Position Paper

Relative to

Proposed Amendments to PD 957 and BP 220 IRR

02 April 2002

Prefatory Statement

It is a state policy 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." *(Sec. 1, BP 220)*

To carry out this policy, the Housing and Land Use Regulatory Board "is authorized 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, and the regulations promulgated thereunder must be made in consultation with the DPWH, INP, and other appropriate government units and instrumentalities and private associations." *(Sec. 3, BP 220)*

The intent of the law is to lower the prices of these types of housing and make them affordable to average and low-income earners. *(Sec. 2, BP 220)*

Section 2 c) of Executive Order No. 648, S. 1981, Charter of the Human Settlements Regulatory Commission (now HLURB) commands said office to "streamline, improve and optimize land use policies and regulation on human settlements."

Section 1 c) of Executive Order No. 90, S. 1986 also mandates the HLURB to encourage "greater private sector participation in low-cost housing through liberalization of development standards, simplification of regulations."

Notwithstanding the foregoing statutory directives, HLURB has come up with more stringent rules and/or requirements for housing development that have both legal and economic implications as follows:

Revisions Common to PD 957 & BP 220 Projects

1. **ENVIRONMENTAL PLANNER AS PLAN CO-SIGNATORY** *(BP 220 – Rule IV, Section 2; PD 957 – Rule II, Section 5)*

    a) This requirement has no legal basis. PD 957 does not require it.

    b) The old procedure suffices. Practicing architects and engineers are also mindful of environmental concerns affecting real estate projects.

    c) Developers are not privy to any agreement entered into by HLURB and the Professional Regulatory Commission.

    d) It will entail additional cost which will be passed on to buyers.

e) All subdivision plans are already signed by an architect, civil engineer or geodetic engineer who, while not necessarily an environmental planner are nonetheless familiar with environmental issues. Besides, the country only has a few environmental planners.

   If at all, this should be required only in instances where projects are located in hilly, mountainous or other critical areas that, by their attributes and characteristics, may pose danger or threat to life or property of all upon the happening of certain contingencies, foreseeable or otherwise.

2. **REGISTRATION OF OWNER/DEVELOPER AS DEALER** *(Rule V, Sec. 13)*

   a) This would result into double registration, since owners/developers are already required to obtain certificates of registration and license to sell for their projects.

      Unlike brokers and salesmen, real estate developers are necessarily real estate dealers; and since registration are already required for their condominium and/or subdivision projects, they should no longer be required to register separately as real estate dealers. This should be true for both first timers and seasoned developer. If not deleted, this requirement may be construed as an act of duplicating the license to sell, since the implication would be that a real estate developer who has not registered as well as real estate dealer would be banned from selling.

   b) This is also an absurdity. The term owner/developer subsumes dealership.

3. **SUSPENSION, NON-ISSUANCE OF LICENSE OF PRESENT AND PROPOSED PROJECTS ON THE BASIS OF MERE COMPLAINTS OF BUYERS** *(Rule V, Sec. 13.E & F)*

   a) This proposed rule is not only the most stringent; it is also the most unjust, oppressive and whimsical.

   b) This rule, in effect, would amount to deprivation of private property in violation of due process. Due process means that a tribunal, such as HLURB, must first hear a case before it condemns. It must proceed upon inquiry and must render judgement only upon and after trial (*Batangas-Laguna-Tayabas Bus Co. vs. Cadiao, L-28725, Mar. 12, 1968, 22 SCRA 987*).

   c) If there is a violation, sanction should be made to apply only to the project where the violation was committed.

   d) This would also be a convenient strategy for buyers to avoid payment of installments and escape rescission of contract.

4. **PRICING** *(BP 220 – Rule II, Section 8; PD 957 – Rule VI, Section 17)*

   HLURB should not interfere in the pricing of lots – whether under BP 220 or PD 957 or otherwise – because there is no law that empowers HLURB to do so.

   The ceiling under the UHLP or MWLS is applicable only to projects to be funded thereunder. If otherwise, HLURB has no authority to impose price ceilings.

5. **PREPARATION OF ELECTRICAL LAYOUT PLAN** *(BP 220 – Rule II; PD 957 – Rule II, Section 5 & Rule IV, Section 7)*

   The electrical layout plan should be prepared by Meralco upon submission by the developer of the sewers, drainage and water distribution system plan.

   The requirement would only entail additional cost to developers and is likely to cause additional delay.

6. **ECC** *(BP 220 – Rule IV; PD 957 – Rule II, Section 5)*

   The new rule that requires ECC prior to the application for development permit would mean costly delays, and is inconsistent with EO 184 and EO 45. The status quo should be maintained, in that the development permit may be issued prior to ECC and actual project development.

7. **VALIDITY OF DEVELOPMENT PERMIT** *(BP 220 – Rule IV, Section 2; PD 957 – Rule II, Section 5)*

   A development permit should have no fixed period of validity. After all, if no development takes place for one reason or another, nobody will be injured. On the other hand, if the development would transcend to a longer period, the provision for automatic expiration could be a 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 requirements for approval.

8. **TREE PLANTING** *(BP 220 – Rule IV, Section 2; PD 957 – Rule II, Section 5)*

   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 to preserving the improvements as they have no stake in planting it.

   Besides, the additional cost that this would entail will simply be passed on to the buyer.

9. ***DUPLEX, ROW HOUSES AND SINGLE ATTACHED SHOULD HAVE HOUSING COMPONENTS*** (BP 220 – Rule II; PD 957 – Rule I, Section 1)

   The requirement should apply only to areas outside Metro Manila, Metro Cebu and other similar urban centers.

10. ***THE PROJECT IS NOT FRAUDULENT*** *(BP 220 – Rule V, Section 18, PD 957 – Rule IV, Section 11)*

    The provision appears to be self-defeating if not totally unnecessary. For, who is to judge, simply based on the papers presented, that the subdivision project is or is not fraudulent? If this is not deleted, this could be a potent source of graft because it would seem that HLURB alone will have all the say on what is and what is not fraudulent, real or imaginary.

11. ***OPEN SPACE REQUIREMENT*** (BP No. 220 – Rule I & Rule II; PD No. 957 – Rule I, Section 1)

    The current physical standards – particularly those pertaining to open space, mandatory facilities, community facilities and amenities – should be maintained.

The whole idea behind BP No. 220 is to lower the standards of land development, housing and construction and related matters in order to make the resultant packages affordable. This is why the required lot sizes have been reduced, the widths of the roads narrowed, the open space requirement reduced, and amenities downgraded.

Whatever may be lacking in the open space and amenities will have to be filled up by local government units – as is their responsibility.

To increase the requirements for open space and amenities would be to compound the cost to the developers in terms of loss in saleable area. The additional costs will simply be passed on, thereby impairing affordability.

If the new rule is allowed to stand, it would result in an absurd situation where requirements that are not imposed on PD 957 projects are imposed on BP 220 projects.

Revisions Relative to BP 220 Projects

The new BP 220 rules increase or impose new requirements, among which are:

1. Parks and Playground allocation based on densities. *(Sec.5, 6.1 and b.2)*
2. Facilities for multipurpose, health, talipapa and commercial centers, elementary and high school. *(Sec. 5)*
3. Road right of way, from 8 to 10 meters. *(Sec. 5, b.3.2)*
4. Alleys and pathways, width and access restrictions, i.e. a 3-meter alley or pathway cannot be used as access to lot. *(Sec.5b.3.2)*
5. Concrete lined canal with load bearing cover. *(Sec. 5)*
6. Minimum design for all roads – paved including minor roads. *(Sec. 5)*
7. Provision for loft. *(Table 3, 15)*

All these upgraded design standards and requirements increase development cost and thus impair affordability, contrary to the intent of BP 220 and the mandates of the HLURB.

HLURB should strive to find innovative ways to reduce costs; otherwise, it should maintain the current standards which have worked well over the years.

Follow-up Position Paper

01 June 2002

We thank the Board for its 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 reconsideration on the following items:

1. 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 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. 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.

3. 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:

   a) Multipurpose halls, health, talipapa, commercial centers, elementary and high school;

   b) Increase in road right of way from 8 to 10 meters; '

   c) Increase in the width and access restrictions for alleys and pathways;

   d) Paved roads including minor roads; and

   e) 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:

a) Adversely impact on housing affordability, thus further robbing the millions of underprivileged homeless families of the capability to acquire decent dwellings; and

b) Seriously impair – 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.

4. 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. Experience has shown that 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 – then 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 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).

5. 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.

6. 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.

7. 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.