Street Address:
590 S. Marine Corps Drive
Suite 733 ITC Building
Tamuning, GU 96913

Mailing Address:
P.O. Box 2950
Hagåtña, GU 96932

GLUC COMMISSIONERS

VACANT
CHAIRMAN

TAE S. OH
ACTING CHAIRMAN

CONCHITA D. BATHAN
COMMISSIONER

HARDY T.I. VY
COMMISSIONER

VACANT
COMMISSIONER

MICHAEL J.B. BORJA
EXECUTIVE SECRETARY

NICOLAS E. TOFT
Legal Counsel

Telephone:
671-649-5386
671-649-5263 ext 375

Facsimile:
671-649-5383

GUAM LAND USE COMMISSION
GUAM SEASHORE PROTECTION COMMISSION

October 9, 2018

2018 NOV 16 PM 4:42

To: Office of the Acting Speaker of the Guam Legislature
Guam Congress Building
Hagatna, GU

From: Planning Division
Department of Land Management

Hafa Adai:

Pursuant to 5 GCA Chapter 8, Section 8113.1, submitted herewith for your perusal are the Minutes from the last GLUC hearings of

1. Guam-Hybrid Land Use Commission; Thursday, August 23, 2018

Please call our office at 649-5263, extension 375 if you have any questions and/or require additional information.

Thank you.

Cristina
649-5263 x375

2568

Vice Speaker Therese M. Terlaje
34GL-18-2568
NOV 16 2018
Time: 1455
Received by:

GOVERNMENT OF GUAM – Department of Land Management
Office of the Recorder

File for Record is Instrument Number 927152

on the Year 20 18 Month 10 Day 02 Time 1:24

Recording Fee DE-OFFICIO Receipt No. _____

Deputy Recorder: Jane Yamasaki
JANE T. YAMASAKI

Above Space for Recorder's Use only

COPY
Signature

GUAM-HYBRID LAND USE COMMISSION REGULAR MEETING MINUTES

Department of Land Management Conference Room
ITC Building, Tamuning

Thursday, August 23, 2018
1:42 p.m. to 2:47 p.m.

GUAM/HYBRID LAND USE COMMISSION REGULAR MEETING
Department of Land Management Conference Room
3rd Floor, ITC Building, Tamuning, Guam
Thursday, August 23, 2018

GLUC MEMBERS PRESENT:

Mr. John Z. Arroyo, Chairman
Mr. Tae S. Oh, Vice Chairman
Mr. Victor F. Cruz, Commissioner
Ms. Hardy I.T. Vy, Commissioner

Excused: Ms. Conchita D. Bathan, Commissioner

HYBRID MEMBERS PRESENT:
Ms. Louise Rivera, Mayor of Tamuning-Tumon-Harmon
Ms. Melissa Savares, Mayor of Dededo
Mr. Allan Ungacta, Mayor of Mangilao

STAFF PRESENT:
Mr. Nicolas Toft, Legal Counsel
Mr. Marvin Aguilar, Guam Chief Planner
Mr. Penmer Gulac, Case Planner
Ms. Celine Cruz, Case Planner
Ms. Cristina Gutierrez, Recording Secretary

Excused: Mr. Michael Borja, Executive Secretary

GLUC/HYBRID 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, August 23, 2018

Time of Meeting:

GLUC:	3:10pm
HYBRID:	2:42 pm

[X] GLUC	[X] HLUC
[X] Regular	[X] Regular
[ ] Special	[ ] Special
[✓] Quorum	[✓] Quorum
[ ] No-Quorum	[ ] No-Quorum

COMMISSION MEMBERS	SIGNATURE
Chairman John Z. Arroyo	
Vice Chairman Tae S. Oh	
Commissioner Conchita D. Bathan	EXCUSED
Commissioner Victor F. Cruz	
Commissioner Hardy T.I. Vy	

HYBRID COMMISSION: Kevin Yang, Application No. 2017-04 (MCoG DLM 2018-06)

Mayor Rudy Matanane, Yigo	
Mayor Allan Ungacta, Mangilao	
Mayor Melissa Savares, Dededo	
Mayor Louise Rivera, Tamuning-Tumon-Harmon	
Michael J.B. Borja, Executive Secretary	EXCUSED
Nicolas E. Toft, Legal Counsel (OAG)	
Marvin Q. Aguilar, Chief Planner	
Frank Taitano, Planner IV	
Penmer Gulac, Planner IV	PRESENT
Celine Cruz, Planner IV	PRESENT
M. Grace Vergara, Planner II	
M. Cristina Gutierrez, M	

ADJOURNMENT: GLUC: 4:30pm HLUC: 2:47P

GLUC Form 19 - GLUC Commission Attendance Sheet

GUAM LAND USE COMMISSION
GUAM SEASHORE PROTECTION COMMISSION
Speaker's Sign-In Record
Location: Department of Land Management Conference Room
590 S. Marine Corps Drive, Third Floor, ITC Building, Tamuning

[X]	GLUC	[X]	Regular	Date:	THURSDAY, AUGUST 23, 2018
[✓]	HLUC	[ ]	Special	Time:	1:42 pm / 3:00 pm
[✓]	Quorum	[ ]	No Quorum	Adjournment:	2:47 pm / 4:30 pm

(THIS RECORD WILL BE USED IN THE TRANSCRIPTION OF THE GLUC/GSPC MINUTES. PLEASE PROVIDE YOUR FULL NAME AND WHO YOU REPRESENT, I.E., ITEM ON AGENDA.)

PLEASE PRINT NAME CLEARLY	APPLICATION NAME AND/OR NUMBER	Telephone No.
Mary Cat. Ellis		482 5315
Danny Natividad		888 2324
Christine Duenas		687 1709
Kevin Yang		688-737
Dan Iwasaki	7160 Family Plaza	688-8025
	* ——— *	
	Nothing follows	

GLUC Form 20 - GLUC Speaker Log Record Form - APRIL 2010

GUAM LAND USE COMMISSION
GUAM SEASHORE PROTECTION COMMISSION
Public Attendance Record
Location: Department of Land Management Conference Room
590 S. Marine Corps Drive, Third Floor, ITC Building, Tamuning

X	GLUC	X	Regular	Date:	THURSDAY, AUGUST 23, 2018
X	HLUC		Special	Time:	1:42pm / 3:00pm
✓	Quorum	✓	No Quorum	Adjournment:	2:47pm / 4:30pm

PLEASE PRINT NAME CLEARLY	APPLICATION NAME AND/OR NUMBER	Telephone No.
Christina Borja		487-1200
	— NOTHING FOLLOWS —	

GLUC Form 21 - GLUC Public Attendance Record Form - APRIL 2010

GUAM-HYBRID LAND USE COMMISSION

Chairman John Z. Arroyo
Vice Chairman Tae S. Oh
Commissioner Conchita D. Bathan

Commissioner Victor F. Cruz
Commissioner Hardy T.I. Vy

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

AGENDA

Regular Meeting

Thursday, August 23, 2018

Department of Land Management Conference Room
590 S. Marine Corps Drive, 3rd Floor, ITC Building, Tamuning
[As advertised in the Guam Daily Post on August 16th and August 21st, 2018]

I. Notation of Attendance [ ] Quorum [ ] No Quorum

II. Approval of Minutes

- GLUC Regular Meeting of Thursday, May 24, 2018

III. Old or Unfinished Business [None]

IV. New Business

Zone Change

A. **Application No. 2017-04**, Applicant, Kevin J. Yang represented by Daniel D. Swavely; Zone Change request from "A" (Rural/Agricultural) to "C" (Commercial) zone, on Lot 7, Tract 10417, in the Municipality of Yigo. **[MCoG DLM 2018-06]**
Case Planner: Celine Cruz

V. Administrative & Miscellaneous Matters

VI. Adjournment

GUAM-HYBRID LAND USE COMMISSION REGULAR MEETING MINUTES
Department of Land Management Conference Room, 3rd Floor, ITC Bldg., Tamuning
Thursday, August 23, 2018 • 1:42 p.m. to 2:47 p.m.
[As advertised in the Guam Daily Post on August 16th and August 21st, 2018]

I. Notation of Attendance

Chairman Arroyo called the regular meeting of the Guam-Hybrid Commission for Thursday, August 23, 2018 to order at 1:42 p.m., noting a quorum.

Present were: Chairman John Arroyo, Vice Chairman Tae Oh, Commissioner Victor Cruz, Commissioner Hardy Vy, Mayor Louise Rivera, Mayor Melissa Savares, Mayor Allan Ungacta, Legal Counsel Nick Toft, Guam Chief Planner Marvin Aguilar, Planning Staff Celine Cruz and Recording Secretary Cristina Gutierrez.

II. Approval of Minutes

Chairman Arroyo before the Commission is the GLUC-Hybrid Minutes from May 24, 2018. Commissioners have had the opportunity to review the Minutes, Chairman Arroyo requested for a motion.

Commissioner Vy made a motion to approve the GLUC-Hybrid Minutes of May 24, 2018.

Commissioner Cruz seconds the motion.

Chairman Arroyo motion made by Commissioner Vy, seconded by Commissioner Cruz. No discussion noted, Chairman Arroyo puts the motion to a vote.

All in favor of the motion to approve say "aye" [Chairman Arroyo, Commissioner Vy, Commissioner Cruz, Mayor Savares, and Mayor Rivera], opposed say "nay."

[Motion passed; 6 ayes, 0 nay]

III. Old Business [None]

IV. New Business

Zone Change

A. **Application No. 2017-04**, Applicant, Kevin J. Yang represented by Daniel D. Swavely; Zone Change request from "A" (Rural/Agricultural) to "LC" (Limited Commercial) zone, on Lot 7, Tract 10417, in the Municipality of Yigo. [MCoG DLM 2018-06]
Case Planner: Celine Cruz

Celine Cruz reads staff report to include purpose, facts, public hearing results, staff analysis/discussion, and recommendation. [For full content/context, please see attached report]

[Attachment A – August 14, 2018]

[Chairman Arroyo acknowledges the arrival of Mayor Allan Ungacta, Mangilao]

Chairman Arroyo read for the record, a letter received from Maureen N. Maratita, a resident of Perez Acres who is in support of the project. [For full content/context, please see attached Exhibit 1]

Questions of the staff.

Commissioner Cruz in the staff analysis it states 890 employees; Commissioner Cruz asked if this number was for the private sector.

Celine Cruz Mr. Swavely cites in the original application that it is a Department of Labor statistics and believes that it is all in one.

Chairman Arroyo (no additional questions noted from the Board) Chairman Arroyo noted that several letters of opposition was received for this project; however, one in particular that was received from the last meeting was from Robert Klitzkie. Because of this letter, the Commission had to have the applicant re-submit the application because of questions with respect to the mailing of notices to all property owners within the 500-foot area received the notice. Chief Planner, was this done.

Marvin Aguilar (Guam Chief Planner) responded "yes sir."

Chairman Arroyo the other issue was with respect to whether or not the applicant of record which is Kevin J. Yang is eligible to submit an application when he is not the owner of the property. In Mr. Klitzkie's follow up letter he mentions a discussion between Commissioner Cruz and Legal Counsel regarding who is eligible to submit an application.

Chairman Arroyo states that Mr. Klitzkie cites Section 61631, and clarification was needed to identify the owner of the property and who is the applicant.

Marvin Aguilar the owner of the property is Ysengsong Inc. In the second supplement submitted by the applicant's representative, there is action by the Corporation to elect Mr. Kevin Yang as their duly authorized representative.

Chairman Arroyo asked Legal Counsel Nick Toft if he had confirmed that this was the actual law.

Nick Toft (Legal Counsel) confirmed that the section noted was the actual law.

Chairman Arroyo if Mr. Yang is authorized by the owner, the law says that it has to be the property owner or somebody that is leasing the property. Is Mr. Yang leasing the property from the legal owner.

Celine Cruz no; however, part of the supplement is a Waiver of Notice of consent by the Board of Directors on behalf of Ysengsong of which Mr. Yang is the Secretary of Ysengsong.

Chairman Arroyo was unsure if this satisfies the complaint.

Nick Toft his thought on this is that Mr. Kevin Yang is an authorized representative of the Corporation. The way he would approach it is to have a vote by the Board to see if they believe that this satisfies 61631 as far as whether Mr. Yang fulfills that requirement. The way to approach this is that the Board should discuss the matter, and whether or not they accept that the applicant

qualifies under 61631. If this will go through any type of litigation the Court will look to the Board to see whether this was discussed or not, analyzed and if the Board actually made a decision on it.

Chairman Arroyo has this ever come up before, this situation.

Marvin Aguilar it has happened; best way to approach this is to read the definition of ownership under Chapter 60.

Mayor Louise Rivera recalls the Meskla on the Cove situation where they were not the owners of the property. That went to the Supreme Court where they were not able to change the zone to commercial, and that is the reason why the business is no longer at this location.

Chairman Arroyo was that situation similar to this case.

Marvin Aguilar it was defined under a split-zone (that is how the zone changed occurred) under a split-zone which has specific requirements on which the Court cited for split-zones. In this case, Meskla was not the owner, but the lessee of the property. This was for a split-zone and this application is for a change of zone which is totally different.

[Lengthy discussion ensues]

Chairman Arroyo the whole issue is that we don't want someone arbitrarily coming in and requesting for a zone change who has no interest in the property. However, in this particular case Mr. Yang is authorized to represent the company, and did not believe that Mr. Yang was doing anything that the company is not aware of. Is Mr. Yang before the Commission today.

Kevin Yang responds to Chairman Arroyo that together with his wife they are 99.9 percent owners of Ysengsong Inc. which is the owner of the property.

Chairman Arroyo why did you not have your company put their name on the application.

Kevin Yang explained that when the property was first purchased it was under Mr. Yang's name; however, since the property was going to be developed into a commercial center he felt it was best to form a corporation and transfer the title of the property under the corporation. This happened after the application was submitted to the Department of Land Management. A supplemental application was submitted explaining this transaction.

Chairman Arroyo was the property owned by the corporation when the application was submitted.

Kevin Yang at that time, it was owned by the applicant.

Chairman Arroyo did Mr. Yang own any portion of that land.

Kevin Yang identifies himself as the owner of the property.

Chairman Arroyo at the time the application was submitted you owned the property.

Kevin Yang yes, under his personal name.

Chairman Arroyo asked of the members if they were comfortable with Mr. Yang's explanation on the ownership to which the Board stated they had no objections.

Vice Chairman Oh is there a rule in place that states that the application's name has to be Ysengsong.

Nick Toft not that he has seen. In the previous split-zone case that was discussed, the lessees where not considered owners of the property versus under Section 61631, it explicitly says that both lessees and owner, and did not know whether this has any bearings on this case. There is nothing that would prevent the Board at this time on deciding that Mr. Yang would qualify as the owner.

Chairman Arroyo Mr. Yang was asked to produce some sort of documentation that shows that he and his wife were the owners of the property at the time the application was submitted as proof of record, and to submit to the Case Planner.

Vice Chairman Oh was not understanding the whole argument behind Mr. Klitzkie's written statement.

Nick Toft explained that it was kind of a distinction without a difference sort of situation. He assumed that Mr. Klitzkie knew that Mr. Yang was part of the Corporation of Ysengsong Inc.

[Discussion ensues]

Vice Chairman Oh states that he did not see an issue.

Commissioner Cruz inquires if the Deeds are included in the application.

Celine Cruz in the original application it does. It is part of the original application that was submitted. Ms. Cruz explains that these applications take some time to develop. At the initial time when Mr. Yang was discussing this with Mr. Swavely it was under his name. Ms. Cruz added that the Commission has acted on applications where it starts off as the applicant as one name but by the end of the application process it's a different owner just because of time passing. We knew that this was not a show-stopper for the application because it could be verified through documentation. In the original application and all the supplements submitted there is information to support this.

Chairman Arroyo believed that the Commission was okay in proceeding with this application. [All agreed] There were no additional questions of staff, Chairman Arroyo asked for the applicant and his consultant to present the application.

Dan Swavely (with Kevin Yang) presented the application which is almost two years old. This is a major application with three supplementals; this is the second GLUC public hearing; there was two village public hearings; one private meeting with Perez Acres' residents; and something meaningful transpired at each one the events.

- Although Mayor Matanane is not present at today's meeting, his letter of support is included in the original application.
- Two years ago, Mr. Swavely met with George Gogue who was the President at that time of the Perez Acres Homeowners Association. The project was discussed but no application had been submitted, and it looked good to him;

- Met with Mayor Matanane and stated what he would like to see what the village needs;
- A month later, a pre-application was submitted to Land Management.
- Two months later, received direction from Planning Division to make corrections, and submitted the final copies (the final application) and this happened in January 2017;
- Received on 12/6/2016 letter of support from the Yigo Mayor.
- February 2017 the application went before the Application Review Committee for review. Position statements received, no objections.
- It took nine months to do the research for properties within 500-feet.
- The public hearing was tentatively scheduled in November, Mr. Swavely and Mr. Yang met with residents of Perez Acres and presented the project. It was a good meeting, and some of the suggestions from the residents included exterior lighting, 24-7 security, landscaping, provide exterior lighting to which was agreed upon. In addition, they requested for a second egress/ingress from Yigo Family Plaza. Mr. Swavely continues to explain location of the additional egress/ingress into the property.
- First public hearing was conducted on November 1, 2017. Turn out was good. Community asked that they continue to work on an interconnection between McDonald's and Yigo Towne Center and Yigo Family Plaza so that there could be parking lots that could connect. An open area was provided along each of those adjacent properties where a drive-thru can be placed.
- December 14th, 2017 the application went before the GLUC for the first time. At this hearing it changed the application process "forever more." A 500-foot radius has to be done around the perimeter of the property, identify the owner, addresses and send a USPS certified letter informing the owner of a public hearing.
- When the 500-foot arc goes through a subdivision that has a homeowner's association, Planning Division sends out a letter within that arc and sends the same letter to the HOA for all other residents. It was brought up by Bob Klitzkie that when there is a HOA and there are common areas within that 500-feet, residents of Perez Acres own 1/200th of that common area; and therefore, they should be given a certified letter. This was confirmed by DLM's Legal Counsel and agreed. Second research was done and a second public hearing was scheduled.
- At this GLUC meeting, it was suggested that the zone change go from commercial to limited commercial to which was done. They are prohibited from bars, gambling, night clubs, strip clubs, massage parlors ...
- Prior to the second public hearing, Mr. Swavely then approached the Perez Acres HOA and advised them of the changes made to the application, and suggested another meeting with the residents be scheduled but no response received.
- Second public hearing done and about the same number of concerns was received. What was shown at the public hearing was the revised site plan.
- Supplemental Application number three was submitted, and in it everything that was discussed was included in the application; and, it had the revised site plan. Mr. Swavely stated that the buildings had to be reconfigured and layouts and lost 5,000 square feet of gross leasable areas dues to the reconfigurations done. It went from 25,000 square foot plaza to 20,000 square foot plaza.
- Discussions continued with the Yigo Towne Center and McDonald's on the interconnection.
- Explains that due to high construction costs, the cost to construct this plaza now exceeds three-million dollars and this is the reason for this application is now before the Hybrid Commission

Summarizing his presentation, Mr. Swavely states that they have been in this process for about two years. At the end of the day they have a better project and planning has to be a dynamic process. A developer must work with his neighbors, listen and respond to the needs. What they are looking for is consensus which is the objective of community planning. Mr. Swavely asked that the members look into all the meetings, processes, requests and concerns and responses in writing, to prove positive that consensus does exist for this rezoning application and asked for support in voting in favor of approving the request for limited commercial zone change.

Chairman Arroyo noting no comments and/or questions for the applicant, Chairman Arroyo opened the floor for public comments.

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

Chairman Arroyo any additional comments ---

Kevin Yang (Applicant) comments that Mr. Swavely has covered everything, and thanked the Commission members for their time and effort. Mr. Yang is committed to working with the community to make this project a success. It is a much-needed commercial center and it will help the residents of Yigo and Dededo.

Chairman Arroyo thanks both Mr. Swavely and Mr. Yang for reaching out to the community and trying to find a common point; and they have gone out of their way to work with the community.

There was no additional discussion on the application, Chairman Arroyo was ready to entertain a motion.

Vice Chairman Oh wanted to go back to the opposition that was presented by Mr. Robert Klitzkie. First concern was on who the legal owner of the property was which was rectified.

For the record, Vice Chairman wanted to ensure that all issues were ironed out before going for a vote. The other issue was on the mailing of certified letters to all homeowners of Perez Acres, and asked if there were more residents present at the public hearing, and asked if there were any major concerns.

Dan Swavely there more than the first public hearing, and same concerns were brought up.

Celine Cruz most questions were directed towards the GLUC, the government and what the government was going to do about the existing conditions in the area.

Vice Chairman Oh asked Mr. Swavely if he was aware of any traffic plans and/or upgrades within Chalan LaJuna.

Dan Swavely responded that he was aware that there are none at this time.

[Discussion ensues on the improvement of Chalan LaJuna]

Mayor Melissa Savares (Dededo) comments that as far development is concerned, and she believes that moving services closer to where the people are, in their neighborhoods, is more appreciated once commercial services are closer to them.

Chairman Arroyo for the record, confirmed that the application is not a Zone Change from "A" to "C", but will be a change in zone to Limited Commercial zone. There was no further discussion, Chairman Arroyo was ready to entertain a motion.

Mayor Savares makes a motion to approve from agriculture to limited commercial for Lot 7, Tract 10417, in the municipality of Yigo.

Mayor Ungacta (Mangilao) seconds the motion.

Chairman Arroyo there is a motion on the floor to approve the application from "A" to "Limited Commercial" and it has been seconded by Mayor Allan Ungacta. Any discussion.

Vice Chairman Oh amended the motion to include limited activities; the amendment to the motion is to change the zoning to Limited Commercial zone that prohibits the following activities:

A. Bars;
B. Night Clubs;
C. Any type of gambling activities;
D. Strip clubs;
E. Massage parlors;
F. Adult shops; and,
G. Game rooms

Chairman Arroyo there is an amended motion on the floor; can I get a second on the amended motion.

Commissioner Cruz seconds the motion.

Chairman Arroyo seconded by Commissioner Cruz. No discussion on the amended motion, Chairman Arroyo put the amendment motion to a vote; all in favor of the motion say "aye" **[Chairman Arroyo, Vice Chairman Oh, Commissioner Cruz, Commissioner Vy, Mayor Savares, Mayor Ungacta and Mayor Rivera],** all opposed say "nay." **[Amended motion passed; 7 ayes, 0 nay]**

Chairman Arroyo on the main motion; any further discussion [None noted]. All in favor of the motion say "aye" **[Chairman Arroyo, Vice Chairman Oh, Commissioner Vy, Commissioner Cruz, Mayor Savares, Mayor Ungacta and Mayor Rivera]**, all opposed say "nay."

[Main motion passed; 7 ayes, 0 nay]

V. Administrative and Miscellaneous Matters [None]

Chairman Arroyo noting no additional business for discussion for this hybrid meeting, Chairman Arroyo was ready to entertain a motion for adjournment.

VI. Adjournment

Mayor Savares motions to adjourn today's meeting, seconded by Vice Chairman Oh; with all in favor.

The regular meeting of the Guam-Hybrid Land Use Commission for Thursday, August 23, 2018 was adjourned at 2:47 p.m.

Approved by:

Tae S. Oh, Vice Chairman
Guam Land Use Commission

Date approved:

Sept. 27, 2018

Transcribed by:

M. Cristina Gutierrez, Recording Secretary
DLM, Planning Division

RECORDING SECRETARY'S NOTE: On September 4, 2018, Executive Secretary Michael Borja received correspondence from Senator Tom Ada's Office in reference to the expiration of Chairman John Arroyo and Commissioner Victor Cruz GLUC terms. [Please see attached]

As stated in Senator Ada's letter, the terms of both Chairman Arroyo and Commissioner Cruz expired as of July 17, 2018; and therefore, the votes of Chairman Arroyo and Commissioner Cruz for Application No. 2017-04 is considered void.

However, note that a quorum of the Guam-Hybrid Commission consists of five (5) members; and therefore, with the votes from the remaining Commissioners, Application No. 2017-04 was passed with a vote of 5 ayes [Vice Chairman Oh, Commissioner Hardy Vy, Mayor Melissa Savares, Commissioner Allan Ungacta, and Mayor Louise Rivera]; 5 ayes, 0 nay.

Sen. Thomas Ada
Chairman
Committee on Environment, Land, Agriculture, and Procurement Reform
I Mina'Trentai Kuåtro Na Liheslaturan Guåhan • 34th Guam Legislature

September 4, 2018

To: Michael Borja
Executive Secretary
Guam Land Use Commission

Subject: **Guam Land Use Commission Expiration of Chairman Arroyo and Commissioner Cruz**

Hafa Adai Executive Secretary Borja,

The Committee on Land has found that the term of Chairperson John Arroyo and Commissioner Victor Cruz expired on July 17, 2018 inclusive of the extension periods. The Committee finds that the Guam Land Use Commission meeting held on August 23, 2018, did not meet quorum, due to the expiration of Chairperson Arroyo and Commissioner Cruz. Per GCA, § 60401 Quorum shall require the presence of three (3) members.

Thank you for your attention on this matter. If you may have any questions, please feel free to contact my office at 473-3301

Senseramente,

Thomas C. Ada

Ada Plaza Center, Suite 207 • 173 Aspinall Ave. • Hagåtña, Guam 96910
(671) 473-3301 • Office@SenatorAda.org • www.SenatorAda.org

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Website:
http://dlm.guam.gov

E-mail Address:
dlmdir@land.guam.gov

Telephone:
671-649-LAND (5263)

Facsimile:
671-649-5383

ATTACHMENT A

DIPÅTTAMENTON MINANEHAN TÅNO'
(Department of Land Management)
GUBETNAMENTON GUÅHAN
(Government of Guam)

EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

MICHAEL J.B. BORJA
Director

DAVID V. CAMACHO
Deputy Director

August 14, 2018

MEMORANDUM

TO: Chairman, Guam Land Use Commission

FROM: Guam Chief Planner

SUBJECT: **Supplementary Staff Report** - Application No. 2017-04, Zone Change from "A" (Agricultural/Rural) to "C" (Commercial) Zone on Lot 7, Tract 10417 in the Municipality of Yigo

1. PURPOSE:

A. Application Summary: The Applicant, Kevin J. Yang, represented by Daniel D. Swavely, request for a zone change from "A" (Agricultural/Rural) Zone to "LC" (Limited Commercial) Zone, for the proposed Yigo Family Plaza, on Lot 7, Tract 10417, in the Municipality of Yigo, under Application No. 2017-04.

B. Legal Authority: Sections 61630 to 61638 of Chapter 61 (Zoning Law), Title 21, GCA (Real Property).

2. FACTS:

A. Location: The project site is located about three hundred fifty feet in from Route 1 in Yigo along Chalan Lujuna, a sixty feet wide Public Access and Utility Easement.

B. Lot Area: The lot area is 3.14 Acres or 12,714 Square Meters or 136,656 Square Feet.

C. Present Zoning: The subject lot is split zoned; "A" (Agricultural/Rural) Zone and "C" (Commercial) zone.

D. Field Description: The lot is undeveloped with heavy vegetation.

E. Masterplan: Residential – Medium High

F. Community Design Plan: Urban Residential – Low Density

G. Previous Commission Action: None

3. APPLICATION CHRONOLOGICAL FACTS:

A. Date Application Accepted: November 28, 2016

B. Date Heard By ARC: February 2, 2017

C. Public Hearing Results: A public hearing was held on June 20, 2018 at 6:05 PM at the Yigo Senior Center. Present were planning staff, the applicant and his representative Mr. Dan Swavely, and about twelve concerned citizens.

Mr. Swavely explained how the project has evolved since the acceptance of the application in late 2016. Supplemental information has been provided as a result of public concerns and coordination with the Application Review Committee (ARC) members. As of the date of the public hearing, there were 2 Supplemental Applications submitted in response to the concerns raised. Key changes to the project include ingress and egress to the lot will not be from Chalan Lajuna, instead, Lot 13-R/W, Tract 10417 will be partially developed to provide access to the proposed commercial complex. The request is now for a "Limited Commercial" zone. Also, there has been correspondence made with the Department of Public Works and their consultation to request a new traffic signal at the entrance to Perez Acres, increasing the length of time for the left turn signal from Chalan Lajana to Route 1 and general road improvements to Chalan Lajuna.

The public were concerned about the present conditions of traffic in the area and what the potential impacts of locating a commercial complex on the subject lot would mean to the residents who live on Chalan Lajuna.

The meeting was closed at 7:03 PM; full public hearing results are included as **Attachment 1**.

4. STAFF ANALYSIS: As proposed by this application, the request is to change the existing split zone of "A" (Agricultural/Rural) zone and "C" (Commercial) zone to a full "LC" (limited Commercial) zone for a proposed commercial complex.

Compatibility with existing uses. The applicant provided a feasibility study which draws attention to market demands. The project site is adjacent to other commercial activities, to which customer traffic is already attracted, and only one lot away from Marine Corps Drive. Additional traffic is generated along Chalan Lajuna which serves nearby residences for crossover traffic between Route 1 and Route 15.

With an emphasis on neighborhood-friendly businesses, the mall can appeal to a variety of small stores, shops and restaurants on which most families rely. The goal for tenant selection will be a mix of products and services that are most commonly needed by both nearby residents as well as commuters. Because of the above, the applicant submits that this zone change from "A" to "LC" is compatible with adjacent and neighborhood developments as they exist.

Title 21 GCA, Chapter 61, Section 61630 cites the Commission may, with the approval of the Governor, change the zones established under this chapter whenever it finds that the **public necessity, convenience and general welfare** justifies this action. To assist the Commission on its assessment of the request, the applicants provide their perspective on how such criteria is met and planning staff concludes their finding on such response.

Public Necessity and Convenience: The applicant submits there is demonstrated **necessity** since Yigo is Guam's second most populous municipality, and has the third highest number of housing units of all municipalities which continuing to attract new families and more residential

development. Nonetheless, commercial development in Yigo does not match its residential growth. The applicant sites that in 2012, of the 2,246 business establishments on Guam, only 75 of those businesses are located in Yigo. Similarly, in the same timeframe (2012), of 60,950 employees on Guam, only 890 worked in Yigo.

The applicant feels **public convenience** is enhanced by locating such facilities in closer proximity to this area nearby Route 1, where a sizeable population of neighborhood residents are presently located. Un-needed travel far away for retail items and services will be reduced if not eliminated significantly, thus saving on energy, fuel costs, and minimizing resident inconvenience and stress.

General Welfare: general welfare is elevated because there will be new community responsive facilities to provide much needed neighborhood and similar commercial services. Furthermore, the applicant submits that there are increased employment opportunities; as well as tax generating revenue economic activities which all contribute to the general welfare of the community.

5. **CONCLUSION:** We submit that in areas which have the potential to become densely populated, we must anticipate related uses/activities to support such growth. Retail stores and personal service shops have become integral components of growing communities. By granting the zone change, it will not be materially detrimental to the public welfare, in fact, it will improve public welfare by affording a convenience retail outlet and other neighborhood services for the public and most especially the residents of Yigo. The requested change of zoning to "LC" (Limited Commercial) ensures that the commercial establishments proposed for the Yigo Family Plaza directly support the community already existing and any future residential developments in Yigo.

   We have reviewed the Master Plan and the Community Design Plan for the area which is designated as Residential. An urban-residential design considers the growth of the community to become densely populated and anticipates related uses/activities to conveniently support growth. Related uses/activities such as the proposed mall, support growth of the community and in this respect, we feel such use will not be contrary to the Plans' objectives. In addition, future land use plans such as the North and Central Guam Land Use Plan designate this area as Mixed Use. The mixed-uses category primarily focuses on larger commercial centers and corridors, including commercial uses that require large sites and draw customers from throughout the island.

   To date, three supplement applications have been received as the applicant's response to comments, conditions and concerns brought forth by the public and the ARC members. The application has evolved from its original submission in response to the concerns at the public hearing and recommendations and conditions as stated in ARC Official Position Statements.

   Based on the above preceding discussions, we find the criteria for the grant of zone change is justified. ARC agencies who officially responded have "no objections" as reflected in their position statements. We find within the context of the application, justification that public necessity, convenience and general welfare supports a positive action of the zone change request.

6. **RECOMMENDATION:** Based on the above, Planning Staff recommends **APPROVAL WITH CONDITIONS** as follows:

   That the applicant adheres to ARC conditions as stated in their official position statements.

Marvin Q. Aguilar
Guam Chief Planner

ATTACHMENTS:

1. **Public Hearing Results**
2. **Testimony received from Thomas Rozycki, M.D.**
3. **Testimony received from Robert Klitzkie**
4. **Testimony received from Phillip Santos**
5. **Testimony received from John Duenas**

Case Planner: Celine Cruz

**********NOTHING FOLLOWS**********

PUBLIC HEARING MINUTES
June 20, 2018 6:00 PM
Yigo Senior Center
Zone Change Application No. 2017-04
Lot 7, Tract 10417, Yigo

The meeting was called to order at 6:05 PM by Planning Division staff. Planning staff announced that there have been several meetings related to this project and that any and all testimony submitted is made part of the record. The applicant's representative Mr. Dan Swavely was introduced and he began with updates to the project from its acceptance on November 2016 to date Mr. Swavely explained how the project has evolved since the acceptance of the application in late 2016.

Supplemental information has been provided as a result of public concerns and coordination with the Application Review Committee (ARC) members. As of the date of the public hearing, there were 2 Supplemental Applications submitted in response to the concerns raised. Key changes to the project include ingress and egress to the lot will not be from Chalan Lajuna, instead, Lot 13-R/W, Tract 10417 will be partially developed to provide access to the proposed commercial complex.

The request is now for a "Limited Commercial" zone. Also, there has been correspondence made with the Department of Public Works and their consultation to request a new traffic signal at the entrance to Perez Acres, increasing the length of time for the left turn signal from Chalan Lajana to Route 1 and general road improvements to Chalan Lajuna.

General questions and comments were specific to traffic along Chalan Lajuna. The public were concerned about the present conditions of traffic in the area and what the potential impacts of locating a commercial complex on the subject lot would mean to the residents who live on Chalan Lajuna. Egress and ingress has been shifted to the interior (undeveloped) right of way within Tract 10417 in order to alleviate delays that entering and exiting the commercial complex may cause.

Attendants questioned why DPW has not address the existing conditions of traffic and congestion on the main road.

There were no additional questions and the public hearing was adjourned at 7:03 PM.

Doc. No. 34GL-18-2568.

Response in objection to application to rezone lot 7, tract 10417, Yigo

For many years Chalan Lujuna was a road which ended near the entrance to Perez Acres. It is a narrow 2 lane road which was adequate to serve its purpose as access for Perez Acres residents to get to Route 1. However, it was eventually paved all the way from Route 1 to Route 15, making it a favored road connecting Route 1 and Route 5 and causing an exponential increase in vehicular traffic, including its use by numerous large trucks. It's not unusual during peak morning hours to have traffic backed up from near the Perez Acres entrance all the way to Route 1.

The only sidewalk along Chalan Lujuna is a short section along part of the boundary adjacent to Perez Acres. Otherwise pedestrians face the frightening and dangerous prospect of dodging traffic along the narrow road. We have already seen the tragic death of a Perez Acres resident, a teenage girl who was struck by a vehicle while on the left side of Chalan Lujana returning to her home.

The rezoning proposal for Guam Family Plaza includes an access road from Chalan Lujuna into the Plaza with links to the adjacent Yigo Town Center and to the McDonald's currently under construction. This will cause a further increase in traffic on the already overloaded Chalan Lujuna and will exacerbate the danger to pedestrians.

The claim that more commercial space is needed for the residents of Yigo is absurd. There are currently 4 vacant commercial spaces in the Yigo Payless mall less than a half mile away. The Yigo Town Center has 2 empty commercial spaces. It has also seen at least 3 restaurants come and go in the building next to Bank of Guam. The site of those failed restaurants is now where the VFW Post is located after it moved from a nearby building along Route 1; that vacated building stood empty for a considerable period of time before finally being occupied by yet another restaurant. In addition to vacant commercial spaces, there are an ample number of family restaurants, convenience/grocery stores and coffee shops within a mile or so of the proposed plaza.

I am strongly opposed to the rezoning proposal for lot 7, tract 10417.

T Thomas Rozycki

Thomas Rozycki, M.D.

Received 11-17-17 6:01PM



Robert Klitzkie, Esq.
22 Baki Ct., Yigo, GU 96929
(671) 653-6607
klitzkie@hotmail.com

December 14, 2017

Honorable members of the Guam Land Use Commission: Chairman John Z. Arroyo, Vice Chairman Victor F. Cruz, Commissioner Conchita D. Bathan, Commissioner, Tae S. Oh, Commissioner Hardy Tan I. Vy

Re: Application to Rezone Lot 7, Tract 10417, Yigo, Application 2017-04

Allowing the building of this project would create a situation fraught with danger. That danger will be fully explained in reason 7. *infra.*

There are seven reasons that this application should not be approved:

1. Kevin J. Yang is not eligible to file an application to change the zoning of the captioned parcel from "A" to "C" because he is not the owner. Eligibility is governed by 21 GCA § 61631 which reads:

> § 61631. Procedure. A proposed change may be initiated by the Commission or by an application directed to the Commission by any **person owning or leasing real property** within the area covered by the zone. [Emphasis supplied.]

The record in this application shows that Y Sengsong, Inc. is the owner not Yang.

2. Notice of the meeting held November 1 was not mailed to all the landowners as required by 21 GCA § 61633[1] which reads:

> § 61633. Hearing Date-Notice. (a) Upon the filing of an application for a change of zone, the Commission shall hold at least one (1) hearing thereon in the municipal district where the property to be rezoned is located, as such districts are described in Chapter 40, 5 GCA Government Operations, and a notice of the time and place of the hearing shall be published in at least one (1) newspaper of general circulation at least ten (10) days before the date of said hearing, and **sent** by mail to the Mayor of the municipal district concerned, and to those **landowners owning land within five hundred (500) feet of the property** for which the rezoning is requested, the mailing addresses for such landowners to be in the Real Tax records. [Emphasis supplied.]

The subdivision known as Perez Acres, a horizontal property regime[2], of which I am a forty-plus years resident, lies partially with 500 foot zone surrounding Lot 7, Tract 10417, Yigo. There are 200 owners in Perez Acres each of whom owns a 1/200th undivided interest in the common area of the subdivision[3]. The record in this application shows that only 82 notices were mailed in accordance with § 61633. Simple arithmetic, 200-82=118, shows that over 118 Perez Acres owners were not mailed the statutorily required notice. If the Commission proceeds in default of the § 61633 notice requirements it does so at great peril because of the extremely strong language of 21 GCA § 6133 (c) which reads:

> (c) The Commission shall not render a decision in favor of any applicant that fails to comply with both this sign requirement and any other public notice requirement that is prescribed by law, rule or regulation. **Failure** to meet the notice requirements as provided herein **renders any approval by the Commission null and void[4].** [Emphasis supplied.]

3. The balance of the equities[5] favors the Chalan Lujuna neighborhood but disfavors this application. Reasons 6. and 7. describe the hardships that the Chalan Lujuna neighborhood will suffer if Yang's project is built. Although Chalan Lujuna neighborhood will undergo great inconvenience and be exposed to danger, the shopping center will provided no benefit to the neighborhood. Yang, on the other hand, will enjoy a significant windfall. Land which is zoned "A" sells for much less than that which is zoned "C." Because Lot 7, Tract 10417 is zoned "A," the owner can build one family houses or duplexes which of course could be rented for as much as $100,000 *per annum.*

Yang's shopping center will consist of 25,000 square feet of space. Attached is a real estate listing paper showing that retail space in a nearby shopping center went for $2.00 per square foot a year and a half ago. Do the math: $2.00 per square foot X 25,000 square feet=$600,000 per year. If granted, zone "C" provides a great financial gain for Yang for the minimal cost of preparing some papers and bringing this matter before this Commission. A great gain for Yang correlates with at least great inconvenience for the Chalan Lujuna neighborhood. Balance the equities and the hardships and it becomes clear that this application should be denied.[6]

4. Even if Yang's application complied with the jurisdictional requirements of 21 GCA Ch. 6, Art. 6 Subarticle 3, which it doesn't, an examination of the merits of the application shows that it still should not be granted. In order to be meritorious an application for a zone change must meet all three requirements of 21 GCA § 61630 which reads:

> § 61630. Requirements For Changes. The Commission may, with the approval of the Governor, change the zones established under

> this Chapter whenever it finds that the **public necessity, convenience** and **general welfare** justify such action.[7]

ONE AT A TIME: There is **no public necessity** to rezone an agricultural lot to a commercial lot in order to build the shopping center Yang describes in his application. Dr. Tom Rozycki lays it out quite clearly in his well researched letter, which is part of the record in this matter , a copy of which is attached for your easy reference. The key word in Dr. Tom's letter is

ABSURD

> "The claim that more commercial space is needed for the residents of Yigo is **absurd**. There are currently 4 vacant commercial spaces in the Yigo Payless mall less than a half mile away. The Yigo Town Center has 2 empty commercial spaces. It has also seen at least 3 restaurants come and go in the building next to Bank of Guam. The site of those failed restaurants is now where the VFW Post is located after it moved from a nearby building along Route 1; that vacated building stood empty for a considerable period of time before finally being occupied by yet another restaurant. In addition to vacant commercial spaces, there are an ample number of family restaurants, convenience/grocery stores and coffee shops within a mile or so of the proposed plaza." [Emphasis supplied.]

5. Anyone intending in good faith to build a commercial structure in Yigo would naturally gravitate to Marine Corps Drive where there has been an abundance property zoned "C" for over forty years. See 21 GCA § 61208. One would have to concur with Dr. Tom's analysis that idea that there is a public necessity to rezone Lot 7, Tract 10417, Yigo is indeed absurd.

> § 61208. Yigo Commercial Zone. All property lying on either side of Route 1 (Marine Drive) between the Old Marbo PX and the Yigo Catholic Church, to a depth of 200 feet from the edge of the right of way along Route 1, is hereby established as commercial zone property. The Department of Land Management is hereby directed to amend its zoning maps accordingly. SOURCE: GC § 17053.3 enacted by P.L. 12-160.

6. Yang's project fails miserably when it come to the **public convenience** prong of the statutory requirement of § 61630. In fact, as more fully described *infra,* Yang's project will visit a great **inconvenience** on the Chalan Lujuna neighborhood. A commercial ingress/egress onto an already overburdened two lane road to accommodate an unnecessary shopping center is the very essence of a lack of public convenience.

7. The **general welfare** of the neighborhood will be severely impacted if Yang is allowed to build his project. Here's the historical background:

> When Perez Acres was built in the early 70's a paved road was constructed from Marine Drive to Paseo Antonio, *i.e.* the entrance to Perez Acres. A temporary primitive gravel road was constructed from that intersection to Rt. 15 to serve as a haul road to bring building materials into the Perez Acres construction site from the companies located on Rt. 15. When the construction of Perez Acres was completed a berm was built across the gravel road closing it to all traffic. In a couple years the boonies reclaimed the road and it was forgotten.
>
> About twenty years ago when Goring Villa Estates was built the scenario was repeated. But this time no berm was built across Chalan Lujuna closing it. Instead the mayor of Yigo, Bob Lizama, took it upon himself to have the road paved! No public notice, hearings, legislation or whatever. The road that Lizama built lacked proper markings and signage. It was just a road and the cause of a multitude of problems. It is still a poor excuse for a road especially considering the amount of heavy duty traffic it handles on a daily basis.

Some points to consider:

- Chalan Lujuna connects Rt. 15 with Marine Corps Drive bearing heavy traffic composed primarily of large construction vehicles, *e.g.* dump trucks and low boys hauling bulldozers, front end loaders, etc. The stop signs at the junction of Chalan Lujuna and Paseo Antonio, *i.e.* the entrance to Perez Acres, are routinely ignored.
- The intersection of Marine Corps Drive and Chalan Lujuna is already burdened with traffic exiting the Mobil station directly onto Chalan Lujuna. Shortly, McDonalds will open, exiting onto Chalan Lujuna directly across from the Mobil station. Adding yet a third shopping facility on Chalan Lujuna with no other ingress and egress is a recipe for disaster.
- Congestion and collisions are sure to result as traffic to and from Marine Corps Drive attempts to penetrate traffic flow from the three businesses less than fifty yards from a major intersection.

Back to Dr. Tom again:

> "The only sidewalk along Chalan Lujuna is a short section along part of the boundary adjacent to Perez Acres. Otherwise pedestrians face the frightening and dangerous prospect of dodging traffic along the narrow road. We have already seen the tragic death of a Perez Acres resident, a teenage girl who was struck by a vehicle while on the left side of Chalan Lujuna returning to her home."

As can be seen, allowing Yang to build his project is the opposite of furthering the general welfare: it would create a situation fraught with danger.

In closing there are at least seven reasons not grant the application. Right now, Lot 7, Tract 10417, Yigo is zoned "A." Here's what that means:

> § 61304. A Rural Zone. (a) Uses permitted: (1) **One-family dwellings and duplexes.** (2) **Farming** and fisheries, including all types of activities and pursuits customarily carried on in the field of agriculture and fisheries, including the raising of crops and fruits, poultry and livestock, grazing and dairying, tree and other vegetative production whether for commercial or personal uses.
> (3) Cockpits.
> (4) Uses customarily accessory to any of the above uses including home occupations, and private auto mobile parking areas as well as accessory buildings and structures such as private garages, warehouses, barns, corrals or other similar structures. [Emphasis supplied.]

Lot 7, Tract 10417, Yigo, is zoned "A." Please let it stay that way. Please for the sake of all of us who live in the neighborhood, those who must drive Chalan Lujuna and for the sake of school children who catch their bus on Chalan Lujuna, deny Application 2017-04

Respectfully submitted,



Robert Klitzkie
[Corrections made on December 15.]

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[1] A fair reading of the statute suggests that the notice requirements for every Public Hearing, including this one, are mandated.
[2] See generally 21 GCA CH. 45 HORIZONTALPROPERTY ACT.
[3] See 21 GCA § 45106.
[4] *NB* because of the verbiage of the statute, "null and void," the failure to comply with the notice requirements is fatal to the application *ab initio*.
[5] "Equities" here is not used in economic sense but as used in a legal sense, *e.g.* "Where competing interests are weighed against each other in an effort to determine the most appropriate outcome of a dispute.--Quimby

[6] The matters set out in Reason 3. are hypothetical and conjectural and are not to be taken as factual representations.

[7] NB the requirements of § 61630 are in the conjunctive not the disjunctive so failure to meet just one of the requirements means that the Commission would not be justified in approving the application.

Robert Klitzkie, Esq.
22 Baki Ct., Yigo, GU 96929
(671) 653-6607
klitzkie@hotmail.com
June 20, 2018



Honorable members of the Guam Land Use Commission: Chairman John Z. Arroyo, Vice Chairman Victor F. Cruz, Commissioner Conchita D. Bathan, Commissioner, Tae S. Oh, Commissioner Hardy Tan I. Vy

Re: Application to Rezone Lot 7, Tract 10417, Yigo, Application 2017-04[1]

Prior to any discussion of the concerns raised in my testimony submitted to this august body on December 14 (corrected copy submitted on December 15,) I am compelled to bring to your attention the invalidity of this meeting. At the December 14 meeting as reasons not to approve the application then pending before the Commission I advance reasons 1. and 2., *viz:*

1. Kevin J. Yang is not eligible to file an application to change the zoning of the captioned parcel from "A" to "C" because he is not the owner. Eligibility is governed by 21 GCA § 61631 which reads:

> § 61631. Procedure. A proposed change may be initiated by the Commission or by an application directed to the Commission by any **person owning or leasing real property** within the area covered by the zone. [Emphasis supplied.]

The record in this application shows that Y Sengsong, Inc. is the owner not Yang.

2. Notice of the meeting held November 1 was not mailed to all the landowners as required by 21 GCA § 61633[2] which reads:

> § 61633. Hearing Date-Notice. (a) Upon the filing of an application for a change of zone, the Commission shall hold at least one (1) hearing thereon in the municipal district where the property to be rezoned is located, as such districts are described in Chapter 40, 5 GCA Government Operations, and a notice of the time and place of the hearing shall be published in at least one (1) newspaper of general circulation at least ten (10) days before the date of said hearing, and **sent** by mail to the Mayor of the municipal district concerned, and to those **landowners owning land within five hundred (500) feet of the property** for which the rezoning is requested, the mailing addresses for such landowners to be in the Real Tax records. [Emphasis supplied.]

The subdivision known as Perez Acres, a horizontal property regime, of which I am a forty-plus years resident, lies partially with 500 foot zone surrounding Lot 7, Tract

Doc. No. 34GL-18-2568.

10417, Yigo. There are 200 owners in Perez Acres each of whom owns a 1/200th undivided interest in the common area of the subdivision[3]. The record in this application shows that only 82 notices were mailed in accordance with § 61633. Simple arithmetic, 200-82=118, shows that over 118 Perez Acres owners were not mailed the statutorily required notice. If the Commission proceeds in default of the § 61633 notice requirements it does so at great peril because of the extremely strong language of 21 GCA § 6133 (c) which reads:

> (c) The Commission shall not render a decision in favor of any applicant that fails to comply with both this sign requirement and any other public notice requirement that is prescribed by law, rule or regulation. **Failure** to meet the notice requirements as provided herein **renders any approval by the Commission null and void[4].** [Emphasis supplied.]

You adjourned without addressing the pending application. The application came before you again at your January 25 meeting. Your minutes for that meeting show the following:

- An exchange between Commissioner Oh and Commission Counsel Nick Toft yielded, Commissioner Oh: "In cases of these types of situations, Legal Counsel's opinion and advice is to notify all homeowners of Perez Acres. Nick Toft: responds yes…"
- An exchange between Acting Chairman Cruz and Nick Toft yielded: "Acting Chairman Cruz will the applicant have to start the process over or is it just the notification process. Nick Toft: because this one the first things that has to be done, the application should be started over. Mr. Klitzkie also point out the defect on the name that was noted on the billboard sign being Mr. Yang's name and not the corporation or visa [*sic*] versa. Correct this as well so it does not give him a "foothold to launch an appeal" on the Commission's decision on a technical legal matter. If Mr. Klitzkie wishes to appeal the decision of the Board [*sic*] it is considered more difficult for him to get the Court to overturn the decision."

Summarizing: Commission Counsel advises as follows:

1. The Commission is required to notify all homeowners in Perez Acres of a meeting to deal with an application to rezone.
2. More than just renoticing the December 14 meeting is required. Per Toft the application should be started over.
3. The application should be corrected showing the correct name of the applicant.
4. The billboard announcing the meeting should conform to 3., *supra.*(see attached photo of the billboard).

The notice that called this meeting is identical to that that called the October 15 and December 14 meetings excepting only that the date was changed to June 20. The applicant is still Kevin J. Yang. Conclusion: This meeting is a nullity.

Recommendation: Take heed of Counsel's advice and if Applicant Yang or Y Sengsong, Inc., or whoever the owner or lessee of the realty happens to be, submits a correct

application, after the necessary staff work has been accomplished, notice the required public hearings (giving notice to all 500 owners in Perez Acres) and proceed.

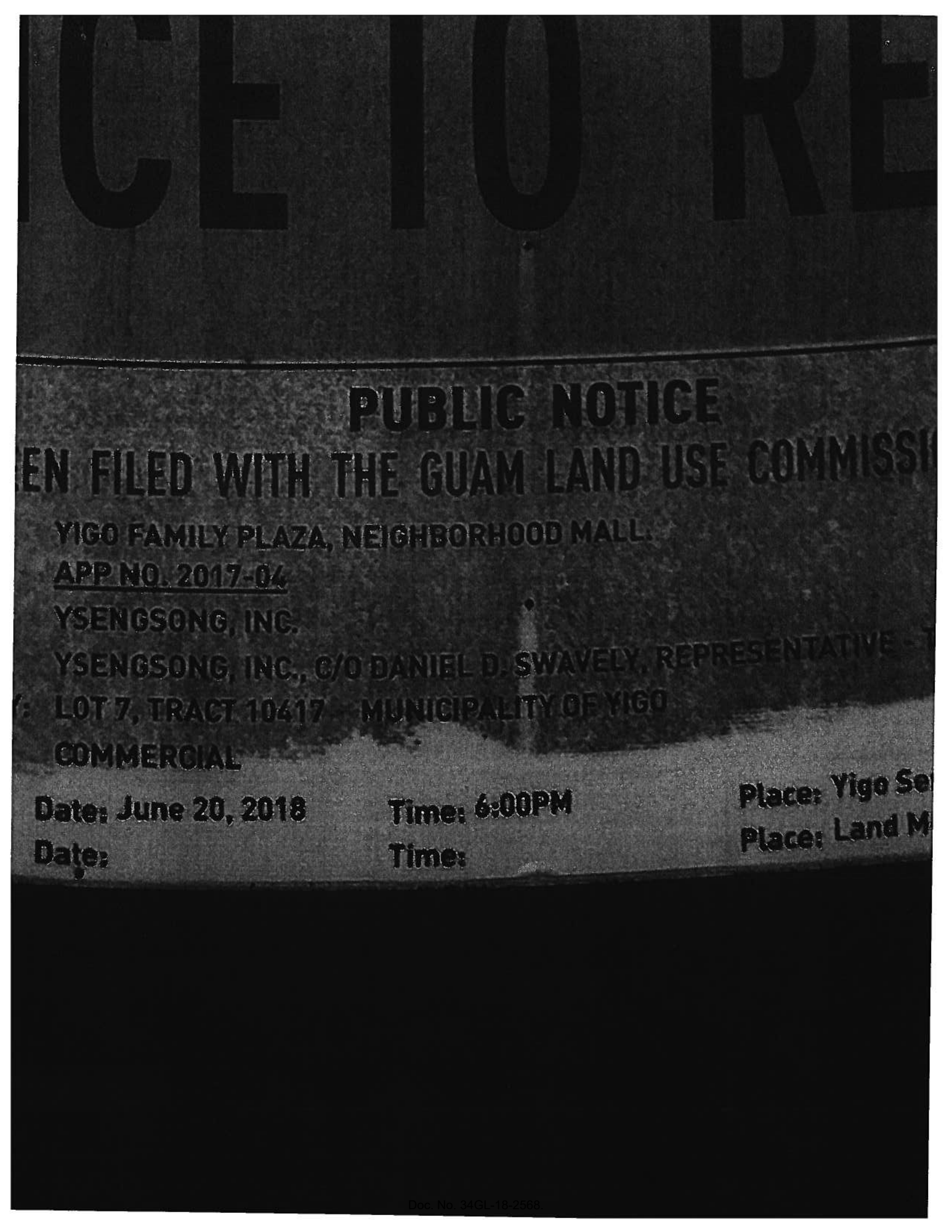
I waive no ability, and reserve all rights, to challenge the validity of this gathering in the face of any claim that it is a valid meeting or public hearing of the Guam Land Use Commission as I attach a copy of my aforementioned testimony. The testimony is attached for your handy reference and in no way may be regarded as legitimizing your invalidly noticed meetings of last year and this gathering which suffers the same infirmity. In other words referencing your two earlier improperly called and noticed meetings in submitting my testimony dated December 14 to this gathering must not be regarded as acquiescence or approval of those meetings or today's flawed attempt at a "do over."

Respectfully submitted,

Robert Klitzkie

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[1] Although improper for the reasons stated *supra*, because it is used on the June 5 notice I received, I use this reference not because it's correct but merely convenient.



Doc No. 34GL-18-2568

6-P-Room

Celine Cruz



From: John P. Duenas <jpduenas@dcaguam.com>
Sent: Tuesday, June 19, 2018 10:52 AM
To: Celine Cruz
Subject: Fwd: Yigo Family Plaza

MB 6/21

Forwarding my comments to the Perez Acres HoA Board of Directors regarding the Yigo Family Plaza SLUC development-related application for your records and use.

John Duenas

Begin forwarded message:

From: "Perez Acres HoA" <paha@guam.net>
Subject: RE: Yigo Family Plaza
Date: June 19, 2018 at 8:33:08 AM GMT+10
To: "'John P. Duenas'" <jpduenas@dcaguam.com>
Cc: "'Elizabeth C. Duenas'" <lduenas@remaxguam.com>, "'PAHA GM | David R. Fowler'" <pahagm@guam.net>

Good morning Mr. & Mrs. Duenas,
The PAHA Office truly appreciates your below email regarding the Yigo Family Plaza construction. I will forward your email to the Board of Directors to notify them of your concerns.

Regards,
Arlene V. M.

Administrative Assistant

Perez Acres Homeowners Association
Ofc: 671.653.2014 | Fax: 671.653.3544
Email: paha@guam.net | Website: www.perezacresguam.org
Office Hours: MON to FRI - 8am to 5pm | SAT/SUN & Holidays - Closed

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-----Original Message-----
From: John P. Duenas [mailto:jpduenas@dcaguam.com]
Sent: Tuesday, June 19, 2018 8:30 AM
To: paha@guam.net
Cc: Elizabeth C. Duenas

Subject: Yigo Family Plaza

We (John P and Elizabeth C. Duenas) own a unit at Perez Acres.I have read you message about the Perez Acres HoA Board of Directors deciding to oppose the development based on "several" homeowners expressing opposition to the development. While we do not live at Perez Acres and have leased our unit to tenants over the past many years, we are also concerned about the quality of developments that can occur on neighboring properties. As I know it, the Yigo Family Plaza is a commercial development proposal that is in character with abutting commercial uses (MacDonalds and the strip commercial plaza to the north. The Plaza proposes to add commercial uses that would seem to benefit the residents of Yigo and Perez Acres. The property proposed for development is currently zoned Agricultural and can actually be used without rezoning for agricultural uses such as a piggery, animal grazing activities and other uses that can be obnoxious.

Your reference to the traffic on Chalan Lujuna that will be generated by MacDonalds assumes that that volume of traffic is high such that the use of Chalan Lujuna will be severely compromised by additional traffic that will be generated by the proposed new Yigo Family Plaza development. I do not agree as MacDonalds has direct access to Route 1 and the bulk of vehicular MacDonalds-bound traffic will be from Route 1. I believe that improvements need to made to the intersection of Chalan Lujuna and Route 1 to accommodate the additional traffic projected to be generated by the Plaza and that these improvements need to be a required part of the Plaza development. This will be quantified by the results of the review of the development by the Department of Public Works. Also, note that Chalan Lujuna is a collector road that connects Route 15 and Route 1 and functions to shunt traffic to and from these two major highways. Indeed DPW should focus on improving Chalan Lujuna over its entire length to function more efficiently as a collector road and not necessarily and specifically in reaction to accommodating projected traffic from developments on abutting properties. If the Perez Acres HoA is concerned about assuring that traffic on Chalan Lujuna does not affect the quality of life at Perez Acres, the focus of that concern should be directed at the Department of Public Works and not in opposition to developments that may use this road for ingress and egress.

In my opinion, this proposed development if undertaken properly will be a great benefit to the village of Yigo and specifically to the residents of Perez Acres.

We do not agree with Perez Acres HoA BOD's opposition to the proposed development and ask that your representative at the Public Hearing testify as such.

In full disclosure, I provided the infrastructure analysis in support of the GLUC application by the Developer as the Principal of Duenas, Camacho & Associates, Inc. and my wife, Liz Duenas, was the Real Estate agent for the sale of the property to the developer.

Thank you.

John and Elizabeth Duenas

=

This email has been checked for viruses by Avast antivirus software.
https://www.avast.com/antivirus

Phillip Santos
#48 South Cupa Ct.
Yigo, Guam 96929
(671) 689-5462
GALFED2003@GMAIL.COM



6/21

6.20.18
7:04pm

Håfa Adai and good evening members of the Guam Land Use Commission,

My name is Phillip Santos, a resident of Yigo for 45 years and for 19 years, a homeowner at Perez Acres. I currently serve as Chairman of the Board for the Perez Acres Homeowners Association (PAHA) but, testifying tonight as a homeowner and resident of Yigo.

I wish to express my objection to the proposed Application to Rezone Lot 7 Tract 10417, Yigo, Application 2017-4. The rezoning of this area from Zone A to Zone C will create hardships on the residents of Perez Acres.

As it is right now, Chalan Lajuna that leads to Perez Acres from Route 1 or Route 15 has seen an increase in traffic over the last 10 to 15 years. Residents of our beautiful and quiet community have seen dump trucks, racing cars, utility vehicles, and private vehicles utilize this road to gain access to Marine Corp Drive and Route 15, including school buses who use this road to pick up students at Perez Acres or just simply to exit Chalan Lajuna on their way to drop off students to our schools.

As a resident, I have witnessed drivers fail to stop at the stop signs on Chalan Lajuna - in all directions. There have been numerous near collisions as a result of this. Nearly 10 years ago, a young girl was hit and killed on this very same road because the motorist failed to stop. A close relative was killed in a tragic car accident at the Route 1 and Chalan Lajuna intersection - prior to traffic lights being installed.

With the proposed rezoning for the Yigo Family Plaza, there will be a definite increase to vehicle traffic on Chalan Lajuna which will also very likely impact the safety of pedestrians walking to nearby establishments - including young school children walking to their respective bus stops. No sidewalks exists from to Perez Acres boundaries to Route 1 nor to Route 15.

There are several other vacant commercial places within the vicinity of Perez Acres along Route 1, which are already appropriately zoned. There are businesses along Route 1 that have opened up within a mile of Perez Acres including laundromats, a bakery, fast food restaurants, a filtered water station, Notary and copying office and a drive thru coffee café. I don't see the zone change and plans for ingress and egress for the proposed development as further benefit to our neighborhood.

I live in Perez Acres and I oppose the rezoning of Lot 7 Tract 10417, Yigo, and Application 2017-04.

Thank you for giving me this opportunity to come before you to read my testimony.

Si Yu'os Ma'åse',

Phillip Santos
Perez Acres Homeowner

Robert Klitzkie, Esq.
22 Baki Ct., Yigo, GU 96929
(671) 653-6607
klitzkie@hotmail.com

December 14, 2017

Honorable members of the Guam Land Use Commission: Chairman John Z. Arroyo, Vice Chairman Victor F. Cruz, Commissioner Conchita D. Bathan, Commissioner, Tae S. Oh, Commissioner Hardy Tan I. Vy

Re: Application to Rezone Lot 7, Tract 10417, Yigo, Application 2017-04

Allowing the building of this project would create a situation fraught with danger. That danger will be fully explained in reason 7. *infra.*

There are six reasons that this application should not be approved:

1. Kevin J. Yang is not eligible to file an application to change the zoning of the captioned parcel from "A" to "C" because he is not the owner. Eligibility is governed by 21 GCA § 61631 which reads:

> § 61631. Procedure. A proposed change may be initiated by the Commission or by an application directed to the Commission by any **person owning or leasing real property** within the area covered by the zone. [Emphasis supplied.]

The record in this application shows that Y Sengsong, Inc. is the owner not Yang.

2. Notice of the meeting held November 1 was not mailed to all the landowners as required by 21 GCA § 61633[1] which reads:

> § 61633. Hearing Date-Notice. (a) Upon the filing of an application for a change of zone, the Commission shall hold at least one (1) hearing thereon in the municipal district where the property to be rezoned is located, as such districts are described in Chapter 40, 5 GCA Government Operations, and a notice of the time and place of the hearing shall be published in at least one (1) newspaper of general circulation at least ten (10) days before the date of said hearing, and **sent** by mail to the Mayor of the municipal district concerned, and to those **landowners owning land within five hundred (500) feet of the property** for which the rezoning is requested, the mailing addresses for such landowners to be in the Real Tax records. [Emphasis supplied.]

Received 12/14/17

The subdivision known as Perez Acres, a horizontal property regime[2], of which I am a forty-plus years resident, lies partially with 500 foot zone surrounding Lot 7, Tract 10417, Yigo. There are 200 owners in Perez Acres each of whom owns a 1/200th undivided interest in the common area of the subdivision[3]. The record in this application shows that only 82 notices were mailed in accordance with § 61633. Simple arithmetic, 200-82=118, shows that over 118 Perez Acres owners were not mailed the statutorily required notice. If the Commission proceeds in default of the § 61633 notice requirements it does so at great peril because of the extremely strong language of 21 GCA § 6133 (c) which reads:

> (c) The Commission shall not render a decision in favor of any applicant that fails to comply with both this sign requirement and any other public notice requirement that is prescribed by law, rule or regulation. **Failure** to meet the notice requirements as provided herein **renders any approval by the Commission null and void[4].** [Emphasis supplied.]

3. The balance of the equities[5] favors the Chalan Lujuna neighborhood but disfavors this application. Reasons xthroughx describe the hardships that the Chalan Lujuna neighborhood will suffer if Yang's project is built. Although Chalan Lujuna neighborhood will undergo great inconvenience and be exposed to danger, the shopping center will provided no benefit to the neighborhood. Yang, on the other hand, will enjoy a significant windfall. Land which is zoned "A" sells for much less than that which is zoned "C." Because Lot 7, Tract 10417 is zoned "A," the owner can build one family houses or duplexes which of course could be rented for as much as $100,000 *per annum*.

Yang's shopping center will consist of 25,000 square feet of space. Attached is a real estate listing paper showing that retail space in a nearby shopping center went for $2.00 per square foot a year and a half ago. Do the math: $2.00 per square foot X 25,000 square feet=$600,000 per year. If granted, zone "C" provides a great financial gain for Yang for the minimal cost of preparing some papers and bringing this matter before this Commission. A great gain for Yang correlates with at least great inconvenience for the Chalan Lujuna neighborhood. Balance the equities and the hardships and it becomes clear that this application should be denied.[6]

4. Even if Yang's application complied with the jurisdictional requirements of 21 GCA Ch. 6, Art. 6 Subarticle 3, which it doesn't, an examination of the merits of the application shows that it still should not be granted. In order to be meritorious an application for a zone change must meet all three requirements of 21 GCA § 61630 which reads:

> § 61630. Requirements For Changes. The Commission may, with the approval of the Governor, change the zones established under

this Chapter whenever it finds that the **public necessity, convenience** and **general welfare** justify such action.[7]

ONE AT A TIME: There is **no public necessity** to rezone an agricultural lot to a commercial lot in order to build the shopping center Yang describes in his application. Dr. Tom Rozycki lays it out quite clearly in his well researched letter, which is part of the record in this matter , a copy of which is attached for your easy reference. The key word in Dr. Tom's letter is

ABSURD

> "The claim that more commercial space is needed for the residents of Yigo is **absurd**. There are currently 4 vacant commercial spaces in the Yigo Payless mall less than a half mile away. The Yigo Town Center has 2 empty commercial spaces. It has also seen at least 3 restaurants come and go in the building next to Bank of Guam. The site of those failed restaurants is now where the VFW Post is located after it moved from a nearby building along Route 1; that vacated building stood empty for a considerable period of time before finally being occupied by yet another restaurant. In addition to vacant commercial spaces, there are an ample number of family restaurants, convenience/grocery stores and coffee shops within a mile or so of the proposed plaza." [Emphasis supplied.]

5. Anyone intending in good faith to build a commercial structure in Yigo would naturally gravitate to Marine Corps Drive where there has been an abundance property zoned "C" for over forty years. See 21 GCA § 61208. One would have to concur with Dr. Tom's analysis that idea that there is a public necessity to rezone Lot 7, Tract 10417, Yigo is indeed absurd.

> § 61208. Yigo Commercial Zone. All property lying on either side of Route 1 (Marine Drive) between the Old Marbo PX and the Yigo Catholic Church, to a depth of 200 feet from the edge of the right of way along Route 1, is hereby established as commercial zone property. The Department of Land Management is hereby directed to amend its zoning maps accordingly. SOURCE: GC § 17053.3 enacted by P.L. 12-160.

6. Yang's project fails miserably when it come to the **public convenience** prong of the statutory requirement of § 61630. In fact, as more fully described *infra,* Yang's project will visit a great **inconvenience** on the Chalan Lujuna neighborhood. A commercial ingress/egress onto an already overburdened two lane road to accommodate an unnecessary shopping center is the very essence of a lack of public convenience.

7. The **general welfare** of the neighborhood will be severely impacted if Yang is allowed to build his project. Here's the historical background:

> When Perez Acres was built in the early 70's a paved road was constructed from Marine Drive to Paseo Antonio, *i.e.* the entrance to Perez Acres. A temporary primitive gravel road was constructed from that intersection to Rt. 15 to serve as a haul road to bring building materials into the Perez Acres construction site from the companies located on Rt. 15. When the construction of Perez Acres was completed a berm was built across the gravel road closing it to all traffic. In a couple years the boonies reclaimed the road and it was forgotten.
>
> About twenty years ago when Goring Villa Estates was built the scenario was repeated. But this time no berm was built across Chalan Lujuna closing it. Instead the mayor of Yigo, Bob Lizama, took it upon himself to have the road paved! No public notice, hearings, legislation or whatever. The road that Lizama built lacked proper markings and signage. It was just a road and the cause of a multitude of problems. It is still a poor excuse for a road especially considering the amount of heavy duty traffic it handles on a daily basis.

Some points to consider:

- Chalan Lujuna connects Rt. 15 with Marine Corps Drive bearing heavy traffic composed primarily of large construction vehicles, *e.g.* dump trucks and low boys hauling bulldozers, front end loaders, etc. The stop signs at the junction of Chalan Lujuna and Paseo Antonio, *i.e.* the entrance to Perez Acres, are routinely ignored.
- The intersection of Marine Corps Drive and Chalan Lujuna is already burdened with traffic exiting the Mobil station directly onto Chalan Lujuna. Shortly, McDonalds will open, exiting onto Chalan Lujuna directly across from the Mobil station. Adding yet a third shopping facility on Chalan Lujuna with no other ingress and egress is a recipe for disaster.
- Congestion and collisions are sure to result as traffic to and from Marine Corps Drive attempts to penetrate traffic flow from the three businesses less than fifty yards from a major intersection.

Back to Dr. Tom again:

> "The only sidewalk along Chalan Lujuna is a short section along part of the boundary adjacent to Perez Acres. Otherwise pedestrians face the frightening and dangerous prospect of dodging traffic along the narrow road. We have already seen the tragic death of a Perez Acres resident, a teenage girl who was struck by a vehicle while on the left side of Chalan Lujuna returning to her home."

As can be seen, allowing Yang to build his project is the opposite of furthering the general welfare: it would create a situation fraught with danger.

In closing there are at least six reasons not grant the application. Right now, Lot 7, Tract 10417, Yigo is zoned "A." Here's what that means:

> § 61304. A Rural Zone. (a) Uses permitted: (1) **One-family dwellings and duplexes.** (2) **Farming** and fisheries, including all types of activities and pursuits customarily carried on in the field of agriculture and fisheries, including the raising of crops and fruits, poultry and livestock, grazing and dairying, tree and other vegetative production whether for commercial or personal uses.
> (3) Cockpits.
> (4) Uses customarily accessory to any of the above uses including home occupations, and private auto mobile parking areas as well as accessory buildings and structures such as private garages, warehouses, barns, corrals or other similar structures. [Emphasis supplied.]

Lot 7, Tract 10417, Yigo, is zoned "A." Please let it stay that way. Please for the sake of all of us who live in the neighborhood, those who must drive Chalan Lujuna and for the sake of school children who catch their bus on Chalan Lujuna, deny Application 2017-04

Respectfully submitted,

Robert Klitzkie

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[1] A fair reading of the statute suggests that the notice requirements for every Public Hearing, including this one, are mandated.

[2] See generally 21 GCA CH. 45 HORIZONTALPROPERTY ACT.

[3] See 21 GCA § 45106.

[4] *NB* because of the verbiage of the statute, "null and void," the failure to comply with the notice requirements is fatal to the application *ab initio*.

[5] "Equities" here is not used in economic sense but as used in a legal sense, *e.g.* "Where competing interests are weighed against each other in an effort to determine the most appropriate outcome of a dispute.--Quimby

[6] The matters set out in Reason 3. are hypothetical and conjectural and are not to be taken as factual representations.

Doc. No. 34GL-18-2568.

[7] NB the requirements of § 61630 are in the conjunctive not the disjunctive so failure to meet just one of the requirements means that the Commission would not be justified in approving the application.

Response in objection to application to rezone lot 7, tract 10417, Yigo

For many years Chalan Lujuna was a road which ended near the entrance to Perez Acres. It is a narrow 2 lane road which was adequate to serve its purpose as access for Perez Acres residents to get to Route 1. However, it was eventually paved all the way from Route 1 to Route 15, making it a favored road connecting Route 1 and Route 15 and causing an exponential increase in vehicular traffic, including its use by numerous large trucks. It's not unusual during peak morning hours to have traffic backed up from near the Perez Acres entrance all the way to Route 1.

The only sidewalk along Chalan Lujuna is a short section along part of the boundary adjacent to Perez Acres. Otherwise pedestrians face the frightening and dangerous prospect of dodging traffic along the narrow road. We have already seen the tragic death of a Perez Acres resident, a teenage girl who was struck by a vehicle while on the left side of Chalan Lujana returning to her home.

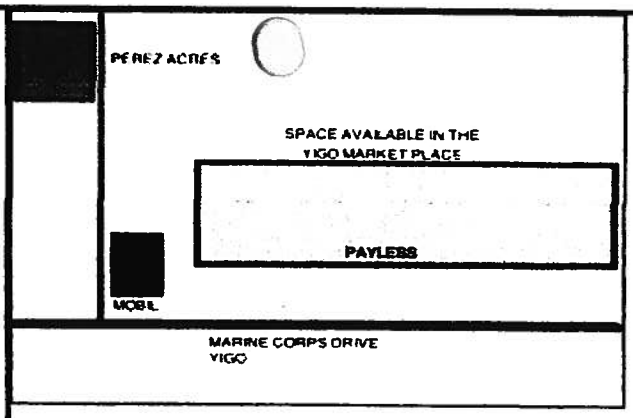
The rezoning proposal for Guam Family Plaza includes an access road from Chalan Lujuna into the Plaza with links to the adjacent Yigo Town Center and to the McDonald's currently under construction. This will cause a further increase in traffic on the already overloaded Chalan Lujuna and will exacerbate the danger to pedestrians.

The claim that more commercial space is needed for the residents of Yigo is absurd. There are currently 4 vacant commercial spaces in the Yigo Payless mall less than a half mile away. The Yigo Town Center has 2 empty commercial spaces. It has also seen at least 3 restaurants come and go in the building next to Bank of Guam. The site of those failed restaurants is now where the VFW Post is located after it moved from a nearby building along Route 1; that vacated building stood empty for a considerable period of time before finally being occupied by yet another restaurant. In addition to vacant commercial spaces, there are an ample number of family restaurants, convenience/grocery stores and coffee shops within a mile or so of the proposed plaza.

I am strongly opposed to the rezoning proposal for lot 7, tract 10417.

Thomas Rozycki, M.D.





Reports

List Number	16-1317	**Property Type**	Comm Space for Rent
Listing Member	Janet G. Calvo Office Phone: (671) 687-1841 Office E-Mail: janet@guamhome.com	**Listing Office**	Today's Realty Office Phone: (671) 649-4361
Selling Member	Dennis Unpingco, DJ Unpingco Office Phone: (671) 483-0654	**Selling Office**	Guam Realty Finder Office Phone: (671) 647-4140
Days On Market	167		

Contract Information

Status	Closed	**Terms**	1st Month's Rent & Security Deposit
List Date	04/16/2016	**Expiration Date**	
Status Change Date	10/14/2016	**Original List Price**	3200
List Price	3200	**How To Show**	Call Agent
Type	Exclusive Authorization	**Occupancy**	Vacant
Commission	1 Mo - 50/50		

Pending/Sold Information

Sold Date	09/30/2016	**Under Contract Date**	09/14/2016
Sold Price	3,200.00	**Terms of Sale**	5 year lease

Location

Village	Yigo	**Postal Code**	96929
Street Name	Marine Corps	**Building Name**	Yigo Market Place
Apt/Unit #	111/112	**State/Province**	Guam

Property Description

Style	Retail Space	**Realtor.com Type**	Commercial
Stories	2	**Zoning**	C
Book Section	Commercial Rental	**Living Area SqFt**	1600
Year Built	1999	**Access**	Paved
Flood Zone	UNKNOWN	**Condition**	Very Good
SqFt Source of Info	Not in List	**Ownership**	Fee Simple
Floor	1		

Taxes & Legal

Legal	L7024-1-NEW-1-2 YIGO

Remarks

Public RemarksLOOK NO FURTHER! TWO 800 s.f. spaces directly next to PAYLESS SUPERMARKET. Winner location for the business who benefits from the constant flow of customers making their way to the market.

Street Address:
590 S. Marine Corps Drive
Suite 733 ITC Building
Tamuning, GU 96913

Mailing Address:
P.O. Box 2950
Hagåtña, GU 96932

Website:
http://dlm.guam.gov

E-mail Address:
dlmdir@land.guam.gov

Telephone:
671-649-LAND (5263)

Facsimile:
671-649-5383



DIPÅTTAMENTON MINANEHAN TÅNO'
(Department of Land Management)
GUBETNAMENTON GUÅHAN
(Government of Guam)

EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

MICHAEL J.B. BORJA
Director

DAVID V. CAMACHO
Deputy Director

August 16, 2018

MEMORANDUM

TO: Guam Land Use Commission (GLUC) Members

FROM: Chairman, Application Review Committee (ARC)

SUBJECT: Summary of Position Statements by ARC Members

RE: Zone Change Application No. 2017-04

Listed below are the **APPLICATION REVIEW COMMITTEE POSITION STATEMENTS** as submitted:

PERMANENT VOTING MEMBERS

1. **DEPARTMENT OF LAND MANAGEMENT:** Recommend **APPROVAL WITH CONDITIONS** as follows:

   That the Applicants adhere to all ARC recommendations as provided in their respective position statements.

2. **GUAM ENVIRONMENTAL PROTECTION AGENCY:**
   No Position Statement has been received as of the date of this Memorandum of August 16, 2018.

3. **DEPARTMENT OF AGRICULTURE:**
   Agriculture has reviewed the subject lot for a "Zone Change" request from Agricultural to a Commercial Zone and has no opposition to the proposed zone change for the construction of a Family Plaza Shopping Mall development. Our agency will recommend approval of the zone change with the following statements, conditions and requirements set forth in 21 GCA Chapter 61 Section 61317 as our primary inspection of the site found no adverse impact to Agricultural activity and to any Endangered Species and other protected Coastal Zones, Wetland Habitat and Watersheds.

   The proposed zone change for the lot is located in an area that has been traditionally used for various farming and ranching activities in the past. Currently no such "Agricultural" activity has been identified for this particular site in over 20

years and no active farms are in the immediate area. the current uses of the surrounding facilities are in line with the proposed zone change and subsequent development into a full service commercial center. Therefore no adverse impact to any agricultural activity exists either within the property scope or the surrounding properties. With regard to any immediate damage to the environment should the project proceed our agency will require the following conditions to be met and implemented onto the project site once clearing and grading is to take place.

Should the proposed zone change be approved and the project moves into the building phase be aware that the proper Clearing and Grading permits must be obtained and registered with the Department of Public Works One Stop section with all the regulatory agencies signed off on the permit in order to proceed with mass clearing and grading of the site. No land clearing activity is to occur prior to securing the proper permit.

As rapid development occurs in this region of the island the destruction and removal of native tree species increases the potential for pollution and the loss of Guam's Northern Aquifer the primary source of drinking water that supplies the island. As such our agency requires that a comprehensive landscaping plan address this deficiency in development of the northern part of the island and as it relates to the construction of Yigo Family Plaza to be built on this site. Should the proposed project precede Agriculture recommends that the lot designated for build will have elements of a green zone dedicated to it, as part of the overall landscaping plan. It this includes parking and green zones not identified in the application the use of native trees that originate in this area is highly recommended as they are suitable and will adapt readily to the existing soils. Simply, the re-planting of native trees in a dedicated section of the lot(s) or allowing the existing fauna to remain as is vital in maintain the aquifer and the surrounding habitat to allow for healthy and vibrant eco-system. The root system of these trees helps to prevent erosion and assists in filtering out synthetic contaminants and other manmade chemicals that would otherwise make its way into the aquifer and polluting it. The Department of Agriculture has several programs and personnel that can assist you in developing a plan to address this issue.

Please contact our Agricultural Development Services & Forestry divisions here at he agency for further assistance and guidance at 300-7972 and 7976 respectively. Our Forestry division grows and maintains these native tree species should you choose to incorporate them into the project. Contact their office for assistance and consultation at 300-7976. Please be aware that the increased loss of Guam's native habitat contributes to a diminished capacity to sustain and support a healthy island community. It is vital that all land developers take a proactive step in preventing and causing this loss. To fully benefit and see these eco-friendly practices being used visit our Department of Agriculture Organic and Environmental Demonstration Farm. The demonstration farm displays various planting techniques that will aid the incorporation of flora back into the landscape to ease and possibly eliminate further damage to the environment. The planting of native trees will add to the aesthetic appeal of the development as it uses the trees that were once abundant in this part of Yigo. The trees will also serve to provide shading for its residents, windbreak capabilities during heavy weather, erosion control, filtration of runoff and more nature driven development that takes into account Guam's vital natural resources.

During our site investigation of the area there were no incidents of the "Little Fire Ant" (Wassmannia auropunctata) however be aware that there are reported infestations located at the Yigo waste dumpsite which lies on the back road of Route

15 the opposite end of this property. This is of concern as the presence of this invasive and threatening species could spread to this area if heavy equipment is being used on other sites and brought into this area by contamination of equipment and vehicles. To avoid issues from occurring and preventing future problems down the road we recommend that equipment entering the work site be properly treated by a licensed pesticide company. In addition to this any clearing of vegetation should also be handled with care as stockpiling of green waste will act as a breeding and nesting site for the "Coconut Rhinoceros Beetle" (Oryctes rhinoceros) larvae. All green waste should be transported to a facility that can properly dispose and treat the organic matter either through mulching and composting. By having the green waste recycled the plant material can be used to provide landscaping material back into the project for weed control and aesthetics for a proper managed landscaping plan. Please see the listing for these companies that are available on line or for proper guidance you can contact our office for further assistance in using their services.

Once again should the project proceed to the build phase and the permits for land clearing and grading are secured be aware that Guam is a migratory route for various species of birds to use as a resting point. During our investigation and inspection of the site no birds were observed. However there exists a strong possibility that the site is used as it contains very little human activity that would otherwise discourage them from landing. If these species of migratory birds are observed at any point in the site no interference is to occur either to prevent them from landing or disturbance and disruption of their normal behavior should be altered.

Please be aware that development and the loss of Guam's natural habitat can have a devasting effect on the quality of life here on island. It is vital that all land developers take a conscious approach in protecting our resources for future island residents and the general well being of our delicate eco-system. The guidelines as listed in this Impact Assessment should be used as a template to ensure continuation of Guam's habitat. For other earth friendly techniques and guidance please contact our offices at 300-7973.

4. **GUAM WATER WORKS AUTHORITY**:

The following comments are conditions for GWA's position in favor of the approval of the zone change application:

1. The applicant must provide GWA with site development plans to construct the proposed commercial building. The site development plans must illustrate the proposed point of connection for water and sewer and is subject to GWA inspection and approval. Submittals shall include water and sewer design calculations and complete drawings and specifications. Design calculations shall include proposed water demand calculations including fire-flow and sewer production calculations.
2. GWA requires the applicant to coordinate with the GWA Engineering Department will in advance of the building permit application submittal. Discussions shall include the proposed water demand and sewer production calculations in order to determine if existing facilities can accommodate the proposed development and if any off-site infrastructure improvements may be necessary.

3. If on-site water and sewer infrastructure improvements are installed by the developer, they will require prior approval and shall be subject to inspection by GWA. Any infrastructure improvements will be at the expense of the applicant.
4. On-site utilities installed on public rights of way or easements to support the proposed development shall be at the expense of the developer/applicant.
5. The applicant shall install GWA water meters in the public right of way or easement.
6. Backflow prevention devices are required for non-residential activities.
7. A grease trap is required if the development will include a food preparation facility.
8. New development is subject to water and/or sewer system development charges (SDC).

5. GUAM POWER AUTHORITY:

A. Comments and Recommendations Concerning GPA requirements:
   1. Customer is required to comply with the following pursuant to the National Electric Code, National Electric Safety Code and GPA's Service Rules and Regulations:
      - Coordinate overhead/underground power requirements with GPA Engineering for new structure.
      - Maintain minimum clearances as defined by the current edition of the National Electrical Safety Code and National Electrical Code.
      - Maintain adequate clearance between any structures and electrical utility easements in accordance with NESC and GPA requirements.
      - Developer/Owner shall provide necessary electrical utility easements to GPA prior to final connection.
      - Provide scheduling and magnitude of project power demand requirements for new loads.
      - All relocation costs for GPA's facilities, if necessary, is 100% chargeable to the applicant including but not limited to labor and materials.
   2. Primary distribution overhead and underground line extensions and GPA service connections must adhere to the guidelines outlined in the current issue of GPA's Service Rules and Regulations.
   3. A system impact assessment may be required to determine the effect of this facility on GPA's existing power facilities.
   4. All costs associated with the modification of GPA facilities shall be chargeable to the customer. This includes relocation costs, new installation costs and any required system upgrades.

B. General Comments

   GPA has no objection to the request subject to the conditions cited above.

6. DEPARTMENT OF PARKS AND RECREATION:

We reviewed our records and found no evidence of any archeological investigation conducted on the subject lot. We have determined that any construction or development proposed on the lot will require an archeological survey to determine if historic properties are present on the property and the mitigation required for their treatment of disposition, if any.

As to the rezoning of the subject lot, we have no objection to the approval of the subject application.

7. DEPARTMENT OF PUBLIC WORKS:

The Department of Public Works, (DPW) has completed its review with the following requirements from DPW- Division of Capital Improvement Projects (CIP).

- Provide a storm drainage disposal (must be shown in detail and be supported with calculations);
- Parking layout and detail of parking stalls (compact, standard and accessible stalls) must meet the American Disability Act (ADA);
- If the owner chooses to use GSWA disposal or any private services, the location of the trash bin container should be situated in an area that will not hinder the public rights of way.
- Comply with all the geotechnical requirements related to site preparations;
- Road (entrance, exit, sidekicks and pedestrian) must be wide enough for public access; and must be in conformance to the Highway Master Plan.

NOTE: The applicant must coordinate with Guam Fire Department as to the required distance from (Mobil) gas station due to the technical hazard that may be reasonably expected to impact in the structure before and after construction.

DPW recommends approval, subject to the comments after review by the Application Review Committee (ARC) with conditions that the complete set of design drawings incorporating all the engineering disciplines are provided for with the building permit application. The plans shall be in conformance with the latest building code edition and must be signed by a registered engineer or architect.

8. **BUREAU OF STATISTICS AND PLANS**: The Bureau of Statistics and Plans (Bureau) has completed its review of Application 2017-04 to rezone Tract 10417 Lot 7 from "A" Rural zone to "C" Commercial zone and provides the following comments and recommendations.

Land Use. The North and Central Guam Land Use Plan (NCGLUP) is approved as an element of the Guam Comprehensive Development Plan (GCDP). The subject property is identified "Mixed Use" designation in the Future Land Use Map of the NCGLUP, which states:

> *"The Mixed Use category primarily focuses on larger commercial centers and corridors, including commercial uses that require large sites and draw customers from throughout the Island. Examples of commercial uses appropriate to this category include but are not limited to department stores, malls, office buildings,*
>
> *medical and other service uses, hotels/motels and restaurants. Mixed use developments incorporating a variety of types and densities of residential units are also appropriate in this designation. Mixed Use development along corridors should be developed in a manner that focuses density in specific areas or 'transit targets' to support high-quality transit service, and should be developed at a walkable neighborhood scale. Along undeveloped corridors, the mixed use development should be interspersed with development that is lower density to maintain natural character and open space."*

The Bureau finds that the proposed commercial activity is consistent with mixed uses in accordance with the North and Central Guam Land Use Plan.

Agricultural District. Tract 10417 Lot 7 is located in an "A" Rural zone in the municipality of Yigo. Guam's zoning law, 21 GCA Real Property, Chapter 16, §61637, states:

> *"No additional land may be established as a rural zone and no land presently zoned "A" may be rezoned without the Commission first having considered an*

agricultural impact statement which shall be submitted by the Director of the Department of Agriculture. This statement shall provide a detailed statement of

(a) The agricultural impact of the proposed rezoning upon the agricultural components of the Guam Master Plan.

(b) Any adverse conservation or agricultural effects which cannot be avoided should the rezoning be approved.

(c) The Director's opinion whether said rezoning should be approved and reasons therefore."

The Bureau recommends the applicant, Kevin J. Yang, Inc. to submit an agricultural impact statement addressed to the Director of the Department of Agriculture as required by Guam's zoning law.

Aquifer Protection from Commercial Waste. The subject property is in the boundary of the Ground Water Protection Zone of the Northern Guam Lens Aquifer. The aquifer is an essential resource for Guam and is the primary source of drinking water for eighty percent of the island population. Moreover, the U.S. Environmental Protection Agency has designated the NGLA a sole source aquifer for Guam's drinking water. Therefore, it is of paramount importance to prevent sources of contamination from entering Guam's water supply.

The Bureau is concerned that activities from the proposed commercial zone will adversely affect Guam's sole source aquifer. The Bureau recommends that the property owner, comply with the following:

1. Implement practices for managing waste to avoid potential contamination and ensure long term protection of the aquifer pursuant to the "Resource Conservation and Recovery Act of 1976."

2. Comply with an Aquifer Protection Review pursuant to the Federal Safe Drinking Water Act, §1424 and Guam Safe Drinking Water Act, 10 GCA

   Chapter 53. The property owner must work closely with Guam Environmental Protection Agency (EPA) for this review and for implementation of best management practices (BMPs) in preventing runoff from contaminating Guam's sole source aquifer in accordance with the CNM[Guam Stormwater Management Manual.

3. Coordinate with the Guam Waterworks Authority (GWA) for water resource conservation and water pollution prevention in protection of the Northern Guam *Lens* Aquifer *pursuant to the "Water Pollution Control Act," 10 GCA Chapter47; 'Water Resources Conservation Act," 22 GCA Chapter 5; 10 GCA Chapter 46, as amended by P.L. 17-87, and the Guam Water Resource Development & Operating Regulations.*

Low Impact Development (LID). The subject property is also located in the Mataguac Spring-Frontal Pacific Ocean Watershed. This area has seen an increase in impervious surfaces throughout the years. In between the years 2005 and 2011, the impervious surface area increased by more than five percent according to National Oceanic Atmospheric Administration's (NOAA) Coastal Change Analysis Program (C-CAP). As surface area increases so does the risk of flooding and degradation of water quality.

The LID approach works with nature to manage stormwater as close to its source as possible. LID employs principles such as preserving and recreating natural

landscape features and minimizing the use of impervious surfaces to create functional and appealing site drainage that treats stormwater as a resource rather than a waste product. Impervious surfaces from roads, parking lots, driveways, sidewalks, and rooftops accelerate stormwater runoff.

The Bureau is concerned that once impervious surfaces are installed, commercial wastes are easily washed into the aquifer. If not managed, this activity can adversely impact Guam's drinking water source and surrounding neighbors.

The Bureau recommends the property owner to consider a green approach by implementing island bioretention, permeable parking and walkways, living roofs, grassed swales and/or rain gardens as a means to avoid or minimize runoff from their property. These approaches will add great benefits such as low maintenance, stormwater management, aquifer recharge, beautification, and neighborhood collaboration in accordance with the North and Central Guam Land Use Plan. An electronic file of the guidebook *"Island Stormwater Practice Design Specifications"* is available on the Bureau's, Guam Coastal Management Program's website www.bsp3.guam.gov.

Historical and Archaeological Resources. The Bureau recommends coordination with Department of Parks and Recreation, State Historic Preservation Office to ensure the preservation, protection, excavation, and evaluation of specimens and sites pursuant to *"Historical Objects and Sites", 21 GCA, Chapter 76.*

The **Bureau recommends approval** to the zone change in order to develop a one story 25,000 square foot shopping mall with activities such as a restaurant, convenience/grocery store, a coffee shop, and other compatible activities. The Bureau finds that the zone change from Rural Zone to Commercial Zone is consistent with the North and Central Guam Land Use Plan "Mixed Use" designation.

However, and most especially due to the Aquifer directly below, the activities can detrimentally affect Guam's sole source aquifer and surrounding neighbors if best management measures are not in place to control storm water runoff and prevent contaminants from entering the aquifer. Subsequently, if this application is approved, the property owner is highly encouraged to implement best management and LID practices and any other concerns by all the Application Review Member agencies/department as stipulated. Moreover, the applicant must be required to comply with established laws and the recommendations stipulated above.

As government officials, it is our primary responsibility to ensure that the construction and operations of this proposed endeavor are in a manner designed to protect the public health, safety, and to promote the public welfare and convenience. We also encourage the applicant to protect Guam's natural resources and to ensure they are used in a sustainable manner.

EX-OFFICIO MEMBERS

1. **DEPARTMENT OF PUBLIC HEALTH and SOCIAL SERVICES:**

   No Position Statement has been received as of the date of this Memorandum of August 16, 2018.

2. **GUAM FIRE DEPARTMENT:**

No Position Statement has been received as of the date of this Memorandum of August 16, 2018.

3. **GUAM ECONOMIC DEVELOPMENT AUTHORITY:**

No Position Statement has been received as of the date of this Memorandum of August 16, 2018.

4. **GUAM PUBLIC SCHOOL SYSTEM:**

No Position Statement has been received as of the date of this Memorandum of August 16, 2018.

5. **DEPARTMENT OF CHAMORRO AFFAIRS:**

No Position Statement has been received as of the date of this Memorandum of August 16, 2018.

Marvin Q. Aguilar
Chairman, ARC

Case Planner: Celine Cruz

GUAM POWER AUTHORITY

ATURIDÅT ILEKTRESEDÅT GUAHAN
P.O.BOX 2977 • AGANA, GUAM U.S.A. 96932-2977

RECEIVED
JAN 30 2017
Department of Land Management
Time 2:10 Int

January 24, 2017

MEMORANDUM

To: Chairman, Guam Land Use Commission
Executive Secretary, Guam Land Use Commission

From: General Manager

Subject: Lot 7, Tract 10417, Municipality of Yigo, (Kevin J. Yang); Zone Change Application from "A" (Agricultural) to "C" (Commercial) to construct 65 single or multi-family residential with 48 vacant lots suitable for housing. **Application No. 2017-04**

Guam Power Authority has reviewed the application described above and submits the following position statement:

A. Comments and Recommendations Concerning GPA requirements:

1. Customer is required to comply with the following pursuant to the National Electric Code, National Electric Safety Code and GPA's Service Rules and Regulations:
   - Coordinate overhead/underground power requirements with GPA Engineering for new structures.
   - Maintain minimum clearances as defined by the current edition of the National Electrical Safety Code and National Electrical Code.
   - Maintain adequate clearance between any structures and electric utility easements in accordance with NESC and GPA requirements.
   - Developer/Owner shall provide necessary electric utility easements to GPA prior to final connection.
   - Provide scheduling and magnitude of project power demand requirements for new loads.
   - All relocation costs for GPA's facilities, if necessary, is 100% chargeable to the applicant including but not limited to labor and materials.

2. Primary distribution overhead and underground line extensions and GPA service connections must adhere to the guidelines outlined in the current issue of GPA's Service Rules and Regulations.

3. A system impact assessment may be required to determine the effect of this facility on GPA's existing power facilities.

4. All costs associated with the modification of GPA facilities shall be chargeable to the customer. This includes relocation costs, new installation costs and any required system upgrades.

B. General Comments
GPA has no objection to the request subject to the conditions cited above.

JOHN M. BENAVENTE, P.E.

ASG/arp

VFSR

INFRASTRUCTURE CERTIFICATION FORM

Agency Certifying: **Guam Power Authority**
Applicant: Kevin J. Yang
Location: Lot 7, Tract 10417, Yigo
Type of Application: Zone Change
GLUC/GSPC Application No. 2017-04
Brief Project Description:
"A" to "C" to construct 65 single or multi-family residential with 48 vacant lots suitable for housing.

For the purposes of this Certification, GOVERNMENT SERVICES, FACILITIES, and INFRASTRUCTURE include, but are not limited to: **power lines poles and facilities; water lines, pumps and facilities; sewer and liquid waste disposal; storm water disposal; solid waste disposal; telephone lines and facilities; schools; health facilities; police and fire fighting service and facilities; roads; traffic and street lights; parks and recreational activities.**

1. I hereby certify that the required GOVERNMENT SERVICES, FACILITIES and INFRASTRUCTURE are currently **AVAILABLE AND IN PLACE** to support this project:
   Yes ☐ No ☒

2. If the answer to #1 above is YES, then:
   I hereby certify that the required GOVERNMENT SERVICES, FACILITIES and INFRASTRUCTURE are currently **ADEQUATE** to support this project:

   Yes ☐ No ☒

3. If the required GOVERNMENT SERVICES, FACILITIES and INFRASTRUCTURE currently in place are **NOT AVAILABLE** or they are **AVAILABLE, BUT NOT ADEQUATE,** itemize the services, facilities and infrastructure that are needed, the estimated cost thereof and whether funds are currently available and identified to develop such services, facilities and infrastructure:

Services, Facilities and Infrastructure Needed	Cost of Upgrades	Funds Available	Date Available	Funds Identified
Please see comments below				

I hereby certify that the foregoing is true and correct to the best of my knowledge.

JOHN M. BENAVENTE, P.E.
General Manager

1/26/17
Date

Comments:
Based on a preliminary inspection of the site, the electrical facilities may require upgrading to meet the demand of the proposed project. A system impact assessment maybe required to determine the effect of this facility on GPA's existing power distribution system. The applicant will be responsible for the cost of any required system upgrade.

ASG/arp

Eddie Baza Calvo
Governor of Guam

Ray Tenorio
Lieutenant Governor

BUREAU OF STATISTICS & PLANS
SAGAN PLANU SIHA YAN EMFOTMASION
Government of Guam
P.O. Box 2950 Hagåtña, Guam 96932
Tel: (671) 472-4201/3
Fax: (671) 477-1812

William C. Mcdonald
Acting Director
Manuel Q. Cruz
Deputy Director

APR 0 3 2017
RECEIVED
MB 4/4 APR 0 4 2017
Department of Land Management
Time 2:42 Int 1

MEMORANDUM

TO: Chairman, Guam Land Use Commission

VIA: Executive Secretary, Department of Land Management

FROM: Acting Director, Bureau of Statistics and Plans

SUBJECT: Position Statement on Application 2017-04; Tract 10417, Lot 7 Municipality of Yigo, Guam from "A" Rural Zone to "C" Commercial Zone; Applicant: Mr. Kevin J. Yang c/o Daniel D. Swavely

Håfa Adai! Applicant, Mr. Kevin J. Yang represented by consultant, Daniel D. Swavely seeks to rezone his property located in the Municipality of Yigo, from "A" Rural zone to "C" Commercial zone. The applicant proposes to construct a one story 25,000 square foot shopping mall with activities such as a restaurant, convenience/grocery store, a coffee shop, and other similar activities.

Tract 10417, Lot 7 is located just off the Chalan Lujuna road close to Perez Acres. The property is currently forested and is 136,856 square feet or approximately 3.1 acres and is surrounded by the Perez Acres Subdivision and the Ada Yigo Town Center. A vacant property separates Marine Corp Drive from the applicant's property.

The Bureau of Statistics and Plans (Bureau) has completed its review of Application 2017-04 to rezone Tract 10417 Lot 7 from "A" Rural zone to "C" Commercial zone and provides the following comments and recommendations.

Land Use. The North and Central Guam Land Use Plan (NCGLUP) is approved as an element of the Guam Comprehensive Development Plan (GCDP). The subject property is identified "Mixed Use" designation in the Future Land Use Map of the NCGLUP, which states:

> *"The Mixed Use category primarily focuses on larger commercial centers and corridors, including commercial uses that require large sites and draw customers from throughout the Island. Examples of commercial uses appropriate to this category include but are not limited to department stores, malls, office buildings, medical and other service uses, hotels/motels and restaurants. Mixed use developments incorporating a variety of types and densities of residential units are also appropriate in this designation. Mixed Use development along corridors should be developed in a manner that focuses density in specific areas or 'transit targets' to support high-quality transit service, and should be developed at a walkable neighborhood scale. Along undeveloped corridors, the mixed use development should be interspersed with development that is lower density to maintain natural character and open space."*

The Bureau finds that the proposed commercial activity is consistent with mixed uses in accordance with the North and Central Guam Land Use Plan.

Agricultural District. Tract 10417 Lot 7 is located in an "A" Rural zone in the municipality of Yigo. Guam's zoning law, 21 GCA Real Property, Chapter 16, §61637, states:

> *"No additional land may be established as a rural zone and no land presently zoned "A" may be rezoned without the Commission first having considered an agricultural impact statement which shall be submitted by the Director of the Department of Agriculture. This statement shall provide a detailed statement of:*
>
> *(a) The agricultural impact of the proposed rezoning upon the agricultural components of the Guam Master Plan.*
> *(b) Any adverse conservation or agricultural effects which cannot be avoided should the rezoning be approved.*
> (c) *The Director's opinion whether said rezoning should be approved and reasons therefore."*

The Bureau recommends the applicant, Kevin J. Yang, Inc. to submit an agricultural impact statement addressed to the Director of the Department of Agriculture as required by Guam's zoning law.

Aquifer Protection from Commercial Waste. The subject property is in the boundary of the Ground Water Protection Zone of the Northern Guam Lens Aquifer. The aquifer is an essential resource for Guam and is the primary source of drinking water for eighty percent of the island population. Moreover, the U.S. Environmental Protection Agency has designated the NGLA a sole source aquifer for Guam's drinking water. Therefore, it is of paramount importance to prevent sources of contamination from entering Guam's water supply.

The Bureau is concerned that activities from the proposed commercial zone will adversely

affect Guam's sole source aquifer. The Bureau recommends that the property owner, comply with the following:

1. Implement practices for managing waste to avoid potential contamination and ensure long term protection of the aquifer pursuant to the "Resource Conservation and Recovery Act of 1976."

2. Comply with an Aquifer Protection Review pursuant to the Federal Safe Drinking Water Act, §1424 and Guam Safe Drinking Water Act, 10 GCA Chapter 53. The property owner must work closely with Guam Environmental Protection Agency (EPA) for this review and for implementation of best management practices (BMPs) in preventing runoff from contaminating Guam's sole source aquifer in accordance with the CNMI Guam Stormwater Management Manual.

3. Coordinate with the Guam Waterworks Authority (GWA) for water resource conservation and water pollution prevention in protection of the Northern Guam Lens Aquifer pursuant to the *"Water Pollution Control Act," 10 GCA Chapter 47; "Water Resources Conservation Act," 22 GCA Chapter 5; 10 GCA Chapter 46, as amended by P.L. 17-87, and the Guam Water Resource Development & Operating Regulations.*

Low Impact Development (LID). The subject property is also located in the Mataguac Spring-Frontal Pacific Ocean Watershed. This area has seen an increase in impervious surfaces throughout the years. In between the years 2005 and 2011, the impervious surface area increased by more than five percent according to National Oceanic Atmospheric Administration's (NOAA) Coastal Change Analysis Program (C-CAP). As surface area increases so does the risk of flooding and degradation of water quality.

The LID approach works with nature to manage stormwater as close to its source as possible. LID employs principles such as preserving and recreating natural landscape features and minimizing the use of impervious surfaces to create functional and appealing site drainage that treats stormwater as a resource rather than a waste product. Impervious surfaces from roads, parking lots, driveways, sidewalks, and rooftops accelerate stormwater runoff.

The Bureau is concerned that once impervious surfaces are installed, commercial wastes are easily washed into the aquifer. If not managed, this activity can adversely impact Guam's drinking water source and surrounding neighbors.

The Bureau recommends the property owner to consider a green approach by implementing island bioretention, permeable parking and walkways, living roofs, grassed swales and/or rain gardens as a means to avoid or minimize runoff from their property. These approaches will add great benefits such as low maintenance, stormwater management, aquifer recharge, beautification, and neighborhood collaboration in accordance with the North and Central Guam Land Use Plan. An electronic file of the guidebook *"Island Stormwater Practice Design Specifications"* is available on the Bureau's, Guam Coastal Management Program's website

www.bsp3.guam.gov.

Historical and Archaeological Resources. The Bureau recommends coordination with Department of Parks and Recreation, State Historic Preservation Office to ensure the preservation, protection, excavation, and evaluation of specimens and sites pursuant to *"Historical Objects and Sites", 21 GCA, Chapter 76.*

The **Bureau recommends approval** to the zone change in order to develop a one story 25,000 square foot shopping mall with activities such as a restaurant, convenience/grocery store, a coffee shop, and other compatible activities. The Bureau finds that the zone change from Rural Zone to Commercial Zone is consistent with the North and Central Guam Land Use Plan "Mixed Use" designation.

However, and most especially due to the Aquifer directly below, the activities can detrimentally affect Guam's sole source aquifer and surrounding neighbors if best management measures are not in place to control stormwater runoff and prevent contaminants from entering the aquifer. Subsequently, if this application is approved, the property owner is highly encouraged to implement best management and LID practices and any other concerns by all the Application Review Member agencies/department as stipulated. Moreover, the applicant must be required to comply with established laws and the recommendations stipulated above.

As government officials, it is our primary responsibility to ensure that the construction and operations of this proposed endeavor are in a manner designed to protect the public health, safety, and to promote the public welfare and convenience. We also encourage the applicant to protect Guam's natural resources and to ensure they are used in a sustainable manner.

WILLIAM C. MCDONALD
Acting Director

The Honorable
EDDIE BAZA CALVO
Governor

The Honorable
RAY TENORIO
Lt. Governor

public works
DIPATTA MENTON CHE'CHO' PUPBLEKO
GLENN LEON GUERRERO
Director

FELIX C. BENAVENTE
Deputy Director

MB 3/16 MAR 16 2017

130 pt

March 8, 2017

MEMORANDUM

TO: Director, Department of Land Management

FROM: Director

APPLICANT: Kevin J. Yang

APPLICATION: 2017-04

SUBJECT: Rezone from ("A") Agricultural to ("C") Commercial, Lot 7, Tract 10417, Yigo

Buenas yan Hafa Adai! The applicant is requesting to rezone subject property from "A" to "C" with the intent to construct a family plaza neighborhood mall. The proposed mall will be located within a walking distance from Perez Acres Subdivision adjacent to Yigo Town Center. (See attached map). The Plaza will consist of a restaurant, grocery store, coffee shop, branch copy express and a specialty merchandise store.

The Department of Public Works (DPW) has completed its review with the following requirements from DPW-Division of Capital Improvement Projects (CIP).

- provide a storm drainage disposal (must be shown in detail and be supported with calculations);
- parking layout and detail of parking stalls (compact, standard and accessible) which must meet the American Disability Act (ADA);
- if the owner chooses to use GSWA disposal or any private services, the location of the trash or bin container should be situated in an area that will not hinder the public rights of way;
- comply with all the geotechnical requirements related to site preparations;
- road (entrance, exit, sidewalks and pedestrian) must be wide enough for public access; and must be in conformance to the Highway Master Plan.

NOTE: The applicant must coordinate with Guam Fire Department as to the required distance from (Mobil) gas station due to technological hazard that may be reasonably expected to impact in the structure before and after construction.

✓ DPW recommends approval, subject to the comments after review by the Application Review Committee (ARC) with conditions that a complete set of design drawings incorporating all the engineering disciplines are provided for building permit. The plans shall be in conformance with the latest building code edition and must be signed by a registered engineer or architect.

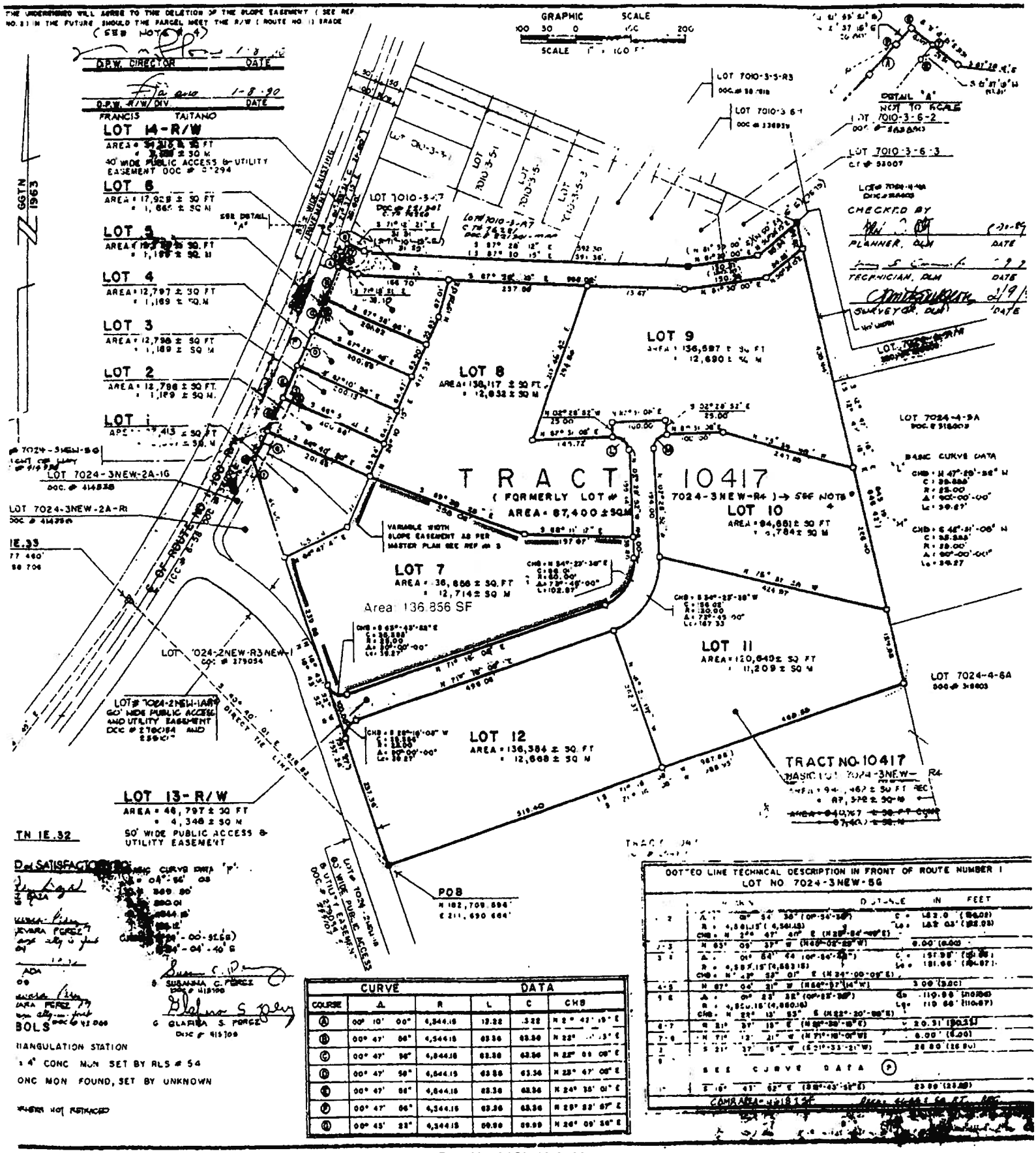
If you have any questions, please call Mr. John F. Calanayan, Acting Engineer in Charge or Maryrose M. Wilson, Engineer III at Division of Capital Improvement Projects (CIP) at 646-3189 or 646-3224. Dangkulu na Si Yu'os Ma'ase!

GLENN LEON GUERRERO

jfc

P. Gulac 3/16/17 Plng

542 North Marine Corps Drive, Tamuning, Guam 96913 • Tel (671) 646-3131 • FAX (671) 649-6178



CURVE	DATA				
COURSE	Δ	R	L	C	CHB
Ⓐ	00° 10' 00"	4,344.18	12.22	12.22	N 2° 42' 19" E
Ⓑ	00° 47' 56"	4,344.18	60.56	60.56	N 22° 19' 53" E
Ⓒ	00° 47' 56"	4,344.18	60.56	60.56	N 23° 08' 09" E
Ⓓ	00° 47' 56"	4,344.18	60.56	60.56	N 23° 47' 05" E
Ⓔ	00° 47' 56"	4,344.18	60.56	60.56	N 24° 35' 01" E
Ⓕ	00° 47' 56"	4,344.18	60.56	60.56	N 25° 22' 57" E
Ⓖ	00° 45' 22"	4,344.18	57.38	57.38	N 26° 09' 36" E

DOT "EO LINE TECHNICAL DESCRIPTION IN FRONT OF ROUTE NUMBER 1
LOT NO 7024-3NEW-5G

		DOT SCALE	IN	FEET
2	Δ = 00° 54' 38" (00° 54' 38")	C =	L&T = 103.0	(104.08)
	R = 4,581.15' (4,581.15)	Lc =	L&T = 103'	(102.08)
	CHB = N 3° 40' 40" E (N 3° 40' 40" E)			
2-3	N 03° 09' 37" W (N 03° 09' 37" W)		0.00'	(0.00)
3	Δ = 00° 54' 44" (00° 54' 38")	C =	151.98'	(151.98)
	R = 4,581.15' (4,583.15)	Lc =	151.98'	(151.97)
	CHB = N 3° 43' 01" E (N 3° 43' 00" E)			
4-5	N 07° 04' 21" W (N 86° 57' 39" W)		3.00'	(3.00)
5	Δ = 00° 23' 38" (00° 23' 38")	C =	119.88'	(119.88)
	R = 4,581.15' (4,583.15)	Lc =	119.88'	(119.87)
	CHB = N 3° 53' 53" E (N 3° 53' 50" E)			
6-7	N 21° 39' 15" W (N 89° 38' 45" E)		20.31'	(20.31)
7-8	N 71° 12' 21" W (N 71° 12' 21" W)		8.00'	(8.00)
8	S 21° 37' 15" W (S 21° 37' 15" W)		28.80'	(28.80)
9	SEE CURVE DATA (P)			
10	S 15° 41' 52" E (S 89° 43' 52" E)		23.99'	(23.88)

CAMARA = 0.818 AC

Doc. No. 34GL-18-2568.

Department of Parks and Recreation
Government of Guam
490 Chalan Palasyo, Agana Heights, Guam 96910
Director's Office: (671) 475-6296/7; Fax (671) 477-0997
Parks Division: (671) 475-6288/9
Guam Historic Resources Division: (671) 475-6294/5
Facsimile: (671) 477-2822

Eddie B. Calvo
Governor

Ray Tenorio
Lt. Governor

Robert S. Lizama
Director

William N. Reyes
Deputy Director

In reply refer to:
RC2016-0951

February 17, 2017

RECEIVED
MAR 03 2017
Department of Land Management
Time 9:08 Init

To: Executive Secretary, Guam Land Use Commission

From: Director, Department of Parks and Recreation

Subject: DPR Position Statement on DLM Application No. 2017-04:
Rezone Lot 7, Tract 10417, Yigo, to Commercial for Yigo Family Plaza

We reviewed our records and found no evidence of any archaeological investigation conducted on the subject lot. We have determined that any construction or development propose on the lot will require an archaeological survey to determine if historic properties are present on the property and the mitigation required for their treatment of disposition, if any.

As to the rezoning of subject lot, we have no object to the approval of subject application. If you have any questions regarding our position, please do not hesitate to contact our office.

Sincerely,

Robert S. Lizama
Director

Cc: Dan D. Swavely, Consulting Service, Inc.
dds@guam.ne

GUAM WATERWORKS AUTHORITY
Gloria B. Nelson Public Service Building
688 Route 15, Mangilao, Guam 96913

RECEIVED
APR 07 2017
Department of Land Management
Time Int

MEMORANDUM

March 17, 2017

TO: Director, Department of Land Management

FROM: Miguel C. Bordallo, P.E., General Manager

SUBJECT: Position Statement on Zone Change Application No. 2017-14 for Lot 7, Tract 10417, in the Municipality of Yigo.

APPLICANT(S): Kevin J. Yang represented by Daniel D. Swavely

The Guam Waterworks Authority (GWA) has reviewed the applicant's request for a zone change from "A" (Agricultural) to "R2" (Commercial) zone for the proposed development of a commercial building (Yigo Family Plaza).

This memorandum shall serve as GWA's position statement to the above zone change request related to availability of water and sewer infrastructures to serve the above subject lot. This position statement shall not be construed as notice that water and sewer systems have the capabilities to accommodate the proposed development including fire flow without on-site or off-site improvements. Any extension of the water and sewer systems and/or capacity upgrades required to serve the property shall be subject to the rules and regulations of GWA. Any required extension to the existing facilities to serve the subject properties shall be at expense of the applicant.

Given the information provided in the application and field observations, the following comments are conditions for GWA's position in favor of the approval of this zone change application:

1. The applicant must provide GWA with site development plans to construct the proposed commercial building. The site development plans must illustrate the proposed point of connection for water and sewer and is subject to GWA inspection and approval. Submittals shall include water and sewer design calculations and complete drawings and specifications. Design calculations shall include proposed water demand calculations including fire-flow and sewer production calculations.

2. GWA requires the applicant to coordinate with the GWA Engineering Department well in advance of the building permit application submittal. Discussions shall include the proposed water demand and sewer production calculations in order to determine if existing facilities can accommodate the proposed development and if any off-site infrastructure improvements may be necessary.

3. If off-site water and sewer infrastructure improvements are installed by the developer, they will require prior approval and shall be subject to inspection by GWA. Any infrastructure improvements will be at the expense of the applicant.

4. On-site utilities installed on public rights of way or easements to support the proposed development shall be at the expense of the developer/applicant.

5. The applicant shall install GWA water meters in the public right of way or easement.

6. Backflow prevention devices are required for non-residential activities.

7. A grease trap is required if the development will include a food preparation facility.

8. New development is subject to water and/or sewer system development charges (SDC).

This GWA Position Statement shall remain valid for 365 calendar days from the date of this response. Please contact GWA Engineering Division regarding water and sewer system improvement design and construction standards and procedures. For additional information please contact Mauryn McDonald, P.E., Permits and New Area Development Supervisor, at 300-6054.

2. GWA requires the applicant to coordinate with the GWA Engineering Department well in advance of the building permit application submittal. Discussions shall include the proposed water demand and sewer production calculations in order to determine if existing facilities can accommodate the proposed development and if any off-site infrastructure improvements may be necessary.

3. If off-site water and sewer infrastructure improvements are installed by the developer, they will require prior approval and shall be subject to inspection by GWA. Any infrastructure improvements will be at the expense of the applicant.

4. On-site utilities installed on public rights of way or easements to support the proposed development shall be at the expense of the developer/applicant.

5. The applicant shall install GWA water meters in the public right of way or easement.

6. Backflow prevention devices are required for non-residential activities.

7. A grease trap is required if the development will include a food preparation facility.

8. New development is subject to water and/or sewer system development charges (SDC).

This GWA Position Statement shall remain valid for 365 calendar days from the date of this response. Please contact GWA Engineering Division regarding water and sewer system improvement design and construction standards and procedures. For additional information please contact Mauryn McDonald, P.E., Permits and New Area Development Supervisor, at 300-6054.

Department of Agriculture
Dipåttamenton Agrikottura

Eddie Baza Calvo
Governor

Ray Tenorio
Lt. Governor

Director's Office	300-7970 / 7969 / 7966
Agricultural Development Services	300-7973 / 7972 / 7967
Plant Nursery	300-7974
Aquatic & Wildlife Resources	735-3955/56; Fax 734-6570
Forestry & Soil Resources	300-7975/6
Plant Inspection Station	475-1426/27; Fax 477-9487
Animal Health	300-7965 Fax 734-6569

Matthew L.G. Sablan
Director

Jessie B. Palican
Deputy Director

DEPARTMENT OF LAND MANAGEMENT
RECEIVED
DEC 14 2017
CLTC/GALC/GLUC

MB 12/14

December 11, 2017
Memorandum

To: Director, Department of Land Management

Attn: Executive Secretary, Guam Land Use Commission and Guam Seashore Protection Commission

From: Director of Agriculture

Subject: **"Agricultural & Environmental Impact Statement" for a "Zone Change" request from an "Agrcultural" to a "C" for application 2017-04 on Lots 7 Tract 10417 Yigo Family Plaza Located in Yigo. (Kevin J. Yang).**

Agriculture has reviewed the subject lot for a "Zone Change" request from an **Agricultural to a Commercial zone** and has no opposition to the proposed zone change for the construction of a Family Plaza Shopping Mall development. Our agency will recommend approval of the zone change with the following statements, conditions and requirements set forth in *21 GCA Chapter 61 Section 61637* as our preliminary inspection of the site found no adverse impact to **Agricultural** activity and to any **Endangered Species** and other protected **Coastal Zones, Wetland habitat** and **Watersheds**.

The proposed zone change for the lot is located in an area that has been traditionally used for various farming and ranching activities in the past. Currently no such "Agricultural" activity has been identified for this particular site in over 20 years and no active farms are in this immediate area. The current uses of the surrounding facilities are in line with the proposed zone change and subsequent development into a full service commercial center. Therefore no adverse impact to any agricultural activity exists either within the property scope or to surrounding properties. With regard to any immediate damage to the environment should the project proceed our agency will require the following conditions to be met and implemented onto the project site once any clearing and grading is to take place.

Should the proposed zone change be approved and the project moves into the build phase be aware that the proper Clearing and Grading permits must be obtained and registered with the Department of Public Works One Stop section with all the regulatory agencies signed off on the permit in order to proceed with mass clearing and grading of the site. No land clearing activity is to occur prior to securing the proper permit.

As rapid development occurs in this region of the island the destruction and removal of native tree species increases the potential for pollution and the loss of **Guam's Northern Aquifer** the primary source of drinking water that supplies the island. As such our agency requires that a comprehensive landscaping plan address this deficiency in development of the northern part of the island and as it relates to the construction of **Yigo Family Plaza** to be built on this site. Should the proposed project precede **Agriculture** recommends that the lot designated for build will have elements of a green zone dedicated to it, as part of the overall landscaping plan. If this includes parking and green zones not identified in the application the use of native trees that originate in this area is highly recommended as they are suitable and will adapt readily to the existing soils. Simply, the re-planting of native trees in a dedicated section of the lot(s) or allowing the existing fauna to remain as is vital in maintaining the aquifer and the surrounding habitat to allow for a healthy and vibrant eco-system. The root system of these trees helps to prevent erosion and assists in filtering out synthetic contaminants and other manmade chemicals that would otherwise make its way into the aquifer and polluting it. The **Department of Agriculture** has several programs and personnel that can assist you in developing a plan to address this issue.

Please contact our **Agricultural Development Services & Forestry** divisions here at the agency for further assistance and guidance at 300-7972 & 7976 respectively. Our Forestry division grows and maintains these native tree species should you choose to incorporate them into the project. Contact their office for assistance and consultation at 300-7976. Please be aware that the increased loss of Guam's native habitat contributes to a diminished capacity to sustain and support a healthy island community. It is vital that all land developers take a proactive step in preventing and causing this loss. To fully benefit and see these eco-friendly practices being used visit our **Department of Agriculture Organic and Environmental Demonstration Farm.** The demonstration farm displays various planting techniques that will aid the incorporation of flora back into the landscape to ease and possibly eliminate further damage to the environment. The planting of native trees will add to the aesthetic appeal of the development as it uses the trees that were once abundant in this part of Yigo. The trees will also serve to provide shading for its residents, windbreak capabilities during heavy weather, erosion control, filtration of runoff and a more nature driven development that takes into account Guam's vital natural resources.

During our site investigation of the area there where no incidents of the **"Little Fire Ant"** ***(Wassmannia auropunctata)*** however be aware that there are reported infestations located at the Yigo waste dumpsite which lies on the back road of Rte.15 the opposite end of this property. This is of concern as the presence of this invasive and threatening species could spread to this area if heavy equipment is being used on other sites and brought into this area by contamination of equipment and vehicles. To avoid issues from occurring and preventing future problems down the road we recommend that equipment entering the work site be properly treated by a licensed pesticide company. In addition to this any clearing of vegetation should also be handled with care as stockpiling of green waste will act as a breeding and nesting site for the **"Coconut Rhinoceros Beetle"(*Oryctes rhinoceros)*** larvae. All green waste should be transported to a facility that can properly dispose and treat the organic matter either through mulching and composting. By having the green waste recycled the plant material can be used to provide landscaping material back into the project for weed control and aesthetics for a proper managed landscaping plan. Please see the listing for these companies that are available on line or for proper guidance you can contact our office for further assistance in using their services.

Once again should the project proceed to the build phase and the permits for land clearing and grading are secured be aware that Guam is a migratory route for various species of birds to use as a resting point. During our investigation and inspection of the site no birds were observed. However there exist a strong possibility that the site is used as it contains very little human activity that would otherwise discourage them from landing. If these species of migratory birds are observed at any point on the site no interference is to occur either to prevent them from landing or disturbance and disruption of their normal behavior should be altered.

Please be aware that development and the loss of Guam's natural habitat can have a devastating effect on the quality of life here on island. It is vital that all land developers take a conscious approach in protecting our resources for future island residents and the general well being of our delicate eco-system. The guidelines as listed in this Impact Assessment should be used as a template to ensure continuation of Guam's habitat. For other earth friendly techniques and guidance please contact our offices at 300-7973. Thank you in this regard.

MATTHEW L.G. SABLAN
Director



5 Baki Court,
Perez Acres,
Yigo, GU 96929

August 23, 2018

Guam Land Use Commission
ATTENTION:
Chairman John Arroyo/Cristina Gutierrez

I am a homeowner and resident of Perez Acres. I write in strong support of the Yigo Family Plaza, to be built close to Perez Acres.

There are several reasons why I support this development, and ask the Guam Land Use Commission to also support it.

- The board of the Perez Acres Homeowners Association chose to oppose this development, but I believe there are many residents and homeowners like me that would like to see it proceed.
- Firstly, we can all walk to this commercial center – a distinct plus. We will not even have to cross a road to reach it, which is another advantage.
- There are definitely residents who already walk to those shops and facilities we have close by, and patronize local shops. But we could certainly do with more facilities that we can walk to, especially if we don't have to cross Marine Corps Drive. I would welcome more restaurants that we can walk to.
- Most importantly, I think Mr. Kevin Yang clearly wants to build a development that will be welcomed, and is going out of his way to be a good neighbor and ensure that Yigo Family Plaza is a plus to the village and to our part of it, and that it harmonizes with neighboring developments.
- Yigo has grown in past decades and we have some shops near us, but nothing like the variety of facilities in Dededo; commercial development in Yigo has not kept pace with residential growth. The more we can do to improve the commercial offerings, the better.

Please do not hesitate to call me if you have any questions. I can be reached on 687-2505.
Sincerely and with thanks,

M Maratita

Maureen N. Maratita