J. Y. Interpretation No.336（February 4, 1994）*

ISSUE: Does Article 50 of the Urban Planning Act, which does not require the government to procure land reserved for public facilities within a limited period, violate the Constitution?

RELEVANT LAWS:

Articles 23 and 143 of the Constitution（憲法第二十三條、第一百四十三條）; Article 214 of Land Act（土地法第二百十四條）; Articles 5, 6, 26, 27, 28, 29, 49, 50, 50-1, 51 of the Urban Planning Act（都市計畫法第五條、第六條、第二十六條、第二十七條、第二十八條、第二十九條、第四十九條、第五十條、第五十條之一、第五十一條）.

KEYWORDS:

public interest（公共利益）, urban planning（都市計畫）, reserved land for public facilities（公共設施保留地）.**

HOLDING: The Amendment to Article 50 of the Urban Planning Act which was amended and promulgated on July 15, 1988, does not require the government to take land reserved for public facilities within a limited period. It is to maintain the integrity of urban planning,

解釋文：中華民國七十七年七月十五日修正公布之都市計畫法第五十條，對於公共設施保留地未設取得期限之規定，乃在維護都市計畫之整體性，為增進公共利益所必要，與憲法並無牴觸。至為兼顧土地所有權人之權益，主管機關應如何檢討修正有關法律，係立

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and is necessary for enhancing the public interest, and does not violate the Constitution. As for protection of property owners' interest, whether the competent authority should review the statutes and regulations concerned and make the necessary amendments is a matter of legislation.

REASONING: To ensure the planned growth envisaged in urban planning, the competent authority sets aside land for public facilities within an urban planning area according to the Urban Planning Act to be the backbone of city development. Before such land is set aside, it is called land reserved for public facilities. Articles 6 and 51 and other relevant stipulations prevent property users from using property as an obstruction of a reserved purpose. Planning by estimation of the next 25 years of city development, urban planning has its integrity, and this is obvious in the stipulation of Article 5. For this reason, land reserved for public facilities as mentioned above, when compared to urban planning as a whole, is a relation of a part urban plan, it is impossible to require that to a whole. Unless there is a

法問題。

解釋理由書：主管機關為實現都市有計畫之均衡發展，依都市計畫法在都市計畫地區範圍內設置公共設施用地，以為都市發展之支柱。此種用地在未經取得前，為公共設施保留地。同法第六條、第五十一條等有關規定，限制土地使用人為妨礙保留目的之使用。而都市計畫有其整體性，乃預計二十五年內之發展情形訂定之，同法第五條規定甚明。足見上述公共設施保留地與都市計畫之整體，具有一部與全部之關係。除非都市計畫變更，否則殊無從單獨對此項保留地預設取得之期限，而使於期限屆滿尚未取得土地時，視為撤銷保留，致動搖都市計畫之整體。而都市計畫之變更，同法第二十六條至第二十九條設有一定之程序，非「取得期限之預設」所能取代。此與土地法第二百十四條所定保留徵收期滿不徵收時，視為撤銷之情形，有所不同，兩者更無特別法

change in an such land be reserved for public facilities within a limited period, and, without acquiring the land before the expiration of that period, this will cause abolition of reservation, and alter the whole urban plan. For a change in an urban plan, Articles 26 to 29 stipulate a specific procedure, which is not replaceable by a "preset plan within a limited period." This is different from Article 214 of Land Act, which stipulates that not taking the land before the expiration of the reserved period will cause abolition of the reservation. There is also no relation here of specific law and general law. Thus, Article 50 of the Act, which was amended and promulgated on July 15, 1988, does not require the government to take land reserved for public facilities within a limited period. This is to maintain the integrity of urban planning, and urban planning is necessary for enhancing public interest, and does not violate Articles 23 and 143 of the Constitution. Since urban planning is developed by estimation of the next 25 years of city development, it should be reviewed comprehensively at least every 5 years according to Article 26 of the Urban

與普通法之關係可言。是同法於中華民國七十七年七月十五日修正公布之第五十條，對於公共設施保留地未設取得期限之規定，乃在維護都市計畫之整體性，而都市計畫之實施，則為增進公共利益所必要，與憲法第二十三條及第一百四十三條並無牴觸。至都市計畫既係預計二十五年內之發展情形而為訂定，依都市計畫法第二十六條規定，每五年至少應通盤檢討一次。其中公共設施保留地，經通盤檢討，如認無變更之必要，主管機關本應儘速取得之，以免長期處保留狀態。若不為取得（不限於徵收一途），則土地所有權人既無法及時獲得對價，另謀其他發展，又限於都市計畫之整體性而不能撤銷使用之管制，致減損土地之利用價值。其所加於土地所有權人之不利益將隨時間之延長而遞增。雖同法第四十九條至第五十條之一等條文設有加成補償、許為臨時建築使用及免稅等補救規定，然非分就保留時間之久暫等情況，對權利受有個別損害，而形成特別犧牲（Sonderopfer）者，予以不同程度之補償。為兼顧土地所有權人之權益，如何檢討修正有關法律，係立法問題，合併指明。

Planning Act. When a plan to reserve land for public facilities, having been reviewed comprehensively, is considered unnecessary to change, the competent authority should acquire said land quickly, to avoid reserving it for too long. If it is not acquired (not limited to expropriation), the property owner not only can not receive the payment in time to conduct other business, but also can not abolish the land use control for the integrity of the urban plan and this will cause diminution of the property value. The interest burden on the property owner will also increase as time passes. Though Article 49 to Article 50-1 provide the compensatory stipulation of overcompensation, temporary building permit and tax exemption, they do not differentiate the period of reservation, and provide different compensation for those who suffer specific injury and make special sacrifices. Thus, for the protection of the property owners' interest, whether the competent authority should review the statutes and regulations concerned and make the necessary amendments is a matter of legislation.