

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of) DOCKET NO. A80-501
KUMAKA, INC.)
To Amend the Agricultural Land Use)
District Boundary to Reclassify)
Approximately .7923 Acre, TMK:)
7-5-17:24, at Puapuaa 2nd, North)
Kona, Island and County of Hawaii,)
into the Urban Land Use District)

DECISION AND ORDER

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KUMAKA, INC.) KUMAKA, INC.
To Amend the Agricultural Land Use)
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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 Kumaka, Inc., a Hawaii corporation which corporation requests that the classification of the subject property be amended from the Agricultural District to the Urban District. The property comprises approximately .7923 acre of land, situate at Puapuaa 2nd, North Kona, Island and County of Hawaii. The subject property is more particularly described as Hawaii Tax Map Key No. 7-5-17:24.

PURPOSE OF PETITION

Petitioner requests reclassification of the subject property from Agricultural to Urban in order to develop a useu car and truck sales lot, and construct a 2-story, 40-foot by 100-foot office building and other suitable improvements.

PROCEDURAL HISTORY

Initial Hearing:

The Petition was received by the Land Use Commission on November 14, 1980. The Commission published notice of the hearing on this Petition on February 27, 1981, in the Hawaii Tribune Herald and The Honolulu Advertiser, and sent notice of the hearing by certified mail to all parties involved herein on February 26, 1981. The Commission received no timely application to intervene as a party or appear as a witness. However, during the course of the hearing, Mr. Arthur Loughren, on behalf of the Kilohana Homeowners Association, without objection by the parties, testified in opposition to the reclassification as a public witness.

The initial hearing on this Petition was held on April 13, 1981, in Kailua-Kona, Hawaii.

Kumaka, Inc., the Petitioner herein, was represented by David Walters; the County of Hawaii was represented by Deputy Planning Director Duane Kanuha and the Department of Planning and Economic Development was represented by Land Use Division Planner Esther Ueda.

The parties presented the following witnesses:

Petitioner:

Samuel Kang - President of Kumaka, Inc.

Leo Flemming - Civil Engineer

David Walters - Authorized representative of
Kumaka, Inc.

County of Hawaii:

Duane Kanuha - Deputy Planning Director

Department of Planning and Economic Development:

Esther Ueda - Land Use Division Planner

Both the County of Hawaii and the Department of Planning and Economic Development opposed the subject Petition during the initial hearing.

Reopened Hearing:

On April 9, 1981, the Petitioner filed a Motion To Reopen Hearing, Memorandum In Support Thereof and The Affidavit of David A. Walters. Having received no Memorandums In Opposition to Petitioner's Motion and/or Counter Affidavits, and good cause appearing thereof, the Hearing Officer granted Petitioner's Motion by Order dated April 27, 1981.

On May 14, 1981, the Department of Planning and Economic Development filed its Memorandum In Opposition to the Reopening of the Hearing which was followed by Petitioner's response filed on June 1, 1981. On June 2, 1981, Petitioner filed an amendment to its Petition. On June 17, 1981, Paul Nolte, Esq. filed an Appearance Of Counsel on behalf of Petitioner. On August 3, 1981, Deputy Attorney General Randall Iwase filed an Appearance Of Counsel on behalf of the Department of Planning and Economic Development.

The Hearing Officer sent notice of the Reopened Hearing to all parties by certified mail or hand delivery on June 29, 1981 and notice on the procedures to be followed prior to and during the hearing was sent by certified mail or hand delivery to all parties, on July 21, 1981.

The Reopened Hearing was conducted in Kailua-Kona, Hawaii, on August 10, 1981.

The Petitioner was represented by Paul Nolte, Esq.; the County of Hawaii was represented by Deputy Planning Director Duane Kanuha; and the Department of Planning and Economic Development was represented by Deputy Attorney General Randall Iwase.

The parties presented the following witnesses:

Petitioner:

Leo Flemming - Civil Engineer

Harry Hasegawa - Realtor

Donald McIntosh - Licensed surveyor, civil
engineer and realtor/
associate

Samuel Kang - President of Kumaka, Inc.

County of Hawaii:

Duane Kanuha - Deputy Planning Director

Department of Planning and Economic Development:

Esther Ueda - Land Use Division Planner

At the Reopened Hearing the County of Hawaii favored approval of the Petition and the Department of Planning and Economic Development opposed the Petition.

APPLICABLE REGULATION

Standards for determining the establishment of an Urban District are found under Part II, Section 2-2(1) of the State Land Use Commission's District Regulations and provide in pertinent part:

- (1) "U" Urban District. In determining the boundaries for the "U" Urban District, the following standards shall be used:
 - (a) It shall include lands characterized by "city-like" concentrations of people, structures, streets, urban level of services and other related land uses.
 - (b) It shall take into consideration the following specific factors:

1. Proximity to centers of trading and employment facilities except where the development would generate new centers of trading and employment.
 2. Substantiation of economic feasibility by the petitioner.
 3. Proximity to basic services such as sewers, water, sanitation, schools, parks, and police and fire protection.
 4. Sufficient reserve areas for urban growth in appropriate locations based on a ten (10) year projection.
- (c) Lands included shall be those with satisfactory topography and drainage and reasonably free from the danger of floods, tsunamis and unstable soil conditions and other adverse environmental effects.
- (d) In determining urban growth for the next ten years, or in amending the boundary, lands contiguous with existing urban areas shall be given more consideration than non-contiguous lands, and particularly when indicated for future urban use on State or County General Plans.
- (e) It shall include lands in appropriate locations for new urban concentrations and shall give consideration to areas of urban growth as shown on the State and County General Plans.
- (f) Lands which do not conform to the above standard may be included within this District:
1. When surrounded by or adjacent to existing urban development; and
 2. Only when such lands represent a minor portion of this District.
- (g) It shall not include lands, the urbanization of which will contribute towards scattered spot urban development, necessitating unreasonable investment in public supportive services.
- (h) It may include lands with a general slope of 20% or more which do not provide open space amenities and/or scenic values if the Commission finds that such lands are undesirable and suitable for urban purposes and that official design and construction controls are adequate to

protect the public health, welfare and safety, and the public's interests in the aesthetic quality of the landscape.

FINDINGS OF FACT

The Panel of the Land Use Commission, after having duly considered the record in this docket, the testimony of the witnesses, the evidence adduced herein, and the report of the Hearing Officer, makes the following findings of fact:

1. The subject property, owned in fee simple by the Petitioner Kumaka, Inc., is located at Puapuaa 2nd, North Kona, Island and County of Hawaii, and consists of approximately .7923 acre, more particularly described as Hawaii Tax Map Key No. 7-5-17:24. The subject property is located approximately three miles south of the Palani Road-Kuakini Highway intersection and is situate abutting and mauka of Kuakini Highway.

2. The Hawaii County zoning designation of the subject property is Agricultural 1-acre (A-1a). The subject property is not within the County's Special Management Area (SMA) nor within the Kailua Village Special District.

3. The County of Hawaii Land Use Pattern Allocation Guide Map designation for the subject property is for Low Density Urban Development. Pursuant to the General Plan Revision Ordinances (Ordinances 456, 475, 484 and 538) Low Density uses include low density residential at no more than 4 units per acre, neighborhood commercial, and ancillary community and public uses. Petitioner's proposed use is not a permitted use for lands designated Low Density Urban Development on the LUPAG Map. The General Plan must be amended in order to permit Petitioner's proposed use.

4. The subject property and surrounding area are presently vacant and unimproved. The subject property abuts the State Land Use Agricultural District on its northern and eastern boundaries and the State Land Use Urban District on its western and southern boundaries. The 76-lot Kona Hillcrest residential subdivision is located approximately 4,500 feet to the north of the subject property. The 100-lot Kilohana Subdivision is located approximately 1,000 feet south of the subject property. Commercial developments in the vicinity include the Pottery Terrace Restaurant located approximately 4,500 feet north and the Dillingham properties located approximately 3,200 feet south of the subject property. The land makai of and abutting Kuakini Highway, between the aforementioned residential and commercial developments, is within the State Land Use Urban District.

5. Elevation of the subject property is approximately 200 feet above sea level. Its slope ranges from 0% to 8% in the northwesterly direction towards Kuakini Highway. Average rainfall for the subject property is approximately 30-40 inches per year.

6. The subject property is not classified under the Agricultural Lands of Importance to the State of Hawaii (ALISH) classification system. The Land Study Bureau's Detailed Land Classification System classifies the soil of the subject property as "E" or very poorly suited for agriculture.

The U.S.D.A. Soil Conservation Service, Soil Survey Report for the Island of Hawaii, classifies soils on the subject property as Punaluu extremely rocky peat, 6% to 20% slopes (rPYD).

The Punaluu extremely rocky peat, 6% to 20% slopes, has a surface layer of black peat about 4 inches thick in a representative profile. It is underlain by pahoehoe lava bedrock. This soil is medium acid. The peat is rapidly permeable. The pahoehoe lava is very slowly permeable, although water moves rapidly through the cracks. Runoff is slow, and the erosion hazard is slight. This soil is used primarily for pasture purposes.

The subject property is situated in an area of minimal flooding according to the Federal Insurance Administration Flood Insurance Study for the Island of Hawaii.

7. The Department of Agriculture and the Soil Conservation Service do not object to the reclassification because it has no impact on agricultural resources. The Department of Land and Natural Resources has commented that there is an absence of historical, cultural, architectural and/or archaeological resources on the subject property which are listed on the Hawaii Register and/or the National Register of Historic Places, or that have been determined Eligible for Inclusions on the National Register of Historic Places. Petitioner's Archaeological Study reveals that no archaeological or historical features other than stone cattle fences exist on the subject property.

8. Petitioner has conducted its used car and truck operations in Kailua-Kona under the name "Hawaii Auto Center" at its present location since 1975. That site is bordered by the Foodland Supermarket on one side and by an office building and parking lot behind it. On October 26, 1979, the fee owner of the property notified Petitioner to vacate the premises in order to accommodate the owner's

plans to enter into a long term lease with another entity. The owner has permitted Petitioner to continue occupying the property on a month to month tenancy.

Petitioner purchased the subject property approximately three years ago with the intent of relocating its operations to the subject property. At the time the subject property was purchased, Petitioner's President was unaware of the necessary land use and zoning changes which would be required in order to use the subject property for used car and truck sales. In order to demonstrate the need for the proposed reclassification, Petitioner alleged that "there are no acceptable properties, suitably zoned in fee simple for this business in its marketing territory." Petitioner's expert witness, Harry Hasegawa, a Kona Realtor of 14 years, testified that there were no properties on the market available for a used car lot. Mr. Hasegawa searched for properties not classified Agricultural of approximately one-half acre in size, available for immediate purchase. Mr. Hasegawa did not consider the fact that the Commission had recently reclassified 100 acres of land owned by Liliuokalani Trust (in Docket No. A79-470) and 130.10 acres of land (plus 110.36 acres incrementally approved) owned by T.S.K. Associates (in Docket No. A80-482) for light industrial use, which use includes used car sales. Petitioner's witness, Donald McIntosh, a licensed surveyor, civil engineer and realtor/associate, testified that on the basis of examining Land Use Commission maps H7 and H8 covering an area between Kam III Highway and downtown Kailua-Kona, there was no property available for Petitioner's needs. Mr. McIntosh examined the unimproved Urban designated property between

1/2-acre to 1 1/2 acres in size feasible from an engineering standpoint for used car sales.

Petitioner's unaudited financial statement indicates a net worth of \$107,114.81.

9. The Hawaii County Planning Department Land Use Inventory indicates that there are approximately 67 acres of vacant zoned commercial lands in the Kailua to Keauhou area, in addition to the lands recently reclassified by the Land Use Commission for light industrial use, which lands the Petitioner's witness has not considered.

10. The reclassification of the subject property will not unreasonably burden public agencies to provide necessary urban amenities, services and facilities because:

a. Access - Proposed access to Kuakini Highway from the subject property will be from the Old Kailua-Keauhou Middle Road. The access road and access onto Kuakini Highway will be constructed according to applicable State and County requirements.

b. Sewage - Sewage disposal will be through the use of a single cesspool connected to the single bathroom.

c. Water - Hawaii County's Department of Water has no objections to the subject Petition in regard to the required water usage.

d. Drainage - There is natural drainage toward Kuakini Highway.

e. Police and Fire Protection - Adequate police services are available to serve the needs of the proposed development. Adequate fire fighting services are available from the Kailua Fire/Rescue

Station located 3 1/2 miles away and hydrants on Kuakini Highway.

f. Electrical and Telephone Services - Electrical and telephone lines are available in the area to service the proposed development.

11. The proposed reclassification does not conform to the Land Use Commission's standards for determining district boundaries in the following respects:

a. the Petitioner has not satisfactorily demonstrated that existing areas planned or designated for commercial or light industrial use cannot accommodate the proposed use. Furthermore even if additional land is needed for commercial or industrial use in North Kona, the project is inconsistent with the County General Plan designation for the subject property, and

b. the reclassification would encourage "spot urban development" since surrounding areas are presently zoned Ag-1 and the closest commercial zoned area is approximately 1/2 mile to the south of the subject property.

12. Based on a review of the Petition, the evidence adduced at the hearing, and the provisions of Chapter 205, Hawaii Revised Statutes, the County of Hawaii Planning Department supported the proposed reclassification, but stated that their favorable recommendation should not be construed as an approval of the Petitioner's proposed commercial use. Because the proposed use is not permitted under the General Plan LUPAG map designation for the area,

the County would not approve the specific commercial use of the property until after the General Plan LUPAG map is amended to permit this use.

A General Plan amendment for this proposed use is premature without further assessment and analysis of the overall commercial needs and demands adjacent to Kuakini Highway. The County is presently conducting a review of the draft Regional Development Plan for the Kona-Kohala District which would assess commercial needs of the area.

CONCLUSIONS OF LAW

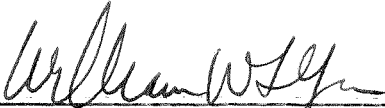
Reclassification of the subject property, consisting of approximately .7923 acre of land, situate at Puapuaa 2nd, North Kona, Island and County of Hawaii from Agricultural to Urban and an amendment to the district boundaries does not conform to the requirements of Section 205-2 of the Hawaii Revised Statutes and the Rules of Practice and Procedure and District Regulations of the Land Use Commission.

ORDER

FOR GOOD CAUSE APPEARING, it is hereby ordered that the Petition of Kumaka, Inc. to amend the Agricultural Land Use District boundary from Agricultural to Urban shall be and the same is hereby denied and the property which is the subject of the Petition in this Docket No. A80-501, consisting of approximately .7923 acre, situate at Puapuaa 2nd, North Kona, Island and County of Hawaii, identified as Hawaii Tax Map Key No. 7-5-17:24, shall be and hereby is retained in the Agricultural District.

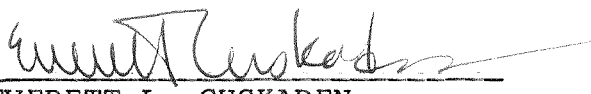
DONE at Honolulu, Hawaii, this 21st day of
January, 198⁸², per Motion on November 13, 1982.

LAND USE COMMISSION
STATE OF HAWAII

By 
WILLIAM W. L. YUEN,
Chairman and Commissioner

By 
CAROL B. WHITESELL, Vice
Chairman and Commissioner

By 
RICHARD B. F. CHOY,
Commissioner

By 
EVERETT L. CUSKADEN,
Commissioner

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
)
KUMAKA, INC.) DOCKET NO. A80-501
)
To Amend the District Boundary of)
Certain Lands Situated at Puapuaa)
2nd, North Kona, County of Hawaii,)
State of Hawaii)
_____)

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
Capital Investment Building
Penthouse, 850 Richards Street
Honolulu, Hawaii 96813

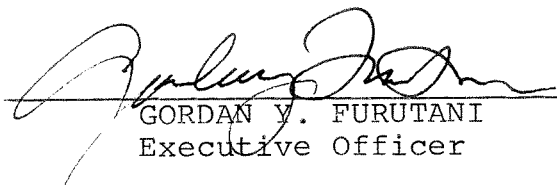
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Kailua-Kona, Hawaii 96740

DATED: Honolulu, Hawaii this 21st day of January, 1982.



GORDAN Y. FURUTANI
Executive Officer