



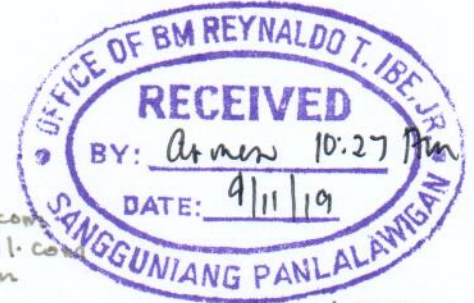
ANVAYA COVE
The Neighborhoods at Anvaya Cove
Homeowners Association, Inc.

11 September 2019

SANGGUNIANG PANLALAWIGAN
(THE PROVINCIAL BOARD)
PROVINCE OF BATAAN
CAPITOL COMPOUND, SAN JOSE,
BALANGA CITY, BATAAN – 2100

Handwritten signature in pink ink
c/o JOSE Y. S.D.
SEPT. 11, 2019

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RE: 2019 Draft General Revision containing the Proposed Schedule of Fair Market Value

Gentlemen/Mesdames:

This is a formal petition for review and revocation of 2019 Draft General Revision containing the Proposed Schedule of Fair Market Value and proposed Tax Ordinance increasing the fair market values of properties in the Province of Bataan, on the ground that it is oppressive, excessive, unjust and confiscatory.

Petitioner The Neighborhoods at Anvaya Cove Homeowners Association, Inc. is a non-stock and non-profit organization duly organized and existing under Philippine Laws, with office at Village Administration Office, Anvaya Cove, Morong, Bataan. It is composed of individual and corporate members who are registered owners of residential properties in Anvaya Cove, Morong, Bataan, taxpayers and/or residents of Anvaya Cove, Morong, Bataan, and who are adversely affected by the said Draft General Revision and/or Ordinance. Petitioner therefore prays that this protest be given due consideration and after review of the questioned Draft General Revision and proposed Ordinance, the same be revoked and set aside based on the followings:

LEGAL INFIRMITIES OF THE RESOLUTION/ORDINANCE

Although there appears to be no question about the legal basis of the taxing authority of the Sangguniang Panlalawigan, it is nevertheless submitted that the tax measure should have been left to the sound judgment of the different Sangguniang Panlungsod/Bayan and city/municipal assessors of Bataan, who are in a better position to determine the fair market values, assessments and classification of properties in their respective territorial jurisdictions. Thus, Section 200 and 201 of the Local Government Code (LGC) of 1991 expressly provide:

“Section 200. *Administration of Real Property Tax* – The provinces and cities, including the municipalities within the Metropolitan Manila Area, shall be



primarily responsible for the proper, efficient and effective administration of the real property tax”.

“Section 201. *Appraisal of Real Property* – All real property, whether taxable or exempt, shall be appraised at the current and fair market value prevailing in the locality where the property is situated. The Department of Finance shall promulgate the necessary rules and regulations for the classification, appraisal, and assessment of real property pursuant to the provisions of this Code”.

The Sangguniang Panlalawigan also failed to substantially comply with the mandatory procedural requirements for the enactment of a valid Draft General Revision /ordinance as directed under Section 187 (LGC) and Article 275 (IRR) which respectively provide:

“Section 187. *Procedure for Approval and Effectivity of Tax Ordinances and Revenue Measures - Mandatory Public Hearings*. The procedure for approval of local tax ordinances and revenue measures shall be in accordance with the provisions of this Code: provided, that public hearings shall be conducted for the purpose prior to the enactment thereof. xxx”.

“Article 275. *Procedure for Approval and Effectivity of Tax Ordinances and Revenue Measures*. The procedure for approval of local tax ordinances and revenue measures shall be in accordance with the provisions of this Rule provided that public hearings shall be conducted for the purpose prior to the enactment thereof. xxx”.

The specific procedural infirmities of the Resolution/Ordinance which constitute solid grounds for assailing its legality are hereunder enumerated together with the provisions of the LGC and IRR which were violated:

1. There was no pre-publication or posting of the proposed tax resolution/ordinance within the ten-day period from the filing thereof; if at all there was any pre-publication, it appears this was done only once, in violation of Art. 276 (b) (1) [IRR] which provides:

“(1) Within ten (10) days from filing of any proposed tax ordinance or revenue measure, the same shall be published for three (3) consecutive days in a newspaper of local circulation or shall be posted simultaneously in at least four (4) conspicuous public places within the territorial jurisdiction of the LGU concerned xxx”.

2. Written notices of the proposed Draft General Revision/Ordinance were not sent to the interested or affected parties operating or owning properties within the territorial jurisdiction of Bataan. For instance, petitioner’s individual and corporate members who are registered owners of a residential property in Anvaya Cove, Morong, Bataan, and taxpayers and/or residents in Morong, Bataan, were not duly notified or sent any written notice. Petitioner and its members are ready to attest to the fact they did not receive any

written notice about the proposed Draft General Revision/ordinance nor any invitation to any public hearings thereon, from the Sangguniang Panlalawigan. Neither did the officers and directors of the Anvaya Cove Golf and Sports Club, Inc., Anvaya Cove Beach and Nature Club, Inc., or its developer, Ayala Land Inc., whose offices are located in Morong, Bataan, receive any written notices in violation of Sec. 276 (b) (2) [IRR] which provides:

“(2) In addition to the requirement for publication or posting, the Sanggunian concerned shall cause the sending of written notices of the proposed ordinance, enclosing a copy thereof, to interested or affected parties operating or doing business within the territorial jurisdiction of the LGU concerned.

“(3) The notice or notices shall specify the date or dates and venue of the public hearing of hearings. The initial public hearing shall be held not earlier than ten (10) days from the sending out of the notice or notices or the last day of publication, or date of posting thereof, whichever is later.

3. Even assuming that public hearings were held, it appears undisputed that all interested and affected parties were not accorded an opportunity to appear and present their views, comments and recommendations, nor were such public hearings continued until all issues have been presented, in clear violation of Article 276 (b) (4) and (5) [IRR] which provides:

“(4) At the public hearings or hearings, all affected or interested parties shall be accorded an opportunity to appear and present or express their view, comments and recommendations, and such public hearing or hearings shall continue until all issues have been presented and fully deliberated upon and/or a consensus is obtained, whether for or against the enactment of the proposed tax ordinance or revenue measure.

(5) The secretary of the Sanggunian concerned shall prepare the minutes of such public hearings and shall attach to the minutes the position papers, memoranda, and other documents submitted by those who participated.

4. With respect to the requirement of post-publication of the Ordinance, it appears that this was only partially complied with since the inserts containing the text of the Draft General Revision/ordinance appeared only once. However, as provided in Sec. 188 (LGC) and Art. 276 [IRR], respectively –

“Sec. 188. Publication of Tax Ordinances and Revenue Measures. Within ten (10) days after their approval, certified true copies of all provincial, city and municipal ordinances or revenue measures shall be published in full for three (3) consecutive days in a newspaper of local

circulation, the same may be posted in at least two (2) conspicuous and publicly assessable places.”

“Art. 276. Publication of Tax Ordinances and Revenue Measures. (a) within ten (10) days after their approval, certified true copies of all provincial, city and municipal tax ordinances or revenue measures shall be published in full for three (3) consecutive days in a newspaper of local circulation provided that in provinces, cities, and municipalities where there are no newspapers of local circulation, the same may be posted in at least two (2) conspicuous and publicly accessible places.

If the tax ordinances or revenue measure contains penal provisions as authorized under article 280 of this article rule, the gist of such tax ordinances or revenue measure shall be published in a newspaper of general circulation within the province, posting such ordinance or measure shall be made in accessible and conspicuous places in all municipalities and cities of the province to which the Sanggunian enacting the ordinance or revenue measure belongs.

“XXX “

“(c) No tax ordinance or revenue measure shall be enacted or approved in the absence of a public hearing duly conducted in the manner provided in this article.”

5. Since the Draft General Revision/ordinance contains penal provisions under chapter x, general penal provision, this makes compliance with publication or posting a critical factor in determining the legality of its enactment, as further provided in art. 276 (b) (1) [IRR], as follows:

“If the tax ordinance or revenue measure contains penal provisions as authorized in article 280 of this rule, the gist of such tax ordinance or revenue measure shall be published in a newspaper of general circulation within the province where the sanggunian concerned belongs. In the absence of any newspaper of general circulation within the province, posting of such ordinance or measure shall be made accessible and conspicuous public places in all municipalities and cities of the province to which the sanggunian enacting the ordinance or revenue measure belongs.”

THE ORDINANCE CONTRAVENES THE FUNDAMENTAL PRINCIPLES OF REAL PROPERTY TAXATION

Section 198, Chapter I of the LGC and Article 290, Rule XXXI of the IRR provide that:

“Fundamental Principles – The appraisal, assessment, levy and collection of real property tax shall be guided by the following fundamental principles:

- (a) Real property tax shall be appraised at its current and Fair market value;
- (b) Real property shall be classified for assessment Purposes on the basis of the actual use;
- (c) Real property shall be assessed on the basis of a uniform classification within each local government unit;
- (d) The appraisal, assessment, levy and collection of real property tax shall not be let to any private person; and
- (e) The appraisal and assessment of real property shall be equitable.

In the case of the questioned Draft General Revision/ordinance, the Sangguniang Panlalawigan clearly violated some the foregoing principles. Thus, a perusal of the Schedule of Fair Market Values (Land) in the Municipality of Morong would reveal that the appraisal and assessment was based on location instead of actual use. For example, in Anvaya Cove, residential properties of Petitioner and its members were classified as Beachland Resort (instead of residential) with an assessment level of 15%, and assessed at P1,800.00 per square meter from its previous value of P800.00 per square meter. It is common knowledge, however, among the residents of Anvaya Cove that their properties or neighborhoods are purely residential. The fact that there is a golf course and beach resort in Anvaya Cove should not affect the classification of their properties as residential because assessment should be based on actual use. Moreover, the objective of maximum welfare of the community was not considered. The community in general should undergo the least aggregate sacrifice in meeting the tax liability under the Draft General Revision/ordinance. While the impact of the increased taxes will be upon the real property owners, the effects will be upon the consumers who will bear the money burden of the tax and are not able to pass it on to others.

It is generally recognized that high taxes affect savings, investment, production, employment and growth of the economy. Therefore, even assuming that the Local Government Code has vested the local government units with expanded taxing powers, the limit of taxable capacity would be the total resources of the community. There are provinces, cities and municipalities whose total resources are far greater that of Bataan in general, or Morong in particular, and yet their Sanggunian have had second thoughts of imposing increase of real property taxes beyond the taxable capacity not only of the owners but also on the other categories of taxpayers. It has to be decided as to how much sacrifice may possibly be imposed on the taxpayers.

The increase in taxes should have been directly related to the expenditures requirements of the budget for 2020 (and beyond) of the local government. It is noted, however, that the amount of revenue expected to be generated from the increased real property taxes has not even been pre-determined or qualified. For example, the Sangguniang Panlalawigan has not given any data on the expected revenue to be generated from increased real property taxes.

Basically, it is the overall budgetary policy and expenditure requirements which matters and not just taxation in isolation of the budget.

The determination of the market value of property should have been based on careful study of empirical data and consideration of certain basic principles of taxation, budgeting, and economic policy, such as:

1. Since the Draft General Revision/Ordinance was enacted pursuant to the LGC, it provided an opportunity for the formulation of an approximate tax system for the Province of Bataan. A mere copying of the taxing powers and assessment levels in the LGC cannot provide a good tax system. There must be compatibility with the revenue requirements of the Province of Bataan on one hand and the need to promote a functioning private enterprises economy on the other. Local taxation should not constitute a deterrent to business productivity and growth.
2. The Schedule of Fair Market Values and Assessment Levels should have been related to ability to pay which is one of the fundamental principles laid down in Section 130 (LGC). Economic indices should have been used so as to make the tax structure constitute a fair distribution of the tax burden. The incidence to the taxpayers of a tax ordinance or revenue measure depends on how it is imposed initially, what rate structure is used, how the base is defined, and how general is its coverage. The use of the comparative data in fixing the fair market values based on, for example, the average amount of taxes paid by each business sector for the past three (3) years would have helped in arriving at a reasonable and approximate rate of increase in the real property tax. Petitioner and its members feel that they are being singled out and made to subsidize the tax liability of other property owners in Bataan, specifically delinquent taxpayers, simply because their residential properties are located in Anvaya Cove.
3. The considerable increase in the real property tax is clearly excessive, unconscionable and confiscatory in the light of the major increase during the past recent years, and factors such as the decline in the purchasing power of the peso, slow growth of business, natural calamities, etc.
4. Similarly, no consideration appears to have been given to the effect of taxation on investment and capital formation, employment and consequently, the growth of the economy. The same will hold true even at the level of the local economy. Therefore, the need for revenue must be sufficiently subordinated to the objective of promoting a higher level of business activity which will promote growth rather than retard the local economy.

Furthermore, because of the level of self-government which the LGC seeks to institute, a close link can be established between the delivery of basic services and the collection of taxes, fees and charges to finance them. It is far easier to base local taxation on a judicious admixture of the benefits-received principle, cost-of-service approach, and the principle of taxable capacity. These principles should therefore have been considered not only in the enactment of the Draft General Revision/Ordinance but more important, in the over-all fiscal policy of the Province of Bataan.

Finally, it is a basic rule in taxation that an efficient and effective tax collection is far better than simply increasing taxes, and would result in increased revenues for the government. Petitioner submits that this is what the local government of Bataan should focus on.

WHEREFORE, IN VIEW OF ALL THE FOREGOING, Petitioner respectfully prays that the questioned Draft General Revision/Ordinance be revoked and set aside.

Morong, Bataan, 11 September 2019.

THE NEIGHBORHOODS AT ANVAYA COVE HOMEOWNERS ASSOCIATION, INC.

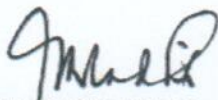
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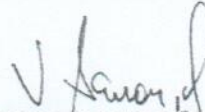
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