

BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A73-367
)	
JOSEPH FLORES)	
)	
For Reclassification of Certain)	
Lands Situated At Lawai Homesteads,)	
Koloa, Island of Kauai.)	
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PROPOSED AMENDED DECISION AND ORDER

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Koloa, Island of Kauai.)
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PROPOSED AMENDED DECISION

This matter was originally a proceeding pursuant to Section 205-4 of the Hawaii Revised Statutes upon the petition of JOSEPH FLORES to amend district boundaries and reclassify from Agricultural to Urban approximately 24.15 acres of land situated at Lawai Homesteads, Koloa, Island of Kauai. On December 7, 1973, this Commission reclassified approximately 16.7 acres of the subject property, identified by Tax Map Key No. 2-5-6:a portion of Parcel 13, from Agricultural to Urban and amended the District Boundaries accordingly upon certain conditions set forth more fully herein. There subsequently having been reason to believe that the Petitioner, JOSEPH FLORES, has failed to perform according to the conditions imposed upon reclassification of the subject property from Agricultural to Urban in this Docket No. A73-367, this Commission voted on September 24, 1976 to issue an Order To Show Cause directed to JOSEPH FLORES ordering him to appear and show cause why the subject property should not revert to its former land

use classification or be changed to a more appropriate classification because of his apparent failure to perform according to the conditions imposed upon reclassification of the subject property. Notice of this proceeding was served upon the Planning Department of the County of Kauai and upon the Land Use Division of Department of Planning and Economic Development of the State of Hawaii. A hearing was held on the Order To Show Cause on November 22, 1976 in Lihue, Kauai, at which time this Commission voted to continue the matter for a period of three months or until such time as JOSEPH FLORES submitted a petition to this Commission for modification or deletion of conditions. On February 15, 1977, JOSEPH FLORES submitted a written request to Commission for waiver of all the original conditions imposed upon reclassification of the subject property. Further hearings were held on the Order To Show Cause and JOSEPH FLORES request for waiver of original conditions in Honolulu on April 6, 1977 and on April 13, 1977. This decision and order is issued as a proposed decision and order pursuant to Section 91-11, HRS, in that not all of the commissioners who participated in rendering this decision attended each of the several hearings which were conducted in this proceeding. JOSEPH FLORES may, if he wishes, file written exceptions to this proposed decision and order. If written exceptions are filed, a further hearing will be held at which JOSEPH FLORES may present argument to this Commission before a final decision is entered. If no written exceptions are filed within fifteen (15) days of the date of this proposed decision and order, it will be entered as a

final decision and order of this Commission. The Commission, having duly considered the record in this Docket, hereby makes the following proposed findings of fact, and conclusions of law.

PROPOSED FINDINGS OF FACT

1. Reclassification of the subject property, approximately 16.7 acres situated at Lawai Homesteads, Koloa, Island of Kauai, identified by Tax Map Key No. 2-5-6: a portion of Parcel 13, from Agricultural to Urban by this Commission on December 7, 1973 was subject to the conditions:

"1. That the petitioned area be developed in accordance with all representations made in writing and orally before the Land Use Commission, and in compliance with all County requirements."

"2. . . . that the Land Use Commission be informed as to the progress of the development within the next 6 months."

2. JOSEPH FLORES has performed accordingly the second condition by apprising this Commission of the progress of his development on May 20, 1974.

3. The written and oral representations which were made before this Commission and which this Commission, by its first condition, required that the reclassified subject property be developed in accordance with, including the following:

a. That the 16.7 acres would be subdivided into seventy-two (72) lots and developed into a residential subdivision by a joint venture of the Hawaii Rural Development Corporation, a nonprofit corporation, and the

Hawaii Housing Authority with financing from the federal government.

b. That homes of a pole house design would be constructed on all seventy-two (72) lots.

c. That of the seventy-two (72) homes constructed, six (6) were pledged to local buyers in order to recover initial costs incurred by JOSEPH FLORES, fourteen (14) would be sold on the open market, and fifty-two (52) would be sold to low and moderate income families.

d. That profits from the sale of fourteen (14) house and lot packages sold on the open market for \$42,000 to \$45,000 would be used to subsidize the cost of the fifty-two (52) houses to be sold to low and moderate income families, approximately \$25,000, so that the purchase price to those families would range from \$23,000 to \$26,200.

4. For a number of reasons, including lack of financing from the Hawaii Housing Authority and the passing of time with resulting increase in costs, JOSEPH FLORES is not able to perform according to the representations which he made to this Commission, which representations this Commission imposed as conditions upon reclassification of the subject property to Urban.

5. JOSEPH FLORES now proposes to sell his interest in the subject property as purchaser on an agreement of sale to DANIEL R. MATSUKAGE who will then subdivide and develop the subject property into sixty-seven (67) residential lots. DANIEL R. MATSUKAGE has agreed not to sell the sixty-seven (67) residential lots on the open market for the first six (6) months following completion of the subdivision, but to only sell to purchasers approved by JOSEPH FLORES during that period. JOSEPH FLORES intends to obtain purchasers for all of the sixty-seven (67) lots during the six (6)

month period, construct homes on twenty (20) of the lots for sale on the open market as moderate cost house and lot packages for approximately \$50,000 and up, and to sell the remaining forty-seven (47) lots at the buyer's election as either improved lots for approximately \$15,000 or as house and lot packages for approximately \$38,000 to \$40,000. DANIEL R. MATSUKAGE has agreed to make these lots available for sale through JOSEPH FLORES during the six (6) month period following subdivision at DANIEL R. MATSUKAGE's cost plus twenty-five percent (25%) or approximately \$15,000. JOSEPH FLORES intends to use the profit made on the sale of the twenty (20) moderate cost, approximately \$50,000 and up, house and lot packages, and the profit from the sale of his adjoining Agricultural land which he plans to subdivide into six (6) one-acre lots, to subsidize to the cost of the forty-seven (47) lots and house and lot packages to low income families. The subsidy will be by reduction in the cost of these lots or the cost of houses to be constructed thereon, or by direct grant to the purchaser which may be made upon or subsequent to purchase. The subsidy would reduce the costs of \$15,000 for a lot and \$38,000 to \$40,000 for a house and lot package by an undetermined amount.

6. If JOSEPH FLORES is unable to obtain twenty (20) purchasers for the moderate cost house and lot packages and forty-seven (47) purchasers for the lot or house and lot packages for low income families, he intends to sell as many of the twenty (20) moderate cost house and lot packages and as many of the forty-seven (47) lots or house

and lot packages for low income families as possible. Minimally, JOSEPH FLORES intends to sell five (5) moderate cost house and lot packages and seventeen (17) lot or house and lot packages to low income families. Those lots which JOSEPH FLORES does not sell within the first six (6) months after subdivision, Mr. Matsukage will sell on the open market.

7. If JOSEPH FLORES is unable to provide at least seventeen (17) lots and house and lot packages available to low income families, DANIEL R. MATSUKAGE intends to consult with the Hawaii Housing Authority on the availability of programs to meet the objective of providing housing to low income families.

8. JOSEPH FLORES and DANIEL R. MATSUKAGE have both represented to this Commission that they would support reasonable anti-speculation devices for those lots and house and lot packages which are sold on a subsidized basis to low income families.

PROPOSED CONCLUSIONS OF LAW

In that JOSEPH FLORES cannot perform according to the conditions imposed upon reclassification of the subject property in this Docket, development of any low income housing will not occur on the subject property unless the conditions are removed or amended. Development of the subject property as JOSEPH FLORES now proposes to develop and market it with the assistance of DANIEL R. MATSUKAGE is reasonable, not violative of Section 205-2, HRS, and consistent with the interim policies and criteria

established pursuant to Section 205-16.1, HRS, particularly subsection (5) thereof which provides, among other things, a preference for petitions which will provide needed housing accessible to existing or proposed employment centers, or assist in providing a balanced housing supply for all economic and social groups. Amendment of the conditions imposed upon reclassification of the subject property in this Docket in order to permit the development as now proposed is reasonable, not violative of Section 205-2, HRS, and consistent with the interim policies and criteria established pursuant to Section 205-16.1, HRS.

PROPOSED AMENDED ORDER

IT IS HEREBY ORDERED:

That in accordance with the representations made by JOSEPH FLORES and DANIEL R. MATSUKAGE in this proceeding, the conditions imposed upon reclassification of the subject property in this Docket No. A73-367 be amended by deleting the previously existing conditions and substituting the following conditions:

1. That the subject property be subdivided and developed into sixty-seven (67) residential lots by DANIEL R. MATSUKAGE.

2. That during the first six (6) months following completion of the residential lot subdivision, JOSEPH FLORES use his best efforts to obtain purchasers for five (5) of the residential lots for sale on a house and lot package basis at an approximate sales

price of \$50,000 and up, depending upon the model of home selected by the purchaser and that JOSEPH FLORES use his best efforts to obtain purchasers for seventeen (17) of the residential lots for sale, at the buyer's election, either as improved residential lots or on a house and lot package basis. These seventeen (17) lots will be sold to low and moderate income families for approximately \$15,000 for an improved residential lot and for approximately \$38,000 to \$40,000 for a house and lot package.

3. That profit made by JOSEPH FLORES from the sale of the five (5) house and lot packages and profit made by JOSEPH FLORES from the sale of his adjoining Agricultural land which he plans to subdivide into six (6) one-acre agriculture lots, be used by JOSEPH FLORES to subsidize the cost of the seventeen (17) residential lots and residential lot and house packages to low and moderate income families; which subsidy shall be either by reduction in the cost of these lots or reduction in the cost of houses to be constructed thereon, or by direct grant to the purchaser upon or subsequent to purchase. The subsidy will reduce the approximate costs of \$15,000 for a residential lot and \$38,000 to \$40,000 for a house and lot package.

4. That if JOSEPH FLORES is unable to deliver within the first six (6) months following completion of the subdivision at least seventeen (17) residential lots and house and lot packages to low and moderate income families

at the approximate costs of \$15,000 for a residential lot and \$38,000 to \$40,000 for a house and lot package and further reduce those costs by application of a subsidy derived from his profit on the sale of five (5) moderate cost, approximately \$50,000 and up, house and lot packages and his profit from the sale of his adjoining Agricultural land which he plans to subdivide into six (6) lots and sell as agriculture lots, DANIEL R. MATSUKAGE use his best efforts to provide low income housing through whatever programs may be available with the Hawaii Housing Authority and other governmental agencies.

5. That the following Anti-Speculation Provisions, which provisions shall take the form of a Declaration of Conditions, Limitations, Covenants and Restrictions filed with the Bureau of Conveyances, be imposed as covenants running with the land on any of the seventeen (17) residential lots which are sold on a subsidized basis to low and moderate income families:

a. The purchaser must complete construction of a dwelling on the lot and must occupy the same within six years from the date of the deed (the "Construction Period").

b. The purchaser must sign a sworn statement that he will own and personally occupy the lot for residential use until a specified date, which date will be seven (7) years from the date of final subdivision approval by the County of Kauai (the "Restriction Period").

c. If within the seven (7) year Restriction Period the purchaser desires to transfer the lot voluntarily or involuntarily (other than by will or intestate succession) to a person other than an immediate family member (i.e. a lineal descendant of the purchaser either by blood, adoption, a parent, grandparent, spouse and brother or sister), JOSEPH FLORES shall have the right of first refusal which right may be exercised within forty-five (45) days by JOSEPH FLORES or by a ready and willing low income family approved by JOSEPH FLORES offering to purchase the lot and improvements thereto at an agreed or established price. If this right of first refusal is not exercised within forty-five (45) days, then the purchaser shall be free to transfer his lot without restriction.

d. If the purchaser fails to complete construction of a house within the Construction Period, or fails to occupy the lot during the seven (7) year Restriction Period, JOSEPH FLORES or a ready, willing, and able low income family approved by JOSEPH FLORES shall have the right to purchase the lot and any improvements thereto at an agreed or established price and the purchaser shall deliver the lot and improvements within forty-five (45) days from offer.

e. The purchase price to JOSEPH FLORES or to a ready, willing, and able low income family approved by JOSEPH FLORES shall be the sum of: (a) the original purchase price, (b) actual mortgage and closing costs, (c) the purchaser's cost of improvements as determined by agreement or arbitration, and (d) the actual financing cost of any improvements to the lot.

f. Any transfer of title pursuant to the right of first refusal in clause (c) or the right of purchase in clause (d) shall be subject to all of the Anti-Speculation Provisions contained within the Declaration of Conditions, Limitations, Covenants, and Restrictions filed with the Bureau of Conveyances, as covenants running with the land for the remaining period of the Restriction Period or for five (5) years, whichever is greater.

g. The provisions of the Declaration will be subject and subordinate to the lien of any mortgage for the purchase of lots and construction of improvements thereon.

6. That JOSEPH FLORES and DANIEL R. MATSUKAGE make substantial progress on the proposed development within three (3) years from the date of the final Amended Decision and Order in this Docket, and that sale of

lots begin immediately upon completion of the sub-
division.

Done at Honolulu, Hawaii, this 26th day of
April, 1977, by motion passed by the Commission on
April 13, 1977, in Honolulu, Hawaii.

LAND USE COMMISSION
STATE OF HAWAII



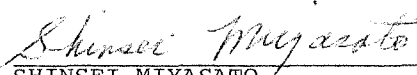
EDDIE TANGEN
Chairman and Commissioner



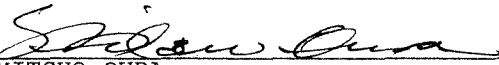
STANLEY SAKAHASHI
Vice Chairman and Commissioner



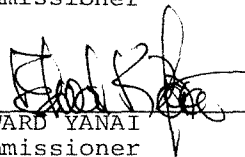
CHARLES DUKE
Commissioner



SHINSEI MIYASATO
Commissioner



MITSUO OURA
Commissioner



EDWARD YANAI
Commissioner