

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of) DOCKET NO. A82-533
)
ADELINE R. FRANCO and) ADELINE R. FRANCO
FLORA R. TAVARES) and FLORA R. TAVARES
)
To Amend the Agricultural Land Use)
District Boundary to Reclassify)
Approximately 2.707 Acres, TMK:)
2-7-03:79, at Haiku, Island and)
County of Maui, into the Urban)
Land Use District)

DECISION AND ORDER

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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 Adeline R. Franco and Flora R. Tavares 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 2.707 acres of land, situated at Haiku, Island and County of Maui. The subject property is more particularly identified as Tax Map Key No. 2-7-03:79.

PURPOSE OF PETITION

Petitioners' stated purpose for requesting the reclassification of the subject property from Agricultural to Urban is so that Petitioners can subdivide the subject property into eight (8) residential houselots approximately 11,000 square feet in size. After subdivision, Petitioners

intend to convey as a gift, one lot to each of their six children, so that the children may build homes on the subject property or may use their lots to acquire sufficient assets to build elsewhere.

THE PROCEDURAL HISTORY

Initial Hearing:

The Petition was received by the Land Use Commission on May 17, 1982. Due notice of the hearing on this Petition was published on September 28, 1982, in the Maui News and in The Honolulu Advertiser. Notice of the hearing was also sent by certified mail to all parties involved herein on September 23, 1982. No timely application to intervene as a party or appear as a witness was received by the Land Use Commission.

The initial hearing on this Petition was originally scheduled for October 28, 1982, in Kahului, Maui, Hawaii.

Due to the unavailability of the Hearing Officer on the scheduled hearing date, the Executive Officer of the Land Use Commission requested, and there being no objections from any of the parties present, that the hearing be continued to November 8, 1982.

Reopened Hearing:

An agenda of the reopened hearing was mailed to all parties involved herein and filed with the Office of the Lieutenant Governor, State of Hawaii, on November 3, 1982. No timely application to intervene as a party or appear as a witness was received by the Land Use Commission.

The reopened hearing was conducted in Kahului, Maui, Hawaii, on November 8, 1982.

Adeline R. Franco and Flora R. Tavares, the Petitioners herein, were represented by Lawrence N. C. Ing, Esq;

the County of Maui was represented by Guy P. Archer, Deputy Corporation Counsel; and the Department of Planning and Economic Development was represented by Staff Planners Esther Ueda and Abe Mitsuda.

The witnesses presented by the aforementioned parties were as follows:

Petitioner:

Stanley Franco

County of Maui:

Patrick Matsui

Department of Planning and Economic Development:

Abe Mitsuda, Staff Planner

POSITION OF THE PARTIES

County of Maui - Approval.

Department of Planning and Economic Development - Approval.

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. The subject property, owned in fee simple by the Petitioners herein, is located at Haiku, Island and County of Maui, and consists of approximately 2.707 acres, more particularly described as Tax Map Key No. 2-7-03:79. The subject property is located approximately 10 miles northeast of Kahului, approximately 800 feet south of the abandoned Haiku Pineapple Cannery site, and 400 feet south of the Lowrie ditch. It is situated on Kokomo Road which is an extension of Haiku Road which branches off in a mauka direction from Hana Highway.

2. The subject property is located within the State Land Use Agricultural District as reflected on the Land Use District Boundary Map (M-10) Haiku. Kokomo Road which borders the subject property, separates it from a portion of the Haiku Urban District and the Haiku Rural District. Lands surrounding the subject property can best be characterized by single-family residential units and small neighborhood businesses within the Urban District, scattered single-family residences in the Rural District, and predominantly pineapple cultivation within the Agricultural District.

3. The subject property is designated for agricultural use under the existing Maui General Plan. As the Haiku area has no zoning maps or general plan maps, the subject property falls under the interim zoning ordinance

which permits single-family residences with minimum lot sizes of 6,000 square feet. The proposed Paia-Haiku Community Plan prepared by EDAW, Inc., in October, 1981, which is currently under consideration by the Maui County Council, also designates the subject property "AG" Agricultural.

4. The topography of the subject property is relatively flat and slopes gently in a south to north direction. The proposed subdivision site is designated Zone C or an area of minimal flooding according to Federal Flood Insurance Maps prepared for Maui County. Zone C comprises areas which are outside of the 100-year flood plain and tsunami inundation zone. The subject property does not lie within the Special Management Area (SMA).

5. According to the U.S.D.A. Soil Conservation Service, Soil Survey, the soil of the subject property is classified as Haiku clay (HbB and HbC), with slopes ranging from 3 to 15 percent. These soils are used primarily for pineapple and grazing. Currently, the subject property is vacant and used for cattle grazing.

6. The soil of the subject property has a productivity rating of "C" on a scale of "A" to "E," with "A" being the highest, according to the Land Study Bureau 1967 Detailed Land Classification report. The soil is well-suited for machine tillability, nonstony, well-drained, and with an average depth of over 30 inches.

7. Although the subject property is not classified under the Agricultural Lands of Importance to the State of Hawaii classification system, in a memorandum to the Department of Planning and Economic Development dated September 1, 1982, the State Department of Agriculture

stated that the subject parcel is surrounded by extensive "Prime" classified agricultural lands to the east and west. The memorandum went on to say that the subject property had fair to excellent productivity potential for pineapple, orchard, grazing, forage, vegetables and sugarcane. The Department of Agriculture concluded, however, that reclassification of the subject property should have no significant adverse effect upon agricultural resources of the area. As suggested by the Department of Agriculture, the Petitioners have been made aware that the normal daily operation of pineapple cultivation may be a source of odor, dust, noise and other by-products that may annoy residents of the subject property. Stanley Franco, speaking for the Petitioners, has represented that since the family has grown up in the area for years, it is used to pineapple cultivation-related problems and is aware of potential problems that may arise.

8. In a letter dated October 5, 1982, the U.S. Department of Agriculture Soil Conservation Service stated that it had no comments to make regarding the subject boundary amendment.

9. In a memorandum to the Department of Planning and Economic Development dated August 2, 1982, the Department of Land and Natural Resources stated that their records indicated that the proposed project did not occur on historic properties listed on the Hawaii Register of the National Register of Historic Places or that have been determined eligible for inclusion on the National Register of Historic Places. The Department further stated that:

Due to the lack of archaeological surveys in the vicinity, we are not aware that significant resources exist in the project area, this does not confirm the absence of historical, cultural, architectural and/or archaeological resources on the property. In the event that any previously unidentified sites or remains such as artifacts, shell bone or charcoal deposits; human burials; rock or coral alignments, pavings, or walls are encountered, please inform the applicant to stop work and contact our office immediately.

Petitioners have represented that they are willing to stop work and contact the Department of Land and Natural Resources office in the event some unidentified site remains may be located during the development of the subject property.

10. In a letter to the Department of Planning and Economic Development dated July 23, 1982, the State of Hawaii Office of Environmental Quality Control stated that it did not believe the requested district boundary change from Agriculture to Urban for a 2.7-acre lot would have any significant environmental effects.

11. Petitioners intend to subdivide the subject property into eight (8) residential houselots approximately 11,000 square feet in size. After subdivision, Petitioners intend to convey as a gift, one lot to each of their six children, so that the children may build homes on the subject property or may use their lots to acquire sufficient assets to build elsewhere. Petitioners have further represented that the proposed subdivision plan would avoid probate expenses and allow property which has been owned by the family for over 30 years to continue in the family. The Petitioners intend to sell the remaining two lots to cousins for \$40,000 to \$45,000 each to assist in financing the costs of the subdivision.

Petitioners have indicated that about \$78,000 worth of improvements will be necessary for the subdivision-- \$13,000 for estimated engineering and survey costs and approximately \$65,000 for improvement costs. Because Petitioners are on fixed incomes, they will be required to sell two (2) of the lots to pay for the subdivision costs. Mr. Stanley Franco, son of Petitioner Adeline R. Franco, has represented that if the improvements cannot be paid for from the sale of the two (2) lots, the six heirs have been notified and are willing to contribute personally or get outside funding to develop the subdivision.

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

a. Access - Access to the subject property will be from Haiku Road, a two-lane, 42-foot right-of-way with a 20-foot pavement width. No curbs, gutters or sidewalks exist along Haiku Road.

b. Schools - The State of Hawaii Department of Education, in a memorandum to the Department of Planning and Economic Development dated June 21, 1982, stated that the proposed residential subdivision would have a negligible impact on the surrounding schools.

c. Sewage - There is no public sewer system available to the subject site. The Petitioners have represented that they intend to dispose of sewerage by cesspools.

d. Water - The Petitioners have represented that a County water line is presently in place

alongside the subject property. The County of Maui Department of Water Supply, in a letter to the Department of Planning and Economic Development dated June 28, 1982, stated that they would not have any objections provided that the Petitioners conform to the requirements of the Department.

e. Sanitation - Solid waste disposal will be provided by County refuse collection operations.

f. Traffic - In a memorandum dated July 7, 1982, the State Department of Transportation stated that the subject subdivision consisting of eight residential lots is not anticipated to affect the State Highway system.

g. Fire, Police and Electrical Services - Petitioners have represented that development of the subject property would not unreasonably burden any of the public agencies providing services or require any additional outlays for capital improvements by the State or County.

13. 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 Maui 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 2.707 acres of land, situated at Haiku, Island and County of Maui, from the Agricultural District to the Urban District 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 this Docket No. A82-533, consisting of approximately 2.707 acres, situated at Haiku, Island and County of Maui, identified as Tax Map Key No. 2-7-03:79, shall be and hereby is reclassified from the Agricultural District to the Urban District and the district boundaries are amended accordingly.

DONE at Honolulu, Hawaii, this 3rd day of February, 1983, per Motion on January 19, 1983, and January 27, 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 Everett L. Cuskaden
EVERETT L. CUSKADEN, Commissioner

By Shinsei Miyasato
SHINSEI MIYASATO, Commissioner

By Winona E. Rubin
WINONA E. RUBIN, Commissioner

By Teofilo Phil Tacbian
TEOFILO PHIL TACBIAN, Commissioner

By Robert S. Tamaye
ROBERT S. TAMAYE, Commissioner

By Frederick P. Whittemore
FREDERICK P. WHITTEMORE,
Commissioner

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CERTIFICATE OF SERVICE

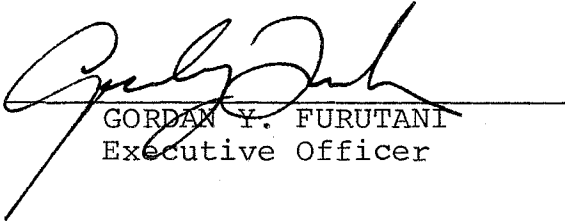
I hereby certify that a copy of the Decision and Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

HIDETO KONO, Director
Department of Planning and Economic Development
State of Hawaii
250 South King Street
Honolulu, Hawaii 96813

TOSH ISHIKAWA, Planning Director
Planning Department
County of Maui
200 South High Street
Wailuku, Hawaii 96793

LAWRENCE N. C. ING, Attorney
2145 Wells Street, Suite 204
Wailuku, Hawaii 96793

DATED: Honolulu, Hawaii, this 4th day of February, 1983.


GORDAN Y. FURUTANI
Executive Officer