

## Taking of customary land for the new Salelologa township

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### Introduction

The valuation of the land taken for Salelologa Township is a lesson not only to the government but also to the landowners of Salelologa village. The process and valuation of this land paves the way to reconsider the land valuation procedures and land policy under the Ministry of Natural Resources and Environment (MNRE). The valuation of 2,872 acres of land in the village of Salelologa produced challenges and experiences to the people involved, especially the government valuers and Salelologa village. One learning experience that emerged from this land valuation case is to identify a gap between valuation principles and practices. That gap needs to close by way of controlling and monitoring the valuation practices in one way or the other.

The critical issue of liability for negligence is one core principle examined under the Salelologa case. The causes of negligence are clearly identified under international land valuation standards (Hayward and Rees 2000). Land valuers cautiously performed the duties according to the required standards. *Gesta Romanorum* laid the greatest peril of negligence as *Whatever you do, do cautiously, and look to the end* (ibid) In comparison to the Samoan context, land valuers adhere to the land valuation policy. This policy set the requirements and conditions that all valuers need to have a license in order to practice land valuation in the country. This policy satisfies one required standard of the international valuation standard (IVSC 2003).

This paper begins with discussing the valuation of 2,872 acres of customary land. The discussion is then directed to the negotiations between Salelologa village and Government where the issue of land value conflicts is identified. We conclude with a discussion of lessons learned and the implications to the Salelologa village and Government.

### Land valuation of 2,872 acres

The valuation of 2,872 acres of land was valued similarly to other large areas of land. Land valuation procedures and processes were implemented. The valuers acted under instructions from the Land Board, to perform the valuation of the Salelologa Township. The valuation began by studying the 2,872 acres following approval of survey by the Chief Executive Officer and Minister of Natural Resources and Environment. The government and Salelologa village made negotiations before the land survey in 2000. These negotiations concentrated on surveying the land and money was involved between the two parties.

In valuing the 2,872 acres of land, the government valuers identified the land boundaries, took soil samples, identified potential features, recorded landuse and elevations, as well as inspecting physical characteristics of land. The fieldwork including inspection of the land was critical in the land valuation process. Some of the works involved in the process were inspections, taking critical notes and collecting data from comparable land sale transactions.

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Major comparable sales were located along the coastal area of Faasaleleaga district and the inland Vaiaata area. Few land sales were located in the Palauli district.

The basis of valuation is very essential in any valuation work. The international valuation standards have specific standards in forming up a valuation basis. Every practising valuer shall follow the international standards no matter which country they reside and practice. Valuation basis is where the valuer has formed up an opinion based on evidence and accurate information from fieldwork of the land being valued. The adoption of valuation methods rationalise and underpin the opinion and create a strong valuation of the land. In comparison with 2,872 acres, the accurate data gained from fieldwork, and land sales available in Palauli, Faasaleleaga and Vaiaata districts form up the basis of valuation. In addition, previous land compensation payments and appropriate adjustments of land sales were included in the valuation basis.

The valuation method secures the land value of the land. The most recognised method adopted in Samoa is the direct comparison method. This method was adopted to value 2,872 acres of Salelologa land. The reliability, accuracy and availability of information pertaining to the method will enlighten the justification of using it to value 2,872 acres. The confidence of the government valuer in using the method is paramount. There is no limitation to using valuation methods in Samoa. However the selection of an appropriate and suitable method depends upon the valuer's decision. Salelologa land is a customary land. Under the law there is no land value for customary land. An adjustment is made at 10 percent depreciation from the market rate due to the fact that land is under customary ownership, rocky, volcanic, and undeveloped. The government valuer not only uses the direct comparison method as a primary approach but also adopted the unit metre method as a check approach to value 2872 acres. The final land value of 2872 acres is \$3.2 million that is \$1,114 per acre basis.

The impact of statutory provisions to the market value of the land is imperative. The court cannot take into account any special allowance for customary land in terms of compensation. In valuing the 2,872 acres, the government valuer has to consider the provisions of land valuation under the *Taking of Lands Act 1964*. The calculation of this land value has made reference to the provisions of the Act. The land value of \$3.2 million tala was a true value without any special allowance. On the other hand, there is a special value to the owner concerning the compulsory taking of the land for public purpose. The international valuation standards underpin the valuers' judgement to include an appreciation allowance on top of the market value in consideration of the special value. However, this required standard cannot consider statutory laws in Samoa. There is a gap existing between international standards and statutory laws exercised in the country itself.

### **Negotiations between Salelologa and Government**

Negotiations began on 2 February 2001 between the Government and Salelologa village at the Ministry of Transport headquarters. The Government representatives included the Minister, CEO and senior officers of MNRE. The Minister offered \$3.2 million for 2,872 acres based on government valuations prepared by the government valuer. The government valuer elaborated on the valuation implementation and valuation basis to the village representatives. The representatives from the village did not agree to the \$3.2 million offered by the government. In response, the village proposed for \$300 million for 2,872 acres plus free accessibility to electricity and water supply. In conclusion, no amicable agreement was reached by both parties. The government advised the village to set up a sub-committee to

provide a valuation to support the basis of their offer and liaise closely with government officials.

A second negotiation took place in the village of Salelologa on the 11 May 2004. The village again offered \$300 million for 2,872 acres, equivalent to \$104,500 per acre. However, government kept its offer of \$3.2 million. Again no agreement was reached and still no valuation provided by the village to support their price. A third negotiation on the 19 October 2001 in which Salelologa village sought out an amount of \$50 million, that is \$17,410 per acre. Government still remained at \$3.2 million and still no agreement was made between parties. A fourth negotiation between Salelologa and Government was made on the 11 December 2001. The government still offered the same amount for compensation whilst the high chief of the village advised the government to leave the matter with the village. There was no mention of any alternative compensation amount sought by Salelologa village.

The fifth negotiation was held at Salelologa village on 1 February 2002. The honourable Prime Minister, Tuilaepa Sailele Malielegaoi was involved in the negotiation process as a representative for the government. The government offered \$4 million for 2,872 acres to the village as compensation. This amount includes \$3.2 million based on government valuations and \$800,000 as *matupalapala* (gift under Samoan custom and usage) to recognise the importance of the relationship between the government and Salelologa village. The high chief of the village accepted the offer at \$4 million for 2872 acres. There was no mention by the high chief or any other matai (holders of chiefly titles) present as to any other amount sought by Salelologa as compensation. The written agreement between the village and government was held on 25 March 2002. The Minister of MNRE explained the legal agreement document as the high chief of the village and other matais of Salelologa village were signing the agreement.

### **The land value conflicts**

The government started to implement some work at the Salelologa township after an amicable agreement was made. Roads were constructed inside the 2872 acres. Some portions of the area were subdivided for commercial, industrial, and other public amenities. The government's intention was leasing out the land plots to all people for business development. The priority to lease these land plots were given to the people living in Savaii Island. After several months the Salelologa village took the government to Court claiming \$40 million as compensation based on their valuation at \$45 million tala. A private valuer made the valuation. The difference between the government valuation and the private valuation is \$41.8 million tala. It appears that people were confused especially the Salelologa village. This case raises other land issues that were not handled by the government in the past. The issue of land valuation practice and true value of land appears to be controversial. People will question the reliability of the land valuation practice, which needs solutions from government. The piece de resistance that emerged from the Salelologa case is to bring out land valuation issues requiring further investigations.

### **Lesson learned**

The writer admits that gaining work experience from the Salelologa case was challenging. Land compensation and land exchanges were key lessons learned by the government not only from the Salelologa case but from other land issues in the past. The most important thing is to maintain the *faasamoa* (Samoan way of life) between the government and villages. The *va tapuia* amongst the matais is still paramount and that is one essence of the Samoan way of life. Although political movement is hiding somewhere, that is real life and the same situation happens to other Pacific countries (Van Trease 1987).

The lessons learned by the Government included:

- a) review protocols and procedures in taking customary land under *The Taking of Lands Act 1964*,
- b) control and monitor the land valuation practice and system through land valuation legislation,
- c) more resources to investigate ways to register and use customary land as collateral, and
- d) recognise the importance of consultation with villages in dealing with land issues.

Lessons learned by Salelologa village (applicable also to other land owners) were:

- a) people of the village understand that their rights are exercised under the law,
- b) people of the village and other villages in Savaii island benefit by the development of the new township,
- c) people understand that land valuation is part of their preparation for negotiation process, and
- d) that government has no intention to treat the villages unfairly in regards to land compensation.

### **Conclusion**

This paper provided an insight to the issues of land valuation practices and land negotiation processes. The protocol of the law still remains. However, government uses the principle of *faasamoa* in negotiations with the village in order to achieve the development of new township for Savaii Island. The land valuation practice required legislation to control and monitor since it is an important element to fulfil sustainable development. This legislation requires consultation and should be carefully crafted at precursory level. There is a need in reviewing the procedures and protocols for the taking of customary lands for public purposes. Government should carefully make decisions according to the law of compulsory acquisition of lands. Finally the case describes a 'win-win' situation for both parties involved – Salelologa is enjoying the benefits from their lands but in the long run they will enjoy more from the benefits of a new township whilst the government successfully achieves major development objectives.

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