

Philippine Real Property Appraisal: Legal Infirmities and Proposed Reforms

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I. INTRODUCTION

In the Philippines, determining the appraised value of real property becomes necessary in different instances, but is done by different agencies and through different methods. This causes incoherence in the government's appraisal system. There are at least 23 national government agencies that appraise real property values, with each using its own system and methodology.¹ According to Senate Bill (S.B.) No. 898, or the proposed Real Property

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1. S.B. 898, explan. n., 14th Cong., 1st Sess. (July 3, 2007) [hereinafter Angara Bill]. See also Public Relations and Information Department, House of Representatives, House wants reforms in real property appraisal, available at <http://www.congress.gov.ph/press/details.php?pressid=4117> (last accessed Aug. 31, 2010).

Appraisal and Assessment Reform Act of 2007, “[t]he lack of a single agency responsible for property valuations has created inadequate technical supervision on valuation matters. And the use of multiple appraisal systems and procedures has resulted in the lack of uniformity and equity in real property appraisal in the country,”² resulting in a situation where there can be 23 different versions of the possible appraisal of a single property.³ These agencies include the Bureau of Internal Revenue (BIR) for national taxation; the Department of Agrarian Reform (DAR) for land acquisition and distribution pursuant to agrarian reform; the Land Registration Authority (LRA) and the various Registry of Deeds for real property litigation and garnishment proceedings, registration and exaction of fees; the Local Government Units (LGUs) for real property taxation, acquisition, and disposal; and many others.⁴

There have been persistent attempts in Congress to create a National Appraisal Authority (NAA) in the country.⁵ More recently, the issue has called attention to itself in the newly installed administration as real estate and property stakeholders urged President Benigno “Noynoy” S. Aquino III to certify the Valuation Reform Act (VRA),⁶ introduced in the previous administration, as part of his priority reform agenda that will support his revenue generation policy.⁷ According to the Australian Government’s Overseas Aid Program (AusAID), “[t]he purpose of land administration is to ensure the integrity of the record of rights and interests in land and property.”⁸ Integrity ensures, among other things, that transactions involving land and property occur efficiently and effectively, that information on rights, restrictions, and responsibilities of land are readily available, and that land disputes are minimized.⁹

2. Angara Bill, explan. n.

3. *Id.*

4. See Panfilo M. Lacson, Sponsorship Speech on S.B. 3519 (The Real Property Valuation Reform Act), available at <http://pinglacson.blogspot.com/2009/11/sponsorship-speech-on-senate-bill-3519.html> (last accessed Aug. 31, 2010).

5. See S.B. 3519, 14th Cong., 3d Sess. (Nov. 11, 2009); S.B. 1645, 14th Cong., 1st Sess. (Sep. 27, 2007) & the Angara Bill.

6. S.B. 3519.

7. Stakeholders Back Land Valuation Reform Bill, THE PHIL. STAR, available at <http://www.philstar.com/Article.aspx?articleId=596634&publicationSubCategoryId=66> (last accessed Aug. 31, 2010).

8. AusAID, *Undertaking Land Administration Projects: Sustainability, Affordability, Operational Efficiency and Good Operational Guidelines*, 6 (The Australian Government’s Overseas Aid Program, Quality Assurance Series No. 26, 2001).

9. *Id.*

This Note is the product of a study undertaken in coordination with the Land Administration and Management Project Phase 2 (LAMP 2) of the Bureau of Local Government Finance (BLGF) of the Department of Finance (DOF), specifically on component four which deals with Valuation, which was submitted for use in the legislation reforms phase of the LAMP 2.¹⁰

Arguably, land is the basis of wealth.¹¹ Land and buildings are relatively long-lasting assets which are not subject to depreciation or depletion, having infinite life.¹² Nevertheless, because land is sold so infrequently, one really does not know what a particular parcel of land is worth. Hence, even when land is sold, the selling price may not reflect its *true* value.¹³

This Note identifies certain laws that deal with the appraisal of real property and analyzes how they have resulted in incoherence, confusion, and failure to determine the true appraised value of real property. These provisions are analyzed with respect to what is perceived as a violation of constitutionally enshrined rights and taxation principles. As this work examines specific tax laws, laws on eminent domain, ordinances, revenue memorandum orders, and executive orders, the confusion in appraisal becomes more apparent and therefore, the creation of the NAA to streamline the appraisal process is relevant.

As used in this Note, *appraisal* refers to “a systematic and analytic determination, opinion or conclusion relating to the nature, quality, value or utility of specified interests in or aspects of property resulting in a supportable estimate and opinion of value of the property involved at a given point in time for a specific purpose.”¹⁴ Appraisal is used interchangeably with valuation and is limited to the concept of appraisal of real estate property in the Philippines, conducted prior to assessment for tax purposes. Note that under agrarian reform, appraisal does not necessarily connote just compensation. The determination of just compensation is a purely judicial function.¹⁵

Although there are numerous government agencies that undertake real property appraisals, the analysis in this Note is limited to laws that impose

10. See Land Administration and Management Project Phase 2, Components, available at <http://www.phil-lamp.org/Components.html> (last accessed Aug. 31, 2010).

11. See JOHN P. WIEDEMER, REAL ESTATE INVESTMENT 7 (1994).

12. See THOMAS P. EDMONDS, ET AL., FUNDAMENTAL FINANCIAL AND MANAGERIAL ACCOUNTING CONCEPTS 386 (2007).

13. See RENE A. HENRY JR., HOW TO PROFITABLY BUY AND SELL LAND 29 (1977).

14. Angara Bill, § 3 (a).

15. Export Processing Zone Authority v. Dulay, 149 SCRA 305, 316 (1987).

taxes such as real property tax, capital gains tax, estate tax, donor's tax, and documentary stamp taxes;¹⁶ and laws that implement the government's power of expropriation, specifically the Comprehensive Agrarian Reform Law (CARL)¹⁷ and the Urban Development and Housing Act (UDHA).¹⁸

II. SURVEY OF LAWS AND ADMINISTRATIVE ISSUANCES

There are several laws containing provisions on methods of appraisal of real property in the Philippines. These are found in laws implementing the government's power of taxation and of expropriation. This Section presents some of these different provisions on methods of appraisal for real properties and identifies the various factors considered in the appraisal process of the different government agencies involved.

A. Appraisal Methods in Tax Laws on Real Property Transactions

I. Real Property Tax

Real property tax imposed by LGUs is founded on the 1987 Constitution¹⁹ and implemented in Republic Act (R.A.) No. 7160, the Local Government Code of 1991 (LGC),²⁰ which provides for the imposition of an annual *ad valorem* tax on real property.²¹ Section 201 of the LGC provides for the manner of appraising the value of real estate properties as follows:

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16. *See generally*, An Act Amending the National Internal Revenue Code, as Amended, and for Other Purposes [TAX REFORM ACT OF 1997], Republic Act No. 8424, tits. II, III & VII (1997).
 17. An Act Instituting a Comprehensive Agrarian Reform Program to Promote Social Justice and Industrialization, Providing the Mechanism for its Implementation, and for Other Purposes [Comprehensive Agrarian Reform Law of 1988], Republic Act No. 6657, as Amended (1988).
 18. An Act to Provide for a Comprehensive and Continuing Urban Development and Housing Program, Establish the Mechanism for its Implementation and for Other Purposes [Urban Development and Housing Act of 1992], Republic Act No. 7279 (1992).
 19. PHIL. CONST. art X, § 5. ("Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees and charges shall accrue exclusively to the local government.")
 20. An Act Providing for a Local Government Code of 1991 [LOCAL GOVERNMENT CODE OF 1991], Republic Act No. 7160 (1991).
 21. *Id.* § 232. This section provides:
Power to Levy Real Property Tax. — A province or city or a municipality within the Metropolitan Manila Area may levy an annual

Section 201. Appraisal of Real Property. — All real property, whether taxable or exempt, shall be appraised at the current and fair market value prevailing in the locality where the property is situated. *The Department of Finance shall promulgate the necessary rules and regulations* for the classification, appraisal, and assessment of real property pursuant to the provisions of this Code.²²

Pursuant to this provision, the DOF issued Local Assessment Regulations No. 1-04, otherwise known as the Manual on Real Property Appraisal and Assessment Operations (Manual)²³ to provide local assessors and treasury officials with guidelines to enhance their knowledge and skills with the adoption of a uniform system of real property appraisal and assessment for taxation purposes. The Manual also enumerates factors, referred to as “forces,” which are taken into consideration in order to estimate the value of property. These are: social forces, economic forces, governmental or political forces, and physical or environmental forces.²⁴

According to the Manual, a Schedule of Fair Market Values (SFMV) shall be prepared by the provincial, city, and municipal assessors of municipalities within the Metro Manila for the different classes of real property situated in their respective LGUs.²⁵ The law clearly delegates the function of appraisal of real property to the local assessors.

The Manual also states that the SFMV shall be prepared on the basis of the standard approaches to value, namely: (1) the Cost Approach,²⁶ (2) the

ad valorem tax on real property such as land, building, machinery, and other improvement not hereinafter specifically exempted.

22. *Id.* § 201 (emphasis supplied).

23. Department of Finance, Manual on Real Property Appraisal and Assessment Operations, Local Assessment Regulations Nos. 1-04 (2004) [hereinafter Manual on Appraisal].

24. *Id.*

25. *Id.* at 2.

26. *Id.* § 6 (C). This section provides:

The cost approach is based on the proposition that, an informed purchaser would pay no more for a property than the cost of producing a substitute property with the same utility as the subject property. The starting point of the cost approach is the assembly of property facts in an appraisal inventory and the accumulation of cost data in the price governing factors. These are combined in the cost estimating process to develop a reproduction cost new (RCN) or cost of replacement (COR). Reproduction Cost New (RCN) is the cost of producing or constructing the property in like land at current prices using the same materials, construction or manufacturing standards, design layout and quality of workmanship. Cost of Replacement is the cost of producing or constructing a property of equivalent utility at

Market Data Approach,²⁷ and (3) the Income Approach.²⁸ Reconciling the three approaches is the final step in estimating value through the process of relating the data gathered, developing the three standard approaches to value, analyzing and weighing the strengths and weaknesses of each approach, and determining which approach is best supported. Ultimately, the approach

current prices using modern materials according to modern standards, design and layout.

27. *Id.* § 6 (A). This section provides:

The market data or comparative approach is that approach in appraisal analysis which is based on the proposition that an informed purchaser would pay no more for a property than the cost of acquiring an existing property with the same utility. The market approach is particularly applicable when there is an active market with sufficient quantities of reliable data which are verifiable by authoritative sources. The market approach is relatively unreliable in an inactive market or in estimating value of property wherein there is no comparison.

As in the cost approach, the starting point of market data approach is the assembly of property facts in the appraisal inventory and accumulation of market data in the form of current market sales and offerings. These are combined in the valuation process to develop an estimate fair market value. Information obtained during the inspection of the property should include age, size, location and other factors pertinent to a comparison with a property exchanging in the market. Analogous to the situation of the reproduction and replacement costs, the market analysis may be made on a direct or comparative basis.

After market data have been accumulated, adjustments must be made on the indicated selling prices for differences in physical characteristics, market conditions and terms of sale.

28. *Id.* § 6 (B). This section provides:

In the Income Approach, an estimate is made of the prospective economic benefits of ownership. This approach is predicated on the proposition that an informed purchaser would pay no more for a property than the cost of obtaining an income stream of the same size and embodying the same risk as that involved in the subject property.

The income approach is particularly applicable when the future benefits of ownership may reasonably be estimated in the light of related risks to be incurred. The approaches selected must be supported by the facts and circumstances of the case on hand. The applicability of any approach in a given valuation problem depends on the character of the problem, the type of property involved, the nature of market and of course, the availability of the required data of appropriate quality and sufficient quantity.

most relied upon will be the most dependable and best supported approach. The two other approaches will then provide additional support.²⁹

In the case of unoccupied land, according to Engineer Romoles D. Penilla of the Makati City Assessor's Division, land will be classified and valued according to Chapter IV of the Manual which provides specific rules in the appraisal of Urban Lands, Agricultural and Other Lands, Timber and Forest Lands, and Mineral Lands.³⁰

The rules in the Appraisal of Urban Lands have been divided into methods depending on whether the land being appraised is rectangular, triangular, trapezoidal, or irregularly shaped.³¹

Agricultural Lands also follow a different method of appraisal where the following general guidelines are observed:

- (1) The unit base value per hectare prescribed in the SFMV is multiplied by the area of the agricultural land to arrive at the market value for the different kinds and sub-classes of agricultural lands.
- (2) The computation of values begins with the determination of the area, productivity and sub-class or sub-classes of an agricultural land. In the case of a parcels of land utilized or planted to various agricultural crops, such as rice, corn, coconut, etc. (if practicable, the boundaries between each sub-class shall be plotted or sketched on the map) and the corresponding area thereof shall be determined. Each area so determined shall be multiplied by the applicable unit base value. The resulting values for each sub-class so computed are summed up to obtain the total base market value of the parcel.
- (3) To arrive at a final value, the total base value is multiplied by the adjustment percentage value as discussed in the succeeding paragraphs. Values or improvement such as plants and trees shall be considered in the preparation of the Schedule of Values for agricultural land. However, if it shall be proven that the ownership of the land is different from that of the improvement, a separate valuation and assessment shall be made in the names of their respective owners.³²

2. Capital Gains Tax

The National Internal Revenue Code of 1997 (NIRC) imposes a capital gains tax on the sale of real property by individuals and corporations.³³ A final tax of six per cent is imposed on the *gross selling price or current fair market*

29. Manual on Appraisal, § 6.

30. Interview with Romoles D. Penilla, Engineer, Makati City Philippines Assessors Office (2007).

31. Manual on Appraisal, § 11.

32. *Id.* § 11 (A) (2).

33. TAX REFORM ACT OF 1997, § 24 (D).

value as determined in accordance with Section 6 (E),³⁴ whichever is higher, the capital gains presumed to have been realized from the sale, exchange, or other disposition of real property classified as capital assets³⁵ located in the Philippines.³⁶

The NIRC clearly provides that the six per cent tax will be based upon the higher amount of either the selling price or the fair market value as determined in accordance with the authority of the Commissioner to prescribe real property values. In effect, there are actually three options in determining the value of real property for the purpose of capital gains tax depending on which yields the highest taxable amount:

- (1) *Selling price* as determined by the parties to the transaction in the deed of sale;
- (2) Fair market value as shown in the *Zonal Value or Area* as divided by the Commissioner of Internal Revenue; and
- (3) Fair market value as shown in the *Schedule of Values* of the Provincial and City Assessors.³⁷

Committees on Real Property Valuation in different revenue offices in regional and district levels determine zonal values,³⁸ which are in turn submitted to the Secretary of Finance for approval.³⁹ The details on how the values are arrived at are found in Revenue Memorandum Order (RMO) No. 41-2010.⁴⁰

Furthermore, public hearings and notices to the public are included in determining Zonal Values.⁴¹

The RMO also provides factors considered in formulating Zonal Values:

- (a) Acceptable methods of appraisal of real properties;

34. *Id.* § 6 (E).

35. See VIRGILIO D. REYES, *INCOME TAX, LAW AND ACCOUNTING: A NEW APPROACH II* (2005).

36. TAX REFORM ACT OF 1997, § 24 (D) (emphasis supplied).

37. *Id.* §§ 6 (E) & 24 (D) (emphasis supplied).

38. Bureau of Internal Revenue, Revised Policies, Guidelines and Procedures in the Establishment/Revision of Schedule Zonal Values of Real Properties Within the Jurisdiction of the Revenue District Offices and for Other Purposes, Revenue Memorandum Order No. 41-2010, item II (1) (Apr. 23, 2010).

39. Manual on Appraisal, ch. 3.

40. RMO No. 41-2010, item IV.

41. *Id.* item V.

- (b) Records of most recent actual sales/transfers/exchanges of properties appearing in documents filed in public offices e.g., BIR, Land Registration Commission, etc.
- (c) Private records of banks, realtors, appraisers in the locality.
- (d) Records of provincial/city/municipal assessors; and
- (e) Other procedures and methods of appraisal.⁴²

3. Estate Tax and Donor's Tax

The transfer of the estate of a decedent, whether a resident or non-resident of the Philippines, is subject to estate tax.⁴³ Furthermore, the donation *inter vivos* of any real property by one person to another is subject to donor's tax.⁴⁴ These types of taxes are governed by Revenue Regulation (Rev. Reg.) No. 02-03, the Consolidated Revenue Regulations on Estate Tax and Donor's Tax Incorporating the Amendments Introduced by the Tax Reform Act of 1997.⁴⁵ Section 5 of Rev. Reg. No. 02-03 provides for the Valuation of the Gross Estate as follows:

Section 5. Valuation of the Gross Estate. — The properties comprising the gross estate shall be valued based on their fair market value as of the time of death.

If the property is real property, the fair market value shall be the fair market value as determined by the Commissioner or the fair market value as shown in the schedule of values fixed by the provincial and city assessors, whichever is higher. For purposes of prescribing real property values, the Commissioner is authorized to divide the Philippines into different zones or areas and shall, upon consultation with competent appraisers, both from the private and public sectors, determine the fair market value of real properties located in each zone or area.⁴⁶

As indicated above, the value of real property to be included in the gross estate shall be based on the fair market value of the property, which shall be whichever is higher of the following:

- (1) The fair market value as shown in the *Zonal Value or Area* as divided by the Commissioner of Internal Revenue; or

42. *Id.* item III-B 4.

43. Tax Reform Act of 1997, § 84.

44. *Id.* § 98.

45. Commissioner of Internal Revenue, The Consolidated Revenue Regulations on Estate Tax and Donor's Tax Incorporating the Amendments Introduced by Republic Act. 8424, the Tax Reform Act of 1997, Rev. Reg. No. 02-03 (Jan. 17, 2003).

46. *Id.* § 5.

- (2) The fair market value as shown in the *Schedule of Values* of the Provincial and City Assessors.⁴⁷

4. Documentary Stamp Tax

Documentary stamp tax is a “tax on documents, instruments and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right or property incident thereto.”⁴⁸ Section 196 of the NIRC imposes a stamp tax on Deeds of Sale and Conveyance of Real Property, *viz.*:

Section 196. Stamp tax on Deeds of Sale and Conveyance of Real Property. — On all conveyances, deeds, instruments, or writings, other than grants, patents, or original certificates of adjudication issued by the Government, whereby any land, tenement or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to the purchaser, or purchasers, or to any other person or persons designated by such purchaser or purchasers, there shall be collected a documentary stamp tax, at the rates herein below prescribed *based on the consideration contracted to be paid for such realty or on its fair market value determined in accordance with Section 6 (E) of this Code, whichever is higher*: *Provided*, That when one of the contracting parties is the Government, the tax herein imposed shall be based on the actual consideration.⁴⁹

Therefore, it can be observed that in imposing documentary stamp taxes on the sale and conveyance of real property, the value of the property shall be:

- (1) The *selling price* as determined by the parties to the transaction in the deed of sale;
- (2) The fair market value as shown in the *Zonal Value or Area* as divided by the Commissioner of Internal Revenue; and
- (3) The fair market value as shown in the *Schedule of Values* of the Provincial and City Assessors.⁵⁰

B. Appraisal Methods in Expropriation Laws

1. Agrarian Reform

The CARL was created pursuant to the constitutional mandate that the State “shall undertake an agrarian reform program and undertake the just distribution of agricultural lands.”⁵¹

47. *Id.* (emphasis supplied).

48. 2 HECTOR S. DE LEON, *THE NATIONAL INTERNAL REVENUE CODE ANNOTATED* 286 (2003).

49. TAX REFORM ACT OF 1997, § 196 (emphasis supplied).

50. 2 DE LEON, *supra* note 48, at 316 (emphasis supplied).

The government is duty bound to pay the land owner just compensation before his title can be transferred to the Republic of the Philippines.⁵² Executive Order No. 405⁵³ vests the primary responsibility in the determination of Land Valuation and Compensation to the Land Bank of the Philippines (LBP).⁵⁴ The LBP is guided by the criteria provided in Section 17 of the CARL which enumerates 10 factors to be considered in the valuation of lands under agrarian reform.⁵⁵ These include the current value of like properties, the nature of the land, tax declarations, assessments made by government assessors, and social and economic benefits contributed by the farmers.⁵⁶

DAR Administrative Order (A.O.) No. 6, Series of 1992,⁵⁷ as amended by DAR A.O. No. 11, Series of 1994,⁵⁸ governs land valuation under CARL. Its issuance is expected to lessen the landowner's rejection of the offered price and facilitate the acquisition of the land. As provided by said Order, the basic formula for the valuation of agricultural lands covered by Voluntary Offer for Sale (VOS) and Compulsory Acquired (CA) regardless of date of offer or coverage is now:

$$LV = (CNI \times 0.6) + (CS \times 0.3) + (MV \times 0.1)$$

Where: LV = Land Valuation
 CNI = Capital Net Income⁵⁹

51. PHIL. CONST. art XIII, § 4.

52. PHIL. CONST. art. III, § 9.

53. Office of the President, Vesting in the Land Bank of the Philippines the Primary Responsibility to Determine the Land Valuation and Compensation for All Lands Covered Under the Republic Act No. 6657, Known as the Comprehensive Agrarian Reform Law of 1988, Executive Order No. 405 (June 14, 1990).

54. *Id.* § 1.

55. See Comprehensive Agrarian Reform Law of 1988, § 17.

56. *Id.*

57. Department of Agrarian Reform, Rules and Regulations Amending the Valuation of Lands Voluntarily Offered and Compulsorily Acquired as Provided for Under Administrative Order No. 17, Series of 1989, as Amended, Issued Pursuant to Republic Act No. 6657, Administrative Order No. 6 (Oct. 30, 1992).

58. Department of Agrarian Reform, Revising the Rules and Regulations Covering the Valuation of Lands Voluntarily Offered or Compulsorily Acquired as Embodied in Administrative Order No. 6 Series of 1992, Administrative Order No. 11 (Dec. 8, 1994).

59. Capital Net Income refers to the difference between the gross sales (AGP x SP) and the cost of operations (CO) capitalized at 12%.

CS = Comparable Sales
 MV = Market Value per Tax Declaration⁶⁰

This formula is used if all three factors (i.e., capital net income, comparable sales, and market value per tax declaration) are present, relevant and applicable.⁶¹ When the Comparable Sales factor is not present, and the Capitalized Net Income and Market Value per tax declaration are applicable, the formula shall be:

$$LV = (CNI \times 0.9) + (MV \times 0.1)^{62}$$

When the Capitalized Net Income factor is not present, and Comparable Sales and Market Value are applicable, the formula shall be:

$$LV = (CS \times 0.9) + ((MV \times 0.1)^{63}$$

When both the Comparable Sales and Capitalized Net Income are not present and only the Market Value are applicable, the formula shall be:

$$LV = MV \times 2^{64}$$

In equation form, this is expressed as: $CNI = \frac{(AGP \times SP) - CO}{12}$

12

Where:

AGP = latest available 12 months gross production immediately preceding the date of offer in case of VOS or date of notice of coverage in case of CA.

SP = the average of the latest available 12-month's selling prices prior to the date of receipt of the claim folder by LBP for processing, such prices to be secured from the Department of Agriculture (DA) and other appropriate regulatory bodies or, in their absence, from the Bureau of Agricultural Statistics. If possible, SP data shall be gathered from the barangay or municipality where the property is located. In the absence thereof, SP may be secured within the province or region.

CO = Cost of Operations

When the cost of operations could not be obtained or verified, an assumed net income rate (NIR) of 20% shall be used. Landholdings planted to coconut which are productive at the time of offer/coverage shall continue to use the 70% NIR.

DAR A.O. No. 6, item B.

60. *Id.* item A.

61. *Id.*

62. *Id.* item A.1.

63. *Id.* item A.2.

64. *Id.* item A.3.

From these formulas, it is evident that the LBP uses a completely different method to formulate the valuation of agricultural land compared to BIR and local government assessors.

B. Socialized Housing

Socialized housing refers to “housing programs and projects covering houses and lots or home lots only undertaken by the Government or the private sector for the underprivileged and homeless citizens, which shall include sites and services development, long-term financing, liberated terms on interest payments, and such other benefits” in accordance with the UDHA.⁶⁵ The pertinent provision that deals with valuation of lands is Section 13, which states:

Sec. 13. Valuation of Lands for Socialized Housing. — Equitable land valuation guideline for socialized housing shall be set by the Department of Finance *on the basis of the market value reflected in the zonal valuation, or in its absence, on the latest real property tax declaration*. For sites already occupied by qualified Program beneficiaries, the Department of Finance shall *factor into the valuation the blighted status of the land as certified by the local government unit or the National Housing Authority*.⁶⁶

Thus, the UDHA imposes upon the DOF the duty to prepare a “valuation guideline” for socialized housing on the basis of:

- (1) The fair market value as shown in the *Zonal Value or Area* as divided by the Commissioner of Internal Revenue; and
- (2) The fair market value as shown in the *Schedule of Values* of the Provincial and City Assessors.⁶⁷

The BIR is identified in the UDHA as one of the agencies involved in the inventory of land used for socialized housing as they are tasked to provide data on land valuation and taxation.⁶⁸ Thus, the method of valuation for the purpose of socialized housing is dependent on the manner in which zonal valuations and schedule of market values (SMVs) are formulated.

Annex A to this Note presents a summary of the methods of appraisal introduced and discussed thus far.

65. Urban Development and Housing Act of 1992, § 3 (r).

66. *Id.* § 13 (emphasis supplied).

67. *Id.*

68. Housing and Urban Development Coordinating Council, Guidelines for the Inventory and Identification of Lands and Sites for Socialized Housing pursuant to Section 40 of R.A. 7279, § 5.6 (a) (Nov. 25, 1992).

III. ANALYSIS

This Section is divided into two parts. The first part is a legal analysis of the different factors, methods, and persons involved in formulating zonal valuations and SMVs under our taxation system. It involves only the provisions of laws and statistical data showing the appraisal systems of real property for purposes of taxation. The second part is a legal analysis of the different factors, methods, and persons involved in formulating the appraised value of real property for purposes of eminent domain. It involves only the appraisal of urban land used for socialized housing and agricultural land used for agrarian reform.

A. Factors, Methods and Persons Involved in Formulating Zonal Valuations Compared to Schedule of Market Values

The Author notes that there are four points of comparison in formulating zonal valuations compared to SMVs. First of all, there are more factors considered in the determining of SMVs than that of zonal valuations. Four factors, otherwise called forces, are considered to determine SMVs, whereas there are less factors considered in determining zonal valuations.

Second, the officials involved in determining of SMVs are also the same people involved in the determination of zonal values. Local assessors and the Secretary of Finance take active part in the formulation of both values.

Third, zonal valuations have no fixed statutory review period. The reviews are not conducted at regular intervals compared to that of SMVs which should be conducted every three years.

Lastly, there are fixed methods of appraisal being used to determine SMVs as compared to the overbroad discretion allowed in determining zonal valuations. Zonal valuations may be based on “acceptable” methods of appraisal. This method is overbroad, undefined and unlimited by any statutory provision. Given these circumstances in our present legislation, there are various legal precepts that warrant amendment.

Annex B to this Note provides a comparison of how values are arrived at for purposes of local and national taxation.

Although the imposition of real property tax and national taxes are for different purposes, it must be remembered that national and local taxation work hand in hand to achieve one common goal: to raise adequate revenue to provide for the expenses of the government.⁶⁹ Furthermore, the issue is not on the tax rates to be imposed but in the inconsistency in the means of realizing the true appraised value on which the tax shall be imposed. Arguably, the failure arrive at a single base value violates both constitutional and taxation principles.

69. *Commissioner of Internal Revenue v. Algue, Inc.*, 158 SCRA 9, 16 (1988).

The lack of consistency in formulating the appraised value, on which the tax rate is to be imposed, violates the constitutional rule that taxation shall be uniform and equitable.⁷⁰ In addition to this constitutional infirmity, the need for the NAA becomes apparent as the principle of fiscal adequacy towards promoting a sound tax system of both local and national government is impaired.

I. Classifying Real Property Values into SMVs and Zonal Valuations
Violates Uniformity and Equitability of Taxation

The paramount question is: Why should property valuations be classified into SMVs and Zonal Values when it is *one* and *the same* property? The lack of consistency in formulating the tax base violates the rule that taxation shall be uniform and equitable as provided in Section 28, Article 6 of the Constitution.⁷¹ The Author argues that it is unconstitutional for legislation to classify one and the same real property using different sets of valuation standards.

a. *Uniformity in Taxation*

Uniformity in taxation, “like the kindred concept of equal protection, merely requires that all subjects or objects of taxation, similarly situated, are to be treated alike both in privileges and liabilities.”⁷² A classification is valid as long as the following requisites are followed:

- (1) The standards that are used therefor are substantial and not arbitrary;
- (2) The categorization is germane to achieve the legislative purpose;
- (3) The law applies, all things being equal, to both present and future conditions; and
- (4) The classification applies equally well to all those belonging to the same class.⁷³

Based on the standards above, the classification created by present legislation of real estate property values into SMVs and zonal valuations, must be declared unconstitutional.

First, there are no substantial standards that warrant the classification. Both local and national taxation provide that the tax shall be based on the

70. PHIL. CONST. art. VI, § 28 (1).

71. PHIL. CONST. art VI, § 28 (1).

72. *Tan v. Del Rosario, Jr.*, 237 SCRA 331 (1994) (citing *Juan Luna Subdivision, Inc. v. Sarmiento, et al.*, 91 Phil. 371, 377 (1952)).

73. JOAQUIN G. BERNAS, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* 804 (2009 ed.) (citing *Tan v. Del Rosario, Jr.*, 237 SCRA 324, 331 (1994)).

fair market value of the property. The officials involved in the determination of SMVs are also the same as those involved in zonal valuation. The methods of appraisal used must be the same if they are to be called “acceptable methods.” BIR officials must use the same methods as that used by local assessors as they actually work hand in hand in the formulation of appraisals for Zonal Values.

Second, the classifications are not germane to achieving the legislative purpose of the government. One and the same property should be appraised using the same factors, methods and under a single limited set of methodology recognized by statute. There is no reason to value the property differently when both taxes, national and local, must be imposed on its true value.

More importantly, the purpose of the government is to generate adequate revenue for the expenses of the national government and that of local government units. The categorization, however, into two different values does not achieve the same purpose. In fact, it hampers fiscal autonomy and as a result, this also affects national taxation. This Note will demonstrate that the classification into two values causes local governments to rely more on Internal Revenue Allotments (IRA) instead of local sources of revenue. This is clearly contrary to the objective that local governments shall enjoy a tax system that will enable them to assume greater responsibility for social and economic development.⁷⁴

b. Equitable System of Taxation

Taxation is said to be equitable when its burden falls on those better able to pay.⁷⁵ Equality in taxation means that taxes shall be strictly proportional to the relative value of the taxable property.⁷⁶ This is not only a constitutionally mandated provision as the LGC provides that “it is a fundamental principle that taxes shall be equitable and based as far as practicable on the taxpayer’s ability to pay.”⁷⁷ Local taxation must furthermore be based on appraisals which are equitable.⁷⁸

74. PHIL. CONST. art. X, § 5.

75. *Reyes v. Almanzor*, 196 SCRA 322, 327 (1991).

76. NEPTALI A. GONZALES, PHILIPPINE CONSTITUTIONAL LAW 154 (1975).

77. LOCAL GOVERNMENT CODE OF 1991, § 130.

The following fundamental principles shall govern the exercise of the taxing and other revenue-raising powers of local government units:

- (1) Taxation shall be uniform in each local government unit;
- (2) Taxes, fees, charges and other impositions shall:
 - (a) *be equitable and based as far as practicable on the taxpayer’s ability to pay;*

Nevertheless, taxes imposed are not based on equitable values under current laws considering that situations arise where *one* and the *same property* is valued differently for the single purpose of taxation, whether national or local. Again it is stressed that officials involved in determining SMVs are essentially the same people involved in determining zonal values. Furthermore, regulations providing for the methods of appraisal consider various factors. Said regulations have resulted in inconsistencies in determining the true value of property.

A comparison of the SMV and zonal values of real property in Dasmariñas Village, Makati City is one example of the inconsistencies in property appraisal. According to Makati City Ordinance No. 96-302,⁷⁹ the

- (b) be levied and collected only for public purposes;
- (c) not be unjust, excessive, oppressive, or confiscatory;
- (d) not be contrary to law, public policy, national economic policy, or in the restraint of trade;
- (3) The collection of local taxes, fees, charges and other impositions shall in no case be let to any private person;
- (4) The revenue collected pursuant to the provisions of this Code shall inure solely to the benefit of, and be subject to the disposition by, the local government unit levying the tax, fee, charge or other imposition unless otherwise specifically provided herein; and
- (5) Each local government unit shall, as far as practicable, evolve a progressive system of taxation.

Id. (emphasis supplied).

78. *Id.* § 198.

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

- (1) Real property shall be appraised at its current and fair market value;
- (2) Real property shall be classified for assessment purposes on the basis of its actual use;
- (3) Real property shall be assessed on the basis of a uniform classification within each local government unit;
- (4) The appraisal, assessment, levy and collection of real property tax shall not be let to any private person; and
- (5) *The appraisal and assessment of real property shall be equitable.*

Id. (emphasis supplied).

79. City of Makati, An Ordinance Prescribing the Revised Schedule of Fair Market Values of Real Properties (Land Only) in the City of Makati, Subject to all Legal and Existing Rules and Regulations, City Ordinance No. 96-302 (Dec. 20, 1996).

approved value per square meter in the Village was ₱13,500.00.⁸⁰ But, DOF Department Order (D.O.) No. 64-97⁸¹ reflected that the zonal value was ₱35,000.00 per square meter.⁸² There is an obvious discrepancy of ₱21,500.00 per square meter between the two values. This makes it highly improbable to determine the fair market value of the property. As a result, the imposition of tax falls short of being equitable.

2. Classifying Real Property into SMVs and Zonal Valuation Impairs Fiscal Adequacy of Both Local and National Taxes

The power of taxation is inherent in every sovereign being essential to the existence of every government.⁸³ Thus, in *Commissioner of Internal Revenue v. Algue, Inc.*, the Supreme Court explained:

It is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for the lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard-earned income to taxing authorities, every person who is able to must contribute his share in the running of the government. The government for its part is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This *symbiotic relationship* is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power.⁸⁴

One of the principles of a sound tax system is fiscal adequacy.⁸⁵ This principle requires that taxes imposed as a source of revenues must be adequate to meet government expenditures and their variations.⁸⁶ This principle was enunciated in *Chavez v. Ongpin*⁸⁷ where the Supreme Court struck down an executive order that was not in consonance with the sound tax system because it imposed collection of taxes based on real property valuation arrived at several years before in disregard of the current value of

80. *Id.*

81. Department of Finance, Implementation of the Revised Zonal Values of Real Properties in the City of Makati under Revenue District Office No. 50 (South Makati), Revenue Region 8 (Makati) for Internal Revenue Tax Purposes, Order No. 64-97 (June 6, 1997).

82. *Id.*

83. HECTOR S. DE LEON, *THE LAW ON TRANSFER AND BUSINESS TAXATION* 3 (2000).

84. *Algue*, 158 SCRA at 16-17 (emphasis supplied).

85. HECTOR S. DE LEON & HECTOR M. DE LEON, JR., *COMPREHENSIVE REVIEW OF TAXATION* 5 (8th ed. 2010)

86. *Id.*

87. *Chavez v. Ongpin*, 186 SCRA 331 (1990).

real properties.⁸⁸ The Court declared that real property taxes must be based on current values:

We agree with the observation of the office of the Solicitor General that without Executive Order No. 73 [Providing for the Collection of Real Property Taxes], the basis for collection of real property taxes will still be the 1978 revision of property values. Certainly, *to continue collecting real property taxes based on valuations arrived at several years ago, in disregard of the increases in the value of real property that have occurred since then, is not in consonance with a sound tax system.* Fiscal adequacy which is one of the characteristics of a sound tax system, requires that sources of revenues must be adequate to meet government expenditures and their variations.⁸⁹

Looking at the present status of local appraisal systems, it becomes apparent that the *Chavez* doctrine has not been strictly adhered to. A close look at the local government status will show that various local assessors and *sanggunians* have not updated their SMVs. A study conducted by the BLGF reveals that from 1993 to 2006, there has been a “progressive non-compliance” with LGUs which have actually conducted a general revision of SMVs as imposed by the LGC.⁹⁰ In 2006, only 25% of all LGUs updated their SMVs opposed to 83% in 1993.⁹¹ The study also noted “lack of regulation” as a cause.⁹²

This is a clear indication that most of the SMVs of local government units are not up to date. A specific example is Makati City Ordinance No. 96-302, which has not been revised since its issuance. The ordinance shows that the City of Makati, which is the prime business city of the Philippines, imposes real property tax based on 1997 land values⁹³ in complete disregard of the LGC which provides that provincial, city, or municipal assessors shall undertake general revisions of real property valuations every three years.⁹⁴ Consequently, the Supreme Court’s declaration in *Chavez* that taxes should not be based on valuations arrived at several years before, in disregard of the increase in the value that have occurred since then,⁹⁵ is ignored.

88. *Id.* at 337-38.

89. *Id.* at 338 (emphasis supplied).

90. Real Property Valuation Reform, available at [http://picpa.com.ph/getmedia/e8c5f8d4-d443-4564-a220-b4130c706395/64thANC_Tax-Forum-\(Senate-Bill-3519\).aspx](http://picpa.com.ph/getmedia/e8c5f8d4-d443-4564-a220-b4130c706395/64thANC_Tax-Forum-(Senate-Bill-3519).aspx) (last accessed Aug. 31, 2010).

91. *Id.*

92. *Id.*

93. *Id.*

94. LOCAL GOVERNMENT CODE OF 1991, § 219.

95. *Chavez*, 186 SCRA at 338.

Furthermore, the Constitution provides that “provinces, cities, municipalities and *barangays* shall enjoy local autonomy.”⁹⁶ Local autonomy “means more than just decentralization” as

decentralization of administration is when the central government delegates administrative powers to political subdivisions in order to broaden the base of government power and in the process to make local governments ‘more responsive and accountable’ and ‘ensure their fullest development as self-reliant communities and make them more effective partners in the pursuit of national development and social progress.’ At the same time it relieves the central government of the burden of managing local affairs and enables it to concentrate on national concerns.⁹⁷

Corollary to local autonomy is fiscal autonomy. This is a constitutional grant stated in Section 5, Article X of the Constitution. It provides that local government units “shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of Local Autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments.”⁹⁸

The purpose behind fiscal autonomy is to give LGUs adequate sources of revenue. However, it seems that current laws hinder the purposes of fiscal autonomy. Real property taxes are not based on updated SMVs. As a result of the non-revision, LGU performance from 2002–2006, according to the BLGF, reveals that LGUs actually depended more on revenues from external sources of which the greater part came from Internal Revenue Allotments.⁹⁹ Furthermore, a study of land values also by the LAMP 2 in coordination with the DOF reveals that SMVs of LGUs are lower by 13% to 94% of the BIR’s zonal values.¹⁰⁰

Since SMVs are not up to date, the real property taxes collected are not based on the actual value of the property but in some cases, are based on values arrived at more than 10 years ago. This results in a lower collection of local taxes, which in turn encourages LGUs to depend on internal revenue allotments. The end result is the impairment of fiscal autonomy and the principle of fiscal adequacy of a sound tax system.

B. Factors, Methods, and Persons Involved in Formulating Appraised Value for Eminent Domain

96. PHIL. CONST. art. X, § 2.

97. BERNAS, *supra* note 73, at 1112–13 (citing *Limbona v. Mangelin*, 170 SCRA 786, 794–95 (1989)).

98. PHIL. CONST. art. X, § 5.

99. Real Property Valuation Reform, *supra* note 90.

100. See Lacson, *supra* note 4.

In appraising agricultural lands, there are more factors considered by the LBP than that of local assessors (see Annex A). The formula used for the appraisal of land for purposes of agrarian reform is fixed and limited to a basic formulation. In contrast, local assessors consider the area, distance, productivity from public road and the improvements, plants, and trees. Nevertheless, it is worth noting that local assessors' appraisals are one of the factors also considered by the LBP. The Market Value per tax declaration is a necessary inclusion in the fixed basic formulation in LBP appraisal. If these formulas or methods are used on a single property, the result is a disparity in the values arrived between the SMV and the LBP.

The same problem is present in urban lands expropriated for socialized housing. The value used for expropriation involves the comparison of SMVs and Zonal Values. But the values derived from SMVs and Zonal Values are incoherent and fail to reflect the true fair market value of the property.

It is the position of this Note that the lack of uniformity in the method of appraisal for purposes of expropriation violates the right of land owners to just compensation and the principles of social justice.

a. Lack of Uniformity in Determining Appraised Value Violates the Right of Land Owners to Just Compensation.

In implementing the CARL and the UDHA, Congress included provisions for expropriation. Section 10 of the UDHA provides:

Section 10. Modes of Land Acquisition. — The modes of acquiring lands for purposes of this Act shall include, among others, community mortgage, land swapping, land assembly or consolidation, land banking, donation to the Government, joint-venture agreement, negotiated purchase, and expropriation: *Provided, however, That expropriation shall be resorted to only when other models of acquisition have been exhausted:*

...

For the purpose of socialized housing, government-owned and foreclosed properties shall be acquired by the local government units, or by the National Housing Authority primary through negotiated purchase: *Provided, That qualified beneficiaries who are actual occupants of the land shall be given the right of first refusal.*¹⁰¹

Section 16 of the CARL states:

Section 16. Procedure for Acquisition of Private Lands. — For purposes of acquisition of private lands, the following procedures shall be followed:

- (1) After having identified the land, the landowners and the beneficiaries, the DAR shall send its notice to acquire the land to the owners

101. Urban Development and Housing Act of 1992, § 10 (emphasis supplied).

thereof, by personal delivery or registered mail, and post the same in a conspicuous place in the municipal buildings and barangay hall of the place where the property is located. Said notice shall contain the offer or the DAR to pay a corresponding value in accordance with the valuation set forth in Sections 17, 18, and other pertinent provisions hereof.

- (2) Within 30 days from the date of receipt of written notice by personal delivery or registered mail, the landowner, his administrator or representative shall inform the DAR of his acceptance or rejection of the offer.
- (3) If the landowner accepts the offer of the DAR, the LBP shall pay the landowner the purchase price of the land within 30 days after he executes and delivers a deed of transfer on favor of the Government surrenders the Certificate of Title and other muniments of title.
- (4) In case of rejection or failure to reply, the DAR shall conduct summary administrative proceedings to determine the compensation of the land by requiring the landowner, the LBP and other interested parties to submit evidence as to the just compensation for the land, within 15 days from the receipt of the notice. After the expiration of the above period, the matter is deemed submitted for decision. The DAR shall decide the case within 30 days after it is submitted for the decision.
- (5) Upon receipt by the landowner of the corresponding payment or in case of rejection or no response from the landowner, upon the deposit with an accessible bank designated by the DAR of the compensation in cash or LBP bonds in accordance with this Act, the DAR shall take immediate possession of the land and shall request the proper Register of Deeds to issue a Transfer Certificate of Title (TCT) in the name of the Republic of the Philippine. The DAR shall thereafter proceed with the redistribution of the land to the qualified beneficiaries.
- (6) Any party who disagrees with the decision may bring the matter to the court of proper jurisdiction for final determination of just compensation.¹⁰²

While these laws are enforced on the basis of the inherent power of eminent domain of the State, they are subject to the constitutional rights of the private real property landowners. Section 9, Article III of the Constitution provides that “private property shall not be taken for public use without just compensation.”¹⁰³ Section 1 of the same article provides that “no person shall be deprived of property without due process of law.”¹⁰⁴

102. Comprehensive Land Reform Act of 1988, § 16.

103. PHIL. CONST. art III, § 9.

104. PHIL. CONST. art III, § 1.

The power of eminent domain is not absolute as it requires: (1) the “taking” of private property; (2) the taking must be for “public use;” and (3) the payment of “just compensation.”¹⁰⁵

There is no question that the first and the second requisites are satisfied by both the CARL and the UDHA. The government, in taking agricultural lands from private owners promotes the welfare of the landless farmers and farm workers. Through agrarian reform, farmers are accorded the highest consideration. This law was also intended to promote social justice and to move the nation toward sound rural development and industrialization. In taking private urban lands, the government has created a means to uplift the conditions of the underprivileged and homeless citizens in urban areas and in resettlement areas by making available to them decent housing at affordable cost, basic services, and employment opportunities. The problem lies in the third requisite which is the payment of “just compensation.”

The concept of appraisal, as remarked in the Introduction, is distinct from just compensation. As declared in *Export Processing Zone Authority v. Dulay*, the determination of just compensation in eminent domain cases is a judicial function.¹⁰⁶

Thus, for properties covered by CARL, just compensation cannot be an absolute amount disregarding particularities of productivity, distance to market place, etc. Hence, land valuation is not an exact science but an exercise fraught with inexact estimates. This requires integrity, conscientiousness, and prudence on the part of those responsible for determining its value. What is important ultimately is that the land value approximates as closely as possible, which is broadly considered by the community, to be just.¹⁰⁷ Thus Section 17 of the CARL declares the factors to be considered in the determination of just compensation:

Section 17. Determination of Just Compensation. — In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farm workers and by government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.¹⁰⁸

Nevertheless, problems are encountered in determining just compensation because of present legislation. It is the position of this Note

105. BERNAS, *supra* note 73, at 400.

106. *Export Processing Zone Authority*, 149 SCRA at 316.

107. DAR A.O. No. 6.

108. Comprehensive Agrarian Reform Act of 1988, § 17.

that the lack of uniformity in determining the appraised value of real property violates the right of private property owners to just compensation. This is because the manner of appraisal actually affects the determination of just compensation.

Under agrarian reform, appraisal is separate from the determination of just compensation. As explained in the second Section, the LBP is guided by DAR A.O. No. 6, as amended by DAR A.O. No. 11.

As can be observed from the formulas presented in the second Section of this Note on Agrarian Reform, market value per tax declaration is a factor heavily relied upon in the determination of the preliminary valuation of the LBP. However, as explained in first part of this Section, the market valuations or SMVs that are relied upon by the LBP are mostly not up to date. These SMVs fail to present the true value of real property.

The Supreme Court has declared that as a general rule, just compensation must be based on the fair market value at the time of the taking, as clearly enunciated in *National Power Corporation v. Tiangco*,¹⁰⁹ where the Court remanded an eminent domain case for the proper determination of the fair market value at the time of the taking:¹¹⁰

Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. In this case, this simply means the property's fair market value *at the time of the filing of the complaint*, or 'that sum of money which a person desirous but not compelled to buy, and an owner willing but not compelled to sell, would agree on as a price to be given and received therefor.' The measure is not the taker's gain, but the owner's loss.¹¹¹

Considering that SMVs are generally not up to date and consequently, fail to reflect the fair market value of the property, the right of property owners to just compensation is not safeguarded.

There is also a problem in determining just compensation in expropriating urban lands. As explained in the Introduction, the legislature has delegated the function of appraisal to the DOF which shall prepare a "valuation guideline" for socialized housing.

Like in expropriation for agrarian reform, the market valuations or SMVs that are relied upon by the DOF are mostly not up to date. These SMVs fail to reflect the true, current value of real property. The zonal values are also unreliable.

109. *National Power Corporation v. Tiangco*, 514 SCRA 674 (2007).

110. *Id.* at 688.

111. *Id.* at 685 (emphasis supplied).

First of all, there are less factors taken into consideration in zonal valuations. Second, the officials involved in determining SMVs are essentially the same people involved in determining zonal values. Third, zonal valuations have no fixed statutory review period. The reviews are not conducted at regular intervals as compared to that of SMVs, which should be conducted every three years. Lastly, there are fixed methods of appraisal being used to determine SMVs as compared to the overbroad discretion allowed in determining zonal valuations.

Zonal valuations may be based on *acceptable* methods of appraisal which is undefined and unlimited by any statutory provision. Thus, in conclusion, the reliance of the DOF on the SMVs or Zonal Valuations does not actually guarantee the determination of the true appraised value of the real property.

Therefore, reliance on these two classifications of appraisals is violative of the right to just compensation of real property owners.

2. Lack of Uniformity in Determining the Appraised Value Violates the Principles of Social Justice

Social justice is a constitutionally enshrined principle that guides Congress in enacting measures to reduce social, economic, and political inequalities and to regulate property ownership.¹¹² As a result, the right to property may be subject to the State's regulation if said right creates social, economic, and political inequalities.

The principles of social justice have been violated by the hodge-podge of rules created by the various appraisal methods. One example is found in *National Housing Authority [NHA] v. Reyes*.¹¹³ The facts show that the government sought to enforce Presidential Decree (P.D.) No. 464¹¹⁴ which limited the value of the property when the government exercises the power of expropriation.¹¹⁵ According to the decree, the payment of just

112. PHIL. CONST. art XIII, § 1. This section provides:

The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.

To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments.

PHIL CONST. art. XIII, § 1.

113. *National Housing Authority v. Reyes*, 123 SCRA 245 (1983) [hereinafter NHA].

114. Enacting a Real Property Tax Code [REAL PROPERTY TAX CODE], Presidential Decree No. 464, as Amended (1974).

115. *NHA*, 123 SCRA at 257.

compensation shall be based on the SMVs prepared by local assessors or that which is declared by the property owner, whichever is lower.¹¹⁶ This was created to end the baneful practice of under-valuation for tax purposes and of over-valuation for expropriation purposes.¹¹⁷ The Supreme Court upheld the validity of P.D. No. 464 by citing the explanation posed by then Justice Manuel M. Lazaro:

The memorandum for petitioner submitted by Government Corporate Counsel, now likewise the Presidential Legal Assistant, Justice Manuel M. Lazaro, pursues the matter further in prose impressed with force and clarity: 'The issue in this petition for certiorari and mandamus involves the application of a rule introduced by P.D. No. 76¹¹⁸ and reiterated in subsequent decrees that *not only promotes social justice but also ends the baneful and one-sided practice abetted by the collusive acquiescence of government officials and employees, of under declaring properties for the purpose of taxation but ballooning the price thereof when the same properties are to be acquired by the government for public purposes. Put to the test, therefore, is the power of the government to introduce rationality in the laws and to discourage a deceitful practice that is not only ruinous to the government coffers but also undermines its efforts at awakening a democratic responsiveness of the citizenry toward good government and its economic and social programs.*' The courts should recognize that the rule introduced by P.D. No. 76 and reiterated in subsequent decrees does not upset the established concepts of justice or the constitutional provision on just compensation for, precisely, the owner is allowed to make his own valuation of his property.¹¹⁹

In *NHA*, the Court *en banc* acknowledged the need for the government to introduce rationality in the laws and discourage the deceitful and ruinous practice of the collusive acquiescence of government officials and employees of under-declaring properties for tax purposes but ballooning the price thereof when the same properties are expropriated.

However, in a later case the Court *en banc* in *Export Processing Zone Authority*, overturned the *NHA* doctrine and stated that tax declarations only serve as a guiding principle in determining just compensation but cannot be the controlling value:

We are convinced and so rule that the trial court correctly stated that the valuation in the decree may only serve as a guiding principle or one of the factors in determining just compensation but it may not substitute the court's own judgment as to what amount should be awarded and how to arrive at such amount. The doctrine we enunciated in *National Housing*

116. *Id.* See also REAL PROPERTY TAX CODE, § 92.

117. *NHA*, 123 SCRA at 251.

118. Requiring all Persons, Natural or Juridical, Owning or Administering Real Property, Including the Improvements Thereon, to File Sworn Statement of the True Value of Such Property, Presidential Decree No. 76 (1972).

119. *NHA*, 123 SCRA at 251 (emphasis supplied).

Authority v. Reyes therefore, must necessarily be abandoned if we are to uphold this Court's role as the guardian of the fundamental rights guaranteed by the due process and equal protection clauses and as the final arbiter over transgressions committed against constitutional rights.¹²⁰

As can be observed from these two cases, the Court and the executive arm of the government have been attempting to put an end to the practice of under-valuation for tax purposes and of over-valuation in expropriation. Nevertheless, there are still no means to balance the power of taxation and that of the right to just compensation in expropriation. This is because of the presence of divergent, inconsistent, and incoherent systems of appraisal found in a multitude of laws, administrative orders, and ordinances on the matter. Social justice is eluded due to these various practices.

IV. CONCLUSION

Under the government's inherent power of taxation, the value of a single property may be classified into: (1) that prepared under the SMVs by local assessors; or (2) that prepared under the zonal valuations by the Commissioner of Internal Revenue. One single parcel of real property is treated differently because of the different existing methods under our system of laws. These classifications and incoherent methods have caused the failure to determine the true appraised value of a single parcel of real property.

Constitutional and taxation principles continue to be violated as a result of this incoherence and confusion.

First, the creation of two different classifications of appraisal methods violates the rule that taxation shall be "uniform and equitable."¹²¹ The classifications violate the uniformity principle as there are no substantial standards that warrant these classifications. The classifications are not even germane to achieve the legislative purpose to give adequate revenue for the expenses of both the national government and LGUs. Furthermore, the present system makes it impossible to impose the tax on those who are better able to pay as there is a failure to determine the true appraised value on which the tax should be imposed. As a result, the inconsistent base values caused by appraisals result in an inequitable taxation system.

Second, the creation of two different classifications has impaired fiscal adequacy required if a government is to achieve a sound tax system. SMVs are not up to date even if the legislation mandates a general revision every three years. Zonal Values also cause problems as they do not have a fixed statutory review period. As a result, LGUs rely more on internal revenue allotments, which in turn hinders fiscal autonomy as a means of ensuring local autonomy.

¹²⁰. *Export Processing Zone Authority*, 149 SCRA at 314 (emphasis supplied).

¹²¹. PHIL. CONST. art. VI, § 28 (1).

Third, under the government's power of eminent domain, specifically the CARL and the UDHA, the lack of uniformity in determining the appraised value of agricultural and urban lands violate the right to just compensation and the principles of social justice.

The LBP relies on market values stated in the SMVs when appraising agricultural land to determine just compensation, even though most of these SMVs, as approved via ordinances, are not up to date. The law mandatorily provides that there shall be a general revision every three years, but this is not complied with. These SMVs fail to present the true value of real property.

The same argument can be used when it comes to determine just compensation for socialized housing. On the one hand, the market valuations or SMVs relied upon by the DOF are mostly not up to date. Zonal values, on the other hand, consider less factors, have no fixed statutory review period, and there is an overly broad discretion in the appraisal methods used. In conclusion, the reliance of the DOF on both the SMVs and Zonal Valuations does not actually produce the true appraised value of the real property and thus creates a violation of the right to just compensation.

Finally, the absence of a uniform means to determine the value of one and the same property allows a property owner to understate the value of his property for taxation purposes and over-value it when expropriated. As a result of this "baneful" practice, there is a violation of the principles of social justice enshrined in the Constitution. The incoherence, confusion, and failure to determine the true appraised value of real property creates social, economic, and political inequities which result in the failure to equitably diffuse wealth and political power for the common good.

Thus, these various laws, ordinances, and administrative issuances that provide for the different methods of real property appraisal suffer a serious legal infirmity and should be rationalized through the establishment of a National Appraisal Authority.

VI. RECOMMENDATIONS

There is a need to create a uniform system to determine the appraised value of real property in the Philippines that will be used as the sole basis of valuation for whatever purpose, be it for taxation or expropriation.

Given that the country's Constitution and tax laws were patterned after those of the United States (U.S.), the Author suggests using the uniform system of appraisal therein as a guideline.

A. The U.S. System of Appraisal

1. Uniform Standards of Appraisal Practice

The early 1980's in U.S. witnessed a crisis in the savings and loan industry.¹²² Because of this, lending institutions saw the need to reform appraisal practices based on “established, recognized standards, and free from outside pressures.”¹²³ In 1986, nine of the leading professional appraisal organizations in the U.S. and Canada formed the Ad Hoc Committee on the Uniform Standards of Professional Appraisal (USPAP).¹²⁴ Thereafter, the Appraisal Foundation was established to implement the USPAP which, since January 1989, has been “recognized throughout the United States as the generally accepted standards of professional appraisal.”¹²⁵

2. Organization/Legal Enforceability

The 1989 enactment of the Financial Institutions Reform, Recovery, and Enforcement Act¹²⁶ (FIRREA), requires that real estate appraisals used in conjunction with federally-related transactions¹²⁷ be performed in accordance with USPAP.¹²⁸ More than 80,000 state certified and licensed appraisers are currently required to adhere to the USPAP.¹²⁹ The USPAP

122. The Appraisal Foundation, History of the Foundation, *available at* <http://www.appraisalfoundation.org/> (last accessed Aug. 31, 2010).

123. *Id.*

124. *Id.*

125. *Id.*

126. Financial Institutions Reform Recovery and Enforcement Act of 1989 (FIRREA), 12 U.S.C. § 3331 (2006). It provides:

The purpose of this title is to provide that Federal financial and public policy interests in real estate related transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.

127. *Id.* § 3350 (5). For purposes of this title:

(5) Real Estate Related Financial Transaction. — The term “real estate-related financial transaction” means any transaction involving —

- (1) the sale, lease, purchase, investment in or exchange of real property, including interests in property, or the financing thereof;
- (2) the refinancing of real property or interests in real property; and
- (3) the use of real property or interests in property as security for a loan or investment, including mortgage-backed securities.

128. Foundation Frequently Asked Questions, *available at* <http://www.appraisalfoundation.org/> (last accessed Aug. 31, 2010).

129. *See* History of the Foundation, *supra* note 122.

contains the recognized standards of practice for real estate, personal property, and business appraisal.¹³⁰

The Appraisal Standards Board's authority even extends beyond FIRREA; since 1992, the U.S. Office of Management and Budget (OMB) required federal land acquisition and direct lending agencies to conform with USPAP.¹³¹

Today, as required by Federal Law, each U.S. State or Territory has a State Real Estate Appraiser Regulatory Board to certify and license real estate appraisers and supervise appraisal-related activities.¹³² The licensed appraisers perform their functions by using the recognized methods of practice for the specific real estate transaction for which the real property is valued.¹³³

3. Salient Features of USPAP

One salient feature of the board pertinent to this Note is the use of USPAP rules on subsidized housing similar to our UDHA. For instance, Advisory Opinion 14 (1998) of the Appraisal Standards Board provided specific guidance for the appraisal for subsidized housing projects of the government.¹³⁴ Said guidelines provided for the identification of subsidized housing, competency issues of appraisers, property rights issues, value definition issues, market analysis issues, and legal jurisdiction matters.¹³⁵

As for taxation purposes, John S. Brenan, Director of Research and Technical Issues of the Appraisal Foundation of the United States, explained that USPAP requires appraisers involved to employ recognized methods and techniques necessary to render credible assignment results.¹³⁶ Thus, by virtue of USPAP, valuations on real property for purposes of taxation in the United States are based on credible appraisals.

B. Recommendations to the Philippine Legislature

130. *Id.*

131. *Id.*

132. The Appraisal Foundation, State Regulatory Information, *available at* <http://www.appraisalfoundation.org/> (last accessed Aug. 31, 2010).

133. *Id.*

134. Appraisal Standards Board, Appraisals for Subsidized Housing, Advisory Opinion No. 14 (1998).

135. *Id.*

136. Online Interview with John S. Brenan, Director of Research and Technical Issues of the Appraisal Foundation, in the United States (2007).

Former President Gloria Macapagal-Arroyo issued Executive Order No. 467,¹³⁷ which defines the implementation arrangements for the LAMP 2. This was created as a continuation to the commitment to reform the Land Administration and Management (LAM) sector as an instrument for poverty reduction and for the promotion of economic growth through the implementation of the first phase of Land Administration and Management Project (LAMP 1). Valuation is one of the components of LAMP 2 which seeks to:

- (1) Improve the quality of government and private sector property appraisal performance through the adoption of uniform valuation standards and a single valuation base for taxation;
- (2) Pursue property taxation reform.¹³⁸

In line with these objectives, the following programs are being undertaken by LAMP 2 which involve:

- (1) Policy, legislative and regulatory activities pursuing the enactment of property valuation and taxation reform;
- (2) An accredited appraisal professional association developing and monitoring practice, standards and international linkages for property valuation;
- (3) Valuation standards and guidelines approved and adopted as best practice by the DOF and counterpart agencies;
- (4) Four LGUs trained and with systems developed and in place, ready to adopt the unified single base property valuation system (two LGUs from LAMP 1 and two new LGUs); and
- (5) A Valuation Unit established and supported to manage LAMP 2 valuation activities.¹³⁹

Pending in the 14th Congress was S.B. No. 3519 which provided for the establishment of the NAA. This superseded all previous attempts in the Senate to establish the NAA in the Philippines and complemented the efforts

137. Office of the President, An Act Defining the Implementation Arrangements for the Land Administration and Management Project Phase 2, Executive Order No. 467 (Oct. 5, 2005).

138. Land Administration and Management Project Phase 2, *available at* <http://phil-lamp.org/whatislamp2.html> (last accessed Aug. 31, 2010).

139. Property Valuation and Taxation, *available at* <http://www.phil-lamp.org/lamp2valuation.html> (last accessed Aug. 31, 2010).

of the House of Representatives to pass a similar bill.¹⁴⁰ While the House Bill had passed a second reading, the Senate Bill was still pending its second reading at the close of the 14th Congress.¹⁴¹

Ms. Consolacion Q. Agcaoili of the BLGF of the DOF, in a brief interview, explained the organization, functions, enforceability of appraisals and procedures of the proposed NAA:

Organization. Under the House and Senate Bills, the NAA shall be under the arm of the national government as a separate Bureau under the DOF. The concept of Zonal Valuation will be removed from the power of the Commissioner of Internal Revenue. The NAA will only provide for the manner of creating the SMVs. The power of LGUs to create SMVs shall also be subjected to the control of the NAA.

Functions. The NAA shall have the following functions:

- (1) Set and maintain valuation standards for real property appraisal and for tax and for other purposes;
- (2) Review and approve the SMV;
- (3) Provide technical assistance on real property appraisal matters;
- (4) Provide leadership and direction to LGUs, NGAs, private sector institutions and individuals dealing with real property appraisal;
- (5) Recommend to the Secretary of Finance for appointment of qualified government assessors; and
- (6) Develop and maintain a database of real property transactions.

Enforceability of Appraisals. The NAA shall develop, maintain, and implement uniform valuation standards, which shall be used:

- (1) By all appraisers and assessors of national and local governments in appraising or valuing properties for taxation and other purposes;
- (2) For *ad valorem* purposes, all real properties shall be appraised at the market value prevailing in the locality where the

140. See Lacson, *supra* note 4. See also Fidel Gumawid, House wants reforms in Property Appraisal, available at <http://www.congress.gov.ph/press/details.php?pressid=4117> (last accessed Aug. 31, 2010).

141. See Department of Finance, Legislative Matters and their Status, 14th Congress, available at <http://www.dof.gov.ph/report/matrix%20-%20legis%20update.pdf> (last accessed Aug. 31, 2010).

property is situated, in conformity with the valuation standards prepared; and

- (3) Approved SMVs shall be used for the general revision of property assessment and for computing all applicable real property related taxes imposed by the national and local governments.

Procedure. The SMVs shall be prepared under the valuation standards that must conform to generally accepted valuation principles and internationally accepted standards. The SMVs shall be submitted to the regional office of the NAA for review and completion of compliance report. This will then be submitted to the central office for approval. After approval after 90 days, the SMVs shall be published.

Review. There shall be a mandatory review after three to five years of the organizational and functional relationship of the NAA to other government agencies and Stakeholders.¹⁴²

After a thorough review and analysis of the different laws, ordinances, and administrative issuances involving real property appraisal, the Author recommends that in creating the NAA, the legislature should further observe the following guidelines:

First, declare that it is State policy to ensure that taxes should be uniform and equitable and should conform to the principles of a sound tax system of fiscal adequacy.

Second, declare that it is State policy to ensure that there are no violations of the right to just compensation and to due process whenever the government exercises its power of eminent domain.

Third, declare that it is State policy to promote social justice by removing the baneful and one-sided practice abetted by the collusive acquiescence of government officials and employees of under-declaring properties for the purpose of taxation but ballooning the price thereof when the same properties are to be acquired by the government for public purposes.

Fourth, there should be mandatory reviews of appraisal values every three to five years. The non-revision of appraisals for a period of more than five years should be a ground for filing of administrative charges against the government officials who fail to act accordingly without justifiable reason.

Fifth, like the USPAP, valuations should be subject to review by a regional office of the NAA. This is similar to the USPAP where each U.S.

142. Interview with Consolacion Q. Agcaoili, who is involved with the advocacy team in the Bureau of Local Government Finance of the Department of Finance (2007).

state or territory has a State appraiser regulatory agency, which is responsible for certifying and licensing real estate appraisers and supervising their appraisal-related activities, as required by Federal Law. Decentralization should be adopted and not a devolution of power of appraisal.¹⁴³

Sixth, there should be uniform standards that shall be used by all appraisers. These standards must be pre-approved and published so that the right to due process, the right to notice and hearing, and the right to just compensation shall not be violated. Furthermore, said standards must be clearly defined to govern all types of property of similar kind or classification. For instance, agricultural and urban lands shall be appraised by one uniform method that shall be used for taxation and shall also be used for agrarian reform and socialized housing. In effect, all existing laws which provide for a system of valuation should be amended accordingly. The Author suggests the use of local assessors in the Manual, as supplemented by the international valuation standards, recently adopted by the Philippines under DOF D.O. No. 37-09.¹⁴⁴

Seventh, it is recommended that Congress provide a priority list of provinces or cities with SMVs that are not up to date so that there will be immediate appraisal of the property within their jurisdictions.

143. *See* *Disomangcop v. Secretary of Public Works and Highways*, 486 SCRA 398 (2004).

144. Department of Finance, *Prescribing the Philippine Valuation Standards (1st Edition) — Adoption of IVSC Valuation Standards under Philippine Setting*, Department Order No. 37-09 (Oct. 19, 2009).

ANNEX A

Summary of Methods of Appraisal of Real Estate Property in the Philippines

PURPOSE	GOVERNMENT AGENCY/ OFFICIALS INVOLVED	BASIS	FACTORS	METHOD/ FORMULA OF APPRAISAL
Real Property Tax	<ul style="list-style-type: none"> • Guidelines provided by the Secretary of Finance • Provincial, city and the municipal assessors of the municipalities • <i>Sanggunian</i> 	Schedule of Market Values (SMVs)	(1) Social Forces; (2) Economic Forces; (3) Governmental or Political Forces; and (4) Physical or Environmental Forces.	(1) The Cost Approach (2) The Market Data Approach (3) The Income Approach
		For unoccupied lands: Chapter IV of the Manual on Real Property Appraisal and Assessment		Chapter IV of the Manual on Real Property Appraisal and Assessment which provides specific rules in the appraisal of Urban Lands, Agricultural and Other Lands, Timber and Forest Lands and Mineral Lands.

Capital Gains Tax, Estate Tax and Documentary Stamp Tax	<ul style="list-style-type: none"> • Guidelines provided by the Secretary of Finance • The Revenue District Officer of the BIR; • Provincial/City Municipal Assessors; • Two competent real property appraisers/practitioners representing private sector. 	<ul style="list-style-type: none"> • <i>Selling price</i> as determined by the parties to the transaction in the deed of sale; • Fair market value as shown in the <i>Zonal Value or Area</i> as divided by the Commissioner of Internal Revenue; and • Fair market value as shown in the <i>Schedule of Values</i> of the Provincial and City Assessors. 	<p>(1) Acceptable methods of appraisal of real properties;</p> <p>(2) Records of most recent actual sales/transfers/exchanges of properties appearing in documents filed in public offices e.g. the Bureau of Internal Revenue (BIR), Land Registration Commission (LRC), etc.</p> <p>(3) Private records of banks, realtors, appraisers, etc., in the locality.</p> <p>(4) Records of Provincial/City/Municipal Assessor.</p> <p>(5) Other procedures and methods of appraisal.</p>	Acceptable methods of appraisal of real properties.
Agrarian Reform	Land Bank of the Philippines	Land value based on the appraisal of the Land Bank of the Philippines.	<p>(1) Cost of acquisition</p> <p>(2) Current value of like properties</p> <p>(3) Nature of the land</p> <p>(4) Actual use</p> <p>(5) Income</p> <p>(6) Sworn valuation by the</p>	<p>General Rule:</p> $LV = (CNI \times 0.6) + (CS \times 0.3) + (MV \times 0.1)$

			<p>landowner (7) Tax declaration assessment made by government assessors (8) Social and economic benefits contributed by the farmers and farmworkers of the government (9) non-payment of taxes or loans secured from any Government-financing institution of land.</p>	<p>Where: CNI= Capital Net Income CS = Comparable Sales MV = Market Value per Tax Declaration</p>
Socialized Housing	<ul style="list-style-type: none"> • Department of Finance/ Provincial and City Assessors • Bureau of Internal Revenue 	<ul style="list-style-type: none"> • Fair market value as shown in the <i>Zonal Value or Area</i> as divided by the CIR; and • Fair market value as shown in the <i>Schedule of Values</i> of the Provincial and City Assessors. 	Whichever is higher of the Zonal Value / SMVs.	Whichever is higher of the Zonal Value / SMVs.

ANNEX B

Comparison of Schedule of Market Values and Zonal Valuation

PURPOSE	OFFICIALS/ AGENCY INVOLVED	BASIS (GENERAL RULE)	FACTORS	METHODS	DURATION
<p>LOCAL TAXATION</p> <p>Real Property Tax</p>	<ul style="list-style-type: none"> • Guidelines provided by the Secretary of Finance • Provincial, city and the municipal assessors of the municipalities • <i>Sanggunan</i> 	Schedule of Market Values (SMVs) found in ordinances	<p>(1) Social Forces</p> <p>(2) Economic Forces</p> <p>(3) Government or Political Forces</p> <p>(4) Physical or Environmental Forces</p>	<p>(1) Cost Approach</p> <p>(2) Market Data Approach</p> <p>(3) Income Approach</p>	Every 3 years

NATIONAL TAXATION	See Annex A	Fair market value as shown in the <i>Zonal Value or Area</i> as divided by the CIR.	See Annex A.	Acceptable methods of appraisal of real properties.	No fixed statutory review period.
Capital Gains Tax, Estate Tax and Documentary Stamp Tax					