

COUNTY OF HAWAI'I



STATE OF HAWAI'I

BILL NO. 89

Draft 3

ORDINANCE NO. 05 157

AN ORDINANCE AMENDING ORDINANCE NO. 95 51 AMENDING ORDINANCE NO. 90-160, WHICH RECLASSIFIED LANDS FROM AN UNPLANNED (U) AND MULTIPLE FAMILY RESIDENTIAL (RM-1.5) TO OPEN (O) AND RESIDENTIAL-AGRICULTURAL (RA-1a) AT WAIKOLOA, SOUTH KOHALA, HAWAI'I, COVERED BY TAX MAP KEY 6-8-02:PORTION OF 16 AND 6-8-03:PORTION OF 32.

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

SECTION 1. Ordinance No. 95 51 is amended as follows:

"SECTION 3. This change in district classification is conditioned upon the following.

- A. The applicant, successors or its assigns shall be responsible for complying with all of the stated conditions of approval;
- B. Final subdivision approval for not less than 175 lots shall be secured within [~~five~~ (5)] ten (10) years from the effective date of this new amendment. Plans for infrastructural improvements, including off-site roadway improvements required in Condition C, shall be submitted in conjunction with construction drawings for final subdivision approval for any portion of the subject property. [~~Prior to June 30, 1996, construction of the channelization improvements to the Waikoloa/ Pua Melia/ Paniolo Avenue intersection (including acceleration/ deceleration and left turn storage lanes and pavement and shoulder widening) meeting with the requirements of the Department of Public Works, shall be completed and dedicated to the county. In addition, t~~]The applicant shall install and dedicate the traffic signalization improvements required in Condition C prior to the Final Subdivision Approval for more than 350 lots of twenty acres or less, or sooner in the event the warrants for such installation are justified by the [~~chief engineer~~] director of public works. In lieu of actual construction of infrastructural

improvements required herein, except for Condition C, the applicant may enter into an agreement with the County to assure the County that the infrastructural improvements will be constructed together with the appropriate bond, surety, or other security deemed acceptable to the Planning Director and the Corporation Counsel. Upon execution of such agreement and/or filing of the security with the County, final subdivision approval for the subject property or portions thereof shall be granted prior to the actual construction of required infrastructural improvements.

- C. Access shall meet with the requirements of the Department of Public Works. Direct access to Waikoloa Road shall be limited to one roadway from the project site. Waikoloa Road-Pua Melia Street-Paniolo Avenue intersection shall be channelized and signalized meeting with the requirements of the Department of Public Works. These improvements together with other improvements required by the Department of Public Works based upon a current Traffic Impact Analysis Report [~~dated December 1989~~] shall be provided [~~prior to the opening of the golf course or~~] in conjunction with final subdivision approval of the first increment, [~~whichever occurs first,~~] or as otherwise provided by Chapter 23 (Subdivision Control);
- D. To ensure that the goals and policies of the Housing Element of the General Plan are implemented, the applicant shall comply with the requirements of Chapter 11, Article 1, Hawaii County Code relating to Affordable Housing Policy. This requirement shall be approved by the County Housing Agency prior to final subdivision approval. [~~secure the concurrence of the County Housing Agency, upon the recommendation of the Office of Housing and Community Development, that the applicant's affordable housing requirements, if any, have been fulfilled prior to the issuance of final subdivision approval~~];
- E. A drainage system shall be installed in accordance with the requirements of the Department of Public Works and other affected agencies;

- F. Comply with all applicable County, State and Federal laws, rules, regulations and requirements[~~, including conditions of Use Permit No. 71~~];
- G. [~~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 developer's election, be satisfied by performance in accordance with the requirements of the Unified Impact Fees Ordinance;~~
- ~~G. An annual progress report shall be submitted to the Planning Director prior to the anniversary 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;~~
- ~~H. An extension of time for the performance of conditions within the ordinance may be granted by the Planning Director upon the following circumstances:
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;~~
- ~~1. Granting of the time extension would not be contrary to the General Plan or Zoning Code;~~
 - ~~2. Granting of the time extension would not be contrary to the original reasons for the granting of the change of zone;~~
 - ~~3. 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~~
 - ~~4. 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.]~~

Restrictive covenants in the deeds of all proposed lots within the 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 1-acre lot. This restriction may be removed by amendment of this ordinance by the County Council. The owner of the property may also, in addition, impose private covenants restricting the number of dwellings. A copy of the proposed covenant(s) to be recorded with the State 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;

H. Before final subdivision approval, applicant must obtain reclassification of the RA-1a zoned area from the State Land Use Commission to the Rural or Urban district. Prior to the submittal of plans for a grading or any associated permit for a golf course to the County for review and approval, the applicant shall consult with the Waikoloa Village Association and the County Council relative to the timing and propriety of such a use. This condition, except for the consultation requirement for any golf course, may be waived by the Planning Director, after consultation with Corporation Counsel, if an appellate judicial decision, or substantive change to Chapter 205, Hawaii Revised Statutes, clearly establishes the legality of this project in the Agricultural State Land Use district, including the residential uses of the lots;

I. The applicant shall make its fair share contribution to mitigate the potential regional impacts of the property with respect to parks and recreation, fire, police, solid waste disposal facilities and roads. 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 receipt of Final Plan Approval or within five years from the effective date of this amended 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 the amendment to the ordinance, based on the percentage change in the Honolulu Consumer Price Index (HCPI). The fair share contribution shall have a maximum combined value of \$9,991.21 per single-family residential unit. Based upon the applicant's representation of intent to develop a total of one hundred and seventy five (175) single-family residential units, the indicated total of fair share contribution is \$1,748,461.75 for the single-family residential units. However, the total amount shall be increased or reduced in proportion with the actual number of units according to the calculation and payment provisions set forth in this condition. The fair share contribution per single-family residential unit shall be allocated as follows:

- \$4,817.93 per single-family residential unit for one hundred and seventy five (175) single-family residential units for an indicated total of \$843,137.75 to the County to support park and recreational improvements and facilities;
- \$232.42 per single-family residential unit for the one hundred and seventy five (175) single-family residential units for an indicated total of \$40,673.50 to the County to support police facilities;
- \$459.06 per single-family residential unit for one hundred and seventy five (175) single-family residential units for an indicated total of \$80,335.50 to the County to support fire facilities;
- \$200.98 per single-family residential unit for the one hundred and seventy five (175) single-family residential units for an indicated total of \$35,171.50 to the County to support solid waste facilities;
- \$4,280.82 per single-family residential unit for the one hundred and seventy five (175) single-family residential units for an indicated total of \$749,143.50 to the County to support road and traffic improvements;

In lieu of paying the fair share contribution, the applicant may contribute land and/or construct improvements/facilities related to parks and recreation, fire, police, solid waste disposal facilities and roads within the region impacted by the proposed development, subject to the review and recommendation of the Planning Director, upon consultation with the appropriate agencies and approval of the County Council;

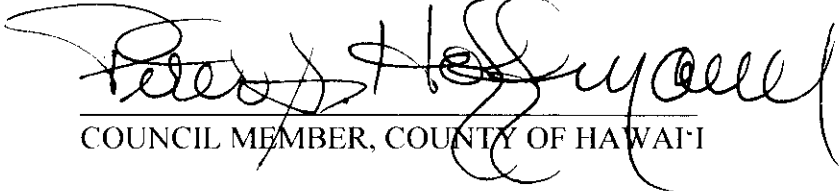
- J. Should the Council adopt a Unified Impact Fees Ordinance setting forth criteria for imposition of exaction or the assessment of impact fees, conditions included herein shall be credited towards the requirements of the Unified Impact Fees Ordinance;
- K. An annual progress report shall be submitted to the Planning Director prior to the anniversary 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. 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 material 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

INTRODUCED BY:


COUNCIL MEMBER, COUNTY OF HAWAII

 Kona , Hawaii
Date of Introduction: November 22, 2005
Date of 1st Reading: November 22, 2005
Date of 2nd Reading: December 7, 2005
Effective Date: December 15, 2005

REFERENCE: Comm. 230.9

OFFICE OF THE COUNTY CLERK
 County of Hawai'i
Kona, Hawai'i

(Draft 3)

Introduced By: Pete Hoffmann/K. Angel Pilago
 Date Introduced: November 22, 2005
 First Reading: November 22, 2005
 Published: December 4, 2005

REMARKS: _____

Second Reading: December 7, 2005
 To Mayor: December 9, 2005
 Returned: December 15, 2005
 Effective: December 15, 2005
 Published: December 22, 2005

REMARKS: _____

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki	X			
Higa	X			
Hoffmann	X			
Holschuh	X			
Ikeda	X			
Isbell	X			
Jacobson		X		
Pilago	X			
Safarik	X			
	8	1	0	0

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Arakaki	X			
Higa	X			
Hoffmann	X			
Holschuh	X			
Ikeda	X			
Isbell	X			
Jacobson		X		
Pilago	X			
Safarik	X			
	8	1	0	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:

Ch. S. Kelly
 DEPUTY CORPORATION COUNSEL
 COUNTY OF HAWAII
 Date 12/13/05

Myrtle H. ...
 COUNCIL CHAIRMAN

L. ...
 COUNTY CLERK

Bill No.: 89 (Draft 3)
 Reference: C-230.9/PC-44
 Ord No.: 05 157

Approved Disapproved this 15th day
 of December, 2005
Harry Kim
 MAYOR, COUNTY OF HAWAII