

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A83-552
)	
JOHN Y. T. & JAMES Y. T. DANG)	JOHN Y. T. DANG &
)	JAMES Y. T. DANG
To Amend the Urban Land Use)	
District Boundary to Reclassify)	
Approximately 14.34 Acres, TMK:)	
2-3-17: 23, at Kalaheo, Koloa,)	
Island of Kauai, State of Hawaii)	
into the Agricultural Land Use)	
District.)	
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DECISION AND ORDER

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JOHN Y. T. & JAMES Y. T. DANG) JOHN Y. T. DANG &
To Amend the Urban Land Use) JAMES Y. T. DANG
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Approximately 14.34 Acres, TMK:)
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Island of Kauai, State of Hawaii)
into the Agricultural 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 John Y. T. and James Y. T. Dang who are requesting that the designation of the subject property be amended from the Urban to the Agricultural District. The requested change consists of property comprising approximately 14.34 acres of land, situated at Kalaheo, Koloa, Island and County of Kauai, State of Hawaii. The subject property is more particularly identified as Tax Map Key No. 2-3-17:23.

PURPOSE OF PETITION

Petitioner's stated purpose for requesting the reclassification of the subject property from Urban to Agricultural is so that Petitioner's can retain the subject as a farm for cattle grazing and the growing of fruit trees.

THE PROCEDURAL HISTORY

The Petition was received by the Land Use Commission on June 13, 1983. Due notice of the hearing on this Petition was published on July 29, 1983, in the Garden Island and the Honolulu Advertiser. Notice of the hearing was also sent by certified mail to all parties involved herein on July 28, 1983. 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, 1983, in Lihue, Kauai, Hawaii.

John Y. T. and James Y. T. Dang, the Petitioners herein, represented themselves; The County of Kauai was represented by Deputy Corporation Counsel Max Graham; and the Department of Planning and Economic Development was represented by Esther Ueda.

The witnesses presented by the aforementioned parties were as follows:

Petitioner:

John Y. T. Dang

James Y. T. Dang

County of Kauai

Heather Harvey - Staff Planner,
Kauai Planning Department

Department of Planning and Economic Development:

Esther Ueda - Staff Planner
Land Use Division

POSITION OF THE PARTIES

County of Kauai - Approval.

Department of Planning and Economic Development -
Approval.

APPLICABLE REGULATION

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

- (1) "A" Agricultural District. In determining the the boundaries for the "A" Agricultural District, the following standards shall apply:
 - (a) Lands with a high capacity for agricultural production shall be included in this District except as otherwise provided for in other sections of these regulations.

- (b) Lands with significant potential for grazing or for other agricultural uses shall be included in this District except as otherwise provided for in other sections of these regulations.
- (c) Lands surrounded by or contiguous to agricultural lands and which are not suited to agricultural and ancillary activities by reason of topography, soils and other related characteristics may be included in the Agricultural District.
- (d) Lands in intensive agricultural use or lands with a high capacity for intensive agricultural use shall not be taken out of this District unless the Commission finds either that:
 - 1. such action will not substantially impair actual or potential agricultural production in the vicinity of such lands, and/or
 - 2. such action is reasonably necessary for urban growth.

FINDINGS OF FACT

The Hearing Officer, having duly considered the record in this docket, the testimony of the witnesses and the evidence introduced herein, makes the following proposed findings of fact:

- 1. The subject property, owned in fee simple by the Petitioners herein is located at Kalaheo, Koloa Island and County of Kauai, State of Hawaii and consists of approximately 14,34 acres, more particularly described as Tax Map Key No. 2-3-17:23. The subject property is located in the Kukuiolono Park Area, which is within the Kalaheo

Urban District and lies approximately 2 miles southeast of Kalaheo Town. Portions of the subject property abut Papalina and Waha Road. The subject property contains one single family residence wherein the Petitioners reside and is also being utilized for cattle grazing and the growth of fruit trees. Approximately 7 acres of the subject property consist of flat areas and the remaining 7 acres consist of steeper gully lands.

2. The subject property is currently situated within the State Land Use Urban District. State Land Use Urban Districts to the north, south and west of the subject property consists of subdivided single family residential lots which are part of the Dang Lots Subdivision. Agricultural District areas to the east of the subject property are presently either undeveloped or being used for grazing purposes.

Since 1974 District Boundary Review, the Land Use Commission has received and acted on two district boundary amendment requests for the Kalaheo area. On May 12, 1976, the Land Use Commission approved a request by Janet L. Greenblath and Marcia S. Vespoli (Docket No. A75-410) to reclassify approximately 6.45 acres from the Rural to the Urban District at Kalaheo. Kauai TMK: 2-4-14:1 for a single family residential subdivision use. On March 7, 1978, the

Land Use Commission approved a request by the County of Kauai (Docket No. A77-432) to reclassify approximately 1.35 acres from the Agricultural to the Urban District at Kalaheo, Kauai, TMK: 2-2-01: portion of 11, for a single family residential subdivision for low and moderate income families.

3. The Koloa-Poipu-Kalaheo Development Plan adopted by the Kauai County Council on February 17, 1983, reflects the subject property to be zoned R-4 and Open and is General Planned Single - Family Residential and Open. The subject property is not situated within the County of Kauai's Special Management Area.

4. The subject property is located at approximately the 550 - 625 foot elevation. Rainfall in the area is approximately 50-75 inches per year. The Land Study Bureau Overall Productivity Ratings for the area reflect that approximately one-half of the subject property is classified as "B" lands, and the other half as "E" lands. The subject property is not classified according to the State Department of Agriculture's Agricultural Lands of Importance to the State of Hawaii (ALISH) classification system. According to the Flood Insurance Study for the Island of Kauai prepared by the Federal Insurance

Administration, the subject site is not situated in any designated flood plain but rather in an area of minimal flooding or Zone C designation.

5. Petitioners state that the reclassification is being requested for purposes of allowing them to retain the subject property as a farm for cattle grazing and the growing of fruit trees. Portions of the subject property are presently being subleased to other individuals on a month to month basis for nursery and cattle grazing activities. Although the Petitioners are presently employed in non agricultural occupations, they intend to pursue agricultural activities on the property upon their retirement and continue the agricultural activities which have existed on the property since the 1920's. The Petitioner's propose to utilize the subject property upon their retirement as follows:

- Orchard - 7.5 acres
- Wildlife - 2.8 acres
- Nursing - 2.5 acres
- Bananas - .8 acres
- Housesite - .5 acres

The Petitioner's have also indicated that the real property tax assessments on Urban designated lands have caused an undue burden upon them in view of the fact that the subject property always has and always will be used for

agricultural activities and since no development of an Urban nature is contemplated. As a result of the requested classification and since the subject property is already being utilized for the agricultural purposes contemplated, no financial capability information was submitted nor required.

6. The subject property does not contain historic sites that are listed on the Hawaii or National Register of Historic Places, or that have been determined eligible for inclusion on the National Register of Historic Places. Since the proposed reclassification would permit the continuation of an existing agricultural use, no significant change in impacts on the environment of the area is foreseen as a result of the Petitioner's request.

7. Reclassification of the subject property will not unreasonably burden public agencies provide necessary amenities, services, facilities due to the following:

a. Water: The Petitioner's indicate that adequate water service is presently available for the existing use. Comments from the County of Kauai Department of Water indicate that they have no objections to the proposed reclassification request.

b. Sewage: The Petitioner's have indicated that the existing residence has adequate sewage disposal facilities and no other structures are proposed, no

significant problems are anticipated with respect to sewage disposal. The County of Kauai Department of Public Works has indicated they have no comments to offer on the proposed reclassification request. The State Department of Health has indicated they have no objections to the proposed land use change.

c. Schools: The Department of Education indicates that the proposed reclassification will not have any impact on schools serving the area insofar as the orchard and cattle farm is an extension of the present use of the land.

d. Drainage: According to the petition, the existing gullies in the area serve as a natural drainage for the subject property.

8. Based on a review of the Petition, the evidence adduced at the hearing and the provisions of Chapter 205, H.R.S., the County of Kauai and the DPED have recommended that the reclassification of the subject property be approved.

CONCLUSIONS OF LAW

Reclassification of the subject property, consisting of approximately 14.34 acres of land, situated at Kalaheo, Koloa, Island and County of Kauai, State of Hawaii, from Urban to Agricultural and an amendment of 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 is this Docket No. A83-552, consisting of approximately 14.34 acres, situated at Kalaheo, Koloa, Island and County of Kauai, State of Hawaii, identified as Tax Map Key No. 2-3-17: 23, shall be and hereby is reclassified from Urban to Agricultural and the district boundaries are amended accordingly.

DONE at Honolulu, Hawaii, this 13th day of December, 1983, per Motions on December 01, 1983 and December 13, 1983.

LAND USE COMMISSION
STATE OF HAWAII

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

By Richard B. F. Choy
RICHARD B. F. CHOY
Vice-Chairman and Commissioner

By Lawrence F. Chun
LAWRENCE F. CHUN,
Commissioner

By *Shinsei Miyasato*
SHINSEI MIYASATO,
Commissioner

By *Winona E. Rubin*
WINONA E. RUBIN,
Commissioner

By *T. 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 Land Use Commission's Decision and Order was served upon the following by depositing the same in the U. S. Postal Service by certified mail:

KENT M. KEITH, Director
Department of Planning and Economic Development
State of Hawaii
250 South King Street
Honolulu, Hawaii 96813

AVERY YOUN, Planning Director
Kauai County Planning Department
4280 Rice Street
Lihue, HI 96766

JOHN Y. T. DANG
P. O. Box 46
Kalaheo, Kauai, Hawaii 96741

DATED: Honolulu, Hawaii, this 19th day of December, 1983.


GORDAN Y. FURUTANI
Executive Officer

DOCKET NO. A83-552 - JOHN Y. T. DANG & JAMES Y. T. DANG

A certified copy of the Land Use Commission's Decision and Order was served by regular mail to the following on December 19, 1983.

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

MICHAEL BELLES, County Attorney
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County of Kauai
4396 Rice Street
Lihue, Hawaii 96766

BENJAMIN MATSUBARA, Hearing Officer
Suite 1717, Pacific Tower
1001 Bishop Street
Honolulu, Hawaii 96813