

April 27, 2006

Honorable Stacy Higa, Chair
and Members of the County Council
Hawaii County Council
25 Aupuni Street
Hilo, HI 96720

Dear Chair Higa and Members of the County Council:

SUBJECT: BILL 246 – SUBDIVISION CODE

I am writing to give a further explanation of Bill 246, which proposes some changes to the Subdivision Code. These changes are crucial to the Planning Department to avoid hundreds and perhaps thousands of man-hours of unnecessary work, and to avoid months of costly delay for people applying for subdivisions. They do not reduce the ability of the public to review and comment upon subdivisions, or change the basic requirements for the size and dimensions of lots, for water, roads, wastewater, drainage, or historic sites. Most of the public comments have been on the “informational” aspects of the changes, so I will discuss these first.

A subdivision application begins with the filing of a “preliminary plat” in the Planning Department. Under the proposed changes, the preliminary plat would still show the location of the proposed subdivision, the owner’s proposed lot layout, the number of lots, the dimensions of the lots, the proposed roads and where they would connect, and what the developer plans to do for water supply, and other information.

This kind of information is certainly enough for interested members of the public to offer meaningful comments if they choose. If the Council would like to improve the ability of the public to know about new subdivisions, I suggest that we amend the Subdivision Code to require monthly publication of new subdivision applications received, stating the name of the owner, the tax map key, the acreage, and the number of proposed lots,

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similar to the Zoning Code requirement in sec. 25-2-3(g). Currently, there is no requirement for public notice at all, except for the recently enacted amendment requiring signs, sec. 23-58A, unless the subdivider asks for a variance.

Specifically, the proposed code changes would eliminate two items from having to be shown on the preliminary plat.

The first is sec. 23-66(3), which requires the owner to show “the approximate location within the subdivision and in the adjoining streets and property of existing sewers and water mains, culverts and drain pipes, electric conduits or lines proposed to be used on the property to be subdivided and invert elevations of sewers at points of proposed connections”. This level of detail is often unnecessary, and if it is necessary, it is covered later when detailed construction drawings must be submitted. See sec. 23-79 and sec. 23-80, which are unchanged. In addition, it is dubious that the general public would seek this type of information in wanting to offer comments on a proposed subdivision.

The second is sec. 23-66(7): “Improvements to be made by the developer and the approximate time such improvements are to be completed. Sufficient detail regarding proposed improvements shall be submitted so that they maybe checked for compliance with objectives of these regulations, State laws and other applicable County ordinances.” The actual practice, since at least the 1970’s, has been for the County to specify the requirements for the streets, water system, and drainage as conditions of tentative subdivision approval, which is the next stage of the process. It does not add anything to require a description of proposed improvements at the time the preliminary plat is submitted, because the developer must either meet the ordinary standards or apply for a variance. (The variance is a public process requiring public notice and notice to adjoining landowners.) It is not practical to require the developer to give detailed descriptions of proposed improvements at the stage of the preliminary plat because the County may reject the proposed lot layout, or require modifications that change where the roads are located.

The amendments also give the planning director the option of waiving some informational requirements. There are legitimate reasons why these could be waived. For example, it sometimes happens that a subdivision affects only a small part of a large parcel of thousands of acres. In this case, it does not make sense to require the preliminary plat to show “location of all existing structures, wells, cisterns, private sewage disposal systems”, sec. 23-64(5), or “the location and direction of all water courses”, sec. 23-64(3), if these are miles away from the area actually affected.

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Please note that although the planning director can waive certain information being **shown** on a preliminary plat, the developer must actually **perform** all of the actual requirements, which are covered by other sections, such as drainage, sec. 23-37 and 23-92, minimum lot size, sec. 23-33(a) and (b), sewage disposal, sec. 23-33(b), and 23-85(a) and (b), streets, sec. 23-34, 23-86, and 23-87, and that these actually must be built according to approved plans, sec. 23-79 and 23-80.

Besides it being reasonable to allow the Planning Director to waive certain informational requirements in the future, it is crucial to have this provision because of subdivisions already being processed in the Planning Department. Many of them—probably numbering in the hundreds--do not have one or more of the “informational” requirements that the Leslie decision said were mandatory. If we were to fully implement the Leslie decision, we would, at least for subdivisions not having tentative approval, have to (1) re-examine each preliminary plat for all of the technical requirements, and (2) reject them and send them back to the subdivider when something was missing. This is literally months of work. Besides tying up Planning Department staff for months, this will cause months of delays to people who have applied for subdivisions.

If this would truly result in better subdivisions we could understand doing it. But almost invariably, the failing is not something that will actually change the way the subdivision is done. For example, we would have to return a preliminary plat to be redone if the subdivider had not included “zoning on adjacent tracts.” In past practice, we would not reject a preliminary plat on these grounds because we have the information about zoning readily available to our planners and the public here in the Planning Department.

We do not think that the Leslie case will necessarily lead to the invalidation of other subdivisions that have been give tentative approval but have not yet received final approval. We believe that there are legal arguments that can be made in defense of those subdivisions, but the present situation creates a possible avenue of legal attack against hundreds of subdivisions that are in that stage. Again, the legal challenge could be made on technical grounds that do not affect the merits of the subdivision at all. The subdivision could be challenged on the grounds that the initial application did not contain a description of “improvements to be made by the developer” even if, in fact, all of the improvements had to be done according to full county standards. This is exactly what happened in the Leslie case itself. The case did not actually change how the lots were laid out, or where the roads were built, or how water was supplied to the lots, or how drainage was handled. It just forced the developer to submit a revised application.

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It has been suggested that the “waiver” provisions would allow a Planning Director to approve anything. This is not correct. For one thing, all of the actual requirements remain in other sections. For another thing, it makes no sense to approve a subdivision that does not show the lot layout, the streets, and the lot dimensions, because that is what the subdivider needs.

Similarly, the waiver provisions for the final subdivision plat affect only technical information, and the subdivider can still be made to correct discrepancies, sec. 23-74(c).

The proposed changes also eliminate specific requirements for grades and curves contained in sec. 23-50, and say that these “shall conform to accepted engineering practice as determined by the director of public works.” The current sec. 23-50 sets maximum allowable grades, and minimum radii of curvature, for streets of various types, but states that the planning director and the director of public works can permit variations “where advisable to meet unusual conditions.” It is not feasible to build mauka-makai streets in many areas of Kona, especially, within these grade limitations because the land is steep. For example, a collector road is not supposed to exceed 10%, but Hina Lani and Haleki’i both have sections of 18-19%. A secondary arterial is not supposed to exceed 8%, but the Kealakehe Parkway is planned by the state to have a maximum grade of 11%. Although it is already possible in the code to waive these “standards” in “unusual conditions”, the fact is that there are large areas of the island for which these standards are impractical and have not been followed.

The minimum horizontal curvature does not relate to current engineering practice, where the allowable curvature would be a function of design speed and superelevation. The current code inhibits the use of sharper curves as a traffic calming device.

For these reasons, the department of public works asked that the specific requirements in sec. 23-50 be eliminated.

Some of the public criticism of the bill seems based on a fundamental misconception of the subdivision process, including the comment that allowing the Planning Director to approve subdivisions by himself gives him too much power. (In practice, my staff does most of the work.) The Planning Director has had this power at least since the mid-1960’s. The power was delegated to the Director by ordinances passed by the Council (actually, the old Board of Supervisors.)

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Some members of the public seem to think that the subdivision is the point at which the county makes the basic decision whether or not the land can be divided into smaller parcels. That is not correct. That basic decision was made by the Council in the zoning of the property. The subdivision review is meant to ensure that the property, when subdivided, has proper road access, water supply, sewer or other provisions for wastewater, and drainage, and that specific requirements of the rezoning ordinance, and of other laws such as those relating to historic sites, or the SMA law, are carried out. For these reasons, handling the 200-250 subdivision applications that are considered in a year is an administrative process.

I will be happy to answer specific questions that the Council may have at its meeting on this bill on May 2. We ask that the Council assist us in restoring a workable and practical subdivision process.

Sincerely,

CHRISTOPHER J. YUEN
Planning Director

CJY:pak
Wpwin60/Chris2/Sub Code 246

cc: Corporation Counsel