

ORDINANCE NO. 07 98 BILL NO. 62

AN ORDINANCE AMENDING SECTION 25-8-30 (NAALEHU ZONE MAP), ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAI'I COUNTY CODE 1983 (2005 EDITION), BY CHANGING THE DISTRICT CLASSIFICATION FROM SINGLE FAMILY RESIDENTIAL – 7,500 SQUARE FEET (RS-7.5) TO VILLAGE COMMERCIAL – 7,500 SQUARE FEET (CV-7.5) AT POUPOUWELA AND KOWALA, KAU, HAWAI'I, COVERED BY TAX MAP KEY 9-5-024:008.

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

SECTION 1. Section 25-8-33, 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 Poupouwela and Kowala, Kau, Hawai'i, shall be Village Commercial – 7,500 square feet (CV-7.5):

Beginning at a spike at the Southeast corner of this parcel of land, and on the Northwesterly side of the Mamalahoa Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "STEIN 2" being 247.09 feet North and 2,368.31 feet West, and running by azimuths measured clockwise from true South:

1. 77° 26' 11" 49.15 feet along the Northwesterly side of the Mamalahoa Highway to a pipe;

Thence along Kukui Street along a curve to the right having a radius of 55.00 feet, the chord azimuth and distance being:

2. 119° 25' 05" 73.58 feet to a pipe;
3. 161° 24' 101.94 feet along the Easterly side of Kukui Road to a nail;

Thence along the Easterly side of Kukui Road along a curve to the left having a radius of 620.00 feet, the chord azimuth and distance being:

- | | | | | | |
|----|------|-----|-----|--------|--|
| 4. | 160° | 49' | 20" | 12.50 | feet to a nail (found); |
| 5. | 257° | 15' | 45" | 81.64 | feet along Lot 171, Naalehu Subdivision, Third Series to a pipe; |
| 6. | 163° | 53' | 30" | 10.00 | feet along Lot 171, Naalehu Subdivision, Third Series to a pipe; |
| 7. | 253° | 53' | 30" | 35.05 | feet along Lot 171 and Lot 173, Naalehu Subdivision, Third Series to a pipe; |
| 8. | 347° | 26' | 11" | 175.40 | feet along Lot 170-B to the point of beginning and containing an area of 17,382 square feet, more or less. |

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

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, successors or assigns shall be responsible for complying with all of the stated conditions of approval.

- B. Plans for conversion of the single-family dwelling shall be submitted for Plan Approval from the Planning Director within one (1) year from the effective date of this ordinance. Plans shall identify fire protection measures, access roadway, driveway and parking stalls. Landscaping shall be indicated on the plans for the purpose of mitigating any potential adverse noise or visual impacts to adjoining parcels. The applicant shall retain the existing landscaping or provide landscaping in accordance with the requirements of Planning Department's Rule No. 17 (Landscaping Requirements), Chapter 25 (Zoning Code), Hawaii County Code.
- C. Access to the property from Highway 11 shall meet with the approval of the Department of Transportation.
- D. The commercial development shall utilize the existing dwelling. Renovations and improvements which are generally consistent with the current appearance of the existing home shall be allowed.
- E. All development-generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties.
- F. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to the issuance of a Certificate of Occupancy.
- G. All earthwork activity shall conform to Chapter 10, Erosion and Sedimentation Control, of the Hawaii County Code.
- H. 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 mitigation measures have been taken.

1. If the applicant, successors or assigns develops residential units on the property, 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 become due and payable prior to receipt of Final Plan Approval. The fair share contribution for each lot shall be based on the actual number of residential units developed. The fair share contribution in the 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 **\$6,653.40** per multiple family residential unit (**\$10,368.57** per single family residential unit). The total amount shall be determined with the actual number of units according to the calculation and payment provisions set forth in this condition. The fair share contribution per multiple family residential unit (single family residential unit) shall be allocated as follows:

1. **\$3,281.93** per multiple family residential unit (**\$4,999.91** per single family residential unit) to the County to support park and recreational improvements and facilities;
2. **\$103.73** per multiple family residential unit (**\$241.20** per single family residential unit) to the County to support police facilities;

3. **\$319.07** per multiple family residential unit (**\$476.39** per single family residential unit) to the County to support fire facilities;
4. **\$142.21** per multiple family residential unit (**\$208.57** per single family residential unit) to the County to support solid waste facilities; and
5. **\$2,806.46** per multiple family residential unit (**\$4,442.50** per single family residential unit) 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. To ensure that the goals and policies of the Housing Element of the General Plan are implemented, if required, 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 Administrator of the Office of Housing and Community Development prior to Final Plan Approval.
- K. 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.
- L. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.

M. An initial extension of time for the performance of conditions within the ordinance may be granted by the Planning Director upon the following circumstances:

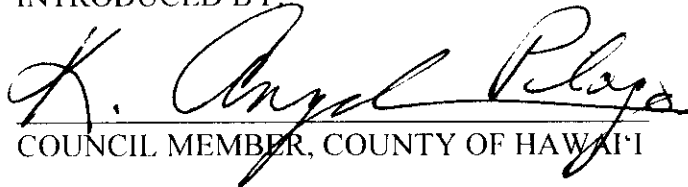
1. The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence.
2. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
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 should require an additional extension of time, the Planning Director shall submit the applicant's request to the County Council for appropriate action.

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 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.

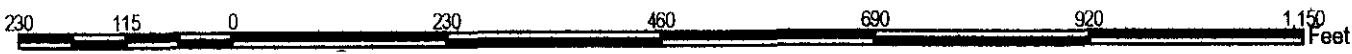
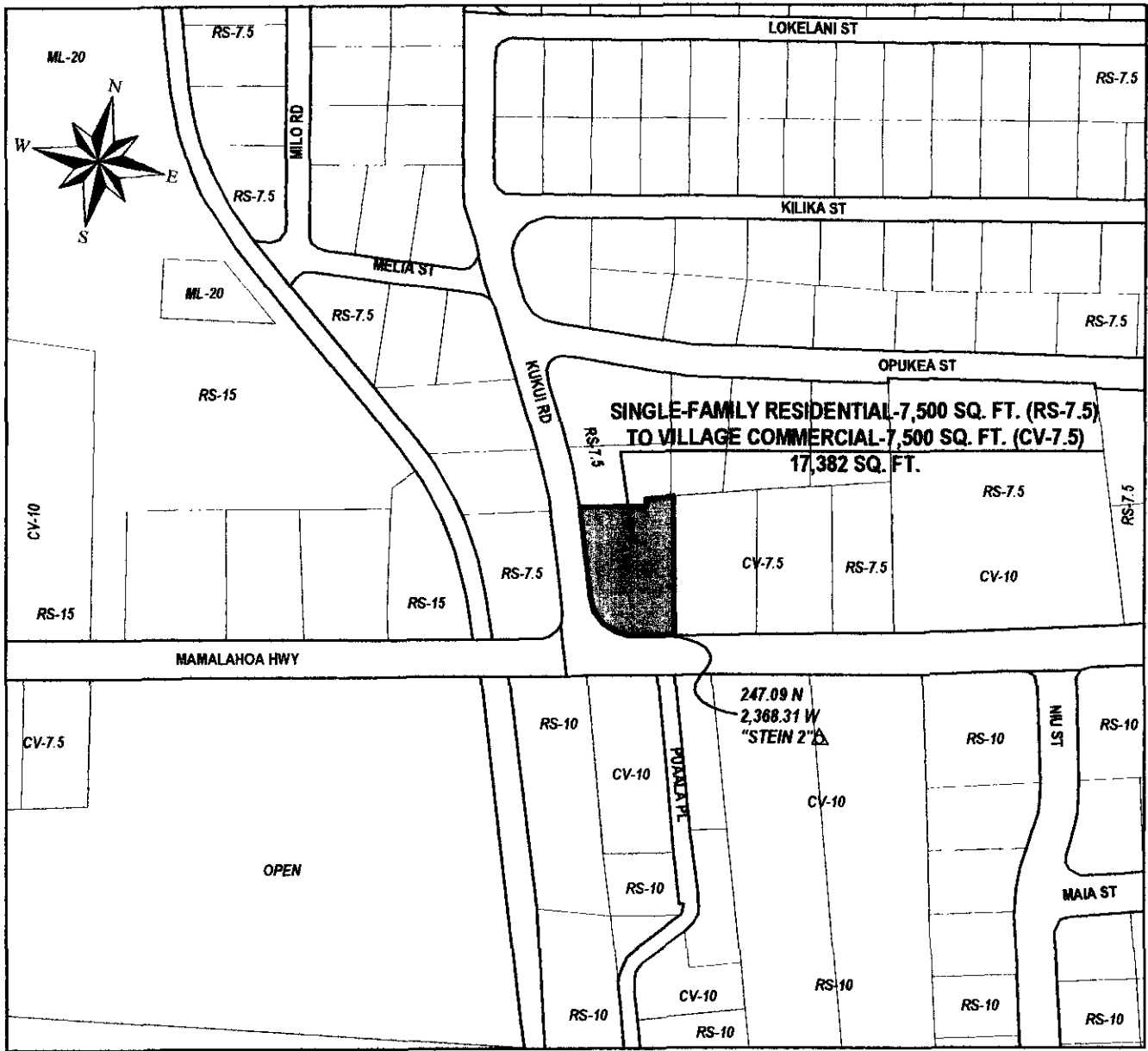
INTRODUCED BY:


COUNCIL MEMBER, COUNTY OF HAWAII

Hilo, Hawai'i

Date of Introduction: April 4, 2007
Date of 1st Reading: April 4, 2007
Date of 2nd Reading: June 1, 2007
Effective Date: June 25, 2007

REFERENCE: Comm. 199



AMENDMENT TO THE ZONING CODE

AMENDING SECTION 25-8-30 (NAALEHU ZONE MAP)
 ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE
 1983 (2005 EDITION), BY CHANGING THE DISTRICT CLASSIFICATION
 FROM SINGLE-FAMILY RESIDENTIAL-7,500 SQ. FT. (RS-7.5)
 TO VILLAGE COMMERCIAL-7,500 SQ. FT. (CV-7.5)
 AT POUPOUWELA AND KOWALA, KAU, 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: April 4, 2007
First Reading: April 4, 2007
Published: April 13, 2007

REMARKS:
April 18, 2007 - Postponed
May 22, 2007 - Public Hearing
(Naalehu)

Second Reading: June 1, 2007
To Mayor: June 12, 2007
Returned: June 26, 2007
Effective: June 25, 2007
Published: July 3, 2007

REMARKS:

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Ford	X			
Higa	X			
Hoffmann	X			
Ikeda	X			
Jacobson	X			
Naeole	X			
Pilago	X			
Yagong	X			
Yoshimoto	X			
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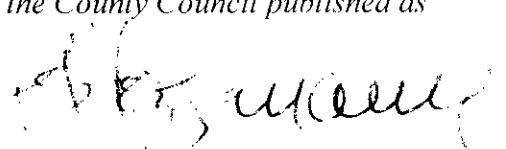
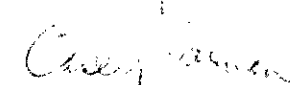
ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Ford	X			
Higa			X	
Hoffmann	X			
Ikeda	X			
Jacobson	X			
Naeole	X			
Pilago	X			
Yagong	X			
Yoshimoto	X			
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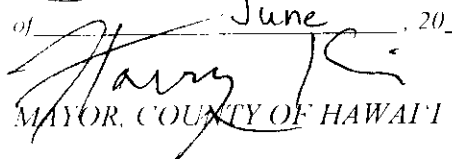
I DO HEREBY CERTIFY that the foregoing BILL was adopted by the County Council published as indicated above.

APPROVED AS TO
FORM AND LEGALITY:


DEPUTY CORPORATION COUNSEL
COUNTY OF HAWAII

Date _____


COUNCIL CHAIRMAN

COUNTY CLERK

Approved Disapproved this 25th day
of June, 2007

MAYOR, COUNTY OF HAWAII

Bill No.: 62
Reference: C-199/PC-22
Ord No.: 07 98