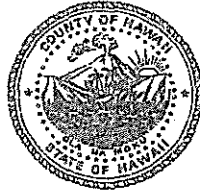


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • Fax (808) 961-8742

May 14, 2004

KAMAOA DEVELOPMENT COMPANY LLC
c/o Mr. Rick Vidgen
78-630 Ihilani Place
Kailua-Kona, HI 96740

Dear Mr. Vidgen:

SUBJECT: VARIANCE FILE NO. 1442(DENIAL) WH (VAR 04-037)
Applicant: KAMAOA DEVELOPMENT COMPANY LLC.
Owner: KAMAOA DEVELOPMENT COMPANY LLC.
Request: Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required,
Section 23-84, Water Supply, (1) (2)
Tax Map Key: 9-3-003:073, (SUB 03-0176)

After reviewing the subject variance application and information submitted, the Planning Director denies your variance from Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply, (1), to allow a proposed 9-lot subdivision of the subject TMK property without providing a water system meeting 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 **denied** based on the following findings:

BACKGROUND

1. **Location.** The subject property, containing 190 + acres, is situated at Kamoao-Puueo, Kau, Hawaii.

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2. **Zoning.** The subject property is zoned Agricultural (A-20a) by the County and designated Agriculture (A) by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM.** The applicant or Kamaoka Development Company, LLC., submitted a subdivision application (SUB 02-0037) which includes a preliminary plat map (PPM), dated December 16, 2003, proposing to subdivide subject TMK property into nine (9) lots. Further action on the proposed 9-lot subdivision application was deferred pursuant to letter dated March 2, 2004 in SUB 03-0176.
4. **Variance Application.** The applicant submitted the variance request and subject variance application on or about March 9, 2004 and other supplemental information.

The applicant ("3/10/04") states in part:

"The area receives 41+ inches of rain annually which will support a private catchment system. Note. Rainfall Data comes from the "Inventory of Basic Water Resources Data: Island of Hawaii" (State Department of Land and Natural Resources) (sic) The nearest rain gauge is the Kamaoka 2 rain gauge, State Key No. 5.0. The mean annual rainfall is 41.14 inches. Lot owners can, if necessary, purchase water to supplement the private catchment system. As advised surrounding lots (mainly) rely on catchment for their potable water systems."

5. **Agency Comments and Requirements WH (VAR 04-037):**

- a. The Department of Water Supply (DWS) memorandum, dated April 20, 2004, states in part:

"We have reviewed the subject application for the proposed subdivision. Please refer to our January 28, 2004, memorandum to you for our comments and requirements."

The Department of Water Supply (DWS) memorandum dated January 28, 2004 states in part the following:

We have reviewed the subject application for the proposed subdivision and have the following comments.

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Please be informed that the Department's existing facilities cannot support the proposed subdivision at this time. Extensive improvements and additions, including source, storage, transmission, booster pumps, and distribution facilities, must be constructed. Currently sufficient funding is not available and no time schedule is set."

- b. The Hawaii County Fire Department memorandum is dated April 16, 2004. (Refer to memorandum in variance file).
 - c. The State Department of Health (DOH) memorandum is dated May 3, 2004. (Refer to memorandum in variance file).
6. **Notice to Surrounding Owners.** The applicant's forwarded a copy(s) of a notice dated April 20, 2004 sent to a list of surrounding property owner(s), and other submittals. Pursuant to these submittals, it appears that the respective notice was mailed on or about April 21, 2004.
7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received. The following objection letters from a surrounding property owner(s) were received:
- a. Objection letter dated April 23, 2004 to subject application from George B. Pitts, Jr.
 - b. Objection letter (faxed) dated April 30, 2004 to subject application from Anthony C. Gordon, Et al.

INTENT AND PURPOSE-WATER VARIANCE

Section 23-84 of the Subdivision Code requires that all new subdivisions have a water system meeting with the minimum requirements of the Department of Water Supply.

Variances can be granted, but under section 23-15, no variance may be granted unless it is found that:

- (a) There are special or unusual circumstances applying to the subject property which exist either to a degree which deprives the owner or applicant of substantial property rights that would otherwise be available or to a degree which obviously

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interferes with the best use or manner of development of that property; and

- (b) There are no other reasonable alternatives that would resolve the difficulty; and
- (c) The variance will be consistent with the general purpose of the district, the intent and purpose of this chapter, and the County general plan and will not be materially detrimental to the public welfare or cause substantial, adverse impact to an area's character or to adjoining properties.

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.

The proposed variance would not fulfill the intent of the Subdivision Code in that the water supply would be inadequate.

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.

The analysis of existing rainfall within the subject property utilizing maps at the Planning Department, DPW, and information provided by the applicant show that there is inadequate rainfall within the subject property and surrounding areas to support individual or separate private rainwater catchment systems for potable and emergency uses for the proposed subdivision. According to the applicant's reference and data published or cited in "An Inventory of Basic Water Resources Data: Island of Hawaii Report R-34", State of Hawaii, Department of Land and Natural Resources-DLNR, "Station No. 5.0"(1923-1966-Mean) annually received "41.14 inches" of rainfall. According to a map- Plate 6-WATER-RESOURCES INVESTIGATIONS REPORT 95-4212, the proposed 9-lot subdivision appears to be nearest active rain gage station "5.1". According to recent data (1998) published by the National Oceanic and Atmospheric Administration-NOAA, "Kamaoa Puueo 5.1" received only 13.84 inches of rainfall during 1998. The analysis of the applicant's submittals together with other recent published data shows the subject TMK property receives approximately 13 + inches of rainfall or approximately 35 % of the mean rainfall recorded nearly 40 years ago. This demonstrates that there may be many years where rainfall is not enough to support catchment.

The alternative to a water system proposed by the applicant--rain catchment by the individual lot owner--would not meet the intent and purpose of the Subdivision Code: in this case, that a subdivision have adequate clean safe drinking water for human consumption, and a reliable

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supply of water for firefighting purposes. The rainfall is too low and too unreliable to support a catchment system. The Subdivision Code, by specifying the need for a water system, represents a policy decision that subdivisions should have on-site water and not rely on hauling in water. As for fire protection, although a variance could include a condition that the lot owner have a second tank for fire fighting purposes, and keep it filled, this condition would be impossible to monitor and if it were breached, the violation would likely be discovered at the worst possible moment, when a fire truck actually tried to get water from the tank. The proposed subdivision could, therefore, be detrimental to the public welfare.

It appears that the property was recently acquired by the present owner. It is at least as suitable for its likely beneficial uses (probably ranching) in its present configuration. It is not at all obvious that the best use or manner of development of the subject property is to divide it into nine (9) smaller lots.

The applicant has not demonstrated that there are no reasonable alternatives. In particular, it may be possible to develop a private water system. A private well uphill yielded good quality water.

If subdividers are allowed to subdivide to the full extent with water variances, they will have no incentive to develop water systems, and the County will have more substandard subdivisions.

Approval of the subject variance(s) from water supply requirements would not conform to the following goals, policies and standards of the Hawaii County General Plan which state in part:

Water system improvements and extensions shall promote the County's desired land use development pattern.

All water systems shall be designed and built to Department of Water Supply standards.

The county shall encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.

Furthermore, the precedent by allowing this subdivision without the minimum subdivision improvements could become a precedent for other similar subdivisions of adjoining property or development within the surrounding area.

Your variance request to allow or develop a 9-lot subdivision without providing water supply to the proposed 9-lots or variance from Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply, (1), to allow proposed 9-lot subdivision

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without providing a water system meeting the minimum requirements of the Department of Water Supply (DWS) is denied.

In accordance with a recent charter amendment and Ordinance No. 99-111, you may appeal the director's decision and request the following:

Any person aggrieved by the decision of the director in the administration or application of this chapter, may, within thirty days after the director's decision, appeal the decision to the board of appeals.

Pursuant to Board of Appeal (BOA) Rule, PART 8. APPEALS, 8-15 General Standards for Appeals (Non-Zoning):

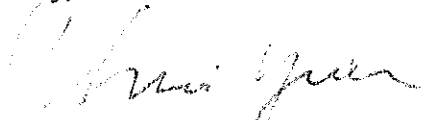
"A decision appealed from may be reversed or modified or remanded only if the Board finds that the decision is:

- (1) In violation of the Code or other applicable law; or
- (2) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (3) Arbitrary, or capricious, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion."

In view of the above, enclosed is form-**GENERAL PETITION FOR APPEAL OF DECISIONS BY PLANNING DIRECTOR**.

Should you have any questions on the variance decision or the appeal procedure, please feel free to contact our Hilo office at telephone (808) 961-8288.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

WRY/CJY:pak
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Enclosure

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xc: Manager-DWS
 ✓Planning Dept.-Kona
 SUB 03-0176
 Mr. George B. Pitts, Jr.
 Anthony C. Gordon, Et al.