

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A81-516
)	
GEORGE LEWIS SAGEN)	GEORGE LEWIS SAGEN
)	
To Amend the Agricultural Land Use)	
District Boundary to Reclassify)	
Approximately 5.0 Acres, TMK:)	
5-2-13: portion of 14, (5-2-19:1),)	
at Kilauea, Island and County of)	
Kauai, into the Urban Land Use)	
District)	
)	

DECISION AND ORDER

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of) DOCKET NO. A81-516
GEORGE LEWIS SAGEN)
To Amend the Agricultural Land Use)
District Boundary to Reclassify)
Approximately 5.0 Acres, TMK:)
5-2-13: portion of 14, (5-2-19:1),)
at Kilauea, Island and County of)
Kauai, into the Urban Land Use)
District)

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 George Lewis Sagen who is 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 5.0 acres of land, situated at Kilauea, Island and County of Kauai. The subject property is more particularly identified as Tax Map Key No. 5-2-13: portion of 14, (5-2-19:1).

PURPOSE OF PETITION

Petitioner's stated purpose for requesting the reclassification of the subject property from Agricultural to Urban is so that Petitioner can develop the subject property for industrial use. Petitioner proposes to build eight additional warehouse-type structures which together

with existing structures and improvements on the subject property, he intends to lease individually on an industrial park basis.

THE PROCEDURAL HISTORY

The Petition was received by the Land Use Commission on September 21, 1981. Due notice of the hearing on this Petition was published on January 25, 1982, in the Garden Island and The Honolulu Advertiser. Notice of the hearing was also sent by certified mail to all parties involved herein on January 19, 1982. At the opening of the hearing, Mrs. Blair Halasay, who, with her family lives on the adjoining property, requested and with the consent of all parties, was permitted to testify as a public witness in the subject proceeding.

THE HEARING

The hearing on this Petition was originally scheduled to be held on March 5, 1982, in Lihue, Kauai, Hawaii. Due to the Petitioner's failure to recover satisfactorily from major surgery, and by Stipulation filed by Michael R. Salling, Esq., dated April 8, 1982, and agreed to by all parties involved herein, the hearing was re-scheduled to a later date.

The hearing on this Petition was held on April 20, 1982, in Lihue, Kauai, Hawaii.

George Lewis Sagen, the Petitioner herein, was represented by Michael R. Salling, Esq.; the County of Kauai was represented by Max W. J. Graham, Jr., Esq.; and the Department of Planning and Economic Development was represented by Esther Ueda.

The witnesses presented by the aforementioned parties were as follows:

Petitioner:

George Lewis Sagen

Jane Adrian Sagen

County of Kauai:

Bryan Mamacclay

Department of Planning and Economic Development:

Esther Ueda

Public Witnesses:

Mrs. Tom G. (Blair) Halasey

Margaret Halasey

POSITION OF THE PARTIES

County of Kauai - Denial.

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 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. Big G. Kauai, a joint-venture partnership which includes as partners, Mr. and Mrs. George L. Sagen and Mr. Richard Houar, is the owner of the subject property. Mr. Richard Houar has consented to the filing of the subject Petition. The subject property is located at Kilauea, Island and County of Kauai, and consists of approximately 5.0 acres, more particularly described as Tax Map Key No. 5-2-13: portion of 14, (5-2-19:1). Located approximately 1,500 feet northwest of Kilauea Town, the subject property is situated along the mauka side and abutting Kuhio Highway.

2. As reflected on the Land Use District Boundary Map K-6 (Hanalei), the subject property is located within the State Land Use Agricultural District. The subject property is surrounded on all sides by lands in the State Land Use Agricultural District. The closest land designated as Urban, the Kilauea Urban District, is located approximately 1,500 feet to the southeast of the subject property.

3. The subject property is designated as Agricultural on the County of Kauai General Plan. Kauai County zoning for the subject property is also Agricultural-- "Agricultural District (A)." At present, the draft North Shore Development Plan Update designates the subject property as Project Development/Limited Industrial. The Petitioner has represented that he will request a zoning change to Limited Industrial if the Urban designation is

granted by the Land Use Commission. The draft North Shore Development Plan Update, however, is still under review and will be subject to public hearings before the County Planning Commission and then the County Council before a final version is adopted. The subject property is not situated within the Special Management Area.

4. The U.S.D.A. Soil Conservation Service Soil Survey, has classified the soils of the subject property as Puhī Silty clay loam, 3 to 8 percent slopes (PnB) and Puhī silty clay loam, 8 to 15 percent slopes (PnC).

In a representative profile, the surface layer of these soils is brown silty clay loam about 12 inches thick. The subsoil, about 48 inches thick, is reddish-brown and dark reddish-brown silty clay loam and silty clay that has subangular blocky structure. The substratum is silty clay. The surface layer is very strongly acid. The subsoil is slightly acid to medium acid.

Puhī silty clay loam, 3 to 8 percent slopes has slow runoff and erosion hazard is slight. This soil is used for sugarcane, pineapple, orchards, pasture, truck crops and homesites.

Puhī silty clay loam, 8 to 15 percent slopes, has slow runoff and the erosion hazard is slight. This soil is used for sugarcane, pineapple, pasture, and orchards.

According to the Detailed Land Classification Study of Kauai, the soil of the subject property has a productivity rating of "C."

5. As indicated by the Flood Insurance Study for the Island of Kauai prepared by the Federal Insurance Administration, the subject property is not situated within

any designated floodplain, but rather in an area of minimal flooding.

6. According to the State of Hawaii's Agricultural Lands of Importance to the State of Hawaii (ALISH) classification system, the subject property is classified as "Prime Agricultural Land." Although the subject property is not presently being used for agricultural or agricultural-related purposes, according to the Petitioner, two sharecropping farmers have successfully raised some truck crops on the subject property. Also, farmers on agricultural land adjacent to the subject property have planted their land with papaya, coco palms and dryroot taro.

7. The State Preservation Office has indicated that there are no known significant historic sites on the subject property.

8. The Petitioner herein proposes to develop the subject property for industrial uses. The Petitioner intends to build eight additional warehouse-type structures on the subject property which together with already existing structures and improvements, "can be individually leased on an industrial park basis." Included with the Petition is a site plan which indicates that the proposed development will include existing facilities as well as the eight additional warehouse areas. The total development will consist of the following:

Existing Facilities:

10,000 gallon fuel tank	
1,000 gallon underground gasoline tank	
Warehouse	1,800 sq. ft.
Storage building	792 sq. ft.
Storage building	320 sq. ft.
Storage building	320 sq. ft.
Scale house and office	120 sq. ft.
Warehouse	3,200 sq. ft.
Office and Conference room	1,072 sq. ft.

Proposed New Structures

Warehousing (8 structures @ 6,000 sq. ft. each)
48,000 sq. ft.

The Petitioner estimates that erecting a warehouse would cost about \$20 per square foot and a 6,000 square foot structure would cost about \$120,000. The Petitioner has represented that the intended prices of his proposed industrial leases will be equal to or below comparable prices in the area which run between 30 and 40 cents a square foot. At 35 cents per square foot, the Petitioner could expect to generate approximately \$2,700 a month from one of his proposed warehouse structures.

Once the required Land Use and County zoning and any necessary subdivision requirements are granted, the Petitioner intends to proceed promptly with developing the subject property.

The Petitioner has represented that he is financially sound and able to secure financing for the proposed development from either Bancorp or GECC. An unaudited financial statement, drafted December 31, 1980, included in the Petition, reflects that the Petitioner has total assets of \$1,407,400, total liabilities of \$518,300 and net worth of \$889,100.

9. The reclassification of the subject property will affect the ability of certain public agencies to provide necessary urban amenities, services and facilities as follows:

- a. Access - Direct access to the subject property will be from Kuhio Highway. The State Department of Transportation has indicated that the proposed development will not significantly

affect the existing highway facilities. Any construction work within the State Highway right-of-way, however, will require a permit from the Department of Transportation.

b. Schools - The State Department of Education has indicated that the proposed development will have negligible effect on the schools in the area.

c. Sewage - The Petition states that there is no sewer system in the area. The Petition contains no information regarding how the Petitioner will handle sewage disposal for the industrial use.

d. Police and Fire Protection - The Petition states that "Police and fire protection is dependent upon the services rendered by the County of Kauai. The Hanalei Fire and Police Station is less than ten miles away."

e. Drainage - There is no proposal in the Petition of a drainage system for the anticipated industrial waste. The Petition does state that the existing drainage is to the rear of the lot and ultimately into the mauka gully.

f. Water - Although the Petition states that according to the Department of Water, potable water is adequate for the proposed development, the County Department of Water has indicated that at present the source and storage facilities are at capacity. The existing water mains along Kuhio Highway are not adequate for the proposed use.

10. The Kauai County Planning Department's Draft North Shore Development Plan points out that there are no industrially zoned lands in Kilauea. At present, light industrial activities (auto repair, boat construction/repair, wholesale bakery, food produce warehouse) operate as non-conforming uses in the "old mill area" (approximately 7 acres) utilizing former warehouses, storage, and other buildings remaining from the sugar mill complex. Phasing out of the industrial uses in the mill area is recommended due to adverse impacts from heavy equipment traffic through the residential area, noise, air quality concerns, and lack of area for expansion. As light industrial services are needed to support agricultural activities and community needs, the Plan's report recommends that the subject area be designated for light industrial uses, on the premise that industrial activities be limited to supportive agricultural light-industrial services as expressed by the community and that the geographic service area be limited within the North Shore Planning Area. Although the Kauai County Planning Department recognizes a potential for an industrial site on the subject property, it has concluded that the Petitioner has not adequately justified the proposed urban boundary change:

1. The need for the types of industrial uses must be demonstrated. The applicant has not provided any supporting data nor demonstrated that there is an expressed urgency to establish an industrial site for the planning area.
2. Water service facilities are currently inadequate to the site. This includes adequate fire line requirements, and
3. Because formal public hearings on the draft North Shore development Plan Update, including the site in question, have not yet been held and the final review of the plan by the

Planning Commission and County Council follow the hearings, it would be premature to conclude that the subject site would be the area that will be adopted by the County Council for the North Shore industrial area.

11. The Petition states that "the proposed development would provide warehouse and industrial development sites for people employed principally in the North Shore area of Kauai. This is one of the fastest growing commercial/residential areas. Continued industrial uses in Kilauea Town itself are not compatible with planned residential and commercial growth there; thus an area for new industrial development must be found, and the proposed site has the support of a significant number of the residents of the community."

"While there are considerable urban designations on the County of Kauai, inquiry in the North Shore community indicates that there is a real lack of suitable space for industrial development, especially warehouse space, in the area." Petitioner further maintains that the subject property with its existing structures and its location, is the logical place for such development to occur. Testimony submitted by Petitioner's "expert witness," Michael Ching, also emphasizes the need in the Kilauea area for light industrial development and the practicality of the subject property to meet this need.

12. The Kauai County Planning Department, however, points out that Mr. Ching's written testimony contains no statement as to his expertise, if any, to render the opinions contained therein, and as such, it should be given no greater weight than the testimony of any other lay witness. The testimony itself contains opinions and conclusions

unsupported by specific data, facts, studies, charts or analyses. The Kauai County Planning Department further contends that the Petitioner has not complied with the Interim Statewide Land Use Guidance Policy (H.R.S. §205-16.1) as follows:

1. As to subsection (1), the Petitioner has failed to produce data or studies identifying and relating the expected growth and development in the North Shore area to his proposal. There is similar lack of information concerning the possible occurrence of significant adverse effects on agricultural, natural, environmental and scenic resources in the area resulting from his proposal.
2. The conditions of subsection (2), concerning adequate public services and facilities, are not met in that the water service facilities and fire line requirements for the proposed site are presently inadequate. The Petitioner has not suggested what can or will be done to remedy this inadequacy.
3. The conditions of subsections (3) and (4) are transgressed insofar as the Petitioner's proposal would result in scattered urban development on a site which is not contiguous to an existing urban district. The land in question is presently surrounded by Agricultural Districts.
4. Finally, with reference to subsection (5), the Petitioner has failed to adequately project the nature, types, and number of permanent employment positions that his development will create.

The Kauai County Planning Department also maintains that the Petitioner has not supplied reliable facts or data sufficient to satisfy the special requirements of subsections of Section 6-2(2), rules entitled Special Requirements for Petitions for Urban Classifications:

1. Subsection (b) - There is insufficient information concerning the selling price of the warehouse units, the project's intended markets, or the development's timetables and projected costs.

2. Subsection (e) - The preliminary development plans are vague, and there is little in the way of topographic data, drainage information, and traffic and demographic studies.
3. Subsection (f) - The Petitioner has failed to provide answers concerning the availability and adequacy of sewers, water, sanitation (including waste disposal) facilities, and fire protection, and whether existing services (especially water) would be unreasonably burdened by the proposed development.
4. Subsection (h) - There is no reliable data concerning the potential for permanent employment opportunities that this project will generate.
5. Subsection (l) - The petition does not adequately explain why the proposed classification is necessary at this time, rather than after the finalization of the North Shore Plan Update.

13. The Department of Planning and Economic Development, also, finds that the subject Petition has not adequately demonstrated that a need exists for additional urban lands for industrial purposes, or that the subject property is the appropriate site for industrial development should such a need exist. The Department of Planning and Economic Development maintains that the Petition does not indicate a method for sewage disposal of industrial waste, nor is there any indication that water is available for the proposed development at the present time.

14. 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 Kauai and the Department of Planning and Economic Development have recommended that the reclassification of the subject property be denied.

15. The Hearing Officer finds that the concerns expressed by the County of Kauai and the Department of Planning and Economic Development to be supported by

credible evidence adduced during the course of this proceeding.

CONCLUSIONS OF LAW

Reclassification of the subject property, consisting of approximately 5.0 acres of land, situated at Kilauea, Island and County of Kauai, from the Agricultural District to the Urban District and an amendment to the district boundaries accordingly would not be in conformance with 205-2 of the Hawaii Revised Statutes, and the Rules and Regulations of the Land Use Commission.

ORDER

FOR GOOD CAUSE APPEARING, it is hereby ordered that the property which is the subject of the Petition in this Docket No. A81-516, consisting of approximately 5.0 acres, situated at Kilauea, Island and County of Kauai, identified as Tax Map Key No. 5-2-13: portion of 14, (5-2-19:1), be denied and that the subject property remain in the Agricultural District.

DONE at Honolulu, Hawaii, this 15th day of March, 1983, per Motion on February 15, 1983, and March 15, 1983.

LAND USE COMMISSION
STATE OF HAWAII

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

By Richard B. F. Choy
RICHARD B. F. CHOY, Vice Chairman

By Lawrence F. Chun
LAWRENCE F. CHUN, Commissioner

By *Shinsei Miyasato*
SHINSEI MIYASATO, Commissioner

By *T. Tacbian*
TEOFILO PHIL TACBIAN, Commissioner

By *Robert S. Tamaye*
ROBERT S. TAMAYE, Commissioner

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
)
GEORGE LEWIS SAGEN) DOCKET NO. A81-516
)
To Amend the Agricultural Land Use)
District Boundary to Reclassify)
Approximately 5.0 Acres, TMK:)
5-2-13: portion of 14, (5-2-19:1),)
at Kilauea, Island and County of)
Kauai, 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

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

FERNANDES SALLING & SALLING
1347 Ulu Street
Kapaa, Hawaii 96746

DATED: Honolulu, Hawaii, this 16th day of March, 1983.



GORDAN Y. FURUTANI
Executive Officer

DOCKET NO. A81-516 - GEORGE LEWIS SAGEN

A certified copy of the Land Use Commission's Decision and Order was served by regular mail to the following on March 16, 1983:

ANNETTE CHOCK, Deputy Attorney General
Department of Attorney General
State Capitol, 4th Floor
Honolulu, Hawaii 96813

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

GEORGE LEWIS SAGEN
1620 Kahai Street
Honolulu, Hawaii 96819