

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

【Review and Approval of Urban Renewal Business Summaries and Plans】

ISSUE: Are the Urban Renewal Act's provisions governing the review and approval of urban renewal business summaries and plans constitutional ?

RELEVANT LAWS:

Articles 10, 15 & 23 of the Constitution (憲法第十條、第十五條、第二十三條) ; J.Y. Interpretation Nos. 400, 443, 454, 596 & 689 (司法院釋字第四〇〇號、第四四三號、第四五四號、第五九六號、第六八九號解釋) ; Article 11, Section 1 of the International Covenant on Economic, Social and Cultural Rights (經濟社會文化權利國際公約第十一條第二項) ; Paragraph 1 of Article 7, Paragraphs 1 & 2 of Article 10, Article 11, Paragraph 1 of Article 26 and Paragraph 1 of Article 36 of the Urban Renewal Act (as amended on November 11, 1998) (都市更新條例第七條第一項、第十條第一項及第二項、第十一條、第二十六條第一項、第三十六條第一項 (中華民國八十七年十一月十一日修正公布)) ; Article 3, 9, Paragraph 3 of Article 19, Paragraph 1 of Article 22 and Article 22-1 of the Urban Renewal Act (as amended on

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January 29, 2003) (都市更新條例第三條、第九條、第十九條第三項、第二十二條第一項、第二十二條之一(中華民國九十二年一月二十九日修正公布)) ; Article 22-1 of the Urban Renewal Act (as amended on June 22, 2005) (都市更新條例第二十二條之一(中華民國九十四年一月二十二日修正公布)) ; Paragraphs 1 & 2 of Article 10, Paragraph 1 of Article 22 Article 21, Paragraph 3 of Article 22, Paragraph 1 of Article 31 and Paragraph 1 of Article 36 of the Urban Renewal Act (as amended on January 16, 2008) (都市更新條例第十條第一項及第二項、第二十二條第一項、第二十一條、第二十二條第三項、第三十一條第一項、第三十六條第一項(中華民國九十七年十一月十六日修正公布)) ; Paragraphs 3 & 4 of Article 19 and Paragraph 1 of Article 36 of the Urban Renewal Act (as amended on May 12, 2010) (都市更新條例第十九條第三項及第四項、第三十六條第一項(中華民國九十九年五月十二日修正公布)) ; Article 34 and Paragraph 1 of Article 92 of the Administrative Procedure Act (行政程序法第三十四條、第九十二條第一項(中華民國一〇四年十二月三十日修正公布)) 。

KEYWORDS:

Right to property (財產權), freedom of residence (居住自由), adequate standard of living (適足居住), principle of proportionality (比例原則), due process in administrative procedures (正當行政程序), Urban Renewal Act (都市更新條例), renewal units (更新單元), Urban Renewal Business Summary (都市更新事業概要), Urban Renewal Business Plan (都市更新事業計畫), Transfer of Rights (權

利變換), substantial relation (重要關聯性), appropriate organization (適當組織), presenting opinions (陳述意見), hearing (聽證), public hearing (公聽會), proportion of agreement (同意比率), spirit of democracy (民主精神), legislative discretion (立法形成).**

HOLDING: 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 provides the competent authority's approval procedures for urban renewal business summaries, is inconsistent with the due process in administrative procedures required by the Constitution because it does not establish an appropriate organization to review urban renewal business summaries. It also fails to ensure that interested parties be kept informed of all relevant information or have the opportunity to present their opinions in a timely manner. Paragraph 2 of the same Article (as amended on January 16, 2008, which retained the same proportion of agreement as the prior version), which provides the required proportion of agreement needed

解釋文：中華民國八十七年十一月十一日制定公布之都市更新條例第十條第一項（於九十七年一月十六日僅為標點符號之修正）有關主管機關核准都市更新事業概要之程序規定，未設置適當組織以審議都市更新事業概要，且未確保利害關係人知悉相關資訊及適時陳述意見之機會，與憲法要求之正當行政程序不符。同條第二項（於九十七年一月十六日修正，同意比率部分相同）有關申請核准都市更新事業概要時應具備之同意比率之規定，不符憲法要求之正當行政程序。九十二年一月二十九日修正公布之都市更新條例第十九條第三項前段（該條於九十九年五月十二日修正公布將原第三項分列為第三項、第四項）規定，並未要求主管機關應將該計畫相關資訊，對更新單元內申請人以外之其他土地及合法建築物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

for an urban renewal business summary application, is also inconsistent with the due process in administrative procedures required by the Constitution. Article 19, first part of Paragraph 3, 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 organized them as Paragraphs 3 and 4 of this Article), does not request the competent authority to separately deliver the urban renewal business plan's relevant information to owners of lands and legal buildings within an area to be renewed other than to the applicants. This provision also fails to require the competent authority to hold hearings in public, which would allow interested parties to attend the hearing, present their statements and conduct oral argument. Nor does this provision ask the competent authority to take the entire records of the hearing into consideration, explain its rationale for accepting or declining the arguments when granting the approval, or deliver approved urban renewal business plans to owners of lands and legal buildings within an area to be renewed, owners of other legal

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，連同已核定之都市更新事業計畫，分別送達更新單元內各土地及合法建築物所有權人、他項權利人、囑託限制登記機關及預告登記請求權人，亦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。

rights, relevant authorities of registration of request or restriction, and persons who may apply for advance notice registration. As a result, this provision does not comply with the due process in administrative procedures required by the Constitution either. 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 provisions stated above in accordance with the meaning and purpose of this Interpretation. 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.

Article 22, Paragraph 1, of the Urban Renal Act, as amended on January 29, 2003, and January 16, 2008, which provides the required proportion of agreement needed for the application for approval of urban renewal business plans, is not in violation of the principle of proportionality under the Constitution. Neither

九十二年一月二十九日及九十七年一月十六日修正公布之都市更新條例第二十二條第一項有關申請核定都市更新事業計畫時應具備之同意比率之規定，與憲法上比例原則尚無牴觸，亦無違於憲法要求之正當行政程序。惟有關機關仍應考量實際實施情形、一般社會觀念與推動都市更新需要等因素，隨時

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is there any violation of the due process in administrative procedures required by the Constitution. Nonetheless, the relevant authorities should consider factors such as the situation of practical implementation, general social attitudes, the need for promoting urban renewal, etc., and review and modify relevant provisions from time to time.

The application of Article 22-1 of the Urban Renal Act, as amended on January 29, 2003 (the amendment on June 22, 2005, only corrected the text of this Article), is limited to urban renewal applications in areas designated for renewal due to war, earthquake, fire, flood, storm or other major incidents prescribed in Article 7, Paragraph 1, Item 1, of the Urban Renal Act. This Article is also limited by not changing the differentiated ownership of other buildings and the ownership of the portion of the base lot they own. In this circumstance, this Article is consistent with the constitutional principle of proportionality.

檢討修正之。

九十二年一月二十九日修正公布之都市更新條例第二十二條之一（該條於九十四年六月二十二日為文字修正）之適用，以在直轄市、縣（市）主管機關業依同條例第七條第一項第一款規定因戰爭、地震、火災、水災、風災或其他重大事變遭受損壞而迅行劃定之更新地區內，申請辦理都市更新者為限；且係以不變更其他幢（或棟）建築物區分所有權人之區分所有權及其基地所有權應有部分為條件，在此範圍內，該條規定與憲法上比例原則尚無違背。

REASONING: In this case, the statutes applied by the courts in the final judgments (Supreme Administrative Court 100 Pan1905 (2011), Supreme Administrative Court 100 Pan 2004 (2011), Supreme Administrative Court 100 Pan 2092 (2011), and Taipei High Administrative Court 98 Su 2467 (2009)) include Article 10, Paragraphs 1 and 2, of the Urban Renal 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; hereinafter the “Act,” including the former Act and the current Urban Renewal Act). In this Interpretation, these statutes all fall under this Court’s scope of review according to Article 5, Paragraph 1, Subparagraph 2, of the Constitutional Interpretation Procedure Act. The first part of Article 19, Paragraph 3, of the former Act applied in the final judgment of the Supreme Administrative Court 100 Pan1905 (2011) is not included in the petitions, but it provides procedures that

解釋理由書：查本件原因案件之確定終局判決（最高行政法院一〇〇年度判字第一九〇五號、第二〇〇四號、第二〇九二號判決及臺北高等行政法院九十八年度訴字第二四六七號判決）所適用之法律，包括八十七年十一月十一日制定公布之都市更新條例第十條第一項、第二項及九十二年一月二十九日修正公布之都市更新條例第二十二條第一項、增訂公布第二十二條之一（九十二年一月二十九日修正公布後都市更新條例下稱舊都市更新條例），以及九十七年一月十六日修正公布之都市更新條例第二十二條第一項（現行及舊都市更新條例合稱本條例），依司法院大法官審理案件法第五條第一項第二款規定，均為解釋之客體。又查最高行政法院一〇〇年度判字第一九〇五號確定終局判決所適用之舊都市更新條例第十九條第三項前段雖未經聲請人聲請釋憲，惟此係規定直轄市、縣（市）政府主管機關核定都市更新事業計畫前應遵行之程序，乃同條例第十條第一項直轄市、縣（市）主管機關核准都市更新事業概要之後續階段，都市更新事業概要是否核准為都市更新事業計畫是否核定之前提問題，足見舊都市更新條例第十九條第三項前段與第

the municipal or county (city) authority should follow before approving urban renewal business summaries. The approval of an urban renewal business summary is a prerequisite for the approval of an urban renewal business plan. The first part of Article 19, Paragraph 3, of the former Act has a substantial relation to the regulatory function of Article 10 of the same Act. Hence, as an initial point, this Court will also review the first part of Article 19, Paragraph 3, of the former Act in this Interpretation.

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 infringements by the government or any third party, so as to ensure that a person can realize his freedoms, develop his personality, and maintain his dignity (see Interpretation No. 400). In addition, Article 10 of the Constitution stipulates that people shall have freedom of resi-

十條第一項之規範功能，具有重要關聯性，爰將舊都市更新條例第十九條第三項前段一併納入審查範圍，合先敘明。

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（本院釋字第四〇〇號解釋參照）。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（本院釋字第四四三號解釋參照）。然國家為增進公共利益之必要，於不違反憲法第二十三條比例原則之範圍內，非不得以法律對於人民之財產權或居住自由予以限制（本院釋字第五九六號、第四五四

dence. This Article guarantees people the freedom to choose their residence and to enjoy their life in privacy without intrusion (see Interpretation No. 443). However, in order to advance public welfare, a 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 Interpretation Nos. 596 and 454).

Urban renewal is a program of urban planning. Urban renewal promotes well-planned urban land redevelopment, revitalizes urban functions, improves the urban living environment, and advances public welfare. The Act was enacted for these purposes. It ensures that people can 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 the legal basis for imposing restrictions on the people's rights to property and freedom of residence. The implementation of urban renewal involves concerns of politics,

號解釋參照)。

都市更新為都市計畫之一環，乃用以促進都市土地有計畫之再開發利用，復甦都市機能，改善居住環境，增進公共利益。都市更新條例即為此目的而制定，除具有使人民得享有安全、和平與尊嚴之適足居住環境之意義（經濟社會文化權利國際公約第十一條第一項規定參照）外，並作為限制財產權與居住自由之法律依據。都市更新之實施涉及政治、經濟、社會、實質環境及居民權利等因素之考量，本質上係屬國家或地方自治團體之公共事務，故縱使基於事實上需要及引入民間活力之政策考量，而以法律規定人民在一定條件下得申請自行辦理，國家或地方自治團體仍須以公權力為必要之監督及審查決定。

economics, society, physical environment, and residence rights, etc., and is, in essence, a public duty of the state or local autonomous body. Taking into account the actual need to introduce the vitality of private parties (into the implementation of urban renewal), the law can stipulate that people may apply to self-manage the implementation of renewal under certain conditions. Nonetheless, the state or local autonomous body still has to inspect and review the implementation of renewal according to its authority, which is public. According to the Act, the competent authority can implement an urban renewal business by itself, entrust it to an urban renewal business institution, or accept other organizations (institutions) as agents of implementation to undertake the business of urban renewal. In addition, after meeting certain criteria the owners of the lands and legal buildings (of an area that has been designated for implementation of urban renewal) may apply to the municipal, county (city) authority according to law for approval of their urban renewal business summary, and then organize a renewal group to implement the urban

依本條例之規定，都市更新事業除由主管機關自行實施或委託都市更新事業機構、同意其他機關（構）實施外，亦得由土地及合法建築物所有權人在一定條件下經由法定程序向直轄市、縣（市）主管機關申請核准，自行組織更新團體或委託都市更新事業機構實施（本條例第九條、第十條、第十一條規定參照）。而於土地及合法建築物所有權人自行組織更新團體或委託都市更新事業機構實施之情形，主管機關對私人所擬具之都市更新事業概要（含劃定更新單元，以下同）所為之核准（本條例第十條第一項規定參照），以及對都市更新事業計畫所為之核定（本條例第十九條第一項規定參照），乃主管機關依法定程序就都市更新事業概要或都市更新事業計畫，賦予法律上拘束力之公權力行為，其法律性質均屬就具體事件對特定人所為之行政處分（行政程序法第九十二條第一項規定參照）。其中經由核准都市更新事業概要之行政處分，在更新地區內劃定可單獨實施都市更新事業之更新單元範圍，影響更新單元內所有居民之法律權益，居民如有不願被劃入更新單元內者，得依法定救濟途徑謀求救濟。而主管機關核定都市更新事業計畫之行政處分，涉及建築物配置、費用負擔、

renewal business or entrust it to an urban renewal business institution for implementation (see Articles 9, 10 & 11 of the Act). When the owners of the lands and legal buildings organize a renewal group to implement the urban renewal business or entrust it to an urban renewal business institution for implementation, the competent authority's approval of an urban renewal business summary (including the designation of renewal units—the same shall apply hereinafter) (see Article 10, Paragraph 1, of the Act) and an urban renewal business plan (see Article 19, Paragraph 1, of the Act) drafted by private parties are the competent authority's exercise of public authority according to legal procedures making an urban renewal business summary or an urban renewal business plan legally binding. The legal essence of these administrative acts is an administrative disposition issued to a specific person concerning a specific matter (see Article 92, Paragraph 1, of the Administrative Procedure Act). An administrative disposition approving an urban renewal business summary defines the scope of the units to be renewed in the

拆遷安置、財務計畫等實施都市更新事業之規制措施。且於後續程序貫徹執行其核准或核定內容之結果，更可使土地或建築物所有權人或其他權利人，乃至更新單元以外之人之權利受到不同程度影響，甚至在一定情形下喪失其權利，並被強制遷離其居住處所（本條例第二十一條、第二十六條第一項、第三十一條第一項、第三十六條第一項等規定參照）。故上述核准或核定均屬限制人民財產權與居住自由之行政處分。

area that has been designated for renewal and exerts an influence on the rights and legal interests of all residents (residing) in the units to be renewed. If a resident is unwilling to be included in the units to be renewed, he may seek the judicial relief that is available according to law. An administrative disposition that is rendered by the competent authority and which approves an urban renewal business plan involves critical components of the implementation of the plan, including the layout of the building, sharing of expenses, plans for removal and resettlement, and financial plans. Moreover, the implementation of the approved summary or plan in the following procedures may have varying impact on the owners or other right holders of the lands or legal buildings, or even on the rights of someone residing outside the units to be renewed. In certain circumstances, it could even result in the forfeiture of those people's rights 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 aforemen-

tioned approval of an urban renewal business summary and approval of an urban renewal business plan are both administrative dispositions imposing restrictions upon the people's rights to property and freedom of residence.

The legislature should formulate the content of the constitutional principle of due process by prescribing the corresponding legal procedures after the legislature takes into consideration the types of fundamental rights involved, the strength and scope of the restrictions, the public interests pursued, the proper function of the determining authority, as well as the existence of alternative procedures and their costs (see Interpretation No. 689). A renewal implementation not only involves the pursuit of an important public interest, but also has significant impact on the property rights and the freedom of residence of owners of various units to be renewed and surrounding lands and legal buildings. Furthermore, the implementation of renewal is prone to disputes due to the complicated interests involved. In order to ensure that the competent authori-

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解釋參照）。都市更新之實施，不僅攸關重要公益之達成，且嚴重影響眾多更新單元及其週邊土地、建築物所有權人之財產權及居住自由，並因其利害關係複雜，容易產生紛爭。為使主管機關於核准都市更新事業概要、核定都市更新事業計畫時，能確實符合重要公益、比例原則及相關法律規定之要求，並促使人民積極參與，建立共識，以提高其接受度，本條例除應規定主管機關應設置公平、專業及多元之適當組織以行審議外，並應按主管機關之審查事項、處分內容與效力、權利限制程度等之不同，規定應踐行之正當行政程序，包括應規定確保利害關係人知悉相

ty's approval of an urban renewal business summary or an urban renewal business plan matches an important public interest and complies with the principle of proportionality and the requirements of relevant laws—and also to pursue a broader acceptance of an approved urban renewal business summary or plan through building a consensus among people by encouraging people to get actively involved—the Act should require the competent authority to establish an impartial, professional, and diverse appropriate organization for the review of urban renewal business summaries and urban renewal business plans. Moreover, the Act should prescribe the due process for administrative procedures in light of the items to be reviewed by the competent authority, the content and effect of an administrative disposition, and the severity of restrictions imposed upon people's rights. These procedures should include rules ensuring that interested parties be kept informed of all relevant information, and should also provide interested parties with opportunities to present their opinions orally or in writing to the competent authority in a timely manner so as

關資訊之可能性，及許其適時向主管機關以言詞或書面陳述意見，以主張或維護其權利。而於都市更新事業計畫之核定，限制人民財產權及居住自由尤其直接、嚴重，本條例並應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，始無違於憲法保障人民財產權及居住自由之意旨。

to assert or preserve their rights. The approval of an urban renewal business plan in particular directly and significantly restricts the people's rights to property and freedom of residence. Therefore, the Act should require the competent authority to conduct hearings in public, allow interested parties to appear and present their statements and arguments orally during the proceedings, and explain their rationale for adopting or declining the arguments after taking into consideration all the records of the hearings. In this fashion the Act can be made consistent with the meaning and purpose of the constitutional guarantee of the people's rights to property and freedom of residence.

Article 10, Paragraph 1, of the former Act provides, "The owners of the lands and legal buildings of an area that has been designated for renewal may designate the units to be renewed by themselves as units defined by the competent authority, or according to the criteria for designating a unit to be renewed. They may also conduct a public hearing. They may then present a business summary

舊都市更新條例第十條第一項規定：「經劃定應實施更新之地區，其土地及合法建築物所有權人得就主管機關劃定之更新單元，或依所定更新單元劃定基準自行劃定更新單元，舉辦公聽會，擬具事業概要，連同公聽會紀錄申請當地直轄市、縣(市)主管機關核准，自行組織更新團體實施該地區之都市更新事業或委託都市更新事業機構為實施者實施之。」(於九十七年一月十六日

together with the public records of the hearing to the municipal, county (city) authority to apply for approval. Finally, they may organize a renewal group to implement the urban renewal business of that area or entrust it to an urban renewal business institution for implementation” (The amendment of January 16, 2008, only changed the punctuation in this sentence). Although this provision requires applicants or implementing agents to conduct a public hearing, it fails to sufficiently guarantee interested parties the opportunity to present their opinions to the competent authority in order to assert or preserve their rights in a timely manner. This provision and other relevant provisions do not require the competent authority to establish an appropriate organization to review urban renewal business summaries, nor do they ensure that interested parties be kept informed of all relevant information. As a result, this provision is inconsistent with the due process in administrative procedures required by the Constitution and in violation of the meaning and purpose of the constitutional guarantee of the

僅為標點符號之修正) 雖有申請人或實施者應舉辦公聽會之規定，惟尚不足以保障利害關係人適時向主管機關陳述意見，以主張或維護其權利。上開規定及其他相關規定並未要求主管機關應設置適當組織以審議都市更新事業概要，且未確保利害關係人知悉相關資訊可能性，與前述憲法要求之正當行政程序不符，有違憲法保障人民財產權與居住自由之意旨。

people's rights to property and freedom of residence.

When people apply to an administrative agency for specific administrative actions, the administrative agency must first review the application to see whether it meets the procedural requirements prescribed by law. An administrative agency will conduct an administrative disposition only when the procedural requirements prescribed by law are met. In view of this, the people's application is part of the entire administrative procedure. Provisions regulating the people's application must therefore comply with due process in administrative procedures. Since the Act provides that the owners of lands and legal buildings within an area to be renewed may apply for approval of an urban renewal business summary or an urban renewal business plan, the Act should also properly specify that the application contain a minimum proportion of agreement among the owners of the lands and legal buildings within the area to be renewed in accordance with the state's constitutional duty to protect the people's rights to prop-

人民依法申請行政機關為特定行政行為時，行政機關須就其申請是否合法定程序要件予以審查，於認為符合法定程序要件後，始據以作成行政處分，故人民申請之要件亦屬整體行政程序之一環，法律有關人民申請要件之規定，自亦應符合正當行政程序之要求。本條例既規定土地及合法建築物所有權人在一定條件下，得申請主管機關核准都市更新事業概要與核定都市更新事業計畫，則基於國家保護人民財產權與居住自由之憲法上義務，就提出申請時應具備之同意比率，亦應有適當之規定。舊都市更新條例第十條第二項規定：「前項之申請應經該更新單元範圍內土地及合法建築物所有權人均超過十分之一，並其所有土地總面積及合法建築物總樓地板面積均超過十分之一之同意。」（於九十七年一月十六日修正公布為：「前項之申請，應經該更新單元範圍內私有土地及私有合法建築物所有權人均超過十分之一，並其所有土地總面積及合法建築物總樓地板面積均超過十分之一之同意；……」）依其規定，申請核准都市更新事業概要之同意比

erty and freedom of residence. Article 10, Paragraph 2, of the former Act provides, “The application mentioned in the foregoing paragraph should be accepted by more than 10% of the owners of the lands and legal buildings within the area to be renewed, and the total land area and the total floor area of the legal buildings owned should also exceed 10%; ...” (After the amendment of January 16, 2008, this provision reads as “The application mentioned in the foregoing paragraph should be accepted by more than 10% of the owners of the private lands and legal private buildings within the area to be renewed, and the total land area and the total floor area of the legal buildings owned should also exceed 10%; ...”). Under this provision, any application for the approval of an urban renewal business summary is filed in accordance with the law as long as it meets the 10% requirement, regardless of whether the application is filed by more than 10% of owners of the lands and legal buildings within the area to be renewed or by owners who own more than 10% of the total land area and the total floor area of the legal buildings. Therefore, the

率，不論土地或合法建築物所有權人，或其所有土地總面積或合法建築物總樓地板面積，僅均超過十分之一即得提出合法申請，其規定之同意比率太低，形成同一更新單元內少數人申請之情形，引發居民參與意願及代表性不足之質疑，且因提出申請前溝通協調之不足，易使居民顧慮其權利可能被侵害，而陷於價值對立與權利衝突，尤其於多數人不願參與都市更新之情形，僅因少數人之申請即應進行行政程序（行政程序法第三十四條但書規定參照），將使多數人被迫參與都市更新程序，而面臨財產權與居住自由被侵害之危險。則此等同意比率太低之規定，尚難與尊重多數、擴大參與之民主精神相符，顯未盡國家保護人民財產權與居住自由之憲法上義務，即不符憲法要求之正當行政程序，亦有違於憲法保障人民財產權與居住自由之意旨。

minority owners of the area to be renewed may easily file an application because the required proportion of agreement prescribed under this provision is very low. However, it is doubtful whether such an application represents the will of all the residents. Moreover, due to insufficient communication conducted prior to the filing of the application, residents are likely to be concerned as to whether their rights will be violated and they also face the dilemma of the conflict of various values and rights. Particularly, in a case where most people are not willing to participate in an urban renewal plan, residents may be forced to participate in the procedure of urban renewal and thus risk their property rights and freedom of residence only because the administrative procedure is undertaken after an application filed by a few people (Article 34, proviso clause, of the Administrative Procedure Act). This provision, allowing such a low proportion of agreement, does not match the spirit of democracy by majority rule or expansion of citizen's participation, and obviously fails to fulfill the state's constitutional duty to protect the people's rights

to property and freedom of residence. It is inconsistent with the due process in administrative procedures 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.

Article 19, first part of Paragraph 3, of the former Act provides, "After an urban renewal business plan is drafted or revised, and before it is sent to a competent urban renewal review committee at a municipal, county (city) government or township (village, city) for review, the urban renewal business plan should be publicly exhibited for 30 days at each municipal, county (city) government or township (village, city) hall. The date and place of exhibition should be published in the newspaper for the public. A public hearing should be conducted as well. Within the exhibition period, any citizen or group can submit written suggestions with their names or titles and addresses to competent municipal, county (city) government or township (village, city) hall in order to provide reference to the compe-

舊都市更新條例第十九條第三項前段規定：「都市更新事業計畫擬定或變更後，送該管直轄市、縣（市）政府都市更新審議委員會審議前，應於各該直轄市、縣（市）政府或鄉（鎮、市）公所公開展覽三十日，並應將公開展覽日期及地點登報周知及舉行公聽會；任何人民或團體得於公開展覽期間內，以書面載明姓名或名稱及地址，向該管直轄市、縣（市）政府提出意見，由該管直轄市、縣（市）政府都市更新審議委員會予以參考審議。」（該條於九十九年五月十二日修正公布，將原第三項分列為第三項、第四項：「都市更新事業計畫擬訂或變更後，送各級主管機關審議前，應於各該直轄市、縣（市）政府或鄉（鎮、市）公所公開展覽三十日，並舉辦公聽會；實施者已取得更新單元內全體私有土地及私有合法建築物所有權人同意者，公開展覽期間得縮短

tent urban renewal review committee at a municipal, county (city) government or township (village, city) during review.” (After the amendment of May 12, 2010, this paragraph was split into paragraphs 3 and 4, and reads as “After an urban renewal business plan is drafted or revised, and before it is sent to a competent authority for review, the urban renewal business plan should be publicly exhibited for 30 days at each municipal, county (city) government or township (village, city) hall, and a public hearing should be conducted as well. The date of public exhibit can be shortened to 15 days when the implementing agents have already obtained the consent of all the owners of private lands and private legal buildings within the area to be renewed.” “The date and place of the exhibition and public hearing mentioned in the previous two paragraphs should be published in the newspaper for the public, and people who are party to the business should be notified, including owners of lands and legal buildings within the area to be renewed, owners of other legal rights, relevant authorities of registration of request or restriction,

為十五日。」「前二項公開展覽、公聽會之日期及地點，應登報周知，並通知更新單元範圍內土地、合法建築物所有權人、他項權利人、囑託限制登記機關及預告登記請求權人；任何人民或團體得於公開展覽期間內，以書面載明姓名或名稱及地址，向各級主管機關提出意見，由各級主管機關予以參考審議。……」) 上開規定就都市更新事業計畫之核定雖已明文，送都市更新審議委員會審議前，應將都市更新事業計畫公開展覽，任何人民或團體得於公開展覽期間內提出意見，惟上開規定及其他相關規定並未要求主管機關應將該計畫相關資訊(含同意參與都市更新事業計畫之私有土地、私有合法建築物之所有權人清冊)，對更新單元內申請人以外之其他土地及合法建築物所有權人分別為送達。且所規定之舉辦公聽會及由利害關係人向主管機關提出意見，亦僅供主管機關參考審議，並非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，連同已核定之都市更新事業計畫，分別送達更新單元內各土地及合法建築物所有權人、他項權利人、囑託限制登記機關及預告登記請求權人。

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and persons who may apply for advance notice registration. Within the exhibition period, any citizen or group can submit written suggestions with their names or titles and addresses to the competent authority, and the competent authority should review the suggestions.”). The aforementioned provision has expressly prescribed the approval of an urban renewal business plan and requires a public exhibit of an urban renewal business plan and submission of suggestions by any citizen or group within the exhibition period before an urban renewal business plan is sent to an urban renewal committee for review. Nevertheless, the foregoing provision, and other relevant provisions, do not require the competent authority to separately deliver the urban renewal business plan’s relevant information (including a list of owners of private lands and private legal buildings who agree to participate in the urban renewal business plan) to those owners of lands and legal buildings within an area to be renewed other than applicants. Moreover, the conduct of the public hearing and the submission of suggestions by interested parties to

凡此均與前述憲法要求之正當行政程序不符，有違憲法保障人民財產權與居住自由之意旨。

the competent authority prescribed under this provision are only for the competent authority's reference. The provision does not require the competent authority to hold the hearing in public and thus fails to allow interested parties to attend the hearing, present their statements or conduct oral argument. Neither does the provision ask the competent authority to take the entire records of the hearing into consideration, explain its rationale for accepting or declining the arguments when granting its approval, or deliver approved urban renewal business plans to owners of lands and legal buildings within the area to be renewed, owners of other legal rights, relative authorities of registration of request or restriction, and persons who may apply for advance notice registration. All of the above are inconsistent with the due process in administrative procedures required by the Constitution and are also in violation of the meaning and purpose of the constitutional guarantee of the people's rights to property and freedom of residence.

Relevant authorities should review and amend the unconstitutional parts of provisions stated in the foregoing paragraphs in accordance with the meaning and purpose of this Interpretation. The unconstitutional parts of provisions shall become null and void if they have not been amended within one year from the issuance of this Interpretation.

Article 22, Paragraph 1, of the former Act stipulates that, "When an implementing agent is drafting or revising urban renewal business plans to submit for approval, the application for approval of urban renewal business plans in accordance with the regulations in Article 10 should obtain sufficient agreement as follows. On the one hand, for an urban renewal area designated in accordance with Article 7, agreement should be reached by more than 50% of the owners of private lands and private legal buildings within a unit to be renewed. Furthermore, the sum of the land area and floor area of the legal buildings should be more than 50% of the total. On the other hand, for other areas, agreement should be reached by more

上述各段論述違憲部分，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。

舊都市更新條例第二十二條第一項規定：「實施者擬定或變更都市更新事業計畫報核時，其屬依第十條規定申請獲准實施都市更新事業者，除依第七條劃定之都市更新地區，應經更新單元範圍內土地及合法建築物所有權人均超過二分之一，並其所有土地總面積及合法建築物總樓地板面積均超過二分之一之同意外，應經更新單元範圍內土地及合法建築物所有權人均超過五分之三，並其所有土地總面積及合法建築物總樓地板面積均超過三分之二之同意；其屬依第十一條規定申請獲准實施都市更新事業者，應經更新單元範圍內土地及合法建築物所有權人均超過三分之二，並其所有土地總面積及合法建築物總樓地板面積均超過四分之三以上之同意。」該項規定於九十七年一月十六日修正公

than 60% of the owners of private lands and private legal buildings within a unit to be renewed. Moreover, the sum of the land area and floor area of the legal buildings should be more than two thirds of the total. The application for approval of an urban renewal business in accordance with the regulations in Article 11 should obtain more than two thirds of the owners of private lands and private legal buildings owners within a unit to be renewed. Furthermore, the sum of the land area and floor area of the legal buildings should be more than 75% of the total.” After the amendment of January 16, 2008, this paragraph reads as “When the implanting agent is drafting or revising urban renewal business plans to submit for approval, the application for approval of urban renewal business plans in accordance with the regulations in Article 10 should obtain sufficient agreement as follows. On the one hand, in an urban renewal area designated in accordance with Article 7, agreement should be reached by more than 50% of the owners of private lands and private legal buildings within a unit to be renewed. Furthermore, the sum of the land

布為：「實施者擬定或變更都市更新事業計畫報核時，其屬依第十條規定申請獲准實施都市更新事業者，除依第七條劃定之都市更新地區，應經更新單元範圍內私有土地及私有合法建築物所有權人均超過二分之一，並其所有土地總面積及合法建築物總樓地板面積均超過二分之一之同意外，應經更新單元範圍內私有土地及私有合法建築物所有權人均超過五分之三，並其所有土地總面積及合法建築物總樓地板面積均超過三分之二之同意；其屬依第十一條規定申請獲准實施都市更新事業者，應經更新單元範圍內私有土地及私有合法建築物所有權人均超過三分之二，並其所有土地總面積及合法建築物總樓地板面積均超過四分之三之同意。……」考其立法目的，一方面係為落實推動都市更新，避免因少數人之不同考量而影響多數人改善居住環境、促進都市土地有計畫再開發利用之權益，因而規定達一定人數及一定面積之同意比率，即得申請核定都市更新事業計畫；另一方面又為促使居民事先溝通協調，以減少抗爭，使都市更新事業計畫得以順利執行，同意比率亦不宜太低；復考量災區迅速重建之特殊需要，因而視更新單元是否在已劃定之更新地區內及是否屬迅行劃定之更新

area and floor area of the legal buildings should be more than 50% of the total. On the other hand, for other areas agreement should be reached by more than 60% of the owners of the owners of private lands and private legal buildings within a unit to be renewed. Moreover, the sum of the land area and floor area of the legal buildings should be more than two thirds of the total. In addition, the application for approval of urban renewal business in accordance with the regulations in Article 11 should obtain agreement from more than two thirds of the owners of private lands and private legal buildings within the unit to be renewed. Furthermore, the sum of the land area and floor area of the legal buildings should be more than 75% of the total The legislative intent of this provision is as follows: In order to carry out and promote urban renewal, and to protect the rights of the majority wanting to improve their living environment and promote the planned development and re-use of urban lands from being affected by different concerns of the minority group, this provision requires that the application for approval of urban renewal business

地區，而於上開條文分別就第七條、第十條或第十一條之情形為各種同意比率之規定（參考立法院公報第八十七卷第四期委員會紀錄第三〇二頁至第三〇三頁、第十二期委員會紀錄第二九一頁至第三〇四頁、第四十二期院會紀錄第二八二頁至第二八三頁、第三三〇頁至第三三一頁；第九十二卷第六期委員會紀錄第一〇九頁至第一一〇頁、第一四九頁至第一五〇頁、第五期院會紀錄第七十七頁至第七十八頁、第八十四頁至第八十五頁）。其目的洵屬正當，且以一定比率之同意規定亦可達成上述立法目的。又查上開規定之同意比率均已過半，並無少數人申請之情形；而斟酌都市更新不僅涉及不願參加都市更新者之財產權與居住自由，亦涉及重要公益之實現、願意參與都市更新者之財產與適足居住環境之權益，以及更新單元周邊關係人之權利，立法者應有利益衡量空間；且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，當屬立法形成之自由。立法者於斟酌實際實施情形、公益受影響之程度、社會情狀之需要及其他因素，而為上述同意比率之規定，核屬必要，且於相關利益之衡量上亦非顯失均衡，自未違反憲法上比例原則，亦無違於憲法要求之正當行政程

must be agreed by a certain number of people and a certain area of land (within a unit to be renewed). The required proportion of agreement should not be too low, because the law wants to encourage residents to communicate in advance so as to smoothly implement an urban renewal business plan without too much fighting and struggle. Moreover, considering a disaster area's need for speedy relief, the provision provides for a different proportion of agreement for applications filed in accordance with Articles 7, 10 or 11 based on whether a unit to be renewed is located in and belongs to a designated renewal area (see Committee Records, Gazette of the Legislative Yuan, vol. 87, no. 4, p. 302-303; Committee Records, Gazette of the Legislative Yuan, vol. 87, no. 12, p. 291-304; Records of Legislative Yuan, Gazette of the Legislative Yuan, vol. 87, no. 42, p. 282-283, 330-331; Committee Records, Gazette of the Legislative Yuan, vol. 92, no. 6, p. 109-110, 149-150; Records of Legislative Yuan, Gazette of the Legislative Yuan, vol. 92, no. 5, p. 77-78, 84-85). The foregoing legislative intent is proper and can be fulfilled by requiring a

序。惟有關機關仍應考量實際實施情形、一般社會觀念與推動都市更新需要等因素，隨時檢討修正之。又依本條例之規定，都市更新處理方式分為重建、整建、維護三種，其對土地及合法建築物所有權人權益影響之程度亦有重輕之別，則法律就相關申請之同意比率，允宜有不同之規定。另為使同意比率之計算基礎臻於確實，在同意都市更新事業計畫之徵詢時，是否應將權利變換內容納入同意之項目，以及在徵詢同意後，實施者就經同意之都市更新事業計畫之內容有變更者，是否應重新徵詢同意，亦應予檢討改進。

certain portion of agreement. Moreover, there is no application by the minority because the required proportion of agreement prescribed in all aforementioned provisions goes beyond 50%. The Legislature should have discretion in balancing different interests because urban renewal involves not only the property rights and freedom of residence of those not willing to participate in urban renewal, but also the realization of important public interests: the rights and interests of property and an appropriate living environment for those willing to participate in urban renewal, and the right of interested parties residing near the unit to be renewed. The Legislature should also have discretion in deciding the portion of agreement as long as it is not too low to violate due process in administrative procedures. It is necessary for the Legislature to lay down provisions with the aforementioned portion of agreement after considering its practical implementation, the degree of impact on the public interest, society's needs and other factors. As the balancing of relevant interests is not inappropriate, there is no violation of the principle of proportion-

ality under the Constitution. Neither is there any violation of the due process in administrative procedures required by the Constitution. Nonetheless, the relevant authorities should consider factors such as practical implementation, general social attitudes, the need for promoting urban renewal, etc., and the need to review and modify relevant provisions from time to time. In addition, under the Act there are three methods of implementing urban renewal, including reconstruction, renovation and maintenance. These three methods have different impacts upon the owners of private lands and private legal buildings, and the degree of the impact varies from one to the other. Accordingly, the law should have different proportions of agreement for relevant applications. Furthermore, in order to ensure that the computation of the proportion of agreement is true and accurate, the following should also be reviewed and improved: (1) whether listing the content of a transfer of rights as one of the items to be approved is necessary when seeking approval for an urban renewal business plan; and (2) whether an implementing agent should

seek approval for an approved urban renewal business plan again when the content of the approved urban renewal business plan has been changed.

Article 22-1 of the former Act provides, “When implementing the urban renewal business in an area designated in accordance with Article 7, and if several buildings on the same site have been demolished and are being processed for reconstruction, renovation, or maintenance, they can be computed separately, under the circumstances of not changing the differentiated ownership of other buildings and the ownership of the portion of the base lot they own, the proportion between the number of differentiated owners, the differentiated ownership and the ownership of the portion of the base lot they own.” (The amendment of June 22, 2005 corrected the text of this Article but did not significantly change the core idea of this Article). This Article was amended after referring to Article 17-2 of the Provisional Act Governing 921 Earthquake Post-Disaster Reconstruction. The purpose of this Amendment was to efficiently

舊都市更新條例第二十二條之一規定：「依第七條劃定之都市更新地區，於實施都市更新事業時，其同一建築基地上有數幢建築物，其中部分建築物毀損而辦理重建、整建或維護時，得在不變更其他幢建築物區分所有權人之區分所有權及其基地所有權應有部分之情形下，以各該幢受損建築物區分所有權人之人數、區分所有權及其基地所有權應有部分為計算基礎，分別計算其同意之比例。」（於九十四年六月二十二日修正公布，將「數幢」修正為「數幢或數棟」、「其他幢」修正為「其他幢或棟」、「各該幢」修正為「各該幢或棟」、「區分所有權人之人數、區分所有權」修正為「所有權人之人數、所有權」，其餘未修正）係參考九二一震災重建暫行條例第十七條之二規定而增訂，其目的係考量於同一建築基地內有多幢大樓，部分建築物因災害受損倒塌時，以該受損倒塌部分計算同意比率，較可迅速有效解決重建之困難問題（參考立法院公報第八十九卷第五十八

and effectively resolve the difficult problem of reconstruction by using the demolished portion to compute the proportion of agreement when several buildings on the same site have been demolished due to a disaster (see Records of Legislative Yuan, Gazette of the Legislative Yuan, vol. 89, no. 58, p. 38, 47-48; Committee Records, Gazette of the Legislative Yuan, vol. 92, no. 6, p. 107 & 109; Records of Legislative Yuan, Gazette of the Legislative Yuan, vol. 92, no. 5, p. 75-78, 85). In addition, when there is damage affected by disasters, any step taken to facilitate quick reconstruction of affected buildings certainly serves the public interest as it eliminates expansion of the damage. From this point of view, the legislative intent of this Article is proper and the computation of the proportion of agreement prescribed in this Article should be able to efficiently and effectively fulfil the legislative intent. Moreover, considering the text and the legislative intent of the foregoing Article as a whole, this Article has taken the rights of residents of other buildings into consideration because the application of this Article is limited to urban renewal ap-

期院會紀錄第三十八頁、第四十七頁至第四十八頁；第九十二卷第六期委員會紀錄第一〇七頁及第一〇九頁、第五期院會紀錄第七十五頁至第七十八頁、第八十五頁）。再者，既已因災害造成毀損，如能促使受損建築物迅速重建，自亦有避免危害擴散以維護公益之意義。準此以觀，該條規定之立法目的洵屬正當，且依其規定計算同意比率，當可迅速有效達成其立法目的。又綜觀上開規定之文義與立法目的，其適用既以在直轄市、縣（市）主管機關業依本條例第七條第一項第一款規定因戰爭、地震、火災、水災、風災或其他重大事變遭受損壞而迅行劃定之更新地區內，申請辦理都市更新者為限；且係以不變更其他幢（或棟）建築物區分所有權人之區分所有權及其基地所有權應有部分為條件，已兼顧其他幢（或棟）居民之權利。復考量受損倒塌之建築物已危及人民之生命、身體、財產與居住自由等權利，而有災後迅速重建、避免危害擴散之必要性與公益性，則上開規定以各該幢（或棟）受損建築物區分所有權人之人數、區分所有權及其基地所有權應有部分為同意比率之計算基礎，核屬必要，且於相關利益之衡量上亦非顯失均衡，自與憲法上比例原則無違。惟考量

plications in areas designated for renewal due to war, earthquake, fire, flood, storm or other major incidents prescribed in Article 7, Paragraph 1, Item 1, of the Act, and is conditioned by not changing the differentiated ownership of other buildings or the ownership of the portion of the base lot they own. Furthermore, it is necessary for the aforementioned Article to stipulate that the computation of the proportion of agreement is based on the number of differentiated owners, the differentiated ownership of each building affected, and the ownership of the portion of the base lot they own after taking into account that the affected or collapsed buildings have already endangered people's rights, including their right to life, bodily safety, property, freedom of residence, etc., and that quick post-disaster reconstruction and elimination of expansion of damage is both necessary and in the public interest. Also, this Article articulates a proper balance of relevant interests at stake and is therefore consistent with the principle of proportionality under the Constitution. However, it is more meaningful for the protection of residents'

同一建築基地一體利用與同時更新在居民權利保障與公益實現上較具意義，且為避免因割裂更新而可能產生之不良影響，如無窒礙難行之情形，宜儘可能使同一建築基地之其他幢（或棟）參與更新，故上開規定未設有受損建築物居民或其委託之實施者於都市更新事業計畫報核前，應先徵詢同一建築基地之其他幢（或棟）居民是否有參與更新意願之規定，亦有未周，允宜檢討改進。

rights and the realization of the public interest if all buildings on the same site are developed as a whole and renewed at the same time. Given the foregoing, and in order to avoid possible undesirable outcomes due to separate urban renewal processes, it is better to encourage other buildings on the same site to participate in urban renewal together. Thus, the aforementioned Article inappropriately fails to require residents of affected buildings or the persons entrusted to represent them to check the willingness of residents of other buildings on the same site to participate in urban renewal before submitting the urban renewal business plans for approval. It should be reviewed and amended accordingly.

One of the petitioners argued that Article 22, Paragraph 3, of the former Act (as amended on January 16, 2008), which provides, “If the owners disagree with the urban renewal plan exhibited publicly, they can revoke their agreements by the end of the exhibition”, is unconstitutional based on the final judgment of the Supreme Administrative Court 100

聲請人之一據最高行政法院一〇〇年度判字第一九〇五號確定終局判決，指摘九十七年一月十六日增訂公布之都市更新條例第二十二條第三項中有關「所有權人不同意公開展覽之都市更新事業計畫者，得於公開展覽期滿前，撤銷其同意」之規定違憲乙節，經查該確定終局判決並未適用上開規定，自不得以之為聲請解釋之客體。至聲請

Pan No. 1905 (2011). Nonetheless, the disputed provision is not an object for interpretation because it was not applied in those final judgments. Article 36, first part of Paragraph 1, of the former Act (as amended on May 12, 2010) provides, “Within an area set for a transfer of rights, the implementing agent must publicly announce the land improvements made that require to be removed, and also notify the owners, managers or users to demolish or remove them within 30 days. If the land improvements are not removed before the given time limit, the implementing agent may remove the land improvements for the owners (or managers or users) or request the municipal, county (city) authority to demolish or remove the land improvements on behalf of the implementing agent. The municipal, county (city) authority has the obligation to carry out the removal on behalf of the owners (or managers or users); ...” (Article 36, first part of Paragraph 1, of the former Act amended on November 11, 1998, and on January 16, 2008, shares the same meaning and purpose). Petitioners contend that this provision is unconstitutional because

人等指摘九十九年五月十二日修正公布之都市更新條例第三十六條第一項前段規定：「權利變換範圍內應行拆除遷移之土地改良物，由實施者公告之，並通知其所有權人、管理人或使用人，限期三十日內自行拆除或遷移；屆期不拆除或遷移者，實施者得予代為或請求當地直轄市、縣（市）主管機關代為之，直轄市、縣（市）主管機關有代為拆除或遷移之義務；……」（八十七年十一月十一日制定公布及九十七年一月十六日修正公布之同條例第三十六條第一項前段規定之意旨相同）中，有關授權實施者得代為或請求主管機關代為拆除或遷移，並課予主管機關代為拆除或遷移義務之規定違憲乙節，經查確定終局判決均未適用該項規定，自亦不得以之為聲請解釋之客體。綜上所述，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，應不予受理，併此敘明。

it authorizes the implementing agent to remove the land improvements for the owners (or managers or users) or request the municipal, county (city) authority to demolish or remove the land improvements on behalf of the implementing agent. However, this disputed provision is also not an object for interpretation because it was not applied in those final judgments either. The aforementioned petitions do not comply with Article 5, Paragraph 1, Subparagraph 2, of the Constitutional Interpretation Procedure Act and shall all be dismissed in accordance with Paragraph 3 of the same Article.

Justice Sea-Yau Lin filed concurring opinion.

Justice Chen-Shan Li filed concurring opinion.

Justice Mao-Zong Huang filed concurring opinion.

Justice Pai-Hsiu Yeh filed concurring opinion.

Justice Chun-Sheng Chen filed concurring opinion.

Justice Beyue ,Su Chen filed concurring opinion.

本號解釋林大法官錫堯提出之協同意見書；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；葉大法官百修提出之協同意見書；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；羅大法官昌發提出之部分協同部分不同意見書；湯大法官德宗提出之協同暨部分不同意見書；蘇大法官永欽提出之一部不同意見書；陳大法官新民提出之部分不同意見書。

Justice Chang-Fa Lo filed concurring opinion in part and dissenting opinion in part.

Justice Dennis Te-Chung Tang filed concurring opinion and dissenting opinion in part.

Justice Yeong-Chin Su filed dissenting opinion in part.

Justice Shin-Min Chen filed dissenting opinion in part.

EDITOR'S NOTE:

Summary of facts: (1) Daqing Xinyi Futun (大慶信義福邨) is a five story condominium complex with 90 units on the same site located at Tucheng District of New Taipei City. The 40 units at the front of the complex were damaged during the 921 Earthquake and should have been processed for reconstruction according to the Act. Later the City Government of New Taipei City (hereinafter "New Taipei City Government") publicly announced the implementation of a transfer of rights affecting the same 40 units. However, some owners of the 40 units were not satisfied with the plan to transfer rights. Moreover, some owners of other

編者註：

事實摘要：(一)新北市土城區大慶信義福邨5層樓集合住宅共90戶座落同一基地，前排40戶因921地震受損依都市更新條例相關規定辦理重建。嗣新北市政府公告該40戶辦理權利變換，其中部分住戶不滿權利變換內容，又該40戶以外之其他住戶亦有主張有權參與重建者，乃有52人對市府核准之都市更新事業計畫暨權利變換計畫之行政處分，共同提起行政爭訟，遭駁回確定，爰主張都市更新條例相關規定違憲，聲請解釋。(二)1.A等3人土地及建物座落北市陽明段、2.B土地及建物座落萬隆段，均為臺北市政府分別納入實施都更，並核准相關都市更新事業計畫及權利變換計畫；3.C土地及建物

units not among the said 40 alleged that they had a right to participate in the plan to transfer rights as agents implementing reconstruction within the unit to be renewed. Accordingly, 52 people jointly filed an administrative suit to challenge New Taipei City Government's approval of the urban renewal business plan and the plan to transfer rights. The court rejected the challenge and the judgment was final. The parties then petitioned for an interpretation alleging that the relevant provisions of the Urban Renewal Act were unconstitutional. (2) 1. A and two other people own the land and buildings located at Yangming Road in Taipei City. 2. B owns the land and buildings located at Wanlong Road in Taipei City. The City Government of Taipei City (hereinafter "Taipei City Government") designated the aforementioned lands and buildings for renewal, and approved the urban renewal business plan and plan to transfer rights related to those lands. 3. C owns the land and buildings located at Yongji Road in Taipei City. In order to implement urban renewal, the Taipei City Government approved a revision of the original urban

座落永吉段，因實施都更，臺北市政府核准變更原擬定之都市更新事業計畫及權利變換計畫。三案當事人均不服臺北市政府相關行政處分，分別提起行政爭訟，遭駁回確定，乃併同聲請解釋。

大法官就二聲請案分別受理後，因聲請解釋之標的相同，乃併案審理。

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renewal business plan and the original plan to transfer rights. The parties in the three aforementioned cases separately filed administrative lawsuits to challenge the relevant administrative acts of the Taipei City Government. Nevertheless, the court rejected their challenges and the judgments were final. Therefore, the parties petitioned together for interpretation. Upon accepting these two separate petitions, the Constitutional Court reviewed them together because both petitions request interpretation of the same issue.