

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of) DOCKET NO. A80-475
)
KAUAI BIBLE CHURCH) KAUAI BIBLE CHURCH
)
To Amend the Conservation Land Use)
District Boundary to Reclassify)
Approximately 3.75 Acres at)
Omao, County of Kauai, into the)
Agricultural Land Use District)
_____)

DECISION

THE PETITION

This matter arises from a Petition for an amendment to the Land Use Commission district boundary filed pursuant to Section 205-4 of the Hawaii Revised Statutes, as amended, and Part VI, Rule 6-1 of the Land Use Commission's Rules of Practice and Procedure and District Regulations by the fee owner of the property who is requesting that the designation of the subject property be amended from the Conservation to the Agricultural District. The requested change consists of property comprising approximately 3.75 acres of land, situated at Omao, Island and County of Kauai. The subject property is more particularly identified as Tax Map Key No. 2-5-01: portion of parcel 6.

PURPOSE OF PETITION

Petitioner's stated purpose for requesting the reclassification of the subject property from Conservation to Agriculture is primarily for the purpose of being able to utilize a portion of the subject property as an access

road to Petitioner's proposed church. The remainder of the subject property would be used as a play area for Petitioner's congregation where gardening and camping activities could occur. The proposed uses would therefore require Petitioner to obtain a Special Use Permit if the boundary amendment to the Agricultural District is granted.

THE PROCEDURAL HISTORY

The Petition was received by the Land Use Commission on January 15, 1980. Due notice of this Petition was published on March 14, 1980, in The Honolulu Advertiser and The Garden Island. Notice of the hearing was also sent by certified mail to all parties involved herein on March 10, 1980. No timely application to intervene as a party or appear as a witness was received by the Land Use Commission.

THE HEARING

The hearing on this Petition was held on April 22, 1980, in Lihue, Kauai, Hawaii.

Kauai Bible Church, the Petitioner herein, was represented by John Tumacder, Esq. and Mark Pettinato, Esq.; the County of Kauai was represented by Deputy County Attorney Michael Belles; and the Department of Planning and Economic Development was represented by Ms. Esther Ueda.

The witnesses presented by the aforementioned parties were as follows:

Petitioner:

Pastor Stephen M. Johnson

County of Kauai:

Tom Shigemoto - Staff planner, Kauai Planning
Department

Department of Planning and Economic Development:

Esther Ueda - Planner.

POSITION OF THE PARTIES

County of Kauai - Denial.

Department of Planning and Economic Development -
Approval.

APPLICABLE REGULATION

Standards for determining the establishment of the Agricultural District are found under Part II, Section 2-2(2) of the State Land Use Commission's District Regulations. Said regulation provides in pertinent part that:

- "(2) 'A' Agricultural District. In determining the boundaries for the 'A' Agricultural District, the following standards shall apply:
- (a) Lands with a high capacity for agricultural production shall be included in this District except as otherwise provided for in other sections of these regulations.
 - (b) Lands with significant potential for grazing or for other agricultural uses shall be included in the District except as otherwise provided for in other sections of these regulations.
 - (c) Lands surrounded by or contiguous to agricultural lands and which are not suited to agricultural and ancillary activities by reason of topography, soils and other related characteristics may be included in the Agricultural District.
 - (d) Lands in intensive agricultural use or lands with a high capacity for intensive agricultural use shall not be taken out of this District unless the Commission finds either that:

1. such action will not substantially impair actual or potential agricultural production in the vicinity of such lands, and/or
2. such action is reasonably necessary for urban growth."

FINDINGS OF FACT

The panel of the Land Use Commission, after 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 subject property, owned in fee simple by the Petitioner herein, is located at Omao, Koloa, Island and County of Kauai, State of Hawaii. It consists of approximately 3.75 acres, more particularly described as Tax Map Key No. 2-5-1: portion of parcel 6. The historical origination of the subject property began on January 26, 1979, when the Petitioners obtained a Conservation District Use Permit to subdivide the parcel identified as Tax Map Key No. 2-5-1:6, consisting of approximately 825 acres and owned by McBryde Sugar Co., Ltd. McBryde Sugar Co., Ltd. in turn, upon subdivision of the property, conveyed to Petitioner portions of Tax Map Key Nos. 2-5-1:6 and 2-5-1:2. These two parcels were in turn consolidated into a new lot (Lot 6-B), consisting of approximately 5.01 acres. That portion of the new consolidated parcel derived from Lot Tax Map Key No. 2-5-01:2, consisted of approximately 1.25 acres and was within the State Land Use Agricultural District. The balance of the newly created parcel consisted of that portion subdivided from Lot Tax Map Key No. 2-5-1:6, consisting of approximately 3.75 acres which was within the State Land Use Conservation

District. The latter parcel consisting of 3.75 acres is the property involved in the subject Petition. On June 1, 1979, Petitioner was granted a Special Use Permit (SP79-329) to erect a church on the parcel identified as Tax Map Key No. 2-5-1:2 (Por.) which adjoins the subject property.

2. The present State Land Use District classification for the subject property is Conservation. The subject parcel is also within the "resource" subzone as classified by the Board of Land and Natural Resources and part of a forest reserve. The subject parcel is designated as open (O) under the Kauai County general plan.

3. The subject property abuts Kaumualii Highway and is located mauka of the intersection of Kaumualii Highway and Upa Road, approximately .5 mile east of Kalaheo Town. The subject parcel is presently undeveloped and is comprised of steeply sloping lands. The vegetation consists of eucalyptus trees, buffalo grass and various bushes and shrubs. The eastern boundary of the subject parcel is bordered by an old government road. The subject parcel abuts the Agricultural District on its eastern, western and southern boundaries. The Agricultural District to the west of the subject parcel (Tax Map Key No. 2-4-1:7) is owned by the Hawaii Seventh Day Adventists and said parcel is occupied by a school and parsonage. The Agricultural District areas to the east include Piwai Stream, the site of Petitioner's proposed church and the Kauai Sei-Cho-No-Ie Church. Lands immediately north of the subject parcel are in the Conservation District and include Kamaloa Ditch and Tunnel.

4. The slope of the subject property in its steeper areas is between 50% to 60% while in other areas has a slope of between 20% to 30%.

5. The USDA Soil Conservation Service classifies soils of the subject parcel primarily as Puhī silty clay loam, 25% to 40% slopes. Runoff is rapid and erosion hazard is severe on soil of this type. Lands comprised of this type of soil are generally used for pasture, woodland, wild-life habitat, and water supply. The Land Study Bureau classifies the subject parcel as class "E" lands.

6. The subject parcel is not classified as either "prime," "unique," or "other important agricultural land" under the Department of Agriculture's Agricultural Lands of Importance to the State of Hawaii classification system. The Agricultural Districts immediately to the east of the subject parcel (where Petitioner proposes to build its church) are classified as "other important agricultural lands."

7. Petitioner is requesting the reclassification of the subject property so that it will be able to utilize the total 5.01 acres it owns for church and church related purposes. The portion of the 5.01 acres already in the Agricultural District, comprising approximately 1.3 acres, and the subject of SP79-329 will contain a structure that will be utilized as the sanctuary, classrooms, nursery and office. Also included will be the parking area and portions of the access road to the church structure. The remaining 3.75 acres of Petitioner's 5.01-acre parcel which is the subject of the Petition will be utilized for portions of the access road to the church structure while the remaining areas will be planted with grass and shrubs and utilized as a play area

and for gardening and camping purposes. At the time Petitioner purchased the property, it was aware of the Land Use classification and zoning and was able to purchase the same at a reasonable price because of the characteristics of the property. Petitioner intends to utilize the subject property as a quarry for the fill material it needs for site preparation of the church site and for constructing the access road. Petitioner does not have a survey which indicates the present boundary between the Conservation and adjoining Agricultural parcel it also owns and has indicated that the access road could conceivably be built within the present Agricultural designated parcel which possesses the Land Use Commission Special Permit. The Petitioner has not filed a Conservation District Use Application because from discussions with staff members of the Department of Land and Natural Resources, it feels it will be unsuccessful.

3. The State Departments of Transportation, Health, Education, Taxation, Agriculture, and the Hawaii Housing Authority have indicated that the proposed reclassification would have no known adverse impact on any existing or proposed State programs for the area. The USDA Soil Conservation Service and the Department of Agriculture have no objections to the proposed reclassification.

9. There are no known historic or archeological sites of significance on the subject parcel.

10. There has been no indication by any agency that the public utilities and services available to the subject property would be overburdened by the proposed reclassification.

11. Based upon a review of the Petition, the evidence adduced at the hearing, and the policies and criteria of the Interim Statewide Land Use Guidance Policy, the Department of Planning and Economic Development has recommended that the reclassification be approved.

12. The County of Kauai, based upon a review of the Petition, the evidence adduced at the hearing, and the policies and criteria of the Interim Statewide Land Use Guidance Policy, has objected to the granting of this Petition. Kauai County Planning Department has indicated that "...we do not believe that the State Land Use District boundary amendment procedure is the appropriate mechanism to achieve the indicated objectives of the applicant. We believe the subject site was included in the Conservation District because of its topography and susceptibility to soil erosion. As such, we do not believe the request to amend the District boundary to Agriculture for non-agricultural purposes is justifiable." In addition, Kauai County has listed four other reasons as a basis for their objection to the proposed application which are as follows:

"1. Regarding grading, the County of Kauai did not order petitioner to grade the road leading to the proposed church building. The requirement was that the road be paved. In fact, the plans exhibited showed that the building, parking and driveways were possible with only a minimum amount of grading. We note that the petitioner did not submit the revised plans showing how much more cuts and/or fill was intended on the site. Without such a revised plan, we wonder how the applicant knows that he needs to cut into the Conservation District, and how much land will be involved. From the petitioner's Exhibit "B," it appears that only .7 acres of the Conservation District area needs to be used. If so, perhaps just this amount of land should have been requested to be reclassified rather than the whole 3.75 acres.

2. The amount of Conservation land to be removed should not be a determinant in the reclassification because the Conservation District is so large and it would be difficult if not impossible to determine at what point that an area being removed becomes substantial.

3. We do not concur that the property is not well suited for inclusion within the Conservation District. As mentioned previously, the site contains steep slopes and it is part of a forest reserve. To put it in a more proper perspective, we feel the site is better suited in the Conservation District than it would be in the Agricultural District.

4. Regarding the church use on the property the County, by recommending approval for the Special Permit, has indicated its support for the project. However, we are now questioning the means by which the church building can be realized. If constructing the church means only grading into the Conservation District, we would probably have no objections (depending on the extent) for only that area to be reclassified. But, to reiterate, we believe that the grading can be done by leaving the subject site in the Conservation District. The reclassification of Conservation lands into the Agricultural District to accommodate a church use does not seem to be appropriate."

CONCLUSIONS OF LAW

Reclassification of the subject property, consisting of 3.75 acres of land, situated at Omao, Koloa, Island and County of Kauai, State of Hawaii, from Conservation to Agriculture in an amendment to the district boundaries accordingly is not in conformance with Section 205-2 of the Hawaii Revised Statutes, the Rules and Regulations of the Land Use Commission, and the Interim Statewide Land Use Guidance Policy established pursuant to Section 205-16.1 of the Hawaii Revised Statutes, as amended.

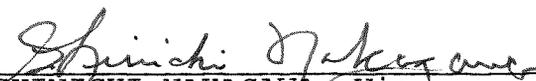
ORDER

FOR GOOD CAUSE APPEARING, it is hereby ordered that the property which is the subject of the Petition in this Docket No. A80-475, consisting of approximately 3.75 acres of land, situated at Omao, Koloa, Island and County of Kauai, State of Hawaii, identified as Tax Map Key No. 2-5-1: portion of 6 be denied.

DONE at Honolulu, Hawaii, this 29th day of October, 1980, per Motion on October 15, 1980.

LAND USE COMMISSION
STATE OF HAWAII

By 
C. W. DUKE, Chairman and
Commissioner

By 
SHINICHI NAKAGAWA, Vice
Chairman and Commissioner

By 
RICHARD B. F. CHOY, Commissioner

By 
SHINSEI MIYASATO, Commissioner

By 
MITSUHO OURA, Commissioner

By _____
GEORGE PASCUA, Commissioner

By *Carol B Whitesell*
CAROL B. WHITESELL, Commissioner

By _____
WILLIAM YUEN, Commissioner

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Land Use Commission's 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.

HIDETO KONO, Director
Department of Planning & Economic Development
State of Hawaii
250 South King Street
Honolulu, Hawaii 96813

ANNETTE CHOCK, Deputy Attorney General
Department of Attorney General
Penthouse, 850 Richards Street
Capital Investment Building
Honolulu, Hawaii 96813

BRIAN NISHIMOTO, Planning Director
Planning Department
County of Kauai
4280 Rice Street
Lihue, Hawaii 96766

MORRIS SHINSATO, County Attorney
Office of County Attorney
County of Kauai
Lihue, Hawaii 96766

MARK PETTINATO & JOHN TUMACDER
Attorneys for Petitioner
302 California Avenue, Suite 215A
Wahiawa, Hawaii 96786

DATED: Honolulu, Hawaii, this 31st day of October, 1980.


GORDAN Y. FURUTANI
Executive Officer