Chamorro Land Trust Commission

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Chairman

Annie R. Perez
Commissioner

David J. Matanane
Commissioner

Oscar A. Calvo
Commissioner

COMMISSION MEETING MINUTES
Re: Ypao Point Development Project
Guam Ancestral Lands Commission Conference Room, Anigua
May 13, 2005; 4pm

Meeting was called to order at 4:10pm by Chairman Delfin Damian. Present were Commissioner Annie Perez, Commissioner Oscar Calvo, Commissioner David Matanane and Administrative Director Thomas Elliott. Also present were Attorney Charles Troutman (legal counsel for Chamorro Land Trust Commission), Harry Chang (representative for Himalayan Group), Jerry Tang (legal counsel for Himalayan Group) and Felix Dungca.

A. Opening Remarks by the Chairman – Rules, Regulations and Procedures for the conduct of Negotiation of Meeting

Chairman Damian informed the public that there will not be any public testimony allowed at today's meeting but written testimony will be accepted until Wednesday of next week.

B. NEGOTIATION

a. Approval of CLTC Resolution to address required $50,000 performance bond.

Chairman Damian informed the Commission that there would have to be a change on the Resolution for the $50,000 because of the performance bond issue.

Jerry Tang commented that the RFP indicated that the developer is required to provide a $50,000 performance bond. It was also not specific on what the performance bond was for. According to Mr. Tang there was no insurance company on Guam who would issue the performance bond. Some of the items raised were what the conditions of default and non-performance were. The Developer is requesting if they could pay the $50,000 as security deposit.

Commissioner Matanane clarified if the amount was for $50,000 or $500,000.

Jerry Tang commented that as indicated in the RFP it is a $50,000 performance bond and then at the end of the negotiation it is $500,000.

Attorney Charles Troutman inquired from the Chairman if he has the proposed amendments.

Chairman Damian commented that the Administrative Director will begin the process of putting the resolution together to change the language from $50,000 performance bond to cash.

Jerry Tang suggested that CLTC legal counsel take part in the preparation of the resolution.

Attorney Troutman informed the Board that he can assist.

All Commission members approved the change on the Resolution.

b. Discussion-Compensation to CLTC, Development Agreement & General Lease and other related matters.

Jerry Tang informed the Commission that they would like to comply with any concerns the Commission may have on the draft DA.

Chairman Damian commented that the items that we would need to focus on are the three venues which are the Naftan Manaina-ta, the museum and the cultural center. We would need to look at the space requirements for all three venues.

Felix Dungca informed the Commission that he had been meeting with representatives from Dept. of Chamorro Affairs and will be providing information to the developers relative to proposed recommendations on a museum and on the cultural aspects to assist them in their vision.

Commissioner Calvo commented that land for the Chamorro Land Trust Commission is very valuable to use and we need to preserve the artifacts.

Harry Chang commented that he is aware that the preservation of the artifacts is important and would also like to request the Commission's assistance on giving them ideas on the quality and type. Mr. Chang requested for a possible field trip to look at the inventory and remains.

Chairman Damian commented that we will communicate with Ancestral Lands Commission, Dept. of Chamorro Affairs and Dept. of Parks and Recreation to assist with Director Elliott and Mr. Dungca on the matter.

Felix Dungca commented that this project would have to go through the permitting process and will eventually go through some of these agencies for their input. Mr. Dungca agrees with the field trip and could possibly be set up by next week.

Chairman Damian commented that the Attorney General's Office had responded to the Commission citing several items of concern relative to the draft Development Agreement and Ground Lease Agreement with the Himalayan Holding Group.

1. Development Agreement - "Beautification of Surrounding Areas": The Developer agrees to beautify surrounding areas such as the sports facilities, the Bishop Flores Circle and the entrance coming into Tumon which is just to name a few. There was however, no timeframe within which these repairs and improvements are to be undertaken.

Chairman Damian requested if the developer could provide a timeframe as to the completion of the beautification process for the next meeting.

Jerry Tang commented that they had overlooked it and will respond in writing.

Commissioner Calvo commented that the time frame is important because we also need to make sure that the improvements are compatible with the infrastructure.

2. Lease – "Demised Premises": According to paragraph 16.3, the lease will not be recorded, but a "short form" may. The Lease's description of the premises does not contain a statement as to the availability of water or power. The Attorney General's Office reminds us that pursuant to 21 GCA §60314, the short form version will have to contain such a statement.

Jerry Tang commented that he is aware of that and will comply.

3. Development Agreement – "Exhibits": According to the list of exhibits at the end of the table of contents, Exhibit B is supposed to be the Lease and Exhibit C is supposed to be a description of the Components of Improvements. In paragraph 2.5(a), the DA erroneously describes the Lease as being attached as Exhibit C. Chairman Damian commented that this may be a typographical error.

4. Development Agreement – "Force Majeure": If the developer's purchasing agent forgets to pre-order important materials, then apparently that would be an excused "inability to procure materials". Only the inability to procure materials which is not directly or indirectly caused by the developer should be excused.

5. Lease – "Initial Term": The dates indicated in this paragraph would have to be changed in the final signed version.

6. Lease – "Fee Subordination by Landlord": This paragraph provides that the CLTC must execute a mortgage if requested by the developer. The AG's office trust that the decision to allow this was made by the Commission pursuant to P.L. 25-179 which provides a commercial lease may be disposed of through negotiation, subject to findings by the Commission that such is, at a minimum, compliant with their terms and conditions. When sending the AG's office with the final version of the lease and DA, the Commission must provide them with minutes from any Commission meetings at which any findings and the terms and conditions for this Lease were made. For a

condition as important as a mortgage, a finding specific to the mortgage would have to have been made.

7. Lease – "Costs of Litigation": This paragraph provides that if a lawsuit is brought against one party without any fault on its part, by the other, then the party at fault shall pay all costs and expenses, including attorneys' fees of the other. For certain suits brought by the developer, the Government Claims Act would apply, and the Act at 5 GCA §6301 provides that the government is not liable for an opposing party's attorneys fees except under one limited circumstance. To this extent, paragraph 14.9 should be clarified.

Jerry Tang commented that it would be best to respond to these issues once the $50,000 is turned over to the Commission.

Going back to Item #6, Fee Subordination by Landlord, Commissioner Matanane commented that you can't mortgage the property itself.

Commissioner Calvo commented that Item #7, Cost of Litigation, is very important to the entire project. We are not going to be held accountable if anything happens.

Jerry Tang informed the Commission that he was approached by Tom Sheldon who claims that he is going to sue everyone because the Chamorro Land Trust Commission is unconstitutional. Jerry Tang also informed the Commission that when they had received the PTR from Title Guaranty of Guam there was a claim of interest by Frankie Perez and that the property was supposed to be used for a hospital facility.

Mr. Tang requested if the Commission could clarify these legal issues.

Chairman Damian commented that the Commission will respond to these issues at the next meeting.

Commissioner Calvo requested if Attorney Troutman can look into those legal issues and report back at the next meeting.

Chairman Damian commented that the Commission will make a formal written request to the Attorney General's Office on the matter.

c. Pending Tasks leading up to submittal to Guam Land Use Commission

Some of the pending tasks are the final development plan and the master covenants.

Chairman Damian thanked both Harry Chang and Jerry Tang for being present at today's meeting.

Chairman announced that he will recess the meeting for 3 to 5 minutes.

Meeting reconvened at 5:05pm.

Chairman Damian informed the Commission that the anticipated information regarding the Commission's budget is not available at this time and will be taken up at the next meeting. The Commission is researching and will have information relative to the issue of paying back the general fund for Commission expenses such as salaries and benefits.

Chairman Damian informed the Commission that this issue was brought up at the Commission's budget hearing.

Commissioner Matanane commented that he hopes the Commission doesn't have to give it up that easily.

Commissioner Matanane moved to adjourn the meeting. Commissioner Perez seconded the motion. Meeting was adjourned at 5:10pm.

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