

IN THE TOWN PLANNING APPEAL BOARD

Town Planning Appeal No. 8 of 2010

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BETWEEN

Messrs. HO KWAI WAH and  
HO YUN FAT

Appellants

and

TOWN PLANNING BOARD

Respondent

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Appeal Board : Mr. Patrick FUNG Pak Tung, SC (Chairman)

Miss Carmen CHAN Ka Man (Member)

Miss CHUNG Ching May (Member)

Ir. NG Kwok Chun (Member)

Dr. John WONG Yee Him (Member)

Date of Decision : 1<sup>st</sup> April 2011

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**DECISION ON REVIEW**

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1. By our Decision dated 1<sup>st</sup> March 2011 (“the Decision”), we dismissed the Appellants’ Appeal pursuant to Regulation 7(2)(c) of the Town Planning (Appeals) Regulations on the

ground that neither the Appellants nor their authorized representative appeared at the hearing of the Appeal despite the fact that they had been given ample notice of the same.

2. A copy of the Decision was sent by the Secretary to the Appeal Board ("**the Secretary**") to the authorized representative of the Appellants, Allied Surveyors Limited, under cover of a letter dated 1<sup>st</sup> March 2011 sent by registered post (double).
3. Regulations 7(3) and (4) of the Town Planning (Appeals) Regulations provide as follows : -

“(3) If the Appeal Board dismisses an appeal under subregulation (2)(c), an appellant may, within 14 days of the making of the order dismissing the appeal, apply in writing to the secretary to the Appeal Board for the Appeal Board to review its decision.

(4) On a review under subregulation (3), the Appeal Board may, if it is satisfied that the failure to appear was due to reasonable cause, set aside the order and fix a date and time as it thinks fit for the hearing, and, unless the parties agree, the date shall be not less than 14 days from the date of the review.”

4. By a letter dated “15 March 2011” ("**the Letter**") and marked “By Fax and By Post (Fax No. 2186-8031)”, Allied Surveyors Limited wrote to the Secretary and applied for a review of the Decision. The 2<sup>nd</sup> and 3<sup>rd</sup> paragraphs of the Letter read as follows : -

“We refer to the appeal hearing which was scheduled to be heard on 17 February 2011 and write to apologize for not attending the said hearing due to absence from Hong Kong.

According to the provisions made under Regulation 7(3) of the Town Planning (Appeals) Regulations, we hereby write to you again for a review of the Appeal Board’s decision made on 1 March 2011 on a sympathetic ground.”

5. Although the letter is dated “15 March 2011”, it was not received by the Secretary until 18<sup>th</sup> March 2011. The envelop containing the Letter in fact bears a post mark dated 17<sup>th</sup> March 2011.
6. Furthermore, although the Letter bears the indication that it was faxed to the Secretary, she discovered that she had not received a copy of the Letter through the fax machine whether on 15<sup>th</sup> March 2011 or subsequently after careful checking. It is also noted that the fax number “2186 8031” marked on the Letter was indeed a wrong number. The correct number of the Secretary’s office should be “2186 8301”. This is of course not the fault on the part of the Secretary.
7. In the circumstances, the application for review by the Appellants was made after the expiration of the 14 day-period prescribed by the said Regulation 7(3). For this reason alone, the application should not be entertained.

8. Furthermore, we are of the view that “absence from Hong Kong” of the Appellants and/or their authorized representative on the scheduled date of the hearing of the Appeal in the circumstances of the present case does not constitute any “reasonable cause” within the meaning of the said Regulation 7(4) to merit a review of the Decision. Neither would any alleged “sympathetic ground” entitle the Appellants to succeed on the application for review.
9. In all the circumstances, we dismiss the Appellants’ application for a review of the Decision.

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Mr. Patrick FUNG Pak-tung SC  
(Chairman)

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Miss Carmen CHAN Ka Man  
(Member)

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Miss CHUNG Ching May  
(Member)

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Ir. NG Kwok Chun  
(Member)

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Dr. John WONG Yee Him  
(Member)