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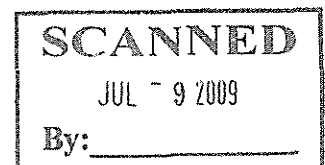
**BEFORE THE COUNTY OF HAWAI'I
PLANNING COMMISSION**

Application of SYLVIA DOLENA) SPP No. 09-000078
)
Special Permit to Allow the Construction of) FINDINGS OF FACT, CONCLUSIONS OF
a Temple for Religious Purposes, Three) LAW, DECISION AND ORDER
Guest Bedrooms for Overnight)
Accommodations, and to Conduct)
Agricultural Tourism on 5.007 Acres of)
Land within the State Land Use Agricultural)
District.)
)
Property situated at Kapoho, Puna, Hawai'i,)
TMK: 1-4-73:4.)
)

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

BACKGROUND

SYLVIA DOLENA (referred to as "Applicant") submitted an application for a Special Permit on February 13, 2009 to allow the construction of a temple for religious purposes, three guest bedrooms for overnight accommodations, and to conduct agricultural tourism on 5.007 acres of land within the State Land Use Agricultural



District. The property is owned by the Applicant and is situated along the southeast side of Ililani Road, approximately 2,400 feet from the Ililani Road - Kapoho Beach Lots Road intersection, Vacationland Hawai'i Subdivision, Unit II, Kapoho, Puna, Hawai'i, TMK: 1-4-73:4.

The Applicant provided statutory notice to the surrounding property owners of the June 5, 2009 Windward Planning Commission (referred to as "Commission") hearing. Mr. Albert Lono Lyman, representing Kapoho Land and Development, filed a Petition for Standing in Contested Case Hearing on June 1, 2009.

At its June 5, 2009 meeting, the Commission as a whole conducted the hearing on the Special Permit application with Commissioner Rell Woodward as the Chairman.

The Commission denied Albert Lono Lyman standing to intervene in a contested case hearing regarding the Project because the petition was not filed in a timely manner.

The Commission reviewed evidence and heard testimony at the hearing held on June 5, 2009, at the County of Hawai'i Aupuni Center Conference Room, 101 Pauahi Street, Hilo, Hawai'i.

All Commissioners voting on the instant Special Permit Application have reviewed the entire record and file herein.

The Commission, having considered the entire record, and having heard and considered the arguments, makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

A. Procedural Matters:

1. On February 13, 2009, the Planning Department received the Special Permit Application. The Applicant mailed the first notice of the application to surrounding property owners within 500 feet of the property on February 18, 2009 and additional mailings on February 24, 2009, which were not part of the first mailing. Along with the application, the Planning Department received the Applicant's list of surrounding property owners within 500 feet.

2. On February 26, 2009, the Planning Department acknowledged receipt of the Special Permit Application (SPP 09-000078).
3. On March 5, 2009, the Planning Director sent a request for written comments to public and interested private agencies, and requested written comments no later than April 2, 2009. The agencies included the Department of Public Works-Hilo, Department of Water Supply, Hawai'i County Police Department, Hawai'i County Fire Department, Department of Environmental Management, Civil Defense Agency, Office of Planning, Department of Land and Natural Resources - Land Division and State Historic Preservation Division, Department of Health, State Land Use Commission, Department of Agriculture, NRCS and Vacationland Community Association and Kapoho Beach Lots Community Association. Comments were received from all agencies except the Civil Defense Agency, the Land Use Commission and NRCS.
4. On March 10, 2009, the Planning Director sent a request for written comments to Kapoho Beach Lots Community Association and requested written comments no later than April 7, 2009.
5. The Applicant posted a sign on the property adjacent to the public roadway informing the public of the application in a timely manner.
6. By letter dated April 1, 2009, the Planning Department notified the Applicant that the Commission would hold a public hearing on the application on May 1, 2009, in the County of Hawai'i Aupuni Center Conference Room, 101 Pauahi Street, Hilo, Hawai'i.
7. By letter dated April 7, 2009, the Applicant informed the Planning Department that she would be off-island from April 23, 2009 through May 4, 2009 and asked that the May 1, 2009 hearing be re-scheduled.
8. By letter dated May 6, 2009, the Planning Department notified the Applicant that the Commission would hold a public hearing on the application on June 5, 2009, in the County of Hawai'i Aupuni Center Conference Room, 101 Pauahi Street, Hilo, Hawai'i. Notice of the public

hearing was published by the Commission on May 16, 2009 in the Hawai'i Tribune-Herald and the West Hawai'i Today.

B. Proposed Request:

1. The Applicant submitted a Special Permit Application to allow the following:

a. Temple:

- Construction of a temple for religious purposes. The temple is approximately 1,500 square feet in size.

b. Religious purposes - to conduct spiritually based ceremonies & celebrations, spiritual practices, energy healing practices, and educational sessions:

- Spiritually based ceremonies, which will include pujas, birthing, betrothal and wedding ceremonies, will be part of the activities associated with the temple. The majority of ceremonies are held once monthly with a maximum of 20 participants. Weddings will have a maximum of 50 participants.
- Spiritual practices, which will include various disciplines of Yoga, Tanta Yoga, Qi Gong, meditation, guided visualizations, prayers, chanting and dancing, and vision quests. These practices will be held on a weekly and monthly basis, with a maximum of 20 participants. Vision quests will be by appointment for 1-5 participants.
- Energy healing practices, which includes the Yuen method of Chinese Energetics, chakra activation, sound therapy and Tapas. These practices will be held on a weekly basis.
- Educational sessions, to teach the above referenced spiritual and healing practices. These sessions will be held once a month with a maximum of 20 participants. Additionally, the applicant will hold a 10-day initiation and

certification intensive workshop 2 to 4 times per year with a maximum of 40 participants.

c. Three guest bedrooms for overnight accommodations:

- There will be three (3) detached guest bedrooms available for overnight accommodations for the patrons of the agricultural tourism and religious practices conducted on-site. There is a guesthouse that has been constructed and the applicant is proposing to construct two (2) more detached guest bedrooms.

d. Conduct agricultural tourism:

- The applicant will be conducting agricultural tours of the property, which will include agricultural education classes. Topics covered will include sustainable farming, maximizing use of natural resources, designing for low maintenance, native plants and tilapia farming in an aquaponic system. The classes will be 4 hours to 1 day in length with a maximum of 20 participants. Normally, agricultural tours would be a permitted use in the State Land Use Agricultural District. However, the applicant is requesting to conduct agricultural tourism as part of the Special Permit request because they do not think they can meet the minimum requirements for agricultural tourism to show a minimum of \$10,000 in verifiable gross sales as listed in Section 25-4-15 in the Zoning Code.

2. The temple will have no employees but will have several volunteers available for different sessions.

C. Background information:

1. The Planning Department received a request for an additional farm dwelling from the applicant in January of 2006. The Planning Department returned the application because the applicant referred to a retreat farm

and educational center. The Planning Department's letter dated January 20, 2006 stated that the applicant cease and desist operation of "Pele Lani Retreat Farm and Ag Education Center" and remove all advertising of such. It also stated that there shall be no further use of the facilities without first obtaining approval of a Special Permit from the Planning Commission.

2. The applicant submitted a Special Permit application (Special Permit No. 08-000054) on February 21, 2008 to allow the establishment of a temple on 5,000 square feet of land within the State Land Use Agricultural District. The applicant withdrew the application on June 25, 2008 because it was incomplete.

D. Property Description and Surrounding Area:

1. The property is situated along the southeast side of Ililani Road, approximately 2,400 feet from the Ililani Road - Kapoho Beach Lots Road intersection, Vacationland Hawai'i Subdivision, Unit II, Kapoho, Puna, Hawai'i, TMK: 1-4-73:4.
2. The property is 5.007 acres in size and is roughly rectangular in shape.
3. The landowner of the property is Pele Lani Farm LLC.
4. Building Permit No. 990681 was issued from the County of Hawai'i Department of Public Works-Building Division on June 18, 1999 to construct a 2-bedroom/2-bath single family dwelling for the subject property. The permit was finalized on June 25, 2003.
5. Building Permit No. 000531 was issued from the County of Hawai'i Department of Public Works-Building Division on April 12, 2000 for additions to the existing single-family dwelling, which included enlarging an existing bath and adding several rooms and carport. The permit was finalized on June 25, 2003.
6. Building Permit No. B2007-1543H was issued from the County of Hawai'i Department of Public Works-Building Division on June 25, 2007 for a 2-story detached guest cottage.

7. Surrounding properties to the north and west are zoned A-1a, A-5a and FA-2a, and consist of agricultural uses, dwellings or vacant land. Properties to the south and east (or makai) are within the Kapoho Beach Lots Subdivision. The lots are zoned RS-10 and consist mainly of single-family dwellings or vacant land.
8. The U.S.D.A. Soil Type for the property is Malama extremely stony muck, 3 to 15 percent slopes (rMAD).
9. The Land Study Bureau Soil Rating identifies the property as having "E" or "Very Poor" soil and a portion in "Existing Urban Development".
10. The Agricultural Lands of Importance to the State of Hawai'i (ALISH) system classifies the property as "Other Important Agricultural Land" and a portion in "Existing Urban Development".
11. The Property is in an area designated as Zone X – an area determined by the Federal Emergency Management Agency (FEMA) to be outside the 500-year flood plain on the Flood Insurance Rate Map (FIRM).
12. Flora resources on the property include taro, soybeans, breadfruit, noni, papaya, mango, kao'ia, loulu palm, lauhala, and plumeria planted on the property. Ohia already exists on the property. Fauna resources include cardinals, Japanese white eyes, doves and mynah birds.
13. The Department of Land and Natural Resources- State Historic Preservation Division issued a "no effect" letter dated November 26, 2008 stating DLNR-SHPD has determined that no historic properties will be affected by this undertaking.
14. There is no evidence of any traditional native Hawaiian activities occurring on the property.
15. There is no public access to the mountains or the shoreline that traverses the property.
16. The Property is located approximately 1,000 feet from the nearest coastline and will not be impacted by coastal hazard or beach erosion.

E. State and County Plans affecting the Subject Property:

1. The Property is situated within the State Land Use Agricultural District and the County's Agricultural 1-acre (A-1a) zoned district.
2. The General Plan Land Use Pattern Allocation Guide (LUPAG) map designation for the Property is Important Agricultural Land.
3. The Property is not located within the County's Special Management Area (SMA).
4. The Property is subject to the Puna Community Development Plan, which was adopted by Ordinance 08-116 on September 10, 2008. There is no specific land use designation identified in the plan for the subject property.

F. Public Services and Facilities:

1. Access to the property is from Kapoho Beach Road to Ililani Road. Kapoho Beach Road is a private subdivision road, which is an approximate 20-foot wide paved road within an approximate 100-foot right-of way. Ililani Road is a private subdivision road, which is an approximate 12-foot wide compact cinder road within a 40-foot right-of-way.
2. County water is available to the property. The applicant would also add two (2) water catchment systems to meet additional water needs for the uses.
3. Wastewater would be disposed of into an approved individual wastewater system.
4. Telephone and electrical services are available to the site.

G. Findings Related to Impacts:

1. The Commission did not base its decision on the religious practices or proposed religious practices of the applicant.
2. In a letter dated April 2, 2009 from the Department of Business, Economic Development & Tourism-Office of Planning (OP), a portion of the letter stated "This proposal would entail large scale non-agricultural activities on-site including on-going religious activities on a weekly, monthly and

year round basis. These and other types agricultural activities would also attract many participants on a regular basis, with impacts which may be similar in nature to commercial activities. Also, of concern to OP is the approval of short-term vacation rentals. The applicant is proposing using one bedroom in the main house, and the construction of a two-bedroom guest house to be used as rentals, in conjunction with either the religious activities and ceremonies or the agricultural activities on the site.

Approving this proposal for a Special Permit may encourage the applicant as well as other home owners to further abandon in favor of commercial use of their property. Therefore, we recommend denial or approval with conditions sufficient to mitigate these concerns.”

3. In a letter dated April 4, 2009 from the Vacationland Hawai‘i Community Association, a portion of the letter stated “The permit will give the land a new use other than farm use. According to the plans submitted by the applicant and the information on the applicant’s website, Mauigoddess.com, the site will be used for commercial and for profit activities. It will also be used to house an undetermined number of guests and will require a certain amount of support help that will also need transportation. There will therefore be a significant increase in traffic on Ililani Road.”
4. In a letter dated April 6, 2009 from the Kapoho Beach Lots Community Association (KBCA), a portion of the letter stated “The permit will give the land a new use other than farm use. According to the plans submitted by the applicant and the information on the applicant’s website, Mauigoddess.com, the site will be used for commercial and for profit activities. It will also be used to house an undetermined number of guests and will require a certain amount of support help that will also need transportation. Although the property can only be accessed via Beach Lots Road, the owner of this property is not a member of KBCA and does not contribute to the maintenance of its roads. Beach Lots Road is

- privately owned and maintained solely at the expense of the members of KBCA and was never intended to support commercial volumes of traffic.”
5. In a letter dated April 24, 2009 from Jill Steele, a portion of the letter stated “My name is Jill Steele and my husband Andrew and I have received notice of the above listed special permit applied for by Sylvia Dolena. We are against any non-agricultural development within Kapoho Farm Lots. The above applicant is proposing a commercial venture that would increase traffic and noise in the surrounding area. Our house is directly adjacent to where the central focus of the gatherings would be. We are at 14-4960 Kapoho Beach Rd. Our TMK is 3-1-4-010-057. We live quiet lives and moved to this area precisely for this reason. The farm lots were established for agricultural purposes and we feel that the type of venture proposed belongs in a commercial area and not in a private community.”
 6. In a letter dated June 2, 2009 from Harry Samelson, a portion of the letter states “As a owner in Kapoho Beach Lots, I find her request to open a for profit tourist attraction to be an improper use of Farm Lots ag land and an undue burden on Kapoho Beach Road, a private Road maintained by KBCA which she does not financially support.”
 7. In a letter dated June 5, 2009 from Jack and Gladys Christenson, a portion of the letter stated “As property owners in both Kapoho Beach Lots and Kapoho Vacationland Hawai‘i, we oppose the granting of the subject Special Use Permit. This property lies within a zone restricted to agricultural uses and we feel that granting of this application would set an unwarranted precedent.” Further, the letter states “We ask that the Planning Department assist the two communities in maintaining their quiet enjoyment of their properties by denying this application.”
 8. In an email submitted at the Commission hearing on June 5, 2009 by Mike Lewis, a portion of the email states The Ililani access road to the applicants property, located within our Vacationland Farm Lots, is mostly red cinder and course rock and we have found over the years that even

minimal vehicle traffic on Ililani road erodes easily with increased traffic, and on dry days emits a large amount of dust which can irritably coat nearby houses and land. Also we, Vacationland Association landowners, pay for our road maintenance and feel the applicants client-based business ventures would severely increase both factors of increased dust and erosion, further increasing our annual maintenance for all owners.”

9. At the June 5, 2009 Commission hearing, Kenney Parrish testified against the proposed request citing noise and traffic impacts that the proposed request will create in the area.
10. At the June 5, 2009 Commission hearing, Mike Lewis testified against the proposed request citing traffic impacts, road damage and cost of maintenance to repair damaged roads.
11. At the June 5, 2009 Commission hearing, James Lehner testified against the proposed request citing traffic impacts, increased number of people to the area, road damage and cost of maintenance to repair damaged roads.
12. At the June 5, 2009 Commission hearing, Mitchell Norman Fenn testified against the proposed request citing noise impacts, traffic impacts and concerns of theft as a result of increased traffic creating the need to lock their gate and house.
13. At the June 5, 2009 Commission hearing, Patrick Kelly testified against the proposed request citing traffic impacts, increased amount of people to the area, road damage and cost of maintenance to repair damaged roads.
14. At the June 5, 2009 Commission hearing, Lono Lyman testified against the proposed request citing traffic impacts, setting a precedent for others to have hybrid uses, continuing to keep area in agriculture, and less than standard infrastructure for the proposed request.
15. At the June 5, 2009 Commission hearing, Mark Lane testified against the proposed request stating the proposed request was a “tantric, self-pleasuring sex center” and “sex ranch” instead of a farm or aquatic center. Mark Lane’s testimony regarding “tantric self-pleasuring sex center” and

“sex ranch” was accepted but not considered by the Planning Commission or used as a basis to deny or approve the application.

16. At the June 5, 2009 Commission hearing, Commissioner Andrew Iwashita made a motion to deny the application based on the following summarized reasons: 1) allowing other uses that are going to increase the values of the lands in that area then makes it more difficult for farmers to farm because the land costs too much to get the farming going. 2) This is ag land and under the General Plan it’s supposed to be for ag use. 3) Other properties in this area are successfully being used for commercial agriculture, that really should be the use that we want to promote in this area.
17. Commissioner Wallace Ishibashi seconded the motion.
18. Commissioner Domingo expressed his understanding that ag tourism has been provided for in our state to enable existing farmers who are currently struggling to bring tours on their properties for agricultural purposes and for them to look at agricultural endeavors and to see that, and enjoy what they would be raising in the property itself. For instance, macadamia nuts and other produce that they were raising on the property and at the same time they were able to sell, to sell certain souvenirs which were grown on the property in itself. That was to essentially help the farmers and their families to supplement their income.
19. There were other letters, signed petitions and testimonies received in support of the proposed request.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Commission makes the following Conclusions of Law, including mixed conclusions of fact and law.

1. The Commission has jurisdiction over this Special Permit application pursuant to Hawai‘i Revised Statutes Section 205-6.
2. Pursuant to HRS Section 205-6, and Planning Commission Rule 6.6, 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, Hawai'i Revised Statutes, as amended.
3. In considering the Special Permit application, the Commission shall also consider the criteria listed under Commission Rules Section 6.3(b)(5)(A) through (G), which are:
 - 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. In determining whether a proposed Special Permit use is "unusual and reasonable," the Planning Commission should consider the impacts of the proposed use. The Special Permit provides a mechanism for addressing the nature and impact of proposed uses. Curtis v. Board of Appeals, 90 Hawai'i 384, 397, 978 P.2d 822, 835, (1999).
5. Under the facts of this case, the Commission concludes that the establishment of agricultural tourism as described within this application will adversely affect surrounding properties with substantial increases in

traffic, increases in noise, and increased damage to the existing Kapoho Beach Road and Ililani Road, which is inconsistent with Commission Rule 6.3(b)(5)(B).

6. Additionally, the Commission concludes that the establishment of agricultural tourism as described within this application will substantially alter or change the essential character of the land and the present use, which is inconsistent with Commission Rule 6.3(b)(5)(F). The proposed use will change the character of the land and the present use from a quiet dwelling with agricultural uses to a transient accommodation facility and tourist attraction. Such a commercial and tourist use would be inconsistent with the reverent, protected non-commercial quietude and peaceful repose which reasonable people generally expect for an agriculturally zoned area.
7. Lastly, the Commission concludes that the establishment of agricultural tourism as described within this application will be contrary to the General Plan, which identifies the area for agricultural uses. This is inconsistent with Commission Rule 6.3(b)(5)(G). The Commission would rather promote the expansion of existing agricultural uses on this property than to allow the proposed requests, as other properties in this area are successfully being used for commercial agriculture.
8. Pursuant to HRS Section 205-6, the Commission has the duty to determine whether Applicant has carried the burden of showing that the proposed use is "unusual and reasonable" and will promote the objectives and effectiveness of HRS Chapter 205.
9. Based on the foregoing, the Commission concludes that although the proposed construction of a temple for religious purposes, three guest bedrooms for overnight accommodations, and establishment of agricultural tourism is an unusual use, under the peculiar facts it is not a reasonable use for purposes of evaluating a Special Permit application under HRS Section 205-6.

10. Therefore, the Commission finds and concludes that the instant Special Permit application should be denied.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, Application SPP No. 09-000078 for a Special Permit to allow the construction of a temple for religious purposes, three guest bedrooms for overnight accommodations, and to conduct agricultural tourism on 5.007 acres is hereby DENIED.

DATED: Hilo, Hawai'i, July 8, 2009.

By, 

Rell Woodward, Chairman
Planning Commission