BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A83-546
	)	
GRAHAM BEACH PARTNERS	)	GRAHAM BEACH PARTNERS
	)	
To Amend the Conservation Land Use District Boundary to Reclassify Approximately 0.50 Acres, TMK: 3-7-03: portion 14 at Hanamaulu, Island and County of Kauai, State of Hawaii.	)	

DECISION AND ORDER

BEFORE THE LAND USE COMMISSION

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In the Matter of the Petition of	)	DOCKET NO. A83-546
GRAHAM BEACH PARTNERS	)	GRAHAM BEACH PARTNERS
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DECISION

Petition

This matter arises from a Petition for an amendment to the Land Use Commission district boundary filed on February 2, 1983, and amended on February 17, 1983, pursuant to Section 205-4 of the Hawaii Revised Statutes, as amended, in Part VI, Rule 6-1, of the Land Use Commission's (the "Commission") Rules of Practice and Procedure and District Regulation by Graham Beach Partners, a Hawaii General Partnership, to amend the designation of the property comprising approximately 0.50 acres of land, situate at Hanamaulu, Island and County of Kauai, State of Hawaii, identifed as Kauai Tax Map Key No. 3-7-03: portion 14 (the "Property") from the Conservation to the Urban Land Use District. A map of the Property is attached hereto as Exhibit "A."

PURPOSE OF THE PETITION

The Petitioner proposes to cure an encroachment of existing improvements and landscaping in the conservation district, which encroachments were found by the State of Hawaii, Board of Land and Natural Resources (the "Board"), subsequent to the completion of those improvements and landscaping by the Petitioner, as well as to prevent possible future encroachments due to the shifting of the vegetation line caused by the flowing of water from the drainage ditch into the ocean.

PROCEDURAL HISTORY

The Commission, based on Petitioner's environmental assessment, determined that the reclassification would not constitute a significant effect on the environment as defined in Section 343-5 of the Hawaii Revised Statutes, as amended.

THE HEARING

The hearing on this Petition was opened by the Commission on July 20, 1983 in Lihue, Kauai, pursuant to notice published on June 13, 1983 in the Garden Isle News and the Honolulu Advertiser. The Committee to Save Nukolii filed a Petition to Intervene on June 27, 1983. Petitioner Graham Beach Partners was represented by Walton Hong, Esq; County of Kauai was represented by Deputy Corporation Counsel Warren Perry, Esq.; The Department of Planning and

Economic Development was represented by Deputy Attorney General Annette Chock, Esq.; and the Intervenor Committee to Save Nukolii was represented by Linda Levy, Esq. The Commission deferred consideration of a motion to appear as counsel filed by Sidney Wolinsky, Esq. The Commission denied the Committee to Save Nukolii's Petition to Intervene and granted Petitioner's Motion to Continue Hearing because Petitioner required additional time to serve copies of the Amended Petition for Boundary Amendment on all persons with a property interest in the Property. The Commission filed its Orders on these Motions on August 18, 1983, and August 8, 1983, respectively.

The Commission appointed a Hearing Officer to conduct the continued hearing in this docket which resumed on June 26, 1984 in Lihue, Kauai.

The following public witnesses and witnesses presented by the parties testified:

Public Witnesses:

Francis S. Warther

Valerie Hepa

Petitioner:

Allan P. Yasue - Partner, Coopers and Lybrand, Certified Public Accountants.

Ceasar Portugal - Civil Engineer and Land Surveyor

Robert C. Oda - Project Manager, Hasegawa Komuten

R. S. Yokoyama - Professional Surveyor and Engineer

County of Kauai:

Michael Laureta - Staff Planner, County of Kauai Planning Department.

Department of Planning and Economic Development:

Tatsuo Fujimoto - Chief, Land Use Division, Department of Planning and Economic Development.

POSITION OF THE PARTIES

County of Kauai - Approval. Department of Planning and Economic Development - Approval.

APPLICABLE REGULATIONS

Standards for determining the establishment of an Urban District found the under Commission District Regulations provides 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 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 considerations to areas of urban growth as shown on the State and County General Plans.

(f) Lands which do not conform to the existing 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 Land Use Commission, 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 Property is located at Hanamaulu, Island and County of Kauai, State of Hawaii, and consists of approximately 0.50 acres, identified as Kauai Tax Map Key No. 3-7-03: portion 14. The Property is a part of lot 1-D, a 13 acre parcel which is the site of the 150-unit Kauai Beach Villas Condominium project. Lot 1-D, with the exception of the Property, is in the Urban Land Use District.

The Property is a portion of a 150 foot wide strip running along the shoreline in the Conservation District, southeast of Kauai Beach Villas condominium. A drainage ditch is located along the northern boundary of the Property and the Pacific Ocean borders the subject property on the east.

2. The County of Kauai's General Plan designates the Property as Open. The County Of Kauai has zoned the Property Open under the County's Comprehensive Zoning Ordinance. The Property is situate within the County's Special Management Area.

3. The Property has an elevation which ranges from 8-12 feet above sea level. The Property slopes toward the drainage ditch along the northern boundary of the condominium site, except for that portion immediately fronting the improvements which is relatively flat due to grading and landscaping. The Property drains in the makai direction into the bordering drainage ditch or into the ocean. Rainfall in the area is approximately 40 inches per year. The soil on the subject site is comprised mostly of beach sand with some silt washed down from the upland watershed. The Land Study Bureau of the University of Hawaii does not classify beach sand on its scale of land productivity. The State Department of Agriculture has not classified the Property in its Agricultural Lands of Importance to the State of Hawaii classification system. The Property is situate within the tsunami inundation area. The Federal Insurance Administration, in its Flood Insurance Study for Kauai County, designates the property in zones V18 and A4. The approximate 100-year tsunami elevation at the site is 9 feet above mean sea level. This 100-year event has a one percent chance of being equalled or exceeded in any given year.

4. On November 5, 1982, the Board found that Petitioner had violated the Board's Regulation 4, which governs uses with the Conservation District at Hanamaulu,

Kauai. The violations consisted of construction of landscaping and plantings, spot lights, sprinklers, a drainage ditch, and a portion of Building G of the Kauai Beach Villas residential condominium project within the Conservation District without Board approval. In addition to financial sanctions levied by the Board on Petitioner, the Board also imposed the following requirements:

> "That the landowner be required to submit a petition before the Land Use Commission, within six (6) months of this date, to seek removal of that portion of Building 24 which currently lies in the Conservation District."
>
> "That the Board maintains continuing jurisdiction over this violation. In the event that the Land Use Commission denies the reclassification, this matter will be returned to the Board for further disposition, which may include removal of the building from the Conservation District."

The Board, however, has retained jurisdiction over Petitioner's after-the-fact Conservation District Use Application for the subdivision of the Conservation lands. The Board has indicated that the Conservation District Use Application will only be considered and acted upon following the Commission's decision on this docket.

5. The placement of improvements within the Conservation District without Board approval was unintentional and done under the erroneous assumption that the subject property was within the State Land Use Urban District. In order to change the zoning district of the Property and to obtain a Special Management Area Use Permit from the County of Kauai, Petitioner was required to designate setbacks from the shoreline on which no building of structures would be permitted. Petitioner's engineer, Portugal Ibarra & Associates, Inc., obtained a shoreline certification from the Department of Land and Natural Resources for the subject property on or about June 23, 1980 and relied upon this certification for the siting of the buildings in accordance with the County of Kauai shoreline setback requirements. The shoreline in the Hanamaulu/Wailua area runs in a north-south direction. Due to the drainage ditch along the Property's northern boundary, the vegetation line in the vicinity of the beach begins to curve inland to the ditch.

Petitioner's engineer failed to request that the State surveyors certify the shoreline along the entire makai boundary of Lot 1-D northward along the line of vegetation to the other side of the ditch. Rather, Petitioner's engineer erroneously assumed that the vegetation line curved inland due to the ditch.

Petitioner's engineer did not request that the Commission certify the Urban-Conservation district boundary; along the entire length of Petitioner's shoreline boundary. Petitioner's engineer merely located the urban-conservation boundary in the vicinity of the Property by extrapolation of the line provided by the Commission.

The Board subsequently determined that notwithstanding the Board's previous interpretation of the shoreline, that portion of the vegetation line, which curved inland, was not the shoreline for purposes of determining the shoreline setback. The result of the Board's determination is that a portion of one building, certain lighting fixtures, signs and some landscaping were constructed within the State Land Use Conservation District without previously obtaining the requisite Conservation District Use Application permit. Petitioner has also requested that a portion of the Conservation district mauka of the curve inland by the vegetation line be designated Urban because of the vegetation line, the shoreline and the shoreline setback area continually shift in the vicinity of Building G where the vegetation line begins to curve inland towards the drainage ditch.

Petitioner indicated that all of the existing improvements within the Conservation district will remain if this Petition were granted. The only additional improvements that could be placed within the subject property would be additional landscaping and the maintenance of said landscaping. Since all improvements contemplated for the Property are already in place, the financial condition of Petitioner appears satisfactory for the purpose of maintaining such improvements.

6. The reclassification of the Property will not adversely impact any resources of the area since all the improvements with the exception of the additional landscaping on the subject property are already in place.

7. The reclassification of the Property will not unreasonably burden the provision of public services and facilities in the area since all necessary urban services have already been provided to the subject property and are currently available to the Kauai Beach Villas condominium.

8. Based on a review of the Petition, the evidence adduced at the hearing and the provisions of Chapter 205 of the Hawaii Revised Statutes, County of Kauai and the Department of Planning and Economic Development have recommended that the reclassification of the subject property be approved.

CONCLUSION OF LAW

Reclassification of the Subject Property, consisting of approximately 0.50 acres of land, situated at Hanamaulu, Island and County of Kauai, State of Hawaii from the Conservation District to the Urban District and an amendment to the district boundaries accordingly is reasonable and non-violative of Section 205-2 of the Hawaii Revised Statutes.

ORDER

IT IS HEREBY ORDERED:

That the property which is the subject of this Petition in this Docket No. A83-546, consisting of approximately 0.50 acres of land situate at Hanamaulu, Island and County of Kauai, State of Hawaii identified as Kauai Tax Map Key No. 3-7-03: portion 14 shall be and hereby is reclassified from the Conservation District to the Urban District and the district boundaries are amended accordingly.

DOCKET NO. A83-546 - GRAHAM BEACH PARTNERS

Done at Honolulu, Hawaii, this 12th day of April, 1985, per motions on December 18, 1984 and March 6, 1985.

LAND USE COMMISSION
STATE OF HAWAII

By _____
WILLIAM W. L. YUEN
Chairman and Commissioner

By _____
TEOFILO PHIL TACBIAN
Commissioner

By _____
TORU SUZUKI
Commissioner

By _____
RICHARD B. F. CHOY
Commissioner

By _____
FREDERICK P. WHITTEMORE
Commissioner

By _____
WINONA E. RUBIN
Commissioner

By Lawrence F. Chun
LAWRENCE F. CHUN
Commissioner

By Robert S. Tamaye
ROBERT S. TAMAYE
Commissioner

A83-546
GRAHAM BEACH

SHORELINE AS CERTIFIED ON JUNE 27, 1983

N49°07'32"E — N48°51'40"E — N50°07'54"E
42.11 — 63.77 — 50.00

232.00

ROCK PILE

ROCK PILE

EDGE OF DITCH

315° 30'

282.63

6ft. Wide Pedestrian Easement

296° 10'
45.00

1000'

109.35

286° 40'

4139.3618 N
7178.5283 E

AREA
APPROVED
12,676 sf

BUILDING G

Proposed Area

BUILDING H

LAND USE BOUNDARY AS
CERTIFIED ON JULY 11, 1983

78° 10'

110.00

290.00'

LOT I D

LOT I E

North

SCALE: 1" = 50'

TMK: 3-7-3:14

KAUAI, HAWAII

EXHIBIT A

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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:

KENT M. KEITH, Director
Department of Planning and Economic Development
State of Hawaii
250 South King Street
Honolulu, Hawaii 96813

AVERY H. YOUN, Planning Director
Planning Department
County of Kauai
4280 Rice Street
Lihue, Hawaii 96766

WALTON D. Y. HONG, Attorney for Petitioner
Masuoka & Hong
P. O. Box 1727
Lihue, Hawaii 96766

DATED: Honolulu, Hawaii, this 12th day of April, 1985.

ESTHER UEDA
Executive Officer

DOCKET NO. A83-546 - GRAHAM BEACH PARTNERS

A copy of the Land Use Commission's Decision and Order was served by regular mail to the following on April 12, 1985.

EVERETT KANESHIGE, Deputy Attorney General
Department of the Attorney General
State Capitol, 4th Floor
Honolulu, Hawaii 96813

MAX GRAHAM, County Attorney
Office of the County Attorney
County of Kauai
4396 Rice Street
Lihue, Hawaii 96766

BENJAMIN MATSUBARA, Hearing Officer
1717 Pacific Tower
1001 Bishop Street
Honolulu, Hawaii 96813

AKIO SERIZAWA
Department of Land and Natural Resources
Kalanimoku Building
1151 Punchbowl Street
Honolulu, Hawaii 96813