

PLANNING COMMISSION
COUNTY OF HAWAI'I

HEARING TRANSCRIPT
MAY 1, 2009

A regularly advertised hearing on the application of **RICHARD & CINDY VOGEL (SPP 09-77)** was called to order at 10:38 a.m. in the Aupuni Center Conference Room, 101 Pauahi Street, Hilo, Hawai'i with Chairman Rell Woodward presiding.

PRESENT: Rell Woodward
Takashi Domingo
Andrew Iwashita
Shelly Ogata
Wallace Ishibashi

Brandon Gonzalez, Deputy Corporation Counsel
BJ Leithead Todd, Planning Director
Norman Hayashi, Staff Planner
Phyllis Fujimoto, Staff Planner
Jeff Darrow, Staff Planner
Maija Cottle, Staff Planner

And 8 people from the public in attendance

APPLICANTS: RICHARD & CINDY VOGEL (SPP 09-77)

Special Permit to allow the establishment of a 1-bedroom bed and breakfast establishment within an existing 4-bedroom single family dwelling on 1-acre of land situated within the State Land Use Agricultural District. The property is located at 13-3357 Hookupu Street, approximately 2,700 feet north of the Hookupu Street – Leilani Avenue intersection, Leilani Estates Subdivision, Keahialaka, Puna, Hawaii, TMK:1-3-31:66.

WOODWARD: Agenda Item No. 4, Richard and Cindy Vogel, Special Permit Application 09-77, application for a Special Permit to allow the establishment of a 1-bedroom bed and breakfast establishment within an existing 4-bedroom single family dwelling on 1-acre of land within the State Land Use Agricultural District. Jeff.

DARROW: Thank you, Mr. Chairman. If I can direct your attention to the power point presentation. Our next application is a Special Permit to allow a 1-bedroom bed and breakfast within an existing 4-bedroom dwelling. The applicants are Richard and Cindy Vogel. The application is, or the request is located within the Puna district. More specifically we're looking at the Leilani Estates Subdivision. Pahoehoe would be located just north of the subdivision. You would be traveling on the Kalapana-Kaimu Road to the entrance of the subdivision. The actual property is located on the makai side of the subdivision or the lower subdivision identified

with a black outline on Hookupu Street. They are requesting a 1-bedroom bed and breakfast within an existing 4-bedroom dwelling that was constructed in 2006 on 1-acre of land.

This is an aerial photo that gives you a little overview of the surrounding properties, mainly you can see it's ohia forest. There is a dwelling located across the street and there are very few dwellings surrounding this property.

Looking at the plot plan, if you were to enter into the property it would be coming from your left side. The actual area where the 1-bedroom for the bed and breakfast is located is identified in red. This is over a covered area. The actual main residence is in this location. There is a roof that covers the majority of it and there's an opened deck; and you'll be able to see that in the pictures. This is the driveway entrance from Hookupu Street. Hookupu is a paved 20-foot wide road; and this is the actual residence. The open deck area is here and the 1-bedroom area for the B&B is located in that particular area.

The Planning Department is recommending that the Planning Commission approve this special permit application with conditions. Any questions?

WOODWARD: Commissioner Iwashita.

IWASHITA: Thank you, Mr. Chair. In the background report there was no specific reference to the various applicable provisions of the Puna Community Development Plan and, specifically, I guess I'd like the Department or the Director to address couple of points in the Puna Community Development Plan. The first is that in, I think it was at page 3-9, I guess Section 3.2.2, Objectives, the only reference that I could find to bed and breakfast in the Puna Community Development Plan was Item I under 3.2.2, which talks about to promote farm businesses such as local food stores and "farm stay" bed and breakfasts. There's no other reference to bed and breakfast that I could find in the Puna Community Development Plan. I guess my concern is that in the file we have a letter from the Office of Planning, the State Office of Planning, pointing out that approval of this bed and breakfast operation would basically discourage developing agricultural activity in Leilani Estates. And so given that and the Puna Community Development Plan's, basically as I see, limitation of bed and breakfast to "farm stay" type of bed and breakfast, I'd like the staff or someone to address that point.

DARROW: Thank you, Commissioner Iwashita. You are correct in stating that the Puna Community Development Plan is quiet in regards to overall use of bed and breakfasts within the Puna district. They do mention it within the different town centers (regional town center, community village center, and the neighborhood village center) as being other uses that can be allowed within those centers. But outside of those centers within these subdivisions it's mainly quiet. It does request to promote or support the "farm stay" type bed and breakfast. On these smaller type lots where agricultural activity is difficult based on the soil conditions and the size of the lots, you know, in our criteria for review we look at whether or not these particular applications or uses are going to affect the preservation of prime ag lands.

In this particular case we're looking at "E" soil which is very poor. We're looking at an area that's unclassified by the State of Hawai'i Agricultural Lands of Importance; and this is

considered under the General Plan as a rural type area, which is more residential/agricultural in nature.

This, again, looking at the plan, because it's silent, it doesn't give us very much, you know, direction in regards to what the specific action would be for this particular area in Puna in regards to bed and breakfasts. So our next step is, again, looking at the General Plan which does encourage bed and breakfast by supporting the visitor industry and, also, allowing for people, residents of Puna to be able to improve their quality of life and also their, it also allows for new economic opportunities.

You know, when we looked at this specific use it's a 1-bedroom bed and breakfast within an existing 4-bedroom. The applicants I believe live there alone so they have several empty bedrooms. They are looking at an opportunity to be able to increase their income, and this is a good opportunity. In Leilani Estates at this time there are only 5 bed and breakfasts overall in the 2,000 plus lot subdivision. So we don't see this as a use that is going to be detrimental to the preservation of agricultural lands. The actual land that is on this property can still be utilized for agricultural activities as well.

IWASHITA: Thank you, Mr. Darrow. Couple of other points I'd like to be addressed is that the Puna Community Development Plan, again, 3.2, Agriculture and Economic Development, it's on page 3-7, this is basically a discussion about preserving agriculture. And one of the points raised is, you know, rising land costs -- especially with subdivisions within subdivisions, I would add such as Leilani Estates, where residential dwellings are the principal use -- make it difficult for new farmers to acquire land for viable agricultural operations. So, I guess, you know, what we're doing, well, I guess this sort of emphasizes the point made by the Office of Planning. And that is that if we allow other nonagricultural uses in agriculturally zoned lands that really has -- this one has no, you know, there's no agricultural activity on this property, it's not being put out as an eco-tourism kind of thing -- there's no associated agricultural activity that this is tied to, then, you know, this obviously would have an effect in my mind of increasing the value of this property. And then if I was a real estate agent I would say, you know, once this approved, well, Leilani Estates can turn into a bed and breakfast community. And the value of the properties would go up, and then basically raising the concern raised by this point on 3.2, and that is, you know, authorizing other uses basically is going to raise the cost of the land and make it more difficult for farmers to afford land, you know, to people who want to farm. So part of my difficulty with this application is that although the Puna Community Development Plan is mentioned once in the background report there is no reference to any of these, in my mind, clearly applicable provisions. That's why I'm trying to raise them now.

WOODWARD: Commissioner Iwashita, if I might respectfully request that we delay this till we get to the discussion phase. We haven't yet heard from the applicant.

IWASHITA: Well, you know, I would like the Department or the Director to address these concerns, you know, because it involves basically the background report. And before, you know, I really don't have issues with or, you know, questions of the applicant. I'm really addressing this to the Department.

And the other point is in the Puna Community Development Plan, 3.2.1, Goals, all of the goals, “a” through “g”, all talk about agricultural activities, and one reference to ecotourism. So, you know, the Puna community has spoken in terms of what has already been -. You know, we talk about the General Plan designation as agriculture and now we’re talking about are we going to enforce that or not. Special Permit applications are supposed to be unusual kinds of activities. Well, I would, I guess my concern is that approving this, you know, as an unusual activity basically would submarine or torpedo many of the provisions here in the Community Development Plan. So I’d like those addressed. I would have preferred that they had been addressed in the background report, but we can discuss it now.

WOODWARD: Planning Director.

LEITHEAD TODD: Mr. Darrow, could you put the overhead up that shows the surrounding property. Yeah, okay.

If you look at Chapter 205 of the Hawai‘i Revised Statutes it recognizes that when they did land use classification and moved or classified a lot of properties as agriculture, it didn’t necessarily mean that the property was suitable for agriculture. It frequently meant that it was the catch-all classification where land got put into. It didn’t necessarily mean that it was good agricultural land. It didn’t necessarily mean that it was actually being used for agriculture. My understanding is this is a pre-1976 subdivision.

DARROW: Correct, it was approved on February 15, 1960.

LEITHEAD TODD: Okay. So it is one of those subdivisions where they have a right to build a single family residence as opposed to coming in with a farm dwelling. So they have a legal right to build single family. If you can look at the surrounding property what you have is ohia. And there has been in the past mixed signals, I think. On the one hand the Puna community would like to support agriculture. On the other hand they also want to try and protect the native forest that is in the lower Puna area. And so where you have a property here where they have not clear-cut it from property line to property line it’s actually something that is supported by the community. You have an existing single-family residence which is legally permitted, you have property that is not very good for agriculture based on its soil.

To me when you’re looking at a special permit you’re looking at whether it’s an unusual or reasonable use of the property, and you’re also recognizing that some of the property that’s classified agriculture is not suitable for agricultural production. I think given its location and the fact that it’s an existing house and it’s one room in this house, that it certainly fits within the parameters of a special permit application. It also fits into some of the visions for Puna, which is that rather than having people have to commute all the way into Hilo for job opportunities that there would be more sustainable job opportunities within the Puna area. This allows this family to derive some income from their property which is otherwise not available to them. And I think that in that sense it does fit in with what the vision for Puna is. Thank you.

WOODWARD: Thank you. I have one question. It says here that there will be parking provided. Of course, it would be for only one car I assume. But I am not able to tell on this site plan where the parking for the guests would be. Maybe I'm just overlooking it.

DARROW: There's an overall site plan that was submitted, Mr. Chairman. And I don't think it's identified by an exhibit. It's just before the plot plan for the house. Maybe what we can do is ask the applicant specifically where they're going to be using the parking. But we had conducted a site inspection of the area, and there's ample room for parking on the property.

WOODWARD: All right, very good. Any other questions before we call the applicant? Okay, seeing none, if we could have the applicants come to the table. And first I'll need to swear you in. If you'll raise your right hand. Do you swear or affirm to tell the truth today before the Windward Planning Commission?

C. VOGEL: I do.

R. VOGEL: I do.

WOODWARD: Okay. Now if you'll give us your name and address, and then you're free to begin your testimony.

C. VOGEL: Thank you. Cindy Vogel, 13-3357 Ho'okupu Street.

R. VOGEL: Richard Vogel, same address.

WOODWARD: Okay.

C. VOGEL: Thank you for the opportunity. We have nothing to add other than I can address your parking concerns if you'd like.

WOODWARD: Okay.

C. VOGEL: May I approach so I can point it out on the -?

WOODWARD: Sure.

C. VOGEL: Thank you.

LEITHEAD TODD: Is there one prior to that, Jeff?

C. VOGEL: No, I -.

LEITHEAD TODD: Okay.

C. VOGEL: I should be able to point it out right there. You can see the stairs leading up to the front deck?

WOODWARD: Right.

C. VOGEL: They would be entering the property from this left side here. There's a driveway, and this area right here is designated for parking. We have solar lights that will come on in the evening to provide light.

WOODWARD: Okay, very good.

C. VOGEL: Thank you.

WOODWARD: Anything else?

C. VOGEL: No, I have nothing else to add. Any further questions?

WOODWARD: Okay. Any questions? All right, seeing none you may be seated.

C. VOGEL: Thank you.

WOODWARD: Thank you. All right, I guess we're ready to entertain a motion.

IWASHITA: Mr. Chair?

WOODWARD: Yes.

IWASHITA: I have an additional question for staff actually. Are there any other B&Bs in Leilani Estates?

DARROW: Yes. There are five other B&Bs.

IWASHITA: There are?

DARROW: Yes.

IWASHITA: And how long ago were the done or -?

DARROW: A majority of them were approved in 1990, four of them; and then there was one approved in 1999.

IWASHITA: Thank you. Are they all 1-bedroom ones or -?

DARROW: There are several 2-bedroom and several 3-bedroom, and one 1-bedroom.

IWASHITA: Thank you.

WOODWARD: Commissioner Domingo.

DOMINGO: Mr. Chairman, just one question. Are these parcels all prior to the adoption of a General Plan, pre-General Plan era?

DARROW: The actual subdivision?

DOMINGO: Yes.

DARROW: Yes. This was in 1960.

DOMINGO: I think -. Mr. Chairman, if I may?

WOODWARD: Yes, sir.

DOMINGO: You know, if we look back in history, it's a notable issue. In fact there was a book written about this very issue, and I think it's titled "LAND AND POWER," and how it all came about where there were no regulations, restrictions, or requirements as to what you can and you cannot do. And that's why there are so many vacant lands in Puna; and they're all zoned agricultural parcels but today are being used for residential uses. And I guess when you consider the zoning, you know, soil contents and its value has to be noted, streets and water as we have provided for, all these were absent at that time; and we find similar situations throughout the entire island. And I can think of Kamuela, on the slopes of Kamuela, where you have a huge, I call it huge residential parcels zoned agriculture but with people living on it.

And I think the problem here is that when we think and we insist and look at agricultural zoned lands, not all of those lands are suitable for any agricultural pursuits. But I've heard a lot of comments from my colleague before that, you know, you can have a dry arid, poor soil property and still do agriculture; and that's true because there are many methods in which you can do those things, hydroponics, and hot houses, and all of those that are taken into consideration. But I think when we look at all of these smaller agricultural parcels with residences on it -- and here in this particular case we're finding an individual with one house on their single property wanting to establish a bed and breakfast, you know, and in their own description it's to help with the economic situation -- and I think when we look at the use being unusual but reasonable as described in HRS 205, then this falls within that category. And I have no problem in approving any application with regards to bed and breakfasts as long as they fall within this premise as described in HRS 205.

WOODWARD: Very good. Let me do one thing I forgot to do. If we could have Ms. Vogel come back up for a second. I just want to make sure that you've had a chance to review the recommendations of the Planning Department and the conditions, and those are acceptable to you.

C. VOGEL: Yes, we have. Yes, we are.

WOODWARD: Okay, thank you very much. You may be seated. All right, now, further discussion.

IWASHITA: Mr. Chair?

WOODWARD: Yes, sir.

IWASHITA: Yes, thank you, Mr. Chair. The information about the five prior approvals for bed and breakfasts in this subdivision from almost couple decades ago now, I think, goes to the point about whether or not this is really an unusual use of this property, of the land. And, you know, I guess Leilani is a relatively more developed subdivision than some of the other substandard subdivisions in the Puna area. There are quite a number of houses actually down there, and it's one of the more desirable, I guess, locations in the Puna area with it being on the slope down there.

The concern, again, I really have is that -. You know, the Puna Community Development Plan has addressed the points that we're talking about. I don't think we can, you know, the law is the Puna Community Development Plan is the law. And so now when we're talking about basically reasoning our way around those sections that, in my mind, are applicable -- and no one has cited any other provisions that, you know, really state to the contrary -- the specific goals, the policies, all of those things really, you know, none of those things support the approval of this application. That's my difficulty now. And, you know, the fact that the only specific authority in the Puna Community Development Plan for bed and breakfasts are for those which are associated with agricultural activity -- you know, that's what it says -- the fact that it's silent as to others in the various substandard subdivisions in the Puna area, is not, that's not evidence that there should be more bed and breakfasts there.

So, you know, my sense right now is that because the Puna Community Development Plan is the law, and because all the policies and goals and implementation provisions of the Puna Community Development Plan do not support and, in fact, arguably speak against allowing this special permit application for a bed and breakfast that, you know, my sense is that relying on that, it really is not an unusual, or can't be reasonable if it's contrary to the Puna Community Development Plan.

The other concern that I have is -. I know that the action committee for the Puna Community Development Plan has not been appointed. It's there but the Mayor hasn't appointed the people to populate it, and that to me is problematical again because, you know, it would be nice to have perhaps some input from the action committee about yeah, well, this one is okay. So those are my concerns. I am, you know, again, because of that, I am really uncertain whether I should support this or not. Thank you, Mr. Chairman.

WOODWARD: Thank you. Any other comments? Are we ready to entertain a motion then? Commissioner Domingo.

DOMINGO: Mr. Chairman, thank you very much. With regards to the application submitted by Richard and Cindy Vogel, Special Permit No. 09-77, I move for its approval based on the recommendation of the Planning Director and the contents therein with regards to the requirements.

OGATA: Second.

WOODWARD: All right, it has been moved and seconded. Discussion? I guess not. All right, Jeff, let's take a vote.

DARROW: Thank you, Mr. Chairman. The motion before us is to approve. With that I'll take the vote. Commissioner Domingo?

DOMINGO: Aye.

DARROW: Commissioner Ogata?

OGATA: Aye.

DARROW: Commissioner Ishibashi?

ISHIBASHI: Aye.

DARROW: Commissioner Iwashita?

IWASHITA: No.

DARROW: And Mr. Chairman?

WOODWARD: Aye.

DARROW: The motion passes four to one.

WOODWARD: Thank you. You'll be notified in writing.

The discussion ended at 11:06 a.m.

Respectfully submitted,

Sharon M. Nomura, Secretary
Windward Planning Commission