



PAMAHALAANG BAYAN NG TAYTAY TANGGAPAN NG SANGGUNIANG BAYAN

**EXCERPT FROM THE MINUTES OF THE 114th REGULAR SESSION OF THE 11th
SANGGUNIANG BAYAN, TAYTAY, RIZAL, HELD ON NOVEMBER 9, 2021, 1:36 PM
AT THE SESSION HALL OF THE MUNICIPAL BUILDING, TAYTAY, RIZAL**

PRESENT:

Hon. Michell B. Bermundo	-	Vice Mayor/Presiding Officer
Hon. Sophia Priscilla L. Cabral	-	Councilor
Hon. Ma. Jeca B. Villanueva	-	"
Hon. Patrick John P. Alcantara	-	"
Hon. Joanne Marie P. Calderon	-	"
Hon. Ceferino R. Resurreccion Jr.	-	"
Hon. Kyle Georic Y. Gacula	-	"
Hon. Ma. Elaine T. Leonardo	-	"
Hon. Philip Jeison J. Cruz	-	"
Hon. Frank Luster L. Santos	-	LnB President
Hon. Roda May A. Diño	-	SK Federation President

Authored & Sponsored by:	Coun. Philip Jeison J. Cruz
Co-Sponsored by:	Vice Mayor Michell B. Bermundo
	Coun. Sophia Priscilla L. Cabral
	Coun. Ma. Jeca B. Villanueva
	Coun. Patrick John P. Alcantara
	Coun. Joanne Marie P. Calderon
	Coun. Ceferino R. Resurreccion Jr.
	Coun. Kyle Georic Y. Gacula
	Coun. Ma. Elaine T. Leonardo
	LnB Pres. Frank Luster L. Santos
	SK Fed Pres. Roda May A. Diño

RESOLUTION NO. 398 series of 2021

**A RESOLUTION EXPRESSING SUPPORT TO THE POSITION PAPER OF
SAMATHOA TOGETHER WITH APOLA AND RESPECTFULLY
REQUESTING THE LLDA BOARD TO CONSIDER THE SALIENT POINTS
PRESENTED THEREIN**

WHEREAS, The Samahang Masigasig Tapayan Homeowners Association, Inc., (SAMATHOA) a member organization of the Alliance of People's Organizations in Lupang Arenda (APOLA) has submitted to the Rizal Provincial Environment and Natural Resources a position paper that divulges salient points pertaining to their application of residential free patents in a portion of Lupang Arenda;

WHEREAS, the said application has been pending for more than four years now which continually deprives the inhabitants their rightful claim to the said land and further delay our constituents' security of tenure in their homes;

WHEREAS, the Local Government of Taytay under the administration of Hon. Mayor George Ricardo R. Gacula II and the Sangguniang Bayan of Taytay is dedicated to protecting the welfare of every Taytayeños;

WHEREAS, the Sangguniang Bayan of Taytay expresses its support and affirmation to the attached position paper dated 24 April 2021 and is one with APOLA and SAMATHOA's prayer for the Laguna Lake Development Authority Board to be an instrument for the awarding of the parcels of lands to our constituents;


NOW THEREFORE, BE IT RESOLVED, as it is hereby resolved by the 11th Sangguniang Bayan of Taytay, Rizal, in session duly assembled, hereby EXPRESSES SUPPORT TO THE POSITION PAPER OF SAMATHOA TOGETHER WITH APOLA AND RESPECTFULLY REQUESTS THE LLDA BOARD TO CONSIDER THE SALIENT POINTS PRESENTED THEREIN.

RESOLVED FURTHER, that the position paper from SAMATHOA dated 24 April 2021 form part as an attachment of this Resolution.

RESOLVED FURTHERMORE, that copies of this Resolution be furnished to all concerned.

ADOPTED, this 9th day of November, 2021, 2:10 PM at the Sangguniang Bayan Session Hall, Municipality of Taytay, Province of Rizal.

I HEREBY CERTIFY, to the correctness of the foregoing Resolution which was duly adopted by the Sangguniang Bayan of Taytay on second reading on November 9, 2021 and was passed on third and final reading on November 9, 2021 during the 114th Regular Session held on the 9th day of November, 2021.


SONIA C. SAMSON
Secretary to the Sanggunian
Officer-in-Charge

ATTESTED AND CERTIFIED TO BE DULY
ADOPTED BY HER HONOR


HON. MICHELLE B. BERMUNDO
Municipal Vice Mayor/Presiding Officer

24 April 2021

Dr. ISIDRO L. MERCADO

Provincial Environment and Natural Resources Officer
Don Hilario Cruz Avenue, Brgy. San Juan
Taytay, Rizal

Dear Dr. Mercado:

I write on behalf of 734 members of Samahang Masigasig Tapayan Homeowners Association, Inc. (SAMATHOA), a member organization of the Alliance of People's Organizations in Lupang Arenda (APOLA). In 2017, the members of SAMATHOA applied for the issuance of residential free patents under R.A. No. 10023 over 50,300 square meters of land constituting a portion of Lupang Arenda. To date or almost four years later, their applications remain pending.

In a meeting on this matter held on 11 March 2021 among officials and representatives of the DENR, other government agencies, and APOLA, the representative from the Laguna Lake Development Authority (LLDA) expressed their opinion that only about two out of the more than five hectares of land applied for are above the 12.5-meter elevation of the lake level of Laguna Lake. APOLA took exception to this opinion, considering that a certification from the LLDA itself concludes that the entirety of the 50,300 square meters of land is above the reglementary 12.5-meter elevation. Per the suggestion of DENR Usec. Benny Antiporda, this position paper, on behalf of the members of SAMATHOA together with APOLA, is being submitted for your consideration.

We posit three main arguments against the said opinion of the LLDA and for the immediate approval of the subject applications of the members of SAMATHOA:

1. The LLDA itself has admitted in its Certification dated 28 March 2007 that the entirety of the 50,300 square meters of land being applied for is above the reglementary 12.5-meter elevation and is therefore not covered by R.A. No. 4850 as amended.
2. The entirety of the 50,300 square meters of land being applied for has long been classified as alienable and disposable land pursuant to LC Map 639 dated 11 March 1927, Project 5-A, and no subsequent classification or declaration from government has reclassified the same as inalienable land.
3. In any case, the applications of the members of SAMATHOA remain unopposed and no opposition or protest has been filed by the LLDA against it.

We discuss each of these arguments below.

First, in a Certification of the LLDA dated 28 March 2007 (attached as ANNEX "A"), the LLDA itself admitted that the entirety of the 50,300 square meters of land being applied for is above the reglementary 12.5-meter elevation under R.A. No. 4850 as amended. Specifically, the LLDA certified that "20,100 square meters out of 50,300 s.q. meters [...] in the name of Samahang Masigasig ng Tapayan Association Inc. [now SAMATHOA] is above the reglementary 12.5 meter elevation." Further, the LLDA certified that "the remaining area of 30,200 square meters or 60% of the total area of 50,300 sq. meters has attained a present elevation of 12.70 m to 12.90 meter respectively, due to human intervention through backfilling."

Indeed, during the meeting on 11 March 2021, the LLDA representative in essence confirmed the accuracy of this Certification when they acknowledged the same and conceded that the said 20,100 square meters of land should already be awarded to members of SAMATHOA. What the LLDA representative could not concede is that the remaining 30,200 square meters of land should likewise be awarded to the members of SAMATHOA. In explaining their position, the LLDA representative said that the 12.5-meter elevation should not be due to any human intervention.

The LLDA representative is mistaken. The standard of the 12.5-meter elevation is based on the definition of Laguna Lake in Section 41 (11) of R.A. No. 4850, as amended by P.D. No. 813. Under this provision, Laguna Lake is defined in this wise:

(11) Laguna Lake or Lake. Whenever Laguna Lake or lake is used in this Act, the same shall refer to Laguna de Bay which is that area covered by the lake waters, when it is at the average annual maximum lake level of elevation 12.50 meters, as referred to a datum 10.00 meters below mean lower low water (M.L.L.W.). Lands located at and below such elevation are public lands which form part of the bed of said lake.

Meanwhile, Section 1 of LLDA Resolution No. 192, s. 2004, Approving the Revised Rules, Regulations and Procedures Implementing R.A. No. 4850, as Amended ("IRR" for brevity) defines Laguna de Bay or Laguna Lake in this wise:

"Laguna de Bay or Laguna Lake" refers to that area covered by waters when it is at the average annual maximum elevation of 12.50 meters referred to datum 10.00 meters Mean Lower Low Waters (M.L.L.W.) as defined under Section 41 of Republic Act No. 4850, as amended.

The same standard is used by the provision in defining the lake bed, which is what forms part of the inalienable lands of the public domain under the IRR:

"Lake Bed" means the lands located at and below the average annual maximum lake level elevation of 12.50 meters as referred to datum 10.00 meters below mean lower low water (MLLW) and therefore forms part of the inalienable lands of the public domain.

Nowhere in any of these definitions is elevation due to human intervention cited as an exception. In fact, there is not even any mention of human intervention or any other words of similar import in any of the definitions. Likewise, no jurisprudence would support the LLDA's claim that elevation due to human intervention is an exception to the rule found in the foregoing provisions. Clearly, then, neither the law nor the LLDA's own IRR

distinguishes between elevation without human intervention and elevation due to human intervention. It is axiomatic that no distinctions should be made by interpreters of the law when no such distinctions are made by the law itself. *Ubi lex non distinguit nec nos distinguere debemus*. Where the law does not distinguish, neither should we.¹

Thus, whether or not the elevation of 12.7 to 12.9 meters of the remaining 30,200 square meters of land is due to human intervention is of no consequence to the applications of the members of SAMATHOA. Being beyond the 12.5-meter elevation under the law and its IRR, the said remaining portion of the land is not part of Laguna Lake. It is outside the lake bed and is therefore not part of the inalienable lands of the public domain under the IRR.

Second, it bears stressing that the official land classification of the entirety of the subject 50,300 square meters of land to this day remains as alienable and disposable public land. It has been classified as such for almost a century pursuant to Land Classification (LC) Map No. 639, dated 11 March 1927, Project 5-A, and no act of government has withdrawn such classification or reclassified the land. In the Investigation Report of the Technical Working Group (TWG) created under Regional Special Order No. 135, s. 2017, of DENR Region IV-CALABARZON (attached as ANNEX "B"), the following findings were made:

The DENR Center (proposed) is classified as alienable or disposable public land pursuant to LC Map 639, dated March 11, 1927, Project 5-A. It has been occupied and possessed by the beneficiaries for more than thirty (30) years, in the manner that is open, continuous, exclusive, adverse, notorious and in the concept of owner. It is a portion of approved RS-04000427 under PSU No. 56436, copies enclosed.

The occupants to repeat have been occupying and possessing their respective areas since more than 30 years ago, open continuous, exclusive, adverse and notorious, in the concept of owner, with their residential houses all made of concrete materials [...] Such being the case, the areas passed from public land to private property of the occupants.

Upon these premises, the TWG recommended the awarding of the subject 50,300 square meters of land to the members of SAMATHOA.

It is well-settled in this jurisdiction that only a positive act of government may classify and reclassify public lands. The Supreme Court has explained:

Under Section 6 of the Public Land Act, the prerogative of classifying or reclassifying lands of the public domain belongs to the President. The President, through a presidential proclamation or executive order, can classify or reclassify a land to be included or excluded from the public domain. The DENR Secretary is the only other public official empowered by law to approve a land classification and declare such land as alienable and disposable.²

The LLDA is not vested with any power to classify or reclassify public lands, much less to reverse any classification already made by the DENR Secretary or the President. Without

¹ Spouses Plopenio v. DAR, G.R. No. 161090, July 4, 2012.

² Republic v. Heirs of Fabio, G.R. No. 159589, December 23, 2008.

the support of any reclassification made by the DENR Secretary or the President, therefore, the opinion of the LLDA that the remaining 30,200 square meters of land applied for cannot be awarded to members of SAMATHOA does not hold water. The classification of the entirety of the subject 50,300 square meters of land as alienable and disposable public land under LC Map No. 639 stands and should be upheld. As a matter of fact, the LLDA Certification dated 28 March 2007 did not certify that the remaining 30,200 square meters of land had already been reclassified as inalienable or as part of the lake bed of Laguna Lake. This is because no such reclassification has ever been made by the proper authorities.

Finally, even assuming without conceding that there is merit in the opinion of the LLDA, it has yet to file its opposition or protest against the applications of the members of SAMATHOA for residential free patents. Ever since the applications were filed, the LLDA never formalized its challenge against them. Neither is any certification or approval from the LLDA a requirement for the issuance of residential free patents under R.A. No. 10023 or DENR A.O. No. 12-10. In the first place, therefore, the opinion of the LLDA is immaterial and inconsequential to the applications of the members of SAMATHOA.

The applications for residential free patents were filed in 2017. Almost four years have lapsed since then. Section 6 of R.A. No. 10023 very clearly states the mandatory period for resolving applications for residential free patents:

Section 6. Period for Application. - All applications shall be filed immediately after the effectivity of this Act before the Community Environment and Natural Resources Office (CENRO) of the DENR. The CENRO is mandated to process the application within one hundred and twenty (120) days to include compliance with the required notices and other legal requirements, and forward this recommendation to the Provincial Environment and Natural Resources Office (PENRO), who shall have five (5) days to approve or disapprove the patent. In case of approval, patent shall be issued; in case of conflicting claims among different claimants, the parties may seek the proper judicial remedies.

Undoubtedly, the 125-day period to resolve the applications of members of SAMATHOA has long passed. To further delay the resolution thereof because of the opinion of an agency that is not a party or oppositor thereto, and whose certification or approval is not one of the requirements under the rules, is unjust, unfair, and a mockery of the law. Ultimately, what is being prevented by this delay is the security of tenure and the realization of the basic human right to adequate shelter of hundreds of families living on Lupang Arenda.

On the basis of the foregoing premises, we respectfully submit that the entirety of the 50,300 square meters of land being applied for by the members of SAMATHOA is alienable and disposable land and that residential free patents should finally be approved and awarded to the applicants-members of SAMATHOA in the soonest possible time.

For communications on this matter, please contact me at vicentebarnos@gmail.com or via +63943 709 1266 or +63965 286 4314.

Thank you very much.