J. Y. Interpretation No.732（September 25, 2015）*

【Expropriation of Lands Adjacent to Mass Rapid Transit System Facilities】

ISSUE: Is it unconstitutional that the provisions at issue allow competent authorities to expropriate adjacent lands, which arenot necessarily required for transportation, in accordance with applicable laws for the purpose of land development ?

RELEVANT LAWS:

Articles 10, 15, 23, and Article 143, Paragraph 1, of the Constitution（憲法第十條、第十五條、第二十三條、第一百四十三條第一項）；J.Y. Interpretation Nos. 400 and 709（司法院釋字第四００號、第七０九號）；Paragraph 2 of Article 1, Paragraph 2 of Article 3, and Paragraphs 3 and 4 of Article 4 of the Land Expropriation Act（土地徵收條例第一條第二項、第三條第二款、第四條第三項、第四項）；Article 7, Paragraph 3, of the Mass Rapid Transit Act（promulgated on July 1, 1988）, and Article 7, Paragraphs 2, of the Mass Rapid Transit Act（amended on May 30, 2001）（大眾捷運法第七條第三項（77.7.1）、第七條第二項、第四項（90.5.3））；Article 9, Paragraph 1, of the Regulations for the Joint Development of Land Adjacent to or Contiguous with the Mass Rapid Transit System（promulgated on February 15,

* Translated by Yen-Chia CHEN

** Contents within frame, not part of the original text, are added for reference purposes only.

1990）（大眾捷運系統土地聯合開發辦法第九條第一項79.2.15））；Article 208, Sub-paragraph 2, of the Land Act（土地法第二百零八條第二款）

KEYWORDS:

land expropriation（徵收）, adjacent lands（毗鄰地區土地）, joint development（聯合開發）, mass rapid transit system-facilities（捷運設施）, transportation（交通事業）, right to property（財產權）, freedom of residence（居住自由）**

HOLDING: Article 7, Paragraph 4, of the Mass Rapid Transit Act amended on May 30, 2001 (hereinafter the "Mass Rapid Transit Act 2001") provides: "The land required for . . . the development of areas adjacent to the Mass Rapid Transit system . . . may be expropriated by competent authorities in accordance with applicable laws." Article 7, Paragraph 3, of the Mass Rapid Transit Act promulgatedon July 1, 1988 (hereinafter the "Mass Rapid Transit Act 1988") provides: "Lands used for joint development . . .may be expropriated." Article 9, Paragraph 1, of the Regulations for the Joint Development of Land Adjacent to or Contiguous with the Mass Rapid Transit System (hereinafter

解釋文：中華民國九十年五月三十日修正公布之大眾捷運法（下稱九十年捷運法）第七條第四項規定：「大眾捷運系統……其毗鄰地區辦理開發所需之土地……，得由主管機關依法報請徵收。」七十七年七月一日制定公布之大眾捷運法（下稱七十七年捷運法）第七條第三項規定：「聯合開發用地……，得徵收之。」七十九年二月十五日訂定發布之大眾捷運系統土地聯合開發辦法（下稱開發辦法）第九條第一項規定：「聯合開發之用地取得……，得由該主管機關依法報請徵收……。」此等規定，許主管機關為土地開發之目的，依法報請徵收土地徵收條例（下稱徵收條例）第三條第二款及土地法第二百零八條第二款所規定交通事業所必須者以外

the "Regulations for Joint Development of Land") provides: "Lands used for joint development . . . may be acquired by competent authorities in accordance with applicable laws. . ." These provisions allow competent authorities to expropriate adjacent lands, which are not lands necessarily required for transportation as prescribed under Article 3, Sub-paragraph 2, of the Land Expropriation Act (hereinafter the "Expropriation Act") and Article 208, Paragraph 2, of the Land Act, in accordance with applicable laws for the purpose of land development. What lies within this scope isinconsistent with the principle of proportionality under Article 23 of the Constitution, as well as the meaning and purpose of the constitutional guarantee of the people's rights to property and freedom of residence, and shall no longer be applicable from the date of this Interpretation.

之毗鄰地區土地，於此範圍內，不符憲法第二十三條之比例原則，與憲法保障人民財產權及居住自由之意旨有違，應自本解釋公布之日起不予適用。

REASONING: 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

解釋理由書：憲法第十五條規定人民財產權應予保障，旨在確保個人依財產之存續狀態行使其自由使用、收益及處分之權能，並免於遭受公權力或第三人之侵害，俾能實現個人自由、發

their rights to use, profit by, and dispose of their property during the existence of the property, and to prevent infringements by the government or any third party, so as to guarantee individual freedom, personal development, and maintain personal dignity (*see* J.Y. Interpretation Nos. 400 and 709). Article 143 of the Constitution expressly states that private ownership of land acquired by the people in accordance with the laws shall be protected and restricted by law. Moreover, people's freedom of residence is protected under Article 10 of the Constitution. The expropriation of private land by the State not only imposes a restriction on people's right to property, but also has a serious impact on the freedom of residence of persons, if any, legally residing on the expropriated land(s). In addition to giving reasonable and prompt compensation to landowners in accordance with the laws, the expropriation of private land by the State must be necessary for the purpose of public use or other public interests so as not to contradict Article 23 of the Constitution.

展人格及維護尊嚴（本院釋字第四００號及第七０九號解釋參照）。人民依法取得之土地所有權，應受法律之保障與限制，亦為憲法第一百四十三條第一項所明定。又人民居住自由亦屬憲法第十條保障之範圍。國家徵收人民土地，不但限制人民財產權，如受徵收之土地上有合法居住者，亦嚴重影響其居住自由。徵收人民土地除應對土地所有權人依法給予合理及迅速之補償外，自應符合公用或其他公益目的之必要，始無違於憲法第二十三條之規定。

Article 7, Paragraph 4, of the Mass Rapid Transit Act 2001 provides: “The land required for . . . the development of areas adjacent to the Mass Rapid Transit system . . . may be expropriated by competent authorities in accordance with applicable laws” (hereinafter “Provision 1”). Provision 1 allows the competent authorities to expropriate adjacent lands close to the routes, depots, or stations of the Mass Rapid Transit system (hereinafter the “Mass Rapid Transit System Facilities”) in accordance with applicable laws for the purpose of land development. Here, “expropriation in accordance with applicable laws” refers to land expropriation in accordance with the Expropriation Act. Article 1, Paragraph 2, of the Expropriation Act provides: “Land expropriation shall be governed by this Act. Matters not provided for in this Act shall be governed by other applicable laws.” Thus, other applicable laws shall apply when the Expropriation Act does not mention the scope of land expropriation. Article 3, Sub-paragraph 2, of the Expropriation Act provides: “The State may expropriate private lands in order to carry out any of

九十年捷運法第七條第四項規定：「大眾捷運系統……其毗鄰地區辦理開發所需之土地……，得由主管機關依法報請徵收。」（下稱系爭規定一）許主管機關為土地開發之目的，依法報請徵收大眾捷運系統路線、場、站（下稱捷運設施）土地之毗鄰地區土地。所稱依法報請徵收，係指依徵收條例之規定為之。徵收條例第一條第二項規定：「土地徵收，依本條例之規定，本條例未規定者，適用其他法律之規定。」就徵收土地之範圍而言，徵收條例未規定者，應適用其他法律之規定。徵收條例第三條第二款規定：「國家因公益需要，興辦下列各款事業，得徵收私有土地；徵收之範圍，應以其事業所必須者為限：……二、交通事業。……」準此，其徵收除應為興辦該第三條所規定之事業外，其徵收土地之範圍，並應確為興辦該事業所必須。大眾捷運系統屬徵收條例第三條第二款所規定之交通事業，其所得徵收土地之範圍，應為捷運交通事業所必須之土地。依系爭規定一所得報請徵收作為開發用地之毗鄰地區土地，包括與捷運設施用地相連接、與捷運設施用地在同一街廓內且能與捷運設施用地連成同一建築基地、與捷運設施用地相鄰之街廓而以地下道或陸橋相連

the undertakings listed in the following sub-paragraphs to serve the needs of the public. The scope of the expropriation should be limited according to what a given undertaking requires:… (2) Transportation. …"Accordingly, the expropriation must conform to the undertakings set out in Article 3 of the Expropriation Act and its scope must indeed be such as is required for carrying out these undertakings. The Mass Rapid Transit system is a form of transportation prescribed in Article 3, Sub-paragraph 2, of the Expropriation Act. The scope of land which may be expropriated for the Mass Rapid Transit system is therefore limited to the extent required for such an undertaking. Under Provision 1, adjacent lands which may be expropriated for the purpose of land development include lands immediately adjacent to Mass Rapid Transit System Facilities, lands located in the same street block and which can be integrated into the construction site of lands required for Mass Rapid Transit System Facilities, and lands located in street blocks neighboring Mass Rapid Transit System Facilities and connected via an underpass

通等之土地（九十年捷運法第七條第二項參照），此等徵收土地之範圍，難謂全為捷運交通事業所必須，其徵收非捷運交通事業所必須之土地，自已限制人民之財產權，並對其上合法居住者嚴重影響其居住自由。又七十七年捷運法第七條第三項規定：「聯合開發用地……，得徵收之。」（下稱系爭規定二）雖未設有前述「依法報請徵收」之要件，然其程序自應受當時有效之徵收法律之規範。開發辦法第九條第一項規定：「聯合開發之用地取得……，得由該主管機關依法報請徵收……。」（下稱系爭規定三）對聯合開發用地之取得，亦設有「依法報請徵收」之要件。徵收條例係八十九年二月二日制定公布，故聲請人之一原因案件所適用之七十七年捷運法，應以當時之土地法有關徵收之相關規定作為報請徵收之依據。然就徵收土地之範圍言，土地法第二百零八條第二款規定：「國家因左列公共事業之需要，得依本法之規定，徵收私有土地。但徵收之範圍，應以其事業所必需者為限。……二、交通事業。……」故其徵收除應為興辦該第二百零八條所規定之事業外，其徵收土地之範圍，並應確為興辦該事業所必須。然系爭規定二、三許興辦捷運交通事業時，就聯合開發用

or overpass (*see* Article 7, Paragraph 2, of the Mass Rapid Transit Act 2001). It is hard to say that the scope of this type of expropriated land is wholly within what is required for the Mass Rapid Transit system. The expropriation of private land not necessarily required for the Mass Rapid Transit system is itself a restriction of the people's right to property and also has a serious impact on the freedom of residence of persons legally residing there. Article 7, Paragraph 3, of the Mass Rapid Transit Act 1988 provides: "Lands used for joint development . . . may be expropriated" (hereinafter "Provision 2"). Although there is no "expropriation in accordance with applicable laws" requirement in Provision 2, the expropriation of private land by the State nonetheless shall be in accordance with applicable laws in force at the time. Article 9, Paragraph 1, of the Regulations for Joint Development of Land provides: "Lands used for joint development . . . may be acquired by the competent authority in accordance with applicable laws. . ." (hereinafter "Provision 3"). Provision 3 also sets forth an "expropriation in accordance with appli-

地報請徵收；七十七年捷運法對「聯合開發之用地」並無範圍之界定。是依系爭規定二、三報請徵收土地之範圍，難謂全為捷運交通事業所必須，其徵收非捷運交通事業所必須之土地，亦已限制人民之財產權，並對其上合法居住者嚴重影響其居住自由。

cable laws" requirement for acquisition of private lands used for joint development (by the State). The Expropriation Act was enacted and promulgated on February 2, 2000. Given that the Mass Rapid Transit Act 1988 applies in one of the underlying cases that the petitioners argued in this petition, the legal basis for the expropriation of private lands by the State in such case shall be the applicable regulations set forth in the Land Act in force at the time. With regard to the scope of land which may be expropriated by the State, Article 208 of the Land Act provides: "By meeting the requirements of the following public undertakings the State may compulsorily purchase private lands according to the provisions of this Act, but the scope of the expropriation should be limited according to what a given undertaking requires:.. (2) Transportation…"Therefore, in addition to that the expropriation must be necessary for carrying out the undertakings set out in Article 208 of the Land Act, the scope of land which may be expropriated must, indeed, be such as is required for carrying out the said undertaking. Nevertheless, Provisions 2

and 3, which allow the expropriation of lands used for joint development by the State in order to carry out the transportation purposes of the Mass Rapid Transit system, as well as the Mass Rapid Transit Act 1988, which contains the said "lands used for joint development" requirement, set no limit to the scope of "lands used for joint development". It is hard to say that the scope of land which may be expropriated in accordance with Provisions 2 and 3 is wholly within what is required for the Mass Rapid Transit system. The expropriation of private land not necessarily required for the Mass Rapid Transit system is itself a restriction of the people's right to property and also has a serious impact on the freedom of residence of persons legally residing there.

If the expropriation of land by the State, which deprives the people of their land ownership and may even greatly impact the freedom of residence of persons legally residing on the expropriated land(s), is not done for a public cause, then it must conform to the legitimate purposes of other public interests.The expro-

國家以徵收方式剝奪人民土地所有權，甚而影響土地上合法居住者之居住自由，如非為公用，則須符合其他公益之正當目的。徵收捷運交通事業所必須之土地，屬為興辦交通事業公用之目的；而主管機關辦理毗鄰地區土地之開發，係在有效利用土地資源、促進地區發展並利大眾捷運系統建設經費之取得

priation of land necessarily for the Mass Rapid Transit System is a taking that fulfills the purpose of building a transportation system for public use. In addition, the development of adjacent land carried out by competent authorities does have its legitimate public interest purpose be cause it uses resources of land effectively, promotes local development, and helps obtain funding for the construction of the Mass Rapid Transit system(*see* Office of the Secretariat, Legislative Yuan, Special Issue No. 114 – The Mass Rapid Transit Act 253 (Office of the Secretariat, Legislative Yuan eds., 1989) (referring to the legislative purpose of the Act)). Yet, when the State expropriates adjacent land that lies outside what is required for transportation (hereinafter "land not required for transportation")in accordance with applicable laws for the purposes of using resources of land, promoting local development and assisting in obtaining funding for construction, the expropriation leads to a redistribution or transfer of the good of the resources of land to the State or some other private owners, thereby making it such that the original owners of the

（立法院秘書處編印，《法律案專輯第一百一十四輯－大眾捷運法案》，立法院秘書處，七十八年，第二五三頁等所示立法目的參照），固有其公益上之目的。然國家為利用土地資源、促進地區發展並利建設經費之取得等目的，依法報請徵收交通事業所必須者以外之毗鄰地區土地（下簡稱非交通事業所必須之土地），將使土地資源之利益重新分配或移轉予國家或其他私人享有，造成原土地所有權人遭受土地損失之特別犧牲。另為達利用土地資源、促進地區發展並利建設經費之取得等目的，非不得以適當優惠方式與土地所有權人合作進行聯合或共同開發、以市地重劃之方式使原土地所有權人於土地重新整理後仍分配土地、以區段徵收使原土地所有權人取回與原土地同價值之土地、或以其他適當且對土地所有權侵害較小之方式達成。系爭規定一、二、三以使土地所有權人遭受特別犧牲之方式，徵收非交通事業所必須之土地進行開發，並非達成土地資源有效利用、地區發展並利國家建設經費之取得目的所不得不採之必要手段，且非侵害最小之方式。其許主管機關為土地開發之目的，依法報請徵收非交通事業所必須之土地，於此範圍內，不符憲法第二十三條之比例原則，

land are forced to make a special sacrifice of the loss of their land. Furthermore, in order to achieve the purposes of using the resources of land, promoting local development, and obtaining funding for construction, as a last resort these goals may be attained by cooperating in joint- or co-development on preferential terms with the owners of the land, or by means of a redrawing of urban land such that after the land has been re-arranged the original landowners may still be recipients of the redistributed land, or by zone expropriation such that the original owners of the land receive land of equivalent value to their original land, or by other appropriate and less harmful means to the owners of the land. Provisions 1, 2, and 3 (hereinafter the "Provisions at issue") are such that the owners of the land may be forced to make a special sacrifice when the expropriation leads to development of land not required for transportation. These are not the only means that can be used nor are they the least harmful ways possible to attain the goals of the effective use of the resources of land, local development and helping the State to obtain funding for construc-

與憲法保障人民財產權及居住自由之意旨有違，應自本解釋公布之日起不予適用。

tion. Inasmuch as the Provisions at issue allow competent authorities to expropriate lands not required for transportation in accordance with applicable laws for the purpose of land development, they are inconsistent with the constitutional principle of proportionality under Article 23 of the Constitution, as well as the meaning and purpose of the constitutional guarantee of the people's rights to property and freedom of residence, and shall no longer be applicable from the date of this Interpretation.

One of the petitioners alleged that Article 7, Paragraphs 1, 2, and 7, of the Mass Rapid Transit Act 2001, Article 4, Paragraph 1, and Article 6 of the Regulations for Joint Development of Land, the proviso of Article 10, Paragraph 2, and Articles 13, 14, and 15 of the Expropriation Act, which were applied in the judgment of the Supreme Administrative Court 99 Pan 1259 (2010)(hereinafter the "final and binding judgment"), are unconstitutional. Nevertheless, this Court found that the aforementioned provisions were not applied in the final and bind-

聲請人之一認最高行政法院九十九年度判字第一二五九號判決（下稱確定終局判決）所適用之九十年捷運法第七條第一項、第二項及第七項、開發辦法第四條第一項及第六條、徵收條例第十條第二項但書、第十三條、第十四條及第十五條等規定違憲，惟該等規定並未為確定終局判決所適用，自不得據以聲請解釋。另一聲請人就七十七年捷運法第七條所規定毗鄰地區之土地，認為違反法律明確性，同條第一項認違反比例原則，惟本解釋已宣告系爭規定二於許主管機關為土地開發之目的，報請徵收土地法第二百零八條第二

ing judgment. Thus, these provisions are insufficient to serve as a basis for a petition for interpretation. On the other hand, another petitioner argued that Article 7 of the Mass Rapid Transit Act 1988, in respect ofthe phrase "adjacent areas of land" prescribed therein, is in violation of the principle of clarity and definiteness of law, and that Paragraph 1 of the same Article is in violation of the principle of proportionality. However, in this Interpretation this Court has held thatProvision 2 shall no longer be applicable in the circumstance where this Provision allows competent authorities to expropriate lands not necessarily required for transportation in accordance with Article 208, Sub-paragraph 2, of the Land Actfor the purpose of land development. Moreover, with regard to the meaning and purpose of this portion of the petition, the petitioner failed to specifically point out the unconstitutionality of the provisions mentioned above from an objective point of view. Along these lines, the aforesaid petitions do not meet the requirements prescribed in Article 5, Paragraph 1, Sub-paragraph 2, of the Constitutional Interpretation Procedure

款所規定交通事業所必須者以外之毗鄰地區土地部分，不予適用；且聲請人此部分聲請意旨，亦難謂已客觀具體指摘究有何違反憲法之處。是上開聲請，均核與司法院大法官審理案件法第五條第一項第二款規定不合，依同條第三項規定，應不受理。

Act and shall be dismissed accordingly.

Justice Yeong-Chin SU filed a concurring opinion.

Justice Chen-Shan LI filed a concurring opinion.

Justice Mao-Zong HUANG filed a concurring opinion.

Justice Chun-Sheng CHEN filed a concurring opinion.

Justice Beyue SU CHEN filed a concurring opinion.

Justice Chang-Fa LO, filed a concurring opinion, in which Justice Ching-You TSAY, joined.

Justice Shin-Min CHEN filed an opinion concurring in part and dissenting in part.

Justice Hsi-Chun HUANG, filed an opinion concurring in part and dissenting in part, in which Justice Chi-Ming CHIH and Justice Ming CHEN, joined.

Justice Pai-Hsiu YEH filed an opinion concurring in part and dissenting in part.

Justice Sea-Yau LIN filed a dissenting opinion.

本號解釋蘇大法官永欽提出之協同意見書；李大法官震山提出之協同意見書;黃大法官茂榮提出之協同意見書;陳大法官春生提出之協同意見書；陳大法官碧玉提出之協同意見書；羅大法官昌發提出，蔡大法官清遊加入之協同意見書；陳大法官新民提出之部分協同部分不同意見書；黃大法官璽君提出，池大法官啟明、陳大法官敏加入之部分協同部分不同意見書；葉大法官百修提出之部分協同部分不同意見書；林大法官錫堯提出之不同意見書。

EDITOR'S NOTE:

Summary of facts: 1.For the construction of Wanlong Station on the Xindian Line of the Taipei Metro Mass Rapid Transit system, the Taipei City Government needed to acquire six parcels of landwith a total area of 0.0328 hectares, including three parcels of land located at lot numbers 351-4, 352, and 356-1 of Sub-section 4 of Xinglong Road in Wenshan District of Taipei City (land for traffic use), as well as three parcels of land located at lot numbers 199-6, 351-3, and 356 of the same Section (adjacent lands, residential district). Thus, the Taipei City Government submitted an application for land expropriation, along with other relevant materials such as land-use plans and cadastral maps, to the Ministry of Interior. The Ministry of Interior approved the Taipei City Government's application for land expropriation in its Tai-Nei-Di-Zi No. 0920060925 dated May 2, 2003. After receiving approval from the Ministry of Interior, the Taipei City Government disclosed its land expropriation plan to the public in its Fu-Di-Si-Zi No. 09202091000 announcement dated June 3,

編者註：

事實摘要：一、臺北市政府為辦理台北都會區大眾捷運系統新店線萬隆站工程，需用坐落於台北市文山區興隆路 4 小段第 351-4、352、356-1 地號之 3 筆土地（交通用地），以及坐落於同段第 199-6、351-3、356 地號之 3 筆土地（毗鄰地，住宅區）等 6 筆土地，面積 0.0328 公頃，乃檢附徵收土地計畫書及圖等有關資料，報請內政部以民國 92 年 5 月 2 日台內地字第 0920060925 號函核准徵收，交由臺北市政府以 92 年 6 月 3 日府第四字第 09202091000 號公告，並發函通知聲請人。聲請人不服，循序提請行政爭訟。用盡審級救濟途徑後，認最高行政法院 99 年度判字第 1259 號確定終局判決所適用之 90 年捷運法第 7 條第 4 項等規定，有違憲之疑義，聲請解釋。

2003 and informed the petitioners with official notices. Nevertheless, the petitioners disagreed with the decision of the Taipei City Government and sought remedies by filing administrative litigation accordingly. After exhausting all available measures for *see*king relief in appellate review, the petitioners filed their petition for interpretation by arguing that Article 7, Paragraph 4, of the Mass Rapid Transit Act 2001 as well as other provisionsapplied in the judgment of the Supreme Administrative Court 99 Pan 1259 (2010) are allegedly in violation of the Constitution.

2. For the construction of the Xindian Line of the Taipei Metro Mass Rapid Transit system, the Taipei County Government submitted to the Ministry of Interior a land expropriation application for 239 parcels of land located at lot numbers 47-81 of Section Dapinglin, Sub-section Qizhang in Xindian City of Taipei County (now renamed as Xindian District of New Taipei City). After receiving approval from the Ministry of Interioron January 24, 1991, the Taipei County Government (now renamed the New Taipei City Gov-

二、臺北市政府為興辦臺北都會區大眾捷運系統新店線工程，報經內政部以民國 80 年 1 月 24 日函准予徵收坐落臺北縣新店市（改制後為新北市新店區）大坪林段七張小段 47-81 地號等 239 筆土地，並交由臺北縣政府（改制後為新北市政府）公告。聲請人等先於 97 年間，分別請求臺北縣政府向內政部申請撤銷部分土地之徵收，經台北縣政府審查，認未符合撤銷徵收之規定，並函復否准撤銷徵收之處理結果，聲請人等不服，循序提起行政爭訟。用盡審級救濟途徑後，認最高行政法院 101 年

ernment) disclosed its land expropriation plan to the public. In the year of 2008, the petitioners separately filed to the Taipei County Government requesting it to apply to the Ministry of Interior for revocation of approval of the expropriation for some parts of the expropriated lands. However, in its review the Taipei County Government found that the petitioners' requests did not meet the requirements for revocation of approval of the expropriation and therefore declined the petitioners' requests with official written notices. The petitioners disagreed with the decision of the Taipei County Government and sought remedies by filing administrative litigation accordingly. After exhausting all available measures for seeking relief in appellate review, the petitioners filed their petition for interpretation by alleging that Article 7, Paragraph 3, of the Mass Rapid Transit Act 1988, Article 9, Paragraph 1, of the Regulations for Joint Development of Land, and other provisions applied in the judgment of the Supreme Administrative Court 101 Pan 722 (2012) are arguably in violation of the Constitution.

度判字第 722 號確定終局判決所適用之 77 年捷運法第 7 條第 3 項及開發辦法第 9 條第 1 項等規定，有違憲之疑義，聲請解釋。