



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
MANILA

En Banc

G.R. No. 213948

KNIGHTS OF RIZAL
Petitioner

- versus -

DMCI HOMES, INC. *ET AL.*
Respondents

**MEMORANDUM FOR
DMCI PROJECT DEVELOPERS, INC.**

CASTILLO LAMAN TAN
PANTALEON & SAN JOSE

LAW FIRM





To love one's city, and have a part in its advancement and improvement, is the highest privilege and duty of a citizen.

– Daniel H. Burnham, architect
and master planner of Manila

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MEMORANDUM

Private respondent DMCI Project Developers, Inc. (“DMCI-PDI”), by counsel, respectfully states:

Prefatory

In December 1913, the Jose Rizal National Monument (“Rizal Monument”) was erected on the Luneta as a tomb and a memorial to Jose Rizal. Since its creation in 1907 as the model entitled *Motto Stella* up to the present, more than a century hence, it has been mired in controversy. The statue of Rizal was criticized as a poor depiction of the national hero, dressed like a European in an ill-fitting overcoat, while the monument itself, according to the *Official Gazette* website, “shies away from magnificence. It does not tower, there are no ornate details, no grandiose aesthetic claims.”¹

For decades after its installation until 1961, it stood alone in an empty field. Then the Knights of Rizal, petitioner in this case (“petitioner”), successfully lobbied for the building of a Rizal Memorial Cultural Center at the back of the monument, which was never built. But a towering steel shaft that reached more than 30 meters was installed on the monument, until it was removed two years later after widespread censure. In the decades that passed, buildings have sprouted behind the Luneta, including a power plant with two giant smokestacks jutting into the sky. Interest in the monument and the park that carries Rizal’s name “has

¹ The Centenary of the Rizal Monument (“Centenary”), Part VI, *available at* <http://www.gov.ph/rizal-monument/> (last accessed on Sept. 16, 2015).

waxed and waned”² through the years but the monument continues to bear the burdens of the historical narrative that it hosted, including parties and politicians eager to attach their names to the national hero’s.³

In this petition, petitioner invokes what national artist for literature F. Sionil Jose decries as “a heavy overdose of nationalism”⁴ to justify the removal of Torre de Manila from the backdrop of the Rizal Monument, even if no law prohibits its construction and the building was erected on private property after getting all the required government approvals.

This memorandum will discuss the historical facts of the case, from the location of the lot on which Torre de Manila was built behind the iconic Manila Jai Alai building, to the erection of numerous high-rises around and behind the monument, including the planned Hall of Justice of Manila, to the history of the Luneta as an execution ground and the center of the Philippine capital under the Americans, to the design and construction of the Rizal Monument, and finally the building of Torre de Manila near the planned civic core of Daniel Burnham, as well as the attacks that led to the filing of this case and the issuance of a TRO by this Honorable Court. It is a long narrative, but one that is necessary in order to understand the truth behind this controversy.

The Facts

MANILA JAI ALAI BUILDING

1 On Saturday, July 15, 2000, a sixty-man demolition crew marched into the old Manila Jai Alai building on Taft Avenue in Manila and with sledgehammers began demolishing the rear and interior of the building.⁵ “By Wednesday, July 19,” wrote John L. Silva, a member of the Heritage Conservation Society, “sledgehammers were aimed at the ground and second floor façade. From reports given by the construction workers, their orders were to hammer away without exposing themselves to the public and that they had to tear the whole building down in 45 days.”⁶

² *Ibid.*

³ *Ibid.*

⁴ F. Sionil Jose, “*The Rizal Monument, the Supreme Court, and Patriotism*,” Hindsight column, THE PHILIPPINE STAR, June 21, 2015, available at <http://www.philstar.com/sunday-life/2015/06/21/1468065/rizal-monument-supreme-court-and-patriotism> (last accessed on Sept. 20, 2015).

⁵ JOHN L. SILVA, *cited in* AUGUSTO VILLALON & JONATHAN BEST, LUGAR: ESSAYS ON PHILIPPINE HERITAGE AND ARCHITECTURE 330 (Bookmark, 2001).

⁶ *Ibid.*

2 Hanging by the building's once-gleaming glass façade—now broken in many places—was a streamer pleading, “*Lito Huwag Mo Kaming Gibain.*”⁷ “Lito” was Manila City Mayor Jose L. Atienza, Jr., who ordered the demolition of the heritage building to give way to a twelve-storey Hall of Justice for Manila that would house 100 courtrooms and prosecutor’s offices that were packed into the nearby City Hall. The project, originally expected to cost ₱500 million, had the blessings and financial support of Malacañang.⁸ As the demolition team prepared to move in, conservationists stepped up their efforts to save the building. They held demonstrations at the site and bombarded the mayor with emails, but he was unfazed. Nor was the Office of the President, which let it be known that President Joseph Estrada would not intervene.⁹

3 The four-story Manila Jai Alai building, built in 1939,¹⁰ was the work of noted American architect Welton Becket, a friend of Hollywood celebrities and designer of the Los Angeles international airport.¹¹

The Jai Alai’s sleek, cylindrical glass front was said to evoke the velocity of the game, in which *pelotaris* use curved scoops to hurl a rubber ball at speeds of up to 200 km an hour against three walls of a court. But the building was a lot more than a sports hall. Every night, Manila’s socialites would gather in the elegant Sky Room to party and dine. Those seated closest to the balcony could also watch the competition. “They had a grand view of the game,” says Silva, a consultant to the National Museum. “They would conduct bets through the waiters while enjoying dinner.” Says newspaper columnist, socialite and conservationist Bambi Harper: “Back then, the Sky Room was really the only place to hold big functions, aside from the Manila Hotel.”¹²

4 Following the grant of a 25-year-license to the Philippine Jai Alai Corporation, a company controlled by financier Vicente Madrigal,¹³ later a Philippine Senator, the games at the Manila Jai Alai building were formally inaugurated on October 17, 1940 by a team of seven Basque *pelotaris*¹⁴ who began nightly competition in the stylish art-deco fronton, “attracting well-heeled gamblers to the courtside seats and society’s elite

⁷ *Id.*, at 331.

⁸ Alfred A. Araya Jr., “Waiting for the demolition domino: After Jai Alai building, what’s next?,” *available at* <https://heritagesentinel.wordpress.com/2006/07/25/jai-alai-building-taft-avenue-manila/> (last accessed on Sept. 5, 2015).

⁹ Peter Cordingly & Ruel De Vera, “*The game’s over: A link with the past goes as Manila’s Jai Alai stadium is torn down*,” *ASIaweek*, Sept. 1, 2000 (“Cordingly & De Vera”), *available at* <http://edition.cnn.com/ASIANOW/asiaweek/magazine/2000/0901/as.heritage.html> (last accessed on Sept. 5, 2015).

¹⁰ MARCIANO R. DE BORJA, *BASQUES IN THE PHILIPPINES* 74, 118 (Univ. of Nevada Press, 2005) (“De Borja”).

¹¹ Cordingly & De Vera, *supra*.

¹² *Ibid.*

¹³ ALFRED W. MCCOY, *POLICING AMERICA’S EMPIRE: THE UNITED STATES, THE PHILIPPINES, AND THE RISE OF THE SURVEILLANCE STATE* 369 (Univ. of Wisconsin Press, 2009) (“McCoy”). See Madrigal Properties website, <http://www.madrigalproperties.com/profile.htm> (last accessed on Sept. 5, 2015). See also *Republic v. Razon and Jai Alai Corporation*, 20 SCRA 234, 246 (1967) and *Del Mar v. Phil. Amusement and Gaming Corp.*, 346 SCRA 485, 503 (2000), footnote 14.

¹⁴ De Borja, *supra*.

to the swanky Sky Room for dinner, drinks and dancing.”¹⁵ With its sleek and streamlined design, the Manila Jai Alai building became an icon.¹⁶



FIG. 1. THE MANILA JAI ALAI BLDG.

5 In 1975, the Philippine Jai Alai Corporation’s license expired and, with it, its interest in the Manila Jai Alai building and lot. Pursuant to Commonwealth Act Nos. 485 and 601, the building and the land on which it was erected became the property of the Government of the Philippines after 25, later extended to 35, years of operation.¹⁷ On August 20, 1975, almost three years after the declaration of martial law, President Ferdinand E. Marcos issued Presidential Decree (“P.D.”) No. 771 (1975) revoking the powers of the local government to grant permits or licenses and canceling all existing franchises to operate jai alai.

6 Less than two months later, he issued P.D. 810 (1975) granting the Philippine Jai Alai and Amusement Corporation, an enterprise controlled by his brother-in-law Alfredo Romualdez, a franchise to operate a jai alai fronton within the Greater Manila Area.¹⁸ Section 8 of P.D. 810 stated,

For purposes of this franchise, the grantee is herein authorized to make use of the existing fronton, stadium and facilities located along Taft Avenue, City of Manila, belonging to the government by virtue of the provisions of Commonwealth Act numbered four hundred and eighty-five.¹⁹

¹⁵ McCoy, *supra*.

¹⁶ *Ibid*.

¹⁷ Jai Alai Corporation of the Phils. v. Court of Tax Appeals, 106 Phil. 345, 347 (1959).

¹⁸ See Lim v. Pacquing, 236 SCRA 211, 214 (1994); Del Mar v. Phil. Amusement and Gaming Corp., 346 SCRA 485, 504 (2000). According to this Honorable Court in *Del Mar*, the issuance of P.D. 771 was “to assure that this Romualdez corporation would have no competition ...” (*Id.*, at 510).

¹⁹ On the same day that he issued P.D. 810 on Oct. 16, 1975, Pres. Marcos also signed P.D. 809 transferring and vesting the Manila Jai Alai building and its lot to the National Development Company (NDC), further authorizing NDC “to transfer ownership and convey the said parcel of land to any person or corporation qualified to acquire lands under the Constitution and holding a franchise to operate and maintain a fronton for

7 The jai alai fronton's profits were soon eroded by casino contracts issued by the Philippine Amusement and Gaming Corporation ("PAGCOR"), created under P. D. 1067-A (1977), which exempted PAGCOR from regular government audits, customs duties and taxes, civil service and labor laws, and authorized it to deal in foreign currency.²⁰ "Before its eventual demise," according to *Asiaweek*, "the Jai Alai building had gone the same way, accelerated toward its fate by the anything-goes years of the Marcos regime, during which it was closed in a match-fixing scandal. Under the control of the national government, it fell into disrepair, as did the neighborhood. Those who could afford to get out got out, replaced by squatters living in shacks, with, at first, a red-light district around the corner and now a rumbling Light Rail Transit system overhead."²¹

8 On May 8, 1987, President Corazon C. Aquino issued Executive Order ("E.O.") No. 169 repealing P.D. 810. "Accordingly," declared Section 1 of the E.O., "the grant to the Philippine Jai-Alai and Amusement Corporation or its successors of the right, privilege or authority under the aforementioned law, as amended, is hereby revoked and cancelled," including its right to make use of the Manila Jai Alai building and its lot.

9 The old Manila Jai Alai building was handed over to the City of Manila in 1999.²² In the same year, President Joseph Ejercito Estrada issued Proclamation No. 224 vesting the 6,470-square-meter Manila Jai Alai lot in the Republic of the Philippines and directing the Register of Deeds for Manila to cancel Transfer Certificate of Title ("TCT") No. 122150 in the name of the Philippine Jai-Alai and Amusement Corporation.

10 Fifteen years later, a residential condominium built on the parking lot of the old Manila Jai Alai building would be the subject of this action.

MANILA HALL OF JUSTICE

11 On March 28, 2000, upon the request of Mayor Atienza for assistance in the construction of a new, presentable, and spacious court building, President Estrada issued Memorandum Order No. 94 granting flagship status to "(t)he proposed construction

Basque pelota games, either through public bidding or through negotiations, as the interest of the government warrants ... subject to the condition that after the expiration of the franchise, the land and all improvements including facilities thereon shall revert to the Government of the Philippines without payment." (Secs. 3 & 4). The property was subsequently sold by NDC to the Philippine Jai Alai and Amusement Corporation of Alfredo Romualdez (*see* Proc. No. 224, s. 1999, third *whereas*).

²⁰ McCoy, *supra*, at 401; P.D. 1399 (1978).

²¹ Cordingly & De Vera, *supra*.

²² *Ibid*.

of the Manila Hall of Justice on the Jai-Alai property along Taft Avenue, Manila.” The City of Manila was directed to submit a definitive cost proposal for the Hall of Justice project to the Inter-Agency Committee headed by the Department of Justice, after which the committee would conduct a simplified bidding for the project.²³ Shortly afterwards, Mayor Atienza announced the demolition of the Manila Jai Alai building.

12

A news report succinctly captured the Mayor’s decision:

HISTORIC JAI ALAI BUILDING HAS TO GO -- MAYOR ATIENZA

Manila, June 19, 2000 - A historic landmark on Taft Avenue is being torn down, and in its place will rise a new home for the city’s regional trial courts.

Manila Mayor Lito Atienza said yesterday that the city government has no choice but to demolish the jai alai building to make way for the construction of Manila’s Hall of Justice.

The jai alai fronton, original home of the “game of a thousand thrills,” has fallen into an obvious state of disrepair, sticking out like a ghost from one’s past beside Sta. Isabel College and Adamson University.

“I am sorry that the old Skyroom has to go. But there is no better option left for the city government in the construction of its much-needed Hall of Justice, one which should have been provided for the people of Manila 20 years ago,” Atienza said.

The decision came amid moves from art conservationist groups to convince Atienza to change his mind about completely wasting what could be the only art deco building remaining in the country and, perhaps, the whole of Asia.

The Skyroom, built in the 1930s, was designed by American architect Welton Beckett, who also designed the Dorothy Chandler Pavilion (site of the Oscar awards) and the Los Angeles International Airport.

Aside from providing the venue for the Basque game, it became a place to “see and be seen,” where Manila’s elite held social events like balls, dances and wedding receptions.

Caught between the legitimate demands of art preservationists and the equally practical need to decongest City Hall, Atienza chose finally to bite the bullet and provide a home for the city’s justice system.

Manila’s 30 metropolitan trial court and 56 regional trial court judges hold forth in congested, cramped, stuffy, poorly ventilated courtrooms scattered all over the city: at City Hall; at the old GSIS building along Mayor Antonio Villegas Street (formerly Arroceros); at

²³ Mem. Order No. 94, s. 2000, Sec. 3.

the Napocor building on Bonifacio Drive in Port Area, and even atop the Ongpin fire station in Chinatown.

The new court building will also house personnel from the Land Registration Authority (LRA) and other judicial offices including Manila's 125 prosecutors now also jostling for every available cramped space (including mezzanines) at City Hall's third floor, said Manila Chief City Prosecutor Ramon Garcia.

RTC Judge Guillermo Loja, president of the Manila RTC Judges Association (MRTCJA), rued the absence of a hall of justice for Manila, the country's capital.

"It is rather ironic that the City of Manila, for all its vaunted prestige and pre-eminence, has no Hall of Justice of its own.... We sorely need it for a more effective and environment-friendly delivery of the justice system in our judicial backyard," Loja told The STAR.

Saying he was looking for a win-win formula, Atienza last Friday broached the possibility that the hall of justice architecture would be compatible with the revered landmark designs of the old Department of Finance and Tourism buildings, the National Museum (former legislature), and the old but still imposing Post Office building at Liwasang Bonifacio (formerly Plaza Lawton).

"We would like to assure you that in the current controversy over the old jai alai (building), I am as much for its preservation and conservation as you are. But we cannot remain captive to and thus paralyzed by the equally important demands of art appreciation in a civilized society in the face of a higher end," Atienza said in defense.

"In fact, I am under express instruction from the President, who has equally been supportive of our urban renewal projects such as the new Plaza Miranda and the Lacson Underpass in Quiapo, to preserve the original character of the building," he pointed out.

Suggestions to look for other places to construct the Hall of Justice were politely declined by Atienza, who said the city has to seize the opportunity lest it be lost again.

"We have long been constrained by lack of funding for the project. Now the President has given it to us (P200 million initially) and this is only for the building. We have no money for new places to be considered. We have to do it now," he said.²⁴

13 A magazine article reported, "Mayor Lito Atienza, who studied architecture in college, says he is aware of the Jai Alai building's pedigree, but argues that it was necessary to tear it down. He believes (that) the need for a new courthouse far outweighs the sports center's historical value. 'I've been given an opportunity by the national government to build a hall of justice,' he told *Asiaweek*. 'I am proceeding

²⁴ Sol Jose Vanzi, "Historic Jai Alai Building has to go—Mayor Atienza," Phil. Headline News Online, available at <http://www.newsflash.org/2000/06/ht/ht001195.htm> (last accessed on Aug. 30, 2015).

with the task even if we have to sacrifice part of our historical past in the process.’ To suggestions that the Jai Alai building could have been saved and adapted as a court, he replies: ‘That building has been housing criminals, [purse-] snatchers and pickpockets and even deteriorated into a casbah. It would not work as a new justice building if we kept the facade because people would remember the game-fixing and the cheating, instead of the dignity that befits a hall of justice. It just wouldn’t blend.’”²⁵

14 Instead of the adaptive reuse of the building urged by members of the Heritage Conservation Society—such as turning it into a city college, a modern art gallery, a modern theatre, a mixed-use building with a podium parking, a commercial mall, office space and high-end serviced apartments or a hotel, which would generate revenue for the city—Mayor Atienza envisioned the new Manila Hall of Justice as the beginning of the rehabilitation of Taft Avenue.²⁶ “You get a hall of justice and you get rid of a decaying part of Manila,” he said.²⁷

15 With funding from the national government, the construction of the new building—now estimated to cost ₱1.7 billion—promptly started on January 28, 2002. By the time the project was halted on May 11, 2005 due to the decision by this Honorable Court to swap the former Manila Jai Alai building lot with the lot of the old Government Service Insurance System (“GSIS”) on Arroceros corner Concepcion Streets, PAGCOR and the Department of Justice had spent ₱514 million for bored piles, pile caps, and a skeletal frame of structural steel columns and beams rising up to the second floor of the building. However, there is no record of any demolition permit or building permit issued to the City of Manila or to the Department of Justice authorizing the demolition of the Manila Jai Alai building or the construction of the Manila Hall of Justice.²⁸

16 The Manila Hall of Justice was designed by Arch. Gregorio G. Sta. Maria of TecPhil, Inc. as a modern Roman Classic building with a superstructure of structural steel columns and beams. It would have a total floor area of about 45,000 square meters (“sq. m.” or “m²”) rising up to 12 storeys.²⁹ Since the area of the former Manila Jai Alai lot was 6,470 m², the floor area ratio (“FAR”) (total floor area

²⁵ Cordingly & De Vera, *supra*.

²⁶ *Ibid.* The suggestion for a college or modern art gallery came from columnist Bambi Harper, the mixed-use building with podium parking, a commercial mall, office space, and high-end service apartments or a hotel came from Architect Emmanuel A. Miñana, while the world-class theatre was from urban economist Raymund Magdaluyo.

²⁷ *Ibid.*

²⁸ A copy of the Letter dated Aug. 3, 2015 of Manila City Building Official Armando L. Andres is attached as Annex 1; City of Manila Submission dated Aug. 18, 2015, pars. 2 & 3.

²⁹ DMCI-PDI Manifestation with Submission dated Aug. 28, 2015 (“DMCI-PDI Manifestation with Submission”), par. 3. Photographs of the unfinished project show structural steel columns measuring 1.7m x .6m (16 units) and .75m c .75m (37 units) connected by structural steel beams up to the second floor level (DMCI-PDI Manifestation with Submission, Annexes 3 to 3b).

divided by lot area) of the new Manila City Hall would have been 6.955 or, when rounded off, 7.³⁰ The building footprint would have been 3,750 m² (45,000 m² ÷ 12 storeys), assuming there was no podium parking, equivalent to .58 of the lot area. When finished, the Manila Hall of Justice would have looked like this when viewed from the Rizal Monument:



FIG. 2. TORRE DE MANILA AT 12 STOREYS.

17 On April 27, 2005, acting on the joint request of the City of Manila, GSIS, and this Honorable Court, President Gloria Macapagal Arroyo issued Proclamation No. 833 to swap the former Manila Jai Alai lot with the old GSIS building and lot at the corner of Concepcion and Arroceros Streets³¹ because construction of the Manila Hall of Justice “ha(d) proven to be impracticable”³² due to lack of funds. Following the swap, GSIS became the owner of the Taft Avenue lot and began offering it for sale to bidders in 2011 through August 2015. As of this writing, the lot is still listed as an acquired asset of GSIS.³³

18 On the same day she issued Proclamation No. 833, President Arroyo signed Proclamation No. 835 assigning to this Honorable Court the former GSIS lot and building on Arroceros Street, which had a bigger area of 10,818 m² compared to the old Manila Jai Alai lot, to be used for the Hall of Justice of Manila.³⁴ The same proclamation directed the Register of Deeds for Manila to issue a new title over the property, pursuant to which Original Certificate of Title No. 11008 was issued in the name of this Honorable Court in 2005.³⁵

³⁰ *Id.*, par. 5.

³¹ Arroceros Street is now named Gat Antonio J. Villegas Street.

³² Proc. 833, fourth whereas.

³³ <http://www.gsis.gov.ph/bigtickets.php?atype=ncr> (last accessed on Sept. 8, 2015).

³⁴ Proc. 835, fourth whereas.

³⁵ See *Gov’t. Service Ins. System v. City Treasurer*, 609 SCRA 330, 347-8 (2009). However, neither the Register of Deeds for Manila nor the Land Registration Authority (“LRA”) has a copy on file of OCT 11008. A copy of the LRA Certification dated Sept. 15, 2015 is attached as Annex 2.

19 In August 2005, this Honorable Court resolved to renovate the old GSIS building for use as the Manila Hall of Justice.³⁶ Built from 1952 to 1954 by architect Federico S. Ilustre³⁷ and more than 50 years old when it was assigned to this Honorable Court, the building suffered a fire at around 5:00 p.m. on January 24, 2006.³⁸ Welders were installing metal bars on the fifth floor roof deck for the formal turnover of the building to this Honorable Court when sparks caught a pile of rubbish that triggered a blaze, reaching the fifth alarm in twelve minutes.³⁹ At the time of the fire, the building was vacant save for employees of this Honorable Court who used the parking lot.⁴⁰

20 On March 16, 2006, the Manila City Council enacted Ordinance No. 8119 (“Manila zoning ordinance” or “ordinance”) adopting the Manila Comprehensive Land Use Plan and Zoning Regulations of 2006 (“MCLPUZO”) proposed by Mayor Atienza. Among its principal authors was councilor Danilo Victor H. Lacuna, Jr., the current acting Manila City Planning and Development Officer (“CPDO”), whom this Honorable Court interpellated during the oral arguments on August 18, 2015.⁴¹ A month later on June 16, 2006, the mayor approved the ordinance.

21 The Manila zoning ordinance, which was based on the Housing and Land Use Regulatory Board (“HLURB”) Revised Model Zoning Ordinance (1996), divided the City of Manila into six zones: general residential, commercial, industrial, institutional, public open spaces, and others (utility, water, and overlay zones), each with prescribed land uses and land use intensity control ratings (“LUIC”) such as percentage of land use occupancy (“PLO”) and FAR.⁴²

³⁶ A.M. No. 05-7-04-SC *En Banc* Reso. dated Aug. 2, 2005.

³⁷ Julia Nebrija, *They Way They Were*, p. 162, Project Manila (Oct., 2014), *available at* <http://static1.squarespace.com/static/54cc965ee4b017d38e3cc37f/t/54d61c1fe4b00f3795e6acae/1423318047804/The+Way+They+Were+%281%29.pdf> (last accessed on Sept. 28, 2015); Coconuts Manila, “15 heritage buildings that need to be rescued,” ABS-CBN News, Feb. 11, 2014, *available at* <http://www.abs-cbnnews.com/lifestyle/02/11/14/15-heritage-buildings-need-be-rescued> (last accessed on Sept. 8, 2015).

³⁸ Evelyn Macairan & Nestor Etolle, “*Rubbish fire hits old GSIS building*,” THE PHILIPPINE STAR, Jan. 25, 2006, *available at* <http://www.philstar.com/metro/318326/rubbish-fire-hits-old-gsis-building> (last accessed on Sept. 8, 2015).

³⁹ *Ibid.*

⁴⁰ *Ibid.* See also Tomas U. Ganiron, Jr., “*Forensic Investigation of Abandoned GSIS Building in Manila*,” 4 INTL. JOURNAL OF DISASTER RECOVERY AND BUSINESS CONTINUITY 23, 26 (Nov., 2013); *available at* www.sersc.org/journals/IJDRBC/vol4/3.pdf (last accessed on Sept. 8, 2015). In his study, Dr. Ganiron recommended (a) a change in use of the GSIS building so the structure will have less occupants and less machinery inside; (b) refurbishing the part of the building damaged by fire to arrest deterioration and restore the burnt portion; and (c) retrofitting of the structural members to provide support in carrying the loads to comply with the present load standards under the National Structural Code of the Philippines and the American Concrete Institute. Dr. Ganiron is a structural engineer.

⁴¹ TSN, City of Manila, Aug. 18, 2015, pp. 24 *et seq.*

⁴² Manila zoning ordinance, Art. IV, Sec. 7.

<i>Zone</i>	<i>Maximum PLO</i>	<i>Maximum FAR</i>
High Density Residential/Mixed Use	0.6	4
Medium Intensity Commercial/Mixed Use	0.8	6
High Intensity Commercial/Mixed Use	0.8	7
Light Industrial	None	None
General Institutional	0.6	4
Institutional University Cluster	0.6	4
General Public Open Space	0.25	Max. BHL ⁴³ 10 m.
Cemetery	None	Max. BHL 10 m.

22 The ordinance included as integral parts the official zoning map⁴⁴ signed by the Mayor, duly authenticated by the City Council,⁴⁵ and the Implementing Rules and Regulations (“IRR”) found in Volume III of the MCLPUZO.⁴⁶ Volume II of the MCLPUZO listed the old GSIS building among 49 historical structures identified in the Pasig River Rehabilitation Plan.⁴⁷ The Rizal Monument and the Rizal Park were also listed in the MCLPUZO with 92 other Historic Sites and Structures with Historical Markers.⁴⁸

23 After initially resolving to swap back the former GSIS lot and building with the former Manila Jai Alai lot because it was more costly to retrofit and renovate the GSIS building than to continue the construction of the Hall of Justice at the Manila Jai Alai lot,⁴⁹ this Honorable Court resolved on February 3, 2009 to demolish the old GSIS building to construct a totally new building to house the Manila Hall of Justice.⁵⁰

24 More than a year later on March 26, 2010, President Arroyo signed into law Republic Act (“R.A.”) No. 10066, otherwise known as the “National Cultural Heritage Act of 2009,” which implemented the constitutional provisions on arts and culture by endeavoring “to create a *balanced* atmosphere where the historic past *coexists* in harmony with modern society.”⁵¹ The law recognized the “problem of conservation,” which it approached “in an integrated and holistic manner, cutting across all relevant disciplines and technologies.”⁵² It required the State to administer the heritage resources “in a spirit of stewardship for the inspiration and benefit of the present and future generations.”⁵³

⁴³ Building Height Limit.

⁴⁴ DMCI-PDI Position Paper dated Jul. 15, 2015 (“DMCI-PDI Position Paper”), Annex 5a.

⁴⁵ Manila zoning ordinance, Art. IV, Sec. 8.

⁴⁶ *Id.*, Art. V, Sec. 11.

⁴⁷ II MCLPUZO, Histo-Cultural Heritage Overlay Zone (O-HCH) 2005-2020, first column, item h. The Manila Jai Alai building, by then demolished, was not in the list.

⁴⁸ *Id.*, fourth column, items 90 and 91.

⁴⁹ A.M. No. 08-9-7-SC *En Banc* Reso. Oct. 14, 2008.

⁵⁰ A.M. No. 08-9-7-SC *En Banc* Reso. Feb. 3, 2009.

⁵¹ Sec. 2, third par. Italics supplied.

⁵² *Ibid.*

⁵³ *Ibid.*

25 R.A. 10066 considered as important cultural property protected from modification or demolition “structures dating at least fifty (50) years old,” unless declared otherwise by the National Historical Institute (“NHI”).⁵⁴ The same law authorized the designation of “heritage zones” to protect the historical and cultural integrity of a geographical area by (a) implementing the adaptive reuse of cultural property; and (b) maintaining the appearance of streets, parks, monuments, buildings, and natural bodies of water, canals, paths and barangays within a locality as close to their appearance at the time the area was of most importance to Philippine history as determined by the NHI.⁵⁵

26 Heritage zones were to be designated by the NHI and the National Museum (“NM”), in consultation with the National Commission for Culture and Arts (“NCCA”) and the HLURB,⁵⁶ but the zones themselves would be maintained by the local government units concerned⁵⁷ such as the City of Manila. Two years later on March 19, 2012, the NCCA promulgated the IRR of R.A. 10066, which took effect on April 18, 2012 after its publication in *The Manila Standard Today*.

27 On March 22, 2012, after several notices of condemnation, the Manila City Building Official issued a permit to demolish the GSIS building, “subject to the provision(s) of R.A. 10066 if (the) structure has any historical significance.”⁵⁸ On August 23, 2012, this Honorable Court broke ground on the construction of a modern, 30-storey Manila Hall of Justice building that would rise on the former GSIS lot.⁵⁹ The planned building, now costing ₱1.83 billion, would house 120 courts, a multi-purpose hall, training and meeting rooms, lounges for judges and lawyers, and space for a clinic, library, and nursery.⁶⁰ The construction was projected to start in 2017 and would be completed in 2019.⁶¹

⁵⁴ R.A. 10066, Sec. 5, third par. (f). R.A. 10086, signed into law on May 12, 2010, renamed the National Historical Institute (NHI) as the National Historical Commission of the Philippines (NHCP) (Sec. 4).

⁵⁵ R.A. 10066, Sec. 13 (a) & (b).

⁵⁶ R.A. 10066, Sec. 12.

⁵⁷ R.A. 10066, Sec. 13.

⁵⁸ A copy of the Manila Building Official Demolition Order No. 12-ED-01-D.O. dated Mar. 22, 2012 is attached as Annex 3.

⁵⁹ Mark D. Merueñas, “Construction of P1.8-B City of Manila Hall of Justice finally underway,” GMA News Online, Aug. 23, 2012, *available at* <http://www.gmanetwork.com/news/story/270875/news/metro/construction-of-p1-8-b-city-of-manila-hall-of-justice-finally-underway> (last accessed on Sept. 8, 2015).

⁶⁰ *Ibid.* Later media reports increased the project cost to ₱ 1.865 billion. See Tim, “Billion-Peso Manila Hall of Justice to Start Construction on (sic) 2017,” Today in Manila, Sept. 3, 2015, *available at* <http://www.todayinmanila.com/2015/09/billion-peso-manila-hall-of-justice-to.html#.Ve7gEHtQg7A> (last accessed on Sept. 8, 2015; “Tim”).

⁶¹ Edu Punay, “Twelve new halls of justice to rise next year,” THE PHILIPPINE STAR, Sept. 1, 2015, *available at* <http://www.pressreader.com/philippines/the-philippine-star/20150901/281668253736895/TextView> (last accessed on Sept. 8, 2015).

28 Based on online sources such as *Today in Manila*, the building design makes adaptive reuse of the existing GSIS building façade, with a 30-storey tower rising above it.⁶² The Request for Expression of Interest for Consultancy Services (“Request”) recently issued by this Honorable Court for the detailed architectural and engineering design of the Manila Hall of Justice⁶³ required portions of the old GSIS building to be retained as an important cultural property pursuant to R.A. 10066.⁶⁴ In designing the new building’s character, the Request required consultations to be made with the NCCA, the NHI (now the National Historical Commission of the Philippines or “NHCP”), and the NM with respect to the retention of portions of the old GSIS building.⁶⁵

29 Under the Manila zoning ordinance, the old GSIS building is located in District 5a of the City of Manila, which is classified as a General Institutional (“INS-G”) zone (light blue colored zone) primarily used, among others, for government services.⁶⁶ The maximum PLO in the INS-G zone is 0.6, equivalent to 6,490.8 m², and the FAR is 4.⁶⁷ Based on the maximum allowable floor area of 43,272 m² (10,818 m² x 4 FAR), the maximum building height of the new Manila Hall of Justice would be 6.66 or seven floors (43,272 m² ÷ 6,490.8 PLO), without podium parking.

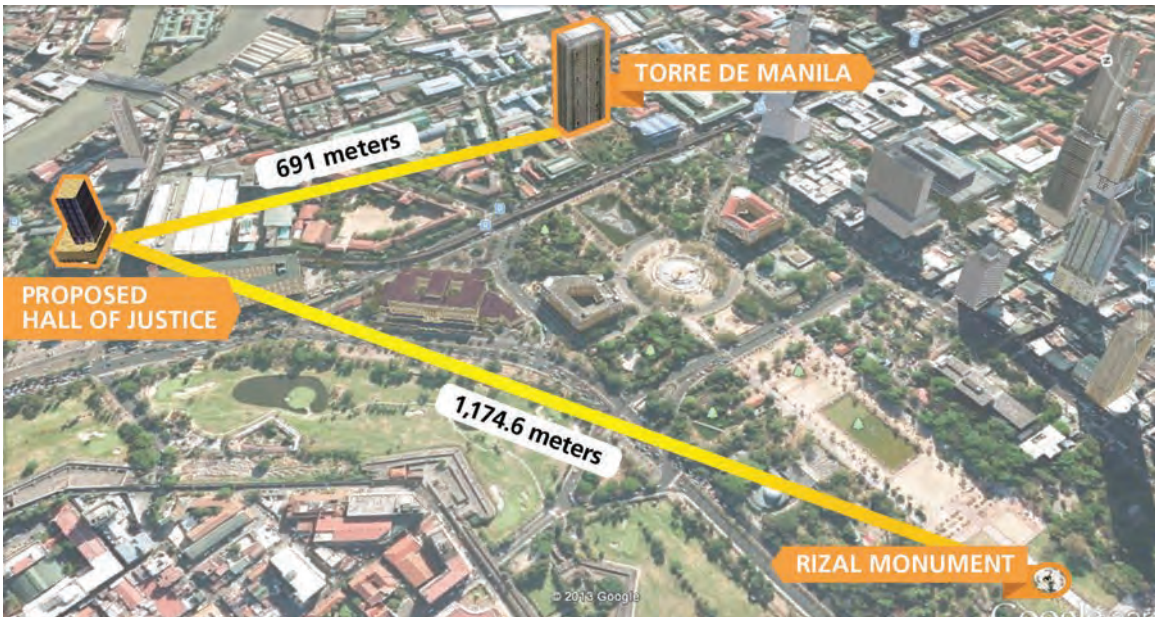


FIG. 3. PROPOSED MANILA HALL OF JUSTICE AT 30 STOREYS WITH DISTANCES FROM RIZAL MONUMENT AND TORRE DE MANILA.

⁶² Tim, *supra*.
⁶³ Request for Expression of Interest, available at <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/pio/callforbids/06-05-15-3.pdf> (last accessed on Sept. 9, 2015).
⁶⁴ Request for Expression of Interest, pp. 22-23, 25.
⁶⁵ *Id.*, at p. 25.
⁶⁶ DMCI-PDI Position Paper, Annex 5.
⁶⁷ Manila zoning ordinance, Sec. 16.

30 If the new Manila Hall of Justice were to rise thirty floors from ground level, it would look like this:



FIG. 4. PROPOSED MANILA HALL OF JUSTICE AT 30 STOREYS AS SEEN FROM RIZAL MONUMENT (WITHOUT LANDSCAPING)

31 The new Manila Hall of Justice is about 691 meters northwest of Torre de Manila and about 1.17 kilometers away from the Rizal Monument.⁶⁸ Depending on the location and viewing distance, as well as the presence of landscape trees and garden, a visitor to the Rizal Monument may or may not see the Manila Hall of Justice in the backdrop of the monument.

THE TORRE DE MANILA PROJECT

32 **On September 11, 2011**, after the requisite due diligence by its counsel Saulog & de Leon,⁶⁹ DMCI-PDI acquired three adjacent lots, formerly used as a parking lot of the former Manila Jai Alai building,⁷⁰ measuring 7,475 m² (out of a total saleable area of 7,716 m²).⁷¹ DMCI-PDI purchased the lots from its owner Rope Realty, Inc., a corporation owned by the heirs of Vicente Madrigal and their holding companies, for the price of ₱216.8 million.⁷²

33 At the time of the sale, the lots were vacant (Fig. 5) and could be accessed from Taft Avenue through one of the lots (Fig. 6) separating Sta. Isabel College and the former Manila Jai Alai lot. The property frontage along Taft Avenue, as shown in the photograph below (Fig. 7), was a rusty steel gate framed by concrete walls. Other than

⁶⁸ A rendition based on Google Earth is attached as Annex 4.

⁶⁹ Saulog & de Leon letter dated Aug. 19, 2011 to DMCI-PDI, which is not appended to this Memorandum by reason of confidentiality.

⁷⁰ TSN, DMCI-PDI, Aug. 4, 2015, pp. 110, 113.

⁷¹ The portion not included in the sale was occupied by the “Adamson Walkway,” a right of way used by pedestrians and students of Adamson University, *infra*.

⁷² Deed of Absolute Sale dated Sept. 1, 2011, entered as Doc. No. 489, Page 99, Book 14, s. 2011 of Notary Public Ma. Lourdes E. Guillergan of Makati City and Doc. No. 334, Page 68, Book CIV, s. 2011 of Notary Public Basilio D. Gascon, Jr. of Makati City. A copy of the Deed of Absolute Sale is attached as Annex 5.

the setback of three meters from the pedestrian walkway connecting Taft Avenue and San Marcelino Street that was recorded on one of the titles,⁷³ the properties had no registered liens or encumbrances.⁷⁴



FIG. 5. VACANT LOTS AT THE TIME OF PURCHASE FROM ROPE REALTY, INC.



FIG. 6. ACCESS ROAD FROM TAFT AVENUE TO VACANT LOTS

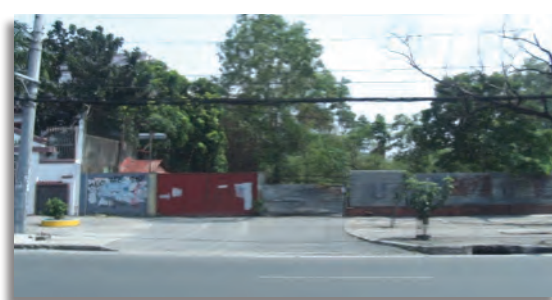


FIG. 7. PROPERTY FRONTAGE ALONG TAFT AVENUE

34 On January 19, 2012, DMCI-PDI acquired from Rope Realty, Inc. for another ₱2.4 million an additional 81.80 m² of the remaining portion of 241 m² not included in the previous sale,⁷⁵ thereby increasing the total lot area to its present size of 7,556.8 m². Under the deeds of sale of the contiguous lots, the seller warranted to DMCI-PDI that:

Should it appear that the PROPERTY has any unrecorded liens, encumbrances or claims from third parties, the SELLER shall be allowed forty five (45) days to settle the same, subject to a written advise (sic) of extension and duly approved by the BUYER, failing which, the BUYER shall have the sole option to unilaterally rescind this Agreement should it determine that such liens, encumbrances or claims appear to substantially hinder the development of the PROPERTY or unnecessarily drag the BUYER into litigations or suits. In case of rescission solely attributable to the fault and/or negligence of the SELLER, the parties agree to a mutual restitution, with further right of the BUYER to claim for damages and/or expenses incurred to develop the PROPERTY;⁷⁶

⁷³ Entry No. 5261/T-1852 on the title to the biggest lot, TCT No. 189704, with an area of 6,596 m².

⁷⁴ Saulog & de Leon letter dated Aug. 19, 2011 to DMCI-PDI, *supra*.

⁷⁵ Deed of Absolute Sale dated Jan. 19, 2012 entered as Doc. No. 204, Page 42, Book 15, s. 2012 of Notary Public Ma. Lourdes E. Guillergan of Makati City. A copy of the Deed of Absolute Sale is attached as Annex 6.

⁷⁶ Deed of Absolute Sale dated Sept. 1, 2011, Art. III, Sec. 2.e; Deed of Absolute Sale dated Jan. 19, 2012, Art. III, Sec. 2.e.

35 The shape of the three lots resembled a water dipper or scoop, with its narrow handle measuring nine meters wide and 72.44 meters long protruding towards Taft Avenue from the main trapezoidal parcel of land deep inside the city block:

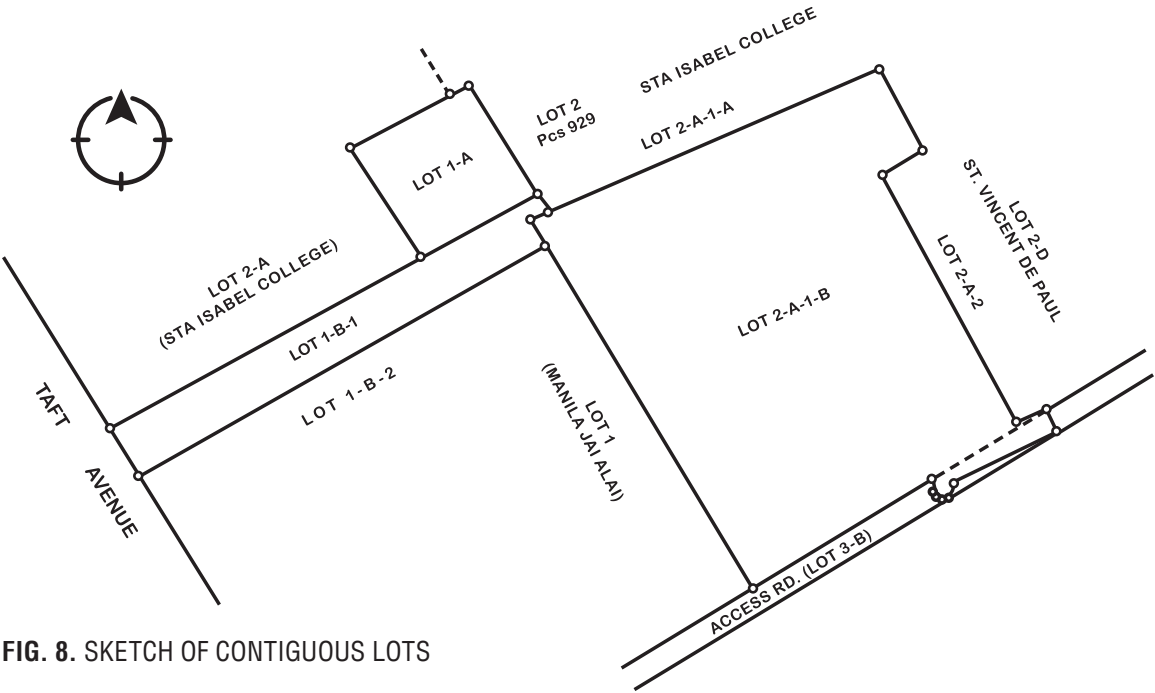


FIG. 8. SKETCH OF CONTIGUOUS LOTS

36 Because of the lots' seventeen-sided irregular shape⁷⁷ and its landlocked location, surrounded on all sides by Sta. Isabel College and the former Manila Jai-Alai lot along Taft Avenue, Saint Vincent de Paul Church and Adamson University along San Marcelino Street, and Instituto Cervantes along Teodoro M. Kalaw Avenue,⁷⁸ it was impracticable to develop the property other than as a high-rise. Between the property and Instituto Cervantes was also a four-meter wide covered pedestrian walkway, about 326 meters long, used by students of Adamson University to enter the school's San Marcelino gate from Taft Avenue. This right of way was protected by a three-meter setback annotated on one of the titles.

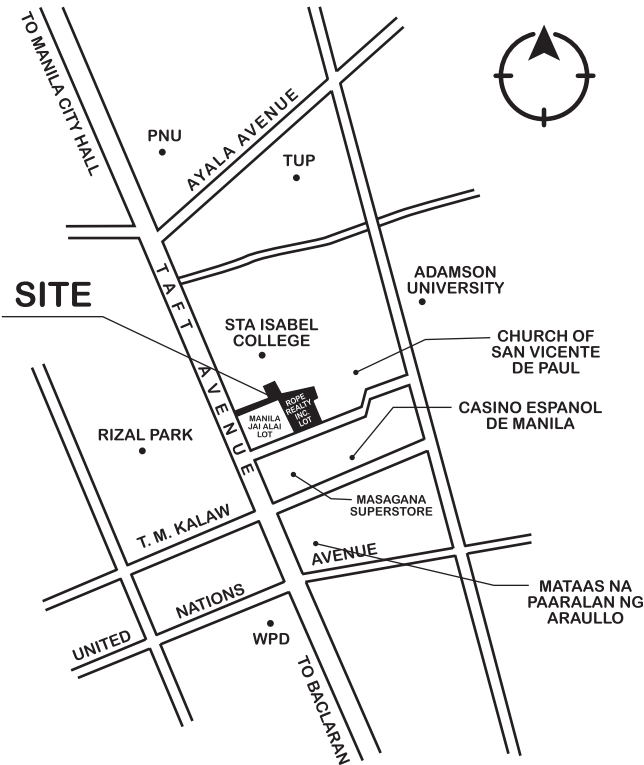


FIG. 9. SKETCH SHOWING NEIGHBORING LOTS & ADAMSON WALKWAY

⁷⁷ DMCI-PDI Manifestation with Submission, par. 8.a.

⁷⁸ *Id.*, par. 8.b.

37 Based on an internal feasibility study prepared in November 2011, DMCI-PDI proposed to build on the property a mixed residential and commercial condominium rising initially to 46 floors, later increased to 49 floors, but with close to 80% of the land surface kept open. This open space was reserved for amenities like swimming pools and a basketball court on the ground level as well as deck courts and deck gardens on the amenity level, parking spaces, and the access road to Taft Avenue.⁷⁹ To accomplish this, the building would be set back by 32 to 35 meters from the former Manila Jai Alai lot. In addition, the building would have indoor open spaces such as the sky patio, two garden atriums, and open corridors overlooking the atriums.⁸⁰ As designed, the proposed condominium could only be accessed from Taft Avenue by a ramp that goes to the third floor driveway leading to the lobby.



FIG. 10. BUILDING FOOTPRINT SHOWING DISTANCES TO JAI ALAI LOT AND ACCESS RAMP TO 3F LOBBY

38 Out of the gross lot area of 7,556.8 m², DMCI-PDI designed a 49-storey high-rise with a building footprint of 1,639 sq. m.⁸¹ The building would have a total of 923 units, 48% of which would be 46 and 48 sq. m. units with two bedrooms and 18% of which would be 65 sq. m. units with three bedrooms.⁸² The remaining

⁷⁹ *Id.*, Annex 1.
⁸⁰ See City of Manila Compliance dated Aug. 20, 2015, p. 3 (Torre de Manila Project Master Development Plan submitted to MZBAA).
⁸¹ *Ibid.* See also TSN, DMCI-PDI, Aug. 4, 2015, p. 10; DMCI-PDI Manifestation with Submission, Annex 1.
⁸² DMCI-PDI Madrigal Property Competition Scan and Property Assessment as of Nov. 2011, which is not

35% would be one-bedroom units with sizes of 28 and 30 sq. m.⁸³ The target market for the project were new homeowners from Manila and Pasay City, students and employees residing in Cavite, Batangas, Laguna and Rizal, and overseas Filipino workers.⁸⁴ The prices per square meter were projected to be 20% lower than those of competitors.⁸⁵ The project would address the need for mid-income housing in the city, in addition to boosting the local economy by providing livelihood and employment and by contributing taxes to the local government.⁸⁶

39 On September 19, 2011 and on April 2, 2012, respectively, the Civil Aviation Authority of the Philippines (“CAAP”) issued to DMCI-PDI two Height Clearance Permits for the project, then known as “the proposed 144.39-m high Madrigal Taft Avenue Building (Building A) with Roof Deck,” one with a top elevation of 149.89 meters⁸⁷ and another with 171.20 meters.⁸⁸ A month later on October 26, 2011, the HLURB issued a Zoning Certification to DMCI-PDI that the lots owned by Rope Realty, Inc. were located in the Institutional Zone.⁸⁹ Finally on April 2, 2012, Barangay 660-A, Zone 71 of the City of Manila issued a Barangay Clearance “for the construction of (a) residential condominium known as the ‘Torre de Manila’...”⁹⁰ The project was formally launched as the Torre de Manila on May 8, 2012.

40 Under Section 17 of the Manila zoning ordinance, the lots where Torre de Manila would be built were in an area classified as an Institutional University Cluster (“INS-U”) Zone, often referred to as “University Belts,” used primarily for educational/academic and residential developments with supporting commercial and services, among other uses.⁹¹ The maximum PLO for the INS-U zone was 0.6 and the maximum FAR was 4.⁹² There was no fixed building height limit in the INS-U Zone except those prescribed by the CAAP and other government regulations.⁹³ Within the zone, building height was based on the prescribed FAR.⁹⁴

appended to this Memorandum by reason of confidentiality.

⁸³ *Ibid.*

⁸⁴ *Ibid.*

⁸⁵ Actual average selling price for Torre de Manila’s two-bedroom units as of fourth quarter 2014 were ₱59,193 per sq. m. compared to 8 Adriatico (₱90,263), University Tower Malate (₱118,845), and Suntrust Parkview (₱77,606) and for one-bedroom units, ₱59,193 per sq. m. compared to Riverview Mansion (₱74,184) and Suntrust Parkview (₱76,913). [Source: Collier’s]

⁸⁶ City of Manila Compliance dated Aug. 20, 2015, p. 3 (Torre de Manila Project Rationale submitted to MZBAA).

⁸⁷ DMCI-PDI Comment *Ad Cautelam* dated Nov. 11, 2014 (“DMCI-PDI Comment *Ad Cautelam*”), Annex I.

⁸⁸ *Id.*, Annex J.

⁸⁹ *Id.*, Annex K.

⁹⁰ *Id.*, Annex L.

⁹¹ Manila zoning ordinance, Sec. 17, par. 1.

⁹² *Id.*, par. 2.

⁹³ *Id.*, Sec. 27, par. B.

⁹⁴ *Ibid.*

41 Since 0.6 of the property's gross land area was 4,534.8 sq. m. (7,556.8 m² lot area x 0.6) and the maximum allowable gross floor area without a variance was 30,227.2 sq. m. (7,556.8 m² lot area x 4 FAR), DMCI-PDI was allowed under the Manila zoning ordinance to build 18.44 habitable floors based on a building footprint of 1,639 sq. m. (30,227.2 m² ÷ 1,639 m²) *sans* a variance. However, if the seven-level parking floors (three basement and four podium parking levels) were excluded as provided in building regulations,⁹⁵ Torre de Manila could be built to a maximum allowable height of 25.44 floors even without a variance.⁹⁶

42 Viewed from the Rizal Monument, the finished eighteen-storey and 25-storey Torre de Manila would have looked like this:



FIG. 11. EIGHTEEN-STOREY TORRE DE MANILA AS SEEN FROM RIZAL MONUMENT



FIG. 12. 25-STOREY TORRE DE MANILA AS SEEN FROM RIZAL MONUMENT

⁹⁵ Nat'l. Building Code Implementing Rules & Regulations ("NBC-IRR"), Guidelines on Building Bulk, Development Controls, Buildings and Other Accessory Structures Within Cemeteries and Memorial Parks, B.f.i; HLURB Revised Model Zoning Ordinance (1996), Art. III (23).

⁹⁶ City of Manila Compliance dated Aug. 28, 2015, Annex B (p. 2) (Minutes of the Fourth Meeting of the MZBAA held on December 23, 2013); City of Manila Memorandum dated Sept. 17, 2015, p. 8; Dir. Emmanuel P. Cuntapay Memorandum dated Sept. 21, 2015, pars. 34, 44.

43 On June 19, 2012,⁹⁷ Resty A. Rebong, then the CPDO of Manila, issued a zoning permit for Torre de Manila for 97,549 m², equivalent to a building height of 59.5 floors (97,549 m² ÷ 1,639 m²), which was 67,321.8 sq. m. or forty-one floors (at eighteen floors) and 55,852.54 sq. m. or thirty-four floors (at 25 floors) in excess of the maximum allowable gross floor area for an INS-U zone. At the time the zoning permit was issued for Torre de Manila, however, the City of Manila had allowed the construction of 22 other high-rises with heights of 30 storeys or higher from July 7, 2006 to January 26, 2012 based only on building permits.⁹⁸ These included two of the seven high-rises adjacent to the Rizal Park, Sunview Palace and Eton Baypark Manila:⁹⁹

<i>Condominium Project</i>	<i>Height</i>	<i>Location</i>
Grand Riviera Suites	55 storeys	Roxas Blvd. cor. Padre Faura St., Malate, Manila
Golden Empire Tower	57 storeys	1332 Roxas Boulevard, Ermita, Manila
Pearl of the Orient Tower	42 storeys	Roxas Boulevard cor. Arquiza Street, Ermita, Manila
Adriatico Residences	38 storeys	Adriatico Street cor. Pedro Gil, Mabini, Manila
Robinsons Place Residences	38 storeys	Ermita, Manila
Mayfair Tower	33 storeys	U.N. Avenue and A. Mabini Streets, Ermita, Manila
Eton Baypark Manila ¹⁰⁰	29 storeys	Roxas Blvd. cor. T.M. Kalaw Avenue, Ermita, Manila
Sunview Palace ¹⁰¹	42 storeys	1015 M.H. del Pilar cor. T. M. Kalaw Streets, Ermita, Manila

44 After paying the required fees on July 2, 2012, DMCI-PDI received Building Permit No. 01-2012-001148-NC on July 5, 2012 from then Manila City Building Official Melvin Q. Balagot. The building permit allowed DMCI-PDI to construct a 49-storey residential condominium with basement and two penthouse levels on the property,¹⁰² with a proposed construction start date in October 2012 and expected completion date in November 2016.¹⁰³

45 During the administration of former Manila Mayor Alfredo S. Lim (2007-2013), the practice was to “suspend” the FAR limits under the Manila zoning ordinance, apparently to

⁹⁷ Jose P. Rizal’s 151st birth anniversary.
⁹⁸ City of Manila Compliance dated Aug. 28, 2015, Annex A.
⁹⁹ A copy of the CPDO Certification dated Sept. 21, 2015 is attached as Annex 7.
¹⁰⁰ Located 235 meters south of the Rizal Monument per Google Maps.
¹⁰¹ Located 250 meters south of the Rizal Monument per Google Maps.
¹⁰² DMCI-PDI Comment *Ad Cautelam*, Annex N.
¹⁰³ *Ibid.*

avoid the Manila City Council from acting on any recommendation for FAR variance by the Manila Zoning Board of Adjustments and Appeals (“MZBAA”) as required in Section 63 of the same ordinance:

Zoning Permit (Locational Clearance). – All lot/land owners/land developers and business establishments shall secure a zoning permit (locational clearance) from the City Planning and Development Officer for all conforming uses and, in all cases of variances and exceptions from the Sangguniang Panlungsod as per recommendation from the Manila Zoning Board of Adjustments and Appeals (MZBAA) through the Committee on Housing, Urban Development and Resettlements prior to conducting any business activity or construction on their property/land.

46 DMCI-PDI was unaware of such practice until its attention was called by the Department of Environment and Natural Resources (“DENR”) prior to the start of construction. On October 8, 2012, before mobilizing for the project, DMCI-PDI’s environment consultant Gaia South, Inc. wrote CPDO Rebong to clarify the issuance of the zoning permit despite the floor area of Torre de Manila being in excess of the maximum FAR of 4 allowed under the Manila zoning ordinance:¹⁰⁴

Upon checking with the Manila CLUPZO, it was ascertained that High Density Residential/Mixed Zone (R3/MXD) is allowed in the Ins-U zone. However, the Floor Area Ratio (FAR) limit is only 4.0 while the proposed project has a FAR of 8.0. DMCI PDI was already issued a building permit, thus, we assumed that the project is exempted from FAR limits. In this regard, we would like to request for a certification that the proposed project is allowed to be built in the area regardless of the FAR limit for the Ins-U zone.¹⁰⁵

47 Two days later, CPDO Rebong replied that the “provision(s) on height limitations and/or FAR provisions in the said ordinance were suspended by the executive branch, for it opted to follow the National Building Code (“NBC”) as stated in the legal opinion (of the City Legal Officer, Atty. Renato G. dela Cruz)” and that “the issuance of (the) Zoning Permit (p)rior to (the) Building Permit by this office clears/frees the applicant DMCI from any obligation to the city.”¹⁰⁶ Attached to CPDO Rebong’s letter was a copy of Atty. dela Cruz’s opinion dated September 19, 2011¹⁰⁷ on the alleged illegal construction of 168 Shopping Mall in Binondo, Manila in violation of the Manila zoning ordinance, where he wrote—

At this point, it is worth noting that the City of Manila has been clear in its stand to follow the provisions of Presidential Decree No. 1096, otherwise known as the “National Building Code of the

¹⁰⁴ City of Manila Compliance dated Aug. 20, 2015, attachment 1.

¹⁰⁵ *Ibid.*

¹⁰⁶ CPDO Rebong’s letter dated Oct. 10, 2012 to Gaia South, Inc. (DMCI-PDI Comment *Ad Cautelam*, Annex Q).

¹⁰⁷ City of Manila Compliance dated Aug. 20, 2015, attachment 6.

Philippines”, particularly the provisions on building height limitations. A careful perusal of the provisions of the above-mentioned ordinance shows that there is no particular provision limiting the heights of buildings in the City.

Particularly, Section 27, Article VI of Ordinance No. 8119, states:

“Sec. 27. Height Regulations – Building height must conform to the height restrictions and requirements of the Air Transportation Office (ATO), as well as the requirements of the National Building Code, the Structural Code, as well as all laws, ordinances, design standards, rules and regulations relate to land development and building construction and the various safety codes.”

Clearly, there is no categorical provision limiting the height of buildings. Even your reference to the so-called Floor-Area-Ration (FAR) in the ordinance does not stand to constitute a hard and fast rule on height limitations. In view thereof, reference can be made to the provisions of the National Building Code, which likewise, does not provide for categorical limitations on building heights except in certain instances when it is necessary to secure a clearance from ATO.¹⁰⁸

48 The MZBAA, to whom DMCI-PDI could have appealed had CPDO Rebong denied the zoning permit application of Torre de Manila for being non-conforming, met only once during the term of Mayor Lim.¹⁰⁹ In that lone meeting on December 10, 2009, then CPDO Rodolfo H. Catu acknowledged that it was the first meeting of the MZBAA and explained that “the convening of (the) MZBAA was included in his agenda upon his assumption to office but this was superseded by urgent tasks and beyond-his-control circumstances” like the approval of City Ordinance No. 8187, which legitimized the retention of existing industries in Pandacan, Manila, thereby amending the Manila zoning ordinance.¹¹⁰ After that only meeting, the MZBAA no longer met despite the many buildings taller than 30 floors built during the administration of Mayor Lim that required a variance.¹¹¹

49 Before commencing construction, DMCI-PDI secured a Development Permit on July 20, 2012 from the HLURB,¹¹² which also issued to DMCI-PDI a Certificate of Registration¹¹³ of Torre de Manila and a License to Sell¹¹⁴ on September 25, 2012. In all, DMCI-PDI secured ten clearances and permits before it mobilized for the project in October 2012.¹¹⁵

¹⁰⁸ *Ibid.*

¹⁰⁹ TSN, City of Manila, Aug. 18, 2015, p. 79.

¹¹⁰ City of Manila Compliance dated Aug. 20, 2015, attachment 2.

¹¹¹ TSN, City of Manila, Aug. 18, 2015, p. 79.

¹¹² DMCI-PDI Comment *Ad Cautelam*, Annex R.

¹¹³ *Id.*, Annex T.

¹¹⁴ *Id.*, Annex S.

¹¹⁵ TSN, DMCI-PDI, Aug. 4, 2015, p. 72.

<i>Permit / License / Certificate / Exemption</i>	<i>Date Issued</i>	<i>Issuing Authority</i>	<i>Description</i>
Height Clearance	9/19/11	CAAP	Allowed DMCI-PDI to construct Torre de Manila up to 144.39 meters high, with top elevation of 149.89 meters above mean sea level.
	4/2/12		Allowed DMCI-PDI to construct Torre de Manila up to 165.70 meters high, with top elevation of 171.20 meters above mean sea level.
Zoning Certification	9/21/11	HLURB	Classified the project area of Torre de Manila as “Institutional,” which allowed residential use.
Barangay Clearance	4/2/12	Office of the Barangay Chairman	Allowed the construction of Torre de Manila in Brgy. 660-A, Zone 71, Ermita, Manila.
Zoning Permit	6/19/12	Manila CPDO	Allowed Torre de Manila to have a gross floor area of 97,549 sq. m.
Building Permit	7/5/12	Manila Office of the Building Official (OBO)	Allowed DMCI-PDI to construct a “Forty Nine (49) Storey w/ Basement & 2 Penthouse level Res’l/ Condominium.”
Sanitary/Plumbing Permit	7/5/12	Manila OBO	Allowed DMCI-PDI, among others, to install certain fixtures and provide for adequate water supply and disposal systems.
Development Permit	7/30/12	HLURB	Recognized the Zoning Permit and Building Permit that the Manila City Government previously issued to DMCI-PDI. The HLURB issued the Development Permit in conformity with the Implementing Rules and Regulations of P.D. 957.
License to Sell	9/25/12	HLURB	Allowed DMCI-PDI to sell 923 residential condominium units and 702 parking slots of Torre de Manila.
Certificate of Registration	9/25/12	HLURB	Certified that (i) Torre de Manila, a project covered by TCT Nos. 265032, 265031 and 189704, with an area of 7,716.60 sq. m. and located at Taft Avenue, Ermita Manila was registered with the HLURB pursuant to P.D. 957; and (ii) DMCI-PDI is the project owner and developer of Torre de Manila.

50 Relying in good faith on CPDO Rebong’s assurance in his reply dated October 10, 2012 to Gaia South, Inc., *supra*, DMCI-PDI began bored piling on the site in December 2012. On the

basis of CPDO Rebong's reply, the DENR also issued an Environmental Compliance Certificate to DMCI-PDI on March 15, 2013.¹¹⁶

51 Beginning in 2012, the Manila City Council began investigating the issuance of zoning permits and building permits to construction projects in excess of the prescribed FAR. On September 18, 2013, while the construction of Torre de Manila was on the third floor podium parking, the new Manila Mayor, Joseph Ejercito Estrada, issued E.O. 30 reconstituting the MZBAA and defining its functions.¹¹⁷ Among its assigned functions were to evaluate reports from the CPDO and to submit recommendations to the *Sangguniang Panlungsod*, through the Committee on Housing, Urban Development and Resettlements, "regarding appeals on the grant or denial of zoning permit/location clearance and development permit and (to) act on ... applications" for variances and exceptions.¹¹⁸

52 Five weeks later, the Ad Hoc Oversight Committee of the City Council ("Oversight Committee") reported the result of its investigation. In a Resolution No. 146, s. 2013, passed on November 23, 2013, the 9th City Council of Manila cited the committee's report "finding zonal law violations (of Torre de Manila) under City Ordinance No. 8119, pertaining to floor area ratio and height restrictions within a University/Institution (sic) Cluster Zone."¹¹⁹

53 The Oversight Committee then held a hearing and recommended to the City Council during its plenary session on December 12, 2013 that a copy of its findings "be furnished the City Building officials for appropriate action considering the violation of the aforesaid ordinance,) subject to any appeal (that) DMCI Homes may file before the MZBAA."¹²⁰ Concerned, DMCI-PDI consulted the new CPDO, Arch. Lacuna. It was advised to seek a variance pursuant to the Manila zoning ordinance.¹²¹

54 On December 18, 2013, DMCI-PDI President Alfredo R. Austria wrote Mayor Estrada, who chaired the MZBAA, "to seek clarification as well as assistance" regarding its zoning permit, which "was allegedly issued without complying with the standard procedural requirements of City Ordinance No. 8119 ..."¹²² DMCI-PDI explained in its letter,

The zoning permit was issued after we have submitted the required development plans. As the former city planning and

¹¹⁶ DMCI-PDI Comment *Ad Cautelam*, Annex U.

¹¹⁷ City of Manila Compliance dated Aug. 20, 2015, attachment 3.

¹¹⁸ Manila E.O. No. 30, s. 2013, Sec. 2 (3).

¹¹⁹ City of Manila Position Paper dated July 15, 2015 ("City of Manila Position Paper"); City Council of Manila Reso. dated Nov. 26, 2013, fifth whereas.

¹²⁰ City of Manila Position Paper, Annex L, second whereas.

¹²¹ TSN, City of Manila, Aug. 18, 2015, pp. 83, 123-25.

¹²² City of Manila Position Paper, Annex I.

development officer did not deny the application, we continued on for the application of the building permit of the project. Had our application for zoning permit been denied, we could have gone through the process of appealing to the local zoning board, if any was then constituted, and applied for an exemption from the city council.

Nevertheless, should it be necessary that we comply, we are willing to take the necessary steps to conform therewith. We humbly request your good office, however, not to suspend our building permit pending our compliance with the required procedure.¹²³

55 Acting on DMCI-PDI's request after it was referred to him, MZBAA Executive Director CPDO Lacuna called a meeting of the MZBAA on Monday, December 23, 2013,¹²⁴ during which the Board approved Zoning Board Resolution No. 6, s. 2013 ("MZBAA Resolution No. 6"), recommending to the City Council of Manila "the approval for variance" of the Torre de Manila project.¹²⁵ In the same meeting, the MZBAA recognized that the prescribed FAR of 4 for the INS-U Zone allowed DMCI-PDI to build up to 25 floors.¹²⁶

56 In a subsequent meeting of the MZBAA on January 8, 2014, it issued Zoning Board Resolution No. 6-A, s. 2014 ("MZBAA Resolution No. 6-A"), amending its previous resolution by requiring DMCI-PDI to "ensure the adoption of Green Building practices" instead of registering and securing a BERDE certification from the Philippine Green Building Council as originally required.¹²⁷ The MZBAA meeting on January 8, 2014 was notable, in that it was already the fifth time it convened just six months into the term of Mayor Estrada.¹²⁸

57 On January 16, 2014, the Manila City Council through Councilor Ernesto C. Isip, Jr., Chairman of the Committee on Housing, Urban Development and Resettlements, approved Resolution No. 5, s. 2014, formally adopting MZBAA Resolution Nos. 6 and 6-A and ratifying and confirming all previous permits, licenses and approvals issued for Torre de Manila.¹²⁹

WHEREAS, the members of the City Council of Manila find no cogent reason to deny and/or reverse the aforesaid recommendation of the Manila Zoning Board and Adjustment Appeals (MZBAA) and hereby ratify and confirm all previously issued permits, licenses and approvals issued by the City of Manila for Torre de Manila;

¹²³ *Ibid.*

¹²⁴ City of Manila Compliance, attachment 4.

¹²⁵ DMCI-PDI Comment *Ad Cautelam*, Annex V; City of Manila Position Paper, Annex J.

¹²⁶ See City of Manila Compliance dated Aug. 28, 2015, Annex B (p. 2) (Minutes of the Fourth Meeting of the MZBAA held on Dec. 23, 2013).

¹²⁷ DMCI-PDI Comment *Ad Cautelam*, Annex W; City of Manila Position Paper, Annex K.

¹²⁸ *Ibid.*

¹²⁹ DMCI-PDI Comment *Ad Cautelam*, Annex X; City of Manila Position Paper, Annex L.

RESOLVED, by the City Council of Manila, to adopt, as it hereby adopts, the Zoning Board Resolution No. 6, dated December 23, 2013 and its amendatory Zoning Board Resolution of the Manila Zoning Board of Adjustment and Appeals.¹³⁰

58 At the time Resolution No. 5 was approved by the City Council in January 2014, pursuant to its authority to approve any deviation from any section or part of the Manila zoning ordinance,¹³¹ the construction of Torre de Manila was still on the sixth level of the building,¹³² nineteen storeys shy of the maximum allowable FAR of 25.44 floors. By that time, it had poured ₱290 million into the construction (plus land cost of ₱219.2 million) and was on track to complete the project by November 2016 as stated in its Building Permit.

THE RIZAL PARK

59 The Torre de Manila stands 132 meters from the eastern side of the Rizal Park that faces Taft Avenue, the same section that abuts the elevated LRT tracks and the former Manila Jai Alai lot. The Rope Realty, Inc. property frontage on Taft Avenue (see Fig. 7, *supra*), now an access ramp to the third floor driveway and lobby of Torre de Manila,¹³³ is 30 meters away from the edge of Rizal Park.¹³⁴



FIG. 13. TORRE DE MANILA DISTANCES FROM RIZAL PARK & MANILA JAI ALAI LOT

¹³⁰ *Ibid.*
¹³¹ Manila zoning ordinance, Sec. 62.
¹³² TSN, DMCI-PDI, Aug. 4, 2015, p. 77.
¹³³ DMCI-PDI Manifestation with Submission, Annex 1.
¹³⁴ DMCI-PDI Comment *Ad Cautelam*, Annex BB; Petition, par. 2.14.

60 The Rizal Park is a 16.24-hectare¹³⁵ national park owned by the Philippine government as part of its private domain,¹³⁶ located in the district of Ermita, Manila. It is rectangular in shape, bounded on the north by Padre Burgos Drive, on the south by Teodoro M. Kalaw Avenue, on the east by Taft Avenue, and on the west by Roxas Boulevard. The park stands on two city blocks separated by Maria Y. Orosa Street: the smaller eastern section near Taft Avenue has the Museum of the Filipino People, Museum of Natural History, the Children's Park, and the relief map of the Philippines, while the bigger western section has the Chinese Garden, Japanese Garden, National Library, Martyrdom of Jose Rizal diorama, Independence Flagpole, Kilometer 0 marker, and the subject of this petition, the Rizal Monument.

61 The area now known as Rizal Park was originally open wetland, mudflats or mangroves just outside the *Puerta Real* (Royal Gate) of the walled city of Intramuros, which

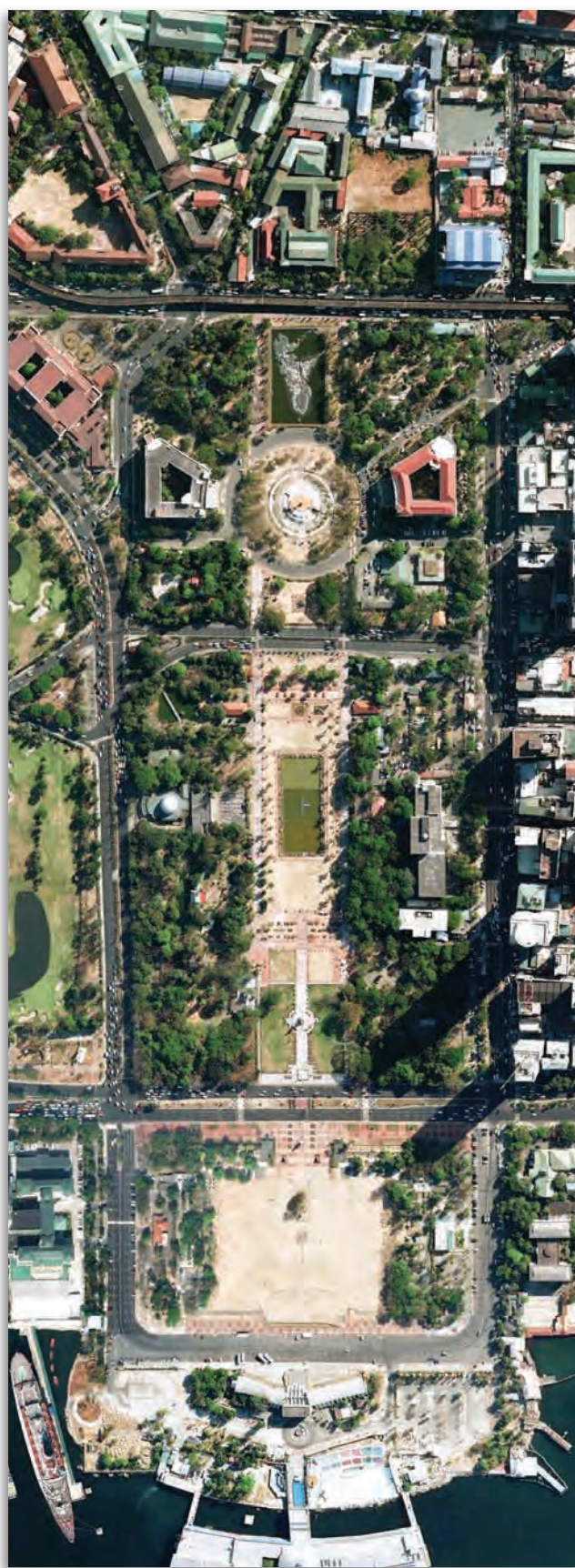


FIG. 14. IMAGE OF RIZAL PARK FROM GOOGLE MAPS (<https://goo.gl/w7KHFu>)

¹³⁵ Proc. 234, s. 1955. Other sources put the area at 54 hectares (PAOLO G. ALCAZAREN, ED., PARKS FOR A NATION (Nat'l. Parks Dev't. Comm., 2013) ("Alcazaren") or 58 hectares [Danny Pata, "A walk through Rizal Park on the National Hero's 154th birthday," GMA News Online, June 19, 2015, *available at* <http://www.gmanetwork.com/news/story/506498/lifestyle/artandculture/a-walk-through-rizal-park-on-the-national-hero-s-154th-birthday> (last accessed on Sept. 8, 2015)].

¹³⁶ DMCI-PDI erred in its earlier submission that the Rizal Park was owned by the City of Manila. The case it cited in support of its previous position, *The City of Manila v. The Rizal Park Co., Inc.*, 53 Phil. 515 (1929), involved Block 44 of the Rizal Park Subdivision, not the Rizal Park. Undersigned counsel regret their error.

was fortified to exclude foreign invaders and the native populace. Its soft ground was crisscrossed by *esteros*. Eventually, dwellings and structures, including a church, filled the space. By the 18th century, the area was an established suburb, or *arrabal*, called Bagumbayan, Tagalog for “new village,”¹³⁷ inhabited by native Filipinos and Chinese. According to historian Cristina Evangelista Torres,

Intramuros was patterned originally after a medieval fortress, complete with walls, a surrounding moat, and gates with draw bridges. Inside the city walls were magnificent Catholic churches, Catholic schools, government buildings, and the residences of Spanish nationals. Intramuros served as an enclave for the Spaniards who tried to make its landscape comparable, if not similar to, that of their native Spain. The native Filipinos and the Chinese lived outside the walls, inhabiting the outside villages commonly referred to as *extramuros*.¹³⁸

62 As Intramuros grew more crowded, its inhabitants sought respite outside the walls. For daily relief, they took late afternoon promenades down two long stretches of roads or *paseos*, one along the moat of Intramuros, a crescent-shaped drive called the *Paseo de la Calzada*, and the other a three-kilometer road called the *Malecon* that ran from the mouth of the Pasig River to the edge of Ermita where the two *paseos* converged into Bagumbayan. The open field where the two *paseos* merged was turned into a roundabout or loop, shaped like a hippodrome, where people gathered in the evenings to flirt, chat, or flaunt their wealth. The space was officially named the *Paseo de Alfonso XIII* but it became more popularly known as the *Paseo de Luneta*, or *Luneta* for short,¹³⁹ *luneta* being the Spanish translation of the French *lunette*, the arrow-shaped stone fortifications surrounding Intramuros.¹⁴⁰

The promenade became part of the daily agenda, although one that would always concede to that set by the Catholic church’s. After vespers, the Manila elite would converge on the rectangular field, for the bracing evening air and the pleasure of each other’s company. The seemingly innocuous stroll allowed the Spanish their early evening relaxation—all whilst preening before people of their own class and race (and, later, when less stringent rules applied, to the *ilustrados* who streamed from the surrounding suburbs). It was a ritual of posturing beneath the guise of a leisurely, even lazy, pursuit.¹⁴¹

63 When pockets of rebellion erupted all over the country at the close of the 19th century, Luneta became the execution ground of disloyal Filipinos whom the Spaniards labeled as *insurrectos* or rebels. Fourteen years before his own execution at the old Bagumbayan on December 30, 1896, Dr. Jose Rizal’s life was forever changed by the public death by *garrote* of three secular priests, Mariano

¹³⁷ Alcazaren, *supra*, at p. 21.
¹³⁸ CRISTINA E. TORRES, THE AMERICANIZATION OF MANILA 1898-1921 48 (Univ. of the Phils. Press, 2010) (“Torres”).
¹³⁹ *Id.*, at pp. 29-31.
¹⁴⁰ *Id.*, at p. 23.
¹⁴¹ Centenary, *supra*, Part I.

Gomez, Jose Apolonio Burgos, and Jacinto Zamora, who were falsely charged and convicted of treason and sedition by a Spanish military tribunal for their alleged involvement in events that led to the uprising of around 200 Filipinos working in the Cavite arsenal, an incident that became known as the Cavite Mutiny.¹⁴² In protest, the Archbishop of Manila refused to defrock the condemned Filipino priests and ordered the bells of every church to toll in honor of their deaths.¹⁴³ Rizal dedicated his second novel, *El Filibusterismo*, to the memory of the martyrs GomBurZa:

The Government, by enshrouding your trial in mystery and pardoning your co-accused, has suggested that some mistake was committed when your fate was decided; and the whole of the Philippines, in paying homage to your memory and calling you martyrs, totally rejects your guilt. The Church, by refusing to degrade you, has put in doubt the crime charged against you.¹⁴⁴

64 The NHCP estimates the number of people executed at the Luneta to be about 800, although the actual number remains unknown.¹⁴⁵ The earliest recorded incident was the capture and execution of 82 non-commissioned officers and soldiers of the Tayabas regiment on January 21, 1843.¹⁴⁶ One of the last was the martyrdom on January 10, 1897 of thirteen Filipinos, the “Trece Martires,” just eleven days after the execution of the national hero.¹⁴⁷ In his memoirs, U.S. Army Colonel Conrad S. Bobcock described how promenaders would watch as the firing squad did its morbid business in full view of the public.

Blindfolded, many a wretched native has stood on the gravel covered Luneta, his back to the waves and to the setting sun, four rifle armed soldiers executioners facing him; while all around, save on the bay side, stood or sat in their carriages, hundreds of ladies and gentlemen, the pick of Manila society, and the native Filipino men and women for whose attempted independence the life of the insurgent was about to be forfeited in a blast of rifle fire.¹⁴⁸

65 When the Americans arrived in Manila in 1898, they found a Spanish city with a strong European influence manifested in the walled city of Intramuros. The succeeding American colonial administration found it necessary to leave their imprint on the city, to redevelop it to acquire an American character, and to make it suitable to the lifestyle of Americans who subsequently pursued their career or business in the islands.¹⁴⁹ The second Philippine Commission headed by William H. Taft ordered the redevelopment of the city as the

¹⁴² Alcazaren, *supra*, at p. 39.

¹⁴³ Centenary, *supra*, Part II.

¹⁴⁴ *Ibid.*

¹⁴⁵ Alcazaren, *supra*, at p. 40.

¹⁴⁶ *Ibid.*

¹⁴⁷ *Ibid.*

¹⁴⁸ ROBERT H. FERRELL, ED., REMINISCENCES OF CONRAD S. BLACK: THE OLD U.S. ARMY AND THE NEW, 1898-1918 11 (Univ. of Missouri Press, 2012).

¹⁴⁹ Torres, *supra*.

seat of power and the social, cultural, economic and political center of the country.¹⁵⁰

66 The person commissioned to prepare the master plan for Manila was Daniel H. Burnham, a well-known Chicago building architect and exponent of the “City Beautiful” movement. Burnham became interested at what he deemed a great architectural opportunity after the Philippine Commission’s first choice, Frederick Olmsted Law, Jr., son and apprentice of the most famous landscape architect in 19th-century America, Frederick, Sr., declined his appointment.¹⁵¹ Burnham took to the task with enthusiasm, and did not charge any professional fee but only sought reimbursement for his expenses.¹⁵²

67 His methodology of urban design incorporated parks, symmetrical pathways for traversing the city and classical motifs, which he earlier successfully implemented in a major renewal of Washington, D.C. in January 1902 and in designing the cities of Cleveland and San Francisco in 1903 and 1904.¹⁵³ He considered Washington, D.C., where the U.S. Capitol and the Mall were at the center of the street system, as the best planned city in the world, and used it as a model for Manila where radial streets emanated from the center.¹⁵⁴ The MCLUPZO approved by the City of Manila in 2006 was inspired by Burnham, whom it quoted on page 1 of the Executive Summary:

Make no little plans; they have no magic to stir men’s blood and probably themselves will not be realized. Make big plans; aim high in hope and in work, remember that a noble, logical diagram once recorded will never die, but long after we are gone [it] will be a living thing, asserting itself with ever growing insistency. Remember that our sons and grandsons are going to do things that would stagger us. Let your watchword be order and your beacon beauty.¹⁵⁵

68 Burnham and his assistant Pierce Anderson spent 45 days in Manila and Baguio from December 1904 to January 1905 to survey both cities. In June 1905, he submitted his plans and reports for Manila and Baguio to Secretary of War Taft. These were approved within two months and orders for their implementation were given immediately.¹⁵⁶ As envisioned by Burnham, at the center of the city

¹⁵⁰ *Id.*, at p. 59.

¹⁵¹ DAVID BRODY, *VISUALIZING AMERICAN EMPIRE: ORIENTALISM AND IMPERIALISM IN THE PHILIPPINES* 147 (Univ. of Chicago, 2010).

¹⁵² Torres, *supra*, at p. 65.

¹⁵³ Alcazaren, *supra*, at p. 47.

¹⁵⁴ Torres, *supra*, at 62.

¹⁵⁵ II MCLUPZO, Executive Summary, p. 1-01. Several authors have tried and failed to trace the origin of this motto, which was quoted by Charles Moore in II DANIEL H. BURNHAM: ARCHITECT, PLANNER OF CITIES 147 (Boston, 1921). *See, e.g.*, THOMAS S. HINES, *BURNHAM OF CHICAGO: ARCHITECT AND PLANNER* 401, note 8 (Univ. of Chicago Press, 2008).

¹⁵⁶ Alcazaren, *supra*, at p. 48.

was a civil core in what is now the eastern section of the Rizal Park, then known as Wallace Field. As described by architect Alcazaren,

The plan included all elements of a classic City Beautiful plan. It had a central civic core. Radial* [streets] emanating from this core were laid over a gridiron pattern and large parks interconnected by parkways. In this core, which Burnham located beside the old city [of Intramuros], government buildings were arranged in a formal pattern around a rectangular mall ("mall" here refers to a linear formal open space defined by trees or buildings). This mall is reminiscent of the National Mall in Washington D.C. and is, in fact, roughly the same width and orientation. The layout differed from the Spanish "Laws of the Indies" configuration in that the focus was civic space and government buildings and did not include religious structures.

Completing the civil ensemble were the Hall of Justice complex, located south of the mall, and semi-public buildings such as libraries, museums and permanent exposition buildings all along a drive towards the south.

The core then was not intended to be the Rizal Park we know today, although a monument to a national hero was part of the plan.¹⁵⁷

69 The Burnham Plan identified a cluster of government buildings that would rise at the eastern portion of the Luneta, which he called the National Group. This cluster included the Capitol Building, which was to house the legislature, the various department buildings, museums and libraries.¹⁵⁸ In designing the civic complex, one of the first elements the American civil government wanted to put up was Manila's equivalent of the Washington monument. For this, they chose Dr. Jose Rizal; his monument was to rise at the center of the projected new civic mall.¹⁵⁹ As shown in the tabletop model displayed in January 1914 at the Bureau of Public Works (see Fig. 17, *infra.*), the cluster of buildings formed a massive wall in the shape of a horseshoe surrounding the spot where the monument to the national hero would rise.

70 From its location, the monument of Dr. Rizal would have no skyline¹⁶⁰ or a view of an expanse of the sky; the viewer would see the monument wrapped in the shadow of the buildings around it, with the Capitol looming as a backdrop. At the back of this immense cluster of buildings was the lot where the Manila Jai Alai building was constructed and, behind it, the parking lot that became the site of Torre de Manila. It would be decades later, due to an unintended consequence, that the sky would accidentally become part of the monument's backdrop.

¹⁵⁷ *Id.*, at pp. 49-50. Words in brackets added; words in parentheses in the original; * denotes omitted letter.

¹⁵⁸ Torres, *supra*, at p. 62.

¹⁵⁹ Alcazaren, *supra*, at p. 62.

¹⁶⁰ A picture that includes an extensive view of the sky [WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED 2136 (1976)].

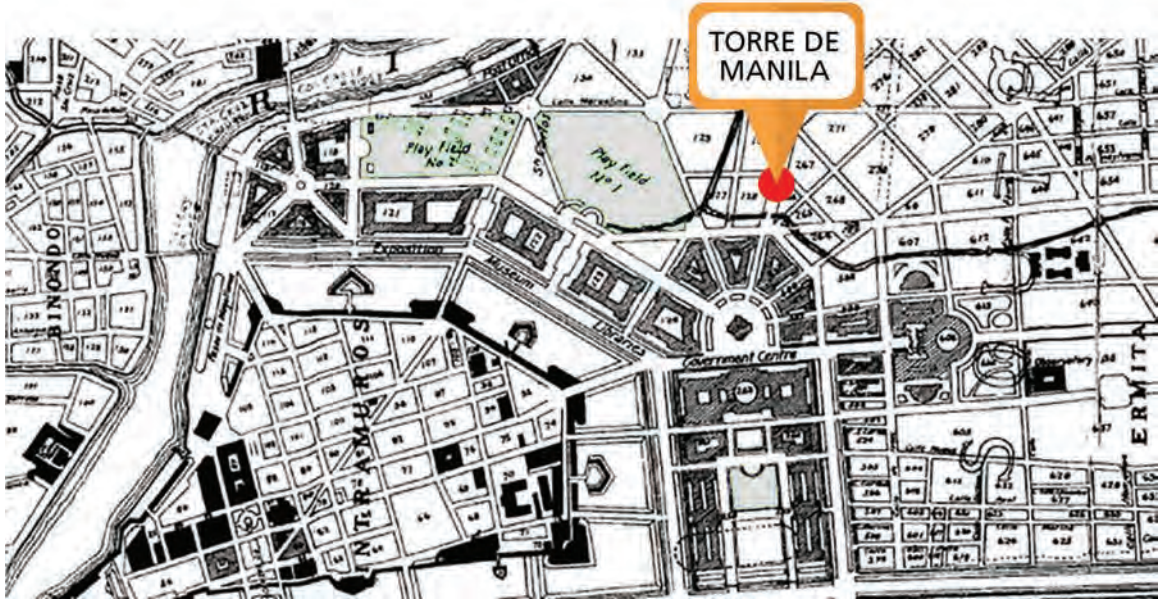


FIG. 15. PORTION OF BURNHAM PLAN SHOWING LUNETA AND THE CIVIC CORE. THE HIPPODROME IS OUTLINED IN A DOTTED OBLONG NEAR THE MONUMENT OF THE NATIONAL HERO.

FIG. 16. CONTEMPORARY RENDITION OF BURNHAM PLAN SHOWING LUNETA, THE CIVIC CORE, AND THE HIPPODROME NEAR THE RIZAL MONUMENT. COURTESY: OFFICIAL GAZETTE WEBSITE (<http://www.gov.ph/rizal-monument/>).



FIG. 17. TABLETOP MODEL OF BURNHAM PLAN SHOWING LUNETA AND THE CIVIC CORE, WITH THE NOTATION “BUREAU PUBLIC WORKS MODEL OF PHILIPPINE CAPITOL, MANILA P.I. JAN. 1914.” THE HANDWRITTEN ANNOTATION READS “LUNETA IN BACKGROUND AND BURNHAM GREEN BEYOND.”

71 “By the end of the first decade of 20th century,” Alcazaren wrote, “Manila was a boomtown. The country was abuzz with construction as the Americans built more in the first two decades of the era than the Spanish did in the previous two centuries.”¹⁶¹ However, Burnham’s grand plans for the new capital, with a core built near the old Luneta grounds, was never implemented after the Republicans lost the 1912 U.S. elections and the new administration controlled by Democrats implemented a policy that eventually led to the letting go of

¹⁶¹ Alcazaren, *supra*, at p. 62.

their far-flung island colony.¹⁶² By 1913, the year the Rizal Monument was inaugurated, infrastructure building had slowed down.

72 According to the account in the *Official Gazette* website,

But the Rizal of the Americans—the new Roman-inspired metropolis—was not to be. By 1916, the debate on whether America would permanently keep, or let go, of the colony had been settled; and the grand plan of Burnham was implemented more in the breach in a combination of Filipino protestations of economizing—no grand capitol would be built, the legislature, instead, taking over and remodeling what had been intended to be the National Library—and American extravagance: Governor-General Francis Burton Harrison used funds intended for the Burnham Plan to build an Executive Building in Malacañan Palace, closing down the governor-general's office in Intramuros, sounding the death-knell of the walled city as administrative heart of the colony and firmly charting the future *extramuros*.¹⁶³

73 A 1930s zoning map of Manila¹⁶⁴ still showed the Luneta as the site of a government center, with the proposed Capitol and the Spanish-era hippodrome drawn in the map. Photographs of the era showed the hippodrome intact, with the monument of Jose Rizal standing alone in the vast, empty field.¹⁶⁵ The Luneta became the site of the inauguration of the Commonwealth Government of the Philippines in 1935, the 33rd International Eucharistic Congress in 1937, the speech of Japanese Premier Hideki Tojo promising independence to the Philippines in 1943, the inauguration of the Philippine Republic in 1946, and the Philippine International Fair of 1953.

74 In 1905, the Manila Electric Railroad and Light Company or Meralco built a steam plant on Isla de Provisor by the Pasig River behind San Marcelino Street, where it also established its main offices and yard for its electric streetcars or *tranyias*. As Manila grew, the plant was expanded and its single smokestack became prominent as a backdrop for the newly inaugurated Rizal Monument in the Luneta. Wrote Alcazaren, “(n)o one worried about the view then since a grand civic center with large buildings and a tall domed capitol were to be built on what is now Agrifina Circle. These buildings would have become the fitting background for the monument.”¹⁶⁶ In 1964, under a Filipino company led by Don Eugenio Lopez Sr. as owner, Meralco built the new Tegen power station beside the old steam plant, its two giant smokestacks replacing the old smokestack that was destroyed when retreating Japanese forces blew up the steam plant.¹⁶⁷

¹⁶² *Id.*, at pp. 54, 65.

¹⁶³ Centenary, *supra*, Part V.

¹⁶⁴ A copy of the zoning map is attached as Annex 8.

¹⁶⁵ For the photographs, see Alcazaren, *supra*, at p. 85.

¹⁶⁶ Paulo Alcazaren, “Skyline of power,” *City Sense*, The Philippine Star, Oct. 25, 2008, available at <http://www.philstar.com/modern-living/409748/skyline-power> (last accessed on Sept. 15, 2015).

¹⁶⁷ *Ibid.* Tegen had a total capacity of 200MW from two power generating units of 100MW; hence, the two

75 A decade before, the Jose Rizal National Centennial Commission, in collaboration with petitioner, proposed the construction of a Jose Rizal National Cultural Shrine at the Luneta, complete with a grand national theater at the back of the Rizal Monument, a national museum and a national library.¹⁶⁸ The project spawned a controversy that lasted from 1954 until 1961 and put the Luneta under the limelight,¹⁶⁹ much like the present controversy subject of this action. According to the *Official Gazette*,

In the late 1950s, President Ramon Magsaysay reserved the Luneta exclusively for park purposes and had trouble resisting persistent official pressure from groups who wished to exploit the park for their own pet projects. One group [the Knights of Rizal] strongly lobbied to use Luneta as the site of a national cultural center, envisioning the construction of a National Library, a National Museum, and a National Theater. But not a few persons decried the plans to mark the huge, open park—prompting a newspaper columnist [Teodoro Valencia] to comment, “Luneta has been ruthlessly butchered, cut up to small, useless areas assigned for incongruous uses.” The arguments went on, silenced only by the death of the major protagonists. In the end, the Rizal Memorial Cultural Center was approved; Magsaysay himself laid the cornerstone of the only building that would be completed, the National Library.

In the meantime, the park lay bare and unkempt; the Rizal Monument neglected, muddy in the rain and surrounded with tall cogon in the summer. The Luneta—now Rizal Park—was, like so many grand projects of the newly-independent nation, much better on paper than it turned out in reality. Foundations were laid; but not much else.¹⁷⁰

76 The Rizal Park acquired its present landscape and features due to efforts of the National Park Developments Committee (“NPDC”), first created by President Diosdado Macapagal on January 14, 1963 and given its present name in February 1964.¹⁷¹ “Up to 1963,” wrote former newspaper columnist and NPDC Executive Director Teodoro Valencia, “Luneta Park in Manila was a notorious place right in the heart of the metropolis. No one dared cross the park at night ... Luneta was a place for duels and gang rumbles. The Rizal monument ... was a miserable sight. The (cogon) grass around the monument grew to six feet in sections.”¹⁷²

77 Through donations of artworks, services, and contributions of private citizens to NPDC as well as tireless fund-raising by Valencia, the area around the Rizal Monument was landscaped

smokestacks. The plant was purchased by the Philippine government from Meralco on Jan. 1, 1979 and decommissioned in 2002 (“Gov’t to shut down Tegen power plant, sell land,” *The Philippine Star*, Sept. 16, 2002, *available at* <http://www.philstar.com/business/176202/government-shut-down-tegen-power-plant-sell-land> (last accessed on Sept. 15, 2015).

¹⁶⁸ Alcazaren, *supra*, at p. 121.

¹⁶⁹ *Id.*, at pp. 122-25.

¹⁷⁰ Centenary, *supra*, Part VI.

¹⁷¹ *Ibid.*

¹⁷² Alcazaren, *supra*, at p. 142.

and paved for promenading. Water fountains, statues, playgrounds, and toilets were installed. First a Chinese Garden, then a Japanese Garden, was created. Weekend concerts were held at the park, which were televised and broadcast abroad. A relief map of the Philippines was built in 1967. In the same year, the iconic flower clock was inaugurated. In 1975, the Planetarium was opened. Honor guards of the Philippine Marine Corps' Marine Security and Escort Group ("MSEG") were later put on 24-hour duty at the Rizal Monument.¹⁷³

78 Until he stepped down after President Corazon Aquino assumed power in 1986, Valencia—not the Knights of Rizal—was the face of the Rizal Park for more than twenty years. He spearheaded the opening of an art gallery at the park called the City Gallery, a Park for the Blind, a Rose Garden, a *Halamanang Pilipino* (Filipino Garden), and the Rizal Park Library. From its desolate, squalid, and seedy former self, the Rizal Park became a regular destination of people—employees and students on weekdays; families, seniors, fitness buffs, and couples on weekends; and artists, vendors, photographers, and tourists practically every day.

79 In the nineties, fast food outlets invaded the park, from Cindy's, then to Wendy's, and presently Jollibee restaurant, ignoring this Honorable Court's ruling that Rizal Park is beyond the commerce of man and could not be the subject of a lease contract.¹⁷⁴ New facilities, artworks, and structures were added, such as an Orchidarium, a butterfly pavilion, a climbing wall, a *tranvia* ride, and an event venue. As the number of structures in the park grew, so too did the trees. By the late 1990s there were approximately 30,000 mature trees in Rizal Park.¹⁷⁵

80 The Rizal Park is classified under Section 18 of the Manila zoning ordinance as a General Public Open Space ("POS-GEN") Zone¹⁷⁶ used for parks and plazas. No vertical structures are allowed in this zone except those that are integral to the park and plaza,¹⁷⁷ such as the museums and the National Library. The PLO inside the zone is .25, with a maximum building height limit of 10 meters.¹⁷⁸ Apart from the POS-GEN Zone, only the Cemetery (POS-CEM) Zone has a similar building height limit of 10 meters.¹⁷⁹

¹⁷³ *Id.*, at pp. 138 (donations, fund-raising, landscaping of Rizal Monument), 139-140 (fountains and playgrounds), 143 (Chinese Garden and Japanese Garden), 154-7 (concert at the park), 150 (relief map, flower clock), 151 (Planetarium), 150-151 (Marine guards).

¹⁷⁴ *Lansang v. Court of Appeals*, 326 SCRA 259, 266 (2000).

¹⁷⁵ *Alcazaren, supra*, at pp. 146-50 (City Gallery), 152-53 (Park for the Blind, Rose Garden, Filipino Garden, Rizal Park Library), 180-209 (regular destination of people), 170 (fast food outlets), 169 (new facilities), 170 (30,000 mature trees). The Park for the Blind was evicted on March 29, 1988 (*Lansang v. Court of Appeals, supra*).

¹⁷⁶ DMCI-PDI Position Paper, Annex 5.

¹⁷⁷ Manila zoning ordinance, Sec. 18, par. a.

¹⁷⁸ *Id.*, Sec. 18, second par.

¹⁷⁹ *Id.*, Sec. 19, second par.

81 Exempt from height regulations inside the park are monuments, obelisks, and other commemorative structures as well as churches, utility, and other structures not covered by the height regulations of the NBC and/or the CAAP.¹⁸⁰ Thus, to accommodate the museums and the National Library inside the Rizal Park that were higher than 10 meters, these areas were carved out of the POS-GEN Zone and classified as an “INS-G” Zone, with a PLO of .6 and FAR of 4.¹⁸¹ As a result, only 80% of the Rizal Park is open space; buildings occupy the rest.

82 Across Taft Avenue from Rizal Park is an INS-U Zone roughly one-and-a-half times the size of the park and the site of government buildings originally envisioned in the Burnham Plan, where Torre de Manila is located. This zone stretches eastward from the sidewalk of Taft Avenue past the parallel streets of San Marcelino and Romualdez down to the twisting Estero Tanque.¹⁸²

83 Despite the fact that Manila was an old city founded in 1571, with 189 known historical sites and structures identified in the MCLUPZO,¹⁸³ no heritage zone has been declared by the NHCP and the NM, in consultation with the NCCA and the HLURB, on any part of the city.¹⁸⁴ For its part, the City of Manila never followed the HLURB’s recommendation on building height regulations when the City Council adopted the Manila zoning ordinance on March 16, 2006. Back in 1956, the Philippine Congress in fact declared the Walled City of Intramuros a commercial, residential and educational district¹⁸⁵ and allowed commercial, residential and educational buildings to be constructed inside its walls. The law authorized the widening of Cabildo Street to 30 meters¹⁸⁶ and allowed “any wall of Intramuros or a part thereof (to) be opened at any point where it is necessary for the extension or widening of any street.”¹⁸⁷ Only Fort Santiago was declared a national shrine to be known as the “Dambana ng Kalayaan,” in memory of Jose Rizal and other national heroes and martyrs who were confined or who lost their lives therein.¹⁸⁸

¹⁸⁰ *Id.*, Sec. 19, third par. (with*).

¹⁸¹ DMCI-PDI Position Paper, Annex 5.

¹⁸² *Ibid.*

¹⁸³ II MCLUPZO, Histo-Cultural Heritage Overlay Zone, 2005-2020.

¹⁸⁴ Edgar Allan M. Sembrano & Joselito B. Zulueta, “Torre de Manila vicinity, a virtual ‘heritage zone’,” *PHIL. DAILY INQUIRER*, Aug. 17, 2015, pp. D1, D3-D4.

¹⁸⁵ Rep. Act No. 1607 (1956), as amended, Sec. 1.

¹⁸⁶ Rep. Act No. 1818 (1957).

¹⁸⁷ Rep. Act No. 1607 (1956), as amended, Sec. 3.

¹⁸⁸ Rep. Act. NO. 1607 (1956), as amended, Sec. 5.

84 Article VI, Section 24 of the HLURB Revised Model Zoning Ordinance¹⁸⁹ forming part of the HLURB Guidelines for the Formulation/Revision of Comprehensive Land Use Plans, s. 1996, which served as the template for the zoning ordinances promulgated by the local government units, contained the following express recommendation, marked with a box to signify its importance:

*INSTRUCTIONS: **LOCAL GOVERNMENT UNITS, HOWEVER, MAY CHOOSE TO PRESCRIBE BUILDING HEIGHTS FOR CERTAIN ZONES IF SPECIFIC CONDITIONS REQUIRE THEM (E.G. IN TOURISM ZONES WHERE CERTAIN VIEWS NEED TO BE PRESERVED SUCH AS TAGAYTAY RIDGE SO AS NOT TO BLOCK THE SCENIC VIEW OF THE TAAAL LAKE OR IN HISTORICAL DISTRICTS WHERE IT HAS BEEN DECIDED THAT NO BUILDING SHOULD BE HIGHER THAN AN IDENTIFIED HISTORICAL STRUCTURE).***¹⁹⁰

85 While the Rizal Park itself has a building height limit of 10 meters,¹⁹¹ a sea of other zones without a fixed building height limit surrounds it. The INS-U Zone across Taft Avenue where Torre de Manila now stands has a FAR of 4, while an INS-G Zone across T. M. Kalaw Street from the southeast side of Rizal Park (from Maria Y. Orosa Street to Taft Avenue) has the same prescribed FAR of 4.¹⁹²

86 Just across T. M. Kalaw Street from the southwest side of Rizal Park is actually a large High Intensity Commercial Mixed-Use (C-3/MXD) Zone (from Maria Y. Orosa Street to Roxas Boulevard) with a PLO of .8 and a FAR of 7.¹⁹³ Within this zone, just 30 meters from the Rizal Park, DMCI-PDI could have built Torre de Manila at a height of 32.27 floors (52,897.6 m² gross floor area ÷ 1,639 m² building footprint), or even at 39.27 floors if the seven parking levels were excluded, both without a FAR variance. In this zone are several high-rises visible from the Rizal Monument, two¹⁹⁴ of them taller than Torre de Manila, that petitioner completely ignores in the Petition.¹⁹⁵

¹⁸⁹ HLURB Reso. No. 590-96, s. 1996.

¹⁹⁰ HLURB Revised Model Zoning Ordinance, Art. VI, Sec. 24, par. b; italics in the original; boldface added.

¹⁹¹ Manila zoning ordinance, Sec. 27, par. A.

¹⁹² *Id.*, Sec. 16, second par. & Sec. 27, par. B.

¹⁹³ *Id.*, Sec. 14, second par. & Sec. 27, par. B.

¹⁹⁴ See table in par. 43, *supra*.

¹⁹⁵ Petition, par. 2.21 (“... the PROJECT ... dwarfs all surrounding buildings within a radius of two kilometer/s. The buildings around it average five storeys or about 15 meters in height.”)

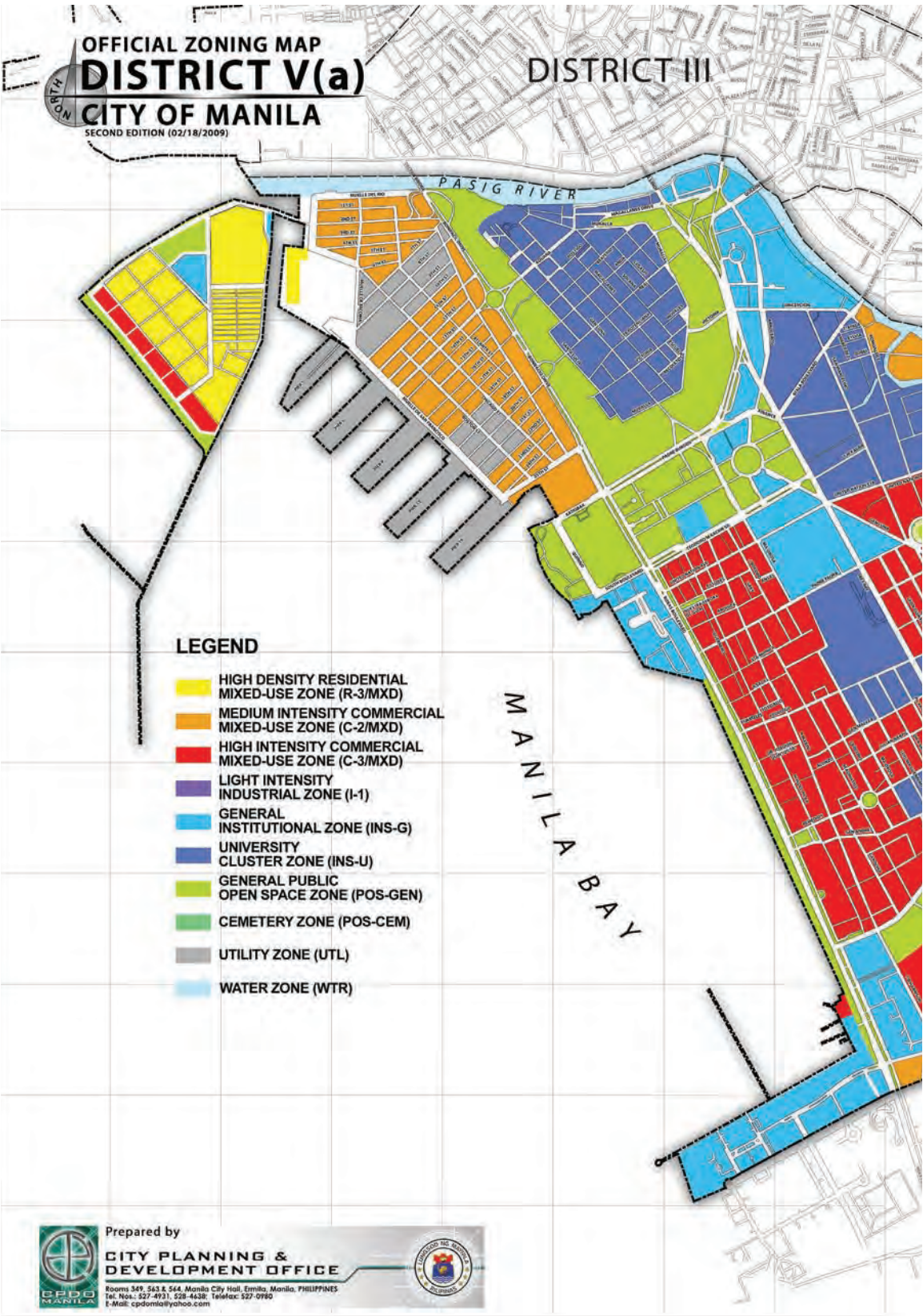


FIG. 18. ZONING MAP OF RIZAL PARK AND ENVIRONS

RIZAL MONUMENT

87 **The Rizal Monument is composed** of a standing bronze sculpture of the national hero, with an obelisk as his backdrop, set on an unpolished granite stone base where his remains are interred. Surrounding the obelisk are allegorical figures of a European woman about to nurse a child, a young man and a boy reading a large book, a banana plant with ripening fruit amidst jars, and the likeness of

Rizal facing the sea, wearing an overcoat and holding a single book in his left hand. Behind him are ornamental plants.¹⁹⁶ Below the engraved name “RIZAL” at the front of the stone base, a plaque reads: “To the memory of José Rizal, patriot and martyr, executed on Bagumbayan Field December Thirtieth 1896. This monument is dedicated by the people of the Philippine Islands.”

88 The monument, which stands 14 meters or 46 feet,¹⁹⁷ was made by Richard Kissling, a Swiss sculptor who specialized in monuments and memorials. It was based on a model or *bozeto* entitled *Motto Stella*, Latin for “guiding star,” which won second place in an international competition launched by the Rizal Monument Committee in 1905 and concluded in 1907.¹⁹⁸ The committee was organized in 1901 by virtue of Act. No. 243 of the Philippine Commission, which empowered the committee to raise funds by public subscription to “offer prizes for designs for a suitable monument and to employ competent artists and sculptors to select the most appropriate design,” as well as to pay “all the expenses of the erection of the monument, including the payment of the sculptor and incidental expenses.”¹⁹⁹ The Act also authorized the Municipal Board of the City of Manila to grant permission to the committee to erect the monument upon any place in the Luneta.²⁰⁰

89 Kissling’s simple design was attacked by the press as soon as the committee announced that the contract would be awarded to him instead of to Italian sculptor Carlo Nicoli, who submitted the winning neo-classical design entitled *Al Martir de Bagumbayan*, which specified exquisite, high-quality Carrara marble as statuary material.²⁰¹ According to an online account,

In comparison with Nicoli’s grand prize-winning *bozeto*, Kissling’s model was more streamlined, and almost lacks the grandeur that befits the greatest hero of the land. Indeed, when news of the change of model spread, some of the local press criticized Kissling’s model. A newspaper caricature poked fun at its design. Some unscrupulous people even put forward the ridiculous suggestion that the famous Filipino painter Felix

¹⁹⁶ Richard Kissling Gallery, *available at* <http://www.gov.ph/rizal-monument/> (last accessed on Sept. 10, 2015). Zoom in the images to see the details. Contrary to what the petitioner alleges in 2.18 of the Petition, the figure of Rizal does not hold “books” and there is no mother “reading to a child.”

¹⁹⁷ Although most online sources give the monument’s height at 12.7 meters or 42 feet, Arch. Ricardo Berbensana, Chief of NPDC Planning and Management Division, gave the following dimensions of the monument: obelisk (8.9 m), base (5.1 m), and elevated marble steps (.60 m). [Interview of Arch. Berbensana, Sept. 8 and 21, 2015]. See also Danny Pata, “A walk through Rizal Park on the National Hero’s 154th birthday,” GMA News Online, June 19, 2015, *available at* <http://www.gmanetwork.com/news/story/506498/lifestyle/artandculture/a-walk-through-rizal-park-on-the-national-hero-s-154th-birthday> (last accessed on Sept. 8, 2015).

¹⁹⁸ Alcazaren, *supra*, at p. 65. Contrary to the Position Paper of the Solicitor General, the “Motto Stella” does not refer to the “obelisk and the statue” (p. 7) but to the *bozeto* or scale model submitted by Kissling (Centenary, Part IV).

¹⁹⁹ Act No. 243, Secs. 5 & 6.

²⁰⁰ *Id.*, Sec. 1.

²⁰¹ Centenary, *supra*, Part IV.

Resurreccion Hidalgo should inspect and modify the design. In fairness to Hidalgo, he might not even have known of the suggestion and even if he did, would most likely have rejected the idea. Indeed, the suggestion was quickly rejected by the jury. Meanwhile the work on the monument was already in progress. The figure of Rizal was cast in bronze while the obelisk and the base were sculpted from unpolished granite.²⁰²

90 The monument took all of four years to construct and cast in Switzerland. Supervising the casting was Rizal's good friend, the painter Felix Resurreccion Hidalgo, who was less than pleased with the result.²⁰³ The monument was installed and inaugurated at the Luneta on December 30, 1913, a year after Rizal's remains, contained in an ivory urn, were reinterred at the base of the monument.²⁰⁴ The unveiling of the monument, which coincided with the renaming of Luneta to "Rizal Park," took more than twelve years since the enactment of Act No. 243 and seventeen years to the day of Rizal's death.²⁰⁵ The monument was located not on the actual spot where Rizal was executed but slightly south of it because of the geometry and the width required of the Burnham-designed mall.²⁰⁶

91 With the active participation of petitioner during Rizal's centennial year in 1961, a humongous stainless steel spire was installed over the monument's granite obelisk to make it "more modern."²⁰⁷ The tower increased the height of the monument to 30.5 meters. However, the gleaming steel structure, which had neon and beacon lights at night, conflicted with the somber tone of the bronze statue and the unpolished granite obelisk²⁰⁸ and caused intense public opprobrium.²⁰⁹ Two years later, the bizarre steel shaft was quietly removed,²¹⁰ restoring the monument to its former "restrained elegance."²¹¹

92 The Rizal Monument has several identical versions in other parts of the world, such as the one at the busy Avenida de las Islas Filipinas in Madrid in Spain and at the Rizal Park in Fujian in China.²¹² There is a standing statue of a pensive Rizal at the Rizal Park in Wilhelmsfeld in Germany, and an imposing 18-meter statue in Nueva Vizcaya similar to the one at Rizal Park but without the obelisk and the

²⁰² Dennis Villegas, "The Story of the Rizal Monument," Rizaliana Media, June 11, 2011, available at <http://myrizal150.com/2011/06/the-story-of-the-rizal-monument/> (last accessed on Sept. 10, 2015).

²⁰³ Centenary, *supra*.

²⁰⁴ *Ibid.*; Alcazaren, *supra*, at p. 65.

²⁰⁵ Centenary, *supra*.

²⁰⁶ Alcazaren, *supra*, at p. 62.

²⁰⁷ *Id.*, at p. 125.

²⁰⁸ Centenary, *supra*.

²⁰⁹ Alcazaren, *supra*, at p. 125.

²¹⁰ Centenary, *supra*.

²¹¹ Alcazaren, *supra*, at p. 125.

²¹² Isagani de Castro, Jr., "Look: Why Rizal has a shrine in China," ABS-CBN News.com, July 3, 2015, available at <http://www.abs-cbnnews.com/focus/07/03/15/look-why-rizal-has-shrine-china> (last accessed on Sept. 10, 2015).

other figures. In 2013, during the centenary of the Rizal Monument, the NM declared the monument as a National Cultural Treasure.²¹³



FIG. 19. PHOTOGRAPH OF PEOPLE PROMENADING AROUND RIZAL MONUMENT, REPRODUCED FROM PARKS FOR A NATION, P. 151.



FIG. 20. PHOTOGRAPH OF TREES SURROUNDING RIZAL MONUMENT (FROM PAULO ALCAZAREN, <https://goo.gl/n5vFqQ>)

93 As originally designed, the Rizal Monument was part of the Burnham Plan for a Mall at the Luneta, a section of the city sealed off from vehicular traffic and enclosed by a Philippine Capitol and other public and semi-public buildings. The monument was to be viewed with a backdrop of government buildings, not the blue sky. When the Burnham Plan did not materialize and the area around the monument was landscaped and improved in the sixties as a promenade, people congregated around the base of the statue, unmindful of the two giant smokestacks of the Meralco power plant and government buildings that dotted the horizon and formed its skyline, such the Philippine Senate, the Department of Agriculture, the Department of Finance, and the National Library. The buildings were later obscured by foliage from growing trees planted around the monument.



FIG. 21. RIZAL MONUMENT WITH SMOKESTACKS OF MERALCO TEGEN POWER STATION IN THE BACKGROUND (<http://goo.gl/VrcruA>)



FIG. 22. RIZAL MONUMENT WITH PEOPLE PROMENADING AND GOVERNMENT BUILDINGS AND MERALCO SMOKESTACKS IN THE BACKGROUND (<https://goo.gl/sStS2S>)

²¹³ National Museum Declaration No. 9-2013, s. 2013.

94 When Valencia convinced the Marine Corps to assign the MSEG honor guards to the Rizal Monument, people came not only to view the monument but also to watch the changing of the guards, called the *Kabalyeros de Rizal*. “Once a month,” wrote Alcazaren, “starting at 4 p.m. at the back of the Rizal monument, the public (was) treated to a ‘silent drill.’ A 20-minute precision drill exhibition without verbal command, the drill show(ed) MSEG staff do a series of calculated drill movements and precise handling of their hand-polished M-1 Garand rifles (with) nickel-plated bayonets in an impressive display of skill and coordination.”²¹⁴

95 Sometime in the late eighties, however, the MSEG complained of heckling and rowdiness by crowds who poked fun and threw things at them. At the request of the honor guards, the pavement around the Rizal Monument was cordoned by NPDC and a row of nine stainless steel bollards were installed 32 meters from the base of the monument in front of Rizal’s statue.²¹⁵ The grass fields on both sides of the monument were also roped off, forcing visitors to stay at the foot of the Independence Flagpole and to view the monument against the rising sun in the mornings and to wait until late afternoon for photographic opportunities. They had to hike around the fringes of the grass fields to view the monument from the sides.

96 The unintended consequence of this action was to deprive the visitor of an ideal view of the monument, which was nine meters from the base of the monument.²¹⁶ The extended viewing distance caused by the barriers minimized the silhouette of the Rizal Monument, which receded into the horizon against the backdrop of the open sky.



FIG. 23. PHOTOGRAPH OF RIZAL MONUMENT AT NINE METERS

97 The effect was to subconsciously create in the mind of visitors to the Rizal Monument that the sky was part of the view. In fact, because the eye could not see the details of the monument from such a distance, it took in the sky and the surrounding landscape. The image of the Rizal Monument as shown in countless photographs since then was the result of nothing more than thirty years of being conditioned to look at the monument, framed by foliage, from

²¹⁴ Alcazaren, *supra*, at p. 150.

²¹⁵ Interview with Arch. Berbensana, Sept. 16, 2015.

²¹⁶ For discussion of the ideal viewing distance, see pars. 153 to 154, *infra*.

a distance. If the bollards were removed or at least set back to allow an ideal viewing distance, the sky would become irrelevant.



FIG. 24. PHOTOGRAPH OF RIZAL MONUMENT AT 32 METERS

THE PHOTOBOMB CONTROVERSY

98 On June 8, 2012, performance artist and cultural activist Carlos P. Celdran wrote a post in his Tumblr microblog, “*F*** YEAH. WALK THIS WAY,*” lauding improvements in the Rizal Park and in the sightline of the Rizal Monument, with the recent removal of the Meralco smokestacks.²¹⁷ In the same post, however, Celdran invited his followers to sign a petition against a new condominium project he branded the “Terror de Manila”:

If DMCI Holdings has their way, they’re gonna build a huge mid-range condominium complex RIGHT behind our national hero (middle left shot). The project is called Torre de Manila. So from hereon [sic], everytime [sic] you take a photo or look at our National Hero and think of him - you will also take in the sight of this Terror of Manila.²¹⁸

99 The online petition was picked up by the *Philippine Daily Inquirer*, a leading daily broadsheet, by Yahoo! Southeast Asia and *BusinessWorld*, and soon by the Manila City Council and the Philippine Congress, with the Senate and the House of Representatives subsequently holding separate but overlapping public hearings.²¹⁹

100 On July 24, 2012, the Manila City Council passed Resolution No. 121, s. 2012 declaring that the front view of the Rizal Monument “is obviously the most naturally

²¹⁷ See <http://carlosceldran.tumblr.com/post/24679160733/dmci-the-terror-de-manila-one-step-forward-two> (last accessed on Sept. 15, 2015).

²¹⁸ *Ibid.*; parentheses in the original; brackets added.

²¹⁹ See Petition, p. 19 for allegations concerning the Senate hearing on Aug. 27, 2014.

logical perspective and reference angle, and any structure that impairs its traditional sight line would not just be a repulsive eyesore, aesthetically offensive, but more gravely, would become a blatant disrespect and wanton disregard for the noble legacy of Dr. Jose Rizal and the freedom he sacrificed his life for.”²²⁰ The City Council then resolved to enjoin the City Building Official, Melvin O. Balagot (“BO Balagot”), who by then had issued a building permit to DMCI-PDI, to “temporarily suspend the building permit of the Torre de Manila project until an acceptable development design is approved upon proper compliance with the standards and policy guidelines set” by NHCP.²²¹ Copies of the Resolution were furnished to BO Balagot and the NHCP, among others.

101 Acting on the Resolution, BO Balagot wrote a 1st Indorsement dated August 30, 2012 to the City Legal Officer Atty. dela Cruz, “requesting the favor of his view” if the former was bound to comply with the City Council Resolution.²²² On September 12, 2012, Atty. dela Cruz replied—

Central to an authoritative resolution of this issue, however, is the actual location of the project site.

The area where the *Torre de Manila* Condominium is to be constructed is situated between Taft Avenue and San Marcelino Street; behind what used to be the old *Jai alai* edifice which had been demolished and consequently lies outside the Luneta Park. Moreover, the residential condominium is simply too far from the Rizal monument to be a repulsive distraction or have an objectionable effect on the artistic and historical significance of the hallowed resting place of the national hero.

Evidently, there is no showing that the subject property has been officially declared as an anthropological or archeological area. Neither has it been categorically designated by the National Historical Institute as heritage zone, a cultural property, a historical landmark or even a national treasure. Indeed, it is not among those listed in the Registry of the Philippine Culture Properties (PRECUP) of the National Commission for the Culture and the Arts.

Finally, the proposed construction of the *Torre de Manila* Condominium has prominently elicited quite outrageous controversy among heritage enthusiasts. This notwithstanding, none of the concerned Cultural Agencies has issued a Cease and Desist Order against the Project in accordance with Sec. 25 of RA No. 10066.

Consequently, this Office finds no legal justification for the temporary suspension of the Building Permit issued in favor of DMCI-Project Developer Inc. Your office may thus lawfully disregard City Council Resolution No. 121.²²³

²²⁰ Manila City Council Reso. No. 121, s. 2012, eighth whereas.

²²¹ *Id.*, first operative clause.

²²² City of Manila Position Paper, Annex D.

²²³ *Id.*, Annex E.

102 For its part, NHCP wrote to Mayor Lim on November 7, 2012 that—

The NHCP's *Guidelines on Monuments Honoring National Heroes, Illustrious Filipinos and Other personages* seek to preserve the prominence and dominance of monuments, partly by keeping “vista points and visual corridors to monuments clear for unobstructed viewing appreciation and photographic opportunities.” The Torre de Manila project site is outside the boundaries of the Rizal Park and well to the rear (789 meters) of the Rizal National Monument; hence it cannot possibly obstruct the front view of the said National Monument.

To prevent a recurrence of a similar dilemma in the future, the NHCP respectfully, recommends to the City Government of Manila the enactment of an ordinance designating a buffer zone around Rizal Park and prescribing guidelines regulating building development.²²⁴

103 Heeding the NHCP advice more than four months later on March 21, 2013, the Eighth City Council of Manila enacted Ordinance No. 227 regulating the construction or development of any building or structure of such height or in such location as to impair the vicinity or ruin the line of sight/view/vista of any historical and cultural sites and monuments in the City of Manila.²²⁵ The ordinance prohibited the erection of any structure that would “diminish the dominance and dignity” or “aesthetically desecrate the frontal or natural perspective” of any historical and cultural site or monument,²²⁶ but clarified that it did not absolutely ban any development projects near historical and cultural sites or monuments but sought “only to regulate any such construction through hearing and dialogue with” the NHCP, the Manila Tourism and Cultural Affairs Office, and the Manila City Council’s Committee on Tourism, Committee on Arts and Culture, and Committee on Housing, Urban Planning Development and Resettlement.²²⁷ Unfortunately, Mayor Lim vetoed the ordinance on April 12, 2013 for being *ultra vires*.²²⁸

104 Undaunted, the Manila City Council passed another Resolution No. 146 on November 26, 2013 urgently enjoining the City Building Official to temporarily suspend the building permit of the “highly controversial” Torre de Manila project “in light of the recent public outcry of nearly 8,000 concerned citizens (and to) give due course to their meritorious submitted petition.”²²⁹ The petition “of nearly 8,000 concerned citizens” mentioned in the ordinance was Celdran’s online petition, which by that time had reached 7,800

²²⁴ *Id.*, Annex F.

²²⁵ Manila City Ord. 227, s. 2013, Sec. 3.

²²⁶ *Ibid.*

²²⁷ *Id.*, Sec. 6.

²²⁸ City of Manila Position Paper, Annex G, p. 3.

²²⁹ *Id.*, Annex H.

supporters.²³⁰ The resolution sought a dialogue among all parties and stakeholders, so the project would comply with pertinent laws, policies and guidelines.²³¹ A copy of the resolution was furnished to DMCI-PDI as well as NHCP, NCCA, NPDC, the Heritage Conservation Society, the Mayor of Manila, and CPDO Lacuna, among others.

105 As previously mentioned, the resolution prompted DMCI-PDI to write Mayor Estrada as MZBAA Chairman, leading to the adoption of MZBAA Resolution Nos. 6 and 6-A by the City Council of Manila on January 16, 2014.

106 Meanwhile, Torre de Manila was lambasted and its owner and developer, DMCI-PDI, demonized in social and traditional media. Torre de Manila was the subject of no less than 49 articles, 20 opinions and six editorials in the *Philippine Daily Inquirer*, which waged a public campaign against the project. Pictures of Torre de Manila looming large over the Rizal Monument, some taken with long focal lenses that shrank and distorted its image, were published online and in the papers.²³² The building was caricatured in four editorial cartoons in the same newspaper as an eyesore and its developer lampooned as a voracious corporation. In one editorial cartoon, Jose Rizal was shown chopping an evil tree marked “TORRE DE MANILA” with an axe in the stars and tricolor of the national flag.²³³ In an article and an opinion column posted online in August and September 2014, Torre de Manila was dubbed as the “National Photobomber.”²³⁴

107 In addition, DMCI-PDI and its officers were summoned twice by the Senate and three times by the House of Representatives to attend and give testimony as resource persons. Before that, they were investigated by the Committee on Oversight of the City Council of Manila from June 21, 2012 to December 6, 2013 and denounced in two resolutions, *supra*. These investigations and resolutions were also blogged about and discussed in social media and republished in newspapers and television reports. Petitioner was invited to and participated in some of the public hearings conducted by the Manila City Council beginning June 2012.²³⁵

²³⁰ Manila City Council Reso. No. 146, s. 2013, eighth whereas. Celdran’s online petition would reach 11,679 supporters before it was closed more than a year ago, available at <https://www.change.org/p/demolishtorredemanila> (last accessed on Sept. 15, 2015).

²³¹ *Id.*, tenth whereas.

²³² RONALD G. DRIGGERS, 1 ENCYCLOPEDIA OF OPTICAL ENGINEERING 430 (CRC Press, 2003); see, for example, Phil. Daily Inquirer, June 17, 2015, p. 1.

²³³ PHIL. DAILY INQUIRER, Aug. 29, 2014.

²³⁴ JB Adalia, Torre de Manila, the “Pambansang Photobomber”?, Kicker Daily News, Aug. 27, 2014, available at <http://kickerdaily.com/torre-de-manila-the-pambansang-photobomber/> (last accessed on Sept. 15, 2015), and Conrado de Quiros, “Pambansang Photobomb,” available at <http://opinion.inquirer.net/78284/pambansang-photobomb> (last accessed on Sept. 17, 2015).

²³⁵ TSN, Knights of Rizal, July 21, 2015, p. 21; TSN, HR Committee on Metro Manila Development, Jul. 1, 2015, pp. 1, 53, copies of which are attached as Annexes 9 to 9a.

108 Finally, on September 12, 2014, petitioner sued DMCI Homes, Inc. (“DMCI-HI”) before this Honorable Court to stop the construction of Torre de Manila, then already on the 22nd floor,²³⁶ for allegedly being a nuisance *per se* that “deserves to be abated summarily, even without need of judicial proceeding.”²³⁷

The Case

109 **Two weeks passed before DMCI-PDI was informed** by its affiliate DMCI-HI on September 25, 2014 that it received from petitioner an Urgent Motion for Early Resolution dated September 17, 2014 (a) stating that on September 12, 2014, petitioner filed a Petition for Injunction (“Petition”) in this case; and (b) praying that this Honorable Court issue *ex parte* a temporary restraining order (“TRO”) enjoining the construction of Torre de Manila.

110 Upon learning of the Petition, DMCI-PDI filed a Manifestation and Motion dated October 14, 2014 where it disclosed that it was the owner and developer of Torre de Manila and moved this Honorable Court to implead DMCI-PDI as the real party-in-interest in substitution of DMCI-HI.

111 In its Resolution dated November 11, 2014, this Honorable Court acknowledged DMCI-PDI’s personality and directed that it be served with a copy of the Petition. In the same Resolution, DMCI-PDI was directed to comment on the Petition within 10 days from notice. Thus, on November 13, 2014, DMCI-PDI filed its Comment *Ad Cautelam* dated November 11, 2014 where it stated, among others, that the Petition for Injunction should be dismissed outright because this Honorable Court had no original jurisdiction over actions for injunction, especially those that involve questions of fact, and that Torre de Manila was granted all the required permits, licenses and clearance and could not be deemed a nuisance.

112 However, in a Resolution dated November 25, 2014, this Honorable Court *motu proprio* converted the Petition into one for *mandamus* and impleaded the City of Manila, NM, NHCP, and NCCA as public respondents. In its Resolution, this Honorable

²³⁶ Par. 6.02 of the Petition stated that the project had “reached the 19th floor as of August 20, 2014 based on the ‘construction update’ posted on [DMCI-HI’s] website.”

²³⁷ Petition, pars. 5.05 to 5.08. The *Philippine Daily Inquirer* even asked President Benigno Simeon Aquino III in an interview on Sept. 13, 2015 about his personal opinion on the Torre de Manila and its impact on the Rizal Monument. The President replied that while he saw merit with the idea that “there should be that backdrop to Rizal’s monument that should preserve what we have always known(.) (o)n the other hand, I have sworn to faithfully execute all the laws of the land, and the other side does pose a legitimate question. It seems they went through all the processes. Zoning is a mandate of the local government unit. They seem to have gotten all the permits, so how do we balance the two?” The interview is *available at* <http://lifestyle.inquirer.net/206352/basta-nandiyang-kayo-sa-likod-ko-walang-imposible-i-still-subscribe-to-that#ixzz3lfveKDk7> (last accessed on Sept. 14, 2015).

Court directed the said public respondents to comment on the Petition within a non-extendible period of 10 days from notice.

113 On December 17, 2014, DMCI-PDI filed a Motion for Reconsideration *Ad Cautelam* of the Resolution dated November 25, 2014 on the grounds that (a) this Honorable Court had no jurisdiction over the subject matter of the Petition; hence, it could not convert it into one for *mandamus*; (b) assuming that this Honorable Court could convert the Petition into one for *mandamus*, no relief could be granted to petitioner since there were no allegations in support of a petition for *mandamus*. This motion has not been resolved to date.

114 The next day, DMCI-PDI received a copy of the City of Manila's Comment dated December 10, 2014, which opposed the Petition and asked for its dismissal for lack of merit. The City of Manila argued that Torre de Manila was issued all the necessary permits, licenses, clearances, certifications and variance, and that there was nothing illegal about its construction on private property.

115 On January 13, 2015, despite the fact that the City of Manila agreed with and had no objection to the construction of Torre de Manila, the NCCA *motu proprio* issued a Cease and Desist Order dated January 5, 2015 ("CDO")²³⁸ to David M. Consunji, who was not a director, officer, stockholder or employee of either DMCI-PDI or DMCI-HI.

116 Other than the use of his initials "DMC," Mr. Consunji had no relationship with DMCI-PDI and DMCI-HI and had no interest or involvement in Torre de Manila. The CDO, however, directed him to "CEASE & DESIST from constructing the high-rise condominium *Torre de Manila* located on or around Taft Avenue, Manila, until such time (that) the (NCCA) (could) make the declaration o(n) whether or not there (was) actual destruction and if such destruction warrant(ed) a permanent cease and desist order." The CDO was left at the project site of Torre de Manila, from where it was forwarded to DMCI-PDI.

117 Seven days after it received the CDO, DMCI-PDI received on January 20, 2015 a copy of the NM's, NHCP's, and NCCA's Consolidated Comment dated January 12, 2015 ("Consolidated Comment") in this case, through the Office of the Solicitor General ("OSG"), categorically saying that the NCCA had no jurisdiction to issue CDOs in relation to the Rizal Park and the Rizal Monument since the NCCA's jurisdiction was limited to World Heritage Sites and works of National Artists.

²³⁸ Petitioner's Manifestation dated Feb. 5, 2015.

*With the enactment of R.A. No. 10066 and, subsequently, of R.A. No. 10086, the power of respondent NCCA to issue CDOs has now been clearly confined only to national cultural properties declared as World Heritage Sites and works of National Artists. The Rizal Monument and the Rizal Park are neither World Heritage Sites nor works of National Artists. Specifically, as regards the Rizal Monument, it was not the masterpiece of a National Artist but of a Swiss sculptor named Richard Kissling. As for the Rizal Park, the same was not declared a World Heritage Site by the United Nations Educational, Scientific and Cultural Organization (UNESCO) but a National Historical Site by the NHCP Board by virtue of its Resolution No. 05, series of 1995. Such being the case, it is beyond dispute that the Rizal Monument and Rizal Park are outside the jurisdiction of the NCCA. Verily, there is no sufficient legal basis to compel respondent NCCA, by way of a writ of mandamus, to issue a CDO to enjoin the construction of the Torre de Manila condominium project on the premise that such construction constitutes an impending desecration of the Rizal Monument and the Rizal Park.*²³⁹

118 At the hearing called by the NCCA on January 28, 2015 pursuant to the CDO, its Hearing Officer, Atty. G. Ahmed Paglinawan, threatened to cause the arrest of DMCI-PDI's officers and employees for continuing the construction of Torre de Manila. Because of the threat, DMCI-PDI and DMCI-HI promptly filed a petition for prohibition with damages on February 2, 2015 with the National Capital Regional Trial Court in Makati City, Branch 146, against NCCA and its Chairman, Felipe M. de Leon, Jr., to stop the enforcement of the CDO and to declare it as void for having been issued without or in excess of their jurisdiction. As of the date of this submission, the petition for prohibition and damages has been given due course by the trial court.

119 Meanwhile, petitioner filed individual Responses²⁴⁰ to the Comments of City of Manila and the OSG but did not reply to DMCI-PDI's Comment *Ad Cautelam* dated November 11, 2014.

120 In its Resolution dated February 10, 2015, this Honorable Court required the NCCA to explain why it issued the CDO. Instead of filing an explanation on behalf of its client, however, the OSG filed a Manifestation dated April 7, 2015 asking that it be excused from filing an explanation, which left the NCCA to file the explanation by itself.

121 More than two months after the OSG's Manifestation, the NCCA filed its Compliance dated June 22, 2015 through its special counsel, Atty. Rose Beatrix Cruz-Angeles, explaining that it issued the CDO because it was not prohibited by law or by any court

²³⁹ OSG Consolidated Comment, pp. 30-31; italics supplied.

²⁴⁰ Petitioner's Responses dated Jan. 27 and 28, 2015.

or administrative order from doing so²⁴¹ and that no other administrative agency or government body had issued a CDO to stop the construction of Torre de Manila.²⁴² The vague language of NCCA's Compliance did not cite any legal provision authorizing it to issue CDOs in relation to the Rizal Park and the Rizal Monument, both of which were neither World Heritage Sites nor works of National Artists.

122 Meanwhile, three congressmen, Reps. Winston Castelo, Ibarra Gutierrez, and Rodel Batocabe, made a surprise visit to the Torre de Manila project site on June 11, 2015. Upon confirming the ongoing construction, they issued a statement denouncing DMCI-PDI for "a blatant disregard of a lawful order and total desecration of a shrine as we pay homage to our national hero to celebrate Independence Day."²⁴³ The incident and the congressmen's statement were published in the *Philippine Daily Inquirer* on June 12, 2015 with the lead "*Solons inspect Torre, assail nonstop work.*"²⁴⁴

123 On June 16, 2015, this Honorable Court, voting eight to five, then issued a TRO enjoining the further construction and development of Torre de Manila. In the same Resolution, this Honorable Court set this case for oral arguments on June 30, 2015, at 2:00 p.m.

124 Upon receipt of the TRO on the same day through its undersigned counsel, DMCI-PDI halted all work on the project. The next day, it notified its project team and construction workers on site of the TRO and reassigned its employees to other projects. Since many of the workers could not be accommodated in other projects, they were made redundant and were terminated. DMCI-PDI also notified its contractors, suppliers and creditors as well as its unit buyers of the issuance of the TRO. At the time the TRO was issued on June 16, 2015, DMCI-PDI had topped the project off on May 10, 2015, and the entire 49 floors of Torre de Manila was structurally complete.²⁴⁵ Subsequently on June 18, 2015, the HLURB *motu proprio* suspended the License to Sell of Torre de Manila.²⁴⁶

125 Meanwhile, in a Manifestation and Motion to Reset Oral Arguments dated June 17, 2015 ("Manifestation and Motion"), the OSG moved to reset the oral arguments on June 30, 2015 and asked for an additional period of 30 days to

²⁴¹ NCCA Compliance, pars. 7.3, 20.

²⁴² *Id.*, pars. 7.4, 21. The exact words used by NCCA were "in relation to the same authority in relation to the same subject matter within the same administrative jurisdiction," which were unclear.

²⁴³ Gil Cabacungan, "Solons inspect Torre, assail nonstop work," *Phil. Daily Inquirer*, Jun. 12, 2015, *available at* <http://newsinfo.inquirer.net/697898/solons-inspect-torre-assail-nonstop-work> (last accessed on Sept. 20, 2015).

²⁴⁴ *Ibid.*

²⁴⁵ *See* DMCI-PDI Urgent Motion to Lift Temporary Restraining Order dated June 29, 2015, par. 18 & Annex 2.

²⁴⁶ *Id.*, par. 2 & Annex 1.

prepare because Solicitor General Florin T. Hilbay also had to prepare for the oral arguments in *The Republic of the Philippines v. The People's Republic of China* (PCA Case No. 2013-19) arbitration in The Hague. In its Resolution dated June 23, 2015, this Honorable Court granted the OSG's Manifestation and Motion *ex parte* and reset the oral arguments to July 21, 2015, at 2:00 p.m.

126 DMCI-PDI did not receive both the OSG's Manifestation and Motion and the Resolution dated June 23, 2015 until it attended the preliminary conference set by this Honorable Court on June 25, 2015 to determine the issues to be heard during the oral arguments as well as the order of the parties' presentations. During the preliminary conference, presided by Associate Justices Francis H. Jardeleza and Teresita J. Leonardo-de Castro, DMCI-PDI orally moved to bifurcate the oral arguments by (a) proceeding with the oral arguments on June 30, 2015 but limited only to its motion to lift the TRO, where the public respondents had no interest since they asked for the dismissal of the Petition; and (b) setting the oral arguments on the merits of the Petition on July 21, 2015 as requested by Solicitor General Hilbay. However, the latter opposed the motion, citing vague jurisdictional grounds.

127 On June 29, 2015, DMCI-PDI filed its Urgent Motion of even date ("Urgent Motion") asking this Honorable Court to (a) retain the oral arguments for the lifting of the TRO on June 30, 2015, at 2:00 p.m., as originally scheduled; and (b) hold the oral arguments on the merits of this case on July 21, 2015, at 2:00 p.m. DMCI-PDI argued in its Urgent Motion that the issue on the propriety of the TRO may be resolved in advance of the merits of the case since the OSG did not take any position on its issuance or lifting. DMCI-PDI said that if the OSG would be unable to participate during the oral arguments for the lifting of the TRO on June 30, 2015 due to the upcoming arbitration with the People's Republic of China, the OSG would have every opportunity to present all its arguments on the merits of this case during the oral arguments on July 21, 2015. DMCI-PDI also explained that it would suffer further damage and prejudice should the oral arguments be reset and the TRO not be lifted immediately.

128 On the same day it filed the Urgent Motion, DMCI-PDI also filed its Urgent Motion to Lift Temporary Restraining Order ("Urgent Motion to Lift TRO") praying that the TRO be immediately lifted because (a) its issuance had no factual and legal bases; and (b) of the grave and irreparable damage that DMCI-PDI had suffered and continued to suffer due to the TRO. In its Resolution dated June 30, 2015, however, this Honorable Court merely noted DMCI-PDI's Urgent Motion and Urgent Motion to Lift TRO.

129 In an undated Advisory (“Advisory”) for the oral arguments on July 21, 2015, this Honorable Court directed all the parties to personally file and serve their respective position papers on the issues stated in the Advisory no later than July 15, 2015. In compliance with the Advisory, DMCI-PDI, petitioner, and the City of Manila filed on July 15, 2015 their respective position papers of even date.

130 On July 20, 2015, DMCI-PDI received a copy of the OSG’s Motion for Extension of Time to Submit Position Paper and to Reset Oral Arguments dated July 15, 2015, requesting another resetting of the oral arguments to allow it more time to prepare and asking for an additional 30 days from July 15, 2015, or until August 14, 2015, to file its position paper.

131 In its Resolution dated July 15, 2015, this Honorable Court directed petitioner to proceed with its oral arguments on July 21, 2015 but reset the oral arguments of respondents, including the OSG, to August 4, 2015, at 2:00 p.m. In the same Resolution, this Honorable Court granted the OSG’s request for additional time and allowed it to submit its position paper by personal service to the parties and to this Honorable Court “NOT LATER THAN JULY 29, 2015.”²⁴⁷

132 In the absence of prior court or quasi-judicial proceedings that this Honorable Court could review, and to facilitate the oral arguments, DMCI-PDI served on petitioner and filed with this Honorable Court a Request for Admission and Stipulation dated June 23, 2015, as well as a Supplement to Request for Admission and Stipulation dated July 3, 2015, requesting petitioner to admit or stipulate on 80 items of facts and documents relevant to the Petition. Petitioner replied to DMCI-PDI’s submission with a Motion dated July 10, 2015 requesting this Honorable Court to dispense with the need to respond to DMCI-PDI’s request or, in the alternative, consider as admitted and stipulated only those matters alleged and documents previously submitted by petitioner as of the said date. DMCI-PDI responded to petitioner’s motion with a Comment dated July 22, 2015.

133 In violation of this Honorable Court’s Resolution dated July 15, 2015, the OSG submitted its Position Paper only on July 30, 2015—a day late—without any explanation except that it “(could) only be filed (on the said date).”²⁴⁸ In its Position Paper, the OSG made a complete turnaround from the previous position it took in its Consolidated Comment, which it allegedly “reconsidered,” but without citing any change in the applicable laws and facts in this case that warranted the change in its position.²⁴⁹

²⁴⁷ Reso. dated July 21, 2015, p. 3; capitalization in the original.

²⁴⁸ Motion, p. 1; words in parentheses supplied. The statement in the Motion is “can only be filed today.”

²⁴⁹ The reasons cited by Solicitor General Hilbay for his *volte-face* were the issuance of the TRO by this Honorable Court and two people who gave him the “inspiration”—a law school classmate, and NCCA Board

134 DMCI-PDI responded to the OSG’s Position Paper with an Opposition with Motion to Strike Out *Ad Cautelam* dated August 3, 2015, where DMCI-PDI argued that (a) the OSG’s Position Paper should be denied admission for having been filed out of time and for violating this Honorable Court’s Resolution dated July 15, 2015; and (b) the OSG’s Position Paper should be expunged from the record of this case for being a sham pleading intended to vex, harass, and cause undue injury to DMCI-PDI.

135 In its Resolution dated August 4, 2015, this Honorable Court admitted the OSG’s Position Paper and merely noted DMCI-PDI’s Opposition.

136 In view of the OSG’s sudden about-face, the NHCP filed an Entry of Appearance with Motion for Clarification dated August 7, 2015 (“Motion for Clarification”), seeking clarification of (a) the OSG’s representation of the NHCP, in view the conflict of interest between them; and (b) the status of the OSG’s Consolidated Comment. The OSG responded to the Motion for Clarification with a Manifestation in Lieu of Comment dated August 14, 2015 stating that (a) it could no longer represent the NHCP nor collaborate with its counsel; and (b) its Consolidated Comment was amended *mutatis mutandis* by its Position Paper.

137 This Honorable Court then heard this case on weekly oral arguments on the following dates:

Date	Party interpellated
July 21, 2015	Petitioner
August 4, 2015	DMCI-PDI
August 11, 2015	DMCI-PDI
August 18, 2015	City of Manila
August 25, 2015	City of Manila and OSG
September 1, 2015	OSG and NHCP

138 During the six-week oral arguments, DMCI-PDI filed the following submissions in compliance with various orders of this Honorable Court:

- a. Compliance dated August 7, 2015 submitting the following: (i) copy of DMCI-PDI’s letter dated December 18, 2013 to the City of Manila; (ii) printout of the timeline of Torre de Manila’s construction; and (iii) compact disc containing the video clip of

member and education undersecretary Alberto T. Muyot. See Sylvia A. Mayuga, “About Face, Rizal (Part 2),” GMA News Online, Aug. 9, 2015, available at <http://www.gmanetwork.com/news/story/532200/lifestyle/artandculture/about-face-rizal-part-2> (last accessed on Sept. 16, 2015).

the interview of former Manila Mayor Alfredo Lim and incumbent Manila Mayor Joseph Estrada aired by Jessica Soho on June 17, 2015 on *GMA News, State of the Nation* segment;

b. Compliance dated August 17, 2015 in relation to DMCI-PDI's letters to (i) the Senate of the Philippines; (ii) the Chief Librarian of the Department of Foreign Affairs ("DFA"); (iii) the UNESCO National Commission of the Philippines; and (iv) DFA Office of Legal Affairs, requesting certifications that the Philippines is a signatory or party to the treaties and charters mentioned in the said letters;

c. Manifestation dated August 18, 2015 regarding the statements and advertisements posted online by DMCI-PDI's brokers that Torre de Manila offered a "stunning view" of the Manila Bay and that the project boasted an "unobstructed vista" of the metropolis;

d. Manifestation with Submission dated August 28, 2015 (a) informing this Honorable Court of the information gathered by DMCI-PDI in relation to the construction of the proposed Manila Hall of Justice Building at the sites of the old Manila Jai Alai Building on Taft Avenue and the old GSIS Building on Arroceros cor. Concepcion Streets in Ermita, Manila; and (b) submitting to this Honorable Court the following, among others: (i) printout of the site development plan of the construction site of Torre de Manila, which showed its actual building footprint of 1,639 sq. m., unique location, and irregular geometric shape consisting of 17 sides; (ii) printout of an aerial view from *Google Maps* showing that the Torre de Manila lot was landlocked and did not have a street frontage, which constrained DMCI-PDI to build a 49-storey residential condominium to maximize the lot's utility and value; (iii) photographs of the steel structural framework on the site of the former Manila Jai Alai building showing the presence of massive columns and steel girders up to the second level of the proposed Manila Hall of Justice Building, which confirmed the planned construction of a twelve-storey high-rise Hall of Justice in front of Torre de Manila; and (iv) reprints of the original plan for the Luneta Park by Daniel Hudson Burnham as well as three-dimensional renditions of the same plan posted online by an artist with the username BonDuRant; and (v) news reports regarding the Manila Hall of Justice project.

139 After the oral arguments on September 1, 2015, this Honorable Court directed the parties to simultaneously submit their respective memoranda within a non-extendible period of 20 days, or until September 21, 2015.

140 Petitioner and DMCI-PDI then filed separate motions asking this Honorable Court to partially reconsider its Resolution dated September 1, 2015 by allowing them an extension of 10 days until October 1, 2015 to submit their respective memoranda.

Hence, this memorandum for DMCI-PDI.

The Issues

DMCI-PDI respectfully submits the following issues for resolution by this Honorable Court:

- I. WHETHER DMCI-PDI IS ENTITLED TO THE IMMEDIATE LIFTING OF THE TRO ISSUED BY THIS HONORABLE COURT;
- II. WHETHER *MANDAMUS* LIES AGAINST RESPONDENTS TO ENJOIN THE CONSTRUCTION OF TORRE DE MANILA; AND
- III. WHETHER PETITIONER HAS LEGAL STANDING AGAINST RESPONDENTS.

Discussion

- I. *DMCI-PDI is entitled to the immediate lifting of the TRO issued by this Honorable Court.*
 - A. *Torre de Manila does not impair the sightline of the Rizal Monument.*

141 **The description of the Rizal Monument** in the *Official Gazette* does not refer to a sightline; it is described simply as a “tomb and memorial.”

The tomb and memorial to Filipino nationalist Jose P. Rizal stands right by the edge of Manila, at the heart of a landscape bearing the much-vaunted histories it helped launch.

Its principal form, an obelisk of unpolished granite rising 12.7 meters toward the sky, is as straightforward a sculptural marker as a monument can be: Here lie the remains of Rizal, it announces, its duty as signpost and landmark thus achieved. The figure of Rizal follows the same simple aesthetic: It is a Rizal made restive in bronze, cradling the books that have lent to his legacy and in an overcoat that hangs just a little too boxy for his frame. This figure stands conspicuous, too, however: His garb is unsuited to the tropics—a reminder that he lived his life as an *ilustrado* in the stranger, colder climes of the European continent—and the underscoring of the scholarly air further sets him apart from the riotous revolution that led, if indirectly, to his death. It is a Rizal whose very rendering eschewed the revolutionary glory that had been continually thrust upon him, a glory that he could nonetheless

rightly stake a claim to. His gaze does not even meet the sea; this is a Rizal that offers no dares, dispenses no threat. In a pensive mood, the Rizal of the monument angles his head ever so slightly—toward the Walled City, perhaps by chance.²⁵⁰

142 As defined, a memorial is something, specially a structure, that “serves to preserve the memory or knowledge of an individual or event.”²⁵¹ Its root word is *memoriale*, late Latin for “record, memory, or monument,” which originated from the Latin *memoria* or “memory.”²⁵²

What is a monument? Monuments make certain historical claims based on a conservative impulse to commemorate an epoch, ideology, event, or figure. Monuments construct and preserve a record; they are symbols intended to stand over the vagaries of memory and apart from the contingencies of history. They are literally larger than life, and lend a sense of permanence to an idea, or a regime, by seeming almost part of nature. The emperor or general on his horse, the leader with his arm raised to the sky—these images are all part of an iconography of triumph that projects the past onto the future, from one generation of people to the next.²⁵³

143 A monument, “in its oldest and most original sense, is a work of man erected for the specific purpose of keeping particular human deeds or destinies ... alive and present in the consciousness of future generations.”²⁵⁴ Usually made of imperishable stone or metal, and erected prominently in shared civic spaces—parks, town squares, public buildings—public monuments were meant to be “genuine testimonials of the people’s memory, an eternal repository of what they most hold dear.”²⁵⁵ Memory and monument are to each other as process and product, although not necessarily cause and effect; the two terms are etymologically related and descend from notions of remembering.²⁵⁶

144 Since it is manmade, a monument can convey a favorable message of its human maker—the ruling state or an interest group—sometimes engraved on the structure in words and images, more often subliminally by evoking awe and reverence. Monuments are made larger than life, put on a pedestal so people will

²⁵⁰ Centenary, *supra*, Part VI.

²⁵¹ Webster’s Third New International Dictionary Unabridged 1409 (G. & C. Merriam Co., 1976).

²⁵² *Ibid.* Some authors give different root words (Robert S. Nelson & Margaret Olin, *infra*, at p. 4 say it comes from *monumentum*, “memory,” while Loewen, *infra*, at p. 29 claims it comes from the Latin *monere*, “to remind, admonish, instruct”) but we prefer the etymology of Webster’s.

²⁵³ Charles Merewether, “The Rise and Fall of Monuments,” The Grand Street Magazine, available at <http://www.grandstreet.com/gsisues/g68/g68a.html> (last accessed on Sept. 16, 2015; “Merewether”).

²⁵⁴ Alois Riegl, “The Modern Cult of Monuments: Its Essence and its Development,” available at http://sites.harvard.edu/fs/docs/icb.topic822683.files/Riegl_The%20Modern%20Cult%20of%20Monuments_sm.pdf (last accessed on Sept. 16, 2015).

²⁵⁵ KIRK SAVAGE, *STANDING SOLDIERS, KNEELING SLAVES: RACE, WAR AND MONUMENT IN NINETEENTH CENTURY AMERICA* 5 (Princeton Univ. Press, 1997) (“Savage”).

²⁵⁶ ROBERT S. NELSON & MARGARET OLIN, *MONUMENTS AND MEMORY, MADE AND UNMADE* 3 (Univ. of Chicago Press, 2003) (“Nelson & Olin”).

look up and gape at them, and surrounded by wide-open space that exudes eminence and power.²⁵⁷

Monuments ... are intended to elicit more than an abstract interest in the past. To begin, most monuments say, "I am important." Some communicate this by being large, being huge—imagine the shout of "Timberrrr" that would be fitting for the toppling of the Washington Monument! Even small memorials are usually built for the ages, made of granite, marble, bronze, or the like. These materials assert, "This mattered and should be honored" because they imply that generations far into the future will still want to know about the persons or events they depict.

The grandeur of monuments intrinsically includes an element of consecration, which not only sanctifies the past but also sanctions future actions. Their very existence implies that the person or event portrayed is worth emulating or that the cause symbolized is worth advancing. They imply a moral imperative: go thou and do likewise.

Their landscaping also implies that the people and events remembered on monuments are important and should be honored. In *The Theory of the Leisure Class*, Thorstein Veblen suggests that the rich prove their affluence and hence their worth partly by commanding others to do *useless* work for them. Useless work is key, Veblen points out. After all, a middle-income farmer can pay a full-time worker to grow crops on his 240 acres without demonstrating high status—that's just how the farmer makes his living. But a financier who pays a full-time gardener to mow and weed the 10 acres around his mansion in a wealthy suburb does not make money off his land. On the contrary, keeping it nice proves he knows the aesthetic meaning of "nice" and has money to achieve it. The extensive lawns and plantings around historic monuments represent similar expenditure on the part of the person commemorated—money spent to declare and ensure their status.²⁵⁸

145 Because monuments are and can become potent symbols, they are built large to convey importance. Monuments also communicate eminence by *how* they portray a person.²⁵⁹ Thus, the statue of Jose Rizal is proportionately taller than his actual 4'11" frame. He stands erect, with a strong chin, left foot forward in a heroic stance, clutching a book in his left hand. Flanking him are kneeling figures of a mother, a young man and a boy, showing submissiveness to his lone towering figure. These artistic conventions are called "hieratic scale" in sculpture; "hieratic" as in "priestly" or "sacred."²⁶⁰ Hieratic scale is a system used to visually communicate power in Egyptian art. Significant or important individuals, such as pharaohs, were depicted as being much larger than other figures in a scene.²⁶¹

²⁵⁷ JAMES W. LOEWEN, *LIES ACROSS AMERICA: WHAT OUR HISTORIC SITES GET WRONG* 29-33 (Touchstone, 2007)

²⁵⁸ *Id.*, at 30.

²⁵⁹ *Id.*, at 31.

²⁶⁰ WEBSTER'S THIRD NEW INT'L. DICTIONARY 1066.

²⁶¹ Madelynn Dickerson, *The Handy Art History Answer Book* 35 (Visible Ink Press, 2013).

146 But as observed by history professor Kirk Savage, once a monument is built and takes its place in the landscape of people's lives, it acquires a life of its own and is transformed into an image of the people.²⁶² He explained, "(p)ublic monuments exercised a curious power to erase their own political origins and become sacrosanct, a power that is still evident today whenever people rise to defend monuments from change or attack."²⁶³ They can inspire political movements and popular protests, cults, and civic organizations like petitioner, whose members style themselves as "Knights" of Jose Rizal, who was a propagandist, not a medieval lord.

147 Art historians Robert Nelson and Margaret Olin have called this the "black hole" phenomenon, that is, "the power of monuments to control everything within their orbit, like a star so massive that its gravitational force sucks everything back to itself, even light."²⁶⁴ As happened here, what began as an online protest against the spoliation of the backdrop of the Rizal Monument has evolved into a constitutional matter of such transcendental importance that it threatens to destroy a legitimate residential condominium project. If the OSG were to be believed, the Rizal Monument has become a "'visual phenomenon' with radiating super-constitutional powers that will chop off unwary buildings exceeding its undefined line (of) sight."²⁶⁵

148 What the Solicitor General claims in his Position Paper as the "physics of the Rizal Monument," such that "the obelisk, the statue and its sightline constitute an integrated whole"²⁶⁶ is a hoax. The *Motto Stella* as designed and executed did not include a view of the sky. No existing law or ordinance mandates a *sightline*, which is defined as the straight line along which an observer has an unobstructed vision,²⁶⁷ or a *visual corridor*, which is defined as an architectural opening or transportation corridor in the cityscape that frames a natural or cultural scenic feature,²⁶⁸ or even a *vista point*, which is defined as a more or less distant view through or along an avenue or opening,²⁶⁹ particularly one that applies to the Rizal Monument or other monuments.

²⁶² Savage, *supra*, at 7. The National Museum has declared that the Rizal Monument "has become a preeminent national(,) political, historical and cultural symbol, evoking the virtues, patriotism, sacrifice, death and legacy of Dr. Rizal as a personification of the struggles, aspirations, strength of the Filipinos throughout the generations past, present and future as an independent and sovereign people among the community of nations." (Museum Decl. No. 9-2013, s. 2013, seventh whereas)

²⁶³ Savage, *supra*, at 7-8.

²⁶⁴ Nelson & Olin, *supra*, at 7.

²⁶⁵ TSN, DMCI-PDI, Aug. 4, 2015, p. 7.

²⁶⁶ OSG Position Paper, p. 7.

²⁶⁷ Mark Bobrowski, *Scenic Landscape Protection under Police Power*, 2 BOSTON COLLEGE ENVIRON. AFF. L. REV. No. 4, 698 (1995).

²⁶⁸ *Ibid.*; TSN, NHCP, Sept. 1, 2015, p. 75.

²⁶⁹ WEBSTER'S THIRD NEW INT'L. DICTIONARY 2558.

149 When the NM declared the monument as a national cultural treasure on November 14, 2013, “an artistic and cultural icon and a leading exemplar for public monuments throughout the country and Filipino communities around the world,” it did not include the skyline, the line of sight, vista point, or view corridor of the monument.²⁷⁰ The national cultural treasure was the physical monument itself, not its setting.

150 Although the NHCP has issued Guidelines on Monuments Honoring National Heroes, Illustrious Filipinos and Other Personages (“NHCP Guidelines”) in 2011, which were updated in 2012, it did not specify any sightline, vista point, or view corridor for the Rizal Monument. This was because the NHCP Guidelines were not issued as rules but were interpretive and recommendatory in nature.²⁷¹ It set guidelines to be followed by local government units (“LGUs”) in passing municipal legislation to impose restrictions on the height of buildings surrounding or in the immediate vicinity of monuments and to designate protected vista points and visual corridors.²⁷²

151 As explained by NHCP Chair Ma. Serena I. Diokno, a local ordinance was legally necessary in addition to the NHCP Guidelines because part of the requirement was a rigorous public consultation to be carried out by the LGUs.²⁷³ Since the entire swath of land would involve several stakeholders, it was crucial that such public consultation took place. The outcome of the consultation would help shape the decision of the city council.²⁷⁴ Although the City of Manila tried to enact such an ordinance in July 2012, the enactment did not prohibit developments near historical and cultural sites but only sought to regulate them through hearing and dialogue.²⁷⁵ As earlier stated, this ordinance was vetoed by Mayor Lim.

152 On the other hand, the Guidelines on Easements, View Corridors/Sight Lines, Streets/Road Right-of-Way (RROW), Sidewalks, Arcades, basements, Lots, and Public Buildings/Structures (“DPWH Guidelines”) attached to the IRR of the NBC applied only to commercial signs intruding into road rights of way that lead to important views, vistas, or significant built or natural structure formation and the like. It did not apply to the Rizal Monument, which did not have any RROW leading to it.

To dignify very important public or historical buildings/structures, all forms of commercial signs intruding into RROW leading to or away from such buildings/structures shall not be allowed. Specifically

²⁷⁰ Museum Decl. No. 9-2013, s. 2013.

²⁷¹ TSN, NHCP, Sept 1, 2015, pp. 29, 69.

²⁷² *Ibid.* NHCP Guidelines, Part 1, p. 2.

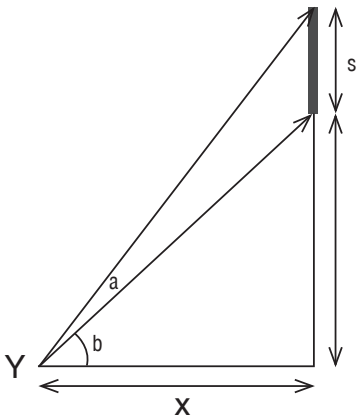
²⁷³ TSN, NHCP, Sept. 1, 2015, p. 38.

²⁷⁴ *Id.*, at p. 39.

²⁷⁵ Manila zoning ordinance, Sec. 6.

disallowed from such RROW are commercial signs from any building projection (such as arcades).²⁷⁶

153 As it is, every monument has an ideal viewing distance, however. John D. Barrow, professor of mathematical sciences at the University of Cambridge and a popular author, has calculated this viewing distance as the geometric mean of the height of the pedestal and the height of the statue, or $x = \sqrt{T(S + T)}$, with Y as the viewer, T as the height of the pedestal, S as the height of the statue, and x as the ideal viewing distance.²⁷⁷



154 Since the height of the obelisk of the Rizal Monument is 8.9 meters, while the height of the granite pedestal is 5.1 meters and that of the marble steps is .6 meter, the total height of the Rizal Monument is 14.6 meters. The ideal viewing distance x is calculated as 9.1225 meters:

$$\begin{aligned} &= \sqrt{[5.7 \text{ m} (5.7 \text{ m} + 8.9 \text{ m})]} \\ &= \sqrt{[5.7 \text{ m} (14.6 \text{ m})]} \\ &= \sqrt{[83.22 \text{ m}]} \\ &= 9.1225 \text{ m} \end{aligned}$$

155 By cordoning the viewing area around the Rizal Monument and putting barriers 32 meters in front of the statue, the NPDC deprived visitors of vista points that offer the best possible view of the monument from all sides. What they got instead was a landscape view of the monument, consisting of 70% blue sky and pavement, 20% foliage, and 10% monument. Through time, repeated exposure to this postcard view conditioned people’s minds to its acceptance. Since the blue sky was neutral and was not offensive, they became accustomed to viewing the Rizal Monument as a relic to be revered from a distance.

156 This phenomenon, called “exposure effect” or repetition effect, was first applied by propagandists²⁷⁸ and studied in 1965 by Robert B. Zajonc.²⁷⁹ It works subconsciously when

²⁷⁶ DPWH Guidelines, Part B, Sec. 1.b.
²⁷⁷ John D. Barrow, “Outer space: Where to stand to look at statues,” *available at* <https://plus.maths.org/content/where-stand-look-statues> (last accessed on Sept. 16, 2015). The geometric figure above is from the site.
²⁷⁸ For a chilling account of how Soviet leaders applied this technique to “construct” audiences, who were used as part of the landscaping and kept at a distance from a monument to create a visual impact of grandeur and awe, see NERMA CRIDGE, *DRAWING THE UNBUILDABLE: SERIALITY AND REPRODUCTION IN ARCHITECTURE* 78-80 (Routledge, 2015).
²⁷⁹ Robert B. Zajonc, “The Attitudinal Effects of Mere Exposure”, Technical Report No. 34, p. 39, Inst. for Social Research, Univ. Of Michigan (Sept., 1965), *available at* http://www.psc.isr.umich.edu/dis/infoserv/isrpub/pdf/Theattitudinaleffects_2360_.PDF (last accessed on Sept. 16, 2015).

stimuli are repeatedly presented and, as a result, are increasingly well liked and accepted. For example, the more a song or slogan is repeated, the more popular it is likely to become; a phenomenon exploited by both radio and television networks. The exposure effect applies only to stimuli that are perceived as neutral or positive. Repeated exposure to an offending stimulus may actually amplify the negative perception, rather than remedy it. The exposure effect has been observed with music, paintings, drawings, images, people, and advertisements.²⁸⁰

Familiarity plays a primary role in aesthetic appeal and acceptance; people like things more when frequently exposed to them. For example, the initial resistance by many people to the Vietnam Veterans Memorial was primarily caused by a lack of familiarity with its minimalist, abstract design. Similar resistance was experienced by Pablo Picasso with his Cubist works, Gustave Eiffel with the Eiffel Tower, Frank Lloyd Wright with the Guggenheim Museum, and many others whose works are today widely accepted as brilliant and beautiful. As the level of exposure to these works increased with time, familiarity with the works also increased and resulted in greater acceptance and popularity.²⁸¹

157 The repeated negative publicity in the media against Torre de Manila, especially at the onset of the controversy, no doubt shaped public opinion against it and moved petitioner and majority of the members of this Honorable Court to ask that its construction be stopped. But like Torre de Manila, the Rizal Monument, the Andres Bonifacio Monuments in Caloocan City²⁸² and at Liwasang Bonifacio in Manila,²⁸³ the Eiffel Tower, the London Eye, the monument to Peter the Great in Moscow,²⁸⁴ and the Monument to the People’s Heroes at Tiananmen Square in Beijing,²⁸⁵ to name a few similar controversial projects, were also severely criticized at the outset.

158 Particularly amusing was the controversy surrounding the construction of the Eiffel Tower as narrated in its official website—

Most of the people opposed the construction of Eiffel Tower and they thought that it is nothing but the wastage of money. The citizens of Paris were shocked when they saw that Eiffel along with his

²⁸⁰ WILLIAM LIDWELL, KRITINA HOLDEN & JILL BUTLER, *UNIVERSAL PRINCIPLES OF DESIGN* 86 (Rockport Publishers, Inc., 2003).

²⁸¹ *Ibid.*

²⁸² Michael Charleston Chua, “Shouting in Bronze: The Lasting Relevance of Andres Bonifacio and his Monument in Caloocan,” *Artes de las Islas Filipinas*, n.d., available at <http://www.artesdelasfilipinas.com/archives/52/shouting-in-bronze-the-lasting-relevance-of-andres-bonifacio-and-his-monument-in-caloocan> (last accessed on Sept. 16, 2015).

²⁸³ Erika Sauler, “Nat’l Artist Almario frowns on ‘shabby’ portrayal of Bonifacio,” *Phil. Daily Inquirer*, Nov. 30, 2012, available at <http://lifestyle.inquirer.net/78587/natl-artist-almario-frowns-on-shabby-portrayal-of-bonifacio> (last accessed on Sept. 16, 2015).

²⁸⁴ Merewether, *supra*.

²⁸⁵ WU HUNG, “TIANANMEN SQUIRE: A POLITICAL HISTORY OF MONUMENTS,” *REPRESENTATIONS* 95-8 (The Regents of Univ. of Calif., Summer 1991).

workers started constructing the tower. The thing that surprised them a lot was the design which he attempted prior to making this tower as well. In dispute with all the things, many reputed personalities from the respective fields like composers, artists, writers and leaders of cultural heritage went to the minister of Paris complaining it as the monstrosity and uselessness. The residents who were living at the Champ de Mars thought that the monster made up of metal will surely fall on their homes and will destroy their homes and also crush them.

The issue went more drastic when a nervous citizen filed a suit against the Paris City to restrict the construction work of tower. The construction process came to halt as Eiffel was busy in providing assurance to the residents about the tower and he bore all the responsibilities of accidents that might occur because of this tower. He also taken responsibility of the accidents till the tower was under construction. One professor of mathematics who belongs to the city of Paris told that if the height of tower increases to 748 feet, the tower will definitely fall. Those residents who are residing along with the tower said that this tower will disrupt the natural beauty of the city and it will also provide negativity to the weather. At that time, people do not have idea about the thing that why thunderstorms and electrify happen. Some also thought that the lighting in the air may also lead to killing the fishes. Most of the people who love nature and wanted to prevent it were against the construction of this tower too. The construction was also interrupted by the superstitions which were prevailed in the town.²⁸⁶

159 The OSG's theory that the Torre de Manila "significantly alters the physical integrity of the Rizal Monument," which necessarily includes its sightline,²⁸⁷ is no different from the superstitious beliefs of the early Paris residents, including renowned author Guy de Maupassant, who believed that the Eiffel Tower would fall or that it would disrupt the weather and kill all the fishes. "For the rest of his life," as one online post wrote tongue-in-cheek, "Guy de Maupassant would declare that the reason he left France was to get away from the Eiffel Tower. But today, millions of people travel from all over the world just to get a glimpse of M. Eiffel's much-maligned tower."²⁸⁸

160 The so-called "physics of the Rizal Monument" has no basis in fact, in science, and in law. It is simply an elaborate way of stating an obvious photographic fact: the closer one is to the subject, the less depth of field there will be; the further away one is, the more depth of field one will have.²⁸⁹ When the object is in the horizon, as in the case of the Rizal Monument, its image will shrink and merge into the background of the sky when the lens is focused, thereby

²⁸⁶ <http://www.eiffeltower.co.in/history-of-eiffel-tower/construction-controversies-of-eiffel-tower.htm>.

²⁸⁷ OSG Position Paper, p. 7.

²⁸⁸ Karen Plumley, The Controversy about the Eiffel Tower, *available at* <http://paris-eiffel-tower-news.com/eiffel-tower-stories/eiffel-tower-controversy.htm> (last accessed on Sept. 28, 2015).

²⁸⁹ *See, e.g.*, the exchange between Sol. Gen. Hilbay and J. Leonen during the oral arguments on Aug. 25, 2015 (TSN, OSG, Aug. 25, 2015, pp. 121-22).

capturing the wide space surrounding it.²⁹⁰ This is plain and simple landscape photography—not sightline, visual corridor or vista point.

B. The zoning and building permits issued to DMCI-PDI for the construction and development of Torre de Manila are valid.

161 **Petitioner claims in its Petition** that DMCI-PDI did not follow the procedure and the zoning restrictions prescribed under the Manila zoning ordinance, in that (a) Torre de Manila lies within the INS-U Zone reserved for schools and government buildings;²⁹¹ and (b) it “has a floor-to-area ratio of 7.79, which translates to a soaring building that is **46-storey high**, or almost **six times** the height limit,” thereby exceeding the “maximum of seven storeys” for an INS-U Zone.²⁹² Petitioner is wrong on both grounds.

162 Petitioner confuses its arguments on Torre de Manila’s impairment of the Rizal Monument’s sightline, which it bases on heritage laws, with its claim that the building is located in an INS-U Zone and exceeds the maximum FAR equivalent to seven storeys, which involves a violation of a city ordinance, the latter being outside the original jurisdiction of this Honorable Court. However, since this Honorable Court extensively discussed the matter of the building’s compliance with the Manila zoning ordinance during the oral arguments, DMCI-PDI will show in this Memorandum that the zoning and building permits issued to Torre de Manila are valid.

163 The City of Manila enacted the Manila zoning ordinance pursuant to the express powers delegated to it by Section 458 of R.A. 7160 (1991), otherwise known as the “Local Government Code of 1991” (“LGC”):²⁹³

Powers, Duties, Functions and Compensation. –

(a) The *sangguniang panlungsod*, as the legislative body of the city, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the city and its inhabitants pursuant to Section 16 of this Code and in the proper exercise of the corporate powers of the city as provided for under Section 22 of this Code, and shall:

...

(2) Generate and maximize the use of resources and revenues for the development plans, program objectives and priorities of the city

²⁹⁰ See Figs. 23 and 24, *supra*.

²⁹¹ Petition, p. 20, par. 5.16.

²⁹² *Ibid.*; boldface in the original.

²⁹³ See Manila zoning ordinance, Art. II, Sec. 2 & the Introduction (Legal Basis) of the HLURB’s Revised Model Zoning Ordinance on which the Manila zoning ordinance was based.

as provided for under Section 18 of this Code, with particular attention to agro-industrial development and city-wide growth and progress, and relative thereto, shall:

...

(vii) *Adopt a comprehensive land use plan for the city:* Provided, That in the case of component cities, the formulation, adoption or modification of said plan shall be in coordination with the approved provincial comprehensive land use plan;

(viii) Reclassify land within the jurisdiction of the city, subject to the pertinent provisions of this Code;

(ix) *Enact integrated zoning ordinances in consonance with the approved comprehensive land use plan, subject to existing laws, rules and regulations;* establish fire limits or zones, particularly in populous centers; and regulate the construction, repair or modification of buildings within said fire limits or zones in accordance with the provisions of the Fire Code[.]²⁹⁴

164 This Honorable Court has long recognized that the authority of an LGU to make a zoning classification is an exercise by the local government of its police power.²⁹⁵ The power of municipal corporations to divide their territory into industrial, commercial and residential zones is acknowledged in almost all jurisdictions as derived from the police power itself and is exercised for the benefit and protection of their inhabitants.²⁹⁶

165 The term “zoning,” ordinarily used with the connotation of comprehensive or general zoning, refers to governmental regulation of the uses of land and buildings according to districts or zones.²⁹⁷ Zoning is the separation of the municipality into districts and the regulation of buildings and structures within the districts so created, in accordance with their construction, and nature and extent of their use.²⁹⁸ A zoning ordinance is defined as a local city or municipal legislation that logically arranges, prescribes, defines, and apportions a given political subdivision into specific land uses as present and future projection of needs.²⁹⁹ It is designed to serve the general welfare.³⁰⁰

166 Hence, the intent of the concerned LGU in the interpretation and construction of its zoning ordinance is of paramount importance. Otherwise, it would dilute the grant of local autonomy to the LGUs and thereby defeat and frustrate,

²⁹⁴ Italics supplied.
²⁹⁵ *Buklod ng Magbubukid v. E.M. Ramos and Sons, Inc.*, 645 SCRA 401, 428 (2011).
²⁹⁶ *Benito Tan Chat, et al. v. The Municipality of Iloilo*, 60 Phil. 465, 473 (1934).
²⁹⁷ *Pampanga Bus Company, Inc. v. Municipality of Tarlac*, 113 Phil. 789, 800-01 (1961).
²⁹⁸ *Ibid.*
²⁹⁹ *Sta. Rosa Realty Development Corporation v. Court of Appeals*, 367 SCRA 175, 193 (2001).
³⁰⁰ *Pampanga Bus Company, Inc. v. Municipality of Tarlac*, *supra*.

rather than promote and foster, the principle of local autonomy under the LGC. The intent of the LGC, it will be recalled, is to resolve any question in favor of devolution of powers and to give more powers to LGUs in accelerating economic development and upgrading the quality of life for the people in the community.³⁰¹

167 At the outset, the determination of DMCI-PDI's compliance with its zoning regulations lies with the City of Manila since it was the entity that promulgated the Manila zoning ordinance pursuant to its delegated police power.

168 On June 19, 2012, DMCI-PDI secured from CPDO Rebong the Zoning Permit, which allowed the construction of a mixed commercial and residential condominium project called the "Torre de Manila" within an INS-U Zone. Section 17 of the Manila zoning ordinance provides that an INS-U Zone shall be used primarily for educational/academic, religious, cultural, and *residential developments* with supporting commercial and services uses.³⁰² The allowable uses for this zone are enumerated as follows:

- a. *All uses allowed in R-3/MXD Zone (High Density Residential/Mixed Use Zone) and INS-G (General Institutional Zone);*³⁰³
- b. Colleges, universities, professional business schools, vocational and trade schools, technical schools, and other institutions of higher learning;
- c. Computer/information technology-related activity; and
- d. Accessory uses: restaurants, canteen, other food serving establishment excluding karaoke bars, beer gardens, disco pubs, and the like.

169 Under Section 12 of the Manila zoning ordinance, the allowable uses for an R-3/MXD Zone (High Density Residential/Mixed Use Zone) include "(c)ommercial housing, e.g., hotel, apartment, apartelle, boarding house, dormitory, pension house, club house, motel, *residential inn/condotel/condominium*."³⁰⁴ Hence, it is not true, as petitioner claims, that DMCI-PDI violated the restriction as to allowable uses within an INS-U Zone.

170 As to Land Use Intensity Control ("LUIC") measures within an INS-U Zone, Section 17 of the Manila zoning ordinance prescribes the following: (a) maximum PLO – 0.6; and (b) maximum FAR – 4. Apart from the FAR, which only influenced but did

³⁰¹ LGC, Sec. 5, pars. (a) & (c).

³⁰² Italics supplied.

³⁰³ Italics supplied.

³⁰⁴ Italics supplied.

not limit the building height of Torre de Mania, there was no building height limit in an INS-U Zone.

171 Under Section 27 of the Manila zoning ordinance, aside from Public Open Space Zones that prescribe a maximum height limit of 10 meters for buildings and structures, all other zones including the INS-U Zone have “no fixed building height limit except those prescribed by the Air Transportation Office (ATO; now, CAAP) and other government regulations.”³⁰⁵ Based on the CAAP Height Clearance Permit dated April 2, 2012 granted to DMCI-PDI, Torre de Manila was allowed to be constructed up to 165.70 meters high, with top elevation of 171.20 meters above mean sea level. This was equivalent to 55 to 57 storeys based on Torre de Manila’s average height per floor of three meters.³⁰⁶

172 As to other government regulations, under the NBC-IRR, FAR is defined as the ratio between the Gross Floor Area (“GFA”) of a building/structure and the Total Lot Area (“TLA”) of the lot on which the property stands.³⁰⁷ FAR is determined by dividing the GFA of the building/structure by the TLA (GFA/TLA).³⁰⁸ The GFA of any building/structure shall not exceed the prescribed FAR multiplied by the TLA.³⁰⁹

173 Without a variance and with a maximum FAR of 4 for an INS-U Zone, Torre de Manila may be built up to 18 stories of *habitable* spaces, computed as follows:

- 1. Building Footprint (actual): 1,639 sq. m.³¹⁰
- 2. Compute the GFA:

GFA = TLA x Maximum FAR
= 7,556.8 sq. m. x 4
GFA = 30,227.2 sq. m.

- 3. Compute the maximum allowable number of habitable stories (without variance):

Max. no. of habitable storeys = GFA/Building Footprint
= 30,227.2 sq. m./1,639 sq. m.
Max. no. of habitable storeys = 18.44 or 18 habitable storeys

³⁰⁵ Italics supplied.
³⁰⁶ A copy of the front elevation plan for Torre de Manila is attached as Annex 10.
³⁰⁷ HLURB Revised Model Zoning Ordinance, Art. III, item 17. The definition and use of FAR as a factor which influences the dimensions of a building is the same, whether under the Manila zoning ordinance or under the NBC-IRR.
³⁰⁸ *Ibid.*
³⁰⁹ *Ibid.*
³¹⁰ DMCI-PDI Manifestation and Submission, Annex 1 (Site Development Plan of Torre de Manila).

174 The reason why the above computation of maximum floors without a variance pertains only to *habitable* spaces and does not include non-habitable spaces is because the computation of GFA under the NBC-IRR excludes “covered areas used for parking and driveways, services and utilities” and “vertical penetrations in parking floors where no residential or office units are present,” among others. Thus:

i. GROSS FLOOR AREA (GFA) — the total floor space within the perimeter of the permanent external building walls (inclusive of main and auxiliary buildings) such as office areas, residential areas, corridors, lobbies and mezzanine level/s. The GFA shall also include building projections which may serve as floors or platforms that are directly connected to/integrated with areas within the building/structure, e.g., balconies (Refer to Section 1004 of Rule X of this IRR) and the GFA *excludes* the following:

(a) *Covered areas used for parking and driveways, services and utilities;*

(b) *Vertical penetrations in parking floors where no residential or office units are present; and*

(c) Uncovered areas for helipads, air-conditioning cooling towers or air-conditioning condensing unit (ACCU) balconies, overhead water tanks, roof decks, laundry areas and cages, wading or swimming pools, whirlpools or jacuzzis, terraces, gardens, courts or plazas, balconies exceeding 10.00 sq. meters, fire escape structures and the like.³¹¹

175 Article III (23) of the HLURB Revised Model Zoning Ordinance provides substantially the same exception from the GFA computation:

GROSS FLOOR AREA (GFA) — THE GFA OF A BUILDING IS THE TOTAL FLOOR SPACE WITHIN THE PERIMETER OF THE PERMANENT EXTERNAL WALLS, OCCUPIED BY:

...

BUT EXCLUDING:

o *COVERED AREAS USED FOR PARKING AND DRIVEWAYS, INCLUDING VERTICAL PENETRATIONS IN PARKING FLOORS WHERE NO RESIDENTIAL OR OFFICE UNITS ARE PRESENT;*

o UNCOVERED AREAS FOR AC COOLING TOWERS, OVERHEAD WATER TANKS, ROOF DECKS LAUNDRY AREAS AND CAGES, WADING OR SWIMMING POOLS, WHIRLPOOLS, OR JACUZZIS, GARDENS, COURTS OR PLAZAS.³¹²

³¹¹ NBC-IRR, Guidelines on Building Bulk, Development Controls, Buildings and Other Accessory Structures Within Cemeteries and Memorial Parks, B. 1. I; italics supplied.

³¹² Italics supplied.

176 Thus, the seven podium parking floors of Torre de Manila are *excluded* from the GFA computation. Consequently, these seven podium parking floors are also excluded in determining the maximum number of floors allowed in the INS-U Zone FAR of 4 since GFA is one of the elements in computing FAR. If these seven non-habitable floors were added to the 18 habitable floors computed above, Torre de Manila would have a total of 25 floors, without need of a variance. This was the same conclusion made by the MZBAA during its meeting on December 23, 2013 when it computed the total number of floors allowed to Torre de Manila, even without a variance.³¹³

177 Taking into account only the FAR restriction under the Manila zoning ordinance, there is *no limit* to the number of storeys that DMCI-PDI could add to its existing structure so long as these additional storeys are non-habitable areas or spaces like parking spaces and driveways, vertical penetrations in parking floors, overhead water tanks, roof decks, laundry areas and cages, etc., which are excluded from the computation of the GFA and, consequently, the FAR. DMCI-PDI may erect a parking building of any height on the same lot without reaching the maximum FAR of 4.

178 This explains why the concept of FAR does not determine but *merely influences* the height of a building or structure. With the same FAR restriction of 4, a building may be constructed higher or lower, depending on its actual building footprint. Assuming the same prescribed FAR, the height of a building will be inversely proportional to its building footprint. The smaller the building footprint, the higher the building will be even without a variance (*i.e.*, a tall and thin building).

179 On the other hand, the larger the building footprint, the lower the building may be constructed even without a variance (*i.e.*, short and squat building). As long as it does not exceed the prescribed maximum PLO, the actual building footprint will depend on the developer's building plans approved by the Building Official. The FAR does not require the developer to build up to the maximum PLO all the time. Otherwise, this would curtail the developer's right to create buildings that are works of art; all buildings would look substantially the same (*i.e.*, short and squat), especially those in zones with similar LUIC ratings.

180 While Section 63 of the Manila zoning ordinance requires that "(a)ll lot/land owners/land developers and business establishments shall secure a zoning permit (locational clearance) from the City Planning and Development Officer for all conforming uses and, in cases of variance and exceptions from the

³¹³ City of Manila Compliance dated Aug. 28, 2015, Annex B.

Sangguniang Panglunsod as per recommendation from the Manila Zoning Board of Adjustments and Appeals (MZBAA) through the Committee on Housing, Urban Development and Resettlements *prior to conducting any business activity or construction on their property/land*,”³¹⁴ this section does *not* provide that a deviation from this procedure will void the zoning permit issued by the CPDO.

181 The Manila zoning ordinance contemplates only two situations when a zoning permit becomes void. Under Section 65, par. 2 of the ordinance, “(a) zoning permit ... shall expire and become null and void if the building, work or business activity authorized therein is *not commenced within a period of one year* from the date of such permit, or if the building, work or business activity so authorized is *suspended or abandoned* at any time after it has been commenced, *for a period of 120 days*.”³¹⁵ In other words, a zoning permit does not become invalid because it was issued prior to the approval of a variance by the Manila City Council.

182 Indeed, the consequence of a violation of Section 63 of the Manila zoning ordinance, as provided in Section 82, is a fine of not more than ₱5,000.00 or imprisonment of not more than one year, or both, at the discretion of the court. However, such violation prescribes in two months.³¹⁶ While the violation may technically be termed as an “illegal” act, the ordinance does not prescribe the penalty of demolition of the subject building.

183 Under Section 455 (b)(3)(vi) of the LGC, the City Mayor may order the demolition of illegally constructed houses, buildings and other structures that fail to secure the necessary permits, *if such penalty is imposed by an ordinance*. In *Crisostomo Aquino v. Municipality of Aklan*,³¹⁷ this Honorable Court ordered the demolition of a building that was constructed in violation of Aklan’s “no build zone” because the municipal ordinance *specifically provided* that demolition may be resorted to as a penalty if buildings were constructed in such zone.³¹⁸

³¹⁴ Italics supplied.

³¹⁵ Italics supplied.

³¹⁶ Act No. 3326 (1926), Sec. 1 provides:

Violations penalized by special acts shall, unless otherwise provided in such acts, prescribe in accordance with the following rules: (a) after a year for offences punished only by a fine or by imprisonment for not more than one month, or both; (b) after four years for those punished by imprisonment for more than one month, but less than two years; (c) after eight years for those punished by imprisonment for two years or more, but less than six years; and (d) after twelve years for any other offence punished by imprisonment for six years or more, except the crime of treason, which shall prescribe after twenty years. *Violations penalized by municipal ordinances shall prescribe after two months.* (Italics supplied).

³¹⁷ 737 SCRA 145 (2014).

³¹⁸ *Id.*, at p. 167.

184 In stark contrast, the Manila zoning ordinance does not contain any such penal provision. Hence, even if Torre de Manila were found to be an illegal construction, it cannot be ordered demolished, as explained by the City of Manila during the oral arguments.³¹⁹

185 Under the NBC, buildings and structures that are given building permits may not be demolished, unless they are found or declared to be dangerous or ruinous. Sections 214 to 215 provide that demolition may be ordered by the Building Official only when a building or structure is found or declared to be dangerous or ruinous, depending on the degree of danger to life, health, or safety:

*Dangerous and Ruinous Buildings or Structures. — Dangerous buildings are those which are herein declared as such or are structurally unsafe or not provided with safe egress, or which constitute a fire hazard, or are otherwise dangerous to human life, or which in relation to existing use, constitute a hazard to safety or health or public welfare because of inadequate maintenance, dilapidation, obsolescence, or abandonment; or which otherwise contribute to the pollution of the site or the community to an intolerable degree.*³²⁰

*Abatement of Dangerous Buildings. — When any building or structure is found or declared to be dangerous or ruinous, the Building Official shall order its repair, vacation or demolition depending upon the degree of danger to life, health, or safety. This is without prejudice to further action that may be taken under the provisions of Articles 482 and 694 to 707 of the Civil Code of the Philippines.*³²¹

186 The zoning and building permits issued to DMCI-PDI for Torre de Manila are presumed to have been regularly issued and are, therefore, valid.³²² This presumption applies until it is overcome by clear and convincing evidence to the contrary.³²³ Unless this presumption is rebutted, it becomes conclusive.³²⁴

187 Apart from this presumption, the zoning permit issued to DMCI-PDI was valid up to a height of 25 floors based on the FAR of 4 for an INS-U Zone. Since the zoning permit issued to DMCI-PDI allowed—but did not compel—it to build up to 57 floors, Torre de Manila conformed with the LUIC rating of FAR 4 of the Manila zoning ordinance, for as long as it did not exceed 25 floors allowed in the INS-U Zone. The only time it could have violated the FAR 4

³¹⁹ TSN, City of Manila, Aug. 25, 2015, p. 66. According to the City of Manila, it only had two alternatives with regard to Torre de Manila: The first one was to impose a penalty of fine of ₱5,000.00 or imprisonment of one year or both, while the second one was to allow—as the City did—DMCI-PDI to complete the application process. The City of Manila never considered demolition in relation to Torre de Manila.

³²⁰ Italics supplied.

³²¹ Italics supplied.

³²² See REV. RULES ON EVIDENCE, Rule 131, Sec. 3 (m).

³²³ *People v. De Guzman*, 299 SCRA 795, 799 (1994).

³²⁴ *Ibid.*

restriction was if it built beyond 25 floors without a variance, which never happened since DMCI-PDI secured a variance long before it reached the twenty-fifth floor. In fact, the construction of Torre de Manila was only up to the sixth floor podium parking when it secured a variance on January 16, 2014.³²⁵ Hence, the lack of a variance under Section 63 of the Manila zoning ordinance could not have nullified the Zoning Permit issued by CPDO Rebong to DMCI-PDI.

188 Moreover, as will be discussed subsequently, DMCI-PDI relied in good faith on the issuance of the zoning permit by CPDO Rebong, which was an operative fact. The doctrine of operative fact states that “(f)rom the passage of such law or promulgation of such *executive issuance* until its invalidation by the court, the effects of the law or executive issuance, when relied upon by the public in good faith, may have to be recognized as valid.”³²⁶ Unless nullified by a court of competent jurisdiction, the Zoning Permit issued by CPDO Rebong remains valid.

189 At any rate, Section 62 of the Manila zoning ordinance allowed deviations from any section or part of the ordinance to be cured and ratified by the City Council.

Approval of the City Council – Any deviation from any section or part of the original Ordinance shall be approved by the City Council.

190 Section 62 of the Manila zoning ordinance is broadly worded to cover not only deviations from the FAR but all other deviations, such as:

- a. deviations from the procedural requirements such as accepting from DMCI-PDI a letter of intent instead of a *pro forma* application in applying for a variance;
- b. deviations from the timeliness of an application (thereby allowing DMCI-PDI to secure a variance from the Manila zoning ordinance while the construction of Torre de Manila was still on the sixth-storey podium parking); and
- c. deviations from the requirements for overlay zones, such as Histo-Cultural Heritage Overlay Zone and Planned Unit Development Overlay Zone, if any, over Torre de Manila.

³²⁵ TSN, DMCI-PDI, Aug. 4, 2015, p. 77.

³²⁶ Commissioner of Internal Revenue v. San Roque Power Corporation, 707 SCRA 66, 79 (2013); italics supplied.

191 This is consistent with the intent of the Manila zoning ordinance to apply its provisions liberally in favor of applicants seeking to comply, like DMCI-PDI:

Construction and Interpretation of Terms. – The words and terms employed in this ordinance shall be interpreted and understood liberally in the generic sense unless otherwise indicated and shall *as far as practicable be construed in favor of applicants seeking to comply with the provisions thereof.*³²⁷

192 In securing the variance, DMCI-PDI complied with the Manila zoning ordinance and was not given any special treatment by the MZBAA and the Manila City Council. In fact, not a single variance for structures taller than 30 storeys was issued during the two terms of Mayor Lim from 2007 to 2013. The practice of not requiring a variance prior to the issuance of the zoning permit was applied by the City of Manila to all builders or developers, not just to DMCI-PDI, as confirmed by the City of Manila during the oral arguments on August 25, 2015.³²⁸

193 Article 5 of the Civil Code provides that “(a)cts executed against the provisions of mandatory or prohibitory laws shall be void, *except when the law itself authorizes their validity.*”³²⁹ Since the Manila zoning ordinance itself authorizes the validity of deviations and DMCI-PDI secured a variance as well as a ratification of its permits and licenses from the Manila City Council through Resolution No. 5, s. 2014, the permits, licenses, and approvals previously issued to DMCI-PDI, especially its zoning permit and building permits, were completely valid.

194 Notwithstanding Section 69 of the Manila zoning ordinance, which provides that “(n)o building and business permit shall be issued by the Local Building Officer and Business Promotion and Development Officer respectively without a valid zoning permit (locational clearance) in accordance with this Ordinance,” a building permit may not be rendered void by virtue of a local ordinance such as the Manila zoning ordinance because the building permit is issued pursuant to the NBC, which is a national law.

195 Sections 303 and 304 of the NBC provide that:

Processing of Building Permits. — The processing of building permits shall be under the overall administrative control and supervision of the Building Official and his technical staff of qualified professionals.

...

³²⁷ Italics supplied.
³²⁸ TSN, City of Manila, Aug. 25, 2015, pp. 35-36.
³²⁹ Italics supplied.

Issuance of Building Permits. — When satisfied that the work described in an application for building permit and the plans and specifications submitted therewith, conform to the requirements of this Code and other pertinent rules and regulations, the *Building Official* shall, within fifteen days from payment of the required fees by the applicant, issue the building permit applied for.

...³³⁰

196 The NBC and its IRR state only two instances when a building permit becomes void, viz.: (a) if the building or work authorized therein is not commenced within a period of one year from the date of such permit, or if the building or work so authorized is suspended or abandoned at any time after it has been commenced, for a period of 120 days;³³¹ and (b) if the building permit is not accompanied by duly signed and sealed “Ancillary Permits,” which consist of the Architectural Permit, Civil/Structural Permit, Electrical Permit, Mechanical Permit, Sanitary Permit, Plumbing permit, and Electronics Permit.³³² These Ancillary Permits do *not* include a FAR variance.

197 The Manila zoning ordinance cannot add to these instances when a building permit is rendered void because an act of the Manila City Council cannot amend or expand an act of Congress. One of the requisites for an ordinance to be valid is that it must not contravene any statute.³³³ This is based on the premise that “local government units are able to legislate only by virtue of their derivative legislative power, a delegation of legislative power from the national legislature. The delegate cannot be superior to the principal or exercise powers higher than those of the latter.”³³⁴ Hence, the building permit issued to DMCI-PDI remains valid and is not nullified just because the formal grant of a variance by the Manila City Council came later on January 16, 2014.

198 More importantly, a defective building permit may be ratified under Section 305 of the NBC, which provides that: “(w)henever the issuance of a permit is based on approved plans and specifications which are subsequently found defective, the Building Official is *not precluded* from requiring the permittee to effect necessary corrections in said plans and specifications or from preventing or ordering the stoppage of any or all building operations being carried on thereunder which are in violation of (the) Code.”³³⁵ Additionally, Section 706 of the NBC provides that:

³³⁰ Italics supplied.
³³¹ NBC, Sec. 305, par. 3; italics supplied.
³³² NBC-IRR, Rule III, Sec. 301, 2. a.
³³³ *Fernando v. St. Scholastica’s College*, 693 SCRA 141, 157 (2013).
³³⁴ *City of Manila v. Laguio*, 495 Phil. 289, 308 (2005).
³³⁵ Italics supplied.

Allowable Floor Area Increases. — The floor areas hereinabove provided *may be increased* in certain specific instances and under appropriate conditions, based on the existence of public space, streets or yards extending along and adjoining two or more sides of the building or structure subject to the approval of the Building Official.³³⁶

199 During the oral arguments on August 18, 2015, J. Jardeleza adverted to what he described as “four layers of protection” with respect to heritage properties under the Manila zoning ordinance: (a) the maximum FAR restriction; (b) Section 22 on the “Use Regulations in O-HCH;” (c) Section 23 on the “Use Regulations in O-PUD;” and (d) Section 47, par. 3, on the submission of a heritage impact statement.³³⁷ This was partly adopted by petitioner in its Memorandum dated September 18, 2015.³³⁸

200 With all due respect, DMCI-PDI submits that it did not commit any violation of any of these purported four layers of protection under the Manila zoning ordinance. Even assuming that it did, the ordinance does not prescribe the penalty of demolition of Torre de Manila.

201 *First*, DMCI-PDI did not violate any FAR restriction under the Manila zoning ordinance because it was granted a variance by the Manila City Council. At the time the variance was approved on January 16, 2014, the construction of Torre de Manila was only on the sixth floor podium parking. Since parking spaces are not included in the GFA and FAR computations, DMCI-PDI did not violate any FAR restriction before a variance was issued for Torre de Manila.

202 *Second*, there is no basis to apply Section 22 of the ordinance since the construction site of Torre de Manila is not in a designated heritage zone within the City of Manila. This is shown in the city’s official zoning map, which was made an integral part of the ordinance.³³⁹

203 *Third*, DMCI-PDI did not violate Section 23 on Planned Unit Development Overlay (O-PUD) Zones because to date, there are no specific regulations applicable to these zones other than those stated in the Manila zoning ordinance.³⁴⁰ While Section 23 of the ordinance provides that the applicable LUIC shall be complied with, the said provision must be read in harmony with Article X, Sections 60 to 62, which allows exemptions, variances, and deviations.

³³⁶ Italics supplied.

³³⁷ See TSN, City of Manila, Aug. 18, 2015, pp. 21-47.

³³⁸ Petitioner Memorandum, p. 23.

³³⁹ City of Manila Compliance dated Aug. 20, 2015, Annex A.

³⁴⁰ See TSN, City of Manila, Aug. 18, 2015, pp. 31-32.

Since DMCI-PDI was granted a variance (*i.e.*, the City Council approval required under Section 62 of the Manila zoning ordinance), it did not violate Section 23 of the Manila zoning ordinance.

204 *Lastly*, DMCI-PDI did not violate Section 47, par. 3 of the Manila zoning ordinance since it did not add, alter or partially demolish any heritage property. The construction site of Torre de Manila, which is not a heritage site, is 870 meters away from the Rizal Monument and 30 meters away from outermost edge of the Rizal Park.³⁴¹

205 Hence, the zoning and building permits for Torre de Manila remain completely valid to date.

C. DMCI-PDI complied in good faith with the Manila zoning ordinance, the NBC and its IRR, as well as heritage laws in acquiring, planning, building, and selling Torre de Manila.

206 **In its Petition**, petitioner accused DMCI-PDI of bad faith in constructing Torre de Manila because it allegedly “went on with the construction of the (Torre de Manila) and appear(ed) to be bent on completing the same as fast as it c(ould).”³⁴² In support of its accusation, petitioner alleged that the Torre de Manila violated zoning restrictions³⁴³ and exceeded the height limit for buildings in an INS-U Zone.³⁴⁴ As stated earlier, these grounds are not true. In addition, DMCI-PDI consistently acted in good faith as an owner and builder.

207 In discussing this issue, DMCI-PDI relies on jurisprudence of this Honorable Court, long settled and applied in numerous cases, that “(b)ad faith is never presumed, while good faith is always presumed.”³⁴⁵ Corollary to this, it is required that “he who claims bad faith must prove it.”³⁴⁶ Bad faith is not an honest mistake, or lack of due diligence, or failure to comply with the requirements of a zoning ordinance in securing a variance. It is a state of mind that is profoundly immoral or malevolent. In other words, it is evil.³⁴⁷

³⁴¹ See DMCI-PDI Comment *Ad Cautelam*, par. 83 & Annex BB.

³⁴² Petition, p. 20, par. 5.18.

³⁴³ *Id.*, p. 20, par. 5.16.

³⁴⁴ *Ibid.*

³⁴⁵ *Catindig v. People*, 600 SCRA 749, 771 (2009); *Suarez v. National Steel Corporation*, 569 SCRA 331, 345 (2008); and *Principio v. Hon. Barrientos*, 478 SCRA 639, 649 (2005)

³⁴⁶ *Ibid.*

³⁴⁷ WEBSTER’S THIRD NEW INT’L. DICTIONARY 788 defines evil as “not good morally; marked by bad moral qualities; violating the rules of morality.”

Bad faith is essentially a state of mind affirmatively operating with furtive design or with some motive of ill will. It does not simply connote bad judgment or negligence. It imports a dishonest purpose or some moral obliquity and conscious doing of a wrong. Bad faith is thus synonymous with fraud and involves a design to mislead and deceive another, not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive.³⁴⁸

208 In its Petition and throughout the oral arguments, petitioner has not shown that the construction of Torre de Manila was immoral or in violation of any law or ordinance or that it was for the purpose of committing fraud and to mislead and deceive another. Petitioner's only offered excuse was that the condominium project removed the "awe" from the Rizal Monument by despoiling its background.³⁴⁹ Petitioner admitted that the constitutional provisions on culture and arts were not self-executory³⁵⁰ and that there was no law protecting the sightline of the Rizal Monument or prohibiting DMCI-PDI from building a high-rise condominium on its own property.³⁵¹ Petitioner went on to argue, quoting Jose Rizal, that not all laws were right.³⁵² According to petitioner, "not everything that is legal is moral."³⁵³

209 It defies reason how petitioner, who professes a contempt for law by saying that not all statutes are right or moral, can invoke the same law to protect a national cultural treasure by demolishing a building constructed in compliance with all regulatory rules and requirements.

210 Here, it is undisputed that DMCI-PDI was issued a zoning permit for Torre de Manila on June 19, 2012. Zoning Permit No. 4212 allowed DMCI-PDI to build a mixed-use condominium up to 25 floors (18 habitable floors plus seven podium parking floors) within the FAR restriction of 4. A variance was unnecessary at the outset since the construction of a residential condominium was among the "conforming uses"³⁵⁴ within an INS-U Zone and the structure did not exceed the FAR restriction of 4 as of July 5, 2012. On that date, DMCI-PDI was issued Building Permit No. 01-2012-001148-NC, which allowed the construction of a 49-storey residential condominium with basement and two penthouse levels on its property. Although the building permit allowed it to build up to 49 floors, DMCI-PDI could stop the construction of Torre de Manila at any time before it exceeded the FAR of 4 (*i.e.*, before the construction went beyond the 25th floor) without need for a variance.

³⁴⁸ *Samson v. Court of Appeals*, 238 SCRA 397, 14 (1994).

³⁴⁹ TSN, *Knights of Rizal*, July 21, 2015, pp. 79-80.

³⁵⁰ *Id.*, at 10-11.

³⁵¹ *Id.*, at 23-27.

³⁵² *Id.*, at 82-83.

³⁵³ *Id.*, at 27.

³⁵⁴ Manila zoning ordinance, Sec. 63.

211 On January 16, 2014, while the construction of Torre de Manila was still on the 6th floor podium parking—which was not included in computing the GFA and the FAR—the Manila City Council formally issued a variance for the project. Hence, at no point was DMCI-PDI in bad faith nor did it violate the FAR restriction of 4 when it constructed Torre de Manila.

212 Under Section 69 of the Manila zoning ordinance, only a valid zoning permit is required prior to the issuance of a building permit. A valid FAR variance is *not* required prior to the issuance of a building permit.

Building Permit/Business Permit. - No building and business permit shall be issued by the Local Building Officer and Business Promotion and Development Officer respectively without a valid zoning permit (locational clearance) in accordance with this Ordinance.

213 While the Manila zoning ordinance required that DMCI-PDI file a written application for FAR variance with the MZBAA through the CPDO, this became physically and legally impossible when (a) then CPDO Rebong granted the zoning permit without qualification and/or condition; and (b) then Mayor Lim did not constitute or convene the MZBAA to act on applications for variances and exceptions.

214 This was confirmed by the City of Manila during the oral arguments on August 18, 2015:

JUSTICE JARDELEZA:

Now, it has been.... Again, I go back to my question. At that time, when the permits were granted, there were no applications for a variance?

ATTY. FLAMINIANO:

None, Your Honor.³⁵⁵

...

JUSTICE JARDELEZA:

Then (DMCI) says, “had our application for zoning permit been denied, we would have gone to the process of appealing to the zoning board, if any was then constituted,” right?

ATTY. FLAMINIANO:

Yes, Your Honor.

JUSTICE JARDELEZA:

So, in other words, the DMCI was saying, “well, it was your

³⁵⁵ TSN, City of Manila, Aug. 18, 2015, p. 56.

fault, you issued it. Had you not issued it, we would have appealed to the MZBAA, if any was then constituted.”

ATTY. FLAMINIANO:
Yes, Your Honor.

JUSTICE JARDELEZA:
Can you check if there was already an MZBAA at that time?

ATTY. FLAMINIANO:
There was, Your Honor, *but it was not constituted. It was not activated*, Your Honor.³⁵⁶

215 As the MZBAA was not constituted, it was legally impossible for DMCI-PDI to apply for a variance since there was no body that could have acted upon such application. Further, it would have been absurd for DMCI-PDI to appeal a favorable issuance of a zoning permit by the CPDO. An appeal to the MZBAA was proper only when an application for a permit was denied, which was not the case for DMCI-PDI. This was confirmed by CPDO Rebong in his reply dated October 10, 2012 to DMCI-PDI’s environmental consultant, Gaia South, Inc., where he said that “the issuance of (the) Zoning Permit (p)rior to (the) Building Permit by this office clears/frees the applicant DMCI from any obligation to the city.”³⁵⁷

216 As further confirmed by the City of Manila, shortly after the Manila City Council raised the FAR issue through Resolution No. 146, DMCI-PDI immediately consulted CPDO Lacuna to secure a variance.³⁵⁸

ARCHITECT LACUNA:
Your Honor, this is what happened. Prior to the writing of the letter, the DMCI and its representatives *were already coordinating with our office* as to how to go about the application for the variance, Your Honor. So, one of the things that are, during one of the consultations, Your Honor, we advised them that one of the three steps that they needed to do to formalize the appeal was to submit a letter addressed to President Mayor, Your Honor. So, that is what we did, Your Honor.³⁵⁹

...

JUSTICE JARDELEZA:
So, as far as you remember, when was this and who paid you a visit?

ARCHITECT LACUNA:
Your Honor, it was sometime December.³⁶⁰

³⁵⁶ *Id.*, at 76; italics supplied.
³⁵⁷ CPDO Rebong’s letter dated Oct. 10, 2012 to Gaia South, Inc. (DMCI-PDI Comment *Ad Cautelam*, Annex Q).
³⁵⁸ TSN, City of Manila, Aug. 18, 2015, p. 79
³⁵⁹ *Id.*, at 83; italics supplied.
³⁶⁰ *Id.*, at 84.

...

JUSTICE JARDELEZA:

Two weeks before December 18?

ARCHITECT LACUNA:

*Yes, Your Honor.*³⁶¹

...

ARCHITECT LACUNA:

They're also asking questions because it was a consultation, Your Honor.

JUSTICE JARDELEZA:

Like what questions?

ARCHITECT LACUNA:

What are the requirements? What's the process, the procedure? Where is it to go first?

JUSTICE JARDELEZA:

So when they asked you those questions, how did you answer?

ARCHITECT LACUNA:

Your Honor, I answered to the best of my knowledge based on what I remember from the ordinance, Your Honor, that they have to seek the exception through the Manila Zoning Board, that the first step that they need to do was to formalize their request and then there was going to be a Zoning Board hearing after which whatever our recommendation is, we will indorse it to the City Council and it will be the City Council which would finally grant or not grant the request, Your Honor.³⁶²

217 On December 18, 2013, after securing all the documentary requirements, DMCI-PDI formally applied for a variance with the MZBAA. In due course, the MZBAA issued its favorable recommendation through MZBAA Resolution Nos. 6 and 6-A.

218 Thereafter, the Manila City Council, through Resolution No. 5, approved the MZBAA's recommendation and "RATIFIED and CONFIRMED all previously issued permits, licenses and approvals issued by the City of Manila for Torre de Manila."

219 Since DMCI-PDI secured all the permits and licenses for Torre de Manila from the various government agencies as required by law, it was within its right to continue the construction of the building on its own property. There was never any bad faith, ill will or sinister motive on the part of DMCI-PDI when it pursued its lawful project.

³⁶¹ *Ibid.* Italics supplied.

³⁶² *Id.*, at 86-87.

D. *The suspension of the construction and development of Torre de Manila unjustly deprives DMCI-PDI of its right to build on its property without due process of law.*

220 **Article III, Section 1 of the Constitution** mandates that “(n)o person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.” Among the basic rights protected under the due process clause is the right to property, particularly the right to own property.

221 Ownership, as a civil law concept, is defined as the independent right of exclusive enjoyment and control of a thing for the purpose of deriving therefrom all advantages required by the reasonable needs of the owner and the promotion of the general welfare but subject to restrictions imposed by law and the right of others.³⁶³ It is made up of a bundle of rights in favor of the owner over a private property.

222 Among such rights, the owner has a right to possess, use, and dispose its private property subject only to such restrictions as may be provided by law.³⁶⁴ The Civil Code provides that the owner of a parcel of land is the owner of its surface and everything under it, and that he can construct thereon any works or make any plantations and excavations that he may deem proper, subject only to the applicable laws, the rules on easement, and requirements of aerial navigations.³⁶⁵

223 While the State through the exercise of its police power can interfere with the right to property, such interference must comply with the requirements of substantive and procedural due process. In particular, substantive due process is an inquiry on whether the government has sufficient justification to deprive a person of life, liberty or property.³⁶⁶

224 With all due respect, the TRO issued by this Honorable Court amounts to an unjust interference with DMCI-PDI’s right to property. As shown above, the construction of Torre de Manila did not and does not violate any laws, rules on easement or requirements of aerial navigation. The construction of Torre de Manila was in fact duly authorized by the concerned national

³⁶³ Reyes and Puno, *cited in* DESIDERIO JURADO, CIVIL LAW REVIEWER 327 (2009).

³⁶⁴ CIVIL CODE, Arts. 428 & 429.

³⁶⁵ CIVIL CODE, Art. 437.

³⁶⁶ White Light Corp. et al. v. the City of Manila et al. 576 SCRA 416, 435-36 (2009).

and local government agencies. In particular, the City of Manila did not and does not object to the construction of Torre de Manila.

225 In its Comment dated December 10, 2014, the City of Manila opposed the Petition and prayed for its dismissal for lack of merit. The City of Manila emphasized that Torre de Manila was granted all the necessary permits, licenses, clearances, certifications and City Council resolution and that there was nothing illegal about its construction on private property.³⁶⁷ Petitioner had absolutely no basis other than an appeal to patriotism and a vague reference to morality³⁶⁸ to say that DMCI-PDI violated the Manila zoning ordinance, the NHCP Guidelines, and the Venice Charter. Thus, the TRO issued by this Honorable Court violates DMCI-PDI's right to substantial due process.

226 Since the TRO cannot be justified as a valid exercise of the State's police power—which in the first instance is not vested with this Honorable Court—the issuance of the TRO amounts to an unjust taking of private property. At the time the TRO was issued, DMCI-PDI has completed all 49 floors of the Torre de Manila and was in the process of finishing the project, around 91% of which had been sold to unit buyers.

227 The effect of the TRO was to halt all construction activities in the project, including deliveries of ordered materials and equipment, laying off of hundreds of construction workers, redeployment of the project team to other construction projects, and idling of all equipment, utilities and materials on site. The negative publicity that followed in the wake of the TRO caused the HLURB to *motu proprio* suspend DMCI-PDI's License to Sell and its right to receive payments from its buyers, thereby causing anxiety among DMCI-PDI's lenders. Since the issuance of the TRO, the project has been unduly suspended for almost four months now. DMCI-PDI cannot develop even the first seven podium parking levels of Torre de Manila, which no one questions—not petitioner, the OSG, Celdran or the *Philippine Daily Inquirer*.

228 In the context of the State's inherent power of eminent domain, there is a "taking" when the owner is actually deprived or dispossessed of his property; where there is a practical destruction or a material impairment of the value of its property; or when it is deprived of the ordinary use of its property.³⁶⁹ After all, ownership "is nothing without the inherent rights of possession, control

³⁶⁷ See City of Manila Comment dated Dec. 10, 2014, pp. 5-7.

³⁶⁸ TSN, Knights of Rizal, July 21, 2015, pp. 27-28.

³⁶⁹ Republic v. Sarabia, 468 SCRA 142, 150-51 (2005).

and enjoyment.”³⁷⁰ Where the owner is deprived of the ordinary and beneficial use of his property or of its value by its being diverted to public use, as in this case, there is taking within the constitutional sense.³⁷¹

229 It is a fundamental rule that private property shall not be taken for public use without just compensation.³⁷² While property may be regulated in the interest of the general welfare and, in its pursuit, the State may prohibit structures offensive to the sight, the State may not, under the guise of police power, permanently divest owners of the beneficial use of their property and practically confiscate them solely to preserve or assure the aesthetic appearance of the community.

230 In *People v. Fajardo*,³⁷³ where the accused Juan Fajardo and Pedro Babilonia were found by the trial court to have violated Baao Municipal Ordinance No. 7, s. 1950 for having constructed without a permit a building that “destroyed” the view of the public plaza, this Honorable Court granted *certiorari* and reversed the conviction, holding:

It is contended, on the other hand, that the mayor can refuse a permit solely in case that the proposed building “destroys the view of the public plaza or occupies any public property” (as stated in its section 3); and in fact, the refusal of the Mayor of Baao to issue a building permit to the appellant was predicated on the ground that the proposed building would “destroy the view of the public plaza” by preventing its being seen from the public highway. Even thus interpreted, the ordinance is unreasonable and oppressive, in that it operates to permanently deprive appellants of the right to use their own property; hence, it oversteps the bounds of police power, and amounts to a taking of appellant’s property without just compensation. We do not overlook that the modern tendency is to regard the beautification of neighborhoods as conducive to the comfort and happiness of residents. But while property may be regulated in the interest of the general welfare, and in its pursuit, the State may prohibit structures offensive to the sight (*Churchill and Tait vs. Rafferty*, 32 Phil. 580), the State may not, under the guise of police power, permanently divest owners of the beneficial use of their property and practically confiscate them solely to preserve or assure the aesthetic appearance of the community. As the case now stands, every structure that may be erected on appellants’ land, regardless of its own beauty, stands condemned under the ordinance in question, because it would interfere with the view of the public plaza from the highway. The appellants would, in effect, be constrained to let their land remain idle and unused for the obvious purpose for which it is best suited, being urban in character. To legally achieve that result, the municipality must give appellants just compensation and an opportunity to be heard.³⁷⁴

³⁷⁰ *Ibid.*

³⁷¹ *Ibid.*

³⁷² CONST., Art. III, Sec. 9.

³⁷³ 104 Phil. 443 (1958).

³⁷⁴ *Id.*, at. 447-48; italics supplied.

231 Hence, the TRO issued by this Honorable Court should be lifted immediately.

E. DMCI-PDI and its buyers have suffered grave and irreparable injury by the suspension of construction and development of Torre de Manila.

232 **Rule 58, Section 6** of the 1997 Rules of Civil Procedure ("1997 Rules") provides the grounds to lift a TRO:

Grounds for objection to, or for motion of dissolution of, injunction or restraining order. — The application for injunction or restraining order may be denied, upon a showing of its insufficiency. The injunction or restraining order may also be denied, or, if granted, may be dissolved, on other grounds upon affidavits of the party or person enjoined, which may be opposed by the applicant also by affidavits. It may further be denied, or, if granted, may be dissolved, if it appears after hearing that although the applicant is entitled to the injunction or restraining order, the issuance or continuance thereof, as the case may be, would cause irreparable damage to the party or person enjoined while the applicant can be fully compensated for such damages as he may suffer, and the former files a bond in an amount fixed by the court conditioned that he will pay all damages which the applicant may suffer by the denial or the dissolution of the injunction or restraining order. If it appears that the extent of the preliminary injunction or restraining order granted is too great, it may be modified.

233 Under this rule, a TRO or injunction may be refused or, if granted, it may be dissolved in the following cases:

a. If there is insufficiency of the complaint as shown by the allegations therein. Refusal or dissolution may be granted in this case with or without notice to the adverse party.

b. If it appears after hearing that although the plaintiff is entitled to the injunction, the issuance or continuance thereof would cause great damage to the defendant, while the plaintiff can be fully compensated for such damages as he may suffer. The defendant, in this case, must file a bond in an amount fixed by the judge conditioned that he will pay all damages which the plaintiff may suffer by the refusal or the dissolution of the injunction.

c. On other grounds upon affidavits on the part of the defendant which may be opposed by the plaintiff also by affidavits.³⁷⁵

234 Here, apart from the grounds of insufficiency of the Petition and petitioner's refusal to post an injunction bond, the TRO should be lifted principally because its

³⁷⁵ Philip Morris, Inc. v. Court of Appeals, 224 SCRA 576, 598 (1993).

continuance has caused and will continue to cause grave and irreparable damage to DMCI-PDI, while petitioner will suffer no damage as a result of the lifting of the TRO. The grave and irreparable injury sustained by DMCI-PDI was discussed in detail in pars. 40 to 48 of its Urgent Motion to Lift TRO, which it adopts here. This injury is continuing and worsens by the day as the project continues to be idled.

235 In addition, millions of pesos worth of perishable supplies on site continue to deteriorate and ultimately to become valueless if not utilized or installed within a short period of time. These include the following, among others:

Wood: • unit doors • baseboard Metal: • steel doors • steel jambs • steel pipes (for fire protection) Finishes: • tiles • sealant (with expiration) Hardware: • door locks	Others (subcontracted items that are have not been completed but are subject to deterioration): • applied waterproofing (without protection) • aluminum doors and windows • gypsum cladding (in common area) • Metal framing for gypsum/ ficem cladding • i-beam separator for elevator (exposed to weather) • steel railings • ducting for ventilation
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236 In view of the (a) grave and irreparable damage that DMCI-PDI and its numerous stakeholders, including the buyers of its condominium units, have suffered and continue to suffer, while petitioner will suffer no damage³⁷⁶ from the lifting of the TRO; as well as (b) DMCI-PDI’s willingness to post a counter-bond to answer for any and all damages that the petitioner may suffer as a result of the lifting of the TRO,³⁷⁷ the TRO issued by this Honorable Court should be immediately lifted.

II. Mandamus does not lie against respondents to enjoin the construction of Torre de Manila.

A. Petitioner has no clear legal right and suffered no injury by reason of the construction of Torre de Manila.

237 **The rule of legal behavior** in a democracy is that what is not expressly or impliedly prohibited by law may be done, except when the act is contrary to morals, customs

³⁷⁶ See Petition, p. 23, par. 6.11.
³⁷⁷ DMCI-PDI Urgent Motion to Lift TRO, par. 49.

and public order.³⁷⁸ This is consistent with our civil law rule that the owner has the right to enjoy and dispose of a thing, without other limitations than those established by law.³⁷⁹ Our criminal law espouses a similar rule in that there is no crime where there is no law punishing it.³⁸⁰ These maxims flow from the fundamental right of due process of law enshrined in Article III, Section 1 of the Constitution, which states that “(n)o person shall be deprived of life, liberty or property without due process of law...”

238 DMCI-PDI, petitioner, and respondents are all agreed that there is absolutely no law, ordinance or rule prohibiting the construction of a building, regardless of height, at the background of the Rizal Monument and the Rizal Park. It follows that DMCI-PDI, as owner of a property located outside the Rizal Park and well to the rear of the Rizal Monument, should be free to exercise its right of ownership and build on its property in accordance with law. It should have the right to construct and develop Torre de Manila, a legitimate condominium project, without fear of civil liability or criminal punishment.

239 The Constitution does not establish any enforceable right, whether expressly or impliedly, for the conservation of sightlines of national parks, monuments, and even national cultural treasures. Not only is there no prohibition against the construction of Torre de Manila, but petitioner itself admits that there is no easement on the property where the project now stands that would have curtailed DMCI-PDI’s rights as owner.³⁸¹

240 Despite the absence of any law prohibiting the construction of Torre de Manila, petitioner comes to this Honorable Court to enjoin its construction and seek its demolition. Petitioner claims that the Rizal Monument and Rizal Park form part of our nation’s cultural treasure³⁸² entitled to the protection of Article XIV, Sections 15 and 16 of the Constitution.³⁸³ Specifically, petitioner asserts a purported right to the “sightline of the Rizal Monument in Luneta Park”³⁸⁴ and claims injury in that the Torre de Manila “would loom at the back and overshadow the entire monument, whether up close or viewed from a distance. No one can take a photo of the Rizal Shrine without also capturing the (Torre de Manila) at its back.”³⁸⁵

³⁷⁸ *Manila Electric Company v. Public Service Commission*, 60 Phil. Reports 658, 661 (1934).

³⁷⁹ CIVIL CODE, Art. 428.

³⁸⁰ *Republic v. Lacap*, 517 SCRA 255, 269 (2007).

³⁸¹ TSN, *Knights of Rizal*, July 21, 2015, pp. 74-77.

³⁸² Petition, p. 14, par. 5.02.

³⁸³ *Id.*, at 13, par. 5.01.

³⁸⁴ *Id.*, at 11, par. 2.21.

³⁸⁵ *Ibid.*

241 As confirmed during the oral arguments, petitioner's issue with Torre de Manila is not because of any specific law prohibiting its construction. Rather, petitioner claims a "moral"³⁸⁶ duty to call for the demolition of Torre de Manila on account of the impairment of petitioner's "right" to (a) take photographs without a "photobomb" or an intrusive tall building showing at the background; (b) celebrate Jose Rizal's birthday and death anniversary without being annoyed by a tall building 870 meters away from the national monument; (c) preserve the beauty of the "skyscape" or "skyline" of the Rizal Monument; and (d) restrict or burden private properties for the benefit of the background view of the Rizal Monument and the viewing public.³⁸⁷ Petitioner's claimed right is vague and dangerous.

242 This Honorable Court has noted during the oral arguments that the terms "dominance," "vista points," "vista corridors," "sightlines," and "setting" are not in the text of the Constitution.³⁸⁸ This notwithstanding, but taking a cue from petitioner's invocation of Article XIV, Sections 15 and 16 of the Constitution, J. Jardeleza suggested a constitutional interpretation of the word "conserve" as a term of art that supports petitioner's claim to a clear sightline or background to the Rizal Monument.³⁸⁹

243 The Honorable Justice's proposal is an exception to the general rule of constitutional construction, which require that the words employed in the Constitution be taken in their *natural and popular sense*, unless they are terms of art, in which case they are to be taken in their technical signification.³⁹⁰ Indeed, "(i)t is a well-settled principle of constitutional construction that the language employed in the Constitution must be given their ordinary meaning except where technical terms are employed. As much as possible, the words of the Constitution should be understood in the sense they have in common use."³⁹¹

244 Unfortunately, apart from the absence of any textual cues that suggest an intent to use "conserve" as a term of art, there is no authoritative text or record of deliberation on the Constitution that considers or recognizes the word "conserve" as a term of art. Fr. Joaquin G. Bernas, a member of the Constitutional Commission and author of several treatises on constitutional and political law, has noted that Article XIV, Sections 14 to 18 of the Constitution are "of little significance as constitutional law."³⁹²

³⁸⁶ See TSN, Knights of Rizal, July 21, 2015, p. 27.

³⁸⁷ *Id.*, at 5 *et seq.*

³⁸⁸ *Id.*, pp. 23-25; see also TSN, DMCI-DPI, Aug. 4, 2015, pp. 21-23.

³⁸⁹ TSN, DMCI-PDI, Aug. 4, 2015, pp. 24-26.

³⁹⁰ *El Pueblo De Filipinas v. Daño*, 87 Phil. 588, 591 (1950).

³⁹¹ *Chavez v. Judicial and Bar Council*, 676 SCRA 579, 598 (2012).

³⁹² JOAQUIN G. BERNAS, *THE 1987 CONSTITUTION OF THE PHILIPPINES: A COMMENTARY* 1261 (2003).

245 The deliberations of the Constitutional Commission also confirm that the word “conserve” refers to the development of historical and cultural heritage of the various cultures as a people and to the retrieval of lost cultural treasures to our country.³⁹³ More importantly, the Constitutional Commission deemed it prudent to leave the mechanics and scope of conservation to legislation.³⁹⁴

246 Moreover, there is no international treaty to which the Philippines is a party, nor is there customary international law, that expressly or impliedly recognizes or protects a right to a sightline of a national park or monument. Even a resort to the international instruments and treaties does not support the proposed interpretation of the term “conserve.”

247 Firstly, the charters mentioned during the oral arguments are not binding as treaty, custom or general principle of law constitutionalized through the incorporation clause. They also do not converge on a specific meaning of the term “conserve.” A survey of all of the charters mentioned during the oral arguments shows that they range from how to restore a work of art to how to contour flora in historical gardens.

248 Assuming *arguendo* that “conserve” was used in the Constitution as a term of art, its meaning in international law is so broad that it would still be necessary to define it by local legislation. Section 3 (h) of R.A. 10066 in fact defines conservation as “all the processes and measures of maintaining the cultural significance of a cultural property including, but not limited to, preservation, restoration, reconstruction, protection, adaptation or any combination thereof.” The words “preservation,” “restoration,” “reconstruction,” “protection,” and “adaptation” in the law all refer to

³⁹³ CONSTITUTIONAL COMMISSION RECORDS, Vol. 4, Rec. No. 80.

MR. OPLE: Does the Commissioner want to direct Congress to enact a law that will help bring back these treasures to our country or, at least, reasonable facsimiles or copies of these treasures?

MS. AQUINO: Yes.

MR. GUINGONA: The committee would like to recall that in the interpellations between Commissioners Ople and Rosario Braid of our committee, this matter of exportation and recovery of the Davide amendment was brought out by Commissioner Rosario Braid. Perhaps, we could also credit Commissioner Rosario Braid for this idea.

MS. ROSARIO BRAID: Madam President, I asked Commissioner Davide whether the concept of recovery which I documented in terms of all the treasures in Europe would be included in his amendment and he said yes. Actually, we fully support this provision as long as it is separate from what Commissioner Davide has already suggested. Earlier, he said yes when I interpellated him about the concept of recovering these treasures which we fully support because we have a number of people who have come to us saying that they are disturbed about the fact that we do not have the best of all our treasures since they are out of the country.

MS. AQUINO: If the committee accepts the amendment, then we will have jurisdiction in terms of sequencing of the amendment.

MR. GUINGONA: We accept the amendment. May we request that Commissioner Rosario Braid be considered as a co-sponsor. Madam President, this has been already discussed sufficiently. May we ask for a vote.)

³⁹⁴ *Ibid.*

the physical aspect of cultural properties. The term “conservation” does not contemplate the demolition of private structures that may be seen in the background of cultural properties, more so if the private structure is almost a kilometer away from the cultural property.

249 Prof. Craig L. Forrest, who teaches international law and protection of cultural heritage at the University of Queensland, states that “protection” and “safeguarding” are terms of art in international cultural heritage law but *not* the word “conserve.” Even if “conserve” were a term of art in the context of cultural heritage protection, there are several regimes where their particular meanings need to be specified. Clearly, there is no singular meaning to be followed even if it were a term of art.³⁹⁵

250 Petitioner cites the Venice Charter in support of its position that the project runs afoul of an international commitment of the Philippines.³⁹⁶ However, the Venice Charter, formally known as the 1964 ICOMOS International Charter on Conservation and Restoration of Monuments, is *not* a treaty but merely a precursor to the World Heritage Convention. It is the product of an international assembly of architects and specialists of historic buildings, whereas a treaty is an international agreement concluded between states in written form and governed by international law.³⁹⁷ The Venice Charter is not binding on states because a state is only bound by its consent.³⁹⁸

251 The Venice Charter likewise does not form part of customary international law as it does not comply with the elements found in Article 38(1)(b) of the International Court of Justice Statute. Neither is it international custom, *i.e.*, evidence of a general practice accepted as law. International law authorities³⁹⁹ have surveyed state practice and *opinio juris* and they found that only *one* of the UNESCO cultural heritage conventions may be considered a codification of customary international law: the 1953 Hague Convention, which contemplates protection of cultural properties in times of armed conflict. However, the 1953 Hague Convention clearly does not apply to this case.

252 Thus, the Venice Convention cannot be used as legal basis to protect the backdrop, background, skyline or skyline of the Rizal Monument and the Rizal Park, let alone mandate the demolition of private property. The NHCP, the authority on historical facts and interpretation, has argued that international treaties

³⁹⁵ CRAIG L. FORREST, INTERNATIONAL LAW AND THE PROTECTION OF CULTURAL HERITAGE 18 (2010; “Forrest”).

³⁹⁶ Petition, p. 18, par. 5.11.

³⁹⁷ Vienna Convention on the Law of Treaties, Article 2 (1).

³⁹⁸ North Sea Continental Shelf Cases (Federal Republic of Germany v. Denmark; Federal Republic of Germany v. Netherlands), I.C.J. REPORTS 1969, p.3, International Court of Justice (ICJ), February 20, 1969, available at <http://www.refworld.org/docid/50645e9d2.html> (last accessed Jul. 10, 2015).

³⁹⁹ Forrest, *supra*.

do not protect important views:

ATTY. DIOKNO:
One last point before I end, Your Honors, on the applicability of the international instruments on conservation of national monuments and sites.

It has been argued that the constitutional provisions on the protection and conservation of our cultural and historical heritage include the protection of views or sightlines. The NHCP begs to disagree.

In 2008, Architect Francois LeBlanc, a specialist in heritage conservation and member of the ICOMOS Academy, examined 45 international charters, declarations, conventions, and recommendation on heritage conservation, and found only two that used the word ‘views’ in the context of views to and from historic monuments and sites:

- (1) The 2005 Xi-an Declaration of the Conservation of Setting of Heritage Structures, Sites, and Areas; And
- (2) The 1976 UNESCO Recommendation concerning the Safeguarding and Contemporary Role of Historic Areas.

After reviewing these documents, however, Architect LeBlanc concluded as follows, and I quote:

“[T]he answer to the question *“Do the international charters protect important views?”* is NO, at least, not specifically.

From a review of all the international instruments for the protection of cultural heritage in the Annex that follows, it appears *that there is a need for the international community of experts in conservation to elaborate principles, definitions, and methodologies for identifying and protecting important views to and from world heritage sites as well as other historic places of national and local significance.*⁴⁰⁰

253 For his part, the Solicitor General proposed another mode of interpreting the word “conserve.” To justify that the term “conserve” includes the skyline, skyscape, background or backdrop of the Rizal Monument and the Rizal Park, he introduced a “flexible” interpretation of the Constitution and the application of the precautionary principle,⁴⁰¹ which is a principle in environmental law and not in heritage law.

254 While the Solicitor General proposes an expansive and flexible interpretation of the Constitution, he does not offer any parameters as to how the skyline, skyscape, backdrop or background of the Rizal Monument and Rizal Park should be protected—

⁴⁰⁰ TSN, NHCP, Sept. 1, 2015, pp. 8-16.
⁴⁰¹ TSN, OSG, Aug. 25, 2015, pp. 80, 84-86.

JUSTICE CARPIO:
How far from where you stand to the monument is protected?

SOLICITOR GENERAL HILBAY:
Again, Your Honor, what we’re saying is that, *there is no need for the Court to determine the metes and bounds of that sightline* but when you stand in front of that sightline you can...⁴⁰²

255 The Solicitor General would have this Honorable Court rule that the skyline, skyscape, backdrop or background of the Rizal Monument and Rizal Park are protected, without need of any legal or factual basis but on the strength of judicial notice.⁴⁰³ If this Honorable Court follows the Solicitor General’s suggestion, it would condense from thin air a peremptory rule on sightlines projecting from the Rizal Monument and into the Torre de Manila. How the “physics” of the Rizal Monument can justify that is beyond human comprehension.

256 The NHCP opposed this interpretation proposed by the Solicitor General:

ATTY DIOKNO:
...

Under accepted local, national, and international conservation practice, the state and local legislative bodies have a vital role to play in regulating the views, sightlines and setting of national monuments and historic sites.

The UNESCO Recommendation on Historic Urban Landscape, for instance, provides that member-states should “adopt the appropriate legislative institutional framework with a view to applying the principles and norms set out in this Recommendation in the territories under their jurisdiction.”

UNESCO’s Operational Guidelines for the Implementation of the World Heritage Convention, in addition, provide that “legislative and regulatory measures at national and local levels should assure the survival of the property and its protection...”

Local legislation is needed, Your Honors, because national monuments and historic sites vary in size, height, dimension and other physical characteristics; and it is the local government, in consultation with the local community, that can best determine the appropriate height restrictions to impose on buildings and to designate the views, sightlines, and backgrounds that should be protected for monuments and historic sites in their locality.

In the Municipality of Taal, Batangas, for example, for the local government in 2009 passed Municipal Ordinance No. 3 declaring the perimeters of the heritage zone and buffer, and identifying the St.

⁴⁰² *Id.*, at 150; italics supplied.
⁴⁰³ *Id.*, at 92.

Martin of Tours Basilica as the view subject to be legally protected. Hence the ordinance in Batangas specified a building height of 12 meters.

In Iloilo City, the city government in 2000 passed Implementing Rules and Regulations for Ordinance No. 00054 requiring that the building height, massing, scale and facade design of new structure be compatible with the style and character of surrounding heritage buildings.

In London, it was their City Council that determined and prescribed the legally protected sightlines to St. Paul's Cathedral, the Westminster Palace, and the Tower of London.

As could be seen on the slide, this is the slide of legally protected sightline. Next slide please. And that is the slide, the first is the slide of the sightline. And this is the sight of the legally protected view of the Cathedral.

And in Bali, it was their Provincial Government that passed legislation Imposing a height restriction on building of 15 meters - about the size of coconut tree.

In line with the accepted local, national, and international practice, the NHCP issued Guidelines on National Monuments urging local governments to impose height restrictions on buildings and to take other actions to protect the view of national monuments and sites within their territories. I quote from the Guidelines:

"It is highly recommended that towns and cities formulate zoning guidelines or local ordinances for the protection and development of monument sites and the promotion of a clear and green environment, and strictly implement these laws, especially in places where important monuments and structures are located.

A buffer zone should be provided around the vicinity of monuments and sites, and should be made part of the respective city or municipal land use and zoning regulations through local legislation.

Height of buildings surrounding or in the immediate vicinity of the monument or site should be regulated by local building code or special local ordinance to enhance the prominence, dominance, and dignity of the monument, more importantly, the national monuments."

The City of Manila, however, has not passed any legislation imposing height restrictions on buildings, or prescribing the views, sightlines, and setting to be protected for the Rizal Monument and Rizal Park.

Third, the Solicitor General argues in his position paper that mandamus lies against the NHCP; that the NHCP's statutory mandate to protect the physical integrity of cultural artifacts necessarily includes protection of the sightline of the Rizal Monument; that the Rizal Monument is a *sui generis* cultural artifact whose physical value as a National Cultural Treasure requires the preservation of its sightlines; that the only way to conserve the Rizal Monument is by removing the

impairment to its sightline, referring to the Torre de Manila; that in the area of heritage conservation, the concept of “physical integrity” has a flexible attribute; and that the construction of the Torre de Manila impairs the physical integrity of the Rizal Monument.

The Solicitor General’s arguments remind me, Your Honors, of how easy it is for lawyers to “torture words out of all semblance of meaning.” To answer him I need only to quote from his own Consolidated Comment dated December 19, 2014, where he said and I quote:

“Clearly... respondent NHCP’s duty to issue a CDO arises only when the physical integrity of the Subject cultural property is found to be in danger of destruction or significant alteration from its original state... At most, the type of alteration, deterioration or destruction alleged In the petition pertains only to the sightline of the Rizal Monument and the alleged adverse effect the Torre de Manila construction would have on the “importance” of the Rizal Monument... However, the aforementioned alterations are not constitutive of any physical damage to the monument and the park, which is what is explicitly contemplated in Section 25 of R.A. 10066...”

Undoubtedly, the above-mentioned provision speaks of danger or destruction to the physical integrity of the national cultural treasure or important cultural property. It does not denote alterations to the sightline, even if no damage to the physical integrity of the cultural property is caused...⁴⁰⁴

257 NHCP Chair Diokno, a non-lawyer, also disagreed with the Solicitor General’s position, warning that it has far-reaching implications that lack legal basis:

NHCP CHAIRPERSON DIOKNO:

Yes. In that letter, Your Honor, I wrote the Solicitor General about the far reaching implications of his new position. One was with regard to the rule of law, the second was with regard to the right of the present generation to create new heritage, alongside the heritage of our ancestors. What is the basis of that? The fundamental concept in the discipline of history, Your Honor, is the concept to historical agency, which is the power of a people to create their own history, including artifacts, including traces, including remnants of that history. And one of the concerns in heritage, in the field of heritage today, and this is true not only in the Philippines, Your Honor, but in many other cities in the world is how to balance the heritage of our ancestors with the new developments of this century, because 100 years down the line, whatever is constructed now will constitute the heritage of this generation.

According to the R.A 10066, the presumed important cultural property is only defined as 50, (five zero) years old. But let’s see we go hundred years down the line, all these new heritage now will be part of the heritage of this generation. So, part of our concern as historians is, just like as our ancestors we’re not denied by their ancestors, the right to create the heritage that they did, century ago who are we in this century to deny the same? Present generation, or even the

⁴⁰⁴ TSN, NHCP, Sept. 1, 2015, pp. 8-16.

future generations? But life goes on well beyond our death, and future generations have to have something that tells them about this century, this century, the next century, and the next century. This was what was referring to, Your Honor.⁴⁰⁵

258 Petitioner relies on R.A. 10066 as basis for its purported legal right.⁴⁰⁶ As acknowledged by everyone during the oral arguments, however, there is no law or local ordinance that establishes, whether expressly or impliedly, an enforceable right to protect or enjoy sightlines of national parks and monuments. R.A. 10066 only protects the (a) Rizal Monument and the Rizal Park; and (b) landscape within the park. It also sets a five-meter buffer zone around the monument and the park.

259 The text of the law and the congressional deliberations reveal no specific intent to include the background, backdrop, skyscape or skyline of the Rizal Park and Rizal Monument as protected cultural treasures. In Sen. Edgardo Angara’s sponsorship speech⁴⁰⁷ for Senate Bill No. 2014 (now R.A. 10066), he emphasized the importance of culture and its manifestation in tangible and intangible expression. He gave several examples of works by artists throughout the Philippines, including paintings of national artists, famous churches and structures. He characterized the importance of these cultural and historical artifacts as a reflection of the diversity of Filipino culture. Throughout this lengthy enumeration, he never mentioned the words “backdrop” or “background.”

260 When Sen. Angara referred⁴⁰⁸ to land or sites, he gave examples like Intramuros, Binondo and Fort Bonifacio, not the Rizal Monument or the Rizal Park. He expressed his dismay over the destruction of historical sites to give way to development. However, he specifically pointed to their inherent cultural or historical value, and not as a background for another structure or artwork.

261 Sen. Richard Gordon volunteered to co-sponsor the bill since tourism was his advocacy.⁴⁰⁹ He illustrated the need to protect historical sites by citing how they are now being used without regard for their historical value. He cited the example of *cuartels* once occupied by the Spaniards, now being used as city jails or allowed to deteriorate. Sen. Gordon also expressed concern over specific historical artifacts simply transported out of the Philippines to be displayed in foreign countries. In his enumeration, he likewise did not mention a need to protect the backdrop of important historical or

⁴⁰⁵ *Id.*, at 58-59.
⁴⁰⁶ Petition, par. 5.02.
⁴⁰⁷ Senate Deliberation dated Jan. 26, 2009, p. 1395.
⁴⁰⁸ *Id.*, at 1396.
⁴⁰⁹ *Id.*, at 1397.

cultural works. He merely insisted on the preservation and protection of their physical structure.

262 In the interpellation of Sen. Aquilino Pimentel, Jr., he said that the national heritage of the Philippines consisted of tangibles like buildings, monuments and archeological relics and intangibles like epics, songs and dances of ethnic communities. He deplored how caves, monuments and structures in Quezon Province have been defaced or destroyed specifically because no protection was given to them.⁴¹⁰ These examples show that the intention of the bill was to protect the physical aspect of works and sites of historical value and not the stage on which they were set. In fact, when Sen. Pimentel mentioned historical places, he said that it would be a good step to identify the sites to accord them the proper protection and preservation.

263 These discussions point to the protection and conservation of the physical integrity of the artwork or monument itself, not of any background, vista or visual corridor. This is consistent with the fact that from its inception, the protection of the Luneta, now Rizal Park, and the Rizal Monument was not envisioned to extend to its skyline or background.

264 Clearly, petitioner has no clear legal right to ask for a permanent injunction against the construction of Torre de Manila, much less demand its demolition. It has suffered no legal injury that would entitle it to a *writ* of mandamus since it admitted at the outset that it has no pecuniary interest in this case.⁴¹¹ Petitioner's allegation that Torre de Manila obstructs its view of the Rizal Monument and thereby prevents it from holding its regular rites at the site⁴¹² is patently false because it is still able to organize and hold "programs commemorative of Rizal's nativity and martyrdom."

265 The presence of nearby high-rises such as the Sunview Palace and the Eton Baypark Manila as well as government buildings such as the National Library, NM, Department of Tourism, Department of Finance and the NHCP, among others, has not prevented petitioner from regularly holding its programs in the past. In the same way, the presence of Torre de Manila, which stands 30 meters from the outermost edge of the Rizal Park and 870 meters or almost a kilometer away from the Rizal Monument, has not prevented petitioner from organizing or holding its programs.

B. The NHCP, NM and NCCA have no jurisdiction over Torre de Manila, and the City of Manila may not be compelled by

⁴¹⁰ *Id.*, at 1430.

⁴¹¹ Petition, par. 6.11.

⁴¹² TSN, Knights of Rizal, July 21, 2015, p. 14.

mandamus to revoke the permits and licenses issued to DMCI-PDI as well as to order the demolition of Torre de Manila.

266 **Well-settled is the rule** that jurisdiction is conferred only by the Constitution or by statute. Jurisdiction over the subject matter “must exist as a matter of law and cannot be fixed by agreement of the parties, acquired through, or waived, enlarged, or diminished by, any act or omission; neither can it be conferred by acquiescence of the tribunal.”⁴¹³ As administrative agencies, public respondents NHCP, NM, and NCCA may only exercise powers granted to them by law. However, an examination of their respective charters will show that these agencies do not have jurisdiction over Torre de Manila, which is a private condominium project.

267 R.A. 10086 (2009), otherwise known as the “Strengthening Peoples’ Nationalism Through Philippine History Act,” designated the NHCP, formerly known and designated as the NHI, as the primary government agency responsible for history and granted it the authority to determine all factual matters relating to official Philippine history.⁴¹⁴ R.A. 10086 vested the NHCP with the following duties:

Conduct and support all kinds of research relating to Philippine national and local history;

Develop educational materials in various media, implement historical educational activities for the popularization of Philippine history, and disseminate information regarding Philippine historical events, dates, places and personages;

Undertake and prescribe the manner of restoration, conservation and protection of the country’s historical movable and immovable objects;

Manage, maintain and administer national shrines, monuments, historical sites, edifices and landmarks of significant historico-cultural value; and

Actively engage in the settlement and resolution of controversies or issue relative to historical personages, places, dates and events.⁴¹⁵

268 In line with the above statutory mandates and specifically with respect to monuments, the NHCP Board has the power and function to determine the manner of identification, maintenance, restoration, conservation, and preservation of historical sites, shrines, structures, and monuments⁴¹⁶ as

⁴¹³ Chung Ka Bio v. IAC, 163 SCRA 534, 551 (1988).

⁴¹⁴ R.A. 10086, Sec. 5.

⁴¹⁵ *Ibid*; italics supplied.

⁴¹⁶ *Id.*, Sec. 7 (d).

well as to regulate activities pertaining to the preservation, restoration and conservation of historical property or resources.⁴¹⁷ Thus, on April 14, 2013, it declared the Rizal Monument as a “National Monument.”⁴¹⁸ Prior to this, its predecessor NHI declared the Rizal Park as a “National Historical Site” on July 5, 2015.⁴¹⁹ R.A. 10086 did not grant the NHCP any jurisdiction over private projects like Torre de Manila.

269 On the other hand, R.A. 4846 (1966), or the “Cultural Properties Preservation and Protection Act” declared that it is the policy of the State to preserve and protect important cultural properties and national cultural treasures of the nation and to safeguard their intrinsic value. Cultural properties refer to old buildings, monuments, shrines, documents, and objects that may be classified as antiques, relics, or artifacts, landmarks, anthropological and historical sites, and specimens of natural history, which are of cultural, historical, anthropological or scientific value and significance to the nation.⁴²⁰ A national cultural treasure is a unique object found locally, possessing outstanding historical, cultural, artistic and/or scientific value, which is highly significant and important to this country and nation. R.A. 4846 designated the NM as the implementing agency of the provisions of this statute.⁴²¹ Torre de Manila is not a cultural property, much less an important cultural property or a national cultural treasure.

270 R.A. 4846 was amended by P.D. 374 (1974), which provided, among others, the authority of the Director of the NM to convene the panel that shall decide as to which cultural properties are to be designated as national cultural treasures.⁴²²

271 Additionally, the NM, through R.A. 8492 (1998), has the duty to acquire documents, collect, preserve, maintain, administer and exhibit to the public, cultural material, objects of art, archaeological artifacts, ecofacts, relics, and other materials embodying the cultural and natural heritage of the Filipino nation, as well as those of foreign origin,⁴²³ and to implement the pertinent provisions of P.D. 374 and other laws on the protection and conservation of cultural properties.⁴²⁴ In line with Sec. 6 of P.D. 374, the NM, through Museum Declaration No. 9-2013, declared the Rizal Monument in Luneta as a “National Cultural Treasure” on November 14, 2013. This declaration came after DMCI-PDI was granted zoning and building permits for Torre de Manila.

⁴¹⁷ *Id.*, Sec. 7 (I).
⁴¹⁸ The declaration of the NHCP Board was by virtue of its Resolution No. 5.
⁴¹⁹ Pursuant to NHI Board Resolution No. 7, s. of 1995.
⁴²⁰ R.A. 4846, Sec. 3 (a).
⁴²¹ *Id.*, Sec. 4.
⁴²² P.D. 374, Sec. 6.
⁴²³ R.A. 8492, Sec. 7.1.
⁴²⁴ R.A. 8492, Sec. 7.6.

272 None of the above-mentioned laws granted the NM jurisdiction over private property like Torre de Manila.

273 Similar to the NHCP and the NM, the NCCA was created by statute through R.A. 7356. It is vested with the duty to (a) formulate policies for the development of culture and arts; (b) implement these policies in coordination with affiliated cultural agencies; (c) coordinate the implementation of programs of these affiliated agencies; (d) administer the National Endowment Fund for Culture and Arts (NEFCA); (e) encourage artistic creation within a climate of artistic freedom; (f) develop and promote the Filipino national culture and arts; and (g) preserve Filipino cultural heritage.⁴²⁵

274 The respective charters of the NHCP, NM, and NCCA emphasize the conservation and preservation of national historical and cultural heritage as part of their duties. They do not grant these government agencies power over any private property. To strengthen the mandates of the said agencies and to implement the state policies found in Article XIV, Sections 14, 15, 16, and 17 of the Constitution, Congress enacted R.A. 10066. Pursuant to R.A. 10066's objective to protect, preserve, conserve, and promote national cultural heritage, it named the NM, National Library, NHCP (then, the NHI), National Archives, Cultural Center of the Philippines, and the *Komisyon sa Wikang Filipino* (not including the NCCA, which was separately defined in the law as the "Commission") – as "cultural agencies" and authorized them to issue CDOs in appropriate cases by virtue of Section 25 of the law:

Power to Issue a Cease and Desist Order. - When the physical integrity of the national cultural treasures or important cultural properties are found to be in danger of destruction or significant alteration from its original state, the appropriate cultural agency shall immediately issue a Cease and Desist Order *ex parte* suspending all activities that will affect the cultural property. The local government unit which has the jurisdiction over the site where the immovable cultural property is located shall report the same to the appropriate cultural agency immediately upon discovery and shall promptly adopt measures to secure the integrity of such immovable cultural property. Thereafter, the appropriate cultural agency shall give notice to the owner or occupant of the cultural property and conduct a hearing on the propriety of the issuance of the Cease and Desist Order. The suspension of the activities shall be lifted only upon the written authority of the appropriate cultural agency after due notice and hearing involving the interested parties and stakeholders.

⁴²⁵ R.A. 7356, Sec. 8.

275 As to the lack of jurisdiction of the NM, NHCP, and NCCA to issue CDOs in relation to the Rizal Park and the Rizal Monument pursuant to Section 25 of R.A. 10066, DMCI-PDI respectfully repleads and adopts the arguments on pages 14 to 20 and 25 to 31 of the OSG's Consolidated Comment dated January 12, 2015.

276 Another reason why Section 25 of R.A. 10066 does not apply to DMCI-PDI and to the construction of Torre de Manila is because the said provision clearly states that "the appropriate cultural agency shall give *notice* to the *owner or occupant of the cultural property* and *conduct a hearing* on the propriety of the issuance of the Cease and Desist Order. The suspension of the activities shall be lifted only upon the written authority of the appropriate cultural agency after due notice and hearing involving the interested parties and stakeholders."⁴²⁶

277 Section 25 of R.A. 10066 pertains to CDOs issued against *owners or occupants of properties declared as national cultural treasures or important cultural properties*, and not to owners of private properties not declared as such. The law requires the appropriate cultural agency to notify the owner or occupant of the subject cultural property and to conduct a hearing on the propriety of the issuance of the CDO. The purpose is, of course, to accord due process to the owner or occupant of the cultural property.

278 The said provision clearly does not apply to DMCI-PDI since it is neither the owner nor the occupant of the Rizal Park and the Rizal Monument. Further, since Torre de Manila has *not* been declared a national cultural treasure or an important cultural property, the said provision cannot apply to the project.

279 Further, the power to issue CDOs on the part of the "cultural agencies" (not including the NCCA) requires, as a condition precedent, a report from the local government unit that has the jurisdiction over the site where the immovable cultural property is located that "the *physical integrity* of national cultural treasures or important cultural properties are found to be in danger of destruction or significant alteration from its original state."⁴²⁷

280 However, the City of Manila, which has jurisdiction over the site where the Rizal Park and the Rizal Monument are located, has not made a finding, let alone submitted a report, that the physical integrity of the park and monument is endangered by the construction of Torre de Manila. To the contrary,

⁴²⁶ Italics supplied.

⁴²⁷ Italics supplied.

the City of Manila has issued all authorizations for the construction of Torre de Manila. There is therefore no basis for the “appropriate cultural agency” to issue any CDO against the construction of Torre de Manila.

281 The NHCP’s lack of jurisdiction over Torre de Manila is bolstered by the fact that the condominium project is located on privately-owned property outside the boundaries of the Rizal Park. At the meeting of the NHCP Board on October 19, 2012, after making a finding that the issue with respect to Torre de Manila is “whether (it) blocks the visual corridor (of) the Rizal Monument,”⁴²⁸ the Board noted that,

... in the first place, the area has not been declared a historic center/heritage zone and granting that the Rizal Park is a national landmark, no buffer zone has been delineated. Also, the national building code does not prescribe any height limit for buildings. The Board therefore decided to advise the city government to designate a no buffer zone around the Rizal Park. The Board, however, has no basis to prevent the construction of the building since it does not obstruct the front view of the Rizal monument.⁴²⁹

282 During the oral arguments, NHCP admitted that even if a buffer zone was legislated for the Rizal Park, the situs of Torre de Manila was still outside of the park’s boundaries since the legal buffer zone was only five meters.⁴³⁰ Further, since the Torre de Manila construction site was located on property that was not part of the Rizal Park, any decision with respect to that portion was outside the jurisdiction of the NHCP.⁴³¹

283 Hence, it is clear that the NCCA, NM, and NHCP have no jurisdiction to enjoin the construction of Torre de Manila, much less direct its demolition.

284 In relation to the issue of whether or not the City of Manila may be compelled to revoke the permits and licenses issued DMCI-PDI and to order the demolition of Torre de Manila, DMCI-PDI respectfully repleads and adopts the arguments of the City of Manila with respect to the said issue in its Comment dated December 10, 2014, Position Paper dated July 15, 2015, and Memorandum dated September 17, 2015.

285 Resolution No. 5, s. 2014, which granted a variance in favor DMCI-PDI as well as ratified all permits, licenses and authorizations previously issued to it, was the “final

⁴²⁸ See Minutes of the Meeting of the NHCP Board dated October 19, 2012, p. 5 (Consolidated Comment of the NHCP, NM, and NCCA dated Jan. 12, 2015, Annex 8).

⁴²⁹ *Ibid.*

⁴³⁰ TSN, NHCP, Sept. 1, 2015, p. 34.

⁴³¹ *Id.*, at 35.

action” of the City of Manila that allowed construction of Torre de Manila despite all the objections to the project.⁴³² There was clearly no ministerial duty enjoined by law that the City of Manila failed to perform. Hence, petitioner is not entitled to the remedy of *mandamus* against the City of Manila.

III. *Petitioner has no legal standing or any legal right or interest to institute this proceeding. In fact, petitioner filed the Petition in bad faith, without any legal basis, and with the intention of inflicting substantial injury to DMCI-PDI and its stakeholders.*

286 **As to petitioner’s lack of legal standing** or any legal right or interest to file and prosecute this action, DMCI-PDI repleads and adopts the arguments in pars. 54 to 87 of its Comment *Ad Cautelam* dated November 11, 2014.

287 Petitioner may not invoke the doctrine on citizen suits since the same pertains to *individual* citizens and not to “corporate citizens.” While the laws allowing citizen suits do not define the term “citizen,” a textual examination of the constitutional provisions on citizenship reveals that the term refers to *individual* citizens, given that the Constitution speaks of “natural-born citizens” and persons whose “fathers and mothers are citizens of the Philippines.” Article IV of the Constitution provides:

Citizenship

Section 1. The following are citizens of the Philippines:

- (1) Those who are citizens of the Philippines at the time of the adoption of this Constitution;
- (2) Those whose fathers or mothers are citizens of the Philippines;
- (3) Those born before January 17, 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority; and
- (4) Those who are naturalized in accordance with law.

Section 2. Natural-born citizens are those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship. Those who elect Philippine citizenship in accordance with paragraph (3), Section 1 hereof shall be deemed natural-born citizens.

Section 3. Philippine citizenship may be lost or reacquired in the manner provided by law.

⁴³² See TSN, HR Committee on Metro Manila Development, Jul. 1, 2015, p. 23, a copy of which is attached as Annex 11.

Section 4. Citizens of the Philippines who marry aliens shall retain their citizenship, unless by their act or omission they are deemed, under the law, to have renounced it.

Section 5. Dual allegiance of citizens is inimical to the national interest and shall be dealt with by law.

288 Clearly, corporations are not included in the enumeration of “citizens of the Philippines.” Petitioner’s invocation of the citizen suit doctrine is utterly misplaced. To be sure, petitioner has not established that corporations may invoke the doctrine on citizen suits to file original actions for injunction before this Honorable Court. To DMCI-PDI’s knowledge, there is no precedent where this Honorable Court expressly recognized the right of a corporation to institute an original action for injunction directly before this Honorable Court on the basis of the citizen suit doctrine. As a corporate entity created by mere fiction of law, petitioner cannot claim to be a citizen empowered to institute and maintain a citizen suit.

289 Petitioner may not also invoke Section 7 of R.A. 7356 to claim that it has legal standing as a “corporate citizen” to institute this action. The said provision confers no legally enforceable and demandable right to petitioner or to anyone since it is only among the “Declaration of Principles” under Title I of the law. In short, it is but one of the ideals or principles for which Congress enacted R.A. 7356. This interpretation is consistent with the rule provided under Article 1158 of the Civil Code that obligations arising from statute must be clearly and expressly determined, thus:

Obligations derived from law are not presumed. *Only those expressly determined in this Code or in special laws are demandable, and shall be regulated by the precepts of the law which establishes them;* and as to what has not been foreseen, by the provisions of this Book.⁴³³

290 Here, the relevant part of Section 7 of R.A. 7356 expresses in a general sense the duty of every citizen to “preserve and conserve the Filipino historical and cultural heritage and resources.” This provision is a statement of the statute’s overarching purpose and does not expressly determine an enforceable right or a corresponding demandable obligation that petitioner may invoke.

291 Aside from petitioner’s obvious lack of legal personality to institute this proceeding, petitioner filed the Petition in bad faith, without any legal basis, and with the intention of inflicting substantial injury to DMCI-PDI and its stakeholders.

⁴³³ Italics supplied.

292 At the outset, petitioner admitted during the oral arguments that the main bases of its Petition, *i.e.*, the NHCP Guidelines and the Venice Charter, are not legally binding laws.⁴³⁴ Petitioner also admitted that Article XIV, Sections 15 and 16 of Constitution, which are cited on pages 13-14 of the Petition, are not self-executing.⁴³⁵ As earlier discussed, petitioner’s invocation of Section 7 of R.A. 7356 is also unavailing since the said provision is a mere declaration of policy and not a source of any legally demandable right.

293 Worse, petitioner made a misrepresentation before this Honorable Court and tried to mislead the parties when it misquoted the NHCP Guidelines in its Petition, saying that “(c)ommercial *buildings* should not proliferate in a town center where a dominant monument is situated.”⁴³⁶ As J. Velasco pointed out, the correct text of the NHCP Guidelines states “commercial *billboards*” and not “commercial buildings.” Buildings and billboards are worlds apart. Obviously, petitioner used the term “commercial buildings” instead of “commercial billboards” to make the provision applicable to Torre de Manila. Petitioner’s misquotation of the NHCP Guidelines violates Rule 10.02 of the Code of Professional Responsibility, which renders its counsel administratively liable.

294 During the oral arguments, petitioner said that its justification for filing this action directly with this Honorable Court was that processes in lower courts were excruciatingly slow. According to petitioner, had it filed its action with the lower courts, Torre de Manila would already be completed.⁴³⁷ However, by no means may this lame excuse be construed as sufficient cause to disregard well-settled rules and jurisprudence, let alone reason to undermine the jurisdiction of the lower courts.

295 The Regional Trial Court (“RTC”), which has original jurisdiction over petitions for injunction pursuant to Section 21⁴³⁸ of Batas Pambansa Blg. 129 (1980), otherwise known as the “Judiciary Reorganization Act of 1980,” has the power to issue TROs and *writs* of preliminary injunction (“WPI”) to enjoin or prohibit certain acts. These are equally speedy and adequate provisional remedies readily available to petitioner, assuming it is entitled

⁴³⁴ TSN, Knights of Rizal, July 21, 2015, pp. 26-28, 102.
⁴³⁵ *Id.*, at 11.
⁴³⁶ Petition, p. 17; italics supplied.
⁴³⁷ See TSN, Knights of Rizal, July 21, 2015, p. 22.
⁴³⁸ B.P. 129, Sec. 21 provides:
Original Jurisdiction in Other Cases. — Regional Trial Courts shall exercise original jurisdiction:
(1) In the issuance of writs of certiorari, prohibition, mandamus, quo warranto, habeas corpus and *injunction* which may be enforced in any part of their respective regions; and
... (Italics supplied).

to them. Petitioner’s immediate recourse to this Honorable Court, the highest court of the land, betrays its arrogance and its contempt for lower courts and the rule of law.

296 In addition, petitioner also violated the doctrine of exhaustion of administrative remedies when it failed to file its complaint with the proper government agency before resorting to this Honorable Court. Petitioner cannot feign ignorance of the Manila City Council’s hearings and investigations involving Torre de Manila because as early as June 22, 2012, it was notified of Resolutions 121 and 146 and was invited to the council’s committee hearings.⁴³⁹ In fact, petitioner admitted that “during the public hearings at the Manila City Hall, (petitioner) also participated through (its) representatives.”⁴⁴⁰

297 Hence, petitioner had every opportunity to oppose the construction of Torre de Manila at the administrative level. The fact that petitioner filed its Petition only on September 12, 2014 when the construction of Torre de Manila was already 22.83% complete⁴⁴¹ and the structure was already on the 22nd level smacks of bad faith. It waited two long years before it finally filed its Petition and only after substantial damage and injury could be inflicted to DMCI-PDI and its numerous stakeholders. Petitioner’s flimsy excuse that “(i)t was only after consideration of all factors, all concerns, all possible effects of an action in Court did (it) decide to file the petition last September 12, 2014” is incredible because such “consideration” could not have taken two long years, if petitioner were truly serious about this Petition.

298 Based on its misrepresentation in its Petition, its cavalier attitude during the oral arguments⁴⁴² and its admission that this action is based on tenuous grounds, petitioner clearly filed this action in bad faith and for no purpose other than to drag DMCI-PDI into an expensive and protracted litigation, malign its good name and reputation, and violate its property rights without due process of law. With all due respect, this Honorable Court should immediately dismiss this baseless Petition.

Closing

299 **This case attempts to enlarge the limits** of judicial power. Faced with an action filed by an assembly of zealous men who have sworn to protect the name of a national hero and an issue magnified by public clamor whose flames are

⁴³⁹ Annex 9a.
⁴⁴⁰ TSN, Knights of Rizal, Jul. 21, 2015, p. 21.
⁴⁴¹ *Id.*, at p. 20.
⁴⁴² *Id.*, at pp. 20-21.

fanned by a vacillating “People’s Tribune,” this Honorable Court is asked to flex its judicial muscle to the breaking point.

300 No matter how fervent and impassioned petitioner’s or the public’s pleas may be, this Honorable Court should remind itself that judicial activism should never be allowed to become judicial exuberance.⁴⁴³ At the end of the day, the judicial whistle needs to be blown for a purpose and with caution. It needs to be remembered that this Honorable Court cannot run the government.⁴⁴⁴

301 There is no qualm that this Honorable Court has the power to suspend procedural rules in the exercise of its inherent power to promulgate rules concerning pleading, practice, and procedure in all courts, as expressly recognized in the Constitution.⁴⁴⁵ With all due respect, however, this Honorable Court has been too liberal in its application of its rules of procedure—to the extent of bending over backwards to keep alive a substantively and procedurally defective Petition by throwing it several lifelines.

302 *First*, the Petition filed by petitioner is evidently one for injunction—based on its caption, its allegations, and the relief prayed for. Basic as a hornbook principle is that jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint, which comprise a concise statement of the ultimate facts constituting the plaintiff’s cause of action. The nature of an action, as well as which court or body has jurisdiction over it, is determined by the allegations contained in the complaint of the plaintiff, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein.⁴⁴⁶

303 Under Article VIII, Section 5 of the Constitution, this Honorable Court has no original jurisdiction over a petition for injunction. This notwithstanding, this Honorable Court *motu proprio* treated the Petition as one for *mandamus*. In *Macasiano v. National Housing Authority*,⁴⁴⁷ this Honorable Court held

⁴⁴³ Chavez v. Judicial and Bar Council, 696 SCRA 496, 518 (2013) *citing* the Dissenting Opinion of Chief Justice Panganiban, Central Bank (Now Bangko Sentral Ng Pilipinas) Employees Association, Inc. v. Bangko Sentral ng Pilipinas, 446 SCRA 299 (2004), *citing* Peralta v. COMELEC., 82 SCRA 30, 77 (1978), *citing* concurring and dissenting opinion of former Chief Justice Fernando, *citing* Malcolm.

⁴⁴⁴ Dissenting Opinion of then Associate Justice (now Chief Justice) Maria Lourdes P. A. Sereno in Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay, 643 SCRA 90 (2011) *citing* Justice Dr. A.S. Anand, Supreme Court of India, “Judicial Review – Judicial Activism – Need for Caution,” in Soli Sorabjee’s Law and Justice: An Anthology, Universal Law Publishing Company, (2003), at p. 377. Also in Justice A.S. Anand, Millenium Law Lecture Series, Thursday, October 21, 1999, Kochi, Kerala, *available at* <http://airwebworld.com/articles/index.php> (last accessed on Nov. 17, 2010).

⁴⁴⁵ Solicitor General v. The Metropolitan Manila Authority, 204 SCRA 837, 842 (1991).

⁴⁴⁶ Padlan v. Dinglasan, 694 SCRA 91, 98 (2013).

⁴⁴⁷ 224 SCRA 236 (1993).

that a petition for declaratory relief may be treated as one for prohibition or *mandamus* “if it has far reaching implications and raises questions that need to be resolved; but the exercise of such discretion presupposes, at the outset, that the petition is otherwise viable or meritorious.”⁴⁴⁸ In this case, the Petition is not at all viable or meritorious as counsel for petitioner has himself admitted that petitioner *does not invoke a legal right, but merely a moral one, to the “awe”*⁴⁴⁹ of the Rizal Monument.

304 In *Gamboa v. Teves*,⁴⁵⁰ another petition for declaratory relief was treated as a petition for *mandamus* on the ground that the issue raised therein had far-reaching implications. At the same time, however, this Honorable Court clarified that the threshold issue raised must be a purely legal issue of transcendental importance. This is not the case here. The issues raised here, *i.e.*, whether or not the Torre de Manila mars the “sightline” of the Rizal Monument and whether or not the Torre de Manila exceeds the LUIC under the Manila zoning ordinance, both depend on findings of facts that this Honorable Court cannot resolve as it is not a trier of facts.⁴⁵¹

305 Despite petitioner’s failure to hurdle the standards set in jurisprudence to qualify a pleading not within the authority of this Honorable Court into one that is within its jurisdiction, this Honorable Court *motu proprio* “converted” the Petition as one for *mandamus* if only to breathe life to the Petition’s certain demise. This is the first lifeline.

306 *Second*, as discussed above and as admitted by petitioner’s counsel, petitioner failed to establish that a law existed for the protection of the sightline of the Rizal Monument. In fact, petitioner even admitted that there was no legal right over the sightline and that only a *moral right* existed for its protection.

307 It is too fundamental not to enforce the precept that justice is done according to law. As a rule, equity follows the law. There may be a moral obligation, often regarded as an equitable consideration (meaning compassion), but if there is no enforceable legal duty, the action must fail although the disadvantaged party deserves commiseration or sympathy.⁴⁵²

⁴⁴⁸ *Id.*, at 243.

⁴⁴⁹ TSN, Knights of Rizal, July 21, 2015, p. 79.

⁴⁵⁰ 652 SCRA 690 (2011).

⁴⁵¹ *Co v. Vargas*, 660 SCRA 451, 458 (2011).

⁴⁵² *Rural Bank of Paranaque, Inc. v. Remolado*, 135 SCRA 409, 412 (1985).

308 Be that as it may, during the oral arguments before this Honorable Court, there was a painstaking and meticulous attempt to establish petitioner's position by pursuing arguments and propositions that petitioner never even submitted in its pleadings. Thus, this Honorable Court effectively intercalated the patently defective construct of the Petition and advocated in favor of petitioner by "arguing" that there was a legal issue arising from the need to determine the meaning of the term "conserve" in Article XIV, Section 15 of the Constitution and that there was purportedly grave abuse of discretion on the part of the Manila CPDO in issuing the zoning permit without a prior variance in favor of DMCI-PDI. This is the second lifeline.

309 *Third*, the Solicitor General's belated Position Paper was allowed and admitted by this Honorable Court over DMCI-PDI's objections. Worse, it was allowed to do a sudden 180-degree turn midway into the proceedings, without any supervening event. This Honorable Court seemed to brush aside the fact that the Solicitor General's allegations in its Consolidated Comment constitute judicial admissions that are conclusive upon him and his clients, and cannot be contradicted unless shown to have been made through palpable mistake or that no such admission was made.⁴⁵³ Instead, this Honorable Court apparently focused on the Solicitor General's exercise of his discretion in the management of the case.⁴⁵⁴

310 Even if the Solicitor General were not bound to admissions previously made before this Honorable Court, the Solicitor General cannot trivialize his clients' interests on the say-so of two individuals⁴⁵⁵ and due to an apparent subsequent realization and understanding of the position he originally advocated. This Honorable Court is respectfully reminded of its ruling that the Solicitor General may not "abdicate his function through an arbitrary exercise of his discretion."⁴⁵⁶

311 With all due respect, it would be a travesty if this Honorable Court would sanction the Solicitor General's sudden, unexplained, and unwarranted epiphany midway into the proceedings because of the urging of two persons influential to him. The situation is only made worse considering that the Solicitor General's shift in position is a clear conflict of interest against its own clients in the same litigation—clients who have laid down their respective positions (based on the Consolidated Comment), which the Solicitor General is duty-bound to defend.

⁴⁵³ PLDT v. Roberto Pingol, 630 SCRA 413, 421 (2010).

⁴⁵⁴ Gonzales v. Chavez, 205 SCRA 816, 841 (1992).

⁴⁵⁵ TSN, OSG, Aug. 25, 2015, p. 116.

⁴⁵⁶ *Ibid.*

312 The Solicitor General must be reminded that no emotions, of whatever kind and degree, should be allowed to becloud his high sense of duty and commitment to country and people.⁴⁵⁷ As it stands now, the Solicitor General has a conflict of interest with both the NHCP and the NCCA—the latter still a client of his. This clear conflict of interest was brought to the fore when the NCCA itself filed a Memorandum dated September 21, 2015, despite the fact that the Solicitor General already filed a Memorandum on the same date on behalf of the NCCA. According to the Solicitor General, the NCCA has no jurisdiction to issue a CDO pursuant to Section 25 of R.A. 10066;⁴⁵⁸ the NCCA argues otherwise.

313 As regards the NHCP, even the agency itself, as pointed out by Chief Justice Maria Lourdes P. A. Sereno,⁴⁵⁹ was shocked by the Solicitor General’s flip-flopping. NHCP Chair Diokno, in a letter dated July 29, 2015 addressed to the Solicitor General stated that: “(y)ou advised me not to worry about future cases and that you would be around to defend us. But to change your mind again in the middle of a case, what are we to do?”⁴⁶⁰ This brings to mind a question that remains unanswered since the Solicitor General changed his stance. Who is the OSG *really* representing in this case? If it is not the NHCP and the NCCA, who both submitted Memorandums in conflict with the Solicitor General’s stated legal position, then it also cannot be the National Museum, whose Director, Jeremy Barns, signed the unanimous NHCP Resolution dated October 19, 2012 stating that—

The issue is whether or the Torre de Manila blocks the visual corridor to the Rizal monument. The Board noted that in the first place, the area has not been declared a historic center/heritage zone and granting that he Rizal Park is a national landmark, no buffer zone has been delineated. Also, the national building code does not prescribe any height limit for the buildings. The board therefore decided to advise the city government to designate a buffer zone around Rizal Park. The Board, however, has no basis to prevent the construction of the building since it does not obstruct the front view of the Rizal Monument.⁴⁶¹

314 Sadly, the only apparent benefactor of the Solicitor General’s change in position is petitioner, who admittedly failed to lay down its legal basis in the Petition and to defend its position during the oral arguments. This is the third lifeline.

⁴⁵⁷ *Gonzales v. Chavez*, 205 SCRA 816, 844 (1992).

⁴⁵⁸ TSN, OSG, Aug. 25, 2015, p. 87.

⁴⁵⁹ *Id.*, at 184–85.

⁴⁶⁰ *Id.*, at 185.

⁴⁶¹ OSG Consolidated Comment, Annex 8, Sec. 4.b.

315 *Fourth*, during the oral arguments, this Honorable Court impressed upon the parties its power (and intention) to again convert the proceedings by treating petitioner's Petition also as one for *certiorari*. This Honorable Court, through J. Jardeleza, even asked the Solicitor General to advocate such move by providing jurisprudence where this Honorable Court made findings on grave abuse of discretion in a petition for *mandamus*, in addition to the four cases already found by the staff of J. Jardeleza.⁴⁶² With due respect, this Honorable Court seems too generous to petitioner.

316 With respect to the four cases this Honorable Court is poised to use to treat the Petition as both *mandamus* and *certiorari*, will this Honorable Court qualify its application to this case? Were oral arguments held in those four cases despite an Advisory issued by this Honorable Court listing issues pertaining only to the ministerial duties but not on *certiorari*? Did the conversion of the proceedings in the four cases happen *after* the oral arguments before this Honorable Court? Were the concerned respondents given substantive and procedural due process to meet the new and different issues of *certiorari*?

317 Like all rules, procedural rules should be followed except only when, for the most persuasive of reasons, they may be "relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the prescribed procedure."⁴⁶³ The Petition suffers from one too many procedural defects that this Honorable Court, at the first instance, should not have brushed aside. At this late stage, this Honorable Court should not extend petitioner another lifeline and become its advocate, lest it forget its duty simply to adjudicate and to uphold the rule of law.

318 It bears reiterating that petitioner anchors its cause of action on the nebulous right to the undefined sightline of the Rizal Monument allegedly included in the State's duty to "conserve" the nation's historical and cultural heritage, which allegedly includes the Rizal Monument. Petitioner stakes its claim on its supposed rights to take photographs without a "photobomber" in the background, to celebrate Rizal's birth and death anniversary without being annoyed by a tall building 870 meters away, and to preserve the beauty of the skyline of the Rizal Monument—when Jose Rizal himself only wanted an unassuming resting place in the earth, with a stone on top, a cross, his name, date of birth, date of death, and nothing more.⁴⁶⁴

⁴⁶² *Id.*, at 96

⁴⁶³ *Anillo v. COSLAP*, 560 Phil. 499, 509 (2007).

⁴⁶⁴ LEON MA. GUERRERO, *THE FIRST FILIPINO* 514–15 (2003); Ambeth R. Ocampo, "Much ado about Torre: Rizal asked only for cross on tombstone," *Phil. Daily Inquirer*, Aug. 23, 2015, available at <http://opinion.inquirer.net/87853/much-ado-about-torre-rizal-asked-only-for-cross-on-tombstone#ixzz3kY27Rkls> (last accessed on Sept. 20, 2015).

Indeed, as observed by Ambeth R. Ocampo, former NHCP Chair and history columnist of the *Philippine Daily Inquirer*, “Rizal might well be amused about the honor and respect we accord him, manifested in the fierce defense of a monument and a sight line. God forbid that Rizal comments with the title of Shakespeare’s play: ‘Much ado about nothing.’”⁴⁶⁵

319 On the other hand, DMCI-PDI’s constitutional rights to due process, to just compensation and against *ex-post facto* laws hang in the balance. What petitioner would have this Honorable Court do is to demolish the Torre de Manila without any law providing for such penalty. Worse, DMCI-PDI is at the risk of losing its properties without any just compensation, especially since petitioner was not required to post a TRO bond.

320 It is not amiss to point out that the Constitution likewise guarantees the stability of laws. Private enterprises have the right to rely on the stability of the law and the permits granted by government, who thereby encourages private investment in affordable and reasonably-priced homes that contribute to the urban renewal and development of Manila.

321 This Honorable Court should likewise consider that the TRO still in effect has caused over 400 on-site laborers and hundreds of off-site laborers to be put out of work. Millions of pesos worth of perishable construction materials on site are in danger of deterioration by the day. Installment payments from buyers have likewise been suspended. Irreparable reputational damage has been suffered by DMCI-PDI. Worse, to penalize DMCI-PDI and demolish Torre de Manila for exercising a legitimate property right is to cause fear and chaos among owners whose properties lie against the backdrop or are seen in the background of national monuments. With all due respect, this Honorable Court should not allow this to happen.

322 The words of this Honorable Court, speaking through the eminent Justice J. B. L. Reyes, ring true now more than ever.

Regardless of the opinion of zealots that property may properly, by zoning, be utterly destroyed without compensation, such principle finds no support in the genius of our government nor in the principles of justice as we known them. Such a doctrine shocks the sense of justice. *If it be of public benefit that property remain open and unused, then certainly the public, and not the private individuals, should bear the cost of reasonable compensation for such property under the rules of law governing the condemnation of private property for public use.*⁴⁶⁶

⁴⁶⁵ Ambeth R. Ocampo, “Torre de Manila: Flap repeats itself,” *Phil. Daily Inquirer*, Aug. 30, 2015, available at <http://opinion.inquirer.net/88066/torre-de-manila-flap-repeats-itself#ixzz3kY2tScTd> (last accessed on Sept. 30, 2015).

⁴⁶⁶ *People v. Fajardo*, *supra*, at p. 448; italics supplied.

323 Indeed, obedience to the rule of law forms the bedrock of our system of justice.⁴⁶⁷ No less than the fundamental law of the land dictates that the Government shall promote the common good, and conserve and develop our patrimony under the rule of law.

324 This Honorable Court, above all, is tasked with the solemn duty to ensure that the rule of law is upheld, not to make the law. That there is no such law protecting the sightline, background or vista of the Rizal Monument and the Rizal Park is highlighted by the fact that Sen. Pia S. Cayetano only recently proposed a bill on June 10, 2015⁴⁶⁸ for the protection of the surroundings and vista of cultural properties. While the conservation or protection of the background and sightline of cultural properties may be laudable, recourse cannot be had before the courts, even if it be before the highest court of the land, for the creation of a new right. Suffice it to state that this Honorable Court cannot supply legislative omissions. The proper route is to knock before the doors of Congress. Otherwise, the rule of law will be nothing more than an empty and illusory platitude.

325 Thus, in the absence of any constitutional or legal provision protecting or conserving the sightline of the Rizal Monument, the Torre de Manila remains to be a legitimate expression of DMCI-PDI's right to property. To allow the Torre de Manila to rise against the backdrop of Jose Rizal's monument is not to tarnish his memory or overshadow his greatness as a national hero. Rather, to allow the Torre de Manila to stand tall behind Jose Rizal is a towering manifestation that this Honorable Court is firm in its commitment to uphold the rule of law.

RELIEF

WHEREFORE, private respondent DMCI Project Developers, Inc. respectfully prays that this Honorable Court dismiss the Petition dated September 12, 2014 and immediately lift the Temporary Restraining Order it issued in its Resolution dated June 16, 2015.

It also prays for other just or equitable relief.

Respectfully submitted.

Makati City, September 29, 2015.

⁴⁶⁷ *People v. Veneracion*, 249 SCRA 244, 251 (1995).

⁴⁶⁸ TSN, NHCP, Sept. 1, 2015, p. 10.



*Each one writes history according
to his convenience.*

– Jose Rizal, letter to Blumentritt,
written at Leipzig, August 22, 1886

