

J. Y. Interpretation No.255 (April 4, 1990) *

ISSUE: Are the relevant interpretative directives and orders issued by the Ministry of the Interior unconstitutional to the effect that non-planned roads may be removed *ex officio* or upon application after the planned roads are developed and completed?

RELEVANT LAWS:

Article 15 of the Constitution (憲法第十五條) ; Article 90 of the Land Act (土地法第九十條) ; Directive Ref. No. (66)-TNYT-730275 issued by the Ministry of the Interior (內政部 (六六) 台內營字第七三〇二七五號函) ; Directive Ref. No. (67)-TNYT-759517 issued by the Ministry of the Interior (內政部 (六七) 台內營字第七五九五一七號函) ; Articles 15, Paragraph 1, Subparagraph 6, 17,18,19,20,21, 22, Paragraph 1, Subparagraph 5 and 23 of the Urban Planning Act (都市計畫法第十五條第一項第六款、第十七條、第十八條、第十九條、第二十條、第二十一條、第二十二條第一項第五款、第二十三條) ; Notices Regarding the Application for Removal or Route Change of Lanes or Alleys Not Subject to Urban Planning by Taipei City (台北市非都市計畫巷道廢止或改道申請須知) .

KEYWORDS:

urban planning (都市計畫) , road planning (道路規劃) , removal of roads not subject to urban planning (非都市計畫道路之廢止) .**

* Translated by Vincent C. Kuan.

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

HOLDING: To the extent that an urban plan is implemented, the road planning should be carried out by the competent authorities pursuant to the provisions of the Urban Planning Act. In respect of an area where an urban plan is formulated and a detailed plan is completed according to statutory procedure, the construction and establishment of the roads for such area should then be carried out based on such plans. In mapping out the road systems pursuant to the statutory procedure, any road not subject to such plan is simply meant to be removed and, upon completion of the planned roads, which ought to be available for public traffic, the competent authorities may ex officio or upon application have such non-planned road removed whose existence is no longer necessary for purpose of public traffic. The Directives Ref. No. (66)-TNYT-730275 and Ref. No. (67)-TNYT-759517 as issued by the Ministry of the Interior in respect of the removal of a lane or alley that is not covered by an urban plan, as well as the Notices Regarding the Application for Removal or Route Change of Lanes or Alleys Not Subject to Urban

解釋文：在實施都市計畫範圍內，道路規畫應由主管機關依都市計畫法之規定辦理，已依法定程序定有都市計畫並完成細部計畫之區域，其道路之設置，即應依其計畫實施，而在循法定程序規畫道路系統時，原即含有廢止非計畫道路之意，於計畫道路開闢完成可供公眾通行後，此項非計畫道路，無繼續供公眾通行必要時，主管機關自得本於職權或依申請廢止之。內政部中華民國六十六年六月十日臺內營字第七三〇二七五號、六十七年一月十八日臺內營字第七五九五一七號，關於廢止非都市計畫巷道函及台北市非都市計畫巷道廢止或改道申請須知，既與上述意旨相符，與憲法保障人民權利之本旨尚無牴觸。

Planning by Taipei City, are in line with the intention described above and thus are not in conflict with the constitutional purpose of protecting the rights of the people.

REASONING: It is understood that, pursuant to Article 90 of the Land Act, any district road, ditch and other land for public use located in a city should be planned in advance in accordance with the Urban Planning Act, that a master plan should be first formulated for a city and town plan under an urban plan, pointing out the main roads and other public transportation systems, that a detailed plan should be further executed upon the announcement and implementation of the master plan, further indicating the road systems, that the said master plan and detailed plan should both be submitted to the urban planning committee of the relevant government or the township, town (or county-governed city) for its review, that such plans should be put on display for the public prior to such review, and that, during the period of public display, any citizen or group may come forward with his or their opinions for the relevant urban

解釋理由書：按城市區域道路溝渠及其他公共使用之土地，依土地法第九十條規定，應依都市計畫法預為規定之，都市計畫之市鎮計畫，應先擬定主要計畫書，表明主要道路及其他公眾運輸系統，主要計畫公布實施後，應繼續完成細部計畫，表明道路系統，其主要計畫及細部計畫，均應送由該管政府或鄉鎮（縣轄市）都市計畫委員會審議，在審議前應公開展覽，於公開展覽期間，任何公民或團體均得提出意見，由都市計畫委員會審議，審議結果並應報請上級政府核定後公布實施。此為都市計畫法第十五條第一項第六款、第十七條至第二十一條、第二十二條第一項第五款及第二十三條所明定。是在實施都市計畫範圍內道路之規畫，既應依上述法定程序確定，任何有關之公民或團體，亦均有機會知悉道路設置之狀況並提出意見，則在該計畫確定後，即應依其計畫實施，而在循法定程序規畫道路系統時，原即含有廢止非計畫道路之意，於計畫道路開闢完成可供公眾通行

planning committee to review, the results of which should be reported to the immediately superior government for its approval before the announcement and implementation thereof. The above has been clearly prescribed under Article 15, Paragraph 1, Subparagraph 6; Article 17 through 21, and Article 22, Paragraph 1, Subparagraph 5, of the Urban Planning Act. Therefore, since the planning of any road located within the scope of an implemented urban plan should be made certain by means of the statutory procedure described above, any citizen or group concerned ought to have had the opportunity to familiarize himself or themselves with the layout of the roads and render his or their opinions in respect thereof. Once the relevant plan becomes final, it should be carried out accordingly. In mapping out the road systems pursuant to the statutory procedure, any road not subject to such plan is simply meant to be removed and, upon completion of the planned roads, which ought to be available for public traffic, the competent authorities may ex officio or upon application have such non-planned road removed whose

後，此項非計畫道路，無繼續供公眾通行必要時，主管機關本於職權或依申請廢止之，乃符合都市計畫法立法意旨之行政行為。內政部中華民國六十六年六月十日臺內營字第七三〇二七五號、六十七年一月十八日臺內營字第七五九五一七號，關於廢止非都市計畫巷道函及台北市非都市計畫巷道廢止或改道申請須知，既與前述意旨相符，與憲法保障人民權利之本旨尚無牴觸。惟廢止有公用地役關係之既成巷道，事涉公眾利益，以於都市計畫有關法規作明確之規定為宜，併予指明。

existence is no longer necessary for purpose of public traffic. Such act is an administrative act that is consistent with the legislative intent of the Urban Planning Act. The Directives Ref. No. (66)-TNYT-730275 and Ref. No. (67)-TNYT-759517 as issued by the Ministry of the Interior in respect of the removal of a lane or alley that is not covered by an urban plan, as well as the Notices Regarding the Application for Removal or Route Change of Lanes or Alleys Not Subject to Urban Planning by Taipei City, are in line with the intention described above and thus are not in conflict with the constitutional purpose of protecting the rights of the people. Nevertheless, it should also be made clear that the act of removing any pre-existing road with public easement concerns public interest and, thus, should be unambiguously prescribed in the applicable laws and regulations related to urban planning.