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BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A81-523
JAMES K. AHIA, SR., and)	JAMES K. AHIA, SR.,
FRANCES K. AHIA)	and FRANCES K. AHIA
To Amend the Agricultural Land Use)	
District Boundary to Reclassify)	
Approximately 1.9 Acres, TMK:)	
1-7-6:13, at Kurtistown, Puna,)	
Island and County of Hawaii, into)	
the Urban Land Use District)	

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

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A81-523
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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 James K. Ahia, Sr., and Frances K. Ahia 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 1.9 acres of land, situated at Kurtistown, Puna, Island and County of Hawaii. The subject property is more particularly identified as Tax Map Key No. 1-7-6:13.

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 subject property into three (3) equal lots of 28,568 square feet each. Petitioners thereafter intend to retain the

subdivided lot upon which the existing dwelling is situated and to convey to their two (2) sons the remaining two (2) parcels.

THE PROCEDURAL HISTORY

The Petition was received by the Land Use Commission on November 27, 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.

James K. Ahia, Sr., and Frances K. Ahia, the Petitioners herein, were represented by Mr. Philip Yoshimura; the County of Hawaii was represented by County Planner, Norman Hayashi; and the Department of Planning and Economic Development was represented by Daniel Yasui.

The witnesses presented by the aforementioned parties were as follows:

Petitioner:

Philip Yoshimura - Engineer/Planner

Frances K. Ahia - Petitioner

Albert Ahia - Son of Petitioner

County of Hawaii:

Norman Hayashi - Planner

Department of Planning and Economic Development:

Daniel Yasui - DPED Planner

POSITION OF THE PARTIES

County of Hawaii - Denial.

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 uses.
 - (b) It shall take into consideration the following specific 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 lands 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 standard 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 undesirable 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 subject property, owned in fee simple by the Petitioners herein, is located at Kurtistown, Puna, Island and County of Hawaii, and consists of approximately 1.9 acres, more particularly described as Tax Map Key No.

1-7-6:13. The subject property is located along the northwest side of the Volcano Highway, approximately 500 feet northeast of the Volcano Highway-13 Mile Road intersection and approximately 1 mile away from the Kurtistown Park, Olaa Homestead Reservation Lots in Puna.

2. The Petitioners presently reside in the existing single-family dwelling located on the front portion of the subject property which fronts the Volcano Highway. The rear portion of the subject property is presently being utilized for pasturing purposes. Surrounding land uses include single-family dwellings along the Volcano Highway, churches, agricultural activities including sugar and anthurium growing, and other vacant lands. The Kurtistown commercial area is situated approximately 1 mile northeast of the subject property.

3. As reflected on the Land Use District Boundary Map H-67 (Mountain View), the subject property is situated within the State Land Use Agricultural District. Lands adjacent to the subject property are also classified as Agricultural. The nearest land classified as Urban lies approximately 100 feet northeast of the subject site, along the Volcano Highway.

4. The subject property has been designated for Low Density Urban Development on the Land Use Pattern Allocation Guide Map (LUPAG Map) component of the County of Hawaii General Plan. The Low Density Urban designation allows residential uses at a maximum density of four units per acre provided that the applicable goals, policies and standards of the General Plan can be met. The present County zoning of the subject property is Agricultural with

a 5-acre minimum lot size (A-5a). The subject property is not situated within the Special Management Area.

5. The elevation of the subject property is approximately 880 feet above sea level. The average slope of the subject area is about 2.5 percent in a northeasterly direction. The subject area receives about 125 to 200 inches of rainfall annually. According to the Federal Flood Insurance Study for the Island of Hawaii prepared by the Federal Insurance Administration, the subject site does not lie within any designated flood plain, but rather in an area of minimal flooding. Petitioners' engineer testified that the annual rainfall for the subject property could provide the water needs for the proposed subdivision through a rain catchment system. The Hawaiian Acres Subdivision located opposite the subject property, along Volcano Highway, is comprised of dwellings whose water needs are provided by rain catchment.

6. According to the Soil Survey Report published by the U.S.D.A., Soil Conservation Service (December 1973), the land is of the Ohia Series (OSD) which consists of well-drained, extremely stony silty clay loam, 0 to 20 percent slopes. The thickness of the soil is about 20 to 36 inches over fragmental Aa lava. Stones cover from 3 to 15 percent of the surface. Runoff is slow to medium, and the erosion hazard is slight. This soil is used for sugar cane, woodland, and pasture.

7. The subject property has not been classified as being on the State Department of Agriculture's Agricultural Lands of Importance to the State of Hawaii (ALISH) Map. The Land Study Bureau's overall master productivity rating

for agricultural use on the subject property is Class "D" or Very Poor. The development of two (2) additional lots on the subject property is not expected to adversely affect agricultural activities in the surrounding area. The State Department of Agriculture has indicated that they have no objections to the subject request.

8. There are no known archaeological or historical features on the subject property. A walk-through survey of the surface area did not reveal any signs of historic sites mentioned in the State Historic Register or the Hawaii County General Plan. There are no known rare or endangered species of flora or fauna on the subject property.

9. The Petitioners propose to subdivide the subject property into three (3) equal lots of 28,568 square feet each. The lot located in the front portion of the subject property, along Volcano Highway, upon which the existing dwelling is situated will be retained by the Petitioners while the other two (2) lots will be conveyed to Petitioners' two (2) sons. Petitioners intend to subdivide the subject property pursuant to the County of Hawaii's RS-20 zoning. Petitioners have represented that "this project is a Ohana plan," and that they have no intention of selling the lots in the open market; Petitioners have represented that one of their sons is planning to build his home immediately after securing all governmental approvals.

Based on 1981 prices, the total projected cost for improvements to the subject property will be about \$20,000 for roadway and \$50,000 for a residence.

The subject property was originally acquired by Petitioner Frances K. Ahia's grandmother and has been

passed down through the Ahia family from generation to generation. It is the Petitioners' intent to continue passing the subject property through each succeeding generation. Petitioners' son, Albert Ahia, testified that he and his brother will provide the funds required to subdivide the subject property and to construct all necessary improvements. Albert Ahia is a foreman for a construction company and will have access to construction materials and equipment at cost. Albert Ahia has also placed the home that he owns up for sale and has indicated that the proceeds from the sale of his home will be sufficient to pay for the subdivision improvement costs and the cost of constructing his new home in the proposed subdivision.

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

a. Access - Access to the subject site is presently via the two-lane Volcano Highway which fronts the property. According to the proposed subdivision map submitted with the Petition, the two (2) proposed lots will also have access to the Volcano Highway via a 16-foot-wide road and utility easement over the front lot. Traffic along Volcano Highway is not expected to be materially affected by the proposed development of the two (2) additional residential lots.

b. Schools - Educational facilities serving the subject area are Mountain View School (grades K-8), Keaau Elementary and Intermediate School at Hilo. The State Department of Education has

indicated that it has no objections to the subject request.

c. Sewage - As there is no public wastewater treatment system in the area, Petitioners have represented that they intend to use cesspools to dispose of the sewage generated by the proposed development.

d. Solid Waste Disposal - As there is no government-operated pick up service for solid waste disposal, solid wastes will have to be disposed of by commercial refuse collectors or each individual household will have to dispose of its wastes at an approved disposal site.

e. Drainage - The Federal Emergency Management Flood Insurance Rate Map (FIRM) indicates that the subject property is within an area of minimal flooding (Zone C). Petitioners have represented that "a preliminary drainage study shows that there are no drainage problems. There are no defined waterways through the property, and a major drainage basin and flood area are located in the rear of the property through canefields."

f. Water - The existing single-family dwelling is presently serviced by a 5/8-inch water line. The County of Hawaii Department of Water Supply has stated, based on the prevailing water situation for the Puna area, the existing groundwater sources will not be able to supply the needs of the additional proposed lots. The Hawaii County of Water Supply has recently revised its regulations relating

to the granting of water waivers for subdivision applications. Under the revised rules, water waivers may be granted to subdivision applications of six lots or less where water is not available from the public water system and there is a finding that unreasonable hardship would result from strict compliance with the Rules and Regulations because of special circumstances or conditions affecting the property and the granting of the waiver or relief shall not be detrimental to the public health, safety or welfare or be injurious to other property in the area. The granting of the water waiver is further limited to a subdivision to convey land to immediate family members. If the waiver is granted, the rules further provide that the applicants would have to secure their own water source. The granting of a water waiver can only be considered when a subdivision application is filed. The subdivision application can only be filed for property designated Urban by the State Land Use Commission. The County of Hawaii's primary objection to recommending approval of the petition for an Urban designation is the unavailability of water to the subject property.

g. Electrical and Telephone Services - Electrical and telephone services are already available to serve the subject property.

h. Police and Fire Protection - The police and fire stations nearest to the subject property are located in Keaau, approximately 4 miles away.

11. Based on a review of the Petition, the evidence adduced at the hearing, and the provisions of Chapter 205, Hawaii Revised Statutes, the Department of Planning and Economic Development is satisfied that adequate water is available to the subject property and recommends that the reclassification of the subject property be approved on the condition that Petitioners fulfill the requirements of the Hawaii Department of Water Supply in attaining water for the proposed project. The Department of Planning and Economic Development's further position is that satisfaction of the Department of Water Supply's requirements would include obtaining a water waiver.

CONSLUSIONS OF LAW

Reclassification of the subject property, consisting of approximately 1.9 acres of land, situated at Kurtistown, Puna, 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 Statues. The Commission further concludes that the Petitioners are presently in a "Catch 22" situation in regard to securing the requisite approvals in that a water waiver from the Deapartment of Water Supply which would assist them in obtaining the requisite approvals cannot even be initiated until an Urban designation is obtained. The Urban designation, however, is being objected to by the County of Hawaii because based on relevant planning policies, the Petition as it presently stands lacks the availability of a public service--water. The goals and objectives of the Land Use Law would be

enhanced by granting an Urban designation in this instance by permitting the Petitioners to initiate the process to obtain the requisite approvals according to applicable regulations.

ORDER

FOR GOOD CAUSE APPEARING, it is hereby ordered that the property which is the subject of the Petition in this Docket No. A81-523, consisting of approximately 1.9 acres, situated at Kurtistown, Puna, Island and County of Hawaii, identified as Tax Map Key No. 1-7-6:13, shall be and hereby is reclassified from the Agricultural District to the Urban District 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
WILLIAM W. L. YUEN, Chairman

By Richard B. F. Cho
RICHARD B. F. CHOY, Vice Chairman

By Lawrence F. Chun
LAWRENCE F. CHUN, Commissioner

By Everett L. Cuskaden
EVERETT L. CUSKADEN, Commissioner

By Shinsei Miyasato
SHINSEI MIYASATO, Commissioner

DOCKET NO. A81-523 - JAMES K. AHIA, SR., AND FRANCES K. AHIA

By *Winona E. Rubin*
WINONA E. RUBIN, Commissioner

By *Teofilu Phil Tacbian*
TEOFILO PHIL TACBIAN, Commissioner

By *Robert S. Tamaye*
ROBERT S. TAMAYE, Commissioner

By *Frederick P. Whittenmore*
FREDERICK P. WHITTENMORE,
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
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Honolulu, Hawaii 96813

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

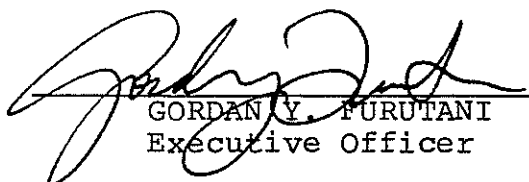
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County of Hawaii
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FRANCES K. and JAMES K. AHIA, SR.
P. O. Box 155
Kurtistown, Hawaii 96760

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


GORDAN Y. FURUTANI
Executive Officer