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Who Decides the Shape and Size of a Lot?

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WHO DECIDES THE SHAPE AND SIZE OF A LOT?

JONGBO KIM*

I. THE CONCEPT OF CITY PLANNING

Theoretically, city planning should be:

an administrative plan that (i) identifies the legal nature of the area subject to regulation and designates zoning for reasonable use of the land in the city; and that determines the (ii) city planning facilities (roads, parks, etc.); (iii) construction units (lot, residential area, etc.); (iv) permissibility of construction of each construction unit (classification of land, etc.); and (v) requirements for construction permits (floor area ratio, etc.).¹

However, such a concept cannot be properly drawn from the provisions of the *National Land Planning and Utilization Act*, because a long-time customary practice that recognized and operated the city planning as a factual measure rather than a normative one has been reflected in the law.

Although the concept of city planning is not included in the *National Land Planning and Utilization Act* as positive law, from the perspective of reasonable use of the land, the concept of the city planning should encompass administrative planning in similar Acts that regulate the right to use land.² On the other hand, even in the sense of administrative planning, the types of administrative planning with different purposes from city planning must be distinguished from the concept of city planning.

In this sense, city planning may be defined as “administrative planning that determines the use/service zone and infrastructure, establishes a construction unit, and decides the permissibility of construction and the requirements of the construction permit of each construction unit for the purposes of reasonable use of the land within the city.” The establishment of construction units, permissibility of construction, etc. constitutes the content of city planning, but some city planning does not include these components, depending on the types of city planning (use zoning, development restriction city planning, etc.).

II. MEANING OF CONSTRUCTION UNIT

In planning a new city, the map of city planning is completed by first determining the roads, which are city planning facilities, and then establishing each construction unit that is connected to such roads. A ‘construction unit’ means a unit of land, a basic unit on which

¹ Jongbo Kim, “Conflicts Between the Core Function of City Planning and the Cadastral System” (2006) 16 Admin. L.J.55.

² The concept of “Land Use Planning” is used similarly to the term city planning and is generally understood to be for the purpose of reasonable use of land. See Hae-woong You, *Land Public Law Theory*, (Korea: Samyoung Publishing. Co., 1994) at 253.

a construction permit may be issued. Thus, city planning determines the unit of land on which a building may be constructed and the unit of land determined as such constitutes the content of city planning as a construction unit.

Once the construction unit is established as the content of the city planning, permission for construction activities on such unit may be determined and once the permissibility of construction is recognised, requirements for construction permits may be determined. Of course, from a practical point of view, the establishment of the construction unit and the determination of the permissibility of construction are accomplished almost simultaneously, and hence these two are not always differentiated in practice, although they remain ideologically differentiated.

When a building is to be constructed, a certain site for the building has to be determined as a precondition to a construction permit. A site determined as such becomes the basis for the calculation of a building-to-land ratio and floor-area ratio, and serves the function of determining the requirements for areas adjacent to roads, building lines, etc. The unit of land that becomes the basis for the construction permit is called the 'construction unit' and the construction unit normally exists even before the application for the construction permit.

The term 'lot' is used as a general term to designate land. However, the concept of a lot is a land unit that has been formed to respect the pre-existing land ownership pursuant to the *Cadastral Act*, not by taking into account the construction unit under public law. For the purpose of the cadastral system, the concept of a lot under the *Cadastral Act* is to provide foundations for civil transactions, and is merely one of the land units that constitute the basis of taxation.

Within the meaning of the public law, establishing a construction unit that becomes the basis of the construction permit is a core function of city planning. A 'unit plan' that is established in the process of developing a new city creates an individual construction unit, and such construction unit operates as the basis of the construction permit.

However, a construction unit under public law to issue the construction permit will not exist if the city planning fails actively to undertake the function of establishing the construction unit, as in the case of use zoning city planning in existing towns. Then the *Building Act* that is responsible for the construction permit naturally creates a construction unit on its own, or determines a construction unit based on the most appropriate land unit among the pre-existing land units.

Under the current system, the concept of a 'lot' under the *Cadastral Act* is understood as the most representative unit of land. The reason that a lot under the *Cadastral Act* is mistakenly understood as designating the general unit of land is because the *Building Act* relies on the concept of a 'lot' under the *Cadastral Act* in a situation where no unique construction unit is established by city planning. Therefore, the concept of lot means the basic unit of land ownership, and sometimes means the basic unit (construction unit) for constructing a building or a higher concept that encompasses both of these concepts to mean a general land unit.

III. *BUILDING ACT* AND CONSTRUCTION UNITS

The term ‘building site’ under the *Building Act* is irrelevant to the classification of land under the *Cadastral Act*, but it means a land unit that is established in the construction permit, and a construction unit to determine the requirements of the construction permit. The term ‘building site’ as the classification of land under the *Cadastral Act*, and the term ‘building site’ as the basis for the construction permit under the *Building Act* appear identical, but these two have completely different meanings. This is because whereas the former is the classification of land under the *Cadastral Act*, which is a concept regarding the issue of permissibility of construction, the latter relates to the character of the construction unit under the public law.

In the past, the *Building Act* defined ‘building site’ under that Act as “a piece of land that has one building or two or more buildings that are inseparable for usage.” This maintained a relative distance from the concept of a lot under the *Cadastral Act*.³ Thereafter, in the process of amending the *Building Act*, the term ‘lot under the *Cadastral Act*’ was adopted in the concept of ‘building site’,⁴ and ‘lot’ under the *Cadastral Act* has been awarded an important position in the construction unit.

The current *Building Act* relies on the *Cadastral Act* for the basic unit of the construction permit in principle, but at the same time provides that it itself can establish the construction unit.⁵ Most importantly, the *Building Act* defines a ‘building site’ as “a land divided into each lot in accordance with the *Cadastral Act*.” Thus, as the *Building Act*, which deals with all permits regarding buildings, considers a ‘lot’ under the *Cadastral Act* as the construction unit in principle, a ‘lot’ under the *Cadastral Act* fulfils a strong function in public law, which is more than undertaking the function as the basic unit of a civil transaction.

In addition, the *Building Act* provides an exception to the supplement, stating that “regarding the land determined by the *Presidential Decree*, two (2) or more lots may become one (1) building site or part of one (1) or more lot may become one (1) building site.” Through this provision, the *Building Act* authorises the holder of the construction permit to determine an independent construction unit and this may become a supplemental construction unit to lot under the *Cadastral Act*.

Thus, as the concept of ‘building site’ under the *Building Act* considers lot under the *Cadastral Act* as the construction unit in principle, and in part allows the *Building Act* itself to create lots and other construction units, construction units under public law are often established by both the *Cadastral Act* and the *Building Act*. This is why the principal function of city planning is undertaken by ‘lots’ under the *Cadastral Act* and ‘building sites’ under the *Building Act*, rather than by city planning in establishing a construction unit under the public law.

³ See *Building Act 1962*, s. 2, para. 1.

⁴ *Amended Building Act 1980*.

⁵ *Building Act*, s. 2.

IV. UNIT PLAN AND CONSTRUCTION UNIT

The *National Land Planning and Utilization Act* anticipated only two (2) types of city planning at the time of its introduction. One is ‘use zoning city planning’ that restricts the requirement of the construction permit by dividing the whole city into four (4) different use/service zones; and the other is ‘city planning facilities planning’ for establishing city planning facilities such as roads, etc. Subsequently, ‘green belt city planning’ was implemented in 1971, and its ‘specific plan,’ which is still used today, was adopted in 1991. However, there is no city planning to determine the construction unit among these four (4) types of major city planning. There are simply some provisions in the ‘specific plan’ and the current ‘unit plan’ which are relevant in part to the establishment of the construction unit.

The ‘specific plan’ system that was implemented by the *Urban Planning Act* in 1991, and subsequently implemented in the ‘unit plan’ system, was adopted in the amended *Urban Planning Act* in 2000 to cover small planning areas. There are also detailed city planning rules that determine the requirements of the construction permit of each individual lot. The original provisions with respect to ‘specific plans’ explicitly declared that a specific plan may contain “the scale and the development plan of the households and blocks”.⁶ If this concept of ‘block’ is construed broadly, then it may be interpreted as establishing the construction unit, and therefore it would be possible to construe this as meaning that even without general city planning, the ‘specific plan’ (or currently the ‘unit plan’) may independently establish the construction unit.

However, in the process of amending the *Urban Planning Act* of 2000, the definition of block was restricted to mean “a piece of land partitioned for planned development or maintenance”.⁷ The term ‘block’ has been omitted, and was changed into the phrase “a piece of land partitioned for planned development or maintenance” in the *National Land Planning and Utilization Act*, which was re-enacted in 2003. Hence, the concept of ‘block’ that existed in the early days has been discoloured to mean a mere part of a development project site which binds several lots under the current law.

Regardless of the insufficiency of applicable legislation, a ‘unit plan’ perfectly determines the new construction unit for developing new cities, and imposes a strong influence in determining the permissibility of construction per construction unit. Also, a unit plan that has been established in existing towns with indeterminate lots has actually established construction units that are different from the existing lots. However, a construction unit which, through a unit plan, has been established differently from a lot in existing towns can easily be dealt with through the ease of city planning.⁸

V. CONCLUSION

A ‘lot’ under the *Cadastral Act* fulfils the function of determining the first basis of taxation or the basic unit of civil transactions. However, the term ‘lot’ has also undertaken

⁶ *Urban Planning Act 1991*, s. 20, para. 2, sub-para. 3.

⁷ Appearing in parenthesis in the *Urban Planning Act 2000*, s. 44, para. 1, sub-para 3.

⁸ *Building Act*, s. 5. See also the relevant case law *Samgak Apartment Case 2006DU1227*, decision rendered by the Supreme Court of Korea (9 November 2006) (Inconsistency between the construction unit and lot under a Unit Plan).

a function as the construction unit under public law by reason of the gap in city planning regulations and through the provisions regarding 'building sites' under the *Building Act*. To that extent, it has a dual character. Apart from the function of 'lot' as the basis of civil transactions, it may be construed that the essence of the additionally-imposed public law function of the lot under the *Cadastral Act* in the process of operating the *Building Act* and the *Urban Planning Act* is that of city planning. Thus, 'lot' under the *Cadastral Act* not only takes on a pure civil function, but also has the meaning of the construction unit under public law; and therefore, it is incorrect to assert that the division or merger etc of lots is regulated only by the civil law.

The explanation that the city planning and the cadastral system are in a conflicting relationship is from the perspective that the city planning and the cadastral system are in conflict in a narrow sense. However, if we assume city planning in a broad sense, it is possible to consider a cadastral system which has undertaken the function of the city planning in reality, as a component of city planning. The cadastral system has partially supplemented the function of establishing a construction unit that should have been undertaken by city planning and to that extent, lot under the *Cadastral Act* was a component of city planning. However, even if lot under the *Cadastral Act* has undertaken the function of city planning, it should be noted that city planning in a narrow sense has not overcome, but has become subordinate to lot under the *Cadastral Act*.