

ORDINANCE NO. 04 56

AN ORDINANCE AMENDING SECTION 25-8-3 (NORTH KONA ZONE MAP), ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAI'I COUNTY CODE, BY CHANGING THE DISTRICT CLASSIFICATION FROM AGRICULTURAL (A-5a) TO SINGLE FAMILY RESIDENTIAL (RS-7.5) AT PUAPUAA 2nd, NORTH KONA, HAWAI'I, COVERED BY TAX MAP KEY 7-5-20:71 and 72.

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

SECTION 1. Section 25-8-3, Article 8, Chapter 25 (Zoning Code) of the Hawai'i County Code, is amended to change the district classification of property described hereinafter as follows:

The district classification of the following area situated at Puapuaa 2nd, North Kona, Hawai'i shall be Single Family Residential (RS-7.5):

PARCEL "A"

Beginning at a ½ inch pipe (found) the Northwesterly corner of this parcel of land, being also the Southwesterly corner of Lot 5-A and being a point on the Easterly side of Alii Drive, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAHELO" being 1,953.10 feet South and 1,089.37 feet East and running by azimuths measured clockwise from True South:

Thence, for the next six (6) courses following along the remainder of Royal Patent 7819, Land Commission Award 8559-B, Apana 8 to William C. Lunalilo:

- 1. 240° 41' 688.11 feet along Lot 5-A to a spike (found);
- 2. 330° 34' 30" 48.96 feet to a spike (found);
- 3. 240° 08' 50.00 feet to a ½ inch pipe (found);

Thence, following along Parcel B-1 on a curve to the left with a radius of 5,050.00 feet, the chord azimuth and distance being:

4. 329° 08' 176.27 feet to a ½ inch pipe (found);
5. 328° 08' 57.30 feet along Parcel B-1 to a ½ inch pipe (found);
6. 57° 52' 35" 739.70 feet along Lot 3-A to a ½ inch pipe (found);

Thence, following along the Easterly side of Alii Drive on a curve to the right with a radius of 5,704.70 feet, the chord azimuth and distance being:

7. 149° 28' 31.5" 318.21 feet to the point of beginning and containing an area of 5.036 Acres.

PARCEL "B"

Beginning at a ½ inch pipe (found) the Southwesterly corner of this parcel of land, being also the Northwesterly corner of Lot 5-A and being a point on the Easterly side of Alii Drive, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAHELO" being 1,953.10 feet South and 1,089.37 feet East and running by azimuths measured clockwise from True South:

Thence, following along the Easterly side of Alii Drive on a curve to the right with a radius of 5,704.70 feet, the chord azimuth and distance being:

1. 152° 43' 06" 327.47 feet to a spike (set);

Thence, for the next five (5) courses following along the remainder of Royal Patent 7819, Land Commission Award 8559-B, Apana 8 to William C. Lunalilo;

2. 244° 21' 50" 735.63 feet along Lot B-1 to a spike (found);

Thence, following along Parcel B-1 on a curve to the left with a radius of 5,050.00 feet, the chord azimuth and distance being:

3. 332° 26' 22" 250.78 feet to a spike (found);
4. 61° 01' 50.00 feet along Parcel B-1 to a spike (found);
5. 330° 34' 30" 29.67 feet along Parcel B-1 to a spike (found);

6. 60° 41' 688.11 feet along Lot 4-A to the point of beginning and containing an area of 5.106 Acres.

All as shown on the map attached hereto, marked Exhibit "A" and by reference made a part hereof.

SECTION 2. In accordance with Section 25-2-44, Hawai'i County Code, the County Council finds the following conditions are:

- (1) Necessary to prevent circumstances which may be adverse to the public health, safety and welfare; or
 - (2) Reasonably conceived to fulfill needs directly emanating from the land use proposed with respect to:
 - (A) Protection of the public from the potentially deleterious effects of the proposed use, or
 - (B) Fulfillment of the need for public service demands created by the proposed use.
- A. The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval.
- B. Final subdivision approval shall be secured within five (5) years from the effective date of this ordinance.
- C. Only one access from Alii Drive shall be allowed for the proposed subdivision meeting with the approval of the Department of Public Works. The subdivision roadway from Alii Drive shall provide a minimum of 45 feet of storage and turnaround on the Alii Drive side of any gated vehicle access. The roadway connection with Alii Drive shall conform to Chapter 22, Streets and Sidewalks, of the Hawaii County Code.

- D. A 5-foot wide no vehicular access planting screen easement shall be delineated along all lots fronting Alii Drive. Vehicular access to the individual lots shall not be permitted from Alii Drive.
- E. A 10-foot future road widening strip along the length of Alii Drive shall be dedicated to the County prior to receipt of final subdivision approval.
- F. A paved shoulder extending to the property line along the Alii Drive frontage of the property shall be provided meeting with the approval of the Department of Public Works. The paved shoulder improvements may include pavement transitions, signs, markings, drainage improvements, and relocation of utilities. Utility meter and pressure reducing valve vaults shall also be located outside of the right-of-way in accordance with the requirements of the Department of Public Works.
- G. The existing two-way left turn lane on Alii Drive fronting the adjacent property to the north shall be extended to serve the roadway entry of the subject property in accordance with the requirements of the Department of Public Works. The necessary improvements for the extension of the two-way left turn lane, which shall consist of, but not limited to, pavement widening, drainage improvements, streetlights, signs and markings, and relocation of utilities shall be provided in accordance with the requirements of the Department of Public Works. These improvements shall be constructed and dedicated at no cost to the County.
- H. Any additional right-of-way necessary for the Kahului to Keauhou Parkway (aka Alii Highway) shall be as determined by the Department of Public Works within four months of the effective date of this ordinance or action on any Planned Unit Development (PUD) permit for the subject project, whichever is sooner, and shall be dedicated at no cost to the County in conjunction with the subdivision of the

subject property. A vehicular egress from the project onto the Parkway shall be allowed, unless deemed inappropriate by the Department of Public Works. Said egress shall also be made available to the general public in times of emergency.

- I. All development-generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties.
- J. A drainage study shall be prepared for review and the recommended drainage system shall be constructed meeting with the approval of the Department of Public Works. The drainage improvements shall be constructed prior to receipt of final subdivision approval.
- K. The proposed subdivision shall connect to the County sewer system.
- L. Comply with Chapter 11-55, Water Pollution Control, Hawaii Administrative Rules, Department of Health, which requires an NPDES permit for certain construction activity.
- M. During construction, measures shall be taken to minimize the potential of both fugitive dust and runoff sedimentation. Such measures shall be in compliance with construction industry standards and practices utilized during construction projects of the State of Hawaii.
- N. All earthwork and grading shall conform to Chapter 10, Erosion and Sediment Control of the Hawaii County Code.
- O. The U.S. Department of Army Corps of Engineers shall be contacted to identify whether a Federal Permit (including a Department of Army permit) is required for this project. The Planning Director shall be notified in writing as to whether such

permit is required for the development of the project.

- P. An archaeological inventory survey shall be submitted to the State of Hawaii Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) for acceptance. The applicant shall obtain approval of a Preservation and Mitigation Plan, which shall include a Burial Treatment Plan, from the DLNR-HPD. The applicant shall include all of the DLNR-HPD mitigation measures and conditions specified in the Preservation and Mitigation Plan, including the Burial Treatment Plan, into the plans for the project, which shall be conditions of subdivision approval.

- Q. The archaeological features on the mauka end of the project site shall be preserved and made a part of the project's approximately one-half-acre landscaping/open space buffer from the Kahului to Keauhou Parkway (Alii Highway). The burial site (16116) consisting of two burial platforms shall be preserved "as is." A landscaped buffer shall be placed surrounding the burial site, and the burial site shall be incorporated into the project's landscaping/open space feature. Access to the burial site by descendants shall be allowed, consistent with the requirements of the Preservation and Mitigation Plan and Burial Treatment Plan approved by the State of Hawaii Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD).

- R. Should any undiscovered remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigation measures have been taken.

- S. The applicant, its successors or assigns, shall be responsible for ensuring that the proposed passive park site is preserved, maintained, and cared for in perpetuity.
- T. The applicant shall purchase and install an Emergency Outdoor Warning Siren, acceptable to the Hawaii County Civil Defense Agency, provided that the cost of these improvements shall be credited against the applicant's fair share requirement for fire, police, and if needed, road and traffic improvements outlined in Condition V. An Emergency Response Plan shall be submitted to the Hawaii County Civil Defense Agency for review and approval prior to receipt of final subdivision approval.
- U. The applicant shall comply with the County of Hawaii's Affordable Housing Policy pursuant to Chapter 11, Article 1, Hawaii County Code.
- V. The applicant shall pay its fair share contribution to address potential regional impacts of the project with respect to roads, park, fire, police and solid waste disposal facilities. The fair share contribution shall be initially based on the representations contained within the change of zone application and may be increased or reduced proportionally if the lot counts are adjusted. The fair share contribution shall become due and payable prior to final subdivision approval of any portion of the subject property or within five (5) years from the effective date of this change of zone ordinance, whichever occurs first. The fair share contribution for each lot shall be based on a maximum density for each lot as determined by the zoning resulting from this change of zone. The fair share contribution in a form of cash, land, facilities or any combination thereof shall be determined by the County Council. The fair share contribution may be adjusted annually beginning three years after the effective date of this ordinance, based on the percentage change in the Honolulu Consumer Price Index (HCPI). The fair share contribution shall have a maximum combined value of **\$9,472.12** per single

family residential unit. Fair share contributions shall be allocated as follows:

1. **\$4,567.62** per single family residential unit for an indicated total of **\$264,921.96** to the County to support park and recreational improvements and facilities;
2. **\$220.34** per single family residential unit for an indicated total of **\$12,779.72** to the County to support police facilities;
3. **\$435.21** per single family residential unit for an indicated total of **\$25,242.18** to the County to support fire facilities;
4. **\$190.54** per single family residential unit for an indicated total of **\$11,051.32** to the County to support solid waste facilities;
5. **\$4,058.41** per single family residential unit for an indicated total of **\$235,376.18** to the State or County to support road and traffic improvements;

In lieu of paying the fair share contribution, the applicant may construct such facilities related to park, fire, police and solid waste disposal facilities subject to the review and recommendation of the Planning Director, upon consultation with the appropriate agencies and approval of the Hawaii County Council.

- W. Should the Council adopt a Unified Impact Fees Ordinance setting forth criteria for imposition of exactions or the assessment of impact fees, conditions included herein shall be credited towards the requirements of the Unified Impact Fee Ordinance.

- X. Comply with all applicable laws, rules, regulations and requirements of other affected agencies, including the Department of Water Supply.

- Y. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of this change of zone ordinance. The report shall include, but not be limited to, the status of the development and compliance with the conditions of approval. This condition shall remain in effect until all of the conditions of approval have been satisfied and the Planning Director acknowledges that further reports are not required.

- Z. An initial extension of time for the performance of conditions within this 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 change of zone.

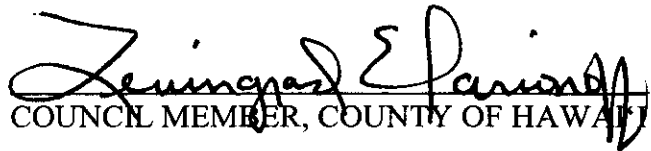
 - 4. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

AA. Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate rezoning of the property to its original or more appropriate designation.

SECTION 3. In the event that any portion of this ordinance is declared invalid, such invalidity shall not affect the other parts of this ordinance.

SECTION 4. This ordinance shall take effect upon its approval.

INTRODUCED BY:


COUNCIL MEMBER, COUNTY OF HAWAII

Hilo, Hawai'i

Date of Introduction: May 5, 2004
Date of 1st Reading: May 5, 2004
Date of 2nd Reading: May 19, 2004
Effective Date: May 27, 2004

REFERENCE: Comm. 455-24

OFFICE OF THE COUNTY CLERK
 County of Hawaii
 Hilo, Hawaii

(Draft 3) 05/11/04 11:08:31

Introduced By: Leningrad Elarionoff
 Date Introduced: May 5, 2004
 First Reading: May 5, 2004
 Published: May 16, 2004

REMARKS: _____

Second Reading: May 19, 2004
 To Mayor: May 21, 2004
 Returned: May 28, 2004
 Effective: May 27, 2004
 Published: June 6, 2004

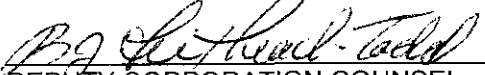
REMARKS: _____

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		
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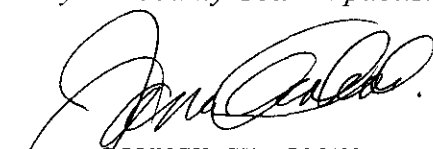

(Draft 4)

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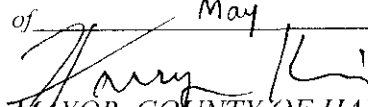
I DO HEREBY CERTIFY that the foregoing BILL was adopted by the County Council published as indicated above.

APPROVED AS TO
 FORM AND LEGALITY:

 DEPUTY CORPORATION COUNSEL
 COUNTY OF HAWAII

Date 5/20/04


 COUNCIL CHAIRMAN

 COUNTY CLERK

Bill No.: 209 (Draft 4)
 Reference: C-455.24/PC-88
 Ord. No.: **04 56**

Approved/Disapproved this 27th day
 of May, 2004

 MAYOR, COUNTY OF HAWAII