

Our Ref : ST/MIS/1371C/L19

Your Ref.: DEVB(PL-P) 50/31/06/1

22 December 2015

Development Bureau
17/F, West Wing,
Central Government Offices,
2 Tim Mei Venue
Hong Kong

By fax and post
(No. 2868-4530)

Attn : Mr. Kevin Ip

Dear Sir,

**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 30 September 2015 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.

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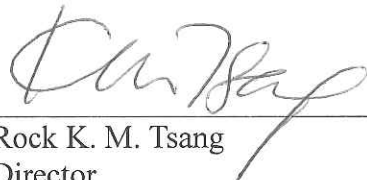
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In the premises, we would request you to classify the columbarium on the site as an existing use under Column 5 of the Information on Private Columbarium

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

Encl.

c.c. Client

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

一九五四年
十月廿三日
歲次甲午九
月廿七日

謝詩飲水埤船終老無他事
先天下知先老就一箇十字詩

▲院址▲
香港九龍
新界沙田

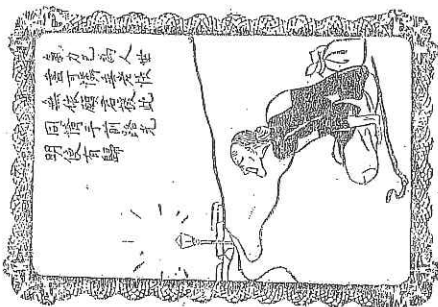
沙田先天道安老院
創辦十週年事略

粵東黃氏撰

沙田先天道安老院之開始：乃在一九四三年，即香港陷敵之二年。時政府廢私立堂，米食停止配給，死亡枕藉；饑寒流離；誠苦雲霓望雨之人，因舉所止託庇，掃以救濟；日數十人，奔走而來者，不勝修行之責者，掃以救濟；至此，則皆以至於斃命，負扶行，責者，亦不能自行救之，四方而已。身既共赴危行，又不顧招搖之以求苟活，故之救世，迴來此。

同姓人等因本派祖德宏深，特聯會成立道舍之會。當時因地方所限，收聚初步，祇有二十二人，以竟其志。兩月之餘，籌備完竣，始於夏二月初三晚，共設七席。嗣後，生之步趨漸衆，近有歸終。老時，米食價格中平，數千五元漲至百餘元，士之同情，時予協助。此雖一區之頭，當時安然渡世，亦云幸矣！越半道，港土重光，竟得復元。址乃遷於太平池，以昭大道之實光。

仍屬舊址性質，董事人等，以租欠賁區，終非久計。五歲：購地造屋。惟告無通當之地。延至一九四八年春：亦置道居。女士樓連路之屋長一百五十尺，屋地一萬二千方尺，於本院建。當日大第落成，屋地至室，最廣至廚，浴至；及加築增加，裝設水電等等。全部費用，達四百餘元。本院意無恒產，遂成公堂道居，暨社會熱心人士，同情捐助，健全其組織。乃分設財政、總務、文書、聯絡、調查、處理院務；設管家二人，常川駐管理；設四人，用有清潔；及服侍老人事務醫藥方面，則任醫生分別診治。當此之中，病者，及時大補與丸散西藥，一應俱全。老人壽延，所有衣食棺木，均由院方代為照度。老人身故，入殮至具，指棺工費，理妥葬禮。全院老人，能步高，履工作，入山，登山探勝。老人日常生活，依規定秩序，

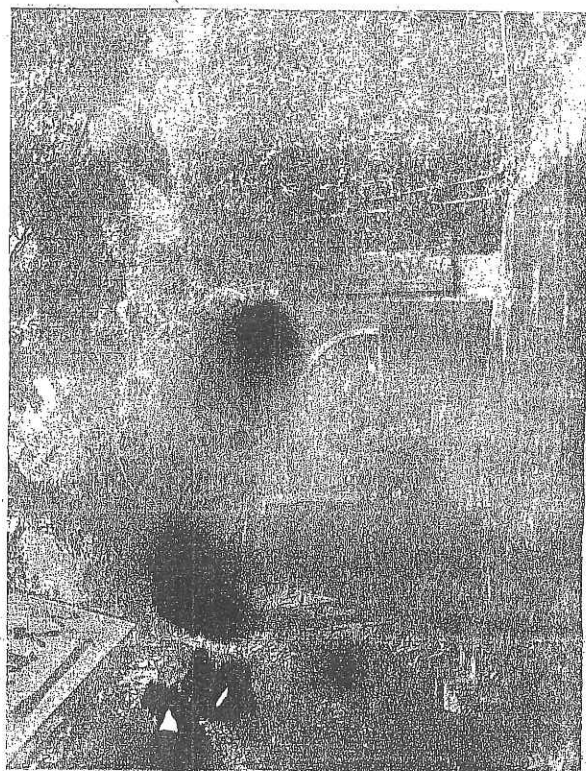


起居飲食，編經禮佛，將坐聽講，均有固定時間。暇則任許自由瞻花樹樹，須鳴主鐘，以增其愉快之情緒。

當一九四九年夏歷四月，本院舉行遷居沙田，成立開業典禮時，蒙新界民政署長班格先生蒞臨為之剪綵。

一九五五年，又蒙政府給賜院後山地二萬餘尺，建在沙田興修善堂醫務會館。至一九五七年，與沙田公所、崇光石室及現寬地基等，仍未定有所遷建。乃先將本院內部加緊組織，分設庶務處、會計、各部及出納、文書、膳食、衛生、護理、音樂、藝文、體育、義工隊等部，配一女子工役二人，置設診劑而己。一九五三年，胡公文復院院犯案，遂以院內辦事更調陳銳真為推計，因建九庵捐奉寺宿舍兩座。嗣後經紀念煙生士請差男宿舍一座，現均次章完成；且將本院上下下諸路修浚，互相通貫，欄模柱舍類備本院宗事，固非私人之事，亦非一個體之專，自非一種宗教之事，誠以老有所需，為人類中最高同情之舉。若一切排棄老，需社會富力強，其精神體力，消遣於垂暮無依。故為五大通途，爭早利而不肯不為援助手，且本院雖為先進道中人所辦，而收容老人，則普無不歡迎之令；倘僅屬老年樂院，又非有殘廢癱瘓者，則不論何人，皆可中途送入安養。是以各界人士，莫不踴躍同情，樂助慷慨。現本院統計有男女老幼七間，收容女姓老人一百七十餘名，不再日將男姓老人收容，即增至二百人以上數矣。將來眾眾財力普及地方所限，而只能收容女性老年人，今更有百金可辦十週年之喪，因茲上表召集籌款會議，定於十月廿三日舉行，本院開辦十週年紀念慶典。用祈本院恩賜庇護！祝！

羅平鵬謹啟



便石級，直達第一宿舍，及第二宿舍。

叶 造 水 田 花 湖

本院在各界善長仁翁協助下，敎鼓題營，從殷堅願，畢登
魁獎。而咸今日國亭院宇，花木扶疎，不特老耆有所安習，即
各莊止，足供憩息，微各方善士之功，曷克罄記！

