

#193

CERTIFIED MAIL

November 16, 1984

Mr. Richard T. Ishida
Attorney at Law
P. O. Box 2639
Kailua-Kona, HI 96745

Dear Mr. Ishida:

Note the TMK
(given in 1st para)
is 8-7-08:29

Variance Application (V84-32)
Iwao Jyo and Harold Manago
Tax Map Key 8-7-08:2

8-7-08:2

After reviewing your application and the information submitted in behalf of it, the Planning Director by this letter hereby certifies the approval of your variance request to allow the creation of a 4-lot subdivision without a water system meeting the minimum requirements of the County of Hawaii Department of Water Supply as required by Article 6, Division 2, Section 23-48(1) of the Subdivision Code. The subject property, which consists of 111.69 acres, is identified by Tax Map Key 8-7-08:29 and is situated on the mauka (east) side of Mamalahoa Highway approximately 1,000 feet south of the Kaohi Road - Mamalahoa Highway intersection, Waikakuu, South Kona, Hawaii.

The approval is based on the following:

Special and Unusual Circumstances

The petitioner has shown by the evidence in his application that there exists special or unusual circumstances related to the land which would warrant or necessitate a waiver from the minimum water requirements to service the 4 lots in the proposed subdivision.

Mr. Richard T. Ishida
Page 2
November 16, 1984

The petitioner cites Civil Action No. 1744 (Stipulated Settlement; Order) as the primary reason for the partitioning action and for the application for a waiver from the minimum water requirements. The petitioner is asking for a waiver from the water standards of the Subdivision Code to settle a civil action between land owners with differing interests as well as to resolve a financial problem. The court in its settlement decision has set forth parameters for the proposed partitioning action and mandates the County to provide a water waiver for this action.

Alternatives

There are no other reasonable alternatives in resolving the difficulty of the petitioner in resolving this civil dispute over property interests. The third circuit court's settlement order is deemed to be the most reasonable alternative in view that the subject area lacks a public water system. As such, the imposition of providing a public water system in this area for the proposed subdivision would be putting excessive demands upon the petitioner when a more reasonable alternative is available.

Intent and Purposes

The judicial decision mandating the county to allow a water waiver is considered to be complying with the intent and purposes of the County's General Plan, Subdivision and Zoning Codes.

Based on the foregoing findings, the variance request would be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning and Subdivision Codes and the County General Plan; will not be materially detrimental to the public's welfare; and will not cause substantial adverse impact to the area's character and to adjoining properties.

The variance request is approved, subject to the following conditions:

1. The petitioner, its assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. The petitioner, its assigns or successors, shall file a written agreement with the Planning Department prior to receipt of final subdivision approval containing the following stipulations and covenants:


Mr. Richard T. Ishida
Page 3
November 16, 1984

- a) that the subdivider agrees and accepts the fact that a county dedicable public water system is not now or in the foreseeable future available to service the subdivision, and that no portion of the subject property may be further subdivided without first having a water system meeting with the standards of the Department of Water Supply.
 - b) that the subdivider agrees and accepts the fact that the County will not at any time bear the responsibility of supplying public water to the subdivision.
 - c) that the written agreement shall be duly recorded at the Bureau of Conveyances of the State of Hawaii by the Department at the cost and expense of the subdivider.
3. In the event that there are any amendments or changes to the subdivision after the agreement is signed, the subdivider shall be responsible for informing the Department of the amendments or changes so that the agreement can reflect the amendments or changes; further, the written agreement shall be considered as a condition and covenant running with the land and shall be binding upon the subdivider or owner, his heirs, executors, administrators and assigns or its successors and assigns and shall be incorporated by reference as an exhibit and made a part of each agreement of sale, deed, lease or other similar documents affecting the title or ownership of each subdivided lot.

Should any of the foregoing conditions not be complied with, this variance shall automatically be voided.

If you have any questions on this matter, please feel free to contact us.

Sincerely,



SIDNEY M. DUKE
Planning Director

RHY:gs
Enclosure: Background Report

cc: Planning Commission