacent and to the north of the subject property is within the State Land Use Rural District and is zoned Residential-Agricultural .5 acre (RA-.5a) by the County. This area includes lots of approximately one-half acre in size which front both sides of Mamalahoa Highway. The subject property is not situated within the County's Special Management Area (SMA).

4. The slope of the subject property ranges from 6% to 20% running mauka to makai. The subject area receives approximately 60 inches of rainfall annually. The subject property is situated in an area of minimal flooding and is not within any designated floodplain.

5. According to the Soil Survey Report published by the U.S.D.A., Soil Conservation Service, the land is of the Punaluu Series which consists of well-drained, thin organic soils over pahoehoe lava bedrock. The surface layer is extremely rocky peat about 4 inches thick. The peat is rapidly permeable. The pahoehoe lava is very slowly permeable, although water moves rapidly through the cracks. Runoff is slow, and the erosion hazard is slight. The Master Productivity Rating of the property for agricultural use is Class D or Poor according to the Land Study Bureau's classification system which classifies land productivity on a scale of A through E with A having the highest agricultural potential.

6. The subject property has not been classified as being on agricultural land of importance on the State Department of Agriculture's Agricultural Lands of Importance

to the State of Hawaii (ALISH) Map. The subject property has not been used for agricultural activities since it was purchased 20 years ago due to poor soil conditions and the site's awkward configuration.

7. The proposed boundary amendment is not expected to significantly or adversely affect the ecology of the area. According to the records of the State Department of Land and Natural Resources, the subject property is not listed on the Hawaii Register and/or the National Register of Historic Places, nor has it been determined eligible for inclusion on the National Register of Historic Places.

8. Petitioner's proposed use of the subject property is to subdivide it into 6 parcels, one parcel to remain in her possession, consisting of approximately 2 acres on which a residence and a commercial store are presently situated, and the remaining 5 parcels of one (1) acre each, to be given to her five children. The Petitioner has represented that she intends to make a stipulation in the conveyance documents which will prevent her children from reselling the property so that it will only be passed on to their children and grandchildren so that they will always have a place to build their homes someday and possibly grow their own food for self-sufficiency.

Petitioner represented during the course of the hearing that she has sufficient funds to cover the costs of subdividing the subject property in the event the subject application is approved.

Petitioner has also represented that she intends to subdivide the subject property as soon as all requisite governmental approvals are obtained.

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

a. Access - Vehicular access to the subject property is presently provided via the Mamalahoa Highway which fronts the site. Mamalahoa Highway is a two (2) lane roadway with a 60-foot wide right-of-way in the vicinity of the site.

The subject property will be traversed by the proposed Hawaii Belt Road Project [F-011-1(8)]. This proposed roadway will traverse the property between 200 to 300 feet Mauka (East) of the existing Hawaii Belt Road. Present plans call for two (2) vehicular lanes within a 120-foot right-of-way, with partially controlled access.

The proposed road project will extend from Holualoa in the North to Papa in the South. It is presently intended that the project be undertaken in five (5) mile increments commencing in the North. The segment of the project affecting the subject property is in one of the last increments of the project. At the present time, there is no set construction timetable for the project.

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

c. Sewage - The Petitioner does not address the means to dispose of sewage that will be generated by the proposed subdivision. As there is no public sewerage system available in the area, cesspools are utilized for sewage disposal.



d. Schools - The proposed subdivision is expected to have a negligible impact upon Hookena (grades K-8) and Konawaena High.

e. Water - In letters dated April 24, 1981 and August 3, 1981, the County Department of Water Supply has indicated that the booster pump improvement from the Keei Deep Wells to Mamalahoa Highway, which would service the subject property, is presently being advertised for bids. Water will therefore be available and a water commitment until August 31, 1982, has been awarded to the Petitioner.

f. Police and Fire Protection - Fire and police services are available at Captain Cook, a distance of approximately four (4) miles.

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 of the subject property be approved.

#### CONCLUSIONS OF LAW

Reclassification of the subject property, consisting of approximately 7.3 acres of land, situated at Kealia 1st, South Kona, Island and County of Hawaii, from Agricultural to Rural 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

Docket No. A81-508, consisting of approximately 7.3 acres, situated at Kealia 1st, South Kona, Island and County of Hawaii, identified as Tax Map Key No. 8-5-02:5, shall be and hereby is reclassified from the Agricultural District to the Rural District and the district boundaries are amended accordingly.

DONE at Honolulu, Hawaii, this 26th day of February, 1982, per Motion on January 19, 1982.

LAND USE COMMISSION  
STATE OF HAWAII

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

By Carol B. Whitesell  
CAROL B. WHITESELL, Vice 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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 )

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

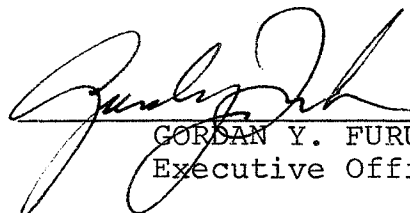
SIDNEY FUKU, Planning Director  
Planning Department  
County of Hawaii  
25 Aupuni Street  
Hilo, Hawaii 96720

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

MADELINE LESLIE  
RR #1 Box 168  
Captain Cook, Kona, Hawaii 96704

MILTON LESLIE  
P. O. Box 156  
Kealahou, Kona, Hawaii 96750

DATED: Honolulu, Hawaii, this 4th day of March, 1982.

  
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GORDAN Y. FURUTANI  
Executive Officer