

County of Hawai'i

PLANNING COMMISSION

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NOV 09 2006

Mr. Les Young
Realcom
1506 Ala Mahamoe Street
Honolulu, HI 96819

Dear Mr. Young:

Special Permit Application (SPP 06-000036)
Applicant: Verizon Wireless and Cingular Wireless
Request: Construction of a 120' Monopole Telecommunications Tower,
Equipment Shelter and Chainlink Fence
Tax Map Key: 1-6-10:portion 114

The Planning Commission at its duly held public hearing on November 1, 2006, voted to approve the above-referenced application to allow the construction of a 120-foot monopole telecommunications tower, two equipment shelters and chain link fence enclosure on approximately 1,983 square feet of land within the State Land Use Agricultural District. The area involved is on the site of the Church on a Sure Foundation situated along the west side of the Keaau-Pahoa Road (Highway 130), Orchidland Estates Subdivision, Keaau, Puna, Hawaii.

Approval of this request is based on the following:

The applicants are requesting a Special Permit to allow the construction of a new 120-foot high steel monopole telecommunications tower, appurtenant equipment shelters, and a six-foot high chain link fence enclosure on approximately 1,983 square feet of land on a 0.943-acre parcel. The objective of the telecommunication facility will be to provide higher and more consistent quality coverage for residents who live and travel between Keaau and Pahoa by "bridging" or linking the transmissions that now originates from the existing Keaau and Pahoa sites. The site will also provide needed coverage to the Orchidland Estates and Hawaiian Paradise Park Subdivisions.

The facility will consist of one unmanned 120-foot self-supporting steel monopole telecommunications tower with a total of twelve 8-foot high panel antennas for Verizon Wireless mounted on top in three separate sectors with four antennas on each sector. In

NOV 09 2006

the future, Cingular Wireless will add twelve 8-foot high panel antennas on the tower. The tower will be painted a non-reflective gray color. There will be equipment shelters constructed for each carrier, which will house all Base Transceiver Station (BTS) and radio cabinets along with indoor diesel emergency generators. A 6-foot high chain link security fence will enclose the facility. There will be room to include one additional carrier for co-location.

The grounds for approving a Special Permit are based on Rule 6-6 in the Planning Commission Rules. It states that the Planning Commission shall not approve a Special Permit unless it is found 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) the proposed use would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended.

The proposed use is an unusual and reasonable use of land situated within the Agricultural District. In recognizing that lands within agricultural districts might not be best suited for agricultural activities and yet classified as such, and in recognition that certain types of uses might not be strictly agricultural in nature, yet reasonable in such districts, the legislature has provided for the Special Permit process to allow certain unusual and reasonable uses within the Agricultural district. The applicants are requesting a Special Permit to allow the construction of a new 120-foot high monopole telecommunications tower and related equipment to provide better cellular phone coverage between the Keaau and Pahoa telecommunication sites. The project site will utilize a 1,983-square foot portion of a 0.943-acre parcel. The remainder of the parcel is being utilized for single-family dwelling uses, but in the future is proposed to be utilized as an office for the Church on a Sure Foundation, who owns the property. Based on the minimal use of land and the public benefit to be provided by the additional tower, the subject request is considered an unusual and reasonable use of agricultural land.

The granting of this request would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended. The State Land Use Law and Regulations are intended to preserve, protect and encourage the development of lands for those uses to which they are best suited in the interest of the public welfare of the people of the State of Hawaii. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use. The State of Hawaii Supreme Court issued a ruling on May 20, 1999 and affirmed the circuit court's reversal of the Board of Appeals order that HRS, Section 205-4.5(1) permits telecommunication towers as of right in the State Land Use Agricultural District. Therefore, a Special Permit is now required to establish a telecommunications tower on State Land Use Agricultural lands. Prior to this ruling, the Planning Department considered telecommunication towers as a permitted use under Section 205-4.5(a)(7), which lists "public, private and quasi-public utility lines and roadways, transformer stations, communications equipment buildings..."

as permitted uses. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use. The project site is situated on soil identified as Lava Flows, Pahoehoe (rLW), which has no soil covering and is typically bare of vegetation, except for mosses, lichens. The project site is classified as "E" or "Very Poor" soil by the Land Study Bureau's Overall Master Productivity Rating and is not classified by the Department of Agriculture's ALISH Map. The use will be located on a small portion of the property and will not displace any existing agricultural activity or diminish the agricultural potential of the subject property. Therefore, the proposed use will not adversely affect the preservation and agricultural use of the County's prime agricultural lands, and is not contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations.

In addition to the above listed criteria, the Planning Commission shall also consider the criteria listed under Section 6-3(b)(5) (A) through (G). In considering the criteria, the Planning Director recommends the following:

(A) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. This criterion has been met based on the previous discussion listed above, mainly because the subject request is considered an unusual and reasonable use of the agricultural land and the proposed use will not adversely affect the preservation and agricultural use of the County's prime agricultural lands that is not contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations.

(B) The desired use would not adversely affect surrounding properties. The project site is located on the west side of the Keaau-Pahoehoe Road (Highway 130), near the intersection of Pohaku Circle and the Keaau Pahoehoe Road. It is located on the site of the Church on a Sure Foundation. The telecommunication facility will utilize a 1,983-square foot portion of the 0.943-acre parcel, which is in the process of being consolidated with the adjoining parcel to the north. The remainder of the property has an existing single-family dwelling, carport and shed. Surrounding properties are similarly zoned A-3a within the Orchidland Estates Subdivision and zoned A-1a in the Hawaiian Paradise Park Subdivision across Highway 130. The surrounding area is characterized by a mix of vacant parcels and single-family residences. The 120-foot tower will be visible from the Keaau-Pahoehoe Road, but surrounding tall trees are expected to minimize the visual impact of the monopole. Additionally, the applicants are proposing to paint the monopole a non-reflective gray color to minimize visual impacts. The tower site will be a fenced facility and self-contained, with periodic maintenance and repair. The Telecommunications Act of 1996 recognizes the absence of health hazards from radio wave transmissions and accordingly prohibits local authorities from regulating the placement of communication towers based on environmental effects as long as those towers comply with the Federal Communication Commission's regulations. As the applicants have represented that they

will adhere to the FCC's regulations, no significant adverse impact to surrounding properties is expected. In addition, no objections or concerns were received from the community. Based on the above information, the applicants have met this criterion.

(C) Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. The applicants have met this criterion. The requested use will not burden public agencies to provide additional services. Only telephone and electricity is required for the requested use, which is available to the project site. Access to the property will be from Pohaku Circle, which is a private subdivision roadway with a 20-foot wide pavement within in an approximate 60-foot wide right-of-way.

(D) Unusual conditions, trends, and needs have arisen since district boundaries and regulations were established. In the 1960's and 1970's, the State's agricultural district boundaries and regulations were established and subsequently amended pursuant to HRS Chapter 205. The State Land Use Commission was created in 1961, and interim regulations and temporary district boundaries became effective in 1962. Subsequently, the regulations and Land Use District Boundaries became effective in August of 1964. At that time, the predominant means of audio communication was by traditional telephone service, and public, private and quasi-public utility lines and roadways including communication equipment buildings were permitted uses within the State Land Use Agricultural District. However, changes in technology in recent years has advanced beyond what the Land Use Law had envisioned for radio and telecommunications. While the State Land Use Law recognizes the need for public, private and quasi-public utility lines and roadways to be permitted within the Agricultural districts, Section 205-4.5 does not specifically permit telecommunication towers on Agricultural designated lands. According to a recent Supreme Court Ruling, a Special Permit is required in order to establish a telecommunications tower within the State Land Use Agricultural District.

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district. The project site is situated on soil identified as Lava Flows, Pahoehoe (rLW), which has no soil covering and is typically bare of vegetation, except for mosses, lichens. The project site is classified as "E" or "Very Poor" soil by the Land Study Bureau's Overall Master Productivity Rating and is not classified by the Department of Agriculture's ALISH Map. Based on the poor soil conditions and the small portion of land being utilized for this request, the applicants have met this criterion.

(F) The use will not substantially alter or change the essential character of the land and the present use. The proposed tower and related equipment will occupy only 1,983 square feet of a 0.943-acre parcel. The present residential use of the land will continue unless the church amends their Special Permit to include the dwelling as an

office in their operations. The small portion of land proposed for the use will not substantially alter or change the essential character of the land and its present use.

The Land Use Pattern Allocation Guide (LUPAG) Map component of the General Plan is a representation of the document's goals and policies to guide the coordinated growth and development of the County. It reflects a graphic depiction of the physical relationship among the various land uses. The LUPAG Map establishes the basic urban and non-urban form for areas within the County. The General Plan LUPAG Map designation for the property is Rural, which includes existing subdivisions in the State Land Use Agricultural and Rural districts that have a significant residential component. Typical lot sizes vary from 9,000-square feet to two acres. These subdivisions may contain small farms, wooded areas, and open fields as well as residences. Allowable uses within these areas, with appropriate zoning, may include commercial facilities that serve the residential and agricultural uses in the area, and community and public facilities. As only a small portion of the property will be used for the telecommunication facility, and the majority of the 0.943-acre parcel will continue to be used for residential uses, the request is consistent with the General Plan designation for this area. The request complements and is consistent with the Land Use, Economic, and Public Utilities elements of the General Plan.

The granting of this request would promote the effectiveness and objectives of Chapter 205A, Hawaii Revised Statutes, relating to the Coastal Zone Management Program. The project site is located on the mauka side of the Keaau-Pahoa Road in the Orchidland Estates Subdivision. Although no formal archaeological study was conducted of the site, the property has been developed with an existing single-family dwelling, carport and shed and it is unlikely that any archaeological features or threatened species of flora or fauna are present on the property. There is no record of a designated public access to the shoreline or mountain areas traversing the property. Due to the project site's distance from the shoreline, the property will not impact any recreational resources, scenic and open space or visual resources, coastal ecosystems and marine coastal resources. Further, there is no evidence of valued cultural, historical or native resources, nor evidence of any traditional and customary Native Hawaiian rights being practiced on the site.

Based on the above, the request to allow the construction of a telecommunication facility consisting of a new 120-foot monopole telecommunications tower, two equipment shelters and chain link fence enclosure on approximately 1,983 square feet of land would be an unusual and reasonable use of land within the State Land Use Agricultural District, and would not be contrary to the objectives sought to be accomplished by the State Land Use Law Rules and Regulations.

This request is approved subject to the following conditions:

1. The applicants, successors or assigns shall comply with all of the stated conditions of approval.
2. Construction of the proposed development shall be completed within five (5) years from the effective date this permit. Prior to construction, the applicants, successors or assigns shall secure Final Plan Approval for the proposed development from the Planning Director in accordance with Section 25-2-71(c)(3), 25-2-72, 25-2-74 and 25-4-12, Chapter 25 (Zoning Code), Hawaii County Code. Plans shall identify all existing and/or proposed structures, driveway access and parking stalls associated with the proposed development. Landscaping shall also be indicated on the plans for the purpose of mitigating any adverse noise or visual impacts to adjacent properties in accordance with the requirements of Planning Department's Rule No. 17 (Landscaping Requirements). Landscaping around all boundaries of the chain link security fenced area shall conform to the standard for separation of a RS (Single-Family Residential) from a ML (Limited Industrial) zone in Rule No. 17. The tower and antenna plans shall be stamped by a structural engineer.
3. Co-location or any expansion on the tower and antennae shall be allowed within the parameters of the building height and envelope as represented.
4. Within 120 days of the permanent abandonment of the tower, the applicants shall remove the tower, antenna and accessory structures. The applicants shall provide written notification to the Planning Director of such removal.
5. Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigative measures have been taken.
6. The applicants shall comply with all applicable County, State and Federal laws, rules, regulations and requirements, including the Federal Aviation Administration and Federal Communications Commission.
7. Upon compliance with applicable conditions of approval, and upon completion of construction for any portion of the development, the applicants shall submit a status report, in writing, to the Planning Director.

Mr. Les Young
Page 7


8. An extension of time for the performance of conditions of the permit may be granted by the Planning Director upon the following circumstances:
 - A. Non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicants, successors or assigns, and that are not the result of their fault or negligence.
 - B. Granting of the time extension would not be contrary to the General Plan or the Zoning Code.
 - C. Granting of the extension would not be contrary to the original reasons for the granting of the permit.
 - D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

Should any of the conditions not be met or substantially complied with in a timely manner, the Planning Director may initiate the revocation of the permit.

This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies.

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

Sincerely,



C. Kimo Alameda, Chairman
Planning Commission

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cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
Rodney Haraga, Director/DOT-Highways, Honolulu