

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
)
TOYAMA GARDENS HAWAII CORPORATION,)
dba, NANI MAU GARDENS, INC.)
)
For a Fifth Amendment to the)
Special Permit Which Establishes)
A Commercial Arboretum For Public)
Tours And The Sale Of Agricultural)
Products On Approximately 58 Acres)
Of Land Situated Within The State)
Land Use Agricultural District At)
Waiakea, South Hilo, Hawaii; Tax)
Map Key Number: 2-2-48, 13 and)
Portion of 11)
_____)

DOCKET NO. SP73-159
TOYAMA GARDENS HAWAII
CORPORATION, dba, NANI
MAU GARDENS, INC.

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LAND USE COMMISSION
STATE OF HAWAII

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER
AMENDING CONDITIONS OF DECISION AND ORDER DATED JULY 24, 1991

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Toyama Gardens Hawaii Corporation, dba, Nani Mau Gardens, Inc. (hereinafter "Applicant") initiated this proceeding pursuant to Section 205-6, Hawaii Revised Statutes and Sections 15-15-95 and 15-15-96 of the Hawaii Administrative Rules. The Land Use Commission (hereinafter "LUC"), having considered the entire record on this matter, hereby makes the following findings of fact, conclusions of law and decision and order:

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On January 11, 1993, the Applicant submitted to the Planning Department of the County of Hawaii (hereinafter

"Planning Department"), a request for a fifth amendment to the Special Use Permit (hereinafter "Fifth Amendment") that was originally approved by the LUC on October 17, 1973 and as amended by Decision and Orders dated September 5, 1984; February 18, 1988; October 31, 1989; and July 24, 1991 (hereinafter "Permit"). The Fifth Amendment requested a time extension to comply with Condition Numbers 3 and 8 of the Findings of Fact, Conclusions of Law, and Decision and Order dated July 24, 1991 (hereinafter "Fourth Amended Order"), issued by the LUC in this docket and upon prior approval by Hawaii County Planning Commission (hereinafter "Planning Commission").

2. On April 15, 1993, the Planning Commission conducted the public hearing on the Fifth Amendment. The Planning Commission did not receive any public testimony on the Fifth Amendment.

3. On April 15, 1993, the Planning Commission recommended approval to the LUC of the Fifth Amendment to the Permit by recommending amendments only to Condition Numbers 3 and 8 of the Fourth Amended Order.

4. On May 5, 1993, a portion of the complete record of the Planning Commission's proceedings were received and accepted for consideration by the LUC. On May 13, 1993, the transcripts of the Planning Commission's public hearing on April 15, 1993 were received and accepted for consideration.

5. On May 21, 1993, the LUC received a letter dated May 20, 1993 from Mr. Donald L. Manalili, Chairman of the Planning Commission and addressed to the Executive Officer of the LUC. The letter was admitted into evidence by the LUC, with no objections from the parties, on May 26, 1993.

DESCRIPTION OF SUBJECT PROPERTY

6. The property covered by the Permit, consisting of approximately 58.786 acres, is identified as TMK: 2-2-48: 13 and portion of 11 (hereinafter "Property").

7. The Property currently includes greenhouses and garden pavilions, an office building (containing a restaurant), a snack shop, a gift shop, fruit and vegetables stands, stables and equestrian trails, a maintenance building, and an existing dwelling.

8. According to the U.S. Army Corps of Engineers Flood Insurance Rate Map, the Property is outside the 500-year flood plain (Zone X).

9. The Land Study Bureau Detailed Land Classification Report designates the Property as Class "E" lands.

10. In accordance with the Agricultural Lands of Importance to the State of Hawaii (ALISH) system, the Property is classified as "Other Important Agricultural Lands."

11. The Property is surrounded by mixed residential and agricultural uses.

12. The Property is situated at the corner of Makalika Street and Awa Street. Access to the Property is from Makalika Street via Hawaii Belt Highway.

13. Electrical, telephone and water services are available to the Property.

DESCRIPTION OF PROPOSED AMENDMENTS TO SPECIAL PERMIT

14. Pursuant to Condition Numbers 3 and 8 in the Fourth Amended Order, Applicant was required to secure Final Plan Approval (Condition No. 3) and complete highway improvements (Condition No. 8) within one year of the filing date of the Fourth Amended Order. The Fourth Amended Order was filed on July 24, 1991.

15. On April 23, 1992, the Planning Director of the County of Hawaii, pursuant to Condition Number 12 of the Fourth Amended Order, granted a one-year extension of time for performance of the conditions required under the Permit from July 24, 1992 to July 24, 1993.

16. Due to unfavorable economic conditions, the expansion of the Property, as represented in the Fourth Amended Order, and the roadway improvements to support the anticipated traffic have not been completed.

17. The Applicant represented that the required highway improvements to Hawaii Belt Highway are estimated to cost over \$400,000.

18. The Applicant represented that the left-turn storage lane has been completed at a cost of \$250,000.

19. The Applicant has made every effort to keep its staff of 35 full and part-time employees and maintain solvency of the existing operations.

20. The Applicant is still desirous of implementing the planned expansion and roadway improvements and will proceed towards completion upon improvement of economic conditions.

21. Pursuant to Applicant's request for a time extension to comply with Condition Numbers 3 and 8 of the Fourth Amended Order and the justification provided for the time expansion by the Applicant, the Planning Commission adopted and approved the recommendation of the Planning Department to amend Condition Numbers 3 and 8 of the Fourth Amended Order (with new material underscored and bracketed material to be deleted):

3. Final Plan Approval for the expanded development, as approved under the fourth amendment by the State Land Use Commission - Decision and Order effective July 24, 1991, shall be secured by Petitioner from the Planning Department within one year from the date of consolidation approval. To assure adequate time for plan approval review and in accordance with Chapter 25-244 (Zoning Code), plans shall be submitted a minimum of forty-five days prior to the date by which plan approval must be secured. Plans shall include a landscaping buffer along the property lines adjacent to Parcels 12, 14, 91, 92, 97 and portion of 11. Parking shall comply with the requirements of Chapter 25, Zoning Code and no parking variance from the Code shall be applied for. Additional parking for buses, vans and cars may be imposed at the time of plan approval. Parking for all functions shall be maintained on the subject properties.

8. The Hawaii Belt Highway (Highway 11) shall be improved with a) a right-turn deceleration lane from the Hawaii Belt Highway onto Makalika Street; b) an acceleration lane for traffic entering the Hawaii Belt Highway from Makalika Street; c) additional street lighting in the vicinity of the Hawaii Belt Highway-Makalika Street intersection. The foregoing improvements shall meet the [requirement] requirements and approval of the Department of Transportation-Highways Division. Highway improvements shall be constructed [and approved by the Department of Transportation] prior to the approval of an occupancy permit by the Planning Director for any portion of the expanded development approved under [this] the fourth amendment by the State Land Use Commission - Decision and Order effective July 24, 1991, or within one year from the date of this amendment, whichever occurs first.

STATE AND COUNTY PLANS AND PROGRAMS

22. The State land use district classification of the Property is Agricultural, as reflected on State Land Use District Boundary Map H-66 (Hilo).

23. The County of Hawaii General Plan Land Use Pattern Allocation Guide Map designates the Property as Orchards and Alternate Urban Expansion.

24. Current zoning for the Property is County Agricultural-10 acres (A-10a).

25. The Hilo Community Development Plan Zone Guide Map recommends that the present A-10a zoning be retained.

26. The Property is not within the Special Management Area of the County of Hawaii.

SUMMARY OF STATE AND COUNTY AGENCIES COMMENTS

27. The County of Hawaii Fire Department, Police Department, Department of Water Supply, and Department of Public Works had no objections to the Fifth Amendment.

28. The County of Hawaii Real Property Tax Office provided no comments in regards to the Fifth Amendment.

29. The State Department of Health had no objections to the Fifth Amendment.

30. The State Department of Transportation, Highways Division, had no objections to the Fifth Amendment.

31. The State Department of Land and Natural Resources (DLNR) noted that its Historic Preservation Division had determined on July 3, 1989 that the use of the Property would have "no effect" on historic sites and that the uses prescribed under the Permit would not alter its determination. DLNR also represented that it had no position with respect to the time extension request.

CONFORMANCE WITH SPECIAL USE PERMIT CRITERIA

32. The Planning Department, in its recommendation to the Planning Commission, provided the following comments related to the Permit's conformance with the guidelines for "unusual and reasonable use" authorized by a Special Use Permit under Section 15-15-95(b), Hawaii Administrative Rules:

The granting of this request will not be contrary to the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended. The State Land Use Law and Regulations are intended to preserve, protect, and encourage the development of lands in the State for those uses to which they are best suited in the interest of the public health and welfare of the people of the State of Hawaii.

In the past, the applicant had four amendments approved by the State Land Use Commission for expansion of the arboretum in land area and uses. All amendments have been supportive of the established use of an arboretum on the subject property. The uses have not been conflicting nor a point of community dissatisfaction in its 20 years of operation.

The applicant has informed the Department that the present economic conditions has not been favorable to expand the facilities as planned nor make the required roadway improvements to support the anticipated traffic as a result of the expansion. Efforts have been made to rearrange personal assets, promote facilities for single-event functions, and explore alternative uses of the property.

PLANNING COMMISSION RECOMMENDATION

33. At its meeting of April 15, 1993, the Planning Commission recommended approval of the Fifth Amendment to the LUC by adopting the amendments to Condition Numbers 3 and 8 of the Fourth Amended Order that were proposed by the Planning Department and as previously stated in paragraph 21 herein.

34. Any findings of fact that may be a conclusion of law shall be deemed a conclusion of law.

CONCLUSIONS OF LAW

The Applicant's request for the Fifth Amendment to provide for a time extension to comply with Condition Numbers 3 and 8 of the Fourth Amended Order is not contrary to the objectives sought to be accomplished by the State Land Use Law under Chapter 205, HRS, to preserve, protect, and encourage development of lands in the State for those uses to which they are best suited in the interest of the public health and welfare.

ORDER

IT IS HEREBY ORDERED that the Applicant's request for the Fifth Amendment to provide a time extension to comply with Condition Numbers 3 and 8 of the Fourth Amended Order is and shall be granted; provided, that Condition Numbers 3, 8, and 12 of the Fourth Amended Order shall be amended as follows:

a. Condition Number 3 of the Fourth Amended Order shall be amended to read as follows:

3. Final Plan Approval for the expanded development, as approved under the fourth amendment by the State Land Use Commission - Decision and Order effective July 24, 1991, shall be secured by Petitioner from the Planning Department within one year from the date of consolidation approval. To assure adequate time for plan approval review and in accordance with Chapter 25-244 (Zoning Code), plans shall be submitted a minimum of forty-five days prior to the date by which plan approval must be secured. Plans shall include a landscaping buffer along the property lines adjacent to Parcels 12, 14, 91, 92, 97 and portion of 11. Parking shall comply with the requirements of Chapter 25, Zoning Code and no parking variance from the Code shall be applied for. Additional parking for buses, vans and cars may be imposed at the time of plan approval. Parking for all functions shall be maintained on the subject properties.

b. Condition Number 8 of the Fourth Amended Order shall be amended to read as follows:

8. The Hawaii Belt Highway (Highway 11) shall be improved with a) a right-turn deceleration lane from the Hawaii Belt Highway onto Makalika Street; b) an acceleration lane for traffic entering the Hawaii Belt Highway from Makalika Street; c) additional street lighting in the vicinity of the Hawaii Belt Highway-Makalika Street intersection. The foregoing improvements shall meet the requirements and approval of the Department of Transportation-Highways Division. Highway improvements shall be constructed prior to the approval of an occupancy permit by the Planning Director for any portion of the expanded development approved under the fourth amendment by the State Land Use Commission - Decision and Order effective July 24, 1991, or within one year from the date of this amendment, whichever occurs first.

c. Condition Number 12 of the Fourth Amended Order shall be amended to read as follows:

12. Should any of the conditions not be met or substantially complied within a timely fashion, the Planning Director of the County of Hawaii may initiate procedures to nullify the Permit.

Condition Numbers 3, 8, and 12, as amended herein, shall be effective as of the date of filing of this Decision and Order.

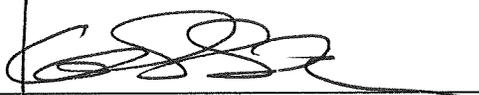
All other conditions to the Fourth Amended Order dated July 24, 1991, are hereby reaffirmed and shall continue to be in effect.

DOCKET NO. SP73-159 - TOYAMA GARDENS HAWAII CORPORATION DBA
NANI MAU GARDENS

Done at Honolulu, Hawaii, this 17th day of June 1993,
per motions on May 26, 1993 and June 16, 1993.

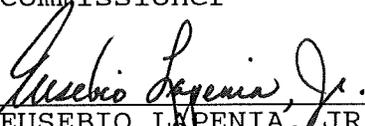
LAND USE COMMISSION
STATE OF HAWAII

By 
ALLEN Y. KAJIOKA
Chairman and Commissioner

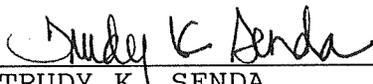
By 
KAREN S. AHN
Vice Chairman and Commissioner

By (absent)
JOANN N. MATTSON
Vice Chairman and Commissioner

By (absent)
ALLEN K. HOE
Commissioner

By 
EUSEBIO LAPENIA, JR.
Commissioner

By (absent)
RENTON L. K. NIP
Commissioner

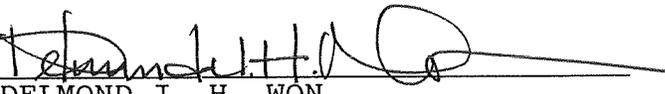
By 
TRUDY K. SENDA
Commissioner

Filed and effective on
June 17, 1993

Certified by:


Executive Officer

By (absent)
ELTON WADA
Commissioner

By 
DELMOND J. H. WON
Commissioner

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Findings of Fact, Conclusions of Law, and Decision and Order Amending Conditions of Decision and Order Dated July 24, 1991 was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

CERT. VIRGINIA GOLDSTEIN, Planning Director
Planning Department, County of Hawaii
25 Aupuni Street
Hilo, Hawaii 96720

CERT. SIDNEY FUKU, Planning Consultant
100 Pauahi Street, Suite 212
Hilo, Hawaii 96720

DATED: Honolulu, Hawaii, this 17th day of June 1993.



ESTHER UEDA
Executive Officer