

BOARD OF APPEALS
COUNTY OF HAWAI'I

HEARING TRANSCRIPT
FEBRUARY 8, 2008

A regularly advertised hearing on the appeal of **JAMES H. REDDEKOPP, JR. AND HAWAIIAN VANILLA COMPANY, INC. (BOA 07-000051)** was called to order at 10:10 a.m. in the County of Hawaii, Aupuni Center Conference Room, 101 Pauahi Street, Hilo, Hawai'i, with Chairman Joel Gimpel presiding.

PRESENT: Joel Gimpel
Valta A. Cook (Left at 11:19 a.m.
and returned at 1:03 p.m.)
David Drury
Peter Hendricks
Diane Gentry
Kim Tavares

ABSENT & EXCUSED: Kelly Ann Soo

William Brilhante, Counsel to the Board
Alice Kawaha, Staff to the Board

James. H. Reddekopp, Jr., Appellant
Christopher Yuen, Planning Director
Amy Self representing Planning Director

PETITIONER: JAMES H. REDDEKOPP, JR. AND HAWAIIAN VANILLA COMPANY, INC. (BOA 07-000051) - Appeal of Decision by the Planning Director dated October 11, 2007 Notice of Violation (ZCV 07-098E), relating to Operation of a Restaurant and Retail Establishment within an Agricultural District without an approved Special Permit. The property consists of approximately 29,926 square feet and is located on the south side of Paauiio Mauka Road, Paauiio Homesteads, Hamakua, Hawai'i, TMK: (3) 4-3-013:27.

GIMPEL: We now move to the petition of James H. Reddekopp, Jr. and Hawaiian Vanilla Company Incorporated, Board of Appeals No. 07-51 which is the appeal of the decision by the Planning Director dated October 11, 2007 Notice of Violation (ZCV 07-098E), relating to Operation of a Restaurant and Retail Establishment within an Agricultural District without an approved Special Permit. The property consists of approximately 29,926 square feet and is located on the south side of Paauiio Mauka Road, Paauiio Homesteads, Hamakua, Hawai'i, TMK: (3) 4-3-013:27.

So we have the petitioner here, Mr. Reddekopp, I presume.

REDDEKOPP: My name is Jim Reddekopp. My wife was unable to make it today, but -.

NOMURA: Microphone.

REDDEKOPP: Oh, I'm Jim Reddekopp of Hawaiian Vanilla Company.

GIMPEL: Okay.

REDDEKOPP: My wife was unable to make it today. She's homeschooling our children.

GIMPEL: All right. Thank you. And -?

SELF: Amy Self, Deputy Corporation Counsel, representing the Planning Director.

GIMPEL: Okay, thank you. Couple of, well, an announcement by way of information. We will break for lunch today at 11:15 because Mr. Cook has a court appearance to make, as I understand; and we will reconvene, if necessary, at 1 o'clock. But I'm hoping we can be through, hopefully, this morning. In any event, what I'd like to do now is ask each of the parties to present an opening statement that indicates their position and why they believe their position is such under the law. So Mr. Reddekopp you're representing yourself today I understand. Would you please go ahead.

REDDEKOPP: Yes, sir. We moved to the Big Island about 10 years ago to farm. I have five children. And we moved out to the Hamakua district to start our vanilla operation in which it has grown over the years. It started from a dinner conversation and now it's something that pretty overwhelms us most of the time. But this piece of land that we're talking about used to be the old De Luz slaughterhouse. We bought it on agreement of sale. About 7 years ago we wanted to turn it into a processing place where we take our vanilla and turn it into value-added products. We went ahead and refurbished the whole mill. We gutted it all out and through a grant through real, research grant and a small business innovation grant, the title of the grant was Vanilla Economic Engine in a Rural Community; and that grant supplied a commercial kitchen, appliances, everything that we needed to make our value-added products. So we took this old mill and redid that and went through many, many permits to get it. I learned quite a bit in doing that process from our EPA standards to our certificate of occupancy which we did get. And, you know, what started as educating people about vanilla, and then we put to making products with it, and then we let them taste it, it really started to grow. And it grew to something that I must apologize might have seem as a restaurant, but we never intended it to be a restaurant. Everything that we do at our site involves tasting the product. I mean it's the best way to sell a product, is to be able to taste it. And having our roadside stand at our farm, everything in there is grown at our farm and it has vanilla in it. We don't sell knickknacks and things. We sell everything that's grown at our farm and/or surrounding farms. There's not much going on in Hamakua and I'm really trying to create a place where people can come to and learn about our products, be able to sell it to them and to have them be able to taste it. We were doing a vanilla experience luncheon that included an educational component. And you could not walk up and just order off the menu. I thought a restaurant was you walk up at any time of the day and they're open for breakfast, lunch and dinner; and that's not what we're about. We do all the

cooking ourselves, hire people in the community and it's a set menu, and everything has an educational component. So that, I think, is it. Thank you.

GIMPEL: All right. Ms. Self.

SELF: This case started when the Planning Department received a complaint for, that they were operating a restaurant and retail establishment. The subject property is located in the State Land Use Agricultural District and the County's Agricultural zoned district. And they were cited for violation of the County's Zoning Code. They weren't actually cited under the Statutes. They were actually cited under the County Zoning Code for a use of the property not permitted under the 20, Section 25-5-72 of the Zoning Code.

It's my understanding from the Planning Department the appellants have applied for a special permit to continue the use that they're doing right now, and that was done on January 25th. Now that is separate from the violation, however. What should have happened was apply for, they should have applied for the special permit prior to making this sort of use of the property. So the violation, even though they have filed for a special permit, the violation is for this Board to determine. The evidence will show that the appellants used the subject property, that the appellant's use of the subject property is not a permitted use in the County's Agricultural Zoned District, and it's also not permitted in the State Agricultural District. The appellants will attempt to prove that they do not operate a retail commercial restaurant or a retail establishment on the property by describing what they're really doing is agricultural tourism.

However, even if they cite to Act 250 which has been since codified under HRS 205, that Statute only allows agricultural tourism on a working farm in the agricultural district in counties that have adopted ordinances regulating agricultural tourism under Hawaii Revised Statutes Section 205-5. However, these ordinances have not yet been adopted by this County. There has been a draft that has gone before the Council but never adopted. It's in limbo at this point. So they're actually claiming that they are in fact conducting agricultural tourism on their property instead of a restaurant and retail establishment. That too is an unpermitted use in this County. It's a violation of the Zoning Code. And also I might add that even if they describe their use as agricultural tourism under a special use permit, they won't be able to obtain a special permit because the County, like I said, has not adopted the ordinances that require it in HRS 205.

They'll also attempt to prove that instead of a retail establishment they operate a roadside stand. However, the evidence will show that the products they sell and serve at the luncheon do not follow the description of a roadside stand and the sale of agricultural products grown on the premises. So based on all the evidence on the record and testimony that will appear today we ask that the Board affirm the Director's decision.

GIMPEL: Okay. Mr. Reddekopp, do you have any witnesses or evidence that you wish to submit or to have testify?

REDDEKOPP: I have Frank De Luz here who is one of the property owners in the area and a testifier.

GIMPEL: Okay. And Ms. Self, are you going to have any witnesses or evidence to submit?

SELF: Yes, I'll be calling the Planning Director.

GIMPEL: Okay. Does anybody wish to offer the record on appeal as for, in evidence?

SELF: Yes, I would ask that it be admitted into evidence.

GIMPEL: Okay. Do we have any objection to having the record on appeal admitted as evidence?

REDDEKOPP: I don't think so.

GIMPEL: Okay, so admitted. Thank you. All right, Mr. Reddekopp, would you call your first witnesses then and I'll -. Mr. De Luz?

REDDEKOPP: Yes, this is Mr. Frank De Luz. And I also have letters from my neighbors as well that I wanted to submit as well if it's possible, letters of support, letters from surrounding property owners

GIMPEL: We may have received those already. Could you identify them?

REDDEKOPP: I have three.

GIMPEL: I have a letter that we received from a Mr. Hamlet Berry, is that one of those?

REDDEKOPP: Yes, it is.

GIMPEL: And there's one from a Terrence Rose.

REDDEKOPP: Correct, correct.

GIMPEL: And you have a third?

REDDEKOPP: I have a third from Anita Suderman.

GIMPEL: I haven't seen that one.

REDDEKOPP: It came yesterday in the mail.

GIMPEL: I see. Have you seen them, Ms. Self? Have you seen those letters?

SELF: I got one, when I walked in the door, from Hamlet Berry.

GIMPEL: Yes. Okay. Why don't we do this, why don't we make copies and show the others to Ms. Self as well, and the third one to the rest of the Board; and we can deal with that issue later. Meanwhile, Mr. De Luz, do you swear to tell the truth, the whole truth and nothing but the truth?

DE LUZ: I do.

GIMPEL: Thank you. Would you state your name and address please, and then you can respond to Mr. Reddekopp's questions.

DE LUZ: I'm Frank De Luz, III. I live in Hilo at Huali Place, H-u-a-l-i, 330 Huali Place. I'm a farmer, born and raised in Paauilo; and if there's any questions on the property -. Back in the 1800s -.

GIMPEL: It would be proper for Mr. Reddekopp to ask you what he wants you to testify to. So ask the questions.

REDDEKOPP: Oh, okay. Could you describe the property and its current and past uses for agri-business.

DE LUZ: Well, I'll give you a little history of it. The Lewison Brothers in the 1800s started the coffee mill. That was the largest coffee mill on the island. They had 2000 acres of it, good amount. And during the depression they couldn't ship the sugar and they went broke. And in the 1930s C. L. Chow converted that to a slaughterhouse; and then in the 50s they lost their lease and they sold it to us. We ran it for 50 years as a meat, slaughterhouse and a processing plant. And we did run the slaughterhouse up till the 90s; and when we felt that the slaughterhouse business was too expensive to spend half a million dollars we sold it to the young gentleman to start the vanilla operation. And we're very proud to have the facility going real nice and that we support the program up there. And we feel that it was an asset, employed people, plus he has planted vanilla and we needed more industry in the agricultural area. I feel that the project there is very sound and I totally support it. And I sold it to him on an agreement of sale so that he could get on his feet and get the operation; and we're proud to see the facility in such a good shape.

REDDEKOPP: And just other things that I wanted to add myself. Thanks, Frank.

GIMPEL: Are you through with this witness for now?

REDDEKOPP: Yes, I am through.

GIMPEL: Then we have cross-examination. Ms. Self, would you like to ask -?

SELF: Yes. Good morning, Mr. De Luz. The only product that's grown on the property is vanilla, is that correct?

DE LUZ: Well, on the property is the facility only.

GIMPEL: Will you speak into the microphone.

DE LUZ: He raises the vanilla right below the street down by, well, in the agricultural area where he's raising the vanilla, yes.

SELF: So that's an area that's separate from where the luncheon takes place?

DE LUZ: Yes. The facility is right up on the highway where he has all the three phases, electricity and all the needs to run it, like we had the slaughterhouse.

GIMPEL: Excuse me, Mr. De Luz, would you remember to speak into the microphone cause we're recording -.

DE LUZ: I'm sorry.

GIMPEL: And need it for the transcript. Thank you.

SELF: And is this, I guess this is a visitors, they call it a visitors center. Is that located on the highway or -?

DELUZ: It's right on the old homestead road.

SELF: Okay, thank you. No further questions at this time.

GIMPEL: Is there any re-cross examination of Mr. De Luz?

REDDEKOPP: No.

GIMPEL: No. Are there any questions from any of the Board? Mr. Cook.

COOK: Mr. De Luz, you've been a long-time resident up there, right?

DE LUZ: Yes. We've been there from, my great grandfather has been there from 1878 and we've never left the community.

COOK: Right. So you know most of the residents of the area that surround this particular property?

DE LUZ: Yes. And I own, I bought out my dad's ranch and we raised cattle, and we've been there all these years. And it's a nice community but we could use more employment and diversify the land. And we're the only place in America to raise vanilla, we're the most southernmost part of the United States. I really think that's exciting to have something like the vanilla there.

COOK: Most of the, it's known in the community there by most of the residents that you own this particular piece of property that the appellant is operating?

DE LUZ: Yes. But I think he was willing to pay off but I told him that, to help him get ahead faster that we'd accept only interest and a small amount, because what he wants is very little to what the place is worth.

COOK: Yeah, so what I wanted to ask you is since it's known that you're the owner of that property, have you received any complaints from any of the property owners in the area about the operation that's going on on that property?

DE LUZ: I have not received any complaint. You know, they widened the road there. And I've been checking on the project and I get excited enough to say that he does, he has improved the area and some people will get jobs there; and I've had no complaints as far as his operation.

COOK: Have you been in, have you been in one of these tours that go through there? And the complaint against your tenant basically is that he's operating a restaurant. Have you been through there to observe what goes on during one of those tours?

DE LUZ: I've been there quite often to attend the luncheon where they explain about the whole operation about vanilla. And we hope that more people planted vanilla because it's such a yield that could create a tremendous income for the community in ag. And I've been there about five or six times to have lunch and people are excited to know that, they're excited. Most of the people didn't know about vanilla, and about the need for it, and the amount of foreign vanilla comes into this country, by the millions, billions really. And I think for a young guy like this to get a project started like that is fascinating.

COOK: Well, you indicated that, the issue here is whether or not a restaurant is being operated on that premises. You said you have been there for lunch. Does that mean that he does have a restaurant going? Did you consider it to be a restaurant?

DE LUZ: Well, it's like a visitors center where people can come have lunch, and they have a video to explain about the whole industry. It's kind of an educational thing to be in. I think most people didn't know about vanilla. And even tourists or locals come there, they think that, it's something they didn't realize could happen here in Hawaii.

COOK: Okay, thank you.

GIMPEL: Anybody else, any other questions from the Board? Mr. Drury.

DRURY: Mr. De Luz, how far is the vanilla operation, the farm itself, from the visitors center?

DE LUZ: Well, it's right there in the facility of old slaughterhouse.

DRURY: No, no, the visitors center is in the old slaughterhouse building. Where is the vanilla grown? Is it a quarter mile away, across the road, how far is it?

REDDEKOPP: I can answer that a little bit better.

GIMPEL: Mr. De Luz, if he doesn't know then he should say he doesn't know it, or if he does know -.

DE LUZ: Actually he has the facility that's right across the street about, oh, 500 feet away that they're showing all the, how the vanilla grows and all. But that's his operation. I've been going more toward the slaughterhouse, the old slaughterhouse where it's very well kept; and they have all their permits and their approvals. And it's fascinating to see what this young fella has done.

GIMPEL: Any other questions from any of the Board? Any other questions? All right, thank you, Mr. Reddekopp. Any other witnesses?

REDDEKOPP: No.

GIMPEL: You wish to testify on your own behalf?

REDDEKOPP: I just wanted to add something on Mr. Cook's question about the lunch or what -.

GIMPEL: I think then we'll ask to swear you in, Mr. Reddekopp. Do you swear to tell the truth, the whole truth and nothing but the truth?

REDDEKOPP: Yes.

GIMPEL: Thank you. Now you can give your name and address for the record, thank you.

REDDEKOPP: James Reddekopp, 43-1969, Paauiilo Homestead Road. When we do any kind of food service because we have a commercial kitchen, if we, well, we grow organic greens so we sell our lettuce, a salad that goes out and it's topped with a vanilla raspberry balsamic dressing. Well, that dressing is made in the commercial kitchen, and that the people are able to sample it, and then they're able to buy it if they like it. That's really how, what we've done it there over the years. And people tend to like all the stuff we make. It has real vanilla in it.

GIMPEL: Cross-examination, Ms. Self?

SELF: Yes.

COOK: Before she, before she examines, maybe you should explain to the petitioner here that the statements he made in his opening statement was not testimony, therefore not evidence. So he may want to repeat those or at least go into a little bit more detail.

GIMPEL: Do you understand?

REDDEKOPP: No.

GIMPEL: Because, the statements you made in your opening statement were not made under oath; therefore, they're really not part of the evidence. That was just what you intend to prove. So if you want to get those in evidence, you should repeat them now.

REDDEKOPP: Okay. My wife and myself, Tracy Reddekopp, own and operate the Hawaiian Vanilla Company. We started 9 years ago as a family farm operation with our five children. Our goal is to raise and grow and process vanilla and other diversified crops on our farm in the hopes of serving as an economic stimulus for our community, which we're struggling to rebound from the decline of sugar here.

I've complied with the Director's orders to immediately cease and desist all culinary demonstrations and vanilla experience luncheons. I've complied with no further culinary demonstrations and vanilla luncheon experiences, what will happen, until I receive my special use permit. I understand that and will comply. And we've also filed a special use permit. We have made something that wasn't there before and we're really just trying to be an advantage to the community and to employ people in the community. And I love my community. I plan to stay there and, forever. So I came into my community to farm and I wanted to raise my children in a rural environment. That's why we're there. If the farming allows that I can sell my product that I grow on my farm for me to make a living and continue farming that's really important to me in the future of my farm and many, many farms. Thank you.

GIMPEL: Ms. Self, you have any questions, cross-examination?

SELF: Yes. Mr. Reddekopp, at the time when you were in operation prior to getting the violation citation you were holding a, what is called a vanilla experienced luncheon; and that was held on Wednesdays, Thursday, and Fridays. Is that correct?

REDDEKOPP: Yes.

SELF: So that was a regular event on Wednesdays, Thursday, and Fridays?

REDDEKOPP: We, it grew to that, yes.

SELF: And then also there was a brunch tea each Monday through Friday from 9:30 to 11. Is that correct?

REDDEKOPP: No, it wasn't correct. We would offer it but people always had to call and see if it was available and see if they could make a reservation. Nobody could just pull up and show up for lunch and say I'm here for lunch. That couldn't happen. Because we were harvesting the food from, portions of the meal to be harvested from the farm, organic greens, we

had to start prepping on Monday for things that we do on Thursday, Fridays, you know, the different days of the week. So we could never take anybody that said I'm here for lunch.

SELF: That's how you advertised, you advertised it on the internet as such?

REDDEKOPP: Reservations. Everywhere in all of our advertisements, reservations were required. That Kona web is somebody that had come up and done our experience, and then went back and decided he wanted to write about it. But I've always made it so important that reservations are required. If people just showed up, my wife, she couldn't handle it. I mean she quit seven times already. I'm amazed we're still together after all these years. But, you know, you have to have a reservation.

SELF: Okay, so provided you have a reservation, there was a price charged of \$30 for seniors, \$30, well, \$30 for anyone who engaged in the luncheon. Is that correct?

REDDEKOPP: It was, yes. And it was a 2 1/2-hour program that included a presentation on vanilla. My children served all the food. It's very much a family experience. My kids are homeschooled so this is their hospitality course, I always have said. And it was a very genuine and unique family experience that we enjoyed doing.

SELF: You don't have a dairy on the property. Is that correct?

REDDEKOPP: There, I don't think there's one dairy left on this island. All the rest of our milk is imported. I mean, brought into the process here.

SELF: So all of the food that's served is not, are not products grown on the property. Is that correct?

REDDEKOPP: No, but they have vanilla in it; and vanilla is the key component to the entire farm, the entire experience. We're in the valued additive business, that's what we do.

SELF: And would you call what you do an agricultural tourism?

REDDEKOPP: Well, let me just back up to answer that question a little bit more because I don't grow beef on my farm either. But the Andrade slaughterhouse in Paauilo supplies me with my needs. That is such an economic stimulus, just from my little place. I buy goat cheese from a guy in Ahualoa. I buy my tomatoes and my bananas and everything I need from Richard Ha in -.

SELF: Okay, so -.

REDDEKOPP: Here, so everything is from Hamakua.

SELF: Just answer the question. So you sell things on your farm that are not grown on your farm. Is that correct?

REDDEKOPP: No, that's not correct. I sell things on my farm that are grown on my, the vanilla is grown on my farm and it goes into all of our products.

SELF: But all the other things that you sell on your farm other than vanilla and maybe the greens are grown elsewhere. Is that correct?

REDDEKOPP: They are grown on other farms in the Hamakua area, yes.

SELF: Okay, thank you.

GIMPEL: Are there any questions from the Board? Ms. Gentry?

GENTRY: Yes. When did you start your educational tours?

REDDEKOPP: When I first bought the place, working with Frank and bought it, I started about five years ago; and this didn't include the lunch. I mean people read about us in a Farm and Ranch Magazine, and we were the first farm in Hawaii to be in this magazine. And so people would go driving down to our farm. It's a 4-wheel drive only and they were in rental cars; and I could see the magazine on the hood of their cars cause my wife had written a journal in there, and it said come by and visit. So people started and coming. And then I bought the slaughterhouse. And my wife was going to kill me cause she said what did you buy that old building for. And I said well, we need a place for people to come and learn about it. And then we had, we started doing it up there; and it has just grown over the years.

GENTRY: When did you buy the slaughterhouse again?

REDDEKOPP: Well, it has got to be 2000, you know.

GENTRY: Around 2000?

REDDEKOPP: Around 2000-2001; and then we just slowly took money and put money into it, everything I do goes back into the business.

GENTRY: When did the tours with tastings begin?

REDDEKOPP: I think seriously about two years ago. And then what we did, cause before we had the, our commercial kitchen, we were using the Paauilo commercial kitchen and were registered down there to make everything in the certified kitchen down at Paauilo. So we were utilizing that to be our kitchen.

GENTRY: What kind of publicity did you use to promote your program?

REDDEKOPP: A lot of it has been word of mouth, which is really hard because it took so long to build that up; and every day I'm turning away people saying I can't offer you that, I can't offer you that. And that's income that -. I've already planned so many things for our farm that we've spent a lot of money for. And, you know, when you plan, when you come to my farm you

see something I started planning five years ago. So without this additional income by having to cease and desist it's a huge burden for me to continue to, I'm really in a hard place. I don't have legal counsel today, I don't have any more money to pay him.

GENTRY: Understood, understood. You did submit to the Board a document; and I just, I had a couple of questions out of that. On page 13 you refer or the document says something about programs that were gaining support will face some special problems. What programs is that referring to? And that's on page 13 under Section E.

REDDEKOPP: I'm sorry, can you repeat the question again? Special problems -.

GENTRY: Yeah, there's a statement in here on page 13 that says programs that were gaining support will face some special problems. What programs were you referring to?

GIMPEL: Yeah, that is page 13 of the -.

GENTRY: Of your document.

GIMPEL: Petitioner's petition for appeal.

REDDEKOPP: Yes.

GIMPEL: Okay.

REDDEKOPP: I believe that had to do with the agricultural tourism side. And when we received our cease and desist order we got a catering license and we thought, okay, well, we'll go and try somewhere else, so we would remove ourselves from the property. And we took it down to our farm. And that I really apologize for my neighbors cause my neighbors down on that side of the road, you know, they started taking pictures one day and then they called the Planning Department. And I was, there was this huge shock to me because I already had a permit in, and I was working with the Planning Department, and then I get a call saying why are you guys still doing tours. And I thought if we moved it about a mile away from the property, that we could still offer that, but we don't do that any more. So those on the farm experiences were something that was really fun and exciting. But all of our neighbors, you know, they have to want it or else we don't want it, we're not going to do it. And I know there's a bill that, Bill 148 that has not gone through the agricultural tourism; and I really hope that we can, the County can adopt something that everybody can live with.

GENTRY: So you were just trying to compensate for the cease and desist order?

REDDEKOPP: Yeah, I was trying to find some way to make it work.

GENTRY: Okay. How many other specialty crop farmers are there in the area? And that's from a statement on Page 5. Who were you referring to?

REDDEKOPP: We work with Hamakua Mushrooms in Laupahoehoe, Richard Ha's farm, Jill Andrade's for beef producers, the honey, Volcano Island Honey in Ahualoa, Ahualoa Goat Dairy, the Hawaiian Island Goat Dairy, Dick Threlfall, and there really seems to be a core group up there that's coming together. We had an agricultural festival this year that got several of those -.

GENTRY: So you just purchase their products and -?

REDDEKOPP: We purchase products and it goes into our presentations.

GENTRY: Use it in your products. Okay.

REDDEKOPP: Because it's a wonderful marketing piece to share with people about this region of Hamakua, because nobody is doing it; and it's what we're trying to do, you know.

GENTRY: Did you bring any photos of the farm or the visitors center?

REDDEKOPP: Any photos of the farm or the visitors center, I have a brochure that shows the farm and the visitors center.

GENTRY: Okay. And is the certified kitchen up at your visitors center?

REDDEKOPP: It is. We do have with the County a certificate of occupancy for a vanilla processing facility.

GENTRY: Okay. And where were the luncheons held?

REDDEKOPP: We have, it used to be all open where the large walk-in freezers were and we enclosed all that. I have a picture of it here. And it's located right outside of the processing facility. And when we got our certificate of occupancy, I mean and, from the Health Department, I mean, it's all enclosed, it's all to specs. It's all, you know, bugs can't come in. I mean, we had to do so we could even open our doors. So I thought I was doing everything right.

GENTRY: Are the tastings held in the same area?

REDDEKOPP: Everything is held inside that area. Any food consumption is within this enclosed area.

GENTRY: The enclosed area. Including the educational talks?

REDDEKOPP: Everything.

GENTRY: Okay. Mr. Chairman, is it possible for us to pass that around and look at it?

GIMPEL: You wish to submit it for examination by the Board?

REDDEKOPP: Sure.

GIMPEL: What is that, the brochure?

REDDEKOPP: Yes.

GIMPEL: Any objections? Ms. Self?

SELF: It should be made an exhibit, so that -.

GIMPEL: Yeah.

SELF: If you want me to refer to it -.

GIMPEL: Okay. Would you like to look at it then? You have no objection to it?

SELF: I'd like to look at it first.

GIMPEL: Yeah, okay. That's what I wanted to do. While we're at that, do you have any objections to admitting into evidence the three letters from, that Mr. Reddekopp has submitted? You've seen them now.

SELF: No.

GIMPEL: All right. They'll be admitted. Thank you.

GENTRY: That's really all the questions I have at this time.

GIMPEL: Thank you. Are there any other questions? Mr. Drury.

DRURY: I have a couple. Referring again to this Page 13, Section E, the first sentence says "Although the Reddekopps firmly believe their activities are permissible, they have complied with the Director's Decision and order to cease and desist certain activities." What are those activities that you've complied with to cease and desist?

REDDEKOPP: The vanilla luncheon experience.

DRURY: So you stopped doing that?

REDDEKOPP: We had to.

DRURY: Okay.

REDDEKOPP: That was serving open food on a plate prepared in a commercial kitchen. And that's what I believe what the violation, you know, I was said to have done, that we were operating a restaurant. So we ceased and desist that.

DRURY: Okay, was there anything else that you stopped doing?

REDDEKOPP: No.

DRURY: Okay. When you moved the operations for a while down onto the actual farm area, what was the nature of the complaints from the neighbors? You seem to imply that the neighbors weren't happy when the operation was moved. What did they not like?

REDDEKOPP: Well, it's just one neighbor, and I'm sure the Planning Department has their name. Down to our farm it's about $\frac{3}{4}$ of a mile and we've had a 4-wheel drive road there forever. My wife finally said, you know, I don't want any more gifts, I don't want any presents from you, I want a road. And the opportunity came up to build a road to our farm. And one of the landowners along paved part of it and I paved part of it; and it got paved all the way to the house. And when the cease and desist order came we said, okay, well, let's try and bring them down there. And then my neighbors, I don't know the complaint, the Planning Department might have the complaint, but maybe it's that I'm imposing on their privacy. Because no sooner than I built the road they put up six signs that say keep out, trespassing, the ugliest signs, beware of dog, and they don't have a dog. And all these horrible signs that you would think they would say thank you or, you know, right on with road. It's just being -.

DRURY: Okay. I have a follow-on question along the same lines. In many places one of the objections to agricultural tourism is that it creates traffic congestion, people walking the streets, parking problems. At the visitors center what exactly have you done to address those possible problems? Anything?

REDDEKOPP: Thank you for asking that. On the one side, across from the visitors center we leveled that out, we graveled it all and put up a fence there. And all the cars park there. And, you know, whenever my neighbors ever have a problem they know who I am and they can come to me. I serve on the community association with Dolores Ramos who couldn't be here today cause she's sick. She's the Vice-President, I mean she's the President. And they'll tell me, you know, hey, you should move this or change this and have all -.

DRURY: I mean have you created parking, has there ever been a parking overflow? Have you -?

REDDEKOPP: Never. And I have my dad out there cause he's 82 and I have to give him something to do. So I put a vest on him and when the lunches are there it's actually from, you know, 12:30 to 2:30; and that's it. Most of my neighbors are, you know, not around.

DRURY: Okay. Just a couple quick follow-up questions. How much have you invested in this operation?

REDDEKOPP: You mean money?

DRURY: Uh huh.

REDDEKOPP: It's the sacrifices that we've all made to make this work, we're, this is over 12 years. We started in, well, before 1990, it has been about 12 years. It started at a dinner conversation. And we received Federal grants, came about \$500,000, and we put in about \$2 million.

DRURY: Okay. And how many jobs have you created? At present how many people are working in connection with the operation?

REDDEKOPP: The most at any time is six full-time employees. But there are times during the year where I need extra help and the kids are out of school; and it has been really awesome that a lot of their grandparents who I know in the community say can my grandson work for you. And to hire these kids during the summer or spring break has been, that added three or four jobs. And sometimes it's their first job. So I'm honored to be their first boss and tell them how to really work hard.

DRURY: Okay, thank you.

GIMPEL: Mr. Cook, you have questions?

COOK: Yeah, couple. This commercial kitchen that you refer to, is that to develop the jams and other products that you sell commercially made by the, this brochure, and other items?

REDDEKOPP: Yes.

COOK: But you also use it for the food that is part of that tour that you do?

REDDEKOPP: Yes. With the State we have a restaurant sit down one on one permit; and that's included in the paperwork that's here. So it's used for both, you know.

COOK: Okay. Now you indicated I think in answer to one of the questions here that you have suspended the food operation. Is that right?

REDDEKOPP: That's correct.

COOK: Now when you charged the \$30 is there a separate charge in that for the food or is it just all combined?

REDDEKOPP: It's inclusive of the educational component and the food.

COOK: Okay. And since you have had to suspend the food, are you still carrying on the tour, and if so what has that done to the tour?

REDDEKOPP: We have had to use alternate sites to take the tours to. What we've, you know, you've got to be innovative on farming. You've got to just keep making money and keep selling. And so people still drive up by word of mouth -- we tried to pull all the advertisement we have on any kind of luncheons -- so people still drive up and what we've tried to do is look at successful, well, like the Kona Coffee guys, you know, we can sell you a bag of coffee but we can't sell you a cup of coffee. That's food service. And so what we're doing now is, you know, we can't do food service so we have a scoop of ice cream and we have toppings, that's complimentary. We can't charge for it. But at least they're getting the taste of it. And then we'll do a presentation at noon every Monday through Friday now, and we can't charge for it. So we hope that they buy something in the store; but that's not always the case. Most of the times they do.

COOK: So what has this done to your economics of the whole -? Cause you had indicated I think in your appeal process that the money from this was helping you continue the operation there. What has it done to you now that you've had to stop charging?

REDDEKOPP: I answer this question with a weary heart. We've refinanced the farm within the last, we just did it so that we can make ends meet. So it's not good but, I'm making it work.

COOK: Thank you. That's all the questions.

GIMPEL: Anybody else any other questions? Mr. Hendricks, yes.

HENDRICKS: Mr. Reddekopp, if you were able to obtain a permit from the Planning Department, would you go back to your previous operation, the package kind of thing?

REDDEKOPP: My wife, she has been thinking about this lately as a blessing in disguise or not, you know. I would, I would go back to it. It wouldn't be as elaborate as it was because it was just beautiful and she was just working too hard. And so we wouldn't go back to something as elaborate -. We were doing it three days a week. We could probably do it no more than that. I really have to see. We're just, we've been optimistic to get our special use permit. I mean we hope that will go through but, and try to line up things for the rest of the year. But I don't even know when we're going to get our special use permit. So I can't really say if we're going even go back to it. I'd like to.

GIMPEL: Anybody else? I have just a couple of questions, Mr. Reddekopp. With respect to the "retail establishment" that was alleged in the complaint to you and your response to that in your petition, I'm referring especially to Page 12 of your petition where it says "The central and single purpose of each 'retail establishment' is to sell a material good to customers. This was and is not the Reddekopps' sole purpose. Sale of their home-grown products is secondary to the overall educational experience. Various products are displayed, but these are small samples emblematic of a larger goal, namely the overall role of Hawaiian vanilla...." My question is what, if any, other products are sold in the retail, in the store?

REDDEKOPP: We have 45 different products and some of them are culinary products that we make in the kitchen.

GIMPEL: Yes.

REDDEKOPP: Some of them are outsourced products like vanilla coffee, which we don't grow coffee so we have somebody else to do the coffee; but we supply the vanilla flavoring that goes into the coffee. Our teas, we supply the flavorings that goes on the teas. There is no bridging tea market. Tea, this is the first year that they're submitting green tea harvest, and we hope to work with those growers when that time comes and we will buy green tea from local growers. But we don't do that now. We just have our flavoring on it. So it's under our brand. The extracts are under our names. And I have a postcard that I sell. A local artist, Jaime Gillmore, who came to our place on one of our experiences and wanted to draw a painting, painting her experience. So she painted the cards. And I've been in other, I go around to other agricultural places or farms. That's what I like to do. I mean if I'm going to go on a trip I want to go see how people grow things and I want to see what they make at their farm. And I've been to places where they're selling paintings and artwork and things that have nothing to do with the farm. And our farm is nothing like those farms I visited. Our roadside stands are -.

GIMPEL: Okay, so in essence what you're saying is the product, what you sell generally contains a vanilla flavoring or something that you -.

REDDEKOPP: Or extract.

GIMPEL: Or extract or something that you grow, but -. Okay. And are you still doing that, that is you haven't ceased that operation since the receipt of the -?

REDDEKOPP: No, I have not.

GIMPEL: Okay, all right. That satisfies my question. All right, I have no other questions. Ms. Gentry, you have?

GENTRY: Yeah, I think I do. After looking at the brochure the accommodations look really nice. How many people can you accommodate at a luncheon?

REDDEKOPP: Our certificate of occupancy says 105. But with five children, I think 70 is the max in there; and they're really working. So we usually try to do, you know, 40 or 50 people at best.

GENTRY: So would you say that's your average attendance on most days?

REDDEKOPP: Yes. And usually it's no more than three days a week.

GENTRY: Okay.

GIMPEL: All right, is there any further cross-examination or any other questions from the Board? No. Do you have any other witnesses, Mr. Reddekopp?

REDDEKOPP: No.

GIMPEL: No. All right, have you closed your case then?

REDDEKOPP: I close my case.

GIMPEL: Okay. Ms. Self.

SELF: I'd like to call Christopher Yuen, Planning Director.

GIMPEL: Do you swear to tell the truth, the whole truth, and nothing but the truth?

YUEN: Yes, I do.

GIMPEL: And would you give your name and title and address and so forth.

YUEN: Yes. I'm Chris Yuen. I'm the Planning Director. Business address is 101 Pauahi Street, Suite 3, Hilo.

SELF: Okay. Mr. Yuen, could you explain to the Board this morning why is there a violation.

YUEN: Yes. It's not a permitted, what he's carrying out is not a permitted use in the County agricultural zone. The Zoning Code says that, the Zoning Code lists permitted uses and then it says in another section that anything that's not listed as a permitted use is not permitted. So the applicant has to bring what they're doing under the umbrella of a permitted use. You know, they have to identify a permitted use that allows what they're doing. And typically the Department in a violation letter will take a, will identify a permitted use. The use is permitted some place else. And saying you're doing this, like a restaurant and, that's only allowed in a commercial zoning. But that's not actually the essential part of the violation. That's just a way of explaining where you can do the kind of thing that you're, the type of thing that you're doing. But the applicant has to show that what they're doing fits in with part of those uses. The violation notice is basically for having these luncheon experiences, meal experiences where people pay to have meals served to them. And I understand from what he's saying it's part of the tour, it's not they'll just go have a meal served in there. Even the paying, the tour part of it is not a permitted use.

What he has identified as the permitted use that he's trying to bring this under is a roadside stand. We kind of take a common sense view of what a roadside stand is. This language goes back to the State Land Use Law originally. The County Zoning Code is simply in this case copying a permitted use under the State Land Use Law, Chapter 205. It comes, it has been in the Statutes from the early 1960s. I think everybody is aware of what a roadstand is, it's for those products grown on the premises which is the exact term. Farmers, if you have walnuts, you can

have a roadside stand to sell those walnuts. Bananas, you have a roadside stand to sell your bananas. The stand is typically is a very simple building, not a building but a rack upon which products are displayed. So that's a roadside stand for products grown on the premises. He has an enclosed building in which he's selling a lot of products that at the most the vanilla is a portion or an ingredient in the products that he's selling; but he is selling products that are certainly not grown on the premises.

SELF: Okay, he talked about other permits he has like the certified kitchen, all this is from, all these permits from DOH. So what is it, what about these permits and what does it permit them to do?

YUEN: Well, the Department of Health is not regulating a land use side of it. They're regulating the source of water, the way you're, the type of countertops they have. There's a series of things that they look at in licensing a certified kitchen. It doesn't mean they have a land use permit. They did have, he does have a building permit for a vanilla ag processing facility where can, you know -. That's a permitted use in the agriculture zone. You can do agricultural processing. So he can take his vanilla beans and turn them into vanilla flavoring and processing it fully. He does not, those other permits that he has that are exhibits here are not being set to legitimate the sale of meals during his tours and the sale of the products that are largely not products that's grown on the premises.

SELF: Okay. And in the appellant's petition or appeal they refer to Act 250. So could you explain what Act 250 which has since been codified as 205 has to do with this?

YUEN: Well, it doesn't help actually; and it further doesn't help his position. Act 250 was, has Federal legislation. What it says is that if the counties enact an ordinance covering agricultural tourism, then it's considered a permitted use under the terms of that ordinance and you don't need a special permit. I think that the reason, I know, I read the history of this bill. It started off as a bill that would pretty much open up ag tourism and say you could do ag tourism in the ag district without a special permit. By the time that this passed they had added this clause that said the counties had to pass an ordinance first. So what it effectively did was remove any doubt that the counties could pass an ordinance allowing ag tourism in the ag district and not, and need not a special permit. Because before Act 250, say the counties, and we thought that before actually that the counties did have the power to allow ag tourism under the County Zoning Code if the County chose to do so. But there was an argument that Chapter 205, which is the State Land Use Law, wouldn't allow that. So Act 250 did have an effect of saying that this is an option now for the counties to allow, and you don't have to require a special permit for this kind of activity that Mr. Reddekopp has. But the County has not enacted the ordinance to cover agricultural-tourism.

SELF: Okay. And what has the Planning Department done about ag tourism and other violations at this time?

YUEN: Well, first on ag tourism generally, you know, we recognize that there's a lot of interest in legitimate farms in having some kind of ag tourism on their property. We also recognize that the special permit can be a permissible process. We think that some level of ag,

we think that the County should allow some level of ag tourism without a special permit through a simpler administrative type process. The special permit goes to the Planning Commission and it has a public hearing. It can be difficult or intimidating for some people. So the question is where do you draw the line. Because we do think that in some level of activity there needs to be a greater scrutiny through the special permit. To give you an example of really a large scale ag tourism operation: Remember Dole had the maze in Central Oahu and they would bring in, they had this big maze and you could go there and to buy pineapples on the ag lots, but it was a huge operation. And buses would pull up, you know, every few minutes. And certainly you can't say that any place in the agricultural district on the island you could plop down an activity like that without any kind of scrutiny. So, I mean, that's just an extreme example but at some point you do need more scrutiny for this kind of operation. The question is where you draw the line.

The Planning Department worked up a bill in 2004 roughly. We had public hearings, we had a lot of meetings on it. We actually, there was a mix. Actually some, one of the farmers thought it was too lenient in terms of what it allowed. Other people involved in ag tourism felt it was too restrictive. There was some opposition from people who were neighbors of agricultural operations at the Council, they thought it was too open ended. And so it actually never passed the Council. It's still pending at the Council. So that's pretty much the gist of it right now.

SELF: Have any other counties passed an ordinance?

YUEN: As far as I know, no.

SELF: We saw that there were a couple of letters from neighbors who support this business. And could you sort of speak about whether this, what effect this has on the violation and whether it's a good project or not, whether that has an effect on the violation itself.

YUEN: Well, it has no effect on the violation and it's, the opinion of the neighbors is significant in considering a special permit application. One of the criteria in the special permit is does it unreasonably burden neighboring properties. If the neighboring property owners don't think so then that's definitely relevant. But it's not relevant to the question of whether this is a violation. Whether or not the neighbors like it or not, we have to enforce the Zoning Code and cite businesses that are operating where they're not allowed by the zoning.

SELF: Okay. And coming back to roadside stands, I know this issue has come up over and over again, and the Department has a policy on how they interpret the section of the Code that refers to roadside stands on the sale of agricultural products grown on the premises. Could you give the Board some detail on, or information on how the Department treats that?

YUEN: It's mostly, it's come up before, not anything to the extent of this operation in terms of a range of things that are being sold. But the difficult question is the degree of processing. And we would allow people to sell their product, you know, in a processed form where the consumer typically buys it. For example, you know, you're just selling coffee on the roadside stand, you can sell roasted coffee. But we look at selling cups of coffee, like Starbucks, as a different kind of business. But, you know, that's still even selling, supposedly, you know, selling their own coffee. So we have looked at the question before. And I, you know, and I want

to say that I did do some research on roadside stands in the Zoning Law. I came across a case that was really very strict about what you can sell, you know, on a roadside stand. It's not something that authorizes to sell meals with -, if you grow tomatoes, that you can sell hamburgers with ketchup made from your tomatoes; you know, that just doesn't go that far, which is more or less what the neighbors said.

SELF: Okay. And, that's all I have for right now.

GIMPEL: Thank you. Is there any question or cross-examination, Mr. Reddekopp?

REDDEKOPP: No.

GIMPEL: All right. Do you have any other witnesses, Ms. Self?

SELF: No.

GIMPEL: No. Do you have any objections to admitting the brochure that we passed around?

SELF: No.

GIMPEL: Okay. So that will be so admitted. Mr. Cook, you have a question?

COOK: Yeah. As I understand it, the special use permit is currently through your Department and then it goes to the Land Use -.

SELF: Planning Commission.

GENTRY: Planning Commission.

COOK: Planning Commission. In Ms. Self's opening statement I understood her to say that it couldn't be allowed, the special use permit. Is that correct or is it -?

YUEN: Yeah, actually I have to disagree with that statement. The Act 250 doesn't preclude you from going through the special permit. You can do a lot of, the range of things that you can potentially do under the special permit is very wide. All it says is unusual and reasonable uses in the agricultural district. So, yes, Act 250 really says that if the County passes an ordinance, it can define a range of things of ag tourism that you can do without a special permit. But we haven't passed that. But in the meantime you can still get a special permit to do ag tourism.

COOK: So he could get -?

YUEN: Yes.

COOK: The ag tourism? And in addition he could get the bill out as part of his tours to serve food? That is also allowable under the special permit assuming it's approved by the -?

YUEN: Right. There's quite a range of things that can be done under the special permit. We have, well, we have at least one other special permit for tours, for paid tours in the agricultural district that I can think of. But, yes, it is potentially -. The application, I mean the application was submitted a little while back, then was initially rejected or returned for more information. Then it came in a few days ago and it's basically okay for further processing. And so it would be, it gets circulated to other government agencies and then put on the Planning Commission's agenda in a set, I can't remember whether it 60 days or 90 days. But it's basically there to agendize.

COOK: Was the complaint about the service of food or was the complaint about the eco-tourism? I guess what he's doing in the form of the seminars and so forth is considered eco-tourism. Am I interpreting this correctly?

YUEN: Well, ag tourism, and ag tourism. And I'm not sure, I know we had a complaint about the operation but I don't know that the complainant gave a lot of detail about what they were complaining about.

COOK Well, you heard his testimony today. Is what he is doing, would the seminar part under your rules, would that be allowed currently?

YUEN: For, if he's charging for it, no.

COOK: So if we were going to uphold his appeal, there'd be the two violations that we're looking at here. One would be the, or at least the Planning Department's interpretation, one would be the eco-tourism, I'll call it that anyway, and the other would be the serving of food which you've interpreted as being a restaurant and not a permitted use?

YUEN: Right. Well, he's cited for selling products besides his vanilla and running, well, having these meals for pay with conversation. I'm, I don't think he has presented any scenario where he has tours for conversation without meals, but that would also, that probably would be a different citation. But this would be in our view, it is, that is agricultural tourism and not a permitted use under the Zoning Code or State Land Use Law.

GIMPEL: Any other questions? Mr. Drury?

DRURY: Yes, I have one or two.

GIMPEL: Go ahead.

DRURY: Mr. Yuen, I mean, you had a lot to do with writing the General Plan and you're very aware of the references to agricultural tourism and to value-added and diversified

agriculture. Is this still a County priority? Is this still something that the County wants to encourage?

YUEN: Yes. But, you know, we have to have the right, the legal framework, you know. And this is the difficult thing about a zoning violation. And in some ways, you know, zoning enforcement is more difficult than typical criminal law enforcement. Because you have individuals who are cited who may be carrying out a perfectly nice business or are perfectly nice people, unlike a criminal law situation where they're making crystal meth or something in a lab. And this is a typical scenario. But we, if it's not allowed in the Zoning District we still have to cite it and enforce. Where I'm at and I gave it some thought to, there's a Hawaii Ag Tourism Association. I gave a talk to them in January or February of last year, 2007; and I pretty much explained as to where we were at with it. And we would like to see an ordinance, we would like to see, and I think it would do everybody good if there's a legal framework for people to operate. And whether, and so some operations don't need a special permit and so it complies, that would be fine, that would be great. But we would like to see the people who are interested in doing it as a business come up with the next step in terms of what should be in the ordinance. Because as I said earlier the Planning Department tried to put together an ordinance, it did not pass the Council, got flak. I prepared an outline, a framework of what should be in the ordinance and somebody needs to, the people that are doing this kind of business, and with the understanding that there are neighbors that need to be on board with this, but somebody else has got to carry forward the next step to pass the ordinance.

DRURY: Actually the follow-up question was has the Department realizing that it is a priority in economic development for the County and realizing that the ordinance as such has been sort of held up because of some controversy, has the Department taken any steps at all to expedite permits, to decide where a special permit is needed or not needed? Because you do have some discretion in that, if I understand you right. Has the Department, in other words, taken any proactive steps to make sure that these businesses that you might want to encourage don't die before the bill makes it through the County Council?

YUEN: Well, at, currently, the typical operation like this one needs to apply for a special permit; and we can't do that for them. They have to apply for a special permit.

DRURY: Are they, for example, has the County any rules or guidelines about the, and I know it's a difficult one, about what size or scope of operation needs to apply for a special permit versus what you just sort of let go? Are there any guidelines your staff has about making that decision?

YUEN: I don't think we, it's not that we sort of let things go. We get a complaint, we look at the operation. If it's an on-going operation we cite it for, if it's a violation. We have had people who applied. Now that I'm thinking about it some more, there are other applicants who are operating similar kinds of activity. I can think of one we just went through on, in the Mt. View area. A coffee mill project went through on a special permit. So, and staff is really, you know, tries to work with applicants as much as possible, especially the people who are doing it themselves and, you know, may be not putting out the expense of hiring planning consultants. You know, staff, I know like we've had a lot of compliments from people who submitted special

permits that the staff has been very helpful in working with them and they should be encouraged to help the people as much as possible. So, but the bottom line is that the business has to apply and prepare a permit.

DRURY: Have there ever been, final question -.

GIMPEL: Wait, it's now 11:18 and we have to recess for lunch.

DRURY: Oh, I'm sorry. I'm sorry. It's a real fast last question, if we can?

GIMPEL: Quickly.

DRURY: All right. Have there ever been cases when violations have been sort of suspended pending the special permit being applied? Have you ever basically waived the fines when a special permit is approved?

YUEN: We've compromised at times. I can't think of us saying it's okay to operate pending -. Once, you know, once it's on the stage of we cite somebody for a violation that we, I can't think of an instance where we just say, oh, go ahead and operate until you get the special permit.

GIMPEL: Okay, it is now 11:19 and I know Mr. Cook has a court date. He's not a defendant or anything like that. So we will recess for lunch and return at 1 o'clock. We will then hear final argument or any questions, and then final arguments and decide. Yes?

(Mr. Cook left the meeting at this time 11:19 a.m.)

SELF: Chris, he has to go to Waimea so if anyone has any questions of him if you can question him now.

GENTRY: Yeah.

GIMPEL: You have a question, all right, real quickly, go ahead. Not yet recessed.

GENTRY: Undo the recess. When was the complaint received?

YUEN: I don't know. Some time, I don't know that. I know that the complaint form is not in here.

GENTRY: Okay. And I wanted to know whether it was by phone or letter. Letter?

SELF: It's almost always by letter. I mean I can't imagine that they would just call. There's usually a complaint form. Oh, I mean, you mean if -?

GENTRY: The complaint, whoever complained, was that by phone or letter because I know that's acted on by, in the previous case we heard that a telephone can generate -.

YUEN: I don't know -.

GENTRY: You don't know.

YUEN: It was not anonymous though.

GENTRY: Okay. That's enough. Did the inspector actually visit the farm site or the visitors center site after the complaint, or was this just handled administratively?

YUEN: I'm not sure. The letter itself doesn't indicate this. The letter is, the facts in the letter are based on a website. We could have the inspector come at 1:00, if there's some desire to ask that question.

GENTRY: So actually the inspector went out to do the occupancy but probably no one has been -. I mean, when the visitors center was completed you needed an inspection then. But there was no physical inspection after the complaint was filed?

YUEN: No, well, okay, not by Planning Department. The Department of Health would have inspected, actually gone and inspected the building for the certified kitchen and to issue that permit. The Building Department if there were, and I don't know the extent of the renovations for the mill -.

GENTRY: Right.

YUEN: The Building Department might have visited it. But the Planning Department would not be involved in inspecting the premises for this kind of operation -.

GENTRY: Okay.

YUEN: For the kinds of things paperwork could resolve before there was a violation.

GENTRY: Okay. And then you were talking about this application or this appeal coming in under a roadside stand. And after looking at the brochure, that doesn't quite look like a roadside stand to the Department. Is it like too big, too enclosed, too refined or something?

YUEN: All of the above plus it's not for the sale of products, agricultural products, on the premises. He's selling products that are clearly not grown on the premises or even his own premises but some distant site selling agricultural products, a wide range of agricultural products.

GENTRY: That's all I have.

GIMPEL: Okay, we will recess and reconvene at 1 o'clock. Thank you.

RECESSED

The Chair called a recess at 11:24 a.m.

RECONVENED

The meeting reconvened at 1:03 p.m.

GIMPEL: Now when we recessed for lunch we were just at the close of Mr. Yuen's testimony and questions by the Board. Is there any further evidence from either party? Mr. Reddekopp, any more evidence to -?

COOK: Mr. Chair?

GIMPEL: Yes.

COOK: Just so we're legal here, I was gone for the last series of questions, I was given a transcript of those questions. I've read it so I'm up to speed.

GIMPEL: Yes, I was going to come to that.

COOK: Okay.

GIMPEL: I've been informed by Counsel that Hawaii Revised Statutes Section 91-11 provides that whenever in a contested case the officials of the agency who are to render the final decision have not heard and examined -. So it requires both hearing and examining the evidence. So, therefore, the decision if adverse to a party to the proceeding other than the agency itself can't be made till a proposal for a decision containing the reasons and so forth is reviewed. So we'll get to that if and when we get to a decision making time. Thank you for bringing that to my attention.

I believe if there's no further evidence to present then it's time for the final argument from each party, final statements. So, Mr. Reddekopp, why don't you begin and tell us what you want to tell us in the way of final statement, final argument.

REDDEKOPP: Thank you. I had some time over lunch to think so I wrote some of this down. In Hamakua we've come out of a plantation era and it's gone and the faces of Ag are changing rapidly around us. There's lot of changes in our community. While serving on the community association board as vice president, next year I'm going to go for president, I've seen those changes just in the last eight years the amount of new people that have come, retired folks that have come to our area, and some new farms that have sprouted up. But the roadside stands of yesterday are not the roadside stands of today. Now our farms must be innovative to survive, we have to be. And value-added seems to be the right way. If I were a tomato farmer I would have a line of pasta sauces and tomato sauces and I would be innovative and creative in everything that I grew so that I could make more money for my family.

We received our cease and desist order in October and we were to comply by November 21st, which we did. We also submitted our first special use permit application on, prior to November 21st or on November 21st. So we did that. And then we had to, it was sent back to us in

December and then we resubmitted on January 25, 2008; and currently it's going through the process and through the different agencies, through the Planning Department.

We did get a certificate of occupancy from the County. It did say that I could have 105 people on my property. That permit was signed by all the offices. I had to walk that through all the offices to get that signed. Planning did sign off on that. They didn't sign off on having lunch, I totally understand that. We have the documents. I mean I couldn't get my certificate of occupancy unless every, the Engineering, Health, Planning, everybody signed off on that. We complied with the cease and desist of operating a restaurant. Chris Yuen cited ag-tourism. We were not cited for that. I don't know how that discussion came up.

But this has come at a cost of right now for the special use permit of \$30,000 in lawyer's fees; and it is, caused quite a bit of stress on the farm. I hope you take that all into consideration. And finally, the one complaint that shut us down, we got one complaint, I have not seen that document. If somebody can just phone in and make a complaint it should be public record or you should be able to see this, the Board. Where is this written complaint that we were operating a restaurant and a retail on our farm? I hope that by following all the guidelines and cease and desisting that the fines will be minimum, if there are any; and I look forward to going through the special use permit and coming out successful at the end of that, hopefully offering that again. Thank you.

GIMPEL: Thank you. Ms. Self.

SELF: I think we can all sympathize with Mr. Reddekopp's situation. It did sound like a nice operation and, you know, maybe one day the County will have a bill that will allow ag tourism. The ag tourism actually came from the application, the appeal, the brief that was attached to the appeal. So we weren't bringing up ag-tourism on our own. That was what was described as by, I guess, it was your attorney, Mr. Reddekopp's attorney, who wrote the brief for the petition, I mean, the appeal. So that's why ag tourism was brought up, because that's how it was described. But because, even though you sympathize with it you have to look at what's really going on. The Planning Department is required to enforce the Zoning Code; and this actually involves more than the Zoning Code. This actually involves State law under Chapter 205. So the type of activities that are going on are not permitted under Chapter 205 and they're not permitted under the Zoning Code. Without a special permit, there's, you can apply for a special permit. I'd like to interject here at this point that there are no fines right now being imposed because our Code presently says that the Director's order is stayed pending the appeal. So that's not going on right now. He isn't being imposed or getting fined on it. So now we have a situation where it seems like a nice operation.

He has indicated there was one complaint. But that's how the Department operates. That's how they find out about Zoning Code violations and Subdivision Code violations. If it were not for complaints from the public the County would have to virtually drive around and look for violations which as you know that's just absolutely impossible. So the reasons these complaints are kept anonymous, the complaint today, you can see the complaint form that is used by the public that the person's name is protected, the person's name, address, phone number, all of that is protected because it would frustrate the purpose if, you know, plus it would cause other

problems if the person's name was open to the public. And that's permitted under 92-F. The Department is not required to disclose these names because otherwise nobody would ever report a violation. And that's how things begin to come up.

Now the appellant has, is allowed to do vanilla processing, you heard that from the Director. So he can continue to process the vanilla. But he went further than that and started doing things that are not permitted under the Code. You heard from his own testimony that they're serving, well, it's also on page 3 of the record of appeal, they're serving a 5-course meal at lunch time. And so far the only things that I actually heard mentioned that are actually grown on the property is the vanilla, of course, which is an ingredient that's in all of the other things he's selling, and then also the greens, well, greens they grow. So he is selling products that are not grown on the premises which is required for a, he wants to call it a roadside stand. That's what a roadside stand is, is selling products that are grown on the land. He's selling products that are grown on other people's property as well. The appellant had a duty before going into this, expanding into this type of business, he had a duty to check the Code to see what he would be allowed to do with the property. He did that for the vanilla processing but did not once he started going into these other areas. And he needed to apply for a special permit before doing that, not after the fact. The Planning Department cannot do that for him. He had to do it himself. He has now done that so it would be up the Planning Commission at this point to determine whether or not he's going to get a special permit.

This case is actually similar to another case that came up, you probably read about it in the Honolulu Advertiser. This was a dispute, same kind of thing, the dispute. This was huge dispute though between neighbors. This was a case of Walsh versus Kona Joe Coffee. And it was in the Third Circuit Court, so it's not a published case that you could find where it's logged. But in that case the defendant had a, Coffee Kona, Kona Joe Coffee, they had a coffee farm and they had a roadside stand, or what they called a roadside stand; and they were selling coffee and they were also selling gift shop items like logos, t-shirts and that sort of thing. Well, this found its way to Third Circuit Court and Judge Strance found that the defendant's construction of commercial nonroadway sales improvements and retail sale of products to the public and tour groups including sales of nonagricultural products and agricultural products not grown on the premises on their agriculturally zoned property in violation of Hawaii County Code 25-5-72, also constitutes a private nuisance to the plaintiffs who are merely adjacent landowners. This points out, I read this to you because it tells you why we had to enforce the Code. We cannot determine it based on what a nice operation it is or whether it's a good project or we can have sympathy for the appellant. They have to apply the Code across the board to anyone. And it could even go as far as this is to be called, to be determined as a nuisance. So once someone complains the Department has a duty to investigate and to, if there is a violation they have to cite that person for the violation.

Now the Board's duty is to review the facts, the evidence that has been presented to you, and then you have to apply the law to the evidence. In this particular case the appellant even in his own testimony indicated that he's selling products that are not grown on his property. He's selling products that are actually grown on other people's property. Vanilla is an ingredient in some of the foods that apparently is served at lunch time. But all the other products are not grown on his property. This is an unpermitted use of State and County Ag property unless you

have a special permit. His attorney in the brief indicated he's conducting ag tourism on the property which is presently unpermitted, is an unpermitted use of ag property in this County without a special use permit.

So I would urge the Board to review the evidence and to look at the permitted uses under Section 25-5-72 of the Zoning Code. If any of the uses that have been described here today and have been described in the record on appeal are not listed on that list of things that are permitted on ag property in this County, then I would urge you to apply the law to the evidence and determine to affirm the Director's decision. Thank you.

GIMPEL: Are there any questions of either of the parties by any member of the Board? Mr. Cook.

COOK: Mr. Reddekopp, I didn't understand you, I don't think. Did you say it cost \$30,000 for that special use permit? What -?

REDDEKOPP: The legal fees reached \$30,000. So yesterday I called my lawyer and said I can't talk to you at all. So he showed up but, free today, but I'm at \$30,000 and I just, I couldn't believe it.

COOK: Okay.

GIMPEL: Any other questions? I have one question. You indicated, I think, in your closing statement that you had ceased operating the culinary demonstrations or the luncheons.

REDDEKOPP: The luncheons.

GIMPEL: And when did you apply for the special permit?

REDDEKOPP: November 21st was our first application.

GIMPEL: Thank you.

COOK: Just a follow-up. If, I guess you had an attorney that was doing the special use permit and now you no longer have. Do you plan to continue that on your own to pursue it through?

REDDEKOPP: I'm going to give it my best shot.

GIMPEL: Any other questions? All right, I will entertain a motion regarding this petition.

DRURY: Mr. Chairman, could I move to go into a very brief executive session? I have a question of law I would like to ask.

GIMPEL: Do I have a second on that?

GENTRY: Second.

GIMPEL: All in favor?

MEMBERS: Aye.

GIMPEL: Aye. All right, we will adjourn for a brief executive session, which you will have to leave the room I'm afraid. Thank you.

EXECUTIVE The Board went into executive session at 1:27 p.m. and came
SESSION out of executive session at 1:48 p.m.

GIMPEL: Okay, we're back into regular session. With respect to the fact that Mr. Cook did not hear all of the questions and answers proposed, propounded to Director Yuen, can we waive the requirement that he both hear and examine all of the evidence? Would the parties not object to him participating in the vote, having examined but not heard all of the evidence?

SELF: No, I have no objections.

GIMPEL: Do you have an objection?

REDDEKOPP: No.

GIMPEL: All right, for the record there is no objection to Mr. Cook voting. Thank you. All right, now I will entertain a motion regarding this matter. Anybody?

DRURY: Want me to?

GENTRY: Yep.

DRURY: Okay, okay. For discussion purposes, I will offer the following motion. I move that the Director's decision be upheld on the grounds that we have seen no evidence that the decision is arbitrary, capricious, contrary to law or an abuse of discretion. The second part of this motion is that in light of the evidence presented in the whole record on this case, the Board strongly recommends that no fines be levied for this violation pending the special permit process and that the special permit process be expedited by the County to the fullest extent possible. I'll read that again if you want.

GENTRY: No. Second.

GIMPEL: All right, motion has been made and seconded: One, to uphold the Director's determination; and two, to make recommendations that No. 1, no fines be levied and that the special permit process be expedited. Is that a fair statement?

DRURY: Yes.

GIMPEL: Is there any discussion? Mr. Drury, you made the motion.

DRURY: What would you like me to say? I think in light of the record it appears that the Director was carrying out the law, that Section 25 says what it says and there was a lot of eating going on at a lot of times. At the same time in the light of the whole record, this is exactly the kind of business that the County General Plan and many other policy documents have said that we need. It is no one's fault that the legislation permitting ag tourism has been held up and it would seem like the most just resolution is that the law be upheld but that the applicant not suffer harm as a result.

COOK: I'd like to speak against the motion. I think we can, if we want to uphold the appeal in this case, I think that the Director did err by taking a very narrow interpretation of what a restaurant is. And I believe with the evidence that we have before us here we should find that there was not a restaurant being operated there. He had a general orientation session that he charged a flat fee of \$30 for; and I think that the interpretation was that there wasn't a menu, there wasn't a set time for this, and under those circumstances I think we could hold, and I think the Director could have interpreted this broader and not found that there was a restaurant there. And as far as selling products that weren't produced on the property, I think the testimony, and again I think the Director erred in that the testimony was clear here that the products that, particularly the food, all contained this vanilla that was raised or was produced on the property there. The commercial kitchen did extract it and product was used. I think we all would like to uphold this appeal; and I believe there are grounds for doing that, so I'll vote against the motion.

GIMPEL: Anybody else any other comments? I have a few. Mr. Reddekopp, I too applaud your efforts to help the community and I think you have helped the community. I appreciate how you bring value to the area. And I applaud your decision to cease the food service operations on November 21st according to your testimony and according by the way to the letter received from the Planning Department saying that you had to cease the operation by November 21st. I also applaud the fact that you have filed for a special permit in conformance with that requirement by the Planning Director again by November 21st. However, I too must find that the Planning Director's determination that you were operating a restaurant is not illegal or abuse of discretion, etc., I think especially in strength of the fact that your own evidence, the letter from Anita Suderman and the letter from Terrence Rose, indicates that you're operating a restaurant; it says "I support your endeavor with the vanilla mill operation including the restaurant. Like all of my neighbors I look at the restaurant operation by the Hawaiian Vanilla Company as an important activity in our area." A restaurant doesn't have to have a menu to be a restaurant. A restaurant doesn't have to be open 24 hours a day to be a restaurant. A restaurant doesn't have to have -, can have a fixed price and a set menu. I think we've all been in restaurants like that. So therefore I would have to vote to uphold the Planning Director's determination according to the motion.

I would also urge the Planning Director not to levy a fine, although I don't think that urging is really necessary because you have completed the corrective action by November 21st that was specified in the Director's October 11th letter to you. It says, one, corrective action consists of: Immediately cease and desist the Hawaiian Vanilla Company's culinary demonstrations and the

Vanilla Experience Luncheons; you have done that. Two, no further culinary demonstrations and Vanilla Experience Luncheons shall be conducted until such time that you receive an approved special permit from the Planning Commission; and that has not been done yet. And, three, you have submitted an application for special permit as required. The fourth thing was remove from your website all information and advertisements under Hawaiian Vanilla Company's culinary demonstrations and vanilla experience luncheons by November 21, 2007; I believe you testified that you did that as well. So you have complied with all of the requirements specified by the Director. Therefore no fine has been levied or will be levied unless one of those, unless you start up again without getting the special permit. So I'm going to have to vote to uphold the Director's determination. Thank you.

Any other comments?

DRURY: Mr. Gimpel?

GIMPEL: Yes.

DRURY: Were you going to suggest an alternative wording for the motion, in light of what you've just said.

GIMPEL: No. I'm just specifying my personal belief in that. I believe the motion is merely a recommendation to the Director and as such, you know, and that part of it I think it's within our authority. I would reiterate that, for the record, that we have, that both parties have agreed to waive the requirement that everybody both read and hear all of the testimony before us because Mr. Cook had to miss just a part of Mr. Yuen's testimony. So with that being said I'll call for a vote.

KAWAHA: Mr. Drury?

DRURY: Yes.

KAWAHA: Ms. Gentry?

GENTRY: Aye.

KAWAHA: Mr. Cook?

COOK: No.

KAWAHA: Mr. Hendricks?

HENDRICKS: Aye.

KAWAHA: Ms. Tavares?

TAVARES: Aye.

KAWAHA: Chair Gimpel?

GIMPEL: Aye.

KAWAHA: Mr. Chair, there are five ayes and one no. Motion is carried.

GIMPEL: Thank you. The prevailing party will prepare findings of fact and that will be in, well, within 30 days and so forth, circulated?

SELF: Yes.

GIMPEL: Thank you. All right. Thank you both for appearing. It was very helpful and we hope that everything moves as smoothly as possible.

REDDEKOPP: Thank you very much.

GIMPEL: Thank you.

The discussion ended at 1:57 p.m.

Respectfully submitted,

Sharon M. Nomura, East Hawai'i Secretary

A T T E S T:

Noriko Sauer, West Hawai'i Secretary