

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

In the Matter of the Petition of)
Y-O LIMITED PARTNERSHIP)
To Amend the Agricultural Land Use)
District Boundary into the Urban)
Land Use District for Approximately)
408.719 Acres of Land at Kaloko and)
Kohanaiki, North Kona, Hawai'i, Tax)
Map Key No.: 7-3-09: 19)
_____)

DOCKET NO. A81-525
ORDER GRANTING MOTION
FOR THIRD EXTENSION OF
TIME TO APPLY FOR
REDISTRICTING OF PHASE
II

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LAND USE COMMISSION
STATE OF HAWAII

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ORDER GRANTING MOTION FOR THIRD EXTENSION OF TIME
TO APPLY FOR REDISTRICTING OF PHASE II

Y-O Limited Partnership, a Hawai'i limited partnership ("Petitioner"), filed a Motion for Third Extension of Time to Apply for Redistricting of Phase II ("Motion") on October 24, 1997, pursuant to sections 15-15-70, 15-15-78, 15-15-79, and 15-15-94, Hawai'i Administrative Rules ("HAR"). Attached to the Motion were a Memorandum in Support of the Motion and an Affidavit of Paul H. Sato, Esq., counsel to Petitioner.

The Land Use Commission ("Commission"), having considered Petitioner's Motion, the Memorandum in Support of the Motion, the Affidavit of Paul H. Sato, Esq., and the testimony and the positions of the Office of Planning ("OP") and the County of Hawai'i Planning Department ("Planning Department"), hereby makes the following findings of fact, conclusions of law, and decision and order:

Background

1. By Findings of Fact, Conclusions of Law and Decision and Order ("Decision and Order") issued January 20, 1983, this Commission redistricted approximately 213.473 acres of land from the Agricultural District to the Urban District ("Phase I"), identified as Tax Map Key No.: 7-3-09: por. 19, at Kaloko and Kohanaiki, North Kona, Hawai'i. This Commission also incrementally approved the remaining area of Petitioner's subdivision development, consisting of approximately 195.246 acres ("Phase II"), identified as Tax Map Key No.: 7-3-09: por. 19, pursuant to section 6-2 of the State Land Use District Regulations¹.

2. On September 21, 1987, Petitioner filed a Motion for Extension of Time to Apply for Redistricting of Phase II ("Motion for Extension").

3. On October 27, 1987, and by Order Approving Motion for Extension of Time to Apply for Redistricting of Phase II dated January 12, 1988, this Commission approved Petitioner's Motion for Extension. Petitioner was granted an extension of time to not later than January 20, 1993, to substantially complete Phase I and to apply for redistricting of Phase II.

¹ The current tax map key numbers of the subject property are 7-3-09: 32 (Phase I) and 7-3-09: 19 (Phase II). Following the reclassification, a survey of the subject property was conducted in 1992 in order to prepare a subdivision map to subdivide the mauka-makai connector road lot from the rest of the subject property. During the survey process, certain discrepancies arose between earlier surveys and the 1992 field work. The discrepancies were resolved and a final subdivision map was approved by the County of Hawai'i and filed at the Bureau of Conveyances as File Plan No. 2092. Said map depicts Phase I, excluding the connector road, as 207.946 acres. Phase II is depicted as 195.319 acres.

4. On September 24, 1992, Petitioner filed a Motion for Second Extension of Time to Apply for Redistricting of Phase II ("Motion for Second Extension").

5. On October 29, 1992, and by Order Granting Motion for Second Extension of Time to Apply for Redistricting of Phase II and Amending Conditions of the Decision and Orders Dated January 20, 1983 and June 13, 1990, dated November 17, 1992, this Commission approved Petitioner's Motion for Second Extension. Petitioner was granted an extension of time to not later than January 20, 1998, to substantially complete Phase I and to apply for redistricting of Phase II. This Commission also amended certain conditions and imposed two additional conditions upon Petitioner.

6. Petitioner's Motion requests this Commission for a third extension of time to substantially complete Phase I and to apply for redistricting of Phase II. Petitioner requests that the current timeframe be extended for an additional five-year period, from January 20, 1998, to and including, January 20, 2003.

7. Petitioner states that it has continuously moved forward with the completion of Phase I since this Commission granted the first and second extensions of time. Petitioner states that factors beyond its control, including the change in the economy in Hawai'i and elsewhere, have delayed its development schedule.

8. Petitioner states that it only received approval of its construction plans for the roadways and drainage system

within the first increment of Phase I from the Planning Department in June 1997.

9. Petitioner states that it has committed a substantial amount of funds to the development of Phase I and anticipates committing substantially more funds and time in completing the necessary onsite and offsite infrastructure in Phase I.

10. Petitioner states that the County of Hawai'i, in its Keahole and Kailua Development Plan, and the State, through its Five-Year Boundary Review, recognize that the area in which Phase I and Phase II are located should be designated for and remain in urban use.

Position of the Parties

11. Both the Planning Department and OP had no objections to Petitioner's Motion.

Petitioner's Efforts Towards Development of Phase I

12. Since receiving the second extension of time, Petitioner has accomplished the following: 1) completion of the channelized intersection at Mamalahoa Highway and Hina Lani Street; 2) the subdivision and dedication of the mauka-makai roadway; 3) the dedication of the street lighting system and water transmission system; and 4) the receipt of subdivision construction plan approval for Increment I of Phase I from the Planning Department.

13. This Commission finds that Petitioner has demonstrated progress, and while not meeting the "substantial completion" requirement of this Commission's Decision and Order,

Petitioner has demonstrated a good faith effort towards compliance.

14. This Commission finds that unforeseen delays in obtaining approval of its subdivision construction plans and the poor economy in Hawai'i and elsewhere were not under the sole control of Petitioner, and that an extension of time to substantially complete Phase I and to apply for redistricting of Phase II is justified.

CONCLUSIONS OF LAW

This Commission finds upon a preponderance of evidence that pursuant to section 205-2, Hawai'i Revised Statutes ("HRS"), section 6-3 of the State Land Use District Regulations, and section 15-15-79, HAR, Petitioner has made a good faith effort towards development of Phase I, and that an extension of time of five years to substantially complete Phase I and to apply for redistricting of Phase II is reasonable and non-violative of section 205-2, HRS, section 6-3 of the State Land Use District Regulations, and section 15-15-79, HAR.

ORDER

IT IS HEREBY ORDERED that Petitioner's Motion for a five-year extension to substantially complete Phase I and apply for redistricting of Phase II be and is hereby GRANTED, and Petitioner is GRANTED an extension of time to not later than January 20, 2003, to substantially complete Phase I and to apply for redistricting of Phase II.


Done at Honolulu, Hawai'i, this 22nd day of December 1997,
per motions on December 2, 1997 and December 18, 1997.

LAND USE COMMISSION
STATE OF HAWAI'I

By 
RUPERT K. CHUN
Chairperson and Commissioner

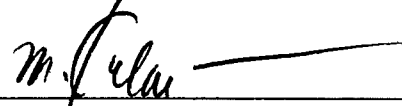
By (absent)
M. CASEY JARMAN
Vice Chairperson and Commissioner

By (absent)
LAWRENCE N.C. ING
Vice Chairperson and Commissioner

By 
P. ROY CATALANI
Commissioner

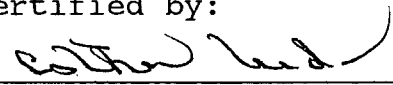
By (absent)
ISAAC FIESTA, JR.
Commissioner


By (absent)
HERBERT S.K. KAOPUA, SR.
Commissioner

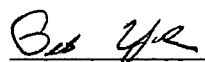
By 
MERLE A. K. KELAI
Commissioner

Filed and effective on
December 22, 1997

Certified by:


Executive Officer

By 
JOANN N. MATTSON
Commissioner

By 
PETER YUKIMURA
Commissioner

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CERTIFICATE OF SERVICE

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I hereby certify that a copy of the Order Granting Motion for Third Extension of Time to Apply for Redistricting of Phase II was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

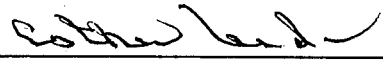
DEL. RICK EGGED, Director
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CERT. PAUL H. SATO, ESQ., Attorney for Petitioner
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220 South King Street
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, this 22nd day of December 1997.



ESTHER UEDA
Executive Officer