

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A80-488
	)	
SAMUEL HEPA, JANET HEPA, ESPECIO	)	SAMUEL HEPA, JANET
DOTARIO and ANGELINE H. DOTARIO	)	HEPA, ESPECIO DOTARIO
	)	and ANGELINE H. DOTARIO
To Amend the Agricultural Land Use	)	
District Boundary to Reclassify	)	
Approximately 3.08 Acres, TMK:	)	
4-4-03:60, at Waipouli, Kawaihau,	)	
Island and County of Kauai, into	)	
the Urban Land Use District	)	
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DECISION AND ORDER

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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 Samuel Hepa, Janet Hepa, Especio Dotario and Angeline H. Dotario, the fee owners, who are requesting that the designation of the subject property be amended from the Agricultural to the Urban District. The requested change consists of property comprising approximately 3.08 acres of land, situated at Waipouli, Kawaihau, Island and County of Kauai. The subject property is more particularly identified as Tax Map Key No. 4-4-03:60.

PURPOSE OF PETITION

Petitioners' stated purpose for requesting the reclassification of the subject property from Agricultural to Urban is so that Petitioners can subdivide the subject property into two parcels, one parcel to contain an area of 1.0 acre, and the second parcel to contain an area of 2.08 acres.

The Hepas own an undivided 2/3 interest of the subject property as Tenants by the Entirety and the Dotarios own an undivided 1/3 interest as Tenants by the Entirety. "After subdivision approval, Hepa will quitclaim their interest in the 1-acre parcel to Dotarios to make them the sole owners thereof for the purpose of constructing a single family dwelling and for farming thereon, and Dotarios will quitclaim their interest in the 2.08-acre parcel to Hepa to make them the sole owners thereof."

#### THE PROCEDURAL HISTORY

The Petition was received by the Land Use Commission on June 17, 1980. Due notice of the hearing on this Petition was published on September 10, 1980, in The Garden Island and The Honolulu Advertiser. Notice of the hearing was also sent by certified mail to all parties involved herein on September 8, 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 October 10, 1980, in Lihue, Kauai, Hawaii.

Samuel Hepa, Janet Hepa, Especio Dotario and Angeline H. Dotario, the Petitioners herein, were represented by Clinton I. Shiraishi, Esq.; the County of Kauai was represented by Michael Belles, Esq.; 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:

Angeline H. Dotario

Especio Dotario

Samuel Hepa

County of Kauai:

Michael Laureta - Planner, Kauai County Planning Department

Department of Planning and Economic Development:

Ms. Esther Ueda - Staff Planner with the Department of Planning and Economic Development

POSITION OF THE PARTIES

County of Kauai - Denial.

Department of Planning and Economic Development - Denial.

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. 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 or 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, is located in the Kapaa Homesteads, Island and County of Kauai, and consists of approximately 3.08 acres, more particularly described as Tax Map Key No. 4-4-03:60. The subject property lies approximately 3 miles west of Kapaa Town, on the northern side of Olohena Road, between Puuopae and Kamalu Road. The subject property was created from a portion of Lot 122 of Kapaa Homesteads, consisting of a net area of 22.16 acres, which was owned by Petitioners Samuel Hepa's and Angeline H. Dotario's late mother. Said Lot 122 was inherited by the twelve Hepa siblings, including Samuel Hepa and Angeline H. Dotario. Seven years later, Said Lot 122 became the subject of an action to quiet title, filed by one of the Hepa siblings, David Hepa. The action to quiet title was subsequently dismissed. Later, said Lot 122 was the subject of a partition suit. As a result of the partition suit, Lot 122 was subdivided and Petitioners became owners of the subject property, with Samuel and Janet Hepa holding an undivided 2/3 interest, and Especio and Angeline H. Dotario holding an undivided 1/3 interest. The subdivision of Lot 122, which created the subject property, was granted final approval by the Kauai County Commission on February 13, 1974.

2. The present Kauai County zoning designation of the subject property is "Agricultural District (A)." Reclassification of the subject property to the Urban District will require approvals on zoning from both the County Planning Commission and the County Council. Petitioners would be

further required to obtain a variance to subdivide the property since the proposed lot configuration would exceed the minimum 4-1 length to width ratio requirement and the minimum average lot width requirement of 150 feet.

3. The County of Kauai General Plan includes the subject property within the "Agricultural District." A General Plan Amendment will be required by both the County Council and the County Planning Commission if the subject property is reclassified to the Urban District. The subject property is not planned for urban expansion under the Kauai General Plan or the Kapaa-Wailua Development Plan. The subject property is not located within the Special Management Area as designated by the County of Kauai.

4. The Land Use Commission's District Boundary Map K-10 indicates that the subject property is presently located within the State Land Use Agricultural District. Agricultural Districts abut the subject property on its northern, eastern and western boundaries. Land to the south of the subject property, separated by Olohena Road, lies in the Rural District. There are no Urban Districts either adjoining or in close proximity to the subject property. Wailua Houselots, the closest Urban District, lies approximately 1 1/2 miles from the subject area. Land uses surrounding the subject property are largely single family residential uses, vacant undeveloped lands, and land being used for grazing purposes.

5. There presently exists on the subject property one single family residential unit which is occupied by the Hepas. A portion of the subject property is also being used for grazing purposes.

6. The median annual rainfall for the area in which the subject property is located is from 50 to 75 inches. The portion of the subject property fronting Olohena Road is level, then slopes toward the rear to a stream which runs through the property. The stream which runs through the parcel provides drainage for the subject property. The subject property is located approximately 360 feet above sea level and is not situated within areas subject to flooding or tsunami inundation as indicated by the U. S. Department of Interior, Geological Survey Map of Flood Prone Areas, 1973.

7. According to the Land Study Bureau, "Detailed Land Classification - Island of Kauai," the portion of the subject property fronting Olohena Road has been classified as C78 with an overall productivity rating of C. The remainder of the subject property has been classified as D80 with an overall productivity rating of D. The U.S.D.A. Soil Conservation Service Soil Survey report classifies the soils of the subject property as the Puhi Series--Puhi silty clay loam, 3% to 8% slopes (PnB) for the soil of the area fronting Olohena Road, and Puhi silty clay loam, 15% to 25% slopes (PnD) for the remainder of the property. Both soils have characteristics of slow run-off and some erosion hazard. The subject property does include lands classified as Prime Agricultural Lands to the Agricultural Lands of Importance to the State of Hawaii (ALISH) classification system.

8. Records from the State of Hawaii Department of Land and Natural Resources do not indicate the presence of historical, cultural, architectural and/or archaeological resources on the subject property.

9. If the Petitioners are granted a boundary amendment to include the subject property in the Urban District,



they propose to subdivide the property into two parcels, one parcel to contain an area of 1.0 acre and the second parcel to contain an area of 2.08 acres. After subdivision approval, the Hepas will quitclaim their interest in the 1-acre parcel to the Dotarios, making them sole owners for purposes of building a single family dwelling and farming, and the Dotarios will quitclaim their interest in the 2.08-acre parcel to the Hepas, making them the sole owners. Petitioners state that all work for the proposed two-lot subdivision can be completed within a period of about 60 days, but no timetable is included in the Petition for the construction of the proposed second single family dwelling unit.

10. Since the subject property resulted from an earlier subdivision of a larger parcel, Petitioners are precluded from again subdividing their property under the Kauai County Comprehensive Zoning Ordinance which provides that "No parcel resulting from a subdivision approved after the date of this Ordinance shall be resubdivided unless the parcel is transferred to the Urban District under the provisions of the State Land Use Law..." The Ordinance in question has prompted the filing of the subject Petition. The justification for the subject Ordinance is as follows:

- "a. limit, retard and control such subdivision of agriculture land that will destroy agriculture stability and potential,
- b. avoid the dissipation of agriculture lands by excessive or premature parceling for other than agriculture uses,
- c. establish and maintain a proportionate mix of parcel sizes to accomodate optimum sizes for existing or potential agricultural uses,

- d. establish a relationship between the size of the parcel to be subdivided and the size of the smaller parcels created by such subdivision, in order to maintain large parcels for agricultural uses and activities best carried out on large parcels, and to maintain and provide smaller parcels of various sizes for agricultural uses that can be carried out most efficiently on such smaller parcels."

11. The public services and facilities available to the subject property are as follows:

a. Traffic - As the Petitioners intend to build only one additional single family residential dwelling on the subject property, no significant traffic impact on the existing roads in the area is anticipated.

b. Schools - According to the Department of Education, the proposed reclassification will have no significant student enrollment effect on schools in the Kapaa, Kauai area.

c. Sewage - At present, there is no public sewage system available to service the proposed residential use. A cesspool will be installed for the residential unit to be built on the second lot.

d. Water - As County water authorities have indicated, there is an adequate supply of water to accommodate the two-lot subdivision.

e. Sanitation - The County of Kauai will provide refuse and garbage disposal services for the proposed two-lot subdivision.

f. Drainage - The subject property's natural drainage is to the north into the stream which runs through the property.

g. Police and Fire Protection - The Lihue Police Station is located approximately 10 miles away from the subject property and the Kapaa Fire Station is located approximately 5 miles away from the subject property.

12. Based upon a review of the Petition, the evidence adduced at the hearing, and the provisions of Chapter 205, Hawaii Revised Statutes, the Department of Planning and Economic Development and the County of Kauai have objected to the granting of the Petition. From a planning standpoint, the Department of Planning and Economic Development does not find it appropriate or desirable to reclassify the subject property into the Urban district simply to circumvent the requirements of the Kauai County Zoning Ordinance. Reclassification may encourage future requests for an Urban change to circumvent the Zoning Ordinance. Since the existing land use pattern of the area is Agricultural and Rural, the Department does not find Urban classification appropriate at the present time. The County of Kauai also does not consider the proposed land use boundary change as a logical and appropriate extension of the Urban Land Use District as:

- "(1) It is not a contiguous extension of any existing Urban district boundary;
- (2) It will contribute towards scattered spot urban districting, and
- (3) It is not consistent with urban residential growth as designated on the County General Plan and the Kapaa-Wailua Development Plan."

In addition, Kauai County is concerned that this redistricting request will set a precedence relative to second time subdivision of agricultural lands for the express purpose of

separating interests in a parcel. Although only one additional lot will be created by the subdivision, an Urban designation of one lot north of Olohena Road, will consequently open up the rest of the north side for possible redistricting, as northern parcels could claim to be adjacent to "existing urban districts." The encouragement of residential development in this area will foster inflated land prices and continue to discourage agriculture related activities."

#### CONCLUSIONS OF LAW

Reclassification of the subject property, consisting of approximately 3.08 acres of land, situated at Waipouli, Kawaihau, Island and County of Kauai, from Agricultural to Urban and an amendment to the district boundaries accordingly is not in conformance with Section 205-2 of the Hawaii Revised Statutes, and the Rules and Regulations of the Land Use Commission in that the subject property:

- (a) is not contiguous to an existing urban district nor does it constitute all or part of a self-contained urban center;
- (b) is not required to reasonably accommodate growth and development, and
- (c) if reclassified to Urban would contribute toward scattered spot urban development.

#### ORDER

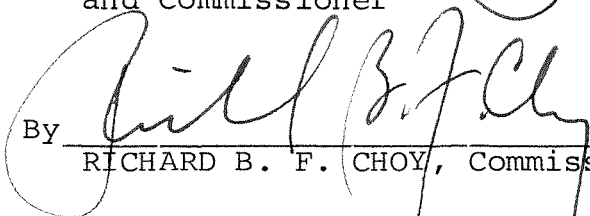
The Petition, failing to comply with Chapter 205 of the Hawaii Revised Statutes, and the Rules and Regulations of the Land Use Commission, is hereby denied and the subject property, consisting of approximately 3.08 acres, situated at Waipouli, Kawaihau, Island and County of Kauai, identified as Tax Map Key No. 4-4-03: 60, shall be retained in the Agricultural land use district.

DONE at Honolulu, Hawaii, this 24th day of  
March, 1981, per Motion on February 3, 1981.

LAND USE COMMISSION  
STATE OF HAWAII

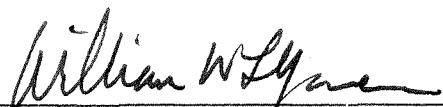
By   
C. W. DUKE, Chairman and  
Commissioner

By   
SHINICHI NAKAGAWA, Vice Chairman  
and Commissioner

By   
RICHARD B. F. CHOY, Commissioner

By   
SHINSEI MIYASATO, Commissioner

By   
CAROL B. WHITESELL, Commissioner

By   
WILLIAM W. L. YUEN, Commissioner

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Island and County of Kauai, into )  
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Land Use Commission 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

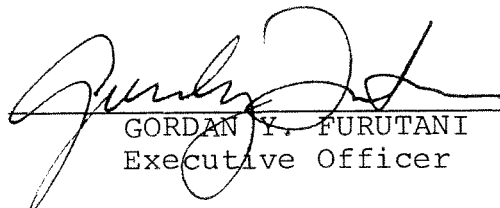
ANNETTE CHOCK, Deputy Attorney General  
Department of Attorney General  
4th Floor, State Capitol  
Honolulu, Hawaii 96813

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

MORRIS SHINSATO, County Attorney  
Office of County Attorney  
4396 Rice Street  
Lihue, Hawaii 96766

CLINTON I. SHIRAISHI, Attorney for Petitioner  
P. O. Box 1246  
Lihue, Hawaii 96766

DATED: Honolulu, Hawaii, this 30th day of March, 1981.

  
\_\_\_\_\_  
GORDAN Y. FURUTANI  
Executive Officer