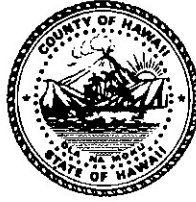


COUNTY OF HAWAI'I



STATE OF HAWAI'I

ORDINANCE NO. 10 45 BILL NO. 228

AN ORDINANCE AMENDING SECTION 25-8-33 (CITY OF HILO ZONE MAP), ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAI'I COUNTY CODE 1983 (2005 EDITION), BY CHANGING THE DISTRICT CLASSIFICATION FROM AGRICULTURAL – ONE ACRE (A-1a) TO NEIGHBORHOOD COMMERCIAL – 20,000 SQUARE FEET (CN-20) AT PONAHAWAI, SOUTH HILO, HAWAI'I, COVERED BY TAX MAP KEY: 2-3-037:006.

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 Ponahawai, South Hilo, Hawai'i, shall be Neighborhood Commercial – 20,000 square feet (CN-20):

Beginning at the northeast corner of this parcel of land and on the south side of Ponahawai Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HALAI" being 1,101.86 feet South and 157.66 feet East and running by azimuths measured clockwise from True South:

1. 345° 40' 445.00 feet along Lot 11;
2. 252° 20' 171.53 feet along Lot 11;
3. 246° 05' 150.10 feet along Lot 10;
4. 333° 10' 220.00 feet along Lot 7;
5. 69° 08' 644.58 feet along Lot 13;

6. Thence along the east side of Komohana Street, along a curve to the right having a radius of 2960.00 feet, the chord azimuth and distance being:
163° 26' 25" 229.97 feet;
7. 165° 40' 232.89 feet along the east side of Komohana Street;
8. 190° 30' 69.34 feet along the east side of Komohana Street;
9. 140° 00' 45.92 feet along the east side of Komohana Street;
10. Thence along the south edge of Flood Zone "A" and all its windings as shown on approved subdivision plan 7389 and Lot 12-A, the direct azimuth and distance being:
274° 29' 50" 256.99 feet;
11. 165° 40' 214.11 feet along Lot 12-A;
12. 255° 40' 30.00 feet along the south side of Ponahawai Street to the point of beginning and containing an area of 5.075 acres.

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

Necessary to prevent circumstances which may be adverse to the public health, safety and welfare; or

- (1) 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), 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 applicants 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 180 days from the effective date of this ordinance.
- C. The applicants shall install a reduced pressure type backflow prevention assembly within five (5) feet of the existing water meter and any additional water meters on private property, which must be inspected and approved by the Department of Water Supply prior to issuance of a Certificate of Occupancy.
- D. The applicants shall relocate and adjust the Department of Water Supply’s water system facilities that are affected by construction of improvements within the Ponahawai Street right-of-way fronting the subject property that are required by this permit.
- E. Construction of the proposed improvements shall be completed within five (5) years from the effective date of this ordinance. This time period shall include securing Final Plan Approval from the Planning Director in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawai‘i County Code.
- F. Development of the property shall be designed and constructed in a way to minimize obstruction of the scenic views of Hilo Bay from Komohana Street.

- G. Prior to issuance of Final Plan Approval, the applicants shall grant a minimum 30-foot wide access easement on the subject property, in favor of the adjacent landowner(s) (TMK: 2-3-37:14), in order to connect the access at Ponahawai Street on TMK 2-3-37:14 to the access at Ponahawai Street on the subject property for the purpose of providing internal traffic circulation between the two properties.
- H. Access at Komohana Street shall be through road and utility easement "RU-9" and shall be limited to right-turn in and right-turn out movements only. This access shall be shared with the adjacent parcel (TMK: 2-3-37:22). Prior to the issuance of a Certificate of Occupancy, the applicants shall install "no left-turn" sign(s) and a physical barrier at the property access to prevent left-turns into and out of the access driveway. All improvements shall meet with the approval of the Department of Public Works.
- I. Access connections to Ponahawai Street and Komohana Street shall conform to Chapter 22 (County Streets) of the Hawai'i County Code.
- J. Prior to the issuance of a Certificate of Occupancy, the applicants shall provide full improvements to the property's frontage along Komohana Street consisting of, but not limited to, pavement widening with concrete curb, gutter and sidewalk, drainage improvements, and any required utility relocation, meeting with the approval of the Department of Public Works.
- K. Streetlights and traffic control devices, as may be required by the Traffic Division, Department of Public Works, shall be installed by the applicants at no cost to the County.
- L. Should the applicants submit plans to develop a land use beyond what is proposed in the application, which the Planning Department in consultation with the Department of Public Works determines will generate over 50 peak hour trips, a Traffic Impact Analysis Report (TIAR) shall be submitted for review and approval by the Department of Public Works prior to Final Plan Approval. The applicants shall implement when required by

the Department of Public Works, at no cost to the County, any transportation improvements deemed necessary by the Department of Public Works.

- M. Any construction within the designated FEMA flood zone shall comply with the requirements of Chapter 27, Floodplain Management, of the Hawai'i County Code.
- N. All development-generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties. A drainage study shall be prepared and submitted to the Department of Public Works prior to the issuance of Final Plan Approval. Any drainage improvements, if required, shall be constructed meeting with the approval of the Department of Public Works prior to the issuance of a Certificate of Occupancy.
- O. During construction, measures shall be taken to minimize the potential of both fugitive dust and runoff sedimentation. Such measures shall be in compliance with construction industry standards and practices utilized during construction projects of the State of Hawai'i.
- P. All earthwork activity, including grading and grubbing, shall conform to Chapter 10, Erosion and Sedimentation Control, of the Hawai'i County Code.
- Q. Comply with Chapter 11-55, Water Pollution Control, Hawai'i Administrative Rules, Department of Health, which requires a NPDES permit for certain construction activity.
- R. Construction activities must comply with the provisions of Hawai'i Administrative Rules, Chapter 11-46, "Community Noise Control."
- S. The applicants shall install a septic system(s) meeting with the requirements of the Department of Health prior to the issuance of a Certificate of Occupancy. In the future, should a public sewer system be installed in Ponahawai Street or Komohana Street fronting the subject property, the applicants shall connect to the sewer system.

- T. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to Final Plan Approval.
- U. 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 - State Historic Preservation Division (DLNR-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-SHPD when it finds that sufficient mitigation measures have been taken.
- V. To ensure that the Goals and Policies of the Housing Element of the General Plan are implemented, the applicants 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 or final subdivision approval for any new residential structures.
- W. If the applicants, successors, or assigns develops residential units on the subject property, the applicants shall make their 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 applicants 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

- X. 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.

- Y. The applicants shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.

- Z. 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 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).

 - 5. If the applicants should require an additional extension of time, the Planning Director shall submit the applicant's request to the County Council for appropriate action.

AA. 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.

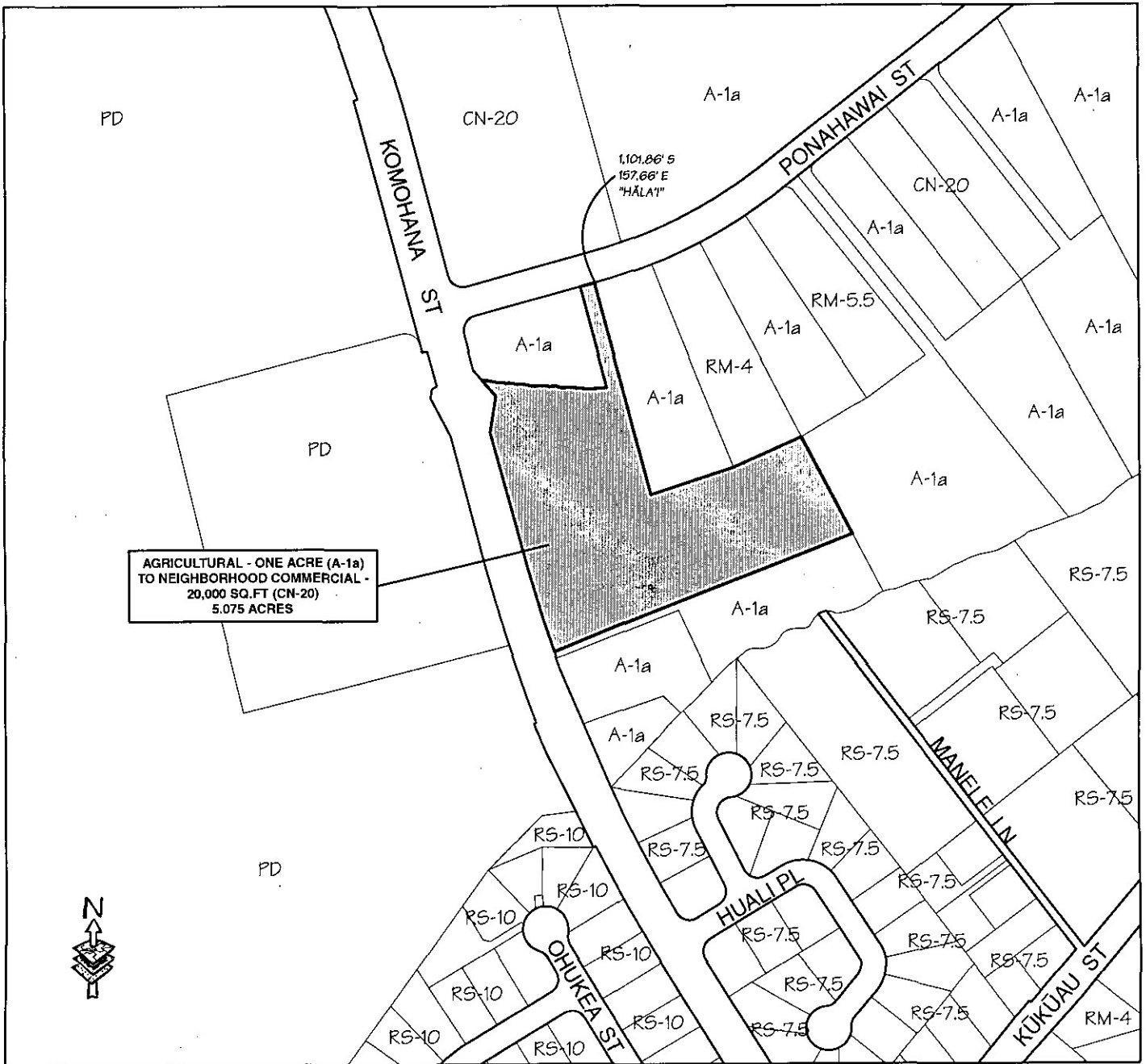
INTRODUCED BY:



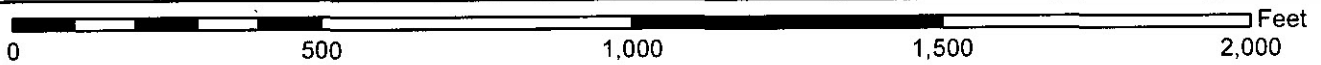
COUNCIL MEMBER, COUNTY OF HAWAI'I

 Kona , Hawai'i
Date of Introduction: April 20, 2010
Date of 1st Reading: April 20, 2010
Date of 2nd Reading: May 5, 2010
Effective Date: May 20, 2010

REFERENCE: Comm. 755



AGRICULTURAL - ONE ACRE (A-1a)
 TO NEIGHBORHOOD COMMERCIAL -
 20,000 SQ.FT (CN-20)
 5.075 ACRES



AMENDMENT TO THE ZONING CODE

AMENDING SECTION 25-8-33 (CITY OF HILO ZONE MAP) ARTICLE 8,
 CHAPTER 25 (ZONING CODE) OF THE HAWAI'I COUNTY CODE 1983 (2005 EDITION),
 BY CHANGING THE DISTRICT CLASSIFICATION FROM
 AGRICULTURAL - ONE ACRE (A-1a) TO
 NEIGHBORHOOD COMMERCIAL - 20,000 SQUARE FEET (CN-20)
 AT PONAHAHAI, SOUTH HILO, HAWAI'I

MAP PREPARED BY:
 COUNTY OF HAWAI'I, PLANNING DEPARTMENT

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

RECEIVED

Introduced By: Donald Ikeda
Date Introduced: April 20, 2010
First Reading: April 20, 2010
Published: April 30, 2010

REMARKS: _____


Second Reading: May 5, 2010
To Mayor: May 13, 2010
Returned: May 20, 2010
Effective: May 20, 2010
Published: May 27, 2010

REMARKS: _____

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			
	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			
	6	0	3	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

Date MAY 14 2010


COUNCIL CHAIRMAN


COUNTY CLERK

Bill No.: 228
Reference: C-755/PC-77
Ord No.: 10 45

Approved/Disapproved this 20th day
of May, 20 10

MAYOR, COUNTY OF HAWAII