

J. Y. Interpretation No.406 (June 21, 1996) *

ISSUE: Does the additional restriction that a building permit shall not be issued until a detailed plan has gone through legal procedures contradict the property right of the people protected under the Constitution?

RELEVANT LAWS:

Article 172 of the Constitution (憲法第一百七十二條); Articles 15 and 17 of the Urban Planning Act (都市計畫法第十五條、第十七條).

KEYWORDS:

urban planning (都市計畫), building line (建築線), building permit (建築執照).**

HOLDING: The “other matters required to be specified” as referred to in Article 15, Paragraph 1, Subparagraph 10, of the Urban Planning Act refer to other matters of similar nature to those provided under Subparagraphs 1 through 9 of said Article and are required to be specified in the Master Plan. There should be no further restriction, or specification or provi-

解釋文：都市計畫法第十五條第一項第十款所稱「其他應加表明之事項」，係指同條項第一款至第九款以外與其性質相類而須表明於主要計畫書之事項，對於法律已另有明文規定之事項，自不得再依該款規定為限制或相反之表明或規定。都市計畫法第十七條第二項但書規定：「主要計畫公布已逾二年以上，而能確定建築線或主要公共設

* Translated by Dr. C.Y. Huang of Tsar & Tsai Law Firm.

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sion to the contrary regarding matters that have been expressly provided by law. The proviso of Paragraph 2 of Article 17 of said Act provides: "Where the Master Plan was announced more than two years earlier and the building line or major public facilities have been confirmed as being completed per the Master Plan, a building permit may be issued, per the provisions of related building ordinances, for the building line designated by the regulatory building authority". The purpose is for the case where restrictions regarding the use of building and alteration of terrain (first sentence of Paragraph 2 of said Article) are imposed upon a piece of land for urban planning, for reason that a detailed plan has not been announced two years following the announcement of the Master Plan, in circumstances where the building line may be designated, an application may be filed, per the provisions of related building ordinances, for the designation of a building line for the issuance of a building permit, so as to remove the restriction on building and to protect the constitutional right of the people to have the freedom to use property. The interpretation

施已照主要計畫興建完成者，得依有關建築法令之規定，由主管建築機關指定建築線，核發建築執照」，旨在對於主要計畫公布已逾二年以上，因細部計畫未公布，致受不得建築使用及變更地形（同條第二項前段）限制之都市計畫土地，在可指定建築線之情形下，得依有關建築法令之規定，申請指定建築線，核發建築執照，解除其限建，以保障人民自由使用財產之憲法上權利。內政部中華民國七十三年二月二十日七十三台內營字第二一三三九二號函釋略謂：即使主要計畫發布實施已逾滿二年，如其（主要）計畫書內有「應擬定細部計畫後，始得申請建築使用，並應儘可能以市地重劃方式辦理」之規定者，人民申請建築執照，自可據以不准等語，顯係逾越首開規定，另作法律所無之限制。與憲法保障人民財產權之意旨不符，應不適用。

letter issued by the Ministry of the Interior dated February 20, 1984, Ref. No. (73)-Tai-Ne-Ying-213392 commented in summary that: even if two years have elapsed since the announcement of the Master Plan, if the “Master Plan” contains the provision that “Application for a building permit shall not be submitted until a detailed plan has been drawn up, and shall be handled per the urban land rezoning approach as much as possible”, the application submitted by the people for a building permit is still subject to rejection. This interpretation clearly exceeds the scope of the aforesaid Article and imposes an additional restriction not provided in the law. This contradicts the constitutional purpose to protect the property right of the people, and should not be applicable.

REASONING: Under Paragraph 1 of Article 15 of the Urban Planning Act, in respect of urban planning for cities and towns, a Master Plan should first be drawn up. Under Subparagraph 10 of said Article and Paragraph, “other matters required to be specified” may be specified

解釋理由書：市鎮都市計畫，依都市計畫法第十五條第一項規定，應先擬定主要計畫書。該主要計畫書依同條項第十款規定，雖得表明「其他應加表明之事項」，惟所稱「其他應加表明之事項」係指同條項第一款至第九款以外，與其性質相類而須表明於主要計畫

in the Master Plan. However, said “other matters required to be specified” refer to other matters of similar nature to those provided under Subparagraph 1 through 9, thereof and are required to be specified in the Master Plan. There should be no further restriction, or specification or provision to the contrary regarding matters that have been separately and expressly provided by law. Otherwise, it will contradict Article 172 of the Constitution. Further, Paragraph 1 of Article 17 of the Urban Planning Act provides that: in respect of the implementation schedule provided for in Subparagraph 9 of Paragraph 1 of Article 15, the priority should be set in accordance with the development trend and local fiscal capability concerning the planned area. A detailed plan for the area designated for Phase I development should be completed within two years after the Master Plan has been announced for implementation, and construction of public facilities should be completed within five years after the announcement of said detailed plan. Detailed plans and construction for other areas should be drawn up in proper sequence after Phase I

書之事項，對於法律已另有明文規定之事項，自不得再依該款規定為限制或相反之表明或規定，否則即與憲法第一百七十二條有違。又都市計畫法第十七條第一項規定：第十五條第一項第九款所定之實施進度，應就其計畫地區範圍預計之發展趨勢及地方財力，訂定分區發展優先次序。第一期發展地區應於主要計畫發布實施後，最多二年完成細部計畫；並於細部計畫發布後，最多五年完成公共設施。其他地區應於第一期發展地區開始進行後，次第訂定細部計畫建設之。其同條第二項規定「未發布細部計畫地區、應限制其建築使用及變更地形」，固在求都市計畫之圓滿實施，而為增進公共利益所必要，然憲法所保障之人民財產權，尚不能因主管機關之遲延不於主要計畫實施後二年內發布細部計畫，使其繼續陷於不能自由使用土地建築之不利益。故同項但書規定：主要計畫發布已逾二年以上，而能確定建築線或主要公共設施已照主要計畫興建完成者，得依有關建築法令之規定，由主管建築機關指定建築線，核發建築執照，用以解除對土地建築使用之限制。是主管機關依同法第十五條第一項擬定之主要計畫書，雖得就同條第一項第一款至第九款以外與其性質相類之事項為

development has gotten under way. Paragraph 2 of said Article provides that “Areas for which a detailed plan has yet to be announced should be subject to restrictions on the use of building and alteration of terrain”. It is granted that the foregoing aims for the successful implementation of the urban planning project and therefore is necessary so as to promote public interests. However, the property right of the people protected under the Constitution should not be infringed upon lest they have no freedom to use the land or building, as a result of the regulatory authority’s delay and failure to announce a detailed plan within two years following the implementation of the Master Plan. Therefore, the proviso of said Paragraph provides: Where the Master Plan was announced more than two years earlier and the building line or major public facilities have been confirmed as being completed per the Master Plan, a building permit may be issued, per the provisions of related building ordinances, for the building line designated by the regulatory building authority. Accordingly, in respect of the Master Plan drawn up per Paragraph 1 of

規定，但不得於第十款其他表明事項中規定「須於細部計畫完成法定程序後，始准予發建築執照」，以排除「主要計畫已逾二年，而能確定建築線或主要公共設施已照主要計畫興建完成者，得依有關建築法之規定，由主管建築機關指定建築線，核發建築執照」規定之適用。內政部中華民國七十三年二月二十日七十三台內營字第二一三三九二號函釋略謂，即使主要計畫發布實施已逾滿二年，如其（主要）計畫書內有規定如主旨所敘（按即都市計畫主要計畫內規定：「應擬定細部計畫後，始得申請建築使用，並應儘可能以市地重劃方式辦理，以取得公共設施用地」）者，人民申請建築執照，自可據以不准云云，及臺灣省苗栗縣政府七十六年十月二十一日七六府建都字第九三二六六號公告竹南頭份（土牛及港墘地區）都市計畫（通盤檢討）圖表明「附帶條件應另行擬定細部計畫，除主要計畫指定之公共設施外，依規定配置必要之公共設施用地，並俟細部計畫完成法定程序後，始准予發照建築，以市地重劃方式開發」，其中關於核發建築執照之規定，依上開說明顯係逾越都市計畫法第十五條第一項第十款規定範圍，另作同法第十七條第二項但書規定所無之限制，與

Article 15 of said Act, the regulatory authority may provide for other matters of similar nature as compared to those provided under Subparagraph 1 through 9 of said Article but have not been provided under said Subparagraphs, but may not provide in Subparagraph 10, regarding other matters, that “a building permit should not be issued unless and until a detailed plan has gone through legal procedures” so as to exclude the applicability of the provision that “Where the Master Plan was announced more than two years earlier and the building line or major public facilities have been confirmed as being completed per the Master Plan, a building permit may be issued, per the provisions of related building ordinances, for the building line designated by the regulatory building authority”. The interpretation letter issued by the Ministry of the Interior dated February 20, 1984, Ref. No. (73)-Tai-Ne-Ying-213392 commented in summary that: even if two years have elapsed since the announcement of the Master Plan, if the “(Master) Plan” contains the provision as per the syllabus (i.e., in the Master Plan it is provided that:

憲法保障人民財產權之意旨不符，應不適用。

“Application for a building permit shall not be submitted until a detailed plan has been drawn up, and shall be handled per the urban land rezoning approach as much as possible, so as to obtain the land for public facilities”), the application for a building permit submitted by the people may be rejected, and so forth. In addition, the Urban Planning (Comprehensive Review) Map for Chu-Nan Tou-Fen (Tu Niu and Kang Chien areas) in the Pronouncement issued by the government of Miao-li Hsien, Taiwan Province, dated October 21, 1987, Ref. No. (76)-Fu-Jien-Du-93266 specified the “incidental conditions that: (1) a detailed plan should be separately drawn up, and in addition to the public facilities designated by the Master Plan and the allocation of necessary land for public facilities according to relevant regulations, a building permit should not be issued until a detailed plan has gone through legal procedures, and (2) development by rezoning the city land”. The foregoing regarding the issuance of a building permit, according to the above explanation, apparently exceeds the prescribed scope of Subparagraph 10 of

Paragraph 1 of Article 15 of the Urban Planning Act and imposes a further restriction that does not exist under the proviso of Paragraph 2 of Article 17 of said Act. This contradicts the property right of the people protected under the Constitution and thus should not be applicable.