

WINDWARD PLANNING COMMISSION
COUNTY OF HAWAI'I

HEARING TRANSCRIPT
JUNE 5, 2009

A regularly advertised hearing on the application of **SYLVIA DOLENA (SPP 09-78)** was called to order at 10:37 a.m. in the Aupuni Center Conference Room, 101 Pauahi Street, Hilo, Hawai'i with Chairman Rell Woodward presiding.

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

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

And approximately 22 people from the public in attendance

APPLICANT: SYLVIA DOLENA (SPP 09-78)

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 of land situated within the State Land Use Agricultural District. The property is located along the southeast side of Ililani Road, approximately 2,400 feet from the Ililani Road - Kapoho Beach Lots Road intersection, Vacationland Hawaii Subdivision, Unit II, Kapoho, Puna, Hawaii, TMK: 1-4-73:4.

WOODWARD: The next item on the agenda is an application by Sylvia Dolena (SPP09-78), 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 plus acres of land situated within the State Land Use Ag District. Jeff.

DARROW: Thank you, Mr. Chairman. Again, if I can direct your attention to the presentation on the board. The applicant in this case is Sylvia Dolena. She is requesting a special permit to allow the construction of a temple for religious purposes, three guest bedrooms for overnight accommodations, and also to be able to conduct agricultural tourism on 5.007 acres of land.

The location of the application is within the Puna district, more specifically we're looking at the Kapoho Beach Lots Subdivision. This is just outside the Kapoho Beach Lots Subdivision in what has been referred to as Kapoho Farm Lots. This is actually Vacationland Unit II

Subdivision. To the left side of the map we have the Red Road; and coming into the Beach Lots we have Kapoho Beach Road; and then the actual access road to the property is Ililani Street or Ililani Road. This is an overview aerial photo. Again, we show Ililani Road. The property is outlined with a red outline. There is an existing dwelling on the property and also a guest house that has been built right in this particular location. There are existing dwellings in the area, mainly the Beach Lots. There also is a dwelling located on the adjacent property.

The applicant is requesting the construction of a temple for religious purposes. I believe this is approximately 1500 square feet in size, three guest bedrooms, let me go back on that. The religious purposes are to be able to conduct spiritually-based ceremonies and celebrations, spiritual practices, energy healing practices, and educational sessions. The background report goes into a little further detail as to what type of sessions and ceremonies these particular religious purposes involve. Again, three guest bedrooms for overnight accommodations -- one has been constructed, two are proposed to be built -- and, lastly, to be able to conduct agricultural tourism on the five-acre property.

This is a plot plan of the property, site plan. The lower portion of the map shows the access road, Ililani Road. There is an existing driveway on the property. Again, we show the, I believe this is where the existing dwelling is, right in this particular location. The proposed temple is going to be in this particular area. There is an existing guest house, and then there is going to be several, two other guest houses built here, as well as a bath house. This, in this particular location there is an existing pond on the property. They have been also required to put in a fire road, and that's on the right side of the property in this particular area. This is just an elevation shot of what the temple will look like when it is constructed. These are some site photos. This is right in front of the property looking towards Kapoho Beach Road. This is Ililani Road. As you can see it's a compact gravel road approximately 12 feet wide. This is the access road or the driveway into the property which is gated. This is the existing dwelling that's located on the property. This is the temple site where the temple will be constructed. This is just next to the existing dwelling. Just to the right over on this side is where the existing guest house is and then the other guest houses are going to be built right in this area along the tree line. This is the existing guest house that is constructed at this time. Again, this is the location of the additional guest houses; and this is the existing pond. Apparently this was constructed prior to Ms. Dolena purchasing the property.

These are aquacultural ponds that are being constructed. There were several of them on the property when we had conducted the site inspection, as well as there was quite a bit of agricultural activity that was occurring on the property. They were in the process of planting all types of fruit trees and doing these aquaculture ponds.

The Planning Director is recommending approval with conditions. If I could direct your attention to the conditions, there are, there have been some concerns regarding this application, especially about traffic impacts, as well as noise impacts, and those types of issues. We have tried to address these impacts within our conditions. Condition 3 goes into quite detail in regards to limiting certain activity on the property. There are hours of use, there are amounts of visitors at any given time, there are amounts of weddings that can occur per month, there are limitations as far as the guest bedrooms, as well as the type of passenger vans that can be permitted (no buses, it will allow up to 25-passenger type buses, but no large buses), as well as "g" states that there will, no concerts, conventions, and other types of special events and activities shall be

prohibited on the property. Use of amplification devices for speech and music shall be prohibited. And then there's a noise level associated with that that usually the Department of Health will monitor. Condition No. 5 addresses improvements to Ililani Road. It states that the applicant shall pave Ililani Road with a 2-inch thick asphalt concrete (A/C) material, 12 feet wide, from the intersection of Ililani Road and Kapoho Beach Road to the northeast end of the subject property, prior to Certificate of Occupancy. The majority of the other conditions are basically our standard conditions.

We have received several correspondence since the application has been sent to the Commission, if I could just bring those to your attention. We have received several correspondence from the representative. One is dated May 28th which has quite a number of signatures for support, as well as several letters. We have a correspondence from their representative dated June 3rd. Again, these are letters of support, one of them from Council Member Naeole, and we've received two letters this morning that have just been passed out to the Commission, one is from Jack and Gladys Christenson, as well as Harry Samelson. And, lastly, we have received a petition for standing in a contested case hearing. This is from Mr. Albert Lono Lyman dated June 3rd, I'm sorry, our letter back to Mr. Lyman is dated June 3, 2009. The actual petition is stamped, date stamped June 1, 2009 from the Planning Department. Are there any questions?

WOODWARD: Mr. Domingo.

DOMINGO: Thank you, Mr. Chairman. Mr. Darrow, we had a brief discussion on this. And just for my own satisfaction and to have a clear understanding of it, because with regards to ag tourism it's something that has been, an interest has been growing into ag tourism with all the farmers trying to find ways and become more innovative in helping them to support their farm and their families. We have in the Zoning Code the requirements for establishing ag tourism operations. And it states, one, that the agricultural activity or agricultural products processing facility must have a minimum of \$10,000 in verifiable gross sales; and it also says an agricultural tourism operation shall have a maximum of 30,000 visitors annually. And, let me see, those are just some of the real important issues that just keep coming to my mind. Because, you know, it seems like it's practically impossible for any farmer to comply with these kinds of requirements. It also says ag tourism in the Agricultural, and FA-1a, and RA districts shall not include weddings, parties, restaurants, schools, catered events or overnight accommodations, unless allowed by special permit or use permit.

And I think, and as I look at it what we have, in my own interpretation, are two, two applications. One is for the establishment of a temple for its described uses and another one is establishing an ag tourism industry wherein certain activities are permitted. And along with that, you know, the ag tourism requirements does specify that there be no overnight accommodations. So how are we addressing the culmination of the uses in this one special permit?

DARROW: Thank you, Mr. Domingo. If I could address those questions. Basically each one of these items, the temple, the guest bedrooms for overnight accommodations that are in association with agricultural tourism require a special permit. Agricultural tourism could be a permitted use within the State Land Use Agricultural District and County Agricultural District, if they comply with the requirements stated in the Zoning Code under Section 25-4-15. It states under Subsection (C) that agricultural tourism activities in the ag district that does not conform to this section shall obtain a special permit. So when we had spoken to the applicants regarding

this because we were intending not to include agricultural tourism as part of the special permit, they had informed the Planning Department that they did not feel at this time they could meet the minimum criteria to be a permitted use under the agricultural tourism section. So at that point we needed to include that particular request within the special permit. Again, it also states, as you had mentioned, that these overnight accommodations and weddings that are also requested by the applicant do require the special permit, as well as any type of church or temple activity. So in a sense even though there are multiple requests, they're all coming together under one special permit request. We're trying to address each of the issues in the conditions. Usually we don't see too many special permits that come before the Planning Commission with so many requests. And so we're trying to be creative in addressing all the possible impacts that can occur from each of the different areas.

DOMINGO: So, in essence, in approving this special permit we're actually exempting the applicant from these requirements as contained in the Zoning Code?

DARROW: Correct.

DOMINGO: We're exempting it?

DARROW: I don't know if you would, what the term exempt means. But if they don't meet that criteria it's okay because they have a special permit. If they do, that's okay, they still have a special permit. But at this time if they get to a position maybe, I don't know even know if they would be able to because of the fact that in the Code it states that if they do have overnight accommodations associated with this activity, they need the special permit. So there is the possibility that if they start to comply with the agricultural criteria mentioned in Subsection (d) that maybe they may not need a special permit anymore. But that can, maybe at some point they can amend the permit to be able to come in and say we'd like to delete the special permit requirement for the ag tourism because we're meeting all those criteria; and then they would just have the permit for the overnight accommodations as well as the temple.

DOMINGO: I see. Well, you know, Mr. Darrow and Members of the Commission, I'm asking these questions only because in the event that we have a bonafide farmer established already wanting to establish an ag tourism district then in essence he would be required to meet all of these requirements. And as I look at these requirements, you know, it sometimes seems to be impossible for anyone to meet these because of having over "x" number of visitors, anticipating "x" number of visitors a year. Was it 30,000 or so?

DARROW: I think that's the maximum.

DOMINGO: Yeah.

DARROW: So that would be quite a bit of activity occurring on the property.

DOMINGO: Thanks. Thank you very much. Thank you, Mr. Chairman.

WOODWARD: All right. Any other questions for staff?

ISHIBASHI: Just -.

WOODWARD: Commissioner Ishibashi.

ISHIBASHI: Just one point of clarification in regards to the pond. You say the pond was in existence prior to her purchasing the property?

DARROW: That's my understanding. I mean maybe the applicant can go into detail. It was my understanding that the previous owner had actually dug this massive hole and -. But, again, we can get further clarification from the applicant.

ISHIBASHI: Thank you.

WOODWARD: All right. Any other questions for staff? Seeing none, we have had a late submission of a petition for contested case hearing; and we'll ask Mr. Gonzalez, our Corporation Counsel, to fill us in.

GONZALEZ: Okay. Thank you, Mr. Chair. According to our rules, the Commission has to take up the matter of whether or not to grant or deny the request for petition for standing in a contested case hearing before it can proceed any further. So there has been one request submitted. And so the Commission has to decide now whether or not to grant or deny. I would like to point out that according to our, the Planning Commission rules, the petition for standing in a contested case hearing is required to be filed no later than seven days prior to the Commission's first scheduled public hearing to consider the application. So what that means is that today is the first day of public hearing on this application, Friday, June 5th. Seven days prior to this would have made filing date May 29th. According to the files and records with the Department the written submission for petition for standing in contested case hearing was not received and filed with the Department until June 1, 2009, which puts it in violation of Rule 4-7, subsection (a). Also, according to the records and files, the applicant in this case was informed of the hearing date pursuant to Planning Commission Rules of Practice and Procedure 6-5 by letter dated May 6th. And then on May 14th, on or about May 14, 2009, the applicant provided written notification and mailed it to owners pursuant to Rule 6-5. Within that written notification to owners the language explicitly states that the hearing is on Friday, June 5th and that as a neighboring landowner you have the right to submit a written request for a contested case procedure and to file such written request on the attached form "Petition For Standing In Contested Case Hearing," that the request shall be filed with the filing fee and that the required information shall be submitted no later than seven calendar days prior to the Commission's first scheduled public hearing.

Now the practical implication of that is that a contested hearing is basically a proceeding where a person or agency is recognized as a party to the proceeding and they are given certain procedural rights, like cross-examination, written arguments to the Commission and written finding. The contested case hearing is not a constitution or statutory right. Persons or agencies have the constitutional and statutory right to participate and be heard in a hearing when required by law. However, the right to participate and be heard can be accomplished without having to secure formal party status or the right to cross-examination, etc., and without violating the party's constitutional due process or statutory rights.

So what is required now is the Commission needs to vote on whether to grant or deny the petition for standing for a contested case hearing.

WOODWARD: So if I might paraphrase what you're saying, there's clearly, this clearly was not filed in a timely fashion and violates the rules for filing for a contested case. And if we deny that standing then the person will be given the opportunity to testify, but without the special standing of a contested case?

GONZALEZ: That is correct, Mr. Chair. The person will be able to give public testimony and present their concerns regarding the application, but there will not be the formality of a contested case hearing procedure.

WOODWARD: Very good. Anybody have any questions of our counsel? Okay, I guess we're ready for a motion with regard to this contested case question. Commissioner Iwashita?

IWASHITA: Mr. Chair, I move that the contested, the petition for standing in a contested case hearing submitted by A. Lono Lyman for Kapoho Land and Development Company which is, appears to have a notarized date of May 28, 2009, which was received by the Department of June 1, 2009 be denied.

WOODWARD: All right, do I have a second?

DOMINGO: Second.

WOODWARD: Okay. Any discussion on this matter? Commissioner Iwashita.

IWASHITA: Is Mr. Lyman, I would ask that he have an opportunity to address this matter.

WOODWARD: Okay, very good. Mr. Lyman, if you can raise your hand, right hand. Do you swear or affirm to tell the truth today before the Windward Hawaii County Planning Commission?

LYMAN: I do.

WOODWARD: Okay, you can give us your name and address and then begin your, whatever you'd like to tell us.

LYMAN: Albert Lono Lyman. Hilo address is PO Box 374, Zip Code 96721. Oahu address, PO Box 3896, Zip Code 96812. I didn't understand that the contested case filing had to physically be before the Planning Department seven days in advance. It was impossible because I was on Oahu. And the filing was notarized as well as mailed by certified mail within seven days. It needed to be filed with a check which you can't fax. So within my understanding of the filing requirements, it was postmarked and notarized on a timely basis.

WOODWARD: Any questions? Okay.

LYMAN: And just with respect to my basis for standing, Kapoho Land and Development owns an adjacent parcel, TMK: 1-4-3:2; and there are concerns with respect to what is presented in the application. The concerns include the non-inclusion of -.

WOODWARD: Let me interrupt you because we need to decide on the question of your status. If you're granted standing you'll be able to give us your testimony; and if you're denied standing you'll be able to give testimony in any case. Okay? So what we need to decide now is the contested case status.

GONZALEZ: If I may, Mr. Chair -.

LEITHEAD: Members of the Commission and Brandon, I'd like to ask you to take a look at Rule 4-4(b) and see whether it has any application to the request for contested case. Thank you.

GONZALEZ: Thank you. I was going to address that matter. I do not view method of service in this case applicable. The Rule 4-7 is explicit that any person seeking to intervene as a party shall file. The word "file" means file, which implies received by the Department with the required filing payment. It's different from the word "submitted." It's different from the word "mailed." It's different from the word "served." It specifically and explicitly says "file." So that's the distinction there.

And then to address Commissioner Iwashita's mention of the notary and also the petitioner's mention of notary, all the notary is doing is saying that Mr. Lyman appeared and executed the document. It does not say that the notary is accepting filing of the document.

IWASHITA: Mr. Chair?

WOODWARD: Yes.

IWASHITA: Just a follow-up?

WOODWARD: Yes, sir. Commissioner Iwashita.

IWASHITA: I'd like to address Mr. Lyman with a couple of questions.

WOODWARD: Okay.

IWASHITA: Mr. Lyman, in our record this notice of special permit application hearing which spells out the seven-day requirement, have you received this notice?

LYMAN: I did the day before I mailed in the petition.

IWASHITA: So on the 27th of May, is that what you're saying?

LYMAN: I have to refresh my memory as to what the notary date is, but it was the day before the notary date.

IWASHITA: The notary date is May 28th.

LYMAN: That's correct, the 27th.

IWASHITA: Okay. Did you, when did you get the notice of this, the first notice of this application?

LYMAN: On the 27th. There had been a previous notice for I think it was over a year ago but then the hearing wasn't held.

IWASHITA: I'm sorry?

LYMAN: I had received a previous notice I believe over a year ago for something related to this application, but it was never, the hearing was never held.

IWASHITA: Not for this particular hearing?

LYMAN: Not for this particular special permit.

IWASHITA: Okay. But you were aware of this application a year ago?

LYMAN: I was aware that the, actually this gets into the history, that the Planning Department issued a cease and desist order in January of 2006 and had turned down a use permit application for this property.

IWASHITA: That's before the current owner?

LYMAN: Same owner.

IWASHITA: Same owner, okay. Thank you, Mr. Chair.

WOODWARD: All right. Yes, Mr. Gonzalez.

GONZALEZ: Thank you. To clarify the points that have just been brought up as well, 4-7 is applicable to the filing of the petition. However, Rule 4-4, subsection (b) that was brought up by the Planning Director and Commissioner Iwashita is applicable to the notice that was actually sent to Mr. Lyman. That prescribes that method of service of notices, documents and other papers are deemed complete upon the mailing, which is why I stated on or about May 14, 2009 the notice was mailed to the petitioner, at this point.

IWASHITA: Can I follow-up on that then, Mr. Chair?

WOODWARD: Yes, Commissioner Iwashita.

IWASHITA: So, I'm a little at a loss, Mr. Lyman because the Department record shows that on May 14th the notice was mailed to you and you're saying that you didn't get it for like two weeks. Is there a -?

LYMAN: It was forwarded from the Hilo PO Box to myself in Honolulu, but it took two weeks to be forwarded.

IWASHITA: So you have your Hilo mail forwarded to your Honolulu PO Box?

LYMAN: It's forwarded by an accounting firm.

IWASHITA: So someone picks up your mail in Hilo and sends it to you?

LYMAN: Correct, they send it right away.

IWASHITA: Okay, thank you.

WOODWARD: Okay.

IWASHITA: Thank you, Mr. Chair.

WOODWARD: Thank you. So we have a motion to deny the contested case status. Do I have a second to that motion?

IWASHITA: You did.

DARROW: Commissioner Domingo.

WOODWARD: Got one. Okay. Is there any further discussion? No? All right. Jeff, you'll take the roll, please. You can be seated, please, sir.

DARROW: Thank you, Mr. Chairman. The motion before us is to deny standing in a contested case hearing for Albert Lono Lyman. With that I'll take the roll call. Commissioner Iwashita?

IWASHITA: Yes.

DARROW: Commissioner Domingo?

DOMINGO: Aye.

DARROW: Commissioner Ishibashi?

ISHIBASHI: Yes.

DARROW: Commissioner Kern?

KERN: Aye.

DARROW: Commissioner Ogata?

OGATA: Aye.

DARROW: And Mr. Chairman?

WOODWARD: Aye.

DARROW: The motion passes six to zero.

WOODWARD: All right, very good. Well, we will go on then with the remainder of Agenda Item No. 4. And next would be to call the applicant and/or representatives. All right, if I can get both of you to raise your right hand. Do you swear or affirm to tell the truth today before the Windward Planning Commission?

NARIMATSU: Yes.

DOLENA: Yes, I do.

WOODWARD: Okay. And then whoever wants to go first can pick up a microphone and give us your name and address and take it from there.

DOLENA: My name is Sylvia Dolena. I'm the applicant. My address is 14-4779 Ililani Road in Kapoho, Pahoa 96778.

NARIMATSU: Curtis Narimatsu, the attorney for the applicant, 1060 Kahoia Road, Hilo, Hawaii 96720.

WOODWARD: Thank you. Whoever would like to testify may begin.

DOLENA: Okay. I have been going through this process of special use permit and building permits for the past three years and have done my very best and my utmost to follow all of the rules and the regulations set forth by the County following the County Code in the process; and in that process I did engage with Lori Mikkelson of All Aina Services to be my agent in this process because she's very knowledgeable. So with her assistance we have prepared the application and filed the application.

And I wanted to address a couple of points first. First, Mr. Ishibashi you had a question of the pond. The previous owner was attempting to excavate a pond. And the story that I get from the neighborhood was that he was to dynamite, to dynamite the hole and then use a D-9 to excavate it. What I did was I filed for a grading permit to remove all of the debris and jungle and cinder to expose the water. So I had a permit to do that. So does that answer your question? Yes?

ISHIBASHI: Yes.

DOLENA: Also I wanted to first say that the two uses for my property, the first and foremost, was originally the use of building a temple and having spiritual practices there so that I could build a small spiritual community on the five acres. Subsequent to that, I engaged with a contractor, Shaun Lindsey, who has been working on my property and living on the property for three years. And he was very much in favor of doing all of the farming there, so we did start excavating small fish ponds for tilapia farming; and we have a small organic farm started.

We've got lots of fruit trees that we've brought in; and we've invested quite a bit of time, effort and energy in creating a small farm, which is no small feat on that property because there's a lot of lava and the soil conditions does not lend to farming very much, which is why we wanted to go into the ag tourism part too to kind of augment that part of it.

I wanted to address the conditions set forth by the County Planning Department; and I am in agreement with all of the conditions except one. And the request that I make is that the condition for the road, it's No. 5, being paved be, that I be relieved of that. And the reason for that is that, first and foremost, I'm not going to be using the road very much. I'm not going to be using the road any more than any agricultural farm in the neighborhood. And we have, let's see, eight different commercial farms in the area, orchid farms, flower farms, a palm farm, a bed and breakfast and a commercial kitchen in the area. And the reason why we won't be using the road that much is because I have contracted with the caretaker of Green Mountain, which is on Highway 137, to put all of my guest parking there, and then shuttle the guests either on a golf cart, which is very normal for that neighborhood, or a small van, a 12-passenger van, to take guests to the property. And I'm also in agreement with limiting the number of vehicles on my property to six guest vehicles, which is about the amount limited for a bed and breakfast. And so I have done everything I could to accommodate, to relieve the road of any kind of traffic or any excessive usage.

WOODWARD: All right, thank you. Any questions for Ms. Dolena? Seeing none, sir, would you like to offer testimony?

NARIMATSU: I'm here to hold her hand.

WOODWARD: Hold her hand, okay.

GONZALEZ: Do you have members of the public signed up?

WOODWARD: Yes, we do. Okay. No questions for the applicant or her representative? Okay, very good. You may be seated and we do have eight people signed up to testify from the public. And maybe we'll take, well, we'll take four at a time since we have four chairs - Shaun Lindsey, Denise Jones, Mike Lewis and Kenny Parrish. All right, first I'll 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?

TESTIFIERS: I do.

WOODWARD: Very good. Well, let's start with you, sir. If you can give us your name and address in the microphone and then begin your testimony. We'll just go down the table.

PARRISH: My name is Kenney Parrish, PO Box 100, Pahoia Hawaii. First I'd like to say it's a pleasure to be here. I was at the, one of your previous Council Members, or Planning Commission to do a special use permit; and it was a very, it was a pleasure dealing with you people because there was no smoke and mirror.

I've got some concerns about Sylvia's past practices. One of the concerns is I had a friend that was going to her, some of her meetings, and they were having about 30 people at a night in the

evening, and there was a moon worship or moon, one -. She has a whole list of things that are, and a number of them, number of people that she's talking about, the singing for the moon and this type of thing -. And I said this is a little concern to me because voices over in that neighborhood travel a tremendous distance. And we've got an orchid farm five acres away from me and I can hear Don talking to his staff. Don is not talking loud. And at night I'm $\frac{3}{4}$ of a mile away from the ocean, I can hear the ocean. It's beautiful. And I've been very blessed with the place that I'm living on. One problem, the other thing is sound travels. I'm concerned with the special use permit, especially when she's talking about 30, I think if I heard this right, 30,000 people in a year. That's an impact that I just cannot in conscience allow to come on to any subdivision to one specific site. To do this with 12 cars, I just, I can't see how it's going to, 12 buses I can't see how that's going to happen. It's just a wonderful quiet location we have there; and that's basically my concern.

WOODWARD: All right, thank you, Mr. Parrish. Any questions for Mr. Parrish? Okay, seeing none, you may give your testimony, sir. Name and address first, please.

LEWIS: Hello, I'm Mike Lewis. I'm at 14-4824 Ililani Road. And my concerns are from the board, the VHCA Board, Vacation Land Board.

IWASHITA: Can you hold the mike to your mouth?

LEWIS: Okay, I'm sorry. Okay, the Board is mainly concerned with the road problems. That's what our, we're a road association. Our charter allows us to make rules and regulations for our roads and our right-of-ways. We have a right-of-way policy for maintenance and improvement of our roads. In recent past the County has held owners who split their property or cause more traffic to put a 20-foot AC wide road, paved road, 20-foot wide, to improve the roads because of the traffic that they, cause of the traffic that's generated. And some of those are the Henderson's, Tipton's and Benjamin's properties that were required to put in 20-foot roads. And Sylvia Dolena's permit application states she could have over 200 people a month, and 40 plus people weekly, plus staff on her property. And even using golf carts or 12-passenger buses is going to impact our roads. I believe there are only four maybe five people that live past her on that road. So she's going to double or triple the traffic, no matter what she does to get this many people there. This is going to significantly add to the traffic. And a 12-foot paved road that in your, you had a resol -, whatever it was there -. The road is not 12 feet all the way down. It's 20-foot wide for about the first 2,000 feet. It is 12-feet wide near her property at the end of the road. There are several adjoining roads and businesses. And one of the nurseries at the end of the road had paved the road which is breaking up. So, I mean, it needs work. So, the road isn't withstanding the traffic it has now. So our main concern is this road. This is a, I don't know how the County can ask or say that all she needs a 12-foot road when it's really the VHCA Board's decision. And our regulations and charter allows us to make the rules and regulations; and we're asking for the 20-foot road if this is approved. That's all I have. Thank you.

WOODWARD: Okay, any questions for Mr. Lewis?

IWASHITA: Just -.

WOODWARD: Yes, Commissioner Iwashita.

IWASHITA: I think you mentioned that the road was paved in the past. Did I hear that correctly?

LEWIS: To the first intersection, yes.

IWASHITA: So how many feet is that?

LEWIS: I'd say 400 or 500 feet, to the first intersection.

IWASHITA: So that's like one -.

LEWIS: I don't know if you have a map but -.

IWASHITA: Is that like $\frac{1}{4}$ of the way to this property?

LEWIS: No. It would be less than 20 percent of the way.

IWASHTIA: Okay.

LEWIS: I mean we have, we only have a, there's less than a hundred people in the farm lots that take care of five miles of road; and probably half of the lots are being lived on. So it's a significant expense for us to try to keep the roads up; and, you know, when you're going to bring in another business with -.

IWASHITA: You have, your rules require the owners to all contribute towards maintaining this road? Your rules require the owners to contribute money towards maintaining the road now, correct?

LEWIS: Yes.

IWASHITA: Okay. So your concern as I understand it is that this use is going to increase the cost of maintaining the road?

LEWIS: Correct.

IWASHITA: Okay, thank you.

WOODWARD: Commissioner Domingo.

DOMINGO: Thank you, Mr. Chairman. To an extent is the road being used right now?

LEWIS: Basically right now we're a residential area and the businesses, the farms are on the paved section of the road. Most everything else is just small farms and residential.

DOMINGO: Like a rural type kind of a setting?

LEWIS: Correct. They're all 5-acre parcels on our side of the road there. I think there may be one 3-acre one; but the rest are 5 to 5 ½ acres.

DOMINGO: And the volume of traffic?

LEWIS: It has been picking up?

DOMINGO: For what reason?

LEWIS: New properties and business. Sylvia has had a lot of heavy equipment in and stuff to, there has been a, you know, her construction people. So there has been a lot of increase traffic, not all due to her. But there are other places being developed also. But they're developed as home sites which is, that's traffic.

DOMINGO: Well, that's, you can attribute volume of traffic towards the building of home sites then, residences?

LEWIS: Partially.

DOMINGO: Okay. Thank you

WOODWARD: Okay, any other further questions for Mr. Lewis? All right, seeing none can I have the next person testify? Can you give us your name and address and begin.

LINDSEY: Hi, my name is Shaun Lindsey. I currently live at 14-4779 Ililani Road, which is Sylvia's property. I've been there for almost three years. I own a landscaping company and I currently rent the bottom of that house. Also, there's a pending LLC on the property next door and I'm part owner in that. So I am for this going in. I've been there doing the, I've worked with other non-profit organizations in the past that do ag and that do education and stuff like that. So on what we're doing we're also, you know, going to have an educational park like that too, with showing, you know, kids in the area how to do ag.

And for Mr. Domingo you said that there's a minimal amount that a farm needs to make, and I think it was \$10,000. Yeah, we're projecting over there. We're not currently at that right now. But of our tilapia alone we're projecting over that amount. And we also have an orchard and other things in place to do that.

And ag tourism has been mentioned from Linda Lingle recently down to Emily Naeole; and I agree with you that there is almost, you know, some issues with it that need to go deeper, we need to go deeper into. And if I heard it correctly, you said the maximum that a person can have in ag tourism is 30,000 people. That's the max that they could have in a year?

DARROW: Yeah.

LINDSEY: So Sylvia never intended to have 30,000. So if that's in the rule, unless it says that you have to pave up to your property they would be singling her out if it's not in there, you know, because that's what she wants to do in ag tourism. And there has also been a letter submitted from Emily Naeole which I read and she approves of it; and she's the current

politician in our area. You know, up to Linda Lingle wants that to happen. So, you know, people who don't want ag tourism to happen, you know, they have a right to that opinion, but that's not what the politicians are saying for economically depressed areas like Puna. And my family has been here from the late 1800s and came here to work on the plantation; and, you know, the only things we ever had since the Hawaiians was ag and tourists. And tourists have got us in trouble a few times, going all with tourism. So I personally believe in my opinion that having these ag tourism and these small agriculture farms is really the only future for a steady economic, you know, growth here in Hawaii. And if it states that if you do ag tourism you can have up to maximum 30,000 people and Sylvia isn't, I would say that, you know, that isn't realistic to ask. You know, they'd be singling her out.

And as far as Mr. Lyman's concerns, I read his paper. He's concerned about people using his property as beach access. And I've lived there for almost three years and that has not happened. What is happening is he's taking the previous owner and saying that that's what Sylvia is doing. I've been there working and I haven't seen anyone do that. So I'm a witness to say it's not happening. So unless they have facts and witnesses and proof of that, that's just heresy bunching her with the previous owner, you know.

And as far as the VHCA, if Mr. Lewis is sitting here on their board, I've got to ask, you know, why do you have an unpermitted pond? You know, he has an unpermitted swimming pool on his property. He has unpermitted things. So how can you sit here and say what's right and wrong when you aren't even following the County Code? So I would have to discredit the VHCA for not even seeing that you can have maximum 30,000 people. Why aren't they addressing these things, you know, from an intelligent standpoint, you know. It seems like they're bypassing all the facts to just say their opinion, which opinion you're allowed to have. But the facts are from Linda Lingle to Emily Naeole, they support this, you know, with their own hand, you know, and as far as Emily Naeole does it. So, you know, we look at what the facts are. You know, she has a paper with, you know, what was it, I don't want to say the wrong number but like 19 people that support it in the area. And I personally think it's the only future for Hawaii, is ag tourism. And I do believe that there's some loopholes in the law and stuff that we need to work on. And that's what is being brought before you guys today, is to see these issues that need to be addressed, and realistically so. When the small guy who is poor can come in here and they're not saying, oh, you need to repave the whole road, and he can barely pay his bills, that's not realistic for us to ask. So we need to have like realistic ways to approach that. And I do agree that the problems are kind of being thrown into your guys lap of how to sort that out, you know. So, you know, I have a lot of respect for you guys cause you guys have to deal with the hard part of these situations. So, thanks. Thanks for having me guys.

WOODWARD: All right, thank you. Any questions for Mr. Lindsey?

ISHIBASHI: Yeah, I've got one.

WOODWARD: Yes, Commissioner Ishibashi.

ISHIBASHI: Thank you for sharing your manao with us. Question, in regards to the current orchard you said you guys have planted -?

LINDSEY: Yes.

ISHIBASHI: What kind fruits?

LINDSEY: We have, last time I counted we have over 20 different types of fruits and vegetables. I have three different types of taro, two native varieties and one Chinese variety. We have, I think it's four to five different types of mango, two different types of lychee. We have coffee, I think four different types of avocado. And then we have some also ornamental stuff. And we're going to be also doing, a main part of the income producing part would be white tilapia; and we also are planning on doing tiger prawns. We also have noni.

ISHIBASHI: So the educational component of this ag tourism you'd be doing is addressing what -?

LINDSEY: I would say for the most part like teaching people how to grow tilapia and use that in combination with hydroponic lettuce, lettuce production, cause that would be the easiest way for a poor person to be able to feed their whole family. So that's what we would focus on, cause that's the most practical way that a poor person could come into it without having to pay for -. You know, the orchard is something that people have to have money to do. So we'd be more focusing on the aquaponics portion for education.

ISHIBASHI: And the fees, you would charge fees for people coming into learn the system or -?

LINDSEY: No, no. It would be more like, well, last time we talked about it, we would like to work with, you know, Hawaiian Home or somebody like that for, you know, poor kids, basically to do it for free. We were never talking about a fee for that at all.

ISHIBASHI: So being able to do this for free would generate more traffic in the area versus somebody paying a fee to attend classes, in other words.

LINDSEY: Yeah, she -. That's actually something that she was focusing on in the future that I told her that I think that we should do to like help out the community. But like she was saying she's going to have the people park at Green Mountain. But since we looked into it I think that that's even a, you know, that was an overkill on her part, like really trying to work with the situation. Cause the nitty gritty in there, she could have up to 30,000 people. So theoretically she didn't even have to go that out of the way for the community to try and address their own personal issues that they wanted addressed. That was more for them than her.

ISHIBASHI: Thank you.

WOODWARD: Okay. Any further questions? Seeing none, okay. Ms. Jones, if you could give us your name and address and then begin.

JONES: Denise Jones, 14-4821 Ililani Road, Pahoa. I've been a resident of Vacationland for 13 years. I've lived, both, and owned property by there by the tide pools. I've been on the Board of Directors, I've served as the secretary for the Waiopae Conservation zoning and I've also been the Neighborhood Watch coordinator for many years. So I have a pretty good idea of our community and its needs.

I want to speak about the needs and our community. That's where I'm really coming from. Our developers did not include a longhouse or a gathering place. We have to travel 18 miles round trip in order to hold meetings of any size for the community. And Ms. Dolena has offered up her property as a meeting and gathering place, which would be a wonderful resource center for our community. We have a lot of people that are not able to travel distances. We have, you know, disabled people and elderly people. So if we could have a gathering place, some place to hold meetings and come together as a community and network as a community, it would be a great blessing for us. And that would also be an opening for the adjoining communities as well. If it's a nonprofit organization Ms. Dolena has opened that possibility up to the adjoining communities as well. So it's a great need in our community, especially in these challenging times, resource centers where we can get together and talking about how we can communicate with one another, what our needs are, health issues. We do not have any volunteer fire departments yet down in our area. There are, you know, significant needs that need to be addressed. So I'm just speaking from the community.

We have had a lot of people that have signed this petition that are for what she's proposing. There were 19 signatures. There are seven people alone that live on Ms. Dolena's Road, Ililani Road, that are for this. So just as a community member I want to also say that she has addressed the impact of the density with the people using the road to come and access her property, but that should not exclude the members of the community. We should all be able to drive on that road that live there and pay our road assessment, to access a gathering place within our own community. And that's what I'd like to say.

WOODWARD: Thank you. Any questions for Ms. Jones?

ISHIBASHI: May I ask one question?

JONES: Yes.

ISHIBASHI: Thank you for coming. I appreciate your time. You made mention you pay road fees, too. That's separate from what this gentleman -?

JONES: We all -.

ISHIBASHI: That's a separate -?

JONES: We all pay road assessment dues. That's what our community association is purely established for, is just road assessment. So house lots which are down by the tide pools is Unit No. 1. They have their own road assessments that are separate from the Farm Lots. And then Farm Lots gets to use our assessments within Farm Lots because our needs are so different.

ISHIBASHI: Thank you.

JONES: Thank you.

WOODWARD: All right, thank you very much. Any further questions? Okay, thank you. You folks may all be seated. We'll call up then the last four, Mitchell Fenn, James Lehner,

Patrick Kelly, and Mr. Lono Lyman. All right, gentlemen, if you'll hold up your right hand -. Do you swear or affirm to tell the truth today before the Windward Planning Commission?

TESTIFIERS: I do.

WOODWARD: Very good. Let's start with you, sir. If you'd give us your name and address; and then you may begin.

LEHNER: All right. My name is James Lehner, address is 14-5049 Waiopae in Vacationland, 96778. I have listened, I've had history with the Board of Directors of Vacationland, Hawaii. I've been on the Board for several years and I'm presently not on there. But during that time we have listened to many people who've come through for subdivision applications and listened to their stories. We had, and they're very much all the same, either I want to subdivide for families, or whatever, and provide homes for my families, we don't want to do anything to the area. I look at this and I think this thing is going to probably turn into another Kalani. If everybody has been down to Kalani when they're having an event down there, traffic is horrible down there. It's just awful. I commend Sylvia for saying that she's going to use buses and everything to transport people in and out of the area; but frankly I really just don't see it happening because there's going to be no monitoring on it. There never is once these things are allowed to happen.

As far as getting out of paving the road down there, there will be traffic in there. And let's face it, ladies and gentlemen, if you're having 30-40 people at an event and somebody wants to cut out of the event, they're going to have to fire up a 25-passenger bus to take that one person over to the parking area to get their car? The traffic is going to be there. There's going to be a definite increase, there's no doubt about it. The 12-foot wide road I find is unacceptable because the County in itself has forced subdividers to put in 20-foot wide paved roads when they have subdivided even from a 5-acre lot to three 1-2/3 acre lots. And that's the County's standard. The Board of Director of VHCA has in the past in their policy has made this the standard we want for our roads. We're the ones that own the roads, the people of the community. We're the ones that's getting stuck paving these roads again, especially when you have a 12-foot wide road which the edges are going to start eroding off because people have to drive on to pass. So I, you know, if this thing is going to be approved I really encourage the Commission to please make it a 20-foot wide road so at least we can start upgrading our roads. Our biggest expense in the association is roads. Ninety-five percent of our money goes to roads, just maintenance and repair. We very seldom are able to make any improvements, and we'd like to get to that point. Thank you.

WOODWARD: Thank you. Any questions for Mr. Lehner. Okay, seeing none, sir, you may -. Commissioner Iwashita.

IWASHITA: Just your last comment about, I guess, the road maintenance is just that road maintenance, that there's really no effort to assess the owners, you know, over a period of time with the intent of setting aside funds so that you can actually improve the road with pavement?

LEHNER: Yeah, I understand -. We are a road association and basically all of our roads, our funds are devoted to the roads, with exception of administrative costs. As you are

aware most associations are strapped for money; and to try to squeeze an extra nickel out of people, it's like pulling teeth. We've had small increases here which we are setting aside money for and trying to make improvements. However, any major improvement is expensive.

IWASHITA: So right now, what is it, oiled cinder? What kind of surface is it?

LEHNER: Throughout our subdivision?

IWASHITA: Yeah.

LEHNER: We have asphalt cement which was done about three years ago, throughout the main houselots.

IWASHITA: Twenty feet wide?

LEHNER: It's about 17 feet wide throughout the houselots; and that was, the original plan was to make it wider. And this was prior to me being on the board, and it's four years ago. But due to the increase in oil prices I had to skinny it up a little bit to get something down.

IWASHITA: So it is a 17-foot wide asphalt concrete?

LEHNER: A/C, yes, over chip and seal.

IWASHITA: So that, and that is Ililani Road and all the other roads?

LEHNER: No. Ililani as it comes off Kapoho Kai is in Farm Lots; and that's 20-foot A/C, and that was required by the County when Benjamas subdivided from five acres to five 1-acre lots.

IWASHITA: So right now it's maintained at 20-foot A/C.

LEHNER: It's 20-foot A/C, yes.

IWASHTIA: Okay, thank you.

WOODWARD: Yes, sir, Commissioner Kern.

KERN: Thank you, Mr. Chairman. You may be the, not the right person or right person to answer this. But I'm curious, in the ag lot section are the road assessment dues mandatory or are they voluntary?

LEHNER: No, they're mandatory by our Charter.

KERN: And if you don't pay them do you get a lien on your place and pay interest?

LEHNER: Correct.

KERN: Thank you.

LEHNER: Yeah, liens are placed on those properties.

KERN: Thank you.

WOODWARD: All right. Any other questions? Seeing none, sir, you may give us your name and address and then begin.

FENN: My name is Mitchell Norman Fenn. My address is 14-4801, I live on Ililani Street. My driveway is the first driveway at the beginning of a deadend street. And I do not know this woman, and I've never met her, and I wish her no harm whatsoever. However, the fact is from the beginning of that deadend street there is basically only about 12 people that live there; and for the impact of the services going to the church and what not are definitely going to impact me. None of the houses that are on that lot on that street can be seen by the road; and for that amount of people to be coming in and out of our neighborhood that we don't know kind of worries me. I think if I left I would have to lock my gate every day, I'd have to find new ways of locking my house, cause with 30,000 people coming in my neighborhood when there is basically only 12 people that live there is a bit worrisome to me.

The agricultural division of what she wants to do I think is a very good thing cause we could all use it and it sounds good. I just don't like the idea of having all of those people coming up and down our street. And for her to pave the street I know will impact the traffic even further because tourism just there for the tidepools is such that people driving by will say, hey, there's a paved road, let's drive down that road and see what is there. And, again, that will just impact more traffic going in there, whether it's going to her place or not. It's just not in my opinion something that I want.

When my wife and I bought out property we saw a beautiful little neighborhood, nice and quiet. And we don't want to see the rules changed to accommodate one person to make it into a new mall or something, and I know that's not her intentions. But for being in a quiet neighborhood, I just don't think that's it's going to be that any longer is we allow this to go by. Thank you.

WOODWARD: Thank you. Any questions for Mr. Fenn? Okay, seeing none, yes, sir. You may begin once you give us your name and address.

KELLY: My name is Patrick Kelly. My address is 14-4993 Kapoho Beach Lots Road in Kapoho. I have several concerns. A lot of it is this road situation cause none of the rest of us are going to ever have that kind of traffic on that road. Even if we, with the dues and everything that come in and everything it's not so bad. But to add 30,000 people a year? Even though she has a parking area right now this property does not belong to her, where she's going to park these cars and bus people from. What happens if that person decides, he sells this property? And then all of a sudden where are they going to go? She has a big parking lot area marked out in her plan and everything, I imagine that would be staying full.

What concerns me also is this special use permit opens the door for several different categories of things, not just specifically where she stated in here. But from what I understand from listening to other people I hear this opens the door for a lot of other things that can happen once

she gets that permit. We are in a pretty quiet farm community out there, the 5-acre lots and everything, and that's why we bought there. I also own property on Ililani Road, another 5-acre piece on Kapoho Beach Road which we also pay assessments from another association to upkeep these roads, both of which she would be asked to use to get to that property. Kapoho Beach Lots Road where it comes off the Highway 137 belongs to the Kapoho Beach Lots Community Association. That road is also a private road maintained by the Kapoho Beach Lots Community. The other road she's using, Ililani, belongs to Kapoho Vacationland. I think that excessive use, right now it's very, very minimal. But to have that kind of traffic on there -- it is predominantly a red cinder road, the dust, the safety and all of that -- and to put a 12-foot wide road in there and try to get past the 25-passenger van or bus isn't going to work. One or the other is going to go off the shoulder of that road, which will make it deteriorate much faster. I think the whole thing, personally if there isn't a road issue, is I think the use of the land is not what it was designed for; and I would like to leave it at that. Thank you very much.

WOODWARD: Thank you. Any questions for Mr. Kelly?

DOMINGO: Mr. Chairman.

WOODWARD: Commissioner Domingo.

DOMINGO: I'd just like to make a comment to clarify an issue which has been spoken of by the visitors, and it's in regards to the traffic. And it has been mentioned that, the figure of 30,000 annually. Now when I brought this up it was just in reference to the requirements of the ag tourism bill, whenever you establish a particular area for an ag tourism district, and that means that you can only have up to a maximum of 30,000. Now with regard to this specific application before us, I'm not saying that they will have up to 10,000, 20,000, or whatever amount. I cannot say. I don't think any one of us can say how many cars or how many visitors will be on that highway. I'd just like to make it clear and be fair to the applicant that we're not anticipating 30,000 visitors with this application. Okay? Thank you.

WOODWARD: Any other questions? Okay. Mr. Lono Lyman, if you'd give us your name and address, and then give us your testimony.

LYMAN: Lono Lyman, PO Box 374, Hilo 96721; and PO Box 3896, 96812, Honolulu. Just to set the record straight, first, I'm representing Kapoho Land and Development. I'm not here just as an individual. I'm a manager and a corporate officer of the company and the company owns an adjacent parcel, TMK: 1-4-02:3.

Part of the background, and I offer this as a comment, my family has been here for over 1,000 years. We're part of the Hawaiian Lyman family. The ownership of the land goes back to my great grandfather who acquired it in the late 1800s from Charles Keaina who is the father of Lunalilo. So it came from the King, to Charles Keaina, to my great grandfather, who while he was learned man and also Lt. Governor of this island chose to die without a will. And I had to think about this for many, many years before I decided that he did it intentionally to keep the land in the family so that his children wouldn't have separate ownership. In 1947 two brothers and my father who was their first cousin started to get together to try to, and all of them were graduates of the University of Hawaii-Manoa Ag Program, Richard Lyman and Arthur Lyman who were the two brothers and my father Clarence. And my father's entire career was with the

US Department of Agriculture as an extension agent first in Kohala, Kona, Hilo, graduating to the College of Tropical Agriculture in Manoa where he ended his career as the State Agronomist. Arthur is the only one of the three that is still alive and he, well, he's in his late seventies, is in a care home. The three of them got together because the first of the off-spring of Rufus passed, and it was Albert Lyman who the airport is named after. And the trust company who was handling his trust said buy us out or be bought out. So they in 1947 started screwing around and got several family members to sell out, others to join in the company. And in one branch of the family, the Norman Lyman branch, held out. And the way that that was resolved was to identify lands which then became Vacationland, and to work with Stanley Hara, Kazuhisa Abe, and the Kuwaye family to develop them. And the intention with the ag lots to provide ag lot land for people in this part of the island has worked over the years. What I see as an example more modern is the Kona Keahole Ag Lots. It's lava land. People through effort can do something and earn a very good income in ag. The trick is keeping it in ag. And Oahu has the Waimanalo Ag Park which in the sixties and seventies was slipping into urban uses; and this is State land. And the State finally put its foot down, and it's now a thriving area for nurseries. And their business has thrived essentially because development has occurred, they need plants. And some of those plants are frankly grown here in this part of the island, shipped over to Oahu and sold to nurseries in Waimanalo.

Part of the problem in changing ag uses is ag is sustainable when land values earn a certain amount. Now public records indicate Ms. Dolena paid well into the \$600,000 for her lot; and ag is not sustainable on that basis. What has not been disclosed is that she has bought the adjacent lot for \$190,000 this year. So part of the issue is do you want to preserve ag, do you want to put the brakes on non-ag uses, or do you want to just open the door? Because if you open the door this will not be the first use.

With respect to infrastructure and the conditions, the road condition being proposed by the County would not be proposed on a County-owned road; and it is essentially not wide enough for two cars to pass each other. The applicant has embraced using catchment as an alternative to extending the waterline. It's quite a substantial distance.

And while I was planning director between '84 and '88, the ag water variance standard was created; and the one thing I recall is that in coastal areas you don't get much rain and during dry periods you're going to have to truck water in. Tied in with the on-site use of water, whether it's for agriculture or human uses, is also fire. And, you know, without adequate water service to the site, you have a fire and you're going to have a little hose and then buckets, and then you're going to run out.

The application is thin with respect to several things; and I talked briefly to the applicant when I arrived. She says that there are calculations that have been done regarding water requirements that were not submitted as part of the application. There is no, nothing definitive provided regarding the on-site existing wastewater disposal capacity, and that then turns to the pond which the applicants own on-line newsletters indicate that she finished; and it's a tidal influenced pond. Now one of the little arcane things about tidal influenced ponds is it's subject to the Army Corp of Engineers permitting. And I checked this and it has never been permitted. The reason it is is because the water goes up and down; and she has acknowledged in on-line newsletters that the water goes up and down. The other reason is 'ōpae'ula, the little red shrimp, which is on the rare and endangered species list.

Now with her application she submits literature related to a Maui church lawsuit. And the attorney for the Maui church is Chuck Hurd which I happen to know for over a quarter of a century. And I'd really admonish the Planning Commission and the County to check out the facts of the lawsuit because in talking to Mr. Hurd the facts of the lawsuit have nothing to do with this application. The County can also check with the County. Mr. Hurd has retired based on that lawsuit.

Now there are a couple of concerns that I have to express now. One is that setting the precedent for this permit will open the door to others. And I'm aware of one other established evangelical church who's in the area near Lava Tree Park who's poised to come in for a permit. And the reason I'm aware of it is they're asking for an easement on a road we own, Kapoho Land and Development, and also for catchment space on land that is really farm land space. And there have already been issues related to the farmers and spray drift and the church. So this has a lot of ramifications. And it's not simply letting, you know, this specific use in but it's letting uses into an ag park, and what it does in terms of land values in the long term sustainability of agriculture.

Now when Mr. Lindsey was leaving I corrected him on the point that he made incorrectly, that I was accusing Ms. Dolena of trespassing. I've not raised that. I spoke to her six months ago on the telephone and asked her about it, and she was quite definite in denying it. I've not raised that in this instance. But there are a lot of ag land in Puna, and the reason I know is we have tenants with over 1,000 acres of papaya, as well as some cattle.

So this is really an important issue policy-wise for a couple of reasons which I shall again enumerate. One is ag, and continuing to keep in ag in an area that was designed for ag. The second is allowing a use like this through a special permit. And the third is less than standard infrastructure which has, in my mind, a real county liability issue. If there is an accident on a road that had been permitted by the County with the specific condition that was less than the County standard, you'll hear from attorneys. Thank you very much.

WOODWARD: Thank you. Questions? Commissioner Iwashita.

IWASHITA: Thank you, Mr. Chairman. Thank you for your testimony, Mr. Lyman. I just wanted to follow-up on, you know, your point that you raised about policy and allowing non-ag use in this ag zoned area. You know, special permits are, one of the requirements is that it's an unusual use that normally is not allowed, right, which is what we're looking at here. So, and we've had in other areas of Puna bed and breakfasts, a lot, quite a number of bed and breakfast applications in various Puna ag subdivisions, actually most of which have been approved, you know. And I share the concerns that you're raising about this particular permit as to a number of those bed and breakfast operations because, you know, that's what we do. But the reality is, as even some of the testifiers before you have said, you know, they own this property and they live on it, they don't do any ag activity. Right? We have not commercial ag activity. And the testimony so far in this record is that in this area there's like three or four of these lots that actually are used for commercial/ag. Right? So how do you address -? And I for one really would like to do whatever we can, you know, to encourage or set up circumstances where agricultural activity is encouraged. Right? So, but the reality again is that, you know, most of this ag land lays fallow. Or if it's developed at all somebody builds a house and they

live there and they maybe have a few papaya trees or a household garden at best. But that's about it, right? So that's the concern or that's the perspective that I'd like to ask your further input on this. You know, the argument is going to be, well, it's not being used for anything else we may as well let it be used for this.

LYMAN: Well, that really gets into an enforcement issue. And when I became Planning Director in late 1984 the Kona Industrial area was rampantly commercial and it was basically impossible to go turn the clock back in time. And eventually a mixed use zoning was created to allow commercial/industrial uses.

With respect to agriculture the standard has changed over time. When I was the Planning Director, the standard, informal or otherwise, was that the majority of your income had to come from agriculture. And the enforcement came up when people were declaring an ag exemption. And when you get into, you know, the dollars driving this, if you don't have the ag exemption you pay residential. If you have the ag exemption you pay a lot less. So it's an enforcement issue. But what we're really talking about is on a different level which is the public policy issue. And I call it where you draw the line in the sand. Because if you draw it one place and then move it back, you're going to keep moving it back. And relative to the ag lots, it was created for agriculture. And relative to Kapoho Land and Development's own commitment, as well as a related entity although has different ownership, Kapoho Land Partnership, we have a 100-year plus commitment to agriculture which looking forward we look in terms of a 50-year timeframe, as well as beyond a 50-year timeframe. The short of it, you just have to stick with your guns with ag or you start changing it. I saw this happen actually on Oahu in the seventies where they stopped ag subdivisions which were basically residential subdivisions. And I saw it change on this island with the last approved, I call it full ag, being Waikii where they have residential lots and easements for cattle running all over the place. And there hasn't been any, well, there is one down in Kona. That was the last one.

IWASHITA: We have here in Hilo Sunrise Ridge, one-acre ag land that people build 6,000- to 8,000-square foot houses on and there's not even a papaya tree.

LYMAN: I hope the County is collecting the residential rate as real property tax.

IWASHITA: Probably, but, you know, I mean that's -. Okay, so you're essentially, your perspective is that we should not move the line back? If we approve this we'll be moving the line back in terms of what's allowed and discouraging, by that discouraging ag use?

LYMAN: My perspective is that if you approve this you will transform the farm lots into hybrid uses and bootstrap an ag use onto it to get through a permit process. And in this case it not only bootstrapped an ag use on it to make it a more hybrid use, it has added the spiritual aspect. And in looking up the church that Ms. Dolena is ordained by, you can go on-line. The only reason I didn't ordain myself is that I didn't want to give out my email address. And the County has to be very cautious of how these things are bootstrapped together. Because with respect to what is being proposed the conditions of approval would be less than the standards with respect to road, water, sewer and fire than what would be required if it was a County-owned road.

WOODWARD: Any further questions? All right, seeing none you gentlemen may be seated. Would the applicant like to say a few things following the testimony?

DOLENA: No.

WOODWARD: Okay. We've got one other person to testify. We're going to break at 12:30 so we'll see how far on this we can get done. Okay. We have a Mark Lane. Is there a Mark Lane?

LANE: Yes.

WOODWARD: Okay, sir, we'll have you testify first and then we'll give the applicant a chance to respond. Okay, if you'll raise your right hand. Do you swear or affirm to tell the truth today before the Windward Planning Commission?

LANE: I do.

WOODWARD: Okay, speak into the microphone. Give us your name and address, and then you may begin.

LANE: My name is Mark Lane. I live at RR2, Box 4747, Pahoa, Kehena Beach. I think there's a big white elephant sitting here on the table that nobody is talking about here and what the neighbors are concerned about with the roads and the impact and all this stuff. We've heard from Sylvia's side about the flowers and the trees and all that stuff. What we're all really concerned about is this is a tantric, self-pleasuring sex center. And that's what we're concerned this is going to turn out to be; and I don't think anybody here is talking about it. I've given you some of her adverting there; and I think this is what you guys are going to okay going in. This is not a farm. This is all a sham. Everybody is being shammed here, the neighborhood, you guys, everybody is. That's what her intentions are. You can go on her websites. I understand some of them were not available now, but that's what we're afraid of; and that's the caliber of people that I think we're dealing with here that have the nerve to come up here and say this is a farm or an aquatic center or, you know, bring in the spirits and all that stuff. This is a sex ranch; and that's what you guys are going to okay if you do. That's all I have to say. That's my opinion.

WOODWARD: All right, thank you. Any questions for Mr. Lane?

DOMINGO: Yeah.

WOODWARD: Commissioner Domingo.

DOMINGO: Just to carry on that conversation, have you any knowledge of anything like that, of that nature taking place now?

LANE: Her advertising.

WOODWARD: Microphone.

LANE: Excuse me, her advertising.

DOMINGO: Could you be more clear on that, like -.

LANE: No, just what it shows right there. I just don't think this is being discussed, what's going to take place in the name of religion there.

DOMINGO: Thank you.

WOODWARD: Yes, any further questions? No? You may have a seat, sir. Okay, we'll give the applicant a chance to respond. You're already still sworn in, Ms. Dolena.

DOLENA: Yes. Thank you. I wanted to address couple of things. First, I wanted Lori Mikkelson to address the water and the catchment issue, if that's possible.

WOODWARD: All we've got to do is swear her in.

MIKKELSON: My name is Lori Mikkelson.

WOODWARD: Okay, do you swear or affirm to tell the truth today before the Windward Planning Commission?

MIKKELSON: I do.

WOODWARD: Okay, give us your name and address and then you may begin.

MIKKELSON: Lori Mikkelson, PO Box 291, Laupahoehoe, 96764. I have helped Sylvia for the last two years trying to put together a viable complete application. There was mention of an application that was, mailings that were sent out a year ago. We did withdraw an application as being incomplete, and then resubmitted. We notified the surrounding property owners at that time that we would be resubmitting.

There was on the original, excuse me, on the original application there was a water calculation done by Paul Nash, who's with Atlas Engineering, a civil engineer. And we also, because of the nature of the application we were in contact with the Fire Department and got their approval for including two catchments, with Fire Department, and the fire lane, and the Fire Department hookups for the hose so that that would be addressed as fire prevention and fire fighting ability.

The septic systems, she has two septic systems approved and installed on her property at this time. All wastewater, it has already been addressed. There would be a proposed bath house which would be included onto the septic system. There's plenty of room on the septic system. So they're approved. Let's see, what else -.

Sylvia has a vast background in marketing and she did do some websites. This is her interest, this is what she has practiced and has accreditation for her practice. And she, the websites were brought up as a complication early on; and she disabled those and was not marketing anything any further at that point. They were not advertisements. She was just trying to see if there was, as I understand, an interest in what she offers from her experience and her background.

WOODWARD: All right, thank you. Any questions? No. Ms. Dolena?

DOLENA: Yes. I would like my attorney, Curtis Narimatsu, to address the RLUIPA law and why we brought that in.

NARIMATSU: Yeah, actually it's not an issue unless you folks want to raise it as an issue. But essentially that law was enacted to make sure that there is the wall of separation between church and state. And as I believe Mr. Mark Lane has so eloquently demonstrated you run into all kinds of vitriolic issues such as, I quote, "sex ranch," as spoken by Mr. Lane, when we bring up metaphysical subjects which would involve eastern faith and religion, which most of us in the western world know nothing about. And I think Mr. Mark Lane is among that group that knows nothing about eastern faith and religion. So that's it for the RLUIPA.

May I also just add one more thing, with all due respect to the most handsome man in the world, Lono Lyman, who served under Mayor Dante Carpenter, the handsomest mayor we've ever had, this Uncle Richard Lyman was a magnificent philanthropist and altruist. Talk to anyone that lived in Kapoho, everyone loved Richard Lyman. But may I kindly remind my young colleague, Mr. Lono Lyman, that Uncle Richard had in mind a \$65,000,000 mega resort for Kapoho that was all but destroyed by the 1960 lava flow. Thank you very much.

WOODWARD: Thank you. Yes, Mr. Gonazalez.

GONZALEZ: All right, in regards to any reference to the RLUIPA, I think you can agree with me that it has been abundantly clear that the Planning Commission in no way was going to base its decision on the religious practices or proposed religious practices of the applicant.

NARIMATSU: Absolutely.

GONZALEZ: Thank you.

NARIMATSU: We absolutely agree with you. Thank you very much.

GONZALES: So if there's going to be any decision, it's going to be based upon the concerns regarding public safety, i.e., noise concerns, road concerns, safety concerns, compliance with applicable federal, state or county laws, the presentation and the submission by your applicant.

NARIMATSU: Right. And Sylvia or Maya, is her nickname, brought that up. I did not bring that up. We absolutely agree with you. Thank you very much.

WOODWARD: Did you have anything further, Ms. Dolena?

DOLENA: Yes, I do, just a couple of points. In the VHCA Community, there are approximately ten commercial businesses or farms that are permitted and each one of those are on five acres. So ten commercial. There are quite a few that are unpermitted businesses, vacation rentals, in the area also, probably more than the ten that are permitted. These generate a lot of traffic because these are large farms with trucks coming in and out. They have an open to the public sale. One place has it once a week, every Thursday. And some of the places have big

trucks coming in, FEDEX trucks, for the shipment of their products. So that is why VHCA has two rates, a residential rate and a commercial rate; and I clearly would fall into the commercial rate, which I'm more than happy to pay. And I still stand on not using the road that much because I will have my cars parked in the Green Lake, Green Mountain area and will use a large shuttle, not a bus. And I never intended on having anywhere close to 30,000 people on my property annually. That's it. Thank you.

WOODWARD: All right, thank you. Any questions for the applicant? No? All right, thank you. You may all be seated. Would anybody care to make a motion? Commissioner Iwashita.

IWASHITA: I'm prepared to make a motion; and I'll ask after I'm done if I could have the floor to explain why I'm making this motion. With regard to Item No. 4, applicant Sylvia Dolena SPP 09-78, 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 of land situated within the State Land Use Agricultural District, I move that the application be denied.

WOODWARD: Do we have a second?

ISHIBASHI: Second.

WOODWARD: All right. We have a motion and a second. Now we're open for discussion. The motion is to deny the application.

IWASHITA: Mr. Chairman?

WOODWARD: Mr. Iwashita.

IWASHITA: Thank you, Mr. Chair. You know when I first went over this application and through the initial part of our considering this I was in favor of it. But given my reflection since then and looking at, I think, our enforcement of the policy to promote agriculture and to maintain conditions which promote agriculture in the long term that the granting to special permits in ag areas really needs to be done in a very, I guess, manini way. It needs to be done in a way that, you know, it really has to be shown to be an unusual circumstance and there really needs to be good cause to allow other uses which I think Mr. Lyman, you know, properly pointed out. When you allow other uses that are going to increase the values of the lands in that area then it makes it more difficult for farmers to farm because the land costs too much to get the farming going.

So the other point that I want to raise is that in the background documentation, the reference to the Puna Community Development Plan says that the Plan does not give a specific land use designation for this subject property. And so we know that this is ag land and under the General Plan it's supposed to be for ag use. And on the LUPAGS and all of that it's, you know, it's going to be ag use. So unless it's really shown, you know, that ag cannot be done for some reason on this property -- and we really need, and actually we have the contrary shown on the record; and it's that there are multiple, ten or more, other properties in this area that are successfully being used for commercial agriculture -- that really should be the use that we want

to promote in this area. So that is the basis of my making this motion to deny this application, cause in my view it is, it would be drawing the line further back and making it more difficult to do agriculture in the future. Thank you, Mr. Chairman.

WOODWARD: Thank you, Commissioner Iwashita. Any other discussion?
Commissioner Domingo.

DOMINGO: I'd just like to add to this, Mr. Chairman. Thank you very much. Originally I would have hoped that both of these separate uses would have been dealt with individually, first as a special permit to include that temple and secondly to establish an ag tourism practice. With, as I look at the conditions and as I tried to interpret the ag-tourism requirements, it says agricultural tourism district shall, it mentions the districts, shall not include, ag-tourism districts shall not include weddings, parties, restaurants, schools, catered events or overnight accommodations, you know, unless allowed by a special permit; and we're considering that here. That's why I asked the question, "Then is it in fact that when we approve this special permit today what we're doing today is giving permission and ignoring the provision in the agriculture tourism bill which prohibits overnight accommodations and weddings?" But if we're looking at the recommendation here in itself it says weddings shall be limited to just one per month with a maximum of 50 participants, and then overnight accommodations shall be limited to three guest rooms. That's why, you know, I felt that perhaps it would have been better if we had entertained both the special permit dealing with the temples and dealing with the ag tourism separately.

As I understand ag tourism has been provided for in our state so that it will enable farmers today who are struggling, to enable them to bring tours onto 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. In fact we had provided for special permits for individuals in the past, which would provide them, people to come up to their property to enjoy. Like for instance they had 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. And that was essentially to help, you know, farmers and their families to supplement their income. But in other cases we find that this ag tourism thing was also being given to people who were not actually really bonafide farmers. But they were given this opportunity because they were selling and processing, for instance, macadamia nuts.

In this particular case I don't think it meets the total criteria. That's why I find it hard to make a decision as to whether, you know, it will, it is essentially workable or not. And that's why with that doubt in my mind I speak against, I speak for the motion.

WOODWARD: Any further discussion? So for the motion means the motion is to deny the application, that's what you mean?

DOMINGO: Yeah, that's the motion made.

WOODWARD: Any further discussion? Okay, seeing none, Jeff, will you call the vote.

DARROW: Thank you, Mr. Chairman. The motion before us is to deny the special permit application. With that I'll take the roll call. Commissioner Iwashita?

IWASHITA: Yes.

DARROW: Commissioner Ishibashi?

ISHIBASHI: Aye.

DARROW: Commissioner Domingo?

DOMINGO: Aye.

DARROW: Commissioner Kern?

KERN: Aye.

DARROW: Commissioner Ogata?

OGATA: Aye.

DARROW: And Mr. Chairman?

WOODWARD: Aye.

DARROW: The motion passes six to zero.

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

The discussion ended at 11:35 a.m.

Respectfully submitted,

Sharon M. Nomura, Secretary
Windward Planning Commission