JAMES E. WHITE
ATTORNEY AT LAW
P. O. BOX 47, Capitol Hill
SAIPAN, MARIANA ISLANDS 96950
Phone : 2.00

02

SUMMARY AND ANALYSIS OF INITIAL THREE DAY MEETING OF THE JOINT LAND COMMITTEE

The purpose of this document is to summarize the general developments of this initial meeting and the various problems that were identified. It is meant to be an in-house document for the use of the Marianas members of the Joint Land Committee, the other members of the Marianas Political Status Commission, and the consultants and legal advisors to the Marianas Political Status Commission. All opinions expressed and evaluations made are not to be attributed to any member of the Commission; they are only my initial thoughts at this juncture. I will not attempt to put this document into finished form as the additional time this would require would be unwarranted, and the necessity of this information to be placed in the hands of our Washington consultants as quickly as possible requires this approach.

The meetings of the Joint Land Committee began on July 15, 1974, at 10:30 a.m. in the Conference Room at Headquarters,

Trust Territory of the Pacific Islands, Saipan, Mariana Islands; and they lasted a full three days. Initially, the United States proposed Terms of Reference for the scope of operations of the Joint Land Committee. This draft was read and reviewed slowly on the first day. The Marianas members of the committee held a separate review of the draft to adequately develop problem areas and areas that needed clarification. During this first session, the "We Love America Committee" petition with 206 signatures of residents of Tinian was presented by Jose R. Cruz to Edward DLG. Pangelinan, Chairman of the Marianas Political Status Commission, who was present at the meeting. In turn this document was turned over to James R. Wilson, Jr., for transmittal to Ambassador Williams. As a result of these meetings, the following documents were developed, and are attached hereto for your reference:

1. Terms of Reference for the United States - Marianas Political Status Commission Joint Land Committee.

2. Proposed Agenda submitted by the United States Delegation on the last day of the meeting. It was basically tabled at that point for further review by our delegation and consultants, and it will become the first item of business when we reconvene on the last

09371

day of July or the first day of August. On page 4 of the agenda you will see the proposed schedule of meetings. These are target dates only and subject to revision if necessary. Any dates listed hereafter will also be tentative, subject to change.

3. Summary of the First Session of the Joint Land Committee. This was developed by Emmett Rice and myself and takes the place of the once-a-day summary initially proposed. Notice that within this summary there is a list of all attending members from both sides, so I will not repeat that process here.

4. Tentative letter to be sent from the United States to our committee chairman indicating that a survey will begin immediately, and requesting assistance on rights of entry. The greatest percentage of our time was spent reviewing the Terms of Reference for the scope of this committee. The following items were discussed:

1. The approach to be used for development of the amount of money to be paid by the United States to the Marianas for the land in question. It was indicated by James Wilson that there are two approaches that could be followed by the United States in arriving at this figure. They are the negotiated approach and

09372

the appraisal approach. He indicated that the United States must follow certain guidelines regardless of which approach is used. We did not get into the discussion of what the guidelines were for the United States in reference to a negotiated price approach; however, we did get into a rather thorough discussion of the appraisal approach. Joe Samaratano gave the following explanation as a procedure followed by the Navy real estate agency when acquiring land using the appraisal approach.

A board is developed by the nomination of a chairman by the commander of the organization in charge of the Navy real estate program. This chairman sets up a board consisting of two other board members and an expert appraiser. These three board members and the appraiser review the specific land problem and develop the scope of work to be performed by the appraisal contract and develop the guidelines under which the contract is to be performed. During this period of developing scope of contract they often get legal interpretation so that the final result of the scope will be legally sound. The procedure followed for developing the value of the land interest to be acquired follows the same procedure whether the land concerned is to be acquired

09373

on a lease basis or on a purchase basis. The first function is to identify the highest and best use for the land in question. It was indicated that these are the operational art words of this entire exercise, and when construing highest and best use for the land it has to be current and not speculative use. In a question put forth as to what is current it was indicated that, in all probability, three years into the future would be all that they would look at. Beyond three years would definitely be speculative in nature. Once the highest and best use is identified, then an A & E Report is developed showing a facsimile of that type of development and the general cost breakdown as to all development aspects such as utilities, etc. Thereafter, the appraiser for the board makes the final scope of the contract terms and also projects his own overview estimate of the land value. The board then selects five appraisers as a slate. A letter is then sent to each of these appraisers to ascertain their availability and includes a summary of the work to be performed. The board then selects one appraiser, or if a very large contract two appraisers, for submittal of his cost to perform the work as outlined in the scope of the contract. There is then a negotiating session and final development of contract price. The appraiser

then makes a gross determination of the value of the land, using its highest and best use. Thereafter, he deducts the cost of land development to get to the highest and best use; i.e., the cost of developing utilities, etc. and comes up with a net cost figure which would be, in effect, the present discounted value of the raw land were it to be immediately developed for the highest and best use selected. The appraiser's work is done strictly in accordance with the scope of the contract, and it was indicated that the key to the entire situation is just what is included in that scope. Once this is developed, any of a number of professional appraisers should come up with a relatively close final result. When the contract is let to the appraiser, it is accompanied by a written memorandum giving the contracting appraiser exactly what is needed in the final report. When the final report is recieved by the board it is reviewed by the local appraiser and then reviewed again by the chief appraiser in Washington, D. C. who puts the final approval figure down which is then used to establish the negotiating price. Also, that figure and report is what is later used in front of the United States Congress in order to obtain the appropriate funding for the purchase or lease of the land in question. The first day's estimate was that

09375

the cost of such an appraisal would run about $60,000 for the U. S. for Tinian. Later that figure, given by Mr. Samaratanc was increased by an estimate given by Jim Wilson of $75,000 to $100,000. Mr. Wilson's feeling is that the United States prefers the negotiated route if at all possible. He further indicated that if the United States goes into this "elaborate appraisal routine" then the United States would coordinate the scope of the contract with our input and then they would develop the figures to be submitted for our review. Once this procedure is followed the United States is locked in with the result and this would then leave no capability for negotiation, and we would conceivably end up with a lot less money than if we were to go on a straight negotiated rate. My personal evaluation of these comments of Mr. Wilson is that it is pure hyperbole. Prior to entering into any negotiating procedure they at least have had an overview as to evaluation so that any negotiated price would have taken that into account. If they felt they could get the land cheaper on an appraised basis, they would have no reluctance to start on an appraisal basis immediately. A valid comment to be made in reference to the use of the negotiated method rather than the appraisal method is not the cost involved, which is

minimal considering the overall project, but the time factor indicated by Mr. Samaratano which would be three to six months for an appraisal to be completed.

We indicated that under no circumstances did we intend to go forward without an appraisal being done by our expert, and that we felt this was necessary to ensure that an adequate price would be received for the land as to do anything less would leave the Commission open for criticism later. Consequently, we made the suggestion that a possible procedure to follow could be the development of the scope of the contract on a coordinated effort between our committee, our expert, and the U. S. appraiser or board; that the U. S. would stop with the development of the scope and not proceed with the actual appraisal work, but our appraiser would proceed with the guidelines set out within the scope. With this information, we would then be able to approach the United States for a potential negotiated settlement, and if we were then unable to arrive at a final figure we would look towards the possibility of a formula approach of one appraiser from our side, one appraiser from their side, and a third appraiser as agreed by the first two. In this fashion the fair market value figure could be developed on the land. The U. S. did not appear to desire to discuss the formula approach at this juncture but did

09377

agree to answer our question about whether or not they would jointly develop a scope of contract at this point and answer that question at our next session. One further suggestion was made by Mr. Samaratano that we should consider the approach of an overview appraisal to be done initially by our appraiser before attempting to develop a full scope appraisal. With this overview we could attempt to arrive at a negotiated price. We made no response to this proposal, however, I feel this alternative is worth noting. It has the advantage of developing a fair market value price that would be within a certain percentage of being accurate without the attendant expense of a full appraisal in accordance with the scope of contract. Additionally, it would have the effect of being completed more quickly, and it is possible that we could develop the actual price figure within the committee report to be submitted to the Commission. We mentioned our awareness of the situation that if the fair market value of the land was sufficiently high, so as to conceivably make it unattractive to the U. S. Congress, we could possibly develop a graduated lease that would, in the initial years, contain a more palatable figure with appropriate graduations to allow a fair market value return when the lease is looked at as a whole. This approach was

09378

not further discussed as the U. S. is still desirous of a lump sum payment.

The final emphasis of this whole area of discussion should be that, if we decide to go the full appraisal route, even if only on our own, prior to doing this we should get an agreement from the United States to develop a joint scope of contract so that we would not later be put in the awkward position where the United States could claim the reason for the variance in appraisal results is that we did not follow the same scope that they did.

2. The Terms of Reference initially indicated that land price determination was going to be one of the first items established as far as our discussions were concerned. They had shown Method of Acquisition first and Land second. These items have now been placed at the end after we have determined Joint Use of Facilities and Lease Back Arrangements.

3. The original Terms of Reference for this committee did not include any joint use of facilities on Tinian except for discussions with reference to Tinian harbor and West Field. We pressed for further discussions of joint use as to other base facilities and such coordinated items as utilites; and, reluctantly, under (B) on page 2 of the final Terms of Reference,

09379

a (3) was included which was developed for further review as to whether or not this subject is properly within this committee's jurisdiction or would it be more appropriate in the jurisdiction of the Later Joint Relations Committee. We emphasized that our concern was not to get into the specifics of each of the potential joint uses, but we do not desire to lose our leverage position and have status and lease agreements signed prior to an inclusion of general principles applicable to joint use in these other areas. In essence, we tried to indicate that this land committee properly should discuss the general principles of scope for the later Joint Relations Committee as it applies to joint uses. The only commitment from the United States, so far, is that they would be amenable to a general statement of policy in this regard without specifics. It appears extremely important that we press on in this area to establish as definitively as possible the various areas of "mutual understanding of sharing of activities" at least in principle and have these activities specifically listed and delineated, hopefully in both the status agreement and the lease. Mr. Wilson's feeling was that they should be delineated in the status agreement but not necessarily the lease itself. The specific areas discussed for possible inclusion were

09380

fishing rights, access to beaches, access to other areas of land on the base, development of coordinated facilities for recreation, utilities, etc.; and specifically the base recreation facilities and schooling for all concerned.

4. We wanted a review of the Joint Use Agreement for Isley Field included in our Terms of Reference. This was resisted by the U. S. Delegation, and reluctantly included as (B)(4). Their position is that the Joint Use Agreement has already been completed and funds have been designated in accordance with that agreement; consequently, no further review is appropriate at this time. However, they did agree that this is something we should approach further once we have an opportunity to review that agreement in depth, and it was included as a paren item on the agenda.

5. We made the request that the Coast Guard Loran Station also be made part of the Terms of Reference for this committee and we ran into great resistance in this area. The U. S. position was specifically stated by Mr. Wilson and I will attempt to reiterate it. Generally, the Coast Guard uses that location for Loran A. This is worldwide and is being phased out and replaced by Loran C. Loran C is established in Guam and Yap now, and consequently when Loran A

09381

is phased out (estimated to be in 1977) the Coast Guard site on Saipan will be closed down except for a receiver station for Loran C. He did not have an answer to whether or not Loran C Receiver Station would require as much land as is presently used under the Loran A setup. The U. S. is also looking into the possibility of using Rota as the Loran C Receiver Station in response to a request by Benjamin Manglona. Mr. Wilson feels that we already have determined that the present lease would be applied up until Loran A was phased out in 1977. If they retained their position on Saipan at that time, a revaluation should then be made; consequently, it is not an appropriate agenda item. We indicated that we felt it was an appropriate item for review by our appraiser while he was available; and this seems like the time to at least develop a fair market value for that property and possibly discuss more fully the rental rate applicable. The only headway we were able to make was the inclusion in the Terms of Reference of Section F indicating that, by agreement of the Joint Committee chairmen, other items could be discussed. Mr. Wilson emphasized that the Coast Guard Station was a fairly small area and we should just let it go for now. We emphasized that it is a relatively large area considering the location, and it is extremely

09382

valuable, especially if the Coast Guard is going to curtail its interests or possibly move out entirely; and, therefore, we feel this particular parcel of land should be reviewed more thoroughly. In reference to items 3, 4 and 5, it has been additionally learned, after a meeting between Ed Pangelinan and Ambassador Williams, that all three of these items are to be included under Section F of the Terms of Reference, but delineated specifically as examples of such items.

6. We expressed the concern of the Marianas Delegation of the inclusion under (D), page 3, Section 2, to establish the role of the Marianas Land Corporation with respect to United States Land requirements, as we are in no position at this point to go forward with a discussion, and we feel this is a subject to be discussed between our Commission and the District Legislature in coordination with the appropriate legislation or Executive Order to be developed for establishment of the land corporation. We were assured by Mr. Wilson that there was no attempt on the part of the United States to insert itself in this area other than to establish what the role of the corporation would be in respect to such items as determination of private land holdings within the proposed military land area

and the settlement of such problems as payment and return of existing leases, etc. With these limitations we agreed to go ahead with this terminology and hope to develop the appropriate answers. Our concern is whether or not the land corporation should involve itself in these actual settlement arrangements; and if so, to what extent the United States would support funding for this operation by the corporation. As Mr. Wilson indicated, settlement costs would be born by the United States in reference to these private holdings of land. Consequently, we actually only have a problem of procedure.

7. A large percentage of the first part of the meeting was devoted to the discussion of the survey problem. The U. S. initially only wanted a survey of the southern boundary and we wanted a complete survey so as to indicate an accurate figure of total acreage and potential surveys of different use areas as might be established under highest and best use so that we could get exact acreages in each of these locations. It was indicated by the United States that the cost of such a complete survey would be in excess of half a million dollars, and where they were willing to pay for the cost of all relevant surveys they were not desirous of spending that kind of money to establish

09384

the exact acreage. We were quite concerned about the approach to be followed in determining the southern boundary, but this was resolved and we decided to adopt the U. S. proposed position of surveying the southern boundary with our observer in attendance. Also, our Joint Land Committee would work closely to determine where this boundary should be, and depend on aerial developments and present existing surveys to calculate the overall acreage of the area developed. If we go into the further development of spheres of uses, we could then, with existing surveys and aerial maps, develop relatively adequate estimates of the acreages involved. It was agreed that this survey work should begin as quickly as possible, and it was further agreed that when the survey teams were aboard a subcommittee, or the committee as a whole should walk the southern boundary areas to ascertain just where the survey is to go. A letter is attached indicating the development of potential rights of entry needed, and indicating the immediacy of the survey by the United States. We reviewed the proposed letter and the indicated changes were developed.

8. Mr. Wilson suggested that two subcommittees be formed to expedite the work during the month of

09385

August. One committee to review the Joint Use problems and the other to review the method of acquisition and land price developments. Our initial position has been to resist this procedure as we feel our small committee could be spread a little too thinly and would be without the benefit of legal and technical advice if both subcommittees were working at the same time. With the full month of August projected for the work of this committee, it would seem we could work as a whole committee and accomplish the work easily.

9. Target dates for completion of work were developed and are included in the proposed agenda. Our initial reaction was that these dates are probably ambitious, however, depending upon the approach to be taken on appraisal could conceivably be reasonably accurate. One additional problem was voiced in this area in that Pedro A. Tenorio, chairman of the Joint Land Committee, is also our representative to coordinate efforts with the Department of the Interior on the developmental planning of the proposed new memorial park. We had hoped to see this effort being developed before the next session of the Marianas Political Status Commission; and, consequently, if he is needed in Washington for a period of time on this work it would conceivably delay the target dates as listed. It is probably necessary

09386

to acquire some information on the time of this study in order to adequately prepare for the remainder of our meetings.

10. Mr. Wilson suggested that both sides consider developing a draft report to save time later. My view is that a draft is premature at this point, however, when the August meetings develop results, as a byproduct of these results, a draft will be started.

11. Joint use of Tanapag Harbor was discussed, and whether or not a Joint Use Agreement was needed in this area. Mr. Wilson indicated that no Joint Use Agreement was needed, and that presently the United States only has a contingent need for harbor capability on Saipan, and that need is adequately protected by the reservation of Able Dock for potential future military development. In the interim, should the military need to use the facilities of Charlie Dock, that would be accomplished on a straight commercial basis, so a joint use agreement for Charlie Dock is not necessary.

12. In reference to the harbor at Tinian, we requested an opportunity to review the master planning of the harbor area itself so that we could develop a more specific input for purposes of our work in August. The United States indicated to us that they do not have a master plan for Tinian Harbor at this juncture

09387

and would like to see what we present in the way of needs prior to developing that master plan. It would appear that we have an avenue here of possible advantage by a concentrated effort immediately on the harbor area of Tinian using an extremely high estimate of anticipated civilian growth and developing a tentative master plan of our own for presentation to the U. S. Delegation prior to their developing a locked in picture.

13. Several questions were developed in the area of port authorities. The first was whether or not port authorities should be included under the diminutive control of the land corporation or whether there should be a separate organization for controlling this development. Our initial reaction was that a separate organization should be developed, but it may be necessary, legally, to have nominal control within the land corporation until there is sufficient transition to the new Marianas Government to allow for an entirely separate organization. An additional problem developed as to whether or not to have a separate port authority for each harbor and for each airfield. It was felt that this would be too much and the proper procedure would be to have one port authority with jurisdiction over all harbors and airfields or have one port authority cover airfields and one port authority cover harbors. Mr. Wilson seemed

09388

to favor the single authority approach and cited an example of the port authority of New York which covers both harbors and airfields. Walter Appelle, the Air Force technician responsible for airfield activities felt that a separate authority should be considered. Our input in this regard was that whenever a function could be combined, with our small population, it should be considered if at all possible. This area will be looked at more closely when the committee members go to look at the harbor and air facilities on Guam. Several suggestions for assistance were forthcoming from Mr. Samaratano and Walter Appelle--one being that the Coast Guard could conceivably be of assistance here as to port authorities, and some areas of public law should be reviewed. They cited Public Law 92-340. The Department of Transportation also has regulations on running the port authorities in addition to this public law. Under airfields, there were several citations given. One was the Airport and Airways Development Act, Public Law 91-258 and Public Law 92-174. The second was the FAA Act of 1958, Sections 1507(a) and 1508, Title 49, USCA Public Law 85-726.

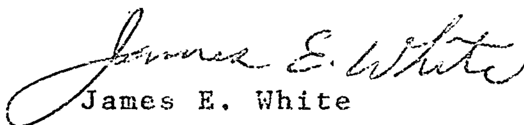
14. The last area of discussion was whether or not our next meeting would be held in Hawaii or on Saipan. It was felt by all concerned that Hawaii,

09389

for part of the next meeting, would be appropriate in that a great percentage of the source material in reference to appraisals, etc. was located in Hawaii and much expertise could be developed at that juncture. Thereafter, a return to Saipan for the remainder of the month to complete work in the other areas. The estimated time in Hawaii would be from one week to ten days. The real issue as to whether or not we could hold the meeting in Hawaii was funding for the Marianas Delegation. The latest word on this subject is that in all probability the start of the meeting will be in Hawaii.

If any general conclusion is to be reached in reference to this meeting, it would be that it was extremely productive in delineating the various problems that this committee will have, and that a rather definitive approach was developed in order to complete the necessary work. The group seemed to work very well together; and with a full month's effort coming in August, the results should be positive.

Respectfully submitted,


James E. White

09390