

ORDINANCE NO. **04 68**

AN ORDINANCE AMENDING ORDINANCE NO. 94 99, WHICH RECLASSIFIED LANDS FROM AGRICULTURAL (A-20a) TO AGRICULTURAL (A-3a) AT KAAUHUUH, NORTH KOHALA, HAWAI'I, COVERED BY TAX MAP KEY 5-5-02:85.

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

SECTION 1. Ordinance No. 94 99 is amended as follows:

“SECTION 1. Section [~~25-95B~~] 25-8-8, Article [~~3~~] 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 Kaauhuhu, North Kohala, Hawai'i, shall be Agricultural (A-3a):

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 stated conditions of approval;
- B. The applicant shall submit the required water commitment payment to the Department of Water Supply in accordance with its “Water Commitment Guidelines Policy” within the one-hundred[-]eighty (180) days from the effective date of this ordinance. No water variance will be granted for the proposed subdivision.

- C. Final Subdivision Approval shall be secured within three (3) years from the effective date of this ~~[ordinance]~~ amendment. Subdivision plans shall delineate a 10-foot future road-widening easement along the subject property's southern boundary and which shall be dedicated to the County of Hawai'i upon its request.
- ~~[C]~~ D. Access to the subject properties from Hawi Road shall meet with the approval of the Department of Public Works;
- ~~[D]~~ E. Drainage system easements and improvements, if required, shall be established and constructed in a manner meeting with the approval of the Department of Public Works, prior to the issuance of Final Subdivision Approval;
- ~~[E]~~ F. Wastewater shall be disposed of in a manner meeting with the requirements of the Department of Health;
- ~~[F]~~ G. ~~[Restrictive covenants in the deeds of all the proposed lots shall prohibit the construction of an ohana dwelling or a second dwelling on each lot. A copy of the proposed covenants to be recorded with the Bureau of Conveyances shall be submitted to the Planning Director for review and approval. Prior to securing final subdivision approval, a copy of the approved covenant as executed by the applicant and recorded with the Bureau of Conveyances, likewise, shall be submitted to the Planning Director.]~~

Restrictive covenants in the deeds of all the proposed lots within the subject property shall give notice that the terms of the zoning ordinance prohibit the construction of a second dwelling unit and condominium

property regimes on each lot. This restriction may be removed by amendment of this ordinance by the County Council. The owners of the property may also impose private covenants restricting the number of dwellings. A copy of the proposed covenant(s) to be recorded with the State of Hawai'i Bureau of Conveyances shall be submitted to the Planning Director for review and approval prior to the issuance of Final Subdivision Approval. A copy of the recorded document shall be filed with the Planning Department upon its receipt from the Bureau of Conveyances.

[G] H. It shall be demonstrated to the satisfaction of the Planning Director that agricultural activity is being conducted on the subdivided lots within three years from the date of Final Subdivision Approval. For the purpose of this condition, "agriculture" shall be defined as the cultivation of crops, including but not limited to flowers, vegetable, foliage, fruits, forage and timber, game propagation, raising of livestock, including but not limited to poultry, bees, fish or other animal or aquatic life that are propagated for economic or personal use. An agricultural activity will be considered satisfactory:

- (1) if such activity is implementing a conservation program for the affected property(ies), as approved by the applicable soil and water conservation district directors and filed with the Soil Conservation Service;
- (2) if it provides a second source of income to the person(s) who reside on the property; or
- (3) if the property is dedicated for agriculture uses in accordance with

applicable Tax Department procedures and that such agriculture dedication shall be made a deed covenant and duly recorded with the State Bureau of Conveyances and a copy of the recorded deeds shall be filed with the Planning Department within one year from the date of Final Subdivision Approval.

Each approved lot must comply with at least one of the above requirements to satisfy the conditions of approval of this ordinance;

- [H] I. The applicant shall comply with all other applicable laws, rules, regulations and requirements of the affected agencies, including those of the Department of Water Supply and Department of Public Works;
- [F] J. Should any unidentified sites or remains, such as lava tubes, artifacts, shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings or wall be encountered, work in the affected area shall cease and the Planning Department immediately notified. Subsequent work shall proceed upon an archaeological clearance from the Planning Department when it finds that sufficient mitigative measures have been taken.
- [J] K. 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 shall be credited towards the requirements of the Unified Impact Fees Ordinance;
- [K] L. 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 with and the Planning Director acknowledges that further reports are not required.

[L] M. ~~{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 the 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).~~

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

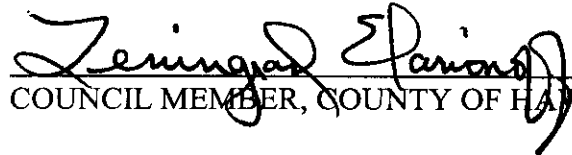
Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Director ~~{shall}~~ may initiate rezoning of the area to its original or more appropriate designation.”

SECTION 2. Material to be deleted is bracketed and materials to be added is underscored.

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.

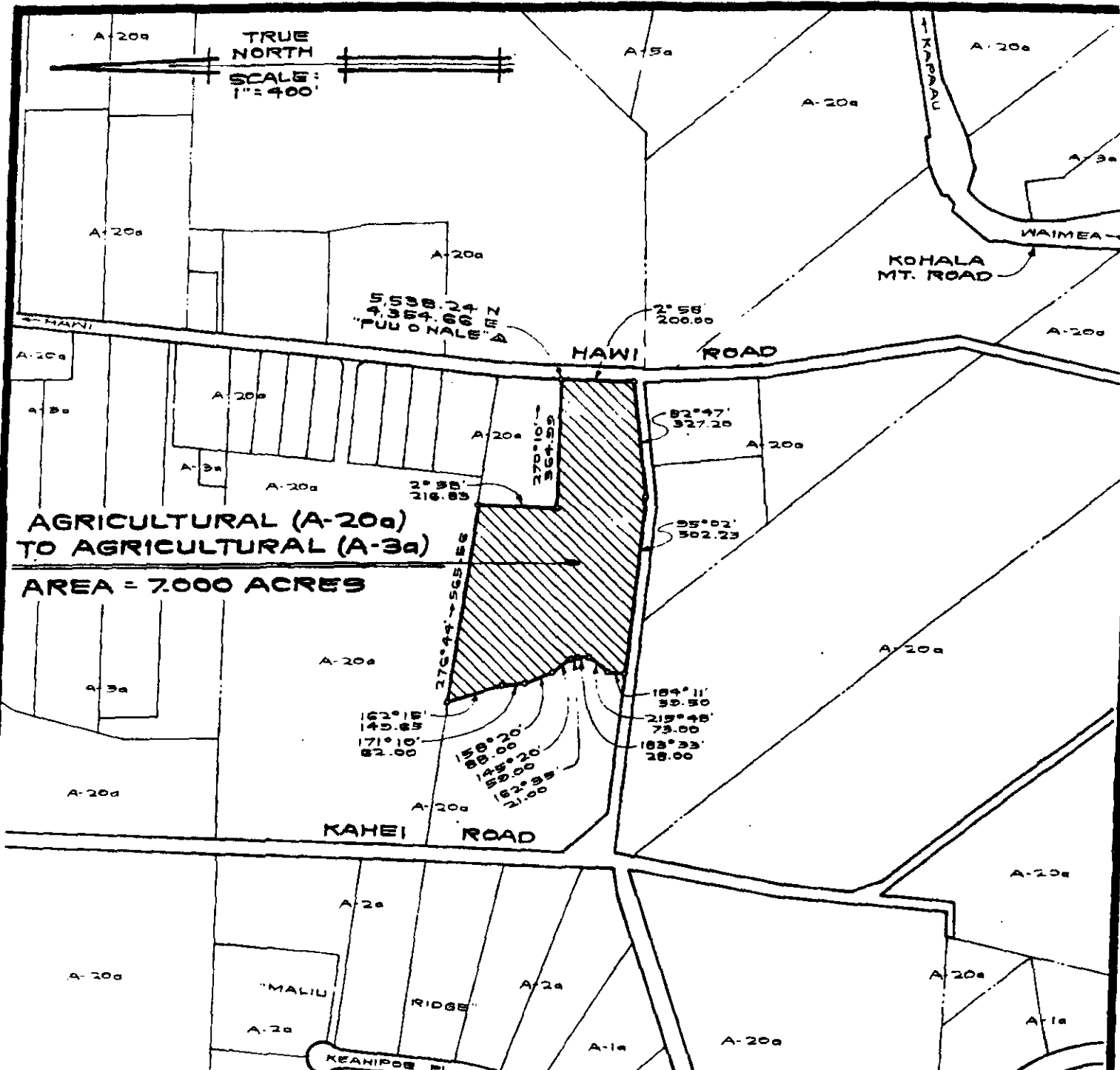
INTRODUCED BY:


COUNCIL MEMBER, COUNTY OF HAWAII

_____ Hilo _____, Hawai'i

Date of Introduction: May 19, 2004
Date of 1st Reading: May 19, 2004
Date of 2nd Reading: June 2, 2004
Effective Date: June 14, 2004

REFERENCE: Comm. 598.1



AMENDMENT TO THE ZONING CODE

AMENDING SECTION 25-95B (UPOLU POINT-KAAUHUUHOMESTEADS ZONE MAP) ARTICLE 3, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE BY CHANGING THE DISTRICT CLASSIFICATION FROM AGRICULTURAL (A-20a) TO AGRICULTURAL (A-3a) AT KAAUHUUH, NORTH KOHALA, HAWAII.

PREPARED BY: PLANNING DEPARTMENT
COUNTY OF HAWAII

OFFICE OF THE COUNTY CLERK
 County of Hawaii
 Hilo, Hawaii

2004 JUN 15 AM 9 52

Introduced By: Leningrad Elarionoff
 Date Introduced: May 19, 2004
 First Reading: May 19, 2004
 Published: N/A

REMARKS: _____

Second Reading: June 2, 2004
 To Mayor: June 4, 2004
 Returned: June 15, 2004
 Effective: June 14, 2004
 Published: June 20, 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			
	8	0	1	0

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki	X			
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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 6/15/04

Approved Disapproved this 14th day
 of June, 2004

[Signature]
 MAYOR, COUNTY OF HAWAII

[Signature]
 COUNCIL CHAIRMAN
[Signature]
 COUNTY CLERK

Bill No.: 262 (Draft 2)
 Reference: C-598.1/PC-91
 Ord: 04 68