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Department of Land Management Officer of the Recorder

File for Record is Instrument No. 908473

On the Year 17 Month 04 Day 14 Time 3:24

Recording Fee DE-OFFICIO Receipt No. \_\_\_\_\_

Deputy Recorder Jane Yamasaki  
JANET YAMASAKI

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ORIGINAL

## GUAM LAND USE COMMISSION REGULAR MEETING MINUTES



Department of Land Management Conference Room  
ITC Building, Tamuning



Thursday, May 11, 2017  
1:43 p.m. to 2:14 p.m.

**GUAM LAND USE COMMISSION**  
**Regular Meeting**  
**Thursday, May 11, 2017**  
Department of Land Management Conference Room  
3<sup>rd</sup> Floor ITC Building, Tamuning

**MEMBERS PRESENT:**

Mr. John Z. Arroyo, Chairman

Ms. Conchita D. Bathan, Commissioner

Mr. Tae S. Oh, Commissioner

Mr. Hardy T.I. Vy, Commissioner

Mr. Michael Borja, Executive Secretary

Mr. Nicolas Toft, Legal Counsel

Excused Absence: Vice Chairman Victor Cruz

**PLANNING STAFF PRESENT:**

Mr. Marvin Aguilar, Guam Chief Planner

Ms. Celine Cruz, Case Planner

Ms. Cristina Gutierrez, Recording Secretary

**GUAM LAND USE COMMISSION  
GUAM SEASHORE PROTECTION COMMISSION  
Attendance Sheet**

Department of Land Management Conference Room  
590 S. Marine Corps Drive, Third Floor, ITC Building, Tamuning

Date of Meeting: Thursday, May 11, 2017

Time of Meeting: GLUC: 1:43 GSPC:

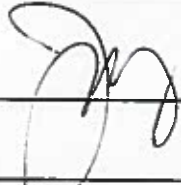
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<input type="checkbox"/>	Special
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<input type="checkbox"/>	GSPC
<input type="checkbox"/>	Regular
<input type="checkbox"/>	Special
<input type="checkbox"/>	Quorum
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**COMMISSION MEMBERS**

**SIGNATURE**

Chairman John Z. Arroyo

  
\_\_\_\_\_


Vice Chairman Victor F. Cruz

Excused  
\_\_\_\_\_

Commissioner Conchita D. Bathan

  
\_\_\_\_\_

Commissioner Tae S. Oh

  
\_\_\_\_\_

Commissioner Hardy T.I. Vy

  
\_\_\_\_\_

**STAFF**


Michael J.B. Borja, Executive Secretary

  
\_\_\_\_\_

Nicolas E. Toft, Legal Counsel (OAG)

  
\_\_\_\_\_


Marvin Q. Aguilar, Chief Planner

  
\_\_\_\_\_

Frank Taitano, Planner IV

\_\_\_\_\_  
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Penmer Gulac, Planner IV

  
\_\_\_\_\_

Celine Cruz, Planner IV

  
\_\_\_\_\_

M. Cristina Gutierrez, WPS II

  
\_\_\_\_\_

ADJOURNMENT: GLUC: 2:14pm GSPC:







# GUAM LAND USE COMMISSION

Chairman John Z. Arroyo  
Vice Chairman Victor F. Cruz  
Commissioner Conchita D. Bathan

Commissioner Tae S. Oh  
Commissioner Hardy T.I. Vy

Michael J.B. Borja, Executive Secretary  
Nicolas E. Toft, Legal Counsel (OAG)

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## AGENDA

### Regular Meeting

**Thursday, May 11, 2017 at 1:30 p.m.**

Department of Land Management Conference Room

*590 S. Marine Corps Drive, 3<sup>rd</sup> Floor, ITC Building, Tamuning*

*[As advertised in the Guam Daily Post on May 4, 2017 and May 9, 2017]*

- I. **Notation of Attendance**      [ ] Quorum                      [ ] No Quorum
- II. **Approval of Minutes**
  - GLUC Regular Meeting of Thursday, April 13, 2017
- III. **Old or Unfinished Business [None]**
- IV. **New Business**
- V. **Administrative & Miscellaneous Matters**

#### Horizontal Property Regime

- A. The Applicant, Karen Young S. Kim (Developer) represented by Melinda S. Swavely, Esq.; requests issuance of its Eighth Supplementary Final Public Report for Happy Condo, located on Lot 10, Block 1, in the Municipality of Tamuning, HPR No. 160, under Application No. 2008-78H.  
Case Planner: Celine Cruz
- B. Cherry Media Vision represented by Richard DeVera; request for reconsideration of conditions of approval in order to allow for "Motion Graphics" for its previously approved Zone Variance, on Lot 2021-1-1-2-1, in a "C" (Commercial) zone, in the Municipality of Tamuning, under Application No. 2012-30.  
Case Planner: Celine Cruz

- VI. **Adjournment**

**GUAM LAND USE COMMISSION REGULAR MEETING MINUTES**  
Department of Land Management Conference Room, 3<sup>rd</sup> Floor ITC Bldg., Tamuning  
Thursday, May 11, 2017 • 1:43 p.m. to 2:14 p.m.

**I. Attendance**

**Chairman Arroyo** called the regular meeting of the Guam Land Use Commission for Thursday, May 11, 2017 to order at 1:43 p.m., noting a quorum.

Present were: Chairman John Arroyo, Commissioner Conchita Bathan, Commissioner Tae Oh, Commissioner Hardy Vy, Executive Secretary Michael Borja, Legal Counsel Nicolas Toft, Guam Chief Planner Marvin Aguilar, Planning Staff Celine Cruz and Recording Secretary Cristina Gutierrez

**II. Approval of Minutes**

**Chairman Arroyo** first order of business on the agenda; we have the minutes of the last meeting from April 13, 2017. Have you all had the opportunity to read them? [Commissioners respond "yes."] Okay, I will entertain a motion for approval.

**Commissioner Bathan** Mr. Chairman, I would like to make a motion to approve the GLUC regular meeting minutes of April 13, 2017; subject to minor corrections or edits to be submitted to Cristina before end of business day today.

**Chairman Arroyo** motion by Commissioner Bathan. Second?

**Commissioner Oh** second.

**Chairman Arroyo** second by Commissioner Oh. Any discussion on the minutes? [None noted]

On the motion, say "aye" [Chairman Arroyo, Commissioner Bathan, Commissioner Oh, and Commissioner Vy], all opposed say "nay." **Motion carries.**

[Motion to approve the April 13, 2017 GLUC Minutes passed unanimously; 4 ayes, 0 nay]

**III. Old or Unfinished Business [None]**

**IV. New Business [None]**

**V. Administrative and Miscellaneous Matters**

**Horizontal Property Regime**

- A. The Applicant, Karen Young Kim (Developer) represented by Melinda S. Swavely, Esq.; requests issuance of its Eighth Supplementary Final Public Report for Happy Condo, located on Lot 10, Block 1, in the Municipality of Tamuning, HPR No. 160, under Application No. 2008-78H.  
Case Planner: Celine Cruz



**Celine Cruz (Case Planner)** presents staff report to include chronological facts and recommendations (For full content/context, please see attached report).

**[Attachment A – Staff Report dated April 26, 2017]**

**Chairman Arroyo** any questions? [None] If you could please state your name for the record.

**Melinda Swavely** we are requesting for the eighth supplementary final report. This is for a four-unit condominium project. The owner sold two (one at a loss), and so she has been waiting for the market to really get better so she could recoup some of her losses, and hopefully get a profit on this project.

I can't pass up the opportunity to talk about the H-2 problem because in fact, with the H-2 problem it may drive really the cost of property and project such as this up. And so her market value may increase, and I may not be seeing you again next year. But frankly, I hope the H-2 problem is resolved and so we can get the workers back here that we need, and so that helps our economy. But at this time, she is still waiting for the market to get a little bit better and then we will be looking again to sell.

**Chairman Arroyo** the units are being rented right now?

**Melinda Swavely** they are. Actually, her daughter is living in one unit and the other one is being rented.

**Chairman Arroyo** any questions?

**Commissioner Bathan** I don't have a question; but, I would like to commend the applicant for coming here and submitting the request to issue an extension on the supplementary final report before the expiration date.

**Chairman Arroyo** we appreciate you being on time, and being proactive with these reports. Anything else? [None noted] Okay, so can I have a motion to accept the 8<sup>th</sup> supplementary report.

**Commissioner Oh** I will make a motion to accept the issuance of the 8<sup>th</sup> supplementary final public report for Happy Condo located on Lot 10, Block 1, in the municipality of Tamuning, HPR No. 160, under Application No. 2008-78H; for a period of thirteen months to expire June 27, 2018.

**Chairman Arroyo** do I have a second.

**Commissioner Bathan** second.

**Chairman Arroyo** any discussion on the motion? [None] All in favor say "aye" [Chairman Arroyo, Commissioner Oh, Commissioner Bathan and Commissioner Vy], opposed say "nay." **Motion is approved.**

**[Motion passed unanimously; 4 ayes, 0 nay]**



## Zone Variance

- B. Cherry Media Vision represented by Richard De Vera; request for reconsideration of conditions of approval in order to allow for "Motion Graphics" for its previously approved Zone Variance, on Lot 2021-1-1-2-1, in a "C" (Commercial) zone, in the Municipality of Tamuning, under Application 2012-30.

Commissioner Oh Mr. Chairman, before we move any further; I would like to just mention that because of the fact that this company is a competitor of ours, and my company is within the same industry I would like to recuse myself.

Chairman Arroyo Commissioner Oh feels he is conflicted and is asking to be recused. Your request is granted.

[Commissioner Oh exits the conference room]

Marvin Aguilar (Chief Planner) reads memorandum to include application history and recommendation. [For full content/context, please see attached report.]

[Attachment B – Memorandum dated May 5, 2017]

Chairman Arroyo any questions?

Commissioner Bathan when do you think that your manufacturer will resolve the brightness issue?

Richard De Vera well, today we've already fixed the problem. We received the problematic hardware that we needed to replace, and both sides are actually fully in adherence to the brightness level. If you drive by it now, it is considerable not as bright as it was prior to in the evening.

Chairman Arroyo any other questions of the staff? Please state your name for the record.

Richard De Vera I am the proprietor for Cherry Media Vision and with me is Melinda Sanchez, she is our Sales Director for Cherry Media Vision.

Chairman Arroyo so you say the brightness is fixed.

Richard De Vera at current standing in the evening time .... what it is is there is a brightness censor that has been fully integrated already or collaborated so that during the evening time as the sun goes down, it gets darker, the sign goes darker too. So, at the darkest hour it drops at least five percent (5%). So now it is a lot more acceptable then it was prior to. The problem was that during the power outages our hardware got damaged during the low level power. Now it is fixed and everything is running smoothly.

Chairman Arroyo so now you are asking the Commission to grant a waiver of the condition on the motion graphics for your displays on your sign.

Richard De Vera yes sir.

**Chairman Arroyo** last time you were here we did point out that basically when we renewed your usage it was conditioned on the initial NOA (Notice of Action). And in that NOA it indicated, and you did indicate in the Minutes of that meeting, that you were not going to have any motion videos on your sign. And we did reiterate at that last meeting that you weren't to have any moving signs, but you went ahead anyway and did it in spite of that conversation. Do you have anything to say about that?

**Richard De Vera** no I don't sir.

**Chairman Arroyo** even in spite of the fact that we said not to do it you decided to do it anyway.

**Richard De Vera** sir, on the initial NOA (Notice of Action) and upon approval of the NOA, there was nothing stipulated in the NOA that we couldn't with moving advertisements.

**Chairman Arroyo** well, it was in the minutes and it was in your application, both applications. It looked like the second application was a carbon copy of the first. The second application for the renewal looked like it was a carbon copy of the first and maybe you just inadvertently forgot to take that section out where you weren't going to have moving images.

**Richard De Vera** I must have missed that sir.

**Chairman Arroyo** so, there is a need for you to have moving images. Can you explain.

**Richard De Vera** one, is to keep us competitive in the market. A lot of our advertisers which is basically the means of our income give us readymade ads. It would be more cost to them to have it actually reproduced in a "still" format as opposed to a commercial that has already been produced and then having them edit it down. It is easier for us to accept it as is from them based on the requirements that we ask for, the size requirements.

**Chairman Arroyo** well, I do appreciate that you are coming in now and you are actually asking us to grant you that waiver of that condition.

Nick, did you have something you wanted to add?

**Nicolas Toft (Legal Counsel)** the Office of the Attorney General was still of the position that granting these types of variances are outside the authority of the Land Use Commission. It is my understanding that sometime in the near future the Attorney General will issue a letter to the Commission regarding these issues. You may want to put the brakes on, not only for moving images issue, but all of these electronic signs including ones already that have had variances granted to them in the past.

**Chairman Arroyo** okay. So, are you saying that in this particular case we are going to have to tell him that he has to remove the sign?

**Nicolas Toft** if the Attorney General were to issue some sort of information/guidance that these variances have been (undecipherable—Nick if you recall what you said, could you please fill in.) from the beginning. Potentially that is one consequence. One way to avoid that would be for either this Board or the businesses involved going to the Legislature and getting the underlined law changed as far as the types of signs allowed. Part of the reason why people are coming in and getting these variances is because the original statute is fairly draconian in the types of signage that it allows. It is non-flashing, non-moving signs that have to be for the business that

is on the premises of where the sign is located. And I know that my predecessor Ms. Finney, conveyed to the Board that getting a variance on that...would require the type of circumstances that have not been shown in these cases that the need for it is unique to that particular property which I don't think there have been any showing, at least on the cases that I have seen. All the listed conditions to get a variance, all four them in my mind have not been met by any of these approvals by the Board. So, I think the best long term course of action is legislative action on the underlining statute. Otherwise, we are going to have agencies butting heads on this.

**Chairman Arroyo** and that is exactly what we have been asking for years. We have also been asking the AG to provide us with some kind of guidance on this numerous times, and we've never really had anything coming from the AG, and this is the first I have ever heard of anything coming from the AG which I guess is something. But the fact of the matter is, is that we don't have it yet and there are these signs out there. People who have been granted the approvals have already expended the funds, and committed to erecting the signs and I think it is really unfair for us to expect that they remove these signs. Again, especially since we have been asking for guidance for so long and nothing has come out. If it does take legislative action then I mean that is obviously the thing we need to do. In Mr. De Vera's case, he's got his sign and it was approved two years (2) ago. I think it is really unfair for us to do anything with the existing signs at this point in time.

I don't have a problem with a Moratorium going forward. I think that would be fair to everybody. But most importantly, it would behoove us to move quickly with some kind of legislation to assist individuals who are looking to market their products and services. And besides the fact that they are advertising for people, there is some public good in what they do.

I think in one of the last applications we heard from the applicant that because of the public notices that they put on, they assisted in the apprehension, I believe of some criminal or something like that. We actually had one individual give a positive testimony and that was a police officer who was here on behalf of Crimestoppers who urged the Commission to approve the application simply because of the good that did for the community by raising awareness of criminal activities and alerting the people that there are dangerous people that are out in the community, and soliciting the help of the community to assist the Police to apprehend these people.

It is kind of hard to weigh those things out. For me, if the public good outweighs...maybe we have a stale law, I am going to err on the side of public service and public protection.

**Nick Toft** I am just informing the Commission. If it comes down to a suit that our odds of prevailing in that would not be good based on how the law stands as it is.

**Chairman Arroyo** I understand, I completely understand. Thank you, we really appreciate it. Any other questions?

**Commissioner Bathan** if in case the problem on the brightness will recur in the future would you be able to convert from a moving sign to a non-moving sign? Say for example you fix the problem with the brightness, and say you have a moving sign. In the future, if the problem with the brightness again, would you be able to convert whatever you are flashing on your screen from a moving to a non-moving motion.

**Melinda Sanchez** I'm sorry, was the question on brightness or motion?

**Commissioner Bathan** for both.

**Richard De Vera** we can manually adjust it down if brightness sensors go out again. I don't understand the question as far as changing from moving to non-moving.

**Commissioner Vy** sounds like they are same mechanism? I think they are separate.

**Melinda Sanchez** assured Commissioner Bathan that if the ad becomes a hindrance because of the way the image is conveyed on the motion they can go back to the client and advise them to adjust the advertisement. Mr. De Vera added that the brightness is like "the volume on a song" in that the song is still loud but volume can be turned down so that you don't change the content of the song.

**Michael Borja (Executive Secretary)** I think what you have Commissioners is that when those signs have been super bright .... but when you have a moving ad and the colors and the motion are changing, trying to drive through that intersection was like being blinded by all sorts of things. From a distance when I first noticed it I thought there was some sort of major accident down at the intersection because there was flashing lights all over the place. That is what gets your distraction. If the brightness intensity adjuster goes out you either manually turn the intensity down or stop having motion sign so that it does not blind you.

**Richard De Vera** yes, of course and we can pull that ad if we have to. We can pull it.

**Michael Borja** remotely?

**Richard De Vera** yes remotely. (Ms. Melinda Sanchez concurs with Mr. De Vera.)

**Chairman Arroyo** any other questions? [None noted] Alright, so I will open up for public comments. Is there anybody who would like to say anything regarding this application?

**Public Comments** [Seeing none, Chairman Arroyo closed the public comment period.]

**Chairman Arroyo** anything else you would like to add before we make a motion?

**Richard De Vera** no sir. Thank you.

**Chairman Arroyo** I am ready to entertain a motion on this request.

**Commissioner Bathan** Marvin, if I may ask. When is the expiration of this application?

**Marvin Aguilar** January 2018.

**Commissioner Bathan** Mr. Chairman, I would like to make a motion to approve the request for reconsideration of conditions of approval in order to allow for motion graphics for a previously approved zone variance on Lot 2021-1-1-2-1, in a commercial zone in the municipality of Tamuning under Application No. 2012-30; for the remaining duration of existing approved application.

**Chairman Arroyo** there is a motion on the floor. I just want to point out that this pertains only to the motion graphics and nothing else, none of the other conditions in place at this time. Is there a second?

Commissioner Vy second.

Chairman Arroyo second by Commissioner Vy. Any discussion on the motion? [None noted]

On the motion, all in favor say "aye" [Chairman Arroyo, Commissioner Bathan and Commissioner Vy], all opposed say "nay." **Motion is passed.**

**[Motion passed unanimously; 3 ayes, 0 nay, 1 recused (Commissioner Oh)]**

Chairman Arroyo any other items to discuss? [None noted from the Planning Staff and Commissioners]

Nick, is there anything new regarding the Wanfang case?

Nick Toft not to my knowledge. We are waiting for a decision from Judge Barcinas on a motion that was made (I believe) in late March. Typically, decisions are made within 90-days, so hopefully we will have something before the next hearing. I will keep the Board updated.

Chairman Arroyo thank you, I appreciate it. Anything else? [None noted] Motion to adjourn---

## VI. Adjournment

Commissioner Bathan motion to adjourn.

Commissioner Vy second.

Chairman Arroyo all in favor say "aye." [Chairman Arroyo, Commissioner Bathan, Commissioner Vy.] **We are adjourned.**

The regular meeting of the Guam Land Use Commission for Thursday, May 11, 2017 was adjourned at 2:14 p.m.

Approved by:

  
\_\_\_\_\_  
John Z. Arroyo, Chairman  
Guam Land Use Commission

Transcribed by:

  
\_\_\_\_\_  
M. Cristina Gutierrez, Recording Secretary  
Planning Division, DLM

Date approved: 5-25-2017

ATTACHMENT A

**DIPĀTTAMENTON MINANEHAN TĀNO'**  
(Department of Land Management)  
**GUBETNAMENTON GUĀHAN**  
(Government of Guam)



EDDIE BAZA CALVO  
Governor

MICHAEL J.B. BORJA  
Director

RAY TENORIO  
Lieutenant Governor

DAVID V. CAMACHO  
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671-649-LAND (5263)

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671-649-5383

April 26, 2017

Memorandum

TO: Chairman, Guam Land Use Commission

FROM: Guam Chief Planner

SUBJECT: Staff Report - Application No. 2008-78H Request for Issuance of Eighth Supplementary Final Public Report

RE: Happy Condo – Registration Number 160

1. **PURPOSE:**

- A. **Application Summary:** Karen Young S. Kim, represented by Melinda C. Swavely, Esq. request for an Eighth Supplementary Final Public Report for "Happy Condo", on Lot 10, Block 1, in the Municipality of Tamuning, in an "R-2" (Multi-Family Dwelling) zone, HPR Registration No. 160, under application No. 2008-78E, pursuant to §45101 to §45155, Chapter 45, Horizontal Property Regime Act.
- B. **Legal Authority:** Title 21, GCA (Real Property), Chapter 45 (Horizontal Property Act), §45154, Automatic Expiration of Public Reports.

2. **FACTS:**

- A. Pursuant to §45154 of Chapter 45, Title 21, GCA, all public reports expire thirteen (13) months after the date of issuance of said public report. The Commission approved and issued the Final Public Report for "Happy Condo" August 14, 2007 and with an expiration date of September 14, 2009. (Reference Instrument No. 780259 dated October 3, 2008).
- B. First Supplementary Final Report was issued on September 24, 2009, expiring on October 24, 2010. (Reference Instrument No. 796768 dated September 2, 2009).
- C. Second Supplementary Final Report was issued on June 13, 2011, expiring on November 24, 2012. (Reference Instrument No. 822857 dated June 6, 2011).



**Staff Report – Request for Issuance of Eighth Supplementary Final Public Report  
“Happy Condo” (HPR Registration No. 160)  
Page 2 of 3**

- D. An Amended Second Supplementary Final Report was issued with a new expiration date of November 24, 2011. (Reference Instrument No. 844836 dated December 3, 2012).
- E. Third Supplementary Final Report was issued on November 8, 2012, expiring on December 24, 2012. (Reference Instrument No. 844936 dated December 5, 2012).
- F. Fourth Supplementary Final Report was issued on December 24, 2012, expiring on January 24, 2014. (Reference Instrument No. 845124 dated December 11, 2012).
- G. Fifth Supplementary Final Report was issued on February 13, 2014, and expiring on March 13, 2015. (Reference Instrument No. 862339 dated March 5, 2014.)
- H. Sixth Supplementary Final Report was issued on February 26, 2015, expiring on March 26, 2016. (Reference Instrument No. 875876 dated March 13, 2015).
- I. Seventh Supplementary Final Report was issued on April 14, 2016, expiring on May 14, 2017. (Reference Instrument No. 892401 dated May 11, 2016).
- J. Units A and B of the Project have been sold. The developer wishes to continue sale of the remaining units, units C and D.
- K. Material changes to the project are as follows: The Developer has re-financed the mortgage on the Property. The following prior mortgages and assignments of rental income have been released: 1) Mortgage dated and recorded on November 30, 2007, under Instrument No. 765246, in the Department of Land Management , Government of Guam, executed by Sung Min Choi in favor of Citizens Security Bank (Guam), Inc. in the principal amount of \$99,000 plus interest; 2) Assignments of Rents dated and recorded November 30, 2007, under Instrument No. 765427, in the Department of Land Management, Government of Guam, executed by Sung Min Choi, assignor to Citizens Security Bank (Guam), Inc., Its Successors and/or Assigns, assignee; 3) Mortgage dated and recorded on January 22, 2008, under Instrument No. 767754, in the Department of Land Management , Government of Guam, executed by Sung Min Choi in favor of Citizens Security Bank (Guam), Inc. in the principal amount of \$150,000 plus interest; and 4) Assignments of Rents dated and recorded January 22, 2008, under Instrument No. 767755, in the Department of Land Management, Government of Guam, executed by Sung Min Choi, assignor to Citizens Security Bank (Guam), Inc., Its Successors and/or Assigns, assignee.

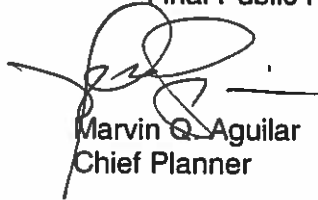
The project is now subject to the following mortgage and assignment of rental income: : 1) Mortgage dated and recorded on May 31, 2012, under Instrument No. 837301, in the Department of Land Management, Government of Guam, executed by Karen Young Sook Kim in favor of Bank of Hawaii in the principal sum of \$230,000 plus interest; 2) Assignments of Rents dated and recorded May 31, 2012, under Instrument No. 837302, in the Department of Land Management, Government of Guam, executed by Karen Young Sook Kim, assignor to Bank of Hawaii, Assignee.

**Staff Report – Request for Issuance of Eighth Supplementary Final Public Report  
“Happy Condo” (HPR Registration No. 160)**

**Page 3 of 3**

Developer will obtain a partial release of the above reference Real Property Mortgage and Assignment of Rental Income from Bank of Hawaii for each unit at the time of conveyance of such unit.

- 3. STAFF RECOMMENDATION:** Recommend issuance of an Eighth Supplementary Final Public Report in order for the developer to continue to market the remaining 2 condominium units, and pursuant to §45154 of Chapter 45, Title 21 the issuance of this Eight Supplementary Final Public Report is for a period of thirteen months to end on ~~May~~ <sup>June</sup> 27, 2018.



Marvin Q. Aguilar  
Chief Planner

Case Planner: Celine Cruz

DOOLEY ROBERTS FOWLER & VISOSKY LLP  
ATTORNEYS AT LAW

DAVID W. DOOLEY  
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Of Counsel:  
MELINDA S. SWAVELY

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Swavely@GuamLawOffice.com

April 6, 2017

RECEIVED  
4.6.17

Via Hand Delivery

Mr. John Z. Arroyo, Chairman  
Guam Land Use Commission  
c/o Mr. Marvin Q. Aguilar, Guam Chief Planner  
DEPARTMENT OF LAND MANAGEMENT  
Government of Guam  
Tamuning, Guam 96913

2008-78H
<b>Karen Young S. Kim</b>
<b>HPR 8th Supp. Public Report</b>
Accepted Date: <b>5-Apr-17</b>
Case Planner: <b>Celine C</b>

**SUBJECT: HAPPY CONDO**  
**REGISTRATION NO.: 160**  
**TYPE: REQUEST FOR APPROVAL OF THE EIGHTH  
SUPPLEMENTARY FINAL REPORT**

Dear Chairman Arroyo and Commissioners:

Our firm represents Karen Young S. Kim ("Developer") of Happy Condo ("Project") on Lot No. 10, Block No. 1, Estate No. 8385, Tumon Heights, Guam 5091#1-1REM-3NEW, Dededo, Guam.

The Developer is requesting the issuance of an Eighth Supplementary Final Report. The Developer has sold two of the four units. However, the Developer sold those units at a loss due to financial hardship at that time. Developer is waiting for Guam housing market prices to go up to sell the remaining units.

We have attached hereto information in support of the issuance of an Eighth Supplementary Final Report for the Project. Your favorable consideration of our request for issuance of an Eighth Supplementary Final Report is respectfully requested.

Sincerely,

  
Melinda S. Swavely

Attachments

**INFORMATION IN SUPPORT OF THE ISSUANCE OF AN EIGHTH  
SUPPLEMENTARY FINAL REPORT FOR HAPPY CONDO**

**1. Brief background information of the project identifying the project name and any amenities provided, its location by lot, block, tract number, municipality.**

- a. Name of Project: Happy Condo
- b. Location: Lot No. 10, Block No. 1, Tumon Heights, Tamuning, Guam
- c. Zoning: R-2
- d. Developer: Sung Min Choi (now deceased) and Karen Young S. Kim
- e. No. of Buildings and Floors: There is one (1) reinforced concrete apartment building with three (3) floors, the ground level consisting of an access way for ingress and egress to the apartment building, eight (8) parking stalls, gates, refuse facilities and ciphered locked entrance door; the second floor consisting of two (2) units; the third floor consisting of two (2) units.
- f. No. of Units and Unit Types: There are four (4) units. All of the four (4) units have three (3) bedrooms, two (2) bathrooms, a kitchen, living area, dining area, laundry room and a balcony.
- g. Parking Stalls: There are eight (8) parking stalls on the ground level of the Project reserved for use by the individual unit owners, with each unit being assigned two (2) parking stalls for its exclusive use as a Limited Common Element appurtenant to the Unit. Each parking stall shall contain no less than one hundred eighty (180) square feet, and shall have immediate access from the ground level in the Project to the access ways, which lead to the public street. The parking stalls appurtenant to each of the units are as follows:

<u>Apt. No.</u>	<u>Parking Stall Nos.</u>
Unit A	1 & 2
Unit B	3 & 4
Unit C	5 & 6
Unit D	7 & 8

- h. Other Amenities or Features: Gates, access ways, ciphered locked entrance door and refuse facilities.

2. **Number and identification of units sold.**

Unit A and Unit B.

3. **Number and identification of units not sold.**

The following units are not sold: Unit C and Unit D.

4. **Type of extension requested.**

[ ] Preliminary [X] Final

5. **Number of extension (i.e., third, fourth, etc.).**

Eighth

6. **Real Estate Broker. Has the Developer retained the services of a real estate broker/company to marketing the remaining units? If so, please provide the complete name, mailing address and phone number of the broker/company. Does the Developer intend to market the remaining units himself or within his company?**

The Developer plans to sell Units C and D when the housing market prices on Guam go up. The Developer sustained a loss on the sale of Units A and B and hopes to recoup some of the loss through the sales of Units C and D. The Developer previously retained the services of Soo K. Choi, principal broker for MACKS Realty, to market the units. At this time, the Developer is marketing the units herself.

7. **Marketing Plan. A brief explanation on how the Developer or his broker plans to market the remaining condominium units.**

The Developer plans to sell the remaining two condominium units when Guam's housing market prices go up.

8. **Changes to original Project. Should there be any material changes to the Project at the time of the application for a supplementary report to extend an existing Report, the Developer shall be required to identify those exact changes in his Report, and provide an explanation as to what remedies or action has been taken to correct those changes. Supporting documents are recommended to justify material changes.**

The Developer has re-financed the mortgage on the Property. The following prior mortgages and assignments of rental income have been released: 1) Mortgage dated and recorded on November 30, 2007, under Instrument No. 765246, in the Department of Land Management, Government of Guam, executed by Sung Min Choi in favor of Citizens Security Bank (Guam), Inc. in the principal amount of \$99,000.00, plus interest; 2) Assignment of Rents dated and recorded November 30, 2007, under Instrument No. 765247, in the Department of Land Management, Government of Guam, executed by

Sung Min Choi, assignor to Citizens Security Bank (Guam) Inc., Its Successors and/or Assigns, assignee; 3) Mortgage dated and recorded on January 22, 2008, under Instrument No. 767754 in the Department of Land Management, Government of Guam, executed by Sung Min Choi in favor of Citizens Security Bank (Guam), Inc., in the principal amount of \$150,000.00, plus interest; and 4) Assignment of Rents dated and recorded January 22, 2008, under Instrument No. 767755, in the Department of Land Management, Government of Guam, executed by Sung Min Choi, assignor to Citizens Security Bank (Guam) Inc., Its Successors and/or Assigns, assignee.

The Project is now subject to the following mortgage and assignment of rental income: 1) Mortgage dated and recorded on May 31, 2012, under Instrument No. 837301, in the Department of Land Management, Government of Guam, executed by Karen Young Sook Kim in favor of Bank of Hawaii in the principal sum of \$230,000.00; and 2) Assignment of Rental Income dated and recorded on May 31, 2012, under Instrument No. 837302, in the Department of Land Management, Government of Guam, executed by Karen Young Sook Kim, Assignor, to Bank of Hawaii, Assignee.

Developer will obtain a partial release of the above-referenced Real Property Mortgage and Assignment of Rental Income from Bank of Hawaii for each unit at the time of conveyance of such unit.

ATTACHMENT B



DIPĀTTAMENTON MINANEHAN TĀNO'  
(Department of Land Management)  
GUBETNAMENTON GUĀHAN  
(Government of Guam)



EDDIE BAZA CALVO  
Governor

RAY TENORIO  
Lieutenant Governor

MICHAEL J.B. BORJA  
Director

DAVID V. CAMACHO  
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Telephone:  
671-649-LAND (5263)

Facsimile:  
671-649-5383

May 5, 2017

MEMORANDUM

To: Chairman, Guam Land Use Commission

From: Guam Chief Planner

Re: Request To Allow Display of Moving Images  
(Application No. 2012-30)

On March 28, 2013, Mr. Richard De Vera, Principle Owner of Cherry Enterprises, Inc. was granted a variance with conditions to construct and operate a free standing Light-Emitting Diode (LED) advertisement sign Lot 2021-1-1-2-1, in the municipality of Tamuning. The approved structure entailed a 20-foot by 20-foot LED screen elevated at a maximum 23-foot high and enclosed in a two-face V-shape display configuration. The structure was completed and issued an Occupancy Permit by Department of Public Works on May 6, 2013. At the present time, the existing signage operates 24/7 as approved by the Commission.

The approved variance was granted with conditions to include a two-year renewal requirement. And on January 28, 2016 Mr. De Vera was granted a renewal to continue operations for another two years, albeit his request to remove the two-year renewal condition. A request for renewal is expected in 2018.

Another condition of approval restricted the use of moving images. However, this condition was not adhered to as moving images are currently being displayed at this time. Mr. De Vera now submits the attached request to allow the display of moving images, citing the need to accept moving advertisements and graphics to remain competitive within industry standards.

Further, the operator had been advised of extreme brightness being displayed, more obviously during evening hours. Mr. De Vera noted that he continues to coordinate with the manufacturer of the sign to reduce brightness, noting a 40% reduction in brightness thus far.

**RECOMMENDATION:** Mr. De Vera has made great strides to adhere to concerns as they are addressed. As in our last report the continued use of the electronic signage appears to be acceptable to the surrounding community in that we have not received any complaints from either the surrounding community or the Tamuning Municipal Planning Council. With this, we recommend the Commission consider the request to allow the use of moving images providing the principle operator continue to work with our office and the Department of Public Works to address any further issues that may arise.

  
Marvin Q. Aguilar

Attachments



April 25, 2017



To: John Z. Arroyo  
Chairman  
Guam Land Use Commission

Cc: Marvin Agiullar  
Chief Planner - DLM

RECEIVED

4-27-17  
Cg

Ref: Moving Sign  
Application No. 2012-30  
Cherry Enterprises, Inc.

Fr: Cherry Enterprises, Inc.  
c/o Richard De Vera – Proprietor  
dba: Cherry Media Vision

Greetings Mr. Chairman,

I hope all is well. I am writing to you today to address an issue that is currently pending regarding our LED Messaging screen in Tamuning. The issue is the utilization of "moving advertisements" or "motion graphics". Although not detailed in our application we acknowledge during the hearing that it was mentioned that we "do not do moving advertisements only still ads" during the discussion of Government PSA's which made it a declaratory part of our application and not detailed in the application itself.

We humbly request that we may be able to continue running "moving advertisements". One of the major reasons we have and currently accept moving advertisements and graphics is that in order to stay competitive, we have to accept ads that are part of an industry standard. As a small business owner whose livelihood is primarily based on this business it is a necessity to be able to accept what clients and potential clients have readily available.

Regarding the brightness issue. We are working with our manufacturer to correct the issues that we are having with brightness control during the evening times. My assumption to them is that recent power outages, intermittent low voltage and power spikes may have damaged key components to the hardware, which controls the brightness. They're assessing and working on it via remote control on their end to find a solution to fix our issues. For the time being the signs have been set down to 40 percent of it full brightness. I have attached a statement from the manufacturer regarding the work being done.

I thank you for your patience and understanding.

Regards,

  
Richard De Vera  
Cherry Enterprises, Inc.



To Whom It May Concern ,

This document is regarding the project attached to serial number #18037; a double-sided billboard located in Guam. At the moment the unit is experiencing issues with its brightness adjustment system which is causing it to be overly bright, even when it should be at its dimmest setting.

We understand that the sign being overly bright may cause some distraction to motorists around the sign's vicinity and can become an eyesore rather quickly, but please rest assured that we are working on a solution to your problem. We have our support team and engineers working on resolving the issue. We will be making sure that this issue gets resolved efficiently and as soon as possible.

We sincerely apologize for any inconvenience the sign may cause. If you have any questions, or further concerns, please feel free to get in contact with us, our information is below.

Thank you for your time.

Kindly,

Victor Carrasco

Technical Support Specialist

Victor@megasigninc.com

(888) 315-7446