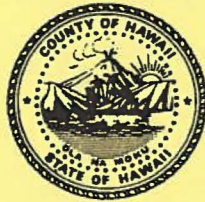


William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

County of Hawai'i

PLANNING DEPARTMENT

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

May 5, 2011

Mr. Sidney Fuke, Consultant
100 Pauahi Street, Suite 212
Hilo, Hawaii 96720

And

Mr. Robert G. Hogan
1 Keahole Place, #1507
Honolulu, HI 96825

Dear Mr. Fuke and Mr. Hogan:

SUBJECT: Application: VAR 11-012
Agent: ROBERT G. HOGAN
Applicant: STEPHANIE DULLUM
Owner: STEPHANIE DULLUM
Request: Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required,
Section 23-84, Water Supply, (1)(2)
Tax Map Key: 4-6-011:039 (SUB 11-001054)

After reviewing the subject variance application, the Planning Director certifies the **approval** of VAR 11-012 to allow proposed 6-lot subdivision (SUB 10-001054) without providing a water supply system to five (5) of the proposed six lots. The variance is from Hawai'i County Code, Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply, (1)(2).

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

MAY 11 2011

Mr. Sidney Fuke and
Mr. Robert G. Hogan
Page 2
May 5, 2011

BACKGROUND

1. **Location.** The subject property contains approximately 71.178 acres, being Portion of Royal Patent 7394, Land Commission Award 8559-B, Apana 1 to W. C. Lunalilo is situated at Kawela, Hāmākua, Hawai‘i.
2. **Zoning.** The subject property is zoned Agricultural – 10 acres (A-10a) by the County and designated Agriculture (“A”) by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM.** The applicants/owners submitted a subdivision application (SUB-10-001054) on February 7, 2011 and preliminary plat map (PPM), dated October 20, 2010, proposing to subdivide subject property into six (6) lots.
4. **Variance Application.** The applicant submitted the variance application and associated materials on February 28, 2011.
5. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated April 5, 2011 (refer to memorandum in variance file).
 - b. No comments received by County of Hawai‘i Fire Department as of this date.
 - c. The Department of Water Supply memorandum dated April 14, 2010, (refer to memorandum in variance file).
6. **Public Notice.** The applicant has submitted a copy of the notice, a list of surrounding property owner(s), and other submittals. Pursuant to these submittals, it appears that the applicant’s notice was mailed to the surrounding property owners by USPS on April 11, 2011. In accordance with Ordinance No. 05-135, the applicants submitted a notarized affidavit, dated April 29, 2011, and photographs to confirm posting of required sign. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on April 8, 2011.
7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received and no objections were received from surrounding property owners or the public.

Mr. Sidney Fuke and
Mr. Robert G. Hogan
Page 3
May 5, 2011

SPECIAL AND UNUSUAL CIRCUMSTANCES

After considering the variance application and background information, including rainfall information provided by the applicant, 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 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 subject property.

ALTERNATIVES

There are no other reasonable alternatives in resolving the difficulty of the applicant. The first alternative requires the applicant to construct extensive improvements and additions to include storage, transmission, booster pumps, and distribution facilities. The estimated cost of these improvements would be in the excess of \$3 million, which would be prohibitive cost for a six (6) lot subdivision.

The second alternative would be to design, drill and develop private wells and install the necessary water system improvements in accordance with DWS standards. The Department of Water Supply has stated in its April 14, 2010 memorandum that a private water system for the proposed subdivision, designed and constructed in accordance with the Department's Water System standards, would include two (2) wells of equal capacity, transmission waterlines, and an offsite 100,000-gallon concrete reservoir. The estimated cost for such improvements may be up to \$2,200,000.

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 applicant when a more reasonable alternative is available.

INTENT AND PURPOSE

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.

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

Mr. Sidney Fuke and
Mr. Robert G. Hogan
Page 4
May 5, 2011

The subject neighborhood which receives approximately 80 inches to 120 inches of rainfall annually qualifies for Planning Department Rule 22 relating to Water Variances. However, the applicant/owner is proposing a private water system that is conceptually similar to the Department of Water Supply's standards. The only difference relates to the size of the wells, storage tank, and distribution system. This should be more than sufficient to address the potable and fire protection requirement of the project.

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.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

The variance request to allow a proposed 6-lot subdivision of the subject property without providing a water system meeting DWS standards to five of the proposed lots 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 10-001054. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting the lot not serviced by a County water system of the pending subdivision application and shall be duly recorded at the Bureau of Conveyances of the State of Hawai'i 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 10-001054. 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

Mr. Sidney Fuke and
Mr. Robert G. Hogan
Page 5
May 5, 2011

affected additional lots created by SUB 10-001054 not serviced by a County water system. No further subdivision of the lots created by SUB 10-001054 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.

- c. Any lots created by SUB 10-001054 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 firefighting 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 Hawai'i County Fire Department. The Hawai'i 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 firefighting 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 10-001054 that the County Water System has been upgraded or an improvement district initiated to enable service to these lots, the owner(s) of the lot(s) shall participate in such improvement district or shall pay their

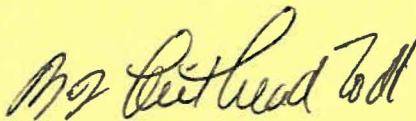
Mr. Sidney Fuke and
Mr. Robert G. Hogan
Page 6
May 5, 2011

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 Hawai'i 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 property also will not constitute grounds for a variance from the subdivision code to permit further subdivision of the property.
3. The subdivision application's final plat map shall meet all the requirements of the Hawai'i County Zoning Code and the Subdivision Code not covered by this variance. No other variance from Chapter 23, Subdivisions, shall be granted to permit subdivision application SUB 10-001054.
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,



BJ LEITHEAD TODD
Planning Director

LHN: nci
O:\Variances\Zone4\VAR-11-012WaterTMK4-6-011-039Dullum.doc

xc: Real Property Tax Office (Hilo)
Manager-DWS
DPW - Engineering Division
SUB 10-001054