

Dasmarinas Village Association Inc.

1417 Campanilla Street, Dasmarinas Village

Tel. No.: 817-3316; Fax No.: 810-2795

DVA Circular No. 04 – 09

March 24, 2004

On Our Deed Restrictions and the Pre-schools

Dear fellow DVA members,

We wish to clarify the issues involving our Deed Restrictions and the pre-schools operating within our village.

On our Deed Restrictions

Our Association was formed to enforce, among other things, restrictions on the use of lots within Dasmarinas Village, Makati City.

These restrictions on the use of lots within our village were originally imposed by the Ayala Corporation and later embodied in an agreement called Building Rules and Regulations and Deed Restrictions ("Deed Restrictions") that we adopted and committed ourselves to follow.

Our Deed Restrictions limits the use of lots within Dasmarinas Village exclusively to "residential purposes" and further limits the type of building to be erected on a "single lot" to "only one single family house."¹

We purposely adopted our Deed Restrictions to preserve the exclusive residential character and quality of life in our village.

The terms of our Deed Restrictions are, therefore, contractual obligations that each one of us is committed to comply with in good faith.² They are there because of *our will*.

¹ Our Deed Restrictions provides: "Section 2. Use of Lots. - x x x

b) Lots shall be used only for residential purposes.

c) Only one single family house may be constructed on a single lot.

x x x

9) The over-all plan must clearly show it is 'A Single Family House'

x x x"

² Section 4, Part I of our Deed Restrictions provides: "The foregoing restrictions shall remain in force during the life of the Association for 50 years from January 1, 1965, unless sooner cancelled in its entirety by two-thirds (2/3) votes of the members in good standing of the Dasmarinas Village Association. However, the Association may, from time to time add new ones, amend or abolish, particular building and architectural restrictions only or parts thereof by majority rule."

All real estate owners or long-term lessees³ of lots within Dasmarinas Village, who automatically become members of the Association,⁴ are bound by the Association's Articles of Incorporation, Amended By-Laws, Rules and Regulations ("By-Laws"), Deed Restrictions, and the Resolutions adopted by the Board of Governors implementing, among other things, the provisions of such Deed Restrictions.⁵

On implementing the Deed Restrictions

Your Board of Governors is tasked, among other things, "to enforce existing deed restrictions in the Dasmarinas Village and adopt such lawful rules and regulations implementing the deed restrictions with or without penalty, governing the use and occupancy of properties in Dasmarinas Village."⁶

On November 19, 1997, the then Board of Governors adopted Board Resolution No. BG-948-97, providing as follows:

"WHEREAS, Dasmarinas Village is solely a residential community;

WHEREAS, all the lots, except Colegio San Agustin which was earmarked at the outset for the operation of a school, are solely and exclusively intended for residential purposes only, pursuant to Section 2-b, Article I of the Deed Restrictions of Dasmarinas Village Association Inc. (DVA);

WHEREAS, there have been reports from the DVA security force and other sources that a number of residences are being used for purposes other than residential purposes such as the operation of businesses and offices like embassy chanceries, embassy offices, nursery schools, corporations and the like, all in outright violation of the existing deed of restrictions;

WHEREAS, the above provisions of the Deed Restrictions have been outrightly transgressed and consistently violated with regard to the use and occupancy of the property, and the usage for commercial purposes have unduly and gravely affected the maintenance of security, peace and order in the Village, and loss of privacy in many homes;

WHEREAS, the volume of traffic in the area has considerably increased as a result of such illegal action; and likewise admittedly increased the cost and burden of road repairs and maintenance;

WHEREAS, the water consumption at said non-residential units has also resulted in higher consumption compared with regular residential dwellings, as well as an increase in the volume of garbage because there are more users and occupants thereon;

WHEREAS, in order to preserve the exclusive residential character and quality of life in the Village as originally envisioned and to eliminate inequities for the resident-members;

NOW, THEREFORE, BE IT RESOLVED, as it is hereby resolved, to promulgate and adopt the following measures to assess and impose a penalty to prevent further violations as regards to the use and occupancy of the lots in

³ Under Section 1, Article II of our By-Laws, "[a] long-term lessee is one who has a written contract of lease for one (1) year or more."

⁴ *ibid.*, Section 1, Article II

⁵ Section 1, Part I, Deed Restrictions

⁶ *ibid.*, Section 2, Article V

consonance with the deed restrictions and building regulations of the Association, viz.:

- 1) By increasing the assessment rates and fees of properties which have violated the deed restrictions to two times (2x) based on the basic rate assessed to residential residents and members at P11.00 per sq.m. to P22.00 per sq.m. computed from the area of the lot until such time the violations are stopped.
- 2) Another three times (3x) the penalty rate per square meter to be assessed to new violations, in order to discourage further similar new violations, after the effectivity of this circular.

FURTHERMORE, the Board pursuant to authority expressly authorized by the by-laws, may further decide to impose appropriate additional penalties to stop and address similar violations in the future;

BE IT FURTHER RESOLVED, that this Policy Resolution shall not be construed and interpreted as a condonation of existing violations of the Deed Restrictions and existing Building Rules and Regulations of DVA.

BE IT FINALLY RESOLVED, that this resolution takes effect immediately upon approval by the Board of Governors of the Dasmarinas Village Association Inc."

On 26 June 2003, your present Board of Governors adopted Board Resolution B.G. No. 2003-340, where we resolved as follows:

"WHEREAS, a number of pre-schools are being operated within Dasmarinas Village in violation of the Deed Restrictions of Dasmarinas Village Association, Inc. 1996 edition.

WHEREAS, residents of Dasmarinas Village have complained about the presence of the said pre-schools and their impact on the safety, security, health and well-being of the residents, the preservation of the purely residential character of Dasmarinas Village and the noise, traffic and pollution within the same;

WHEREAS, the Articles of Incorporation of Dasmarinas Village Association, Inc. provides, among others, that the Association is also organized, subject to existing laws, 'to make and adopt such rules and regulations concerning the use, enjoyment and occupancy of all the property in the area' and 'to enforce the covenants, restrictions, reservations, servitudes, easements, lines and charges which exist or may hereafter be imposed for the benefit of the property in the area over which the Association has jurisdiction' when the same shall be 'for the best interest of the area within the Association's jurisdiction and the owners, lessees and occupants therein';

WHEREAS, Section 2 of the Building Rules and Regulations and Deed Restrictions 1996 edition on the Use of Lots provides in subsection (b), that 'lots shall be used only for residential purposes';

NOW, THEREFORE, RESOLVED, AS IT HEREBY RESOLVED, that except for Colegio San Agustin, any and all existing schools, pre-school or otherwise, within Dasmarinas Village be closed permanently effective school-year 2004;

RESOLVED, FURTHER, that henceforth, no school shall be granted permission to operate within Dasmarinas Village, except for Colegio San Agustin."

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- 1) By increasing the assessment rates and fees of properties which have violated the deed restrictions to two times (2x) based on the basic rate assessed to residential residents and members at P11.00 per sq.m. to P22.00 per sq.m. computed from the area of the lot until such time the violations are stopped.
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Affected by Resolution B.G. No. 2003-340 are the pre-schools ELEANOR ESTEBAN LEARNING CENTER at 1499 Carissa Street;⁷ CREATIVE PLAY CORNER SCHOOL at 1141 Tamarind Road; and the INTERNATIONAL CENTER FOR BEGINNING BEGINNERS at 1613 Cypress Street. The latter pre-school agreed to permanently stop its operations within Dasmariñas Village after our Association filed a complaint against it with the Housing and Land Use Regulatory Board.⁸

In a letter dated July 8, 2003, our Association, through your Board, notified the pre-schools about Resolution B.G. No. 2003-340 and gave them a phase-out period of one (1) school year, or until this March 2004, to close their operations.

Significantly, in an earlier letter dated March 14, 2003, the Association, through its then President Amb. Isabel Caro Wilson, advised Eleanor Esteban Learning Center the following:

"An inspection by our Village Manager, Mr. Mamerto R. Rodriguez, this morning indicates the following observations at 1499 Carissa St.:

The property is primarily being used for commercial purposes and no longer as residence. The house was subdivided into several rooms to suit the need for a:

- Kumon learning school
- Dancing lessons
- Children's gym & parties

This is a violation of our rules and regulations on commercial activities inside the village. Furthermore, you have effectively extended your school curriculum to include children's parties and Kumon tutorials for 60-70 children without clearance from either the Association or the Barangay.

We have to enforce the rules and regulations of this Village and hope you understand that the peace and security of our residents is our first priority and responsibility.

Since this is the end of the school year we are advising you that you can no longer operate at the Carissa address."

On excluding Colegio San Agustin

The Colegio San Agustin, which is the school being run by the San Agustin College (Makati), Inc. within Barangay Dasmariñas, was excepted from the coverage of the aforementioned Board Resolution B.G. No. 2003-340 simply because the two (2) lots it occupies are not covered by our Deed Restrictions. These lots were conveyed by the Ayala

⁷ In addition to Eleanor Esteban Learning Center, the following business activities are also offered at 1499 Carissa Street: (a) conducting Kumon tutorials; (b) giving dance lessons; (c) operating a children's gym; and (d) hosting parties.

⁸ "Dasmariñas Village Association, Inc. vs. International Center for Beginning Beginners, Inc., et al.," HLURB Case No. HOA-032603-261.

Corporation (one by sale and the other by donation) subject to the following restrictions on their "USE AND OCCUPANCY":

"The lots shall be used exclusively for the construction and establishment thereon of a religious educational institution, and may include such religious orders, dormitory for boarders, quarters for the servants, and garage for the school vehicles."

Thus, in excluding Colegio San Agustin from the coverage of Board Resolution B.G. No. 2003-340, your Board did not commit any arbitrariness.

More on Eleanor Esteban Learning Center and Creative Play Corner School

In October 2003, the Office of the Building Official of the City of Makati, through its Building Inspectors Engr. Marte P. Muyot ("Engr. Muyot") and Arch. Mark L. Biniegla ("Arch. Biniegla"), conducted an ocular inspection of the premises occupied by the pre-schools and found that they had been operating without Certificate of Change of Occupancy and Business Permit.

Accordingly, the Office of the Building Official of the City of Makati, in a letter dated 23 October 2003, notified the said pre-schools of the aforementioned findings and gave them fifteen (15) days upon receipt thereof "to secure permit and other necessary requirements for the Change in Use or Occupancy of [their] residential building x x x."

To date, upon verification with the Office of the Building Official of the City of Makati, the two pre-schools have not yet secured the necessary Business Permit and Certificate of Change of Occupancy.

For operating without the necessary Certificate of Change of Occupancy, the owners and operators of the pre-schools and/or the respective owners of the properties at 1499 Carissa St. and 1141 Tamarind Road are in continuing violation of the provisions of Presidential Decree ("P.D.") No. 1096, otherwise known as the "National Building Code of the Philippines.

They are also in continuing violation of the provisions of Makati Municipal Ordinance No. 92-072, otherwise known as the "Makati Revenue Code" for operating without the required Business Permit.

In addition to the foregoing violations, the provisions of the Makati City Ordinance No. 2000-078, otherwise known as the "Comprehensive Zoning Ordinance of the City of Makati" (hereinafter, the "Makati Zoning Ordinance"), are also transgressed.

The Makati Zoning Ordinance classifies Dasmarinas Village as a Low Density Residential or R-1.⁹ Sections 11 and 14 of the Makati Zoning Ordinance respectively provide:

⁹ At Annex B-2 (Zone Boundaries) of the Makati Zoning Ordinance.

"SECTION 11. General Provisions. The allowable land uses and maximum building densities/heights in the zones and subzones defined in this Ordinance are enumerated in the succeeding sections.

1. Allowable land uses are specified according to Principal Uses and Accessory Uses. Principal Uses define the dominant use of a zone/lot while Accessory Uses support the Principal Uses allowed in a zone/lot.
2. A Principal Use/s shall be the dominant use/s in a lot. The dominant use of a lot shall be determined as follows:
 - a. In Residential (R-1, R-2, R-3), xxx, the dominant use is the use that occupies the largest building Gross Floor Area in a lot, xxx;
3. An Accessory Use shall be allowed only with the presence of a Principal Use in the same lot.

xxx"¹⁰

"SECTION 14. Low Density Residential Zone (R-1). An R-1 zone shall be used principally for single detached dwellings with customary ancillary uses, and compatible accessory uses on a neighborhood scale.

1. Principal Use:
 - a. SINGLE DETACHED FAMILY DWELLING, with customary ancillary uses such as house employees' quarter, private garage, and guardhouse
 - b. PARK, PLAYGROUND, SPORTS FIELD/COURT, GARDEN:
2. Accessory Uses:
 - a. PRE-SCHOOL/KINDERGARTEN SCHOOL (maximum of two classrooms)

xxx"¹¹

As the properties at 1499 Carissa St. and 1141 Tamarind Road are principally used as pre-schools, their owners and/or occupants are likewise in violation of the Makati Zoning Ordinance.

The operations of Eleanor Esteban Learning Center and Creative Play Corner School are, therefore, in continuing violation not only of our Deed Restrictions but also of existing laws. Your Board and every responsible member of the Association have the duty to stop such violations.

Possible Health Hazards to Students of Creative Play Corner School

On 9 March 2000, several concerned residents of Tamarind Road, joined by Barangay Dasmarinas, instituted Civil Case No. 00-352, entitled "Hernandez, et al. vs. National Power Corporation," with the Regional Trial Court of Makati City. The case, pending with Branch 135 of the Court, is for damages with prayer for a temporary restraining order and/or preliminary injunction against the National Power Corporation ("NAPOCOR").

¹⁰ Underscoring supplied.

¹¹ Underscoring supplied.

In their Complaint in Civil Case No. 00-352, plaintiffs alleged that they are exposed to the electromagnetic radiation from the nearby row of NAPOCOR's steel pylon posts or towers that are used to support overhead high tension cables that transmit 230,000 volts of electric power.

According to plaintiffs, "[c]onduction of electrical power through cables generates an electromagnetic radiation field that pollutes the environment and is widely regarded by scientific and medical experts to be extremely hazardous, deleterious and injurious to life and health."

They also alleged that "[s]tudies show that exposure to electromagnetic radiation gives rise to a host of afflictions and a high incidence of cancer, brain tumor, breast cancer, leukaemia and lymphoma, abortions and still births, birth defects and abnormalities, Alzheimer's Disease and other life-threatening health disorders" and that "[t]he risk of contracting childhood cancer is doubly greater in the case of children living near high tension power lines."

Significantly, as stated in the Complaint, "[d]efendant (NAPOCOR) itself acknowledged the health hazards from exposure to electromagnetic emissions of high voltage power lines installed perilously near the houses along Tamarind Road as well as the danger of mass destruction, electrocution and fire that a collapse of the massive pylons and the transmission cable could cause on their homes during a calamity." Thus, "[o]n November 12, 1996, defendant (NAPOCOR), agreed and committed x x x [t]o fast-track the construction and transfer of the power lines to Lawton Avenue as soon as possible, before the lines are energized. x x x"

Considering that NAPOCOR energized the transmission lines without transferring the same to Lawton Avenue as it had committed to do, plaintiffs were thus constrained to institute the case.

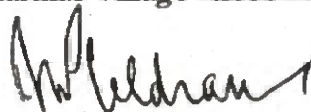
If the allegations of the plaintiffs in Civil Case No. 00-0352 were true, the students at Creative Play Corner School are exposed to health hazards. With more reason therefore that such pre-school should also be closed down.

We trust that we have clarified the issues.

Very truly yours,

THE BOARD OF GOVERNORS
Dasmariñas Village Association, Inc.

By:



MA. VICTORIA P. CELDRAN
President