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Recent Development of Decentralization, Deregulation and Citizens' Participation in Japanese City Planning Law

KADOMATSU Narufumi**

I Classic Structure of Japanese City Planning Law

(1) The Principle of Minimum Intervention

The principle of minimum intervention¹ underpins the whole practice of Japanese land legislation. Abiding by this principle means to restrict private property only where and insofar as it is necessary to overcome clear and present hindrances to the public interest.

For example the development permit (*Kaihatsu Kyoka*)² is generally only required inside City Planning Areas (*Toshi Keikaku Kuiki*) and only for development measures exceeding 1000 m². This principle follows from the idea that the freedom to construct and develop is directly derived from the right to private property. This freedom³ allows only minimal restrictions that are absolutely necessary to satisfy a specified public interest, such as the safety standards of buildings or the orderly development of cities. One can observe a similar trend in all areas of Japanese land law.

However the principle of minimum intervention is not a clearly stated constitutional principle. The Constitution of Japan Art. 29 para.2 stipulates that property rights “shall be defined by law, in conformity with the public welfare” and para.3 allows that private property may be “taken for public use upon just compensation therefor”⁴. Opinions diverge as to whether the

* This essay is based upon the author's presentation at the international seminar “Dezentralisierung und kommunale Selbstverwaltung in Deutschland und Südostasien am Beginn des 21. Jahrhunderts” (Decentralization and Local Autonomy in Germany and Southeast Asia at the Beginning of the 21st Century) at the German University of Administrative Sciences, Speyer (Sep.19-21, 2005, organized by Prof. Rainer Pitschas (University of Administrative Sciences Speyer) and Prof. Shigeo Kisa (Kyushu University)). The original German version will shortly be published as part of the record of the seminar by the publisher Duncker&Humblot. The author wishes to thank Ms. Mai Rapsch and Mr. Dan Tidten for the help in preparing the original German version and Mr. Michael Peter for translating German into English. Needless to say, the author is at fault for all the remaining linguistic mistakes.

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1 Tokiyasu Fukita, Tochi Kihonho Dai 2 Jo no Igi ni Kansuru Oboegaki (Memorandum on the Meaning of §2 Basic Law on Land), in Usui et al (ed.), Koho Gaku no Ho to Seisaku, Vol. 1 Yuhikaku 2000, S. 695-715

2 §29 Toshi Keikaku Ho (City Planning Law) (Law No.100, 1968)

3 cf., Yoichi Ohashi, Neuere Entwicklungstendenzen im Japanischen Stadtplanungsrecht, in: Carl-Eugen Eberle / Martin Ibler / Dieter Lorenz (ed.), Der Wandel des Staates vor den Herausforderungen der Gegenwart: Festschrift für Winfried Brohm zum 70. Geburtstag, 2002, p 485-493, p 487. (‘comprehensive freedom to build’)

4 Nihon Koku Kempo (Japanese Constitution) (promulgated on November 3rd 1946), Art 29

(1) The right to own or to hold property is inviolable.

(2) Property rights shall be defined by law, in conformity with the public welfare.

(3) Private property may be taken for public use upon just compensation therefor.

property guarantee of the Constitution supports a comprehensive freedom to construct and develop as presupposed by the principle of minimal intervention. The majority of constitutional lawyers is rather critical of this.

The principle nonetheless shapes the current practice of Japanese land legislation. The so-called ‘White-Area’ controversy is a direct consequence of this⁵.

In principle, Japanese City Planning Law is practically enforced only in City Planning Areas (*Toshikeikakukuiki*, hereafter CPA), which carry housing for 93.1% of Japan’s population (127 million) but at the same time comprise only 26.3% of Japan’s territory⁶. Likewise not all of the land within the CPAs is governed by the planning law. Only over areas that were subjected to Zoning (*Senbiki*) and were labeled Urbanization Areas (UA) (*Shigaka Kuiki*, hereafter UA) or Urbanization Control Areas (*Shigaika Chosei Kuiki*, hereafter UCA)⁷ the city planning law enforces substantial control. The dichotomy between UA and UCA is similar to that between the German categories of Inner and Outer Area (*Innen- und Außenbereich*) but the contextual difference is evident from the fact that there is a drastic spatial limitation in the designation of UAs and UCAs⁸.

According to Japanese National and Regional Planning Law (*Kokudo Riyo Keikaku Ho*) each prefecture separates its area into five categories: urban areas, agricultural areas, forestry areas, natural reserve areas and natural park areas⁹. The division is rather crude and is not necessarily connected to concrete regulations of the planning law, as was shown in the example of CPAs.

This means that there are within Japan three patterns of so called ‘White-Areas’: (1) areas that are not of the above five categories (constituting in reality only few areas) (2) areas inside the CPA but outside UA and UCA and (3) other areas not controlled by planning law for other purposes (e.g. the land in agricultural areas (*Nogyo Chiiki*) that is not designated as “farmland area” (*Noyochi Kuiki*), where more stringent controls will apply). (see ill. 2)

Regulations on land use in those ‘White-Areas’ are extremely lax. Ironically enough, one has wider freedom to construct on them than on Urbanization Control Areas (UCA), even though the latter, as part of the CPA, is in the long run designated for urbanization construction (at least theoretically). This asymmetrical state of affairs is claimed to be justified by the lack of pressure to expand urbanization within ‘White-Areas’, which leaves no reason to regulate them. However the 1980s and 90s saw that

5 Ohashi (Fn. 3), S. 488

6 Toshi Keikaku Handobukku (Handbook of City Planning) 2004, Toshi Keikaku Kyokai 2005, p 4 (as of March 31st 2004)

7 §7 Toshi Keikaku Ho (Fn. 2)

8 Ohashi (Fn. 3)

9 §9 Kokudo Riyo Keikaku Ho (National and Regional Planning Law) (Law No.92, 1974)

with increasing motorized traffic many shopping malls and buildings for objectionable purposes such as Pachinko parlors or red light establishments were built in 'White-Areas' which has since caused many a problem. Those areas are also subject to the danger of the 'Doughnut-Phenomena'. (see ill. 1)

Basic Law on Land (*Tochi Kihon Ho*) came into force in 1989 and declared priority of public interest over land¹⁰. But this neither changed the principle of minimal intervention although the legislation should- being the underlying law- form the basis of legislative policy for land law.

(2) "Objective" and Numerical Regulation Mechanism

The City Planning Law¹¹ and the Building Standard Law¹² form a pair that constitutes the basis of land use planning¹³. There is a system of 12 Land Use Zones (*Yoto Chiiki*)¹⁴, but the system is only applied to Urbanization Areas.

Restrictions on the use of buildings and the building density operate within these zones. The main tools of the latter are the floor area ratio (FAR) (*Yoseki Ritsu*), the building coverage ratio (BCR) (*Kempei Ritsu*) and the diagonal line limit (DLL) (*Shasen Seigen*).

But these zoning regulations are neither free from problems.

(i) First, the restriction on building use is less detailed. For example, housing and factories with comparatively small environmental impacts share common space in quasi industrial zones. Such mixed use can be widely observed also in other zones.

"In Japan Area Use Zoning has never been an instrument to advance the leading model of functional separation unlike in Europe, where this separation myth had come from a flawed interpretation of the Charta of Athens. In Europe the transformation of the leading ideal from functional separation to multifunctionality was completed on a theoretical level already in the 1970s. In practice, however, separation of functions prevails in European urban construction. The situation is completely different in Japan,

10 § 2 Tochi Kihon Ho (Basic Law on Land) (Law No.84, 1989)

11 Toshi Keikaku Ho see Fn.2

12 Kenchiku Kijun Ho (Building Standard Law)(Law No.202, 1950)

13 Cf. Uta Hohn, Stadtplanung in Japan. Geschichte - Recht - Praxis - Theorie, Dortmund 2000, p 130.

14 (1)Category 1 Exclusively Low-story Residential Zone

(2) Category 2 Exclusively Low-story Residential Zone

(3)Category 1 Medium-high Oriented Residential Zone

(4)Category 2 Medium-high Oriented Residential Zone

(5)Category 1 Residential Zone

(6)Category 2 Residential Zone

(7)Quasi-residential Zone

(8)Neighborhood Commercial Zone

(9)Commercial Zone

(10)Quasi-industrial Zone

(11)Industrial Zone

(12)Exclusively Industrial Zone (For these and other equivalents, the author has consulted the English translation of the Building Standard Law, published by the Building Center of Japan (4th ed. ,2004)

where planning intervention in the mixed use will only be tolerated so long as it is necessary to avoid danger or disadvantages to health, ecology and economy."¹⁵

(ii) Second the Building Standard Law is very property owner friendly. The admissible FAR is usually much higher than the volume of floors actually constructed. An architect once said one would have hell on earth, if the present values of FAR for all estates were fully exploited.¹⁶

(iii) Third one has to bear in mind that these regulatory instruments of building standards, the FAR, BCR and DLL, remain numerical and "objective" standards in their nature. Together with high FARs this allows for flexible construction design but leaves the building administrative authority with little discretion. The Building Standard Law employs the terminology of building confirmation (*kenchiku kakunin*)¹⁷ for the permit of construction in order to highlight its obligatory character.

To be sure, the application of objective standards is a positive development with regard to improved transparency and the rule of law. But it must not be forgotten that within the context of a wide freedom to construct and the high values of FAR this makes a planned and orderly development of cities more difficult.

Hideki Koizumi, urban planner and professor at University of Tokyo, expressed the essence of this problem in the following passage,

*"Though the Japanese urban planning adheres to the principle of predetermination of standards, the actual standards are in reality only roughly predetermined."*¹⁸

II Endeavors of Local Governments under the Classic Structure

(1) Two Types of Local Governments

Japan has three layers of administration, the state as well as two levels of local autonomies- prefectures and municipalities. Although the prefecture has been *de iure* a purely self administrating body and not an institution of the state since the enactment of the post war constitution, it did until 1999 carry out a number of state functions known as Agency Delegated Functions (*Kikan Inin Jimu*)¹⁹. Planning competences also belonged to these

15 Hohn (Fn.13), p.140

16 Yukio Nishimura, Tenkanten ni Aru Nihon no Toshi Keikan Gyosei to Sonogo no Arikata (Turning point of Urban Landscape Policy in Japan) in: Toshi Mondai. Vol. 94 Issue 7, p 12 .

17 §6 Building Standards Law (Fn.12)

18 Hideki Koizumi, Toshi no Keikaku Shisutemu (The Urban Planning System) , in Ueda et al, Toshi no Shisutemu to Keiei, Iwanami-Publisher, 2005, p 115-140, p 123

19 Shigeo Kisa, Grundlegende Reform des örtlichen Selbstverwaltungsrechts in Japan, in, Pitschas/Kisa (ed.), Internationalisierung von Staat und Verfassung im Spiegel des deutschen und japanischen Staats- und Verwaltungsrechts, Berlin: Duncker und Humblot 2002, p 265-281 (p 267).

functions.

(2) Limited Powers of the Regional Authorities

In the situation as it was before 1999 the power of local governments with regard to urban planning was quite limited. Prefectures who had been delegated the most important competences for urban planning decisions were subjected to the instruction and supervision powers of the state. The municipality had in reality even fewer powers of urban planning, with the exception of district planning (*Chiku Keikaku*) introduced in 1980 modeled on the German *Bebauungsplan*.²⁰

(3) Administrative Guidance

Despite the lack of legal competences, local governments were often confronted with land-use conflicts such as protection of green areas, controlling unwanted developments, construction disputes between neighbors etc. The authorities found two ways to overcome these problems. First they extensively used 'administrative guidance' (*Gyosei Shido*)²¹ issuing their own construction guidelines (*Kaihatsu Shido Yoko*).²² Although such guidelines are not legally binding, property owners have mostly followed them so as to make construction processes run as smoothly as possible.

This however was only feasible as long as court disputes remained infrequent and property owners had enough room for negotiation. With the increasingly dire economic circumstances of the 1990s and the newly enacted administrative procedural law of 1993²³- which limits the use of administrative guidance somewhat- the aforementioned prerequisites were no longer given.

(4) *Machizukuri* (Community Development) Ordinance

The other option for the local governments was to enact ordinances. Based on article 94 JC²⁴ regional authorities may enact ordinances without

20 §12-5(§ 12d) City Planning Law. „Trotzdem gibt es einen großen Unterschied zwischen dem japanischen und dem deutschen Bebauungsplan. Während in Deutschland der Erlaß eines Bebauungsplanes in der Regel überhaupt die Voraussetzung für den Erlaß einer Baugenehmigung darstellt, führt der japanische Bebauungsplan zu einer neuen Beschränkung der an sich vorhandenen Möglichkeit der Bebaubarkeit“ [There is nonetheless one big difference between the German and Japanese Bebauungsplan. While the existence of German plan constitutes prerequisite for granting building licenses, its Japanese counterpart causes new restrictions on otherwise existing opportunities to build.] (Ohashi (Fn. 3) p 489. See also Carola Hein/Yorifusa Ishida, *Japanische Stadtplanung und ihre deutschen Wurzeln*, in: *Die alte Stadt* 3/1998, p 189-211(p 210). For a detailed account on district planning Cf. Hohn (Fn. 13), 173 et seqq.

21 Cf. Yoichi Ohashi, *Verwaltungsvorschriften und informelles Verwaltungshandeln*, Verwaltungsarchiv 1991, p 220 et seqq; Tokiyasu Fujita, *Streitvermeidung und Streiterledigung durch informelles Verwaltungshandeln in Japan*, NVwZ 1994, p 133-138; Lorenz Ködderitzsch, *Die Rolle der Verwaltungsvorschriften im japanischen Verwaltungsrecht*, Baden-Baden: Nomos, 1995; Bettina Elben, *Staatshaftung in Japan- Eine rechtsvergleichende Darstellung unter besonderer Berücksichtigung von gyosei shido*, Hamburg, 2001. Takehisa Nakagawa, “Administrative Guidance: A tentative Model of How Japanese Lawyers Understand It”, Kobe University

22 Ködderitzsch(Fn.21), p 62 et seqq. Elben(Fn.21),p 148 et seqq

23 Gyosei Tetsuzuki Ho (Administrative Procedures Law)(Law No.88 of 1993). Cf. Lorenz Ködderitzsch, *Japan's New Administrative Procedure Law: Reasons for its Enactment and Likely Implications*, in: *Law in Japan* Vol.24(1994),p 105-13

24 Art 94 JC [Local public entities shall have the right to manage their property, affairs and administration and to enact their own regulations within law.]

having been expressly delegated such powers. Ordinances are legally binding insofar that they do not run counter to the statutory law²⁵. Some municipalities have used their ordinance powers actively and enacted so-called *Machizukuri* (community development or town making) ordinances. These *Machizukuri* ordinances were not only substitutes for inoperable administrative guidance but also introduced their own novel features. Unlike the vertically-segmented system of the state administration, *Machizukuri* ordinances attempt an all-embracing and cross-sectional solution to land use. Many such ordinances include rules for a negotiation procedure between property developers and residents and function as a model for public participation. It is noteworthy that the term *Machizukuri* itself is closely linked to the idea of citizens' participation in urban planning²⁶. Some of the ordinances have also tried to establish legal ground for communal masterplans for land use. The Japanese masterplan which bears resemblance to the German '*Flächennutzungsplan*' (land use plan) had until 1992 no clear application in Japanese city planning law²⁷.

III Decentralization Reform 1998-2000

(1) A fundamental decentralization reform of the local autonomy law passed the Diet in 1999, which also brought out considerable changes for urban development laws²⁸. The central aim of the reform was to put an end to agency delegated functions and to introduce a more limited framework of state supervision over local governments. The reform focused on "how" the local governments can carry out their competences independently rather than on "which" competences should belong to them.

A somewhat different picture can be observed in the case of urban development laws. In this field one can identify a more comprehensive shift of competences. Many important powers of city planning, such as zoning

25 For indications on whether an ordinance runs counter to the framework, Cf. Supreme Court decision September 10th 1975, Keishu 29- 8-489(Marutschke (ed)(Fn.4) p 309)

26 "Das *Machizukuri* entstand in den 70er Jahren in einer Zeit eines allgemeinen sozioökonomischen Wertewandels als Gegenbewegung zu einer als *Toshikeikaku* bezeichneten Stadtplanung, die als technokratische Expertenplanung von oben primär auf die Hardware-Bereiche der Stadtgestaltung ausgerichtet war.....Mehr und mehr durchgesetzt hat sich das *Machizukuri* als japanische Variante einer von den Bürgern entscheidend mitbestimmten Bottom-up-Planung, die Hard- und Software-Aspekte der Stadtgestaltung integriert, im Verlauf der 80er, vor allem aber seit Anfang der 90er Jahre" [Machizukuri came of age during the socioecological change of values of the 1970s. It was a countermovement against another kind of town making known as Toshikeikaku which was a technocratic planning by experts from above primarily aimed at the hardware areas of a town. Of the two Machizukuri – as the Japanese variant of bottom-up planning which integrates hard and software aspects of urban development – gradually became prevalent during the 1980s and much more so in the beginning of the 1990s.] (Hohn (Fn.13)p 100)

27 With the reform of the City Planning Law in 1992 two types of Master plans were introduced, (1) The prefectural Masterplan for urban development areas (*seibi kaihatu matawa hozen no hoshin*, §6-2 St City Planning Law(Fn.2)) and (2) the communal Masterplan (§18-2 City Planning Law, *shicho-son no toshikeikaku ni kansuru kihonteki hoshin*)

28 In general see Kisa (Fn. 19)

authority were transferred from prefectures to municipalities. Here the matter was not only “how” competences were carried out but also the transfer of competences themselves from prefectures to municipalities.

One reason for this difference is the leading role that the Ministry of Construction²⁹ had taken in the reform process. While the Ministry of Home Affairs³⁰ and some university professors were most influential in other fields of the decentralization reform, the Ministry of Construction made a swift and effective move toward decentralization with regard to urban development laws so as to retain its own initiative³¹. Thus the revision of City Planning Law and the transfer of competences took effect in 1998, already (if only just so) before the wholesale decentralization law was passed in 1999.

The transfer of competences to the municipalities is among other things a consequence of the shift in aim of urban planning law as such. It is often said that since the end of rapid urbanization we live no more in an ‘urbanizing society’ (*Toshika Shakai*) but instead in an ‘urbanized society’ (*Toshigata Shakai*). This renders the principal aim of urban development law less clear. Instead of prioritizing infrastructure, today’s developments focus primarily on vague concepts such as ‘amenity’ or ‘landscape’. Such undefined aims can only be realized by small regional authorities with help from the citizenry. In this sense not prefectures or the state, but municipalities and their populace can claim to have ‘cognitive leadership’³² in the area of town making.

(2) In 2000 another set of amendments of the City Planning Law was completed even after the wholesale decentralization laws had been passed. The later reform is again more comprehensive than that of 1998, but only two of its features will be highlighted here.

(a) At the start of this essay (I(1)) the problem of so-called ‘White-Areas’ was touched upon. These areas are subject to only very loose land use regulation and have therefore become a breeding ground for problematic and uncontrolled land development. The urban development reform of 2000 gives municipalities the following competences to tackle this problem:

(i) The municipalities may outside the Urbanization Areas designate ‘Special Land Use Restriction Zone’ (*Tokutei Yoto Seigen Chiiki*)³³. Within those areas, Pachinko parlors, red light establishments, dangerous factories and other unwanted institutions may be barred. Such area designations

29 In 2001 the ministry was incorporated into the newly created Ministry of Land, Infrastructure and Transport as a part of the Central Government Reform.

30 The ministry was also incorporated into the Ministry of Internal Affairs and Communications in 2001.

31 Cf. Tatsuo Akashi, *Toshi Keikaku no Chiho Bunken wo Meguru Ronten no Kiroku* (Documents on disputed issues in the urban planning decentralisation), in *Toshi Keikaku no Chihobunken*, Gakugei Publisher, 1999, p 300-372 (p 352).

32 Cf. Kadamatsu, *Jichi Rippo ni Yoru Tochi Riyo Kisei no Saikento* (Reflections on land use regulation through legislations of local autonomies), in: Harada (ed), *Nihon no Toshiho* Vol.2, p 321-350 (p 326).

33 §9 Para.14 City Planning Law

may likewise be used to retain control over big shopping centers.

(ii) Outside city planning areas municipalities may designate a ‘Quasi City Planning Area’ (*Jun Toshi Keikaku Kuiki*)³⁴, an area which if it was not designated would present an obstacle for future orderly town development. The justification behind this second area in addition to the city planning area is that it serves a negative control function rather than positively advancing development. Within this quasi city planning area the municipality may determine land use zones (*Yoto Chiiki*) and ‘special land use restriction zones’. It must not be forgotten that the competence to designate ‘quasi city planning areas’ lies with the municipalities but the competence to designate city planning areas lies with the prefectures. The fact that municipalities have better knowledge of the local environment³⁵ usually serves as a justification for the competence of municipalities for the former³⁶ (see also “Supplement” (p.11)).

(b) The second point to consider within the 2000 reform is that the obligation to draw zones has been abrogated. As was mentioned at the start of this essay (I(1)) effective planning control had earlier existed only for areas which were after zoning (*senbiki*) designated Urbanization Areas (UA) (*Shigaika Kuiki*) or Urbanization Control Areas (UCA) (*Shigaika Chosei Kuiki*) (see ill. 1). Under the earlier law prefectures had been obliged to designate such zones but that obligation was deferred by a supplementary provision of the law “for the moment” (*tobun no aida*)---in reality over thirty years---since its enactment in 1968. Consequently zones had been actually designated for less than 60%³⁷ of urban development areas. The 2000 reform did away with zoning obligations (with the exception of particular areas in larger cities³⁸). Now the prefectures may freely decide whether to designate zones. Some prefectures have taken the opportunity and erased their earlier zoning scheme. In May 2004 the prefecture Kagawa even postulated a “revitalization of the area” and radically got rid of all zones. It remains a delicate task how one should evaluate this trend from the perspective of decentralization.

IV “Urban Renaissance” 2002

(1) One Category for Them All: ‘The Private’

The urban renaissance program (*Toshi Saisei*) forms one of the most important pillars of the Koizumi government policy program. Right after

34 §5-2 City Planning Law.

35 This is where the commission presumes ‘cognitive leadership’ of the municipalities (Fn.32).

36 Report of the Advisory Committee on City Planning (*Toshi Keikaku Shingikai*) February 8th 2000

37 In March 2003 There were 1319 City Planning Areas (ca. 9.9 Mill hectare) in Japan. Zoning was done in 337 of these areas (ca. 5.2 Mill hectare).

38 An obligation for zoning exists for designated areas in the vicinity of Tokyo, Osaka, Nagoya and also within precincts of 14 large cities.

the new Prime Minister came into government in 2001 he set up the Urban Renaissance Headquarter (*Toshi Saisei Honbu*) within the cabinet. Then in December 2001 the headquarter formulated its concept³⁹ which included the following two basic objectives:

(1) "Urban renaissance" through the activities of private estate developers

(2) *Machizukuri* (community development) by local residents.

It is remarkable that these two in their nature fundamentally different aims were summarized in the same conceptual document as the 'vitalization of private force' (*Minkan*). This equates estate developers, property owners and community residents (including the urban development NGOs) and fails to take into account their distinct natures and positions. Furthermore one may wonder why this policy of renewal has continuously been and still is seen as part of economic rehabilitation and viewed as a structural reform policy (*Kozo Kaikaku*).

(2) Overemphasis on Pre-Determinability of Construction Norms

Based on the concept described above the 'Urban Renaissance Special Measure Law'⁴⁰ and other pertinent laws were passed. In these laws pre-determinability of construction norms is overly emphasized.

Since 1970 the Japanese Building Standard Law features 'integrated designs'⁴¹. By special provision in the Building Standard Law the developer may be given a premium in form of a higher maximum FAR and a loosening of the diagonal line restriction as remuneration for keeping a certain amount of open space - but only if the construction plan satisfies certain conditions (see ill. 4). In the early days a special permit from the building authority was needed to receive such a premium. The reform in 2002 simply laid down numerical standards for this integrated design⁴² so that the premium will be automatically given whenever the standards are met. The premium furthermore became part of the usual building confirmation (*Kenchiku Kakunin*) scheme. So the building owner now is allowed a higher maximum FAR etc. not needing a special permit and without taking into account the urban planning aims, as long as the building design satisfies relevant conditions. This thinking has its roots in the pre-determinability of construction norms.

The feature of integrated designs may naturally lead to a more flexible building law and therefore result in a more attractive environment, allowing the architect to more fully use his creativity in developing an area and at the same time increasing public open space. This however would be

39 Decision of the Urban Renaissance Headquarter on December 4th 2001.

40 Toshi Saisei Tokubetsu Sochi Ho (law on special measures for urban renaissance) April 5th 2005

41 § 59-2 Building Standards Law (Fn.12)

42 § 52(7),56(7) Building Standards Law (Fn.12)

only guaranteed where adjustment of the project to the urban planning aims is obligatory and the project will be executed with citizens' participation. This is where the 2002 reform disappoints because it solely heightened the already overemphasized pre-determinability within Japanese building law.

(3) Transfer of the Planning Policy Initiative to Large-Scale Estate Developers and Citizens' Groups (While Abolishing Previous Regulations of Urban Planning)

The 2002 reform grants planning initiative to private land owners. (i) The amendments of the City Planning Law⁴³ stipulate that property owners may take their own planning projects to the planning authority if that project has the assent of at least two thirds (acreage) of land owners of the district. (ii) For inside a priority urban development area (*Toshi Saisei Kinkyu Seibi Chiiki*) a private estate agent may propose a wholesale town plan, likewise with the assent of two thirds of land owners. The planning authority must react to the proposal within six months⁴⁴. If adopted all existing building restrictions are erased and replaced with the new town plan.

This planning initiative bears the advantage of challenging the state monopoly on planning initiatives. On the other hand initiatives of private estate agents may hamper participation of ordinary citizens. In addition one must not forget that estate agents, property owners, private individuals and planning NGOs are all included in one and the same category as "the private" without paying tribute to any of their distinct features.

V Conclusion: A Delicate Balancing Act Between Decentralization and Deregulation

Until now this essay has sketched recent developments of Japanese urban development law, while highlighting a number of developments linked to the effort of decentralization. It should be emphasized that the policy of decentralization is linked to citizens' participation on one hand and to deregulation policy on the other hand. These three elements naturally have points of contact, but must also be treated as separate entities. Combination of any of these elements depends heavily on context and strategy of the legal policy en vogue.

The classic model of Japanese Construction Law- that is the principle of

43 § 21-2 et seqq. City Planning Law (Fn.2)

44 This procedure is similar to the German, 'Vorhabens- and Erschließungsplan' (§ 12 BauGB) but in Japan all the usual planning proceedings including citizens' participation were abolished.

minimum intervention (extended freedoms for property owners) together with state regimentation (state planning monopoly) - is today, at least in its pure form, untenable. This is above all due to the objectives of modern urban planning in an 'urbanized society' and its main feature: the decentralization of urban planning. Even though, the principle of minimum intervention as such is still in use today.

The 2000 reform of Urban Development Law to deal with the 'White-Area' controversy was a combination of decentralization and a (limited) novel form of regulating tools for municipalities. The municipalities were granted additional powers in this wake (designation of 'quasi city planning areas' and 'special land use restriction zones'). Of course one must not forget that these additional powers had become necessary because of the influential extended freedom to construct. The endeavors of municipalities had been hampered through the principle of minimum intervention. The abrogation of the duty to draw zones on the other hand was a combination of decentralization and deregulation.

Urban renaissance is nothing but a combination of deregulation and new centralisation. Integrated designs were transformed into a numerical- in some measure mechanical- tool and the options of citizens' participation and discretionary action of the planning authority were lost. The national government can push regimentation by designating priority areas of urban renaissance more easily with the help of "private" estate developers. The government can thereby get rid of all previous urban planning done by the local autonomous authorities.

The context is always of importance when evaluating elements like decentralization or communal participation. In the case of Japan especially, one must consider that planning restrictions on the freedom to construct had been too weak from the beginning. Furthermore one must pay attention to the legal policy that comes with the respective proposal to decentralise.

<Supplement> (Sep. 2006)

A reform of the Japanese City Planning Law was adopted in May 2006. Main concern of the reform is to control the growth of large scale commercial facilities such as shopping malls and cinema complexes in order to preserve city centers. The construction of commercial facilities exceeding 10,000 m² within city planning areas or quasi city planning areas is now permitted only in three land use zones (commercial zone, neighborhood commercial zone, an quasi-industrial zone) (see Fn. 14). Construction in other zones and in 'White-Areas' (see I(1)) is prohibited where no other district planning (see II(2)) operates.

On the other hand authority for quasi city planning areas (see

III(2)(a)(ii)) shifted from municipalities to prefectures, to allow a coordination of interests on a regional level. It should be highlighted that the novel control competences of the 2000 reform have been used sparingly (in only three cases of quasi city planning areas and only 12 cases of special land use restriction zones) in particular because of conflicting interests between the municipalities. While large scale commercial facilities are a danger to city centres they are also a lucrative source of tax income and increased employment. The Ministry of Infrastructure, Land and Transportation seems to have changed its decentralization policy since the end of the 1990s and regarding this problem has opted for a wide ranging coordination of interests.

Illustration 1

City Planning Areas (=only 26.3% of land)

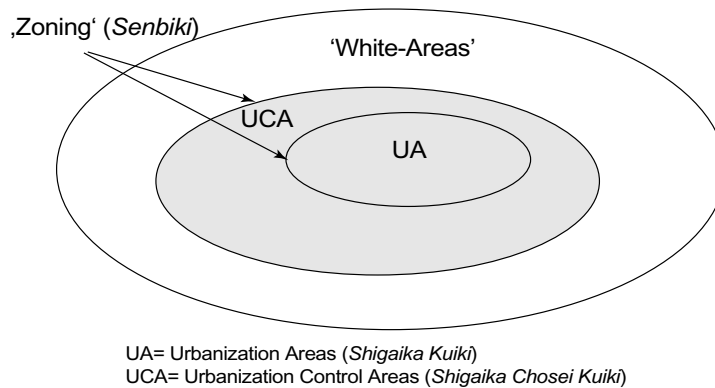


Illustration 2

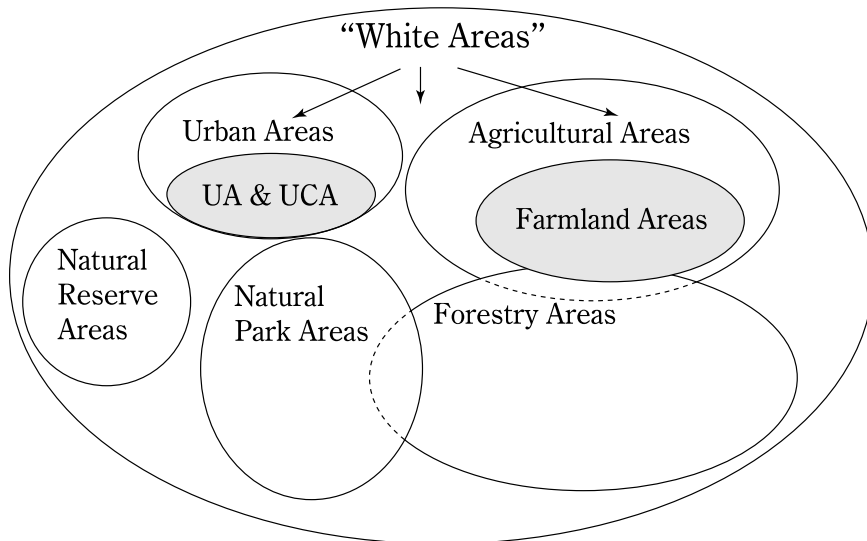


Illustration 3

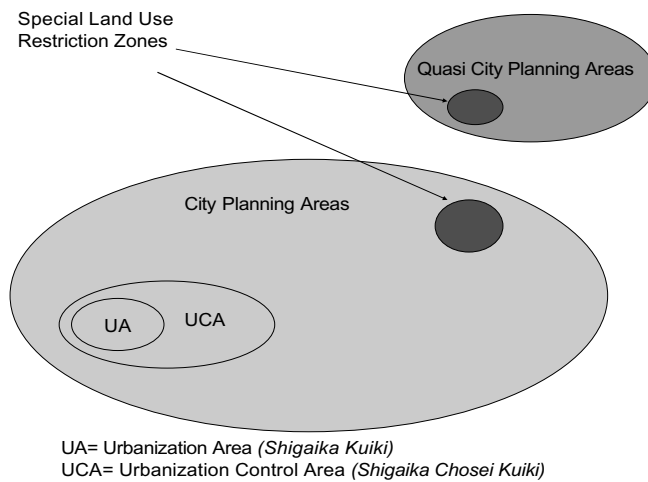
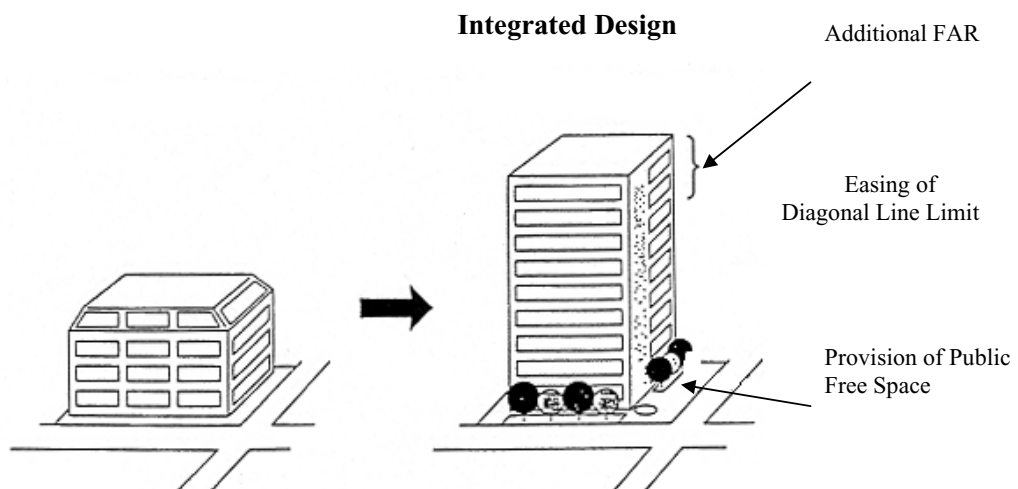


Illustration 4



<http://www.mlit.go.jp/jutakukentiku/house/seido/kisei/59-2sogo.html>