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Mayor



Christopher J. Yuen  
Director

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Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043  
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May 18, 2004

R. M. TOWILL CORPORATION  
c/o Mr. Chester Koga, Project Coordinator  
420 Waiakamilo Road, Suite 411  
Honolulu, HI 96817-4941

Dear Mr. Koga:

**VARIANCE APPLICATION (VAR 04-039)**

**VARIANCE FILE NO. 1444**

**Applicant: JAMES SUMMERS**

**Owner: JAMES SUMMERS**

**Request: Variance from Chapter 23, Subdivisions,  
Article 6, Division 2, Improvements Required,  
Section 23-84, Water Supply, (1) (2) and  
Section 23-86, Requirements for dedicable streets**

**Tax Map Key: 2-7-007:014, (SUB 03-0174)**

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 17-lot subdivision of the subject TMK property without providing a water system meeting the minimum requirements of the Department of Water Supply (DWS) and Section 23-86, Requirements for dedicable streets or roadway improvements stipulated by the Department of Public Works (DPW)-memorandum dated March 17, 2004. As discussed below, this denial treats the roadway variance as a request for a variance from Chapter 23, Section 23-87, Standard for non-dedicable street; escrow maintenance fund, rather than Section 23-86, Requirements for dedicable streets because the requirement is Section 23-87 according to the DPW memorandum.

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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, being Lot 25-E of Onomea Subdivision containing 483+ acres, is a portion of R.P. 8117, L.C. Award 7713, Ap. 20 to V. Kamamalu (Certificate of Boundaries No. 175), and is situated at Onomea, South Hilo, Hawaii.
2. **Zoning.** The subject property is zoned Agricultural (A-20a) by the County and designated Agriculture ("A")-Conservation ("C") by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM.** The applicant/subdivider James S. Summers, submitted a subdivision application (SUB 02-0174) which includes a preliminary plat map (PPM), dated November 26, 2003, proposing to subdivide subject TMK property or Lot 25-E into seventeen (17) lots. Further action on the proposed 17-lot subdivision application was deferred pursuant to letter dated March 23, 2004 in SUB 03-0174.

**Background**-Lot 25-E, containing 483.05 acres +/-) was created by subdivision (SUB 7705-Revised: Onomea Subdivision) on February 17, 2004.

4. **Variance Application.** The applicant submitted the variance request and subject variance application together with other submittals on or about March 31, 2004.

"ATTACHMENT A" states in part:

"The lack of available water supply has resulted in the applicant's exploration of alternatives that include use of individual private catchment systems, or construction of a new private well and appurtenances."

"Access to the proposed subdivision will be through an adjacent subdivision, Onomea Bay Ranch (Sub02-0149) and is therefore guided by provisions of that subdivision. A new access road (Lot 25-E-17) is provided in the proposed subdivision."

The applicant states in part: "Costs associated with this alternative are considered prohibitive in relation to the intended use of the subdivision for agricultural uses. In addition, while development of well, storage, and transmission infrastructure would benefit the area surrounding the subject project, there would be no equitable contribution to the applicant by the surrounding land owners who would benefit from the well. Implementation of this alternative, therefore, is not considered reasonable nor feasible."

The applicant states in part: "The development of a new access from Mamalahoa Highway will required (sic) the acquisition of land (approximately 9.4 acres) from the adjacent landowners, either in the form of direct purchase or through an easement. Development of the roadway would substantially add to the cost of the development."

5. **Agency Comments and Requirements (VAR 04-039):**

- a. The Department of Water Supply (DWS) memorandum, dated April 27, 2004, states in part:

"We have reviewed the subject application for the proposed subdivision.

Please refer to our February 20, 2004, memorandum to you for our comments and requirements."

The Department of Water Supply (DWS) memorandum dated February 20, 2004 (SUB 03-0174) states in part the following:

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

Please be informed that the proposed subdivision is not within the service limits of the Department's existing water system facilities. The nearest facility is at the end of an existing 6-inch waterline along the Kulaimano Homestead Road approximately 1,300 feet from the property. In addition, the elevation of the property is beyond where water can be delivered at adequate pressure and volume under peak-flow conditions.

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Further, the Department's existing water system 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 Department of Public Works (DPW) memorandum dated April 22, 2004 states in part the following:

"We have reviewed the subject application and offer the following comments:

- b. The DPW still believes that to safeguard public welfare and safety, road improvements to satisfy Section 23-34 of the Hawaii County Code (HCC) should be provided. However, if the Planning Director finds that the applicant's reasons provide valid grounds to justify HCC, Section 23-15, the DPW defers to that determination."

- c. The State Department of Health (DOH) memorandum is dated May 11, 2004. (Refer to memorandum in variance file).

6. **Notice to Surrounding Owners.** The applicant's transmittal letter dated May 11, 2004 includes a copy of a notice dated April 19, 2004, list of surrounding property owner(s), and other submittals. According to the transmittal letter, the notice dated April 19, 2004 was mailed on April 19, 2004.

7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received. The following letter from a surrounding property owner was received:

- a. Letter dated April 23, 2004 to subject application from Howard Rogers.

Therefore, after considering the circumstances, variance background information submitted by the applicant-owner, and agency comments to the subject variance request, the Planning Director has determined that there are no special or unusual circumstances applying to the TMK property-Lot 25-E which deprives the applicant-owner of substantial property rights that would otherwise

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be available or to a degree which obviously interferes with the best use or manner of development of the subject property.

### **ALTERNATIVES**

Chapter 23, Subdivisions, Section 23-2, states in part that "all subdivision plats and all streets or ways within the County created for the purpose of partitioning land shall be approved by the director in accordance with this chapter." Chapter 23, Subdivisions, shall be applied and administered within the framework of the Hawaii County General Plan.

In sum, Chapter 23, Subdivisions, requires that the proposed or subdivision of Lot 25-E be provided with a water system meeting with the minimum requirements of the Department of Water Supply and roadways commensurate with DPW standards.

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 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.

### **INTENT AND PURPOSE**

The intent and purpose of requiring a water system and roadways for a subdivision are to assure that adequate water is available for human consumption and fire protection, and, that legal and proper physical access to a subdivision is clearly defined and accessible from a public road.

### **VARIANCE DECISION**

The applicant is requesting variances from the water supply and roadway requirements of the

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subdivision code. Although the variance application requests a variance from sec. 23-86, "Requirements for dedicable streets", this section does not apply to this subdivision. The correct section, as referred to in the Dept. of Public Works memorandum of March 17, 2004, is sec. 23-87, "Standard for non-dedicable streets." This section allows non-dedicable private streets in subdivisions in areas zoned for lots of 3 acres or more in size; this property is zoned A-20a. The non-dedicable street under sec. 23-87 would still be a considerable improvement over the existing roads, although not as much of an improvement as a dedicable street. The remainder of this letter will treat the application as if it had requested a variance from the correct provision, sec. 23-87.

The non-dedicable standard road, constructed according to DPW "Standard Specification" R-39, would consist of a 20' paved main road section, with improved swales and shoulders within a 50' right-of-way. If the grade was greater than 8%, the pavement would have to be asphalt/concrete, if less than 8%, it could be an "oil-treatment" (which looks like an asphalt pavement.) The current access to the proposed subdivision from the Belt Highway is on a private road, with a 50' right-of-way, through the "Onomea Bay Ranch" subdivision, a distance of about 9000'. This road is paved, with a width of about 10', with gravel shoulders. It appears that the proposed subdivision plans to use existing cane haul roads within the subdivision for internal access to the newly-created lots. There is nothing in the record that shows the current condition of these internal cane haul roads. The subdivision would require about 8500' of internal roads. The applicant is apparently requesting that they be granted a variance to allow the use of the substandard access roads through the Onomea Bay Ranch subdivision and to be able to use substandard roads within their subdivision.

To reach the proposed subdivision a vehicle would have to go through the Onomea Bay Ranch subdivision and cross a narrow plantation-era bridge over a gulch. There is nothing in the record which shows the condition or safety of the bridge. To reach some of the lots will require crossing at least two more intermittent streams. There is nothing in the record of the subdivision that shows the condition of the roads at those stream crossings.

The Onomea Bay Ranch subdivision (SUB 7685-A REVISED-June 10, 2004) created 28 lots, primarily resulting from an earlier consolidation/resubdivision action under sec. 23-7 of the Subdivision Code. This section of the code applies to the reconfiguration of existing lots in an area, where the consolidation/resubdivision action does not create additional lots, but merely changes the boundaries of those that already exist. Because new lots are not being added, sec. 23-7 permits this resubdivision without following the normal requirements of the subdivision code. Hence, the Onomea Bay Ranch lots were created without a water system and with substandard roads. (There were 5 lots created with a variance, beyond the number of pre-existing

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lots that were granted on condition that the subdivider pave approximately 23,000 feet of road, thus significantly improving the overall road system in the area.)

The Onomea Bay Ranch subdivider used up all of the pre-existing lots in creating the earlier subdivision, leaving the present 483 acre lot as a "bulk" lot that could only be further subdivided by meeting the normal subdivision code standards (unless a variance was obtained.) The present owner purchased this lot, with the substandard access, without water supply, and should be aware of the limitations of the property with respect to future subdivision.

The proposed variance does not meet the intent and purpose of the Subdivision Code because it would create a subdivision with a substandard and potentially unsafe access, and without a water system. The proposed road system is far below the county standard and below the width required for safe two-way traffic. The applicant does not provide any information to show that the proposed road system is safe or adequate for the proposed subdivision. The project will be materially detrimental to public welfare and to surrounding properties in that it will cause additional traffic on the substandard Onomea Bay Ranch roads, and put additional residents in an area of uncertain access in times of heavy rainfall and flood, potentially endangering police and fire personnel as well.

The only reason given for not providing a water system is the expense of drilling a well. The applicant has not demonstrated that there are no reasonable alternatives, such as utilizing spring sources plus purification and creating a private water system. The applicant has also not demonstrated that the expense is unreasonable, given the number of lots that can potentially be created.

With respect to the roads, the applicant's statement that it would have to acquire 9.4 acres of private land to build an alternative road is not correct. The right-of-way within the Onomea Bay Ranch road is adequate; the applicant would have to make the necessary improvements within the right-of-way.

While the improvements called for by the Subdivision Code are expensive, they are what the Code requires. If properties can be subdivided without making improvements through variances, all incentive for a subdivider to make improvements to infrastructure disappears.

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

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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.

Provide a system of thoroughfares and streets for the safe, efficient and comfortable movement of people and goods between and within the various section of the County.

The design of urban streets shall consider their implications for urban design and potential multiple uses of the right-of-way within the limits of feasibility and quality road design.

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 request for variance(s) to allow a 17-lot subdivision without providing water supply to the proposed 17-lots or variance from Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply, (1), and roadway improvements meeting DPW requirements 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

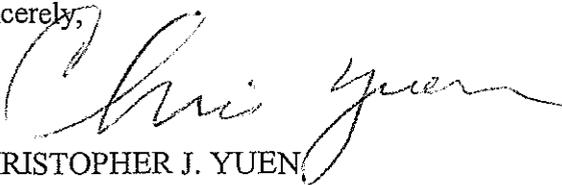
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- (2) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (3) Arbitrary, or capricious, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.”

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

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Enclosure

xc: Manager-DWS  
Planning Dept.-Kona  
SUB 03-0174  
Mr. Howard Rodgers