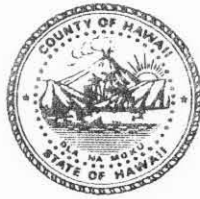


Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
LEED® AP
Deputy Director

County of Hawaii
PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
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February 14, 2007

Stephen K. Yamashiro, Esq.
101 Aupuni Street, PH-1014A
PO Box 626
Hilo, HI 96721

Dear Mr. Yamashiro:

DETERMINATION OF PRE-EXISTING LOTS
TMK No. 2-3-44:09

This is to acknowledge receipt of your letter of May 8, 2006, and documents regarding the subject matter. Specifically, you are requesting recognition of ten (10) 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 Division, and determined that the subject property, TMK No. 2-3-44:09, Lot B of Subdivision No. 7147, consists of three (3) separate legal lots of record:

1. Portion of Royal Patent 252, consisting of approximately 46.5 acres;
2. Portion of Royal Patent 5707, Land Commission Award 463, consisting of approximately 5000 square feet; and
3. Former TMK No. 2-3-44:07, consisting of approximately 1.78 acres.

This property is the area mauka of the Mohouli Extension. Our research shows that the area in question originally contained two grants, Royal Patent 252 to Benjamin Pittman, and Royal Patent 5707, Land Commission Award 463 to Kuihelani. The property contains only a small triangular sliver of Land Commission Award 463 mauka of the Mohouli extension, near its intersection with Plat 40, measuring approximately 150' by 70'.

Royal Patent 1946, Land Commission Award 387 to Lyman, is north of this property, in Punahoa 2nd.

Stephen K. Yamashiro, Esq.
Page 2
February 14, 2007

The application for additional lots referred to former tax map keys that are shown on older tax maps and referred to in field books. Tax Maps Bureau and Survey Department Map Drawing dated August 1934, attached to this letter shows TMK Nos. 2-3-44:5, 6, 7, 8, and 9, which also include numbering, in circles, as 43, 44, 44, 48, 45, and 22, respectively. The tax books only show that these tax map keys were dropped, in December 1943. They do not show any basis for the apparent lot numbers.

Of these, we have determined that the former TMK No. 2-3-44:8 is not within the property being discussed, and any remnant of the former TMK No. 2-3-44-9 shown on the 1934 map is the same area as the triangular sliver of Royal Patent 5707, Land Commission Award 463 that we have already recognized. This leaves the former TMK Nos. 2-3-44:5, 6, and 7. (The only portion of the former TMK No. 2-3-44:5 remaining in the subject area, mauka of the Mohouli extension, is a triangular sliver approximately 50' by 50' in dimensions.)

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, a tax map key, in itself, does not prove a pre-existing lot. 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, except possibly for the former TMK No. 2-3-44:7, 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.

Subdivision No. 1843 and 1843A, creating "Kaumana Gardens", subdivided the bulk of the former TMK No. 2-3-44:9, and adjoined portions of the former TMK No. 2-3-44:5 and 6. However, Subdivision No. 1843 makes no mention of these, or of "Lot 43" or "Lot 44", and do not show any portion of these lots adjoining the property as remnants. The subdivision refers only to the two grants mentioned above. Subdivision Nos. 3773 and 3886 also overlap or adjoin the former TMK Nos. 2-3-44:5 and 6, but do not refer to any such lots being part of the subdivision. These maps only refer to the property affecting Royal Patent 252, which is a strong indication that the surveyor and owner did not consider the property to contain other lots.

We also note that Schedule C to the title report refers to TMK No. 2-3-44:9, as containing portions of Royal Patent 252, Land Commission Award 463, and Land Commission Award 387, and does not refer to any other purported lots. As discussed above, the reference to Land Commission Award 387 is wrong. Schedule C also refers to TMK Nos. 2-3-40:21 and 22. These are valid lots of record, bordering Kaumana Drive, but are not within TMK No. 2-3-44:9. We note that Parcel 21 appears to have been created for road access to the larger property now designated as TMK No. 2-3-44:9.

The area covered by the former TMK No. 2-3-44:7, does not overlap any of the subdivisions that have occurred in the area, nor does it immediately adjoin these subdivisions. While its status is in some doubt, we are recognizing it as a pre-existing lot of record that has not been destroyed by subsequent subdivision.

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 separate tax map key parcel numbers 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.
- 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.

Stephen K. Yamashiro, Esq.

Page 4

February 14, 2007

- 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.

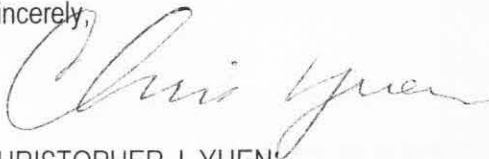
The board of appeals may affirm the decision of the director, or it may reverse or modify the decision, or it may reverse or modify the decision or remand the decision with appropriate instructions if based upon the preponderance of evidence the board finds that:

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 HAWAII BOARD OF APPEALS GENERAL PETITION FOR APPEAL OF DECISIONS BY PLANNING DIRECTOR.

Should you have any questions, please feel free to contact Ed Cheplic of this department.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

CJY:lnm

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Enc. - BOA General Petition for Appeal of Decisions by Planning Director
Maps

xc: ~~Tax~~ Maps and Records Supervisor I
Real Property Tax Division-Hilo
Manager-DWS
SUB-06-000261(Lakeview Estates)
SUB 7147