

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
JOHN J. ARZADON)
To Amend the Agricultural Land Use)
District Boundary to Reclassify)
Approximately 5.43 Acres of Land,)
Tax Map Key 4-3-05: 22, situated at)
Waipouli, Kawaihau, Kauai, Hawaii,)
into the Urban Land Use District)

DOCKET NO. A81-513

DECISION AND ORDER

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	
)	
JOHN J. ARZADON)	DOCKET NO. A81-513
)	
To Amend the Agricultural Land Use)	FINDINGS OF FACT,
District Boundary to Reclassify)	CONCLUSIONS OF LAW,
Approximately 5.43 Acres of Land,)	DECISION AND ORDER
Tax Map Key 4-3-05: 22, situated at)	
Waipouli, Kawaihau, Kauai, Hawaii,)	
into the Urban Land Use District)	
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FINDINGS OF FACT

The above-captioned land use boundary amendment proceeding was initiated by the Petitioner, JOHN J. ARZADON, 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 boundary of certain lands (hereinafter referred to as the "Subject Property"), situated at Waipouli, Kawaihau, Kauai, Tax Map Key 4-3-05: 22, from the Agricultural District to the Urban District, and the Land Use Commission, (hereinafter referred to as the "Commission"), having heard and examined the testimony, evidence, argument of counsel, the proposed findings of fact and conclusions of law, and comments to the proposed findings of fact and conclusions of law, hereby makes the following findings of fact and conclusions of law.

PROCEDURAL MATTERS

1. John J. Arzadon (hereinafter "Petitioner") filed his petition with the Commission on August 7, 1981 to reclassify approximately 5.43 acres of land from the State Land Use Agricultural District to the Urban District at Waipouli, Kawaihau, Kauai, Tax Map Key 4-3-05: Parcel 22.

2. John J. Arzadon, owner by Agreement of Sale of the lands sought to be reclassified, has received the consent of the fee simple owners, Shiro Nishimura and Robert Ozaki, for amending

the State Land Use District Boundary for the subject property.

3. Pursuant to HRS Section 205-4(e)(1), the County of Kauai Planning Department and the State Department of Planning and Economic Development (DPED) appeared as Parties. No petition for intervention nor any requests to appear as a public witness were filed.

4. The Commission conducted the public hearing on the Petition on December 10, 1981 and January 15, 1982 pursuant to notices published in the Garden Isle and Honolulu Advertiser on October 26, 1981 and December 23, 1981, respectively.

DESCRIPTION OF THE SUBJECT PROPERTY

5. The subject property is located in Waipouli, Kawaihau, Island of Kauai, just mauka of Kuhio Highway and approximately 800 feet south of the Kapaa Shopping Center.

6. The subject property is essentially flat and has been partially filled. Its elevation is approximately three feet lower than the surrounding properties.

7. Subject property is presently lying vacant and underdeveloped. The vegetation on the subject property includes koa-haole, shrubs, buffalo grass, and other grasses. Abutting the subject property are cane fields to the west, the Episcopal Church to the north, and mixed residential and commercial uses to the east and south.

8. The subject property is located within a scenic corridor from Kuhio Highway to the Nonou Mountain formation known as the "Sleeping Giant." The fee simple owners had a cul-de-sac constructed at the northern end of the subject property to provide a convenient, off-the-highway viewing area of this "Sleeping Giant" formation.

9. The United States Department of Agriculture Soil Conservation Service identifies the soil on the subject property as Mokuleia fine sandy loam. These are well drained soils in

recent alluvium deposited over coral sand. This soil type is characterized by moderately rapid permeability in the surface layer and rapid permeability in the subsoil. Run-off is very slow and the erosion hazard is slight.

10. The Land Study Bureau of the University of Hawaii, in its Detailed Land Classification Study for the Island of Kauai (1967) describes the soil of subject property as non-stony, of moderately coarse texture, and over 30 inches in depth. The agricultural suitability of the subject property is limited because of its small size, wet soil condition and its immediate proximity to existing urban areas.

11. The subject property is classified as "Other Important Agricultural Lands" under the State Department of Agriculture's Agricultural Lands of Importance to the State of Hawaii (ALISH) classification system.

12. The Waipouli area enjoys a mild marine climate with temperatures ranging from 70.7°F to 78.4°F. Tradewinds from the northeast quadrant prevail 80% of the time at velocities from 8 to 18 mph, with occasional warmer Kona winds from the southwest quadrant. The median annual rainfall in the Kapaa-Wailua area is 51 inches.

13. The subject property is situated in the 100-year Waiea Riverine flood plain (Zone A-3) and more specifically in the Waiea Canal Flood Fringe Area, according to the Preliminary Flood Insurance Study for the Island of Kauai prepared by the Federal Insurance Administration.

PROPOSAL FOR DEVELOPMENT

14. The Petitioner plans to subdivide the 5.43 acres into 15 lots to be used for Limited Industrial use. Fourteen of the lots will range in size from 10,000 sq. ft. to 14,500 sq. ft. and will be offered for sale in fee simple at an average price of \$8.50 per square foot. Petitioner proposes to reserve

the 15th lot, approximately 60,000 sq. ft. in area, for his own business enterprise.

15. The Petitioner proposes to landscape the portion of the subject property abutting the Kipuni Place cul-de-sac with trees and shrubs in order to create a buffer between the proposed development and the "Sleeping Giant" viewing area.

16. Petitioner estimates the proposed development cost will be approximately \$1,100,000.

17. Based on current estimates, Petitioner proposes to sell the fee simple lots at prices ranging from approximately \$85,000 to \$123,000.

18. The Petitioner estimates that he can complete the proposed development within one to two years after securing all governmental approvals.

19. The Petitioner has the financial capability to complete the proposed development.

STATE AND COUNTY PLANS

20. The subject property is located in the Agricultural District as shown on State Land Use District Boundary Map, K-10 (Kapaa).

21. The Kauai County General Plan and Zoning Map both designate the subject property as "Agriculture." The Kapaa-Wailua Development Plan recommends that additional industrial areas be explored.

22. The subject property is not located in the Shoreline Management Area or in a development restriction zone established in the Kauai County General Plan.

23. In order for subject property to be subdivided into 15 lots for Limited Industrial uses, Kauai County must amend its General Plan designation from "Agriculture" to "Industrial," and change its zoning from "Agricultural" to "Limited Industrial" District.

NEED FOR GROWTH AND DEVELOPMENT

24. During the past decade (1970-1980), the population of East Kauai increased approximately 50% or twice the rate for the entire State of Hawaii.

25. The population of East Kauai represented 33.9 percent of the total population of the Island of Kauai in 1980, which is expected to increase to 39.0 percent of the Kauai County total population by 1990.

26. The State Department of Planning and Economic Development (DPED) employment projections indicate that for the 1980-1990 decade, the number of employees needed in sectors related to industrial use will increase from 17,750 to 21,700.

27. The State DPED reports that in 1980, there were 6,900 jobs in industrial-related employment. It projects that by 1990 there will be 9,800 industrial-related employment positions. Based on these DPED projections, there will be a need for approximately 182 acres of additional industrial lands on the Island of Kauai during the period of 1980-1990.

28. In a market analysis prepared for the proposed development, Daly & Associates, Inc. reported that available industrial land on Kauai is relatively limited, and concentrated in Lihue and in the vicinity of the harbors at Nawiliwili and Port Allen. The analysis projects that during the 1981 to 1990 period, an additional 36 to 46 acres of industrial land will be needed to satisfy increased demand in the East Kauai area where the proposed development is located. This demand is expected primarily from the wholesale and retail trades, the service sector, and the construction sector.

IMPACTS ON RESOURCES OF THE AREA

Agriculture

29. The subject property is currently lying fallow and is poorly suited for intensive cultivation of crops due to its

marginal soil conditions, small size, and its separation by a drainage ditch from other agricultural lands in the area.

30. Use of the subject property for raising livestock, such as pigs or cows, and crop production involving the use of fertilizer, herbicides and insecticides would be inappropriate and incompatible with the residential and commercial uses already established adjacent to the project site.

31. The State Department of Agriculture states that "if it is deemed that additional urban district land is needed for industrial uses in the Kapaa area, the subject property appears to be in a logical location for such change since it is adjacent to the urban district and is separated from the productive agricultural lands mauka of the parcel."

Natural Resources

32. There are no endangered flora or fauna that need to be preserved on subject property.

Historical/Archaeological/and Scenic Resources

33. There are no known historical or archaeological sites located on subject property that need to be preserved. The State Historic Preservation Office points out that the subject property has some potential for historic sites. They recommend that prior to development of the property an archaeological reconnaissance be undertaken to determine whether historic sites do exist and whether any mitigative action is necessary.

34. Protection of the scenic corridor from Kuhio Highway to the Nonou Mountain formation known as the "Sleeping Giant" is a concern of State and Kauai County agencies. Attempts at viewing the "Sleeping Giant" from Kuhio Highway presents a traffic hazard, so the cul-de-sac at Kipuni Place was built as a safe turn-off and observation area.

35. The Petitioner intends to impose restrictive covenants on the lots bordering the cul-de-sac requiring minimum

setback requirements and landscaping to provide an attractive buffer between the development and the cul-de-sac. Design guidelines for the project will also provide the development with an appropriate visual quality.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Roadway and Highway Facilities

36. Access to the proposed development will be via the newly constructed paved cul-de-sac which intersects with Kuhio Highway. Within the subdivision, the Petitioner will construct a road to meet County specifications, which will be dedicated to the County of Kauai upon its completion.

37. The traffic impact of the proposed development is expected to be minimal. Petitioner anticipates that Kuhio Highway will be able to absorb the slight increase in peak hour traffic which the subdivision will generate. Based on average trip-rate tables prepared by the National Cooperative Highway Research Board, the average daily traffic will be approximately 390 vehicles; the average A.M. peak hour traffic will be approximately 51 vehicles; and the average P.M. peak hour traffic will be approximately 58 vehicles.

Water

38. Water storage and transmission facilities in the Kapaa-Waipouli area are adequate, but the source facilities are strained. The Department of Water is allowing subdivisions or developments of up to 15 units each, with a maximum allowable total of 200 units for the entire Wailua-Kapaa area. The proposed development of 15 lots is within the allowable limits for approval.

Solid Waste Disposal

39. Solid waste generated by the proposed development will be taken either to the Kapaa Transfer Station or directly to the Kekaha landfill.

Sewage Treatment and Disposal

40. There is no existing municipal sewage system to service the proposed development. The adjacent built-up residential and commercial areas utilize cesspools.

41. The Department of Health has concerns regarding the numerous sewer system failures that they have experienced in the Kapaa area. The DOH points out that they will not approve the use of individual treatment systems such as cesspools for high wastewater uses such as restaurants and laundromats. However, although it would be more economical to install dry sewer lines at this time, it would be impractical because the County sewer system for the area has not been designed, and it is impossible for the Petitioner to determine the location and elevation of the dry sewer system for future connection to the County system.

42. Each lot owner in the proposed development will construct his own individual wastewater system in accordance with the requirements of Chapter 39, Private Wastewater Treatment Works and Individual Wastewater Systems, Public Health Regulations. The County will not require a dry-line system for future hookup to the County sewer system.

Water Quality

43. The use of cesspools in the proposed development will have minimum impact on ground water resources in the area. The subject property is located above brackish water and is too close to the shoreline to be in a water recharge area.

44. The Kauai Division of the Department of Health indicates that the use of cesspools in the area has not produced any complaints of degradation of offshore water quality.

Drainage

45. Based on the preliminary flood insurance study for the Island of Kauai prepared by the Federal Insurance Administration, the subject property is situated in the 100-year Waieka

Riverine Flood plain and specifically in the Waikea Canal Flood Fringe area. At the present time, subject property is lower in elevation than the surrounding areas and consequently, the run-off from adjacent residential and commercial areas, tends to pond on the site before eventually draining into the adjacent plantation drainage ditch. In order to prevent ponding on subject property and flooding of adjacent areas, the Petitioner intends to fill the subject property up to the level of the adjacent property and will direct all run-off to the drainage ditch in the rear of the property.

46. Petitioner will conduct a hydrology study of the subject property to assure that the adjoining properties will not be adversely affected. Such study will be submitted to the County of Kauai Department of Public Works for their review and approval prior to the development of the property.

47. Petitioner will consult with the Department of Health regarding requirements for wastewater disposal for any large wastewater generating operations intending to locate on the subject property.

48. During the construction stage, measures will be taken to control soil erosion, landfilling activities and run-off that might impact the coastal waters. When roadways and other paved areas are constructed, they will be provided with swales or other storm drainage system to direct storm water to the adjacent drainage ditch.

49. Directing storm flow off the site will not impact ground water resources as the subject property is located above brackish basal water and is close to the coastline to act as a water recharge area.

Public Schools/Fire and Police Services

50. The proposed industrial development will not impose any additional burden on the public school system.

51. The Kapaa-Wailua fire station is approximately one-half mile from the proposed development. The Lihue Police Station is approximately seven miles from the proposed development.

Telephone and Electrical Services

52. The Hawaiian Telephone Company and Kauai Electric Company provide telephone and electrical services, respectively, to the subject property.

Recreational Resources

53. The proposed development will not impact on available recreational resources of the area.

STANDARDS FOR DETERMINING DISTRICT BOUNDARIES

54. The subject property abuts the existing Urban District on its east boundary and is in close proximity to Kapaa town which serves as the center of trading and employment for the area. Re-classification of the subject property to the urban district would not contribute towards scattered spot urban development.

55. The proposed reclassification to urban is reasonably necessary for further urban growth and development of the area, because the Kapaa District needs more Limited Industrial lands to fill immediate needs and support the future growth of its commercial sections.

56. The Petitioner has the financial ability and capacity to construct the proposed development for Limited Industrial use.

57. The Kauai County General Plan and Zoning Ordinance designates subject property as "Agriculture." However, Kauai County has supported the Petitioner because of need for Industrial land.

58. The subject property is lying fallow and cannot be used for intensive cultivation. Removal of subject property from the Agricultural District would not impair potential agricultural production in the vicinity.

59. The proposed development will not have significant adverse effects upon natural, environmental, recreational, scenic, historic, or other resources of the area because of conditions imposed.

60. The proposed development will be completed and marketed within one to two years after all governmental approvals are granted.

61. All necessary public services and facilities are available or can be provided at reasonable cost as part of developing the proposed 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 John J. Arzadon in Docket Number A81-513, consisting of approximately 5.43 acres of land situated at Waipouli, Kawaiahu, Island and County of Kauai, State of Hawaii, more

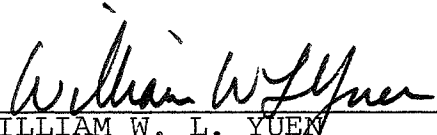
particularly identified as Tax Map Key 4-3-05: 22, shall be and hereby is reclassified from the Agricultural District to the Urban District, and the Land Use District Boundaries are hereby amended accordingly. The reclassification, however, is subject to the following two conditions:


1. That the Petitioner shall conduct a hydrology study of the subject property to insure that the proposed filling of the property will not adversely affect adjoining properties, and that such study will be coordinated with and submitted to the County of Kauai Department of Public Works for their review and approval, prior to the development of the subject property.

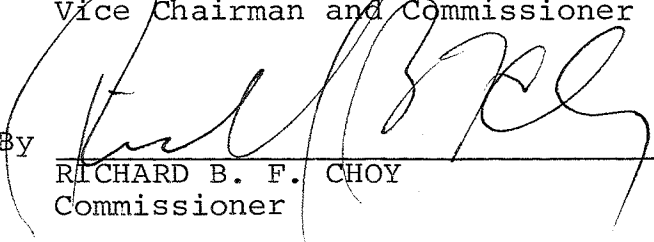
2. Prior to the development of any large wastewater generating operations such as laundries and restaurants on the subject property, the Department of Health shall be consulted regarding their requirements for a wastewater disposal system.

Done at Honolulu, Hawaii, this 27th day of May, 1982,
per motion on April 22, 1982.

LAND USE COMMISSION
STATE OF HAWAII

By 
WILLIAM W. L. YUEN
Chairman and Commissioner

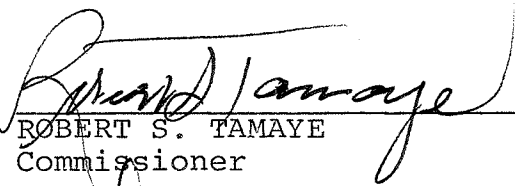
By 
CAROL B. WHITESELL
Vice Chairman and Commissioner


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

BEFORE THE LAND USE COMMISSION
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Approximately 5.43 Acres of Land,)
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Waipouli, Kawaihau, Kauai, Hawaii,)
into the Urban Land Use 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 and 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


BRIAN NISHIMOTO, Planning Director
Kauai County Planning Department
4280 Rice Street
Lihue, Hawaii 96766

MORRIS SHINSATO, County Attorney
Office of the County Attorney
County of Kauai
4396 Rice Street
Lihue, Hawaii 96766

ROY T. TAKEYAMA, Attorney
Suite 3404, Century Square
1188 Bishop Street
Honolulu, Hawaii 96813

JOHN J. ARZADON
3147 Oihana Street
Lihue, Hawaii 96766

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



GORDAN Y. FURUTANI
Executive Officer