

County of Hawai'i

PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

September 17, 2008

Ms. Marta V. Campbell
P.O. Box 357
Kurtistown, HI 96760

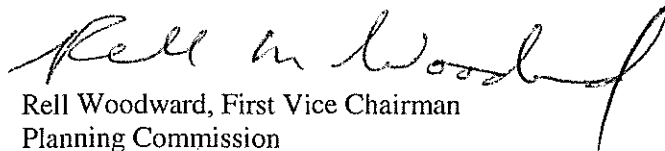
Dear Ms. Campbell:

Special Permit Application (SPP 08-000057)
Applicant: Marta V. Campbell
Request: Establishment of a Tutoring Center for K-6 Students
Tax Map Key: 1-5-27:43

Enclosed is the Findings of Fact, Conclusions of Law and Decision and Order to allow the establishment of a tutoring center on one acre of land situated within the State Land Use Agricultural District, which was approved by the Planning Commission at its meeting of September 4, 2008. The property is located along the makai side of 6th Avenue, approximately 2,300 feet south of the Makuu Drive and 6th Avenue, Hawaiian Paradise Park Subdivision, Puna, Hawaii.

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

Sincerely,


Rell Woodward, First Vice Chairman
Planning Commission

Lcampbell02pc

Enclosure

cc/enc: Department of Public Works
Department of Water Supply
Ivan Torigoe, Esq.
Amy Self, Esq.
Real Property Tax Office
Department of Health
State Land Use Commission
Department of Transportation-Honolulu
Planning Director
George and Meka Kaiser

SEP 17 2008

PLANNING COMMISSION OF THE COUNTY OF HAWAII

STATE OF HAWAII

Application of)	SPP No. 08-000057
)	
MARTA V. CAMPBELL)	FINDINGS OF FACT, CONCLUSIONS
)	OF LAW AND DECISION AND ORDER
Special Permit to Allow the Establishment of)	
a Tutoring Center on an one-acre parcel of)	
land within the State Land Use Agricultural)	
District in the Hawaiian Paradise Park)	
Subdivision, Puna, Hawaii)	
Tax Map Key: 1-5-027: 043.)	
_____)	

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DECISION AND ORDER**

I. FINDINGS OF FACT

A. Background

This matter involves an application submitted by Marta V. Campbell (referred to as "Applicant") for a Special Permit to allow the establishment of a Tutoring Center on an one-acre parcel of land situated within the State Land Use Agricultural District. The property is located on 6th Avenue, approximately 2,300 feet south of the intersection at Makuu Drive and 6th Avenue, Hawaiian Paradise Park Subdivision, Puna, Hawaii, Tax Map Key: 1-5-27: 043.

1. ***Proposed Development:*** The Applicant requests a Special Permit to allow the establishment of a Tutoring Center on an one-acre parcel of land. The Applicant proposes to establish the tutoring center in an existing dwelling for up to 16 children from Kindergarten to Grade 6.
2. ***Employees:*** One employee in addition to the Applicant.
3. ***Parking:*** Parking will be provided on site.
4. ***Days/Hours of Operation:*** Monday through Fridays (operating primarily Monday through Thursday) from 8:00 a.m. to 4:30 p.m.

B. Procedural Matters

1. On April 18, 2008, the Planning Department received the Applicant's Special Permit Application. On April 18, 2008, the Applicant mailed notice of the application to surrounding property owners within 500 feet of the property. Along with the application, the Planning Department received the Applicant's list of surrounding property owners and proof of mailing.

2. On April 18, 2008, the Planning Department acknowledged receipt of the Special Permit Application (SPP No. 08-000057).

3. On April 25, 2008, the Planning Director requested comments from public agencies no later than May 23, 2008. The agencies included the Department of Public Works, Department of Water Supply, Police Department, Fire Department, Department of Environmental Management, Civil Defense Agency, Department of Land and Natural Resources - Land Division and State Historic Preservation Division, Department of Health, State Land Use Commission, and the Department of Transportation.

4. On May 7, 2008, the Applicant posted a sign on the corner of Makuu Drive and 6th Avenue, in accordance with Chapter 25, Article 2, Division 1, Section 25-2-12 Hawaii County Code and the Planning Commission's Rules of Practice and Procedure.

5. By letter dated June 13, 2008, the Planning Department notified the Applicant that the Planning Commission would hold a public hearing on the application on July 10, 2008, in the County of Hawaii Aupuni Center Conference Room, 101 Pauahi Street, Hilo, Hawai'i. Notice of the public hearing was published by the Planning Commission on June 20, 2008 in the Hawaii Tribune-Herald and the West Hawaii Today.

6. On June 23, 2008, the Planning Department received a Petition for Standing in a Contested Case Hearing from George Frank Kaiser.

7. On June 26, 2008, the Planning Department acknowledged receipt of the Petition for Standing in a Contested Case Hearing from George Frank Kaiser.

8. On June 27, 2008, the Applicant mailed a notice of public hearing to property owners within 500 feet of the subject property.

9. The Planning Commission reviewed evidence and heard testimony at the public hearing on the application on July 10, 2008. The County of Hawaii Planning

Department was a party to the contested case hearing pursuant to Rule 4-7(a) of the Hawaii County Planning Commission Rules of Practice and Procedure.

C. Description of Property and Surrounding Areas

1. **Subject Property:** The project site is one acre in size and improved with a tri-level approximately 2,528-square foot single-family dwelling. Chain link fencing surrounds the site, and a gravel driveway provides access to the dwelling.
2. **State Land Use designation:** The property is designated Agricultural.
3. **General Plan LUPAG Map:** The property is designated Rural.
4. **Surrounding Zoning/Land Uses:** Surrounding properties are zoned A-1a and primarily vacant or in single-family residential uses. The closest dwelling is located to the rear of the property, on 7th Avenue. Parcels adjacent to the site and across the street are vacant.
5. **U.S. Soil Survey:** Soils on the property are classified as (rLW) Lava flows, pahoehoe; a miscellaneous land type.
6. **Land Study Bureau Soil Rating:** Soils within the property are classified as "E" or "Very Poor" for agricultural productivity.
7. **ALISH:** The property is unclassified under the ALISH map.
8. **FEMA:** The property is located within Zone "X", an area outside the 500-year flood plain.
9. **Floral/Fauna Resources:** No formal faunal study was conducted, as the property is improved. According to the Applicant, fauna in the area include mynah birds, cardinals and finches.
10. **Archaeological/Historical Resources:** The parcel is not listed on the Hawaii Register or the National Register of Historic Places. By letter dated April 3, 2008 (included in the application), the DLNR-HPD has stated that no historic properties will be affected by this undertaking because "at this time, the owner is requesting a change of use for subject properties [sic]; no ground-altering activities appear as part of the application."
11. **Cultural Resources:** According to the Applicant, there is no evidence of traditional and customary Native Hawaiian rights currently being practiced on the site.

12. **Public Access:** No known public access to the mountains or shoreline traverses the property.

D. Public Services and Facilities

1. **Access/Roads:** Access to the property is from Makuu Drive, to 6th Avenue. According to the Applicant, 6th Avenue is an approximately 40-foot right-of-way road with a 20 to 25-foot cinder pavement in good condition. Makuu Drive is paved up to 6th Avenue. All roads within the subdivision are private.

2. **Water:** The well on the property was approved and issued a certificate of pump installation completion on December 22, 2005 from the DLNR Commission on Water Resource Management. The Applicant has stated that should the permitted well not meet the standards expected for the special permit, bottled water will be provided to clients.

3. **Wastewater:** A cesspool services the property. The Department of Health has indicated that the "EPA requires an existing cesspool serving 20 or more persons in any one day to be upgraded to a septic system."

4. **Police, Fire and Medical Services:** Essential services are available to the site.

5. **Utilities:** All essential utilities are available to the site.

E. Agency Comments

1. The following agencies submitted comments in response to the Planning Department's request for written comments: Department of Public Works, Police Department, Fire Department, Department of Water Supply, Department of Environmental Management, Department of Land and Natural Resources Land Division, Department of Health, Land Use Commission and Department of Transportation.

A. **Department of Public Works:** "We have reviewed the subject application forwarded by your memo dated April 25, 2008 and have no objections to the request. The subject parcel is in an area that is not mapped by the Federal Emergency management Agency (FEMA) and is labeled as an area of "minimal tsunami inundation." For developmental purposes, we designate such parcels as Zone X - areas determined to be outside the 500-year floodplain. 6th Avenue, fronting the subject parcel, is a private right-of-way of 40 feet width."

B. **Police Department:** “Staff, upon reviewing the provided documents and visiting the proposed site, does not anticipate any significant traffic and/or public safety concerns at this time.”

C. **Fire Department:** “We have no comments to offer at this time in reference to the above-mentioned Special Permit Application request.”

D. **Department of Water Supply:** “Please be informed that the subject parcel is not within the Department’s service limits. The nearest adequate point of connection is from an existing 12-inch waterline within Keaau-Pahoa Highway, approximately 4.0 miles from the property access. Therefore, we have no objections to the Applicant’s request as the subject parcel is not within the Department’s existing service limits. Further, the Applicant has noted that water is provided via a private, permitted well source.”

E. **Department of Environmental Management:** “Applicant needs to verify with the Department of Health whether cesspool classifies as LCC. No CIP sewer planned for area. Commercial operations, State and Federal agencies, religious entities and non-profit organizations may not use transfer stations for disposal. Aggregates and any other construction/demolition waste should be responsibly reused to its fullest extent. Ample and equal room should be provided for rubbish and recycling. Greenwaste may be transported to the green waste sites located at the Kailua and Hilo transfer stations, or other suitable diversion programs. Construction and demolition waste is prohibited at all County Transfer Stations. Submit Solid Waste Management Plan in accordance with attached guidelines.”

F. **Department of Health:** “The development of a new potable water source is regulated by our Drinking Water Branch (Ph. 586-4258) in Honolulu. The reference Administrative Rules is Chapter 20, Potable Water Systems, Title 11, Department of Health, State of Hawaii. The Department of Health does not have any objections to the proposed change in land uses. However, existing or planned land use activities adjacent to the proposed residential area should be compatible with a residential neighborhood. We recommend that you review all of the Standard Comments on our website:

<http://hawaii.gov/environmental/env-planning/landuse/landuse.html>. Any comments specifically applicable to this project should be adhered to. EPA requires an existing cesspool serving 20 or more persons in any one day to be upgraded to a septic system. The existing 4 bedroom dwelling is assumed to be occupied by 8 persons based on 2 persons per bedroom. Based on 16

students and 8 occupants, the total number is 24 persons that may be in this dwelling at any one time.”

G. **Land Use Commission:** “We have reviewed the subject application forwarded by your transmittal dated April 25, 2008, and confirm that the subject parcel is designated within the State Land Use Agricultural District.”

H. **Department of Transportation:** “The proposed tutoring center for K-6 students will not adversely impact our State highway facilities. We have observed a trend in this piecemeal or “spot” type zoning or special permit applications and land use changes of agricultural lots in various areas of the county; and eventually the cumulative traffic impacts of these agricultural subdivisions at build-out phase will impact our nearby State highway facilities. We suggest that the County (a) shall review and monitor closely the increase of development and subdivision of agricultural lots; and (b) shall consider imposing a condition requiring applicants/developers for land use approvals to participate in cost-sharing arrangements regarding necessary roadway mitigation measures on our State highway facilities.”

I. **Department of Land and Natural Resources Commission on Water Resource Management:** December 22, 2005 Certificate of Pump Installation Completion letter (**Exhibit A**)

F. Public Comments

1. The following individuals submitted letters in support of the proposed Tutoring Center, which were received by the Planning Department and the Planning Commission: Lou and Bev Gill (map), Barbara Kahn-Langer, Jean E. West, Michael and Carol Dennis, Kathy Booth, Larry and Joy Brennan, Don Maclean and Frank Chase.

2. The Planning Department and the Planning Commission received letters in opposition to the Tutoring Center from Frank and Meka Kaiser and Philip Matlage.

II. CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the Planning Commission adopts the following conclusions of law, including conclusions on mixed questions of fact and law.

1) **HRS Chapter 205-6 provides in pertinent part as follows:**

§ 205-6. Special permit

(a) The county planning commission may permit certain unusual and reasonable uses within

agricultural and rural districts other than those for which the district is classified. Any person who desires to use the person's land within an agricultural or rural district other than for an agricultural or rural use, as the case may be, may petition the planning commission of the county within which the person's land is located for permission to use the person's land in the manner desired. Each county may establish the appropriate fee for processing the special permit petition.

* * *

(c) The county planning commission may, under such protective restrictions as may be deemed necessary, permit the desired use, but only when the use would promote the effectiveness and objectives of this chapter; provided that a use proposed for designated important agricultural lands shall not conflict with any part of this chapter. A decision in favor of the applicant shall require a majority vote of the total membership of the county planning commission.

2) ***Rule 6-6 of the Planning Commission Rules provides that the 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) Would promote the effectiveness and objectives of Chapter 205; Hawaii Revised Statutes, as amended.”

3) ***Rule 6-3(b)(5) of the Planning Commission Rules provides that in considering how the proposed use would promote the effectiveness and objectives of Chapter 205 and constitute an unusual and reasonable use of the land, the following criteria should be addressed:***

(b)(5) A statement of the reasons for the granting of the Special Permit citing how the proposed use would promote the effectiveness and objectives of chapter 205, HRS, and why the proposal is an unusual and reasonable use of the land. The following criteria shall also be addressed:

- (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;
- (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.

4) ***Hawai'i Administrative Rules (HAR) Section 15-15-95(b)(1)-(5) reiterates Rule 6-3(5)(A)-(D) of the Planning Commission Rules of Practice and Procedure and also requires that a petition for a Special Permit establish that:***

(a) The proposed use will not substantially alter or change the essential character of the land and the present use,

(b) The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design Plans.

5) ***H.R.S. Section 205-6(d) and HAR Section 15-15-95(b) delegate the authority to grant special permits to the County Planning Commission for proposals involving less than 15 acres.***

6) ***The existing use is an unusual and reasonable use of land situated within the State Land Use Agricultural District and would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes (HRS), as amended.*** 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 Hawaii. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use. In recognizing that lands within the 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. Soils on the property are classified as "E" or "Very Poor" for agricultural productivity by the Land Study Bureau and is unclassified by the Agricultural Lands of Importance to the State of Hawaii (ALISH) Map. As the use will be restricted within the existing dwelling, the proposed use will not displace any agricultural activity nor diminish the agricultural potential of the area.

7) ***The request is consistent with the objectives and policies as provided by Chapter 205A, HRS, and Special Management Area guidelines contained in Rule No. 9 of the Planning Commission Rules of Practice and Procedure.*** The project site does not abut the shoreline and will not be impacted by coastal hazard and beach erosion. No professional flora and faunal surveys were conducted of the site, since the property is currently improved. It is not anticipated that endangered or threatened candidate species of flora or fauna are located in the immediate project area. The project site has not been identified as a significant botanical or biological habitat. The property has been improved with a single-family dwelling and landscaped. According to the Applicant, there is no evidence of traditional and customary Native Hawaiian rights currently being practiced on the site. The parcel is not listed on the

Hawaii Register or the National Register of Historic Places. By letter dated April 3, 2008 (included in the application), the DLNR-HPD has stated that no historic properties will be affected by this undertaking because “at this time, the owner is requesting a change of use for subject properties [sic]; no ground-altering activities appear as part of the application.”

8) ***The desired use will not adversely affect surrounding properties.***

Surrounding properties are zoned A-1a and primarily vacant or in single-family residential uses. The closest dwelling is located to the rear of the property, on 7th Avenue. Parcels adjacent to the site and across the street are vacant. Due to the nature of the proposed use, it is not anticipated that the project will adversely impact surrounding properties. As a condition of approval, the Applicant will be required to comply with the Planning Department's Rule No. 17 (Landscaping Requirements) to mitigate any potential adverse noise or visual impacts to surrounding areas.

9) ***The establishment of a tutoring center within an existing dwelling will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection.*** Access to the site is from Makuu Drive, to 6th Avenue. According to the Applicant, 6th Avenue is an approximately 40-foot right-of-way road with a 20 to 25-foot cinder pavement in good condition. Makuu Drive is paved up to 6th Avenue. All roads within the subdivision are private. The well on the property was approved and issued a certificate of pump installation completion on December 22, 2005 from the DLNR Commission on Water Resource Management. The Applicant has stated that should the permitted well not meet the standards expected for the Special Permit, bottled water will be provided to clients at her own expense. A cesspool services the project site. As the Department of Health (DOH) requires the conversion of the existing cesspool to a septic system, a condition will be required to reflect the DOH's requirement. All essential utilities are available to the site.

10) ***Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established.*** The project site and surrounding areas are designated for agricultural uses by both State and County land use laws. However, through the issuance of a Special Permit, various “non-agricultural” services and uses may and have been established. The establishment of a tutoring center would allow the Applicant to provide educational opportunities to students in a portion of an existing dwelling. According to the Applicant, there is a need for a tutoring center in the Hawaiian Paradise Park subdivision as

many families drive their children to tutoring centers in Hilo. The proposed project would eliminate the drive to distant locations.

11) *The request will conform to, among others, the Land Use and Economic elements of the General Plan and is not contrary to the goals, policies and standards of the General Plan.* 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 property is designated Rural. According to the County General Plan, allowable uses within Rural designated areas may include commercial facilities that serve the residential and agricultural uses in the area, and community and public facilities. The proposed use is consistent with the Economic goals and policies set forth in the Hawaii County General Plan.

- Provide residents with opportunities to improve their quality of life through economic development that enhances the County's natural and social environments
- Economic development and improvement shall be in balance with the physical and social environments of the island of Hawaii
- Strive for diversity and stability in the economic system
- Provide an economic environment that allows new, expanded, or improved economic opportunities that are compatible with the County's cultural, natural and social environment
- Strive for an economic climate that provides its residents an opportunity for choice of occupation
- Strive for diversification of the economy by strengthening existing industries and attracting new endeavors
- Support all levels of educational, employment and training opportunities and institutions

Approval of the Special Permit would foster the economic goals and policies of the Hawaii County General Plan by encouraging the expansion of economic opportunities that are compatible with the natural and social environment of the community.

12) *The proposed request will not have a significant adverse impact on traditional and customary Hawaiian Rights.* The property is not adjacent to or proximate to the shoreline. As such, gathering of marine life and coastal access is not an issue. There are no known valuable cultural, historical, and natural resources found in the area. The DLNR-HPD has indicated that no historic properties will be affected by this undertaking. The Applicant has stated that there is no evidence of any traditional or customary Native Hawaiian rights being practiced on the project site, nor existence of any known valued cultural, historical or native resources in the area.

III. DECISION AND ORDER


Based on the above findings of fact and conclusions of law, the request to allow the establishment of a Tutoring Center on one-acre of land situated within the State Land Use Agricultural District is an unusual and reasonable use of land, which would not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. Special Permit No. 08-000057 is hereby approved subject to the following conditions. Should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate the revocation of the Special Permit by the Planning Commission.

1. The Applicant(s), its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
2. Should the Department of Health (DOH) determine that the permitted well does not meet DOH standards, the Applicant shall provide bottled water to clients.
3. The Applicant shall secure Final Plan Approval for the proposed use from the Planning Director in accordance with Chapter 25-2-70, Chapter 25 (Zoning Code), Hawaii County Code within 6 months from the effective date of this permit. Plans shall identify all existing and/or proposed structures, fire protection measures, parking stalls, and other improvements associated with the proposed use in accordance with Chapter 25, (Zoning Code), Hawaii County Code. Landscaping shall be provided to screen all play areas from adjacent properties. The property shall be fenced on three sides.
4. The proposed use shall be established within the existing single-family dwelling.
5. The hours of operation shall be limited to Monday through Fridays from 8:00 a.m. to 5:30 p.m.

6. All exterior signs shall conform to Section 3-12 of the Sign Code, Chapter 3 of the Hawaii County Code, relating to signs in the Agricultural district.
7. All development-generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties.
8. The method of sewage disposal shall meet the standards and requirements of the State Department of Health.
9. A Solid Waste Management Plan shall be submitted for review and approval to the Department of Environmental Management, prior to the issuance of a Certificate of Occupancy.
10. 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 - State Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from DLNR-HPD when it finds that sufficient mitigative measures have been taken.
11. Upon compliance with all conditions of approval and prior to the start of the operation, the Applicant shall provide, in writing, a final status report to the Planning Director.
12. The Applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
13. An initial extension of time for the performance of conditions 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 Applicant(s), 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 Zoning Code.
 - C. Granting of the time 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).

DATED: Hilo, Hawai'i, September 17, 2008.

By 
Rell Woodward, 1st Vice Chairman
Planning Commission