

1291
N137
33
2015

MUNICIPAL CORPORATION OF GREATER MUMBAI

No.: CHE/1727/DPES of 16/05/2015

Sub:- Policy guidelines for adjustment of D.P. road against Amenity Space in I to R and I to C conversion cases seeking Opinion of Advocate General in certain specific situations.

Ref:- 1) ChE/9093/DPES of 01/11/2014
2) MCP/418 Dtd. 24/11/2014
3) ChE/23359/DPES Dtd. 25/03/2015
4) MCP/3317 Dtd. 06/04/2015

Reference is requested to this office note vide no. ChE/23359/DPES Dtd. 25/03/2015 in subject matter & Hon. M.C.'s remarks thereon as "pl. discuss typology of various cases to evolve a policy".(n-35).
The remarks are submitted as under,

The residential/ commercial user on lands situated in General & special Industrial Zone(I2 & I3) are granted as per provision 56-3-C & 57-4-C of DCR 1991. The provision of amenity in such I to R/C proposals were governed by policy circulars issued from time to time. The extract of the main circular issued in the past u/No. **CHE/2847/DPC, dtd.04.12.1996** in respect of allowing non-industrial user in Industrial Zoned Lands by way of interpretation of 56(3)(C) and 57(4)(C) of DCR 1991 is reproduced below:

Sr. No.	Area of plot under conversion	%age of the land to be set aside
1	For plots upto 5000 Sq.mts.	NIL
2	For plots having area between 5000 Sq.Mts. to 20000 Sq.Mts.	5%
3	For plots having area 20000 Sq.Mts. and above.	2.5% + 5% for amenity utilizes under D.C. Reg.27 + 10% of additional recreational space.

The provisions u/s 56 & 57 are amended by vide government notification under no, **TPB-4304/2770/CR-312/04/UD-11 dtd 14/5/2007**. Accordingly 5% Amenity Space is insisted for the net plot area up to 2 Hector, 20% Amenity Space for net plot area between 2 hector to 5 Hector & 25 % Amenity Space for net plot area above 5 Hector.

The net plot area in such cases are computed after deduction of D.P. Road & existing Road, & adjusting the area under D.P. reservation if any affecting the said plot against the required amenity space.

The Hon. High Court in W.P. 651 of 2014 has directed to adjust the area of D.P. road against such amenity space considering same at par the D.P. reservations. On basis of decision in above said writ petition and after considering legal opinions obtained from Sr. Counsels, concurring with the said

court order to adjust the area of D.P. Road/ existing road. Six numbers of such proposals are considered by adjusting D.P. Road/ existing road against required amenity space with concurrence of legal department.
 The subject matter was discussed with the then Hon. M.C., when Hon. M.C. directed to put up the proposal for policy circular in this respect.
 The typology of various cases likely to arise with brief remarks are tabulated as under:-

Sr. No.	Case of I to R/C likely to be arise.	Remarks in respect of action proposed
A Proposals to be dealt at MCGM Level.		
1	New proposals of I to R submitted by considering adjustment of D.P. Road/ Setback where ownership of D.P. Road/ setback still vest with Owner/ Developer.	<ul style="list-style-type: none"> • As per the order of Hon. High Court, Mumbai in W.P. 651 of 2014, the D.P. Road is to be considered at par with D.P. reservation. • The reservation area can be adjusted against amenity space to be handed over to MCGM as per amended provision vide no.TPB-4304/2770/CR-312/04/UD-11 dtd 14/5/2007 in 56(3)(C) & 57(4)(C).
2	Revised proposal of I to R submitted by considering for adjustment of road area affected by D.P. Road/ Setback where ownership of land vests with Developer/ owner and where layout is approved & Building plans are not approved and/or bldg.. plan are approved but C.C. not Granted.	<ul style="list-style-type: none"> • The Amenity space in such case are not handed over to MCGM as such the adjustment of D.P. road/ Setback area may be considered treating the proposed road as an amenity as per the decision in W.P. 651 of 2014.
B Cases to be referred to Attorney General, GOM for opinion.		
1	In cases where layout is approved and building plans are also approved and C.C. to one or more buildings have been granted then such cases would be construed as commitment by the owner/ developer for handing over of the amenity space earmarked in such layout to MCGM. However, since the applications have now been received from such owner/developer, it is a point for consideration whether the owner/developer can be stopped from seeking such adjustment in terms of promissory estoppels.	
2	In case where D.P.Roads/ Setback have been handed over to MCGM in lieu of FSI benefit and land has not been transferred in P.R.Card whether the claim of adjustment can be considered	
3	In case where D.P.Road/ setback have been handed over to MCGM in lieu of FSI benefit, CC for equivalent area is already granted but land has not been transferred in the name of MCGM in P.R.Card, then whether the claim for adjustment need to be considered.	

4	In case where D.P.Roads/ Setback have been taken over by MCGM without any FSI or monetary benefit and the land has not been transferred in the P.R.Card in MCGM's name, then, whether the claim for adjustment can be considered. MCGM has already considered the above case and granted adjustments based on opinion of Sr. Counsel. However, the same will be also got confirmed from Advocate General.
5	In case where amenity area is already handed over but PR card is not transferred in name of MCGM and C.C. for the equivalent built up area has not been granted on remaining land in layout, then whether amenity area can be allowed to be reworked by adjusting the D.P. road/ Setback area.
6	In case amenity area is already handed over but PR card is not transferred in name of MCGM and the CC for the FSI benefit of amenity area is already granted, then whether the amenity area can be allowed to be reworked based on adjustment towards D.P. road/ Setback area

In view of above Hon. M.C.'s approvals requested to

1. Obtain the opinion of Attorney General, Government Of Maharashtra, in respect of cases mentioned in Sr.no B of table at N-32/39
2. To consider the proposals as mentioned in Sr.no. 'A' of table at N- 38 in respect of adjustment/ set off of lands affected by D.P. Road or sanctioned R.L. against area of amenity space as envisaged under regulation no. 56 (3)(c) and 57 (4)(c) of DCR 199.

The comprehensive draft policy Circular will be submitted to Hon. M.C. for approval on receipt of opinion from Attorney General, Government Of Maharashtra. However the cases proposed in Sr. no. A of table will be processed in the meantime if agreed.

Submitted Please.

[Signature]
E.E (D.P.) ES

[Signature]
16/5/15
Chief Engineer (D.P.)

Hon. M.C.

Sir,

Acc-(1/10321)

Approved as proposed

[Signature]
17/5/15

Municipal Commissioner

[Signature]
CHES(DP)

बृहन्मुंबई महानगरपालिका
आयुक्तांचे कार्यालय
18 MAY 2015
समय ११, १२, १३, १४
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