

J. Y. Interpretation No.326 (October 8, 1993) *

ISSUE: Is a naturally created river and the “vicinity of watercourses” announced as a result thereof qualified as a land for public facilities?

RELEVANT LAWS:

Articles 3, 32, and 42, Paragraph 1, Subparagraph 1 of the Urban Planning Act (都市計畫法第三條、第三十二條、第四十二條第一項第一款) ; Article 83 of the Water Conservancy Act (水利法第八十三條) .

KEYWORDS:

urban planning (都市計畫), the vicinity of watercourses (行水區), watercourses (河道), river (河流), land for public facilities (公共設施用地) .**

HOLDING: The so-called watercourses described in Subparagraph 1 of Paragraph 1 of Article 42 of the Urban Planning Act refer to those watercourses which are set under the planned development of the important facilities in the city and the reasonable planning according to the provision of Article 3 of this Act. As

解釋文：都市計畫法第四十二條第一項第一款所稱之河道，係指依同法第三條就都市重要設施作有計畫之發展，而合理規劃所設置之河道而言。至於因地勢自然形成之河流，及因之而依水利法公告之原有「行水區」，雖在都市計畫使用區之範圍，仍不包括在內。

* Translated by Jer -Shenq Shieh.

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for the rivers naturally formed by the geographical features, and the “vicinity of watercourses” therefore announced according to the Water Conservancy Act, though they are within the zone for use in the urban planning, they do not belong to the aforesaid watercourses.

REASONING: Urban planning refers to the planned development in some specific areas of the important facilities for the economy, transportation and communications, hygiene, security, national defense, literature and education, recreation, etc. of urban life, and the reasonable planning for land use. This is clearly provided in Article 3 of the Urban Planning Act. The so-called watercourses described in Subparagraph 1 of Paragraph 1 of Article 42 of this Act refer to those watercourses which are set under reasonable planning according to the above-mentioned provision and belong to those “suitable public-owned lands which shall be first taken to be utilized” according to the provision of Paragraph 2 of this Article. It could be perceived that lands through which these watercourses flow

解釋理由書：都市計畫係指在一定地區內有關都市生活之經濟、交通、衛生、保安、國防、文教、康樂等重要設施，作有計畫之發展，並對土地使用作合理之規劃而言，都市計畫法第三條定有明定。同法第四十二條第一項第一款所稱之河道，係指依首開規定合理規劃所設置，且依其第二項規定「應儘先利用適當之公有土地」之河道。足見此種河道所使用之土地原非河道，依都市計畫之設置始成為河道之公共設施用地，至由於地理形勢自然形成之河流及因之而依水利法公告之原有行水區土地，雖在都市計畫使用區之範圍，既非依都市計畫法所設置，自不屬上述之公共設施用地，縱將之改稱為河道，亦同。其依都市計畫法第三十二條所劃定之使用區或特定專用區，乃為使用管制事項而設，與公共設施用地之設置，二者並不相同。

did not belong to the aforesaid watercourses in origin, and they became the watercourses belonging to the lands for public facilities due to being set under the urban planning. As for the rivers naturally formed by the geographical features, and the lands therefore announced as being the vicinity of watercourses according to the Water Conservancy Act, though they are within the zone for use in the urban planning, since they were not thus set according to the Urban Planning Act, they do not belong to the above-mentioned lands for public facilities, nor would they even if they were designated as watercourses. Separating the zone for use or zone for specific use according to Article 32 of the Urban Planning Act is for the land use control, and this is different from the setting of the lands for public facilities.

Justice Rui-Tang Chen filed dissenting opinion.

本號解釋陳大法官瑞堂提出不同意見書。