

AGENDA FOR 166th (ADJ.) MEETING OF THE TOWN & COUNTRY PLANNING BOARD SCHEDULED TO BE HELD ON 11/10/2019 AT 3:00 P.M. IN CONFERENCE HALL, MINISTER'S BLOCK, SECRETARIAT, PORVORIM - GOA.

Item No. 1: Confirmation of the minutes of the 166th meeting of Town & Country Planning Board held on 10/07/2019.

Shri Rajeev Sukhthanker, Architect/Member of TCP Board, vide letter dtd. 21/8/2019 has submitted certain corrections/suggestions about the minutes of 166th meeting of TCP Board with regard to item No. 8, 9, 10 & 13. Subsequently, vide his letter dtd. 28/8/2019, Shri Sukhthanker has withdrawn his comments with regard to item No. 10 and 13 stating that he has obtained required clarification regarding these matters, however corrections/suggestions regarding item No. 8 & 9 is still maintained.

The brief of the corrections/suggestions is as under:

- i) With regard to item No. 8, it is stated that *“There are many items being listed out for correcting typographical or cartographical errors in ODP. Also the ODP with corrections are not displayed in the meeting. At page No. 13 of minutes first and second paragraph whether the conditions are compiled accordingly.”*
- ii) With regard to item No. 9, it is stated that *“After correction of ODP it is to be displayed in the Board meeting which is not done.”*

Also, the Forest Department vide letter No. 2-48(l)-2019-20-Vol.VII-FD/3098 dtd. 30/09/2019, has informed that the following survey numbers, which are reflected under Annexure-A of the cases for provisional approval, are listed in the prospective list of private forest identified:

Sr. No.	Name of the applicant	Sy.No.	Village & Taluka	Area	Comments & Remarks
1.	Mohan Anant Naik	59/1-D-I, I-D-2	Fatorpa/ Quepem	2325	Sy.No. 59 in Fatorpa village has been listed in the prospective private forest identified by South Goa Forest Division Committee. Thus, FCA, 1980 shall be applicable till final survey and demarcation of the Sy.No. 59 in Fatorpa village in Quepem Taluka
2.	Gaurav G. Prabhu Gaonkar	41/1-B	Poiguinim/ Canacona	559	Sy.No. 41/1-B in Poiguinim village has been listed in the prospective private forest identified by Sawant &

					<i>Karapurkar Committee. Thus, FCA, 1980 shall be applicable till final survey and demarcation of the Sy.No. 41 in Poiguinim village in Canacona Taluka</i>
3.	<i>Inacinho Fernandes</i>	<i>331/1-B</i>	<i>Loutolim/ Salcete</i>	<i>6680</i>	<i>Sy.No. 331 in Loutolim village has been listed in the prospective private forest identified by South Goa Forest Division Committee. Thus, FCA, 1980 shall be applicable till final survey and demarcation of the Sy.No. 331 in Loutolim village in Salcete Taluka</i>

Hence Board may decide.

Item No. 2: Appeal under Section 52 of the Town & Country Planning Act, 1974 filed by Shri Suresh Kumar Borana against the Greater Panaji Planning and Development Authority. (File No. TP/B/APL/183/2019).

The appeal is against the Final Notice under ref. no. GPPDA/ILL/CONST/06/TAL/2019/1906 dated 07/03/2019 issued by Respondent in respect of Duplex Bungalow/Villa No. R-6 in Plot No. 17 & 18, S. No. 239, Taleigao Village, Tiswadi Taluka, directing the appellant to demolish / remove the alleged illegal development as mentioned in the Show Cause Notice dated 25/06/2018 and to restore the premises to its original use, i.e. Residential use instead of Hotel (Commercial use). The brief facts of the case are as under:

- a) The appellant is the owner of Villa No. R-6 6 in Plot No. 17 & 18, S. No. 239, Taleigao village Tiswadi Taluka, having purchased the same under Sale Deed dated 04/01/2016.
- b) Prior to above purchase, the appellant had taken the said premises on lease and license basis under leave and license agreement dated 20/12/2014 and had obtained various permissions for running the same as guest house. The permissions include provisional NOC from V.P. Taleigao under ref. no. VP/TLG/14-15/2196, dated 28/01/2015, necessary license/ NOC from Director of Health Services dated 11/03/2015, Registration Certificate from Dept. of Tourism dated 16/03/2015, Fire NOC dated 11/03/2015, Establishment License (Trade) dated 01/04/2015. On account of the above permissions, the appellant purchased the said premises for business of guest house on 04/01/2016 and from time to time has renewed the licenses required for running the business.

The said premises had occupancy certificate with ref. no. VP/TLG/OC/10-11/1465, dated 29/06/2010.

c) On 01/01/2018, the Technical Officer of the Respondent inspected the premises. Appellant states that alterations were there at the time of purchase of the said premises. The Respondent, vide Show Cause Notice dated 25/06/2018, directed the appellant to show cause as to why action under section 52 of the TCP Act should not be initiated against the appellant in respect of the alleged illegal development as mentioned in the Show Cause Notice. Vide application dated 12/07/2018, the appellant requested for material, documents or basis of information while issuing aforesaid Show Cause Notice as well as personal hearing, however the appellant did not get the same. Then vide letter dated 11/02/2019, the appellant filed his reply with the respondent. And prayed for personal hearing. However, the Respondent, vide letter dated 07/03/2019, issued Final Notice directing the appellant to demolish/ remove the alleged illegal development and restore the premises to its original use. Aggrieved by this, the appellant has filed the present appeal on the following grounds:

- a) The impugned order is in violation of the principles of natural justice.
- b) The impugned order is bad in law as the respondent failed to supply documents as requested.
- c) The respondent erred in not considering the fact that the Appellant had asked for personal hearing in the matter.

Hence, Board may decide.

Item No. 3: Appeal under Section 52(2)(b) of the Town & Country Planning Act, 1974 filed by M/s Goa Resorts (Hotel Baia do Sol) against North Goa Planning and Development Authority (File No. TP/B/APL/177/2019).

The matter is regarding property bearing Sy. No. 281/1 Calangute village, Bardez Taluka, admeasuring an area about 2000 sq. mtrs. As per the documents/appeal memo submitted, the said property originally belonged to partnership firm Motel Lomir and Mr. Lucio Miranda. The said partnership firm had constructed structures in the said property prior to 1974 and started

Hotel business therein. Subsequently, the Village Panchayat issued construction licence dtd. 16/08/1976.

Then in 1978 Mr. DamodarNarcinvaNaik was admitted as a partner of the firm. Then the name of the said establishment was changed to Hotel Baia do Sol. The house tax is being paid from 1976 onwards. The appellant has mentioned that house tax and other taxes are being paid from 01/04/1978. Vide letter dtd. 30/07/1982, the Village Panchayat has issued NOC for the structures in this property under reference consisting of 8 single rooms and 14 double rooms.

Then in the year 2008, the Village Panchayat issued a Show Cause Notice dtd. 04/07/2008 calling upon the appellant to Show Cause as to why these structures in the said property should not be demolished. This was followed by personal hearing on 27/01/2009. A demolition Order dtd. 27/02/2009 was thereafter issued, against which, in the matter of Appeal No. 97 of 2009 before Dy. Director of Panchayat, vide order dtd. 26/06/2009, the Dy. Director of Panchayat directed the Village Panchayat to withdraw the Demolition Order dtd. 27/02/2009.

The Panchayat thereafter issued another notice dtd. 10/03/2010 and 09/07/2010, followed by notice dtd 07/10/2011 and 21/07/2012 for demolition. Vide Order dtd 17/10/2012, the Director of Panchayat quashed and set aside the said demolition order.

Thereafter the appellant received notice dtd. 08/09/2016 from North Goa PDA, which was replied on 21/09/2016. The appellant was then given personal hearing on 01/06/2018, in which the appellant produced all the required documents. The Show Cause Notice dtd. 08/09/2016, mentions about RPG-2001 and RPG 2021, which is objected by the appellant on the ground that the structures referred are existing since 1976.

Now the appellant is in receipt of Final Notice dtd. 28/12/2018 against which the present appeal is filed.

The appeal was heard in the 165th (Adj.) meeting of the TCP Board held on 10/06/2019 during which, the appellant remained absent and the Board felt it appropriate to hear the Appellant too, so as to arrive to a particular decision.

The Member Secretary was therefore directed to issue the notices to both the parties to remain present for the next meeting of the Board to give their say in the matter.

Hence, the matter is again placed before the Board.

Additional Items:

Item No. 1: Representation by Dr. Suresh Shetye against Goa University (File No. 36/1/TCP/314/2019).

The matter is regarding oral judgment dated 30/07/2019 by Hon'ble High Court of Bombay at Goa in Writ Petition No. 317 of 2019 filed by Goa University against Town & Country Planning Board and 4 others. Hon'ble High Court has set side Order dated 15/10/2018 and 12/11/2018 and directed the Board to hear the petitioner, i.e. Goa University and Res. No. 3 of the Writ Petition No. 317/2019, i.e. Dr. Suresh Shetye and dispose of the representation made by Res. No. 3 within 3 months from the date of the petitioner university filling response to the representation made by Res. No. 3.

The matter is regarding closure of access to the land bearing Sy. No. 193, 197 and 198 of Village Calapur by Goa University. Earlier, the Goa University commenced the work of construction of compound wall and building in its premises, which was brought to the notice of the North Goa PDA. The North Goa PDA, vide No. NGPDA/111/Gen/Vol.V/1993/14, dated 04/12/2014, issued stop work order, against which the Goa University filed an appeal before the Town & Country Planning Board. The matter was discussed in the 152nd meeting of the TCP Board held on 30/04/2015 under item No. 11 and the Board decided as under:

“The Member Secretary explained that appeal under Section 52 of TCP Act has been filed by Goa University through its Registrar against Order/stop work notice issued by North Goa PDA vide No. NGPDA/111/Gen/Vol.V/1993/14 dated 4/12/2014 as per which it is directed to remove barbed wire

fencing erected on sub-division road abutting to finally approved sub-division layout at Survey No. 206/10 and to stop work of the building being carried out at land under Survey No. 216/1 of Taleigao village.

The appellant submitted that North Goa PDA has not served any show cause notice to appellant with reference to construction of building under progress. It was further submitted that Goa University has already filed an application for regularisation of building situated at Survey No. 216/1. It was also stated that appellant being an institution funded by Government of Goa shall abide by all rules & regulations and accordingly an application for seeking development permission for the project has already been submitted before North Goa PDA on 12/12/2014.

The respondent Member Secretary submitted that the Goa University has not taken development permission for construction under reference also for remaining constructions already completed. He also stated that as per Taleigao ODP a 30.00 mts. road is proposed towards northern boundary of the University campus and same is required to be maintained by the Goa University while undertaking any development in the land. He further submitted that the existing road has been blocked.

The TCP Board after deliberation decided that a sub committee comprising of Shri. Nilesh Cabral, Hon. MLA Shri. Sandeep H. Falari, Architect and Chief Town Planner, members of the Board shall inspect the site and submit report before the Board. Meanwhile the North Goa PDA may decide on the application submitted by Goa University for regularisation under Section 44 of TCP Act. The Board directed the Member Secretary to place matter before the Board once sub-committee submits report after site inspection”.

Subsequently, the appeal was discussed in the 152rd meeting of the Town & Country Planning Board held on 17/08/2015 under item No. 6 and the Board decide as under.

The Member Secretary submitted that appeal under Section 52 of TCP Act has been filed by Goa University through its Registrar against Order/stop work notice issued by North Goa PDA vide No. NGPDA/111/Gen/Vol. V/1993/14 dated 4/12/2014.

The appeal was taken up by the Board in 152nd meeting and it was decided to constitute a Sub-Committee comprising of Shri. Nilesh Cabral, Member, Shri. Sandeep H. Falari, Member and the Chief Town Planner, and it was also decided that Sub-Committee shall inspect the site and submit report before the Board.

The Member Secretary stated that Sub-Committee has submitted the report and the same was placed before the Board. The brief findings of Sub-Committee are given below:

- 1. The Sub-Committee is open for suggestions of University for re-alignment of 30.00 mts. road along existing road of 10.00 mts. right of way abutting faculty building on northern side.*
- 2. There will be two bottlenecks along stretch of said road i.e. near overhead water tank and building block under construction where maximum space of only 11.5 mts. and 13.5 mts. is available.*
- 3. The proposal of University for re-aligning of road and reducing right of way could only be decided at the time of revision to ODP and remedy cannot be granted on an appeal.*
- 4. The Committee is of the opinion that University shall open access by removing portion of compound/fencing blocking access to adjoining lands.*

*The report of the Sub-Committee is taken as part of the minutes. **Annexure-A***

The representative of Goa University has requested the Board to reduce right of way of said road from 30.00 mts. to 12.00 mts. since space of around 12.00 mts. is available from building block under construction. He also submitted that they are

ready to remove portion of compound as per report of Sub-Committee. He also requested to consider the fact that, it is an Institutional building for academic purpose and is already at completion stage.

The TCP after deliberation passed following order:

ORDER

The Board after hearing both the parties and after deliberation took note of the fact that it is a building of the University built for academic purposes to house a faculty block. It is also noted that the building is at completion stage. The Board decided to allow the appeal with the following directions:

- (a) The University shall remove all blockages put up by them in the form of compounds/barbed wire fencing along their boundary, which are blocking access to the neighbouring properties.*
- (b) They shall submit the compliance to the North Goa PDA within 30 days from the date of this order.*
- (c) The North Goa PDA shall keep the stop work notice dated 4/12/2014 in abeyance and see the possibility of re-aligning the proposed 30.00 mts. ODP road and reduction of right of way to 15.00 mts. at the time of reviewing/revision of the ODP, which is currently in progress.*

(d) The University shall take development permission/technical clearance, as the case may be, for any development in the University complex as per the provisions of the Goa Land Development and Building Construction Regulations, 2010, including regularization of any buildings already.

The decision of the Board was communicated to the Goa University vide Order dated 27/10/2015.

Against the Order of the Board, the Goa University filed a Writ Petition No. 681 of 2017 before the Hon'ble High Court of Bombay at Goa and Hon'ble High Court vide Order dated 18/09/2017, was pleased to grant an interim injunction in terms of prayer clause (b), which reads as follows:

“(b) For stay of the consideration of the representation of the Respondent No. 4 by the Res. No. 1-7 so as to acquire part of the acquired land in possession of the Goa University surveyed under No. 126, 135, 132, 130 and 142 of Calapur Village and further restrain the Respondent No. 1-7 agents, servants from taking any steps pursuant to or in furtherance of the representation filed by the Respondent No. 8 or proceeding to acquire the property surveyed under 126, 135, 132, 130 and 142 of Calapur village in any manner whatsoever”.

Meanwhile, the TCP Department received a representation dated 29/07/2016 from Dr. Suresh B. Shetye regarding closing of access to the land bearing Sy. No. 193, 197 and 198 of Village Calapur by Goa University compound wall. It is mentioned in the representation by Sr. S. B. Shetye that he is the owner of the land bearing Sy. No. 193, 197 and 198 of Village Calapur. This University land is adjacent to East Boundary of the Goa University land. Upon visit to his property in the month of September 2015, he found that the University has erected a compound wall as a result of which, the access to his property is blocked. Since the time he purchased the land in 1981, University road was being used as a vehicular access to his property. The Original title holders of property were also using the same access earlier. Hence he filed a representation to the TCP Department. Subsequently, he sent reminders on 14/06/2018 and 02/07/2018. Then the matter was discussed in the 163rd (Adj.)

meeting of the TCP Board held on 15/10/2018, under item No. 15 and the Board decided as under:

The Member Secretary TCP Board informed members that representation is received from Dr. Suresh B. Shetye regarding closing of access to the land bearing Sy. No. 193, 197 and 198 of village Calapur, Tiswadi, which belongs to him, by erection of a compound wall by Government. The Member Secretary further brought to the notice of the members that earlier the Goa University had filed appeal v/s North Goa Planning and Development Authority's stop work order in the similar matter of blocking of access and the TCP Board in its 152nd Board meeting had decided to allow the appeal with certain directions and had asked Registrar of Goa university to remove all blockages put up by them in the form of Compounds/barbed wire fencing along their boundary which were blocking access to neighboring properties, and leaving them land locked.

The Board after deliberate discussion decided to once again inform Registrar Goa University to remove all the blockages and clear the access roads of the neighboring properties, by citing the provisions of Goa Land Development Building and Construction Regulations 4.1(i).

The decision of the Board was communicated to Goa University and copy to Dr. Suresh B. Shetye vide letter No. 36/1/TCP/314/2018/2637 date d28/12/2018.

Against this decision of the Board, the Goa University filed a Writ Petition No. 317 of 2019 before Hon'ble High Court of Bombay at Goa and the Hon'ble High Court of Bombay at Goa, vide oral judgment dated 30/07/2019 was pleased to dispose of the Writ Petition by quashing and setting aside order dated 15/10/2018 and 12/11/2018 and directed the TCP Board to give hearing to both, petitioner-University, as well as Res. No. 3 and to dispose of the representations made by Res. No. 3 within 3 months from the date of the petitioner-University filing response to the representations made by Res. No. 3.

Accordingly, the response of the University is received by TCP Department on 26/08/2019, which makes following points:

1. The TCP Board has got limited jurisdiction as provided in the TCP Act. Section 4 to 8 deal with the constitution of the TCP Board, its functions and powers. These sections do not empower the Board to consider the

representation made by Dr. Shetye for providing an access through the University land to Dr. Shetye.

2. The Regulation 4.11.d of the Goa Land Development and Building Construction Regulations, 2010 is unconstitutional, ultra vires, illegal; and void and in Writ Petition No. 681/2017, Hon'ble High Court of Bombay at Goa has issued a rule by which Chief and Dy. Town Planner have been restrained from considering the representation of Res. No. 8 to the said petition under Regulation 4.11.d.
3. The Order dated 27/10/2015 was passed in an appeal filed by the Goa University against stop work order dated 04/12/2014, the North Goa PDA had taken a view that finally approved sub-division road/proposed 30 mts. ODP road is blocked and further that the work of the building of RCC framework and further that the work of the building of RCC framework was going on and petitioners were directed to remove the barbed wire fencing along their boundary which are blocking access to neighbouring properties.
4. The Goa University removed the blockages at two points i.e. one on the Northern side and one on the Southern side, as those were the points which were inspected by the Sub-committee. The University submitted their compliance report to the Board but has not received any reply. No intimation was received by the University at any point of time from the Board that the University so required to remove the portion of the compound wall everywhere so as to give access to each and every land owner. Such a direction would never have been given and the TCP Board could not have constituted itself as an authority to provide access to one and all when none exists and it is for the person concerned to take appropriate proceeding in the court of law. The TCP Board has no jurisdiction to give such direction to Goa University.

5. The property of Dr. Shetye is on the eastern side of the University whereas the property which was inspected by the Sub-Committee was at one point on the northwest side and one point on the southern side.

Hence, the Board may decide.

Item No. 2: Appeal filed by M/s Swapna Developers against South Goa Planning & Development Authority (File No. TP/B/APL/163/2017-19).

The matter was taken up earlier in 163rd meeting of the Board held on 16/08/2018 under item no. 5. During the hearing on the appeal matter, neither the Appellant nor his lawyer was present. The Respondent was represented by Member Secretary, South Goa Planning and Development Authority.

The Member Secretary, TCP Board briefed that the Appeal was earlier placed before 160th meeting of TCP Board held on 23/11/2017, in which the Board after deliberation had passed the following order:

“The TCP Board dismissed the appeal since matter of illegality was before Hon’ble High Court of Bombay, Panaji Branch and Hon’ble High Court in W.P. No. 14/3027 has already passed an order directing South Goa PDA to take action as per affidavit dated 07/12/2017, and whereas the South Goa PDA has already taken the necessary action after verifying that the development has been carried out without obtaining its prior approval, which is in violation of the rules and regulations”.

The Member Secretary, South Goa PDA submitted that Hon’ble High Court of Bombay at Goa in Writ Petition No. 201/2018 has passed the following order:

- (i) The petition is partly allowed.*
- (ii) The impugned order dated 25/01/2018 passed by the Board is hereby set aside.*
- (iii) TP/B/APL/163/17(P)/175 is restored back to the file of the Town and Country Planning Board for deciding it afresh in accordance with law.*
- (iv) Needless to maintain that the Board shall also decide the application for intervention after hearing the intervenor, in accordance with law.*

- (v) *The Board shall decide the matter as expeditiously as possible and within a period of six months from the receipt hereof.*
- (vi) *The petition is disposed of in the aforesaid terms, with no order as to costs.*

The Board after deliberation had decided to defer the case and to give one more chance to the Appellant to appear before it for the hearing.

The matter is accordingly placed before the Board for hearing.

Item No. 3: Budget of North Goa Planning and Development Authority.

The North Goa PDA has submitted budget for the year 2019-2020. The same is placed before the TCP Board under Section 106 of the TCP Act. The Board may take note of the same.

Item No. 4: Constitution of North Goa Planning and Development Authority, Greater Panaji Planning and Development Authority, Mormugao Planning and Development Authority & South Goa Planning and Development Authority.

The following Planning and Development Authorities are reconstituted under the provisions of Section 20(1) & (3) of the TCP Act. The details of notifications are as below:

1. North Goa Planning and Development Authority has been constituted vide notification No. 28/11/TCP/2017-19/2340 dtd. 17/09/2019 published in Official Gazette Series II No. 25 dtd. 19/09/2019.
2. Greater Panaji Planning and Development Authority has been constituted vide notification No. 28/11/TCP/2017-19/2341 dtd. 17/09/2019 published in Official Gazette Series II No. 25 dtd. 19/09/2019.
3. South Goa Planning and Development Authority has been reconstituted vide notification No. 28/11/TCP/2019/2574 dtd. 01/10/2019 published in Official Gazette Series II No. 27 dtd. 03/10/2019.
4. Mormugao Planning and Development Authority has been constituted vide notification No. 4-5-2-84-UDD(Pt)/12/2339 dtd. 17/09/2019 published in Official Gazette Series II, No. 25 dtd. 19/09/2019.

The matter is placed before the Board for obtaining its post facto approval for reconstitution of PDAs as above, as required under Section 20(1) of the Act.

Item No. 5: Draft Outline Development Plan – 2028 for Arpora-Nagoa-Parra Planning Area under Section 29 of TCP Act.

The North Goa PDA vide letter No. NGPDA/ODP/ARP-NAG-PAR/3644/19 dtd. 26/2/2019 has submitted Draft Outline Development Plan – 2028 for Arpora-Nagoa-Parra Planning Area. The same is placed before the Board for consideration under Section 29 of TCP Act.

Item No. 6: Re-constitution of North Goa PDA and Greater Panaji PDA with regard to Planning Areas.

The Planning Areas under the jurisdiction of North Goa PDA and Greater Panaji PDA are contiguous as regards to Panaji Planning Area and Taleigao Planning Area. Panaji Planning Area is however under the jurisdiction of North Goa PDA and whereas Taleigao Planning Area is under the jurisdiction of Greater Panaji PDA.

The Board may therefore decide about reconstitution of these PDAs by changing the Planning Areas under their respective jurisdiction specifically as regards to Panaji Planning Area, in public interest.

Placed before the Board for necessary decision.

Item No. 7: Proposals received under Section 16B of TCP Act for provisional approval.

With notification of Section 16B of TCP Act, the Town & Country Planning Dept., has started receiving applications u/s 16B. The proposals as received under Section 16B for provisional approval as per Annexure 'A' were discussed in the 166th meeting of TCP Board and the same are placed again before the Board for necessary consideration.

Item No. 8: Proposals received under Section 16B of TCP Act for final approval.

With notification of Section 16B of TCP Act, the Town & Country Planning Dept., has started receiving applications u/s 16B. The proposals as received under Section 16B for final approval as per Annexure 'B' were discussed in the 166th meeting of TCP Board and the same are placed again before the Board for necessary consideration.

Item No. 9: Applications received u/s 16B of TCP Act, 1974.

With notification of Section 16B of TCP Act, the Town & Country Planning Dept., had started receiving applications u/s 16B. The proposals received needs to be deliberated. The list of such cases received is annexed as Annexure 'C'.

Item No. 10: Proposals received under Section 16B of TCP Act for final approval.

With notification of Section 16B of TCP Act, the Town & Country Planning Dept., has started receiving applications u/s 16B. The proposal as received under Section 16B for final approval as per Annexure 'D' is placed before the Board for necessary consideration.

Item No. 11: Any other item with permission of the Chair.