

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition)
)
 of)
)
 BLACKWELL CONSTRUCTION, INC.)
 for a Petition to amend the)
 district boundary of property)
 situated at Wailua Homesteads,)
 Wailua, County of Kauai.)
 _____)

DOCKET NO. A77-431

DECISION AND ORDER

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FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION AND ORDER

The above-entitled matter, a proceeding initiated by Petition of Blackwell Construction, Inc., pursuant to the Hawaii Revised Statutes, Chapter 205, and the Rules of Practice and Procedure of the Land Use Commission, State of Hawaii, to amend the land use district boundary of certain land (hereinafter called the "subject property") situated at Wailua, Kawaihau, Kauai, Hawaii, from the Agricultural to the Rural District, having been heard by the Commission at the County Building, County of Kauai, 4396 Rice Street, Lihue, Kauai, Hawaii, on October 6, 1977, and the Commission having duly considered the complete record thereof and being fully advised in the premises, now makes its findings of fact and conclusions of law, as follows:

FINDINGS OF FACT

1. The subject property comprises all of Lot 16 of the Wailua Homesteads, First Series, situated at Wailua, District of Kawaihau, Island and County of Kauai, with a total area of 34.38 acres, Tax Map Key 4-2-14: 25 (formerly TMK 4-2-02: 10). The property is bounded on the north by the Opaekaa Gulch and

Stream, on the east (makai boundary) by the Wailua Half Acres Subdivision, on the south by Kuamoo Road (the main government road into the Wailua Homesteads area from Kuhio Highway, which is approximately 4.5 miles from the subject property), and on the west (mauka boundary) by a parcel of 49.78 acres owned by Wailua Heights, Inc. The subject property is owned in fee simple by Itsuo and Matsuko Uyeda, husband and wife, as tenants by the entirety under that certain deed dated November 20, 1964, recorded in the Bureau of Conveyances of the State of Hawaii in Book 5254, page 292, subject to an agreement of sale dated August 15, 1969, recorded in said Bureau of Conveyances in Book 6682, page 460, between the Uyedas and Keanuenuue, Inc., a Hawaii corporation, subject further to a sub-agreement of sale dated April 20, 1971, recorded in said Bureau of Conveyances in Book 7508, page 331, between Keanuenuue, Inc., and Emerich & Company, Inc., a California corporation, and subject further to an unrecorded option to purchase dated June 25, 1976, between Emerich & Company, Inc., and Petitioner. In addition, 0.40 acre of the subject parcel, comprising a ditch right-of-way fifteen feet wide, is owned by the State of Hawaii, by its Department of Land and Natural Resources.

2. The subject property is within the Agricultural District on the Land Use Commission Map K-10 and is designated agriculture on the County of Kauai's (hereinafter called "County") General Plan. The subject property is bounded on the east, south, and a portion of its western boundary by property within the Rural District.

3. The subject property, located at elevation 450', slopes mauka to makai (west to east) from nearly level to less than 10%. The soil of the property is dark brown to dark grayish brown, deep, well drained and non-stony, according to the Land Study Bureau's Detailed Land Classification Study of 1967. The property drains naturally into the Opaekaa Gulch

and Stream which meanders in a makai direction until it enters the Wailua River below the Homesteads area. The annual rainfall averages 75 inches for the subject property.

4. The subject property was acquired by Itsuo Uyeda in 1950 from the Territory of Hawaii for agricultural use. Vegetable crops were cultivated for several years until unstable market conditions forced termination of a marginal operation. Pineapple cultivation continued fairly successfully until termination of the Hawaiian Fruit Packers operations in 1973. The subject property is presently vacant.

5. The Land Study Bureau's Detailed Land Use Classification study of 1967 rates the overall and selected crop productivity for the subject property as "D" in a five class rating where A represents the class of highest productivity and E the lowest productivity. The USDA Soil Conservation Service Soil Survey Report of 1972 identifies soil types of the subject property as Halii gravelly silty clay with capability classification of IVs, non-irrigated.

6. The Petitioner proposes to subdivide and develop 5 1/2 acres lots for residential use for fee simple sale. The estimated average sales price is expected to be \$30,000 per lot and construction is expected to commence eight months after the land use district boundary is amended. All uses permitted by the County of Kauai Comprehensive Zoning Ordinance will be permitted by the Petitioner. Although lots will be offered for sale without houses thereon, Petitioner estimates that he will be able to construct a three bedroom home with 720 square feet, single wall, appliances, shake roof, cesspool, labor included for \$25,000. Petitioner will also make available his unique self-builder package. The self-builder is given a credit for his labor which is used for his down payment.

7. Water and power will be available along Kuamoo Road to the subject site. The Wailua Heights, Inc. development

on the west boundary will result in an improvement of water facilities. The State Health Department will require percolation tests for cesspool feasibility. Kuamoo Road, a State highway, is a forty-foot right of way road. A sixty-foot right of way width is projected for future needs and the Petitioner will be required to reserve and dedicate a 10-foot strip from the subject property. The general slope of the property permits surface drainage for a major portion of the subject property into the Opaekaa Stream.

8. From all available data documented by the State Department of Land and Natural Resources Historic Preservation Office, there are no historic or archeological sites or structures on the subject property or in the immediate area. The Wailua Reservoir located approximately one mile mauka of the subject property is a prime habitat area for exotic and native water birds and the four species of endangered water birds on Kauai are likely to frequent the Wailua Reservoir. However, because the Wailua Reservoir is man-made and the area has already undergone significant alteration from its original natural state, it appears unlikely that the proposed development on the subject property will have significant adverse environmental impact on the reservoir area.

9. There is a projected market demand of about 450 new half-acre residential lots on Kauai in the next two and one-half to three years. The Wailua Heights Subdivision being planned in the Wailua area will provide only 82 additional lots. The vast majority of the homes in the Wailua area are priced between \$75,000 to \$90,000, with homes priced under \$70,000 currently being very rare. There are only three half-acre lots in the Wailua area that have been on the market for sale for approximately the past six months to a year, two of which lots are on the market as resales and one of which is on the market as an original sale. Among couples living on Kauai

with a combined gross monthly income of \$1,600 to \$1,800 the target market group of the development proposed for the subject property, there is a demand for half-acre residential lots in the Wailua area at the proposed selling prices.

10. The Wailua Homesteads area, located approximately 11 miles from Lihue Town and 3 miles from Kapaa Town, has developed into a prime residential district of Kauai.

11. The Kauai County General Plan designates the area for agricultural use; however, the County Planning Department supports the Petition for change of the subject property from the Agricultural to the Rural District. Only one farmer is located in the vicinity of the subject property and his farm area is within the Rural District.

12. The State Department of Planning and Economic Development which originally opposed the boundary change, recommends approval of Petitioner's request for boundary change of the subject property from the Agricultural District to the Rural District. No other party, organization, or person opposes the request for boundary change.

13. The development of a residential subdivision of the subject property with limited agricultural potential will not adversely affect the inventory and availability of Agricultural District lands for truck farming or other agricultural uses.

14. The Department of Land and Natural Resources waives notice of Petitioner's application, and does not object to Petitioner's request for boundary change. The State is the owner of a ditch right-of-way, fifteen (15) feet wide, for the East Kauai Water Company, Ltd., Ditch (Lateral Ditch No. 1) across the subject property, containing an area of 0.40 acre which Petitioner intends to purchase upon approval of the boundary change. Said Department does not object to the inclusion of said 0.40 acre in the boundary change.

CONCLUSIONS OF LAW

Pursuant to Hawaii Revised Statutes Chapter 205, and the Rules of Practice and Procedure and the Land Use District Regulations of the Land Use Commission, the Commission finds as follows:

1. That upon the clear preponderance of the evidence adduced herein, the proposed boundary amendment from the Agricultural to the Rural District for the subject property conforms to the standards established for the Rural Land Use District; that such amendment is reasonable, is not violative of the Hawaii Revised Statutes, Section 205-2 (Districting and Classification of Lands), and is consistent with the Interim Statewide Land Use Guidance Policy established pursuant to Hawaii Revised Statutes, Section 205-16.1, in the following respects:

(a) This land use amendment is reasonably necessary to accommodate growth and development, and has no significant adverse effects upon agricultural, natural, environmental, recreational, scenic, historic, or other resources of the area;

(b) Maximum use shall be made of existing services and facilities, and coupled with services and facilities that are to be made available to the subject property, will be adequate to accommodate the proposed development.

2. That the proposed project shall be subject to the performance time provisions of Part VI, Section 6-3 of the Commission's Land Use District Regulations requiring substantial progress in the development of the area redistricted to the new use approved within a period specified by the Commission not exceeding five years.

A decision amending the land use district boundary of the subject property of 33.98 acres, more or less, and the aforementioned ditch right-of-way of 0.40 acre, from Agricultural to Rural shall be entered accordingly.

DECISION AND ORDER

The Commission having determined in the foregoing Findings of Fact and Conclusions of Law (1) that the land use district boundary amendment, as proposed herein, conforms to the standards established for the Rural Land Use District, and that said amendment is reasonable, not violative of Hawaii Revised Statutes, Section 205-2, and is consistent with the Interim Land Use Guidance Policy established pursuant to Hawaii Revised Statutes, Section 205-16.1, and (2) that the proposed project shall be subject to the performance time provisions of PART VI, Section 6-3 of the Commission's Land Use District Regulations;

IT IS HEREBY ORDERED:

1. That the land use district boundary affecting the subject property of 33.98 acres, more or less, and the aforementioned ditch right-of-way of 0.40 acre, shall be and is hereby amended from the Agricultural to the Rural District, thereby placing said property within the Rural Land Use District; and
2. That the performance time provisions of PART VI, Section 6-3, of the Commission's Land Use District Regulations shall apply to the development of the subject property, as proposed herein.

Done at Honolulu, this 4th day of April,
1978, upon motion duly adopted by the Commission on the 7th day
of March, 1978.

LAND USE COMMISSION
STATE OF HAWAII

By *C. W. Duke*
C. W. DUKE
Vice Chairman and Commissioner

By *James R. Carras*
JAMES CARRAS
Commissioner

By *Colette Y. Machado*
COLETTE MACHADO
Commissioner

By *Shinsei Miyasato*
SHINSEI MIYASATO
Commissioner

By *Shinichi Nakagawa*
SHINICHI NAKAGAWA
Commissioner

By *Carol B. Whitesell*
CAROL WHITESELL
Commissioner