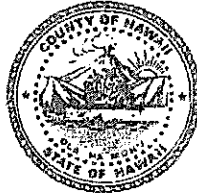


Harry Kim
Mayor



County of Hawaii
PLANNING COMMISSION

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • Fax (808) 961-8742

JAN 20 2003

Mr. Chet Kamimura
P.O. Box 2199
Kamuela, HI 96743

M. Casey Jarman, Esq.
P.O. Box 540
Volcano, HI 96785

Mr. Thomas W. Wilson
Ms. Michelle Wong-Wilson
2106 Kaiwiki Road
Hilo, HI 96720

Patricia K. O'Toole, Esq.
Corporation Counsel
101 Aupuni Street, Suite 325
Hilo, HI 96720

Dear Mr. Kamimura, Ms. Jarman, Mr. Wilson & Ms. Wong-Wilson:

Special Permit Application (SPP 01-019)
Applicant: Kamuela Congregation of Jehovah's Witnesses
Request: Establish a Church and Related Improvements
Tax Map Key: 6-4-17:portion of 23

The Planning Commission at its duly held public hearing on February 21, 2003, voted to deny the above-referenced application and adopted the attached Hearings Officer's Findings of Fact, Conclusions of Law, Decision and Order.

Special Permit No. 1200, which requested the establishment of a church and related improvements on an approximately 0.5 acre portion of a 5.006-acre parcel in the State Land Use Agricultural District, is hereby denied. The property is located in the Kauakea Subdivision, at the west corner of Kauakea Road-Māmalahoa Highway intersection, Pu'ukapu Homesteads 2nd Series, Pu'ukapu, South Kohala, Hawai'i.

Should you have any questions, please contact Alice Kawaha of the Planning Department at 961-8288.

Sincerely,

Fred Galdones, Chairman
Planning Commission

LkamuelacongregationPC
Enclosure

cc/enc: Department of Public Works
Department of Water Supply
Planning Department - Kona
State Land Use Commission

033045MD

JAN 20 2003

BEFORE THE COUNTY OF HAWAI'I

PLANNING COMMISSION

In the Special Permit Application

Of

KAMUELA CONGREGATION OF
JEHOVAH'S WITNESSES

Request: To establish a church and related
Improvements on approximately 0.5 acres of
land in the State Land Use Agricultural District.
The property is located in the Kauakea
Subdivision, at the west corner of Kauakea
Road and Māmalahoa Highway intersection,
Pu'ukapu Homesteads 2nd Series, South Kohala,
Hawai'i, TMK: 6-4-17:Portion of 23

SPP No. 01-019

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND DECISION AND ORDER
FOR DENIAL OF SPECIAL PERMIT
APPLICATION SPP NO. 01-019

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER
FOR DENIAL OF SPECIAL PERMIT APPLICATION SPP NO. 01-019

Applicant Kamuela Congregation of Jehovah's Witnesses ("CONGREGATION"), is seeking a special permit under Chapter 205 of the Hawai'i Revised Statutes ("HRS") and Rule 6 of the Hawai'i County Planning Commission Rules of Practice ("HCPC RULES"), for the establishment of a church and related improvements on a portion of the Kauakea Subdivision, Pu'ukapu Homesteads, South Kohala, Hawai'i TMK (3) 6-4-17: portion of 23 ("Congregation's Application").

Hearing Officer M. Casey Jarman, having reviewed the respective pleadings and exhibits submitted in this matter and having heard and considered the arguments of the parties, makes the following Hearing Officer's Findings of Fact, Conclusions of Law, and Recommended Order:

I. FINDINGS OF FACT

Pre-Hearing Procedures

1. On or about June 10, 2001, the Kamuela Congregation of Jehovah's Witnesses

("Applicant") filed a Special Permit Application pursuant to Rule No. 6 of the Rules and Practices of the County of Hawai'i Planning Commission ("Commission"). (Pet. Ex. C)

2. On October 5, 2001, the Commission held a public hearing on the application. At this meeting the Commission granted Thomas W. Wilson and Michelle Noe Noe Wong-Wilson's petition to intervene and authorized the Hawai'i County Planning Department to select and contract with a Hearing Officer. (Hearing Transc., Planning Commission of Hawai'i, October 5, 2001)

3. A pre-hearing was held on July 22, 2002, at which time filing deadlines and the first hearing date were set. Hearing Officer M. Casey Jarman presided over the pre-hearing. All parties were in attendance.

The Parties

4. The property on which Congregation ("Applicant") is applying for a special permit, TMK 6-4-17:portion of 23 (the "Property"), is owned in fee by Ricky M. Kamimura, who has authorized the Congregation to file for the special permit to use the property for a church and related improvements. (County, Exh. A, p. 1)

5. Congregation is represented by Roy T. Figueroa, a member of the Congregation. (Tr., 10/25/02, p. 4)

6. Intervenors Thomas W. Wilson and Michelle Noe Noe Wong-Wilson (the "Wilsons") reside in Hilo, Hawai'i, and own land in the same subdivision (The Kauakea Subdivision) as the subject Property. (Int. Exh. 13)

7. The Wilsons presently use their land in the Kauakea Subdivision to raise cattle. The Wilsons have no home or residential structure built on their land in the Kauakea Subdivision. The Wilsons have testified that they desire to build a home on and move to their land in the Kauakea Subdivision at some point in the future. (Int. Exh. 13)

8. The Wilsons represented themselves.

9. The County of Hawai'i Planning Department ("Planning Department") is a department of the County of Hawai'i government and is a party to this contested case hearing pursuant to HCPC Rule 4-7(a).

10. The Planning Department is represented by the Planning Director Christopher Yuen and by Deputy Corporation Counsel Patricia O'Toole.

Description of the Property and Surrounding Area

11. The Property is located in the Kauakea Subdivision, at the west corner of Kauakea Road and Māmalahoa Highway, Pu'ukapu Homesteads 2nd Series, North Kohala, Hawai'i, TMK 6-4-17:Portion of 23.

12. Kauakea Road is a privately owned roadway with a right-of-way width of fifty (50) feet. It is paved to a width of approximately sixteen feet. Māmalahoa Highway is a two-lane public road. (SP App., p. 4)

13. The Property is roughly rectangular in shape and is approximately 5.006 acres in size. The subject Property is one of the five, 5+ acre agricultural lots in the Kauakea Subdivision. (Cty., Exh. A, p. 3)

14. The Property is currently improved with a single family dwelling, a separate garage/storage unit occupied by the son of the property owner, and a driveway. The improvements are located in the northeast portion of the Property. (Tr., 10/25/02, pp. 89, 91)

15. The remainder of the Property is open pasture land.

16. The area on the Property where the Applicant proposes to conduct the activity requiring the special permit (the "Project Site"), consists of roughly a half acre of the five acre Property situated within the southeast portion of the Property. (SP App., p. 2)

17. The soil on the Property consists of well-drained, very fine sandy loams that formed in volcanic ash. Permeability is moderately rapid, runoff is slow and the erosion hazard is slight. (SP App., p. 3)

18. Adjacent lands to the north and south of the Property are zoned Agriculture 5-acre (A-5a); lands to the east are zoned A-40a; and to the west is the Nani Waimea Subdivision, zoned A-1a, but containing sixty 8,900 square foot lots. (SP App., p. 4)

19. The nearest structures to the Project Site are homes in the Nani Waimea subdivision to the West. (SP App., p. 4)

20. The property immediately north of the subject Property in the Kauakea Subdivision is owned by Mr. David McCoullough. That property was granted a special permit

(No. 00-041) for operation of an investigative and collection agency, a towing service and a parking business. The permit granted to RT's is limited to a half acre portion of the five acre lot and is further limited to a two year period. (Cty. Exhs. A & D)

21. According to the applicant, there is no evidence of any valued cultural, historical, or natural resources on the Project Site or the Property nor has there been any traditional and customary native Hawaiian rights practiced on the property. However, the applicant did not conduct an archaeological study. (SP App., p. 4)

22. Although no study was conducted by the applicant, there is no evidence that endangered or threatened candidate species of flora or fauna are located within the Project Site or the Property. (Cty. Exh. A, p. 4)

Land Use Designation

23. The Property is in the State land use "Agricultural" district. (Cty. Exh. A, p.2)

24. The General Plan Land use Pattern Allocation Guide ("LUPAG") Map designates the Property as "Intensive Agricultural." (Cty. Exh. A, p. 2)

25. The current County Zoning designation for the Property is Agricultural 5-acre (A-5a). (Cty. Exh. A, p. 2)

26. The Property is classified as "C" or "fair" for agricultural productivity by the Land Study Bureau. The Agricultural Lands of Importance to the State of Hawai'i ("ALISH") Map identifies the Property as "Prime" agricultural lands. (Cty. Exh. A, p. 4)

27. The subject Property is not within the Special Management Area of the County of Hawai'i as such term is defined under HRS Chapter 205A. (Cty. Exh. A, p. 3)

28. Land use within the Property is not defined or classified by the Waimea Design Plan. (Cty. Exh. A, p. 2)

29. There are no known drainage channels within the Property and the area is designated "X" or outside the 500-year flood plain by the FIRM maps. (Cty. Exh. A, p. 4)

Description of the Proposed Project

30. Congregation proposes to construct and establish a meeting facility or "church" and related improvements on a half (.5) acre portion of the 5.006 acre property. Currently, the Congregation meets at a Kingdom Hall in Honokaa. The Congregation proposes to construct

this facility in Waimea for the traveling convenience of members who reside in Waimea and Waikoloa. (SP App., p. 2)

31. The proposed Project will consist of the following:

a. A one-story assembly hall with restrooms, conference rooms, lobby and a Porte Cochere. The hall will contain 103 fixed seats.

b. The building construction will be concrete slab-on-grade, wood siding, and hip roof.

c. Building setbacks will be approximately 117 feet from Māmalahoa Highway right-of-way, 30 feet from Kauakea Road right-of-way, over 200 feet to the adjacent lot in the Kauakea subdivision, and over 400 feet to the adjacent lot in the Nani Waimea subdivision.

d. The plan calls for paved parking for 26 regular parking stalls and two handicap accessible parking stalls.

e. Landscaping will include five canopy shade trees evenly distributed throughout the parking lot. A continuous hedge will be grown to a minimum height of 42 inches along the parking lot and building parallel to Māmalahoa Highway and Kauakea Road. (Pet. Proposed FOF, COL, D&O, pp. 4, 5)

32. The proposed building would be used primarily for Bible education meetings and preparation for the Congregation's ministry. The meetings would be held as follows:

Sunday 9:30 am to 11:30 am

Tuesday 7:00 pm to 8:00 pm

Thursday 7:00 pm to 8:45 pm

Attendance will range from 15 - 85 persons.

In addition, a group numbering anywhere from 5 to 20 persons will meet at Kingdom Hall from 8:45 am to 9:00 am on most days. (SP App., p. 7)

33. Only functions religious in nature will be conducted. Uses of the proposed facility would not include bazaars, swap meets, day care centers or nurseries. (SP App., p. 2)

34. Water is available through the Department of Water Supply's system. (SP App., p. 5)

35. Police and fire services are available from the Waimea Police Station approximately 3 miles away from the Property. (SP App., p. 5.)
36. Sewage disposal will be by cesspool which is permitted under DOH rules. (Cty. Exh. A, p. 6)
37. All essential utilities are available to the property, including phone and electrical service. (Cty. Exh. A, p. 6)
38. The property is located in the vicinity of a segment of Route 19 under County jurisdiction. No significant impact on the state highway system is anticipated. (Cty. Exh. A, p. 7)
39. Access to the facility will be from Kauakea Road, a private road serving the property from Māmalahoa Highway. (SP App., p. 4)
40. The existing 16 foot pavement width of Kauakea Road does not comply with the current county Subdivision Code requirement of 20 feet minimum for agricultural lots exceeding 3 acres in size. The County Department of Public Works recommends that if the special use permit were to be approved, the applicant should mitigate any non-conforming road width and sight distance inadequacies. (Cty. Exh. A)
41. According to their by-laws, Kauakea Community Association, made up of the landowners in the subdivision, manages, controls and maintains Kauakea Road. (Int. Exh. 43)

The Zoning History of and Activity Conducted on the Property

42. Ordinance No. 889 was enacted by the County of Hawai'i County Council ("County Council") in 1983. Ordinance No. 889 amended the Zoning Code as codified in the Hawai'i County Code Ch. 25 by rezoning the Kauakea Subdivision from A40a to A5a. The County Council's approval of the zoning change was subject to a number of conditions, including Condition (H), which states "[t]he remaining portion of the lot [not used for a farm dwelling] shall be used for agricultural purposes only." (Cty. Exh. C, p. 3)
43. On September 21, 1984, after the passage of Ordinance No. 889, and pursuant to the requirement of Condition (H) of Ordinance No. 889, the then developer of the Property submitted a Declaration of Covenants, Conditions, and Restrictions on Agricultural Lands ("CC&R") which was recorded at the Bureau of Conveyances of the State of Hawai'i, in Liber

44. The language used in the CC&R for the property provides in relevant part:

WHEREAS, by Ordinance No. 889 (effective date June 21, 1983), rezoning of said property from A-40a to A-5a was conditioned upon the owner recording restrictive covenants, restricting the use of said property to agricultural use and for farm dwellings only,

NOW, THEREFORE, Owner hereby declares that the property described herein and each and every lot or portion thereof shall be held, transferred, sold, conveyed, and occupied subject to the following covenants, conditions and restrictions:

1. The use of the land shall be restricted to agricultural uses at all times:

“Agriculture” or “agricultural activity” as used herein is defined as:

- (A) cultivation of crops, including but not limited to, flowers, vegetables, foliage, fruits, forage, and timber;
- (B) game and fish propagation;
- (C) Raising of livestock, including but not limited to, poultry, bees, fish, or other animal or aquatic life that are propagated for economic or personal use; and

2. All dwellings on each lot shall be restricted to farm dwellings, which dwellings may take up a maximum area of one-half acre per lot. “Farm dwelling” as used herein shall mean a single-family dwelling located on and in connection with a farm or where agricultural activity provides income to the family occupying the dwelling. Remaining portions of each lot not used for farm dwellings shall be used for agricultural purposes only.

(Int. Exh. 5)

45. The property was purchased by Ricky Kamimura, a Congregation member. His intention was that the property would be used by the Congregation. (Tr. 10/25/02, pp. 87, 89)

46. Mr. Kamimura had 2 structures constructed on the property. They are a single-family dwelling whose dimensions are 26 x 26. The storage structure has the same dimensions. (Tr., 10/25/02, p. 91) Each building has roof extensions that measure three feet beyond each wall. (Declaration of Rodney Nakano dated December 6, 2002, p. 3) In addition there is a 9'

wide gravel driveway providing access to the structures. (Site Plan)

47. He constructed these structures in order to obtain a more favorable financing arrangement than is available for vacant property. (Tr. 10/25/02, p. 96)

48. The residence is occupied by Mr. Kamimura's son and his son's wife. (Tr., 10/25/02, pp. 91, 97)

49. No agricultural activity is conducted on the property in conjunction with these structures. (Tr., 10/25/02, p. 97)

The Application Process

50. Applicant Congregation decided it needed a facility in Waimea in order to service its members who lived in Waimea and Waikoloa. (SP App., p. 2)

51. Applicant investigated purchasing or leasing other property in the area. Other property considered included areas along church row, school facilities, commercial properties in Waikoloa and state land in Kamuela. These properties were either unavailable or deemed unaffordable by the Congregation. (Tr., 10/25/02, pp. 49, 90)

52. On or about May of 2000, Mr. Kamimura purchased the property with the intent to allow the Congregation to construct a meeting facility on the property. Originally, Mr. Kamimura intended to establish a CPR which would allow the Congregation to use a portion of the property for its meeting facility. Mr. Kamimura understands that because of changes in the county law, a CPR is no longer possible. (Tr., 10/25/02, pp. 91, 92)

53. No specific arrangement between the church and Mr. Kamimura has been established regarding the use of the property. (Tr., 10/25/02, p. 93)

54. Prior to purchasing the property, Mr. Kamimura was informed by the Planning Department that he could apply for and would have to obtain a special permit in order to use the property as proposed. (Tr., 10/25/02, p. 90)

55. On or about June 21, 2001, the present special permit application SPP 01-019 was submitted. (Pet. Exh. C)

56. By letter dated October 15, 2001, the Planning Director informed the Congregation that the existing dwelling must be included in the one-half acre project site. The Director requested that Congregation submit a revised site plan reflecting the new half-acre

configuration to include the existing dwelling. (Cty. Exh. B)

57. By letter dated December 13, 2001, the Congregation stated that it had decided to withdraw its special permit application.

58. By letter dated January 8, 2002, the Congregation stated that it had reconsidered and decided to pursue its Special Permit application.

59. The basis for the Director's request was condition H of Ordinance No. 889 which states the following:

"Restrictive deed covenants for each lot shall be recorded with the Bureau of Conveyances together with any recordation of final subdivision plat maps. The covenants shall include a mandatory agricultural use provision for each lot as previously defined in Condition C. The covenants shall require all dwellings to meet the definition of farm dwelling below. Furthermore, the covenant shall restrict the area devoted to all dwellings to a maximum of one-half acre per lot. 'Farm dwelling' as used herein means a single-family dwelling located on and in connection with a farm or where agricultural activity provides income to the family occupying the dwelling. The remaining portion of the lot shall be used for agricultural purposes only. The restrictive covenants contained herein shall run with the land and shall be incorporated into any deed, lease, agreement of sale, mortgage, or other instrument of conveyances executed for the subject properties."

(Cty. Exh. C, p. 3)

60. The Wilsons filed to intervene in the special permit proceedings on August 28, 2001.

61. The Hawai'i County Planning Commission granted the Wilson's Petition for Standing on October 5, 2001. The Special Permit proceeding became a contested case proceeding under HCPC Rule 4.

62. The HCPC voted to appoint a hearings officer to conduct the contested case hearing and to make a recommendation to the HCPC on the Special Permit application.

63. Contested case hearings were conducted by Hearing Officer M. Casey Jarman on October 25 and November 9, 2002.

64. During the hearing on October 25, 2002, it was determined that while Congregation's application stated that its application covered a one-half acre area, the site plan submitted showed that the church and related improvements took up an area greater than one-half acre. (Tr. 10/25/02, p. 106)

65. Congregation was given a choice of amending the application or revising the site plan. (Tr. 10/25/02, p. 107)

66. Congregation chose to submit a new plan conforming to the application. (Tr., 10/25/02, p. 108)

67. At the November 9, 2002 hearing, Hearing Officer Jarman requested that Intervenor Wilson submit by-laws for the Kauaeka Subdivision to establish how decisions are made as to the private road. She also requested that Applicant Congregation submit a scale drawing with actual dimensions for the proposed Kingdom Hall and parking lot. (Tr., 11/9/02, p. 45)

68. The parties complied and the materials were submitted on November 27, 2002.

69. No party requested a further hearing; however, the County submitted comments in the form of a Declaration of Rodney Nakano, Planning Program Manager for the Planning Department after their written request to do so was granted by Hearing Officer Jarman.

70. Monday, January 6, 2003 was set as the date for submission of proposed findings of fact and conclusions of law. Hearing Officer Jarman also requested briefs on two issues: (1) Does the County Council have the legal authority to pass an ordinance that in effect prevents the County Planning Commission from granting a special use permit? (2) What is the appropriate legal vehicle for enforcing restrictive covenants and deeds? (Tr., 11/9/02, pp. 45, 48)

71. By fax letter, dated January 8, 2003, applicant requested additional time to prepare proposed findings and conclusions of law. Hearing Officer Jarman denied the request per fax memo dated January 8, 2003. Applicant made an untimely filing of their proposed findings on January 9.

72. By fax letter, dated January 10, 2003, intervenor requested applicant's proposed findings and conclusions of law be stricken on the grounds of late filing. Hearing Officer Jarman denied the request orally at the January 13, 2003 hearing.

73. Final oral arguments were held on January 13, 2003.

Special Permit Guidelines

74. The special permit guidelines are set out in Haw. Rev. Stat. § 205-6 as amended and HCPC Rule 6. The following findings of fact compare the evidence on the record in the contested case hearing to the specific guidelines of Rule 6 of the HCPC. Therefore, the findings in this section may repeat and apply the findings in the previous sections.

A. The proposed use is not an unusual and reasonable use of land situated within the State Land Use Agricultural District, would not promote the effectiveness of HRS Chapters 205 as amended, and is contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.

75. The State Land Use Law and Regulations are intended 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 the State of Hawai'i.

76. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use.

77. The Property on which the proposed church and related improvements will be located is classified as "C" or "Fair" for agricultural productivity by the Land Study Bureau. The Agricultural Lands of Importance to the State of Hawai'i (ALISH) Map identifies the subject Property as "Prime" agricultural lands. The subject Property contains agriculturally productive soils.

78. Art. XI, Sec. 3 of the Hawai'i State Constitution expresses a policy to "conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands."

79. Nonetheless, in recognizing that lands within the agricultural districts may not be best suited for agricultural activities and yet classified as such, and in recognition that certain types of uses may not be strictly agricultural in nature, yet reasonable in such districts, the Legislature by Haw. Rev. Stat. § 205-5 and 205-6 has provided for the special permit process to allow otherwise non-permissible uses in the agricultural district.

80. Although the County is not bound by precedent in the same matter as courts, the County of Hawai'i has in the past authorized the establishment of churches in agricultural districts by special permit.

81. Applicant has made extensive good faith efforts to find locations for their church that are not bound by the restrictions of the subject property.

82. Unlike other agriculturally zoned lots in the area, the subject property and all properties in the Kauakea Subdivision are subject to Ordinance No. 889 which contains a

mandatory agricultural use provision that states as follows:

. . . (H) restrictive deed covenants for each lot shall be recorded with the Bureau of Conveyances together with any recordation of final subdivision plat maps. The covenants shall include a mandatory agricultural use provision for each lot as previously defined in Condition C. The covenants shall require all dwellings to meet the definition of farm dwelling below. Furthermore the covenant shall restrict the area devoted to all dwellings to a maximum of one-half acre per lot. "Farm Dwelling" as used herein means a single-family dwelling located on and in connection with a farm or where agricultural activity provides income to the family occupying the dwelling. The remaining portion of the lot shall be used for agricultural purposes only. . .

83. Pursuant to the requirements of Condition "H" of Ordinance No. 889, the developer recorded the appropriate Declaration of Covenants, Conditions, and Restrictions on Agricultural Lands (CC&Rs) that tracked the language of the Ordinance.

84. The County Planning Director interprets this language to mean that all dwellings on lots within the Kauakea Subdivision are restricted to a contiguous one-half acre portion of each lot. (Tr., 10/25/02, pp. 23-24)

85. The County Planning Commission has concurred with this interpretation in the issuance of a special use permit to RT's Service Inc. (Cty., Exh. D)

86. Circuit Judge Riki May Amano upheld the County's position on January 3, 2003, in her Findings of Fact, Conclusions of Law and Order Denying Appeal from County of Hawai'i Planning Commission's Decision and Order Dated April 12, 2002 Granting Special Permit Application 00-041.

87. The current and proposed dwellings on the subject property together exceed the contiguous one-half acre restriction on dwellings in the Ordinance and the recorded CC&Rs.

88. Therefore, the proposed use is not an unusual and reasonable use of land situated within the State Land Use Agricultural District, would not promote the effectiveness and objectives of HRS Chapter 205 as amended, and is inconsistent with the objectives sought to be accomplished by the County's land use laws and regulations as reflected in Ordinance No. 889.

B. The desired use will not adversely affect surrounding properties.

89. According to the application and testimonies and exhibits presented during the contested case hearing, the project site itself is confined to a contiguous one-half acre portion of

the southeast portion of the property.

90. The property immediately north of the subject property in the Kauakea Subdivision contains an investigative and collection agency, a towing service and a parking business that is limited to a half acre portion of the five acre lot. These businesses are permitted pursuant to a two-year special permit granted by the county on November 30, 2001 to RT's Service, Inc.

91. Other adjoining property is residential in nature.

92. The subject property and other property in the Kauakea Subdivision is subject to an agricultural use restriction pursuant to Condition H of Ordinance No. 889 enacted by the County of Hawai'i County Council in 1983 and a Declaration of Covenants, Conditions, and Restrictions on Agricultural Lands recorded at the Bureau of Conveyances of the State of Hawai'i, in Liber 18159, page 611.

93. At least three days a week, church meetings will be held with an expected attendance of up to 85 persons. In addition, a group numbering anywhere from 5 to 20 persons will meet at the church site most days. Applicant has asserted that on average this will amount to approximately 20 cars conveying members to meetings on Tuesday and Sunday, with approximately 6 cars for other meetings. (Cty., Exhibit B, Letter from Stanley Watai to County of Hawai'i Planning Department dated September 21, 2001.) Currently the only people accessing the property are the owner's son and wife and their guests.

94. This amounts to a significant increase in the traffic on the substandard Kauakea Road that provides access to the subject property. The County Department of Public Works has stated that the applicant should mitigate any non-conforming road width and sight distance inadequacies of Kauakea Road. (Cty. Exh. B, Memorandum from Ben Ishii, Acting Division Chief, to Christopher J. Yuen, Planning Director.)

95. Kauakea Road is a private road maintained by the Kauakea Community Association. Mr. John Wood, one of two officers of the Kauakea Community Association, testified that historically individual lot owners living on the road would take care of the road by patching pot holes, fixing signs, trimming grass, etc. without getting permission from the Association. (Tr., 11/9/02, pp. 37, 41)

96. Condition #4 of RT's Service, Inc.'s special permit requires RT's Services, Inc. to, at its own cost, repair and maintain Kauakea Road from its intersection with Māmalahoa Highway to the Project Site's access driveway to Kauakea Road during the life of the special permit. (Cty. Exh. D, p. 19)

97. Mr. John Wood testified that the road work done by RT's Service pursuant to their special permit amounted to "patches on patches", that no improvements have been made since the initial patching, and that the road is in bad condition. (Tr., 11/9/02, p. 42)

98. Based upon past practice of the Kauakea Community Association and RT's Service, Inc.'s special permit, it appears that applicant can make any necessary improvements to the road to accommodate the increased traffic.

99. There was no evidence that the proposed church would adversely affect property values of the surrounding property.

100. The church building is a one-story structure the design of which fits into the architectural theme of the Waimea area. Landscaping will screen the parking lot from Māmalahoa Highway. (Tr., 10/25/02, pp. 65-66, App. Exh. B)

101. Based on the above, the desired use will not adversely affect surrounding properties.

C. Such use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements and police and fire protection.

102. County and state agency responses to the Planning Department's request for comments on applicant's special permit support the conclusion that the proposed use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements and police and fire protection. (Cty. Exh. A, pp. 5-8)

D. Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established.

103. The population served by the Applicant has increased significantly since the Kamuela Congregation has been in existence, necessitating the establishment of a new church in the Waimea area. (Tr., 10/25/02, p. 48)

104. Applicant has researched several other properties in commercial areas for the purpose of building a meeting hall but has been unsuccessful for various reasons, such as availability of adequate parking, lack of accessibility for handicapped, and lack of affordable sites for lease or sale. (Tr., 10/25/02, p. 49)

105. No agricultural activity currently occurs on the property. (Tr., 10/25/02, p. 97.) Very little agricultural activity is ongoing in the subdivision. The first, second and fifth parcels from Māmalahoa Highway are residential lots; the other two lots are in pasture use. (Cty. Exh. A, p. 3.)

106. The growing population of Jehovah's Witnesses, the lack of affordable and suitable appropriately zoned sites in the Waimea area, and the lack of any substantial agricultural activity in the Kauakea Subdivision taken together establish that 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 suited for the uses permitted within the district.

107. As previously mentioned, soils within the project site and surrounding area are agriculturally productive.

108. However, the special permit process, established by the Legislature, allows the Planning Commission to consider the establishment of non-agricultural uses upon these Agriculturally-designated lands, provided the objectives of Chapter 205 HRS, are promoted.

109. Granting the special permit as requested would allow a portion of the lot greater than one-half acre to be used for non-agricultural purpose on a permanent basis, contrary to its potential for agricultural use.

F. The proposed use will not substantially alter or change the essential character of the land and the present use.

110. Because commercial activities have been permitted pursuant to a special permit on one of the five lots in the Kauakea Subdivision, the project site itself is confined to a contiguous one-half acre portion of the property, the church building is a one-story structure the design of which fits into the architectural theme of the Waimea area, and landscaping will screen the parking lot from Māmalahoa Highway, the proposed use of the property will not substantially

alter or change the essential character of the land and the present use.

G. The request is consistent with the General Plan and official Community Development Plan and other documents such as plan design.

111. In granting a special permit to RT's Services, Inc., the County Planning Commission found that, even though a portion of their activities is typical of uses permitted on Industrial-zoned land rather than for Extensive Agricultural uses as provided in the General Plan's Land Use Pattern Allocation Guide (LUPAG) Map, (1) it met other goals of the Plan, (2) other feasible sites for the use were not available, and (3) the approval was subject to a limited, two-year non-renewable life of the special permit and therefore met plan consistency requirement. (Cty., Exh. D, pp. 16-17)

112. The subject property is subject to the same County plans as RT's Services, Inc.

113. The County Planning Commission has in the past found churches to be consistent with the goals, policies and standards of the County Plan for agriculturally-zoned lands when the subject property was not being used for agricultural purposes at the time of the application for the special permit, even when the land was designated Extensive Agriculture on the LUPAG Map. (Special Permit No. 1158, June 17, 2002; Special Permit No. 1106, March 19, 2001)

114. Therefore, the proposed use is not contrary to the General Plan and official Community Development Plan and other documents such as Design Plans.

115. To the extent that any of these findings of fact constitute conclusions of law, they shall be considered and construed as such.

II. CONCLUSIONS OF LAW

1. Petition for Standing in this Contested Case Hearing was granted by the Planning Commission in its meeting of October 5, 2001 to Thomas W. Wilson and Michelle Noe Noe Wong-Wilson.

2. A special permit is required for applicant's proposed use of the Property.

3. This Planning Commission has jurisdiction over this request for a special permit pursuant to HRS § 205-6, as Congregation's proposed use of the Property involves less than 15 acres of land.

Special Permit Criteria

4. The Planning Commission may approve a special permit for applicant's proposed use of the Property only upon making the findings required under Rule 6 of the HCPC Rules and HRS § 205-6.

5. Under HCPC Rule 6-6(a) and HRS § 205-6, the Planning Commission must not approve a special permit unless it is found that the proposed use is an unusual and reasonable use of land situated within the Agricultural district.

6. Under HCPC Rule 6-6(b) and HRS § 205-6, the Planning Commission must not approve a special permit unless it is found that the proposed use would promote the effectiveness and objectives of Chapter 205, HRS as amended.

7. Under HCPC Rule 6-6, the Planning Commission must not approve a special permit unless it conforms to the criteria listed under HCPC Rule 6-3(b)(5)(b)(A) through (G).

8. The use proposed by Congregation in its application for special permit SPP 01-019, is not an unusual and reasonable use of the Property and will not promote the effectiveness and objectives of Chapter 205, HRS as amended.

9. The use proposed by Congregation in its application for special permit SPP 00-019, meets some but not all the criteria for a special permit listed under HCPC Rule 6-3(b)(5)(A) through (G).

10. To the extent that any of the conclusions of law constitute findings of fact they shall be considered and construed as such.

III. DECISION AND ORDER

In accordance with the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED BY THE PLANNING COMMISSION that the application of Kamuela Congregation of Jehovah's Witnesses, SPP 01-019, for a special permit to establish a meeting facility and related improvements on 21,400 square feet of land on a portion of the subject five-acre property in the Kauakea Subdivision, Pu'ukapu Homesteads, 2nd Series, South Kohala, Hawai'i, TMK (3) 6-4-17:23, is denied.

DATED: Hilo, Hawaii, MAR 20 2003.

PLANNING COMMISSION

By *Fred Galdon*
FRED GALDONES
Chairperson