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Estate Agent Licence (Company) No. C-006243 地產代理(公司)牌照號碼: C-006243

Our Ref: ST/MIS/1371C/L02
Your Ref.: DEVB(PL-P) 50/12/60/1 Pt.4

21 June 2011

Development Bureau
9/F Murray Building
Garden Road
Hong Kong

By fax and post
(No. 2868-4530)

Dear Sirs,

**Sin Tin Toa Home for the Aged
(Lot No. 475RP in DD 185 and
Government Land Licence No. Z0070 ("the Site"))**

We act for Sin Tin Toa Home for the Aged, the operator of a columbarium on the Site.

We are instructed to object to the Town Planning Information as detailed in Column 5 of the Information on Private Columbarium (Part B) which was updated on 15 June 2011 regarding our client. Column 5 states that :

“ OZP : Sha Tin Outline Zoning Plan
Zoning : Government, Institution or Community and Village Type Development
Not in compliance with planning requirements (unless it is an existing use) ”

We are of the view that the columbarium operated by our client on the Site is an “existing use”. We now attach our counsel’s advice on this matter and supporting documents for your consideration.

In the premises, we would request you to classify the columbarium on the site as an existing use under Column 5 of the Information on Private Columbarium

Rock K. M. Tsang MHKIS MRICS RPS(GP) C. K. Chan MHKIS MRICS RPS(GP)
Daniel W. M. Fung MHKIS MRICS RPS(GP)



ISO 9001 : 2008
Certificate No.: CC 1607
(Valuation & Land Administration)

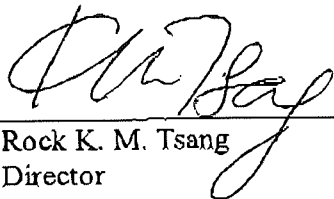
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In the meantime, all our client's rights in this matter are hereby expressly reserved.

Thank you for your kind attention on the matter.

Yours faithfully,
For and on behalf of
LANBASE SURVEYORS LIMITED



Rock K. M. Tsang
Director
RK/in

Encls.

c.c. Client

FW: Sin Tin Toa Home for the Aged Advice

From: YM Poon (ympoon@pauandco.com.hk)
 Sent: Tuesday, June 14, 2011 9:40:26 AM
 To: 'Clara Chiu' (sintintoa@hotmail.com)
 2 attachments
 Advice Sin Tin Toa Home for the Aged.docx (24.0 KB) , Draft Letter to Development Bureau.docx (12.2 KB)

趙姑娘，

隨函附上方大狀的法律意見書，請貴司的測量師發出致發展局的信函。

方大狀在信中所提及的隨函致發展局的附件，另函再發予貴司。

Regards

Y M Poon
 Solicitor
 Louis K Y Pau & Co., Solicitors
 4/F, The Chinese Club Building , 21-22 Connaught Road Central, Hong Kong
 Tel: (852) 2397 4088
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From: fong frederick [mailto:fong1981@hotmail.com]
Sent: Monday, May 16, 2011 11:57 AM
To: ympoon@pauandco.com.hk
Subject: Sin Tin Toa Home for the Aged Advice

Mr. Poon,

Herewith the advice and draft letter to Development Bureau.

Frederick

Re: Sin Tin Toa Home for the Aged

ADVICE

- Instructing solicitors act for Sin Tin Toa Home for the Aged (“the client”) and I am instructed to advise on whether the columbarium established by the client on the land Lot No. 475RP in DD185 and the land under the Government Land Licence No. Z0070 is in compliance with the planning requirements under the draft Sha Tin Outline Zoning Plan.

Background

- The client has been included in Part B of the Information on Private Columbaria which was published by the Development Bureau and updated on 31st March 2011. The reasons are (a) the columbarium operated by the client on the land Lot No. 475RP in DD185 (“the Site 1”) and the land under the Government Lease No. Z0070 (“the Site 2”) are not in compliance with planning requirements and (b) the user restrictions in the relevant land lease are still under consideration and investigation by the Sha Tin District Lands Office.
- This advice concerns solely whether the columbarium on the Site 1 and the Site 2 are in compliance with the planning requirements.
- The columbarium established on the Site 1 and the Site 2 falls within an area zoned “Government, Institution or Community” (“G/IC Zone”) and an area zoned “Village Type Development (“V Zone”)” respectively. The relevant town plan is the draft Sha Tin Outline

Zoning Plan No. S/ST/24 ("OZP 2011") which was published in the Gazette on 11th February 2011.

"Existing Use"

- It is trite that both the Plan and the Notes form part of the OZP 2011. Paragraph 3 of the Notes provides as follows:
 - "(3) (a) No action is required to make the existing use of any land or building conform to this Plan until there is a material change of use or the building is redeveloped.
 - (b) Any material change of use or any other development (except minor alteration and/or modification to the development of the land or building in respect of existing use which is always permitted) or redevelopment must be always permitted in terms of the Plan or, if permission is required, in accordance with the permission granted by the Town Planning Board.
 - (c) For the purposes of subparagraph (a) above, "existing use of any land or building" means-
 - (i) before the publication in the Gazette of the notice of the first statutory plan covering the land or building (hereafter referred as 'the first plan'),
 - a use in existence before the publication of the first plan which has continued since it came into existence; or
 - ...
 - (ii) after the publication of the first plan,
 - a use permitted under a plan which was effected during the effective period of that plan and has continued since it was effected....."
- It is also trite that the Guidelines are material documents and should not be disregarded. In *Henderson Real Estate Agency Ltd. v Lo Chai Wan* (1996) 7 HKPLR 1, Lord Lloyd said:

“The plan and the Notes attached to the plan are obviously material documents to which the Appeal Board were bound to have regard; indeed they are the most material documents in the case. But what about the Explanatory Statement, and the subsequent guidelines? The Explanatory Statement is expressly stated not to be part of the plan. But it does not follow that it was not a material consideration for the Appeal Board to take into account, even though, as Mr Read QC, for the appellants, pointed out, the Ordinance does not contain a provision, corresponding to s 72 of the Town and Country Planning Act 1990, or clause 38(2) of the new Town Planning Bill, requiring the Town Planning Board and the Appeal Board to have regard to material considerations.

By the same token, the 1992 and 1993 guidelines are also material considerations to be taken into account. The Appeal Board was not bound to follow the Explanatory Statement or the guidelines. But they could not be disregarded.”

- In the Town Planning Board Guidelines for Interpretation of Existing Use in the Urban and New Town Areas issued by the Town Planning Board in May 2004 (TPB PG-NO.24C), paragraphs 2.3 and 3.3 are relevant. They read as follows;

“2.3 Generally speaking, the use of any land or building which was in existence at the time when a new statutory plan or a new land use zoning restriction affecting the land or building came into effect will be regarded as the “existing use” of the land or building. The “existing use” of the land or building will be allowed to continue whether or not the use conforms to the new statutory plan or the new land use zoning restriction. However, if the use was effected (i.e. came into existence) when a statutory plan was in force, it must be a use permitted under that statutory plan before the existing use right can be claimed...

3.3 It is not for the Planning Department or the Board to provide evidence to prove whether a use is an “existing use”. Any person who intends to claim an “existing use right” will need to provide sufficient evidence to support his claim.”

- Similarly, the definition of the phrase “existing use” is found under section 1A of the Town Planning Ordinance (Cap. 131) where it is defined as “a use of a building or land that was in existence

immediately before the publication in the Gazette of notice of the draft plan of the development permission area" in relation to a development permission area.

- The exemption of "existing use" accords with the important principle that "our citizens and businessmen should be confident that, save in the most exceptional circumstances, their lives and businesses should not be affected by any laws or regulations retrospectively" (*Kam To Sauna*, Town Planning Appeal No. 1 of 1998).
- The columbarium established on the Site 1 and the Site 2 is not one of the always permitted uses as set out in Column 1 of the Schedule of Uses to the Notes of the OZP 2011 in G/IC Zone and V Zone respectively.
- The sole issue is whether the said columbarium falls within the exception of "existing use" in accordance with paragraph 3 of the Notes.
- The significant date in determining whether the said columbarium is the "existing use" is 15th April 1966 when the draft Sha Tin Outline Zoning Plan (then numbered as No.:LST/47) was first published in the Gazette.
- It is essential to set out the history of the client.
- In 1943, the client was established. Since its establishment, the client has been operating a home for the aged, poor and the disabled. The client has been providing a one stop caring service from the

provision of foods and accommodation to after death services.

- Since 1949, the client has been operating a home for the aged on a piece of land which is now the Site 2 and was granted by the Government such licence since 1977.
- In 1950, the client obtained the Site 1 under the Government Lease New Grant No. 7859. Since 1950, the client has been providing the after death services to its inmates on both the Site 1 and the Site 2.
- The after death services were first in the form of traditional soil burials (see a copy of the extract of an article published by the client on 23rd October 1954 during its 10th anniversary annexed hereto as Annex I).
- Since 1960, the after death services were in the form of columbarium services where the bodies of dead inmates were burned and their ashes were stored in urns (see a copy of the photos annexed hereto as Annex II where the year of death of some of the inmates were stated to be in the years of 1961 and 1962). The year of death appearing on the urns represents the time when the bodies of dead inmates were burned and their ashes were stored in urns. Otherwise, it is against common sense that the bodies were placed elsewhere and buried some time before burning them and placing their ashes in urns.
- The article annexed as Annex I supports the fact that the client provided the after death services on both the Site 1 and the Site 2 as early as 1950. Most importantly, the photos annexed as Annex II are strong evidence to prove that the client provided the columbarium services at least as early as 1961, before the significant date of 15th

April 1966.

Conclusion

- My view is that there is sufficient evidence to prove that the columbarium services provided by the client on both the Land Licence No.: Z0070 and the land Lot No. 475RP in DD185 fall within the "existing use" in accordance with the Notes of the OZP 2011. Accordingly, such columbarium services are in conformity with the planning requirements under the OZP 2011.

Dated the 16th day of May 2011

Frederick FONG
Counsel

Appendix I

一九五四年
十月廿三日
歲次甲午九
月廿七日

先天道安老院創立十週年紀念 暨新建築男女宿舍落成紀念刊

院址
香港九龍
沙田

沙田先天道安老院 籌款華

沙田先天道安老院之開始，乃在一九四三年，即香港淪陷之三年。時政府將該地已蓋。奉命停止服務，死亡枕藉；餘幸蓋被死之遊魂人，因舉新義安白粥以救其命。日數十人，食後而死者一不勝數。行之者，亦不能自存，散之四方而已。身既失志，行，又不願茹荼以求苟活，故說迷來此，坐候飛龍行云。同人等因本救世心，特籌會先天道安老院，以克其志。當時因地方所限，收容初步，祇三十六名。院址則設於深水埗道茶街，一連五間，共計七層。經前月之籌備，始於夏曆六月十五日開幕，更事收管。使生得休養，死者得安。本院自開辦以來，蒙各界人士之同情，時予協助，此舉之艱難，竟得安然渡過。亦幸年兵！越年秋，港土重光，各獲復元，院址乃遷於沙田河元大遊樂之寶貴。計：仍舊舊居性質，查事人等，以發宅資，終九九四八年春，承道區商女士機捐坐落沙田之舊石屋一座，連地一萬五千方尺，以為院址。當即大舉修葺，展拓地基；先將原有老人遷入居位，一面繼續加建臥室，浴室，廚房，浴室；及加築書室，聚族堂等。全部費用，達四萬餘元。本院書室，恆至，各得各室進修，暨社會熱心人士，同德相助，始克落成。乃增修道中及道外老人至七十名，并健全其組織，分設財務，總務，文書，新給，編查，各部，分責辦理，設院長一人，副院長二人，以廣服務；設董事二人，常川駐院管理；什役四人，負責清潔，及服侍老人等什務。醫藥方面，則任道區中，林道富地之中醫生，及聘大埔興九龍之西醫生，分別商之治症。與者送入兩室以息；指由院方安之服役。老人身後，所有未盡棺木，均由院方料理安葬，春秋佳節，老人日常生活，依規定秩序，人員，登山祭掃之。老人日常生活，依規定秩序，

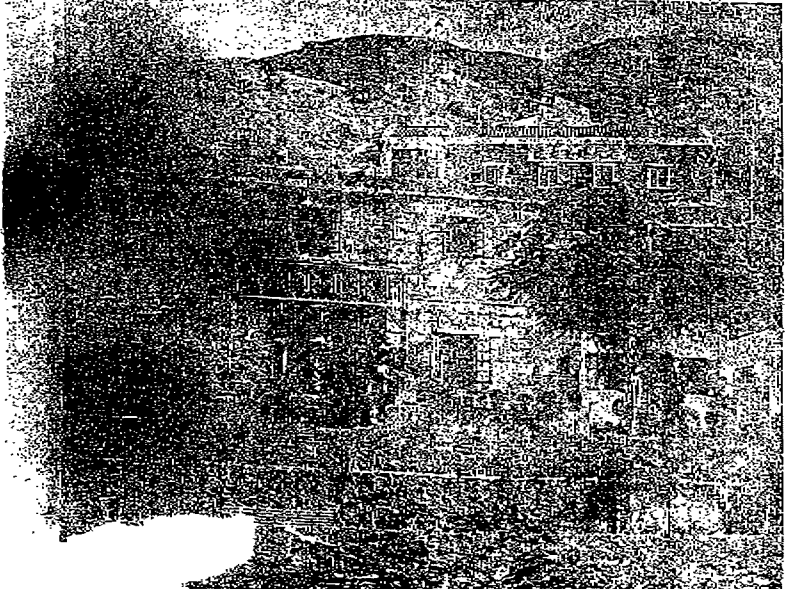


一九四九年夏歷四月，本院舉行遷居沙田，或立開舉典禮時，全新院長政母七位格先生親臨為之剪綵。當一九五五年，又蒙政府撥款後山二萬餘尺，惟昔無收賬。因於一九五一年冬，與沙田新公所，在沙田四圍修築路橋，於一九五一年冬，與沙田新公所，光華石壁，填金路等。仍於定案所處。乃此兩內部加強組織，公選理事七名，正副會長三名，與正副院長三名，處理院務。更分設各部，及出納，文書，醫藥，衛生，醫藥，會計，各部，及出納，保管，庶務，醫藥，衛生，醫藥，會計，各部，及出納，書記一人，女工醫藥，醫藥，會計，各部，及出納，平，胡公文虎廉院服務，深以院內辦事費難認真，區區推許，因陳允允捐築女宿舍兩座。嗣後高紀念胡公文約，更捐建宿舍一座。是年冬，又得善道增先主捐建男宿舍一座。現均次第完成；且於院內上下道路修葺，互相通貫，規矩給給。本院者老，固非一人之事，亦非一團體之事，更非一德宗我之事。故以老有所善，為人願守其有同情之舉。一切工作，以高社會服務；又每因屋舍所積，遂致無依。故一念真過去，早思全性而肯不一，則老無吟賦之分；倘能延年老無依，又非有幾幾幾病者，則不論何人，皆可申請進入安老。是以各界人士，無不表同情，樂為援助。現本院統計有男女老幼七十餘名，收容女姓老人一百七十餘名，不日再將男老老人收容，計在二百名以上。待奉各界援助，及地方所限，則又必不止此數矣！本院奉助財力，無不竭力，於安老之業，益覺允備。今更有百舍可辦十週年之慶，因於上月召集籌備會議；定於十月廿三日舉行，本院開辦十週年紀念慶典。此刊本院，願予協助，以誌感戴。尚請：賜予指導，賜賜銘感！



安所安而為善

本院在各界善長仁翁協助下，蒙款捐資，及啟聖相助，事略獲。而感今日創學院中，花木扶疎，不特老耆有所安身，即遊網如家，亦足供慰思，懇各界善士之助，賜允銘感！



Appendix II

