

BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

In the Matter of the Petition)
)
 of) DOCKET NO. A76-417
)
 CAN CORPORATION,)
)
 For the Reclassification of)
 Certain Lands situated at)
 Kilauea, Island of Kauai.)
 _____)

DECISION AND ORDER

This matter, being a proceeding pursuant to Section 204-4 of the Hawaii Revised Statutes, to consider a Petition to Amend District Boundaries and Reclassify from a Agricultural to Urban approximately 10.686 acres, situated at Kilauea, Island of Kauai, was heard by the Commission in Lihue, Kauai, on November 9, 1976. Can Corporation, the Planning Department of the County of Kauai, 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 to the Findings of Fact and Conclusions of Law submitted 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 situated at Kilauea, Island and County of Kauai, and is more particularly identified as Kauai Tax Map Key: 5-2-02-04, and encompasses an area of 10.686 acres, more or less.

2. The owners of the subject parcel are Michael Mead Dyer, Charlene Gilliss Dyer, Charles Maxwell Gilliss, and Donna Gilliss Crocker. The subject property was sold to the Petitioner Can Corporation by that certain Agreement of Sale dated June 17, 1974, and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 10034 at Page 413. Authority for the petition was given by the land-owners.

3. The subject property is proposed for reclassification from the Agricultural District to the Urban District. A portion of the Northern boundary abuts the existing Kilauea Urban District.

4. The subject parcel is a triangular sliver of land, approximately 2,700 feet long and averaging approximately 175 feet in depth. It is surrounded on all sides by roads, to wit, Kuhio Highway on the south, Kolo Road on the north, and Hookui Road on the west. The subject parcel was formerly a portion of the larger parcel mauka of the new Kuhio Highway, but became isolated into its present configuration by the construction of the new Kuhio Highway.

5. Being in sugar cane prior to its isolation by the new highway, the subject parcel is presently vacant. It is economically unfit for agricultural uses due to its configuration as a sliver of land between three roads. Reclassification of the subject property from the Agricultural District will not substantially impair actual or potential agricultural production in the vicinity. The land slopes range from 3 to 15%, and has an overall master productivity rating of "C" by the Land Study Bureau. The property is not within a flood or tsunami hazard area.

6. The Petitioner's plans are to develop the subject property into residential lots, averaging 9,000 to 10,000 square feet in size. Forty-one residential lots are proposed. Existing drainage patterns will be maintained wherever possible. All county requirements for development will be observed and met by the Petitioner.

7. The Petitioner plans to sell the residential lots for about \$1.75 per square foot, based on today's prices; however, the ultimate selling price will depend on the costs of development. Proposed development costs were projected at \$179,400.00. Marketing will be confined to the island of Kauai, and it is anticipated that the great majority of the lots will be sold to the local residents. Sales would commence six months after all governmental approvals have been obtained.

8. The need for additional urban district lands for residential purposes is justified on the basis of past sales in the area and its projected residential needs. In addition to Petitioner's proposed development, approximately 100 lots will soon become available on lands already classified as within the Kilauea Urban District.

9. The reclassification is a logical extension of the existing Kilauea Urban District.

10. The Kauai General Plan designation for the subject property is agriculture. The County's goal for the area is to maintain agriculture as a primary economic base of the area. The County of Kauai Planning Department does not oppose this Petition, however, because the subject property is poorly suited for agricultural use and because of the need for housing in the area.

CONCLUSIONS OF LAW

Reclassification of the subject property, approximately 10.686 acres, situated at Kilauea, Island of Kauai, from Agricultural to Urban and amendment of the District Boundaries accordingly to permit the proposed development, is reasonable, not violative of Section 205-2, HRS, and consistent with the interim policy and criteria established pursuant to Section 205-16.1, HRS.

RULING ON PROPOSED FINDINGS

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

1. The Department of Planning and Economic Development's Proposed amendment to Finding No. 9 is rejected as being argumentative and not presenting a finding of fact.
2. The Department of Planning and Economic Development's Proposed Additional Finding No. 10 is modified and adopted by Finding of Fact No. 10.
3. The Department of Planning and Economic Development's Proposed Additional Finding No. 11 is rejected as unnecessary for the Commission's decision.
4. The Department of Planning and Economic Development's Proposed Additional Finding No. 12 is rejected as contrary to the evidence.
5. The Department of Planning and Economic Development's Proposed Additional Finding No. 13 is rejected

as not supported by the evidence in that there is no adopted plan for an agricultural park in the Kilauea area and in that the proposal for such a park includes lands which entirely surround the Kilauea Urban District; the record would not support a finding that reclassification of the subject property into the Kilauea Urban District would have an adverse impact upon any State plan, whether adopted or not, for an agricultural park.

CONCLUSIONS OF LAW

Reclassification of the subject property, approximately 10.686 acres, situated at Kilauea, Island of Kauai, from Agricultural to Urban and amendment of the District Boundaries accordingly to permit the proposed development 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.

ORDER

IT IS HEREBY ORDERED:

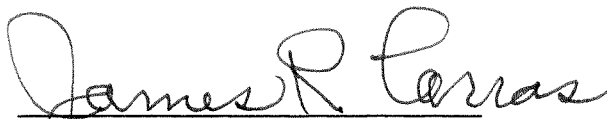
That the property which is the subject of the Petition in this Docket No. A76-417, approximately 10.686 acres, situated at Kilauea, Island of Kauai, identified as Tax Map Key: 5-202-04, shall and is hereby is reclassified from Agricultural to Urban and the District Boundaries are amended accordingly.

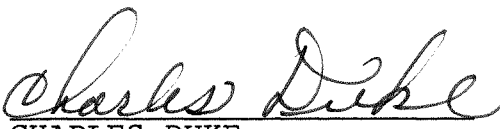
Done at Honolulu, Hawaii, this 16th day of
February, 1977, by motion passed by the Commission on January
6, 1977, in Honolulu, Hawaii.

LAND USE COMMISSION,
STATE OF HAWAII


EDDIE TANGEN
Chairman


STANLEY SAKAHASHI
Vice Chairman


JAMES CARRAS
Commissioner


CHARLES DUKE
Commissioner


COLETTE MACHADO
Commissioner


SHINSEI MIYASATO
Commissioner


CAROL WHITESELL
Commissioner