



Eddie Baza Calvo
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Ray Tenorio
Lieutenant Governor

Commission Members

G. Pika Fejeran
Chairwoman

Joseph I. Cruz
Vice-Chairman

Amanda L.G. Santos
Commissioner

Pascual V.A. Sablan
Commissioner

(Vacant)
Commissioner

Michael J.B. Borja
Administrative Director

Rev. 03/17/2017

Chamorro Land Trust Commission

(Kumision Inangokkon Tano' Chamoru)

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COMMISSION MEETING MINUTES

Department of Land Management Conference Room
3rd. Floor, ITC Building, Tamuning
Thursday, September 20, 2018; 1:03 p.m. – 5:54 p.m.

I. CALL TO ORDER

Chairwoman Pika Fejeran: Calls the regular meeting of the Chamorro Land Trust Commission to order at 1:03 p.m.

II. ROLL CALL

Notation of Attendance

Present were: Chairwoman Pika Fejeran, Vice Chairman Joseph Cruz, Commissioner Amanda Santos, Commissioner Shawntel Techaira and Administrative Director Michael Borja.

Commissioner Austin Duenas not present and Assistant Attorney General Nicolas Toft will be present at 2:30 p.m. due to a prior meeting that required his presence.

After taking roll call, Chairwoman Pika Fejeran makes the decision to take some time to start with public comments and calls the first one on the list which is Juan Camacho.

Juan Camacho: States his name and the reason why he is present at the meeting is to see how far the CLTC has progressed as far as the issuance of leases. He also wanted to hear what others from the public have to say in hopes it is all relative to his concerns. Basically, he asked to allow the issued leases to continue.

Chairwoman Pika Fejeran: moves on to the next person on the public comment list, Gerald H. M. Johnson.

Gerald H. M. Johnson: states his name and his reason being present. He wants to know about his application status and how long will it take for him to be issued a property with a lease.

Chairwoman Pika Fejeran: in response to Gerald Johnson's issues, there is no exact time line. The commission is hoping to move forward as soon as they (referring to commission) can.

Chairwoman Pika Fejeran: calls the next person on the list for public comments which is Antonio Arriola.

Antonio Arriola: states he is present just to listen.

Chairwoman Pika Fejeran: calls Tom Tajalle, the next person on the list for public comments.

Tom Tajalle: states his name and says he is present in regards to his deceased father, Jose C. Tajalle. Informs the Commission he, Tom Tajalle and his siblings would like to transfer the lease to one of their siblings, which is Michael Tajalle.

Administrative Director Michael Borja: What is stated on the staff report is Jose C. Tajalle identified his son Joey Tajalle; however, Joey also has a CLTC property. The second beneficiary listed does not hold any CLTC property.

Tom Tajalle: in response to Administrative Director Michael Borja, states it was Michael Tajalle listed first as a beneficiary then his dad listed Joey Tajalle but because Joey has a CLTC property, again, states he and his siblings want Michael Tajalle to be the beneficiary to their dad's property.

Administrative Director Michael Borja: asks who is residing currently residing on the property.

Tom Tajalle: in response to the Administrative Director Borja's question, it is Michael Tajalle.

Administrative Director Michael Borja: informs Tom Tajalle, one of the concerns, is the property is 5 acre lease lot, and the full 5 acres are not being utilized for agriculture as it states. A site inspection has to be done.

Tom Tajalle: Acknowledges the concerns and inquires what needs to be done to keep the full five acres.

Administrative Director Michael Borja: Present a farm plan to the Commission but before that Michael Tajalle will need to come in to CLTC and we'll just have to check if all the property taxes are up to date and all the supporting documents are in order.

Chairwoman Pika Fejeran and the Commission determined that submitted beneficiary documents show designated beneficiary is deceased lessee's son, Michael Tajalle, and staff will conduct a site inspection and work with beneficiary for transfer of lease based on PL 23-38, Section 9.2.

Chairwoman Pika Fejeran: calls for Cheryl Gumabon, the next person on the list for Public Comments.

Cheryl Gumabon: states her name and inquires on her status with her Barrigada Heights lease. Informs the Commission, her lease was not transferred or switched with anyone and would like to continue to clear. She was in the process of clearing

her property, then when the Barrigada Heights Controversy, she was informed to stop.

Chairwoman Pika Fejeran: informs Cheryl Gumabon, Barrigada Heights will be discussed under New Business.

Chairwoman Pika Fejeran: for the next public comment on the list, Ricardo Cruz.

Ricardo Cruz: states his name and is following up on Agriculture Land for his daughter, Clarissa Cruz who requested for two acres for a pig farm. He is also following up his son, Craig Cruz who paid for a survey of a lot in the 10126 area. However, the tract has been re-schemed due to lot sizes that are not compatible with Guam Environmental Protection Agency septic tank requirements.

Land Agent I John Gumataotao and Land Administrator Margarita Borja: explains that the lots were re-schemed to accommodate those who were effected. The lots closer to the main road where there is sewer to connect to remain the same. The top layer lots were given a half acre to accommodate septic tanks.

[Discussion ensues]

Chairwoman Pika Fejeran: requests from the CLTC for a staff report to be done and informs Ricardo Cruz that the staff will look at the file and prepare a staff report for the next meeting. In regards to his daughter, Clarissa Cruz, suggested to come into the office and work with one of the land agents and possibly identify a property that will work for his daughter and work with legislation to get those two acres out.

Chairwoman Pika Fejeran: Next item on the agenda

APPROVAL OF MINUTES

Tabled for next meeting

Chairwoman Pika Fejeran: a few items to discuss on the agenda, however will wait until the Assistant Attorney General is present.

Administrative Director Michael Borja: suggest to move to **Guam Waterworks Authority: Right of Entry Agreement, Instr. No. 913067; Time Extension – Lot 5075-REM-A NEW-1, Tamuning**

Explains to the Commission the current Right of entry expires on January 31, 2019, but because of the current construction that GWA is in, GWA is requesting to utilize the property that is under CLTC to gain access for their construction equipment to pass through. GWA is also requesting to extend the Right of Entry to October 31, 2019.

Chairwoman Pika Fejeran: shares her concerns, in regards to granting the Right of Entry. It is a property that is for commercial use, should it be ready to lease for commercial, it may be holding CLTC back.

Administrative Director Michael Borja: agrees and was brought to the attention of GWA in the process of their (GWA) request.

[Discussion ensues]

Motion is APPROVED to issue a new Right of Entry expiring October 31, 2019, with the following conditions listed below.

- i. Fill quarry depression
- ii. Clear and grade full lot
- iii. Erect a cyclone fence along the perimeter of lot

Administrative Director Michael Borja: Moves to the next item on the agenda for information purposes. There are two newly introduced Bills.

Bill No. 336-34: UOG Hatchery Land Expansion

Administrative Director Michael Borja: As it states to correct the boundary property to the University of Guam. Basically the Hatchery was built, then they (UOG) encroached around their boundaries. With this Bill it says, you have to correct. Referring to the sketch, it is asking for more land that they really need with no compensation. The Hatchery is actually a business, it is not a school project, and suggested to recommend to in return to provide in kind services, such as the Extension Program for Agriculture. In the past, those services were provided, however, CLTC had to pay for those services.

Administrative Director Michael Borja: moves to the second bill.

Bill No. 342-34: Raceway Park Lease

Administrative Director Michael Borja: As you recall, the Guam Raceway Lease Park had expired. Legislation Bill says we (referring to CLTC) has the right to lease it out with the right to first refusal to the Guam Racing Federation.

The term of the lease can be fifty years, it doesn't really give any other provision to the lease terms.

Again, keep in mind the Guam Racing Federation has to be completely clean before we can give them anything. Right now they (referring to the Guam Racing Federation) is currently in arrears of \$16K.

Chairwoman Pika Fejeran: inquires, when did they stop paying.

Administrative Director Michael Borja: says, if they are given the right to first refusal, we should just be sure they are in good standing.

[Discussion ensues]

Administrative Director Michael Borja: informs the Commission, these two bills are just for your information.

Administrative Director Michael Borja: asks to move on to Nicole Kelly who is requesting to purchase a portion of Lot 5174-REM-1 adjacent to her property. While going through the process to purchase, Department of Public Works wanted to make sure there is no encroachment before they give the Occupancy Permit. Based on the strip of land (shown on the screen) it's a whole strip of land that is not being utilized. Ideally the right thing to do is have the home owners purchase a piece, but doing the research CLTC found that that strip of land is actually leased to one of the residents on the cliff. Because of that, it may require legislation to terminate the lease. What may have happened, is the individual with the CLTC lease wanted access to the cliff and by doing so, the individual requested to lease the property but now, it kind of puts restrictions on everyone else along the area.

Vice Chairman Joseph Cruz: suggests to use the strip as a safety buffer because of the cliff.

Administrative Director Michael Borja: that would only benefit the private land owners not the general public.

[Discussion ensues]

Administrative Director Michael Borja: When the Commission decides on how to go about the strip, it has to go through legislation to terminate the lease.

Chairwoman Pika Fejeran: Request for a staff report to be done and presented at the next meeting as well as invite the lessee to attend the meeting.

Miscellaneous Constituent Reports

Moving on to Anjolisha Aguon, Public Comment on previous meeting.

Assistant Attorney General David Highsmith provided a status update on the CLTC request for assistance to gain access to her property.

- i. Department of Agriculture Lessee, John Benevente, rights to leased land is questionable.
- ii. Still needs to confer with Department of Agriculture
- iii. Resolution may be to obtain a court order restraining order
- iv. Goal is to have a court filing date by October 2, 2018

Moving on to Juan Benevente, the issue is to transfer the lease to the beneficiary due to death and PL 23-38, Section 9.2.

- i. Motion APPROVED to designate Sean Franquez as the beneficiary and to transfer the lease to him subject to the following:

1. Consultation with GWA and GEPA on any land use restrictions due to proximity to active water wells.

Moving on to Tomas Lizama requesting to transfer lease to beneficiary due to death and PL 23-38, Section 9.2.

- i. Motion APPROVED to designate Anita Lizama as beneficiary and to transfer lease to her.

Chairwoman Pika Fejeran: acknowledges that Assistant Attorney General Nicolas Toft is present and that we (referring to the Commission) has jumped around the agenda.

Moving on to discussing a few items on the agenda that were on hold until the Assistant Attorney General Nicolas Toft is present.

OLD BUSINESS

Chairwoman Pika Fejeran: in the packets are resolutions to present to legislation. Based on the last meeting, there was a motion to move all the null and void leases. Throughout the resolution, you'll see that motion in all the different sections.

States the next motion to she would like to address are the 2, 877 voidable leases gives a brief history as far as how the motion was made at the last meeting held on September 6, 2018.

Chairwoman Pika Fejeran: asks Administrative Director Michael Borja if there was a motion drafted.

Administrative Director Michael Borja: referring back to his notes in response to Chairwoman Fejeran's question.

The First motion is to request the Guam Legislature to ratify the following leases

- i. 1995 Original Applicants with Leases
- ii. Transferred Only Leases
- iii. 1996 and After Applicants with Leases
- iv. All APPROVED by unanimous vote.

The second motion is to request the Guam Legislature to ratify Switched Leases

Chairwoman Pika Fejeran: Going as far back as the Chamorro Act itself and revisit the (referring to the list to ratify) holistically, it is something the commission can act on and not take to the legislature.

The application of the act of the Rules and Regulation will still allow the commission to decide, therefore, they (CLTC Commission) will not be sending all those lease to the legislature.

Chairwoman Pika Fejeran states Vice Chariman Joseph Cruz mentions if CLTC Commission is to ratify voidable leases, we (Commission) must focus on the internal

procedures such as the rules and policies; to ensure moving forward and leases are being issued out they are done in accordance of the law and in a fair and equitable manner.

Administrative Director Michael Borja: states you must change the law before you change policies and that is what is prepared and listed on this (referring to the resolution) that is to be presented to the Legislature.

[Discussion ensues]

Chairwoman Pika Fejeran: refers to Assistant Attorney General Nicolas Toft for his opinion as far as what the Commission can do to make a move to rescind the motions.

Assistant Attorney General Nicolas Toft: advises the Commission it is a risky move and to pick the most legally safest route and not the route that is going to satisfy everyone. Unfortunately, it's something that no one may want to hear but it's the best route and the safest route to take as is and bring it to the legislature. What we as a whole don't want to see is later in the future, it comes back to us and we'll be in the same situation if not worse. Again, the safest route to take is to bring it to the legislature.

Chairwoman Pika Fejeran: what we are discussing is 5.7 that gives the directive, believes the leases that are voidable, the ratification, the commission has the authority to ratify because those lease that are voidable did not deprive any one from waiting.

Assistant Attorney General Nicolas Toft: That is the same thing as the line switching, it doesn't deprive anyone from the line. But if you (referring to the commission) looked at it and said it was void because there is no language in the law for it.

As the Rules and Regs stand, the language of it is hampering the ability to do anything. And that is why I say to bring to the legislature.

Administrative Director Michael Borja: states the language used is "shall" not "may" that is the difference. The work "shall" has no discretion, and the word "may" gives discretion.

Chairwoman Pika Fejeran: states she has been forwarded from an Attorney Friend of hers, Case Law about Directory verses Statutory Mandatory Provision and that 5.7 is a Directory and not a Statutory Mandatory Provision. Also believes the best way to protect those leases is with the Commission and not to push it to the legislature and leave it up to the political process.

Administrative Director Michael Borja: Asks Chairwoman Fejeran what risks.

Chairwoman Pika Fejeran: states it's the political process and has seen cases presented to the legislature that doesn't go through.

Administrative Director Michael Borja: states he would have to side with our (DLM/CLTC) Legal Counsel who is not only a Legal Council but is the staff of the Attorney General who is the Legal Officer of Guam, unless someone is willing to write a statement challenging what we (referring to CLTC) could do and gives caution to the commission on moving forward to rescind the motions.

[Discussion ensues]

After intense discussion and back and forth justifications for decisions to take to 2,877 leases to the legislature and justifications to leave it in the hands of the Chamorro Land Trust Commission a motion was made on the following:

Ratification of Leases

- a. Motion APPROVED by unanimous vote to the extent of its authority, the CLTC Board of Commissioners ratify the 2,877 voidable leases listed as:
 - i. 1995 Original Applicants with Leases
 - ii. Transferred Only Leases
 - iii. 1996 and After Applicants with Leases
- b. Motion APPROVED by unanimous vote to Request the Guam Legislature to acknowledge and confirm the CLTC ratification of leases of the 2,877 voidable leases listed as:
 - i. 1995 Original Applicants with Leases
 - ii. Transferred Only Leases
 - iii. 1996 and After Applicants with Leases

Moving on to Barrigada Heights, the Barrigada Heights leases were reviewed by the date of the applications and the date of the leases. It was found that matters were consistent with all other issued leases and that during the most recent lease issuance period, no applications were beyond the December 1995, unless permitted by PL 23-38. These leases were included in the 2,877 ratified leases.

Commission Pika Fejeran: ask Commissioners for any comments

Commissioners: none at this time

Next Meeting: October 2, 2018, Tuesday at 1:00PM

Adjournment: 5:54 p.m.

