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Planning Law and Development Process in South Korea

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Abstract

Literatures that provide a legal studies-based analysis of the entire framework of Korean planning law are almost impossible to find outside of Korea. As a foundation for non-Korean comparative legal researchers comparing Korea to other countries, the purpose of this paper is to examine and analyse contemporary studies and discussions on the "legal aspect" of Korean planning law systems. This paper provides a comprehensive overview of the foundational structures, concepts, and historical context of Korean planning law. Furthermore, it assesses the current law's features from four distinct points: (a) A decentralised system wherein the central government retains authority over a substantial portion of substantial legislation and can intervene in local planning affairs; (b) The integration of the entire Korean territory into urban plans through the establishment of "special-purpose areas (*Yongdojiyeok*)," which functions as a variation to the existing plan comparable to use zoning; (c) An abundance of positive laws regulating specific types of development projects and their role as "variances" from the established plan; and (d) Insufficient protection of development rights, which typically requires discretionary approval in most cases despite the satisfaction of the plan's stipulations and content.

Keywords: Korean Planning Law, Development Process, Korean Planning Regime, Special-purpose Area, Construction and Urban Development Law

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1. Introduction

Because planning is an administrative operation which intervenes exercise of property rights, it requires legal grounds for its legitimacy. Referring to the Planning Accreditation Board's (PAB) definition of "planning law" as "legal and institutional contexts within which planning occurs,"[1] planning law can be understood as the legislation that deals with the function, status, type, system, effect, and process of urban planning. Therefore, understanding the planning system of a specific country is inseparable from understanding the planning law.

Planning law was previously regarded in Korea as a subcategory of public land law or administrative law. Planning law was, in fact, acknowledged as a field suitable for public administrators or planners rather than attorneys. In recent decades, planning law studies have been accumulated and organised by Korean legal scholars, including Prof. Jong Bo Kim[2], Prof. Taeyong Chung[3], Dr. Hae-Wong Yoo[4], and many key scholars in administrative law.[5] Nevertheless, even inside Korea, it is still challenging to discover a regular curriculum in Korean law schools relating to planning law, with the exception of Seoul National University's "Public Construction Law" and "Reconstruction, Redevelopment Law" courses and Korea University's "Public Land Law" course.

On the other hand, several earlier English-language studies examined the Korean planning system, but the majority of them only examined a single aspect or issue, and nearly all of them were planning or public administration studies rather than legal studies. The primary constraint of non-legal analysis is its potential to exaggerate aspects deemed insignificant in actual legal practice.

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[1] Recited from Richard K Norton, 'Planning Law' in NG Leigh and others (eds), *The Routledge handbook of international planning education* (Routledge 2019).

[2] Representatively, Jong Bo Kim, *Geonseolbeobui Ihae (Understanding of Construction and Urban Development Law)* (6th edn, Fides 2018). It is one of the referenceable textbooks for Korean planning law. When citing Korean literature, this article will use the official English title if it exists; if not, it will use both the pronunciation of the Korean title and its English translation.

[3] For instance, Taeyong Chung, 'Local Autonomy and Urban Planning' (2008) 8 Local Government Law Journal 83.

[4] For instance, Hae-Wong Yoo, 'Reform of the Land Use Planning System' (1998) 27 Korea Spatial Planning Review 85.

[5] There are a number of reputable law professors who have studied important subjects in Korean planning law including, without limitation, Prof. Bong Ki Shin (School of Law, Kyungpook National University), Prof. Hyun Ho Kang (Law School, Sungkyunkwan University), and Prof. Jung Kwon Kim (School of Law, Chung-Ang University). In addition to law professors, articles by Prof. Soon-Tak Suh (Department of Urban Administration, University of Seoul) are a valuable resource for learning about important Korean planning law institutions. There are undoubtedly a lot more significant researchers out there; I can't list them all here. But since the majority of them are written in Korean, it can be challenging for non-Korean researchers in the area of planning law to access them.

For instance, Gallent and Kim[6] provided an outlining introduction to the Korean planning system, but they only gave a brief explanation because their main concern was the system's future direction. Lim[7] provided a general and detailed overview of the Korean planning system although it is difficult to call a legal analysis. Kim[8] of Seoul Institute, established by the Seoul Metropolitan Government, provided a clear summary of the main topics in the urban management and master plans, which make up the foundation of the Korean system. It was not, however, a legal or thorough examination of the field of planning law as a whole. As a result, there aren't many English articles that present the framework of Korean planning law from an objective, external, and comparative perspective in addition to the legal one. It indicates that the basis for comparing legal research on the Korean system is lacking. Without that basis, comparative analyses of the Korean planning law would be forced to rely solely on a small body of literature that examined a few issues.

The purpose of this paper is to provide a basis for subsequent comparative legal studies. For this, it will attempt to investigate historical and contemporary discussions on Korean urban planning laws and systems in as much detail as possible from external and objective viewpoints. It will accomplish this by outlining the basic principles, fundamental structures, and history of Korean planning law.

To the best of my knowledge, the paper is at the forefront of providing structures, principles, and discussions on Korean planning law in a language other than Korean, though these discussions may not be entirely novel to Korean readers. Considering this, I am confident that this paper will significantly advance the cooperation between scholars from South Korea and other jurisdictions on comparative legal studies.

For information, the Ministry of Government Legislation (MOLEG) offers and updates translations of Korean legislation.[9] These translations are regarded as the most reliable given MOLEG's standing and expertise, even though they lack legal force. To facilitate further research, this article will make use of the names and expressions from legislation that MOLEG has provided.

[6] Nick Gallent and Kwang Sik Kim, ‘Land Zoning and Local Discretion in the Korean Planning System’ (2001) 18 Land Use Policy 233.

[7] Seo Hwan Lim, ‘Planning Practice in South Korea’ 23.

[8] Sun-Wung Kim, ‘Urban Planning System of Seoul’ (*Seoul Institutue*, 2017) <https://www.seoulsolution.kr/en/node/6310>.

[9] See https://law.go.kr/LSW/eng/engMain.do?eventGubun=060124.

2. Brief History of Planning Law in South Korea

2.1. Japanese Colonial Era

The Chosun Town Planning Decree of 1934, enacted during the Japanese colonial period, has been introduced as the origin of Korea's modern planning law.[10] It was composed of fifty articles and could be broken down into three main categories: infrastructure construction, land readjustment project, and special-purpose area.

The decree established the first version of the current “special-purpose area,” which divides regions into “use” zones and establishes building codes like floor-to-area ratios (FAR). The decree states that a specific “urbanised area,” which is separated into three areas for residential, commercial, and industrial purposes, shall be designated as the “town planning area” by the Governor-General of Chosun, not the local government.[11] If the construction is not appropriate for the designated area, then it shouldn't be permitted.[12] This centralised structure bears some resemblance to Japan's 1919 City Planning Law, which established the Japan's current planning system and placed city planning under the remit of the central government.[13]

In order to reorganise and readjust the boundaries of the lots or parcels, the decree introduced the “Land Readjustment Project.” In order for the administrative agency to implement its urban policy and plan and reserve adequate space for building infrastructure, boundaries of lots had to be set. A specific portion of each lot's space is taken out and sold or reallocated for infrastructure or development to cover the project's costs and provide enough space for infrastructure.[14]

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[10] Gallent and Kim (n 6) 234; Jee-Yeop Kim and Jong-Dae Jung, ‘A Comparative Study of the Land Use Systems of Korea and the US with a Focus on Property Rights under the Constitution’ (2007) 42 Journal of Korea Planning Association 7, 9.

[11] Joseonsigajigyehoengnyeong [Chosun Town Planning Decree] art. 15 (S. Kor.). OSCOLA has no clear guidelines for Korean laws and cases. Since Bluebook is the only legal citation style for Korean laws and cases in English-using countries, this article uses it for legislations and cases.

[12] Ibid, art. 16, 17 (S. Kor.).

[13] For the feature of Japan’s 1919 City Planning Law, see Ishida Yorifusa, ‘Local Initiatives and the Decentralization of Planning Power in Japan’ in Carola Hein and Philippe Pelletier (eds), *Cities, Autonomy, and Decentralization in Japan* (Routledge 2006) 33.

[14] Ki-Hyun Ryu and Soon-Tak Suh, ‘A Study on the Changing Process of Land Readjustment Projects from the Perspective of Historical Institutionalism’ (2014) 24 Space and Environment 178, 216.

2.2. After Independence

The Chosun Town Planning Decree remained in force even after Korea gained independence from Japan in 1945. It was replaced by the Urban Planning Act of 1962 by the Korean legislature.[15]

The Urban Planning Act of 1962 and the decree shared a very similar basic structure. The act states that “urbanised land” shall be designated as the “urban planning area” by the central government, not the local government, and it shall be divided into areas for residential, commercial, industrial, and green areas.[16] Additionally, the stipulations for Land Readjustment Projects remained.

The Urban Planning Act had undergone numerous amendments, but the most notable ones occurred in 1971 and 2000.[17] The Urban Planning Act of 1971 introduced sophisticated planning instruments, such as the diversification of areas, zones, or districts that can be identified and designated through plans. The Development Restriction Zone, an instrument for growth management and also referred to by its unofficial name, the “green belt,” was one of the 1971 act's most significant changes.[18] To protect green spaces, it is strictly forbidden to develop any land inside the green belt. Similar to the word “belt,” it has a shape that surrounds an urbanised area, such as Seoul.[19]

The development process provisions were progressively taken out of the Urban Planning Act and passed into separate, positive laws between 1971 and the revision in 2000.[20] It indicates that specific laws were enacted for each type of development project and that positive laws were started to divide development projects according to their purposes, themes, and characters. For instance, the provisions pertaining to Land Readjustment Projects were divided into the Urban Redevelopment Act of 1976, which became the Urban Development Act of today. During this time, new laws were passed, including the Housing Site Development Promotion Act, the Tourism Complex Development Promotion Act of 1975, the prototype of the Tourism Promotion Act, and the Industrial Base Development Promotion Act of 1973, which is

[15] See Gallent and Kim (n 5) 234.

[16] Dosigyehoekbeop [Urban Planning Act] enacted by Act. No. 983, January 20, 1962, art. 17 (S. Kor.).

[17] See Jinwon Jeon, *National Land Planning and Utilization Act* (Parkyoungsa 2021) 26–28.

[18] See Chang-Hee Christine Bae, ‘Korea’s Greenbelts: Impacts and Options for Change Symposium: Emerging Land Use Law in the Pacific Rim’ (1998) 7 Pacific Rim Law & Policy Journal 479, 480.

[19] See Gallent and Kim (n 6) 234.

[20] See Kim, *Geonseolbeobui Ihae (Understanding of Construction and Urban Development Law)* (n 2) 18; Kim and Jung (n 10) 12; Jeon, *National Land Planning and Utilization Act* (n 17) 27.

the current Industrial Sites and Development Act. As their name, “promotion,” these positive laws aimed quick and effective developments that were closely related to the socioeconomic situation of the time.

2.3. Enactment of National Land Planning Act

Since 2003, the National Land Planning and Utilization Act[21] (hereinafter “National Land Planning Act”) has served as the foundation for the current Korean system of planning laws. It is necessary to first address the Act on the Utilization and Management of the National Territory (hereinafter “Territory Management Act”) of 1973 before looking into the National Land Planning Act. As previously mentioned, only “urbanised areas,” not “un-urbanised areas,” were covered by the Urban Planning Act.[22] The remainder of the nation—the un-urbanised areas not covered by the Urban Planning Act—was governed by the Territory Management Act. It indicates that prior to the Territory Management Act's 2003 merger with the National Land Planning Act, Korea's planning law system was dichotomous.[23]

The Territory Management Act separated the nation into four categories: (a) urban area; (b) semi-urban area; (c) agricultural and forest area; and (d) area designated for the preservation of the natural environment. The act did not stipulate specific permission for development, so even though it proclaimed a restriction on development activities by each area (art. 15), the tools to carry out these restrictions were incomplete. A critical part of the issue was the “semi-agriculture and forest area,” which was adjacent to an urbanised area under intense development pressure and potentially at risk from urban sprawl.[24] Even though developers and property owners had recognised semi-agriculture and forest areas as developable lands, the act did not have sufficient regulation tools to manage urban sprawl, since it defined “semi-agriculture and forest area” as “but also used for the purpose of development” (art. 6 subpara. 4).[25]

[21] Guktoui gyehoek mit iyonge gwanhan beomnyul.

[22] Kim, *Geonseolbeobui Ihae (Understanding of Construction and Urban Development Law)* (n 2) 16; Jeon, *National Land Planning and Utilization Act* (n 17) 31.

[23] Lim (n 7) 6; Kim, *Geonseolbeobui Ihae (Understanding of Construction and Urban Development Law)* (n 2) 16.

[24] Jaeseong Cho, ‘Urban Planning and Urban Sprawl in Korea’ (2005) 23 Urban Policy and Research 203.

[25] See Myungso Eo, ‘Reasonable Management Method for Semi-Agricultural Areas’ (2000) 223 Gukto (National Land) 54, 55.

After being merged with the Urban Planning Act, the Territory Management Act was renamed the National Land Planning Act.[26] As implied by the term "National," "all lands" in Korea are incorporated by the National Land Planning Act into a single, cohesive legal framework.[27] Notwithstanding whether a region is urbanised or not, the merged act allows the use of urban planning instruments from the Urban Planning Act nationwide. The new act established urban planning for "the whole country," whereas the planning law system prior to such amendment primarily focused on urbanised areas.[28]

3. Structure of Legal System on Urban Planning

3.1. Overview of Legislation

Kim distinguishes the positive laws of planning into three main categories: (a) the laws governing the types, procedures for their establishment, authority, and contents of urban plans; (b) the laws governing the building safety standards for the building permission system; and (c) the laws governing the process for major development projects, which is determined by the type of project.[29] Kim explains these are three primary branches of "Construction and Urban Development Law."[30]

Additionally, there are other significant positive laws pertaining to planning, like (d) the laws governing cost-sharing for influence on infrastructure or other potential external effects of development, (e) the laws governing taking or eminent domain, and (f) the laws governing environmental impact assessments of development. "Public land law" is the umbrella term used to describe all of these laws.[31] This article will concentrate on the positive laws that are specifically associated with planning [(a)] and the development process [(c)].

[26] See Kim and Jung (n 10).

[27] Lim (n 7) 6; Kim, *Geonseolbeobui Ihae (Understanding of Construction and Urban Development Law)* (n 2) 16.

[28] Kim, *Geonseolbeobui Ihae (Understanding of Construction and Urban Development Law)* (n 2) 200.

[29] ibid 7–12.

[30] ibid 7. For reference, the academic society that Kim founded, and the law journal published by the society are using the term "Construction and Urban Development Law" for their English title.

[31] See So-Mi Seong, 'New Organizing System of the Real Estate Legislation and Its Recent Legislation Tendency' (2007) 38 Korea Public Land Law Review 1. For reference, Korean Public Land Law Association is one of the biggest academic society on the public land law field.

3.2. National Land Planning Act

The National Land Planning Act specifies the ways in which urban plans are established, as well as their subject, kind, and content. It functions as the fundamental legal foundation for the urban plan. The act specifies who has planning authority and how plans are established, including the mandatory public and local council hearing process.[32] The act's procedures must be followed by the administrative agency; otherwise, the urban plan is illegal and subject to revocation through administrative lawsuits.[33]

Permission for development activities (henceforth referred to as “development permission”) is outlined in the National Land Planning Act and is what establishes whether or not a particular development activity complies with the urban plan. It basically looks at how the development and the plan's contents correspond to each other. In other words, it's a process for implementing the plan and making decisions about how to use the land. The local government has extensive decision-making authority. It is not to be confused with “building permission,” which is the process of determining whether the building is hygienic and physically secure. It is ministerial in most cases[34] because it only verifies safety standards,[35] but there are more and more exceptional cases that acknowledge discretion these days, which is sparking scholarly debates about its ministerial nature.[36]

Development requires both forementioned permissions as well as many other ancillary permissions. However, there is little chance of creating an unduly complex process because of the “Deemed Authorisation or Permission.” This means that if the documentation for permissions B, C, and D from different acts are filed together, then permission A, which is the most direct and important permission for a project, is “deemed” to have received permission for those acts along with permissions B, D, and C. Scholars of Korean administrative law have elucidated and juxtaposed this with the German administrative law concept of the

[32] National Land Planning Act art. 28 (S. Kor.).

[33] Daebeobwon [S. Ct.], Mar. 23, 2000, 98Du2768 (S. Kor.).

[34] Daebeobwon [S. Ct.], June 24, 2004, 2002Du3263 (S. Kor.).

[35] See Jong Bo Kim, ‘Geonchukeogae Jonjaehaneun Jaeryangmunje (Discretionary Issues Existing in Building Permits)’ (1998) 3 Administrative Law Journal 158, 161.

[36] Mee-Hyung Woo, ‘Legal Nature of Building Permit’ (2021) 62 Kangwon Law Review 359, 389. Briefly speaking, one of the main reasons of this recent debate is Building Permission’s relationship with Development Activities Permission which is discretionary. Due to the Deemed Authorization or Permission clause as explained below, both permissions are closely connected to each other procedurally, so it is not easy to find the case that pure form of Building Permission becomes an issue.

Konzentraitonswirkung (Concentration effect), undertaking a research to discern the similarities and differences.[37]

Infrastructure installation and procedure provisions are also included in the National Land Planning Act. It is the remit of urban planning to install infrastructure. The plan must be established before the installation of essential infrastructures 'listed' by secondary legislation.[38] In principle, infrastructure should be installed by local or central governments at their own cost.[39] But it is easy and often possible to transfer the installation burden and cost to a private developer.

3.3. Laws on the Development Process

There are distinct positive laws for various types of development. For example, when building industrial, logistical, or tourism complexes, individual acts manage each development project. Several factors can be used to categorise projects, including development inputs (such as "what kind of lands or locations will be a target of development") and outputs (such as "what kind of buildings or sites will be constructed"). Certain projects are distinguished from others based on their development goals or inputs. For instance, different laws apply to the rehabilitation of deteriorated "city areas" and "old port areas."

To achieve policy objectives, positive laws are continuously passed or revised. Recently the laws pertaining to the construction of public housing by the state or other public entity and the construction of rental housing by private rental business operators are changing rapidly and extensively as a result of the skyrocketing cost of housing.

The Act on Acquisition of and Compensation for Land, etc. for Public Works Projects (hereinafter "Acquisition Act"), a general law governing the taking process, has an appendix that contains an outline of positive laws. Development process actions frequently call for the taking. In order to grant the taking power, the Acquisition Act stipulates that the project name and acts must be listed in the appendix of the act,[40] which presently has 112 acts.

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[37] E.g. Sang Cheon Lee, 'Legal Fiction of Authorization ・Permission & Concentration Effect' (2010) 24 Soongsil Law Review 145.

[38] Jong Kwon Choi, 'A Study of Problems on the Current Law in the Installation of Infrastructure' [2014] Beopje (Legislation) 8.

[39] National Land Planning Act art. 101 (S. Kor.). Daebeobwon [S. Ct.], Feb. 27, 2014, 2011Du7793 (S. Kor.).

[40] The Acquisition Act art. 4-2 para. 1.

4. Structure of Urban Planning and Planning Law

4.1. Who Has Authority? – Central v. Local Government

Positive law separates the two types of urban planning authorities: (a) the authority to formulate or draft the plan (Authority to Formulate) and (b) the authority to confirm and approve the draft (Authority to Determine).[41] All these powers were previously monopolised by the central government: the Urban Planning Act of 1962 made the central government agency oversee all urban planning matters nationwide (art. 4 and 17). However, local governments gradually receive more authority from the central government. Initially, the act gave local governments power to formulate plans while retaining final decision authority for the central government. The act started giving local governments more decision-making power as the localisation trend grew.[42] Eventually, with a few exclusions, the Urban Planning Act of 2000 gave local governments the majority of planning authority (art. 18 and 23).[43]

Nevertheless, there are still central government-led components.[44] The current National Land Planning Act, in principle, gives local governments planning authority. However, in exceptional cases, direct planning can be done by the central government. Planning authority, for instance, is exercised by the central government for major national development projects like high-speed rail, airports, and highways.[45] Should it become necessary to carry out national plans or plans that span neighbouring provinces or cities, the central government may exercise the same level of planning authority as local government.[46] Although positive laws give the central government explicit legal justification for interfering, there are currently few instances in which the central government actively gets involved in “purely” local planning issues because doing so can lead to serious disputes between the central and local governments.

[41] See Chung (n 3) 90.

[42] ibid 92.

[43] See Bomi Kim, ‘A Study on the Autonomy of Planning in Local Government’ (2017) 29 Journal of Local Government Studies 1, 7.

[44] Kim and Jung (n 10) 22.

[45] E.g. Cheoldoui geonseol mit cheoldosiseol yujigwallie gwanhan beomnyul [RAILROAD CONSTRUCTION ACT] art. 4 para. 1. (S. Kor.), Dorobeop [ROAD ACT] art. 5. para. 1, art. 11 (S. Kor.).

[46] National Land Planning Act art. 24 para. 5 (S. Kor.).

4.2. Hierarchy of the Authorities

There are levels in the local government structure. There are “lower-levels” of local government, like *Si* (City), *Gun* (County), and *Gu* (District), and “higher-levels” like *Teukbyeolsi* (Special Metropolitan City), *Gwangyeoksi* (Metropolitan City), and *Do* (Province).[47] The legislation stipulates to give the higher level the power to direct the lower level's activities.[48] The higher level has the authority to audit or make corrections if the lower level's performance violates the law.[49] Even with the positive legislation, academics and professionals continue to debate on whether there is a vertical relationship between higher and lower level local governments.[50]

In urban planning, there is an obvious hierarchy. As previously mentioned, the National Land Planning Act assigns the lower level the planning authority “to formulate (or draft),” while the higher level has the authority “to determine.”[51] Stated differently, the lower level cannot establish the plan on its own if the higher level declines to confirm it unless the higher level transfers its authority to the lower level.

Two unique cases exist. First, for a small-scale plan, the higher level usually transfers the lower level authority. The lower level can draft and confirm the plan on its own in this scenario.[52] Second, the higher level may use the draft power in circumstances where it would be impossible for a lower level to do so on its own, like creating a plan that encompasses neighbouring counties and cities.[53]

4.3. Right of Proposal of the Citizens

Public proposal rights are another crucial subject to cover when discussing the planning authority. Since the Urban Planning Act of 2000, right of proposal have been allowed to

[47] Lim (n 7) 2.

[48] Jibangjachibeop [Local Autonomy Act] art. 166 (Guidance and Support to Affairs of Local Governments) (S. Kor.).

[49] Ibid, art. 169 (Correction of Unlawful or Unjust Orders or Dispositions), art. 171 (Inspection of Autonomous Affairs of Local Governments).

[50] Sangkyung Lee, ‘A Study on the Constitutional Significance, Functions and Requirements of Audit Rights of Wide Area Local Autonomous Governments’ (2021) 27 Constitutional Law (KJCL) 369, 369–370.

[51] National Land Planning Act art. 24 para. 1, art. 29 para. 1 (S. Kor.).

[52] E.g. Seoulteukbyeolsi dosigyehoek jorye [Seoul Metropolitan Government Ordinance on Urban Planning] art. 68 para. 1 (S. Kor.)

[53] National Land Planning Act art. 24 para. 1, art. 29 para. 2 (S. Kor.).

ordinary citizens;[54] however, they can only be made for certain special-purpose districts, infrastructure plans, and district-unit plans.[55] The act does not allow citizens to propose the creation or modification of any plans that are not listed. Until now, the Korean planning law does not allow a proposal for changing a special-purpose area,[56] which is the most crucial plan.

It also has to do with whether the public can sue in administrative court to overturn the planning agency's decision. The administrative agency is not required by law to respond to suggestions made by individuals who do not have the legal right to submit such proposals, and in this instance, the court acknowledges that the agency's decision to reject the proposal is not subject to review and case should be dismissed.[57] Consequently, it is still not permitted to file a lawsuit against the administrative agency for refusing to modify the special-purpose area.[58] In contrast to refusals, the court acknowledged the judicial reviewability of the urban plan itself.[59]

4.4. Discretion of Planning Authority

The planning agency is conferred with a great deal of discretionary power, which extends to the creation, interpretation, and implementation of plans. The latter suggests using discretion when granting development permissions, which necessitates conformity to the urban plan, which may require interpretation and have various meanings. Generally, despite scholarly debates about the planning authority's discretion, judicial precedents have recognised the need to assess the public interest in relation to each permission and the planning authority's discretion.[60]

Positive law and legal principles impose limitations on the planning authority. Finding cases where the planning authority is assessed to violate substantive requirements is difficult, though, because positive laws primarily concentrate on the procedural requirements and only

[54] See Gwangjujibangbeobwon [Gwangju Dist. Ct.] Sep. 12, 2002, 2002Guhap516 (S. Kor.).

[55] National Land Planning Act art. 26 (S. Kor.).

[56] Chung (n 3) 94.

[57] Daebeobwon [S. Ct.], May. 25, 1990, 89Nu5768 (S. Kor.).

[58] Seoul Haengjeongbeobwon [Seoul Admin. Ct.], Jan. 29, 2015, 2014Guhap57874 (S. Kor.).

[59] E.g. Daebeobwon [S. Ct.], Nov. 29, 2018, 2018Du49109 (S. Kor.).

[60] Jeon, *National Land Planning and Utilization Act* (n 17) 416.

list substantive matters in an abstract manner.[61] The German administrative law term for the planning authority's discretion is *Planungsermessen*,[62] which is *Gyehoekjaeryang*[63] in Korean administrative law, and it is generally understood to be more strong than regular discretion.[64] The agency's policy choices regarding the plan created by balancing between related interests and policy goals shall be respected by the court. “Higher and stronger discretion” indicates that the court will hesitate to judge the plan's contents. It may be paired to the idea of judicial restraint or deferential review in other nations.[65]

By adopting the German *Abwagungsgebot* theory, the Korean Supreme Court[66] and legal experts have advanced the legal doctrine for reviewing the discretion of the planning authority. To establish a plan, the administrative agency must appropriately assess, compare, and coordinate pertinent public or private interests. If these reviews contain any errors or omissions, the plan itself will be unlawful.[67] Even so, it is still difficult to get around the deferential review, and in actuality, plaintiffs in cases against plans or decisions related to them rarely succeed.[68]

4.5. Classification of urban planning

4.5.1. Hierarchy of Urban Planning

Urban planning appears to follow a hierarchical structure. State plan (*Gukgagyehoek*) → metropolitan plan (*Gwangyeokgyehoek*) → urban master plan (*Dosigibongyehoek*) → urban management plan (*Dosigwalligyehoek*) is the hierarchical order stipulated by the National

[61] Young Chul Jung, ‘Hwangyeonggyehoekjaeryangui Tongjegyubeomeuroseoui Hyeongnyangmyeongnyeong (Requirement for Consideration as a Control Norm for Planning Discretion in the Environmental Plan)’ (2013) 14 Public Law Journal 275, 280.

[62] See Seung Joo Baig, ‘Haengjeonggyehoekjaeryange Naejaedoen Munjereul Banyeonghan Sabeoptongjeui Ganghwapillyoseong Gochal (Reflection on the Need for Legal Control in Relation to the Problems Inherent in the Epistemology of Planning Discretion in Administration)’ (2009) 43 Korea Public Land Law Review 203.

[63] It means “discretion in the planning.”

[64] See M Künnecke, *Tradition and Change in Administrative Law: An Anglo-German Comparison* (Springer Science & Business Media 2007) 80–81.

[65] For discussions in other nations, see JC Juergensmeyer and others, *Land Use Planning and Development Regulation Law* (4th edn, West Academic Publishing 2018) 43.

[66] Daebeobwon [S. Ct.], Sep. 8, 2006, 2003Du5426 (S. Kor.).

[67] See Hyun Ho Kang, ‘Gyehoekjeok Hyeongseongui Jayuui Tongjesudaneuroseo Hyeongnyangmyeongnyeong (The Principle of Balancing as a Control Mechanism for Planning Freedom)’ (2014) 66 Korea Public Land Law Review 204; Baig (n 62).

[68] Jeon, *National Land Planning and Utilization Act* (n 17) 43.

Land Planning Act.[69] The state plan is created by the central government (Ministry of Land, Infrastructure and Transport, MOLIT). The metropolitan plan is established by the higher-level local government. The urban master plan and urban management plan are made by local governments at both the higher and lower levels.

Even though the act states clearly that a lower-level plan must comply with an upper-level plan,[70] in practice, this requirement rarely matters. There is a lot of leeway for interpretation because upper-level plans typically only provide very declarative and abstract policy goals related to geography, population, and economy. Provoking an explicit violation of an upper-level plan by a lower-level plan is a challenging task. The Supreme Court also affirmed the validity of the urban management plan, even in cases where it conflicts with the urban master plan, which is the upper-level plan.[71]

Plans are typically categorised as either “binding” or “non-binding.” The word “binding” refers to the general public being bound by it.[72] If there has been a violation of the binding plan, an administrative agency shall refuse construction or development permission. The binding nature of the urban management plan is recognised by the Supreme Court, but the binding nature of the other upper-level plans is up for question (See Table 1). Consequently, it makes sense to comprehend that plans are “superficially hierarchical,” since higher-level plans serve primarily as abstract, loose guidelines.

4.5.2. Types of Urban Planning

The National Land Planning Act, the general law for urban planning, stipulates the types of urban plans in detail. Although other special laws can create new types of special plans, in most cases, special plans are granted legal status as the “urban management plan” of the National Land Planning Act.

The general law governing urban planning,[73] the National Land Planning Act, specifics the various kinds of urban plans. While new types of special plans may be created by other special laws, most special plans are incorporated into legal status as “urban management plans”

[69] See Lim (n 7) 10.

[70] National Land Planning Act art. 4, art. 25 para. 1 (S. Kor.).

[71] Daebeobwon [S. Ct.], Apr. 12, 2007, 2005Du1893 (S. Kor.).

[72] Yoo (n 4) 87.

[73] Kim, *Geonseolbeobui Ihae (Understanding of Construction and Urban Development Law)* (n 2) 412.

under the National Land Planning Act.[74] Although the forms and contents of urban plans are complicated, they can be summed up as follows.

Table 1. Classification, hierarchy, and types of urban plans in South Korea.

	Types of Plans	Authority	Binding Power		Contents and Subcategories (Quoted from articles of National Land Planning Act)
			To administrative agency	To citizen	
HIGH ← hierarchy → LOW	State plan	Central	Controversial	Depend on its contents	"plan formulated by a central administrative agency pursuant to Acts or to achieve the policy objectives of the State" (art. 2 para. 14.)
	Metropolitan plan	High Level Local	Controversial	No	"long-term development directions for metropolitan planning zones" (art. 2 para. 1.)
	Urban master plan	High or Low Level Local	No [S.Ct.*]	No [S.Ct.**]	"comprehensive planning for setting basic spatial structures and long-term development directions" (art. 2, para. 3.)
	Urban management plan	Low Level Local (Formulate) High Level Local (Determine)	Yes	Yes [S.Ct.***]	"(a) special-purpose areas, or special-purpose districts (b) development restriction zones, urban natural park zones, urbanization-coordination zones, and fishery-resource protection zones (c) plans for the establishment, maintenance or improvement of infrastructure (d) plans for urban development projects, or maintenance projects (e) district-unit plans (f) areas under minimal siting restrictions and plans on areas under minimal siting restrictions" (art. 2, para. 4.)

* Daebeobwon [S. Ct.], Nov. 27, 1998, 96Nu13927 (S. Kor.), Daebeobwon [S. Ct.], Apr. 12, 2007, 2005Du1893 (S. Kor.).
** Daebeobwon [S. Ct.], Oct. 11, 2002, 2000Du8226 (S. Kor.).
*** Daebeobwon [S. Ct.], Mar. 9, 1982, 80Nu105 (S. Kor.).

As was mentioned above, land use regulations are primarily centred on the urban management plan, which is the "lowest level plan," considering urban plans are just "superficially" hierarchical. An "urban management plan" is a document that directly impacts the way that people use their land. There must not be any breaches of the urban management plan in order for a citizen to be granted building or development permission. As a result, the

[74] ibid 388; Jeon, *National Land Planning and Utilization Act* (n 17) 75.

urban management plan has been the subject of numerous legal precedents and discussions regarding urban planning in Korea.

4.5.3. Contents and Structure of Urban Management Plan

The urban management plan, which has binding force, is comprised of (a) special-purpose area (*Yongdojiyeok*), (b) special-purpose district (*Yongdojigu*), (c) district-unit plan (*Jigudanwigyehoek*), (d) infrastructure plan (*Dosigyehoeksiseolgyehoek*), (e) development (project) plan (*Gaebalgyehoek*), (f) development restriction zones (*Gaebaljehanguyeok*).

(a) “Special-purpose area” divides the entire country into different “use.”[75] It is translated as simply “zoning system” in many articles,[76] and it is explained as “use zones.”[77] The law makes no explicit mention of administrative agencies' being obligated to designate use areas for every location. Nevertheless, the designation of the areas is crucial because use areas (special-purpose areas) establish the basic building regulations (use, density, number of floors, etc.), which limit the construction capacity. As a result, in actuality, most of Korean territory is designated as one of them. 2020 statistics show that the special-purpose area's total area is 106,204,663,546 square metres, which is larger than South Korea (100,412 square kilometres).[78] In the event that the use area is not designated, the most restrictive area's building requirements shall be applied.[79]

(b) “Special-purpose district” adds “extra” regulations to the special-purpose area for specific purposes.[80] A scenic district is a good example, as it imposes additional aesthetic limitations to safeguard the surrounding area. The creation of a special-purpose district is optional rather than required.

(c) “District-unit plan” is an optional tool for micro-managing. Only the designated district unit is covered by the district-unit plan. It might offer comprehensive development guidelines and building specifications. A district-unit plan is typically used when the agency wishes to create

[75] National Land Planning Act art. 36 para. 1 (S. Kor.).

[76] See Tae-Uk Min, ‘The Essence of District Unit Planning and Reconsideration of Related Regal System’ (2012) 57 Korea Public Land Law Review 171.

[77] See Cho (n 24).

[78] Ministry of Land, Infrastructure, and Transport. Available online: http://www.molit.go.kr/USR/NEWS/m_71/dtl.jsp?id=95085717 (archived on 6 January 2023).

[79] National Land Planning Act art. 79 para. 1 (S. Kor.).

[80] Ibid, art. 2 subpara. 16 (S. Kor.)

a “detailed picture” of development and actively provide guidance, particularly for large development projects, whereas the special-purpose area only determines development capacity in a “big frame.” Therefore, for new construction or redevelopment projects, a district-unit plan is utilised.[81]

(d) “Infrastructure plan” is a plan for constructing and managing infrastructures. The National Land Planning Act requires that an infrastructure plan be established before installation of listed infrastructures.[82] Infrastructures belong to the public, so the act implies that the government should, in principle, build them.[83] However, when a development project increases the need for infrastructure, the local government frequently shifts the burden to the developer by requiring the installation of infrastructure for project approval—a process known as “contributed acceptance (*Gibuchaenap*).”

(e) “Development plan” is a plan for a development project implemented by individual development process legislations. Since these projects frequently involve a sizable site, developers must first plan for the entire site and obtain planning authority approval before beginning work on the project.

(f) Lastly, “development restriction zone” is a growth management tool in which the possibility of development is completely shut down in principle.[84] According to the Supreme Court, “development activities, such as the construction of buildings, are, in principle, prohibited considering the purpose of the zone.”[85] It is designated by MOLIT, the central government not the local. Bae stated that there are several goals for the zone,[86] but the main one is to stop urban sprawl[87] by only permitting the use of the “status quo” at the time the zone is designated and outright forbidding the use of any additional land or buildings, so preserving the status quo. The development restriction zone is commonly perceived as an area that cannot be developed without very exceptional approval from the government. One notable exception is the Special Act on Public Housing, which enables the construction of public housing to be built

[81] See Min (n 76).

[82] Choi (n 38) 8.; National Land Planning Act art. 43 para. 1 (S. Kor.).

[83] National Land Planning Act art. 101 (S. Kor.). Daebeobwon [S. Ct.], Feb. 27, 2014, 2011Du7793 (S. Kor.).

[84] See Kim, *Geonseolbeobui Ihae (Understanding of Construction and Urban Development Law)* (n 2) 309.

[85] Daebeobwon [S. Ct.], Mar. 28, 2003, 2002Du11905 (S. Kor.).

[86] Bae (n 18).

[87] See Gallent and Kim (n 6) 235. However, Gallent and Kim introduce critics about this main purpose due to equivocality of development pressure in some designated areas.

in the development restriction zone through a comparatively straightforward process.[88] Since the creation of the development restriction zone in 1971, a complete prohibition on land use has given rise to debate over constitutional taking.[89] It is constitutional, according to the Constitution Court, unless the designation of a development restriction zone forbids the use of the land which had been existed at the time of the designation.[90]

4.5.4. Special-Purpose Area – Core of Planning Law System in Korea

The special-purpose area is the most crucial of the plan types mentioned above. Special-purpose areas are classified into four categories under the National Land Planning Act (art. 36): “urban area,” “control area,” “agricultural and conservation area,” and “natural environment conservation area.” The act separates the control area into three categories: production control area, planned control area, and conservation and control area. It also divides the urban area into four categories: residential area, commercial area, industrial area, and green area. According to the level of development or the severity of use restrictions, each area is further classified; for instance, an “exclusive residential area” is designated to comparatively firmly safeguard the peace and quiet of the residence. As a result, the exclusive residential area has very little density and severely limited commercial building development. On the other hand, Ryu and Jung refer to “quasi-residential area,” which is a somewhat blurry area located in the boundaries between residential and commercial use, as “residential-commercial mixed area.”[91] More than the quasi-residential area but less than the exclusive residential area, the “general residential area” is concentrated on residential use.

The special-purpose area guides the number of floors, development density, and building uses on a given area. The specifications that are permissible in each area are listed in laws and regulations. This implies that the development capacity's outline is determined by the type of special-purpose area. According to scholarly articles, it is the most basic and all-encompassing element of Korea's land use system.[92]

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[88] Gonggongjutaek teukbyeolbeop [Special Act on Public Housing] art. 6-2. (S. Kor.)

[89] See Bae (n 18) 498.

[90] Hunbeobjaepanso [Const. Ct.], Dec. 24, 1998, 89Hunma214 (S. Kor.).

[91] Kyung-Soo Ryu and Eung-Ho Jung, ‘A Study on Zoning Regulations in Residential-Commercial Mixed Areas’ (2020) 31 Journal of the Korean Housing Association 33.

[92] Dong-chan Lee, ‘Zoning as a Means of Land Use Regulation’ (2008) 29 Law Review 55; Min (n 76).

Research frequently draws comparisons between special-purpose areas and American zoning, specifically “use zoning” or “Euclidean zoning.”[93] In the United States, land use is regulated by “use zoning,” which creates multiple zones for the use of urban space and establishes zoning ordinances that specify the building's height, capacity, setback, density, intensity, use, etc. for each zone.[94] Use zones (or use districts) are categorised for “trade, industry, residence or other purposes”[95] in general; the zoning ordinance determines what kind of use the zone will be classified for.[96] The use zoning and the special-purpose area have a similar basic structure. In addition, it applies the predetermined requirement and partitions urban space into multiple subdivisions.

Nonetheless, there are a few distinctions between US use zoning and special-purpose areas. Firstly, the legislation of the central government, not the zoning ordinances of each local government, defines the type of area. The local government's authority is to designate the area that falls under the legislative classification; it is not allowed to create new types of areas. Second, the central government of Korea enacts laws that specify the allowed or restricted uses in each area as well as the building-to-land ratio, height, and floor area ratio. Local ordinances may vary from the law to the extent permitted by law. Third, compared to use zoning, special-purpose area regulations are less detailed.[97] The building-to-land ratio, floor area ratio, permissible use, and height are all determined by the special-purpose area. A district-unit plan, as opposed to a special-purpose area, can establish more specific details. In this regard, the US use zoning shares characteristics with both Korea's district-unit plan and special-purpose area.[98] Fourth, while special-purpose areas are established across the Korean Peninsula, use zoning does not embrace the whole of US territory.

A number of ways are conceivable to manage land use beyond special-purpose area such as: (a) by overlaying “extra control,” (b) by allowing minor change to the special-purpose area without making significant deviations, or (c) by overcoming the special-purpose area and creating a “wholly new plan” for the land use. A special-purpose district, which merely

[93] See Seung Jong Kim, ‘A Study on the Land Use Regulation in the U.S. : Focusing on Zoning System and Zoning Permits’ (2014) 22 Seoul Law Review 77; Jeeyeop Kim, Cuz Potter and A-ra Cho, ‘Flexible Zoning and Mixed Use in Seoul, Korea Planning Implications of Seoul’s Zoning Model’ (2020) 22 Architectural Research 145.

[94] Juergensmeyer and others (n 65) 24; B Burke, *Understanding the Law of Zoning and Land Use Controls* (LexisNexis 2013) 99.

[95] Juergensmeyer and others (n 65) 65.

[96] ibid.

[97] Kim, ‘A Study on the Land Use Regulation in the U.S. : Focusing on Zoning System and Zoning Permits’ (n 93) 78.

[98] See ibid 78.

establishes annexed conditions without altering the contents of the special-purpose area, is a common example of an additional control. Certain district-unit plans or development plans derived from different development process laws are examples of minor deviations that modify the special-purpose area's contents for new development, like the redevelopment of an old built-up urban area. Creating a completely new plan refers to situations in which the current special-purpose area is completely replaced with a new development project. An example of this would be converting farmland or forests to build a sizable apartment complex or industrial complex.

4.6. Implementation of Urban Planning – Permission System

When an urban plan is in place ahead of time, the developer or property owner needs a procedure to officially verify whether their project complies with the plan. Development permission controls this process primarily. In order to implement the urban plan, it controls and restricts development that deviates from the plan.

“Development activities” that impact land use are defined by the National Land Planning Act. These include building, constructing structures, altering the form and quality of any land, extracting earth and stone, dividing the land, and storing goods in a specific area for a minimum of one month.[99] They can be understood as activities that have an impact on current urban plans or land use.[100] Permission from the local government is required for those who wish to do these activities, and engaging in them without permission may result in criminal penalties.[101]

The discretion of the permission authority is determined by the relationship between the plan and the permission. [102] Assume that the plan outlines the precise and indisputable requirements for development and is legally binding. In that scenario, administrative agencies' discretion over the permission system will be constrained since, in cases where the plan has already granted the development allowance for lots, the permission shrink's role will only need to be reviewed in detail for the plan's checklists.

[99] National Land Planning Act art. 56 (Permission for Development Activities) para 1. (S. Kor.).

[100] Jeon, *National Land Planning and Utilization Act* (n 17) 405.

[101] National Land Planning Act art. 140 (Penalty Provisions) (S. Kor.).

[102] See Kim, *Geonseolbeobui Ihae (Understanding of Construction and Urban Development Law)* (n 2) 228.

However, in cases where the plan's contents are non-binding or abstract, permission is crucial. Agencies are able to complete planning decisions for each lot in this scenario with permission. Planning permission is the central component of the planning law system in the UK, for example.[103] Although the content of the plan is less binding and more abstract,[104] Individual planning permission is the primary means by which planning decisions must be made. Permission is used to determine development possibilities rather than the plan. The planning authority's discretion over the planning permission is quite significant.

The permission system in Korea lies halfway between those two approaches. The special-purpose area only places upper limits on the number of floors, density, and type of use, while the US zoning ordinance is much more detailed. Although the special-purpose area has binding power, this does not imply that the development right is granted to the full extent of the area's upper bounds. The possibility of development is not entirely vested by a special-purpose area.[105] Rather, the permission finalises the determination of the feasibility of development, unless a more detailed plan exists that determines the possibility of development outside the special-purpose area.[106] Therefore, agencies may, in theory, exercise a great deal of discretion in granting permission to fill in the blank of the special-purpose area that are unclear.

5. Development Process

5.1. Choice of Law; Which Process and Act will be used?

Different perspectives on the scope and goal of development are necessary to comprehend the Korean development process. Let's say that the developer plans to adhere to the regulations of an existing special-purpose area or district-unit plan, and the scale of the development is not significant. The permissions process doesn't have to be complicated in this instance. To proceed without changing the current plan, a developer only needs to obtain the development permission discussed above.

[103] See George Dobry, 'Planning Law in England' (1976) 11 Real Property, Probate and Trust Journal 507, 512.

[104] See Susan Miller Reid, 'The Scope of Planning Law in England: Decision Criteria in Development Control' 79, 655; Michael Oxley and others, 'Review of European Planning Systems' (Centre for Comparative Housing Research, Leicester Business School, De Montfort University 2009) 6.

[105] Jong Bo Kim, 'Grant of Development Permission and Its Reflection by City Planning' (2012) 53 Seoul Law Journal 145, 173.

[106] See Jong Bo Kim and Kunwoo Park, 'The Permission of Characteristic Transfer of Land by National Land Planning and Utilization Act and the Development Permission' (2021) 64 Administrative Law Journal 45, 50.

However, if the development is large-scale, there will be a significant external impact; therefore, obtaining those permissions alone won't be sufficient; additional steps, such as plan modification, are required. The National Land Planning Act restricts the amount of development that can be done with permission[107] when it involves changing the shape and character of the land, which includes turning undevelopable sites like hills, farms, and forests into developable lands. Permission can be obtained for less than 10,000 square metres in residential, commercial, natural, and productive green areas. Permission can be obtained for less than 30,000 square metres in industrial, control, agricultural, and forestry areas. Permission can be obtained for less than 5,000 square metres in areas that are in pressing need of conservation, such as the natural environment conservation area or the green conservation area.[108]

If these scales are exceeded, development will need a new “plan,” such as a district-unit plan or a development plan, rather than relying on individual “permission.”[109] Permission and plan differ greatly from one another. The permission process is an internal decision-making process within an agency; in contrast, the act requires a series of planning procedures for the establishment of plans. For instance, the Urban Development Act mandates certain processes, including initial surveys, resident opinion hearings, and urban planning committee deliberations in order to establish a development plan.[110] The more procedures and factors there are to take into account, the more discretion the planning authority has. More discretion narrows the developer's scope of liberty and makes it harder to ensure a favourable decision from the planning authority.

The discussion above can be summed up in the following table.

[107] Jinwon Jeon, ‘Sustainable Development and Infrastructure: Legislative Failures of South Korea’s Infrastructure Rolling System’ (2023) 15 HUFS Global Law Review 89, 95.

[108] Enforcement Decree of the National Land Planning Act art. 55 (Scale of Permission for Development Activities) para 1 (S. Kor.).

[109] Jeon, *National Land Planning and Utilization Act* (n 17) 407.

[110] Dosigaebalbeop [Urban Development Act] art. 6, art. 7, art. 8. (S. Kor.).

Table 2. Development Process and Choice of Law

Scale of development	Method	Applicable law	Process
Small (Less than 5,000 ㎡ /10,000 ㎡/30,000 ㎡)	Development Permission	National Land Planning Act	Apply for and get a permission
Large (More than 5,000 ㎡ /10,000 ㎡/30,000 ㎡)	District-unit plan	National Land Planning Act	(1) Establish district-unit plan → (2) Get a permission for each parcel(lot)
	Development project plan	Individual act on development process	(1) Establish development plan → (2) Designate project implementer → (3) Approve project implementation plan

5.2. Subject of Development; Who will develop?

5.2.1. Types of Development Project Implementer

There are two types of developers in a high level: public and private entities that carry out development projects. Central and local governments, as well as public enterprises founded by them, are considered public entities.[111] In most cases, landowners make up private entities.

The qualifications needed to implement a project and grant taking power are a major distinction between public and private entities. Although private entities must demonstrate “public needs” on a comparable level with public entities, public entities are established for the interest of the public.[112]

A certain proportion of consent is needed for democratic legitimacy in order for private entities to carry out development.[113] Owning the entire site is relatively difficult for private entities because these developments are large-scale projects. Thus, even for private entities, a grant of taking power is frequently required. The development plan also can include re-zoning, which increases the developer's interest. A public interest basis and democratic legitimacy–such as

[111] Gonggonggigwanui unyeonge gwanhan beomnyul [Act on The Management of Public Institutions] (S. Kor.); Jibanggonggieopbeop [Local Public Enterprises Act] (S. Kor.).

[112] Eunhye Jang, ‘Legal Issues Over Expropriation by Private Persons’ (2015) 71 Korea Public Land Law Review 207.

[113] Heejun Lee, ‘Consent Requirement in Designating Urban Planning Facilities Project Implementer’ (2020) 25 Studies on Public Administration Cases 399, 440.

a consent rate and the project's public characteristic prerequisites for granting a private entity such a benefit. In general, a 2/3 consent rate is needed; however, depending on the project, either a relieved rate of 3/5 or an enhanced rate of more than 3/4 is needed. It has been contested whether such a relieved rate is legitimate, but if there is a valid policy reason, it is hard to argue against its constitutionality.[114]

5.2.2. Association of Property Owners

One distinctive aspect of the Korean development process is the “property owners association.” The association was established by landowners. Assume, for instance, that locals are attempting to reconstruct an outdated apartment complex. Then, to carry out development on their own, the apartment owners establish an association, begin a project to construct new apartments under the association's name, and then distribute the newly constructed apartments to the owners. It frequently seeks higher-density development, tearing down older low-rises and erecting new high-rises, distributing them to project participants' property owners, and raising money for development costs by selling extra apartments.[115] If the association is created by explicit legal provisions, it may be regarded as an administrative agency.[116]

The positive laws for these projects have to specify (a) how property owners establish an association, (b) how the association makes decisions, (c) how new properties are distributed to owners, and (d) how surplus properties are sold after distribution. The most important decisions for the development are made by the votes of individual property owners,[117] and in reality, disagreements usually occur during the voting process. When it comes to choosing a construction company, allocating new apartments, and valuing owners' properties, conflicts usually have to do with money.

Because property owners are not experts in development, construction companies frequently run things in the background,[118] providing financial support for the project's anticipated

[114] Hunbeobjaepanso [Const. Ct.], Jul. 26, 2012, 2011Hunba130 (S. Kor.).]

[115] For more detailed explanation, see Jinwon Jeon, ‘Transformation of Land Readjustment in Korea: A Legal Analysis on the Exchange of Rights and Collective Replotting’ (2023) 117 The Korea Spatial Review 89. It is published in English.

[116] Daebeobwon [S. Ct.], Nov. 2, 2009, 2009Ma596 (S. Kor.).

[117] Dosi mit jugeohwangyeongjeongbibeop [Act on The Improvement of Urban Areas and Residential Environments] art. 45 para. 1 (S. Kor.).

[118] See Minhee Lim, ‘Jaegeonchuk·jaegaebalsaeopgwa Sigongja Seonjeongjehan (Reconstruction and Redevelopment Projects and Restrictions on Selection of Constructors)’ (2022) 8 Construction and Urban Development Law Journal 2.

marketability.[119] Construction companies occasionally engage in illegal competition to draw in landowners in order to form a majority. The government tries to prevent this phenomenon in three ways: (a) by enforcing criminal penalties,[120] (b) by prohibiting construction companies from getting involved too early in the project,[121] and (c) by improving the transparency and equity of the selection process for construction companies.

5.3. Process of Development Project

The majority of large-scale development projects typically consist of two steps: a “development plan” and a “project implementation plan.” Each plan must be approved by administrative authority. The development plan establishes the target area's geographic boundaries and provides outlines about the project,[122] including its purpose, a rough distribution of uses, a list of lots, and its time schedule. The development plan is what decides whether or not a landowner's land is included. Landowners are directly limiting their ability to exercise their property rights by requiring them to obtain special permission for any constructions that could impede the project, if they are to be included.[123] Land specified in the development plan may be subject to expropriation once the project proceeds.

Following the establishment of the development project's outline, a detailed plan known as a “project implementation plan” is formed by the assigned project implementer. The administrative agency receives detailed construction drawings. Thus, constructing the project can start after the agency gives its approval on such a detailed plan.[124] Generally, based on positive laws, the licenses and permissions from other laws required for the construction work are typically granted concurrently with the approval, and in most cases, this includes the grant of taking power.[125] Nonetheless, there are instances where the taking power is immediately

[119] See Soo-Jin Han, Shin-Young Park and Young-Ho Yoon, ‘An Analysis of the Effect of Regulations on Reconstruction in Seoul’ (2004) 20 Journal of the Architectural Institute of Korea 87, 88.

[120] E.g. Dosi mit jugeohwangyeongjeongbibeop [Act on The Improvement of Urban Areas and Residential Environments] art. 134 (S. Kor.).

[121] See Lim (n 118).

[122] See Kim, *Geonseolbeobui Ihae (Understanding of Construction and Urban Development Law)* (n 2) 388.

[123] E.g. Dosigaebalbeop [Urban Development Act] art. 9 para. 5, art. 80 subpara. 1 (S. Kor.).

[124] See Ji Hye Lee, ‘A Study on Rearrangement Project and Approval’ (JD Thesis, Seoul National University 2016) 109.

[125] E.g. Dosi mit jugeohwangyeongjeongbibeop [Act on The Improvement of Urban Areas and Residential Environments] art. 65 para. 2 (S. Kor.).

granted at the time the development plan is established, depending on the specifics of the positive law.[126] These variations simply reflect choices in legislative policy.

Depending on the project's characteristics, a third step may also be necessary in addition to the first two to distribute the newly developed land or buildings. For instance, the “distribution process” is crucial in the context of property owners' associations. Redistributing the project's results to the owners is required because they contribute to it with their properties. The distribution method and process—that is, determining the value of the owners' prior properties and allocating new properties—are included in the plan[127], which is referred to as a “management and disposal plan.”

5.4. Mitigation of External Effect

Large-scale development projects invariably have external effects like increased demand for infrastructure because they fundamentally alter the current land-use relationship. If the local government bears the exclusive responsibility for mitigating these external effects, the developer will profit without any liabilities or payments. Positive laws therefore require that developers pay for the external effects of their actions.

There exist two techniques.[128] First, developers can handle external effects on their own. Developers will pay for the construction of the required infrastructure and donate the local government ownership. It is known as “contributed acceptance,” and it is typically added in order for the development project to be approved. It is comparable to the British concept of “planning gain,” which is the imposition of duties in return for obtaining planning permission.[129] Developers must fulfil the requirement until the appropriate time in order to avoid the default scenario in which they are unable to transfer ownership to the buyers.[130] If the developers

[126] E.g. Dosigaebalbeop [Urban Development Act] art. 22 para. 3 (S. Kor.).

[127] Dosi mit jugeohwangyeongjeongbibeop [Act on The Improvement of Urban Areas and Residential Environments] art. 74 para. 1 (S. Kor.).

[128] For more detailed explanation, see Jeon, ‘Sustainable Development and Infrastructure: Legislative Failures of South Korea’s Infrastructure Rolling System’ (n 107). It is published in English.

[129] For the British-style planning gain, see Shelley Ross Saxer, ‘Planning Gain, Exactions, and Impact Fees: A Comparative Study of Planning Law in England, Wales, and the United States’ (2000) 32 Urban Lawyer 21, 23.

[130] Jeon, ‘Sustainable Development and Infrastructure: Legislative Failures of South Korea’s Infrastructure Rolling System’ (n 107) 97.

don't comply with these requirements, the approval itself might be revoked and the construction might not be able to be completed officially.

There are no clear guidelines or restrictions on statutory laws regarding such contributed acceptance.[131] The Supreme Court affirmed that if the requirement is not "substantially related" to the project, it will be void. For instance, the court decided that the requirement for the oil pipeline to be relocated is valid in the event that the construction of the expressway necessitates it.[132]

But "substantially relativeness" is too ambiguous, and defining precise standards remains controversial. Although the National Land Planning Act's secondary legislation stipulates a guideline of roughly 10 to 20 percent of developed space, this guideline is merely advisory and not legally binding.[133] The absence of a clear legal foundation for contributed acceptance has led some to criticise that administrative agencies have imposed conditions arbitrarily.[134]

The impact fee system is the second technique. According to the National Land Planning Act, local governments have the authority to designate an area for infrastructure levy and charge a fee to developers who intend to build more than 200 square metres within it. But because these fees can only be applied in the event that an infrastructure-levy area is pre-designated, local governments might be hesitant to do so because of resident resistance, and there aren't many examples of this.[135] On the other hand, other impact fee schemes, such as sewerage or school-land,[136] have been effective because governments can impose the fee without designating the target area, which is less affected by resistance from residents.

[131] Woo-Won Kang, 'A Study on the Contributed Acceptance as Urban Planning Laws Focused on Legal Principles' (2013) 26 Journal of the Korean Urban Management Association 195.

[132] Daebeobwon [S. Ct.], Feb. 12, 2009, 2005Da65500 (S. Kor.).

[133] See Dosi·gungwalligyehoeksuripjichim [Guidelines for establishing Urban and Gun management plans] art. 4-10-5, art. 4-10-6 (S. Kor.).

[134] Kang (n 131) 215.

[135] Jeon, 'Sustainable Development and Infrastructure: Legislative Failures of South Korea's Infrastructure Rolling System' (n 107) 108.

[136] E.g. Hakgyoyongji hwakbo deunge gwanhan teungnyebeop [Act on Special Cases Concerning The Procurement, etc. of School Sites] art. 5 (S. Kor.); Hasudobeop [Sewerage Act] art. 61 (S. Kor.).

6. Conclusion

The background and fundamental topics of Korea's planning law and its operation are examined in this article. It is impossible to have a thorough understanding of Korean planning law and Korean planning itself by merely coming across and analysing studies on specific individual issues if one does not comprehend whole structure of planning law system. It is hoped that this article will provide primary data in the context of comparative law research, which is currently steadily growing, to explain the Korean legal system.

The important characteristics of Korean planning law can be underscored as follows, drawing from the aforementioned analysis.

At first, the local government is primarily responsible for running the planning system, while the central government enacts laws regarding the foundation and content of urban planning. It is still possible and justified for the central government to intervene in certain local areas where there are strong policy decisions or national interests. The central government actively intervenes in long-term and national-level plans. Accordingly, Korea retains some elements of a centrally led planning system.

Second, urban planning is required for the entire nation and is not an option only for urbanised areas. Special-purpose areas, which have been designated across the nation, form the basis of Korean urban planning. Regardless of urbanisation, there are urban plans in Korea. However, due to variations in external effects or vested interests, the extent and methods of regulations differ depending on whether the land is urbanised.

Third, there are numerous development projects, and each project has its own set of laws. The developer must therefore select the appropriate law. For a private entity to become a project implementor, different laws have different requirements and processes. In Korea, associations of property owners carry out development projects in many cases, particularly for urban redevelopment and reconstruction projects. For the management and operating of these associations, numerous legal precedents and tools have been established.

Fourth, a special-purpose area with a binding force in Korea defines development capacity in an abstract way. As a result, the permission system is crucial in determining each lot's development possibility. Even in cases where the capacity designated by the special-purpose area is compiled to, permission is not guaranteed. Nonetheless, the administrative agency's discretion decreases with decreasing external effect, as in the case of an already urbanised area. However, defining a precise boundary for the degree of discretion remains debatable.

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