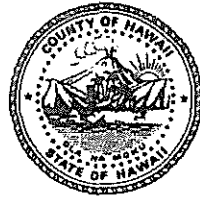


VAR 04-092

Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
LEED® AP
Deputy Director

County of Hawaii
PLANNING DEPARTMENT

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

April 24, 2006

WES THOMAS ASSOCIATES
75-5749 Kalawa Street
Kailua-Kona, HI 96740

Gentlemen:

VARIANCE FILE NO. 1510 WH (VAR 04-092)
Applicant: WES THOMAS ASSOCIATES
Owners: PETER DUNGATE, ET AL.
Request: Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required,
Section 23-84, Water Supply, (1) (2)
Tax Map Key: 8-7-007:008, (SUB 04-0054)

After reviewing the subject variance application and information submitted, the Planning Director approves your variance from Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply, to allow a proposed 5-lot subdivision of the subject TMK property without providing a water system meeting the minimum requirements of the Department of Water Supply (DWS), in lieu of the 8 lot subdivision previously requested and denied by the Director.

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

BACKGROUND

1. **Location.** The subject property, containing approximately 94 + acres, is a portion of Grant 2025 to Pumealani, is situated at Pahoehoe 1st, South Kona, Hawaii.

2. **Zoning.** The subject property is zoned Agricultural (A-5a) by the County and designated Agriculture (A) and Conservation (C) by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM.** The subdivider, Peter Dungate, submitted a subdivision application (SUB 04-0054) which includes a preliminary plat map (PPM), dated July 28, 2004, proposing to subdivide subject TMK property into eight (8) lots. Further action on the proposed 8-lot subdivision application was deferred pursuant to letter dated October 4, 2004. This was denied by the Planning Director and appealed by the applicant to the Board of Appeals. While the appeal was pending, the applicant and the Planning Director agreed to compromise the appeal with the issuance of a variance for five lots.
4. **Variance Application.** WES THOMAS ASSOCIATES, on behalf of the applicants, submitted the variance request and subject variance application on or about February 22, 2005 and other supplemental information.

The applicant's transmittal letter dated February 14, 2005 includes the following background information:

Page 1-2: "According to the printout of a portion of the State GIS maps the property receives approximately 40 to 60 inches of rainfall annually. A copy of the map is enclosed for your reference. Also shown on the composite GIS map are the rain gauge stations Kaohe, Pahoehoe and Pahoehoe Ranch and Opihihale 2.

According to the records of the Hawaii State Climate Office at the University of Hawaii, the average annual rainfall data for stations Kaohe, Pahoehoe and Pahoehoe Ranch is not complete. The closest station with conclusive data is Opihihale 2 with the following data:

<u>Station Name</u>	<u>Dates</u>	<u>Sta Elevation</u>	<u>Ave Rainfall</u>
Opihihale 2	1956-2003	1,400 Ft	41 inches

The subject property ranges in elevation from approximately sea level to 1,140 ft in elevation. This elevation historically receives between 40 to 55 inches of rainfall annually. The owner is proposing to subdivide the mauka 2,700 feet of the property. As you can see from the enclosed copy

of the LANDSAT photo with the tax map key overlay, the property is lush and green.

While the coastal area historically receives less rainfall, approximately 40 inches annually, the mauka portion of the property receives rainfall (50-60 inches annually) that should sustain a catchment system, given the appropriate amount of catchment area and capacity.”

5. **Agency Comments and Requirements (VAR 04-092):**

- a. The Department of Water Supply (DWS) memorandum, dated April 4, 2005, states in part:

“We have reviewed the subject application; and the comments in our memorandum of September 14, 2004, still stand.

Please be informed that the subject property is not within the service limits of the Department’s existing water system facilities.

The nearest Department of Water Supply water system facility is at the end of an existing 8-inch waterline along the Mamalahoa Highway approximately 2.6 miles from the property.”

6. **Notice to Surrounding Owners.** According to the applicant’s agent, a notice regarding the variance request and application was sent to list of surrounding property owner(s) attached to the variance application. Pursuant to the agent, the notice was mailed to surrounding property owner(s) on or about April 2, 2005.
7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received. No written objections from the surrounding property owners or public were received.

After considering the circumstances and variance background information, rainfall information provided by the applicant, agency comment, and after receiving information at the Board of Appeals hearing concerning the denial of the original variance application for eight lots, the Planning Director has determined that there are special or unusual circumstances applying to the subject property which exist either to a degree which deprives the applicant or owners of property rights that would otherwise be available or to a degree which obviously interferes with the best use or manner of development of the

WES THOMAS ASSOCIATES

Page 4

April 24, 2006

subject property, and which make the proposed subdivision into five lots without a water system the most reasonable alternative.

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 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, but has cautioned that adverse health consequences may occur from the use of catchment systems. The Subdivision Code and General Plan have a general policy against the creation of subdivisions on catchment systems.

Some of the concerns over the use of catchment systems are reduced when the property is developed to less than its full potential under the existing zoning. There will be fewer homes at risk of fire damage, and fewer individuals relying upon the catchment water source. In the case of this proposed subdivision, most of the five lots would be at the upper end of the subdivision, which receives more rainfall than the lower section, although rainfall is still marginal at the upper elevation.

Although Planning Department Rule 22, regarding water variances, was not in effect at the time of this variance application, the policy expressed in that rule is consistent with allowing a catchment subdivision in this location, with fewer lots than allowed by zoning, although by the terms of that rule only four lots would be allowed, rather than five.

The alternatives of extending the county water system 2.6 miles, or drilling wells onsite to County Department of Water Supply standards, are not reasonable for a five-lot subdivision because of the very high costs involved.

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 to allow a proposed 5 lot subdivision of the subject TMK property without providing a water system meeting DWS standards is **approved** subject to the following variance conditions:

1. The applicant, 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 No. 04-0054. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting lots in the pending 5 lot 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 proposed subdivision SUB No. 04-0054. 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. The owners agree and accept the fact that the County will not, at this time, bear the responsibility of supplying public water to the proposed or affected additional lots created by SUB No. 00-54 not serviced by a County water system. No further subdivision of the lots created by SUB No. 00-54 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
 - c. Any lots created by SUB No. 00-54 may not be made subject to a condominium property regime.
 - d. Any dwelling constructed on a proposed lot not serviced by a County water system shall be provided with and maintain a private potable rain catchment system which includes a minimum 6000-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 dwelling shall be provided with and maintain a private water supply system which includes an additional minimum 3,000 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 owner(s) of the lot(s) created by SUB. No. 04-0054 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB No. 00-54, the owner(s) of the lot(s) created by SUB No. 04-0054 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 subdivider and all grantees, successors, and assigns acknowledge that the parcel was created by a variance from the normal subdivision requirements of Hawaii County, and that there are no special or unusual circumstances applying to the property which deprive the owner of substantial property rights or to a degree which obviously interferes with the best use or manner of development of the property, and hence, no grounds exist or will exist for a variance from the subdivision code to permit further subdivision of the property, and that changes in the owner's personal or financial situation after acquiring the

WES THOMAS ASSOCIATES

Page 7

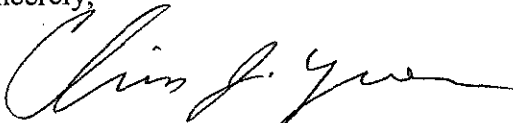
April 24, 2006

property also will not constitute grounds for a variance from the subdivision code to permit further subdivision of the property.

3. The subdivision's final plat map shall meet all the requirements of the Hawaii County Zoning Code and the Subdivision Code not covered by this variance.
4. 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

WRY/CJY:pak

Wpwin60/Chris2/Dungate variance

xc: Roy A. Vitousek III, Esq.
Corporation Counsel
Manager-DWS
SUB 04-0054