J. Y. Interpretation No.739（July 29, 2016）*

【Review Involving Self-implemented Urban Land Consolidation】

ISSUE: Is therequirement set forth in Article 8, Paragraph1 of the Regulation for Encouraging Landowners to Handle Urban Land Consolidation (hereinafter "the Encouraging Consolidation Regulation") to apply for the approval of organizing a preparatory committee by the initiators constitutional? Are the provisions set forth in Article 9, Subparagraph 3 and Article 20, Paragraph 1 of the Regulation which mandate that the preparatory committee shall apply for the approval of the proposed consolidation range, Article 9, Subparagraph 6 and Article 26, Paragraph 1 of the same Regulation which mandate that the preparatory committee shall apply for the approval of the consolidation project, publicly announce, and notify to the landowners constitutional? Are the procedures under the same Regulation regarding that the competent authorities approve the proposed consolidation rangeand grant a permission to implement the consolidation project constitutional? Is the ratio for reaching an agreement set forth in Article 58, Paragraph 3 of the Equalization of Land Rights Act constitutional ?

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RELEVANT LAWS:

Articles 7,10, 15 and 23 of the Constitution（憲法第七條、第十條、第十五條、第二十三條）；J.Y. Interpretation Nos. 400, 443, 488, 689 and 709（司法院釋字第四００號、第四四三號、第四八八號、第六八九號、第七０九號解釋）；Article 56, Paragraph 1 and Articles 57 to 60-1 of the Equalization of Land Rights Act（平均地權條例第五十六條第一項、第五十七條至第六十條之一）；Article 2, 4, Article 8, Paragraph 1, Article 9, Subparagraphs 3 and 6, Article 20, 26, Paragraph 1, Article 37, 38 of the Encouraging Consolidation Regulation（獎勵重劃辦法第二條、第四條、第八條第一項、第九條第三款及第六款、第二十條、第二十六條第一項、第三十七條、第三十八條）； Article 22, Paragraph 1 of the Urban Renewal Act（都市更新條例第二十二條第一項）； Article 24 of the Urban Planning Law（都市計畫法第二十四條）；Articles 11 to 13 of the Regulation Governing the Implementation of Urban Land Consolidation（市地重劃實施辦法第十一條至第十三條）

KEYWORDS:

self-implemented urban land consolidation（自辦市地重劃）, significant relevance（重要關聯性）, property right（財產權）, freedom of residence （居住自由）, inhabitable living environment（適足居住環境）, principle of due process of law （正當法律程序原則）, due process of law in the administrative procedure（正當行政程序）, preparatory committee（籌備會）, consoli-

dation committee（重劃會）, consolidation range（重劃範圍）, consolidation project （重劃計畫）, principle of legal reservation（法律保留原則）, hearings（聽證）, principle of proportionality（比例原則）, principle of equality（平等原則）, ratio for reaching an agreement（同意比率）, legislative formation（立法形成）**

HOLDING: The requirement of Article 8, Paragraph1 of the Regulation for Encouraging Landowners to Handle Urban Land Consolidation to apply for the approval of organizing a preparatory committee by the initiators does not include the provision stating the mandated ratio between the amount of land areas within the proposed consolidation range owned by the initiators and the sum of all land areas within the same proposed consolidation range; further the provision that initiators shall be seven or more landowners does not mandate the ratio between the number and the total amount of all landowners within the proposed consolidation range, thus are inconsistent with the due process of law in the

解釋文：獎勵土地所有權人辦理市地重劃辦法第八條第一項發起人申請核定成立籌備會之要件，未就發起人於擬辦重劃範圍內所有土地面積之總和應占擬辦重劃範圍內土地總面積比率為規定；於以土地所有權人七人以上為發起人時，復未就該人數與所有擬辦重劃範圍內土地所有權人總數之比率為規定，與憲法要求之正當行政程序不符。同辦法第九條第三款、第二十條第一項規定由籌備會申請核定擬辦重劃範圍，以及同辦法第九條第六款、第二十六條第一項規定由籌備會為重劃計畫書之申請核定及公告，並通知土地所有權人等，均屬重劃會之職權，卻交由籌備會為之，與平均地權條例第五十八條第一項規定意旨不符，且超出同條第二項規定之授權目的與範圍，違反法律保留原

administrative procedure required under the Constitution. Article 9, Subparagraph 3 and Article 20, Paragraph 1 of the same Regulation provide that the preparatory committee shall apply for the approval of the proposed consolidation range; Article 9, Subparagraph 6 and Article 26, Paragraph 1of the same Regulation provide that the preparatory committee shall apply for the approval of the consolidation project, publicly announce, and notify to the landowners, etc., those should have been under the authority of the consolidation committee but being handed over the preparatory committee, thus inconsistent with the meaning and purpose of Article 58, Paragraph 1 of the Equalization of Land Rights Act, and exceed the purpose and scope of authorization set forth by Paragraph 2 of the same Article, violate the principle of legal reservation.The procedures provided by the Regulation regarding for the competent authorities to approve the proposed consolidation range do not require the competent authorities to set up appropriate organizations to review, offer the interested parties opportunities to be heard, and respectively execute

則。同辦法關於主管機關核定擬辦重劃範圍之程序，未要求主管機關應設置適當組織為審議、於核定前予利害關係人陳述意見之機會，以及分別送達核定處分於重劃範圍內申請人以外之其他土地所有權人；同辦法關於主管機關核准實施重劃計畫之程序，未要求主管機關應設置適當組織為審議、將重劃計畫相關資訊分別送達重劃範圍內申請人以外之其他土地所有權人，及以公開方式舉辦聽證，使利害關係人得到場以言詞為意見之陳述及論辯後，斟酌全部聽證紀錄，說明採納及不採納之理由作成核定，連同已核准之市地重劃計畫，分別送達重劃範圍內各土地所有權人及他項權利人等，均不符憲法要求之正當行政程序。上開規定，均有違憲法保障人民財產權與居住自由之意旨。相關機關應依本解釋意旨就上開違憲部分，於本解釋公布之日起一年內檢討修正，逾期未完成者，該部分規定失其效力。

the service of the approved dispositions to the lando wnerswithin the consolidation range other than the applicants; the procedures regarding for the competent authorities to grant permissions to implement the consolidation project do not require the competent authorities to set up appropriate organizations to review, respectively execute the service of the consolidation project related information to the landowners within the consolidation range other than the applicants, conduct hearings by public manner, so that the interested parties may appear to vocally express and deliberate opinions, consider all hearing records, explicate the reasons for adoption or not adoption and thereafter make the approval, together with the approved urban land consolidation project, respectively execute the service to every landowners and other stake-holders within the consolidation range, etc.,those are inconsistent with the due process of law in the administrative procedure required under the Constitution. All provisions mentioned above violate the meanings and purposes of the right of property and the freedom of residence of the people

protected under the Constitution. The relevant authorities shall, in accordance with the meaning and intention of this Interpretation, with regard to the parts that violate the Constitution mentioned above, consider amending within one year from the date this Interpretation is issued. The said unconstitutional parts of the provisions shall become null and void if they have not been amended within one year from the issuance of this Interpretation.

The provision set forth inArticle 58, Paragraph 3 of the Equalization of Land Rights Act can hardly be deemed to have violated the principle of proportionality or the principle of equality.

平均地權條例第五十八條第三項規定，尚難遽謂違反比例原則、平等原則。

REASONING: One of the petitioners, in accordance with the provisions set forth in Article 5, Paragraph 1, Subparagraph 2 of the Judicial Yuan Grand Justice Hear Petition Act, with regard to Article 58, Paragraph 3 of the Equalization of Land Rights Act and Article 8, Paragraph 1 and Article 20 of the Regulation for Encouraging Landowners to Handle Urban Land Consolida-

解釋理由書：本件聲請人之一依司法院大法官審理案件法第五條第一項第二款規定，就最高行政法院一００年度判字第一七九０號判決（下稱確定終局判決）所適用之平均地權條例第五十八條第三項、獎勵土地所有權人辦理市地重劃辦法（下稱獎勵重劃辦法）第八條第一項、第二十條規定，聲請解釋。另一聲請人臺灣桃園地方法院民事庭，依本院釋字第三七一號、第五七二

tion (hereinafter "the Encouraging Consolidation Regulation") applied in the Supreme Administrative Court 100 Pan 1979 (2011) Judgment (hereinafter "the final judgment"), filed a petition for interpretation. Another petitioner the Civil Division of the Taiwan Taoyuan District Court, in accordance with J.Y. Interpretation Nos. 371, 572, and 590, also with regard to Article 58, Paragraph 3 of the Equalization of Land Rights Act, filed a petition for interpretation.All of the provisions mentioned above are the objects of interpretation. Furthermore, neither Article 26, Paragraph 1 of the Encouraging Consolidation Regulation as applied in the final judgment has been petitioned for interpretation by the petitioners, nor Article 9, Subparagraphs 3 and 6 as not applied in the final judgment have been petitioned for interpretation by the parties. However, Article 26, Paragraph 1of the above Regulation regarding for the preparatory committee to apply for a permission granted by the competent authorities to implement the urban land consolidation is, indeed, the subsequent phase following Article 20 of the same Regulation, one of

號、第五九０號解釋，亦就平均地權條例第五十八條第三項，聲請解釋。上開規定均為解釋之客體。又獎勵重劃辦法第二十六條第一項規定，為確定終局判決所適用，但未經聲請人聲請解釋；同辦法第九條第三款、第六款規定，未為確定終局判決所適用，亦未經當事人聲請解釋。惟查上開辦法第二十六條第一項籌備會申請主管機關核准實施市地重劃規定，核為解釋客體之同辦法第二十條籌備會申請主管機關核定擬辦重劃範圍規定之後續階段，同辦法第九條第三款籌備會申請核定擬辦重劃範圍，暨第六款籌備會為重劃計畫書之申請核定及公告，並通知土地所有權人規定，則為其前提問題，均與同辦法第二十條規定具有重要關聯性，應一併納入審查範圍（本院釋字第七０九號解釋參照），合先敘明。

the objects of interpretation, regarding for the preparatory committee to apply for the approval of the proposed consolidation project; the provisions set forth in Article 9, Subparagraph 3 of the same Regulation regarding for the preparatory committee to apply for the approval of the proposed consolidation range, and Subparagraph 6 of the same Article regarding for the preparatory committee to apply for the approval of the consolidation project and publicly announce, and notify to the landowners are the antecedent questions for that object of interpretation, are of significant relevance to Article 20 of the same Regulation, therefore, should be included in the scope of review (*see* J.Y. Interpretation No. 709), so described first.

Article 15 of the Constitution provides that the property right of the people shall be guaranteed to ensure that an individual may exercise his or her right and capability to freely use, profit, and dispose based on the ongoing state of the property, and prevent any harm from the public powers or third parties, so as to realize the individual freedom, develop the personal

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、發展人格及維護尊嚴（本院釋字第四００號解釋參照）。又憲法第十條規定人民有居住之自由，旨在保障人民有選擇其居住處所，營私人生活不受干預之自由（本院

character, and uphold the dignity. (*see* J.Y. Interpretation No. 400) Article 10 of the Constitution provides that the people shall have the freedom of residence, aiming at ensuring that the people shall have the freedom to choose their residential dwelling, making their privacy livings without any interference. (*see* J.Y. Interpretation No. 443) To advance the public interest, the State, of course, may restrict the property right or the freedom of residence of the people by laws or regulations expressly authorized by laws. However, those regulations made under the authorization of the laws may not still contradict the intent, content, and scope of the authorization, so as to comply with the principle of legal reservation prescribed under Article 23 of the Constitution. Further, the implication of the principle of due process of law prescribed in the Constitution, taking into compound considerations of factors as the kinds of fundamental rights involved, the strength and scope of restrictions, the public interests pursued, the appropriateness of functions of the decision-making authority, exist or lack of the availability of alternative proce-

釋字第四四三號解釋參照）。國家為增進公共利益，固得以法律或法律明確授權之法規命令對於人民之財產權或居住自由予以限制，惟依法律授權訂定之法規命令，仍不得牴觸其授權之目的、內容及範圍，方符憲法第二十三條法律保留原則。又憲法上正當法律程序原則之內涵，應視所涉基本權之種類、限制之強度及範圍、所欲追求之公共利益、決定機關之功能合適性、有無替代程序或各項可能程序之成本等因素綜合考量，由立法者制定相應之法定程序（本院釋字第六八九號、第七０九號解釋參照）。

dures, or the cost of a variety of possible procedures,etc., the legislators shall enact the corresponding legal procedures. (*see* J.Y. Interpretation Nos. 689, 709)

A self-implemented urban land consolidation case is initiated by the preparatory committee which is organized under the approval of the competent authorities applied by some landowners, the initiation would force the landowners within the consolidation range (Named by Articles 56 to 60-1 of the Equalization of Land Rights Act as consolidation area, consolidation district, and by the Encouraging Consolidation Regulation as consolidation area, consolidation range, consolidation area range, etc.) to participate in the self-implemented urban consolidation process,encountering the dangers that the right of property and the freedom of residence of the people have been restricted. In addition, after the approval of the self-implemented urban land consolidation range, for the reason that the competent authorities may publicly announce to prohibit or restrict the transfer of the land and the new building of

自辦市地重劃個案係由部分土地所有權人申請主管機關核定成立之籌備會發動，此發動將使重劃範圍（平均地權條例第五十六條至第六十條之一所稱重劃區、重劃地區，及獎勵重劃辦法所稱重劃區、重劃範圍、重劃區範圍等語，本解釋概稱重劃範圍）內之土地所有權人，被迫參與自辦市地重劃程序，面臨人民財產權與居住自由被限制之危險。又土地所有權人於自辦市地重劃範圍經核定後，因主管機關得公告禁止或限制重劃範圍內土地之移轉及建築改良物之新建等，對其土地及建築改良物之使用、收益、處分權能已造成一定之限制；於執行重劃計畫時，亦應依主管機關核定之重劃計畫內容，負擔公共設施用地、工程費用、重劃費用、貸款利息，並僅於扣除重劃負擔後之其餘土地達最小分配面積標準時才可受土地分配（平均地權條例第五十九條、第六十條、第六十條之一、獎勵重劃辦法第二條、市地重劃實施辦法第十一條至第十三條規定參照），而受有財產權及居住自由之

the construction improvement within the consolidation range,the landowners will result in certain restriction in terms of the rights and capacities of the usage, profit, disposition of their lands and construction improvements; while implementing the consolidation project, they shall also, in accordance with the contents of the consolidation project approved by the competent authorities, undertake the land for the need of public facilities, the expenses of the construction, the fees of the consolidation, and the interest on the loan, and may enjoy the allocation of the land only when the remaining land, after subtracting the burden for consolidation, is up to the criteria for minimum allocation area (Articles 59, 60, and 60-1of the Equalization of Land Rights Act, Article 2 of the Encouraging Consolidation Regulation, Articles 11 to 13 of the Regulation Governing the Implementation of Urban Land Consolidation), and be subject to the restriction of the right of property and the freedom of residence. The requirements of the application to the competent authorities for the approval of organizing a preparatory committee, the procedures

限制。申請主管機關核定成立籌備會之要件、主管機關核定擬辦重劃範圍及核准實施重劃計畫應遵行之程序，暨申請核准實施重劃計畫合法要件之同意比率規定，均為整體行政程序之一環，須符合憲法要求之正當行政程序，以衡平國家、同意參與重劃者與不同意參與重劃者之權益，始為憲法之所許（本院釋字第四八八號、第七０九號解釋參照）。

with which the competent authorities shall comply when they approve proposed consolidation ranges and grant permissions to implement consolidation projects, and the provisions of ratio for reaching an agreement which are the legitimate requirements for the application for the approval of implementing consolidation projects, are part of the totality of administrative procedures, shall be in compliance with the due process of law in the administrative procedure prescribed under the Constitution, so as to balance the rights and interests among the state, those who agree to participate in the consolidation, and those who disagree to participate in the consolidation, and thus, be permitted by the Constitution. (*see* J.Y. Interpretation Nos. 488, 709)

Article 8, Paragraph 1 of the Encouraging Consolidation Regulation stipulates that: ”A self-implemented urban land consolidation shall be initiated by more than half of the landowners or seven or more persons to organize the preparatory committee, and the initiators shall attach the range plots and copies of own-

獎勵重劃辦法第八條第一項規定：「自辦市地重劃應由土地所有權人過半數或七人以上發起成立籌備會，並由發起人檢附範圍圖及發起人所有區內土地所有權狀影本，向直轄市或縣（市）主管機關申請核定……。」如土地所有權人未達十二人時，僅須過半數土地所有權人，即可申請核定成立籌備會，不問

ership certificates of the lands owned by them, to the competent authorities of the municipal or county (city) governments to apply for the approval...”Where there are less than 12 landowners, only more than half of the landowners are needed to apply for the approval of organizing the preparatory committee, regardless of the ratio between the amount of land areas within the proposed consolidation range owned by the initiators and the sum of all land areas within the same proposed consolidation range; where there are 12 or more landowners, only seven of them are needed to apply for the approval of organizing the preparatory committee, regardless of the ratio between the numbers of the initiators and the total amount of the landowners within the proposed consolidation range, or the ratio between the amount of land areas within the proposed consolidation range owned by the initiators and the sum of all land areas within the same proposed consolidation range.As this could have forced most of the landowners or other landowners who own more areas of landsto encounter the dangers that the right of property and the

發起人於擬辦重劃範圍內所有土地面積之總和應占擬辦重劃範圍內土地總面積比率為何；土地所有權人十二人以上時，僅須七人即可申請核定成立籌備會，不問發起人人數所占擬辦重劃範圍內土地所有權人總數之比率為何，亦不問發起人於擬辦重劃範圍內所有土地面積之總和應占擬辦重劃範圍內土地總面積之比率為何，皆可能迫使多數土地所有權人或擁有更多面積之其他土地所有權人，面臨財產權與居住自由被侵害之危險，難謂實質正當，不符憲法要求之正當行政程序，有違憲法保障人民財產權與居住自由之意旨。

freedom of residence have been impaired, can hardly be deemed to be substantial due, do not comply with the due process of law in the administrative procedure required under the Constitution,and violate the meanings and intentions of the right of property and the freedom of residence protected under the Constitution.

Article 58, Paragraph 1 of the Equalization of Land rights Act provides that: “In order to promote land use and accelerate the urban land consolidation, the competent authorities may encourage the landowners to organize a consolidation committee by themselves to handle the urban land consolidation...” Therefore the matter of urban land consolidation shall be managed by the consolidation committee. Paragraph 2 of the same Article provides that: “The regulations governing matters as the organization of the consolidation committee, office authorities, consolidation businesses, encouragement measures, etc., shall be formulated by the competent authorities of the central government.” Although the regulation promulgated based on this authorization may include

平均地權條例第五十八條第一項規定：「為促進土地利用，擴大辦理市地重劃，得獎勵土地所有權人自行組織重劃會辦理之。……」是自辦市地重劃事項應由重劃會辦理。同條第二項規定：「前項重劃會組織、職權、重劃業務、獎勵措施等事項之辦法，由中央主管機關定之。」據此授權訂定之辦法雖非不得就籌備會之設立及組成併為規定，但籌備會之功能應限於處理籌組重劃會之過渡任務，而不包括應由重劃會行使之職權，始無違於法律保留原則。獎勵重劃辦法第九條第三款、第六款規定：「籌備會之任務如下：……三、申請核定擬辦重劃範圍。……六、重劃計畫書之……申請核定及公告，並通知土地所有權人。」第二十條第一項規定：「籌備會成立後，應備具申請書並檢附下列圖冊向直轄市或縣（市）主管機關

the provisions on the mattes of the organization and composition of the preparatory committee, the function of the committee shall be limited to the transitional missionto organize the consolidation committee, and shall not include those authorities fulfilled by the consolidation committee, so as not to violate the principle of legal reservation. Article 9, Subparagraphs 3 and 6 of the Encouraging Consolidation Regulation stipulate that: "Missions of the preparatory committee shall be as follows:…3. Application for the approval of the proposed consolidation range...6. For consolidation project …apply for the approval, publicly announce, and notify to the landowners."Article 20, Paragraph 1 provides:"Having organized the preparatory committee, it shall submit an application and attach plots and volumes listed below to the competent authorities of the municipal or county (city) governments to apply for the consolidation range..."So does Article 26, Paragraph 1 states: "The preparatory committee shall submit and attach books, figures, plots, and volumes listed below to the competent authorities of the municipal or county (city) gov-

申請核定擬辦重劃範圍：……。」以及第二十六條第一項規定：「籌備會應檢附下列書、表、圖冊，向該管直轄市或縣（市）主管機關申請核准實施市地重劃：……。」均屬重劃會之職權，非屬籌組重劃會之過渡任務，卻交由籌備會為之，除與平均地權條例第五十八條第一項規定意旨不符外，且超出同條第二項規定之授權目的與範圍，違反法律保留原則。

ernments to apply for a permission to implement the urban land consolidation: …"Those are authorities of the consolidation committee, not the kind of transitional mission to organize the consolidation committee, but conferred on the preparatory committee to be fulfilled. This is not only incompliance with the meaning and purpose of Article 58, Paragraph 1 of the Equalization of Land Rights Act, but also beyond the purpose and scope of the authorization prescribed under Paragraph 2 of the same Article, thus contrary to the principle of legal reservation.

The administrative activities of the competent authorities regarding the approval of the proposed consolidation range and granting permissions to implement the consolidation projects are necessary supervisory and reviewing decisions made through public powers with respect to each self-implemented urban land consolidation case, be indeed classified as administrative dispositions in nature, not only restrict the rights of property and freedoms of residence of the landowners within the consolidation range who dis-

主管機關核定擬辦重劃範圍、核准實施重劃計畫之行政行為，係以公權力對於自辦市地重劃個案為必要之監督及審查決定，性質核屬行政處分，不僅限制重劃範圍內不同意參與重劃者之財產權與居住自由，並影響原有土地上之他項權利人權益（獎勵重劃辦法第三十七條、第三十八條規定參照）。相關法令除應規定主管機關應設置適當組織為審議外，並應按審查事項、處分內容與效力、對於權利限制之程度分別規定應踐行之正當行政程序（本院釋字第七０九號解釋參照）。獎勵重劃辦法關

agree to participate in the consolidation, but also impact the rights and interests of holders with other kinds of rights on the original lands (*see* the provisions of Articles 37, 38 of the Encouraging Consolidation Regulation). The related regulations shall require the competent authorities not only to set up appropriate organizations to review, but also in accordance with the reviewed matters and the contents and effects of the dispositions, with respect to the extent of restriction of the right, to provide respectively the due administrative procedures to be satisfied. (*see* J.Y. Interpretation No. 709).The procedures provided by the Encouraging Consolidation Regulation regarding the competent authorities approve the proposed consolidation range do not require the competent authorities either to set up appropriate organizations to review, or to offer the interested parties opportunities to be heard prior to the approval, and do not respectively execute the service of the approved dispositions to the landowners within the consolidation range other than the applicants, neither, thus their opportunities to perceive related information

於主管機關核定擬辦重劃範圍之程序，未要求主管機關應設置適當組織為審議，亦未要求主管機關於核定前給予利害關係人陳述意見之機會，又未將核定處分分別送達於重劃範圍內申請人以外之其他土地所有權人，致未能確保其等知悉相關資訊及適時陳述意見之機會，以主張或維護其權利；同辦法關於主管機關核准實施重劃計畫之程序，未要求主管機關應設置適當組織為審議，又未要求主管機關應將該計畫相關資訊，對重劃範圍內申請人以外之其他土地所有權人分別為送達，且未規定由主管機關以公開方式舉辦聽證，使利害關係人得到場以言詞為意見之陳述及論辯後，斟酌全部聽證紀錄，說明採納及不採納之理由作成核定，連同已核准之市地重劃計畫，分別送達重劃範圍內各土地所有權人及他項權利人等，致未能確保其等知悉相關資訊及適時參與聽證之機會，以主張或維護其權利，均不符憲法要求之正當行政程序。

and to timely be heard so as to assert or uphold their rights cannot be ensured; the procedures provided by the same Regulation regarding for the competent authorities to grant permissions to implement the consolidation projects do not require the competent authorities either to set up appropriate organizations to review, or to respectively execute the service of the consolidation project related information to the landowners within the consolidation range other than the applicants, and do not stipulate the competent authorities to conduct hearings by public manner, so that the interested parties may appear to vocally express and deliberate opinions, consider all hearing records, explicate the reasons for adoption or not adoption and thereafter make the approval, together with the approved urban land consolidation project, respectively execute the service to every landowners and other stakeholders within the consolidation range, etc., thus their opportunities to perceive related information and to timely participate in the hearings so as to assert or uphold their rights cannot be ensured. These are inconsistent with the due process of

law in the administrative procedures required under the Constitution.

With respect to the parts mentioned in prior paragraphs regarding provisions of the Encouraging Consolidation Regulation that violate the Constitution, relevant authorities shall, in accordance with the meaning and purpose of this Interpretation, consider amending within one year from the date this Interpretation is issued. The said unconstitutional parts of the provisions shall become null and void if they have not been amended within one year from the issuance of this Interpretation.

上述各段關於獎勵重劃辦法規定違憲部分，相關機關應依本解釋意旨，於本解釋公布之日起一年內檢討修正，逾期未完成者，該部分規定失其效力。

Article 58, Paragraph 3 of the Equalization of Land Rights Act provides that: “Urban land consolidation handled by the consolidation committee shall be agreed by more than half of the landowners within the consolidation area and the amount of areas of the lands owned by them shall be more than half of the sum of all areas of the lands within the same consolidation area, and implemented after permissions shall be granted by the competent authorities.”An urban land

平均地權條例第五十八條第三項規定：「重劃會辦理市地重劃時，應由重劃區內私有土地所有權人半數以上，而其所有土地面積超過重劃區私有土地總面積半數以上者之同意，並經主管機關核准後實施之。」查市地重劃不僅涉及重劃範圍內不同意參與重劃者之財產權與居住自由，亦涉及重要公益之實現、同意參與重劃者之財產與適足居住環境之權益，以及原有土地上之他項權利人之權益，有關同意之比率如非太低而違反憲法要求之正當行政程序，當屬

consolidation involves not only the property rights and the residence freedoms of those within the consolidation range who disagree to participate in the consolidation, but also the realization of important public interests, the rights and interests of property and inhabitable living environment of those who agree to participate in the consolidation, and the rights and interests of the stake-holders with other kinds of rights on the original lands. A question regarding for the ratio of agreement not be so low as to violate the due process of law in the administrative procedure required under the Constitutionis indeed the free will of legislative formation. (*see* J.Y. Interpretation No.709) Even if the provision mentioned above adopts the same ration of agreement as the one set forth in Article 57 of the same Act, and does not follow Article 22, Paragraph 1 of the Urban Renewal Act which adopts a variety of ratios of agreement classified into different categories, it can hardly be deemed to have reached to the extent of violating the principle of proportionality and the principle of equality. However, the relevant authorities should review

立法形成之自由（本院釋字第七０九號解釋參照）。上開規定縱採同條例第五十七條同一之同意比率，且未如都市更新條例第二十二條第一項區分不同類型，採不同之同意比率，亦難遽謂已達違反比例原則、平等原則之程度。惟有關機關允宜審酌擬辦自辦市地重劃之區域是否已擬定細部計畫或是否屬於平均地權條例第五十六條第一項各款得辦理市地重劃之區域，或重劃範圍是否業經主管機關列入當地分區發展計畫土地，或有進行市地重劃之急迫性等因素（獎勵重劃辦法第四條、都市計畫法第二十四條、都市更新條例第二十二條第一項規定參照），適時檢討申請之同意比率，併此指明。

and concern whether or not the proposed self-implemented urban land consolidation areas have been proposed detail projects,whether or not those areas belong to the ones set forth in Subparagraphs of Article 56, Paragraph 1 of the Equalization of Land Rights Act in which the urban land consolidation may be carried out, or whether or not the consolidation ranges have been enlisted by the competent authorities as the lands for local multi-district development projects, or if there are factors as the imminence of implementing the urban land consolidation, etc. (See the provisions of Article 4 of the Encouraging Consolidation Regulation, Article 24 of the Urban Planning Law, and Article 22, Paragraph 1 of the Urban Renewal Act), and to timely review the ratio for reaching an agreement for the application, as needs to be pointed out.

Justice Dennis Te-Chung TANG, filed an opinion concurring in part, in which Justice Horng-Shya HUANG, Justice Ming-Cheng TSAI and Justice Jiun-Yi LIN, joined.

Justice Mao-Zong HUANG filed a

本號解釋湯大法官德宗提出，黃大法官虹霞、蔡大法官明誠、林大法官俊益加入提出之部分協同意見書；黃大法官茂榮提出之協同意見書；蘇大法官永欽提出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

concurring opinion.

Justice Yeong-Chin SU filed an opinion concurring in part and dissenting in part.

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

Justice Beyue SU CHEN, filed an opinion concurring in part and dissenting in part, in which Justice Chen-Huan WU, joined.

Justice Chang-Fa LO,filed an opinion concurring in part and dissenting in part, in which Justice Horng-Shya HUANG, joined.

Justice Horng-Shya HUANG,filed an opinion concurring in part and dissenting in part, in which Justice Chang-Fa LO joined.

Justice Shin-Min CHEN, filed an opinion dissenting in part, in Justice Horng-Shya HUANG joined.

Justice Hsi-Chun HUANGfiled an opinion dissenting in part.

意見書；陳大法官碧玉提出，吳大法官陳鐶加入之部分協同部分不同意見書；羅大法官昌發提出，黃大法官虹霞加入之部分協同部分不同意見書；黃大法官虹霞提出，羅大法官昌發加入之部分協同部分不同意見書；陳大法官新民提出，黃大法官虹霞加入之部分不同意見書；黃大法官璽君提出之部分不同意見書。

EDITOR'S NOTE:

Summary of facts: Petitioner Hu, through inheritance, having acquired the

編者註：

事實摘要：(一)聲請人胡ＯＯ因繼承而取得之不動產坐落於「台中市鑫

real estate which is located in "the Taichung Municipality Xinxinping self-implemented urban land consolidation area" (later renamed as the Taichung Municipality Zhongke Economic and Trade self-implemented urban land consolidation area)and the land within the consolidation range, and claimed that the procedures the Taichung municipal government applied to approve the organization of the preparatory committee and the proposed consolidation project drawn up by the preparatory committee were illegal. After the administrative appeal had been rejected, the subsequent lawsuit was dismissed by the Taichung High Administrative Court in 99 Su 125 Judgment (2010), and the appeal for the lawsuit was dismissed by the Supreme Administrative Court in 100 Pan 1790 Judgment (2011) and thus finalized. The petitioner considered that Article 58, Paragraph 2 of the Equalization of Land Rights Act, Articles 8 and 20 of the Regulation Governing for Encouraging Landowners to Handle Urban Land Consolidation applied in the finalized judgment were with doubt unconstitutional, hereby filed a petition for interpretation.

新平自辦市地重劃區」（後更名為台中市中科經貿自辦市地重劃區）重劃範圍內土地，主張台中市政府核定重劃籌備會成立及核定籌備會所擬具之重劃計畫書之程序違法，循序訴願遭駁回後，訴經臺中高等行政法院以 99 年度訴字第 125 號判決原告之訴駁回，再上訴經最高行政法院以 100 年度判字第 1790 號判決上訴駁回而告確定。聲請人認確定判決所適用之平均地權條例第 58 條第 2 項、獎勵土地所有權人辦理市地重劃辦法第 8 條 、第 20 條規定，有違憲疑義，聲請解釋。

Petitioner, judge of Taiwan Taoyuan District Court who has heard the case in that district court 103 Su 2184 Judgment (2014) for revocation of the resolutions decided in the urban land consolidation committee members meeting, and believed that Article 58, Paragraph 3 of the Equalization of Land Rights Act applied in that case was with doubt unconstitutional, hereby filed a petition for interpretation.

(二)聲請人臺灣桃園地方法院仁股法官審理該院103年度訴字第2184號撤銷市地重劃區重劃會會員大會決議等事件，認該案所應適用之平均地權條例第58條第3項規定，有違憲疑義，聲請解釋。