

COUNTY OF HAWAI'I



STATE OF HAWAI'I

BILL NO. 299
(Draft 2)

ORDINANCE NO. 06 128

AN ORDINANCE AMENDING ORDINANCE NO. 04-106, WHICH RECLASSIFIED LANDS FROM AGRICULTURAL 5-ACRES (A-5a) TO MULTIPLE FAMILY RESIDENTIAL - 4,000 SQUARE FEET (RM-4) AT O'OMA 1ST, NORTH KONA, HAWAI'I, COVERED BY TAX MAP KEY 7-3-010:051 (FORMERLY 7-3-010:PORTION OF 3).

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

SECTION 1: Ordinance No. 04-106 is amended as follows:

“SECTION 1: Section 25-8-3, Article 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 O'oma 1st, North Kona, Hawai'i shall be Multiple Family Residential – 4,000 square feet (RM-4):

“SECTION 2. 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. The applicant(s), its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
- B. Within three years from the enactment of the ordinance the applicant shall provide assurance satisfactory to the Department of Water Supply and the Planning Director, upon consultation with the Department of Health and the Department of Land and Natural Resources, that a water source(s) of sufficient quality, quantity, and related transmission and storage system can be established.
- C. The actual development of the water source and its water transmission, storage, and distribution system shall be developed in conjunction with Final Plan Approval or Final Subdivision Approval, whichever occurs first. In lieu of actual construction of these improvements, the applicant may enter into an agreement with the County to assure that the infrastructure improvements will be constructed together with the appropriate bond, surety or other security deemed acceptable by the County. Upon execution of such agreement and filing of the security with the County, Final Plan Approval or Final Subdivision Approval shall be granted prior to the actual construction of required improvements, provided further and final approval of any residential structures shall not be issued until the approved water source is developed and its transmission, storage, and distribution system for such source to the subject property has been constructed and accepted for dedication to the Water Board.
- D. The proposed dwelling units shall not exceed the number of units of water that are available and have been committed to the subject property by the Department of Water Supply or other approved water source. Any further development shall occur only when sufficient County water becomes available by construction of on- and off-site water system improvements. All water system improvements shall

meet with the requirements of the Department of Water Supply prior to the issuance of the Certificate of Occupancy for any residential unit.

- E. ~~[Final Subdivision Approval of the subject property shall be secured within five (5) years from the effective date of this ordinance. Lot boundaries of the new lots created by any subdivision shall be consistent with zoning district boundaries to avoid split-zone parcels.]~~

- [F.] Construction of the proposed development shall be completed within five (5) years from the effective date this ordinance. Prior to construction, the applicant, successors or assigns shall secure Final Plan Approval for the proposed development from the Planning Director in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawaii County Code. Plans shall identify all existing and/or proposed structures, paved driveway access and parking stalls associated with the proposed development. Landscaping shall also be indicated on the plans for the purpose of mitigating any adverse noise or visual impacts to adjacent properties in accordance with the requirements of Planning Department's Rule No. 17 (Landscaping Requirements). The applicant shall include native species among the plants used for landscaping.

- [G.]~~E.~~ All driveway connections to Kakahiaka Street and Homestead Road shall conform to Chapter 22, Streets and Sidewalks, of the Hawaii County Code.

- [H.]~~G.~~ The applicant shall construct the extension of Kakahiaka Street through the subject property to the driveway entrance of any development of the area covered by this rezoning ordinance~~[(TMK:7-3-10:3)]~~ as a 50-foot wide street to dedicable standards with concrete curb, gutter and sidewalk improvements along one side of the road. The applicant shall construct the required~~[all]~~ improvements prior to the issuance of a Certificate of Occupancy and dedicate them to the County upon

request. The remainder of Road Lot 5 to the southern boundary of the property shall be set aside as a future road reserve, along with any necessary construction easements, and improved to dedicable standards by the applicant, successors or assigns, when the Planning Director determines that this road will serve a useful function. When required by the Director, [F]the road shall be constructed in the manner specified by the Department of Public Works and shall be on an alignment meeting with the approval of the Planning Director in consultation with the Department of Public Works. The obligation to build the road and the County's right to recover all costs and expenses to enforce the obligation shall be secured by a covenant running with the land recorded against at least one of the parcels created by Subdivision No. 02-000051, or the applicant may build the road or bond its construction. Said covenant shall grant the County the power to foreclose upon the encumbered property to satisfy costs of building the road under public procurement procedures, which costs and procedures shall be as determined by the Director of Public Works.

- [F.]H. To reduce potential impact to residents in Kona Palisades and Kakahiaka Street, occupancy of the project shall not be allowed until the connection of the Lokahi project (TMK: 7-3-10:48) to the Midlevel Road (a street connecting to Ka'iminani Drive from the south, makai of the Kona Palisades subdivision) and the construction of the Midlevel Road from the Lokahi project to Ka'iminani Drive, has been constructed. In lieu of this condition, the applicant may improve Homestead Road from the north boundary of TMK: 7-3-10:[3] 52 from the intersection of Kakahiaka Street to alignment of the Midlevel Road, and construct the Midlevel Road to Ka'iminani Drive. The roads and connections shall be constructed in a manner meeting with the approval of the Department of Public Works and on an alignment meeting with the approval of the Planning Director in consultation with the Department of Public Works, Traffic Division, prior to occupancy of the project.

~~[J.]~~I. Install streetlights, signs, and markings meeting with the approval of the Department of Public Works, Traffic Division prior to the issuance of a Certificate of Occupancy.

~~[K.]~~J. All earthwork activity shall conform to Chapter 10, Erosion and Sedimentation Control, of the Hawaii County Code.

~~[L.]~~K. All development-generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties. A drainage master plan shall be prepared and submitted to the Department of Public Works prior to issuance of Final Plan Approval. Any drainage improvements shall be constructed meeting with the approval of the Department of Public Works prior to the issuance of a Certificate of Occupancy.

~~[M.]~~L. An Archaeological Data Recovery and Preservation Plan shall be submitted for the review and approval of the Planning Director, in consultation with the Department of Land and Natural Resources-State Historic Preservation Division (DLNR-SHPD). All site(s) identified for preservation in the inventory survey and approved by the State Historic Preservation Division shall be included within the preservation plan. A copy of the approved Final Archaeological Data Recovery and Preservation Plan shall be submitted to the Planning Director for its files prior to submitting plans for Final Plan Approval review or prior to the issuance of any land alteration permits.

~~[N.]~~M. Should any 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 mitigative measures have been taken.

~~[O:]~~N. The applicant(s) shall comply with all applicable laws, rules, regulations and requirements of other affected agencies, including the Department of Public Works, Department of Water Supply and Department of Health.

~~[P:]~~O. 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 unit counts are adjusted. The fair share contribution shall become due and payable prior to receipt of Final Plan Approval 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 \$6,206.06 per multiple family residential unit. Based upon the applicant's representation of intent to develop a total of one hundred (100) multi-family residential units, the indicated total of fair share contribution is **\$620,606.00** for the multi-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

~~[P:]~~O. The fair share contribution shall be allocated as follows:

1. **\$3,061.27** per multiple family residential unit for the 100-unit multi-family development for an indicated total of **\$306,127.00** to the County to support park and recreational improvements and facilities;
2. **\$96.75** per multiple family residential unit for the 100-unit multi-family development for an indicated total of **\$9,675.00** to the County to support police facilities;
3. **\$297.62** per multiple family residential unit for the 100-unit multi-family development for an indicated total of **\$29,762.00** to the County to support fire facilities;
4. **\$132.65** per multiple family residential unit for the 100-unit multi-family development for an indicated total of **\$13,265.00** to the County to support solid waste facilities;
5. **\$2,617.77** per multiple family residential unit for the 100-unit multi-family development for an indicated total of **\$261,777.00** to the State or County to support road and traffic improvements.

The Fair Share requirements as contained herein shall be waived for the proposed residential development upon satisfaction of all the following:

- a. That, as represented by the Applicant, 100% of the residential units constructed within the project area shall be sold at prices affordable to residents of the County of Hawaii earning no more than 140% of median income at the time of development. More specifically, the units shall be within the then current Affordable Sales Guidelines as established by the

Department of Housing and Urban Development for a family of four earning no more than 140% of the County of Hawaii median income;

- b. That a minimum of 75% of the units shall be made available to owner-occupant buyers in accordance with Part IV, Chapter 514, HRS, relating to “Sales to owner-Occupants”; and
- c. That the applicant shall submit evidence to the County Housing Agency that the sales prices within the Affordable Guidelines as established above.

Should the residential unit price exceed the then current Affordable Sales Price Guidelines, the Fair Share requirements shall become immediately due and payable.

~~[Q.]P.~~ To ensure that the Goals and Policies of the Housing Element of the General Plan are implemented,

- a. That, ~~[A]~~as represented by the Applicant, 100% of the residential units constructed within the project area shall be sold at prices affordable to residents of the County of Hawaii earning no more than 140% of median income at the time of development. More specifically, the units shall be within the then current Affordable Sales Guidelines as established by the Department of Housing and Urban Development for a family of four earning no more than 140% of the County of Hawaii median income;
- b. That a minimum of 75% of the units shall be made available to owner-occupant buyers in accordance with Part IV, Chapter 514, HRS, relating to “Sales to owner-Occupants”; and

- c. That the applicant shall submit evidence to the County Housing Agency that the sales prices within the Affordable Guidelines as established above.

Should the residential unit price exceed the then current Affordable Sales Price Guidelines, the Fair Share requirements shall become immediately due and payable.

~~[R.]~~Q. 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 Fees Ordinance.

~~[S.]~~R. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of enactment of the ordinance. The report shall include, but not be limited to, the status of the development and the extent to which the conditions of approval are being complied with and sales records for the project identifying amount units were sold for and proof that units were sold to owner-occupants. The annual report shall also provide documentation satisfactory to the Planning Director to evidence the actual sales prices of the units sold. 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.

~~[T.]~~S. An initial 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(s), its 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).
5. If the applicant(s) should require an additional extension of time, the Planning Director shall submit the applicant(s)' request to the County Council for appropriate action.

~~[U.]~~T. Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate rezoning of the subject area to its original or more appropriate designation.”

SECTION 2. Material to be deleted is bracketed and struck through and new material 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:

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via
H.D.*

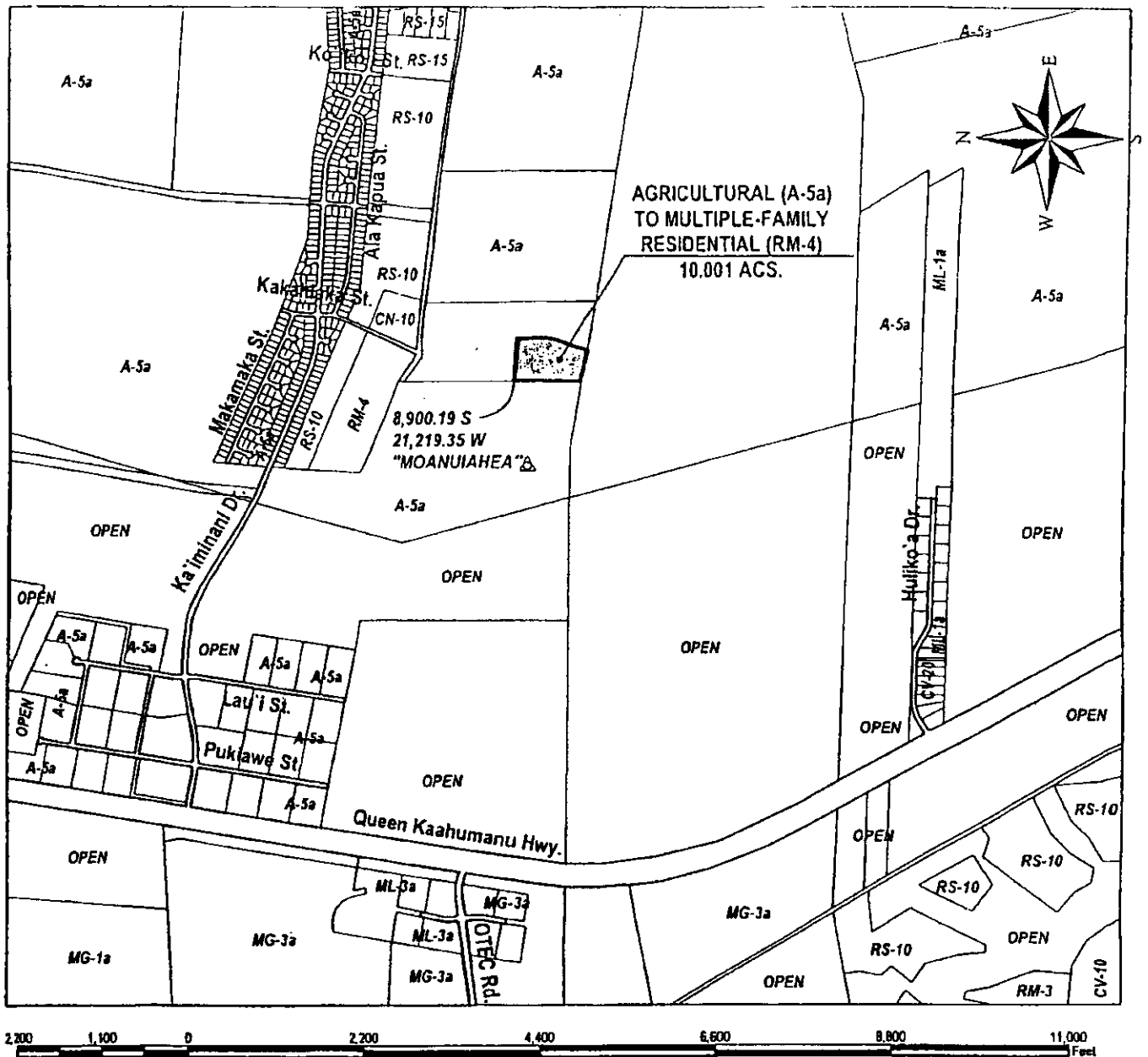
H. Angel Pilago

COUNCIL MEMBER, COUNTY OF HAWAI'I

Kona, Hawai'i

Date of Introduction: September 7, 2006
Date of 1st Reading: September 7, 2006
Date of 2nd Reading: September 20, 2006
Effective Date: September 28, 2006

REFERENCE: Comm. 935.2



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,
 BY CHANGING THE DISTRICT CLASSIFICATION
 FROM AGRICULTURAL (A-5a)
 TO MULTIPLE FAMILY RESIDENTIAL (RM-4)
 AT OOMA 1st, NORTH KONA, HAWAII

PREPARED BY: PLANNING DEPARTMENT
 COUNTY OF HAWAII

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

(Draft 2)

Introduced By: K. Angel Pilago
Date Introduced: September 7, 2006
First Reading: September 7, 2006
Published: September 15, 2006

REMARKS: _____

Second Reading: September 20, 2006
To Mayor: September 22, 2006
Returned: September 28, 2006
Effective: September 28, 2006
Published: October 5, 2006

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			
	7	2	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			
	7	2	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:


DEPUTY CORPORATION COUNSEL
COUNTY OF HAWAII

SEP 25 2006

Date _____


COUNCIL CHAIRMAN


COUNTY CLERK

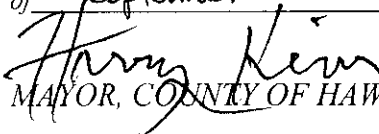
Bill No.: 299 (Draft 2)

Reference: C-935.2/PC-108

Ord No.: 06 128

Approved/Disapproved this 28th day

of September, 2006


MAYOR, COUNTY OF HAWAII