

BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

In the Matter of the Petition) DOCKET NO. A84-567
))
 of) METROPOLITAN MORTGAGE
) & SECURITIES CO., INC.
METROPOLITAN MORTGAGE &)
SECURITIES CO., INC.)
)
To Amend the Agricultural)
Land Use District Boundary)
to Reclassify Approximately)
1 acre, TMK: 2-6-05:)
portion 4, at Koloa, Island)
and County of Kauai, State of)
Hawaii, into the Urban Land)
Use District.)
_____)

DECISION AND ORDER

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Hawaii, into the Urban Land))
Use District.))
_____)

DECISION

PETITION

This matter arises from a Petition for an amendment to the Land Use Commission district boundary filed on May 10, 1984 pursuant to Section 205-4 of the Hawaii Revised Statutes, as amended, in Part VI, Rule 6-1, of the Land Use Commission's Rules of Practice and Procedure and District Regulation by Metropolitan Mortgage and Securities, Co., Inc., a Washington corporation which requests that the designation of approximately one acre of land, situate at Koloa, Island and County of Kauai, State of Hawaii, more particularly described as Kauai Tax Map Key No. 2-6-05: portion of 4 ("Subject Property"), be amended from the Agricultural to the Urban District.

PURPOSE OF THE PETITION

The Subject Property is a portion of a larger parcel of land comprising 8.152 acres (TMK: 2-6-05:4) which is already in the Urban Land Use District and also owned by the Petitioner. The Petitioner plans to develop the entire larger parcel for multi-family residential purposes. The Subject one acre Property would be used for recreational purposes attendant to the multi-family residential development.

PROCEDURAL HISTORY

Due notice of the hearing on this Petition was published on August 15, 1984, in The Garden Island and the Honolulu Advertiser. Notice of the hearing was also sent by certified mail to all parties herein on August 15, 1984. 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 in Lihue, Kauai, on September 28, 1984. The Petitioner herein was represented by Herman Wilson; The Planning Department of the County of Kauai was represented by Max Graham, Deputy Corporation Counsel; The State Department of Planning and Economic Development was represented by Daniel Yasui.

The witnesses presented by the aforementioned parties were as follows:

Petitioner

Herman Wilson - Consultant for Metropolitan Mortgage & Securities, Co., Inc.

County of Kauai

Heather Harvey - Staff Planner, County of Kauai Planning Department.

The Department of Planning and Economic Development

Daniel Yasui - Staff Planner

POSITION OF THE PARTIES

The Department of Planning, County of Kauai - Approval. The State Department of Planning and Economic Development - Approval.

APPLICABLE REGULATIONS

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 considerations to areas of urban growth as shown on the State and County General Plans.
 - (f) Lands which do not conform to the existing 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 Land Use Commission, having duly considered the record in this docket, the testimony of the witnesses and the evidence introduced herein, makes the following findings of fact:

1. The Subject Property, owned in fee simple by the Petitioner herein, Metropolitan Mortgage and Securities, Co., Inc., situated at Koloa, Island and County of Kauai, State of Hawaii, consists of approximately one acre of land more particularly described as Kauai Tax Map Key No. 2-6-05: portion 4. The Subject Property is located in Kukuiula, mauka of Lawai Beach Road, approximately 700 feet west of Prince Kuhio Park. The Subject Property is directly behind (mauka) the Lawai Beach Villas Phase III project which is currently under construction. The extreme east end of the property is presently occupied by Phase I of the Lawai Beach Villas project, a 4-story, 50-unit condominium building together with a parking area and a private sewage treatment plant. Phases II and III of the Lawai Beach Villas project

comprised of an additional 100-units combined is located to the far west and middle of the project. The area to the east of the Subject Property is in the State Land Use Urban District and is occupied by the pool and parking areas of the 71-unit Prince Kuhio condominium project. The area to the west of the Subject Property is also in the Urban Land Use District and is occupied by the 4-unit Likalani condominium project. Land to the north of the Subject Property is in the State Land Use Agricultural District and is presently undeveloped. Lawai Beach Road runs to the south of the Subject Property with a narrow county beach parcel running makai of the road.

2. The Subject Property is situated within the State Land Use Agricultural District as reflected on Land Use District Boundary Map K-8 (Koloa, Hawaii). The Kauai General Plan Update designates the Subject Property Urban Residential (UR). The County zoning of the property is Agricultural. As of August 22, 1984, the County of Kauai has approved Petitioner's Special Use Permit permitting Petitioner to begin construction of a swimming pool, jacuzzi and associated facilities. The County of Kauai has also issued Petitioner a building permit for the construction of said improvements. The Subject Property is not situated within the County's Special Management Area.

3. The property is approximately eight feet above mean sea level with the terrain being relatively flat, very rocky, and sloping gently towards a ponding area that retains current draining for the entire parcel. Rainfall for the Subject Property and the surrounding area averages approximately 35 inches per year. The Land Study Bureau Overall Productivity Rating for the area is E, reflecting soils of poor productivity. The U.S. Department of Agriculture Soil Conservation Service Soil Survey classifies the soil for the Subject Property as Waikomo very rocky silty clay (Wt). This soil type is very stony with bedrock at a depth of less than 20 inches. According to the Federal Flood Insurance Rate Maps, the Subject Property is not subject to Coastal High Hazards (tsunami). The Subject Property, however, is subject to 100-year flooding since the project site acts as a ponding area. It should be noted that this area suffered extensive damage and inundation from the ocean during Hurricane Iwa. Homes and the road fronting the project were completely destroyed. The Subject Property is not classified under the Department of Agriculture's Agricultural Lands of Importance to the State of Hawaii classification system.

4. The Petitioner requests the reclassification of the Subject Property from Agricultural to Urban in order to develop the Subject Property for recreational purposes to be

used in conjunction with the Petitioner's 150-unit Lawai Beach Villas a multi-family residential development immediately adjacent to the Subject Property. Petitioner proposes to build a 25 foot by 40 foot swimming pool, a jacuzzi, portions of a parking lot and open space areas on the Subject Property. Petitioner acquired the Subject Property from Alexander and Baldwin, Inc. in 1979 for the purpose of adjusting and improving a mutual property line. The one acre area was subsequently consolidated into the Petitioner's lot no. 9 (TMK: 2-6-05:4). The reclassification of the Subject Property would in effect place all of lot no. 9 into the State Land Use Urban District. According to the Petitioner the reclassification would enhance the residential project by providing an area for the recreational facilities and more open space. The density of the proposed residential development would not be increased by the reclassification of the one acre property.

The Petitioner estimates that the total improvements to which are presently under construction would not exceed \$80,000.00. The Petitioner has included a balance sheet for September 30, 1982 and September 30, 1983 which reflects assets amounting to \$219,192,409.00, liabilities of \$211,466,414.00 and stockholders' equity in the amount of \$7,725,995.00.

5. All parties to the proceeding agree that reclassification of the Subject Property will not have any significant adverse impacts upon the agricultural, archaeological, environmental, visual and recreational resources.

6. The reclassification of the Subject Property will not unreasonably burden public agencies to provide necessary amenities, services and facilities because:

- a. Water Service: Water service for the entire 150-unit multi-family residential development, of which the Subject Property will be a part, is available from the Kauai County Department of Water. A new 8 inch water line has been installed by the Petitioner to service the project.
- b. Sewage Treatment and Disposal: Sewage generated at the project site will be disposed through a private sewage treatment plant.
- c. Drainage: The Petitioner has stated that they will provide settlement ponds within the project area to meet the Kauai Department of Public Work's criteria for drainage. The drainage plan includes the use of the one acre Subject Property to retain storm water runoff at the site.

d. Roadway & Highway Services & Facilities:

Lawai Beach Road provides vehicular access to the Subject Property. The reclassification of the Subject Property will not in itself have additional impact upon roadways servicing the area since no additional residential units are proposed.

e. Schools: The State Department of Education has stated that the reclassification of the one acre Subject Property, as well as the 150-unit residential development, is expected to have negligible impact upon Koloa Elementary School and Kauai High and Intermediate Schools.

f. Police and Fire Protection Services: Police and fire protection services can be made available to the Subject Property from the Kauai Police Department and the Koloa Fire Station.

7. Based on a review of the Petition, the evidence adduced at the hearing and the provisions of Chapter 205 of the Hawaii Revised Statutes, The County of Kauai and the

State Department of Planning and Economic Development have recommended that the reclassification of the Subject Property be approved.

CONCLUSION OF LAW

Reclassification of the Subject Property, consisting of approximately one acre of land, situate at Koloa, Island and County of Kauai, State of Hawaii, from the Agricultural 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

IT IS HEREBY ORDERED:

That the property which is the subject of this Petition in this Docket No. A84-567, consisting of approximately one acre of land situate at Koloa, Island and County of Kauai, State of Hawaii, identified as Kauai Tax Map Key No. 2-6-05: portion 4 and more particularly identified on the map as Exhibit "A" attached hereto and incorporated herein, 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 12th day
of March, 1984, per Motions on December 18, 1984
and March 6, 1985.

LAND USE COMMISSION
STATE OF HAWAII

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

By T. Tacbian
TEOFILO PHIL TACBIAN,
Vice-Chairman and Commissioner

By Winona E. Rubin
WINONA E. RUBIN,
Commissioner

By Robert S. Tamaye
ROBERT S. TAMAYE,
Commissioner

By Lawrence F. Chun
LAWRENCE F. CHUN
Commissioner

By Toru Suzuki
TORU SUZUKI,
Commissioner

By Frederick P. Whittemore
FREDERICK P. WHITTEMORE,
Commissioner

By Richard B. F. Choy
RICHARD B. F. CHOY,
Commissioner

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OF THE STATE OF HAWAII

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METROPOLITAN MORTGAGE & SECURITIES) METROPOLITAN MORTGAGE &
CO., INC.) SECURITIES CO., INC.
)
To Amend the Agricultural Land Use)
District Boundary into the Urban)
Land Use District for approximately)
1 acre at Koloa, Kauai, Hawaii,)
Tax Map Key: 2-6-05: 4)
_____)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Land Use Commission 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:

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

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

METROPOLITAN MORTGAGE & SECURITIES CO., INC.
c/o Herman A. Wilson
P. O. Box 1601
Lihue, Kauai, Hawaii 96766

DATED: Honolulu, Hawaii, this 12th day of March, 1985

Esther Ueda

ESTHER UEDA
Executive Officer

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Dwg. No. 3004 (Revised 1/24/04)
 Source: LHM B - Deeds
 By: H.N. 1054

A84-567 METROPOLITAN MORTGAGE & SECURITIES CO., INC.

EXHIBIT A

| | | |
|----------------------|-----|------|
| TAXATION MAPS BUREAU | | |
| TERRITORY OF HAWAII | | |
| TAX MAP | | |
| FOURTH DIVISION | | |
| ZONE | SEC | PLAT |
| 2 | 6 | 05 |
| CONTAINING PARCELS | | |

Parcels dropped 8, 9, 2, 14, 15, 23, 17, 5, 12, 18, 16, 20,

H.N. 1054's, losses and vendors
 should be added on this tax map print out
 to be submitted to the Administration
 effective 2/1/04 (2nd) date hereafter 2/1/04
 2004, as amended by 2007 Proclamations 47-07
 and 51-07.

DOCKET NO. A84-567 - METROPOLITAN MORTGAGE & SECURITIES CO., INC.

A copy of the Land Use Commission's Decision and Order was served upon the following by regular mail on March 12, 1985.

EVERETT KANESHIGE, Deputy Attorney General
Department of the Attorney General
State Capitol, 4th Floor
Honolulu, Hawaii 96813

MR. MAX GRAHAM, County Attorney
Office of the County Attorney
County of Kauai
4396 Rice Street
Lihue, Hawaii 96766