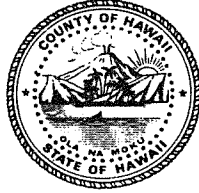


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-8742

July 16, 2002

Mrs. Chrystal Thomas Yamasaki, LPLS
WES THOMAS ASSOCIATES
75-5749 Kalawa Street
Kailua-Kona, HI 96740

Dear Mrs. Yamasaki:

SUBJECT: Variance Permit No. 1289 (VAR 01-023)
Applicants: OPIHI HALE, INC. (LUKE AIKEN)
Owners: LUKE AIKEN, ET AL.
**Request: Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required,
Section 23-84, Water Supply, (1) (2)**
Tax Map Key: 8-7-014:013 (SUB 00-0166)

After reviewing the subject variance application and information submitted, the Planning Director certifies the approval of your variance from Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply, (1), to allow the creation of a eleven (11) lot subdivision or proposed (10) agricultural lots and one (1) private roadway lot without a water system meeting with the minimum requirements of the Department of Water Supply (DWS).

The Planning Director has concluded that the variance from the minimum subdivision water system requirements be approved based on the following findings:

FINDINGS AND BACKGROUND INFORMATION

1. **Location.** The subject property, Lot 9 consisting of 57 + acres of the Olelomaona Homesteads and being the whole of Grant 7595 to Luka Keola, is situated at Opihihale 2nd, South Kona, Hawaii.

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2. **Zoning.** The subject property is zoned Agricultural (A-5a) by the County and is designated Agriculture ("A") by the State Land Use Commission (LUC).
3. **Subdivision Application/PPM.** The applicant's surveyor, submitted a subdivision application (SUB 00-0166) which includes a revised preliminary plat map (PPM), dated February 3, 1997, to subdivide Lot 9 into eleven (11) lots (10-agricultural lots and 1-private road way lot). Further action on the proposed 11-lot subdivision application has been deferred pending consideration of the subject variance application.
4. **Variance Application.** Wes Thomas Associates, on behalf of the applicants/owners, submitted subject variance application to the Planning Department (Kona) on March 12, 2001. Letters acknowledging outstanding building permit issues, structure position, and supplemental rainfall map identifying the location of the proposed subdivision were submitted by the applicant and Wes Thomas Associates on July 12, 2001 and May 10, 2002.
5. **Agency Comments and Requirements WH (VAR 01-023).**
 - a. The Department of Water Supply (DWS) memorandum, dated April 17, 2001, states:

“We have reviewed the subject application and the comments in our memorandum of November 22, 2000 still stand. (A copy is attached.)

Should there be any questions, please call our Water Resources and Planning Branch at 961-8665.”

The attached copy of the DWS memorandum, dated November 22, 2000, states in part:

“We have reviewed the subject application and have the following comments.

Please be informed that the subject property is not within the service limits of the Department's water system facilities. The nearest Department of Water Supply's water system facility is at the end of an existing 8-inch

waterline along the Mamalahoa Highway approximately 8 miles from the property.

Should there be any questions, please call our Water Resources and Planning Branch at 961-8665."

- b. The State Department of Health (DOH) memorandum dated April 10, 2001 states:

"The Department of Health's authority on drinking water quality is based on the definition of a "public water system." A "public water system" means a system which provides water for human consumption through pipe or other constructed conveyance if such system has fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. All public water systems are regulated by the Department of Health and shall be in compliance with the Hawaii Administrative Rules, Title 11, Chapter 20.

Past episodes of water quality concerns for lead, copper, algae and microbiological and chemical contaminations in private rain catchment systems have identified the need for self-monitoring. The Department of Health does not support the use of these private rain catchment systems for drinking purposes since the quality may not meet potable water standards."

5. **Notice to Surrounding Property Owners/Proof of Mailing.** The applicant submitted a letter dated April 3, 2001 together with a certificate of mailing and affixed mail receipt dated April 3, 2001.
6. **Comments from Surrounding Property Owners or Public.** No comments or objections to the subject variance application were received from surrounding property owners or public. No other agency comments were received.

Therefore, considering the above facts, information submitted by the applicants, and agency comments, the Planning Director has determined that there are special or unusual circumstances applying to the subject property which exist either to a degree which deprive the owners of substantial property rights that would otherwise be available or to a degree which obviously interferes with the best use or manner of development of the subject property.

Mrs. Chrystal Thomas Yamasaki, LPLS
WES THOMAS ASSOCIATES
Page 4
July 16, 20002

ALTERNATIVES

There are no other reasonable alternatives in resolving the difficulty of the applicant. The first alternative requires the applicants to improve the existing county water system and provide the necessary dedicable water system improvements in accordance with DWS standards. The second alternative would be to design, drill and develop private wells and install the necessary water system improvements in accordance with DWS standards.

As such, the imposition of improving the existing public water system or providing an approved alternative water system for the proposed subdivision would be putting excessive demands upon the applicants in view of the application to create not more than ten (10) agricultural lots and separate road lot. The subdivision code, Section 23-84, demonstrates a strong public policy against creation of additional lots without a public water system. This is especially true where development or subdivision is proposed in areas receiving marginal rainfall, such as this one. Another alternative to the proposed subdivision is a ceiling to a maximum (10) lots allowed or less in areas receiving marginal rainfall. The draft revisions to the existing Subdivision Code (which received a favorable recommendation from the Planning Commission) suggests a ten (10) lot limit for private catchment subdivisions by allowing a limited number of lots by a water variance and provides a subdivider or owner with some relief in dividing the property without greatly compromising the public policy against allowing new subdivision in areas without a public water system.

INTENT AND PURPOSE-WATER VARIANCE

The intent and purpose of requiring a water system for and within the proposed subdivision is to assure that adequate water is available for human consumption and fire protection.

Rainfall data and a supplemental rainfall map were submitted by Wes Thomas Associates. According to the Department of Agriculture and Soil Conservation and other information cited in their letter dated March 31, 2001, "the subject property receives an average of 50 inches, or more per year". The supplemental rainfall map denotes the subject TMK property's location and indicates the proposed subdivision may receive up to approximately 60 inches of rainfall annually. The property is at a higher elevation than the nearest rain gauge, (which has an average of about 50 inches per year) and therefore receives more rain. The typical or mean rainfall is therefore adequate for an average sized family, although barely so, for private rainwater catchment systems with adequate storage facilities.

Mrs. Chrystal Thomas Yamasaki, LPLS
WES THOMAS ASSOCIATES
Page 5
July 16, 2002

The State Department of Health has no specific rules or regulations relating to the utilization, construction or inspection of private roof catchment water systems for potable or emergency uses.

Additional or similar provisions for water storage, water distribution, and construction of private rainwater catchment system(s) on the property or proposed lots will be privately and further addressed by the applicant or current/future property owner(s).

The subject variance application was acknowledged by certified letter dated March 23, 2001. Additional time to consider the status of the structures located throughout the proposed subdivision, incorporate rainfall information, and study previous correspondence was necessary. In addition, the applicant, et al. will identify, address, and secure any "after-the-fact" building permits and related construction permits for buildings and permitted uses which have been constructed without building permits.

Based on the foregoing findings, this variance request would be consistent with the general purpose of the zoning district and the intents and purposes of the Zoning Code, Subdivision Code and the County General Plan. Furthermore, the variance requested 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.

VARIANCE DECISION-CONDITIONS

The variance request is to allow a 11-lot subdivision or ten (10) agricultural lots and one (1) private road way to be developed without the proposed lots having an approved water system meeting DWS water system requirements or water system and water supply requirements pursuant to Chapter 23, Subdivisions.

This variance request is hereby approved subject to the following conditions:

1. The owners, their assigns, or successors shall be responsible for complying with all stated conditions of approval.
2. WATER VARIANCE: The owners, their assigns, or successors shall file a written agreement or approved written document with the Planning Department within one (1) year from the issuance of tentative subdivision approval and prior to receipt of final subdivision approval of SUB 00-0166. This written agreement shall contain the following deed language, being covenants, conditions, and

restrictions, which affect the proposed lots arising from the approval of pending subdivision application and shall be duly recorded at the Bureau of Conveyances of the State of Hawaii by the Planning Department at the cost and expense of the owners:

- a. The owners agree and accept the fact that a County dedicable public water system is not now able to service the existing property or the proposed lots created by SUB 01-0166. Should the Council adopt a Unified Impact Fees Ordinance setting forth criteria for the imposition of exactions or the assessment of impact fees, conditions included herein shall be credited towards the requirements of the Unified Impact Fees Ordinance.
- b. Any dwellings constructed on lots created by SUB 00-0166 shall be farm dwellings. Farm dwelling is defined in Section 205-4.5 (a) (4) as "a single family dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling."
- c. The owners agree and accept the fact that the County will not, at any time, bear the responsibility of supplying public water to any lots created by SUB 00-0166 not serviced by a County water system.
- d. Any farm dwelling(s) constructed on the proposed lots not serviced by a County water system shall be provided with and maintain a private potable rain catchment system which includes a minimum 6,000-gallon water storage capacity for domestic consumption or potable uses. This private water catchment system shall adhere to the Department of Public Works, Building Division's "Guidelines for Owners of Rain Catchment Water Systems" as well as the State Department of Health requirements related to water testing and water purifying devices.
- e. Each permitted farm dwelling shall be provided with and maintain a private water supply system which includes an additional minimum 6,000 gallon water storage capacity for fire fighting and emergency purposes. The location and capacity of the emergency water supply system, including the necessary compatible connector system, shall meet with the approval of the Hawaii County Fire Department. The Hawaii County Fire Department also advises as a precautionary measure for other uninhabited

agricultural structures that consideration be given to the provision of a similar water storage system for fire fighting and emergency purposes.

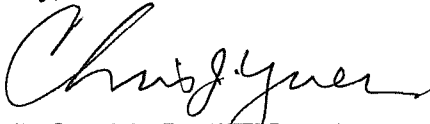
- f. In the event that there are any amendments or changes to the subdivision after the agreement is signed, the applicant shall be responsible for informing the County Planning Department of such amendments or changes so that the agreement can be amended concomitantly. Further, the written or recorded agreement shall be binding upon the owner(s), their successors or assigns and shall be incorporated as an exhibit and made part of each agreement of sale, deed, lease, or similar documents affecting the title or ownership of the existing property or approved subdivided lots.
 - g. In the event that the County notifies the owners of the lots created by SUB 00-0166 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 00-0166, the owners of the lots created by SUB 00-0166 shall participate in such improvement district or shall pay their pro-rata share of the upgrade and installation of laterals, as determined by the Department of Water Supply.
 - h. The subject property was created by subdivision of a larger parcel pursuant to a variance from the water supply requirement in Section 23-84 of the Hawaii County Code. The subdividers, grantees, and their assigns or successors acknowledge that there are no special or unusual circumstances existing on the property, and therefore, there are no grounds for the subdivider or grantee, the assigns or successors to request a further variance from the water supply requirements to permit further subdivision of the subject property.
- 3. The subdivision's (SUB 00-0166) final plat map shall meet all other requirements of the Hawaii County Zoning Code and Subdivision Code not covered by this variance.
 - 4. Each lot created by SUB 00-0166 shall have no more than one dwelling. No "additional farm dwelling" or second farm dwelling shall be permitted on any lot created by SUB 00-0166 for the reason that this variance is granted based on minimal increase in the number of users.

Mrs. Chrystal Thomas Yamasaki, LPLS
WES THOMAS ASSOCIATES
Page 8
July 16, 2002

5. The applicant, et al. will confer with Department of Public Works (DPW)- Building Division to secure the necessary building and related construction permits for any non-permitted farm dwelling or other agricultural buildings or uses on the subdivided or permitted 5 acre + lots within one (1) year from the issuance of Final Subdivision Approval. All building permits shall be "finaled" or closed prior to any sale of the permitted lots or change in ownership or transfer of title.
6. The subdivider, owner(s), their assigns or successors shall pay any outstanding real property taxes and comply with all other applicable State statutes and County ordinances pertaining to building improvements and land use.

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

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

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xc: DWS-Engineering Branch
SUB 00-0166
Planning Department - Kona