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BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of GILBERT AND MARGARET McCONNELL To Amend the Agricultural Land Use District Boundary to Reclassify Approximately 5.153 Acres, TMK: 5-5-08: 3 at Kaauhuhu, North Kohala, Island of Hawaii, into the Urban Land Use District	)	DOCKET NO. A84-563 GILBERT AND MARGARET McCONNELL

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.

11/21/84
Date

Executive Officer

DECISION AND ORDER

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In the Matter of the Petition of GILBERT AND MARGARET McCONNELL To Amend the Agricultural Land Use District Boundary to Reclassify Approximately 5.153 Acres, TMK: 5-5-08: 3 at Kaauhuhu, North Kohala, Island of Hawaii, into the Urban Land Use District	)	DOCKET NO. A84-563 GILBERT AND MARGARET McCONNELL

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 Regulation by Gilbert and Margaret McConnell,hereinafter "Petitioner", who proposes to amend from the Agricultural District to the Urban District the district boundary of approximately 5.153 acres of land, situated at Kaauhuhu, North Kohala, Hawaii, (the "Subject Property"). The Subject Property is more particularly identified as Tax Map Key No. 5-5-08:3.

PURPOSE OF THE PETITION

The Petitioner requests the reclassification of the Subject Property from Agricultural to Urban in order to

subdivide the Subject Property into five, one-acre lots which will provide housing for Petitioner's two children and two grandchildren. The fifth lot will continue to be utilized by a presently existing church on the Subject Property.

THE PROCEDURAL HISTORY

The Petition was filed with the Land Use Commission on February 8, 1984. Due notice of the hearing on this Petition was published on May 4, 1984 in the Hawaii Tribune Herald and the Honolulu Advertiser. Notice of the hearing was also sent by certified mail to all parties herein on May 4, 1984. No timeley 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 June 7, 1984.

The Petitioner herein was represented by J. James Sogi, Esq.; The Department of Planning of the County of Hawaii was represented by Duane Kanuha and Brian Nishimura; The State Department of Planning and Economic Development (DPED) was represented by Abe Mitsuda.

The witnesses presented by the aforementioned parties were as follows:

Petitioner

Gilbert McConnell - Petitioner

The County of Hawaii:

Duane Kanuha - Deputy Planning Director

The Department of Planning and Economic Development:

Abe Mitsuda - Staff Planner

POSITION OF THE PARTIES

Department of Planning, County of Hawaii - Approval

Department of Planning and Economic Development - Approval.

APPLICABLE REGULATIONS

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 considerations 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 Land Use Commission, having duly considered the record in this docket, the testimony of the witnesses and the evidence introduced herein makes the following findings of fact:

1. The Subject Property, owned in fee simple by the Petitioner, is located at Kaauhuhu, North Kohala, Island and County of Hawaii, and consists of approximately 5.153 acres of land more particularly described as TMK No: 5-5-08:3. The Subject Property is situated on the west side of Hawi Road approximately 1,600 feet north of the Hawi Road - Akoni Pule Highway intersection. The Subject Property is basically flat with a mild slope in a northerly direction. The Subject Property is located at an elevation of approximately 480 feet above sea level and is presently occupied by the Petitioner's personal residence and a thirty-seat church located at the southeast corner fronting Hawi Road. The remainder of the Subject Property is presently used as a pasture for cattle grazing.

2. Adjacent lands to the east of the Subject Property, across Hawi Road are subdivided into 15,000 sq. ft. sized lots, and are designated in the State Land Use Urban Distirct. Scattered single family dwellings and vacant land are situated to the north, south and west of the Subject

Property. Urban Districted lands are also situated approximately 550 ft. to the south of the Subject Property and are developed as a single-family subdivision with approximately 15,000 sq. ft. sized lots. Parcels fronting on the Akoni-Pule Highway, approximately 1600 feet to the south, are zoned commercial and utilized for residential and commercial purposes. All other properties within the immediate vicinity are within the State Land Use Agricultural District. The area surrounding the Subject Property reflects an area of transition with scattered residential uses emerging in an area based on agriculture.

3. The Subject Property is presently located within the State Land Use Agricultural District as reflected on Land Use District Boundary Map H-13, Hawi, Hawaii. The County of Hawaii General Plan Land Use Pattern Allocation Guide Map designates the area for low density urban development. The low density urban development designation allows residential uses at a maximum density of four units per acre. The Hawaii County Comprehensive Zoning Ordinance designates the Subject Property as agricultural five-acre (A-5a). Said designation permits the land to be subdivided into five-acre lots primarily for agricultural purposes. The Subject Property is not situated within the Special Management Area (SMA).

4. The average rainfall for the area in which the Subject Property is located is approximately 40 inches per year. According to the United States Department of Agriculture Soil Conservation Service Soil Survey Report the land consists of the Kohala (KhA) soil series. The Kohala series consists of a well drained silty clays that formed in material from basic igneous rock influenced by volcanic ash. In a representative profile, the surface layer is very dark grayish-brown and dark brown silty clay about 14 inches thick. The subsoil is about 25 inches thick and consists of dark brown to dark yellowish-brown silty clay loam and silt clay. The substratum is weathered basic igneous rock. Permeability is moderately rapid, runoff is slow and the erosion hazard is slight.

5. The Land Study Bureau's Overall Master Productivity Rating for the property is class "B" or "Good".

6. The State Department of Agriculture's "Agricultural Lands of Importance to the State of Hawaii" (ALISH) map classifies the Subject Property as "Prime Agricultural Land." Prime Agricultural Land is defined as "land which has the soil quality, growing season, and moisture supply needed to produce sustained high yields of crops economically when treated and managed according to modern farming methods."

7. According to the Flood Insurance Study for Hawaii prepared by the Federal Insurance Administration for the County of Hawaii, the Subject Property is designated Zone C, or area of minimal flooding. Zone C areas are not considered regulatory flood plain areas and flood proofing requirements are not mandatory.

8. Petitioner is requesting the reclassification from the Agricultural District to the Urban District to subdivide the Subject Property into five lots, four of which will be conveyed by Petitioner to Petitioner's two children and two grandchildren when said grandchildren come of age. Petitioner will use fifth lot for church purposes.

9. Petitioner will transfer the subdivided parcel which presently has their personal dwelling on it to their son but retain a life interest in said parcel. Petitioner will continue to retain title to the parcel which presently has the thirty-seat church on it.

10. Petitioner intends to apply for a zoning change from the present Agricultural five-acre zoning to the Agricultural one-acre zoning upon Land Use Commission approval of this application.

11. Reclassification of the Subject Property is not anticipated to have impact upon resources of the area due to the following:

A. Agricultural Resources: State Department of Agriculture has stated that "the approval of this Petition would result in the loss of approximately 5 acres of unimproved pasture land that have good productivity potential for agricultural uses. The cessation of this particular use would probably not adversely affect the agricultural economy of the region."

B. Archaeological Resources: The State Department of Land and Natural Resources has stated that a review of their records indicate that the proposed project does not occur on historic properties that are listed on the Hawaii Register or the National Register of Historic Places. Due to the lack of archaeological surveys in the vicinity, the Department of Land and Natural Resources is not aware that significant resources exist in the project area.

C. Environmental Impacts: There is no evidence of natural hazards such as floods or serious erosion problems on the Subject Property. No endangered flora or fauna are known to exist on the Subject Property.

D. Visual and Recreational: The Subject Property does not possess any distinguishing visual features although the vacant portions contribute to the open space of the area. Recreational resources are not present on the Subject Property.

12. Reclassification of the Subject Property will not unreasonably burden public agencies to provide necessary amenities, services and facilities due to the following:

Water Service: The County Department of Water Supply has issued a water commitment for the proposed project in

the amount of 0.0012 million gallons per day unitl May 31, 1986 subject to conditions imposed by the Department.

Sewer Service/Solid Waste: There is no municipal sewer system in the area and the Petitioner has represented that cesspools will be constructed at the expense of the individual lot owners. Solid waste will be collected and disposed of at approved dumps.

Roadway and Highway Services and Facilities: The State Department of Transportation has stated that the proposed reclassification of the Subject Property will not affect the Department of Transportation facilities or programs in the area.

Schools: The State Department of Education has indicated that the proposed reclassification and subsequent development would have a negligible effect on student enrollment for Kohala High and Elementary School.

Electricity, Gas, Telephone Services: The Petitioner has represented that local private utility suppliers can meet the demands for the Subject Property.

Fire Fighting and Police Service: Both police and fire fighting services are available to the Subject Property. Fire protection will be provided from the Kohala Fire Station with hydrants on Hawi Road near the Subject Property.

13. Although the Subject Property and surrounding parcels on the east side of Hawi Road are generally agricultural in nature Petitioner is experiencing extenuating circumstances that require flexibility in interpreting the agricultural policy for these lands.

14. Based on the review of the Petition, the evidence adduced at the hearing and the provisions of Chapter 205 of the Hawaii Revised Statutes, as amended, the County of Hawaii and the DPED have recommended that the reclassification of the Subject Property be approved.

CONCLUSION OF LAW

Reclassification of the Subject Property, consisting of approximately 5.153 acres of land, situated at Kaauhuhu, North Kohala, Island and County of Hawaii, State of Hawaii, from Agricultural to Urban and an amendment of the district boundaries accordingly is reasonable and non-violative of Section 205-2 of the Hawaii Revised Statutes, as amended.

ORDER

IT IS HEREBY ORDERED:

That the property which is the subject of this Petition in this Docket No. A84-563, consisting of approximately 5.153 acres situated at Kaauhuhu, North Kohala, Island and County of Hawaii, State of Hawaii, identified as Tax Map Key No. 5-5-08:3 shall be and hereby is reclassified from Agricultural to Urban and the district boundaries are amended accordingly with the express condition that the Subject Properties in accordance with the Petitioner's

representations that Petitioner shall not sell or transfer the Subject Property to any grantee who is not a member of the Petitioner's family for a period of five years from the date of this Order, provided that Petitioner may mortgage the Subject Property to a financial institution qualified to do business in the State of Hawaii for the purpose of securing a loan to improve the Subject Property.

DONE at Honolulu, Hawaii, this 14th day of November, 1984, per Motions on October 4, 1984 and November 14, 1984.

LAND USE COMMISSION
STATE OF HAWAII

By _____
WILLIAM W. L. YUEN,
Chairman and Commissioner

By _____
WINONA E. RUBIN,
Commissioner

By _____
TEOFILO PHIL TACBIAN,
Commissioner

By _____
ROBERT S. TAMAYE,
Commissioner

By _____
FREDERICK P. WHITTEMORE,
Commissioner

By _____
TORU SUZUKI,
Commissioner

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CERTIFICATE OF SERVICE

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

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Economic Development
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DATED: Honolulu, Hawaii, this 27th day of November, 1984.

GORDAN Y. FURUTANI
Executive Officer