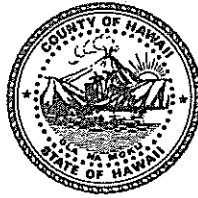


Stephen K. Yamashiro
Mayor



County of Hawaii

PLANNING COMMISSION

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-9615

CERTIFIED MAIL
7099 3220 0000 4869 5820

AUG 25 2000

Ms. Betsy Morrigan
87-3187 Honu Moe Road
Captain Cook, HI 96704

Dear Ms. Morrigan:

Special Permit Application (SPP 00-022)

Applicant: Betsy Morrigan

Request: To Allow the Establishment and Operation of a Kayaking and

Hiking Tour Business Within an Existing Farm Dwelling, Garage and Driveway

Tax Map Key: 8-7-18:28

The Planning Commission at a duly advertised public hearing on August 4, 2000, considered the above-referenced 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 and operation of a kayaking and hiking tour business within an existing farm dwelling, garage and driveway located on approximately 7,500 square feet of land within the State Land Use Agricultural District. The property is located in the Kona Paradise Subdivision on the west (makai) side of Mamalahoa Highway, Mahele Award 25, Kahohe 4th, North Kona, Hawaii.

The Commission voted to deny Special Permit No. 1070 based on the following findings:

In considering a Special Permit for any proposed use, Rule 6 of the Planning Commission relating to Special Permits require that such action *conform to the following guidelines*:

- a. Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations;
- b. The desired use shall not adversely affect surrounding properties;

008315

AUG 25 2000

Ms. Betsy Morigan
Page 2

- c. Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection;
- d. Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established;
- e. The land upon which the proposed use is sought is unsuited for the uses permitted within the district;
- f. The proposed use will not substantially alter or change the essential character of the land and the present use; and
- g. The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design Plans.

In addition to the guidelines detailed above, the Planning Commission must also find that the proposed use:

- a. Is an unusual and reasonable use of land situated within the Agricultural or Rural District, whichever the case may be; and
- b. Would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended.

While a proposed use must meet all of these criteria for approval by the Planning Commission, a denial may be made upon a finding of conflict with any of those criteria.

It is felt that the granting of this particular request at this particular location would be inconsistent with the objectives to be sought to be accomplished by the Land Use Law and Regulations as well as the County General Plan. A goal of the General Plan states that the County shall *"Designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural, and physical environments"* while maintaining a policy to *". . . encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment."*

Concerns regarding the existing use and its adverse effects upon the surrounding properties were raised during public testimony. A resident of Kona Paradise Subdivision noted that "numerous complaints" were received from other residents who were prevented from getting to their properties due to the road being blocked by the kayaking

and hiking tour operation. The resident also noted that the applicant has been utilizing an adjacent vacant home and property as parking. In fact, the resident notes that the three parking spaces noted on the applicant's plans are not generally utilized for parking.

As cited above, approval of this request in this particular location would not be consistent with the following policies of the General Plan to "Designate and allocate land uses in appropriate proportions and mix and in keeping with the *social*, cultural, and *physical environments*" and to ". . . encourage the development and maintenance of communities meeting the needs of its residents *in balance with the physical and social environment.*"

The use will substantially alter or change the essential character of the land and the present use. Kona Paradise Subdivision, while designated for Agricultural uses by State and County land use laws, is single family residential in character primarily due to the small size of parcels within the subdivision. The subject property, including parcels in the immediate vicinity, is 7,500 square feet in size. The existing kayaking and hiking tour operation, as requested, is essentially a commercial use to be conducted within a residential area. No matter how benign the existing tour operation may appear to be, the applicant's past illegal use of the subject property for the tour operation has generated opposition to its approval from residents within the subdivision and surrounding area. Testimony cited the erection of temporary tents on the applicant's property, blocking of the roadway, parking of vehicles on an adjoining property, and concerns regarding the safety of transporting kayak and hiking supplies through the steep subdivision roads. It is these related activities that have demonstrated the inappropriateness of allowing the existing kayaking and hiking tour operation to continue within this portion of Kona Paradise Subdivision.

Based on the above considerations, it is determined that the establishment of a kayaking and hiking tour operation at this particular location is not an unusual and reasonable use of land situated within the Agricultural District and would not promote the effectiveness and objectives of the State Land Use Law. For these reasons, the Planning Commission hereby denies the applicant's request for a Special Permit.

As stated in Rule 6-9, "The Planning Commission's decision is appealable to the Third Circuit Court."

Ms. Betsy Morigan

Page 4

Should you have any questions on this matter, please contact Daryn Arai of the Planning Department West Hawaii Office at 327-3510 or Alice Kawaha of the Planning Department Hilo Office at 961-8288.

Sincerely,



Richard B. Baker, Jr., Chairman
Planning Commission

Lmorigan01PC

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
West Hawaii Office
State Land Use Commission
Kazu Hayashida, Director/DOT-Highways, Honolulu