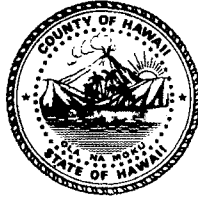


COUNTY OF HAWAII



STATE OF HAWAII

ORDINANCE NO. 12 111 BILL NO. 229

AN ORDINANCE AMENDING ORDINANCE NO. 99 116 WHICH AMENDED ORDINANCE NO. 96 159 WHICH AMENDED SECTION 25-8-33 (CITY OF HILO ZONE MAP), ARTICLE 8, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE, 1983 (2005 EDITION) (formerly referred to as Section 25-114, City of Hilo Zone Map, Article 3, Chapter 25, Zoning Code) BY CHANGING THE DISTRICT CLASSIFICATION FROM SINGLE FAMILY RESIDENTIAL – 10,000 SQUARE FEET (RS-10) TO NEIGHBORHOOD COMMERCIAL – 7,500 SQUARE FEET (CN-7.5) AT WAIĀKEA, SOUTH HILO, HAWAII, COVERED BY TAX MAP KEY NOS. 2-2-044:003, 031, 032, 035, AND 037.

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

SECTION 1. Ordinance No. 99 116 is amended as follows:

~~“[SECTION 2. This change in district classification is conditioned upon the following:]~~

SECTION 2. The following amendments to Ordinance No. 99-116 shall apply only to Tax Map Key Nos. 2-2-044: 031, 032, 035 and 037. 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 anticipated maximum daily water usage shall be submitted and the required water commitment payment shall be submitted to the Department of Water Supply in accordance with its “Water Commitment Guidelines Policy” prior to securing Tentative Subdivision Approval.
- C. Final Subdivision Approval of the proposed consolidation/resubdivision of the subject property shall be secured within five (5) years from the effective date of ~~[the rezoning]~~ this amended ordinance. The subdivision plans shall delineate a 10-foot wide road widening strip along the Kahaopea Street frontage.
- D. In conjunction with the submittal of plans for subdivision review or plan approval review, a master plan for the subject property shall be filed with the Planning Director. Final Plan Approval for the subject property and related improvements shall also be secured from the Planning Director. Plans to be submitted for final subdivision approval or final plan approval shall also comply with the approved master plan and all conditions of approval set forth in this ordinance. The purpose of the master plan is to provide comprehensive principles and guidelines for the commercial and residential development within the subject property in order to assure that the development is compatible with the surrounding area. The master plan shall include, but not be limited to, standards and guidelines relative to open space, architecture building controls (appearance, siting, heights, building materials, signs, etc.), terrain, topography, off-street parking, landscaping, setbacks from property lines and buildings, lot coverage ratio, etc. and enforcement procedures. A Landscaping Plan, in accordance with Planning Department’s Rule 17 shall also be submitted to include landscaping along property boundaries, for the purpose of mitigating any potential adverse noise and visual impacts to adjoining parcels and the intersection. Multiple-family residential structures shall be designed to be in keeping with the single family residential character of the surrounding area.

- E. If required by the Planning Director, [a]an updated Traffic Impact Analysis Report shall be submitted for review and approval by the Department of Public Works and the Department of Transportation (DOT) prior to the submittal of plans for subdivision review. Prior to the issuance of the certificate of occupancy for any portion of the subject property, the applicant shall be responsible for constructing and/or paying for its pro rata share of intersection improvements at the intersection of Kanoelehua Avenue and Kahaopea Street subject to the traffic mitigation measures required by the Traffic Impact Analysis Report for the subject property meeting with the approval of the Department of Public Works and Department of Transportation, should the proposed intersection improvements not be commenced by the DOT.
- F. A Solid Waste Management Plan for the subject property shall be submitted to the Department of Environmental Management for review and approval [~~to the Department of Public Works in conjunction with the submittal of subdivision plans or plan approval to the Planning Department~~] prior to Final Plan Approval.
- G. The applicant shall obtain, if required, a [~~FEMA letter~~] Letter of Map Revision [~~(LOMAR)~~] (LOMR) from FEMA for the subject property prior to securing Final Subdivision Approval or final plan approval, whichever occurs first.
- H. Drainage improvements, if required, shall be constructed in a manner meeting with the approval of the Department of Public Works prior to securing Final Subdivision Approval or final plan approval for the subject property, whichever occurs first.
- I. Prior to securing final subdivision approval or the issuance of certificate of occupancy for the subject property, which ever occurs first, the south side of

Kahaopea Street shall be improved and widened with the construction of curb, gutter and sidewalk improvements (with pavement widening and transitions) fronting the subject property between Kanoelehua Avenue and the access road to the subject property meeting with the approval of the Department of Public Works and shall be dedicated to the County upon its request. For the area fronting the subject property between the access road and the eastern boundary, these or other improvements may be required by the Department of Public Works provided that no major drainage structures, such as a bridge or culvert, are required by such improvements.

- J. Accesses to the property and all roadways within the subject property shall meet with the requirements and approval of the Planning Director, upon consultation with the Department of Public Works and/or the State Department of Transportation. Access to the subject property shall be by the way of the Awapuhi Street extension or an alternate access point as agreed upon by the Planning Director, upon consultation with the Department of Public Works and/or State Department of Transportation.

~~[K. The applicant shall comply with all applicable laws, rules, regulations and requirements of affected agencies.~~

~~L. 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 Office of Housing and Community Development that the applicant's affordable housing requirements for the residential development of the subject property, if any, have been mutually agreed to prior to Final Subdivision Approval for any portion of the subject property.~~

~~M. The applicant shall make its fair share contribution to mitigate the potential regional impacts of the subject property with respect to parks and recreation, fire, police, solid waste disposal facilities, and roads. The amount of the fair share~~

contribution shall be the sum which is the product of multiplying the number of residential units proposed to be developed by the amounts allocated hereinbelow for each such unit, and shall become due and payable prior to final subdivision approval or final plan approval for any portion of the subject property or its increments. If the subject property is developed in two or more increments, the amount of the fair share contribution due and payable prior to final subdivision approval or final plan approval of each increment shall be a sum calculated in the same manner according to the number of additional proposed residential units in each such increment. The fair share contribution may be in a form of cash, land, facilities, or any combination thereof acceptable to the director in consultation with the affected agencies. The fair share contribution shall have a maximum combined value of **\$4,645.29 per multiple-family residential unit and \$7,239.16 per single-family residential unit.** Based upon the applicant's representation of intent to develop up to 37 residential units, the indicated total fair share contribution is **\$116,132.25** for the multiple-family residential units and **\$86,869.92** for single-family residential units, whichever is applicable. 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 M. The fair share contribution shall be allocated as follows:

1. ~~\$2,291.39~~ per multiple-family residential unit for an indicated total of **\$57,284.75** and ~~\$3,490.85~~ per single-family residential unit for an indicated total of **\$41,890.20** to the County to support park and recreational improvements and facilities;
2. ~~\$72.42~~ per multiple-family residential unit for an indicated total of **\$1,810.50** and ~~\$168.40~~ per single-family residential unit for an indicated total of **\$2,020.80** to the County to support police facilities;
3. ~~\$222.77~~ per multiple-family residential unit for an indicated total of **\$5,569.25** and ~~\$332.61~~ per single-family residential unit for an indicated total of **\$3,991.32** to the County to support fire facilities;

4. ~~\$99.29 per multiple family residential unit for an indicated total of \$2,484.25 and \$145.62 per single family residential unit for an indicated total of \$1,747.44 to the County to support solid waste facilities;~~
5. ~~\$1,959.42 per multiple family residential unit for an indicated total of \$48,985.50 and \$3,101.68 per single family residential unit for an indicated total of \$37,220.16 to the State or County to support road and traffic improvements.~~

~~The fair share contributions described above shall be adjusted annually beginning three years after the effective date of the change of zone, based on the percentage change in the Honolulu Consumer Price Index (HCPI). In lieu of paying the fair share contribution, the applicant may construct and contribute 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 approval of the director. The cost of providing and constructing the improvements required in Condition E, I, and J shall be credited against the sum specified in Condition M(5) for road and traffic improvements. For purposes of administering Condition M, the fair market value of land contributed or the cost of any improvements required or made in lieu of the fair share contribution shall be subject to the review and approval of the director, upon consultation with the appropriate agencies.~~

- N. ~~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.~~
- O. ~~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; and~~
 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).~~
- P. ~~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.]~~
- K. The method of sewage disposal shall meet with the requirements of the State Department of Health.
- L. All development-generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties.
- M. Comply with Chapter 11-55, Water Pollution Control, Hawai'i Administrative Rules, Department of Health, which requires a NPDES permit for certain construction activity.
- N. All earthwork activity, including grubbing and grading, shall conform to Chapter 10, Erosion and Sedimentation Control of the Hawai'i County Code.
- O. Construction activities must comply with the provisions of Hawai'i Administrative Rules, Chapter 11-46, "Community Noise Control."

P. 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 DLNR-SHPD when it finds that sufficient mitigation measures have been taken.

Q. If the applicant, successors, or assigns develop residential units or lots on the subject properties, the applicant, successors, or assigns shall make its fair share contribution to mitigate the potential regional impacts of the development 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 Subdivision Approval or Final Plan Approval, whichever is applicable. The fair share contribution shall be based on the actual number of residential units or lots 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 maximum combined value of \$7,903.35 per multiple family residential unit (\$12,316.47 per single family residential unit). The total amount shall be determined by the actual number of units or lots according to the calculation and payment provisions set forth in this condition. The fair share contribution per multiple family residential unit (single family residential units) shall be allocated as follows:

1. \$3,898.50 per multiple family residential unit (\$5,939.22 per single family residential unit) to the County to support park and recreational improvements and facilities;

2. \$123.21 per multiple family residential unit (\$286.51 per single family residential unit) to the County to support police facilities;
3. \$379.01 per multiple family residential unit (\$565.89 per single family residential unit) to the County to support fire facilities;
4. \$168.93 per multiple family residential unit (\$247.75 per single family residential unit) to the County to support solid waste facilities; and
5. \$3,333.69 per multiple family residential unit (\$5,277.10 per single family residential unit) to the County to support road and traffic improvements.

In lieu of paying the fair share contribution, the applicant, successors or assigns 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. The cost of providing and constructing the improvements required in Condition E, I and J shall be credited against the sum specified in Condition Q(5) for road and traffic improvements.

R. 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.

S. To ensure that the Goals and Policies of the Housing Element of the General Plan are implemented, 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 Subdivision Approval.

T. The applicant, successors or assigns shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.

U. 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 may initiate rezoning of the area to its original or more appropriate designation."

SECTION 3. Material to be deleted is bracketed and struck through and material to be added is underscored.

SECTION 4. In the event that any portion of this ordinance is declared invalid, such invalidity shall not affect the other parts of this ordinance.

SECTION 5. This ordinance shall take effect upon its approval.

INTRODUCED BY:


COUNCIL MEMBER, COUNTY OF HAWAI'I

Kona, Hawai'i

Date of Introduction: July 3, 2012
Date of 1st Reading: July 3, 2012
Date of 2nd Reading: July 19, 2012
Effective Date: August 10, 2012

REFERENCE: Comm. 669

AMENDING SECTION 25-114 (CITY OF HILO ZONE MAP) ARTICLE 3, CHAPTER 25 (ZONING CODE) OF THE HAWAII COUNTY CODE, BY CHANGING THE DISTRICT CLASSIFICATION FROM SINGLE FAMILY RESIDENTIAL (RS-10) TO NEIGHBORHOOD COMMERCIAL (CN-7.5) AT WAIAKEA, SOUTH HILO, HAWAII.

TMK: 2-2-44: 3,31,32,35 and 37

OCTOBER 15, 1996

FOR REFERENCE ONLY

(TRI-ELECTRIC)

OFFICE OF THE COUNTY CLERK

County of Hawai'i
Kona, Hawai'i

COUNTY CLERK
COUNTY OF HAWAII

Introduced By: Pete Hoffmann
Date Introduced: July 3, 2012
First Reading: July 3, 2012
Published: July 14, 2012

REMARKS: _____

Second Reading: July 19, 2012
To Mayor: July 27, 2012
Returned: August 10, 2012
Effective: August 10, 2012
Published: August 21, 2012

REMARKS: _____

2012 AUG 10 PM 3:06

	AYES	NOES	ABS	EX
Blas	X			
Ford		X		
Hoffmann	X			
Ikeda	X			
Onishi	X			
Pilago		X		
Smart	X			
Yagong	X			
Yoshimoto	X			
	7	2	0	0

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Blas			X	
Ford		X		
Hoffmann	X			
Ikeda	X			
Onishi	X			
Pilago	X			
Smart	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:

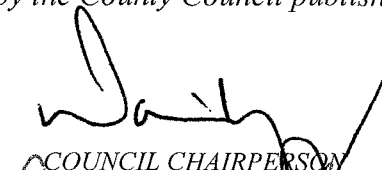
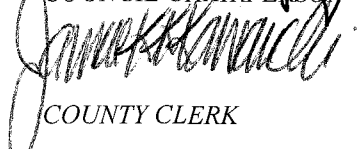

DEPUTY CORPORATION COUNSEL
COUNTY OF HAWAII

Date JUL 31 2012

Approved/Disapproved this 10th day

of August, 20 12

MAYOR, COUNTY OF HAWAII


COUNCIL CHAIRPERSON

COUNTY CLERK

Bill No.: 229
Reference: C-669/PC-54
Ord No.: 12 111