

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the	)	
Classification and	)	DOCKET NO. 77-428
Districting of Certain	)	
Lands at Kilauea	)	MICHAEL DYER AND
Island of Kauai	)	CHARLENE DYER
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DECISION AND ORDER

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\_\_\_\_\_)

DECISION

THE PETITION

This case arises out of a petition for amendment to the Land Use Commission district boundary filed pursuant to Section 205-4 of the Hawaii Revised Statutes by the fee owners of the property who are requesting that their property district designation be amended from Agricultural to Urban. The property in question consists of approximately 1.74 acres and is situated on the East Bank of Kilauea Stream between Kuhio Highway and Kauai Belt Road at Kilauea, Kauai. The Tax Map Key designation for the subject property is 5-2-04:22.

THE PROCEDURAL HISTORY

The petition was originally received by the Land Use Commission on January 20, 1977. Due notice of the hearing was published in the Garden Island News and the Honolulu Advertiser on April 13, 1977. Notice of the hearing was also sent by certified mail to all of the parties to this docket on April 12, 1977.

A prehearing conference on this petition was held on May 13, 1977 for purposes of allowing the parties in this docket to exchange exhibits and lists of witnesses which were to be used or called during the hearing.

The hearing was originally scheduled for May 8, 1977 but continued to June 8, 1977 wherein the hearing on this matter was held and concluded.

THE HEARING

The Hearing Officer conducted the hearing on this petition on June 8, 1977 in Lihue, Kauai. Petitioner Michael Dyer was present and represented himself. The Department of Planning and Economic Development, State of Hawaii was represented by Tatsuo Fujimoto. The Kauai County Planning Department was represented by Deputy County Attorney Michael Belles.

The witnesses presented by the aforementioned parties were as follows:

Petitioner:

Michael Dyer

Peter Taylor - Consulting Engineer

Kauai County Planning Department:

Curtiss Ako - Planner

Department of Planning and Economic Development:

Dr. Paul Schwind - Planner

POSITION OF THE PARTIES

Kauai County Planning Department:

". . .no objections to the change from Agriculture to Urban if the change is for residential use. Commercial use of the nature proposed at the subject location, however is recommended to be disapproved."

Department of Planning and Economic Development:

"Recommends approval of the petition to reclassify the subject property from the Agricultural to Urban District."

APPLICABLE REGULATION

Standards for determining the establishment of an Urban District is found under Part II, Section 2-2(1) of the State Land Use Commission's District Regulations. Said regulation provides in pertinent part that:

- "(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 standards 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 desirable 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 Hearings Officer having duly considered the record in this docket, the testimony of the witnesses and the evidence introduced herein makes the following findings of facts:

- 1. The subject property owned in fee simple by Petitioners is located at Kilauea, Hanalei, Kauai, consists of approximately 1.74 acres of land and is more specifically identified by Tax Map Key designation 5-2-09:8 [previously TMK 5-2-4:22] and is situated on the East Bank of Kilauea Stream between Kuhio Highway and Kauai Belt Road at Kilauea and Kahili, Hanalei, Kauai.

2. The subject property is and has been since 1964, within the Agricultural Land Use District and is surrounded on three sides by property presently in the Urban Land Use District.

3. The Kauai County General Plan designates the subject property as Open. The zoning designation is Open and Agriculture.

4. The subject property is presently vacant since being taken out of agricultural production when Kilauea Sugar Company ceased operations in 1970. The configuration of the subject property as a remnant is the result of the construction of the Kuhio Highway and the Kilauea bypass road in 1973.

5. The subject property is located at the 300 feet elevation and slopes (10%) from east to west into the Kilauea Stream. Rainfall averages 75 inches per year and drains naturally in the westerly direction into the Kilauea Stream.

6. The 100 year flood line extends across approximately the lower one-third of the subject property.

7. The U. S. Department of Agriculture Soil Conservation Service has classified the soils in the subject area as being of the Puhi (PnB) series, which are categorized as having fair suitability as topsoil and low fertility. These soils also have moderate to low shrink-swell potential and moderate limitations for septic tank filter fields on slopes of 8-15 percent. The Land Study Bureau classifies the soils of the subject area as land type C29, with a crop productivity rating of C in a five class rating of A through E with A representing the highest productivity rating.

8. The Petitioner proposes to develop the subject property into a "neighborhood commercial venture" consisting

of a Farmer's Market, snack shop, real estate office and gift shop. The proposed Farmer's Market is expected to provide an outlet for Kilauea agricultural produce which will be sold to residents and visitors of the area. The real estate office will provide space for the Petitioners' own real estate operations and the gift shop is intended to service the visitors to the area. Visitors to the area are expected in that scenic attractions such as Slippery Slides and the Kilauea Lighthouse is in the general area of the subject property.

9. Proposed plans indicate that the Petitioner intends to construct approximately 12,000 sq. ft. of rentable commercial space under roof at the cost of approximately \$400,000.00. The commercial space is proposed to be rented at fifty cents per sq. ft. for a total rental income of \$6,000.00 per month.

10. Construction of the proposed improvements on the subject property is expected to commence as soon as all applicable governmental approvals are obtained which is expected to be approximately three (3) years from the date the property is placed in the Urban Land Use District.

11. None of the structures on the property will be within the 100 year flood line that crosses the property.

12. Petitioner's financial statement as of January 1, 1977 reveals a personal net worth of \$124,000.00 of which \$55,000.00 is cash savings, \$10,000.00 in business investments and \$40,000.00 is the value of mortgage free real estate owned by Petitioner.

13. The existing commercial facilities are presently located in two areas:

- (a) intersection of Kolo Road and Kilauea Lighthouse Road; and
- (b) intersection of Kilauea Lighthouse Road and Keneke Street.

These two areas represent the established commercial core areas of the Kilauea area.

14. Subject property is located at one of the two entrances to Kilauea Town.

15. The two existing core areas are not designated as such on the General Plan since they existed prior to the adoption of the Kauai General Plan. The existing commercial areas were in effect grandfathered in.

16. There is presently 12,000 sq. ft. of commercial floor space in the Kilauea area. All of the existing space is presently being used.

17. Kauai County Planning Department's goal is maintaining agriculture as a primary economic base in the Kilauea area but is not opposed to a residential use of the subject property which requires an Urban designation.

18. The availability of public services and facilities to the subject property is as follows:

- (a) Water. An existing water transmission main runs along Kolo Road which is the Makai boundary of the subject property.
- (b) Sewer. Sewage disposal will be accomplished through the use of cesspools.
- (c) Schools. The subject property is in close proximity to Kilauea Elementary School while high school students will continue to be bussed to Kapaa High School.
- (d) Parks. Kilauea Park is located approximately 2,000 ft. from the subject parcel.

19. The proposed development for the subject property is not expected to add significantly to the traffic on Kuhio



Highway which fronts the subject property. The State Department of Transportation has determined the daily traffic count on Kuhio Highway to be 2,316 cars per day which is below the 4,500 cars per day capacity of Kuhio Highway.

20. The proposed development is not expected to significantly or adversely affect the environment or ecology of the area. There would be no loss of recreational facilities or area and will not have any adverse effect on the scenic quality of the Kilauea area.

21. The subject site has no historical or archaeological significance.

22. Development of the subject property will not significantly alter or overburden the existing natural drainage pattern for the area.

23. The population in Kilauea area dropped with the closing of sugar operations but since that time has stabilized and is gradually increasing.

24. Tourist traffic in the Kilauea area has also steadily increased.

25. The Kauai County Planning Department supports the petition to reclassify the property from Agricultural to Urban if the land is used for residential purposes.

26. Based on a review of the Petition, the evidence adduced at the hearing and the policies and criteria under the Interim Statewide Land Use Guidance Policy, the State Department of Planning and Economic Development has recommended that the reclassification from Agricultural to Urban be approved with the ultimate use of the Urban designated property being properly left to Kauai County.

CONCLUSIONS OF LAW

Reclassification of the subject property, approximately 1.74 acres, situated at Kilauea, Kauai, from Agricultural to Urban and amendment of the District boundaries accordingly is reasonable, not violative of Section 205-2 of the Hawaii Revised Statutes, and consistent with the Interim Statewide Land Use Guidance Policy established pursuant to Section 205-16.1, Hawaii Revised Statutes.

ORDER

FOR GOOD CAUSE appearing, it is hereby ordered that the property which is a subject of the Petition in this Docket No. 77-428, approximately 1.74 acres situated at Kilauea, Island of Kauai, consisting of a parcel of land identified by Tax Map Key 5-2-04:22, shall be and hereby is reclassified from Agricultural to Urban and the District boundaries are amended accordingly.

DONE at Honolulu, Hawaii, this 2<sup>nd</sup> day of December, 1977, per Motion on November 14, 1977.

LAND USE COMMISSION  
STATE OF HAWAII

By *Stanley Sakahashi*  
STANLEY SAKAHASHI, Chairman and  
Commissioner

By *Charles Duke*  
CHARLES 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 *Mitsuo Oura*  
MITSUO OURA, Commissioner

By *Carol B. Whitesell*  
CAROL WHITESELL, Commissioner

By *Edward Yanai*  
EDWARD YANAI, Commissioner