

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
STANLEY G. FRIEL) DOCKET NO. A83-545
STANLEY G. FRIEL)

To Amend the Rural Land Use)
District Boundary to Reclassify)
Approximately 0.579 Acre, TMK:)
5-7-10: 4, at Kaluaaha, Island of)
Molokai, County of Maui, State of)
Hawaii, into the Urban Land Use)
District)

DECISION AND ORDER

subject property does not permit a lot of less than one-half acre in size.

THE PROCEDURAL HISTORY

The Petition was received by the Land Use Commission on January 24, 1983. Due notice of the hearing on this petition was published on March 11, 1983, in the Maui News and The Honolulu Advertiser. Notice of the hearing was also sent by certified mail to all parties involved herein on March 7, 1983. 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 April 18, 1983, in Kaunakakai, Molokai, Hawaii.

Stanley G. Friel, the Petitioner herein represented himself; the County of Maui was represented by Clyde Murashige, Staff Planner; and the Department of Planning and Economic Development was represented by Abe Mitsuda.

The witnesses presented by the aforementioned parties were as follows:

Petitioner:

Stanley G. Friel

Roberta Mae Friel

County of Maui:

Clyde Murashige - Staff Planner

Department of Planning and Economic Development:

Abe Mitsuda - Land Use Division Planner

POSITION OF THE PARTIES

County of Maui - Approval.

Department of Planning and Economic Development -
Approval.

APPLICABLE REGULATION

- (1) "U" Urban District. In determining the boundaries for the "U" Urban District, the following standards shall be used:
- (a) It shall include land 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 consideration to areas of urban growth as shown on the State or 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.

PROPOSED 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 adduced herein, makes the following findings of fact:

1. The subject property, owned in fee simple by the Petitioner herein and his former wife, Roberta Mae Friel, is located at Kaluaaha, Island of Molokai, County of Maui, State of Hawaii, and consists of approximately 0.579 acre, more particularly described as Tax Map Key No. 5-7-10:
4. Located approximately 14 miles east of Kaunakakai, the subject property is more specifically situated in Kaluaaha, makai of Kamehameha V Highway, fronting the ocean. The 0.579-acre lot is of a trapezoid configuration with an average width of 75 feet and an average length of 318 feet. The western boundary of the subject property is defined by a rock wall which extends to Kamehameha V Highway. An unnamed fishpond is located immediately makai of the subject property and Kaopeahina Fishpond is located approximately

250 feet to the east. Both fishponds are in the State Conservation District. An older wooden, one-bedroom, one-bath dwelling is located on the makai portion of the subject property. A single-family dwelling with a detached garage exists on the property bordering the eastern boundary of the subject property.

2. The subject property is currently situated within the State Land Use Rural District. According to the Molokai General Plan Map No. 20, the subject property is classified as "residential" but the property is not zoned due to its location within the Rural District. According to the proposed Molokai Community Development Plan, the subject property has been designated as "Rural." As the subject property is also within the Special Management Area, it will require a Special Management Area (SMA) permit from the County of Maui. Once redesignation has been achieved, a zoning change will be necessary before the Petitioner can proceed with the subject project.

3. Land use of the immediate area surrounding the subject property is a mixture of residential and rural/residential uses. Lands to the west are designated Urban, lands to the east and north (mauka) are designated Rural. The subject property is located at the boundary where the Rural District interfaces with the Urban District.

4. According to the U.S.D.A. Soil Conservation Service, Soil Survey, the soil of the subject property is identified as Kawaihapai stony silty clay (KlaB) with 2 to 6 percent slopes which is used for sugarcane, truck crops and pasture. The subject property is not classified according

to the Agricultural Lands of Importance to the State of Hawaii (ALISH) system.

5. The mauka portion of the subject property is classified as Zone C or an area of minimal flooding according to the Flood Insurance Study for Maui County prepared by the Federal Insurance Administration. The makai portion, however, is classified as Zone A or area of 100-year flood. The subject property is also within the tsunami inundation area as defined by the Hawaii Institute of Geophysics Tsunami Research Program. Based flood elevations and flood hazard factors have not been determined. Although the Petitioner has represented that there has been no flooding on the subject property since 1939 or 1940, because the makai portion of the parcel is located within the 100-year flood area, and the Petitioner is proposing to build a house therein, the Petitioner will have to comply with the County Flood Ordinance. This involves calculating the flood elevation and building the first habitable floor above that mark. Although a site inspection of the property and surrounding area have shown no signs of flooding or tsunami inundation in recent history, judging from the age of existing structures in the area, it is the Department of Planning and Economic Development's (DPED) suggestion that measures be undertaken in site work and building construction to lessen the impact of flooding or tsunami inundation.

6. As the present Rural classification does not permit a lot of less than one-half acre in size, upon redesignation to Urban, Petitioner intends to subdivide the subject property into two (2) residential lots of approximately 11,345 square feet and 13,879 square feet. It is the Petitioner's intention to convey one of two

subdivided lots to Roberta Mae Hagmann Friel, his former wife, as a divorce settlement. The Decree Of Absolute Divorce, granted on May 31, 1973, by the Circuit Court of the First Circuit, State of Hawaii, submitted as Petitioner's Exhibit "D," provides that, "c) The real property located on Molokai owned jointly shall be retained by Plaintiff and defendant as tenants in common, in equal shares."

Petitioner's subdivision plan (Petitioner's Exhibit "C") indicates that the proposed subdivision will consist of two (2) interlocking flag configuration lots, each with shoreline frontage. Lot A-2, approximately 11,346 square feet in size, is on the makai portion of the subject property and extends to the boundary along the high water mark. The existing one-bedroom, one-bath dwelling which Petitioner intends to convey to his former wife is located on this makai lot. Lot A-1, approximately 13,879 square feet in size, is located on the mauka portion of the subject property. This mauka lot will have direct access to the ocean by means of a strip of land approximately 12 feet wide. It is on this mauka lot Petitioner is proposing to build a house for himself and his wife.

The Petitioner has submitted a 1981 "Statement for Federal Civil Service Annuitants" which indicates that he is a disability retiree with a government income of \$11,079. The Petitioner has represented, however, that he has the financial capability to undertake the proposed project and

as he is a part-time carpenter, he intends to build the house himself.

7. According to the Petitioner, the need for the proposed subdivision is to allow the Petitioner to finalize a property settlement in regard to an earlier divorce proceeding whereby the Petitioner will deed one-half of the subject property to his former wife. As the size of the parcel does not allow for subdivision in accordance with densities permitted under the State Rural designation, the Petitioner is seeking Urban designation.

8. The State Department of Agriculture, in a letter to DPED dated March 18, 1983, stated that the reclassification of the subject property from the Rural to the Urban District would not significantly affect their plans and programs. At present, the subject property is being used for residential purposes with some evidence of gardening for personal consumption. There is no sign of agricultural operations in the area surrounding the subject property.

9. As the subject property is a beachfront lot, it is DPED's position that associated development activities such as cesspool sewage disposal, drainage discharge and temporary impacts due to grading and construction have the potential to adversely impact coastal areas if State and County regulations are not followed. The Department of Land and Natural Resources has indicated that the "Old Fishpond" makai of the subject property, is heavily used by throw-netters, gill netters and limu pickers. Present access to

the shoreline, however, does not involve the subject property.

10. The Department of Land and Natural Resources, in a letter to DPED dated April 12, 1983, stated that their records do not indicate the presence of any historical, cultural or archaeological resources on the subject property. Also, due to its existing residential use, there are no known rare or endangered species of flora or fauna on the subject property.

11. Reclassification of the subject property will not unreasonably burden public agencies to provide necessary amenities, services and facilities because:

a. Access - The County of Maui Department of Public Works, in a letter to DPED dated March 18, 1983, provided specifications for access easements to service the proposed two-lot subdivision as well as the residential property immediately to the east. The proposed subdivision plan showing Easements 1, 2 and 3 was submitted as Petitioner's Exhibit "C." The Department of Public Works' letter gave the following specifications for Easements 1, 2 and 3:

<u>Easement</u>	<u>Minimum Width</u>	<u>Pavement Width</u>
1	20 ft.	8 ft.
2	24 ft.	8 ft.
3	20 ft.	16 ft.

The Petitioner has indicated that he will comply with these County standards.

The State Department of Transportation, in a letter to DPED dated March 24, 1983, stated that

the proposed subdivision will have no adverse impacts on its programs and facilities.

b. Water - At present, there is a County water line available to service the subject property. In a letter to DPED dated February 8, 1983, the County of Maui Department of Water Supply indicated that it would have no objection if the proposed boundary amendment were approved. It advised, however, that the Petitioner will have to undertake certain improvements during the subdivision process in accordance with its departmental regulations.

c. Sewer - It is the Petitioner's intent to handle sewage through the use of cesspools. All Maui County Department of Health sanitation requirements must be met at the time the subject development plans become more concrete or when applications for building permits are submitted.

d. Drainage - The issue of drainage will be handled at the time the Petitioner applies for a subdivision permit.

e. Schools - The State of Hawaii Department of Education, in a letter to DPED dated February 9, 1983, stated that the subject project will have a negligible impact on the public schools.

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

CONCLUSIONS OF LAW

Reclassification of the subject property, consisting of approximately 0.579 acre of land, situated at Kaluaaha, Island of Molokai, County of Maui, State of Hawaii, from the Rural 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

FOR GOOD CAUSE APPEARING, it is hereby ordered that the property which is the subject of the Petition in this Docket No. A83-545, consisting of approximately 0.579 acre of land, situated at Kaluaaha, Island of Molokai, County of Maui, State of Hawaii, identified as Tax Map Key No. 5-7-10: 4, shall be and hereby is reclassified from the Rural District to the Urban District and the district boundaries are amended accordingly.

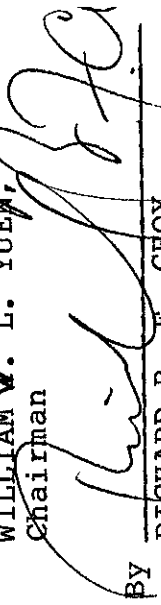
DONE at Honolulu, Hawaii, this 20th day of July, 1983, per Motion on June 27, 1983.

LAND USE COMMISSION
STATE OF HAWAII

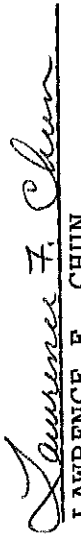
BY


WILLIAM W. L. YUEN,
Chairman

BY


RICHARD B. F. CHOY,
Vice-Chairman

BY


LAWRENCE F. CHUN,
Commissioner

By *Shinsei Miyamoto*
SHINSEI MIYAMOTO,
Commissioner

By *Winona E. Rubin*
WINONA E. RUBIN,
Commissioner

By *Teofilo Phil Tacbian*
TEOFILO PHIL TACBIAN,
Commissioner

By *Robert S. Tamaye*
ROBERT S. TAMAYE,
Commissioner

By *Frederick P. Whittemore*
FREDERICK P. WHITTEMORE
Commissioner

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CERTIFICATE OF SERVICE

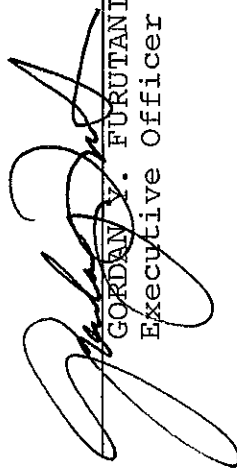
I hereby certify that a copy of the Land Use Commission' Decision and Order was served upon the following by either hand delivery or depositing the same in the U.S. Postal Service by certified mail:

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

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

STANLEY G. FRIEL
Star Route
Kaunakakai, Hawaii 96748

DATED: Honolulu, Hawaii this 22nd day of July, 1983.


GORDAN Y. FURUTANI
Executive Officer

DOCKET NO. A83-545 - STANLEY G. FRIEL

A certified copy of the Land Use Commission's Decision and Order was served by regular mail to the following on July 22, 1983.

ANNETTE CHOCK, Deputy Attorney General
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