# J.Y. Interpretation No. 709 (April 26, 2013)*

## Review and Approval of Urban Renewal Project Summaries and Plans Case

### Issue

Are the Urban Renewal Act's provisions governing the review and approval of urban renewal project summaries and plans unconstitutional?

### Holding

[1] Article 10, Paragraph 1 of the Urban Renewal Act, as amended on November 11, 2008 (the amendment on January 16, 2008, only changed the punctuation of this Article), which governs the procedures of the competent authority's approval of urban renewal project summaries, is inconsistent with the due process of administrative procedure as required by the Constitution because this provision does not establish an appropriate organization to review urban renewal project summaries and also fails to ensure that interested parties are informed of all relevant information and have the opportunity to present their opinions in a timely manner. Paragraph 2 of the same Article, which provides the required ratio of consent for an application for approval of an urban renewal project summary (as amended on January 16, 2008, without changing the ratio of consent), is also inconsistent with the due process of administrative procedure as required by the Constitution. Article 19, Paragraph 3, First Sentence of the Urban Renewal Act, as amended on January 29, 2003 (the amendment on May 12, 2010, split Paragraph 3 of this Article into two paragraphs and renumbered them as Paragraphs 3 and 4 of this Article), is also inconsistent with the due process of

* Translation and Note by Yen-Chia CHEN

administrative procedure as required by the Constitution, because this provision does not require the competent authority to separately deliver an urban renewal project plan's relevant information to land and legal building owners other than the applicants in a renewal unit. Nor does this provision require the competent authority to hold the hearings in public, allow interested parties to be present at the hearings as well as present their statements and arguments orally, or, after taking the entire records of the hearings into consideration, explain the rationale for adopting or declining the arguments when deciding on the approval. Neither does this provision ask the competent authority to separately deliver the approved urban renewal project plans to the owners of the land and legal building in a renewal unit, the holders of other rights, the agencies for registration of restriction requests, or the holders of the right to registration of caution. All of the aforementioned provisions are in violation of the meaning and purpose of the constitutional guarantee of the people's rights to property and freedom of residence. The relevant authorities should review and amend the unconstitutional parts of the aforementioned provisions in accordance with the meaning and purpose of this Interpretation within one year from the date of announcement of this Interpretation. The said unconstitutional parts of the provisions should become null and void if they have not been amended within one year from the date of announcement of this Interpretation.

[2] Article 22, Paragraph 1 of the Urban Renewal Act, as amended on January 29, 2003, and January 16, 2008, which provides the required ratio of consent for an application for approval of an urban renewal project plan, is not in violation of the principle of proportionality under the Constitution or the due process of administrative procedure as required by the Constitution. Nonetheless, the relevant authorities should consider factors such as the actual implementation situations, general societal attitudes, and the needs for promoting urban renewal, and review and modify relevant provisions from time to time.

[3] The application of Article 22-1 of the Urban Renewal Act, as amended on January 29, 2003 (the amendment on June 22, 2005, polished the text of this Article), is limited to an application for urban renewal in a damaged urban renewal area due to war, earthquake, fire, flood, storm or other major incident, and promptly demarcated by the municipal, county (city) authority in accordance with Article 7, Paragraph 1, Subparagraph 1 of the Urban Renewal Act. Such application also must meet the condition of not changing the divided unit ownership and the land ownership of building lot possessed by the divided unit owners of other buildings. To this extent, this Article is consistent with the principle of proportionality under the Constitution.

## Reasoning

[1] In this Interpretation, the statutes applied by the courts in the underlying final judgments (Supreme Administrative Court Administrative Judgment 100- Pan-1905 (2011), Supreme Administrative Court Administrative Judgment 100-Pan-2004 (2011), Supreme Administrative Court Administrative Judgment 100-Pan-2092 (2011), and Taipei High Administrative Court Administrative Judgment 98-Su-2467 (2010)), including Article 10, Paragraphs 1 and 2, of the Urban Renewal Act (as amended on November 11, 1998), Article 22, Paragraph 1, and the amended Article 22-1 of the Urban Renewal Act (as amended on January 29, 2003; hereinafter the "former Act"), and Article 22, Paragraph 1 of the Urban Renewal Act (as amended on January 16, 2008) (the current Urban Renewal Act and the former Act are referred to collectively as "Act"), all fall within this Court's scope of review according to Article 5, Paragraph 1, Subparagraph 2 of the Constitutional Court Procedure Act. Moreover, Article 19, Paragraph 3, First Sentence of the former Act applied in the Supreme Administrative Court Administrative Judgment 100-Pan-1905 (2011), which is a final judgment, is not included in the petitions filed by the petitioners, but this provision provides

procedures which should be followed by the municipal or county (city) authority when deciding on the approval of an urban renewal project plan, which is a subsequent stage following an approval of an urban renewal project summary by the municipal or county (city) authority according to Article 10, Paragraph 1 of the Act. The approval of an urban renewal project summary is a prerequisite for the approval of an urban renewal project plan. Apparently, there is a substantial relation between the regulatory function of Article 19, Paragraph 3, First Sentence of the former Act and Article 10 of the same Act. Hence, this Court will also review Article 19, Paragraph 3, Sentence 1 of the former Act in this Interpretation.

[2] Article 15 of the Constitution provides that the people's right to property shall be protected. The purpose of this Article is to guarantee each individual the freedom to exercise his rights to use, profit by, and dispose of his property during the existence of the property, and to prevent infringement by the government or any third party, so as to ensure that a person can realize his or her freedoms, develop his or her personality, and maintain his or her dignity (*see* J.Y. Interpretation No. 400). In addition, Article 10 of the Constitution stipulates that people shall have freedom of residence. This Article guarantees people the freedom to choose their residence and to enjoy their life in privacy without intrusion (*see* J.Y. Interpretation No. 443). However, in order to advance public welfare, the State may by law impose restrictions on the people's right to property or freedom of residence pursuant to the principle of proportionality under Article 23 of the Constitution (*see* J.Y. Interpretation Nos. 596 and 454).

[3] Urban renewal is part of urban planning. Urban renewal promotes the planned redevelopment and utilization of urban lands, revitalizes urban functions, improves living environments, and enhances public interests. The Act was enacted for these very purposes. The Act ensures that the people enjoy an adequate standard of living with safety, peace, and dignity (*see* Article 11(1) of the International Covenant on Economic, Social and Cultural Rights). The Act

also serves as a legal basis for imposing restrictions on the people's rights to property and freedom of residence. The implementation of urban renewal involves consideration of factors such as politics, economics, society, substantial environment, and residence rights, and is, in essence, a public affair of the State or local autonomous bodies. The law may, out of the policy consideration of coping with actual needs and the introduction of the utilization of vitality in the private sector, stipulate that, under certain conditions, the people may apply to implement urban renewal on their own initiative. Nevertheless, the implementation of urban renewal requires necessary supervision, review, and decision-making by the State or a local autonomous body via its public authority. According to the Act, an urban renewal project may be implemented by the competent authority itself, by an urban renewal project institution chosen by the competent authority, or by another agency (institution) approved by the competent authority, or may be implemented by an urban renewal group organized by or by an urban renewal project institution delegated by the land and legal building owners who, under certain conditions, have filed an application following legal procedures and obtained approval from the competent authority at the municipal or county (city) level (*see* Articles 9, 10 and 11 of the Act). In the case of a renewal implementation by an urban renewal group organized by or by an urban renewal project institution delegated by the land and legal building owners, the competent authority's approval of an urban renewal project summary drafted by private parties (including the designation of renewal units—the same shall apply hereinafter) (*see* Article 10, Paragraph 1 of the Act) and the competent authority's approval of an urban renewal project plan (*see* Article 19, Paragraph 1 of the Act) drafted by private parties constitute the acts of the competent authority exercising public authority according to legal procedures, making an urban renewal project summary or an urban renewal project plan legally binding. The legal nature of both aforementioned acts of the competent authority exercising public authority is an administrative disposition issued to a specified

person in respect of a specific matter (*see* Article 92, Paragraph 1 of the Administrative Procedure Act). An administrative disposition approving an urban renewal project summary not only designates the scope of the renewal units, in which an urban renewal project may be implemented separately, in a renewal area, but also affects the legal rights and interests of all residents in the renewal units. A resident unwilling to be included in a renewal unit may seek relief through available legal remedies. An administrative disposition rendered by the competent authority approving an urban renewal project plan involves the critical components of the implementation of the plan, including the layout of the building(s), the sharing of expenses, removal and settlement plans and financial plans. In addition, the consequences that result from the subsequent procedures implementing an approved summary or an approved plan may have different levels of impact on the owners or other right holders of lands or legal buildings, or even on the rights of someone residing outside the renewal units; and, in certain circumstances, may even result in the forfeiture of the rights of these people and a compulsory removal, forcing them to move out of their residences (*see* Article 21; Article 26, Paragraph 1; Article 31, Paragraph 1; and Article 36, Paragraph 1 of the Act). Therefore, the approval of an urban renewal project summary and the approval of an urban renewal project plan mentioned above are both administrative dispositions imposing restrictions on the people's rights to property and freedom of residence.

[4] With respect to the content of the principle of due process of law under the Constitution, the legislature should promulgate corresponding legal procedures after taking into consideration the types of underlying basic rights, the intensity and scope of the restrictions, the public interests pursued, the proper functions of the decision-making authority and the availability of alternative procedures or the cost of the possible respective procedures (*see* J.Y. Interpretation No. 689). A renewal implementation involves the pursuit of important public interests,

significantly affects the property rights and the freedom of residence of owners of various renewal units and surrounding lands and legal buildings, and is prone to disputes due to the complicated interests involved. In order to ensure that the competent authority's approval of an urban renewal project summary or an urban renewal project plan serves important public interests, complies with the principle of proportionality and the requirements of relevant laws, and also to pursue a broader acceptance of an approved urban renewal project summary or plan through building a consensus among people by encouraging people to become actively involved, the Act should require the competent authority to establish an impartial, professional, and diverse appropriate organization for the review of urban renewal project summaries and urban renewal project plans. Furthermore, the Act should, in light of the items to be reviewed by the competent authority, the content and effect of an administrative disposition, and the degrees of the restrictions imposed upon the people's rights, prescribe the due process for administrative procedures that must be observed, including procedures ensuring that interested parties are kept informed of all relevant information and allowing interested parties to present their opinions in a timely manner in oral or written form to the competent authority to assert or protect their rights. The approval of an urban renewal project plan in particular directly and significantly imposes restrictions on the people's rights to property and freedom of residence. Therefore, the Act should require the competent authority to conduct the hearings in public, allow interested parties to be present at the hearings as well as present their statements and arguments orally during the hearings, and, after taking into consideration all the records of the hearings, explain the rationale for adopting or declining the arguments when deciding on the approval. Only in this fashion is the Act consistent with the meaning and purpose of the constitutional guarantee of the people's rights to property and freedom of residence.

[5] Article 10, Paragraph 1 of the former Act provides that "[t]he owners of the

lands and legal buildings of an area that has been designated for renewal implementation may designate the renewal units by themselves as per renewal units defined by the competent authority, or based on the criteria for designating a renewal unit, conduct a public hearing and draft a renewal project summary. They may then present the project summary together with the public records of the hearing to the municipal or county (city) authority to apply for approval. After obtaining approval, they may organize a renewal group or delegate an urban renewal project institution as the implementer to implement the urban renewal business of that area" (the amendment on January 16, 2008, only changed the punctuation in this provision). Although this provision requires applicants or implementers to conduct public hearings, this provision fails to sufficiently guarantee interested parties an opportunity to timely present their opinions to the competent authority to assert or protect their rights. This provision and other relevant provisions do not require the competent authority to establish an appropriate organization to review urban renewal business summaries and fails to ensure that interested parties be kept informed of all relevant information. As a result, this provision is inconsistent with the due process of administrative procedure as required by the Constitution and in violation of the meaning and purpose of the constitutional guarantee of the people's rights to property and freedom of residence.

[6] When people file an application in accordance with the law to an administrative agency requesting that the administrative agency conduct a specific administrative action, the administrative agency shall first review the application to see whether the application meets the procedural requirements prescribed by law. Only when the procedural requirements prescribed by law are met will an administrative agency render an administrative disposition. From this point of view, the requirements for an application by the people are part of the entire administrative procedure. Provisions prescribing the requirements for an

application by the people must therefore comply with the requirement of due process of administrative procedure. Since the Act provides that, under certain conditions, the owners of lands and legal buildings may file an application to the competent authority for approval of an urban renewal project summary or an urban renewal project plan, the Act should also, according to the State's constitutional duty to protect the people's rights to property and freedom of residence, properly prescribe the required ratio of consent among the owners of the lands and legal buildings which are to be included in the application. Article 10, Paragraph 2 of the former Act provides that "[t]he application mentioned in the preceding paragraph shall require the consent of more than ten percent of the owners of the lands and legal buildings in the renewal unit, and the total land area and floor space of the legal buildings of such owners shall account for more than ten percent of the entire land area and floor space; . . . " (After the amendment on January 16, 2008, this provision reads "[t]he application mentioned in the preceding paragraph shall require the consent of more than ten percent of the owners of the private lands and private legal buildings in the renewal unit, and the total land area and floor space of the legal buildings of such owners shall account for more than ten percent of the entire land area and floor space; . . . "). According to this provision, any application for approval of an urban renewal project summary is filed in accordance with the law as long as such an application meets the required ratio of consent, regardless of whether such an application is filed by more than ten percent of the owners of the lands and legal buildings or by owners who own more than ten percent of the total land area and floor space of the legal buildings. The required ratio of consent prescribed in this provision is far too low, which leads to the potential result that such an application may be filed by minority residents in the same renewal unit and calls into question the willingness to participate of all residents as well as the lack of representation. Moreover, insufficient communication prior to the filing of such an application likely leads the residents to worry that their rights may be infringed upon, which,

as a result, traps the residents in a dilemma of conflict among various values and rights. Particularly in the case where the majority of residents are reluctant to participate in urban renewal, the majority of residents will be forced to participate in the procedure of urban renewal and risk their property rights and freedom of residence simply because an administrative procedure shall be commenced after an application has been filed by the minority of residents (Article 34, Final Sentence of the Administrative Procedure Act). Accordingly, this provision, prescribing such a low ratio of consent, does not match the spirit of democracy by majority rule or the expansion of citizens' participation and clearly fails to fulfill the State's constitutional duty to protect the people's rights to property and freedom of residence. This provision is inconsistent with the due process of administrative procedure as required by the Constitution and is also in violation of the meaning and purpose of the constitutional guarantee of the people's rights to property and freedom of residence.

[7] Article 19, Paragraph 3, First Sentence of the former Act provides that "[a]fter an urban renewal project plan is established or revised, and before such a plan is sent to a competent urban renewal review committee at a municipal, county (city) government or township (village, city) for review, such a plan should be publicly exhibited for thirty days at each respective municipal, county (city) government or township (village, city) hall. The date and venue of the exhibition should be published in the newspaper for the public. A public hearing should be conducted as well. During the public exhibition period, any citizen or group may submit written opinions with their names or titles and addresses to the competent municipal, county (city) government or township (village, city) hall for the reference of the competent urban renewal review committee at that municipal, county (city) government or township (village, city) during review." (This provision was amended on May 12, 2010. The amendment on May 12, 2010, split the original Paragraph 3 into Paragraphs 3 and 4, which subsequently read

as "[a]fter an urban renewal project plan is established or revised, and before such a plan is sent to a competent authority for review, such a plan should be publicly exhibited for thirty days at each respective municipal, county (city) government or township (village, city) hall. A public hearing should be conducted as well. The duration of the public exhibition (of an urban renewal project plan) may be shortened to fifteen days when an implementer has obtained the consent of all owners of the private lands and private legal buildings in the renewal unit." "The date and venue of the exhibitions and public hearings mentioned in the two preceding paragraphs should be published in the newspaper for the public, and notice sent to the owners of the lands and legal buildings in the renewal unit, the holders of other legal rights, the agencies for registration of restriction requests, and the holders of the right to registration of caution. During the public exhibition period, any citizen or group may submit a written opinion with their name(s) or title(s) and address(es) to the competent authority for the reference of the competent authority during review."). The aforementioned provision regarding the approval of an urban renewal project plan has expressly prescribed that, before an urban renewal project plan is sent is sent to a competent urban renewal review committee for review, such a plan should be publicly exhibited, and any citizen or group may submit a written opinion during the public exhibition period. Nevertheless, the foregoing provision and other relevant provisions do not require the competent authority to separately deliver the relevant information of such an urban renewal project plan (including a list of the owners of the private lands and private legal buildings who agree to participate in that urban renewal project plan) to those owners of the lands and legal buildings in the renewal unit other than applicants. In addition, the conduct of a public hearing and the submission of opinions by interested parties to the competent authority prescribed under this provision are only for the reference of the competent authority. This provision does not require the competent authority to hold a hearing in public, allow interested parties to be present at the hearing as well as present their statements

and argument orally during the hearing, or, after taking into consideration all the records of the hearings, explain the rationale for adopting or declining the arguments when deciding on approval. Nor does this provision ask the competent authority to separately deliver the approved urban renewal project plans to each of the owners of the lands and legal buildings in the renewal unit, the holders of other legal rights, the agencies for relevant authorities of registration of restriction requests and the holders of the right to registration of caution. All of the above is inconsistent with the aforementioned due process of administrative procedure as required by the Constitution and is also in violation of the meaning and purpose of the constitutional guarantees of the people's rights to property and freedom of residence.

[8] Within one year from the issuance date of announcement of this Interpretation, relevant authorities should review and amend the unconstitutional parts of those provisions mentioned in the preceding paragraphs in accordance with the meaning and purpose of this Interpretation. The unconstitutional parts of those provisions shall become null and void if those parts have not been amended within the aforesaid period.

[9] Article 22, Paragraph 1 of the former Act provides that "[w]hen an implementer presenting an established or revised urban renewal project plan for approval files its application in accordance with Article 10, for an urban renewal area demarcated according to Article 7, such an implementer shall obtain the consent of more than fifty percent of the owners of the lands and legal buildings in a renewal unit, and the total land area and floor space of the legal buildings of such owners shall account for more than fifty percent of the entire land area and floor space; whereas, for an urban renewal area other than the aforesaid area, such an implementer shall obtain the consent of more than sixty percent of the owners of the lands and legal buildings in a renewal unit, and the total land area and floor space of the legal buildings of such owners shall account for more than two-thirds

of the entire land area and floor space. When an implementer presenting an established or revised urban renewal project plan for approval files its application in accordance with Article 11, such an implementer shall obtain the consent of more than two-thirds of the owners of lands and legal buildings in a renewal unit, and the total land area and floor space of the legal buildings of such owners shall account for more than seventy-five percent of the entire land area and floor space." This provision was amended on January 16, 2008, and subsequently read "[w]hen an implementer presenting an established or revised urban renewal project plan for approval files its application in accordance with Article 10, for an urban renewal area demarcated according to Article 7, such an implementer shall obtain the consent of more than fifty percent of the owners of the private lands and private legal buildings in a renewal unit, and the total land area and floor space of the legal buildings should be more than fifty percent of the entire land area and floor space; whereas, for an urban renewal area other than the aforesaid area, such an implementer shall obtain the consent of more than sixty percent of the owners of the private lands and private legal buildings in a renewal unit, and the total land area and floor space of the legal buildings shall account for more than two-thirds of the entire land area and floor space. When an implementer presenting an established or revised urban renewal project plan for approval files its application in accordance with Article 11, such an implementer shall obtain the consent of more than two-thirds of the owners of the private lands and private legal buildings in a renewal unit, and the total land area and floor space of the legal buildings shall account for more than seventy-five percent of the entire land area and floor space. . ." The legislative intent of this provision is, on the one hand, to carry out and promote urban renewal, as well as to protect the rights and interests of majority residents desiring to improve their living environment and promote the planned development and reuse of urban lands from being affected by the different concerns of minority residents. Accordingly, this provision stipulates that one may file an application for approval of an urban renewal project after

obtaining the consent of a certain number of people owning a certain area of land and/or floor space and achieving the prescribed threshold of the ratio of consent. On the other hand, the ratio of consent should not be too low because the law is designed to encourage residents to communicate with each other in advance so as to reduce fighting and facilitate a smooth implementation of an urban renewal project plan. Moreover, considering the special need of a disaster area for speedy reconstruction, this provision, being based on whether a renewal unit is located in a demarcated renewal area and whether a renewal unit belongs to a renewal area demarcated at the earliest time, thus provides different ratios of consent for applications filed in accordance with Articles 7, 10 or 11 (*see* Committee Records, Legislative Yuan Gazette 87(4): 302-303; Committee Records, Legislative Yuan Gazette 87(12): 291-304; Records of General Assembly, Legislative Yuan Gazette 87(42): 282-283, 330-331; Committee Records, Legislative Yuan Gazette 92(6): 109-110, 149-150; Records of General Assembly, Legislative Yuan Gazette 92(5): 77-78, 84-85). The aforementioned legislative intent is proper and can be fulfilled by prescribing certain ratios of consent. In addition, there will be no application filed by minority residents because all ratios of consent prescribed in all aforementioned provisions are above fifty percent. The legislature should have discretion in balancing different interests because urban renewal involves not only the property rights and freedom of residence of those unwilling to participate in urban renewal, but also the realization of important public interests, the property of those willing to participate in urban renewal as well as their rights and interests in an appropriate living environment, and the rights of interested parties residing around the renewal unit. Furthermore, the legislature should be able to exercise its legislative discretion in determining the required ratio of consent as long as the ratio of consent is not far too low to violate the due process of administrative procedure as required by the Constitution. It is necessary for the legislature to lay down provisions prescribing the aforementioned ratios of consent after considering the actual situation of renewal implementation, the level

of impact on the public interest, the needs of the society, and other factors. Also, the balancing of the relevant interests at stake is not apparently inappropriate. Thus, there is no violation of the principle of proportionality under the Constitution or the due process of administrative procedure as required by the Constitution. Nonetheless, the relevant authorities shall review and amend relevant provisions from time to time after considering factors such as the actual situations of renewal implementation, general societal attitudes, and the need for promoting urban renewal. In addition, under the Act, there are three methods for the processing of urban renewal: reconstruction, renovation, and maintenance. These three methods have different levels of impact on the rights and interests of the owners of the lands and legal buildings. Accordingly, the law should prescribe different ratios of consent for different types of applications. Furthermore, in order to ensure that the computation of the required ratio of consent is true and accurate, the following should be reviewed and amended as well: whether listing the content of a transfer of rights on the consent agenda is necessary during the process of obtaining the consent to an urban renewal project plan; and whether an implementer should, after obtaining consent for an urban renewal project plan, obtain further consent if the content of the urban renewal project plan has been changed.

[10] Article 22-1 of the former Act provides that "[d]uring the implementation of an urban renewal project plan in an urban renewal area demarcated according to Article 7, if several buildings on the same building base are affected and processed for reconstruction, renovation, or maintenance, the ratio of consent may be calculated separately based on the number of the divided unit owners of each respective affected building, the divided unit ownership of the unit owners of each respective affected building and the part of the building base they own, without changing the divided unit ownership of the unit owners of the other buildings and the part of the building base they own." (This provision was

amended on June 22, 2005. The amendment revised the phrase "several buildings" to read "some of the buildings," revised the phrase "the other buildings" to read "other buildings," revised "each building" to read "each respective building," and also revised "the number of the divided unit owners, the divided unit ownership" to read "the number of the unit owners, the unit ownership;" with the rest of this provision remaining unchanged). This Article was amended, modelled aftert Article 17-2 of the Provisional Act Governing 921 Earthquake Post-Disaster Reconstruction. The purpose of this amendment was to efficiently and effectively resolve the difficult problem of reconstruction by using the affected portion to calculate the ratio of consent when some of the buildings on the same building base were affected due to a disaster (*see* Records of General Assembly, Legislative Yuan Gazette 89 (58): 38, 47-48; Committee Records, Legislative Yuan Gazette 92 (6): 107 & 109; Records of General Assembly, Legislative Yuan Gazette 92 (5): 75-78, 85). In addition, where there is damage caused by a disaster, any measure taken to facilitate the quick reconstruction of affected buildings certainly serves the public interest, as such a measure prevents the damage from escalating. From this point of view, the legislative intent of this Article is proper, and the calculation of the ratio of consent prescribed in this Article should be able to efficiently and effectively fulfill the legislative intent. Moreover, considering the text and the legislative intent of the this Article as a whole, this Article has taken the rights of the residents of other buildings into consideration, because the application of this Article is limited to an application for urban renewal in a destructed or damaged urban renewal area and demarcated by the municipal, county (city) authority at the earliest time, due to war, earthquake, fire, flood, storm or other major incidents prescribed in Article 7, Paragraph 1, Subparagraph 1 of the Act, and also must possess the condition of not changing the divided unit ownership of the divided unit owners of other buildings and the part of the building base they own. Furthermore, considering that quick post-disaster reconstruction and the prevention of damage from escalating are both necessary

and in the public interest since the affected or collapsed buildings have endangered the rights of the people, including their rights to life, bodily safety, property, and freedom of residence, it is necessary for the aforementioned Article to prescribe that the calculation of the ratio of consent is based on the number of the divided unit owners of each respective affected building, the divided unit ownership of the unit owners of each respective inflicted building, and the part of the building base they own. Also, the balancing of the relevant interests is not apparently inappropriate. Therefore, this Article is not inconsistent with the principle of proportionality under the Constitution. However, it will be more meaningful for the protection of the rights of the residents and the realization of the public interest if all buildings on the same building base are developed as a whole and renewed at the same time. Given the foregoing, and also to avoid any undesirable outcomes which may arise from separate urban renewal processes, it would be better to encourage other buildings on the same building base to participate in urban renewal together if there are no obstacles to overcome. Thus, the aforementioned Article is inadequate and requires further review and amendment because this Article fails to require the residents of affected buildings or an implementer delegated by these residents presenting an urban renewal project plan for approval to inquire about the willingness of the residents of other buildings on the same building base to participate in urban renewal before filing an application for approval.

[11] One of the petitioners argued that, according to the final judgment of Supreme Administrative Court Administrative Judgment 100-Pan-1905 (2011), Article 22, Paragraph 3 of the former Act (as amended on January 16, 2008), which provides that "[i]f an owner disagrees with an urban renewal plan exhibited in public, he may withdraw his consent by the end of the exhibition period," is unconstitutional. Nevertheless, this disputed provision is not a subject for interpretation because this disputed provision was not applied in the aforesaid

final judgment. Article 36, Paragraph 1, First Sentence of the former Act (as amended on May 12, 2010) provides that " [a]n implementer shall publicly announce the land improvements inside the areas covered by rights transfer to be dismantled or relocated, and also notify the owners, managers or users to dismantle or relocate the land improvements within thirty days on their own initiative. If the land improvements are not dismantled or relocated within the given period, the implementer may dismantle or relocate the land improvements for the owners, managers or users, or request the municipal, county (city) authority to dismantle or relocate the land improvements to dismantle or relocate the land improvements. The municipal, county (city) authority has an obligation to dismantle or relocate the land improvements; . . ." (Article 36, Paragraph 1, First Sentence of the former Act promulgated on November 11, 1998, and the same provision amended on January 16, 2008, share the same meaning and purpose). Petitioners contend that the part of this provision, that authorizes an implementer to dismantle or relocate the land improvements for the owners, managers or users, or request the municipal, county (city) authority to dismantle or relocate the land improvements, and also imposes on the competent authority an obligation to dismantle or relocate the land improvements, is unconstitutional. However, this disputed provision is not a subject for interpretation either, because this disputed provision was not applied in those final judgments mentioned above. Given the foregoing, the aforementioned petitions do not comply with Article 5, Paragraph 1, Subparagraph 2 of the Constitutional Court Procedure Act and are to be dismissed according to Paragraph 3 of the same Article.

## **Background Note** by the Translator

Ta Ch'ing Hsin I Futs'un in the Tucheng District of New Taipei City is a five-story condominium complex with ninety units on the same building base. The forty units at the front of the complex were affected by the great earthquake

of September 21, 1999 (also known as the “1999 Jiji Earthquake” or the “921 Earthquake”), and were processed for reconstruction according to the Act. Later, the City Government of New Taipei City (hereinafter the “New Taipei City Government”) publicly announced the use of the rights transformation method to implement urban renewal on the aforesaid forty units. However, some owners of those forty units were not satisfied with the content of the rights transformation. In addition, some owners of other units other than the aforesaid forty units alleged that they had a right to participate in the reconstruction. Subsequently, fifty-two people jointly filed an administrative lawsuit challenging the New Taipei City Government’s administrative disposition approving an urban renewal project plan and a rights transformation plan. Nonetheless, the said administrative lawsuit was dismissed by the court, and the dismissal has become final. The parties then petitioned for an interpretation alleging that relevant provisions of the Act were unconstitutional.

1. Kuang-Shu WANG and two other people owned lands and buildings located in the Yangming Section of Taipei City. 2. Shu-Lan CHEN owned land and buildings located in the Wanlong Section in Taipei City. The City Government of Taipei City (hereinafter the “Taipei City Government”) demarcated the aforementioned lands and buildings for urban renewal and approved an urban renewal project plan and a rights transformation plan related to those lands and buildings. 3. Lung-San PENG owned land and buildings located in the Yongji Section in Taipei City. In order to implement urban renewal, the Taipei City Government approved a change to the previously-established urban renewal project plan and rights transformation plan. The parties in the three aforementioned cases were dissatisfied with the relevant administrative dispositions of the Taipei City Government and separately filed administrative lawsuits to challenge those administrative dispositions of the Taipei City Government. Nevertheless, the aforesaid administrative lawsuits were dismissed

by the courts, and the dismissals have become final. Therefore, the parties jointly petitioned for an interpretation. Upon separately accepting these two petitions, the Constitutional Court reviewed these two petitions together because the subjects of both petitions for interpretation were identical.

J.Y. Interpretation No. 709 is a landmark decision of the Constitutional Court, because in this Interpretation the Constitutional Court formally enunciated the doctrine of "due process of administrative procedure as required by the Constitution," requiring administrative authorities to observe due process in administrative proceedings. Dating back to when the Constitutional Court rendered J.Y. Interpretation No. 348 in 1994, the Constitutional Court has long held that due process is enshrined in the Constitution and guarantees both substantive due process and procedural due process. The phrase "due process of administrative procedure" first appeared in the reasoning of J.Y. Interpretation No. 663. However, not until J.Y. Interpretation No. 709 did the Constitutional Court use the phrase "due process of administrative procedure as required by the Constitution" in the holding of a J.Y. Interpretation. J.Y. Interpretation No. 709 construed the doctrine of "due process of administrative procedure as required by the Constitution" from the requirements of due process enshrined in the Constitution and in parallel with the due-process-of-administrative-procedure line of previous J.Y. Interpretations (*e.g*., J.Y. Interpretations Nos. 409, 462, 488, 491, 535, and 663). After J.Y. Interpretation No. 709, procedural due process in administrative proceedings became a constitutional requirement rather than a statutory requirement under the Administrative Procedure Act in Taiwan. The doctrine of "due process of administrative procedure as required by the Constitution" articulated in J.Y. Interpretation No. 709 is followed in subsequent J.Y. Interpretations (*e.g*., J.Y. Interpretations Nos. 731 and 739) and further tailored in J.Y. Interpretation No. 739, where the Constitutional Court reiterated that "due process of administrative procedure as required by the Constitution"

includes both substantive due process and procedural due process. In J.Y. Interpretations Nos. 709 and 739, the Constitutional Court upheld that “due process of administrative procedure as required by the Constitution” is part of the due process guarantee under the Constitution and contributes to building a society of greater social justice.