C. A. No. 1383

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RALPH E. ALLISON, CHARLES K. SAKAGUCHI, MASAJI KAWAZOE, SATORU SATO, MRS. HENRY YOUNG, JAMES TAMURA, TSUTOMU MENDE, JOHN AH SING, JR., KAZUO TANJI, BUNICHI HARADA, NOOMAN K. AU, BERNARD E. AU, BERNARD T. MIURA, JERRY NAGO, JANE K. KUBO, THEODORE HIRO, ROY RIHACHI NAGATA, SHIZUE KAYA, TSUTOMU NISHIZAKI, MARGARET W. AU, JACK Y. OTA, KENJI INOUYE, JAMES U. ISHII, PAUL M. OKAMOTO, TETSUO MORINOUE, TOMOO OKUYAMA, JENNIE A. KONDO, AKIRA YAMAMOTO, YUKIE HIRAKI, BECKY B. ARQUERO, THOMAS T. SAKAKIHARA, ITSUJI KODAMA, KENJI SUGAWARA, TAKEO TSUTSUI, JACK KANEKO, FRANCIS AI, EDWARD W. ROSEHILL, JR., KAZUICHI OKINO, WILLIAM R. AU, JR., HENRY T. MONIZ, LOUIS P. ARAUJO, IWAO NAGATA, HIROSHI SHISHIDO, MILTON HAKODA, PROCOPIO VESPERAS, REBECCA TIM SING and GEORGE S. YUDA,

Appellants,

vs.

STATE LAND USE COMMISSION,

Appellee.

NOTICE OF APPEAL

3RD CIRCUIT COURT
STATE OF HAWAII
HILO, HAWAII
FILED
1966 JUL 20 PM 4 02
CLERK

CARLSMITH, CARLSMITH, WICHMAN AND CASE
(Curtis W. Carlsmith)
121 Waianuenue Avenue
Hilo, Hawaii

Attorneys for Appellants.

ORIGINAL

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C. A. No. 1383

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RALPH E. ALLISON, et al.,	)
Appellants,	)
vs.	)
STATE LAND USE COMMISSION,	)
Appellee.	)

DECISION

3RD CIRCUIT COURT
STATE OF HAWAII
HILO, HAWAII
1983 SEP 3 PM 4 20
FILED
CLERK

C. A. No. 1383

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RALPH E. ALLISON, et al.,	)
Appellants,	)
vs.	)
STATE LAND USE COMMISSION,	)
Appellee.	)

DECISION

A petition was filed with the Land Use Commission of the State of Hawaii by fifty-nine owners of sixty separate parcels of land, constituting almost all of the lots in the Panaewa Houselots Subdivision in Waiakea, South Hilo, Hawaii, in which the owners of such parcels of land requested that the Commission change the land use district boundary within which their lots are located from an agricultural to an urban district. The petition was subsequently amended by the enlargement of the request so that the Commission was asked to change the boundary to an urban or rural district. After the petition was amended the area to be affected thereunder was increased by the inclusion of the remaining seven other parcels of land in the Panaewa Houselots Subdivision.[1]

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1. These additional lots were brought under the petition by the Land Use Commission on its own initiative as authorized by section 98H-4, R.L.H. 1955, as amended.

A public hearing was held by the Commission on the amended petition in the manner required by section 98H-4, R.L.H. 1955, as amended. A written report was prepared and presented by the staff of the Commission at the hearing and the report recommended the denial of the requested district change. Most of the owners were represented by counsel during such public hearing. On July 8, 1966, the Commission accepted the staff recommendation and the amended petition was denied, and it thereafter made findings of fact, conclusions of law and decision, dated and filed on July 24, 1966. Just prior to the denial of the amended petition, another staff memorandum refuting some of the reasons and arguments submitted during the public hearing by the petitioners was presented to the Commission in the absence of the petitioners and their counsel.

Forty-seven of the fifty-nine owners who were petitioners have appealed pursuant to chapters 6C and 98H, R.L.H. 1955, as amended, from the decision of the Commission.

The scope of the appeal is limited to a review of the record as transmitted to the Court by the Commission and no evidence was offered or adduced de novo.

The houselots involved in the district boundary change proceedings before the Commission were originally a tract of land owned by the territorial government, predecessor of the state. The territorial government, previous to the enactment in 1961 of chapter 98H, R.L.H. 1955, had caused this tract to be subdivided into lots, a few of such

lots containing a minimum area of 1.81 acres and most having a maximum area of 2.73 acres.

The notice of sale, conditions of sale instrument, special sale agreement and the land patent pertaining to the sale, disposition and transfer of the title to each of these lots expressly specified that the purchasers and owners of each of such lots must for a period of at least ten years after the issuance of the land patents use the land for residential purposes only and that such purchasers and owners could subdivide their lots if such smaller lots shall contain at least 10,000 square feet, or such minimum area as may be required by the Hawaii County Planning Commission.

The petitioners in their request for the change in the district boundary relied primarily upon such covenant relative to use and representation authorizing the future subdivision of their land claiming that most of the petitioners had purchased these lots for the purpose of building more than one house per lot to provide homes for their children or parents or to derive rental income after their retirement.

Eight separate grounds for reversal or modification of the decision of the Commission and for other incidental relief have been alleged by the appellants. In addition to the usual contention that the decision of the Commission is contrary to the evidence, the appellants claim that chapter 98H, R.L.H. 1955, as amended, is unreasonable, arbitrary and unconstitutional,

and that the decision violates the state and federal constitutions since it forbids the only reasonable use of the land involved in the district boundary change and prohibits the highest and best use of such land, and since it also impairs the express contracts between the appellants as landowners and the state and renders void certain restrictive covenants regarding the use of such land. It is also urged by the appellants that agricultural classification for such land has no real or substantial relation to the health, safety, morals or general welfare, and that agricultural zoning for such land is illegal and improper because in appellants' view the provisions of said chapter 98H, as amended, require the Commission to maintain the existing uses in the establishment of land use districts and the physical characteristics of the land demonstrate that these lots are not suitable for agricultural uses.

This is not the first case to be presented to this court for judicial review involving the application of said chapter 98H to the Panaewa lands. Two other cases have been already decided with conflicting results where a lot owner, who is also an appellant here, sought to obtain a special permit under the provisions of the said chapter. See C. A. No. 1059, and C. A. No. 1261.

Certain well established principles should be set forth and considered in connection with the determination of the issues in this case.

In the resolution of these questions, the court must primarily look to and examine the record as made before the Commission in order to ascertain whether the findings are consonant with or against the clear weight of the evidence. City of Tulsa v. Swanson, 366 P.2d 629 (Okla.1961); Lockard v. City of Los Angeles, 202 P.2d 38 (Cal. 1949).

It is a basic rule applicable to zoning cases that the action of a board or commission vested with authority to classify and to zone property is presumed to be correct. Zilm v. Zoning Board of Adjustment, 150 N.W.2d 606 (Ia. 1967); Leroux v. Baltimore, 234 A.2d 747 (Md. 1967); Agneslane Inc. v. Lucas, 233 A.2d 757 (Md. 1967); Mutz v. Village of Villa Park, 226 N.E.2d 644 (Ill. App. 1967); City of Lubbodk v. Whitacre, 414 S.W.2d 497 (Tex.Civ. App. 1967).

In view of such presumption of correctness and validity, and as a consequence thereof, it is also the general rule that the party attacking the zoning of a parcel of land has the burden to prove that the action of the Commission was arbitrary, unreasonable and confiscatory, or that the limitation of use is unreasonable and bears no substantial relationship to the public health, morals, safety and general welfare. Agneslane Inc. v. Lucas, supra; Strandberg v. Kansas City, 415 S.W.2d 737 (Mo. 1967); Metropolitan Dade County v. Kanter, 200 So.2d 624 (Fla. App. 1967); Muntz v. Village of Villa Park, supra; Hudson v. Township of Buena Vista Zoning Board, 150 N.W.2d 167 (Mich.

App. 1967); City of Lubbock v. Whitacre, supra; Gilmer v. Fritz, 281 N.Y.S.2d 154 (1967).

While a general scheme of land use classification adopted by the Commission may be valid, such a plan when applied to a particular property and a particular set of facts and circumstances may be so arbitrary and unreasonable as to result in a confiscation; and if such be the case as to the parcels involved here, then the decision must be nullified. Denman v. City of Cincinnati, 159 N.E.2d 805 (Ohio 1959). Of course, a zoning act is beyond the pale of the exercise of the police power if it is not reasonably required to promote the public health, morals, safety and general welfare. Gerstenfeld v. Jett, 374 F.2d 333 (1967); Mutz v. Village of Villa Park, supra. It has been said in this connection that "in all cases attacking the validity of an ordinance, there must be a careful balancing of the essential interests between the individual in the enjoyment of his property rights and the general welfare." Style Rite Homes, Inc. v. Zoning Board of Appeals, 28 N.Y.S.2d 623 (1967).

This court must then decide whether the Commission in this instance correctly interpreted said chapter 98H, as amended, and applied it with reasonable discretion to the facts. Pascale v. Board of Zoning Appeals of New Haven, 186 A.2d 377 (Conn. 1962). If the correctness of the decision denying the boundary change is fairly debatable, then the action of the Commission should not be disturbed. Gerstenfeld v. Jett, supra; Lockard v. City of

Los Angeles, supra; City of Long Beach v. California Lambda Chapter, 63 Cal. Rptr. 419 (1967); Bosley v. Hospital for Consumptives of Maryland, 227 A.2d 746 (Md. 1967); Price v. Cohen, 132 A.2d 125 (Md. 1957); Mutz v. Village of Villa Park, supra; City of Lubbock v. Whitacre, supra; Gilmer v. Fritz, supra.

In accordance with the statutory requirements contained in said chapter 98H, as amended,[2] the Commission was fully informed and advised of the comments and recommendations of the Hawaii County Planning Commission. It was the recommendation of the local planning commission that the request of the appellants for a boundary change from agricultural to rural be approved since the property was

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2. Section 98H-4, R.L.H., as amended, 1965 Supplement, reads in part as follows:

> "Section 98H-4. Amendments to district boundaries. Any department or agency of the state of county, or any property owner or lessee may petition the commission for a change in the boundary of any district. Within five days of receipt, the commission shall forward a copy of the petition to the planning commission of the county wherein the land is located. Within forty-five days after receipt of the petition by the county, the county planning commission shall forward the petition, together with its comments and recommendations, to the commission. Upon written request by the county planning commission, the commission may grant an extension of not more than fifteen days for the receipt of such comments and recommendations. The commission may also initiate changes in a district boundary which shall be submitted to the appropriate county planning agency for comments and recommendations in the same manner as any other request for a boundary change."

not suitable for agricultural uses and that it should be allocated for low density residential use.[3]

Although a condition was set forth in the report from the county planning commission which seemed to suggest that the subdivision of the area should not be approved until adequate water is made available and the density of rural-agricultural shall be determined, such a notation appears to be merely a staff advice and nothing more.

In the report of the staff of the Commission presented during the public hearing held in connection with the petition the following observation is found: "Soils in the area of the subject lands are known as the Olaa or Ohia soil material, consisting of young lava with a thin covering of volcanic ash, occurring in very wet regions on the islands of Hawaii. More than half of the land surface is occupied by bare bed rock outcrop, with the rest consisting of a thin covering of volcanic

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3. The findings of the Hawaii County Planning Commission were as follows:

> "1. Rural districts are created in areas characterized by low-density residential lots and where small farms are intermixed with such low density residential lots. Existing land use of areas in question indicates this condition.
> 2. Area is not suited for intensive agricultural use because of poor soil condition.
> 3. The area should not be in urban as it is not contiguous of the existing urban area and is against the policy of the County and State to provide a scattering of urban areas.
> 4. The General Plan has provided for adequate residential areas in the city of Hilo including some areas which are not designated as agricultural but are contiguous to urban districts. The comprehensive plan reserves residential area for a population of 40,000 in 1980."

ash that extends into cracks and crevices in the rough, broken, a-a lava. Some parts of this unit are forested and others are pastured, while in a few places sugar cane was once grown by hand labor, but these have been abandoned. This land type is difficult to cultivate, and pastures are very poor quality. However, some areas at lower elevations are developed for macadamia nuts, coffee, and pastures.

"The general area involves a mixed land use of residential, agricultural and wooded areas. Building density approximates 2.7 acres per dwelling unit located among wild growth, coffee orchards, lichee orchards, macadamia nut orchards and small gardens. Basic electrical, telephone and water services are available for the present subdivision, although Lama Street is of cinder construction. The average annual rainfall in the area approximates 130 inches."[4]

The staff of the Commission recommended adversely that the petition for boundary change from agricultural to urban or in the alternative to rural be denied. Mr. Moriguchi, the Executive Officer of the Commission, revealed that his basis for refusal to favorably recommend an urban district for the appellants' land was the lack of information to substantiate any need for additional urban land for Hilo and its immediate vicinity as well as the apprehension that urban facilities would then be required to serve such land.[5]

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4. See Staff Report, dated May 6, 1966, page 405.

5. See Minutes of Meeting, dated May 6, 1966, page 31, also Staff Report, dated May 6, 1966, page 6.

Section 98H-2, R.L.H. 1955, as amended, 1965 Supplement, provides that there shall be four major land use districts into which all lands in the State shall be placed, namely, urban, rural, agricultural and conservation, and further definesthese districts in the following terms:

> "Urban districts shall include activities or uses as provided by ordinances or regulations of the county within which the urban district is situated.
> Rural districts shall include activities or uses as characterized by low density residential lots of not more than one dwelling house per one-half acre in areas where 'city-like' concentration of people, structures, streets and urban level of services are absent, and where small farms are intermixed with such low density residential lots. These districts may include contiguous areas which are not suited to low density residential lots or small farms by reason of topography, soils, and other related characteristics.
> Agricultural districts shall include activities or uses as characterized by the cultivation of crops, orchards, forage, and forestry; farming activities or uses related to animal husbandry, and game and fish propagation; services and uses accessory to the above activities including but not limited to living quarters or dwellings, mills, storage facilities, processing facilities, and roadside stands for the sale of products grown on the premises; and open area recreational facilities.
> These districts may include areas which are not used for, or which are not suited to, agricultural and ancillary activities by reason of topography, soils, and other related characteristics.
> Conservation districts shall include areas necessary for protecting watersheds and water sources; preserving scenic areas; providing park lands, wilderness and beach reserves; conserving endemic plants, fish and wildlife; preventing floods and soil erosion; forestry; and other related activities; and other permitted uses not detrimental to a multiple use conservation concept."

The section referred to clearly imposes upon the Commission a duty to set standards for the determination of boundaries in each district consistent with the prescribed

legislative mode and it further prescribes that "in the establishment of boundaries for rural districts, areas of land composed primarily of small farms mixed with very low density residential lots, which may be shown by a minimum density of not more than one house per one-half acre and a minimum lot size of not less than one-half acre shall be included."

Pursuant to such statutory provision, the Commission has adopted land use district regulations[6] which include the standards used in establishing the final boundaries and to be used as guides for review of district boundaries and the granting amendments thereto.[7] Section 2.8 of such regulations provides inter alia that "(d) Lands with limited potential for other agricultural uses or which require extensive development to reach moderate quality may be included in either this District or in the Rural District depending on location with respect to other agricultural or rural lands." Section 2.10 of the same regulations applicable to rural districting reads:

> "2.10 "R" Rural District
>
> In determining the boundaries for the "R" Rural District, the following standards shall apply:
>
> (a) Areas consisting of small farms shall be included in this District.
> (b) It shall include activities or uses as characterized by low density residential lots of not more than one-half (1/2) acre and a density of not more than one-single family dwelling per one-half (1/2) acre.
> (c) Generally, parcels of land not more than five (5) acres shall be included in this District.
> (d) Notwithstanding subsection 'c' above, parcels of land larger than five (5) acres may be included in this District.

6. Adopted on June 20, 1964; effective as of August 23, 1964.
7. Section 2.6, Part II, State Land Use Regulations.

(e) It shall include parcels of land where 'city-like' concentration of people, structures, streets and urban level of services are absent.
(f) It may include parcels of land that are not suitable for agricultural uses.
(g) It may include small parcels of land that are contiguous to this District and are not suited to low density residential uses, or for small farm uses.
(h) Parcels of land consisting of small farms need not be included in this District, if it will alter the general characteristics of the area." (Emphasis added)

There is no dispute, and the record clearly shows, that appellants' lots were subdivided in 1958 by the territorial government for residential purposes. The notice of sale published in the Hilo Tribune-Herald informing the public of the date, time and place of sale of these lots described the property as "house lots" and also disclosed that the use thereof would be restricted to residence purposes only for ten years after the issuance of the land patents. All of the subsequent documents relating to the disposition of these lots contain similar references as to the type and nature of as well as the restriction upon the use. A reasonable inference that may be drawn is that the land was and is best suitable for residential development, rather than for agricultural pursuits. Such a conclusion is amply sustained by the physical characteristics of the land as to which there seems to be no disagreement.

It is also apparent from the record that in July, 1964,[8] prior to the adoption of the permanent district boundaries

8. Section 98H-3, R.L.H. 1955, as amended, provides that district boundaries within a county shall be adopted in final form within a period of not more than 90 days and not less than 45 days from the time of the last hearing in the county, provided that district boundaries for all counties shall be adopted in final form no sooner than May 1, 1964, nor later than July 1, 1964.

placing the appellants' lots within an agricultural district these lots had been used for low density residential purposes, with not more than one dwelling house per one-half acre, and within the Panaewa Subdivision area "city-like" concentration of people, structures, streets and urban level of services were absent. Further, because of the low density of population, small farms were intermixed with residences. Thus, the report of the staff of the Commission noted that the "area involves a mixed land use of residential, agricultural and wooded areas;"[9] and such environmental conditions also existed at the time of the original classification of these lots.[10] While this court must not sit as a zoning commission and it should not substitute and replace its judgment for that of the Commission, such salient physical features and land qualities would overwhelmingly indicate that the area is deserving of at least a rural district boundary.

From what has been said and based especially upon the record and the provisions of said chapter 98H, as amended, this court can arrive at no other conclusion than that the original district boundaries into which the Panaewa Houselots Subdivision was placed was erroneous. It must also be concluded that under the facts as shown by the record the correctness of the decision of the Commission is not a "fairly debatable" matter, but that the continued imposition of an agricultural classification upon

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9. Staff Report, dated May 6, 1966, page 5.

10. Findings of Fact, Conclusions of Law and Decision, dated August 24, 1966, page 5.

the appellants' property would be arbitrary, capricious, discriminatory and illegal. County Commission of Howard County v. Merryman, 159 A.2d 854 (Md. 1960). The classification is manifestly not founded on a legitimate exercise of the police powers of the state, bears no relation to the public interest, benefits no one, and is unfair and discriminatory. In City of Tulsa v. Swanson, 366 P.2d 629 (Okla. 1961) it was said:

> "By unmistakable tenor of the argument we are urged by the City to, in effect, place its legislative powers beyond the scope of judicial review whenever the matter appears 'fairly debatable'. But this, as was stated in the Barclay case, must depend upon the physical facts disclosed in each particular case. We must be ever mindful that, inasmuch as the inevitable effect of ordinances, such as the one here involved, is to limit private rights in the interest of public welfare, the exercise of the municipal power must be carefully guarded and be permitted only when the conditions and circumstances as shown disclose a need for the proper exercise of the police power. Oklahoma City v. Barclay, supra. An academic opinion of a professional city planner as to the desirability of a particular restriction to serve as a 'buffer of lesser than normal commercial intensity', will not when contradicted by controlling physical facts, justify this court in holding as a matter of law that the question here presented is 'fairly debatable' and precludes judicial interference with the municipal determination of necessity for the particular restriction placed."

The foregoing disposes this appeal and it becomes unnecessary to rule uon the other numerous grounds specified for review.

Decision of the Commission is reversed.

Dated at Honolulu, Hawaii, this 3rd day of September ~~August~~, 1968.

Thomas S. Ogata

THOMAS S. OGATA
Assigned Judge of the above entitled court

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C. A. NO. 1383

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RALPH E. ALLISON, et al., Appellants,	)
vs.	)
STATE LAND USE COMMISSION, Appellee.	)

JUDGMENT

3RD CIRCUIT COURT
STATE OF HAWAII
HILO, HAWAII
1969 MAR 14 PM 12 43
FILED
CLERK

C. A. NO. 1383

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RALPH E. ALLISON, et al., Appellants,	)
vs.	)
STATE LAND USE COMMISSION, Appellee.	)

JUDGMENT

This appeal from the Decision of the Land Use Commission of the State of Hawaii came on for hearing before this Court, and the Court having heard arguments by Counsel for Appellee and Counsel for Appellants and having reviewed the pleadings and the records filed herein,

IT IS ORDERED, ADJUDGED AND DECREED that the Decision of the State Land Use Commission dated August 24, 1966 is reversed and remanded for further proceedings in accordance with the Decision of this Court filed on September 3, 1968.

DATED: Honolulu, Hawaii, March 14, 1969.

Thomas S. Ogata

Assigned JUDGE

THIRD CIRCUIT COURT

DATE: FRIDAY, MAY 26, 1967
DIVISION: FIRST
BEFORE THE HONORABLE THOMAS OGATA , JUDGE PRESIDING
REPORTER: T. SHISHIDO
CLERK: S. AKIYAMA BAILIFF: R. KUSUMOTO

9:25 - 10:50
11:07 - 12:55

✓ CA-1383 RALPH E. ALLISON, ET AL vs. STATE LAND USE COMMISSION
Jury Waived Trial - 1 day

9 a.m.
* CCW&C(Curtis
* Dep. AG
RTakeyama

The Court asked the attorneys whether or not they wished the Court to proceed to hear this case as the Court had served in the Senate in 1962, at the time of the enactment of the Land Use Law, and the Court had subsequently, as a senator, voted to repeal the Land Use law. Neither counsel wished to disqualify the Court.

Mr. Curtis Carlsmith asked the Court to rule on his motion filed on August 23, 1966. Mr. Takeyama resisted the motion. After argument, the Court allowed No. 2 to remain, and 3 and 14 to be stricken. (Later the Court allowed 14 to remain.)

ARGUMENT BY COUNSEL RELATIVE TO THEIR POSITIONS.

Mr. Takeyama will be allowed until July 15, 1967 to file his Memorandum, and Mr. Carlsmitn will be given until July 31, 1967 to answer his Memorandum.
THE COURT TOOK THIS APPEAL UNDER ADVISEMENT. DECISION WILL BE RENDERED AFTER SUBMISSION OF THE MEMORANDA.

BY ORDER OF THE COURT: _____ CLERK

CASES IN WHICH A GOVERNMENTAL AGENCY FURNISHED THE RECORD ON APPEAL UPON REQUEST OF THE APPELLANT

Case No.	Case Name	Description
Civil No. 1261	TAMURA V. LAND USE COMMISSION	Record on appeal was prepared by the Land Use Commission.
Civil 1383	ALLISON, ET AL. V. LAND USE COMMISSION 3/8/71 Return record in file. Mr Hane	Record on appeal was prepared by the Land Use Commission.
S.P. 169 (M-169)	WAIAKEA MILL CO. V. YASUO ARAI, ET AL.	Certified record on Petition for Review and transcripts filed 5/16/47. Vitousek, Pratt & Winn represented plaintiff; costs of the action were paid by Carlsmith & Carlsmith on 4/14/47. On 8/19/49 the case was placed on the inactive calendar.

BUSINESS ADDRESS:
28 SHIPMAN STREET
HILO, HAWAII

BUSINESS PHONE:
51-127

BOARD OF WATER SUPPLY
COUNTY OF HAWAII
P. O. BOX 1820
HILO, HAWAII 96720

March 3, 1966

Mr. Ralph E. Allison
451 Awa Street
Hilo, Hawaii 96720

Pardon my delay in answering your recent letter, Ralph. I have been especially preoccupied with legislative matters during the past weeks.

As I stated earlier, one of the reasons for not endorsing subdivisions along Makalika and Lama Streets in the Panaewa area is the lack of adequate size water mains. We pointed out previously that the earlier State Subdivisions in Panaewa were designed such that the water system would accommodate only a limited number of lots. We followed a rural concept in our design criteria. This matter was brought to the attention of the proper officials at that time.

Should the large water mains from the Volcano highway and from the recently developed houselot tract be extended and installed along Makalika and Lama Streets, additional lots can be created. We would, of course, reserve judgment on approving additional lots until we can determine the total number of lots that are proposed for subdivision. In our earlier letter to the Planning Commission, we mentioned our concern over the population density in this area due to the proximity of our underground Panaewa well supply. We would definitely make recommendations concerning the size of lots, proposed use, and extent of re-zoning of this area.

I hope you will understand the position of our Board of Water Supply. The Panaewa Well Station was selected for water development as it was located at the edge of town and the area zoned for agricultural use. Our Board approved the State Panaewa lots because they not only brought idle land into production, but the large-size lots were in line with our low-density recommendation for this area. Like you, we, too, would like to see development come about; and in this line, we endorse proper zoning based on sound engineering and conservation practices.

Bill

W. Y. Thompson
Manager-Engineer

CIRCUIT COURT, THIRD CIRCUIT
FILED
AT 12:10 o'CLOCK P. M.
May 26 1967
Shizue Akiyama
Clerk

... Water brings progress ...