

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition)
)
 of)
)
 LIHUE PLANTATION COMPANY, LTD.)
 and HRT, LTD.,)
)
 For Reclassification Of Certain)
 Lands Situated At Lihue, Island)
 of Kauai.)
 _____)

DOCKET NO. A75-397

DECISION AND ORDER

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DECISION AND ORDER

This matter, being a proceeding pursuant to § 205-4 of the Hawaii Revised Statutes to consider a Petition to amend district boundaries and reclassify from Agriculture to Urban approximately 30 acres of land situated at Lihue, Island of Kauai, was heard by the Land Use Commission at the State Office Building, Lihue, Kauai, on January 12, 1976. Lihue Plantation Company, Ltd., HRT, Ltd., the Kauai County Planning Department, and the Department of Planning and Economic Development, State of Hawaii, were admitted as parties in this Docket.

The Commission having duly considered the record in this Docket, the proposed findings of fact and conclusions of law submitted by the Petitioner and the objections thereto by the Kauai County Planning Department, and the findings of fact and conclusions of law proposed by the Department of Planning

and Economic Development, hereby makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The subject property is located at Lihue, Kauai and is identified by Tax Map Key No. 3-7-01:1. The total area of the parcel is 420.711 acres and the area proposed for redistricting is approximately 30 acres. Lihue Plantation Company, Ltd. is the fee simple owner of the subject parcel and HRT, Ltd. is the purchaser under unrecorded agreements of sale made on or around December, 1973 and March, 1974. HRT, Ltd. purchased the land by agreement of sale with no condition on district boundary amendments, i.e., the land will not revert back to Lihue Plantation Company, Ltd. if the land is not reclassified as Urban.

2. The subject parcel is contiguous to an existing commercial use on the South (the Ala Moana Bowl, Inc.) and Wilcox Hospital on the North. The County of Kauai has zoned a 150 foot deep strip along the subject parcel fronting Kuhio Highway for general commercial use, containing approximately four acres, and the rest of the subject parcel R-20TO (20 houses to one acre of land). A 150-foot deep strip of land on the mauka side of the subject parcel, containing approximately four acres, has also been zoned for general commercial use by the County of Kauai.

3. The topography of the subject property

is quite level with the advantage of natural gullies for drainage and the subject property is reasonably free from floods and other natural disasters.

4. The subject property is presently in cane production and has been for some time. The Land Study Bureau rates the area as "B" productivity lands. The U.S.D.A. soil conservation survey designates soils of the area as Lihue silty clay, zero to eight percent (0-8%) slope. The properties of this soil are: slight erosion hazard, with capability classification II (good for cultivation).

5. Areas to the north, west and south of the subject property are within the Urban District and areas to the east are within the Agricultural District and in cane production. The surrounding land usage and county zoned designations are compatible with the intended use.

6. The subject parcel is easily accessible from Kuhio Highway and is highly accessible through the following public facilities thus minimizing public expenditure for such service: (a) a fire station which is within five minutes drive; (b) the police department which is within three minutes drive; (c) and electrical and telephone lines which front the subject parcel.

7. In 1964, the State Land Use Commission classified the subject land within an Urban District. On February 26, 1971, Lihue Plantation Company, Ltd. made an application to the State Tax Office to

dedicate the subject parcel for Agricultural use; on June 26, 1971, the State Tax Office denied the agricultural dedication based on the reason that the subject parcel had greater suitability for Urban use than for Agricultural use, and that it was the State's action against dedicating the land for agricultural use that caused Lihue Plantation Company, Ltd. to proceed with development plans for this area; on July 20, 1971, the Kauai County Council designated the subject parcel as single-family residential on the County General Plan; on August 15, 1972, the Kauai County Council designated a portion of the subject parcel R-20 and R-4/STP on the County Zoning Map; on May 15, 1974, the Kauai County Council designated a strip of approximately 150 feet fronting Kuhio Highway from the Ala Moana Bowling Alley to Wilcox Hospital as general commercial; and that in December of 1974, the State Land Use Commission reclassified the subject parcel from the Urban to the Agricultural District.

8. On January 7, 1975, the Commission reclassified 87 acres from the Urban to the Agricultural District (Docket K74-18), and the K74-20 redistricting action by the Commission effectively eliminates the adjacent K74-19 area containing 14 acres just makai of Wilcox Hospital by cutting off economical access resulting in the net increase in the Lihue-Hanamalu area of only Urban 31 acres.

9. HRT, Ltd. proposes to develop the subject property into a shopping center complex containing approximately 200,000 to 250,000 square feet of floor space. HRT, Ltd. expects to develop the subject parcel in phases; that the first phase will cover approximately 60,000 to 75,000 square feet of commercial space and that the entire development should be substantially completed within five years.

10. The proposed development will not require relocation of families and will not disturb any religious or historical sites or artifacts.

11. That there will be no decrease in employment as a result of withdrawing the subject parcel from Agricultural use in view of Lihue Plantation Company, Ltd.'s new lease from Grove Farm Company for an additional 2,800 acres of land for Agricultural use, giving Lihue Plantation Company, Ltd. a total cane growing area of approximately 17,700 acres.

12. When the commercial center is fully developed, approximately 300 employees will be employed. In addition, another 100 employees will be employed during the construction phase.

13. HRT, Ltd. purchased the subject property for approximately \$76,000 per acre with the intention of using the land for commercial use, and when it purchased the property it was in the Urban District but that it was subsequently reclassified by the Commission to Agriculture in December, 1974.

14. Harry Weinberg, who has controlling interest in HRT, Ltd. has had over 40 years of experience in real estate business and has owned, developed and operated 14 shopping centers here and on the mainland; he has not sold any of his shopping centers.

15. The financial statement submitted by HRT, Ltd. clearly shows that it is in sound financial condition and has the financial capacity to develop the subject parcel.

16. The Lihue Shopping Center Annex has been certified for occupancy since August of 1975, and since that date seven of the eight shops have been leased, and there have been several telephone calls and one letter expressing an interest in 54,000 square feet of floor space in the proposed development.

17. The Kauai Water Department's master plan for the Island of Kauai shows that the subject property is within the master plan's service limit for County domestic water;

(a) the Water Department of the County of Kauai has made no objection to the proposed change to Urban District provided that any approval of actual development or subdivision of this area would be dependent upon the adequacy of the source, storage and transmission facilities as then existing;

(b) there is a 10-inch and six-inch waterline fronting the subject parcel on Kuhio Highway,

and a 16-inch waterline is proposed from Ahukini Road to Hanamalu and is already funded by the State; the 16-inch waterline will be completed at the end of June, 1976, and this waterline will adequately serve the proposed development;

(c) there is no demand on the domestic water service from the existing land use of the subject property since the subject property requires only irrigation water from plantation sources.

(d) presently, there is an inadequate source of water to serve the proposed shopping center development but diversion of plantation mill water for domestic use could serve as a source of water for the proposed development;

(e) the policy of the Kauai County Water Board is a "first come first served" basis for water services;

(f) generally, more water is necessary for residential use and industrial use than for commercial use;

18. The subject property is within the master plan service area for the Lihue Water/Waste Water System as taken from the Kauai County Waste Water Management Plan;

(a) presently, sewage treatment plant facilities lack the capacity to serve the proposed shopping center on the subject property;

(b) the Department of Water Works has prepared the Master Plan and Reassessment Plan of the

present Lihue sewage system, and this Plan provides for additional expansion of the sewer services area and enlargement of the treatment plant to accomodate the land use changes proposed in the Lihue Development Plan;

(c) expansion of the existing public sewage system should adequately meet the needs of any future increase in land zoned for commercial use, and such expansion should be completed in early 1979 contingent upon the availability of federal funds;

(d) only a small portion of the proposed development of the subject property could be served through the proposed expansion of the existing sewage treatment plant by 1979.

19. The adequacy of sewer and water services applies to any proposed development in the Lihue area, and this proposed development must obtain the necessary approval and permits from the County of Kauai.

20. In April, 1975, Kauai County engaged the services of EDAW, Inc., and Muroda & Associates, Inc. to develop the Lihue Development Plan. These same consultants had previously prepared the Kauai County General Plan, the Comprehensive Zoning Ordinance and the Subdivision Laws. The Kauai County Council had authorized the development of the Lihue Development Plan and the Planning Commission had appointed these consultants to prepare the Plan.

21. The Lihue Development Plan is only a

draft plan and it has not been approved or reviewed by the County Planning Commission, or by the County Council who has the final authority to reject, amend or approve said Plan.

22. The Lihue Development Plan contemplates an increase in population of 10,000 to 15,000 by 1985 and an increase in employment of 4,500 to 7,000 jobs within that period, and the Lihue area is seen as the major commercial and civic center of the entire Island of Kauai.

23. Employment opportunity directly affects population and will induce migration; where people live and where there is increased commercial activity is dependent upon where there is employment and Lihue is the focal point of employment opportunities on Kauai.

24. The Lihue Development Plan as entered into evidence will be submitted without further amendment to the Kauai County Planning Commission for approval. The Plan proposes commercial use of land other than the subject property, proposing that the commercial hub of Lihue remain between the existing Lihue Shopping Center and the proposed realignment of Ahukini Road and not upon the subject property.

25. The Lihue Development Plan proposes to place 120 acres in the commercial district, and a portion of the subject property is proposed for commercial use where it borders Ahukini Road.

26. In 1971, the General Plan adopted by the

Kauai County Council designated the subject property for single-family residential use. In 1972, the Kauai County Council adopted a Comprehensive Zoning Ordinance which zoned the subject property as a residential district (R-20). In May, 1974, the Kauai County Council zoned a portion, approximately four acres of the subject property, for general commercial use (C-G).

27. The Council of the County of Kauai has passed a resolution requesting that the Land Use Commission redistrict the subject parcel to Urban, although the resolution does not specifically endorse the concept of a shopping center development as proposed for the subject property.

28. There is a need for more commercial zoned land and the Petitioners have demonstrated that they can meet this need.

CONCLUSIONS OF LAW

1. Reclassification of the subject property from the Agriculture to the Urban District will not substantially impair actual or potential agriculture production in the vicinity of the subject property, and reclassification is reasonably necessary to accomodate urban growth.

2. Amendment to the district boundary as Petitioners propose is reasonable, not violative of § 205-2, HRS, and consistent with the interim policies

and criteria established pursuant to § 205-16.1, HRS, and State Land Use District Regulations Rules 2-2, 3-1, and 6-1.

RULING ON PROPOSED FINDINGS

Any proposed finding submitted by a party and not already ruled upon by the Commission by adoption herein or rejected by a clearly contrary finding of fact herein, is ruled upon as follows:

1. Petitioner's Proposed Finding No. 3 is rejected because of uncertainty over its meaning and DPED's similar Proposed Finding No. 4 is adopted as Finding No. 3.

2. Petitioner's Proposed Finding No. 11 is rejected as not established by the evidence.

3. Petitioner's Proposed Finding No. 13 is rejected as not established by the evidence.

4. Petitioner's Proposed Finding No. 14 is rejected as not established by the evidence and DPED's Proposed Findings No. 45, 46, and 47 are adopted as Finding No. 26.

5. Petitioner's Proposed Finding No. 19 is rejected in favor of DPED's Proposed Finding No. 28 which more accurately states the facts as supported by the evidence and is adopted as Finding No. 16.

6. Petitioner's Proposed Finding No. 23 is rejected as irrelevant.

7. Petitioner's Proposed Finding No. 24c is rejected in favor of DPED's more accurately stated Proposed Finding No. 35 adopted at Finding No. 17d.

8. Petitioner's Proposed Finding No. 25d is rejected as contrary to the evidence.

9. DPED's Proposed Findings No. 15, 16, and 17 are rejected as not relevant.

10. DPED's Proposed Findings No. 20 and 21 are rejected as not established by the evidence.

11. DPED's Proposed Finding No. 22 is rejected as not relevant.

12. DPED's Proposed Findings No. 52, 53, 54, and 55 are rejected as not relevant.

13. DPED's Proposed Findings No. 59 and 60 are rejected as not established by and contrary to the evidence.

14. DPED's Proposed Findings No. 61 and 64 are rejected as not relevant.

ORDER

IT IS HEREBY ORDERED;

That the property which is the subject of this Petition in Docket No. A75-397, approximately a 30-acre portion of the parcel identified by Tax Map Key No. 3-7-01:1 and fronting Kuhio Highway, are hereby reclassified from the Agriculture to the Urban District classification

and the District Boundaries are amended accordingly.

Done at Honolulu, Hawaii, this 9th day of
April, 1976, by Motion passed by the Commission on March
29, 1976.

LAND USE COMMISSION
STATE OF HAWAII

By Eddie Inoué
Chairman

Stan Sakakuchi
Commissioner

Sanji Yamamura
Commissioner

Commissioner

Commissioner

Commissioner

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Commissioner

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Commissioner

Paul K...
Commissioner

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Land Use Commission's Decision and Order for Docket A75-397 was personally served on this 9th day of April, 1976 to:


Mr. Hideto Kono, Director
Department of Planning & Economic Development
Kamamalu Building
Honolulu, Hawaii 96813;

and served by certified mail on this 9th day of April to:

Mr. Brian Nishimoto
Planning Director
Kauai Planning Department
4280 Rice Street
Lihue, Kauai 96766

Mr. Roy Takeyama, Esq.
33 S. King Street, Suite 223
Honolulu, Hawaii 96813

Mr. Francis M. Izumi, Esq.
Izumi & Tanaka
7th Floor, 888 Mililani Street
Honolulu, Hawaii 96813


AH SUNG LEONG
ACTING EXECUTIVE OFFICER
LAND USE COMMISSION