

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of) DOCKET NO. A84-584
)
EDWARD P. PERREIRA, VIRGINIA) EDWARD P. PERREIRA,
PERREIRA, MANUEL P. PERREIRA,) VIRGINIA PERREIRA,
RUTH G. PERREIRA, ERNEST P.) MANUEL P. PERREIRA,
PERREIRA, VERONICA PERREIRA,) RUTH G. PERREIRA,
ERNEST A. PERREIRA, GAIL M.) ERNEST P. PERREIRA,
PERREIRA, WALTER P. PERREIRA,) VERONICA PERREIRA,
VIOLET PERREIRA, FLORA ALLENCASTRE,) ERNEST A. PERREIRA,
SATURNINO MAGALIANES and JANET) GAIL M. PERREIRA,
MAGALIANES,) WALTER P. PERREIRA,
) VIOLET PERREIRA,
To Amend the Rural Land Use) FLORA ALLENCASTRE,
District Boundary to Reclassify) SATURNINO MAGALIANES,
Approximately 3.99 Acres,) and JANET MAGALIANES
TMK: 2-7-11: 22,46, 47, 48, 51, 52,)
53, 54 at Haiku, Makawao, 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 on October 31, 1984, pursuant to Section 205-4 of the Hawaii Revised Statutes, as amended, and Part VI, Rule 6-1, of the Land Use Commission's ("the Commission") Rules of Practice and Procedure and District Regulation by EDWARD P. PERREIRA, MANUEL P. PERREIRA, RUTH G. PERREIRA, ERNEST P. PERREIRA, VERONICA PERREIRA, ERNEST A. PERREIRA, GAIL M. PERREIRA, WALTER P. PERREIRA, VIOLET PERREIRA, FLORA ALLENCASTRE, SATURNINO MAGALIANES, and JANET MAGALIANES ("Petitioners")

to amend the designation of the property comprising approximately 3.99 acres of land, situate at Haiku, Makawao, Island and County of Maui, State of Hawaii, identified as Maui Tax Map Key Nos. 2-7-11: 22, 46, 47, 48, 51, 52, 53, and 54 ("the Property") from the Rural to the Urban Land Use District.

PURPOSE OF THE PETITION

Petitioners propose this boundary amendment in order to subdivide the eight existing parcels into sixteen residential lots each comprising an area of approximately 11,000 sq. ft. Upon subdivision of the Property, Petitioners will convey as a gift to members of their immediate family the newly created lots.

THE HEARING

The Commission's hearing officer conducted the hearing on this Petition on February 26, 1985 in Wailuku, Maui, pursuant to Notice published on January 23, 1985 in the Maui News and the Honolulu Advertiser. Petitioners were represented by Lawrence M. C. Ing, Esq.; the County of Maui was represented by Clyde Murashige; the Department of Planning and Economic Development was represented by Daniel Yasui. The parties presented the following witnesses:

Petitioners

Edward Perreira - Petitioner

Manuel Perreira - Petitioner

County of Maui

Clyde Murashige - Staff Planner, County of Maui
Department of Planning

Department of Planning and Economic Development

Daniel Yasui - Staff Planner, Land Use Division,
Department of Planning and
Economic Development

POSITION OF THE PARTIES

The County of Maui - Approval. The 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 Property is owned in fee simple by the Petitioners herein and is located at Haiku Makawao, Island and County of Maui, State of Hawaii, and consists of approximately 3.99 acres, identified as Maui Tax Map Key No. 2-7-11: 22, 46, 47, 48, 51, 52, 53, and 54. The Property is located in Haiku fronting Kuiaaha Pauwela Homestead Road and adjoining the Lowrie Ditch. The Property currently consist of eight subdivided parcels which range in size from .48 acres to .58 acres. A single family dwelling is situated on each parcel.

2. The Property is located within the State Land Use Rural District. The Property abutts the existing State Land Use Urban District on its northern and western borders and the State Land Use Rural District on its southern and

eastern borders. The predominant land use of the immediate surrounding area is primarily residential.

3. The topography of the Property slopes from east to west towards Lilikoi Gulch. The United States Department of Agriculture Soil Conservation Service, Soil Survey Report for the Island of Maui classifies most of the soils of the area as Haiku Clay (HbC), said soils are primarily used for pineapple, pasture and home sites. According to the Department of Agriculture, the Property is not classified under the Agricultural Lands of Importance to the State of Hawaii (ALISH) System. The Land Study Bureau overall productivity rating for the site is identified as "C" or fair productivity potential. According to the Maui County Flood Insurance Study Maps (FIRM) prepared by the Federal Insurance Study Administration, the Property has been classified as being within zone "C", or area of minimal flooding. The Property is also located outside of the Special Management Area, which in Haiku is defined by the Hana Belt Road.

4. The County of Maui's Paia-Haiku Community Plan designates the Property for rural use. Chapter 6, Section 2.K of the Community Plan, however, indicates that consideration for the expansion of the State Land Use Urban District boundary should be given in situations where:

(a) That the District boundary changes reasonable and necessary in order to allow conveyance of property within families.

(b) That the proposed change is contiguous with the Urban or Rural District.

(c) That adequate public services and facilities are available or as can be so provided at reasonable costs to the Petitioner.

(d) That the proposed Land Use amendment shall have no significant adverse effects upon agricultural, natural, environmental, recreational, scenic, historic, or other resources of the area.

5. The Petition conforms to land use for the Property proposed by the Paia-Haiku Community Plan.

6. The Petitioners propose to subdivide the existing eight lots to a sixteen lot subdivision averaging of lots approximately 11,000 sq. ft. The Petitioners then intend to convey the eight newly created parcels to immediate family members for their personal use. The Petitioners indicate that development of the proposed subdivision would occur immediately upon obtaining requisite State and County permits. The Petitioners have further testified that they, as a group, will be able to finance the improvements to finalize the proposed subdivision in the amount of approximately \$20,000.00.

7. The reclassification of the Property will not adversely impact any resources of the areas since the Property is presently utilized for residential purposes.

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

(a) Access - Petitioners have indicated that they would do whatever is required, including pavement widening and relocation of utilities to comply with applicable County requirements.

(b) Water - Petitioners have indicated that they would comply with the County Department of Water Supply requirements, including the construction of required improvements to provide water to the proposed subdivision.

(c) Sanitation - The Petitioners intend to utilize cesspools for liquid waste disposal in accordance with applicable Maui County regulations.

(d) Fire and Police Protection - Fire services are existing at Paia, which is approximately eight miles away while police services presently exist for the Haiku area.

9. 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 Maui County Planning Department and the Department of Planning and Economic Development have recommended that the reclassification of the Property be approved.

CONCLUSION OF LAW

Reclassification of the Property, consisting of approximately 3.99 acres of land situate at Haiku, Makawao, Island and County of Maui, State of Hawaii, from Rural 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. A84-584, consisting of approximately 3.99 acres of land situate at Haiku, Makawao, Island and County of Maui, State of Hawaii identified as Maui Tax Map Key No. 2-7-11: 22, 46, 47, 48, 51, 52, 53, and 54 shall be and hereby is reclassified from the Rural District to the Urban District and the district boundaries of the Property be and is amended accordingly.

DOCKET NO. A84-585 - EDWARD P. PERREIRA, ET AL.

Done at Honolulu, Hawaii, this 29th day of August
1985, per motions on May 1, 1985 and July 24, 1985.

LAND USE COMMISSION
STATE OF HAWAII

By *T. Tacbian*
TEOFILO PHIL TACBIAN
Chairman and Commissioner

By *Frederick P. Whittemore*
FREDERICK P. WHITTEMORE
Vice Chairman and Commissioner

By *William W. L. Yuen*
WILLIAM W. L. YUEN
Commissioner

By *Toru Suzuki*
TORU SUZUKI
Commissioner

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

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

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

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Land Use District)	
)	

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

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

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

DATED: Honolulu, Hawaii this 29th day of August 1985.



ESTHER UEDA
Executive Officer

DOCKET NO. A84-586 - EDWARD P. PERREIRA, ET AL

A copy of the Land Use Commission's Decision and Order was served upon the following by regular mail on August 29, 1985.

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

H. RODGER BETTS, Corporation Counsel
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