

August 1, 1991

Joe Sovella and Brian Johnson
c/o Wes Thomas and Associates
75-5722 Kalawa Street
Kailua-Kona, HI 96740

Gentlemen:

Variance Application 90-43
Petitioners: Sovella and Johnson
Variance from Water Requirements of the Subdivision Code
TMK: 7-5-01:10

We regret to inform you that after reviewing your application and the information presented in its behalf, the Planning Director has concluded that your variance request should be denied. The reasons for the denial are stated below:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are not found to be special and unusual circumstances applying to the subject property which deprive the applicant of substantial property rights that would otherwise be available or which interfere with the best use or manner of development of the property.

It is a fact that the county water system infrastructure serving this general area is insufficient in carrying capacity to serve additional subdivided lots. The present existing system is only capable of serving the existing lots. This condition affects other lands in the general area, so the applicants situation is neither special nor unusual.

The owner is not being deprived of substantial property rights, as he has always been able to utilize the land for the agricultural purpose for which it is zoned. However, there is no "right" to subdivide land without providing the necessary

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infrastructure such as access and water. Such as today's access must accommodate vehicles; a hiking or horse trail access alone will not suffice. Today's water requirements must meet potable standards as well; there are no "non-potable" standards just as there are no "non-Dept. of Water Supply" standards.

Where proper public roads do not serve the property, a developer must provide them. Similarly, if the public water system does not serve the property, the developer should provide it. Obtaining a lower standard of road or water system would not be in the public interest, absent special and unusual circumstances. It has already been stated that the applicant is not being deprived of the agriculture use of his land. If an area lacks adequate access and water and the developer is not able to or desires not to provide them then that area is considered premature for further subdividing.

Furthermore, the County general plan which is the adopted public policy of the County states that "all water systems shall be designed and built to Dept. of Water Supply standards." In order that the variance procedure be applicable to this situation - to substitute roof catchments for the Department of Water Supply water standards, special and unusual circumstances applying to the real property must be present, and in this case, they are not.

Based on the foregoing, there are not found to be the special and unusual circumstances applying to the subject property which would deprive the applicant of substantial property rights that would otherwise be available or which interfere with the best use or manner of development of the property. Therefore, the application is denied.

ALTERNATIVES

The alternative to connect the over-extended County water system is for the applicant to provide or help improve the existing water system. The costliness, (sometimes alluded to as economic hardship) by itself is not considered sufficient reason to warrant the granting of a variance request. And, not necessarily must the applicant do the improvements alone. A group of property owners could cooperatively band together.

When an area does not already contain the necessary infrastructure to adequately serve it, and the developer is not

able or decides not to provide it, then that area can also be considered as being premature for the proposed development. The alternative then is not to subdivide but to utilize the land in some other way. The land's zoning designation, agriculture, which is common to the area, allows a vast array of uses. The applicant is not being prevented from using his land for agricultural purposes, nor is there interference with his property rights.

There is no inherent "right" to subdivide land if the proper infrastructure is not in place or cannot be provided. If standard improvements can not be made then the alternative of "no subdividing" should be considered.

Lowering the water standards by a variance which would permit roof catchment cannot be considered because there is no special or unusual circumstance applying to this situation since the condition ("existing system cannot support the proposed subdivision at this time") is common to this area of North Kona at this elevation.

INTENT AND PURPOSE

The intent and purpose of the water requirement standard in the subdivision code is to ensure that all subdivided lots are served by an adequate, dependable and safe potable water system. The public's health, welfare and safety with regard to the supply of water to their lots would otherwise be at stake.

Although the specific zoning designation, A-5a has been given this property consisting of 31 acres, there is no automatic granting of 5-acre sized lots without among other things, the proper infrastructure being provided to support the proposal. The subdivision code regulates the subdividing of lots. That code requires the provision (or existence) of a standard water system meeting the requirements of the Department of Water Supply. That code as well as the zoning code have as their basis, the county general plan which is the policy of the county. The general plan policy with regard to the providing of water states - all water systems in the county "shall be designed and build to Department of Water Supply standards."

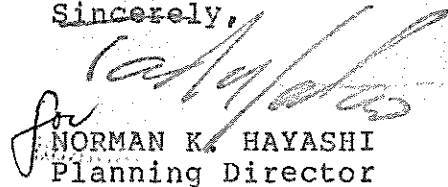
The request by the applicant for a variance from these water standards, for the reasons he states, would lower the water standards of the county for his development. His request does not meet the criteria for the granting of a variance.

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Based on the above, the Planning Director has concluded that the variance request to allow this proposed 6 lot subdivision without providing a water system meeting the standards of the Subdivision Code should be denied.

Should you have any questions, please feel free to contact Donald Tong of this office at 961-8288.

Sincerely,



NORMAN K. HAYASHI
Planning Director

DT:mra
2635(D)

cc: West Hawaii Office