

PLANNING COMMISSION  
COUNTY OF HAWAI`I

HEARING TRANSCRIPT  
APRIL 2, 2004

A regularly advertised hearing on the application of **MICHAEL AND MISATO MORTARA (SP 04-001)** was called to order at 10:32 a.m. in the County Building, Councilroom – Room 201, 25 Aupuni Street, Hilo, Hawai`i, with Vice Chair Earl Fujikawa presiding.

PRESENT: Earl Fujikawa  
William Graham  
Francis Smith  
Hannah Springer  
Bill Thibadeau

ABSENT AND EXCUSED: Fred Galdones  
Christian Alameda  
Jeffrey McCall

Patricia O'Toole, Deputy Corporation Counsel  
Christopher J. Yuen, Planning Director  
Norman Hayashi, Planning Program Manager  
Phyllis Fujimoto, Staff Planner  
Jeff Darrow, Staff Planner

And approximately 10 people from the public in attendance.

**APPLICANT: MICHAEL AND MISATO MORTARA (SP 04-001)**

Special Permit to allow the establishment of an art studio on 39,608 square feet of land situated within the State Land Use Agricultural District. The property is located between the Volcano Highway (State Highway 11) and the Old Volcano Road, approximately 200 feet west (Kau side) of Alii Kane Street and approximately 1 mile east (Keaau side) of the Volcano Solid Waste Transfer site, Royal Hawaiian Estates Subdivision, Keaau, Puna, Hawai`i, TMK: 1-1-17:88 and 89.

FUJIKAWA: Okay, Commissioners, the next Applicant will be Michael and Misato Mortara applying for a special -, SP 04-001, special permit to allow the establishment of an art studio on a 39,608 square feet of land situated in the State Land Use Agricultural District. Staff, you may proceed.

DARROW: Mr. Chairman, if it's okay, I believe the Applicants are outside waiting to get in, if we could hold on for a minute.

FUJIKAWA: Yeah, I noticed that, yeah. Okay.

DARROW: Thank you, Mr. Chairman. If I may direct your attention to the location map, this next application is located in the Puna District of Hawai'i. This white line here, traveling in a east or westerly direction is the Hawai'i Belt Road or Volcano Highway. This would be traveling towards Hilo direction, this would be towards the Volcano direction. This area here is the Royal Hawaiian Estates Subdivision. This is -, if you were traveling on the Hawai'i Belt Road traveling towards Volcano, this application would be located between the 23 and the 24 mile marker on the Hawai'i Belt Road.

The red dot is the subject property area that we're looking at. It's located on the corner of the Hawai'i Belt Road and the Old Volcano Road. The Old Volcano Road actually does not connect in this area to the Hawai'i Belt Road. I'm going to pass out some photos here, and that way you can see the access a little clearer.

The Applicants in this case, Michael and Misato Mortara, are requesting a special permit to allow the establishment of an art studio on 39,608 square feet of land in the State Land Use Agricultural District. The art studio, if I can direct your attention to the site plan, the art studio will consist of an office area, an area where the public can view artists working, as well as an area where they can see the finished work of the artists. This is the general configuration of both lots, Parcels 88 and 89. The Applicants are proposing to consolidate these two parcels into one parcel for this use. The Applicants also own Parcel 90, which is this area here, which is not part of this application but also creates an additional buffer to surrounding property owners. This over here is the HELCO substation that's located near this proposed request.

The Applicants have requested access from the Department of Transportation to be able to access their property off Hawai'i Belt Road. They haven't received a response as of yet, but the proposed access will be an entry off of Hawai'i Belt Road onto the property. There will be no exit from this access. There's a parking area identified here. Exit will be onto Old Volcano Road, out back onto the Hawai'i Belt Road. If visitors are coming from Volcano towards Hilo, they would access this area from the Old Volcano Road and also exit from that area.

We've received -, the Planning Department has received numerous letters of support for this request, as well as a petition for standing in a contested case from Robert E. and Gladyce Clement. The Clements' property is identified here. They are within the 500 feet of the subject property area. Are there any questions?

FUJIKAWA: Any questions, Commissioners, to the Staff? Graham.

GRAHAM: I just wanted to know if, looking at your map on the left, Jeff, where you can see all the green area on the Mauna Kea side of the highway.

DARROW: Right here.

GRAHAM: Yeah, that little green triangle there, which is the area between the major highway and the Old Volcano Road. Is there a -, there's no other classification except Ag in that area, are there any other special permits for facilities that have been granted in that area?

DARROW: The nearest facility -, there has been, I believe, a church in this area. If you are familiar with Akatsuka Farms, they have a special permit right here in this area. There's another -. In the Volcano area, we have literally numerous -.

GRAHAM: Right.

DARROW: Bed and breakfasts, an art studio, all different types of permits. In this particular area, there are not a whole lot of special permits. I recall one in this particular area, and then also we have the Akatsuka Farms and the New Hope Volcano Church.

GRAHAM: But nothing on the same side of the highway as this one?

DARROW: Nothing in this area.

GRAHAM: Thank you.

FUJIKAWA: Commissioners, any questions with the Staff? None. Will the Applicant or his representative please step forward.

MICHAEL MORTARA: Good morning.

FUJIKAWA: Hi. You want to raise your right hand? I want to know who you are. Raise your right hand, please. Do you swear to tell the truth on this matter now before the Hawai'i Planning Commission?

MICHAEL MORTARA: I do.

MISATO MORTARA:I do.

FUJIKAWA: You want to state your name, your name and your address.

MISATO MORTARA:Misato Mortara.

FUJIKAWA: Misato.

MICHAEL MORTARA: And I'm Michael Mortara.

FUJIKAWA: Your address?

MICHAEL MORTARA: P.O. Box, Volcano, Hawai'i.

FUJIWARA: You Are the same address, right?

MISATO MORTARA:Yes.

MICHAEL MORTARA: Yes.

MISATO MORTARA:P.O. Box.

FUJIKAWA: You do have a -, there is a application for a contested on your application. Do you have anything to say on that?

MICHAEL MORTARA: We're not going to oppose the contested case. We think it's unfortunate that we weren't -, we tried to resolve the differences between the Clements and our application prior to the meeting. It's unfortunate we weren't able to do so. We feel that we have addressed most of their issues in our application to this point. Recently, we've actually modified our site plan in order to relocate the building further away from the subject property. We believe we have almost 170 feet of separation between the project site and the perimeter of their property line, and given the low height of the building, we just -, we really don't feel that it's an impact. But, of course, you know, we recognize their right as a property owner to have a say in determining what goes on in their neighborhood. So, regrettably we, you know, what can we do at this point?

FUJIKAWA: Okay. Do you have anything to say?

MISATO MORTARA:No, not -, we believe that our property doesn't give any impact to the other neighbors, but that's as far as I can say. I don't believe what they are mentioning is a problem.

FUJIKAWA: Well, I have five people who have signed up to testify, so why don't you two sit in the back.

O'TOOLE: We have a Petitioner.

FUJIKAWA: Oh, the Petitioner is here? The Petitioner?

O'TOOLE: The person -.

DARROW: Yes, she's present. The Petitioner is present at this time.

FUJIKAWA: She's right there.

DARROW: Mrs. Clement.

FUJIKAWA: Yeah, you two may sit on the side in the back there and -. Oh, okay, go ahead. You have a -. Oh, okay, Gladyce Clement. Okay, Gladyce, will you step forward.

CLEMENT: Do I sit?

O'TOOLE: Yes.

FUJIKAWA: Yeah, go ahead and sit down and raise your right hand.

CLEMENT: Surely.

FUJIKAWA: Do you want to swear to tell the truth on this matter now before the Hawai'i Planning Commission?

CLEMENT: Yes, I am, sir.

FUJIKAWA: State your name and address.

CLEMENT: Gladyce Clement, 95-380 Waia Loop.

FUJIKAWA: And -.

CLEMENT: Mililani, Hawai'i.

FUJIKAWA: In Mililani?

CLEMENT: In Honolulu.

FUJIKAWA: Honolulu. Okay, you are the Petitioner. You may proceed.

CLEMENT: What was the question, sir, because I was listening to him?

FUJIKAWA: You have applied for contested on this case.

CLEMENT: Yes, I have.

FUJIKAWA: Do you want to say your side?

CLEMENT: Okay.

FUJIKAWA: Reasoning?

CLEMENT: Well, I did put it in the letter.

FUJIKAWA: Yeah, we want to hear verbally.

CLEMENT: To everyone. Okay. Now, where did I put that? On this side, okay. Okay. First, I state that when we purchased the property, we knew that it was zoned agricultural land and we thought, you know, that we wouldn't have any problems of someone wanting to change it, okay, that on variance. And -, okay. We are entitled to peace and quiet on our property, is the way I feel. Unless I am misunderstanding this thing, there would be more people coming round the area, cars in the area. How many artists will be in there? I don't know who will be coming. And perhaps even tour buses will be coming in, I don't know, later.

And at first when I received correspondence from the Applicants, they said for -, to put an art studio. Then about a month or so ago, I received another letter, and it states we're making, making and displaying of the art sculptures, the glass art. And it seems like to me now it's becoming even like a manufacturing plant where they will be manufacturing, and naturally, I'm going to have concerns about their melting of the products, the sand, whatever needs, whether there are chemicals in there, whether we're going to be breathing these chemicals. And I do -, I raise a granddaughter, she has asthma, so that's one of the issues that I'm really now concerned about, because several artists, what I'm just hearing now, will be working. I thought it would be just one. And I think that we are entitled to a safe and enjoyable area, and at this point, I guess that is all that I can say.

FUJIKAWA: Commissioners, any questions with the Applicant for -? Go ahead, Springer.

SPRINGER: I'm wondering if, Mrs. Clement.

CLEMENT: Yes.

SPRINGER: Having made the petition for standing in a contested case hearing, has that contested case hearing process been explained to you?

CLEMENT: I did call the Planning Commission after receiving the letter, and I was told, I don't know who spoke with me, I did not write the person's name down, and I was told just write a letter and just give it when I came in, just make about 15 copies. So is there another -?

SPRINGER: Well -.

CLEMENT: Thing that I did not see or wasn't told?

SPRINGER: Well, just -, I'm wondering, based on your testimony, if there is some guidance, perhaps, that the Planning Director can give Mrs. Clement with regard to sketching out what the contested case hearing process is. I'm not sure if Mrs. Clement is fully informed as to the process.

YUEN: We can do that later. We can do that here now if you would like, but the Staff can do that with her afterwards, as well.

SPRINGER: Well, I'm just, I'm wondering if she's fully informed what she has made an application to participate in.

CLEMENT: Excuse me, but I did call the Planning Commission, and I don't remember the person's name, it was Phil or whatever it was, and I did ask do I have to present another check or -? And the person said no, that I have already done that. Just bring a letter. He didn't even state whether I'm to bring the same letter, perhaps I should have asked, and make about 15 copies and bring it and present it. And that was all that I was told.

SPRINGER: Mrs. Clement, my concern is that a contested case hearing is a rather lengthy quasi-judicial process where their exhibits are presented, evidence is presented, and there's some commitment of time as well as resources, and I was just wondering if you'd been informed of that.

CLEMENT: No.

SPRINGER: And that's why I'm asking if it might be incumbent upon us to inform Mrs. Clement as to what the contested case looks like in terms of expenditure of time and resources.

YUEN: Okay, let me -. When -. You got a form saying that you have a right to request intervention in a contested case.

CLEMENT: Correct.

YUEN: And that's what you filled out and you've submitted that.

CLEMENT: Correct.

YUEN: There are two ways that an application like this can normally be processed. If you were here for the earlier application -.

CLEMENT: No.

YUEN: Okay.

CLEMENT: I was not even aware of it until I received something.

YUEN: No, I'm sorry, earlier this morning.

CLEMENT: Oh, earlier this morning, yes.

YUEN: Earlier this morning, you were here? In that application, it's a similar kind of application, notice was sent out to the neighbors. No one requested intervention in a contested case. The Commission sat here and heard what people had to say and took a vote and voted in favor of that particular application. People could also have come and opposed it,

but just testified against it. And you see what I'm saying? They could just have come up and they could have said we don't want this church to be here but not requested intervention in a contested case, and that -, if that happened, the Commission sitting here could vote yes, vote no, or defer to think about it more.

CLEMENT: Okay.

YUEN: That's one way of processing an application like this. When you request this contested case, it puts us into a more formal way of making the decision. The -, and what happens is that either the Commission will hear it again at a later date, or the Commission will have a -, hire a hearings officer to hear the testimony. When the hearing happens, we'll have a conference before the hearing. We will expect both sides, yourself and the Mortaras, the Applicant, to put together their information that they want considered, their evidence, before the hearing, share it with each other, give a list of the witnesses that they want to have testify, and present all that either to the Commission or the hearings officer. If it's done with a hearings officer, the hearings officer will listen to everything, make a recommendation to the Commission, and then it comes back to the Commission again to take a final vote. So by requesting this contested case hearing, you are making a more formal way of coming to a decision on this. We will expect you to participate in the contested case hearing, and this is basically what's expected of both sides in doing that.

CLEMENT: That's fine.

YUEN: Okay.

SPRINGER: Thanks, Chris.

FUJIKAWA: No problem. Any questions?

SPRINGER: No, that satisfies my concern, thank you.

FUJIKAWA: Okay. Commissioners, do you have any questions with this -, Mrs. Clement? If not, you may go ahead and sit -, go back and -.

O'TOOLE: Ask for a motion on the petition.

FUJIKAWA: The petition?

O'TOOLE: To intervene.

FUJIKAWA: Oh. Do I hear a motion to intervene, this petition?

SPRINGER: Given the -, my reading of the petition for standing in the contested case hearing, clearly the Applicant for standing meets the criteria of proximity to the subject

property, so I would move to accept Gladyce Clement's petition for standing in a contested case hearing.

FUJIKAWA: Is there a second?

GRAHAM: I second.

FUJIKAWA: It's been moved by Commissioner Singer and seconded by Commissioner Graham that Gladyce Clement's petition be accepted. All in favor, say aye.

COMMISSIONERS: Aye.

FUJIKAWA: No? None. Okay.

O'TOOLE: We have five ayes?

FUJIKAWA: They're all ayes. Okay, now -.

O'TOOLE: Now public testimony.

FUJIKAWA: You may go ahead and sit back there and -. May I have -.

O'TOOLE: Oh, no, wait. Are you going to vote on -?

FUJIKAWA: On what?

O'TOOLE: Hearings officer or Commission hearing the contested case?

FUJIKAWA: You want to vote on the hearings officer, the motion for -? What do you want to do?

SPRINGER: I think that that would be appropriate following Corp. Counsel's guidance, and my standard question for the Director, do we have sufficient funds to even consider outsourcing?

YUEN: Yes, we do.

SPRINGER: Thank you.

FUJIKAWA: Okay, so -.

SPRINGER: Mr. Chair, then with regard to the forthcoming contested case hearing, I move that the Planning Director, following County procurement procedures, outsource the position of hearings officer on this matter of a contested case hearing on SP 04-001.

FUJIWARA: It's been -, a motion has been moved by Commissioner Springer. Do I hear a second?

SMITH: Second.

FUJIKAWA: And seconded by Commissioner Smith, that a hearing officer be involved into this case and chosen by the Planning Department. All in favor, aye?

COMMISSIONERS: Aye.

FUJIKAWA: No? None. Aye got it, Staff. And do we have the five people who signed up to testify on this behalf? Will you please come up. This Gladyce Clement, you already testified, right? Wenner, McGovern, Barton, and Ono, that's four of you. Raise your right hand, please. Do you swear to tell the truth on this matter now before the Hawai'i Planning Commission?

TESTIFIERS: I do.

FUJIKAWA: Okay. Let's introduce yourselves first of all, with your address, and let's start with you, ma'am.

WENNER: My name is Cynthia Gillette-Wenner, and I live in Royal Hawaiian Estates, not far from this location.

FUJIKAWA: Okay.

WENNER: And my post office box is Volcano, Hawai'i.

FUJIKAWA: The next gentleman.

MCGOVERN: My name is Robert McGovern, and I also live in Volcano, and my post office is PO Box 30, Volcano.

FUJIKAWA: Okay. You, ma'am.

BARTON: My name is Pam Barton, and my address is PO Box 65 in Volcano.

ONO: My name is Ira Ono, and I'm in Volcano, PO Box 112.

FUJIKAWA: Thank you. We will start with your testimony, ma'am.

WENNER: I did -, my husband and I both wrote a letter to both Mr. Yuen and the Commission, so you should have that in your file, but I just would like to make a couple of quick points, particularly after hearing Mrs. Clement, I believe it is, speak.

If I were where her piece of property is, I'd be a little more concerned about the HELCO substation being right behind me as far as possible pollution or noise issue and also the fact that she's right on the highway. We live a block back from the highway, and the highway noise has grown tremendously in the 15 years that we've been living there, so that is particularly with her lot being right on the Old Highway, that would be a major noise and pollution concern.

What I'd like to say, too, though, is that the Mortara's business or what they're planning, their studio, is the kind of artistic, small, clean, home or studio business that many of us wish to promote and see happen in the Volcano area. And I know, being familiar with their work, that this is essentially a quiet, clean type of artistic work. And I know that is a studio that will be just for them and for those few visitors that would come by to have a chance to see what is going on with the production of glass work. Thank you.

FUJIKAWA: Any questions, Commissioners, with the testifier? Graham.

GRAHAM: Cynthia, one thing -, when you're talking about the few people who would come by and the fact that they are asking for another access unto the Volcano Highway gives one the sense that, you know, may the projection is a lot more than a few will come by, otherwise, they maybe wouldn't need that access.

WENNER: I understand what you are saying. I believe because I'm familiar with that area where they are that for people coming up the road, it would just make much more sense to have a little ingress in that area for them to be able to come onto the property front rather than going up and driving back, but still everybody exiting's going to have to go back to the road that's already established and anybody coming downhill is going to have to go in that way. So I would say I'm sure, knowing the Mortaras, they are not anticipating buses of people coming. They have a small business. They do excellent quality work, and I think what they are really planning to do is be in a location that is more visible with the hopes that with some kind of advertising that there will be drop-in people that might stop during the course of the day. But my feeling is, knowing Volcano, knowing the other studios that are there, knowing how the artistic business or community operates, you know, maybe they might have five, six, seven cars drop in during the course of the day, but I'd be very surprised if it was more than that. Now in time, possibly that could grow, but on a daily basis, I would -, I have a feeling, particularly going in that ingress, it would be five cars, five-six cars. So I -.

GRAHAM: Okay. Thanks for your thoughts.

WENNER: Yeah, I just -, I find it hard to believe it would be a lot of traffic.

GRAHAM: Okay.

FUJIKAWA: Jeff, do you have anything?

DARROW: Yeah, thank you, Mr. Chairman. If I could just clarify for Commissioner Graham. This particular area of the Old Volcano Road is blocked so it does not access the State Highway. If you can see right here, this is just one example of all these particular lots along the highway. They all have access from the highway. They actually don't have access from the Old Volcano Road. It appears to be a road in limbo at this time, so people that are doing their houses or whatever they're doing along this area are requesting access from the highway from DOT.

GRAHAM: Thank you.

FUJIKAWA: Okay.

DARROW: Thank you.

FUJIKAWA: Thank you. Any other questions with the testifier? If not, Bob, you may proceed.

MCGOVERN: For the last nine years, I've been a neighbor of Michael and Misato, and they actually have a studio at this time in Orchid Isle Estate, which is behind Royal Hawaiian, about .8 from the highway. The studio is on three acres, and I own the property immediately adjacent to them. In those eight years, nine years I think that they've actually been there, there's never been noise pollution. Their integrity taking care of their property is wonderful for me. One never knows who one gets for a neighbor. And they are always very open in what differences or changes that they might make. And so I'm here to say that it's been my experience, and I've lived in Volcano since '84, that development we will have, and this kind of development is very good for our community, and I am very happy to hear that they wish to continue to work in our area. Thank you.

FUJIKAWA: Any questions, Commissioners, of Robert? If not, Pam, is it?

BARTON: Yes.

FUJIKAWA: You may proceed.

BARTON: Beg your pardon?

FUJIKAWA: You may go ahead with your testimony.

BARTON: Mr. Chairman and honorable members of the Council, I couldn't say, I couldn't if I tried say anything adverse about their business or their art and -, their art

creations. I think neighbors -, I think having something like their business as a neighbor would be very -, would be enhancing. I think their business will enhance the entire art community in the State. I can't help but see the Big Island as a Mecca for art in the State, for artistic adventures and artistic talent, etcetera in the State of Hawai'i. And I see the impetus in Volcano. I think they'd be great neighbors, and I think the Clements would enjoy visiting their studio. Thank you.

FUJIKAWA: Any questions, Commissioners, with the testifier? If not, Ira, go ahead.

ONO: Good after -, good morning, my name is Ira Ono. I've lived in Volcano for 24 years. A little over a year and a half ago, I applied to this group for a special use permit for my business, Volcano Garden Arts, which is on Old Volcano Road, and I've developed an old kama'aina home into a working art studio and gallery. I've employed four people, and we have over 50 artists in the gallery that show there, and we feature Big Island artists.

I feel what the Mortaras want to do is very in keeping with what the need is for that area. It is , as Pam mentioned, a very artistic area, it's right before you get to Volcano National Park, and this type of development is really important, I feel. It's not a commercial development, it really is a working art studio. It's educational. People can see glass being produced there and other work. And I feel, as a neighbor, it would be a great asset to the community to have something like this.

I feel the issues with this contested case hearing are -, I understand them, but I think people have to realize that a development like this is really going to enhance the cultural aspects of this area. And knowing the Mortaras for many years, they will do a splendid job of aesthetically being pleasing, and also the concerns about toxic things, etcetera really are not an issue if you understand what is happening when you work with like glass.

I think this is a wonderful type of development for the area. This is an area will be developed over the years. This is the commercial corridor of Volcano National Park, and so things like this really do add much to the ambiance and the aesthetics of a visitor destination. I'm sure they will not be using tour buses in that area. It will be very low impact. Thank you.

FUJIKAWA: Thank you. Commissioners, any questions with this testifier? If not, is there anyone else in the audience who wanted to testify and haven't signed in yet? None? Okay. So thank you, ladies and gentlemen.

This is a contested case, so the Applicant, you will be informed by writing by the -, keep in touch with the Planning Department, okay? Thank you.

The discussion ended at 10:55 p.m.

Respectfully submitted,

Janet L. Kama, Transcriber