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SEP 20 1990
HAWAII COUNTY

September 20, 1990

Robert K. Yanabu, Division Chief
Engineering Division
Dept. of Public Works
County of Hawaii
25 Aupuni Street
Hilo, Hawaii 96720

Re: Consolidation/Subdivision Application No. 90-20;
TMK No. 8-1-09:03

Dear Mr. Yanabu:

This letter serves to confirm our telephone conversation of Tuesday, September 11, 1990, wherein I directed your attention to two recently approved consolidation/resubdivision actions (Subdivision Nos. 90-39 and 90-48). You indicated that you would review those files and get back to me. As indicated, the reason for bringing those applications to your attention was that it appears that Subdivision Nos. 90-39 and 90-48 involve circumstances similar to our client's application (Subdivision No. 90-20) and may provide additional guidance on recommended conditions of approval.

Pending your review and further discussion of this matter, please be informed that our clients, the Smiths, are withdrawing their proposed alternatives to your department's recommended conditions of approval previously outlined in my letters of July 27, 1990 and August 15, 1990.

I believe it is worthwhile to provide a summary and a history of the other files and a comparison of the action taken in Subdivision No. 90-20.

Subdivision 86-42

In 1986, under Subdivision No. 86-42, the applicants proposed the consolidation and resubdivision of 14 lots on the south side of Kaawaloa Road. The property was bounded on the north by Kaawaloa Road and on the east by Napoopoo Road. That property is directly across from the Smiths' property. Citing Section 23-7 of the Hawaii County Code, your department indicated road improvements would not be required. There was no requirement that a right of entry be obtained from DLNR if access to the lots was taken from Kaawaloa Road.

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Subdivision 90-20

On February 26, 1990, your division made a number of initial recommendations regarding the Smiths' application for a consolidation/resubdivision including providing a minimum 20' wide agricultural standard pavement within a minimum 50' wide right-of-way whether on Kaawaloa Road or within a private road. It was also required that the Smiths obtain permission from DLNR should they use Kaawaloa Road for access to their proposed lots.

Subdivision 90-39

On March 14, 1990, this application for consolidation/resubdivision was acknowledged as received. On April 9, 1990, your division recommended that a 16' wide pavement (no standard required) be constructed within the Kaawaloa right-of-way. In lieu of such improvements, your division suggested that the applicant might provide deed covenants disclosing the physical access constraints. There was no requirement that permission from DLNR be obtained. No other requirements similar to those enumerated for our clients were proposed except for the delineation of a 50' wide right-of-way. Section 23-7 was also mentioned as a basis for consideration.

On May 4, 1990, your division then indicated its willingness to accept deed covenants in lieu of road improvements. On May 30, 1990, your division accepted the form of covenants provided. On June 1, 1990, the Office of Corporation Counsel also approved the form of covenant and on June 13, 1990, Subdivision No. 90-39 was given final approval.

Subdivision No. 90-48

This is a consolidation/resubdivision application for three lots. One of the proposed lots took access from Hienaloli Kahului Road, which is unimproved and approximately 10 feet in width.

On April 16, 1990, your division, citing Section 23-7, had no comments to offer. On July 10, 1990, final approval was granted.

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On July 20, 1990, Dexter Smith and I met with you and Lawrence Capellas to discuss the comments contained in your April 9, 1990 letter. During that meeting your position was as follows:

1. The right of entry from DLNR was required unless we could provide more substantiation of our position that Kaawaloa Road was a County road. Improvements to Kaawaloa Road or an internal access was necessary in order to allow ongoing vehicle access.
2. A 20' wide pavement improvement might not be necessary, given your department's concern that the pavement width be only enough to allow emergency vehicles access to each lot. It was indicated that your division would consider a narrower pavement if justified.
3. You did not believe covenants against claims would provide an acceptable alternative to road improvement requirements, or that covenants to improve access as the same became necessary and further, the Corporation Counsel's office did not believe such covenants were appropriate or enforceable.
4. Section 23-7 of the County Code gave you authority to impose conditions upon consolidation/resubdivision actions which would protect safety; hence your department's recent stance on the road improvement requirement. Your position was that analysis of such actions had changed during the past few years.

Subsequent to our meeting, I investigated the recommended minimum pavement with the Fire Inspector, who recommended a 12' pavement width and informed your division of the same by letter dated August 15, 1990.

Despite the above, on September 7, 1990, your division revised its comments and added a number of comments not previously indicated, most all of which were not required in the consolidation/resubdivision actions we have summarized above. Moreover, a 20' wide pavement is still being required.

I am providing this chronology and summary so that you may give us some rationale why your division has recommended a number of conditions to the Smiths' consolidation/resubdivision

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application when such conditions were not recommended in the applications described above. The Smiths ask that they be given the same consideration given to similar applications or your division's reasons for the different standards.

Please let me know if you have any questions about the above. As indicated previously, we would appreciate the opportunity to meet with you again on this matter to discuss a possible resolution. Otherwise, we await your reply.

Very truly yours,

MENEZES TSUKAZAKI YEH & MOORE

By 

THOMAS L. H. YEH

cc: Dexter Smith, et al.
✓Planning Department
TLHY:db