J. Y. Interpretation No.742（December 9, 2016）*

【Challenging Urban Plan Modifications Based on Periodic Comprehensive Review】

ISSUE: Is it permitted to challenge by filing an administrative appeal or initiating court proceedings in an administrative court a specific part of an urban plan modification based on a periodic Comprehensive Review of the urban plan, if that specific part either directly restricts the rights and privileges of specific individuals within a certain region or of an identifiable group of individuals, or imposes additional obligations on such individuals ?

RELEVANT LAWS:

Articles 15 and 16 of the Constitution（憲法第 15 條、第 16 條）；J.Y. Interpretations Nos. 156, 396, 400, 503, 574, 653, 739 and 741（司法院釋字第一五六號、第三九六號、第四00號、第五0三號、第五七四號、第六五三號、第七三九號、第七四一號解釋）；Article 26 of the Urban Planning Act（都市計畫法第 26 條）；Article 4 of the Implementing Regulation of Periodic Comprehensive Review of Urban Plans（都市計畫定期通盤檢討實施辦法第 4 條）；Paragraph 1, Article 4 of the Administrative Litigation Act（行政訴訟法第四條第

* Translated by Hsiu-Yu FAN

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一項）；Fu-Gong-Second-Zi Announcement No. 81086893 of Taipei City Government on December 14, 1992（臺北市政府81年12月14日府工二字第81086893號公告）

KEYWORDS:

urban plan（都市計畫）, periodic comprehensive review（定期通盤檢討）, modifications based on periodic comprehensive review（定期通盤檢討之變更）, supplementary interpretation（補充解釋）, right to litigate（訴訟權）, timely and effective remedy（及時有效救濟）, Interpretation with a judicial deadline/ Interpretation with a sunset provision（定期失效解釋）**

HOLDING: The necessary modification to an original urban plan based on a periodic Comprehensive Review of the urban plan conducted by competent urban plan formulating authorities is a regulation in nature, not an administrative act. Nonetheless, when a specific part thereof either directly restricts the rights and privileges of specific individuals within a certain region or of an identifiable group of individuals, or imposes additional obligations on such individuals, based on the constitutional principle

解釋文：都市計畫擬定計畫機關依規定所為定期通盤檢討，對原都市計畫作必要之變更，屬法規性質，並非行政處分。惟如其中具體項目有直接限制一定區域內特定人或可得確定多數人之權益或增加其負擔者，基於有權利即有救濟之憲法原則，應許其就該部分提起訴願或行政訴訟以資救濟，始符憲法第十六條保障人民訴願權與訴訟權之意旨。本院釋字第一五六號解釋應予補充。

of *ubi jus ibi remedium* ("where there is a right, there must be a remedy",) the said individuals should be allowed to seek redress for the infringement imposed by that specific part by filing an administrative appeal or initiating court proceedings in an administrative court, in compliance with the protection of the people's right to appeal and the right to litigate offered by Article 16 of the Constitution. The preceding should be deemed supplementary to our Interpretation No. 156.

The formulation of urban plans (including modifications based on a periodic Comprehensive Review) has considerable influence on the people's rights and privileges. The legislative organs should amend relevant laws and regulations within two years from the publication of this Interpretation, so as to enable the people to seek redress for the infringement by initiating court proceedings against unlawful urban plans that they deem an infringement of their rights or lawful interests. Should [the legislative organs] fail to amend [the laws and regulations] in time, the remedial action procedures against

都市計畫之訂定（含定期通盤檢討之變更），影響人民權益甚鉅。立法機關應於本解釋公布之日起二年內增訂相關規定，使人民得就違法之都市計畫，認為損害其權利或法律上利益者，提起訴訟以資救濟。如逾期未增訂，自本解釋公布之日起二年後發布之都市計畫（含定期通盤檢討之變更），其救濟應準用訴願法及行政訴訟法有關違法行政處分之救濟規定。

unlawful administrative acts set forth in the Administrative Appeal Act and the Administrative Litigation Act are to be applied *mutatis mutandis* to any redress against urban plans (including modification based on a periodic Comprehensive Review) announced after two years from the publication of this Interpretation.

REASONING: A petition filed by an interested party who has questions on the application of our past Interpretations to a final judgment of the court of last resort, requesting a supplementary interpretation, shall be heard if it has been approved as a petition with legitimate reasons. (*see* our Interpretations Nos. 503 and 741.) The Petitioners of the two Petitions respectively filed administrative appeals and initiated court proceedings and each has received a final judgment from the Supreme Administrative Court, which referred to our No. 156 Interpretation (hereafter the "Interpretation at issue") as the basis of the judgment. The holding of the Interpretation at issue explained that: "the modification to urban plans by the competent authorities is a unilateral

解釋理由書：當事人對於確定終局裁判所適用之本院解釋，發生疑義，聲請補充解釋，經核確有正當理由者，應予受理（本院釋字第五〇三號、第七四一號解釋參照）。本件二聲請案之聲請人各因都市計畫事件提起行政爭訟，分別經最高行政法院確定終局裁判引用本院釋字第一五六號解釋（下稱系爭解釋）作為裁判依據。系爭解釋之解釋文釋示：「主管機關變更都市計畫，係公法上之單方行政行為，如直接限制一定區域內人民之權利、利益或增加其負擔，即具有行政處分之性質，其因而致特定人或可得確定之多數人之權益遭受不當或違法之損害者，自應許其提起訴願或行政訴訟以資救濟，本院釋字第一四八號解釋應予補充釋明。」且於理由書附論：「都市計畫之個別變更，與都市計畫之擬定、發布及擬定計畫機關

administrative action under public law, which, if directly restricting the rights or interests of the people within a certain region, or imposing additional obligations on such people, possesses the characteristics of an administrative act; if [such a modification] therefore causes improper or unlawful infringement on the rights and privileges of specific individuals or an identifiable group of individuals, they should be allowed to file administrative appeals or to initiate court proceedings in administrative court to seek redress for such an infringement. Our Interpretation No. 148 should be hereby supplemented and clarified [by the preceding].” It further stated in its reasoning: “the case-by-case modification of urban plans is different from the formulation of urban plans, the publication of urban plans, or the necessary modification based on the five-year periodic Comprehensive Review conducted by the competent formulating authorities (*see* Article 26 of the Urban Planning Act), [none of] which directly restricts the rights and privileges of the people within a certain region, nor imposes additional obligation on such people.”The Petition-

依規定五年定期通盤檢討所作必要之變更（都市計畫法第二十六條參照），並非直接限制一定區域內人民之權益或增加其負擔者，有所不同。」聲請人就都市計畫定期通盤檢討所作變更是否為行政處分，及得否提起行政爭訟部分，聲請補充解釋，經核有正當理由，合先敘明。

ers filed Petitions requesting supplementary interpretation regarding whether a modification based on the periodic Comprehensive Review of urban plans is an administrative act, and whether they can file administrative appeals and initiate court proceedings, which Petitions have been approved as petitions with legitimate reasons—as set out above.

Article 15 of the Constitution provides that the people's right to property shall be guaranteed. This is to ensure an individual may exercise her or his right and capacity to freely use, profit from, or dispose of the property according to its current status, and to further prevent the incursions from state authorities or third parties, so as to realize individual freedom, to develop [her or his own] personality and to preserve [her or his] dignity. (*see* our Interpretations Nos. 400 and 739.) Furthermore, the people's right to litigate, as protected by Article 16 of the Constitution, refers to the people's right to ask the courts for remedies when their rights or lawful interests are violated. (*see* our Interpretation No. 736.) Based

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、第七三九號解釋參照）。又憲法第十六條保障人民訴訟權，係指人民於其權利或法律上利益遭受侵害時，有請求法院救濟之權利（本院釋字第七三六號解釋參照）。基於有權利即有救濟之憲法原則，人民權利或法律上利益遭受侵害時，必須給予向法院提起訴訟，請求依正當法律程序公平審判，以獲及時有效救濟之機會。此乃訴訟權保障之核心內容（本院釋字第三九六號、第五七四號、第六五三號解釋參照）。

on the constitutional principle of *ubi jus ibi remedium* ("where there is a right, there must be a remedy",) whenever the people's rights or lawful interests are violated, they must be offered an opportunity to initiate court proceedings requesting a fair trial with due process of law, so as to receive a timely and effective remedy. This is the core value of the right to litigate. (*see* our Interpretations Nos. 396, 574 and 653.)

As applied in one of the initial cases, Article 26 of the Urban Planning Act (as amended and promulgated on September 6, 1973) provides: "No *ad hoc* changes shall be made to any urban plan that has been announced and implemented. However, the agency formulating the plan shall review the plan comprehensively at least once every five years and make necessary modifications according to developments while also taking the people's suggestions into consideration. Land reserved for public facilities that are deemed unnecessary shall be de-reserved and used for other purposes. "As applied in the other initial case, Article 26 of the Urban

原因案件之一所適用之中華民國六十二年九月六日修正公布之都市計畫法第二十六條規定：「都市計畫經發布實施後，不得隨時任意變更。但擬定計畫之機關每五年至少應通盤檢討一次，依據發展情況並參考人民建議作必要之變更。對於非必要之公共設施用地，應予撤銷並變更其使用。」另一原因案件所適用之現行都市計畫法第二十六條規定：「（第一項）都市計畫經發布實施後，不得隨時任意變更。但擬定計畫之機關每三年內或五年內至少應通盤檢討一次，依據發展情況，並參考人民建議作必要之變更。對於非必要之公共設施用地，應變更其使用。（第二項）前項都市計畫定期通盤檢討之辦理機關、作

Planning Act, currently in force, provides: " (Paragraph 1) No *ad hoc* changes shall be made to any urban plan that has been announced and implemented. However, the agency formulating the plan shall review the plan comprehensively at least once every three or five years and make necessary modifications according to the developments while also taking the people's suggestions into consideration. Land reserved for public facilities that are deemed unnecessary shall be de-reserved and used for other purposes. (Paragraph 2) The Ministry of the Interior shall stipulate the implementing regulations regarding the competent authorities, the operating procedures, and the criteria for review in the periodic Comprehensive Review of urban plans, as described in the preceding paragraph." None of the above specifically regulates the scope of modifications or any possible content thereof. Article 4 of the Implementing Regulation of Periodic Comprehensive Review of Urban Plans, however, provides that necessary modifications can be made by the periodic Comprehensive Review to both the Master Plan and the Detail Plan; hence the

業方法及檢討基準等事項之實施辦法，由內政部定之。」均未具體規範定期通盤檢討之變更範圍及可能之內容。都市計畫定期通盤檢討實施辦法第四條則規定，定期通盤檢討得對主要計畫及細部計畫為必要之修正，是其所得修正之範圍及內容甚廣。按定期通盤檢討對原都市計畫之主要計畫或細部計畫所作必要變更，屬法規性質，並非行政處分。然由於定期通盤檢討所可能納入都市計畫內容之範圍並無明確限制，其個別項目之內容有無直接限制一定區域內特定人或可得確定多數人之權益或增加負擔，不能一概而論。訴願機關及行政法院自應就個案審查定期通盤檢討公告內個別項目之具體內容，判斷其有無個案變更之性質，亦即是否直接限制一定區域內特定人或可得確定多數人之權益或增加負擔，以決定是否屬行政處分之性質及得否提起行政爭訟。如經認定為個案變更而有行政處分之性質者，基於有權利即有救濟之憲法原則，應許其就該部分提起訴願或行政訴訟以資救濟，始符憲法第十六條保障人民訴願權及訴訟權之意旨。系爭解釋應予補充。

scope and content of what may be modified is very broad. The necessary modifications to an original urban plan based on the periodic Comprehensive Reviews of the urban plan are regulations in nature, not administrative acts; however, as there is no clear limit on the scope of urban plan that may be included in the periodic Comprehensive Review, it is not possible to categorically conclude whether or not the content of an individual item directly restricts the rights and privileges of specific individuals within a certain region or of an identifiable group of individuals, or imposes additional obligations on such individuals. The agencies[with jurisdiction] over administrative appeals and the administrative courts should review the specific content of each individual item case by case in the announcement of a periodic Comprehensive Review to decide whether or not it possesses the characteristics of a case-by-case modification and whether or not it directly restricts the rights and privileges of specific individuals within a certain region or of an identifiable group of individuals, or imposes additional obligations on such individuals, so as to decide

whether or not it possesses the characteristics of an administrative act and whether or not administrative appeals and court proceedings are available. If [an individual item is] considered as a case-by-case modification and hence possessing the characteristics of an administrative act, based on the constitutional principle of *ubi jus ibi remedium*, the persons affected should be allowed to seek redress for the infringement imposed by that specific part by filing an administrative appeal or initiate court proceedings in an administrative court, in compliance with the protection of the people's right to appeal and the right to litigate offered by Article 16 of the Constitution. The preceding should be deemed supplementary to the Interpretation at issue.

Additionally, an urban plan (including any modifications based on the periodic Comprehensive Review; the same shall apply hereinafter) is a regulation in nature, not an administrative act. Under current law, even if the people consider the plan to be unlawful and to have violated their rights or lawful interests, they

又都市計畫（含定期通盤檢討之變更；下同），因屬法規性質，並非行政處分，依現行法制，人民縱認其違法且損害其權利或法律上利益，仍須俟後續行政處分作成後，始得依行政訴訟法提起撤銷訴訟（行政訴訟法第四條第一項參照）。然都市計畫核定發布後，都市計畫範圍內土地之使用將受限制（都

still have to wait until a subsequent administrative act is made to file an action of revocation (*see* Paragraph 1, Article 4 of the Administrative Litigation Act.) Nonetheless, the land use within the scope of an Urban Plan will be restricted right after the approval and announcement of the urban plan (*see* the related restrictive regulations in Article 6 and from Chapter 3 to Chapter 6 of the Urban Planning Act.) The influence of this on the rights and privileges of the people within the region is tremendous and the content of this is hardly distinguishable from that of an administrative act. In order to ensure timely, effective and complete protection for the people's right to property and right to litigate, to allow them to immediately seek remedies by initiating court proceedings when their right to property is violated due to an urban plan, and to urge the competent authorities to comply with laws and regulations when contemplating, approving, and announcing urban plans, the legislative organs should amend related laws and regulations within two years after the publication of this Interpretation, so as to enable the people to seek

市計畫法第六條及第三章至第六章等相關限制規定參照），影響區內人民權益甚鉅，且其內容與行政處分往往難以明確區隔。為使人民財產權及訴訟權受及時、有效、完整之保障，於其財產權因都市計畫而受有侵害時，得及時提起訴訟請求救濟，並藉以督促主管機關擬定、核定與發布都市計畫時，遵守法律規範，立法機關應於本解釋公布之日起二年內增訂相關規定，使人民得就違法之都市計畫，認為損害其權利或法律上利益者，提起訴訟以資救濟。如逾期未增訂，自本解釋公布之日起二年後發布之都市計畫之救濟，應準用訴願法及行政訴訟法有關違法行政處分之救濟規定。

redress for the infringement by initiating court proceedings against unlawful urban plans that they deem an infringement of their rights or lawful interests. Should [the legislative organs] fail to amend [the laws and regulations] in time, the remedial action procedures against unlawful administrative acts set forth in the Administrative Appeal Act and the Administrative Litigation Act are to be applied *mutatis mutandis* to the redress against any urban plan announced after two years from the publication of this Interpretation.

Regarding the request made by the Petitioner of one of the Petitions to interpret the unconstitutional part of Postscript 2 of Item No. 5 under section "3(1) Modification" in the detailed specification column, which provides that "……should provide 30% of land for public facilities (land reserved for parks), and should also concentrate the reservations of mandatory vacant lots accordingly" in the Fu-Gong-Second-Zi Announcement No. 81086893 of Taipei City Government on December 14, 1992 "Case of Public Facilities Reservation in Taipei City (Comprehensive

有關聲請案之一之聲請人聲請解釋臺北市政府八十一年十二月十四日府工二字第八一〇八六八九三號公告「臺北市都市計畫公共設施保留地（通盤檢討）案」詳細說明欄三、（一）變更計畫部分編號 5. 備註 2.「……應提供 30% 之土地作公共設施（公園用地），同時法定空地亦應配合集中留設」違憲部分，因該備註規定是否直接限制一定區域內特定人或可得確定多數人之權益或增加其負擔，而具有行政處分之性質，並因而許其提起行政爭訟，應由行政法院依本解釋意旨認定；其既屬行政法院認事用法之職權範圍，自不得據以

Review),"the question whether or not this Post Script directly restricts the rights and privileges of specific individuals within a certain region or of an identifiable group of individuals, or imposes additional obligations on such individuals, and therefore possesses the characteristics of an administrative act and hence makes administrative appeals and court proceedings available[to the Petitioner] should be decided by the administrative courts according to this Interpretation. As it is within the administrative courts' authority to review the facts and apply the laws, [the Petitioner] should not request us for an interpretation. In sum, this part of the Petition of the Petitioner is at odds with Subparagraph 2, Paragraph 1, Article 5 of the Constitutional Court Procedure Act and should not be heard according to Paragraph 3 of the same Article.

聲請本院解釋。是該聲請人此部分之聲請，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。

Justice Dennis Te-Chung TANG filed an opinion concurring in part.

Justice Ming-Cheng TSAI, filed an opinion concurring in part, in which Justice Beyue SU CHEN and Justice Chong-Wen CHANG, joined.

本號解釋湯大法官德宗提出之部分協同意見書；蔡大法官明誠提出，陳大法官碧玉、張大法官瓊文加入之部分協同意見書；許大法官宗力提出之協同意見書；羅大法官昌發提出之協同意見書；林大法官俊益提出之協同意見書；

Justice Tzong-Li HSU filed a concurring opinion.

Justice Chang-Fa LO filed a concurring opinion.

Justice Jiun-Yi LIN filed a concurring opinion.

Justice Chih-Hsiung HSU filed a concurring opinion.

Justice Jui-Ming HUANG filed a concurring opinion, in which Justice Sheng-Lin JAN, joined.

Justice Hsi-Chun HUANG filed an opinion dissenting in part.

Justice Chen-Huan WU filed a dissenting opinion.

許大法官志雄提出之協同意見書；黃大法官瑞明提出，詹大法官森林加入之協同意見書；黃大法官璽君提出之部分不同意見書；吳大法官陳鐶提出之不同意見書。

EDITOR'S NOTE:

Summary of facts: 1. The Petitioner (Que,Yong-Huang et al.) representing 6 persons co-owned 27 titles of land in Nangang District, Taipei City (hereafter the "Land at issue,") which were designated as Land Reserved for the Academia Sinica in 1972. On December 14, 1992, the Taipei City Government announced and implemented the "Case of Public Facilities Reservation in Taipei City (Comprehensive Review)," which made partial

編者註：

事實摘要：一、聲請人闕永煌等6人共有坐落臺北市南港區的27筆土地（下稱系爭土地），61年間經規劃為中央研究院機關用地，81年12月14日臺北市政府公告發布實施「臺北市都市計畫公共設施保留地（通盤檢討）案」，關於系爭土地部分，以中央研究院放棄保留而作部分變更：「將北半部機關用地變更為第三種住宅區，惟應提供30%之土地作公共設施（公園用地），同時法定空地亦應配合集中

modifications to the Land at issue because the Academia Sinica had relinquished the land reservation: "the northern half of the reserved land is to be changed into the Third Category Residential Area, but yet [the land owner] should provide 30% of land for public facilities (land reserved for parks), and should also concentrate the reservations of mandatory vacant lots accordingly." (Hereafter the"Announcement at issue.") The Petitioner disagreed with the Announcement at issue and filed an administrative appeal in 2013, which was later rejected by the Ministry of Interior for the reason that the Announcement at issue was not an administrative act. The Petitioner then brought an action before the administrative court to revoke it, which action was later dismissed by the Taipei High Administrative Court in its 2014 Su-Zi Decision No. 424. One of the grounds for dismissal was that, based on J.Y. Interpretation No. 156, the Announcement at issue was a regulation in nature, not an administrative act and therefore could not be challenged by initiating court proceedings in an administrative court. This decision was later affirmed by the

留設。」(下稱系爭公告)。聲請人不服系爭公告，在 102 年提起訴願，內政部以系爭公告不是行政處分而不受理，聲請人續提行政訴訟請求撤銷，經臺北高等行政法院以 103 年度訴字第 424 號判決駁回，理由之一是依司法院釋字第 156 號解釋意旨，系爭公告屬法規性質，並不是行政處分，不得提起行政訴訟，這個見解被最高行政法院 104 年度判字第 680 號判決所維持。聲請人於是向本院聲請補充解釋釋字第 156 號解釋。

Supreme Administrative Court with its 2015 Pan-Zi Decision No.680. The Petitioner therefore filed the Petition requesting a supplementary interpretation to our Interpretation No. 156.

2. The Petitioner Zhao Heng Corporation, due to urban planning, owned 3 titles of land in the Shilin District, Taipei City, of which the designated land use was Gas Station Land Use (hereafter the"Gas Station Land at issue.") In May 2013, Taipei City Government, after receiving an approval from the Ministry of the Interior, announced and implemented a"Comprehensive Review of the Urban Plan for Waishuangxi in Shilin District, Taipei City (Master Plan)" (hereafter the "Announcement at issue,") which changed the status of the Gas Station Land at issue into "Transportation Land Use (Tourist Center)." The Petitioner disagreed with the Ministry of Interior's approval and the Announcement at issue and filed an administrative appeal. Having been rejected by the agencies with jurisdiction over administrative appeals, the Petitioner then brought an action before the administra-

二、聲請人兆亨公司因都市計畫事件，所有坐落臺北市士林區的 3 筆土地，原來的土地使用分區是加油站用地（下稱系爭加油站用地），臺北市政府在報經內政部核定後，於 102 年 5 月發布實施「臺北市士林區外雙溪地區都市計畫通盤檢討（主要計畫）案」(下稱系爭公告)，將系爭加油站用地變更為「交通用地（遊客中心）」。聲請人不服內政部的核定及系爭公告，提起訴願，遭訴願機關不受理，聲請人續提行政訴訟請求撤銷，經臺北高等行政法院以 102 年度訴字第 2024 號裁定駁回，理由之一是依司法院釋字第 156 號解釋意旨，都市計畫通盤檢討屬法規性質，並不是行政處分，不得提起行政訴訟，這個見解被最高行政法院 103 年度裁字第 1505 號裁定所維持。聲請人於是向本院聲請補充解釋釋字第 156 號解釋。

tive court to revoke the change of status. This action was later dismissed by Taipei High Administrative Court in its 2013 Su-Zi Ruling No.2024. One of the grounds for dismissal was that, based on J.Y. Interpretation No. 156, the Announcement at issue was a regulation in nature, not an administrative act and therefore could not be challenged by initiating court proceedings in an administrative court. This decision was later affirmed by the Supreme Administrative Court in its 2014 Cai-Zi Ruling No.1505. The Petitioner therefore filed the Petition requesting supplementary interpretation to our Interpretation No. 156.