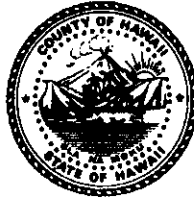


COUNTY OF HAWAI'I



STATE OF HAWAI'I

BILL NO. 225ORDINANCE NO. 06 106

AN ORDINANCE AMENDING SECTION 25-8-3 (NORTH KONA ZONE MAP), ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAI'I COUNTY CODE 1983 (2005 EDITION), RELATING TO MODIFICATIONS OF THE CONDITIONS OF ORDINANCE NO. 93 45, AND FURTHER AMENDING THE ORDINANCE BY DELETING TAX MAP KEY 7-2-05:1. THE REMAINING AREA OF 273.82 ACRES IS RETAINED AS AGRICULTURAL (A-3a) AT KAU, NORTH KONA, HAWAI'I, COVERED BY TAX MAP KEY 7-2-15:1-43, 46-86.

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

SECTION 1. Ordinance No. 93 45 is amended as follows:

"SECTION 1. Section ~~[25-87]~~ 25-8-3, Article ~~[3]~~ 8, Chapter 25 (Zoning Code) of the Hawai'i County Code 1983 (2005 Edition), is amended to change the district classification of property described hereinafter as follows:

The district classification of the following area situated at Kau, North Kona, Hawai'i, shall be Agricultural (A-3a):

~~[Beginning at the Northeast corner of this parcel of land, on the westerly side of Hawaii Belt Road, F. A. P. No. F-10 (5), the coordinates of which referred to Government Survey Triangulation Station "AKAHIPUU" BEING 5,574.46 feet South and 2,650.51 feet West and running by azimuths measured clockwise from True South:~~

- | | | | |
|----|--------------|----------|--|
| 1. | 11° 08' | 1,630.12 | feet along the westerly side of Hawaii Belt Road, F. A. P. No. F-10 (5); |
| 2. | -91° 30' | 25.16 | feet along Government Land; |
| 3. | 103° 19' | 117.11 | feet along Lot 1 of Makaula Subdivision, Unit 1; |
| 4. | 105° 29' 45" | 154.26 | feet along Lot 3 of Makaula Subdivision, Unit 1; |
| 5. | 97° 42' 38" | 190.95 | feet along Lots 3 and 7 A of Makaula Subdivision, Unit 1; |
| 6. | 2° 00' | 65.18 | feet along Lot 7 A of Makaula Subdivision; Unit 1; |

7.	93°	42'	20"	2,828.95	feet along Grant 3741 to W. H. Kailiino to a "+" cut on ahu;
8.	98°	06'		2,069.50	feet along Government Land of Makaula to a "+" cut on ahu;
9.	100°	15'	30"	2,018.50	feet along Government Land of Makaula to a "+" cut on stone;
10.	115°	04'		5,166.71	feet along Government Land of Makaula;
11.	198°	10'		2,312.70	feet along remainder of L. P. 8265, Mahele Award 13-B to Paalua (Certificate of Boundaries No. 191);
12.	291°	46'	30"	800.00	feet along Government Land of Puukala to a "+" cut on rock with ahu named "Kekuakakawahie";
13.	280°	26'	30"	2,814.00	feet along Government Land of Puukala to a "+" cut on rock on ahu;
14.	290°	58'	30"	5,603.00	feet along Government Land of Puukala to a "+" cut in Pahoeheo;
15.	286°	08'	20"	844.61	feet along Grant 3968 to P. M. Pahukula to a pipe in concrete;
16.	286°	19'	30"	1,522.38	feet along Lots 78, 73, 69, 65, 61, 57, 53, 49, 45, 39, 31 and 25 of Kona Ocean View Properties (File Plan 637) to a pipe in concrete;
17.	286°	21'		621.96	feet along Grant 3968 to P. M. Pahukula to the point of beginning and containing an area of 727.8 Acres.]

Beginning at the Northwest corner of this parcel of land, the coordinates of which referred to Government Survey Triangulation Station "AKAHIPUU" being 7,564.62 feet South and 3,917.89 feet West and running by azimuth and distance measured clockwise from True South:

1.	290°	55'	24"	2280.07	feet along Puukala;
2.	286°	43'	20"	63.18	feet along Grant 3968 to P.M. Pahukula;

<u>3.</u>	<u>285°</u>	<u>20'</u>	<u>20"</u>	<u>86.10</u>	<u>feet along Grant 3968 to P.M. Pahukula;</u>
<u>4.</u>	<u>286°</u>	<u>17'</u>	<u>20"</u>	<u>122.81</u>	<u>feet along Grant 3968 to P.M. Pahukula;</u>
<u>5.</u>	<u>286°</u>	<u>38'</u>	<u>50"</u>	<u>207.90</u>	<u>feet along Grant 3968 to P.M. Pahukula;</u>
<u>6.</u>	<u>285°</u>	<u>52'</u>	<u>30"</u>	<u>210.14</u>	<u>feet along Grant 3968 to P.M. Pahukula;</u>
<u>7.</u>	<u>285°</u>	<u>22'</u>	<u>10"</u>	<u>162.43</u>	<u>feet along Grant 3968 to P.M. Pahukula;</u>
<u>8.</u>	<u>286°</u>	<u>19'</u>	<u>50"</u>	<u>1522.38</u>	<u>feet along Lots 78, 73, 69, 65, 61, 57, 53, 49, 45, 39, 31-B, 31-A, and 25 of Kona Ocean View Properties (File Plan 637);</u>
<u>9.</u>	<u>286°</u>	<u>21'</u>	<u>20"</u>	<u>621.96</u>	<u>feet along Grant 3968 to P. M. Pahukula;</u>
<u>10.</u>	<u>11°</u>	<u>08'</u>	<u>20"</u>	<u>1627.14</u>	<u>feet along the westerly side of Mamalahoa Highway, F.A.P. No. F-10 (5);</u>
<u>11.</u>	<u>91°</u>	<u>30'</u>	<u>20"</u>	<u>25.78</u>	<u>feet along Lot 1-A of Makaula Subdivision Unit I;</u>
<u>12.</u>	<u>103°</u>	<u>19'</u>	<u>20"</u>	<u>117.11</u>	<u>feet along Lot 1-A of Makaula Subdivision Unit I;</u>
<u>13.</u>	<u>105°</u>	<u>30'</u>	<u>05"</u>	<u>154.26</u>	<u>feet along Lot 3 of Makaula Subdivision Unit I;</u>
<u>14.</u>	<u>97°</u>	<u>42'</u>	<u>58"</u>	<u>190.95</u>	<u>feet along Lot 3 and Lot 7-A-1 Makaula Subdivision Unit I;</u>
<u>15.</u>	<u>92°</u>	<u>18'</u>	<u>50"</u>	<u>2833.97</u>	<u>feet along Grant 3741 to W.H. Kailino;</u>
<u>16.</u>	<u>98°</u>	<u>06'</u>	<u>00"</u>	<u>2069.48</u>	<u>feet along Makaula;</u>
<u>17.</u>	<u>100°</u>	<u>15'</u>	<u>30"</u>	<u>180.00</u>	<u>feet along Makaula;</u>
<u>18.</u>	<u>197°</u>	<u>14'</u>	<u>00"</u>	<u>2844.54</u>	<u>feet along the remainder of Kau to the said point of beginning and containing an area of 273.82 acres.</u>

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

SECTION 2. [This change in district classification is conditioned upon the following:] In accordance with Section 25-2-44, Hawai'i County Code 1983 (2005 Edition), 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) That the applicant, successor or assigns shall be responsible for complying with all of the stated conditions of approval;
- (B) ~~[That a drainage system in accordance with the standards of the Department of Public Works shall be installed;~~
- (C) ~~That the property shall be developed on an incremental basis. There shall be no more three (3) increments of which the first two (2) shall consist of no more than 100 lots each;~~
- (D) ~~That the zoning for Increment I shall not become effective unless and until there are legal financial assurances satisfactory to the Department of Water Supply that water for domestic and agricultural use for Increment I will be available;~~
- (E) ~~That the zoning for the second and third increments shall be effective upon the establishment of adequate water for domestic and agricultural use meeting with the approval of the Department of Water Supply at the property line of that increment, provided however that the final subdivision approval shall not be granted until it is demonstrated to the satisfaction of the Planning Director that substantial agricultural~~

~~activity is being conducted on fifty (50) percent of the lots in the first increment and on at least two thirds of the land of each lot, comprising that minimum of fifty (50) percent. For the purpose of this condition, "agricultural" shall be defined as the cultivation of crops, including but not limited to flowers, vegetables, 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 substantial: (1) if it provides a major source of income to the person(s) who resides on the property; or (2) if the property is dedicated for agriculture uses in accordance with applicable Department of Finance, Real Property Tax Division's procedures. This condition shall be incorporated in each of the deeds for the proposed lots and shall be duly recorded with the State Bureau of Conveyances and a copy shall be filed with the Planning Department within one year of the date of final subdivision approval of the lots;~~

~~(F) — That the final subdivision approval of the first increment shall be secured by January 31, 1994 and that subdivision plans for the subsequent increments shall be submitted within one (1) year from the date of receipt of final subdivision approval of the previous increment (s);~~

~~(G) — That a proposed 80 foot wide right of way and its improvements shall be extended to the Queen Kaahumanu Highway if and when any development occurs within the existing Conservation District portion of the parcel identified as TMK: 7 2 5:1;~~

~~(H) — That to insure proper regional road system development, the applicant shall participate in the implementation of the County's Keahole to Kailua Sub-Regional Plan. All portions of Kau Drive, University Drive, Kealakaa Street, Waena Drive and the mid-level arterial that traverse the subject parcel, shall be constructed and dedicated incrementally with the subdivision buildout, Roadway and intersection plans shall be reviewed and approved by the Department of Public Works and Department of Transportation.~~

- (I) ~~That a Solid Waste Management Plan meeting with the approval of the Department of Public Works shall be submitted prior to final subdivision approval of the first increment;~~
- (J) ~~That the applicant shall install a wastewater treatment system meeting with the requirements of the Department of Health and Department of Public Works;~~
- (K) ~~That all construction wastes shall be prohibited from the Kailua landfill and all transfer stations island wide until the new West Hawaii Landfill is complete and in operation. Construction wastes may be brought to the Hilo Landfill, however, the contractor will be responsible to provide all necessary labor, equipment, materials, and supplies to properly landfill any waste;~~
- (L) Restrictive covenants in the deeds of all the proposed lots shall prohibit the construction of a second dwelling on each lot. A copy of the proposed covenant(s) to be recorded with the Bureau of Conveyances shall be submitted to the Planning Department for review and approval prior to final subdivision approval. A copy of the approved covenant shall be recited in an instrument executed by the applicant and the County and recorded with the Bureaus of Conveyances likewise prior to final subdivision approval;
- (~~[M]~~C) 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;
- (~~[N]~~D) That all other applicable rules, regulations and requirements shall be complied with[;] .


- ~~[(O) Should the Council adopt a Unified Impact Fees ordinance, setting forth criteria for the imposition of exactions or the assessment of impact fees, conditions including herein shall be credited towards the requirements of the Unified Impact Fees Ordinance;~~
- ~~(P) That an annual progress report shall be submitted to the Planning Director prior to the anniversary date of the effective date of the amended ordinance. The report shall address the status of the development and the compliance with the conditions of approval. This condition s 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; and~~
- ~~(Q) That an initial extension of time for the performance of conditions within the ordinance may be granted by the Planning Director upon the following circumstances: a) the non performance is the result of conditions that could not have been foreseen or area beyond the control of the applicants' successors or assigns, and that are not the result of their fault or negligence; b) granting of the time extension would not be contrary to the general plan or zoning code; c) granting of the time extension would not be contrary to the original reasons for the granting of the change of zone; d) 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 e) 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 initiate rezoning of the area to its original or more appropriate designation.]~~

SECTION 3. Material to be deleted is bracketed and struck-through. New material 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 the adoption of the Hilihilu Development, LLC's Change of Zone application.

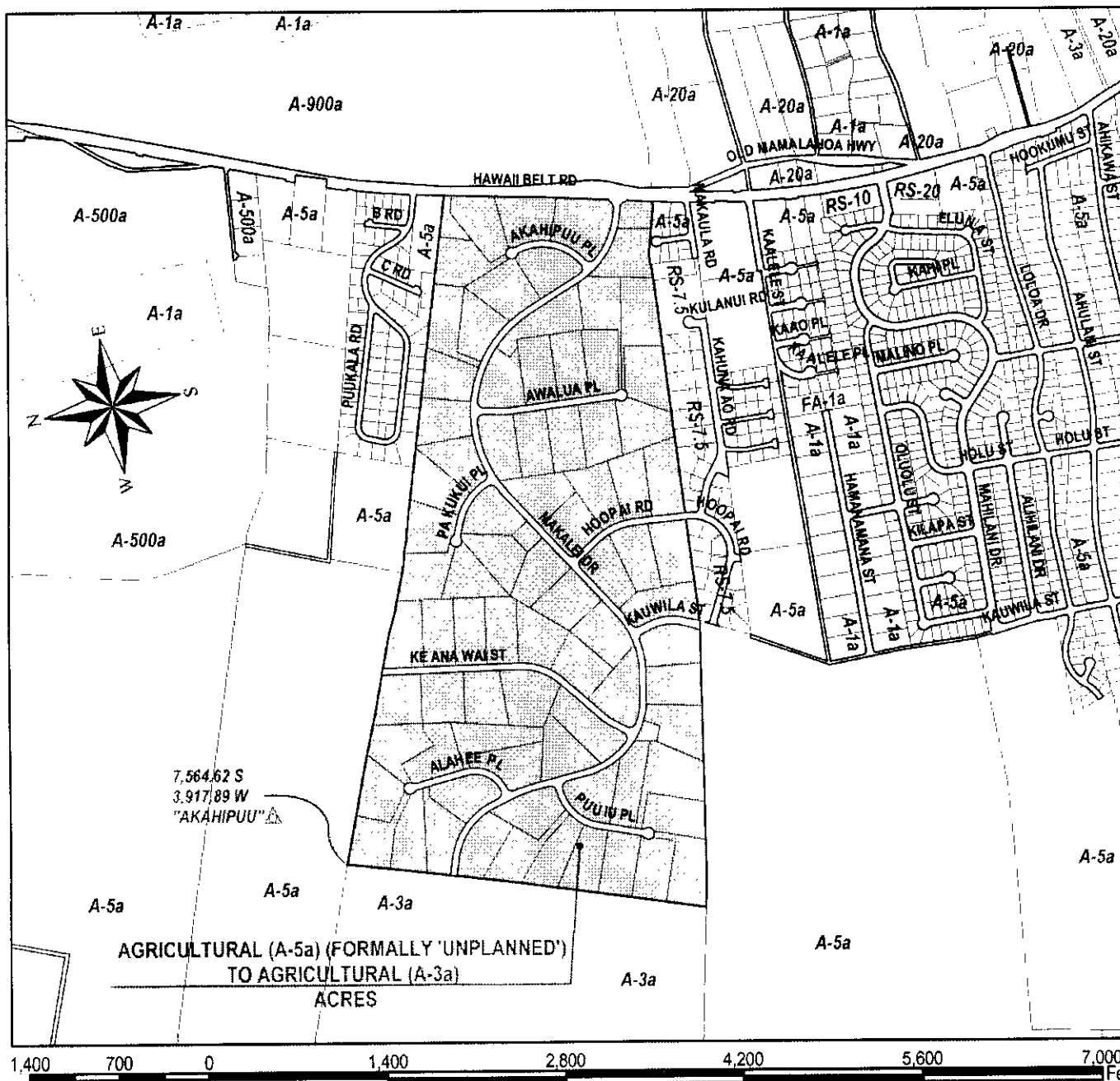
INTRODUCED BY:


COUNCIL MEMBER, COUNTY OF HAWAII

Hilo, Hawai'i

Date of Introduction: June 5, 2006
Date of 1st Reading: June 21, 2006
Date of 2nd Reading: July 7, 2006
Effective Date: July 17, 2006

REFERENCE: Comm. 688



AMENDMENT TO THE ZONING CODE

AMENDING SECTION 25-8-3 (NORTH KONA ZONE MAP)
 ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE
 1983 (2005 EDITION), RELATING TO MODIFICATIONS OF THE CONDITIONS
 OF ORDINANCE 93-45, AND FURTHER AMENDING THE ORDINANCE BY
 DELETING TAX MAP KEY 7-2-05:1. THE REMAINING AREA OF 273.82 ACRES
 IS RETAINED AS AGRICULTURAL (A-3a)
 AT KAU, NORTH KONA, HAWAII

PREPARED BY: PLANNING DEPARTMENT
 COUNTY OF HAWAII

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

Introduced By: K. Angel Pilago
Date Introduced: June 5, 2006
First Reading: June 21, 2006
Published: N/A

REMARKS:

June 5, 2006 - Postponed to
June 21, 2006 Council Meeting

Second Reading: July 7, 2006

To Mayor: July 11, 2006

Returned: July 17, 2006

Effective: July 17, 2006

Published: July 21, 2006

REMARKS:

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ROLL CALL VOTE				
	YES	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	
	6	2	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:

Ang D. Sely
DEPUTY CORPORATION COUNSEL
COUNTY OF HAWAII

Date JUL 14 2006

Ang D. Sely
COUNCIL CHAIRMAN

Constantine R. Kim
COUNTY CLERK

Bill No.: 225

Reference: C-688/PC-74

Ord No.: 06 106

Approved Disapproved this 17th day

of July, 20 06

Harry Kim
MAYOR, COUNTY OF HAWAII