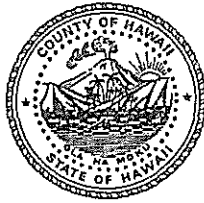


Harry Kim
Mayor



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

October 20, 2004

Mr. Brian Takeda
Planning Project Manager
R, M. TOWILL CORPORATION
420 Waiakamilo Road, Suite 411
Honolulu, HI 96817-4950

Dear Mr. Takeda:

SUBJECT: VARIANCE FILE NO. 1480 (DENIAL) WH (VAR 04-073)
Applicant: RONALD THOMAS
Owner: RONALD THOMAS
Request: Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required,
Section 23-84, Water Supply, (1) (2)
Tax Map Key: 9-4-004:011, (SUB 03-0096)

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 2-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:

Hawai'i County is an equal opportunity provider and employer.

MD 061449

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BACKGROUND

1. **Location.** The subject property, Lot A containing 42.633 acres, being a portion of R.P. 6886, L.C. Aw. 8452, Ap. 17 to A. Keohokalole, is situated at Kawela, Puueo, Kau, Hawaii.
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 submitted a subdivision application (SUB 02-0096) which includes a preliminary plat map (PPM), dated May 23, 2003, proposing to subdivide subject TMK property into two (2) lots. Tentative Approval to the PPM was granted by Planning Department letter dated February 4, 2004.
4. **Variance Application.** The applicant (Refer to Authorization Letter dated August 31, 2004 in variance file) or agent-R.M. TOWILL CORPORATION submitted a variance request and subject variance application on or about August 26, 2004 and other supplemental information.

The information or Report prepared by R.M. Towill Corporation dated "AUGUST 2004" states in part:

Page 4: "County water supply in the area is located at a distance of 2,700 linear feet from the subject property. However, development of infrastructure to access the water system is considered cost prohibitive by the applicant. The difficulty of developing infrastructure to access the water system has resulted in the applicant's exploration of alternatives that include (1) use of individual private catchment systems, and (2) construction of a new private well and appurtenances."

According to the report (Page 2) the "Total Cost" to extend the County DWS line to the subdivision would cost "\$385,000", and, for a new private well and appurtenances, the "Total Cost" for the private well and appurtenances would cost "400,000" (Page 3).

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Page 4: "Elevation of the site is approximately 1,440 to 1,560 feet elevation relative to mean sea level. Average annual rainfall in the area is estimated at approximately 51 inches per year. This amount of rainfall is expected to permit use of individual catchment systems capable of supplying sufficient potable and emergency water for an average family of four persons."

(Note: The applicant's report (Page 4) cites rainfall data obtained from rainfall gage station-"NAALEHU 14, HAWAII" or "data derived from NCDC TD 9641 Clim 81 1961-1990 Normals. 30 years between 1961 and 1990").

Page 5: "The variance will not be contrary to the intent and purpose of the zoning district, nor avoid regulatory requirements of the Zoning and Subdivision Code."

Page 6: "Sufficient water supply will be developed with an adequately designed and constructed private catchment system. Rainfall in the subject area is approximately 50 inches per year, and is considered sufficient for the development of catchment systems for an average family of 4 persons for potable and emergency (fire) uses."

5. **Agency Comments and Requirements WH (VAR 04-073):**

- a. The State Department of Health (DOH) memorandum is dated September 9, 2004. (Refer to memorandum in variance file).
- b. The Hawaii County Fire Department memorandum is dated September 12, 2004. (Refer to memorandum in variance file).
- c. The Department of Water Supply (DWS) memorandum, dated September 14, 2004, states in part:

"We have reviewed the subject application and the comments in our memorandum of November 10, 2003, still stand. (A copy is enclosed.)"

The Department of Water Supply (DWS) memorandum dated November 10, 2003 (SUB 03-0096) states in part the following:

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We have no objections to the proposed subdivision. The next nearest point of adequacy for water supply access to the subdivision is a 6-inch ductile iron waterline in Kamaoa Road, which appears to be approximately 2,700 feet away from the nearest boundary of the subdivision property.”

6. **Notice to Surrounding Owners.** The applicant’s agent forwarded transmittal letter dated September 14, 2004, copy of a notice dated September 9, 2004 sent to a list of surrounding property owner(s), and other submittals. Pursuant to the copy of the mailing receipts, it appears that a notice dated September 9, 2004 was mailed to surrounding property owners(s) on September 10, 2004.
7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received. No objection letters from a surrounding property owner(s) were received.

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 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.

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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 records within or near the subject property utilizing maps at the Planning Department, DWS, 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. The applicant's agent refers to rain gauge station "NAALEHU 14" and data published between 1961 and 1990 purporting that the proposed subdivision or surrounding area receives approximately 50 inches of rainfall annually. However, the proposed subdivision is nearest rain gauge station "KAMAOKA 2", and, according to data collected between 1945 and 1966 published by the State of Hawaii publication-"AN INVENTORY OF Basic Water Resources Data: ISLAND OF HAWAII", this station received a mean annual rainfall of 41.14 inches.

The analysis of the rainfall data submitted by the applicant and historical data published by other sources show the mean rainfall in this area is approximately 41 + inches and historical weather trends show this region is extremely dry during summer months. As such, the likelihood of an expense to haul potable water to the proposed subdivision would be necessary during drought or during annual "dry months" or during the months of June, July, and September.

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 supply of water for firefighting purposes. The annual rainfall within this area 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.

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The DWS has indicated that County water is available to the proposed 2-lot subdivision and is within approximately 2700 feet of the proposed subdivision. The owner or applicant cites that the costs to expand the existing DWS system (\$385,000.00) or installing a private new well or costs of building a private water system (\$400,000.00) would be "costly" or is "cost prohibitive". 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.

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 two (2) lots.

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

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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):

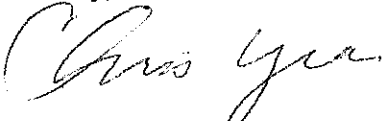
"A decision appealed from may be reversed or modified or remanded only if the Board finds that the decision is:

- (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

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Enclosure

xc: Manager-DWS
Planning Dept.-Kona
SUB 03-0096