

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	
FLORO and TRINIDAD P. VILLABRILLE)	DOCKET NO. A78-436
to Amend the Agricultural Land Use)	
District Boundary to Reclassify)	FLORO and TRINIDAD P.
Approximately 7.42 acres, Tax Map)	VILLABRILLE
Key No. 4-6-14: 17 and 101, at)	
Kapaa, Island and County of Kauai)	
into the Urban Land Use District)	
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DECISION AND ORDER

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FLORO and TRINIDAD P. VILLABRILLE) DOCKET NO. A78-436
to Amend the Agricultural Land Use)
District Boundary to Reclassify) FLORO and TRINIDAD P.
Approximately 7.42 acres, Tax Map) VILLABRILLE
Key No. 4-6-14: 17 and 101, at)
Kapaa, Island and County of Kauai)
into the Urban 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 owners of the property who are requesting that the designation for the subject property be amended from Agricultural to the Urban district. The requested change consists of property comprising of approximately 7.42 acres, situated at Kapaa, Island and County of Kauai. The property is more specifically identified as Tax Map Key No. 4-6-14: 17 and 101.

PURPOSE OF PETITION

Petitioners' stated purpose for requesting the reclassification of the subject property from Agricultural to Urban is so that Petitioners can develop a twelve lot, single-family residential subdivision. The Petitioners intend to keep six of the lots for themselves and their

children, and sell six lots to local residents to pay for the costs of developing and subdividing the land.

THE PROCEDURAL HISTORY

The Petition was received by the Land Use Commission on February 21, 1978. Due notice of the hearing on this Petition was published in the Honolulu Advertiser and The Garden Island on April 21, 1978. Notice of the hearing was also sent by certified mail to all of the parties involved herein on April 21, 1978. No timely application for intervention or request to appear as witness was received by the Land Use Commission.

THE HEARING

The hearing on this Petition was held on May 26, 1978, in Lihue, Kauai.

Floro and Trinidad P. Villabrille, the Petitioners herein, were represented by Ted Chihara, Esq.; Kauai County was represented by Kauai County Corporation Counsel, Morris Shinsato, Esq.; and the Department of Planning and Economic Development was represented by Tatsuo Fujimoto.

The witnesses presented by the aforementioned parties were as follows:

Petitioner:

Floro Villabrille

County of Kauai:

Bert Matsumoto - Kauai County Staff Planner

Department of Planning and Economic Development:

Esther Ueda - Staff Planner

POSITION OF THE PARTIES

County of Kauai - Approval.

Department of Planning and Economic Development -
Approval.

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, tsunami 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 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 Petitioners herein, Floro and Trinidad P. Villabrille, is located at Kapaa, Island and County of Kauai, and consists

of approximately 7.42 acres, more particularly described as Tax Map Key No. 4-6-14: 17 and 101. The subject properties are located on the westerly side of Hauaala Road, approximately 750 feet from the intersection of Hauaala and Kawaihau Roads in the town of Kapaa.

2. The existing State Land Use classification of the subject property is Agricultural. In 1968, under Docket No. A68-203, Petitioners requested that the Land Use Commission amend the district boundary from Agricultural to Urban for 32.4 acres of land, which included the subject properties and an additional parcel identified by Tax Map Key No. 4-16-14: 16. The Land Use Commission approved the redistricting of only three acres of land owned by the Petitioners and denied reclassification of the remaining areas largely due to flooding hazards. During the Land Use Commission's 1969 Boundary Review, a parcel identified as Tax Map Key No. 4-6-14: 101, was reclassified from Agricultural to Urban, largely on the grounds that the Kapaa-Wailua area was one of the primary Urban concentrations on the Island of Kauai and was projected to include the greatest amount of growth based on current population projections. During the Land Use Commission's 1974 Boundary Review, the subject properties were reclassified back to the original Agricultural designation under Docket No. K74-10. The Commission's stated purpose for reclassifying the property was that during the five-year period following the reclassification of the subject property from Agricultural to Urban, there had been no improvements initiated on the subject property.

3. That the Kauai General Plan designates the subject property as "single-family residential" and the County zoning for the property is "open". That if the district boundary change is approved, the Petitioners have represented that they intend to apply to the County of Kauai to rezone the subject property to an R-4 designation.

4. That presently there are three separate buildings located on the subject property of which two are occupied as residential dwellings and the remaining structure is used for storage. Presently a few head of cattle and chickens are raised on the property for home consumption.

5. That the subject property, consisting of approximately 7.42 acres, is bounded on the north and northwest by lands in the State Land Use Agricultural district and bounded on the east and south by the present Kapaa Urban district.

6. That the subject properties range in elevation from 40 to 120 feet based on USGS maps for the area. Slope for the subject properties are approximately 33%. That the slope direction is north, which runs downward towards the Kapaa River.

7. That the U.S. Department of Agriculture Soil Conservation Service has classified the soils in the subject area as being of the Puhi series, PnD (Puhi Silty Clay Loam, 15 to 25% slopes) and PnE (Puhi Silty Clay Loam, 25 to 40% slopes). This series consists of well-drained soils on the uplands of the Island of Kauai and were developed in material derived from basic igneous

rock. PnD soil is classified as having medium runoff and a moderate erosion hazard. This soil is used for sugarcane, pineapple, orchards, pasture, woodland, wildlife habitat, and water supply. PnE soil is classified as having rapid runoff and is a severe erosion hazard. This soil is used for pasture, woodland, wildlife habitat, and water supply.

8. That the University of Hawaii Land Study Bureau (Detailed Land Classification - Island of Kauai, [1967]), has classified the subject property as C43 and D44 with an overall productivity rating of D in a five-step system of A, B, C, D, and E, with A being the representation of highest productivity land and E the lowest.

9. That the average annual rainfall for the subject property is approximately 40-60 inches and drainage from the property is into the Kapaa River, which lies approximately 600 feet from the subject property. Based on the 1973 U.S. Corps of Engineers "Map of Flood Prone Areas" for the Kapaa area, the subject properties abut, but are not within areas subject to flooding hazards. That the Petitioner who resided on the property since 1953 has not experienced any flooding on his property.

10. That the subject property contains no known significant natural scenic or recreational resources. That no known archaeologic or historic sites are present on the subject property. That no significant adverse environmental impacts are expected as a result of this reclassification.

11. The Petitioners propose to subdivide and develop the subject property into approximately twelve

residential lots. The Petitioners intend to keep six of the lots for themselves and their children and sell six lots to local residents to pay for the costs of developing and subdividing the land. Each of the lots are intended to be approximately 8,500 to 10,000 square feet, with the selling price of the house lots to be between \$18,000.00 and \$25,000.00. All onsite improvements required by Kauai County ordinances will be complied with and funded by the Petitioners. Cesspools will be used for sewage disposal and the cost of installation will be the responsibility of the individual lot owners.

12. That due to the slope of the subject property, and the fact that it is bisected by an abandoned ditch right-of-way, the proposed subdivision will not follow a uniform subdivision design. That said constraints, however, will prevent the site from being developed as a high residential density area. That the limited density restriction and the effective utilization of the slope areas will allow the Petitioners to create lots with a unique site orientation and visual opportunity.

13. That there is a need and demand for house lots in Kapaa, Kauai, and since the subject properties are within the town of Kapaa and also close to Lihue, the proposed subdivision at the price represented by the Petitioners can be easily marketed. That an A & B developed subdivision located above the subject property consisting of approximately 100 lots, was marketed and sold very readily.

14. That the subject properties do not have a high capacity for agricultural production. That the subject property, which is not suitable for agricultural use can be utilized to another advantage pertaining to residential use.

15. The subject property abuts the existing Kapaa Urban district and would not contribute to spot urban development.

16. That the subject property is in close proximity to centers of trading and employment and to St. Catherine's School, Kapaa High School, and Mahelona Hospital. That the subject property is a short driving distance to Wailua and Lihue and is in an area that has many recreational resources.

17. That telephone, water and electrical services are available to the subject property.

18. That all State agencies contacted in regard to the reclassification of the subject property have indicated that they have no objections to said reclassification.

19. Based on 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 and the County of Kauai have recommended that the reclassification be approved.

CONCLUSIONS OF LAW

Reclassification of the subject property, consisting of approximately 7.42 acres, situated at Kapaa, Island and County of Kauai, from Agricultural to Urban and an amendment to the district boundaries accordingly is reasonable, non-violative of Section 205-2 of the Hawaii Revised Statutes, and is consistent with 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 a subject of the Petition in this Docket No. A78-436, consisting of approximately 7.42 acres, situated at Kapaa, Island and County of Kauai, identified as Tax Map Key No. 4-6-14: 17 and 101, shall be and the same is hereby reclassified from the "Agricultural" district to the "Urban" district classification, and the district boundaries are amended accordingly.

DONE at Honolulu, Hawaii, this 17th day of November, 1978, per Motion on November 2, 1978.
1978.

LAND USE COMMISSION
STATE OF HAWAII

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

By *Shimichi Nakagawa*
SHIMICHI NAKAGAWA
Vice Chairman and Commissioner

By *James R. Carras*
JAMES R. CARRAS
Commissioner

By *Colette Y. Machado*
COLETTE Y. MACHADO
Commissioner

By *Shinsei Miyasato*
SHINSEI MIYASATO
Commissioner

By *Mitsuo Oura*
MITSUO OURA
Commissioner

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

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_____)

CERTIFICATE OF SERVICE

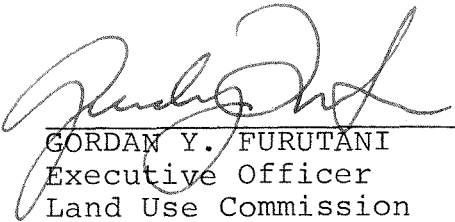
I hereby certify that a copy of the Land Use Commission's Decision and Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

Mr. Hideto Kono, Director
Department of Planning & Economic Development
250 South King Street
Honolulu, Hawaii 96813

Mr. Brian Nishimoto, Planning Director
Kauai Planning Department
County of Kauai
4280 Rice Street
Lihue, Kauai 96766

Mr. Clinton I. Shiraishi, Esq.
Shiraishi & Yamada
P. O. Box 1246
Lihue, Kauai 96766

Dated: Honolulu, Hawaii, this 21st day of November, 1978.



GORDAN Y. FURUTANI
Executive Officer
Land Use Commission