The Philosophy and Reality of the City Planning Law

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1. Introduction

The current City Planning Law was enacted by the 58th Diet (National Parliament) on May 17, 1968, promulgated as Law No.100 on June 15, 1968, and came into effect on June 14, 1969. This year 1979 marks the tenth anniversary of the law's enactment. Since it has become the basis of city planning as an existing law, its problems and evaluations have to a certain extent been settled. With the enactment of the new postwar Constitution, various types of democratic legislation were enacted, and the format was changed from the katakana (Japanese original character) to the softer hiragana (the other type of Japanese original character), a major change from the prewar legal format. During this period, there were many legislative acts and amendments related to Machizukuri (town making), including the "Building Standards Law" in 1950, which completely revised the former Urban Building Law; the new "Road Law" in 1953; the "Land Readjustment Law" in 1954; the "Urban Park Law" in 1956; the "Sewerage Law" in 1958; and other important acts one after another.

As far as the "City Planning Law" is concerned, "Special City Planning Law" used only for reconstruction after the war was enacted in 1946. And its complete revision was done 23 years after the war. The "City Planning Law," which should have been the basis for Machizukuri, was overdue for revision that indicated the complexity and difficulty of urban planning. A more in-depth examination of the reasons why the old law with its strong government-regulated character survived for 23 years after the war reveals that the local autonomy recognized by the new Constitution had not substantially matured. The role of the old City Planning Law, while purporting to be broad in scope, was largely taken away by other laws and projects. It was limited to procedural legal aspects and lacking in substantive city planning content. This shows the fragility of urban planning in Japan.

2. The Actual State of the old City Planning Law

Before looking at the enactment of the new law, we examine the philosophy and reality of the old law. The old City Planning Law was enacted in 1919 and went into effect the following year, 1920. The Tokyo City and District Revision Ordinance enacted in 1888 was intended for the development of the imperial capital, and it was being applied to the surrounding areas of Tokyo and other large cities as well. In response to the rapid urbanization of the time, Minister of the Interior Shinpei Goto (1857-1929) stressed the need for more holistic approach to city planning. In 1918, the City Planning Commission was established for the first time and the law was enacted the following year.

Despite the efforts of the pioneers, things did not always go as expected from the beginning. Originally, city planning was created to function and organize the city in a more organic and comprehensive manner, overcoming the sectionalism of each administrative body and the private egoism that clings to individual interests. However, such comprehensive science was not well understood, and even within the Public Works Bureau of the Ministry of the Interior, there were voices saying that there was no need for city planning because the respective laws for rivers, canals, roads, and water and sewerage systems were already in place, and each had its own job to do. The Ministry of Finance, which was responsible of financial resources, was extremely unaware of the importance of the bill.

On the crucial issue of financial resources, important parts of the bill were left out. Special measures of the law that allowed public bodies to levy land value-increase tax, improvement tax, and inter-regional land tax to implement city planning projects, and to levy taxes beyond the scope of local tax restrictions, was largely deleted or revised, resulting in the loss of independent financial resources.

Especially, the city lost the chance to rationally solve the problem of urban planning by taxing the increase in land prices. Furthermore, government subsidies for urban planning projects were also vertically divided, with the government officials simply saying that it was enough to subsidize individual roads, ports, water supply and sewage systems, etc., and that urban planning is planning, not implementation. Although the City Planning Law is the basic law for urban development, it was not positioned as a basic law for urban development, but was merely a law that was concurrent with other construction-related laws.

More importantly, who decides urban planning? Article 3 of the former law stated, "City planning, city planning projects, and city planning projects to be executed annually shall be decided by the competent minister after deliberation by the City Planning Council and approved by the Cabinet." The city was not allowed to participate in the planning process at all, but was merely entrusted with the role of executing the decided projects as a subcontractor for the national government. The planners of the time, while recognizing the need for comprehensive planning, also believed that if the planning was left to the municipalities, the plans would fluctuate and permanence could not be maintained, thus limiting the autonomous function by the national government.

This was astutely pointed out by Charles Austin Beard (1874-1948), who was invited to Japan by Shinpei Goto, mayor of Tokyo, immediately after the Great Kanto Earthquake (1923). He pointed out that "the authority to make plans and implement them is in the hands of other agencies. The Minister of the Interior has full decision-making authority. According to the law, the mayor must implement a plan" that he did not participate in making, even if he disagrees with it or does not think it is a wise plan.[1] Far more important, the lawmakers apparently did not like to give the city government broad authority over city planning. Either they did not trust the city authorities, or they wanted to keep municipal authority in the hands of the central government. In the end, they were caught in a dilemma and ended up after attempting two tasks simultaneously, accomplishing neither.[2]

Furthermore, Beard stated, "Within the current city limits of Tokyo, there are at least seven administrative bodies that perform important administrative functions. Any minister of the central government who wishes to construct a building within the city limits may do so without the permission of the City of Tokyo"[3]. In fact, this situation has continued to the present day, even after the last war, to make comprehensive city planning impossible. Even the Minister of the Interior, who had the authority to make decisions, was not really in charge of city planning. The authority was scattered, and the city planning committee, which was supposed to unify the planning process, was completely ineffective. Since the functions of the municipality were hardly recognized, there was no room for the citizens, who should be the protagonists of the city, to make an appearance.[4]

3. Philosophy of the new City Planning Law

The old City Planning Law could not be used to plan city planning in an organic and unified manner. Even after the war, local autonomy was recognized in the Constitution, new democratic local governments were born, and individual laws were created for planning in towns. From the 1950s onward, each municipality began to formulate comprehensive plans and long-term plans, without being bound by the limited framework of the City Planning Law. Although these comprehensive and long-term plans were not effective in many respects, they were transforming the previously ineffective city planning under the City Planning Law into the situation that the city planning bureau became more like a vertically divided institution given responsible for other areas such as land readjustment projects.

However, the rapid growth of the 1950s brought about a new wave of urbanization, which resulted in many urban problems such as confusion over land use and inadequate provision of infrastructures. In response, the issue of a complete revision of the City Planning Law was finally raised, and the law was passed in 1968.

The basic motivation for the new City Planning Law was to establish land use planning in urban areas and to redistribute authority between the national and local governments. In particular, the establishment of land use planning was responding to the 6th Report of the Housing Land Council (March 24, 1967)[5], which sharply addressed the problems of skyrocketing land prices, land use confusion, and the deterioration of the urban environment due to unregulated urbanization. Countering the phenomenon of sprawl caused by disorganized development, the report called for the establishment of a land use plan, “not just a master plan, but a plan with legal regulatory power to improve urban space in the actual urban area.”[6] The report called for the establishment of four categories: already built-up area, urbanization promote area, urbanization control area, and conservation area. And an introduction of planning permission system and program for the development of infrastructures. As the principle of responsibility sharing, it addressed to correct the social injustice that most of the development benefits associated with infrastructures development belong to landowners.

In response to this report, the four regional classifications were simplified into two, urbanization zones and urbanization control zones, but the so-called "demarcation" of these zones and the introduction of a development permit system were epoch-making events in land use planning in Japan. This system stopped unregulated development that was based on arbitrary and uncontrolled plans, and made possible the orderly formation of cities and the improvement of urban environments.

Regarding the distribution of administrative affairs, another pillar of the city planning system, it is said that "there is a latent strategic theory that gives substance to the formal autonomy of municipalities and makes them the opportunity to become a true municipality.[7]” The new City Planning Law "reallocated authority to two levels, prefectures and municipalities, with the aim of simultaneously satisfying both the essentials of municipal autonomy and the essentials of wide-area city planning"[8].

Compared to the former law, which was extremely abstract, difficult to understand, and lacking in specifics, the new law is an epoch-making revision. The Article 2 of the Basic Principles states that "rational use of land should be promoted under appropriate restrictions "[9] as a concrete means of realizing these principles, while also calling for harmony with agriculture and forestry, healthy and cultural urban life, and a functional urban lifestyle. This is a significant step forward in focusing on land use and seeking an effective means of city planning, though it is very late to introduce.

In addition, “In practice, even under the old law, the municipalities would formulate a draft plan and the Minister of Construction would make decisions based on the proposal or informal offer of the plan. The national government would provide wide-area coordination and technical guidance in response. This is said to be reasonable from a practical standpoint.”[10] This is another major step forward in bringing responsible urban planning closer to the citizens in a comprehensive manner.

4. Problems with the new City Planning Law at the legislative stage

Although the new City Planning Law contains some fundamental changes as mentioned above, the fatal flaws that have plagued Japanese urban planning remain since the old law. The first of these is the lack of comprehensiveness, which should naturally be the essence of the original city planning philosophy. It is necessary to view the city as an organism, and to add appropriate measures at each point in time, while looking to the future. The plan must be effective. However, as has already been pointed out, the power of local governments, which should be responsible for substantive comprehensive planning, is weak. City planning has so far been understood only as an abstract idea, or as a legal procedure for something that has already been decided on in other areas.

Compared to the former law, the new law is certainly more systematically organized, and the contents of the plan are more concrete. In addition, the full introduction of specific measures, such as the establishment of urbanization control zones and development permits, was a major reform.

In terms of systematization, the old law only stated that “If an area or district (in terms of zoning) is

to be designated, changed, or abolished in accordance with the Building Standards Law within a city planning area, it shall be done so as a facility of city planning."[11] It did not specify the contents at all. The new Law specifically enumerates the names of the local zoning plan. Except this local zoning plan under the Building Standards Law, the old law only allowed for the designation of scenic areas and harbor areas, while the new law includes traditional buildings preservation districts under the Cultural Properties Protection Law, special historic preservation districts under the Ancient Capital Preservation Law, and green spaces under the Greenery Production Land Law. However, even though the names are systematically listed, no one is fully responsible for integrating them, and in practice, they are only defined vertically by the corresponding organizations of each ministry and agency, and through the formality of city planning decisions as a procedure. While the law may have formal consistency, it still lacks the substantive comprehensiveness of city planning.

For cities, the establishment of industrial zones under the Metropolitan Industrial Limitation Law and the establishment of relocation promotion and guidance zones under the Industrial Reallocation Law are separate from city planning decisions. They do not adequately reflect the opinions of city governments, which are the essence of city planning. This means that they are determined on a completely different level from city planning decisions, without fully reflecting the opinions of the local governments.

Furthermore, at the project stage, the method, content, and timing of projects are determined individually by the ministries and bureaus that hold the subsidies, and some entities, such as national railways, have direct budgets to carry out projects.

In effect, rather than becoming a comprehensive law that serves as the basis for Machizukuri, it remains a law supervised by the Urban Bureau of the Ministry of Construction just like other laws. Nevertheless, it can be said that the formal systematics, if not the effectiveness, of the law was well integrated into the laws of the various ministries and agencies. In addition, as for the planners of the old law, they made considerable efforts to provide public bodies with financial resources for voluntary city planning projects, although they did not achieve this. The new law leaves the financial resources for projects to the existing individual subsidy system, and seems to have given up on the financial resources for comprehensive projects for the region from the very beginning. In 1968, when the new City Planning Law was enacted, the government official responded at a meeting of the House of Representatives Construction Committee: "At present, there are five-year plans for roads, rivers, and sewerages. If we consider the growth of the current five-year plan as it is, we can almost cover the public investment in the urbanization area from a macro perspective."[12] He admitted from the outset that individual plans were necessary. Comprehensive urban planning projects require schools, parks, daycare centers, waste disposal facilities, railroads, buses, and many other things. They should not be planned by individual ministries and bureaus, but the investment must be made at the appropriate time for each district, which naturally requires funding according to local plans. In addition, the idea of allocating land value-added tax to city planning projects, as in the former bill, is not only a matter of financial resources, but also includes the idea of returning individual profits to the public for the creation of an external economy through city planning projects. It is a rational system to utilize the profits from city planning for environmental improvement. The new law, however, does not discuss these issues at all.

The government, however, stated, "In order to accomplish this project, it is necessary to secure financial resources, and we are determined to make our best efforts to move forward with this project. As to what specific financial resources we should immediately provide, I must confess that I do not have any concrete ideas...but I will do my best." The answer was extremely abstract and vague, and at last the idea of a financial resource for comprehensive city planning projects did not come up at all. If the financial resources are controlled by individual ministries and bureaus, they cannot become adequate and timely, nor will they be able to be used for comprehensive projects such as the creation of a new environment by combining various projects.

5. The Philosophy of the City Planning Law and Issues

Although the law itself is already deficient in terms of its essential comprehensiveness, the rationalization of land use and the decentralization of planning authority to the municipal level can be evaluated as an attempt of city planning. The city planning has not actually been implemented according to its philosophy due to various issues.

1) Problems with Planning Decision Makers and Planning Entities

The new law designates prefectural governors and municipalities as decision makers (Article 15). This is an extremely important reform from the standpoint of making city planning an inherently autonomous task and ensuring the comprehensive nature of the region. Here, for the first time, a major shift was made from city planning as a national task to city planning for cities. However, a careful reading of the law reveals that most of the important parts, including urbanization zones and urbanization control zones, are determined by prefectural governors. The governor also determines the zoning of almost all urban areas, including metropolitan areas, new industrial cities, industrial special zones, and cities with more than 250,000 inhabitants. Almost all public facilities as wide-area or fundamental urban infrastructures, including national roads, prefectural roads, and roads over 16 meters in width, are determined by the governor. The rest of other minor infrastructures are needless to go through the process of city planning decisions.

Parks and open spaces over 4 hectares were once classified as the governor's decision according to Article 9, Paragraph 2, Item 5 of the Cabinet Order. In addition, Article 3 of the Supplementary Provisions stipulates that, notwithstanding this Cabinet Order, those over 1 hectare in area are, for the time being, to be regarded as fundamental public facilities. In other words, it needs a decision by the governor. In this case, the municipalities' decisions are meaningless, and all decisions are made by the governor. The municipalities, which are the basic local governments, have the direct relationship with the citizens, understand specific local circumstances, and should be able to demonstrate their comprehensiveness, are at the center of planning.[14] Contrarily, municipalities lose their positions as decision-maker by the Cabinet Order, despite the new law formalized their role. Furthermore, the governor, who is the decision-maker, is explicitly mentioned in the Diet answering that he is an organ of the national government. In effect, it is still a decision of the national government.

The distrust to local governments does not end here. While Article 15 of the law makes the governor and municipalities the decision-making bodies, Article 18, Paragraph 3 of the law states that certain items must be approved by the Minister of Construction. The scope of the decision was left to a Cabinet order, which may not have been clear enough at the stage of the deliberation of the bill, but the Cabinet order issued covers almost all cities in Japan: urban areas in the Tokyo metropolitan area, Kinki area, and Chubu area, suburban development areas, urban development areas, new industrial city areas, special industrial development areas, and cities with populations of 100,000 or more. These areas must be approved in advance by the Minister of Construction. In the deliberations at the Diet, there were comments such as, "If an issue to cover several prefectures arises, it requires the approval of the minister. Municipality should be the main actor to make decisions. The purpose of this arrangement is not to impose the will of the national government."[16]

However, the process is the same as it was under the old law. It is required to be checked and agreed upon in advance by the Ministry of Construction officials. All matters from municipalities are due to be approved on a rotating basis, subject to the opinions of various divisions within the Ministry. In addition, since the government holds all project permissions and subsidies, municipalities are obliged to obtain the full approval of the government, which is something they have been accustomed to since the days of the old law. Considering this kind of situation, this is not a realization of the principles of the new law. While the governor is responsible for making decisions and the Ministry of Construction has actual authority, only the final responsibility is transferred to the municipalities. This was not the original intent.

There may be various reasons for this, such as the fact that the new law has just been enacted and local governments are not yet accustomed to it, or that they lack sufficient knowledge and wisdom. Nevertheless, with the Local Autonomy Law 30 years old now and the new City Planning Law 10 years old, we should return to the original philosophy. The government's permission should be limited to a passive check, and the municipalities, as the original planning entities, should be nurtured. The process may have already become too entrenched as a procedure, so it is necessary to return to the original principles in practice.

The most difficult part of the decision-making process is the relationship with citizens. Solving this problem, the municipalities closest to the citizens must function as responsible planning and coordinating entities, or effective urban planning will become difficult.

2) The Problem of Demarcation

The "demarcation" of urbanization zones and urbanization control zones based on the report of the Housing Land Council (national committee) was an epoch-making event in the history of land use in Japan. Until then, land use was governed by various laws, but in principle, land development and land use were free, and sprawl was carried out arbitrarily by individuals and companies. This system can be said to be the first to aim at effective land use in earnest.

This system becomes effective when policies related to basic urban structure, land policy including taxation and land prices, agricultural policy, and the unification of planning bodies and financial resources for the development of urban infrastructures are developed concurrently and comprehensively. If these are not integrated comprehensively among the ministries, it will be very difficult to make full use of the law.

After all, it is certainly an epoch-making system compared to previous land use laws. If so, it can be used quite effectively if it is focused on orderly land use to prevent sprawl, which is clearly the purpose of the law. In the case of Yokohama City, the City Planning Law was utilized with this intention clearly stated from the beginning, as stated in the report of the Housing Land Council. The city authority has adopted a policy of restricting the expansion of urbanization zones and, in principle, designating all other areas as urbanization control zones, except existing urban areas, areas obtained planning permission, and areas currently undergoing planned development. In addition, the city designated an original policy of agriculture enhance districts in urbanization control zones. The city addressed that it would utilize the system of development permits for planned developments in urbanization control zones.

This froze areas where sprawl was partially underway and prevented further progression. And it gave more positive effects by establishing various systems such as citizens' forests, natural forest preservation, and citizens' farms, in addition to agricultural enhance districts. As for Kohoku New Town, it has been systematically urbanized with rivers, streets, railroads, and other key infrastructures being developed.

From the nationwide perspective, the expansion of urbanization zones has been done in a rather haphazard manner. If there were no differences in taxation, landowners would naturally prefer to own land in urbanization zones. It is because the issue of taxation was considered separately, and appropriate measures for agriculture were not added to the urbanization control zones. In other words, the policy of the Ministry of Construction alone, no matter how excellent, is not sufficient as a tool for demarcation.

In the process of deliberation on the bill, the government had already stated that agricultural land in an urbanization zone would not be taxed as residential use immediately after the land was classified into that zone. In 1973, the local taxation system was revised in a regressive manner so that farmland in urbanized areas in metropolitan areas would be taxed at the same level as residential land. In 1976, the Local Tax Law was partially revised to allow for a reduction in taxation on farmland in urbanized

areas. In parallel with this, from 1973 onward, each municipality developed its own system for the preservation of agricultural land in response to the gradual implementation process, and most agricultural land was spared from being taxed like residential land in effect.

In the absence of planning in urban areas, the introduction of residential land taxation may accelerate the deterioration of its environment by the progression of mini-housing development and sprawl. In practice, the conditions for taxation should be clarified from the beginning of the demarcation, and if they vary too much depending on various conditions, it would lack fairness and credibility.

From the beginning of the demarcation process, the Ministry of Construction's policy was to define (1) area with a population of 5,000 more in density of 40 persons/ha higher, (2) area with more than one third of its perimeter bordering on uses of residence, school, city park, office, factory, etc., and (3) area as already urbanized surrounded by less than one kilo square meters with such uses. (4) areas that is currently being urbanized, and where more than 3 houses/ha have been newly built or more than 10% of the land has been converted to residential land during the past 3 years.[17]

In addition to the above, there are many other requirements for the area to be systematically urbanized. This means that the entire city of Yokohama is belong to urbanization zone. In particular, "areas that are currently undergoing urbanization" are clearly in the process of sprawl and should be frozen to stop the ongoing cancer, and among "urbanized areas," such sprawl should be stopped.

In other words, although urbanization zones are, in principle, where urbanization is orderly planned and public facilities are prepared, they are zones where sprawl will occur because the land can be used freely. Therefore, it is precisely in such areas that sprawl must be prevented, but the Ministry of Construction's policy rather allows sprawl to occur.

Except for fully built-up areas, developments with planning permission obtained, and completely preserved natural lands, all other areas should be designated as urbanization control zones. Then the development permit system should be utilized to control sprawl while considering planned developments. From this point of view, policies such as the urbanization control zone covering 20 hectares or more and the planning permission for the new development within the urbanization control zones must be 20 hectares or more are also problematic. Regarding the urban sprawl areas in urbanization zones where the cancer has progressed, we should proceed even small areas to be designated as urbanization control zones being surrounded by urbanization zones, rather than leaving those farming lands alone with tax benefits, among the sprawl areas. And we should grant planning permission if those areas have enough planning conditions, as well. In addition, since many development permits were granted in a rush at the time of the demarcation, it distorted its principles and had many negative repercussions later.

3) Problems with Development Permits

It has already been mentioned that demarcation of planning zones and the system of development permits should be mobilized as an integral part. The term "land" essentially has a completely different meaning from the raw land and residential land incorporated into an urban area. For obtaining citizenship as an urbanized area, the development permit system should have been fully utilized.

The law in the urbanization zone has allowed those with less than one hectare to go unchecked, thus intensifying the sprawl of mini-development in the urban area. In addition, many state institutions are exempted from the development permit system, but when preserving the overall environment in the area, even the state or equivalent legal entities would not be an exception. It is regrettable that private residential areas require a permit, but public institutions do not. Public organizations are no different from private organizations which cannot have a comprehensive perspective or policies on urban development.

Furthermore, the law makes exceptions for development permission in urbanization control zones, and

Article 34, Item 10 (b) allows development "that is not likely to promote urbanization in the development area and that is deemed difficult or extremely inappropriate to be carried out in the urbanization area" to be permitted after the Development Review Committee has deliberated on the matter. The abstract wording of this provision is not clear. This abstract expression is neither on a government ordinance nor a ministerial ordinance, but just a permit policy, which includes housing for the second and third sons of farmers who are splitting up their families. This may be a kind of compromise, but it will lead to sprawl even in the urbanization control zones, which may have a negative impact on the future, and it also raises issues of fairness.

In addition to this, building restrictions are imposed in urbanization control zones, but the 1975 amendment allows for the lifting of building restrictions on "land in an area that is recognized as constituting a daily living area integrated with the urbanization area and is generally comprised of a series of 50 or more buildings, based on the natural and social conditions. Simply put, this is based on the theory that one cannot build in a similar area while one can freely build in an urbanized area right next to it, and that they should be the same.

However, in this seemingly innocuous amendment, there is in fact a divergence between the fundamental philosophy of land use and reality. It is often argued strange to have restrictions on building and development across a single road, but land use is a system based on the spirit of creating high-density residential areas on one side and completely unbuilt open space or farmland on the other, separated by a single road or abstract line on a drawing. This is the spirit of the system. This allows for a rational arrangement of the land by utilizing it once and for all. If we try to make it the same as the one next to it, we will end up with an unending sprawl.

Land use means to make a clear distinction between the right and the left. This is how the land can be utilized in a viable manner. However, this should be accompanied by a coherent land policy, including a tax system, and, as I have mentioned, land use must be a comprehensive policy, and in this respect, the new City Planning Law, despite its planners' willingness, has not received significant support.

6. Conclusion: Issues of Municipalities and Citizens

I have already pointed out several issues why the principles of the new City Planning Law have not always been applied well. There are many points that need to be mentioned again, such as the issue of citizen participation, but since there is not enough space, please refer to the separate article.[19]

In any case, for the City Planning Law to be effective, it is necessary to create a better urban environment by making full use of comprehensive means including land use, under the leadership of local governments composed by citizens.

This requires comprehensive planning and its effective implementation at all costs. The legal and operational shortcomings to achieve this have already been mentioned, but it is not right to lay all the responsibility on these shortcomings.

In fact, we have made a certain amount of progress in terms of the principles. While it is necessary to make efforts to use these principles in the future, local governments are expected to have the willingness and the power to create an urban environment by ensuring such effective comprehensiveness. Urban planning is an important task for city governments, and as a comprehensive plan rooted in the local community, there is no one else who can do it better than the city governments themselves. If this is the case, the local governments should first wake up and do what they can to restore comprehensiveness, and from there, they should bring reality closer to the ideals of the law and enhance its content. Citizens should also consider land use and town planning as mutual rules from the standpoint of creating their own environment under the joint responsibility of all citizens, rather than merely making demands.[20]

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