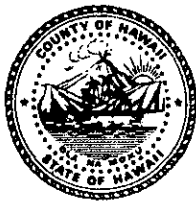


COUNTY OF HAWAII



STATE OF HAWAII

BILL NO. 292

(Draft 4)

ORDINANCE NO. 08 115

AN ORDINANCE AMENDING ORDINANCE NO. 93 36 WHICH RECLASSIFIED LANDS FROM AGRICULTURAL – 20 ACRES (A-20a), AGRICULTURAL – 10 ACRES (A-10a), AND AGRICULTURAL – 3 ACRES (A-3a) TO RESIDENTIAL AND AGRICULTURAL – 1 ACRE (RA-1a) AT KUKUAU 1ST, SOUTH HILO, HAWAII, COVERED BY TAX MAP KEY 2-4-8:PORTIONS OF 14 AND 26.

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF HAWAII:

SECTION 1. Ordinance No. 93 36 is amended as follows:

"SECTION 1. Section [25-114] 25-8-33, 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 Kukuau 1st, South Hilo, Hawai'i, shall be Residential and Agricultural - 1 acre (RA-1a):

"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. The applicant, successors or assigns shall be responsible for complying with all of the stated conditions of approval;
- B. The required water commitment payment for the development shall be submitted to the Department of Water Supply in accordance with its "Water Commitment Guidelines Policy" within ~~[ninety]~~ 180 days from the date of approval of the amended change of zone. The applicant shall pay installation and facilities charges as required by the Department of Water Supply;
- C. ~~[Subdivision plans for the proposed development shall be submitted to the Planning Department within one year from the effective date of the change of zone.]~~ Final Subdivision Approval shall be secured within ~~[two years from the date of receipt of Tentative Subdivision Approval]~~ five years from the effective date of this amendment, provided further, that for the construction of the Kupulau Street extension, final subdivision approval shall be granted upon the developer posting a construction bond of \$3.5 million, after it has been determined by the Planning Director, in consultation with the Department of Public Works, that the topography allows the construction of the Kupulau Street extension without significant changes to the construction plans for the remaining subdivision infrastructure, and that upon approval of firm construction estimates for the Kupulau Street extension, the bond amount shall be increased or decreased accordingly;
- D. The ~~[Saddle Road (Puainako Street), Kupulau Street and]~~Kawailani Street ~~[extensions]~~ extension affecting the subject property shall be delineated on preliminary and final subdivision plans to allow for a right-of-way. ~~[These]~~ This street ~~[extensions]~~ extension shall be fully graded at a vertical alignment meeting with the approval of the Department of Public Works in conjunction with Final Subdivision Approval. The portion of the Kupulau Street extension from Puainako Street to the southern property line shall be constructed to county dedicable

standards meeting with the approval of the Department of Public Works, and shall serve as an additional ingress/egress for the subdivision. The applicant shall dedicate the land area for the proposed Kupulau St. extension between Puainako St. and Puloku St. to the county at no cost. [The Mohouli Street/Ainako Avenue roadway segment which affects the subject property shall be constructed to county-dedicable standards in a manner meeting with the approval of the Department of Public Works prior to the issuance of Final Subdivision Approval for the proposed development. The cost of the roadway extension improvements shall be borne by the applicant and shall be credited and limited to the amount of the applicant's fair share contribution for road and traffic improvements. In lieu of the actual construction of the roadway extension improvements the applicant may elect to enter into an agreement with the County, together with the appropriate bond, surety bond or other security deemed acceptable by the Planning Director for the construction of the said roadway extension improvements;]

~~[E. Intersection improvements, including the design and construction of traffic signals and related improvements other than channelization, shall be installed at the Kukuau-Komohana Street intersection meeting with the approval of the Department of Public Works by July 1994; and intersection improvements, including the design and construction of traffic signals and related improvements shall be installed at the Mohouli-Komohana Street intersection meeting with the approval of the Department of Public Works in conjunction with the construction of the Mohouli/Ainako roadway extension;]~~

[F.] E. As represented by the applicant, restrictive covenants in the deeds of all the proposed lots shall prohibit the construction of a second dwelling unit 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 Bureau of Conveyances likewise prior to final subdivision approval;

~~[G.]F. [To ensure that the goals and policies of the Housing Element of the General Plan are implemented, the applicant shall 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]~~ To ensure that the goals and policies of the Housing Element of the General Plan are implemented, if applicable, 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 receipt of final subdivision approval;

~~[H.]G. Access to the development shall meet with the approval of the Department of Public Works. No lots shall have direct access from Puainako Street. [Access to the proposed lots shall be via the existing Kukuau-Komohana intersection and via the proposed Mohouli Street to Ainako Avenue in which the roadway segment between Kukuau Street and the Ponahawai golf course's southerly boundary shall be constructed by the applicant to county dedicable standards up to the length adjoining the Ponahawai golf course's southerly boundary, provided that the road improvements of the proposed Ponahawai golf course have received final approval and the road improvements have been bonded. In the event that the proposed Ponahawai golf course development does not come to fruition, the applicant shall provide, in lieu of constructing the county dedicable roadway segment adjoining the golf course's southerly boundary, a contribution of three hundred thousand dollars (\$300,000).]~~

H. 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 Subdivision 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 \$11,506.13 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 single-family residential unit shall be allocated as follows:

- A. \$5,548.46 per single-family residential unit to the County to support park and recreational improvements and facilities;
- B. \$267.66 per single-family residential unit to the County to support police facilities;
- C. \$528.66 per single-family residential unit to the County to support fire facilities;
- D. \$231.45 per single-family residential unit to the County to support solid waste facilities;
- E. \$4,929.90 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, provided however, that the estimated cost of constructing the Kupulau Street extension on the subject property in the amount of \$3.5 million as provided in Conditions "C" and "D", shall be credited to offset the full amount of the fair share for road and traffic improvements by the Planning Director, without further approval of the County Council;

- I. Drainage improvements shall meet with the approval of the Department of Public Works;
- J. The method of sewage disposal shall meet with the approval of the Department of Health;
- K. 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;
- L. ~~[All other applicable laws, rules, regulations and requirements shall be complied with]~~ Comply with all applicable County, State and Federal laws, rules, regulations and requirements;
- M. 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;

- N. 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 and the Planning Director acknowledges that further reports are not required; and,
- O. ~~[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 year); and~~
 - 5) if the applicant should require an additional extension of time, the Planning Director shall submit the applicant's request to the Planning Commission and 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 2. Material to be deleted is bracketed and stricken. 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:


COUNCIL MEMBER, COUNTY OF HAWAI'I

Kona, Hawai'i

Date of Introduction: June 3, 2008
Date of 1st Reading: June 3, 2008
Date of 2nd Reading: August 27, 2008
Effective Date: September 10, 2008
REFERENCE: Comm: 1191.10/Council

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

(Draft 3)

RECEIVED

Introduced By: Donald Ikeda
Date Introduced: June 3, 2008
First Reading: June 3, 2008
Published: June 13, 2008

REMARKS: June 18, 2008 - Postponed to
July 2, 2008 meeting; July 2, 2008 -
Postponed to August 13, 2008 meeting;
August 13, 2008 - Amended to Draft 4 &
held over pursuant to Council Rule 25(e)

Second Reading: August 27, 2008
To Mayor: September 5, 2008
Returned: September 10, 2008
Effective: September 10, 2008
Published: September 18, 2008

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			
	7	0	2	0

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			
	9	0	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:

Am X Self
DEPUTY CORPORATION COUNSEL
COUNTY OF HAWAII

Date SEP - 9 2008

[Signature]
COUNCIL CHAIRMAN
Casey Janner
COUNTY CLERK

Approved/Disapproved this 10th day

26 September, 2008
Harry Kemi
MAYOR, COUNTY OF HAWAII

Bill No.: 292 (Draft 4)
Reference: C-1191.10/PC-86
Ord No.: 08 115

Ordinances Numbered 08-115, 08-116, 08-117, 08-118, 08-119, & 08-120

I hereby certify that the following Ordinances passed second and final reading at the meeting of the County Council on August 27, 2008, by vote, as listed below:

Ordinance 08-115 (Bill 292, Draft 4): An Ordinance Amending Ordinance No. 93 36 Which Reclassified Lands From Agricultural – 20 Acres (A-20a), Agricultural – 10 Acres (A-10a), and Agricultural – 3 Acres (A-3a) to Residential and Agricultural – 1 Acre (RA-1a) at Kukuau 1st, South Hilo, Hawai'i, Covered by Tax Map Key 2-4-8: Portions of 14 and 26. AYES: Council Members Ford, Higa, Ikeda, Jacobson, Naeole, Pilago, Yagong, Yoshimoto, and Chair Hoffmann – 9; NOES: None; ABSENT: None; EXCUSED: None.


Ordinance 08-116 (Bill 318, Draft 4): An Ordinance Adopting the County of Hawai'i Puna Community Development Plan. AYES: Council Members Ford, Jacobson, Naeole, Pilago, Yagong, and Chair Hoffmann – 6; NOES: Council Members Higa, Ikeda, and Yoshimoto – 3; ABSENT: None; EXCUSED: None.

Ordinance 08-117 (Bill 325): An Ordinance Amending Chapter 21, Article 5, Section 21-37 of the Hawai'i County Code 1983 (2005 Edition as Amended) Relating to the Sewer Connection Loan Program. AYES: Council Members Ford, Higa, Ikeda, Jacobson, Naeole, Pilago, Yagong, Yoshimoto, and Chair Hoffmann – 9; NOES: None; ABSENT: None; EXCUSED: None.

Ordinance 08-118 (Bill 328): An Ordinance to Amend Ordinance No. 08-78, as Amended, the Operating Budget for the County of Hawai'i for the Fiscal Year Ending June 30, 2009. AYES: Council Members Ford, Higa, Ikeda, Jacobson, Naeole, Pilago, Yagong, Yoshimoto, and Chair Hoffmann – 9; NOES: None; ABSENT: None; EXCUSED: None.

Ordinance 08-119 (Bill 329): An Ordinance to Amend Ordinance No. 08-78, as Amended, the Operating Budget for the County of Hawai'i for the Fiscal Year Ending June 30, 2009. AYES: Council Members Ford, Higa, Ikeda, Jacobson, Naeole, Pilago, Yagong, Yoshimoto, and Chair Hoffmann – 9; NOES: None; ABSENT: None; EXCUSED: None.

Ordinance 08-120 (Bill 343): An Ordinance to Amend Ordinance No. 08-78, as Amended, the Operating Budget for the County of Hawai'i for the Fiscal Year Ending June 30, 2009. AYES: Council Members Ford, Higa, Ikeda, Jacobson, Naeole, Pilago, Yagong, Yoshimoto, and Chair Hoffmann – 9; NOES: None; ABSENT: None; EXCUSED: None.


Casey Jarman
County Clerk

(Hawai'i Tribune-Herald – September 18, 2008)
(West Hawai'i Today – September 18, 2008)

Note: The original Digest/Affidavit is attached to Ordinance 08-115.