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County of Hawaii

PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
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CERTIFIED LETTER

August 1, 1996

Mr. Sidney Fuke
100 Pauahi Street, Suite 212
Hilo, Hawaii 96720

Dear Mr. Fuke:

Variance Application WH (VAR96-29)

Variance No. 753

Applicant: BIG ISLAND COUNTRY CLUB & ESTATES

Variance from the minimum water requirements of
Subdivision Control Code, Chapter 23, Sec. 23-84(1)

TMK: 7-01-05:09, 10, 22, 26, 28-34, 39, 40, 41, 58 & 59
Puuanahulu Homesteads, North Kona, Hawaii

Having reviewed your application and the information submitted in behalf of it, and including comments received from consulting agencies, the Planning Director by this letter hereby certifies the approval of your request to allow a variance from the minimum water requirements of Article 6, Division 2, Section 23-84 (1) of the Subdivision Control Code.

The subject property is situated on the west side of the Mamalahoa Highway at Puuanahulu Homesteads, North Kona, Hawaii.

The Planning Director has concluded that the Variance request from the Subdivision Code be approved based on the following:

Grounds for Granting a Variance

The requested variance will not introduce a use which is not permitted in the State Land Use Agriculture District nor the County's Agricultural one (1) acre Zoned district. The applicant intends to establish a private water system for its proposed 106 lot agricultural-1 acre subdivision, community facilities, golf course and golf course related facilities. These uses have been previously established through change of zone, Use permit and Special permit.

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water system be a private water system, thus the use of a material elsewhere acceptable, does not appear to be unreasonable.

Intent and Purpose

Section 23-84 of the Subdivision Code requires that subdivisions laid out subsequent to December 21, 1996, shall be provided with "A water system meeting the minimum requirements of the County Department of Water Supply" and does specify either public or private systems. The intent is to assure that an adequate water system is available for domestic consumption and for fire protection. The water system relative to source, quality and design of the transmission and appurtenant systems are consistent with the requirements of the Department of Water Supply, with the exception of the tank and pipeline materials. In this situation, the substitute private water system is considered adequate for the development.

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

The variance is therefore, approved subject to the following conditions.

1. The applicant, his assigns, or successors shall be responsible for complying with all the stated conditions of approval.
2. The applicant shall indemnify and hold the County of Hawaii, including its Department of Water Supply and the Planning Department, harmless from and against any loss, liability, claim or demand for the property damage, personal injury or death arising out of any act or omission of the applicant, its successors or assigns, officers, employees, contractors and agents under this variance permit or relating to or connected with the granting of this variance permit.
3. The applicant, his 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 which shall be duly recorded at the Bureau of Conveyances of the State of Hawaii at the expense of the subdivider.

- a. The water system will be privately maintained and operated with compliance as a regulated public utility. The water system shall not be connected at any time to any Department of Water Supply's water system. Should a connection be desired, the water lines must be upgraded to Ductile Iron Pipes from the proposed PVC High Pressure Water Pipes. Should the developer or future owners of the development wish to dedicate to the Department of Water Supply, the water system in the future, the Ductile Iron Pipes and concrete water tank must be constructed prevailing requirements and standards of Department of Water Supply.

The Department of Water Supply reserves the right to accept or refuse dedication of the water system even though the water pipes are brought up to prevailing standards.

- b. In the event that there are any amendments or changes to the subdivision after the agreement is signed, the applicant/subdivider shall seek the approval for 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 applicants/subdivider, or owner, successors, and assigns and shall be incorporated as an exhibit and made a part of each agreement of sale, deed, lease, or other similar documents affecting title or ownership of each subdivided lot.
4. Construction plans shall be submitted to the Department of Water Supply for their review for consistency with American Water Works Association standards and specifications. The construction plans shall be certified by a licensed consulting engineer attesting to the plans and conformity with AWWA design and material standards.

Construction plans shall contain a separate signature block noting the Department of Water Supply's review relative to consistency with AWWA standards and not its approval of the plans.

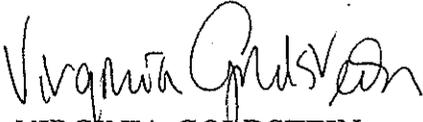
5. Upon completion of the private water system, the contractor shall certify that the improvements have been constructed in compliance with the engineer-certified construction plans. The certification shall be submitted to the Planning Department and the Department of Water Supply prior to subdivision final approval or upon release of construction bonds.

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6. Deeds of all lots affected by this variance shall include a notice of the water variance and its conditions, including the indemnification and written agreement.
7. Comply with all other applicable State, including the Public Utilities Commission and County rules and regulations.

Should any of the foregoing conditions not be complied with, the Planning director may proceed to declare the Variance Permit null and void.

Sincerely,


VIRGINIA GOLDSTEIN
Planning Director

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cc: West Hawaii Office
Department of Water Supply
Corporation Counsel
Subdivision Files