



# **SELANGOR APPEAL BOARD LAW REPORTS**

**[SECTION 36, Town and Country Planning Act, 1976(Act 172)]**

Volume 4, Issue 2 [SABLR/4/2/2014, September 2014]

**Persatuan Rumah Warga Emas Klang V. MPK**

**Tetuan Visamaya Sdn. Bhd. V. MPSJ**

*Published By State of Selangor  
Selangor State Town And Country Planning Department and Selangor Appeal Board  
September 2014*





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## HIGHLIGHTS

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## **Editorial**

Y.Bhg. Dato' Abu Bakar b. Awang

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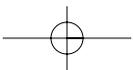
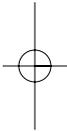
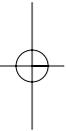
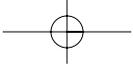
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# AWARDS REPORTED

FILE NO	PARTIES
LR. SEL. (195)MPK/07/2010	Persatuan Rumah Warga Emas Klang V. MPK
LR. SEL. (272)MPSJ/03/2012	Tetuan Visamaya Sdn. Bhd. V. MPSJ



**LEMBAGA RAYUAN NEGERI SELANGOR**

**RAYUAN NO: LR Sel. (195)MPK/07/2010**

*Di Antara*

**PERSATUAN RUMAH WARGA EMAS KLANG - PERAYU**

*Dan*

**MAJLIS PERBANDARAN KLANG - RESPONDEN**

**PER: RAYUAN TERHADAP PENOLAKAN KEBENARAN MERANCANG BAGI TUJUAN  
TUKAR GUNA BANGUNAN DARIPADA RUMAH KEDIAMAN KEPADA PUSAT JAGAAN  
WARGA EMAS DI NO.57, LORONG BENDAHARA 3/KS7, TAMAN SEJATI, 41200  
KLANG, MUKIM KLANG, DAERAH KLANG UNTUK PERSATUAN RUMAH WARGA  
EMAS KLANG.**

**Ahli Lembaga Rayuan**

Dato' Abu Bakar bin Awang	-	Pengerusi
Ho Khong Ming	-	Ahli
Dato' Hj. Abd. Mutallib bin Jelani	-	Ahli

**Pendaftar**

En. Saifuddin B. Marsuk

## ALASAN KEPUTUSAN

The fact that there is an application from a charitable organisation to use a residential house for the purpose of an old people's home reflects a sad and unsatisfactory situation in our society. Ideally, old peoples homes are community responsibility, that is a state responsibility. Ideally, an old peoples home should be specially designed and specially located. It should be a single storey building, yes, just as the Respondent has so correctly and loudly made a point of. Indeed more than that it should be a large building with many rooms with immediate and easy access to medical facilities and doctors and staffed by personnel trained in the care of old peolpe. Ideally it should include a communal dining room, a recreation room, a television room, perhaps a hall for line dancing, specially designed bathrooms and toilets with support rail facilities and individual bedrooms, for even old people need privacy some time. It should have a sick room, a therapy room, a prayer room, and perhaps other facilities. It should have large grounds for exercise, calisthenics. Games like lawn bowling, croquet and so on.

But we do not have such facilities. Instead we have make-do facilities utilising whatever affordable houses are on the market. We have volunteer bodies and untrained staff doing as best they can to fill a yawning gap of need. Or sometimes, we have commercial bodies making a business out of looking after the aged.

As an nation, we live by the principle that aged parents are the responsibility of their chidren. However, we should take cognition that the affordable house available on the housing market do not provide a normal family with contingent space to house an additional aged parent or a pair of aged parents. The institution of the nuclear family also makes many children reluctant to look after their aged parents. The current social situation and physical environment is making many of the aged homeless.

As no state agency, such as Jabatan Kebajikan Masyarakat or local authorities, provides old peoples' homes, the duty of the local authorities should be at least to facilitate the voluntary bodies that come forward to provide such homes. They should perhaps even bend backward to facilitate them but certainly as far as possible avoid obstructing their work.

### Rationale for the Refusal of Planning Permission

The reasons given by the Respondent for the rejection of planning permission are:

- a) Kategori warga emas adalah dalam lingkungan 60 tahun ke atas;

- b) Keadaan rumah 2 tingkat adalah tidak sesuai bagi warga emas jika dilihat faktor kesihatan dan keselamatan;
- c) Lebih sesuai dibuat di rumah sesebuah 1 tingkat di jalan cul-de-sac;
- d) Perlu mengambilkira faktor kebersihan.

Reason (a) is not a reason at all but merely a statement of the age qualification for inclusion in the age of "warga emas". Anyway, it is not the business of the Respondent to make such categorisation. The Respondent should accept whatever age qualification is determined by the Jabatan Kebajikan Masyarakat as it is in a better position to do so (and may have other purposes for it, such as the entitlement to welfare benefits). (The said Jabatan it appears to make exceptions to the age qualification as the Appellant reports that it, as well as the hospitals, sends paraplegics below the age of 60 to his old peoples' home to be taken care of.)

Reason (b) and (c) are one reason and not two reasons. This appears to be the only technically plausible reason given by the Respondent. Nevertheless, it is countered by the following arguments:

- i. As explained by the Appellant, the upstairs rooms are used by the staff and for storage and not for the inmates.
- ii. The Appeal Board would like to add that it is not necessarily true that a person who is 60 and above cannot climb stairs!

The Board would like to remind the Respondent that the Appellant, being a charitable organisation, is probably operating within a tight budget and other constraints and must make do with whatever is available to him. Futhermore, the Board is given to understand, the Appellant needs a location conveniently close to its existing old peoples' home, for which planning permission has been granted by the Respondent. The said old peoples' home or homes are really a gift to the Respondent by members of the public. Until and unless the Respondent himself provide old peoples' homes to care for derelict old folks, he should stop looking a gift horse in the mouth!

Reason (d) may be used as a condition of approval but it cannot be presumed that the old peoples' home will be dirty and the presumption cited as a reason for rejection of the application.

## Land Use

The Respondent proposes that old peoples' home should be regarded as an institutional use and should be located in an institutional use area. Does this mean that an old peoples' home should be located with museums and libraries? This is nonsense. Old people are still people. They should be living among people. It is hypocrisy to refer to old people as "warga emas" and immediately treat them as nuisance group to be put aside and forgotten. The organisation to look after the aged may be an institution, but the land use involved is pure and simply residential. For administrative purpose of course such as for the collection of rates (cukai pintu), the Respondent may treat an old peoples' home as institutional (as opposed to commercial). Indeed, the Respondent should consider exempting old peoples home that are run by charitable organisations from the payment of rates (provided the benefit goes to the charitable organisation and not the landlord). It is a small gesture but it will at least be moral support.

## Objectors

The Respondent has notified many neighbouring residents of the application. The majority have not responded. The Appeal Board takes note of this and must apply the dictum "*qui tacet, consentire videtur*" (silence means consent).

Those the objected seem more prejudiced and ill-informed than rational. One objects the likely increase in traffic from the "functions" that will be held, perhaps hinting at imagined funeral rites. The Board is informed that terminally sick inmates are taken to hospital and funeral wakes are not held at the old peoples' homes. Visits by friends and relatives are also not likely to be frequent as these are "abandoned" persons-indeed, as we aspire to be a caring society, such visits should be encouraged.

Another objected to the dirty conditions and smells because old people cannot take care of themselves properly. This is an absurdly offensive suggestion. People who keep dogs and allow their dogs to defecate all over the neighbourhood are more of nuisance. People who keep cats and their cats leave droppings in neighbour's gardens and driveways are more common nuisance. Cleanlines can be made a condition of approval, but the lack of cleanlines and potential smells should not be a presumption to be used to reject a planning permission. The requirement of cleanliness is a matter for the care-takers to comply with.

While the Board appreciates that the Respondent should be respectful to and patient with objectors, he should examine objections with greater discretion and judgement. The Respondent should have a set of objectives to promote the public good to guide his response to individual objections and not to accept objections without thought.

## Decision of the Board

The Respondent's rejection is without merit. The Board therefore allows the appeal and directs that the Respondent grants planning permission for a period of three years, at the end of which the planning permission may be reviewed and *rebutis sic stantibus* renewed. The planning permission should only be terminated if the Appellant fails to comply with any of the conditions of approval.

The Respondent may impose conditions of cleanliness and minimisation of disturbance to neighbours in the approval.

**Bertempat di Shah Alam  
Pada 18 April 2013**

**Dato' Abu Bakar bin Awang**  
Pengerusi,  
Lembaga Rayuan Negeri Selangor

Saya setuju dengan keputusan ini

**Ho Khong Ming**  
Ahli Lembaga Rayuan  
Negeri Selangor

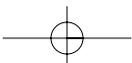
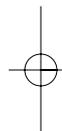
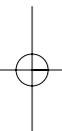
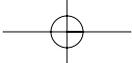
Saya setuju dengan keputusan ini

**Dato' Abd. Mutallib b. Jelani**  
Ahli Lembaga Rayuan  
Negeri Selangor

*Bagi Pihak Perayu*

*Bagi Pihak Responden*

- *Tetuan Persatuan Rumah Warga Emas*
- *Tetuan S. Many & Co*
- *Majlis Perbandaran Klang*



**LEMBAGA RAYUAN NEGERI SELANGOR**

**LR SEL.(272) MPSJ/03/2012**

*Di Antara*

**TETUAN VISAMAYA SDN. BHD - PERAYU**

*Dan*

**MAJLIS PERBANDARAN SUBANG JAYA - RESPONDEN**

**PER: RAYUAN TERHADAP PENOLAKAN KEBENARAN MERANCANG BAGI  
PENDIRIAN BANGUNAN BAGI CADANGAN MEMBINA 2 BLOK KOMERSIL "SERVICE  
APARTMENT "DI ATAS LOT 847, JALAN SUBANG 7, TAMAN PERINDUSTRIAN  
SUBANG USJ 1, SUBANG JAYA , MUKIM DAMANSARA, DAERAH PETALING  
UNTUK TETUAN VISAMAYA SDN. BHD.**

**Lembaga Rayuan**

Dato' Abu Bakar bin Awang - Pengerusi  
Dato' Azmeer Bin Rashid - Ahli  
Ho Khong Ming - Ahli

**Pendaftar**

En. Saifuddin B. Marsuk

## ALASAN KEPUTUSAN

Pihak Perayu di dalam Rayuan ini adalah Tetuan Visamaya Sdn. Bhd yang telah membuat rayuan terhadap keputusan Majlis Perbandaran Subang Jaya bertarikh 30 Mei 2012 menolak permohonan Kebenaran Merancangnya bagi Pendirian Bangunan Bagi Cadangan Membina 2 Blok Komersil "Service Apartment "Di Atas Lot 847, Jalan Subang 7, Taman Perindustrian Subang USJ 1, Subang Jaya, Mukim Damansara, Daerah Petaling.

Penolakan Kebenaran Merancang C (2) bertarikh 30 Mei 2012 adalah:-

- a) Aktiviti perniagaan komersil "Service Apartment" adalah tidak bersesuaian dengan gunatanah sekitar;
- b) Aktiviti perniagaan yang dibenarkan di kawasan ini adalah dari jenis perniagaan untuk menyokong kawasan perindustrian sedia ada sahaja;

Selain dari itu, di dalam surat kelulusan Pejabat Daerah dan Tanah Petaling bertarikh 15 Mac 2012 yang menyampaikan kelulusan Majlis Mesyuarat Kerajaan Negeri Selangor untuk mengubah dan menukar jenis kegunaan tanahnya daripada perindustrian kepada perniagaan tertera syarat bahawa bangunan perniagaan yang dibina hendaklah tertakluk kepada keperluan piawaian Pihak Berkuasa Perancang.

Menurut Rancangan Tempatan Majlis Perbandaran Subang Jaya 2020 di bawah tajuk Peta Cadangan Gunatanah BP.1 : Subang Jaya - USJ 1, di bawah Jadual 7.1.6 kegunaan tanah dalam BP 1 ini adalah terhad kepada apa saja yang diperuntukkan di situ tetapi aktiviti bangunan "Service Apartment" tidak diperuntukkan. Ini bermakna cadangan pihak Perayu untuk mendirikan "Service Apartment " tidak boleh dibenarkan.

Oleh yang demikian, walaupun pihak Perayu memiliki lot yang disyaratkan untuk "perniagaan" tetapi oleh kerana ia terletak di dalam zon "perindustrian" dan aktiviti gunatanah di situ tidak membenarkan bangunan "Service Apartment" maka permohonan pihak Perayu tidak boleh dibenarkan.

Oleh yang demikian, keputusan Penolakan Kebenaran Merancang bertarikh 30 Mei 2012 ini dikekalkan.

Tiada perintah kos.

**Bertempat di Shah Alam**  
**Bertarikh 12 Mac 2013**

**Dato'Abu Bakar b. Awang**  
Pengerusi,  
Lembaga Rayuan Negeri Selangor

Saya setuju dengan keputusan dan perintah ini  
12 Mac 2013

**Dato' Azmeer Bin Rashid**  
Ahli Lembaga Rayuan Negeri Selangor

Saya setuju dengan keputusan dan perintah ini  
12 Mac 2013

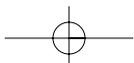
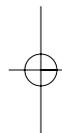
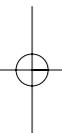
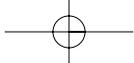
**Ho Khong Ming**  
Ahli Lembaga Rayuan Negeri Selangor

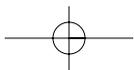
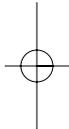
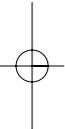
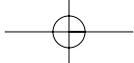
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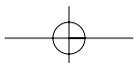
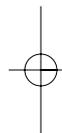
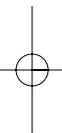
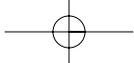
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*Cik Sandy Ee*  
*En. Kuh Kin Kuang*  
*Cik Wong Siiw Hooi*

*Bagi Pihak Responden*

- *Pn. Anita bt. Abd. Jalil*  
*En. Ismail b. Muhamad*  
*Majlis Perbandaran Subang Jaya*







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