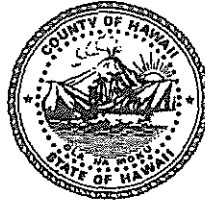


William P. Kenoi
Mayor



BJ Leithead Todd
Planning Director

Margaret K. Masunaga
Deputy Planning Director

County of Hawaii

PLANNING DEPARTMENT

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May 28, 2009

Richard A. Wheelock
East West Realty, Inc.
700 Bishop Street, Suite 1000
Honolulu, HI 96813

Dear Mr. Wheelock:

DETERMINATION OF PRE-EXISTING LOTS
Ponahawai, South Hilo, Hawai'i
Tax Map Keys 2-3-037:001, 2-3-049:053 and 2-3-044:019

We have received your letter dated March 27, 2009, requesting recognition of twelve (12) pre-existing lots.

Please be advised that we have reviewed the documents submitted, our department records, as well as those of the Real Property Tax (RPT) Division, and determined that the subject properties consist of the following:

A. TMK 2-3-037:001

1. The whole of Lot "B" containing 8.0 acres created by Subdivision No. 4060 dated February 9, 1978 (1 Lot).

B. TMK 2-3-049:053

1. The whole of Lot 58 containing 1.0 acres created by Subdivision No. 3950 dated May 23, 1977 (1 Lot)

C. TMK 2-3-044:019

1. A Portion of Royal Patent 1946 No. 1, Land Commission Award 387 Part 4, Section 1, area unknown (1 Lot);
2. A Portion of Land Commission Award 463, area unknown (1 Lot); and
3. A Portion of Grant 252, area unknown (1 Lot).

Total of three (3) Lots containing 162.504 acres, Being Remainder Lot A of Subdivision No. 7147G creating Parcel 7 of the Mohouli Street Extension.

This property is the area makai of the Mohouli Street Extension. Our research shows that the area in question originally contained portions of three grants, Royal Patent 252 to Benjamin Pittman; Royal Patent 5707, Land Commission Award 463 to Kuihelani; and Royal Patent 1946, Land Commission Award 387.

The request for recognition of additional lots refers to former tax map keys that are shown on older tax maps. Tax Maps Bureau and Survey Department Map Drawing dated May 1933, attached to this letter shows TMK Nos. 2-3-44:2, 3 and 4, which also include numbering, in circles, as 2, 3 and 42, respectively. The RPT history books do not even address these tax map keys that appear to have been dropped. That fact alone gives us doubt as to the validity of the lots/parcels. We do not find any basis for the apparent parcel or lot numbers.

While the dropping of a tax map key does not, in itself, result in a consolidation and loss of an otherwise valid pre-existing lot, the showing of a tax map key on the plat maps, in itself, does not prove a pre-existing lot either. We do not have any other indication that these parcel numbers refer to lots actually created prior to the county's subdivision ordinance, such as a recorded subdivision map or a conveyance of these properties.

Despite these old tax maps, there are strong contrary indications that your client's predecessors in title did not consider these properties to constitute separate lots. They did not show them as separate lots when subdividing property that included portions of these areas, or adjoined these areas.

Several subdivisions, including the ones mentioned above, dating to the 1970's make no mention of the Parcel Numbers 2, 3 or 4, nor of "Lots 2, 3 or 42", and do not show any portion of these lots situate within the property as remnants or exclusions. The various subdivisions do not refer to any such lots being part of the subdivision. These maps only refer to the actions affecting Royal Patent 252; Royal Patent 1946, Land Commission Award 387; and/or Royal Patent 5707, Land Commission Award 463, which is a strong indication that the surveyor and owner did not consider the property to contain other lots.

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We also note that Exhibit "A" to the title report refers to TMK No. 2-3-044:019 as containing portions of Royal Patent 1946, Land Commission Award 387; Royal Patent 5707, Land Commission Award 463; and Royal Patent 252, but does not refer to any other purported lots. We note that a Land Commission Award and a Royal Patent (Grant) refer to the same land area as evidence of the Government's right to commutation of title to the land and are not separate lands.

Therefore, we have determined that there are a total of five (5) pre-existing lots of record contained within the subject parcels.

It is our understanding that, based on this information provided regarding pre-existing lots, you may be submitting an application for consolidation and resubdivision of the subject parcels which would result in the development of specific metes and bounds for the subdivided lots. If consolidation and resubdivision is not the intent, you may want to have a modern metes and bounds survey be conducted for a more accurate and current land area determination and that a map reflecting this information may be submitted for certification.

A request for a separate tax map key parcel number for the one (1) un-numbered portion of TMK 2-3-044:019 should be in writing to this department.

Should you not concur with the above finding, your recourse is as follows:

In accordance with a recent charter amendment and Ordinance No. 99-112, you may appeal the director's decision and request the following:

- a) Any person aggrieved by the decision of the director in the administration or application of this chapter, may, within thirty days after the date of the director's written decision, appeal the decision to the board of appeals.
- b) A person aggrieved by a decision of the director if:
 - 1) The person has interest in the subject matter of the decision that is so directly and immediately affected, that the person's interest is clearly distinguishable from that of the general public; and
 - 2) The person is or will adversely affected by the decision.

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- c) An appeal shall be in writing, in the form prescribed by the board of appeals and shall specify the person's interest in the subject matter of the appeal and the grounds of the appeal. A filing of \$250 shall accompany any such appeal. The person appealing a decision of the director shall provide a copy of the appeal to the director and to the owners of the affected property and shall provide the board of appeals with the proof of service.
- d) The appellant, the owners of the affected property, and the director shall be parties to an appeal. Other persons may be admitted as parties to an appeal. Other persons may be admitted as parties to an appeal, as permitted by the board of appeals.

The board of appeals may affirm the decision of the director, or it may reverse or modify the decision, or it may reverse or modify the decision or remand the decision with appropriate instructions if based upon the preponderance of evidence the board finds that:

1. The director erred in its decision; or
2. The decision violated this chapter or other applicable law; or
3. The decision was arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

In view of the above, we have enclosed County of Hawai'i Board of Appeals General Petition for Appeal of Decisions by Planning Director.

Should you have any questions, please feel free to contact Jonathan Holmes of this department.

Sincerely,



BJ LEITHEAD TODD
Planning Director

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Enc.: County of Hawai'i Board of Appeals General Petition for Appeal of Decisions by Planning Director

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xc: Tax Maps and Records Supervisor
Real Property Tax Division-Hilo
Manager-DWS
Director-DPW
L.G. Bailado-GIS Analyst