



Planning Commission

Lorraine R. Inouye
Mayor

25 Aupuni Street, Rm. 109 • Hilo, Hawaii 96720 • (808) 961-8288

CERTIFIED MAIL

May 18, 1992

Mr. Robert Malagday
74-4410 Nehiwa Street
Kailua-Kona, HI 96740

Dear Mr. Malagday:

Special Permit Application
Applicant: Robert Malagday
Parking Area for Vehicles Used for Off-Site Jobs
Tax Map Key: 7-3-46:75

The Planning Commission at duly advertised public hearings on February 6, 1992, March 24, 1992, and May 7, 1992, considered your request for a special permit in accordance with Chapter 205-6, Hawaii Revised Statutes, and Rule 6 of the Planning Commission, to allow the establishment of a parking area for vehicles used for off-site jobs on one acre of land situated within the State Land Use Agricultural District at Kalaoa 5th, North Kona, Hawaii.

The Commission voted to deny the special permit based on the following findings:

Chapter 205-6, Hawaii Revised Statutes (HRS), authorizes the County Planning Commission to issue Special Permits for certain unusual and reasonable uses within agricultural districts other than those for which the district is classified but only when the use would promote the effectiveness and objectives of Chapter 205, HRS. The establishment of a business and parking area for vehicles for off-site jobs does not meet the guidelines set forth in the Land Use District Regulations which may determine its use as unusual and reasonable.

The use is contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. The intent of these statutory provisions is to preserve, protect and encourage the development of lands in the State for those uses to which they are best suited in the interest of the public health and welfare of the people of Hawaii. It is recognized that the Agricultural district may include areas which are not used for,

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or which are not suited to, agricultural and ancillary activities by reason of topography, soils, and other related characteristic. Although agriculture may not be a suitable use on the property, other considerations must be made as to those uses to which the land is best suited. The Kona Acres Subdivision is a low density rural residential area. The industrial nature of the proposed use is not consistent with the character of the existing community.

In encouraging the development of lands for those uses to which they are best suited, the State Land Use Commission has also designated lands for Urban use. These lands are regulated by the County Zoning Code in order to promote the general welfare of the community. The proposed use is better suited to an Urban area which has been determined to be appropriate for such industrial use.

The desired use would adversely affect surrounding properties. The character of the surrounding subdivisions is residential/agricultural in nature. The close proximity of dwellings conflicts with the proposed use by the applicant. This application for Special Permit is the outcome of complaints filed by surrounding property owners. Complaints were based on negative visual impact as well as noise and traffic problems created by the activity. While the applicant has existing and proposed landscaping buffers along the perimeter of the subject property to buffer any anticipated visual impacts, the problem of noise and traffic would not be mitigated.

The proposed use will substantially alter or change the essential character of the land. The proposed parking of dump trucks and heavy earthmoving equipments on the property will substantially alter the existing residential/agricultural character of the land.

The request is contrary to the intent of the General Plan. This denial is upheld by a goal of the Land Use Element of the General Plan to "Designate and allocate industrial areas in appropriate proportions and in keeping with the social, cultural, and physical environments of the County." The Land Use Element of the General Plan gives the following policies and standards for industrial development:

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- * "Industrial development shall be located in areas adequately served by transportation, utilities, and other amenities.
- * "Industrial development shall maintain or improve the quality of the present environment.
- * "Industrial development shall be conveniently located to its labor resource."

The use proposed is normally permitted only within the County's Industrial zoned district and should comply with the goals and policies for Industrial development. The establishment of such an industrial use in the Kona Acres Subdivision would create an undesirable situation in conflict with the present residential/agricultural neighborhood.

Should this request be approved, it could lead to a proliferation of other similar requests, with an accompanying potential for disruption of the community.

Based upon the above, it is determined that the subject request is an unreasonable use of the land, which will not promote the effectiveness and objectives of Chapter 205, HRS, and should be denied.

A denial by the Commission of the desired use shall be appealable to the Circuit Court in which the land is situated and shall be made pursuant to the Hawaii Rules of Civil Procedure.

Should there be further questions on this matter, please feel free to contact the Planning Department at 961-8288.

Sincerely,



Mike Luce, Chairman
Planning Commission

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xc: State Land Use Commission
Corporation Counsel
Mayor
Planning Director
West Hawaii Office