

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
PARADISE DEVELOPERS, INC.) DOCKET NO. A81-517
To Amend the Agricultural Land Use)
District Boundary to Reclassify)
Approximately 147.56 Acres,)
TMK 2-2-02: 2 at Kamaole, Kihei,)
Island and County of Maui, into the)
Rural and Urban Land Use Districts)

DECISION AND ORDER

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	
PARADISE DEVELOPERS, INC.)	DOCKET NO. A81-517
To Amend the Agricultural Land Use)	FINDINGS OF FACT,
District Boundary to Reclassify)	CONCLUSIONS OF LAW,
Approximately 147.56 Acres,)	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 147.56 acres, Tax Map Key 2-2-2: 02, (hereinafter referred to as the "subject property") situated at Kamaole, Kihei, Island and County of Maui, from the Agricultural District to the Rural and Urban Districts. The Land Use Commission (hereinafter, the "Commission") having heard the testimony and reviewed the documentary evidence at the hearing on February 2, 1982, and having fully considered the record, the proposed findings of fact and conclusions of law submitted by the parties, and the responses made thereto, and the closing oral arguments by parties on May 5, 1982, hereby makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

PROCEDURAL MATTERS

1. Paradise Developers, Inc. (hereinafter "Petitioner"), a Hawaii corporation, filed its petition for amendment of land use district boundaries on September 23, 1981.

2. Pursuant to a notice published on December 21, 1981 in the Maui News and the Honolulu Advertiser, the hearing on the petition was held on February 2, 1982 at the Kahului Library Conference Room in Kahului, Maui.

3. There were no petitions for intervention. The Commission granted requests from John Bose II and Harold Luntney to testify as public witnesses.

DESCRIPTION OF THE SUBJECT PROPERTY

4. The subject property is located in southern Kihei in the Makawao District of the Island of Maui, approximately 11 miles southeast of Wailuku. It fronts on the mauka (east) side of the new Piilani Highway, between and above the intersections with Keonekai Road and Kilohana Drive.

5. The subject property, identified as Maui TMK 2-2-02: 2, consists of 147.56 acres. The Petitioner seeks to reclassify approximately 142 acres from the Agricultural to the Rural District and approximately 6 acres from the Agricultural to the Urban District.

6. The Petitioner, Paradise Developers, Inc., is a Hawaii corporation acting as an agent for United Realty, Inc. United Realty, Inc. purchased the subject property by an Agreement of Sale dated December 21, 1978 from Heftel Broadcasting Corporation and Cecil Heftel and Edris Joyce Heftel, the fee simple owners, for the purchase price of \$2,325,000. The Agreement of Sale is due on December 28, 1984.

7. United Realty, Inc. and the fee simple owners have appointed the Petitioner to act as its Agent in all matters pertaining to the reclassification, rezoning and subdivision of the subject property. Both United Realty, Inc. and Paradise Developers, Inc. are owned by Ivan Pivaroff, President of United Realty, Inc.

8. The subject property is now vacant and covered with

scrub vegetation. Elevations on the site range from approximately 200 feet above sea level at the western border to approximately 500 feet above sea level at the eastern border. Average slope is less than 10 percent. The annual rainfall amounts to 10 to 20 inches.

9. The subject property is bounded by the new Piilani Highway and the Urban District to the west, vacant lands within the Agricultural District to the north and east, and the 674-lot Maui Meadows Subdivision within the Rural District to the south. Lands to the north and east in the Agricultural District are owned by Haleakala Ranch Co., and have been used for grazing.

10. The U.S.D.A. Soil Conservation Service, Soil Survey classifies the mauka portion of the subject property as belonging to the Keawakapu Series (KNXD), an extremely stony silty clay loam which occurs on the low uplands of Maui with 3 to 25 percent slopes. Permeability is moderate, runoff is slow to medium and the erosion hazard is slight to moderate. The soil is used for pasture and wildlife habitat. The makai half of the site consists of the soil classification belonging to the Makena Series (MXC), a stony loam complex found on the lower leeward side of Haleakala with slopes of 3 to 15 percent. Permeability is moderately rapid, runoff is slow to medium, and the erosion hazard is slight to moderate. These soils are used for pasture and wildlife habitat.

11. The subject property is not classified as being agriculturally important land under the State Department of Agriculture's Agricultural Lands of Importance to the State of Hawaii (ALISH) classification system.

12. The proposed development site is designated as an area of minimal flooding ("Zone C") according to the Federal Insurance Administration Flood Insurance Study for the Island of Maui.

PROPOSAL FOR DEVELOPMENT

13. Petitioner proposes to develop a residential subdivision of 236 half-acre lots on the 142 acres which it seeks to reclassify from the Agricultural to the Rural District; and a neighborhood commercial center and park on the 6 acres which it seeks to reclassify from the Agricultural to the Urban District.

14. The Petitioner estimates that the approval and construction of the residential development in the proposed Rural District would take approximately 3 years, and would cost \$8,019,000 (1984 dollars), or approximately \$34,000 per lot. Of the total cost, \$7,048,000 would be for on-site construction and services, and \$971,000 for off-site water storage and transmission development. Overall residential density would be approximately 1.7 dwelling units per acres.

15. The Petitioner intends to sell the rural lots at prices ranging from \$95,000 to \$125,000 per lot (based on today's market), depending on size and location within the subdivision. Marketing efforts would focus on middle to upper income families currently residing on Maui, which represent approximately 20 percent to 22 percent of the total number of households.

16. The Petitioner estimates that construction of the commercial center within the proposed Urban District would commence simultaneously with residential construction. A feasibility study prepared by Petitioner's consultants, Hawaii Management Corporation and The Beall Companies, estimated development cost of the 60,000 square feet gross-leasable-area shopping center at \$3,928,999 (1980 dollars).

17. The Petitioner intends to dedicate 2 acres adjacent to the commercial center and within the area proposed for reclassification to Urban, to the County of Maui for use as a park.

18. The financial statement dated March 24, 1981 on Ivan and Gwen Pivaroff indicates total assets of \$2,478,980 at

"cost" or \$4,199,542 at "market value"; and Net Worth of \$1,944,480 at "cost" or \$3,665,042 at "market value." Listed among assets is \$225,000 "Due from Paradise Developers, Inc." Paradise Developers, Inc. is wholly owned by Ivan and Gwen Pivaroff, but because no financial information was specifically provided on this entity, the ability of this Petitioner to successfully undertake the proposed development is not determined.

STATE AND COUNTY PLANS

19. The subject property is situated within the State Land Use Agricultural District as reflected on Land Use District Boundary Map M-8 (Puu O Kali). A portion of its southern boundary abuts the Rural District (Maui Meadows Subdivision) and its western boundary abuts the new Piilani Highway with the Urban District makai of the highway.

20. The proposed development does not conform to the existing Kihei General Plan Map No. 5 nor the Draft Kihei-Makena Community Plan, both of which designate the subject property for "Agriculture."

21. The Draft Kihei-Makena Community Plan specifically recommends

- (a) "Use a projected resident population of 22,900 persons over the next 20 years as a guideline for planning. This projection is to be used for the planning of facilities, programs, and support services for the region."
- (b) "Direct major increases in resident population to Kihei proper while allowing for a diversity of housing choices mauka and south of the main Kihei area, in the following manner:
 - (1) "The bulk of major increases to be located makai of Piilani Highway;"
 - (2) "Residential expansion areas mauka of Piilani Highway in north and central Kihei;"
 - (3) "Residential expansion south of Kihei, defined by the makai edge of the projected Piilani Highway extension, Wailea Phase II, and Seibu Mauka."

NEED FOR GROWTH AND DEVELOPMENT

22. The Maui County Planning Department anticipates a projected demand of 5,200 single family residential units by the year 2000 in the Kihei-Makena area. The proposed Kihei-Makena Community Plan provides for 8,360 single-family-residential units, which is a margin of flexibility of 61 percent.

23. The Kihei region currently contains approximately 1,100 acres zoned for single-family-residential use which are undeveloped. The proposed Kihei-Makena Community Plan has designated an additional 977 acres to accommodate projected demand for single-family use through the year 2000.

24. The Maui Meadows Subdivision adjacent to the subject property contains 278 vacant one-half acre lots.

25. Development of residential lots and a commercial center on the subject property would be contrary to the Maui County General Plan and the Draft Kihei-Makena Community Plan. The Petitioner has not clearly shown that housing needed for the population projected for the area will not be adequately provided on lands already designated for residential development on current County planning documents.

26. The Petitioner proposes to sell the 236 one-half acre house lots in the proposed development at prices ranging from \$95,000 to \$125,000 each. The petition has not substantiated a need for residential lots of the sizes and at prices proposed.

27. Not having a clearly demonstrated need for the proposed house-lot subdivision, Petitioner has also failed to demonstrate the need for the proposed neighborhood commercial center which is proposed to serve and primarily dependent upon customers from the proposed residential development.

IMPACTS UPON RESOURCES OF THE AREA

Agricultural Resources

28. The subject property is now vacant, and in an area of low rainfall, high temperatures and drying winds. The soil is generally poor and rocky, but the land could be used as pasture.

Historic, Archaeological and Cultural Resources

29. No evidence was adduced as to any known historic, archaeological, or cultural resources on the subject property.

Natural and Environmental Resources

30. The subject property is not a habitat for any rare or endangered plants or animals.

31. There are no permanent streams on the subject property. Petitioner proposes to utilize a gulch which bisects the subject property to serve as a channel for the discharge of storm runoff and drainage water. Use of this drainage channel would adversely impact two public beaches along the shoreline.

32. The subject property is a portion of open pasture lands which currently permit unobstructed views from Piilani Highway to the slopes of Haleakala.

ADEQUACY OF PUBLIC SERVICES AND FACILITIES

Firefighting and Police Services

33. Fire protection for the subject property is provided by the Kihei Fire Station, located approximately three road miles from the subject property. Police patrols originate from the main police station in Wailuku, approximately 13 road miles from the subject property.

Schools

34. Kihei Elementary and Intermediate School, located

on Lipoa Street approximately three road miles from the subject property, would service students from kindergarten through eighth grade. Students in grades nine through twelve could be accommodated at Baldwin High School in Kahului.

Electrical Utility Services

35. Maui Electric Company and Hawaiian Telephone Company would bring electrical and telephone services to the subject property.

Water

36. Water of sufficient quantity and quality to serve the proposed development is not available unless the Petitioner participated in the development of additional water sources and storage facilities.

Sewage Treatment and Disposal

37. The Kihei Sewage Treatment Plant, which treats all sewage running into the Kihei sewer lines, is currently operating at slightly less than half its design capacity and could serve the proposed neighborhood commercial center. The proposed residential development would be served by cesspools.

Solid Waste Disposal

38. The County would provide refuse collection service.

Roadway and Highway Facilities

39. The Piilani Highway, a restricted access two-lane thoroughfare completed in 1980, abuts the subject property on its westerly (Makai) boundary. Although the Petitioner proposes to open two access points on this highway to the proposed development, the State Department of Transportation will require that the Petitioner provide, at its own expense, an analysis of the

impact of the proposed development on traffic in the area before permitting such access. The DOT would also require that the Petitioner construct any access roadways to Piilani Highway at its own expense.

COMPLIANCE WITH STANDARDS FOR DETERMINING DISTRICT BOUNDARIES

40. The subject property and proposed residential development does not conform to the standards for classifying lands into the Rural District:

(a) The Petitioner has not shown that the land use reclassification is reasonably necessary to accommodate growth and development in the Kihei area. Other lands in the area within existing Urban Districts are available for residential development.

(b) The proposed development would not conform to the standards for classification to the Rural District, as an area 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) The proposed development does not conform to the County General Plan for the subject property, and planning projections for basic government services have not taken the proposed uses into consideration.

41. The subject property and proposed commercial development does not conform to the standards for classifying lands into the Urban District:

(a) The Petitioner has not substantiated the need for a commercial shopping center to support growth and development in the Kihei area. Without development of the residential subdivision within the proposed Rural District, there is no need and economic feasibility for the commercial center.

(b) Development fo the commercial center above (mauka of) the Piilani Highway would represent a noncontiguous new urban core, contrary to the County General Plan and proposed Community Development Plan.

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 and Practice and Procedure and District Regulations of the Land Use Commission, State of Hawaii, the Commission finds that the proposed boundary amendments do not conform to the applicable standards and guidelines established for the respective Rural and Urban Districts by the State Land Use District Regulations, is not reasonable, would violate Section 205-2, Hawaii Revised Statutes, as amended, and would be inconsistent with the Hawaii State Plan, as set forth in Chapter 226, HRS, as amended.

DECISION AND ORDER

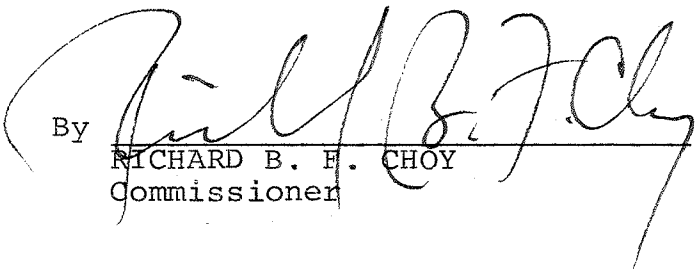
IT IS HEREBY ORDERED that the property which is the subject of the petition of Paradise Developers, Inc., in Docket No. A81-517, identified as Maui Tax Map Key 2-2-02: 2, consisting of approximately 147.56 acres at Kamaole, Kihei, County of Maui, State of Hawaii, remain in the State Land Use Agricultural District.

Done at Honolulu, Hawaii this 27th day of May, 1982,
per motion on May 5, 1982.

LAND USE COMMISSION
STATE OF HAWAII

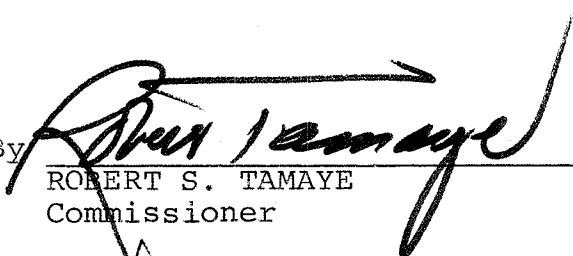
By 
WILLIAM W. L. YUEN
Chairman and Commissioner

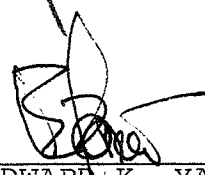
By 
CAROL B. WHITESELL
Vice Chairman and Commissioner

By 
RICHARD B. H. CHOY
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
Department of Attorney General
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HENRY GOMES, Vice President
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P. O. Box 569
Kihei, Hawaii 96753

DATED: Honolulu, Hawaii this 12th day of July, 1982.



GORDAN Y. FURUTANI
Executive Officer