

## J. Y. Interpretation No.232 (November 4, 1988) \*

**ISSUE:** Does Article 25 of the Land Act apply in the case where the joining of publicly owned lands to those of landowners, who under Article 58 of the Equalization of Land Rights Act voluntarily compose a rezoning committee to deal with the rezoning of urban lands, is a disposal activity rendering alteration of right based on the landowner's self-intent?

### **RELEVANT LAWS:**

Article 25 of the Land Act (土地法第二十五條) ; Articles 56 and 58 of the Equalization of Land Rights Act (平均地權條例第五十六條、第五十八條) .

### **KEYWORDS:**

rezoning (重劃) , urban lands (市地) , disposal activity (處分行為) , adjudication (裁決) .\*\*

**HOLDING:** The meaning of the statement that government-owned lands join those of landowners, who under Article 58 of the Equalization of Land Rights Act voluntarily compose a rezoning committee to deal with the rezoning of urban lands, and the meaning of the

**解釋文：**公有土地參加依平均地權條例第五十八條之土地所有權人自行組織重劃會辦理市地重劃，其實質意義與主管機關依同條例第五十六條辦理市地重劃，而將公有土地核定屬重劃區範圍予以重劃同，係為實現憲法平均地權之政策而設，並非土地所有權人以

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

statement that the competent authority carrying out the rezoning of urban lands under Article 56 of the same Act and ratifying publicly owned land within rezoning areas rezone the land are substantially the same. The former is designed to fulfill the policy of equalization of urban land rights under the Constitution. Since there is no disposal activity rendering alteration of right based on the landowner's self-intent involved, Article 25 of the Land Act does not apply here.

**REASONING:** According to the provision in Articles 56-58 of the Equalization of Land Rights Act, the rezoning of urban lands can be carried out by the competent authority at every level after reporting it to the competent authority at a higher level and receiving approval, or by the rezoning committee voluntarily composed of the landowners after the approval of the competent authority. The latter is designed to promote the use of lands, broaden the rezoning of urban lands, and encourage landowners to organize a rezoning committee voluntarily to carry out the rezoning of urban lands, and thus to

自己之意思使權利發生變更之處分行為，自無土地法第二十五條之適用。

**解釋理由書：**依平均地權條例第五十六條至第五十八條規定，都市土地重劃，有由各級主管機關報經上級主管機關核准後辦理者，有由土地所有權人自行組織重劃會經主管機關核准後實施者。後一情形之重劃，乃國家為促進土地利用，擴大市地重劃，獎勵土地所有權人自行組織重劃會辦理市地重劃而設，以免主管機關依前一情形辦理重劃多所勞費，兩者均有公有土地夾雜在內之可能，其在手續上固有所不同，但在實質意義上則均為主管機關准否重劃之行政處分，旨在實現憲法平均地權之政策，促進土地利用效益，加速取得公共設施保留地。在後一情形之重劃，祇須

help the competent authority to avoid spending too much time and expense to carry out the rezoning. Both of them may rezone the publicly owned lands, although in respect of the dealing process, a difference between them originally existed; however, in view of their substantial meanings, these two are both administrative acts made by the competent authority for the approval or disapproval of rezoning. Their purposes are to fulfill the policy of equalization of urban land rights under the Constitution, promote the use of lands, and expedite the process to obtain the lands reserved for public facilities. When rezoning is carried out in the latter situation, it is satisfactory that at least 1/2 of the total number of the owners of private lands within the rezoning area, whose lands occupy more than 1/2 of the total amount of private lands within the rezoning area, have expressed their consent and that the rezoning has been approved by the competent authority; when rezoning in the former situation, the competent authority shall hold a mediation where at least 1/2 of the total number of the owners of privately owned lands within the

重劃區內私有土地所有權人半數以上，而其所有土地面積超過重劃區私有土地總面積半數以上者之同意，並經主管機關核准即可；在前一情形之重劃，須有重劃地區內私有土地所有權人半數以上，而其所有土地面積超過重劃地區土地總面積半數者表示反對時，主管機關始應予調處，並參酌反對理由修訂重劃計畫書重行報請核定，公告實施，土地所有權人不得再提異議。其中所謂「同意」或「反對」，僅係私有土地所有權人，促使主管機關行使職權或重新斟酌之手段，而與公有土地無涉。且市地重劃交換分配之結果，依上開條例第六十二條前段規定：「市地重劃後，重行分配與原土地所有權人之土地，自分配結果確定之日起，視為其原有之土地」。就此交換分配言，乃係法律規定之效果，並非土地所有權人以自己之意思使權利發生變更之處分行為，亦至明顯。至於土地法第二十五條規定：「省市縣政府對於其所管公有土地，非經該管區內民意機關同意，並經行政院核准，不得處分，或設定負擔或為超過十年期間之租賃」，其所謂「處分」，係指基於土地所有權人自己之意思使權利發生變更之行為而言，並不包括上述參加市地重劃之情形在內；其規定應經「行政院

rezoning area, whose lands occupy more than 1/2 of the total amount of privately owned lands within the rezoning area, have expressed their opposition, to revise the rezoning proposal on consideration of the reasons for opposition, report it again for approval, and then publish and execute it, so that the landowners may no longer express any objections. The so-called "consent" or "opposition" is only a means employed by the owners of privately owned lands to urge the competent authority to exercise its duty or to reconsider and is not related to the publicly owned lands. In addition, in respect of the consequence of exchange and apportionment for urban-land rezoning, the former provision of Article 62 of the above Act states: "After rezoning the urban lands, the lands reapportioned and owned by the original owners shall be deemed their originally owned lands." Regarding this kind of exchange and apportionment, the consequence is an effect provided by law; it is obvious that no disposal activity rendering alteration of right based on the land-owner's self-intent is involved. Article 25 of the Land Act states: "Without the

核准」，亦與市地重劃依上開條例規定，由中央或地方主管機關核准者有別。從而公有土地參加上述後一情形之市地重劃，自無土地法第二十五條之適用。

consent of a representative institution located in its jurisdiction and the approval of the Executive Yuan, no provincial, municipal, or county government can dispose of the publicly owned lands under its control, or fix charges or lease more than 10 years on those lands.” The so-called “disposal” focuses on the activity rendering alteration of right based on the land-owner’s self-intent, but does not include the joining of rezoning urban lands; the so-stated “approval of the Executive Yuan” is also different from the approval of the central or local competent authorities under the Act mentioned above. Therefore, Article 25 of the Land Act will not be applicable to the publicly owned lands that adjoin the urban-land rezoning in the latter situation mentioned above.

Justice Geng Wu filed dissenting opinion. Justice Chien-Hua Yang filed dissenting opinion, in which Justice Yueh-Sheng Weng, Justice Zu-Zan Yang and Justice Herbert Han-Pao Ma joined.

本號解釋吳大法官庚提出不同意見書；楊大法官建華、翁大法官岳生、楊大法官日然與馬大法官漢寶共同提出不同意見書。