

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
JAMES M. LOWSON and PETER Z. DYCK,) DOCKET NO. A78-447
to Amend the Agricultural Land Use) JAMES M. LOWSON and
District Boundary to Reclassify) PETER Z. DYCK
Approximately 2.377 Acres, TMK:)
4-3-01: 31 (portion), at Mahinahina,)
Lahaina, Island and County of Maui,)
into the Urban Land Use District.)

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 the fee owners of the property who are requesting that the designation for the subject property be amended from the Agricultural to the Urban district. The requested change consists of property comprising approximately 2.377 acres of land, situated at Mahinahina, Lahaina, Island and County of Maui. The property is more specifically identified as Tax Map Key No. 4-3-01: 31 (portion).

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 five (5) lots ranging in size from approximately 9,459 sq. ft. to 30,401 sq. ft. and to sell the same to the abutting landowners.

THE PROCEDURAL HISTORY

The Petition was received by the Land Use Commission on November 9, 1978. Due notice of this hearing was published in the Maui News and the Honolulu Advertiser on February 2, 1979. Notice of the hearing was also sent by certified mail to all parties involved herein on February 2, 1979. No requests were received by the Land Use Commission for intervention as a party or to testify as a public witness in this docket.

After the taking of testimony was concluded in this docket on March 9, 1979, the hearing was recessed by stipulation of the parties to permit the Petitioners to resolve the question of ownership to the subject property since a condemnation action had been filed in the Second Circuit Court as Civil No. 3120, involving the subject property. The Petitioners indicated that they were in the process of extricating the subject property from the condemnation action and that upon so doing, would serve upon the Hearing Officer and the parties hereto, documentation and evidence to reflect the same. It was further agreed by and between the parties that if no objections were filed by them with the Hearing Officer within ten (10) days following service of the aforementioned documents, the documents would be included as part of the record herein and the hearing would be closed.

The Petitioners subsequently did in fact submit documentation reflecting the fact that the subject property had been extricated from the condemnation action and said documents were served upon all parties hereto. The Hearing Officer, having received no objections from parties to the proceeding in regard to the documentation filed by the Petitioners, closed the hearing on this matter on January 15, 1980.

THE HEARING

The hearing on this Petition was held on March 9, 1979, in Wailuku, Maui, Hawaii.

Petitioners herein were represented by James M. Lowson; the County of Maui was represented by Roy Yempuku, 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: James M. Lowson

Maui County: Chris Hart

Department of Planning and Economic Development:
Abe Mitsuda

POSITION OF THE PARTIES

Maui County - 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, JAMES M. LOWSON and PETER Z. DYCK, is located at Mahinahina, Lahaina, Island and County of Maui, State of Hawaii, and consists of approximately 2.377 acres, more particularly described as Tax Map Key No. 4-3-01: 31 (portion). The subject parcel is located approximately 100 feet South of Mahinahina Stream and continues for 1,091 feet in a Southerly direction as a narrow remnant parcel with a maximum depth of 140 feet.

2. The existing State Land Use classification of the subject property is Agricultural. The Maui County General Plan designation for the subject parcel is Apartment. The Maui County zoning is Agriculture.

3. The subject property was originally part of a contiguous agricultural area which was severed when the Honoapiilani Highway was realigned which resulted in the long, narrow configuration of the subject property. The subject property is also landlocked and the only access to it is through the property of the abutting landowners. The subject property is bordered on the Mauka side by the upper

Honoapiilani Highway and on the Makai side by five (5) Urban designated parcels of Property. The property presently includes a 30-foot wide abandoned asphalt paved cane haul road, with the remaining portions being vacant and overgrown with scrub brush.

4. The subject property is approximately 80 feet above sea level with moderate topography and encounters approximately 20 to 35 inches of rainfall per year. The subject property lies immediately Mauka of the flood-prone area boundary and tsunami inundation line as mapped by the U. S. Army Corps of Engineers and the Hawaii Institute of Geophysics Tsunami Research Program.

5. The soil on the subject property is classified by the U. S. Department of Agriculture, Soil Conservation Service, as Lahaina silty clay (LaB) with 3% to 7% slope. Permeability is moderate, runoff is slow and the erosion hazard is slight. The Land Study Bureau Detailed Land Classification for the Island of Maui gives the soil in this area a master productivity rating of "A".

6. The Petitioners, who own Urban designated property abutting the subject property, intend to subdivide the subject property and sell the same to other abutting landowners. Including the Petitioners, there are four (4) other abutting property owners to the subject property. According to the Petitioners, since the property is landlocked, the only parties who can obtain any use from the subject property would be the present adjoining landowners. Petitioners further indicated in their Petition that due to the configuration and size of the subject property, it is unusable for agricultural activities and for any other

purpose except to the adjoining landowners and that the subject reclassification would permit the property to become usable.

7. According to the Petitioners, the projected cost for developing the subdivision is approximately \$3,200.00. From evidence submitted by the Petitioners, it is evident that they have the financial capability to carry out the proposed project.

8. Public services, utilities and facilities available to the subject property are as follows:

a. Utilities: Electricity, gas, and telephone are presently available along lower Honoapiilani Highway.

b. Water: An 8-inch diameter cast iron line plus a 16-inch diameter asbestos cement line are existing along lower Honoapiilani Highway; however, development of the parcel will be subject to compliance with all current Department of Water Supply Rules and Regulations, including the West Maui Special Rule (moratorium).

c. Sewer: A public improvement district with funding has been established for purposes of establishing a public transmission line. Sewage would then be transmitted to the County's West Maui Waste Water Reclamation Plant at Honokowai.

d. Drainage: Surface water will be directed to an existing channel adjacent to Honokowai Park and an existing major channel identified as Mahinahina Stream.

e. Schools: Kam III Elementary, Lahainaluna High School and Sacred Hearts Parochial School presently service the subject area.

f. Roads: Access to the subject property will be from the substandard and unimproved lower Honoapiilani Highway.

g. Police and Fire Protection: Police and fire stations are located 3 miles South of Honoapiilani Highway.

9. There are no known agricultural, archaeological, historical, recreational or natural resources which will be affected by the reclassification of the subject property.

10. 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 County of Maui and the Department of Planning and Economic Development have recommended that the reclassification be approved.

CONCLUSIONS OF LAW

Reclassification of the subject property, consisting of approximately 2.377 acres of land, situated at Mahinahina, Lahaina, Island and County of Maui, State of Hawaii, 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 the subject of the Petition in this Docket No. A78-447, consisting of approximately 2.377 acres, situated at Mahinahina, Lahaina, Island and County of Maui, State of Hawaii, identified as Tax Map Key No. 4-3-01: 31 (portion),

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 1st day of April, 1980, per Motion on March 20, 1980.

LAND USE COMMISSION

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

By Shinichi Nakagawa
SHINICHI NAKAGAWA, Vice Chair-
man and Commissioner

By Shinsei Miyasato
SHINSEI MIYASATO, Commissioner

By Mitsuo Oura
MITSUO OURA, Commissioner

By George Pascua
GEORGE PASCUA, Commissioner

By Carol Whitesell
CAROL 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:

HIDETO KONO, Director
Department of Planning & Economic Development
State of Hawaii
250 South King Street
Honolulu, Hawaii 96813

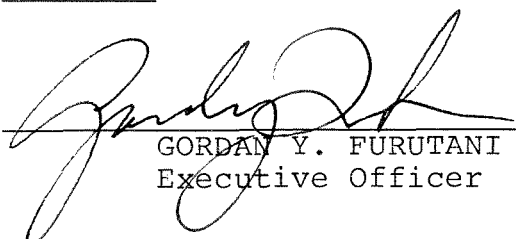
ANNETTE CHOCK, Deputy Attorney General
Department of Attorney General
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Penthouse, 850 Richards Street
Honolulu, Hawaii 96813

TOSH ISHIKAWA, Planning Director
Maui County Planning Department
200 South High Street
Wailuku, Maui 96793

PAUL MANCINI, Corporation Counsel
Office of the Corporation Counsel
County of Maui
200 South High Street
Wailuku, Maui 96793

JAMES M. LOWSON
P. O. Box 998
Lahaina, Maui 96761

Dated: Honolulu, Hawaii, this 7th day of April, 1980.



GORDAN Y. FURUTANI
Executive Officer