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BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

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| In the Matter of the Petition of<br><br>JOSEPH M. and ROSALIND M. LOPEZ<br><br>To Amend the Agricultural Land Use District Boundary to Reclassify Approximately 1.00 Acre, TMK: 2-3-39:40, at Hilo, Island and County of Hawaii, Into the Urban Land Use District | DOCKET NO. A81-521<br><br>JOSEPH M. and ROSALIND M. LOPEZ |

This is to certify that this is a true and correct copy of the Decision and Order on file in the office of the State Land Use Commission, Honolulu, Hawaii.

7/23/82
Date

by
Executive Officer

DECISION AND ORDER

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DECISION

THE PETITION

This matter arises from a Petition for an amendment to the Land Use Commission district boundary filed pursuant to Section 205-4 of the Hawaii Revised Statutes, as amended, and Part VI, Rule 6-1 of the Land Use Commission's Rules of Practice and Procedure and District Regulations by Joseph M. and Rosalind M. Lopez who are requesting that the designation of the subject property be amended from the Agricultural to the Urban District. The requested change consists of property comprising approximately 1.00 acre of land, situated at Hilo, Island and County of Hawaii. The subject property is more particularly identified as Tax Map Key No. 2-3-39:40.

PURPOSE OF PETITION

Petitioners' stated purpose for requesting the reclassification of the subject property from Agricultural to Urban is so that Petitioners can subdivide the acre into four (4) residential lots ranging in size from 8,700 to 12,789 square feet. One (1) lot will be sold to defray the subdivision's development costs while the remaining lots are planned for conveyance to family members.

THE PROCEDURAL HISTORY

The Petition was received by the Land Use Commission on November 9, 1981. Due notice of the hearing on this Petition was published on February 10, 1982, in the Hawaii Tribune-Herald and The Honolulu Advertiser. Notice of the hearing was also sent by certified mail to all parties involved herein on February 9, 1982. No timely application to intervene as a party or appear as a witness was received by the Land Use Commission.

THE HEARING

The hearing on this Petition was held on March 17, 1982, in Hilo, Hawaii.

Mr. and Mrs. Lopez, the Petitioners herein, were represented by themselves; the County of Hawaii was represented by County Planner, Norman Hayashi; and the Department of Planning and Economic Development was represented by Esther Ueda.

The witnesses presented by the aforementioned parties were as follows:

Petitioner:

Joseph and Rosalind Lopez presented testimony on their own behalf in support of their Petition.

County of Hawaii:

Norman Hayashi - County Planner

Department of Planning and Economic Development:

Esther Ueda - Land Use Division Planner

POSITION OF THE PARTIES

County of Hawaii - Approval.

Department of Planning and Economic Development - Approval.

APPLICABLE REGULATION

Standards for determining the establishment of an Urban District are found under Part II, Section 2-2(1) of the State Land Use Commission's District Regulations. Said regulation provides in pertinent part that:

(1) "U" Urban District. In determining the boundaries for the "U" Urban District, the following standards shall be used:

(a) It shall include lands characterized by "city-like" concentrations of people, structures, streets, urban level of services and other related land uses.

(b) It shall take into consideration the following factors:

1. Proximity to centers of trading and employment facilities except where the development would generate new centers of trading and employment.

2. Substantiation of economic feasibility by the petitioner.

3. Proximity to basic services such as sewers, water, sanitation, schools, parks, and police and fire protection.

4. Sufficient reserve areas for urban growth in appropriate locations based on a ten (10) year projection.

(c) Lands included shall be those with satisfactory topography and drainage and reasonably free from the danger of floods, tsunami and unstable soil conditions and other adverse environmental effects.

(d) In determining urban growth for the next ten years, or in amending the boundary, lands contiguous with existing urban areas shall be given more consideration than non-contiguous lands, and particularly when indicated for future urban use on State or County General Plans.

(e) It shall include lands in appropriate locations for new urban concentrations and shall give consideration to areas of urban growth as shown on the State and County General Plans.

(f) Lands which do not conform to the above standards may be included within this District:

1. When surrounded by or adjacent to existing urban development; and

2. Only when such lands represent a minor portion of this District.

(g) It shall not include lands, the urbanization of which will contribute towards scattered spot urban development, necessitating unreasonable investment in public supportive services.

(h) It may include lands with a general slope of 20% or more which do not provide open space amenities and/or scenic values if the Commission finds that such lands are desirable and suitable for urban purposes and that official design and construction controls are adequate to protect the public health, welfare and safety, and the public's interests in the aesthetic quality of the landscape.

FINDINGS OF FACT

The Panel of the Land Use Commission, after having duly considered the record in this docket, the testimony of the witnesses and the evidence adduced herein, makes the following findings of fact:

1. The Petitioners are the purchasers of the subject property under an Agreement of Sale with the fee owners. The fee owners have consented to the filing of the subject Petition. The subject property is located at Hilo, Island and County of Hawaii, and consists of approximately 1.00 acres, more particularly described as Tax Map Key No. 2-3-39: 40. The subject property is located along the northeast or makai side of Wiliwili Street, (133 Wiliwili Street), across from the Crescent City Heights Subdivision, approximately 1.5 miles mauka (west) of downtown Hilo. Lands surrounding

the subject property consist of single-family residential type uses, and include the Crescent City Heights and Kaumana Garden Subdivisions. The Petitioners reside in a single-family dwelling located on the subject property.

2. As reflected on the Land Use District Boundary Map H-66 (Hilo), the subject property is located within the State Land Use Agricultural District. The subject property is one of three one-acre parcels which form a pocket of Agricultural District lands within the Urban District in the area. With the exception of these three acres, all of the surrounding lands are within the State Land Use Urban District. The Land Use Commission is presently considering similar reclassification requests for the other two one-acre parcels (Docket No. A81-510 - Chun and Docket No. A81-522 - Choi). Lands adjacent to, and to the east of the subject property were part of a previous petition before the State Land Use Commission (LUC Docket No. A79-462) filed by the Komohana Investors, Inc., for the reclassification of approximately 212 acres from Agricultural to the Urban District for a residential subdivision. This petition was approved by the Land Use Commission on June 3, 1980.

3. The subject property is designated for Medium Density Urban Development on the Land Use Pattern Allocation Guide Map (LUPAG Map) component of the County of Hawaii General Plan. Such a designation allows for single-family residential uses at a maximum density of 5.8 units per acre. Although County zoning of the subject property is Agricultural 1-acre (A-1a), the Hilo Community development Plan Zone Guide Map suggests that the subject property be rezoned to a Single Family Residential-10,000 square foot (RS-10) zoned

district. The subject property does not lie within the Special Management Area (SMA).

4. The elevation of the subject property, running in a makai-mauka direction, ranges from 345 to 355 feet. The average slope of the subject property is about 3%. The subject area receives about 90 to 150 inches of rainfall annually. According to the Flood Insurance Study for the Island of Hawaii, prepared by the Federal Insurance Administration, most of the subject property is situated in an area of minimal flooding (Zone C designation).

5. The soils of the subject property have been classified as Hilo Silty Clay Loam, 0 to 10 percent slopes, (HoC) and Keaukaha extremely rocky muck, 6 to 20 percent slopes (rKFD) by the U.S.D.A. Soil Conservation Service, Soil Survey.

Hilo silty clay loam, 0 to 10 percent slopes (HoC) has a very strongly acid surface layer consisting of dark brown silty clay loam about 12 inches thick. The subsoil is strongly acid to medium acid and consists of dark-brown, dark reddish-brown, and very dark grayish brown silty clay loam about 48 inches thick. Permeability is rapid, runoff is slow, and the erosion hazard is slight. This soil is used mostly for sugar cane. Small areas are used in truck crops, orchards, and pasture.

Keaukaha extremely rocky muck, 6 to 20 percent slopes (rKFD) has rock outcrops which occupy about 25 percent of the area. In a representative profile, surface layer is very dark brown muck about 8 inches thick. It is underlain by pahoehoe lava bedrock and is strongly acid. The soil above the lava is rapidly permeable. The pahoehoe

lava is very slowly permeable but water moves rapidly through the cracks. Runoff is medium and erosion hazard is slight. Most of the soil is in native forest. Some areas are cleared and used for pasture.

6. According to the State Department of Agriculture's Agricultural Land of Importance to the State of Hawaii (ALISH) classification system, the subject property is classified "Prime Agricultural Land." Although the subject property and surrounding lands were formerly used for sugar cane production, since 1972, the subject property has not been used for agricultural purposes. The lands surrounding the subject property too, are no longer being used for agricultural purposes. The surrounding Urban designated lands are either being used for single-family residences or are proposed to be developed for use as such. Agricultural development was voluntarily curtailed by Mauna Kea Sugar Company, Inc., due to low sugar yields. The Department of Agriculture, also, has commented that they have no objections to the proposed reclassification.

7. There are no known archaeological or historic features on the subject property. There are no known rare or endangered flora or fauna on the subject property.

8. The Petitioners are requesting the Urban reclassification so that they can subdivide the subject property into four (4) residential lots ranging from 8,700 to 12,789 square feet. One (1) of the subdivided lots will be sold as is by the Petitioners to defray the improvement costs to subdivide the subject property. The remaining three (3) lots will be retained by family members. The Petitioners will seek to sell the subject lot for

approximately $45,000.00. Development of the subject property will occur upon the receipt of all requisite governmental approvals.

Petitioner Joseph Lopez has submitted financial information to indicate that he is gainfully employed and that they both retain savings accounts in two financial institutions in Hilo, Hawaii.

9. The reclassification of the subject property will not unreasonably burden public agencies to provide necessary urban amenities, services and facilities because:

a. Access - Wiliwili Street, which fronts the subject property, will provide the primary access to the proposed subdivision by way of Kaumana Drive. The right-of-way width of Wiliwili Street between Kaumana Drive and the subject property varies between thirty (30) and fifty (50) feet. The various right-of-way widths are due to improvements required of subdivisions created along Wiliwili Street. The right-of-way width fronting the subject property is 50 feet. Improvements within the roadway fronting the subject property include a 26-foot-wide pavement, and curb, gutter, and sidewalk on the mauka or opposite side. The shoulder of the roadway fronting the subject property is a 6-foot-wide, oil-treated surface.

b. Schools - The Department of Education has indicated that the proposed development will have a negligible impact on student enrollment and had no objections to the subject Petition.

c. Sewage - As there is no public sewerage system servicing the area, cesspools will have to be utilized for sewage disposal. The Department of Health has indicated that they have no objections to the proposed request at the present time.

d. Water - Water for the proposed development is available from a 6-inch waterline along Wiliwili Street. The Department of Water Supply has approved a water commitment for the proposed development until July 30, 1982.

e. Sanitation - As there is no government-operated disposal service, solid waste will have to be disposed of by commercial refuse collectors or each individual household will have to dispose of its waste at an approved waste site.

f. Drainage - Although the subject property is in an area that has experienced flooding in the past, completion of the Wailuku River flood control and diversion project now under construction and proposed drainage improvements by the Komohana Investors development should greatly alleviate the problem of flooding in the area.

The U.S.D.A., Soil Conservation Service stated that no major flooding or erosion problems are anticipated on the subject property.

10. Based on a review of the Petition, the evidence adduced at the hearing, and the provisions of Chapter 205, Hawaii Revised Statutes, the County of Hawaii and the Department

of Planning and Economic Development have recommended that the reclassification of the subject property be approved.

CONCLUSIONS OF LAW

Reclassification of the subject property, consisting of approximately 1.00 acre of land, situated at Hilo, Island and County of Hawaii, from the Agricultural District to the Urban District and an amendment to the district boundaries accordingly is reasonable and non-violative of Section 205-2 of the Hawaii Revised Statutes.

ORDER

FOR GOOD CAUSE APPEARING, it is hereby ordered that the property which is the subject of the Petition in this Docket No. A81-521, consisting of approximately 1.00 acre, situated at Hilo, Island and County of Hawaii, identified as Tax Map Key No. 2-3-39:40, shall be and hereby is reclassified from Agricultural to Urban and the district boundaries are amended accordingly.

DONE at Honolulu, Hawaii, this 23rd day of July, 1982, per Motion on July 8, 1982.

LAND USE COMMISSION
STATE OF HAWAII

By _____
WILLIAM W. L. YUEN, Chairman

By _____
RICHARD B. F. CHOY, Vice Chairman

By _____
LAWRENCE F. CHUN, Commissioner

By _____
EVERETT L. CUSKADEN, Commissioner

By _____
SHINSEI MIYASATO, Commissioner

By _____
WINONA E. RUBIN, Commissioner

By _____
TEOFILO PHIL TACBIAN, Commissioner

By _____
ROBERT S. TAMAYE, Commissioner

By _____
FREDERICK P. WHITTEMORE,
Commissioner

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Land Use Commission's Decision and Order was served upon the following by either hand delivery or depositing the same in the U.S. Postal Service by certified mail:

HIDETO KONO, Director
Department of Planning & Economic Development
State of Hawaii
250 South King Street
Honolulu, Hawaii 96813

ANNETTE CHOCK, Deputy Attorney General
Department of Attorney General
Capital Investment Building
Penthouse, 850 Richards Street
Honolulu, Hawaii 96813

SIDNEY FUKE, Planning Director
Planning Department
County of Hawaii
25 Aupuni Street
Hilo, Hawaii 96720

STEPHEN MENEZES, Corporation Counsel
Office of the Corporation Counsel
County of Hawaii
25 Aupuni Street
Hilo, Hawaii 96720

JOSEPH M. and ROSALIND M. LOPEZ
133 Wiliwili Street
Hilo, Hawaii 96720

DATED: Honolulu, Hawaii this 23rd day of July, 1982.

GORDAN Y. FURUTANI
Executive Officer