



**PAMAHALAANG LUNGSOD NG MUNTINLUPA
KALAKHANG MAYNILA**



Sangguniang Panglungsod

RESOLUTION NO. 08-210

A RESOLUTION RATIFYING AND/OR CONFIRMING THE DECISION MADE BY THE BLUE RIBBON COMMITTEE ON THE COMPLAINT FILED BY PASTOR ALEX ILAGAN AGAINST HON. CELSO C. DIOKO, CHAIRMAN OF BARANGAY CUPANG FOR ABUSE OF AUTHORITY, GROSS NEGLIGENCE AND DERELICTION OF DUTY.

Sponsored by: **Hon. Coun. Atty. Icasiano M. dela Rea**
 Co-sponsored: **Hon. Coun. Allan Rey A. Camilon**
Hon. Coun. Ma. Luisa Babaran-Echavez, MD
Hon. Coun. Margarita Amythyst Patdu-Labios, MD.
Hon. Coun. Melchor R. Teves
Hon. Coun. Francis Ian T. Bagatsing
Hon. Coun. Joselito V. Arevalo
Hon. Coun. Engr. Marissa Cole-Rongavilla
Hon. Coun. Engr. Mamerto T. Sevilla, Jr.
Hon. Coun. Vergel C. Ulanday
Hon. Coun. Robert A. Abas
Hon. Coun. Atty. Rey E. Bulay
Hon. Coun. Cezar V. Pagkalinawan-ABC President

WHEREAS, the Blue Ribbon Committee, for brevity, again assures the complainant, at the risk of being redundant, that is more that capable, willing and qualified to exercise fairness and integrity in all its official functions, and in accordance, with the basic and fundamental principles of due process of law;

WHEREAS, the decision of the **Blue Ribbon Committee** is hereto attached and shall be made an integral part of this resolution;

NOW THEREFORE, BE IT RESOLVED AS IT IS HEREBY RESOLVED, by the 5th Sangguniang Panlungsod, to ratify and/or confirmed the decision made by the Blue Ribbon Committee on the complaint filed by Pastor Alex Ilagan against Hon. Celso C. Dioko, Chairman of Barangay Cupang for abuse of authority gross negligence and dereliction of duty.

APPROVED, by the 5TH **Sangguniang Panlungsod of Muntinlupa**, this 20th day of **October, 2008**, on its 54th **Regular Session**.

CONCURRED:

DISTRICT 1:

COUN. ALLAN REY A. CAMILON
Member

COUN. MA. LUISA BABARAN-ECHAVEZ, MD
Member

INHIBITED

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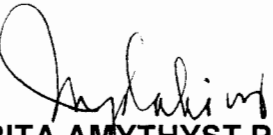
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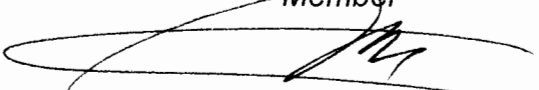
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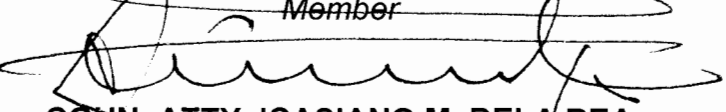


Sangguniang Panglungsod

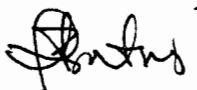
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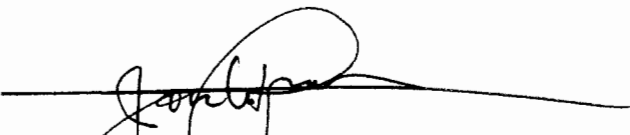

COUN. MARGARITA AMYTHYST PATDU-LABIOS, MD
Member


COUN. MELCHOR R. TEVES
Member


COUN. ATTY. ICASIANO M. DELA REA
Member

DISTRICT II:



COUN. FRANCIS IAN T. BAGATSING
Member


COUN. JOSELITO V. AREVALO
Member


COUN. ENGR. MARISSA COLE-RONGAVILLA
Member


COUN. ENGR. MAMERTO T. SEVILLA, JR.
Member


COUN. VERGEL C. ULANDAY
Member


COUN. ROBERT A. ABAS
Member


COUN. ATTY. REY E. BULAY
Member

COUN. CEZAR V. PAGKALINAWAN
Sectoral Representative
President
Association of Barangay Captains

ABSTAIN:

COUN. ALLEN F. AMPAYA
Member

COUN. LUVI P. CONSTANTINO
Member







**PAMAHALAANG LUNGSDONG NG MUNTINLUPA
KALAKHANG MAYNILA**



Sangguniang Panglungsod

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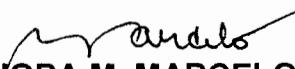
ABSENT:

COUN. ERMIE S. ESPELETA
Member

COUN. MARITA DEANG-CALALANG, DMD
Member

COUN. DANN HENRY G. TEVES
*Sectoral Representative
President
Federation of Sangguniang Kabataan*

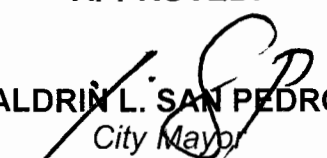
I HEREBY CERTIFY, as to the correctness of the foregoing Resolution.


LEONORA M. MARCELO
Legislative Staff Officer

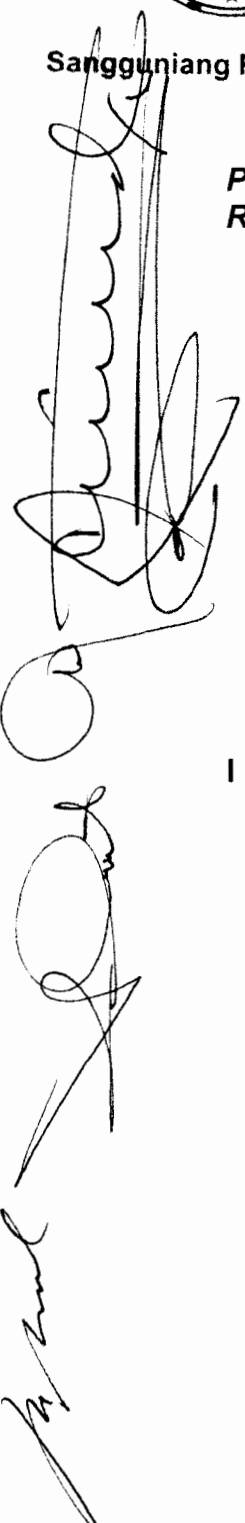
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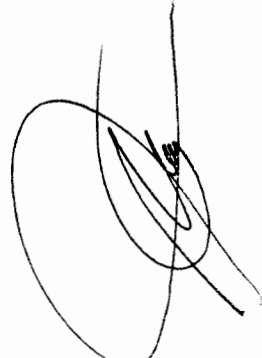

ARTEMIO A. SIMUNDAC
Vice-Mayor/Presiding Officer

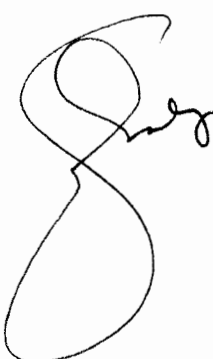
APPROVED:


ALDRIN L. SAN PEDRO
City Mayor
Date: _____

Norie/



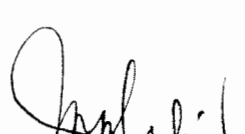














**REPUBLIKA NG PILIPINAS
SANGGUNIANG PANLUNGSOD
LUNGSOD NG MUNTINLUPA**

ALEX R. ILAGAN,
Complainant,

-versus-

SP-2008-01
For: Abuse of Authority;
Dereliction of Duty; and
Gross Negligence

CHAIRMAN CELSO C. DIOKO
Respondent.

DECISION

The Case

This is an Administrative Case filed by Ptr. Alex R. Ilagan against Celso R. Dioko, Chairman of Barangay Cupang, Muntinlupa City on 06 May 2008 before the Sangguniang Panlungsod, Muntinlupa City.

The Facts

The following are the undisputed facts as culled from the records of this case and from the pleadings filed by the parties.

On 21 January 2008, the Complainant for and in behalf of "KATUPARAN NG PANGARAP FOUNDATION, INC." (KNPFI), wrote a letter to the Respondent requesting for a barangay hauling clearance or permit for the transport of filling materials from the on-going project at the South Express Way comprising of "broken PCCP materials, concrete boulders, and other unsuitable materials excavated in that project." (Annex "A", Complaint-Affidavit).

The filling materials would be used to backfill low-lying areas located in Barangay Cupang, Muntinlupa City, specifically, the parcels of land covered by Transfer Certificate of Title Nos. 1171, 1172, 1173, 177536, 177537, 177538, 177539, and 177540. (Annex "B" to Annex "K", Complaint-Affidavit).

The Respondent did not grant Complainant's request and did not issue the Barangay Hauling Clearance and/or Permit.

The Complainant proceeded with the land filling of the subject properties notwithstanding the fact that he did not have any *Barangay Hauling Clearance/Permit, Preliminary Approval and Locational Clearance (PALC), and/or Development Permit* for the subject properties.

On 15 February 2008, Complainant received a Stoppage Order from the City Zoning Administration Office. However, Complainant did not heed the said Stoppage Order, reasoning that it was not him (complainant) who was undertaking the land filling activities but the lot owners themselves. (Par. 7, Complaint Affidavit).

Complainant however admits that the personnel at the project in question and the bulldozer/equipment being used in the said land filling were his own. (Par. 8, Complaint Affidavit).

This prompted the Respondent, in his capacity as Chairman of Barangay Cupang, to enforce/effect the Stoppage Order.

Thereafter, the Complainant made representations with the City Council of Muntinlupa. A public hearing regarding the matter was conducted by the Committee on Urban Poor/Housing of the Sangguniang Panglungsod. Respondent manifested therein that he has no objection over the land-filling project for as long as the Complainant secures all the necessary permit(s) from the City Hall.

In a letter dated 14 April 2008, Engr. Eduardo D. Bautista of the City Zoning Office gave notice to Respondent of Katuparan ng Pangarap Homeowner's Association, Inc.'s *pending status* of its application, prior to submission of other lacking requirements, including but not limited to the Barangay Clearance. (Annex "M", Complaint Affidavit).

It also appears from the records that the Complainant furnished the Respondent a letter dated 17 April 2008 sent by Mr. Peter Salonga, Chief of Staff, Mayor Aldrin San Pedro to Engr. Baustista. In said letter, Mr. Salonga requested Engr. Bautista to allow the Respondent with their land filling activities "pending submission of all requirements for the issuance of the PALC. (Annex N, Complaint Affidavit).

However, Respondent continued to bar the land filling activities of the Complainant reasoning that he may not proceed without the PALC/ Development Permit.

On 23 April 2008, the Complainant sent a letter unto the Respondent reiterating his request for the issuance of a Barangay Permit.

On 25 April 2008, Respondent sent Complainant a reply and requested the latter to submit the documents enumerated below for his review, study and evaluation: (1) Profile of Katuparan ng Pangarap Foundation, Inc.; (2) Securities and Exchange Commission Registration; (3) TCT or Proof of Ownership; (4) Complete Backfilling Plan; (5) Permit from the DENR, ECC, and LLDA; (6) Construction Details; and (7) Drawing Plan.

The Complainant did not submit any of the above documents required by the Respondent. On 28 April 2008, Complainant sent a letter to the Respondent anew, arguing that: (1) The issuance of a Barangay Clearance/Permit is "ministerial"; (2) The Hon. Mayor Aldrin San Pedro allegedly allowed the land filling even if the requirements are not yet

complete; and (3) Respondent's alleged inaction for more than 15 days from receipt of his first letter was equivalent to approval thereof.

On 06 May 2008, Complainant filed herein Administrative Complaint charging Respondent with (1) GROSS NEGLIGENCE for alleged inaction of the Respondent to the request for Barangay Permit; (2) DERELICTION OF DUTY for Respondent's alleged defiance of orders coming from Eng. Eduardo D. Bautista, City Zoning Administration Office and Mr. Peter B. Salonga, Chief of Staff, Mayor's Office, by continuously barring all land filling activities in the subject areas; and (3) ABUSE OF AUTHORITY for Respondent's alleged failure to perform a ministerial function and for requiring the submission of various documents, Company Profile, SEC Registration, etc. (Par. 5, 14, and 18, Complaint-Affidavit respectively).

The above complaint was included in the agenda of the 36th Regular Session of the Sanggunian Panlungsod held on 16 June 2008 under "other matters", and was referred to the "Committee on Barangay Affairs". However, at the 39th Regular Session of the Sangguniang Panlungsod held on 07 July 2008, the chairman thereof, Chairman Cesar Boy Pagkalinawan inhibited himself from the case.

At the 41st Regular Session held on 21 July 2008, the case was referred to the Blue Ribbon Committee chaired by Councilor Atty. Icasiano Dela Rea. The Blue Ribbon Committee conducted its hearing on 23 July 2008 and 14 August 2008.

At the 23 July 2008 hearing, Coun. Dela Rea ordered that the Respondent be formally furnished with a copy of the Complaint, and was given (10) days there from to file his verified answer.

Respondent in his Answer filed on 28 July 2008, specifically denied the charges against him and interposed the following special and affirmative defenses, to wit: (1) Complainant has no juridical authority to sue; (2) The issuance of a Barangay Clearance/Permit is not merely ministerial but is a discretionary function of his office; (3) He is only doing his mandate to his constituent, specifically that under Section 16, R.A. 7160. (General Welfare Clause, Local Government Code); and (4) The land filing activities proceed prior to issuance of a Development Permit. (Par. 7, Respondent's Answer).

At the 14 August 2008 hearing, the parties were given 10 days to submit certified true copies of the documentary pieces of evidence which were annexed in their respective pleadings, and that thereafter, the case would be deemed submitted for resolution.

On 15 August 2008, the Complainant sent a letter to the Hon. Vice-mayor and all the Member of the City Council of Muntinlupa City accusing Councilor Dela Rea of "Obvious Partiality and Deliberate Mishandling of the case", and requested for Coun. Dela Rea's inhibition over the case. Thus, at the Regular Session of the City Council on 19 August 2008, Councilor Dela Rea inhibited himself from the case.

However, he was overruled by the City Council at the Regular Session held on 26 August 2008.

On 03 June 2008, 16 July 2008, 24 July 2008, 15 August 2008, and 01 September 2008, the Sangguniang Panlungsod received letters from the Complainant contending that the Complainant should be declared in default. In addition, Complainant appeals for "fairness and integrity" in hearing and resolving this case, or in legal parlance, for "*due process of law*".

The rest of the contents of above-mentioned letters, the Sangguniang Panlungsod decided to ignore for the reason that they are false, malicious, scandalous, inappropriate, and have no place in civilized proceedings such as this.

The Resolution

The Blue Ribbon Committee, "Committee" for brevity, again assures the Complainant, at the risk of being redundant, that it is more that capable, willing and qualified to exercise "fairness and integrity" in all its official functions, and in accordance with the basic and fundamental principles of "*due process of law*".

In resolving this case, the Committee is guided by the landmark case of *Ang Tibay vs. CIR*, 40 O.G. 7th Supp. 129, which set forth the requisites for Administrative Due Process, to wit:

- a. Right to a hearing;
- b. Tribunal must consider the evidence presented;
- c. Decision must have something to support itself;
- d. Evidence must be substantial;
- e. Decision must be based on the evidence adduced at the hearing, or at least contained in the record and disclosed to the parties;
- f. The Board must act on their independent consideration of the facts and the law of the case, and not simply accept the views of a subordinate in arriving at a decision;
- g. The decision must be rendered in such a manner that the parties to the controversy can know the issues involved and the reason for the decision rendered.

In the case of *Arboleda vs. NLRC*, G.R. No. 119509, 11 February 1999, the Supreme Court held that the essence of due process in administrative proceedings is the "opportunity to be heard". The requirement of notice and hearing does not connote full adversarial proceedings, as actual adversarial become necessary only for clarification or where there is a need to profound searching questions to the witnesses where the issues and evidence presented by the parties are vague. A formal or trial-type hearing is not at all times necessary. (*Padilla vs. Sta. Tomas*, 243 SCRA 155).

In this case, the Committee ruled that there is no more need for a formal type hearing, considering that the issues to be resolved were made clear and were already joined by the pleadings submitted by the contending parties.

The Committee will first resolve the procedural issues involved in herein case, to wit: (1) Whether or not the Respondent should be declared in default; and (2) Whether or not the Complainant has juridical authority to file this instant suit.

Procedure is the method of conducting litigation and judicial proceedings. (R.J. FRANCISCO, CIVIL PROCEDURE, 2001 Ed., p. 68). Pleadings should be construed liberally, in order that litigants may have ample opportunity to prove their respective claims, and that substantial denial of justice, due to legal technicalities, may be avoided. (Cu Unjieng vs. HSBC, 68 Phil. 559). It should be borne in mind that speed is not the chief objective of trial. Careful and deliberate consideration for the administration of justice is more important than a race to end trial. (R.J. FRANCISCO, CIVIL PROCEDURE, 2001 Ed., p. 84).

A defending party declared in default loses his standing in or is considered out of court, and consequently cannot appear in court, adduce evidence and be heard. (Cavite vs. Florendo, 154 SCRA 610).

In this case, the Complainant asserts that the Respondent should be deemed in default. However, considering that the Respondent has already filed his Verified Answer, this Sanggunian deems the same substantial compliance to the Rules, it being the manifest policy of the law to accord the parties trial on the *merits*. *Technicalities*, when not conducive to the accomplishment of the purpose of the law, may be disregarded. (R.J. FRANCISCO, CIVIL PROCEDURE, 2001 Ed., p. 338, citing Camaylonga et.al. vs. Cacarno et. Al., 47 O.G. 4730)

With regard to the issue relating to the Complaint's authority/capacity to file this instant suit, the Committee resolves in the *affirmative*. The herein case is an administrative complaint, for alleged nonfeasance, misfeasance, and malfeasance committed by Respondent, he being the Chairman of Barangay Cupang, in relation to his office. Public office is a public trust. Public officers and employees shall serve with the highest degree of responsibility, integrity, loyalty, and efficiency, and *shall remain accountable to the people*. (Article XIII, Section 1, 1987 Philippine Constitution). Thus, any person, the Complainant included, may file an administrative case against erring public officers. Further, technicalities may be set aside if it will not serve the ends of substantial justice.

After resolving the above procedural issues, we now go to the merits of herein case. The three (3) charges will be discussed jointly as they are closely related. Our laws do not provide for the exact definition of *Gross Negligence*, *Abuse of Authority*, and *Dereliction of Duty*. Fortunately, jurisprudence is replete of such cases which we can use as

benchmark/guide in determining whether or not the acts and/or omissions of Respondent constitute such offense.

Gross negligence implies a want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard or consequences without exerting any effort to avoid them. (TOMBO, et al. vs. MEDINA, et al, A.C. N. 929 January 17, 1974).

Abuse of authority, occurs when a public officer exercises his discretion with improper intention in mind, in bad faith, or on irrelevant considerations. (AGUILAR vs. JUDGE DALANAO, A.M. No. MTJ-00-1275 June 8, 2000).

Dereliction of duty, generally refers to a failure to conform to rules of one's job, which will vary by tasks involved. It is a failure or refusal to perform assigned duties in a satisfactory manner. (FAJARDO vs. SHERIFF QUITALIG, A.M. No. P-02-1535, March 28, 2003).

The Committee resolves to DISMISS all three (3) administrative charges against respondent for the following reasons, to wit:

Firstly, Chapter 3, Section 389, Local Government Code, provides:

“SEC 389. *Chief Executive Powers, Duties and Functions* –

(a) The Punong Barangay, as the chief executive of the barangay government, shall exercise such powers and perform such duties and functions, as provided by this Code and other laws.

(b) For efficient, effective and economical governance, the purpose of which is the *general welfare* of the barangay and its inhabitants pursuant to Section 16 of this Code, the punong barangay shall:

(1) Enforce *all laws* and ordinances, which are *applicable within the barangay*;

x x x

(9) Enforce laws and regulations relating to pollution control and *protection of the environment*;

x x x

(14) Promote the *general welfare* of the barangay;

x x x...

Under the *General Welfare Clause* as provided for in Section 16 Local Government Code, Local Government Units (LGU) can perform just about any power that will benefit their constituencies. Thus, LGUs can exercise powers that are: (1) expressly granted; (2) necessarily implied

from the power expressly granted; (3) necessary, appropriate or incidental for its efficient and effective governance; and (4) essential to the promotion of the general welfare of their inhabitants. (THE LOCAL GOVERNMENT CODE OF 1991, The Key to National Development, AGUILINO G. PIMENTEL, JR. page 46)

Under Section 1, Article X of the 1987 Constitution, the territorial and political subdivisions of the Republic of the Philippines are the provinces, cities, municipalities, *barangays*, and the autonomous regions. Thus, the *barangay* is also considered a local government unit vested with powers as conferred by the General Welfare Clause.

The Committee notes that the land to be back filed by the complainant have a total aggregate area of **FORTY NINE THOUSAND SIX HUNDRED EIGHTEEN SQUARE METERS**, (49,618 Sq. M.). Surely, a land filling project of this magnitude may cause serious deleterious and serious adverse effects to the environment, health, and safety of the inhabitants of Barangay Cupang, Muntinlupa City.

Thus, considering that the Complainant and/or landowners do not have the required PALC/Development Permit, Respondent's act of barring the land filling activities was legal, and in accordance with Chapter 3, Section 389, of the Local Government Code. To the Sanggunian Panlungsod, the Respondent was just fulfilling his mandate from his constituents, protecting their interests, and was just looking after their welfare.

Secondly, the Committee does not find merit in Complainant's argument that a PALC/Development Permit is not necessary/required prior to such land filling activities.

The Complainant seems to be confused as to the difference between a mere Barangay Clearance *vis-à-vis* a Development Permit.

A Barangay Clearance is not absolutely required. However, there is no question that a Preliminary Approval and Locational Clearance (PALC) or Development Permit is indispensable before such land filling activity may proceed.

Under pertinent laws, rules and regulations, developers/owners of lands to be developed into socialized housing project must first secure a PALC/Development Permit before they can proceed to under take such activity. (Republic Act 7279, known as the "Urban Development and Housing Act of 1992"; Executive Order 71, known as "Devolving the Power of the HLURB to Approve Subdivision Plans to Cities and Municipalities Pursuant to R.A. 7160; Batas Pambansa Bilang 220; and among others).

The Committee is at a loss why the Respondent seems to think that he will not be able to secure the necessary PALC/Development Permit in the absence of a Barangay Clearance. Under Memorandum Circular 2007-132, LGU's are required to issue *Development Permits* in relation to housing projects within thirty days (30) from receipt of their complete applications. Section II (3) thereof, provide as follows:

“No city or municipality may issue any license or permit x x x unless a clearance is first obtained from the barangay x x x... The application for clearance (barangay) shall be acted upon within seven (7) days from filing thereof. **In the event that the clearance (barangay) is not issued within the said period, the City or Municipal Mayor may issue the said license or permit.**”

Thus, the Committee see no reason why the non-issuance of the Barangay Clearance by Respondent would necessarily result in the non-issuance of the PALC/Development Permit as well. The City Mayor, pursuant to the above-cited memorandum circular is authorized to issue a PALC/Development Permit even in the absence of a Barangay Clearance. All the Respondent had to do was to file his **complete application**, sans the Barangay Clearance, and his Development Permit would have been surely issued. However, a perusal of the records, particularly the letter of Engr. Eduardo Bautista, and the letter of Mr. Peter Salonga, (Annex “M” and “N” of the Complaint-Affidavit) readily shows that Complainant also lack the other requirements, aside from the Barangay Clearance.

Thus, considering that the land filling activities was being done without the required Development Permit, the Respondent in his capacity as Chairman of Barangay Cupang was justified to order its stoppage in accordance with his duty to (1) Enforce all laws and ordinances, which are *applicable within the barangay*; (2) Enforce laws and regulations relating to pollution control and *protection of the environment*; and (3) Promote the *general welfare* of the barangay:

Third, the Committee does not find the Respondent’s in requiring the submission of documents enumerated below to be contrary to the provisions of Memorandum Circular 2007-143. A perusal said memorandum shows that prohibited documents are those which are not relevant or germane to the issuance of the barangay clearance such as *financial statements, income tax returns, and the like*.

Under the principle of *ejusdem generis*, where a law lists specific classes of persons or things and then refers to them in general, the general statements only apply to the same kind of persons or things specifically listed. Thus, the words “*and the like*” should be limited to those documents akin to financial statements and income tax returns. Surely, (1) the Profile of Katuparan ng Pangarap Foundation, inc.; (2) Securities and Exchange Commission Registration; (3) TCT or Proof of Ownership; (4) Complete Backfilling Plan; (5) Permit from the DENR, ECC, and LLDA; (6) Construction Details; and (7) Drawing Plan do not fall under the same class of proscribed documents. They are germane and relevant to the issuance of the Barangay Clearance.

No matter how the Committee looks at this case, at the end of the day, the fact remains that the Complainant and/or landowners were developing their land into a socialized housing without the required PALC

and/or a Development Permit. It has been said time and time again, "our government is a government of laws and not of men". While their purpose may be lofty, this fact *per se* will not excuse them from complying with the requirement of securing a PALC/Development Permit, as provided for by law, before they can commence with such project. Now, should we punish the Respondent for enforcing the law within his Barangay? The answer is obvious.

WHEREFORE, the foregoing premises considered, the Administrative Complaints against Respondent CELSO C. DIOKO, Chairman of Barangay Cupang for (1) Gross Negligence; (2) Dereliction of Duty; and (3) Abuse of Authority is hereby DISMISSED for lack of merit.

The Secretariat of the Sangguniang Panlungsod, Muntinlupa City is hereby ordered to furnish the parties copies of this Resolution.

Muntinlupa City, 30 September 2008.



COUN. ATTY. ICASIANO M. DELA REA

Chairman
Blue Ribbon Committee



MAMERTO SEVILLA, JR.

Vice-Chairman
Blue Ribbon Committee



COUN. FRANCIS IAN BAGATSING

Member

COUN. LUVI P. CONSTANTINO

Member

COUN. DANN HENRY G. TEVES

Member



COUN. ALLAN REY CAMILON

Member



COUN. MARITA C. CALALANG, DMD

Member