

ORDINANCE NO. 03 162

AN ORDINANCE AMENDING ORDINANCE NO. 91-91, WHICH CHANGED THE DISTRICT CLASSIFICATION FROM AGRICULTURAL (A-1a) TO VILLAGE COMMERCIAL (CV-1a) AT HOLUALOA 1ST AND 2ND, NORTH KONA, HAWAI'I, COVERED BY TAX MAP KEY 7-6-8:PORTION OF 5 (FORMERLY TAX MAP KEY 7-6-8:PORTION OF 10).

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF HAWAI'I:

SECTION 1. Ordinance No. 91-91 is amended as follows:

"SECTION 1. Section [25-87] 25-8-3, Article [3] 8, Chapter 25 (Zoning Code) of the Hawaii County Code, is amended to change the district classification of property described hereinafter as follows:

The district classification of the following area situated at Holualoa 1st and 2nd, North Kona, Hawaii, shall be Village Commercial (CV-1a):

Beginning at the Northeasterly corner of this parcel of land, being also an angle point on the Northerly side of an existing 12-ft. wide trail, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAILUA (NORTH MERIDIAN)" being 8,317.45 feet South and 15,425.88 feet East and running by azimuths measured clockwise from True South:

- | | | | |
|----|--------------|-------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | 358° 54' 30" | 12.07 | feet across the existing 12-ft. wide trail to a point; |
| 2. | 6° 44' 30" | 67.12 | feet along stonewall and along the remainders of Allotment 63 of the Holualoa 1 st and 2 nd Hui Partition and Royal Patent 4475, Land Commission Award 7713, Apana 43 to V. Kamamalu to a point; |

3. 8° 49' 30" 56.82 feet along stonewall and along the remainders of Allotment 63 of the Holualoa 1st and 2nd Hui Partition and Royal Patent 4475, Land Commission Award 7713, Apana 43 to V. Kāmamalu to point;
4. 9° 20' 20.95 feet along the Westerly side of an existing roadway to a point;

Thence, for the next six (6) courses following along the remainders of Allotment 63 of the Holualoa 1st and 2nd Hui Partition and Royal Patent 4475, Land Commission Award 7713, Apana 43 to V. Kamamalu:

5. 82° 33' 30" 241.43 feet to a point;
6. 172° 33' 30" 166.92 feet, passing across the existing 12-t. wide trail, to a point;
7. 262° 33' 30" 145.00 feet to a point;
8. 263° 12' 47.28 feet along stonewall to a point;
9. 267° 16' 30" 30.51 feet along stonewall to a point;
10. 274° 21' 59.75 feet along stonewall to the point of beginning and containing an area of 1.000 Acre.

SECTION 2. This change in district classification is conditioned upon the following:

- A. The applicant, successors or assigns shall be responsible for complying with all of the conditions of approval;
- B. [final Plan Approval for the development shall be secured from the Planning Department within one year from the effective date of the change of zone. To assure adequate time for plan approval review and in accordance with Chapter 25-244 (Zoning code), Hawaii County Code, as amended, plans shall be submitted a

minimum of forty-five days prior to the date by which plan approval must be secured. Plans shall provide for heavy landscaping for the purpose of preserving the green belt and open space;] Construction of the proposed development shall be completed within five (5) years from the date of this amendment. Final Plan Approval by the Planning Director in accordance with the Zoning Code shall be secured by the applicant prior to the commencement of construction.

Development plans shall identify existing and proposed structures, fire protection measures, paved driveway accesses and parking stalls and other improvements associated with the proposed use. Landscaping shall be included in the development plans to mitigate any potential adverse noise or visual impacts to adjacent properties in accordance with the Planning Department's Rule No. 17 (Landscaping Requirements);

[C. construction shall commence within one year from the date of receipt of Final Plan Approval and shall be completed (certificate of occupancy) within two years thereafter;]

[D.] C. a drainage system shall be installed meeting with the requirements of the Department of Public Works;

[E.] D. access to the development shall be restricted to one driveway from Mamalahoa Highway. This access shall be provided over Tax Map key Nos: 7-6-8: 24 and 27, unless an equivalent or better access (i.e., sight distance, topography, hazards) can be utilized meeting with the approval of the Department of Public Works and Planning. The driveway access shall be improved with a minimum 20-foot wide pavement from Mamalahoa Highway to the development meeting with the approval of the Department of Public Works. These improvements shall be completed prior to issuance of a certificate of occupancy for any part of the development;

[F]. E. sight distance, including pavement widening along the frontage of TMK: 7-6-8: 05, shall meet with the requirements of the Department of Public Works. These improvements shall be completed prior to issuance of a certificate of occupancy for any part of the development;

[G]. F. should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings or walks be encountered, work in the immediate area shall cease and the Planning Department shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the Planning Department when it finds that sufficient mitigative measures have been taken;

[H.] G. comply with all other applicable laws, rules, regulations and requirements, including those of the Departments of Health, Water Supply, and Public Works;

[I.] H. should the council adopt a Unified Impact Fees ordinance setting forth criteria for the imposition of exactions or the assessment of impact fees, conditions included herein may, at the developers' election, be satisfied by performance in accordance with the requirements of the Unified Impact Fees Ordinance;

[J.] I. the applicant, his successors, assigns or heirs shall not seek an increase in density beyond the maximum of five units until the existing infrastructure on Hualalai Road and Mamalahoa Highway has been improved to acceptable standards. The applicant shall submit restrictive deed covenants for the subject property to the planning department for its review and approval prior to the submittal to the State of Hawaii, Bureau of Conveyances for recordation with the final plat maps. These covenants shall be included in the deed and will require that there be no increase in density on the subject properties until such time as the infrastructure on Hualalai Road and Mamalahoa Highway has been improved to an acceptable

standard meeting with the approval of the planning department and department of public works. Once those conditions have been met, this covenant may be extinguished;

[K.] J. an annual progress report shall be submitted to the Planning Director prior to the anniversary date of the effective date of the change of zone. The report shall address the status of the development and the compliance with the conditions of approval. This condition shall remain in effect until all of the conditions of approval have been complied and the Planning Director acknowledges that further reports are not required; and,

K. The 12-foot wide trail running along the northern portion of the property shall not be disturbed nor blocked from traditional and customary pedestrian use. Furthermore, the minimum structural setback shall begin from the southern edge from the 12-foot wide trail.

L. [An extension of time for the performance of conditions within the ordinance may be granted by the Planning Director upon the following circumstances: 1) the non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence; 2) granting of the time extension would not be contrary to the General Plan or Zoning Code; 3) granting of the time extension would not be contrary to the original reasons for the granting of the permit; 4) the time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year); and 5]

If the applicant should require an additional extension of time, the Planning Director shall submit the applicant's request to the County Council for appropriate

action.


Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Director [shall] may initiate rezoning of the area to its original or more appropriate designation.

SECTION 3. Material to be deleted is bracketed and materials to be added is underscored.

SECTION 4. In the event that any portion of this ordinance is declared invalid, such invalidity shall not affect the other parts of this ordinance.

SECTION 5. This ordinance shall take effect upon its approval.

INTRODUCED BY:


COUNCIL MEMBER, COUNTY OF HAWAII

 Kona , Hawai'i

Date of Introduction: ~~November~~ 19, 2003

Date of 1st Reading: ~~November~~ 19, 2003

Date of 2nd Reading: ~~December~~ 3, 2003

Effective Date: ~~December~~ 19, 2003

REFERENCE: ~~Comm.~~ 374.4

OFFICE OF THE COUNTY CLERK
 County of Hawaii
 Kona, Hawaii

(DRAFT 3)

Introduced By: Leningrad Elarionoff
 Date Introduced: November 19, 2003
 First Reading: November 19, 2003
 Published: N/A

REMARKS: _____

RE FILED

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki	X			
Chung			X	
Elarionoff	X			
Holschuh	X			
Jacobson	X			
Reynolds	X			
Safarik	X			
Tulang	X			
Tyler	X			
	8	0	1	0

Second Reading: December 3, 2003
 To Mayor: December 9, 2003
 Returned: December 19, 2003
 Effective: December 19, 2003
 Published: January 4, 2004

REMARKS: _____

(DRAFT 4)

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki	X			
Chung	X			
Elarionoff	X			
Holschuh	X			
Jacobson	X			
Reynolds	X			
Safarik			X	
Tulang	X			
Tyler	X			
	8	0	1	0

I DO HEREBY CERTIFY that the foregoing BILL was adopted by the County Council published as indicated above.

APPROVED AS TO
 FORM AND LEGALITY:

[Signature]
 DEPUTY CORPORATION COUNSEL
 COUNTY OF HAWAII

Date 12/19/03

[Signature]
 COUNCIL CHAIRMAN

[Signature]
 COUNTY CLERK

Bill No.: Bill 164 (Draft 4)
 Reference: C-374.4/PC-62
 Ord. No.: 03 162

Approved/Disapproved this 19th day
 of December, 2003

[Signature]
 MAYOR, COUNTY OF HAWAII