

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

July 20, 2009

Mr. Martin Oliver
P.O. Box 233
Pāpa'ikou, HI 96781

Dear Mr. Oliver:

Special Permit Application (SPP 09-000083)

Applicant: Martin Oliver

Request: To Allow a Private, Non-Commercial Airstrip on Five Acres of Land

Tax Map Key: 9-5-5:13

The Planning Commission at a duly advertised public hearing on July 1, 2009, considered the above-referenced request for a Special Permit in accordance with Chapter 205-6, Hawai'i Revised Statutes, and Rule 6 of the Planning Commission, to allow the development of a private, non-commercial airstrip on approximately five acres of land situated within the State Land Use Agricultural District. The property is located approximately 1,000 feet northeast (mauka) of Wai'ōhinu Park and also mauka of Highway 11, Wai'ōhinu, Ka'u, Hawai'i.

The Commission voted to deny Special Permit No. 09-000083 based on the following findings:

The applicant is requesting a Special Permit to allow private, non-commercial aircraft to land, take off and park on approximately 5 acres of private land that is being operated as a commercial grass sod farm. The aircraft would require prior permission from the land owner/operator to take off, land or park on the airstrip and would operate under daylight visual flight rules per the requirements of the Federal Aviation Administration (FAA). The aircraft that would utilize the airstrip is owned by the applicant, and is a two seat light sport aircraft based at the Hilo International Airport. The airstrip is enclosed by an electrified barbed-wire fence, with the electricity provided by solar power. A six foot tall wind sock would be installed at the site. The applicant's objective is to use his aircraft to commute back and forth, up to two times per week, between the sod farm and his residence in Hilo in order to tend to the grass sod farm.

Hawai'i County is an Equal Opportunity Provider and Employer

SCANNED

By: _____

JUL 20 2009

The primary reasons for the denial recommendation are the adverse noise impacts to the residents of Wai'ōhinu town, the increased burden that would be placed on public agencies to respond to noise complaints from the Wai'ōhinu and Nā'ālehu communities, and the proposed use is not necessary for the continued use of the subject property for agricultural purposes.

The criteria for approving a special permit are based on Rule 6-6 in the Planning Commission Rules, which states that the Planning Commission shall 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, and the proposed use would promote the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes (HRS), as amended.

The proposed request is not an unusual and reasonable use of land situated within the State Land Use Agricultural District and would not promote the effectiveness and objectives of the State Land Use Law and Regulations and Chapter 205, 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 Hawai'i. 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 district 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 the agricultural district, the legislature has provided for the Special Permit process to allow certain unusual and reasonable uses within the Agricultural district.

The applicant's request is unusual in that it is not agricultural in nature; however, it is not reasonable because it will create significant adverse noise impacts on the surrounding community and it not necessary to carry out the existing agricultural activities on the land.

The land on which the proposed use is located is classified as "B" or "Good" soil by the Land Study Bureau's Overall Master Productivity Rating, which is the best class of soil as there are no Class A lands on the island of Hawai'i. Additionally, the land is classified as "Prime Agricultural Land" by the Agricultural Lands of Importance to the State of Hawaii (ALISH) Map. Lastly, the land is identified as Important Agricultural Land in the Land Use Pattern Allocation Guide (LUPAG) Map component of the General Plan. These classifications identify that this property and area have the highest agricultural potential for agriculture uses and should be preserved.

Prime Agricultural Land is land best suited for the production of food, feed, forage and fiber crops. The land has the soil quality, growing season and moisture supply needed to produce sustained high yields of crops economically when treated and managed, including water management, according to modern farming methods. The applicant is currently cultivating grass sod on the subject property for commercial purposes. However, the airstrip is not necessary for the continued use of the land for agricultural purposes in that the applicant could drive rather than fly from Hilo to the property to tend the grass sod. This would eliminate the adverse noise impacts associated with aircraft but allow the applicant to continue sod cultivation.

Additionally, a private landing strip would be better situated within an industrial zoned area or within an agriculturally zoned district where residences are far enough away to not be adversely affected by aircraft noise. For example, in 1988 the Planning Commission approved a special permit for a private landing strip at Pu'u Wa'awa'a Ranch in the North Kona district. This airstrip was situated on land used for cattle grazing with poorer soils for agricultural productivity than the subject property, and was located over 3,300 feet from the closest major roadway and 2 miles from the nearest community. Based upon the above discussion, the proposed use is not a reasonable use of land situated in the Agricultural district and would not promote the effectiveness and objectives of Chapter 205, HRS, as amended.

In addition to the above listed criteria, the Planning Commission shall also consider the following criteria listed under Section 6-3(b)(5) (A) through (G) of its rules of practice and procedure:

(A) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. This criterion is partially met based on the previous discussion listed above, mainly that 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. The property is classified as Prime Agricultural Land and the proposed airstrip is actively being cultivated for grass sod. However, the proposed use would be better located within an industrial area or on a large agricultural parcel that is located a sufficient distance from residences.

(B) The desired use would adversely affect surrounding properties. The surrounding properties are currently being used mainly for pasture purposes. The town of Wai'ōhinu is located approximately 600 feet southwest of the proposed airstrip. According to photographs provided by the applicant (Exhibit 1), the approach for aircraft landing at the airstrip is oriented near the town. Based upon the east-west orientation of the airstrip, it is also likely that aircraft taking off from the airstrip will fly near the town of Nā'ālehu. There are several residences located in these towns that will be adversely

affected by the aircraft noise. Airstrips are better suited in industrial areas because noise generated by the aircraft would be similar noise generated by other industrial uses.

(C) Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. In a memo dated May 27, 2009 (Exhibit 5), the Police Department noted that they received a complaint from a citizen due to the noise of the aircraft(s) from the airstrip in close proximity to Wai'ōhinu and Nā'ālehu towns. If this special permit request is approved it is likely that the Police Department will continue to receive these complaints, placing a burden on the Police and Planning Departments to respond to these complaints. Therefore, this criterion is not met.

(D) Unusual conditions, trends, and needs have arisen since district boundaries and regulations were established. This criterion is not met because the proposed airstrip is not necessary for the property to be used for agricultural purposes. The applicant can continue to tend to the grass sod farm by driving from Hilo to the property rather than flying.

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district. This criterion is partially met in that the airstrip is actively being cultivated in grass sod and the property is prime agricultural land, suitable for small-scale ranching and farming.

(F) The proposed use will not substantially alter or change the essential character of the land and present use. This criterion is not met because the quiet character of the land will be substantially altered due to noise generated by aircraft using the airfield.

(G) The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design Plans. This criterion is partially met. The property is identified as "Important Agricultural Land" in the General Plan, which are those lands with better potential for sustained high agricultural yields because of soil type, climate, topography, or other factors. The applicant is actively cultivating grass sod for commercial purposes on a portion of the property.

Based on the above reasons, this request is denied by the Planning Commission.

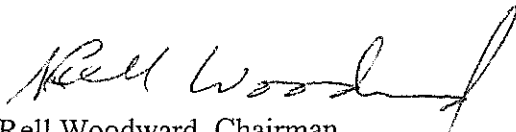
Mr. Martin Oliver

Page 5

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

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Rell Woodward".

Rell Woodward, Chairman
Windward Planning Commission

Lmartinoliverspp09-000083PC

cc: State Land Use Commission
Department of Public Works
Department of Water Supply
Brandon Gonzalez, Esq.