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CHAMBER OF REAL ESTATE AND BUILDERS' ASSOCIATIONS, INC POSITION PAPER

On The Revised BP 220 & PD 957 IMPLEMENTING RULES & REGULATIONS

The HLURB has recently come up with revised rules and regulations (IRR) to implement BP 220, PD 957 and related laws.

It is the Chamber's view that the revised IRRs either have no basis in the laws sought to be implemented or are violative of not only the law but the Constitution as well, even as in general the rules are unnecessary, unrealistic, arbitrary and unjust.

Under the previous IRRs both the developers and the home buyers have already been experiencing extreme difficulties ~ the developer in terms of packaging and selling, the buyer in terms of affordability. The revised rules would only compound these difficulties ~ the developers who comply will not be able to sell, while the buyers who may be attracted by the house/lot packages may find these extremely difficult to acquire ~ for the following reasons:

PROVISIONS COMMON TO PD 957 AND BP 220 IRRs

The Implementing Rules and Regulations of both PD 957 and BP 220 provide/require as follows:

1. **20% ACTUAL PROJECT COMPLETION AS A PREREQUISITE TO ISSUANCE OF LICENSE TO SELL.** ~ This has no basis under the laws sought to be implemented, as neither BP 220, PD 957 nor the related laws require it. It is basic that an implementing regulation cannot be more stringent than the law upon which it is based.

It is an elitist requirement that would allow the survival of only the few huge conglomerates in the housing industry, and would enable only the elite to acquire land and housing.

For, in effect this requirement would amount to a ban on pre-selling ~ a universal practice that, having worked to the mutual benefit of the developer and the buyer, has

subsisted throughout the years. With pre-selling, the sums advanced by the buyers enable the developer to reduce borrowings, thereby cutting down on interest expense and other financing costs. This cost reduction is passed on to the buyers in the form of lower selling prices.

Without pre-selling, the prices of housing packages would be astronomic ~ considering the long gestation period of housing production, the capital-intensive nature of the business which necessitates substantial borrowings, and the high interest rate regime obtaining in the country.

If the intent is to protect the buyers, the performance bond requirement and the proper exercise of powers of the HLURB to forfeit the same or to take over the project in case of non-completion should suffice.

2. **PRICE CEILING.** ~ The HLURB cannot and should not intervene in the pricing of lots and/or house/lot packages whether under BP 220 or PD 957, as (a) there is no law that empowers it or any other agency to do so, and (b) what the buyer and seller freely agree upon is what should be the law between the parties.

The price ceilings under the government homelending program ~ being applicable only to projects enrolled for funding thereunder ~ cannot be used by the HLURB as basis for indiscriminately limiting the prices of all projects, otherwise it would amount to a violation of free enterprise and the non-impairment clause in obligations and contracts.

3. **SUSPENSION/NON-ISSUANCE OF LICENSE OF PRESENT AND PROPOSED PROJECTS ON THE BASIS OF MERE COMPLAINT OF BUYERS.** ~ This rule is not only stringent, it is unjust, oppressive and arbitrary. It would amount to a violation of due process which, per jurisprudence, demands that an adjudicatory body or tribunal such as the HLURB must first hear the case before it condemns and render judgment only upon full and proper inquiry.

4. **REQUIREMENT THAT LOTS DESIGNED FOR DUPLEX, ROW HOUSES AND SINGLE ATTACHED SHOULD HAVE HOUSING COMPONENTS.** ~ This would amount to a practical ban on exclusively lot packages. If applied to Metro Manila and urban centers where land prices have become prohibitive and where buyers thus are able to buy only the lot for future homebuilding, this would practically mean denying the urban landless and homeless ~ who cannot afford a house-and-lot package ~ the opportunity to secure land tenure.

If at all, this requirement may be tenable only outside of urban centers where prices of complete house/lot packages may still be affordable.

5. **INCREASE IN OPEN SPACE REQUIREMENT BASED ON DENSITY.** ~ It is basic in land development and housing that (a) the smaller the lots, the greater is the provision for the roads; (b) the longer and wider the roads, the bigger is the development cost; (c) the longer and wider the roads, and the larger the

provisions for open spaces and amenities, the smaller is the recovery in terms of saleable lots.

All these have such substantial compounding effect in terms of jacking up production cost. and the bigger the production cost, the more expensive and unaffordable will be the prices of the lots.

All these are anathema to BP 220 which mandates the lowering of the standards for land development and house construction in order to make the resultant packages more affordable by the intended beneficiaries.

The proper approach in keeping with the statutory intent is to do exactly the reverse of what is provided under this particular revised rule ~ i.e. (a) to lower the existing provisions for open spaces and amenities to their irreducible minimum; (b) in the case of projects located within 5 kilometer radius of existing parks, playgrounds, schools, commercial centers and other amenities to exempt the project entirely from the requirement for open spaces and amenities; and (c) for areas beyond said radius, to require LGUs to assume responsibility and shoulder the cost of providing such playgrounds and other amenities out of the taxes they collect.

6. **REQUIREMENT FOR TREE-PLANTING.** ~ The present practice where the developer, by contract, requires the lot buyers to undertake tree planting satisfies fully the legal imposition on tree planting. Besides, experience has shown that trees planted by developers are often destroyed, mutilated or dismembered during housing construction by the buyers who become totally callous and indifferent in preserving the improvements, as they had no stake in planting the same.

Furthermore, this would again entail costs, which would inevitably be built into the selling price.

7. **LIMIT ON THE VALIDITY OF DEVELOPMENT PERMIT.** ~ A development permit should have no fixed period of validity, for after all, there is no injury to anyone if it is allowed to subsist. The injury to the developer would arise in cases where development would transcend to a longer period. In such cases, an automatic expiration and the consequent renewal may only become potential source of graft ~ especially when one considers that an applicant for a new development permit would have to go through the entire gamut of bureaucratic processes and costs involved in approval, inclusive of the DAR's and Sangguniang Bayan's "envelopmental SOP", ECC, etc.

8. **REQUIREMENT FOR ENVIRONMENTAL PLANNER TO BE CO-SIGNATORY.** ~ This requirement has no legal basis as neither PD 957 nor the related laws require it, even as it would entail delays and additional costs which will be absorbed by the buyers.

Besides, all subdivision plans are already signed by licensed architects, civil engineers and geodetic engineers who, while not necessarily environmental planners, are nonetheless well-versed in environmental issues and concerns.

Albeit, this requirement is unnecessary, as all projects are already required to be covered by ECC and EGGAR when located in critical areas.

9. **REGISTRATION OF OWNER/DEVELOPER AS DEALER.** ~ Unlike real estate brokers and salesmen, real estate developers are necessarily real estate dealers ~ dealership is subsumed by the term owner/developer.

And since registration is already required on their condominium and/or subdivision projects, they should no longer be required to register separately as real estate dealers, otherwise this would result in double registration. This should be true for both first timers and seasoned developers.

This requirement may also be construed as an unnecessary and redundant act of duplicating the license to sell, since it would imply that a registered real estate developer who has already obtained a license to sell for his project would be banned from selling unless he also registers as a real estate dealer.

10. **ECC REQUIREMENT.** ~ The requirement for an ECC prior to the application for development permit is inconsistent with EO 184 and EO 45, as it would result in costly delays.

It is therefore recommended that this Rule be **deleted**, and the status quo be maintained where the development permit may be issued prior to the ECC and actual development of the project.

11. **FEES.** ~ The following fees are imposed as condition for registration and issuance of license to sell:

Under BP 220:

P 10.00 per lot for socialized housing
P 10.00 per lot for economic housing

Under PD 957:

Residential (per sq.m. of saleable area	~ P 10.00
Commercial/office (per sq.m. of saleable area)	~ P 20.00
Per saleable lot	~ P 120.00
Additional fee per sq.m. of house floor area	~ P 10.00
Memorial parks, per plot (2.5 sq.m.)	~ P 50.00

The above schedule of fees is excessive and arbitrary. While administrative agencies are authorized by law to charge fees, it is understood always that such fees must be in such reasonable amounts as would be commensurate to the specific regulatory function or service being rendered. Albeit the cost of regulation is already funded by an agency's budgetary appropriation, fees

should therefore not be resorted to as a revenue-generating mechanism to cover operational costs. Otherwise this would take on the nature of taxation, for which administrative agencies are not empowered.

BP 220 IRR ~ ADDITIONAL REQUIREMENTS

Apart from the earlier discussed objectionable provisions common to the Revised IRR of both PD 957 and BP 220, Section 5 of the Revised IRR of BP 220 also imposes the following upgraded design standards and technical requirements:

1. Requirement to provide facilities for multipurpose halls, health, talipapa, commercial centers, elementary and high school;
2. Increase in road right of way from 8 to 10 meters;
3. Increase in the width and access restrictions for alleys and pathways;
4. Paved roads ~ including minor roads ~ as the new minimum standard (in the previous IRR, macadam design was allowed for minor roads in socialized housing projects);
5. Concrete lined canal with load bearing covers; and
6. Provision for loft.

All of these would considerably increase development costs and inevitably translate to higher prices of housing packages, thereby:

- a. Adversely impacting on housing affordability, thus further robbing the millions of underprivileged homeless families of the capability to acquire decent dwellings;
- b. Seriously impairing ~ if not rendering impossible ~ the marketability and viability of economic and socialized housing packages, thus completely discouraging private sector involvement that is indispensable in resolving the problem of homelessness.

These impositions therefore contravene not only the clear mandate under the very law that the IRR seeks to implement, but also the Constitutional mandate under Article XIII Section 9 for the State to “undertake, in cooperation with the private sector, a continuing program of urban land reform and housing which will make available at affordable cost decent housing and basic services to the underprivileged and homeless citizens”.

BP 220 clearly sets forth under Section 1 the law’s intent to “promote and encourage the development of economic and socialized housing projects, primarily by the private sector, in order to make available adequate economic and socialized housing units for average and low-income earners in urban and rural areas”. Said law under Section 2 further clarifies that “economic and socialized housing refers to housing units which are within the affordability level of the average and low-income earners which is 30% of the gross family income”.

This intent is affirmed under Section 1 of EO 90 (S1986) which mandates the HLURB to encourage “greater private sector participation in low-cost housing through liberalization of development standards, simplification of regulations”.

It is in pursuit of this intent that the HLURB was authorized under Section 3 of BP 220 “to establish and promulgate different levels of standards and technical requirement for the development of these types of projects from those provided for in PD Nos. 957, 1216, 1096 and 1185”.

The whole idea behind this authority conferred upon the HLURB to “liberalize”, or lower, development standards is to enable a reduction in the prices of housing packages down to the affordability level of the poor.

Thus it was that the original BP 220 IRR allowed for minimum lot sizes smaller than those prescribed under PD 957 in order to make them more affordable. On top of this, the minimum sizes of roads and open spaces prescribed under PD 957 and related laws were reduced, and requirements for non-basic facilities and amenities were eliminated ~ all geared towards reducing development costs and thereby reducing selling prices.

The Revised IRR for BP 220 represents a complete turn-around, for it upgrades, rather than liberalizes, the design standards and technical requirements for economic and socialized housing.

Ironic still, the upgraded requirements for economic/socialized housing projects are not even required for middle- and high- income projects under PD 957 ~ the standards of which are supposed to be higher than those under BP 220.

While it may be that these requirements are intended to satisfy aesthetic and other considerations, this is, however beside the point. For, in the context of the Constitutional and statutory mandates as well as the gravity of the problem of homelessness, it is clear that the paramount concerns ~ to which aesthetics and other non-basic considerations should give way ~ are (1) affordable cost of housing packages and basic services in order to assure land tenure and decent dwelling for the underprivileged homeless, and (2) maximum private sector participation in this effort.

Neither goal will be served if the Revised IRR of BP 220 is allowed to stand.

RECOMMENDATION

In view of all the foregoing, it is recommended that the aforementioned Rules be set aside, and the status quo under the previous IRRs of PD 957 and BP 220 be maintained.

It is further recommended that the schedule of fees be revised in consultation with CREBA and other affected parties.

01 July 2002

HON. MICHAEL T. DEFENSOR

Chairman
Housing & Urban Development
Coordinating Council
Chairman
Housing & Land Use Regulatory Board

ATTN: **HON. ROMULO Q. FABUL**
HLURB Commissioner &
Chief Executive Officer

Mr. Chairman:

In behalf of the real estate and housing industry, we thank you for the Board's speedy and favorable response to CREBA's recommendations regarding the Revised Implementing Rules (IRR) for BP 220 and PD 957.

We would like to request, however, for a reconsideration of the Board's Decision of 05 June 2002 on the following items:

12. **20% ACTUAL PROJECT COMPLETION AS A PREREQUISITE TO ISSUANCE OF LICENSE TO SELL.** ~ The Board's Decision is silent on whether or not this new requirement is to be retained.

We reiterate our earlier recommendation that this requirement be dispensed with, as it has no basis under the laws sought to be implemented, since neither BP 220, PD 957 nor the related laws require it. It is basic that an implementing regulation cannot be more stringent than the law. It is an elitist requirement that would allow the survival of only the few huge conglomerates in the housing industry, and would enable only the elite to acquire land and housing.

For, in effect this requirement would amount to a ban on pre-selling ~ a universal practice that, having worked to the mutual benefit of the developer and the buyer, has subsisted throughout the years. With pre-selling, the sums advanced by the buyers enable the developer to reduce borrowings, thereby cutting down on interest expense and other financing costs. This cost reduction is passed on to the buyers in the form of lower selling prices.

Without pre-selling, the prices of housing packages would be astronomic ~ considering the long gestation period of housing production, the capital-intensive nature of the business which necessitates substantial borrowings, and the high interest rate regime obtaining in the country.

If the intent is to protect the buyers, the performance bond requirement and the proper exercise of powers of the HLURB to forfeit the same or to take over the project in case of non-completion should suffice.

13. **HOUSING COMPONENTS FOR LOTS DESIGNED FOR DUPLEX AND ROW HOUSES.** ~ We request reconsideration of the Board's decision to retain this requirement.

We reiterate that this would amount to a practical ban on the production/sale of exclusively lot packages. If applied to Metro Manila and urban centers where land prices have become prohibitive and where buyers thus are able to buy only the lot for future homebuilding, this would practically mean denying the urban landless and homeless ~ who cannot afford a house-and-lot package ~ the opportunity to secure land tenure.

We would be amenable, however, to a Board decision that would make this requirement applicable only outside of urban centers where prices of complete house/lot packages may still be affordable.

14. **ROAD REQUIREMENTS AND REQUIREMENT TO PROVIDE ADDITIONAL FACILITIES FOR BP 220 PROJECTS.** ~ We appreciate the Board's decision to reduce alleys from 3 meters to 2 meters, and to delete the requirement to provide loft.

However, we would like to reiterate our earlier recommendation to revert to all the standards under the previous BP 220 IRR, and dispense with the new additional requirements such as (1) multipurpose halls, health, talipapa, commercial centers, elementary and high school; (2) increase in road right of way from 8 to 10 meters; (3) Increase in the width and access restrictions for alleys and pathways; (4) paved roads including minor roads; and (5) concrete lined canal with load bearing covers.

As we have earlier stated, any upgraded standard will contravene the letter and intent of BP 220 as it would result in increased development costs, which in turn would (1) adversely impact on housing affordability, thus further robbing the millions of underprivileged homeless families of the capability to acquire decent dwellings; and (2) seriously impairing ~ if not render impossible ~ the marketability and viability of economic and socialized housing packages, thus completely discouraging private sector involvement that is indispensable in resolving the problem of homelessness.

15. **DAR CLEARANCES.** ~ We request reconsideration of the Board's decision to require a DAR exemption clearance as precondition for issuance of a license to sell.

It has always been CREBA's position that lands exempt from CARP by virtue of law, or of local reclassification/zoning ordinance approved by the HLURB in accordance with law, are no longer agricultural lands and as such are outside of the DAR's jurisdiction whether for redistribution or regulation purposes.

This position finds ample support not only in jurisprudence interpreting pertinent Constitutional provisions, but also in existing laws such as the CARL (RA 6657) itself, PD 399, RA 7279, RA 7160 and RA 7916.

Thus, any executive fiat or regulation imposing the requirement of DAR clearances ~ whether conversion or CARP-exemption ~ as precondition for development of these non-agricultural and CARP-exempt lands, is not only illegal but unconstitutional as well, even as it has been inimical to the nation in terms of stunting not only housing development but economic growth as well, by creating an environment of artificial land scarcity and price spiral, prohibitive development costs, and rampant graft.

Under the law, the HLURB is the primary agency specifically designated to regulate housing and land use for non-agricultural purposes. It is its task to enforce the aforementioned laws and ensure that the lands designated therein for various non-agricultural uses are so utilized.

If the HLURB finds itself unable to fulfill this task ~ one that is essential in protecting and promoting the interest not only of the industry but also that of the homeless millions that it serves ~ the very least that the HLURB should do is not to allow itself to be used by the DAR as the tool in enforcing its illegal and unconstitutional act of taking control over non-agricultural lands.

We therefore reiterate our long-standing position that in the issuance of both development permit and license to sell, the requirement for a DAR clearance ~ whether conversion or CARP-exemption ~ should be totally dispensed with, when the land involved is a non-agricultural land under the law (i.e. private stripland under PD 399, urban land under RA 7279, reclassified land under the Local Government Code, Ecozone land under RA 7916, or tourism land under existing tourism laws).

16. VALIDITY OF DEVELOPMENT PERMIT. ~ We request a reconsideration of the Board's decision to retain the 3-year validity requirement.

We reiterate that such requirement benefits no one, yet poses injury to the developer should project development extend to a longer period for causes entirely beyond the developer's control ~ causes such as force majeure, a Court injunction, litigation which could take years to resolve, and other similar cases.

In such cases, an automatic expiration and the consequent renewal would subject the developer to the hardships, cost burdens, and graft associated with the entire gamut of bureaucratic processes involved in securing the multifarious clearances that are prerequisites to securing a development permit.

If the intent behind this requirement is to preclude unnecessary delays in project development, it is wholly unnecessary, considering that in view of the tremendous costs involved it is to the best interest of a developer to avoid anything that would result in delay.

Besides, should delays do occur, it is always within the power of the HLURB to require the developer, on pain of penalty, to explain the same.

17. ENVIRONMENTAL PLANNER AS CO-SIGNATORY. ~ We request reconsideration of the Board's decision to retain this requirement.

We reiterate that this has no legal basis as neither PD 957 nor the related laws require it, even as it would entail delays and additional costs which will be absorbed by the buyers.

Besides, all subdivision plans are already signed by licensed architects, civil engineers and geodetic engineers who, while not necessarily environmental planners, are nonetheless well-versed in environmental issues and concerns.

Albeit, this requirement is unnecessary, considering that all projects are already required to be covered by ECC as well as EGGAR when located in critical areas, and in the process are carefully scrutinized by the DENR for environmental impact.

18. FEES. ~ We request reconsideration of the decision to retain the schedule of fees. We reiterate that these fees, being excessive and arbitrary, take on the nature of taxes for which the HLURB is not empowered.

If the purpose is to augment the HLURB's operational funds, we suggest that this should be pursued not by charging exorbitant fees but by prevailing upon Congress to increase the agency's budgetary appropriation ~ toward which CREBA commits to fully assist the HLURB.

In addition to the foregoing, we request clarification of the decision regarding the ECC. May we emphasize that we are not in any way recommending that this requirement be dispensed with, but simply that simultaneous processing be undertaken in accordance with EO 184 and EO 45 ~ i.e. the status quo under the previous IRR should be maintained wherein the development permit may be issued while the ECC is still in process.

Thank you and more power.