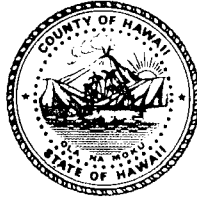


COUNTY OF HAWAI'I



STATE OF HAWAI'I

ORDINANCE NO. 09 168 BILL NO. 177

AN ORDINANCE AMENDING ORDINANCE NO. 92 70 WHICH RECLASSIFIED LANDS FROM SINGLE FAMILY RESIDENTIAL – 15,000 SQUARE FEET (RS-15) TO VILLAGE COMMERCIAL – 10,000 SQUARE FEET (CV-10) AT NĀNĀWALE HOMESTEADS, PUNA, HAWAI'I COVERED BY TAX MAP KEY 1-5-014:007.

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

SECTION 1. Ordinance No. 92 70 is amended as follows:

“SECTION 1. Section [~~25-107~~] 25-8-26, 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 [~~Nanawale~~] Nānāwale Homesteads, Puna Hawai'i, shall be Village Commercial – 10,000 square feet (CV-10):

~~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, its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
- B. — the applicant shall secure Final Consolidation Approval of the subject properties within one year of the effective dated of the zone change.
- C. — the applicant shall secure Final Plan Approval for the proposed development within one year from the date of Receipt of Final Consolidation Approval. To assure adequate time for plan approval review and in accordance with Chapter 25-244 (Zoning Code), plans shall be submitted to the Planning Department a minimum of forty-five days prior to the date by which Final Plan Approval must be secured. Plans to be submitted shall indicate existing and proposed structures, parking associated with the proposed commercial uses, driveway circulation and landscaping. The applicant shall site the proposed commercial structures and provide landscaping for the purpose of mitigating noise and visual impacts to adjacent properties.
- D. — construction of the proposed development shall commence within one year from the date of receipt of Final Plan Approval and be completed within one year thereafter.
- E. — access to the proposed development from the Keaau-Pahoa Road shall meet with the approval of the Department of Public Works.
- F. — should any unidentified sites or remains, such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings or walls be encountered, work in the affected area shall cease and the Planning Department immediately notified. Subsequent work shall proceed upon an archaeological clearance from the Planning Department when it finds that sufficient mitigative measures have been taken.
- G. — all other applicable laws, rules, regulations, and requirements shall be complied with.
- H. — 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 applicants' election, be satisfied by performance in accordance with the requirements of the Unified Impact Fees Ordinance.
- I. — an Improvement District be implemented for improvements to that portion of the Keaau-Pahoa Road within the Pahoa Town proper, the applicant(s), its successors or assigns shall automatically be a participant in the Improvement District.
- J. — an annual progress report shall be submitted to the Planning Director prior to the anniversary date of enactment of the Change of Zone. The report address the status of 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.
- K. — 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 applicants, 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), and~~
- 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.~~

~~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.]~~

- A. The applicant, its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
- B. Prior to the issuance of a water commitment by the Department of Water Supply, the applicant shall submit the anticipated maximum daily water usage calculations as recommended by a registered engineer, and a water commitment deposit in accordance with the "Water Commitment Guidelines Policy" to the Department of Water Supply within one hundred and eighty days from the effective date of this ordinance.
- C. The applicant shall install a reduced pressure type backflow prevention assembly within five (5) feet of the water meter on private property, which must be inspected and approved by the Department of Water Supply prior to the issuance of a Certificate of Occupancy.
- D. Construction of the proposed improvements and related improvements shall be completed within five (5) years from the effective date of this amendment. This time period shall include securing Final Plan Approval from the Planning Director for the commercial development. Plans shall identify structures, fire protection measures, landscaping and maintenance plan, paved and striped parking stalls and driveway and other improvements associated with the proposed uses. Plans shall include landscaping along property boundaries for the purpose of mitigating any potential adverse noise or visual impacts to surrounding properties. Landscaping shall be provided in accordance with the requirements of Planning Department's Rule No. 17 (Landscaping Requirements) standards for CV zones adjoining a RS zone.
- E. All driveway connections to Pahoia Village Road shall conform to Chapter 22, County Streets, of the Hawai'i County Code.
- F. A drainage study, if required, shall be prepared by a licensed civil engineer and submitted to the Department of Public Works prior to receipt of Final Plan Approval. Any recommended drainage improvements, if required, shall be constructed meeting with the

approval of the Department of Public Works prior to receipt of a Certificate of Occupancy.

- G. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to the issuance of Final Plan Approval.
- H. The applicant, successors, or assigns develop residential units on the subject 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 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 combined value of **\$7,698.11** per multiple family residential unit (**\$11,996.63**) 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. **\$3,797.26** per multiple family residential unit (**\$5,784.99** per single family residential unit) to the County to support park and recreational improvements and facilities;
2. **\$120.01** per multiple family residential unit (**\$279.07** per single family residential unit) to the County to support police facilities;
3. **\$369.17** per multiple family residential unit (**\$551.20** per single family residential unit) to the County to support fire facilities;
4. **\$164.54** per multiple family residential unit (**\$241.32** per single family residential unit) to the County to support solid waste facilities; and
5. **\$3,247.12** per multiple family residential unit (**\$5,140.06** 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.

- I. 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, Hawai'i 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.

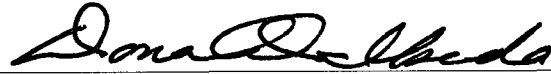
- J. Should the Council adopt a Unified Impact Fees Ordinance setting forth criteria for imposition of exactions or the assessment of impact fees, conditions included herein shall be credited towards the requirements of the Unified Impact Fees Ordinance
- K. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
- L. 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 to what extent the conditions of approval are being complied with. 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.
- M. 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.
- N. Should any of the conditions not be met or substantially complied with in a timely fashion, the Director may 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:

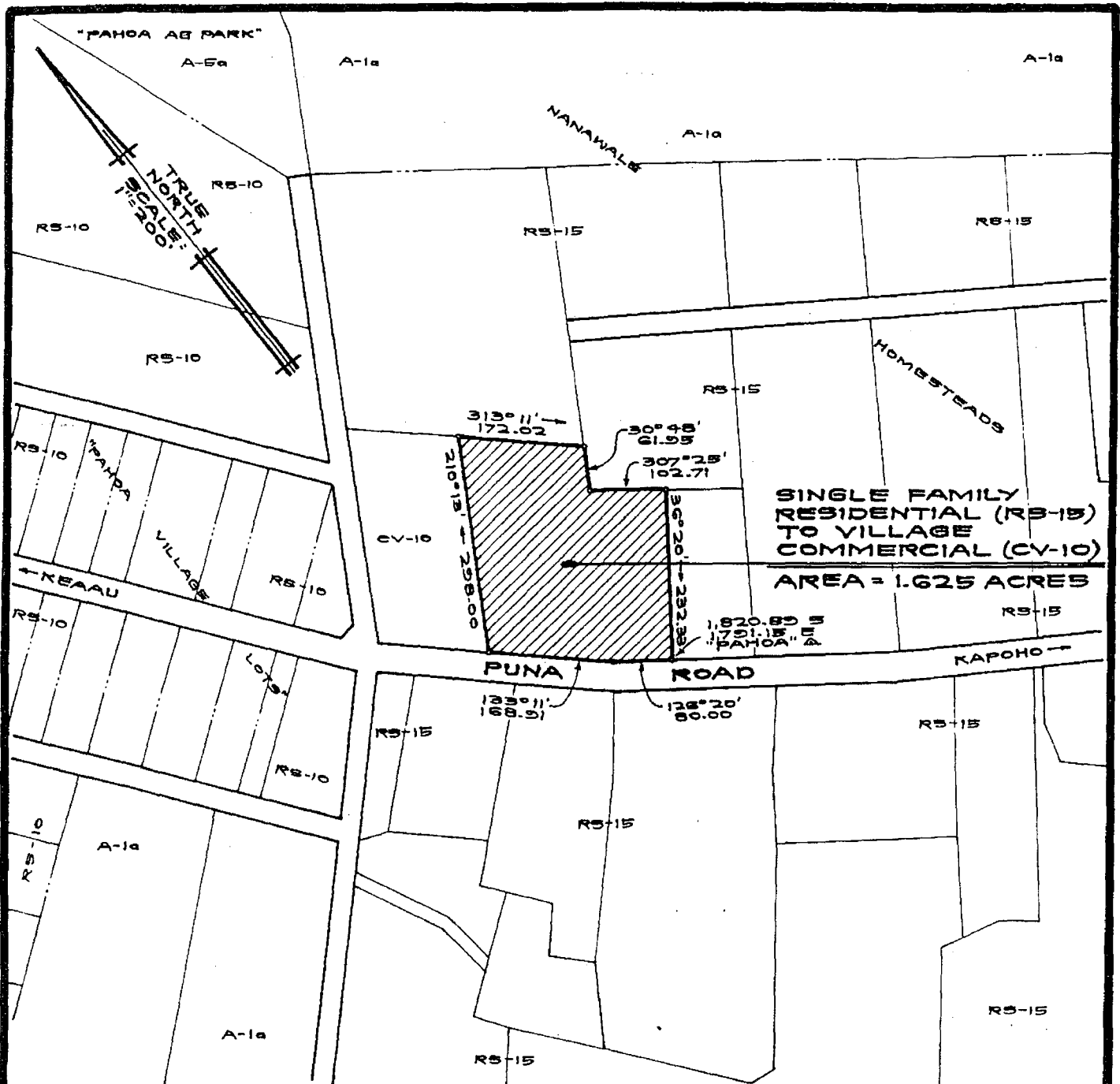


COUNCIL MEMBER, COUNTY OF HAWAI'I

Kona, Hawai'i

Date of Introduction: December 2, 2009
Date of 1st Reading: December 2, 2009
Date of 2nd Reading: December 16, 2009
Effective Date: December 30, 2009

REFERENCE: Comp. 621



AMENDMENT TO THE ZONING CODE

AMENDING SECTION 25-107 (PAHOA ZONE MAP)
 ARTICLE 3, CHAPTER 25 (ZONING CODE) OF THE
 HAWAII COUNTY CODE BY CHANGING THE
 DISTRICT CLASSIFICATION FROM SINGLE FAMILY
 RESIDENTIAL (RS-15) TO VILLAGE COMMERCIAL
 (CV-10) AT NANAWALE HOMESTEADS, PUNA, HAWAII.

PREPARED BY : PLANNING DEPARTMENT
 COUNTY OF HAWAII

TMK : 1-5-14 : 7, 8 AND 23 (POR.)

FEB. 13, 1992

EXHIBIT "A" Comm. 621; Bill 177

(WALTER T. YAMAGUCHI)
 REZ 716 HARA LAND DEV.
 FOR REFERENCE ONLY

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

Introduced By: Donald Ikeda
Date Introduced: December 2, 2009
First Reading: December 2, 2009
Published: December 12, 2009

REMARKS: _____

Second Reading: December 16, 2009
To Mayor: December 24, 2009
Returned: December 30, 2009
Effective: December 30, 2009
Published: January 8, 2010

REMARKS: _____

RECEIVED

2009 DEC 30 AM 10:25
ROLL CALL VOTE 25

	AYES	NOES	ABS	EX
Enriques	X			
Ford	X			
Greenwell	X			
Hoffmann		X		
Ikeda	X			
Naeole-Beason	X			
Onishi	X			
Yagong	X			
Yoshimoto	X			
	8	1	0	0

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Enriques	X			
Ford	X			
Greenwell	X			
Hoffmann		X		
Ikeda	X			
Naeole-Beason	X			
Onishi	X			
Yagong			X	
Yoshimoto	X			
	7	1	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:

[Signature]
DEPUTY CORPORATION COUNSEL
COUNTY OF HAWAI'I
Date DEC 28 2009

[Signature]

COUNCIL CHAIRMAN

[Signature]
COUNTY CLERK

Bill No.: 177
Reference: C-621/PC-56
Ord No.: 09 168

Approved/Disapproved this 28th day
of December, 2009
[Signature]
MAYOR, COUNTY OF HAWAI'I