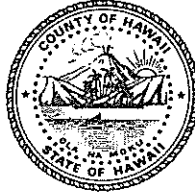


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-8742

July 22, 2002

Mr. Klaus D. Conventz
Baumeister Consulting
P.O. Box 2308
Kailua-Kona, Hawaii 96745-2308

Dear Mr. Conventz:

Additional Farm Dwelling Agreement

Applicants: Philip Ronald Delmer and Diane Corrine Delmer

Land Owners: Philip Ronald Delmer, Diane Corrine Delmer,
Marc Christopher Botticelli, and Nancy Joanne Botticelli

Tax Map Key: (3) 5-9-005:016

Based on the additional information included with your resubmittal of the referenced AFDA application that was received on July 17, 2002, we have reconsidered your client's request for an additional farm dwelling to be situated on the subject property. Therefore, pursuant to authority conferred to the Planning Director by Chapter 25, Article 5, Division 7, Section 25-5-77 of the Zoning Code and Planning Department Rule 13, Farm Dwellings, we have reviewed your request for an additional farm dwelling on the subject property. Your submittals included the following information:

1. A notarized affidavit that the additional dwelling shall be used for farm-related purposes in the form of the enclosed Additional Farm Dwelling Agreement to be submitted for recordation with the Bureau of Conveyances.
2. Name and address of the landowner(s) or lessee(s), if the latter has a lease on the building site with a term exceeding one year from the date of the farm dwelling agreement.
3. Written authorization of the landowner(s) if the lessee filed the request.

02260
Exhibit A

JUL 25 2002

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Baumeister Consulting
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4. A farm plan or evidence of the applicant's continual agricultural productivity or farming operation within the County, including an explanation of why this additional farm dwelling is needed in connection with the agricultural productivity or farming operation. Your farm plan included the following ongoing and proposed income producing agricultural activities:
 - (a) No ongoing agricultural activities are indicated.
 - (b) Proposed agricultural activities include the following:
 - i. The planting and cultivation of approximately 130 lemon and lime trees.
5. In support, evidence of a State of Hawaii Department of Taxation's General Excise (GE) Tax License has also been presented.

Findings:

1. In Chapter 205, Hawaii Revised Statutes (HRS), the State Land Use Law does not authorize residential dwellings as a permitted use in the State Land Use Agricultural district unless the dwelling is related to an agricultural activity or is a farm dwelling. A **farm dwelling** as defined in Section 205-4.5, Chapter 205, HRS, **means a single family dwelling located on and used in connection with a farm, including clusters of single family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling.** (emphasis added)
2. The subject lot was created by subdivision (SUB 5928) approved on July 10, 1990, which, pursuant to HRS §205-4.5(b), requires the first dwelling on the lot to meet the requirements for a farm dwelling.
3. The Farm Plan, GE Tax License (ID number 30126491), and the agreement to use the dwelling for agricultural or farm-related activity on the building site demonstrate that there will be income producing agricultural activity and the income will be taxed.
4. In addition, the following agencies have submitted their comments as stated below:
 - (a) Department of Water Supply (Letter dated April 24, 2002):

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“We have reviewed the subject application and have the following information.

The property does not have an existing water service with the Department as the parcel receives its water from a private water system.

Should there be any questions, please call our Water Resources and Planning Branch at 961-8070.”

(b) Real Property Tax Office (Memorandum dated April 16, 2002):

“There are no rollback tax consequences.

Status of real property taxes: Delinquent/Amount \$2,269.63. Amount includes tax, penalty, & interest up to April 30, 2002.”

(c) Department of Health (Memorandum dated , 2002):

“The proposed Septic Tank System would need to be designed by a Registered Professional Engineer licensed by the State of Hawaii. Please submit the plans to the Wastewater Branch in Kona for approval.”

Decision:

In view of the above, your request to construct a second farm dwelling is approved subject to the following conditions:

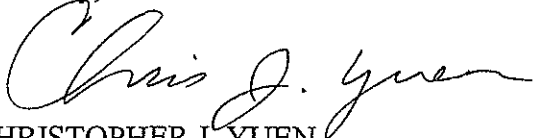
1. The additional farm dwelling shall only be used to provide shelter for persons involved in the agricultural or farm-related activity on the building site. Family members who are not engaged in agricultural or farm-related activities are allowed to reside in the farm dwelling.
2. The agreement shall run with the land and apply to all persons who may, now or in the future, use or occupy the additional farm dwelling. The enclosed Additional Farm Dwelling Agreement must be returned to the Planning Department with the appropriate notarized signatures along with a check made out to the Bureau of Conveyances in the amount of \$25.00 in accordance with the enclosed Additional Farm Dwelling Agreement Instructions. The Planning Department will not approve a building permit application for the additional dwelling until the AFDA document and all required attachments have been accepted for recordation.

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July 22, 2002

3. All other applicable rules, regulations, and requirements of the Planning Department (including but not limited to the Zoning Code, Chapter 25, Department of Public Works, Department of Water Supply, Fire Department and State Department of Health and other reviewing agencies/divisions listed on the Building Permit Application.
4. Your Additional Farm Dwelling Agreement has been approved based entirely on proposed agricultural activity as summarized previously in this letter. It is required that the First Party (owners and lessees) to the Agreement shall have implemented at least 75% of the proposed farm plan within three (3) years of approval of the building permit for the additional farm dwelling. The Second Party (County of Hawaii Planning Department) of the Agreement may allow time extensions and modifications for good cause shown by First Party.
5. The First Party shall allow the Second Party or its representative to inspect the farm upon reasonable prior notice.
6. This Additional Farm Dwelling Agreement shall be valid for a period of two (2) years from the date of this approval letter to secure a building permit for the additional farm dwelling. Failure to secure a building permit for this additional farm dwelling on or before July 22, 2004 may cause the Director to initiate proceedings to invalidate the AFDA.

Should you have questions or require further information, please feel free to contact Larry Brown of my staff at 961-8288.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

LMB:pak
P:\WPWIN60\Larry\FDA\Delmer 5-9-5-16 apvl.doc

Enclosure: AFDA document - AFDA document instruction sheet

Exhibit A



R-442 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
SEP 09, 2002 08:02 AM
Doc No(s) 2002-158602



/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

11 1/1 Z4

AFTER RECORDATION, RETURN BY MAIL TO:

County of Hawaii Planning Department
25 Aupuni Street, Room 109
Hilo, Hawaii 96720

TITLE OF DOCUMENT:

ADDITIONAL FARM DWELLING AGREEMENT

PARTIES TO DOCUMENT:

**FIRST PARTY: PHILIP RONALD DELMER, DIANE CORRINE DELMER
MARC CHRISTOPHER BOTTICELLI,
and NANCY JOANNE BOTTICELLI**

SECOND PARTY: COUNTY OF HAWAII

PROPERTY DESCRIPTION:

TMK: (3) 5-9-005:016

ADDITIONAL FARM DWELLING AGREEMENT

THIS AGREEMENT made and executed this 22nd day of July, 2002, by and between PHILIP RONALD DELMER, DIANE CORRINE DELMER, MARC CHRISTOPHER BOTTICELLI, and NANCY JOANNE BOTTICELLI, herein called the "First Party," whose mailing address is 328 Bigbee Street, Pittsburgh, PA 15211, and the COUNTY OF HAWAII, herein called the "Second Party."

IT IS HEREBY AGREED that the First Party may construct a second farm dwelling located on the property described by Tax Map Key (3) 5-9-005:016 situated within the State Land Use Agricultural district and zoned Agricultural (A-3a) by the Second Party.

IT IS HEREBY ACKNOWLEDGED that the First Party is the legal owner of the property above described.

IT IS HEREBY FURTHER AGREED that this approval to construct an additional farm dwelling is given subject to the following conditions:

1. The additional farm dwelling shall be used to provide shelter to person(s) involved in the agricultural or farm-related activity on the property. Family members who are not engaged in agricultural or farm-related activity are allowed to reside in the farm dwelling.
2. The agreement shall run with the land and apply to all persons who may now or in the future use or occupy the additional farm dwelling.
3. This agreement shall include any and all conditions specified in the Additional Farm Dwelling Agreement letter, attached to this document as Exhibit "A".

IT IS HEREBY FURTHER AGREED that if this agreement is with a lessee, the legal owner shall be a party to this agreement.

IT IS HEREBY FURTHER AGREED that should the pertinent provisions of the State and County laws and rules and regulations change to authorize said farm dwelling, upon request of the First Party, this Agreement may be reconsidered for possible amendment and/or severance.

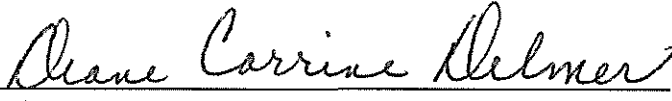
IT IS HEREBY FURTHER AGREED that if the property is situated within the State Land Use Agricultural district, the Second Party may impose a fine of not more than \$5,000 for violation of Section 205-4.5, Hawaii Revised Statutes. If the violation is not corrected within six months of such citation and the violation continues, a citation for a new and separate violation may be imposed. There shall be a fine of not more than \$5,000 for any additional violation. The Second Party may also impose fines for any violation of Chapter 25, Hawaii County Code, as amended, in accordance with the procedures and fine schedule outlined in Division 3, Article 2, of said code.

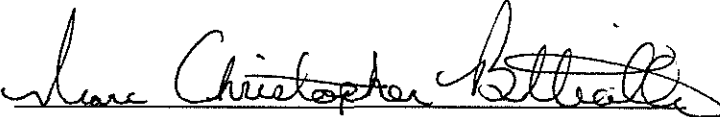
IN CONSIDERATION OF THE AFORESAID, the Second Party hereby approves this Agreement as being in conformity with Sections 205-2 and 205-4.5 of the Hawaii Revised Statutes, relative to permitted uses within the State Land Use Agricultural district. This Agreement is also in conformance with Chapter 25, Hawaii County Code, as amended.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

FIRST PARTY:

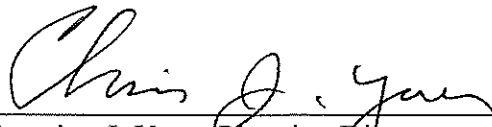

Philip Ronald Delmer, Legal Owner


Diane Corrine Delmer, Legal Owner


Marc Christopher Botticelli, Legal Owner

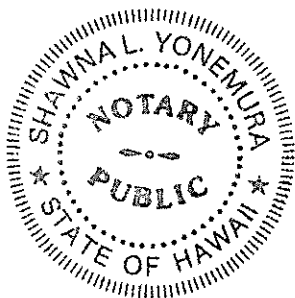

Nancy Joanne Botticelli, Legal Owner

SECOND PARTY:


Christopher J. Yuen, Planning Director
County of Hawaii Planning Department

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 30th day of July, 2002 before me personally
appeared ~~PHILIP RONALD DELMER, DIANE CORRINE DELMER, MARC~~
Philip Ronald Delmer, Diane Corrine Delmer, Marc
CHRISTOPHER BOTTICELLI, and NANCY JOANNE BOTTICELLI to me known
to be the persons described in and who executed the foregoing instrument, and
acknowledged that they executed the same as their free act and deed.

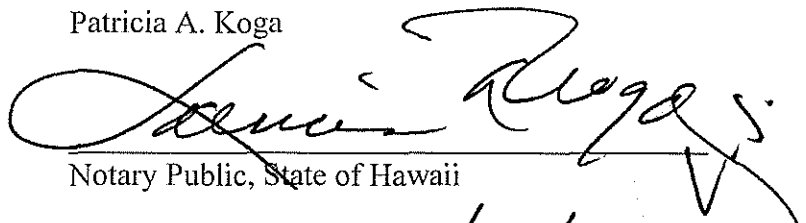


Shawnal L. Yonemura
Shawnal L. Yonemura
Notary Public, State of Hawaii

My commission expires: 8-22-03

STATE OF HAWAII)
) SS
COUNTY OF HAWAII)

On this 29th day of August, 2002 before me personally appeared Christopher J. Yuen, to me personally known, who, being by me duly sworn, did say that he is the Planning Director of the County of Hawaii; and that the Planning Department of the County of Hawaii has no corporate seal; and that the instrument was signed on behalf of the Planning Department of the County of Hawaii, a government agency, and said Christopher J. Yuen acknowledged the instrument to be the free act and deed of said Planning Department, County of Hawaii.

Patricia A. Koga

Notary Public, State of Hawaii
My commission expires: 7/17/2006

Scanned Map
Unavailable
Due to Size

See File

