

BOARD OF APPEALS
COUNTY OF HAWAII

In Re Appeal of)	BOA 18-000194
)	
)	Appeal from Decision of the
Allen and Lana Daniels,)	Planning Director to Deny
Trustees)	Application for Variance
)	
TMK (3) 7-3-02: 1)	
Kalaoa, North Kona, Hawaii)	
_____)	

FINDINGS OF FACT, CONCLUSIONS OF LAW,
DECISION AND ORDER

This is an agency appeal from the County of Hawaii Planning Director's denial of the application of the Appellants-Landowners Allen N. Daniels, Jr. and Lana Deanne Daniels, Trustees for a variance from the water requirement of Section 23-84 of the Subdivision Code.

On June 8, 2018, the Board of Appeals held a hearing on the appeal. Allen N. Daniels, Jr. appeared on behalf of the Appellants-Landowners together with their attorney Michael J. Matsukawa. The County of Hawaii Planning Director Michael Yee appeared as the planning director together with his attorney Michael S. Kagami.

After receiving and considering the evidence that was submitted at the hearing and the arguments of the respective parties, the Board of Appeals determined that the Appellants-Landowners' appeal should be granted.

FINDINGS OF FACT

1. The parties stipulated to the admission of the items contained in the Record on Appeal served by the clerk for the County of Hawaii Planning Department on

May 22, 2018 and to the Appellants-Landowners' Exhibit Nos. 1 to 4, 9 and 11 to 15.¹

2. As a result of the parties' stipulation, the material facts are largely undisputed.

Ordinance 97-37

3. In 1996, Robert Henriques and Gregg Kashiwa submitted an application to the planning department to rezone their commonly owned property, designated as Tax Map Key (3) 7-3-02: 2 and containing about 15.25 acres (also called the "Subject Property"), from Ag-20a to Ag-3a. (ROA 1)

4. Robert Henriques and Gregg Kashiwa intended to subdivide the Subject Property into five lots. (ROA 46)

5. Adjoining the Subject Property was a small remnant lot owned by Nansay Hawaii, Inc. As part of their subdivision, Robert Henriques and Gregg Kashiwa intended to adjust the boundaries of their property (the Subject Property) with the boundaries of Nansay Hawaii, Inc.'s adjoining remnant lot and thereby enlarge the area of Nansay Hawaii, Inc.'s remnant lot from about 7,500 square feet in area to 10,000 square feet in area. (ROA 13, 27, 18)

6. The planning department staff recommended that the proposed rezoning action include a requirement, among others, that Robert Henriques and Gregg Kashiwa install certain improvements to provide water to the five lots that they intended to create if the zoning of the Subject Property were changed from Ag-20a to Ag-3a. (ROA 122, 127, 137, 149, 159)

¹ As stated in footnote 2, the Appellants-Landowners withdrew Appellants Exhibit No. 10, but apparently on the mistaken belief that a copy of Appellants Exhibit No. 10 was already contained in the planning department's Record on Appeal ("ROA").

7. In 1997, the Hawaii County Council enacted Ordinance 97-37 that approved Robert Henriques and Gregg Kashiwa's request to rezone the Subject Property from Ag-20a to Ag-3a. (ROA 172 to 179)

8. The Hawaii County Council conditioned its approval to rezone the Subject Property by requiring Robert Henriques and Gregg Kashiwa (referred to as the "applicant" in the ordinance) to do the following:

SECTION 2. This change in [zoning] district classification is conditioned upon the following:

C. The applicant shall install *applicable* off-site water system improvements to the subject property, including but not limited to a minimum 4-inch waterline approximately 700 feet north of the subject property, meeting with the approval of the Department of Water Supply *in conjunction with Final Subdivision Approval*.

E. *Final Subdivision Approval* of the proposed agricultural subdivision for no more than five lots shall be secured from the Planning Director *within five (5) years* from the effective date of this ordinance.

G. An archaeological study/survey of the subject property shall be prepared and submitted for review and approval by the Planning Director, in consultation with the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD), prior to submittal of plans for subdivision review or any land alteration activity of the subject property, whichever occurs first. (emphasis added) (ROA 174 and 175)²

² There is no evidence that the Hawaii County Council or the planning director required Gregg Kashiwa or Robert Henriques to record the conditions of approval contained in Ordinance No. 97-37 in the bureau of conveyances at Honolulu, Hawaii. Nor did Gregg Kashiwa or Robert Henriques act to record the conditions of approval voluntarily. Nonetheless, the parties did not cite any specific law that requires the Hawaii County Council's conditions of approval in a rezoning ordinance to be so recorded, except for the general recording statute, Section 502-83, HRS that deals with deeds, leases and "conveyances."

Subsequent Events

9. In 1998, Nansay Hawaii, Inc. sold its remnant lot that adjoined the Subject Property to Robert Henriques and Gregg Kashiwa. (Appellants Exhibit 9)

10. A year later, Gregg Kashiwa conveyed his interest in Nansay Hawaii, Inc.'s remnant lot to Robert Henriques (ROA 213-218), leaving Robert Henriques as the sole owner of both the Subject Property and the remnant lot.

11. Although not evidenced by a specific deed, the record indicates that Gregg Kashiwa also conveyed his interest in the Subject Property to Robert Henriques as well (*see* ROA 192 and 194), but continued to provide services as a consultant for Robert Henriques' benefit (*see* letters written to Gregg Kashiwa in ROA 196, 198 and 209).³

Consolidation and Resubdivision Action in Lieu of Contemplated 5-Lot Subdivision

12. As the sole owner of the Subject Property and Nansay Hawaii, Inc.'s remnant lot, Robert Henriques then applied to consolidate and resubdivide the two parcels into two lots of differing configuration. (ROA 192 to 195)

13. On September 14, 1998, the planning director tentatively approved the proposed consolidation and resubdivision, but subject to the condition that Robert Henriques "*[c]omply with all conditions of approved Change of Zone Ordinance No. 97 37 (REZ 847).*" (ROA 209)

³ Appellants-Landowners submitted their Exhibit 10, which is a deed from Gregg Kashiwa to Robert Henriques that transfers Gregg Kashiwa's interest in the Subject Property to Robert Henriques. Appellants withdrew this Exhibit 10, which act may have been based on the belief that the deed in ROA 213-218 also affected the Subject Property, not just the Nansay Hawaii, Inc. remnant lot.

14. The planning director also stated in her tentative approval letter that "No final approval for recordation shall be granted until all the above conditions have been met." (ROA 210)

15. The record shows that the planning director did not treat the "off-site water system improvements" to be "applicable" or required when she allowed Robert Henriques to consolidate and resubdivide the Subject Property and Nansay Hawaii, Inc.'s remnant lot.

16. On March 31, 1999, the planning director granted "final subdivision approval" for the proposed consolidation and resubdivision action (ROA 228), meaning that the planning director believed that Robert Henriques had met or satisfied all of the conditions set forth in the planning director's tentative approval letter. (Finding Nos. 8, 13 and 14)

Sale to Daniels

17. On May 11, 1999, Robert Henriques recorded a deed that reflected the consolidation and resubdivision action in question and the creation of new Lot 1 (7.532 acres) and new Lot 2 (7.881 acres).

18. The deed, however, makes no reference to the conditions of approval contained in Ordinance No. 97-37, described in Paragraph 8, above (also called the "conditions of approval").

19. On May 20, 2000, Robert Henriques sold Lot 1 and recorded a deed that conveyed Lot 1 (designated as Tax Map Key 7-3-02 with an area of 7.532 acres) to Allen N. Daniels, Jr. (Appellants Exhibit 12)

20. The deed, however, makes no reference to the conditions of approval contained in Ordinance No. 97-37. Nor did Robert Henriques inform Allen N. Daniels, Jr. of the conditions of approval. (Transcript, June 8, 2018, Page 5) Allen N. Daniels, Jr. believed that all requirements for closing the sale had been satisfied.

21. By successive deeds thereafter, the Appellants-Landowners came to own Lot 1 (Tax Map Key 7-3-02: 1) as trustees. (Appellants Exhibit 13 and 14)

22. The Appellants-Landowners developed Lot 1 on which they built and operate "Paws University," permitted business facility, and a residence. (Transcript, Testimony of Daniels, Page 5)

23. When Appellants-Landowners and/or their contractor applied for permits and improved Lot 1, they were not informed by county officials that the conditions of approval contained in Ordinance No. 97-37 existed. (Transcript, Testimony of Daniels, Page 6). Nor were they informed by county officials of the conditions of approval when Appellants-Landowners and/or their contractor grubbed Lot 1. (Id. Page 6)

24. Appellants-Landowners' financing lender, Finance Factors, Ltd., did not inform Appellants-Landowners that the conditions of approval contained in Ordinance No. 97-37 existed. (Transcript, Testimony of Daniels, Page 6)

25. As to Condition C, Appellants-Landowners could not estimate the cost they would incur to build the improvements referred to in Condition C of the conditions of approval contained in Ordinance 97-37 (Transcript, Testimony of Daniels, Page 9), although the manager of the Department of Water Supply described the extensive nature of such work (ROA 207, Finding No. 30).

26. As to Condition E, this condition requires the landowner of the Subject Property to obtain Final Subdivision Approval of “no more than five lots” within five (5) years from the effective date of Ordinance 97-37. (Finding No. 8)

27. The Subject Property has been divided into less than five lots, which division the planning director approved in 1999 (Finding No. 16)

28. The record indicates that planning officials believe that Condition E has been “met” or satisfied.

Daniels' 2-Lot Subdivision

29. In 2016, the Appellants-Landowners applied to subdivide their Lot 1 into two smaller lots. (ROA 238, 240)

30. The Department of Water Supply's comment on the application is that there is only one water meter service available for the property and that additional water service is available only with “extensive improvements and additions, which may include, but not be limited to, storage, booster pumps, transmission, and distribution facilities, would be required ...[but that] sufficient funding is not available from the Department for such improvements and no time schedule is set.” (ROA 257)

The Variance Application at Hand

31. The planning director informed the Appellants-Landowners that they could seek relief by applying for a variance from the water requirement of Section 23-84 of the Subdivision Code. (ROA 265 to 266)

32. However, at that time, the planning director did not inform the Appellants-Landowners in his letter that Lot 1 is or may be subject to the conditions of approval contained in Ordinance No. 97-37.

33. The record indicates that planning officials then believed that the conditions of approval contained in Ordinance No. 97-37 had either been satisfied or had overlooked the same.

34. In response, the Appellants-Landowners applied for a variance from the water requirement of Section 23-84 of the Subdivision Code. (ROA 273)

35. The planning director then informed the Appellants-Landowners of the dates when he intended to act upon the variance application (ROA 278), but did not at that time inform the Appellants-Landowners in his letter that Lot 1 is or may be subject to the conditions of approval contained in Ordinance No. 97-37.

36. The planning department's application monitoring file contains a reference to Ordinance No. 97-37 as to a "fair share" requirement, if any, but no reference to the conditions of approval contained in Ordinance No. 97-37. (ROA 282)

37. The Department of Water Supply's comment on the application for a variance is, "We have no objection to the use of rainwater catchment systems" in reference to Appellants-Landowners' application for a variance from the water requirement of Section 23-84 of the Subdivision Code (ROA 296).

Rule 22

38. The planning director published Rule 22, but a suggestion has been made by the Appellants-Landowners that the planning director had no authority to publish Rule 22.

39. Rule 22, as published, removes any discretion from the planning director's review and decision on an application for a "water variance" of subjects such as (a) the size of the collection area, (b) the storage capacity of the water tank, (c) the

amount of rainfall and (d) the amount of water that can be collected, stored and made available by a combination of these three factors. (See Appellants Exhibit 3, page 10 and 11); *compare* Rule 22-4)

40. The University of Hawaii (Manoa) estimates the average rainfall of the Appellants-Landowners' property to be about 42 inches per year. (Appellants Exhibit 1)

41. Records of Aaron Ahn for rainfall at his Ahikawa Street residence (which is located makai of the Hawaii Belt Road and makai of the Appellants-Landowners' property) show a similar amount of actual, recorded rainfall per year. (Appellants Exhibit 2)

42. In his review of the Appellants-Landowners' application for a variance, the planning director recognized that a range of "40 inches to 60 inches per year" of rainfall is or may be an acceptable criterion, Rule 22-4's 60-inch limitation notwithstanding (ROA 306, Page 4, 2nd paragraph)

43. Rule 22-4 on its face fixes a hard-and-fast, absolute rainfall criterion of 60 inches per year or more, nothing less, and without consideration of the size of the catchment area, the storage capacity of the water tank and the average rainfall in combination.

44. On March 19, 2018, the planning director rendered his decision on the Appellants-Landowners' application for the variance and denied the same for reasons stated. (ROA 303-307).

45. The primary reason for the planning director's denial is Condition C of Ordinance No. 97-37 and the average rainfall for the area being less 60 inches per year (Rule 22-4). (ROA 305 to 306)

46. The Appellants-Landowners then appealed to the Board of Appeals.

CONCLUSIONS OF LAW

To the extent that any conclusion below actually constitutes a finding of fact and to the extent that any conclusion below constitutes a mixed finding of fact and conclusion of law, they shall be treated accordingly.

Interpretation of an Ordinance

1. Ordinance No. 97-37 must be interpreted in accordance with the same rules that courts use in interpreting statutes. *Colony Surf, Ltd. v. Director, Department of Planning and Permitting*, 116 Haw. 510, 514, 174 P.3d 349, 353 (2007); *Leslie v. Board of Appeals*, 109 Haw. 384, 393, 126 P.3d 1071, 1080 (2006).

2. The determination of the Hawaii County Council's intent in enacting the conditions of approval contained in Ordinance No. 97-37 must be determined "primarily from the language contained in the [ordinance] ... itself" and starts with the examination of "the language of the [ordinance] ... itself."

3. The meaning of the words that the Hawaii County Council's words employed must also be found on the face of Ordinance 97-37 and the ordinance's language must be read in context with the purpose of the ordinance. *State v. Lum*, 8 Haw. App. 406, 410, 807 P.2d 40, 43 (1991).

4. Further, in seeking the Hawaii County Council's intent, one must read the ordinance according to the natural and most obvious import of the words employed. Any ambiguity should be resolved in favor of the affected landowner and against a result that would lead to the derogation of the landowner's property rights. *Foster Village Community Association v. Hess*, 4 Haw. App. 463, 469-470, 667 P.2d 850, 854 (1983).

5. The conditions of approval contained in Ordinance No. 97-37 encumber the Subject Land because they restrict or limit the use of the Subject Land. *See S. Utsunomiya Enterprises, Inc. v. Moomuku Country Club*, 75 Haw. 480, 502, 866 P.2d 951, 963 (1994).

6. In 1997, when the Hawaii County Council enacted Ordinance No. 97-37, Section 25-13 of the Zoning Code stated that any administrative privilege will "run with the land," which policy continues under Section 25-2-10 of the current Zoning Code.

7. The Zoning Code in effect in 1997 when the Hawaii County Council enacted Ordinance No. 97-37, as well as the current Zoning Code, however, do not similarly state that zoning "encumbrances" that are conditions of legislative approval and that are contained in an ordinance also "run with the land."

8. Private covenants or agreements that restrict or limit the use of land can "run with the land" if (a) the covenants or agreements "touch and concern" the affected land, (b) the contracting parties intend to have the covenants "run with the land" and (c) there is a "privity of estate" between the contracting parties. *Waikiki Malia Hotel*,

Inc. v. Kinkai Properties Limited Partnership, 75 Haw. 370, 383, 862 P.2d 1048, 1057 (1993).

9. Zoning legislation, however, does not constitute a contractual covenant between the enacting body (the Hawaii County Council) and the affected landowner. Instead, zoning legislation is the result of the enacting body's exercise of its police power to regulate land pursuant to Section 46-4, Hawaii Revised Statutes (commonly referred to as the Zoning Enabling Act) and related laws.

10. The planning director did not record or require others to record the conditions of approval contained in Ordinance No. 97-37 in the bureau of conveyances at Honolulu, Hawaii, but the law is not clear as to whether such conditions of approval must be recorded in order to bind persons who purchase the rezoned land or divided lots therein; no specific law exists that obligate county officials to cause such recordation to occur and the subject appears to be left to the discretion of county officials (*see* Exhibit 15).

11. Nonetheless, it is not necessary to decide whether a condition of approval in a rezoning ordinance does or does not constitute a burden, obligation or encumbrance that "runs with the land" or whether county officials have an obligation to cause such a condition of approval to be recorded in the bureau of conveyances at Honolulu, Hawaii in order to bind a future purchaser of the rezoned land or divided lots therein.

12. As for Condition C of Ordinance No. 97-37, Condition C is ambiguous because it requires the owner of the Subject Property to

“install applicable off-site water system improvements to the subject property, including but not limited to a minimum 4-inch waterline approximately 700 feet north of the subject property, meeting with the approval of the Department of Water Supply in conjunction with Final Subdivision Approval.” (emphasis added)

13. Condition C of Ordinance No. 97-37 is ambiguous because it does not state who is to determine whether the improvements in question are “applicable” – the landowner, the planning director, the manager of the department of water supply, the director of public works or other official.

14. The person who decides whether the “off-site water system improvements” are “applicable” is the manager of the Department of Water Supply.

15. The Department of Water Supply manager’s comment letters (Finding Nos. 30 and 37) refer to the need for such improvements, but do not require or demand that the Appellants-Landowners install such improvements as part of their 2-lot subdivision. The Department of Water Supply Manager also has no objections to the Appellants-Landowners’ application for a variance. (ROA 296, Finding No. 37)

16. In this respect, Condition C is not “applicable.”

17. Condition C is also ambiguous as to when such improvements are required to be installed (if applicable). The improvements, if applicable, must be installed in conjunction with Final Subdivision Approval and it is undisputed that Robert Henriques and Gregg Kashiwa proposed to create five lots. However, it is not clear whether the Hawaii County Council intent was to require the improvements to be installed even if less than five lots were created.

18. The Final Subdivision Approval that Condition C refers to are for the five lots that were originally contemplated, not the consolidated and resubdivided lots that were effectuated in 1999.^{4 5}

19. In this respect, Condition C has no operative effect.

20. As to Condition E, Robert Henriques and Gregg Kashiwa contemplated, as part of their subdivision, to concurrently “adjust” the boundary lines between the Subject Property and Nansay Hawaii, Inc.’s remnant lot, and the planning director’s approval of Robert Henriques’ consolidation and resubdivision of the Subject Property and Nansay Hawaii, Inc.’s remnant lot “met” or satisfied Condition E.

Summary

21. When the planning director approved Robert Henriques’ application to consolidate and resubdivide the Subject Property and Nansay Hawaii, Inc.’s remnant lot, the planning director necessarily determined that Condition C and Condition E contained in Ordinance No. 97-37 were either “met” or satisfied. (Finding No. 16)

22. No appeals or other challenges were taken from the planning director’s past determinations and, therefore, his determinations were final. *See Kellberg*

⁴ Even though the consolidation and resubdivision action is not deemed to be a “subdivision” under Section 23-7 of the Subdivision Code, the 15 acres that were rezoned by Ordinance No. 97-37 and affected thereby were still encumbered by the conditions of approval.

⁵ In their application to rezone the Subject Property, Robert Henriques and Gregg Kashiwa informed the Hawaii County Council that if the Subject Property were rezoned to Ag-3a, the Nansay Hawaii, Inc. remnant lot will be the subject of a “consolidation and resubdivision” in order to reconfigure the Nansay Hawaii, Inc. remnant lot into a 10,000+ square foot lot. (ROA 13) In other words, the Hawaii County Council was aware of the landowners’ intent to consolidate and resubdivide the remnant lot (Nansay Hawaii, Inc.’s remnant lot) with the rezoned land.

v. Yuen, 131 Haw. 513, 528, 319 P. 3d 432, 447 (2014) (what constitutes a “final decision”).

23. The planning director argues that he must “follow the law” (Transcript, Page 21), but the law that he refers to (Ordinance No. 97-37 and Rule 22) is ambiguous and, as shown in the record, has not been regularly and consistently administered and applied by planning officials.

24. The law that the planning director must follow is not only ambiguous, but the ambiguity must be resolved in favor of the Appellants-Landowners.

Variance Criteria

25. The unusual factual background of events leading up to the Appellants-Landowners’ appeal demonstrate that special and unusual circumstances are present in this instance.

26. The ambiguity in the conditions of approval contained in Ordinance No. 97-37 and their past application (or non-application) by planning officials are such that a strict interpretation and application of Condition C and Condition E would deprive the Appellants-Landowners of their substantial property rights and would interfere with their best use and development of their property (Lot 1).

27. The planning director may object to the foregoing conclusion, but the evidence in the record supports the foregoing conclusion even though the planning director may argue that the evidence in the record supports a different conclusion.

28. There are no reasonable alternatives that can be employed to resolve the difficulties created by the background of events for which planning officials, in part, and others are responsible.

29. The action described in the application for the variance, if approved, will be consistent with the general purpose of the district, the general plan and with the Subdivision Code and Zoning Code, will not be detrimental to the public welfare and will not adversely impact the area's character of adjoining properties.

30. The Board notes that the Hawaii County Council's records indicate that the Hawaii County Council previously determine that the rezoning, and proposed subdivision, of the Subject Property is consistent with the general plan and codes and will not be detrimental to the public welfare and will not adversely affect the area's character or adjoining properties.

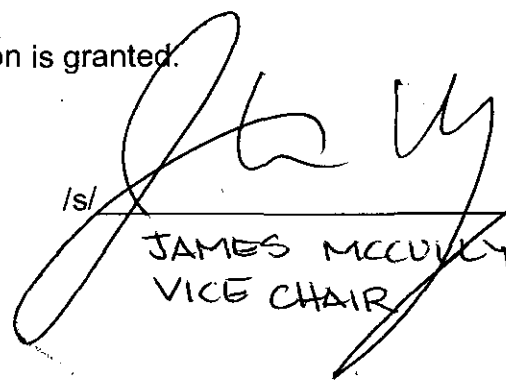
DECISION AND ORDER

Based on the Findings of Fact and Conclusions of Law stated above, the planning director's denial of the Appellants-Landowners' application for a variance from the water requirement under Section 23-84 of the Subdivision Code is reversed because his decision:

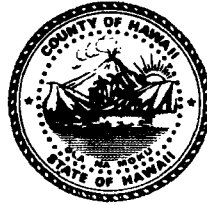
1. Is clearly erroneous in view of the reliable, probative, and substantial evidence in the whole record, and
2. Is arbitrary or characterized by an abuse of discretion.

Under the state of the record, a remand of the matter is not appropriate and, therefore, the Landowners application is granted.

Dated: 8/10/18

/s/ 
JAMES MCCOOLLY
VICE CHAIR

Harry Kim
Mayor



Michael Yee
Director

Daryn Arai
Deputy Director

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County of Hawai'i
PLANNING DEPARTMENT

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Fax (808) 961-8742

March 19, 2018

John D. Weeks, II
John D. Weeks, Inc.
78-6877 Māmalahoa Highway
Hōlualoa, HI 96725

Dear Mr. Weeks:

SUBJECT: VARIANCE DECISION - VAR-17-000456
Applicant: JOHN D. WEEKS, II, JOHN D. WEEKS, INC.
Owners: ALLEN NOHEA JR. & LANA DEANNE DANIELS TRUST
Request: Variance from Chapter 23, Subdivisions, Article 6,
Division 2, Improvements Required, Section 23-84,
Water Supply
Tax Map Key: 7-3-002:001 (SUB-16-001649)

Upon review of your variance application, the Planning Director certifies the **denial** of Variance VAR-17-000456. The variance sought relief for SUB-16-001649 from constructing minimum County dedicable water supply system improvements required by Hawai'i County Code (HCC), Chapter 23 (Subdivisions).

The variance is requested to gain relief from the proposed subdivision's minimum requirements pursuant to HCC, Chapter 23 (Subdivisions), Article 6, Division 2, Improvements Required, Section 23-84, Water Supply, (1)(2).

BACKGROUND

1. **Location.** The referenced property, a portion of Lot 1, being also a portion of Grant 1605, containing approximately 7.532 acres, is situated in Ka laoa 3rd & 4th, North Kona, Hawai'i.
2. **County Zoning.** Agricultural (A-3a).
3. **State Land Use.** Agricultural (A).

4. **General Plan.** Land Use Pattern Allocation Guide (LUPAG) map designates the property as Extensive Agricultural (ea) and Important Agricultural Lands (ial).
5. **Subdivision Code Requirements.** The subdivision code requires that subdivisions be served by a water system meeting the minimum requirements of the County Department of Water Supply (DWS) and be provided with water mains and fire hydrants installed to and within the subdivision in accordance with the rules and regulations of the DWS.
6. **Subdivision Request/PPM.** Subdivision application SUB-16-001649 was submitted to subdivide the subject TMK property into 2 lots. Further action on the subdivision application has been deferred pursuant to letter dated February 21, 2017 in the subdivision file.
7. **Variance Application.** The variance request from water supply improvements was acknowledged by Planning Department letter dated December 26, 2017. This variance application includes background history and circumstances and information regarding the pending subdivision application.
8. **Variance Application (VAR-17-000456) Agency Comments and Requirements.**
 - a. State of Hawai'i-Department of Health (DOH): See attached memorandum dated January 3, 2018 (**Exhibit A**).
 - b. County of Hawai'i Fire Department (HFD): See attached memorandum dated January 5, 2018 (**Exhibit B**).
 - c. Department of Water Supply (DWS): See attached memoranda dated January 23, 2018 (**Exhibit C**). We have also attached their comments in response to the subdivision application (**Exhibit D**). For reference, we have also attached DWS comments from the rezoning application (**Exhibit E**).
 - d. No other agency comments were solicited and none were received.
9. **Notice to Surrounding Owners/Posted Sign.** The applicant submitted evidence regarding the posting of a public notification sign on the subject property pursuant to Section 23-17(c) of the Hawai'i County Code (HCC). A picture of the posted sign was also submitted. Evidence, received February 5, 2018 and mailing verification forms indicate that a notice of the application was sent to the surrounding property owners as required by Section 23-17(a).
10. **Comments from Surrounding Property Owners or Public.** There were no written comments received from the surrounding property owners or the public.

ANALYSIS OF GROUNDS FOR VARIANCE

No variance will be granted unless it is found that:

(a) There are special or unusual circumstances applying to the subject real 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.

The Variance application does not meet criterion (a) for the following reason(s):

The subdivision request is for two (2) lots in keeping with the existing A-3a zoning. The present zoning is the result of Change of Zone Ordinance No. 97-037 (REZ 847, REZ-96-000013). Condition C of said ordinance states, *“The applicant shall install applicable off-site water system improvements to the subject property, including but not limited to a minimum 4-inch waterline approximately 700 feet north of the subject property, meeting with the approval of the Department of Water Supply in conjunction with Final Subdivision Approval.”*

Although there was a past subdivision of the property, SUB 7099 (SUB-98-000095), that was a consolidation of 2 lots and resubdivision into 2 lots and no water system improvements were imposed. The present proposal, however is attempting to create an additional lot and is, therefore, subject to the rezoning ordinance.

(b) There are no other reasonable alternatives that would resolve the difficulty.

The Variance application does not meet criterion (b) for the following reasons(s):

The DWS has indicated that there is water service available to the subdivision and that the existing water system facilities can support the subdivided lots. Constructing water system improvements to the pending 2-lot subdivision at this time requires a 700 foot extension from the existing water system facilities.

Again, Change of Zone Ordinance No. 97 037 (REZ 847, REZ-96-000013). Condition C, requires that the system be extended to serve the lots so encumbered.

(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.

John D. Weeks, II
John D. Weeks, Inc.
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The Variance application does not meet criterion (c) for the following reasons(s):

There is inadequate rainfall (approximately 40 inches to 60 inches of rainfall annually) to support individual water catchment, so the granting of this variance would be inconsistent with PD Rule No. 22, Variance. The request is also inconsistent with Ordinance No. 97- 037.

DETERMINATION

In light of the above, the variance to permit the proposed 2-lot subdivision of the subject TMK property without providing dedicable water system improvements meeting DWS standards is hereby **denied**.

In accordance with Ordinance No. 99-112, you may appeal the director's decision as follows:

- (a) Any person aggrieved by the decision of the director in the administration or application of this chapter, may, within thirty days after the date of the director's written decision, appeal the decision to the board of appeals.
- (b) A person is aggrieved by a decision of the director if:
 - (1) The person has an interest in the subject matter of the decision that is so directly and immediately affected, that the person's interest is clearly distinguishable from that of the general public; and
 - (2) The person is or will be adversely affected by the decision.
- (c) An appeal shall be in writing, in the form prescribed by the board of appeals and shall specify the person's interest in the subject matter of the appeal and the grounds of the appeal. A filing fee of \$250 shall accompany any such appeal. The person appealing a decision of the director shall provide a copy of the appeal to the director and to the owners of the affected property and shall provide the board of appeals with the proof of service.
- (d) The appellant, the owners of the affected property, and the director shall be parties to an appeal. Other persons may be admitted as parties to an appeal. Other persons may be admitted as parties to an appeal, as permitted by the board of appeals. The board of appeals may affirm the decision of the director, or it may reverse or modify the decision, or it may remand the decision with appropriate instructions if based upon the preponderance of evidence the board finds that:
 - (1) The director erred in its decision; or

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John D. Weeks, Inc.
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- (2) The decision violated this chapter or other applicable law; or
- (3) The decision was arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

In view of the above and for your reference, we have enclosed the General Petition for Appeal of Decisions by Planning Director form.

Sincerely,



MICHAEL YEE
Planning Director

JRH:nci
\\COH33\planning\public\Admin Permits Division\Variance\2017\VAR-17-000456 Daniels Water\DENY.doc

Encls: Agency Comments
General Petition for Appeal of Decisions by Planning Director Form

cc: DWS-Engineering Branch
A. Surprenant, PCDP PPM (via e-mail)
SUB-16-001649; REZ 847 (REZ-96-000013)(Ord. 97-037)

cc w/encls: Allen Nohea, Jr. & Lana Deanne Daniels
73-4259-A Hawai'i Belt Road
Kailua-Kona, HI 96740-8615

G. Bailado, GIS Section (via email)



STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 916
HILO, HAWAII 96721-0916

2018 JAN 4 AM 11 45
PLANNING DEPARTMENT
COUNTY OF HAWAII

MEMORANDUM

DATE: January 3, 2018

TO: Mr. Michael Yee
Planning Director, County of Hawaii

FROM: Eric Honda *EH*
District Environmental Health Program Chief

SUBJECT: Application: Variance VAR-17-000456
Applicant: JOHN D. WEEKS, II, JOHN D. WEEKS, INC
Owners: ALLEN NOHEA JR. & LANA DEANNE DANIELS TRUST
Request: Variance from Chapter 23, Subdivisions, Article 6,
Division 2, Improvements Required, Section 23-84,
Water Supply
TMK: 7-3-002:001 (SUB-16-001649)

Public Water Systems: The Department of Health's Safe Drinking Water Branch authority on drinking water quality is based on the definition of a "public water system." Federal and state regulations define a public water system as a system that serves 25 or more individuals at least 60 days per year or has at least 15 service connections. All public water system owners and operators are required to comply with Hawaii Administrative Rules, Chapter 11-20 (HAR 11-20), and titled "Rules Relating to Public Water Systems". All public water systems are regulated by the Department of Health and shall be in compliance with the Hawaii Administrative Rules, Title 11, Chapter 20. Recommend the subdivision lots be connected to an existing public water system.

Concerns on water quality for lead, copper, algae and microbiological and chemical contaminations in private water systems have identified the need for self monitoring. The Department of Health does not support the use of these private rain catchment systems for drinking purposes since the quality may not meet potable water standards. All new public water systems are required to demonstrate and meet minimum capacity requirements prior to their establishment, per HAR 11-20-29.5, titled "Capacity Demonstration and Evaluation." This requirement involves demonstration that the system will have satisfactory technical, managerial and financial capacity to enable the system to comply with safe drinking water standards and requirements.

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Michael Yee
January 3, 2018
Page 2 of 3

Projects that propose development of new sources of potable water serving or proposed to serve a public water system must comply with the terms of HAR 11-20-29. This section requires that all new public water system sources be approved by the Director of Health (Director) prior to its use. Such approval is based primarily upon the submission of a satisfactory engineering report which addresses the requirements specified in HAR 11-20-29.

The engineering report must identify all potential sources of contamination and evaluate alternative control measures which could be implemented to reduce or eliminate the potential for contamination, including treatment of the water source. In addition, water quality analyses for all regulated contaminants, performed by a laboratory certified by the State Laboratories Division of the State of Hawaii, must be submitted as part of the report to demonstrate compliance with all drinking water standards. Additional parameters may be required by the Director for this submittal or additional tests required upon his or her review of the information submitted.

All sources of public water system sources must undergo a source water assessment which will delineate a source water protection area. This process is preliminary to the creation of a source water protection plan for that source and activities which will take place to protect the source of drinking water.

Projects proposing to develop new public water systems or proposing substantial modifications to existing public water systems must receive construction plans approval by the Director prior to construction of the proposed system or modification in accordance with HAR 11-20-30, titled "New and Modified Public Water Systems". These projects include treatment, storage and distribution systems of public water systems. The approval authority for projects owned and operated by a County Board or Department of Water or Water Supply has been delegated to them.

All public water systems must be operated by certified distribution system and water treatment plant operators as defined by HAR 11-25 titled, "Rules Pertaining to Certification of Public Water System Operators".

All projects which propose the use of dual water systems or the use of a non-potable water system in proximity to an existing potable water system to meet irrigation or other needs must be carefully design and operate these systems to prevent the cross-connection of these systems and prevent the possibility of backflow of water from the non-potable system to the potable system. The two (2) systems must be clearly labeled and physically separated by air gaps or reduced pressure principle backflow prevention devices to avoid contaminating the potable water supply. In addition backflow devices must be tested periodically to assure their proper operation. Further, all non-potable spigots and irrigated areas should be clearly labeled with warning signs to prevent the inadvertent consumption on non-potable water. Compliance with HAR Chapter 11-21, titled Cross-Connection and Backflow Control is also required.

All projects which propose the establishment of a potentially contaminating activity (as identified in the Hawai'i Source Water Assessment Plan) within the source water protection area of an existing source of water for a public water supply should address this potential and activities that will be implemented to prevent or reduce the potential for contamination of the drinking water source.

Michael Yee
January 3, 2018
Page 3 of 3

For further information concerning the application of capacity, new source approval, operator certification, source water assessment, backflow/cross-connection prevention or other public water system programs, please contact the SDWB at 586-4258.

Harry Kim
Mayor



Darren J. Rosario
Fire Chief

Renwick J. Victorino
Deputy Fire Chief

County of Hawai'i
HAWAII FIRE DEPARTMENT
25 Aupuni Street • Suite 2501 • Hilo, Hawai'i 96720
(808) 932-2900 • Fax (808) 932-2928

January 5, 2018

TO: MICHAEL YEE, PLANNING DIRECTOR

FROM: DARREN J. ROSARIO, FIRE CHIEF

SUBJECT: Application: Variance – VAR-17-000456
Applicant: John D. Weeks II, John D Weeks, Inc.
Owners: Allen Nohea Jr. & Lana Deanne Daniels Trust
Request: Variance from Chapter 23, Subdivisions, Article 6, Division 2,
Improvements Required, Section 23-84, Water Supply
Tax Map Key: 7-3-002:001 (SUB 16-001649)

In regards to the above-mentioned Variance application, the following shall be in accordance:

NFPA 1, UNIFORM FIRE CODE, 2006 EDITION

Note: Hawai'i State Fire Code, National Fire Protection Association 2006 version, with County of Hawai'i amendments. County amendments are identified with a preceding "C~" of the reference code.

Chapter 18 Fire Department Access and Water Supply

18.1 General. Fire department access and water supplies shall comply with this chapter.

For occupancies of an especially hazardous nature, or where special hazards exist in addition to the normal hazard of the occupancy, or where access for fire apparatus is unduly difficult, or areas where there is an inadequate fire flow, or inadequate fire hydrant spacing, and the AHJ may require additional safeguards including, but not limited to, additional fire appliance units, more than one type of appliance, or special systems suitable for the protection of the hazard involved.

18.1.1 Plans.

18.1.1.1 Fire Apparatus Access. Plans for fire apparatus access roads shall be submitted to the fire department for review and approval prior to construction.

18.1.1.2 Fire Hydrant Systems. Plans and specifications for fire hydrant systems shall be submitted to the fire department for review and approval prior to construction.

**EXHIBIT
B**

Hawai'i County is an Equal Opportunity Provider and Employer.



C~ 18.1.1.2.1 Fire Hydrant use and Restrictions. No unauthorized person shall use or operate any Fire hydrant unless such person first secures permission or a permit from the owner or representative of the department, or company that owns or governs that water supply or system. Exception: Fire Department personnel conducting firefighting operations, hydrant testing, and/or maintenance, and the flushing and acceptance of hydrants witnessed by Fire Prevention Bureau personnel.

18.2 Fire Department Access.

18.2.1 Fire department access and fire department access roads shall be provided and maintained in accordance with Section 18.2.

18.2.2* Access to Structures or Areas.

18.2.2.1 Access Box(es). The AHJ shall have the authority to require an access box(es) to be installed in an accessible location where access to or within a structure or area is difficult because of security.

18.2.2.2 Access to Gated Subdivisions or Developments. The AHJ shall have the authority to require fire department access be provided to gated subdivisions or developments through the use of an approved device or system.

18.2.2.3 Access Maintenance. The owner or occupant of a structure or area, with required fire department access as specified in 18.2.2.1 or 18.2.2.2, shall notify the AHJ when the access is modified in a manner that could prevent fire department access.

18.2.3 Fire Department Access Roads. (*may be referred as FDAR)

18.2.3.1 Required Access.

18.2.3.1.1 Approved fire department access roads shall be provided for every facility, building, or portion of a building hereafter constructed or relocated.

18.2.3.1.2 Fire Department access roads shall consist of roadways, fire lanes, parking lots lanes, or a combination thereof.

18.2.3.1.3* When not more than two one- and two-family dwellings or private garages, carports, sheds, agricultural buildings, and detached buildings or structures 400ft² (37 m²) or less are present, the requirements of 18.2.3.1 through 18.2.3.2.1 shall be permitted to be modified by the AHJ.

18.2.3.1.4 When fire department access roads cannot be installed due to location on property, topography, waterways, nonnegotiable grades, or other similar conditions, the AHJ shall be authorized to require additional fire protection features.

18.2.3.2 Access to Building.

18.2.3.2.1 A fire department access road shall extend to within in 50 ft (15 m) of at least one exterior door that can be opened from the outside that provides access to the interior of the building. Exception: 1 and 2 single-family dwellings.

18.2.3.2.1.1 When buildings are protected throughout with an approved automatic sprinkler system that is installed in accordance with NFPA 13, NFPA 13D, or NFPA 13R, the distance in 18.2.3.2.1 shall be permitted to be increased to 300 feet.

18.2.3.2.2 Fire department access roads shall be provided such that any portion of the facility or any portion of an exterior wall of the first story of the building is located not more than 150 ft (46 m) from fire department access roads as measured by an approved route around the exterior of the building or facility.

18.2.3.2.2.1 When buildings are protected throughout with an approved automatic sprinkler system that is installed in accordance with NFPA 13, NFPA 13D, or NFPA 13R, the distance in 18.2.3.2.2 shall be permitted to be increased to 450 ft (137 m).

18.2.3.3 Multiple Access Roads. More than one fire department access road shall be provided when it is determined by the AHJ that access by a single road could be impaired by vehicle congestion, condition of terrain, climatic conditions, or other factors that could limit access.

18.2.3.4 Specifications.

18.2.3.4.1 Dimensions.

C~ 18.2.3.4.1.1 FDAR shall have an unobstructed width of not less than 20ft with an approved turn around area if the FDAR exceeds 150 feet. **Exception:** FDAR for one and two family dwellings shall have an unobstructed width of not less than 15 feet, with an area of not less than 20 feet wide within 150 feet of the structure being protected. An approved turn around area shall be provided if the FDAR exceeds 250 feet.

C~ 18.2.3.4.1.2 FDAR shall have an unobstructed vertical clearance of not less then 13ft 6 in.

C~ 18.2.3.4.1.2.1 Vertical clearances may be increased or reduced by the AHJ, provided such increase or reduction does not impair access by the fire apparatus, and approved signs are installed and maintained indicating such approved changes.

18.2.3.4.1.2.2 Vertical clearances shall be increased when vertical clearances or widths are not adequate to accommodate fire apparatus.

C~ 18.2.3.4.2 Surface. Fire department access roads and bridges shall be designed and maintained to support the imposed loads (25 Tons) of the fire apparatus. Such FDAR and shall be comprised of an all-weather driving surface.

18.2.3.4.3 Turning Radius.

C~ 18.2.3.4.3.1 Fire department access roads shall have a minimum inside turning radius of 30 feet, and a minimum outside turning radius of 60 feet.

18.2.3.4.3.2 Turns in fire department access road shall maintain the minimum road width.

18.2.3.4.4 Dead Ends. Dead-end fire department access roads in excess of 150 ft (46 m) in length shall be provided with approved provisions for the fire apparatus to turn around.

18.2.3.4.5 Bridges.

18.2.3.4.5.1 When a bridge is required to be used as part of a fire department access road, it shall be constructed and maintained in accordance with county requirements.

18.2.3.4.5.2 The bridge shall be designed for a live load sufficient to carry the imposed loads of fire apparatus.

18.2.3.4.5.3 Vehicle load limits shall be posted at both entrances to bridges where required by the AHJ.

18.2.3.4.6 Grade.

C~ 18.2.3.4.6.1The maximum gradient of a Fire department access road shall not exceed 12 percent for unpaved surfaces and 15 percent for paved surfaces. In areas of the FDAR where a Fire apparatus would connect to a Fire hydrant or Fire Department Connection, the maximum gradient of such area(s) shall not exceed 10 percent.

18.2.3.4.6.2* The angle of approach and departure for any means of fire department access road shall not exceed 1 ft drop in 20 ft (0.3 m drop in 6 m) or the design limitations of the fire apparatus of the fire department, and shall be subject to approval by the AHJ.

18.2.3.4.6.3 Fire department access roads connecting to roadways shall be provided with curb cuts extending at least 2 ft (0.61 m) beyond each edge of the fire lane.

18.2.3.4.7 Traffic Calming Devices. The design and use of traffic calming devices shall be approved the AHJ.

18.2.3.5 Marking of Fire Apparatus Access Road.

18.2.3.5.1 Where required by the AHJ, approved signs or other approved notices shall be provided and maintained to identify fire department access roads or to prohibit the obstruction thereof of both.

18.2.3.5.2 A marked fire apparatus access road shall also be known as a fire lane.

18.2.4* Obstruction and Control of Fire Department Access Road.

18.2.4.1 General.

18.2.4.1.1 The required width of a fire department access road shall not be obstructed in any manner, including by the parking of vehicles.

18.2.4.1.2 Minimum required widths and clearances established under 18.2.3.4 shall be maintained at all times.

18.2.4.1.3* Facilities and structures shall be maintained in a manner that does not impair or impede accessibility for fire department operations.

18.2.4.1.4 Entrances to fire departments access roads that have been closed with gates and barriers in accordance with 18.2.4.2.1 shall not be obstructed by parked vehicles.

18.2.4.2 Closure of Accessways.

18.2.4.2.1 The AHJ shall be authorized to require the installation and maintenance of gates or other approved barricades across roads, trails, or other accessways not including public streets, alleys, or highways.

18.2.4.2.2 Where required, gates and barricades shall be secured in an approved manner.

18.2.4.2.3 Roads, trails, and other access ways that have been closed and obstructed in the manner prescribed by 18.2.4.2.1 shall not be trespassed upon or used unless authorized by the owner and the AHJ.

18.2.4.2.4 Public officers acting within their scope of duty shall be permitted to access restricted property identified in 18.2.4.2.1.

18.2.4.2.5 Locks, gates, doors, barricades, chains, enclosures, signs, tags, or seals that have been installed by the fire department or by its order or under its control shall not be removed, unlocked, destroyed, tampered with, or otherwise vandalized in any manner.

18.3 Water Supplies and Fire Hydrants

18.3.1* A water supply approved by the county, capable of supplying the required fire flow for fire protection shall be provided to all premises upon which facilities or buildings, or portions thereof, are hereafter constructed, or moved into or within the county. When any portion of the facility or building is in excess of 150 feet (45 720 mm) from a water supply on a fire apparatus access road, as measured by an approved route around the exterior of the facility or building, on-site fire hydrants and mains capable of supplying the required fire flow shall be provided when required by the AHJ. For on-site fire hydrant requirements see section 18.3.3.

EXCEPTIONS:

1. When facilities or buildings, or portions thereof, are completely protected with an approved automatic fire sprinkler system the provisions of section 18.3.1 may be modified by the AHJ.
2. When water supply requirements cannot be installed due to topography or other conditions, the AHJ may require additional fire protection as specified in section 18.3.2 as amended in the code.
3. When there are not more than two dwellings, or two private garage, carports, sheds and agricultural. Occupancies, the requirements of section 18.3.1 may be modified by AHJ.

18.3.2* Where no adequate or reliable water distribution system exists, approved reservoirs, pressure tanks, elevated tanks, fire department tanker shuttles, or other approved systems capable of providing the required fire flow shall be permitted.

18.3.3* The location, number and type of fire hydrants connected to a water supply capable of delivering the required fire flow shall be provided on a fire apparatus access road on the site of the premises or both, in accordance with the appropriate county water requirements.

18.3.4 Fire Hydrants and connections to other approved water supplies shall be accessible to the fire department.

18.3.5 Private water supply systems shall be tested and maintained in accordance with NFPA 25 or county requirements as determined by the AHJ.

18.3.6 Where required by the AHJ, fire hydrants subject to vehicular damage shall be protected unless located within a public right of way.

18.3.7 The AHJ shall be notified whenever any fire hydrant is placed out of service or returned to service. Owners of private property required to have hydrants shall maintain hydrant records of approval, testing, and maintenance, in accordance with the respective county water requirements. Records shall be made available for review by the AHJ upon request.

C~ 18.3.8 Minimum water supply for buildings that do not meet the minimum County water standards:

Buildings up to 2000 square feet, shall have a minimum of 3,000 gallons of water available for Firefighting.

Buildings 2001- 3000 square feet, shall have a minimum of 6,000 gallons of water available for Firefighting.

Buildings, 3001- 6000 square feet, shall have a minimum of 12,000 gallons of water available for Firefighting.

Buildings, greater than 6000 square feet, shall meet the minimum County water and fire flow requirements.

Multiple story buildings shall multiply the square feet by the amount of stories when determining the minimum water supply.

Commercial buildings requiring a minimum fire flow of 2000gpm per the Department of Water standards shall double the minimum water supply reserved for firefighting.

Fire Department Connections (FDC) to alternative water supplies shall comply with 18.3.8 (1)-(6) of *this code*.

NOTE: In that water catchment systems are being used as a means of water supply for firefighting, such systems shall meet the following requirements:

- 1) In that a single water tank is used for both domestic and firefighting water, the water for domestic use shall not be capable of being drawn from the water reserved for firefighting;
- 2) Minimum pipe diameter sizes from the water supply to the Fire Department Connection (FDC) shall be as follows:
 - a) 4" for C900 PVC pipe;
 - b) 4" for C906 PE pipe;
 - c) 3" for ductile Iron;
 - d) 3' for galvanized steel.

- 3) The Fire Department Connection (FDC) shall:
 - a) be made of galvanized steel;
 - b) have a gated valve with 2-1/2 inch, National Standard Thread male fitting and cap;
 - c) be located between 8 ft and 16 ft from the Fire department access. The location shall be approved by the AHJ;
 - d) not be located less than 24 inches, and no higher than 36 inches from finish grade, as measured from the center of the FDC orifice;
 - e) be secure and capable of withstanding drafting operations. Engineered stamped plans may be required;
 - f) not be located more than 150 feet of the most remote part, but not less than 20 feet, of the structure being protected;
 - g) also comply with section 13.1.3 and 18.2.3.4.6.1 of *this code*.
- 4) Commercial buildings requiring a fire flow of 2000gpm shall be provided with a second FDC. Each FDC shall be independent of each other, with each FDC being capable of flowing 500gpm by engineered design standards. The second FDC shall be located in an area approved by the AHJ with the idea of multiple Fire apparatus' conducting drafting operations at once, in mind.
- 5) Inspection and maintenance shall be in accordance to NFPA 25.
- 6) The owner or lessee of the property shall be responsible for maintaining the water level, quality, and appurtenances of the system.

EXCEPTIONS TO SECTION 18.3.8:

- 1) Agricultural buildings, storage sheds, and shade houses with no combustible or equipment storage.
- 2) Buildings less than 800 square feet in size that meets the minimum Fire Department Access Road requirements.
- 3) For one and two family dwellings, agricultural buildings, storage sheds, and detached garages 800 to 2000 square feet in size, and meets the minimum Fire Department Access Road requirements, the distance to the Fire Department Connection may be increased to 1000 feet.
- 4) For one and two family dwellings, agricultural buildings, and storage sheds greater than 2000square feet, but less than 3000 square feet and meets the minimum Fire Department Access Road requirements, the distance to the Fire Department Connection may be increased to 500 feet.

Michael Yee
January 5, 2018
Page 9

- 5) For buildings with an approved automatic sprinkler system, the minimum water supply required may be modified.

If there are any questions regarding these requirements, please contact the Fire Prevention Bureau at (808) 323-4760.



DARREN J. ROSARIO
Fire Chief

CB:ds



DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAII
345 KEKĀNAŌ'A STREET, SUITE 20 • HILO, HAWAII 96720
TELEPHONE (808) 961-8050 • FAX (808) 961-8657

2018 JAN 24 PM 10 12
PLANNING DEPARTMENT
COUNTY OF HAWAII

January 23, 2018

TO: Mr. Michael Yee, Director
Planning Department

FROM: Keith K. Okamoto, Manager–Chief Engineer

SUBJECT: Variance Application (VAR 17-000456)
Subdividers – Allen Nohea Jr. and Lana Deanne Daniels Trust
Tax Map Key 7-3-002:001 (SUB 16-001649)

We have reviewed the variance application; and our comments from our memorandum to your Department and copied to John D. Weeks, Inc. of December 21, 2016, regarding the subject subdivision still stand.

The applicant has indicated that they may utilize private rainwater catchment systems for each additional lot. We have no objection to the use of rainwater catchment systems; however, we cannot approve or comment as to the adequacy of those systems as they do not meet the requirements of the Department's Water System Standards.

We recommend that the owner(s) consult with the County of Hawai'i, Planning Department, the County of Hawai'i, Department of Public Works, and/or the State of Hawai'i, Department of Health, to determine any other guidelines, recommendations, or regulations regarding the use of rainwater catchment systems.

Should there be any questions, please contact Mr. Troy Samura of our Water Resources and Planning Branch at 961-8070, extension 255.

Sincerely yours,

Keith K. Okamoto, P.E.
Manager–Chief Engineer

TS:dfg

copy – John D. Weeks, Inc.
Mr. Allen N. Daniels Jr. and Ms. Lana D. Daniels

116347

EXHIBIT
C

... Water, Our Most Precious Resource ... Ka Wai A Kāne ...

The Department of Water Supply is an Equal Opportunity provider and employer.



DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAII
345 KEKŪANAŌ'A STREET, SUITE 20 • HILO, HAWAII 96720
TELEPHONE (808) 961-8050 • FAX (808) 961-8657

December 21, 2016

TO: Mr. Michael Yee, Director
Planning Department

FROM: Keith K. Okamoto, Manager-Chief Engineer

**SUBJECT: Preliminary Plat Map and Defer Action
Subdivision Application No. 16-001649
Applicant – Daniels, Allen N., Jr. and Lana D.
Tax Map Key 7-3-002:001**

We have reviewed the subject application and have the following comments and conditions.

The subject parcel is currently served by one (1) existing 5/8-inch meter (Account No. 930-46730), which is limited to an average daily usage of 400 gallons and is suitable for one (1) single-family dwelling.

We request that the plat map be revised to show the existing meter with the meter and account number. The Department requests that the applicant designate, in writing, which lot within the proposed subdivision will be assigned the existing service, prior to recommending final subdivision approval.

The property is also situated at an elevation where water cannot be delivered at adequate volume and pressure, under peak-flow and fire-flow conditions, from the Department's existing water system facilities. In order to meet the Department's Water System Standards, extensive improvements and additions, which may include, but not be limited to, storage, booster pumps, transmission, and distribution facilities, would be required. Currently, sufficient funding is not available from the Department for such improvements and no time schedule is set.

Parcels that are not within the Department's pressure zone are limited to one (1) unit of water, served through a 5/8-inch meter. One (1) unit of water allows for an average daily usage of 400 gallons served through a 5/8-inch meter and is suitable for one (1) single-family dwelling.

Therefore, the Department's existing water system facilities cannot support the proposed subdivision at this time.

Please be informed that the Department has noted that the usage for Account No. 930-46730, over the past nine (9) years, is approximately 725 gallons per day (gpd), which is equivalent to two (2) units of water.

EXHIBIT

D

... Water, Our Most Precious Resource ... 'Ka 'Wai 'A 'Kāne ...

The Department of Water Supply is an Equal Opportunity provider and employer

109066

12/21/16 10:00 AM

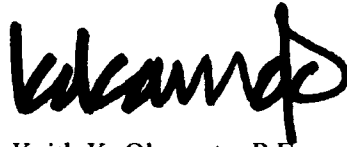
Mr. Michael Yee, Director
Page 2
December 21, 2016

In consideration of this subdivision application, we request that the applicant implement stringent water conservation methods to permanently reduce water use to a maximum of one (1) unit or 400 gpd.

Further, the applicant shall be informed that the existing meter shall not be shared with the other proposed lots and the water system piping between the lots shall not be interconnected in any way.

Should there be any questions, please contact Mr. Troy Samura of our Water Resources and Planning Branch at 961-8070, extension 255.

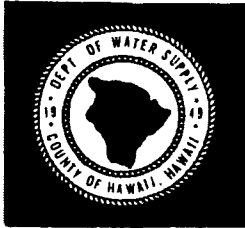
Sincerely yours,

A handwritten signature in black ink, appearing to read 'k. okamoto', written in a cursive style.

Keith K. Okamoto, P.E.
Manager-Chief Engineer

TS:dfg

copy - John D. Weeks, Inc.



DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAII

25 AUPUNI STREET • HILO, HAWAII 96720
TELEPHONE (808) 969-1421 • FAX (808) 969-6996

June 14, 1996

TO: Planning Department
FROM: Milton D. Pavao, Manager
SUBJECT: CHANGE OF ZONE APPLICATION NO. 96-13
APPLICANT - ROBERT J. HENRIQUES AND GREGG R. KASHIWA
TAX MAP KEY 7-3-002:02

PLANNING DEPT.
COUNTY OF HAWAII
JUN 18 PM 4 35
96

Please be informed that the proposed subdivision is not within the Department's service limit in the immediate area. There is an existing 12-inch waterline within Mamalahoa Highway fronting the parcel. However, the nearest point of adequacy is approximately 700 feet north of the property. In order to get adequate pressure, the applicant would have to install a waterline from a point just north of the Kalaoa Booster Pumps to the parcel. The size of the waterline must be determined, however, shall not be less than four (4) inches in diameter. In addition, a reconfiguration of the proposed lots may be required to comply with this Department's standards.

By a copy of this letter, the applicant will be informed of our comments. Should there be any questions, the Water Resources and Planning Section may be contacted at 969-1421.

Milton D. Pavao, P.E.
Manager

GGA

copy - Mr. Robert Henriques
Mr. Gregg Kashiwa

EXHIBIT

E

... *Water brings progress...*

96/09