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Date: JUN 23 1967

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JOHN A. BURNS  
GOVERNOR

RAMON DURAN  
EXECUTIVE OFFICER

STATE OF HAWAII  
LAND USE COMMISSION  
426 QUEEN STREET  
HONOLULU, HAWAII 96813

June 21, 1967

Planning Commission  
County of Hawaii  
Hilo, Hawaii

Attention: Mr. Raymond Suefuji, Director

Gentlemen:

At its meeting on June 16, 1967, the Land Use Commission voted to deny the grant of a special permit to Gilliard and Richard Smart (SP67-43) to construct 40 single-family dwellings, a club house, 4 stables and 2 feed silos on a 41.3 acre parcel in Waikoloa-Puukapu, South Kohala, described by Tax Map Key 6-7-01: portion of parcel 3.25

Enclosed for your information is a copy of the Commission's staff report which formed the basis for the denial.

Very truly yours,

RAMON DURAN  
Executive Officer

Encl.

cc: Chairman Burns  
Gilliard P. Smart

STATE OF HAWAII  
LAND USE COMMISSION

Land Use Commission Hearing Room  
Honolulu, Hawaii

June 16, 1967  
1:00 P. M.

STAFF REPORT

SP67-43 - GILLIARD & RICHARD SMART

A special permit application has been forwarded by the Hawaii County Planning Commission to construct 40 single-family dwellings, a club house, 4 stables and 2 feed silos on a 41.3 acre parcel in Waikoloa-Puukapu, South Kohala, Tax Map Key 6-7-01: portion of parcel 3. The proposed construction is for a cluster-type, single-family ranch style dwelling, condominium development.

Background

The subject parcel is located between the Parker Ranch race track and Kamuela Airport and fronts on Mamalahoa Highway across from the Lalamilo Farm Lots. The site is also located slightly more than 1 mile from the Kamuela Post Office and the nearest elementary and intermediate school. The nearest public high school at Honokaa is approximately 12 miles away. Lands in this area, including subject parcel, are in the Land Use Commission's Agricultural District. The nearest Urban District is  $\frac{1}{2}$  mile away. Electricity and telephone are available along the highway and the Board of Water Supply indicated an existing water line can supply the proposed development upon construction of a supplementary water tank. Adequate drainage can be provided by proper land grading and the area is not subject to flooding.

The soil of the subject property is classified in the Waimea series, i.e., sandy loam, gently sloping at 11 to 20%, with cool, frequent fogs. This soil type is mostly used for grazing with Bermuda grass dominant. Carrying capacity of improved pastures is about 2 to 3 acres  $\frac{1}{2}$  per head. Mean elevation of the

area in question is approximately 2,650 feet above sea level and the mean annual rainfall is about 39 inches.

The County General Plan designates the area in question and the surrounding area for ranching purposes. The proposed zoning under the new Zoning Ordinance and district maps designate the area in the Agricultural District, i.e., A-40a, requiring a minimum size lot of 40 acres. The State General Plan designates the parcel in question and the surrounding area diversified agriculture.

The property in question slopes gently upward from the highway and is part of a 49,490 acre pasture. North of the property in question is the aforementioned race track, a single-family dwelling and stables. The Kamuela Airport is about 1,500 feet southeast of the property in question. The property in question and the remaining surrounding areas are presently in pasture use. In fact, most of the property in question and part of parcel 3 is dedicated for ranching purposes under the Land Use Law for special state tax assessing considerations.

Construction for the special permit for the Slim Holt U-Drive operation recently approved by the Land Use Commission, at the intersection of Mamalahoa Highway and the entrance road to Kamuela Airport, has not started. Across Mamalahoa Highway from the property in question are the Lalamilo Farm Lots. A vacuum cooling plant was recently placed in operation in this area along the highway to permit the growing and marketing of many crops from the Waimea area.

Significant State CIP projects include planning and engineering plans for the Waimea by-pass highway to Kawaihae.

Hawaii County Planning Commission Recommendation

The Planning Commission recommends the approval of the special permit because:

1. The proposed use will not adversely affect surrounding properties nor lower property values.
2. The use would not be contrary to the intent of the Agricultural District (contained in their new Zoning Ordinance) as 1-acre lots are permissible; therefore, 1 dwelling per acre is permissible.
3. The proposed use will still retain the rural atmosphere of the Waimea area as stipulated in the General Plan.
4. The proposed use is unique in an Agricultural District only to the extent that it will be a condominium type development with clubhouse and stable facilities.

The Commission imposed the following conditions:

1. Development be in accordance with health, water and building regulations.
2. The main road shall be built to dedicable standards after approval by the County.
3. Development shall be substantially as shown on the drawings.
4. Drainage plans shall be approved by the County.
5. Construction shall begin within 1 year.
6. Planning Commission shall stipulate if need be, adequate landscaping, adequate offstreet parking, proper siting of structures and alignment of dedicable street.

#### Analysis

The applicant states the project is designed to give the opportunity to horse owners to have a vacation ranch home surrounded by the Parker Ranch atmosphere, and also to attract non-horse owning people because of other outdoor activities in close proximity to the area. This proposed development is not a part of the ranch operation and is not housing for the ranch employees.

It is significant to clarify that the proposed use is not permitted within the Agricultural District as a matter of right. State Land Use District Regulations, Part II, Section 2.14 stipulate "(d) Farm dwelling, farm buildings, or activities or uses related to farming and animal husbandry". The proposed use is clearly intended for urban single-family purposes and is totally unrelated to agricultural activities.

Proposed density should be seriously considered. The County Planning Commission staff's testimony at the public hearing identified the proposed zoning of the property in question and surrounding area as being in the Agricultural District requiring a minimum building site area of 40 acres (A-40a District). Section 13, B, 1) of the recently adopted County Zoning Ordinance states as a permitted use "Single-family dwellings (only 1 per building site)". This would clearly indicate that the density intent of the proposed district map is to permit only 1 dwelling unit per 40-acre parcel throughout this area and on the site in question. However, in the communication to the Land Use Commission from the Planning Director summarizing the request, recommendations, findings and conditions of the County Planning Commission, it is stated (as above) that "1 dwelling per acre is permissible". This seems to be in conflict with the County Zoning Ordinance and information presented at the public hearing. Since the proposed district maps designate the area in question as A-40a requiring 40 acres/dwelling unit, the basis upon which the County Planning Commission partially made their recommendation is considerably weakened because the proposal does not conform to the intent of the ordinance or General Plan.

Your staff also raises the question as to whether or not this density of 1 acre per dwelling unit is even being met, for upon analysis of the proposed site plan, the feed silos and the stables which are permitted uses in the

Agricultural District occupy a little more than 6 acres of the site in question and physically are separated from the cluster of houses at the mauka end of the proposed development. This could mean there are 40 units proposed on 35 acres or less than 1 acre per dwelling unit.

It should also be called to the attention of the Commission that the newly adopted County Zoning Ordinance provides for "Planned Unit Development" in Section 33 and specifically states that approval of a PUD by the Commission requires that "all residential development shall constitute an environment of sustained desirability and stability, shall be in harmony with the character of the surrounding neighborhood, and shall result in an intensity of land utilization no higher than, and standards of open space at least as high as permitted or as otherwise specified for the district in which this development occurs (1 dwelling/40 acres)".

Section 34 of the County's new Zoning Ordinance provides for a "Cluster Plan Development". The proposal before us would more nearly be classified as falling within the purview of this portion of the ordinance except it is a condominium project and thus there would be no individual lots. It is again interesting to note that in computing the density of a Cluster Plan Development the new Zoning Ordinance requires that 20% of the total area be subtracted for streets in order to determine the density of the district. This would further reduce the amount of land area per dwelling unit than stipulated above. Also note that the ordinance permits Cluster Plan Developments in single-family (residential) districts only.

The Land Use Commission, in its wisdom, established criteria to be applied to special permit requests and which are given serious consideration when evaluating an application for a special permit. To establish that the proposed use is "unusual and reasonable", the tests are as follows:

(1) "Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations."

Some of the primary purposes of the Land Use Law are 1) to provide a regulation to assure the use of Hawaii's limited and valuable land for a purpose that would prohibit short-term gain to a few, but provide for the long-term income and growth potential to the economy of the State, 2) to prevent scattered residential developments with expensive yet reduced public services, and 3) to preclude the shifting of agricultural lands into non-revenue-producing residential uses when other lands are available to meet the need. Your staff is convinced that this proposed single-family, residential cluster development application on dedicated agricultural lands now pending before the Commission is contrary to all of these purposes and the objectives of the Land Use Law and Regulations.

(2) "That the desired use would not adversely affect surrounding property."

The petitioner contends that the request will not adversely affect the surrounding property values nor lower the property values.

Your staff agrees that the surrounding property values will not be lower, in fact it would increase if this proposed development is permitted except that the property is dedicated. Requests for scattered residential uses of this type would indeed increase the value of adjacent agricultural land to the extent that it might no longer be economically feasible to continue to use the land for agricultural purposes. To prevent scattered residential development and the encroachment of urbanization on agricultural lands was again the intent of the Land Use Law.

(3) "Such uses would not reasonably burden public agencies to provide roads and streets, sewers, water drainage and school improvements, and police and fire protection."

Presumably roads, streets, sewers, water drainage improvement costs would be entirely absorbed by the developer. However, bus service for school children may require extra attention. Police and fire protection is already limited in Waimea.

(4) "Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established."

Your staff is not convinced that unusual conditions or trends have occurred in the Waimea area that warrant the establishment of this urban pocket when there presently exists considerable vacant land within the Urban District of Waimea to accommodate the anticipated growth over the next 10 years. The development of the Mauna Kea Hotel has been the basis for many to justify the need for boundary changes and special permits. It has also been identified as the unusual condition and as having established an unusual trend. On July 7, 1966, the Commission, in its wisdom, approved a special permit for the construction of a 100-unit recreational resort condominium hotel in the Agricultural District adjacent to Waimea. This special permit will expire in 2 weeks because nothing has been accomplished since the approval.

The County finds the use "unique" only to the extent that this is a "condominium" development. Webster says condominium means "joint ownership" and the State Statutes say "ownership of single units with common elements". In essence, the major difference between a typical residential subdivision development and a residential condominium development in this case is that there are no lots or individual lot lines. The property will be owned in undivided interest with common elements. Being a "condominium" development does not make the use unusual, it is still a single family residential development in an Agricultural District.

(5) "That the land upon which the proposed use is sought is unsuited for



the uses permitted within the district."

The land is being used for pasture purposes which is a permitted use within the Agricultural District and is also dedicated for ranching purposes until 1972. Therefore, it is obvious to conclude that the land in question is suited for the uses permitted within the district.

(6) "That the proposed use would not substantially alter or change the essential character of the land and the present use."

The character of the land is pasture, the present use is grazing, and the land is dedicated for ranching. To introduce 40 dwelling units clustered together on 35 acres in a 49,000+ acre pasture will in fact substantially alter the character of the land and the present use.

(7) "That the proposed use will make the highest and best use of the land involved for the public welfare."

The Land Use Law has as its purpose to preserve agricultural land for agricultural purposes, to prevent scattered pockets of urbanization, and prevent the shifting of agricultural lands into non-revenue producing residential uses. It appears to the staff that the proposal before you represents that which the Land Use Law was intended to prevent.

It should also be emphasized that the County General Plan earmarks the area for ranching purposes, that the County's proposed zoning is agriculture (A-40a), and that the State General Plan recognizes the agricultural potential of this area. Thus, it is the staff's conclusion that the proposed use is not in the best interest of the public.

#### Recommendation

On the basis of the foregoing analysis, discussion and field investigation, the staff believes the approval of this special permit for residential purposes in an Agricultural District will establish an extremely dangerous precedent and therefore recommends this request be denied.