



THE LEGAL PROBLEMS CONCERNING LAND USE PLANNING  
FOR RETAIL AND WHOLESALE BUSINESS

BY  
MR. SORAYUTH SUVARNAPHOL

AN INDEPENDENT STUDY SUBMITTED IN  
PARTIAL FULFILLMENT OF THE REQUIREMENT  
FOR THE DEGREE OF MASTER OF LAWS  
(BUSINESS LAW)

GRADUATE SCHOOL OF LAW  
ASSUMPTION UNIVERSITY

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Author : Mr. Sorayuth Suvarnaphol  
Major : Business Law (English Program)  
Advisor : Assoc.Prof. Dr. Phoonsakdi Vaisamruat


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Faculty of Law, Assumption University approves this Independent Study as the partial fulfillment of the requirement for the Degree Master of Laws.

  
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### ABSTRACT

This study examines the Land Use Planning for retail and wholesale business to describe The Legal Problems concerning of Conflict of Law between announcement of Department of Public Works and Town & Country Planning on Ministerial regulations of Sa-kaew community.

From the Research, it is found that the discretion of The Department of Public Works and Town & Country Planning which is that the principle town planning of Sa-kaew is enforced after the announcement of Public Works and Town Planning Department, rendering to not expiring of the announcement; this should be incorrect. It is because the said announcement is a regulation of property utilization for the purpose of town planning in the areas of Sa-kaew Province which is a kind of town planning being provided in the ministerial regulation regarding enforcing the principle town plan in Sa-kaew 2547, as soon as the ministerial regulation is enforced, the announcement expires in the ministerial regulation promulgation areas. Another observation is that announcement should have low rank and the ministerial regulation, and the ministerial regulation is promulgated, the stipulations of the announcement should be included in the ministerial regulation which thus can be observed if there is no prohibition from doing so, and no action will contradict the ministerial regulation.

This study examines and surveys the problem and recommend the way to improve problem of Conflict of law and relevant legislation by separate retail and wholesale business from The Building Control Act.

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Needless to say, I am solely responsible for all error that remains. Then I owe much to the professionalism and encouragement of several members of Siam city law offices ltd., of whom Mr. Chavalit Uttasart and Mr. Vira Kammee were in the front line of operation in bringing this report to fruition.

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# Chapter 1

## Introduction

### 1.1 Historical Background

#### 1.1.1 Town Planning Law

King Chulalongkorn the Great (Rama V) is the first to employ modern town planning technology in Siam

I intend to write about town planning, which was first employed by King Rama V more than 50 years ago. His Majesty first visited the neighbouring countries to survey their ways of administration, then His Majesty visited Europe twice where he was most interested in the ways the foreign countries planned their towns. Those who have read the book 'Far Away From Home', will find His Majesty's brilliance in picturing his experience in words and understanding the rationale behind the foreign technologies. It was told that His Majesty's diary which he used to jot down about town planning was full of many valuable pictures and short notes. And it appeared that no one in His Majesty's company seemed to understand what and for what he was doing, and what it meant by 'town planning'.

King Chulalongkorn's master pieces of town planning which are well known are the constructions of Ratchadamneun Road, Wat Benchamabopit, and the Dusit Garden Royal Palace; in fact His Majesty had built many other roads as well. If we put side by side the maps of Bangkok before His Majesty's Accession and latter period of his reign, we will be amazed that most of the roads and paths in Bangkok are works of King Chulalongkorn. A good example for today's town planners is Yaowaratch Road which appeared after a big fire in Sempeng area; Yaowaratch was the most difficult to plan, it was originally a small road and the canal running by curved and zig-zagged like snake crawling, but the commuters

on the road never feel those curves and zig-zags. Also the scenic way the buildings on both sides of Yaowaratch Road appear can never be seen twice on other roads of Bangkok. If I was to elaborate the details of town planning in Bangkok, it would be long taking hours to finish and would be more suitable to audience of graduating architecture students, and it would be too much for the paper. So I would suspense it here for the time being; what I want to say here is that King Chulalongkorn was the first Thai to utilize modern science of town planning in Thailand.

Aside from Bangkok, His Majesty also planned Phetchaburi City which was a frequent destination of his. The geography of Phetchaburi City is decorated with many mountains and is very appealing to town planners. It is no surprise that His Majesty chose to plan and develop this city before others. Almost all of the roads in Phetchaburi city were decided by the King; it is a great shame that the complete original town plan devised by His Majesty is not left to be seen. But from the way the roads are laid and the surrounding geography, it suggests that the King was person well versed of modern science of town planning; the city was a monument of His Majesty's genius and a reminder for today's town planners to follow his foot prints in accomplishing successful town planning in their own provinces and other provinces which need town planning in the future.

### **1.1.2 History of Promulgation of Town Planning and Rurality Planning Act 2495**

After the Town Planning and Rurality Planning Act 2495 had been enacted and promulgated for about a year and more, a fire engulfing a large area broke out in Surint province; the Municipal Public Work had put in effort to handle it and promulgated Royal Decree of Enforcing Town Planning and Rurality Planning Act 2495 in the Tambols within urban area of Ampur Meung Surint in Surint Province 2497 relying on the authority provided in the article 2 along with the provision in the article 7 of the master code of this law. The effect of the above

promulgation of Royal Decree was that officials were appointed and time schedule was set up for town planning project within the said areas.

After the officials, who were called officially as in this law ‘Town Planning Officers’, had completed the details of the project of the required town planning; Royal Decree of Enforcing Town Planning and Rurality Planning Act 2495 in the Tambols within urban area of Ampur Meung Surint in Surint Province 2497 was promulgated on 23<sup>rd</sup> March 2498.

It was first promulgation of the first law regarding town planning, which was also the only one since the Municipal Public Works did not only receive budget required to implement the town planning project but also some of the provisions were not clearly written to be implementable.

This law was therefore suggested to be revised, and the cabinet decided to set a committee for that.

### **1.1.3 Greater Bangkok Plan 2533**

In the town plan of Bangkok, or ‘Capital City of Bangkok’ as been called foreigners; in fact the Thai name ‘Krungthep Mahanakhorn’ already indicated that it was a metropolis, and its meaning was even more in line with the name ‘Greater Bangkok’ called by the foreigner who planned the Capital. Therefore from here onwards ‘Greater Bangkok Plan’ will be used.

This Greater Bangkok Plan is a result of collaboration between the Ministry of Interior and the US government through USOM in Thailand; and it has been done for many years.

The history of preparing the Greater Bangkok Plan is as follows. During the period when General Mangkorn Promyothee was Municipal mayor of Bangkok, having visited many countries for field trips he saw that Bangkok was a city of

rapid growth and it needed a city plan to guide and accommodate the growth; for that he then sounded out an American expert. After returning to Thailand he put the idea into action through the instrument of the Ministry of Interior as according to the regulation. Even after completing his term as the Municipal mayor, the Ministry of Interior still carried on the work. And even the achievement did not come as soon as should do, finally on 16<sup>th</sup> December 2500 a contract no. ICA-T-226 was signed in Washington DC to hire the American experts, Mr. Cearence B. Lithfield, Mr. Edmund J. Whiting and Mr. Guy B. Pancro to prepare town planning for Bangkok.

The expenditure of this project was as agreed in the contract and the pre-specified regulation. Later on the contract had been revised somehow; the Thai Ambassador to Washington DC or his deputy would sign in the contract every time of revision. The latest revision came to a conclusion that the planners would take totally 31 months to complete the planning; the Thai government would paid an amount of 2,563,777 baht and the US government would contribute another 382,747 dollars.

Three years later, which was 2503 BE, the Ministry of Interior received the Greater Bangkok Plan which was a 30-year plan, which would end in 2533 BE; the plan was planned by the team of architects and engineers from Litchfield Whiting Bowne & Associate of New York, with the team of Adams, Howard and Greeley of Cambridge Massachusetts providing town planning advice.

The Royal Decree Amending Provisions to be in compliance with the Transfer of Government Sector's Powers and Duties in accordance with the Act Amending Ministry, Sub-Ministry and Department of 2002 (B.E. 2545) specifies that to be in compliance with the transfer of Government Sector, the alteration of wording contained in the Town Planning Act of 1975 (B.E. 2518) had to be amended as follows:

Chapter 1	Town and Country Planning Commission	(Section 6-13)
Chapter 2	Surveying for Mapping and Designing Comprehensive Plan or Specific Plan	(Section 14-16)
Chapter 3	Mapping and Designing Comprehensive Plan	(Section 17-25)
Chapter 4	Implementation of Comprehensive Plan	(Section 26-27)
Chapter 5	Mapping and Designing Specific Plan	(Section 28-40)
Chapter 6	Implementation of Specific Plan	(Section 41-49)
Chapter 7	Board of Local Administrative Town and Country Planning	(Section 50-53)
Chapter 8	Demolition, Removal or Alteration of Building	(Section 54-69)
Chapter 9	Appeal	(Section 70-77)
Chapter 10	General Provisions	(Section 78-82)
Chapter 11	Penalty	(Section 83-84)

Implementation of comprehensive plan is applied by issuing the ministerial regulation which is enforceable not exceeding 5 years. Within the said period of implementation, the ministerial regulation specifies that, if it is appropriate, the comprehensive plan shall be amended in order to fit the change of circumstances and environment or for the State's benefit.

Within one year prior to the termination of comprehensive plan implementation, if the survey indicates the result of no significant change in circumstances and environment, the meeting shall be held for public participation and hearing. If no objection is made, the period for implementing the ministerial regulation shall be extended for another five years. On the other hand, if there is significant change in circumstances and environment, the said comprehensive plan will be amended to be consistent with such change.

In the case where the comprehensive plan may not be amended in time, the ministerial regulation can be issued to extend the period for implementing the

ministerial regulation. The extension may be made available only for another two times, each of which shall not be exceeded one year.

Regarding the implementation of specific plan in any area, enactment of the said must be in a form of an act only. Unless otherwise specified, the act shall come into force not exceeding five years. However, the period of implementation is extendable by re-enactment when the former five years period is over. Presently, no promulgation of specific plan is made, although the specific plans of Maptaphut New Community, Rayong province and Laem Chabang New Community have already been arranged and submitted to the Cabinet for consideration of acceptance since 1988. They, however, remains in the Judicial Council because of the land surrender problem.

#### **1.1.4 Ministerial Regulation For Comprehensive Plan Implementation**

Generally, in the annex to ministerial regulation for comprehensive plan implementation, it comprises of a map as the annex, a plan determining the use of land which is classified in the annex, details attached to a plan determining the use of land which is classified in the annex, a plan demonstrating the project of communication and transportation as the annex, details attached to a plan demonstrating the project of communication and transportation as the annex, etc.

Announcement of Department of Public Works and Town and Country Planning on Criteria for Utilization of Property for Mapping and Designing Comprehensive Plan

Town Planning Measures for Control of Retail and Wholesale Commercial Buildings

In 2003, an attempt is made to restrict commercial operation in a category of huge department store retailing and wholesaling several kinds of consumer goods, most of which are operated by large entrepreneurs having foreign shareholders. Due to

the impact on small-and-medium-size entrepreneurs and on the construction in the vicinity of downtown area causing traffic congestion, the government finally decided to adopt the measure for town planning and building control.

With regard to measure for town planning control, the Royal Decree Determining Survey Area for Mapping and Designing Comprehensive Plan in 72 Provinces of 2003 (B.E. 2546) was issued on May 19, 2003 in order to promulgate the Notification of Department of Public Works and Town and Country Planning on Criteria for Utilization of Property for Mapping and Designing Comprehensive Plan in ..... Provinces for 72 Provinces (Excluding Bangkok, Nonthaburi, Samutprakarn and Phuket). The definition of "Retail and Wholesale Commercial Buildings" is determined in the Notification. Besides, provisions are specified in the Notification in each province regarding the restriction on the utilization of land in several areas for construction, modification, use or alteration as retail and wholesale commercial buildings and the size of which is dependable upon the Notification in each province. Additionally, various criteria on the construction control of retail and wholesale commercial buildings are determined in the Notification.

The Royal Decree Determining Survey Area for Mapping and Designing Comprehensive Plan in 72 Provinces of 2003 (B.E. 2546) is determined to have three year effective period from May 20, 2006 until May 19, 2009 and will be expired when the ministerial regulation for comprehensive plan implementation in the area that the Royal Decree comes into effect.

### **1.1.5 The Building Control Act.**

#### **1. History of Building Control Act.**

The issue of building control act in Thailand is the Building Construction Control Act 2479, having its intention in controlling construction of various buildings, ensuring the strength of buildings, ensuring hygiene,

and ensuring sanitary facility, the prevention of fire disasters and town planning.

## **2. Objective of Building Control Act**

- 2.1 To control construction of various buildings, to ensure the strength and durability of buildings, to ensure hygiene, to ensure sanitary facility, to prevent fire disasters and to do town planning.
- 2.2 To make sure the suitability and compliance with the current situation and to increase efficiency in controlling the strength and durability of building, building safety, fire disaster prevention, the public health affairs, the conservation of environment, town planning, architecture, traffic convenience.

### **1.2 Hypothesis**

Although announcement of the Department of Public Works and Town & Country planning is against the Ministerial regulations of Sa-Kaew , finally announcement of Department of Public Works and Town & Country planning cannot be enforced of this case.

The enforcement of this law should be improved also such relevant legislation should be amend.

### **1.3 Objective of the Study**

1. To study conflict of Law between Announcement of Department of Works Public and Town & Country Planning on Ministerial Regulation of Sa-kaew Community.
2. To study Land Use Planning of US Law compare with Thai Laws.

3. To analyze the problem of the enforcement of Announcement of Department of Public Works and town& Country planning on Ministerial Regulations of Sa-kaew Community.
4. To recommend the way to improve of Town Planning act B.E. 2518 and Building Control Act. B.E. 2522.

#### **1.4 Research Methodology**

The method used in this research is a documentary research. The researcher will make a research on the Act, textbook, journal and internet. In addition this research study on the US Law, Town Planning Act. B.E. 2518 and Building Control Act. B.E. 2522.

#### **1.5 Scope of Research**

This research focused on problem of conflict of law between Announcement of Department of Public Works and Town & Country planning on Ministerial Regulation of Sa-kaew Community and relevant legislations.

#### **1.6 Expectations**

1. Knowing of the details of Land Use Planning for Town Planning Act and Building Control Act.
2. Knowing of the differences between US Law, Town Planning Act B.E. 2518 and Building Control Act B.E. 2522, relevant legislations.
3. Find out the problem of the enforcement of Ministerial Regulation of Department of Public Works and Town& Country planning on Ministerial Regulation of Sa-kaew Community.
4. Find out the way to improve the relevant law and officer discretion of Ministerial Regulation of Department of Public Works and Town & Country planning on Ministerial Regulation of Sa-kaew Community.

## **Chapter 2**

### **Theory of Town Planning and Characteristics of the Town Planning and the Relevant Law**

#### **2.1 The History of Town Planning in Thailand**

The first Town Planning law is the Town and Rural Area Planning Act of 1952 (B.E. 2495). The first Thai planning was recorded in 1955 when Bangkok Mayor requested for assistance from the United States Operation Mission (USOM) resulting in the signing on the Agreement to hire Litchfield Whiting Bowre & Associates, the American Consulting firm, for planning the Bangkok-Thonburi Town Plan when the population was only 1.4 million. The Bangkok-Thonburi Town Plan was completed in the middle of 1960 after three years of study, information gathering and research. It was generally recognized as the "Litchfield Plan" and subsequently used as a town planning model

#### **2.2 Planning Theory**

The first settlements in North America were little more than forts to protect the New England towns of the seventeenth century, which were remarkable for their simplicity. Modest houses for each family were grouped in a gridiron pattern around a park, or commons, that was usually next to a meeting place. The southern colonists were more isolated and developed a plantation style of planned, such as Williamsburg and Jamestown, Virginia, were more formal, with a market square at the center. They were reminiscent of English villages, as would be expected.

The Dutch settlement of New Amsterdam was quite a different development. It was more like a medieval town surrounding a castle in this case, the Battery. When the area of Manhattan was planned, the gridiron pattern used was the one William Penn had developed for Philadelphia in 1682. James Oglethorpe's 1733 plan for Savannah,

Georgia, partly imitated the Philadelphia plan, but Oglethorpe was far more generous with open spaces for squares<sup>1</sup>

The most notable exception to the gridiron approach in early American planning was Pierre L'Enfant's 1791 plan for Washington, D.C. A baroque like plan of radial streets slashing through the gridiron, it was to be a monument to the new federal government, although it was more reminiscent of Versailles or Napoleonic Paris.

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Thus, the pattern of early American planning was like European planning of the seventeenth and eighteenth centuries. The difference was that the colonists wanted more space and openness in their cities when they wanted cities at all. The early settlers were not urban people. It was not until the middle of the nineteenth century that more than 20 percent of the U.S. population lived in cities. This precedent of anti city sentiment greatly influenced American urban planning. Savannah may be the epitome of such planning in the midst of the Georgia marshlands was set out an urban plan based upon open spaces as the organizing feature, with the country brought into the city.

The halcyon years of U.S. urbanization saw the great industrialization and foreign immigration of the late nineteenth and early twentieth centuries. Adequate transportation and communications, cheap labor, abundant resources, and open space made the United States grow at an unprecedented rate. It was a chaotic growth, however. The industrial cities became drab, polluted, unsafe, and unhealthy. Greed and selfishness resulted in land being treated as a commodity to be traded for profit. Ugliness was accepted, and ruthless efficiency was the planning goal.

The critics of this era were solidified by Lincoln Steffens, who prompted the name "muckraker" with his 1904 book, *The Shame of the Cities*. He pointed out the horrors of late-nineteenth-century urban life in industrial America. The muckrakers spurred a generation of social reformers and activists, yet it took a visionary architect-planner to capture fully the imagination of the people.

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<sup>1</sup> Anthony J. Catanese & James C. Snyder, *Urban planning* 2<sup>nd</sup> ed., (New York: McGraw-Hill, Inc., 1976), pp. 187-243.

Daniel H. Burnham was the chief planner and architect for the Chicago World's Fair in 1893. Called the Columbian Exposition, it was to commemorate the 400<sup>th</sup> anniversary of the discovery of America. Burnham chose to develop a White City as an antithesis of the dark American industrial centers. The fair was to honor the new industrial might of the country, yet Burnham used classical buildings and expansive esplanades, promenades, and open spaces on the Chicago waterfront. He invoked an adage that became a manifesto for planners and their patrons:

Make no little plans; they have no magic to stir men's blood. Make big plans, for a noble document once recorded will never die.

The White City of the Columbian Exposition was a commercial success, but more importantly, it showed the people what could be achieved by planning on a colossal scale.

So was the city beautiful movement of American urban planning ushered in. Burnham created plans for several cities, including San Francisco, Cleveland, and Chicago, and he revised the plan for Washington, D.C. Scores of American cities commissioned other plans for landmarks, monuments, plazas, esplanades, and great avenues. Major buildings at the focal points of axes of streets were the common order. The Ecole des Beaux-Arts in Paris was the mecca for architects designing these buildings. The master plan, or grand design, was the hallmark of a progressive city in America at the beginning of the twentieth century; the lack of such a plan was a sign of atrophy.

In part of Thailand Town Planning come from England and United States, in England town plan have the comprehensive plan and development to specific plan. In United States used zoning ordinance and develop to urban plan, to determine activities of zoning to block of land.

### **2.2.1 Definition of Town Planning**

Town planning is a managerial work to set a direction of town's future development; its works involve planning and executing to ensure that the development in the concerned town and related areas or the concerned rural areas

is in accordance with the principle town plan and the specific town plan. The setting of the development direction needs incorporate many aspects into consideration, such as orderliness, aesthetics, resource utilization, safety, social welfare, environment, and conserving and restoring the buildings or locations that are valuable in arts, architecture, history, and archeology.

### **2.2.2 Reason of Planning**

The Constitution of the Kingdom of Thailand 2540 B.E. gives precedence to decentralization of the administrative authority to the localities, consequently it is enacted certain act to designate plan and procedure of the decentralization in 2542 B.E.. Town planning is designated to be a type of authority and responsibility to be decentralized to the locality.

The Department of Public Works and Town Planning has responded to this decentralization policy by transferring certain town planning works to the localities; and the localities are required to equip and update themselves with necessary knowledge and understanding to undertake the work of town planning themselves.

### **2.2.3 Result of Planning**

There will be confusion in land uses. Every one has the freedom to do whatever at will, and this leads to many entailing problems which are difficult to resolve or even irresolvable in the end. These problems in turn do damages to the society as a whole. The rural people would migrate into towns, resulting in problems of unemployment, crimes, shortage of public services, and of environment; the air would be polluted, residence would be congested and unorganized. Also the traffic would be jammed as the networks of transportation are not coordinate. There would be shortage of urban lung areas for public recreation; the public utility and public assistance could not be kept in pace with the public demand.

## 2.3 The Types of Town Plan

According to the Town Planning Act 2518, there are two types of town planning being designated, which are the principle town plan and specific town plan. At present however, due to the situation of the society and the economy, plus the government policy, towns grow rapidly, the Department of Public Works and Town Plan thus designates six types of plan as follows,

1. Country Plan
2. Regional Plan
3. Provincial Principle Town Plan
4. Principle Town Plan
5. Specific Town Plan
6. Tumbol Plan

### 2.3.1 The Organization is Responsible for which Type of Plan

In carrying out the work of laying out the plan, various responsible persons for different levels of plan are needed. Preliminarily, the Department of Public Works and Town Planning has designated the responsibilities and direction as follows,

1. Country Plan: this is the overall planning at the country level and is responsible by the Department of Public Works and Town Planning.
2. Regional Plan: this is the planning at the regional level and is responsible by the Department of Public Works and Town Planning.
3. Provincial Principle Town Plan: this is the planning at the province level which designates the role, priority, and the community logistics; it is responsible by the Provincial Administrative Organization.
4. Principle Town Plan: this is the overall planning at the level of urban area, such as the municipal town or municipal Tumbol; the responsible party is the municipality of the Bangkok Metropolis or that of Pattaya City.
5. Specific Town Plan: this is the locality-specific detailed planning within the area which has been given the Principle Town Plan or within an area from

which a petition for a town plan is filed; the local administrative organizations and the Department of Public Works and Town Planning.

6. Tumbol Plan: this is the planning within the rural areas, such as the areas under different Tumbol administrative organizations, for the purpose of setting a direction of community development; Tumbol Administrative Organization is responsible for this planning.

### **2.3.2 The Process of the Planning**

In the process of planning, there are theoretical stage and legal stage; at any rate, the procedure of planning consists of the following stages,

Data collection

Data analysis

Goal setting + objective

Planning

Plan implementation

Plan evaluation

### **2.3.3 The Participation of People**

In the Constitution of the Kingdom of Thailand, it is stated that the localities shall be able to rely on themselves. They shall be able to make their own decision on the local affairs, and to designate direction of the development of the economy, the society, the public utility, and the public assistance, by considering the will of the local people in the concerned province. Town planning, which is another form of planning, must incorporate the outlook, the role, and the priority of the concerned community into the principle of planning. Consequently, the public participation is needed with the principle “to join in knowing, to join in thinking, and to join in implementing”.

The process of the principle “to join in knowing, to join in thinking, and to join in implementing” means that in planning for development every concerned party

come to participate in shaping idea, in building sense of joint responsibility to come up with a resolution to determine the future development.

## **2.4 Implementation in Conformance with the Principle Town Plan**

The planning and devising the Principle Town Plan is a plan of utilizing the land in the future by dividing land into different categories, such as residence, commerce, rurality, and agriculture etc.; and it is a plan of designating the transportation and logistics network so there is commuting between the land within the planned area and those outside it. In addition, it also purports to achieve orderliness and aesthetics, and to prepare for the physical, economic, social, and population expansion within the community.

The abovementioned planning-related works shall proceed in accordance with Town Planning Act 2518 B.E. It is that after the technical part of the town planning is done there must be coordination with other concerned agencies at the central administration, and the matter must be discussed with the concerned locality, and incorporating the public opinion into consideration. These are for achieving efficiency in the principle town planning and keeping in tune with the future growth, and to lay down a principle in the town planning so as to respond to the demand and life quality of the local people which are to be prioritized.

### **2.4.1 The Ministerial Regulations which are Enforced on the Principle Town Plan**

The ministerial regulations which are enforced on the Principle Town Plan are those ministerial regulations which are enforced on the matters of the policy plans and projects, and on the matters of the general control measures in order to lay down a direction of developing and conserving towns and the concerned areas or the rural areas in the aspects of resource utilization, transportation and logistics, the public utility and the public assistance, the public services and the environment.

**2.4.2 The Main Points of Town Plan – the ministerial regulation requires the Principle Town Plan to have the main points as follows,**

1. The objective laying down and devising Principle Town Plan
2. Map illustrating the area of the Principle Town Plan
3. The scheme of land utilization of different categories and the illustration of transportation and logistic projects
  - 3.1. the designation of different categories of land utilization by using colors to indicate them with the statements indicating the regulations regarding each category of land utilization
  - 3.2. the designation of the network of road in 2 categories namely the projected roads and the recommended roads, which are the expansion of the existing roads and the projected new roads to be constructed
4. the attachments of the scheme
5. the policy, measures, and methods of proceeding in implementation to achieve objective of the Principle Town Plan

**2.4.3 The Enforcement –** the ministerial regulation which enforces the Principle Town Plan is effective once it is put on the Royal Gazette. Upon its effectiveness people are prohibited from utilizing the land in a way which is against the Principle Town Plan; its effective period is no more than 5 years. After the completion of the five-year effective period, if there is no major change in the main points the effective period of the Principle Town Plan will be extended for another five years. However, in the case where there is major change, the Principle Town Plan shall be revised; if the concerned revision cannot be completed within the period designated by the ministerial regulation regarding the extension of effective period, ministerial regulation regarding the extension of effective period can be enforced twice, no more than one year for each time of extension by issuing ministerial regulation. The ministerial regulation shall not be enforced backward in time regarding the cases where the owners or

occupants of lands have utilized their lands before the promulgation of the concerned ministerial regulation which enforces the Principle Town Plan; they may continue to utilize their land they as before. After the ministerial regulation has come into effect, the offenders are liable to imprisonment of no more than six months or a fine of no more than ten thousand baht or both.

## **2.5 Implementation in Accordance with the Scheme of Land Utilization Indicated at the End of the Ministerial Regulation**

### **2.5.1 The Responsible Parties in the Implementation in Accordance with Scheme of Land Utilization**

1. the mayor in municipality
2. the president of the provincial administrative organization in the concerned provincial administrative area
3. the governor of Bangkok in the area of Bangkok Metropolis
4. the Deputy Chief of Pattaya City in the area of Pattaya City
5. the Chief Officer of the local administration in the area which the Minister pronounces to be under the local administration

### **2.5.2 Points of Consideration in Permission**

1. To survey the concerned land plot to determine whether it is within the area of the Principle Town Plan; if area of the land intersects with that of the Principle Town Plan, only the portion of the land which is in the area of the Principle Town Plan is considered.
2. To check within which category of land utilization the concerned land is situated; in the case of intersected categories, the land shall be divided to consider separately.
3. To check whether the concerned land can be utilized in accordance with category of land utilization or not; it shall be considered as follows,

- 3.1. The prohibited utilization of land shall not be permitted.

3.2. The utilization of land of the primary utilization category might be permitted.

3.3. The utilization of land of the secondary utilization category might be permitted on the condition that there is enough land in its proximity.

### **2.5.3 The Illustration of the Scheme of Land Utilization and the Regulation**

1. For each category of land utilization, a color is used to indicate it; for example, low-density residence is indicated using yellow color, red color for land of commercial use category, purple color for lands of industry and cargo category, olive green color for land of education institute category.

In utilizing the land of different categories, the land will be divided into zones each with a reference number, the first digit of which indicates the different categories of land and the digits after the dot indicate the order of the area in utilizing the land in that category.

2. the regulation regarding the land utilization is categorized into 2 main categories namely,

That which has the primary category and secondary category of land utilization; they are the lands which are designated of certain utilization in percentage of each area, like residence land, industry land, and rural and agriculture land etc.

That which has no primary category or secondary category of land utilization; they are the lands which are designated of certain utilization not in percentage but in whole of each area, like the recreation and environment conservation category land, education institute category land, government institute category land etc.

3. the method of implementation to ensure compliance with the scheme

The procedure of implementing according to the regulations of land utilization,

- a) to measure all the areas of the lands of each category
- b) to calculate the area of lands of secondary category as in the regulation

- c) to measure the existing area of the land of secondary category before promulgation of the ministerial regulation
- d) to use the area measured in c) to subtract that calculated in b), the left over is the total area that may be permitted of utilization.

Note: in the case where the Principle Town Plan states that the land utilization of secondary category do not include the previous land utilization, the resulted area of b) may be used in considering permission.

The principle of measuring land of secondary category of utilization

- a) The land area that is really utilized, it may be with or without building on it, like golf course for instant.
- b) The land area that is designated by law to be a condition in filing for permit of constructing a building, like parking spaces, the allowance space for instant.
- c) The land area that has been continuously utilized, namely the area which is necessary in conducting everyday activities in that building, like cargo resting areas for instant.

## 2.6 The Building Control Act

The issue of building control act in Thailand is the Building Construction Control Act 2479, having its intention in controlling construction of various buildings, ensuring the strength of buildings, ensuring hygiene, and ensuring sanitary facility, the prevention of fire disasters and town planning.

### 2.6.1 The Objective of The Building Control

To control construction of various buildings, to ensure the strength and durability of buildings, to ensure hygiene, to ensure sanitary facility, to prevent fire disasters and to do town planning.

To make sure the suitability and compliance with the current situation and to increase efficiency in controlling the strength and durability of building, building safety, fire disaster prevention, the public health affairs, the conservation of environment, town planning, architecture, traffic convenience.

### 2.6.2 The Characteristic of the Building Control

This law is characteristic in that it is a multi-regulating law, i.e. it is a law regulating the right and responsibility of the concerned parties; it is a law regulating the method of proceeding, i.e. it is a law regarding the procedure of consideration (of various undertakings); it is both a public and private law; it is both a penal and civil law, i.e. it is a penal law because it results in criminal punishment, and it is a civil law because it regards the right and responsibility; it is an administrative law, i.e. it regulates the relationship between the state and private parties. It is therefore a difficult law for the concerned parties.

### 2.6.3 The Hierarchy of Law

The type of law, since our laws are categorized into many types and each type has different rank of enforcement. The laws of the more important type would always be enforceable; and the laws of less important type cannot contradict or contravene with the laws of higher rank. In considering and interpreting law of each type, it is required to think of the character and scope of each type of law to determine on which matter the law may be enforced. It is needed to consider further that if the law is enacted by the executive branch, its interpretation must involve the mater law; in other words, the power of the law must not exceed the mater act, otherwise the concerned law is not enforceable.

Each type of Law may have the Ranks as follows,

1. The Constitution and other constitution-equivalent laws, the royal law regarding succession, (some) pronouncements of revolution council, pronouncements of administrative reform council, or the pronouncement of National Peace Maintaining Council (Ro So Cho) for instant. The Constitution is the highest law, or it is called “the law of all laws”, no other laws can contradict or contravene the Constitution.
2. Acts and other act-equivalent laws, like the code of law, royal acts, royal decrees, pronouncements of revolution council, pronouncements of administrative reform council, or the pronouncement of National Peace Maintaining Council (Ro So Cho), the Royal Commands, or some of the royal scripts from the times of absolute monarchy and so on. This type of law may contradict or

contravene with one another if they regard different matters, but if they regard the same matter the latest one shall be used.

3. The royal decrees which are issued as derivative law of the master law cannot contradict or contravene with the master law.
4. The ministerial regulation (of the rank lower than that of royal decree) is the law which the legislative section authorizes the executive section to enact, and it cannot contradict or contravene with the master law.
5. Pronouncements of Ministry, some law empower the executive section to promulgate pronouncements, like the article 13 of the Building Control Act 2522, or the space 2 of article 3 of the Land Filling and Digging Act 2543.
6. area-specific law of locality, generally such type of law is preliminarily promulgated country-wide except that some provisions state to be applied in certain areas. There are some derivative laws being issued by relying on the authority provided by the master law, and the concerned law is the area-specific law for that concerned locality; they are the code of law of the local government, municipal law or regulation and have the following special characters,
  - (1) There must be authorizing law
  - (2) The issuance and promulgation must be according to the procedure specified by law.

The article 42 of the Building Control Act 2522

The proceeding of ordering the “person who is not the building owner to demolish the building” is “an administrative order to do something impossible”; there is “saying of law” that “law must not compel a person to do something impossible”. If the executive section issues such order, that administrative order would be “unlawful order”.

The rationale of having subordinate law: subordinate law is the law issued by the executive section (governing party) for the following reasons,

1. the burden of the legislative section
2. technical problem of certain aspects which normal lawyer may not understand, therefore the master law authorizes the executive section who have better knowledge and understanding in the matters than others to issue subordinate law
3. The flexibility of the law: if the law is enacted to be too inflexible, it would be difficult to apply in the real situation or it would be rendered inapplicable, thus hindering development. The subordinate law will cover more detail and more practical in the real situation
4. urgency: certain laws may need urgently the subordinate laws under some situation; if master law is to be enacted it would take a long procedure and time, thus is not timely, like the custom law, the revenue code, forestry etc.

The frequently used subordinate laws are,

1. The royal decrees are sibling laws in the case where the master law provides to have royal decree; it is selected under the situation which is more important than normal.
2. Ministerial regulation is often used subordinate law. Even though the master law states that “the minister shall have power to enact ministerial regulation”, in practice it is agreed within the cabinet that the draft of ministerial regulation to the cabinet for consideration and approved; and this practice has become a tradition that a ministerial regulation is issued by the minister with the consent of the cabinet.
3. the ministerial announcement is a subordinate law which is used on less important issue, it is promulgated without needing to pass the cabinet like the ministerial regulation.

4. the laws which are called by other names specified by the master law, like the Ko Pho regulation, or the Ko To regulation etc.
5. the local bylaws, the authority in issuing the local bylaws are two as follows,
  - (1) The exclusive authority that the concerned local administration has; the nature and scope of the authority is different depending on the type of local administration. The general authority is provided in the master law and the local administration is authorized to issue the local sub-law flexibly depending on the contingent need and suitability, provided that it does not contradict or contravene with other laws and its enforcement scope must not exceed that of the authorizing master law.
  - (2) The authority provided by specific law; the local administration is authorized by the provision in the master law to issue local law on the matter which is specified in the master law, like the Building Control Act, Land filling and Digging Act etc.
6. the resolution of the cabinet has the nature of law (there are three types of cabinet resolution, namely, policy, order and regulation). In the case where the master law empowers the cabinet to issue law, like the article 13 of the Act regarding state official's infringement liability 2539 for example. It is considered as a general authority in administering, and it lays down the criteria which may be applied in the real situation and is effective as long as it does not contradict other laws.

Article 46 : building under construction ... is in a state or is used in a dangerous way to health... the local official shall have the authority to order to have it corrected.

In the case where official order is not observed and the building may be dangerous to health ... the local official shall have the authority to order to have it demolished.

In evaluating the condition of the building, it needs to know the fact through engineering data which are analyzed, the official then applies discretion to come out with a resolution of the condition of the building. Then the official will incorporate public health data to legally determine whether the building is dangerous to health or not. Then it is required to consider in the same manner about previous condition of the building and what criterion

is to be applied to the building so that the article 46 space 2 can be applied. In the case where the current condition of the building is as before or is worse than before, it is to be considered whether the criterion may be changed or not, the rationale is adequate or not; if demolition is needed, how and when it shall be done.

The applying of the above discretion must always be provided by law, no matter it relies on the principle of equality or the principle of reasonability and the principle of certainty in applying law; law must be applied to the real situation appropriately depending on the real contingency.



## **Chapter 3**

### **Comparative Foreign Laws and Thai Laws**

#### **3.1 Comparison between Administrations of the United States and Thailand**

##### **3.1.1 Organization Structure of Management and Town Planning<sup>1</sup>**

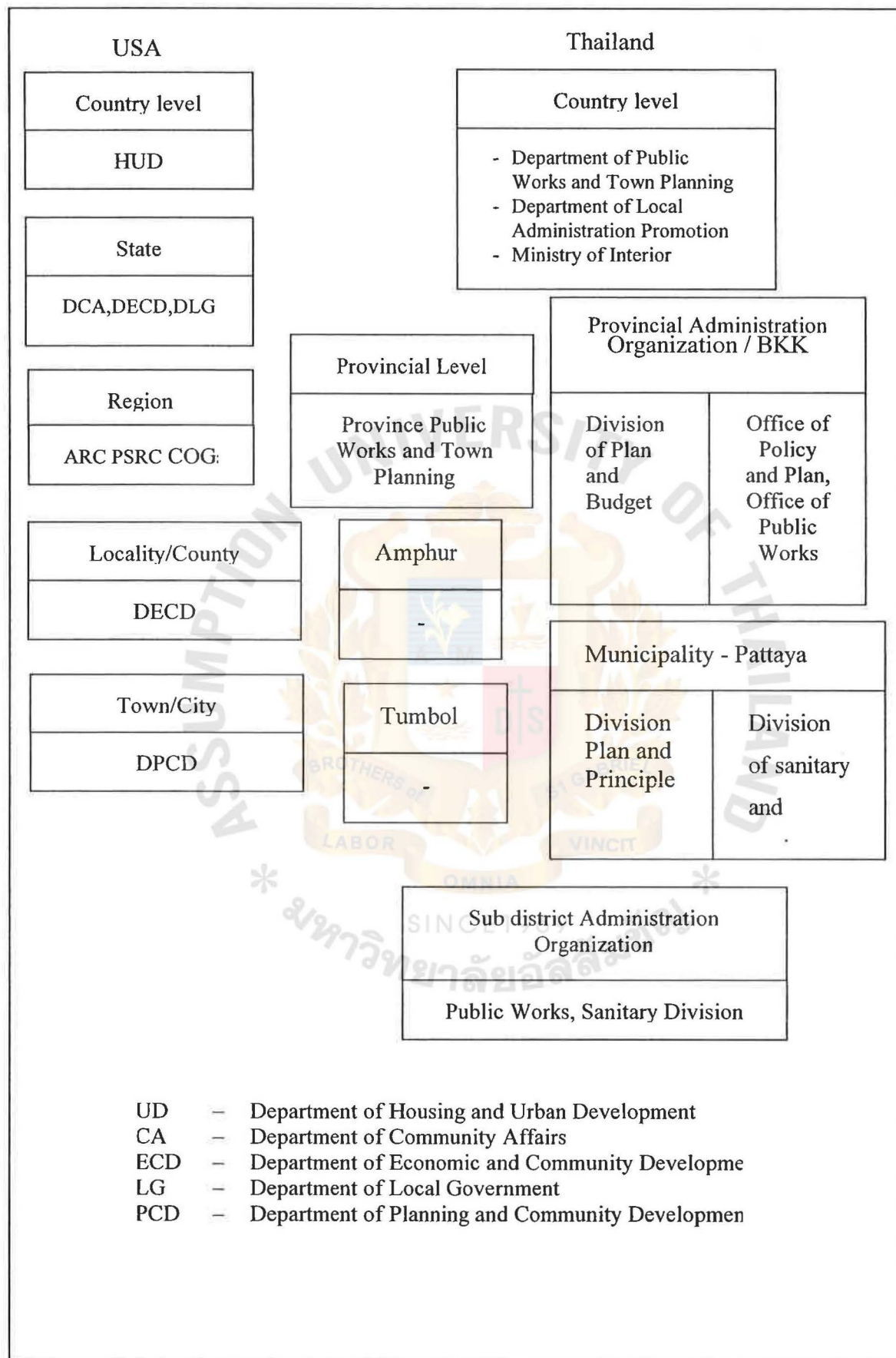
It is difficult to compare the structure of administrations between the two countries since the two have different administrative systems. The USA is a federation of states system while Thailand is a single state; the USA is a large country consisting of 50 states each of which has its own freedom regarding its administration within the state and has its state constitution which is unique in every state within which the local state agencies work under the state constitution. If the two countries are compared, Thai government is like both federal and state government; in other words, Thailand has its sovereignty in regards of foreign affairs, military, and bank notes printing like that of federal government of the USA, and it also has the authority to administer internal affairs within the country like that of the state governments of the USA. For illustration of the overall comparison of the administrative organization and town-planning-related administration will be presented in diagram as follows.

Comparison of organization structure of Plan Management and Town Planning between USA and Thailand

- Department of Public Works and Town Planning

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<sup>1</sup> Chulalongkorn University “Interim Report Study on Principle of Town Plan and Town Plan System of U.S.A., Wales, France,” February 2004.



Apart from the comparison of the structure of responsibility, the researcher also observes the differences in town planning management of the two countries as follows.

### 1. The Differences in Idea and Management of Town Planning

In the USA they have the idea that town plan is a part of the economic development plan and physical plan of a town, since the physical environmental factors such as buildings, constructed structures, roads and paths, water, electricity, garbage, all have their own effects to the being of the people; so they need to be developed along side with the development of the public health, education, economy for quality of life of the residents. Consequently, the planning must be in parallel with the development in the environment and other public assistances. The planning is therefore not separated from the plans of town development and communities of the residents. This idea manifests itself in division of works of different levels of administrative organizations, as can be seen in the diagram of the town planning sub-agencies in most of the community development agencies.

In Thailand, this idea is not yet popular; different governmental sections and the people have not been able to connect ideas regarding town in a holistic way; town planning work and town development work are thus isolated from each other; while the USA would tend to connect them up as one whole issue.

### 2. Significance of Town Planning

The USA sees works of town planning more important and Thailand does, as can be seen in there being many of the organizations and state agencies in every level of administrative structure and there being also many technical and academic committees in each agency which is responsible for community affairs; especially, the chief of executive section of each level of

administration would have advisory committee regarding town development plan, residence administration and so forth.

In Thailand, town plan affairs are under the administration of the Department Public Works and Town Planning (DPWTP) of the Ministry of Interior, which is responsible for town planning of which the achievement is so little. In the local administration of the province level, the officials and agencies of public work and town planning are so small organizations that they do not have enough power to push forward work of the whole province. In local administrations, except the local administration of Bangkok, the work of town planning is in transition of decentralization of authority. At any rate, success of the plan depends on attention and importance the people pay to it.

### 3. Participation of People

The USA realizes the importance of parts taking in the process of planning, like zoning, using of land and town development, from the every beginning to the very end. Room is opened to the people so they can express their demands and opposition all time, even after the plan has been put into implementation they can still appeal; and in practice, the people are exercising their rights.

In Thailand, after town planning is done and completed, the concerned government agencies will hold public hearings; but there are only a little people coming to participate and they have their own reasons; however once they come they often come to oppose the plan which is partly due to they having not participated in giving opinion at the very beginning and the resulted plan is often not acceptable.

#### 4. Professional Associations and Interest Groups

In the USA the professional associations and the interest groups are very powerful and they work in teams and networks. The professional associations, like the American Planners Association, Architects Association, Town Administrators Association etc. hold seminars, do researches, and give education to the public members; they also periodically prepare reports of opinion and suggestions in development and renovation of towns. The other interest groups, like the Contractors Association for instant, regard themselves to have stakes in changing of town plan; they would follow up the news and take parts in protecting their interest. At the same time, the residents also are afraid of losing stake in advantage-taking of industrial businesspeople; they often associate themselves to safeguard their communities. The aforementioned political behaviours are rarely seen in Thailand, if it is only a big public issue and is interesting to the public. In many cases, once the problems occur they have resulted in damages beyond correction.

##### 3.1.2 Differences in Plannings/Plans

The most important difference of this aspect is that in the USA every level of the planning and every agencies of the planning belong to the same organization. The plan is used as physical instrument in leading to the goals established in the economic and social development plan of the locality by utilizing the planning / plan of land utilization. While in Thailand, the agencies of economic and social development plans of towns are not the ones which are responsible for the physical plans; therefore there is no coordination between the 2 plannings/plans, resulting in conflict among the agencies concerned in planning and plan of the locality all the time. In regarding the detailed differences in this aspect between the two countries, 5 issues will be considered, namely the idea regarding planning, process of planning, management of planning, implementation of plan, and follow-up and evaluation of the plan. However, due to different administrative structure in the USA town

planning in each state is different; as a result, the comparison will be done in a way that a state of USA is comparable to the whole country of Thailand. The comparison is divided into two sets namely, 1) Town planning of Georgia State and Thailand, and 2) Town planning of Washington DC and Thailand.

### 3.1.3 Comparison of Town Plannings of Georgia State and Thailand

Due to the rather huge difference in the two countries' political systems and administrative systems, the comparisons are done in the points that comparison is possible in order to make understanding easier. In comparison at the level of plannings and plans, the state of Georgia is comparable to country, and regions consisting of counties are comparable to regions consisting of provinces of Thailand; and at the level of locality, i.e. city, it is comparable to an area of principle town plan of Thailand, as in the following table.

Levels	Georgia	Thailand
Country	State	Country
Region	Group of counties	Group of Provinces
Province	County	Province
Locality	City (Atlanta)/Municipality	Areas of Principle Town Plan/Municipality

Points of comparison consist of idea regarding systems of planning and plan, responsible agencies, contents of plan, implementation of plan.

Points	Georgia State	Thailand
<u>Idea regarding systems of planning and plan</u>	Bottom-up planning: starting from locality, region, state	Top-down planning: starting from country level, the regional development plan of society and economy

Points	Georgia State	Thailand
		is under the National Development Plan of Society and Economy devised by the Office of Committee of National Development of Society and Economy, the regional plan must be within the framework of the national plan
<u>Responsible agencies</u>		
Country level	The state government, but now there is no planning yet	Office of Committee of National Development of Society and Economy
Region level	Region Development Centres are responsible for regional planning	Office of Committee of National Development of Society and Economy
Locality level	Localities such as towns, municipalities, region development centres, under the control and advice, and assistance of the state government	Department of Public Works and Town Planning, with collaboration with

Points	Georgia State	Thailand
		other agencies, especially the provinces; however the law stipulates that the localities may plan for themselves like the case of Bangkok, but it must be under the supervision of the government through the Committee of Town Planning and the Minister of Interior
<u>Contents of plan</u>		
Country level	Not available	The National Development Plan of Economy and Society which is a global plan covering the contents of physicals, economy, and society; like regional plan and scheme of Georgia State
Region level	It is a comprehensive plan/scheme stating the future policy, planned projects of different	

Points	Georgia State	Thailand
Locality level	<p>agencies. The minimum components of the regional plan are 6:</p> <ol style="list-style-type: none"> <li>1. Population</li> <li>2. Economy</li> <li>3. Natural and historic resources</li> <li>4. Public utility and public assistance</li> <li>5. Residences</li> <li>6. Land uses</li> </ol> <p>It is a comprehensive plan/scheme stating the future policy, planned projects of different agencies. The minimum components of the regional plan are 6:</p> <ol style="list-style-type: none"> <li>1. Development of economy</li> <li>2. Residences</li> <li>3. Public services</li> <li>4. Transportation</li> <li>5. Environment</li> <li>6. Natural resources</li> <li>7. Historic resources</li> <li>8. Public parks and recreation</li> </ol>	<p>Emphasising on land use plan, transportation system plan, open space plan. There are researches of different data of different fields to achieve these three types of planning.</p>

Points	Georgia State	Thailand
	9. Arts and culture 10. Libraries 11. Education 12. Security 13. Design of communities 14. Land uses	
<u>Implementation of plan</u> Development	1. The programs and projects are accommodated and specified in the plan/scheme. Each branch shows the details of plans and schemes in physical developments of the town. 2. Programs and projects accommodated and specified in each branch 3. Details of plans and schemes of physical development of towns are shown,	There is no presentation of continuous programs and projects, except they are the programs and projects of other agencies or programs and projects under proposal There is enforcement of the specific town planning

Points	Georgia State	Thailand
Control	<p>like</p> <ul style="list-style-type: none"> <li>- Capital improvement program – CIP</li> <li>- Detailed planning of development for specific areas for the specific purposes, like plan/scheme of development of commercial neighbourhood, mixed residential commercial areas</li> </ul> <ol style="list-style-type: none"> <li>1. land use control by zoning; it must be separate but conformant</li> <li>2. Zoning is stricter by different measures to control density and conserve the environment, security, like using FAR, set-back</li> </ol>	<p>Land use control by including regulations into the plan</p> <p>Most of the regulations are prohibitions of certain land uses;</p>

Points	Georgia State	Thailand
	distance, height, details for the purpose of community design	there is no detailed control or other measures

### 3.1.4 Differences in Laws Regarding Town Planning

In the main points there are 4 Differences as follows,

#### 1. Issues of State Power vs. Private Property Right

The states of USA delegate the power of eminent domain (expropriating private properties) and the police power in regarding private uses of properties to the local governments, namely counties, cities etc. in the course of expropriating private properties and limiting the right to private uses of land; while the rights to private properties are guaranteed by the Constitution (central) and the state constitution, which is both the guarantee of substance and due process. It results in severe conflict and problems between local governments and land owners. For instants, land owners have brought not less than 10,000 cases to the court that the zoning regulation contradicts with the Constitution, on which the court has come to holdings; and there are many lawyers in big cities, like New York, who practise their profession as lawyers expertised specifically in litigations regarding zoning regulation.

#### 2. The Court of the USA is very Experienced in Cases Concerning Law of Town Planning and Plan.

The Court of Justice of the USA has come up with decisions which are landmark decisions in a lot of cases concerning the disputes of exercising of power of eminent domain of state in private property right and those between exercising the right to police power of state and the right to private property of the private. The rationale

behind these decisions will benefit the court in Thailand in making decisions regarding cases of similar nature in the future.

In addition, it is note worthy that Thai Constitution has provisions to guarantee the rights to properties of the private but it also accommodates the state's power of eminent domain. The problem is that Thai Constitution does not guarantee clearly the police power; regarding this, it is important and interesting that in case of discretion how the court will make the decision.

3. Nowadays, the Law Regarding the Planning and Plan of Town in the USA has Included Important Values in its Objectives.

In the past, values which were in the objectives of the law regarding town planning and plan in the USA were mainly the values of economy and security; but nowadays, value of environment protection, value of family institution, and value of basic human rights have been incorporated into the objectives of the law regards town planning and plan in USA. This has resulted in more details and newer techniques in the US town planning law than that of Thailand.

4. The Trend of Development of Town Planning and Plan law in the USA is that it Tends to Change from being Regulatory to being ever more Consultative.

Initially, the law regarding town planning and plan was instrument of the local governments in supervising and regulating private's utilization of land; by relying on power of eminent domain and police power they issued law regarding principle town planning to expropriate properties, to regulate zoning, allocation of land etc. However, the trend today is that it has been changed to be rather a process of providing consultation to the concerned stakeholders.

### 3.2 Different in Laws Regarding Town Planning (Comparison with England and Wales)<sup>2</sup>

#### 3.2.1 Enforcement of Needing Town Planning

From the law regarding town planning of England and Wales, the Town and Country Planning Act 1990, which is the primary town planning law of England and Wales being enforced nowadays; it is found that the County Councils and District Councils are designated with the responsibility to prepare the town planning. Since town plan is an instrument which is very important to developing the country and localities, the UK has been experienced in having and enforcing town planning law for almost 100 years with the first issue of the law since 1907. From this long experience they learn that in their previous issues of the law they did not designate the local authority to have the responsibility of town planning but only conferred them only the authority to use discretion in preparing town planning, and that had resulted in negative effects since different aspects of town development could not be implemented in concert and efficiency is missing. The current law therefore provides that the local authorities shall have the responsibility to prepare their town plannings.

While in Thailand, we have had the first town planning law in 2495 BE; it appeared as the Town and Rurality Planning Act 2495, which was enforced countrywide but also provided the executive section with the authority to issue royal decrees in specifying which areas are to be enforced of the town planning<sup>3</sup>. The effect of the above is that most of the localities do not have town planning as the executive section has not enacted the concerning royal decrees. While in the areas where the royal decrees regarding town planning have been issued, the officials could prepare

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<sup>2</sup> Chulalongkorn University "Interim Report Study on Principle of Town Plan and Town Plan System of U.S.A., Wales, France. February." 2004.

<sup>3</sup> Article 2 of the Town and Rurality Planning Act 2495 provided "this Act shall be enforced on and onwards the next day of the day it is announced on the Royal Gazette; and regarding the areas of enforcement it shall be provided by royal decree"

the town planning in time since the law specified a very short time frame for the town planning (which was then called “project” in law”), which was only 6 months (this is also experience of similar type in the early issues of the town planning law in English and Wales). Such a short time frame also demoralized the executive section in enacting royal decree to enforce the Act in the localities of the country. In short and to conclude, the Town and Rurality Planning Act 2495 has never been really enforced in practice, dwellability and orderliness of the society has therefore not brought about.

Later new town planning law was enacted, which was the Town Planning Act 2518 BE, with the repealing of the previous Town and Rurality Planning Act 2495. the Town Planning Act 2518 BE is still in effect today though there have been amended three times of which the last is the Town Planning Act (issue 3) 2535 BE. Likewise, the Town Planning Act 2518 BE does not designate any state agency to have the “responsibility” of preparing town planning, but it provides that it shall be the “discretion” type of authority of the two state agencies, namely the Office of Town Planning and the local officials regarding this affair. The said provisions appear in the article 18<sup>4</sup> (in the case of preparing the principle town plan) and the article 29<sup>5</sup> of this Act. The two provisions use the wordings “see fit” which actually suggest discretion of the state officials.

The non-compulsoriness of the law in forcing the concerned state officials to prepare town planning is probably a wrong policy, since it does not facilitate the

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<sup>4</sup> The article 18 of the Town and Rurality Planning Act 2495 provided “when seen fit to have and to prepare town planning in any area, the Office of Town Planning shall prepare the principle town planning of that locality; or the local officials of that locality shall prepare the principle town planning of their locality; in the latter case the principle town planning must be approved by the Town Planning Committee”

<sup>5</sup> The article 19 of the Town and Rurality Planning Act 2495 provided “when there is ministerial regulation to enforce town planning in any locality, if the local officials see it fit to have town planning specific to that locality, or they may ask the Office of Town Planning to prepare the said specific town planning; the specific town planning shall be in conformance to the principle town planning”

localities of the country to develop systematically for dwellability of communities and for the sake of residents in communities, which is an interest of the whole country. It is therefore needed to amend the law to stipulate the “responsibility” rather than “discretion authority” of preparing town planning of the concerned state officials. However, since Thailand is still lacking town planning personnel, the law should allow reasonable time frame for the officials who are to prepare town plan in each locality, and to have mechanism in extending the time frame for flexibility (like, by the procedure of enacting sub-laws); otherwise they will encounter the same problems that have been encountered in England and Wales, that is, the state officials cannot complete the town planning within specific timeframe. In by this policy, though state officials may take opportunity to take advantage of extending time frame, it is better a policy than leaving the town planning at discretion of the state officials who may or may not do it as they please.

### **3.2.2 Exercising of Local Power in Preparing Town Planning**

We can see that in England and Wales the law authorizes the local authorities (namely the County Council and District Council of general towns, Metropolitan District Council of the metropolitan cities, and London Borough Council of London Metropolis) in administering their own town plans<sup>6</sup>. And the town plans that have been prepared by the local authorities and passed by vote can be implemented right away without referring them to the central (the minister) before hand (except when the minister exercises his right to call the local authorities to hand in the plan to the minister for approval – call-in power, or to order to revise the plan, but such exercise of right must be done before the local vote for passing the plan).

That the UK law authorises the local authorities to prepare their own town plans (development plans) is due to the fact that town plan is seen as an instrument in developing and organizing towns, and the local people know best about their localities and therefore the local administrators (who are actually the local people

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<sup>6</sup> The Town and Country Planning Act 1990 calls town plans “Development Plans”

who are elected to administer the localities) are in the best position in being able to prepare the best plans while the central administrators cannot do it as well as the local ones do. Though the local can plan their own towns, the development of the localities should be in line with the national policies, such as the policy of economy and investment for instants, which are under the responsibility of the government. Therefore, the law empowers the ministers that represent the government to with the right to intervene; but as mentioned before in practice intervention rarely happens except only really necessary.

In the case of Thailand, the Town Planning Act 2518 BE does not open chance to the local to approve their own town plans. As in this Act, there are two classes of town plan, namely the principle town plan (characterized as frame of policy) and specific town plan (which is a plan for the development of one locality)<sup>7</sup>. The two classes of town plan must be considered and approved by the minister<sup>8</sup>; in before submitting to the minister it must be approved by the Town Planning Committee. The two aforementioned organizations both belong to the central administration. And it can be seen from analysing the principle town plan that after the minister has approved the plan a ministerial regulation must be enacted for it<sup>9</sup>, which is clear a power of the government. As for specific town plan, once it is approved by the minister it is to be enforced through again process of enactment (like the acts regarding expropriating land)<sup>10</sup>.

In fact the policy of delegating to the local the right of self-determination is conformant to the principle of political science; and Thailand is heading to the principle of local-administered-by-local. The Constitution 2540 B.E. of Thailand provides that it is the responsibility of the government to promote local

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<sup>7</sup> See 3.3.

<sup>8</sup> The articles 25 and 40 of the Town Planning Act 2518 BE.

<sup>9</sup> The articles 25 and 26 of the Town Planning Act 2518 BE.

<sup>10</sup> The articles 40 and 41 of the Town Planning Act 2518 BE.

administration<sup>11</sup>; laws are legislated and procedure is devised to carry out decentralization of authority, like the Act regarding devising plan and procedure of decentralization of authority. Furthermore, the Constitution also prioritises especially the right of the people to public participation in the matters which have effects to the quality of the environment<sup>12</sup>; and it is certain that town planning is a matter that has direct effects to the quality of the environment. The problem needed to be considered is whether it is good that in regarding town planning chances should be opened to the local to go on without needing to refer it to the central (the minister).

It is to be admitted that the local administration of Thailand is not as ready as those in the foreign countries like England; also there are corruptions and illegal behaviours at the high level in a serious extent; one main problem in the current decentralization as according to the law stems from corruption. If we are to adopt the experience of the UK (England and Wales) in Thailand while the Thai locals are not ready for that, it will be not a fruitless effort (like “pointing to the way the elephant is pointing to”). Due to the aforementioned situation, it is seen fit that for the time being the authority to approve town plans should be at the central with simultaneous promotion of local participation in town planning. And in the future if Thai local administrations are really strong, the law should be amended to allow the local to approve implementation of their own town plans with needing to refer to the central – the way the UK is heading.

### 3.2.3 The Division of Town Plan into 2 Levels

The Town and Country Planning Act 1990 of England and Wales, two-tier development plan system is adopted. The locals are required to prepare their development plans in two levels, one level is the broad framework of development plan (structure plans), another level is detailed plans in which details of

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<sup>11</sup> The article 78 of the Constitution of the Kingdom of Thailand 2540 BE.

<sup>12</sup> The articles 56, 59, and 79 of the Constitution of the Kingdom of Thailand 2540 BE.

development within the framework of the predetermined structure plans are determined (called local plans) for the sake of smooth and flexible operation (except in the metropolitan cities where there are integrated plan, or the unitary development plans).

The Town Planning Act 2518 BE adopts the same policy, as after studied, the principle town plan has the characteristics of structure plans as in the Town and Country Planning Act 1990, since it is only the broad specification of the development framework and no details and timeframes are specified. It appears in the definition of “the principle town plan” in the article 4 that “plans, policies and projects, including control measures in general which are for setting guideline of development; and for sustaining towns and the concerned areas or the ruralities regarding utilization of properties, transportation and logistics, public utility, public services and environment condition; for achieving the objectives of town planning.” The specific plans are also similar in nature to the local plans as in the Town and Country Planning Act 1990; there are specifications of details of the developments to ensure that they are within the framework of the principle town plan. Therefore the stipulation as in Thailand should be appropriate for the time being.

### **3.2.4 The Process of Town Planning**

The Town and Country Planning Act 1990, together with the ministerial regulations that have been enacted by this Act, provide the process of town planning to the very detail, starting from the phase of initial consultation, publicity for public opinions, opposition and consideration of the opposition of people and the stake holders, fact-finding or public investigation, until the phase of accepting plan.

Similarly the Town Planning Act 2518 BE also provides similar procedure as follows,

in Office of Town Planning’s preparing principle town plan (now it is the Department of Public Works and Town Planning), the law stipulates to notify the

officials of the localities where the town planning will be implemented and to let them express their opinion regarding the town plan to the Office of Town Planning<sup>13</sup> (the phase of consultation).

In preparing the principle town planning of the localities in any one province (no matter it is the Office of Town Planning or the local officials), the law stipulates that the province governor shall appoint a town planning advisory committee which consists of representatives of the local administrations, representatives of the Office of Town Planning, representatives of various government agencies in the areas where the principle town planning will be implemented, and other persons, with the total amount of committee members not less than 15 persons but not more than 21 persons – quite a big advisory committee (phase of consultation).

After the town plan has been completed, the law stipulates that it is be publicized to let the people know of the plan, and at least one meeting must be held for hearing the public opinion from the local people; it may be specified that only representatives of the people may join the meeting and the ministerial regulation may be issued for this very matter<sup>14</sup>. At present, there are three issues of the ministerial regulation regarding the public hearing<sup>15</sup> (phase of publicity).

The law also stipulates to have the procedure of public participation. After the principle town plan has been approved by the Town Planning Committee, the Office of Town Planning or the local officials who have prepared the town plan need to put a public notice to let the general people know of the plan for one more time; and stake holders need to be invited to examine the plan and these stakeholders can also oppose the plan (by requesting revision, changes or repealing

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<sup>13</sup> The article 19 paragraph 1 of the Town Planning Act 2518 BE.

<sup>14</sup> The article 19 paragraph 2 of the Town Planning Act 2518 BE.

<sup>15</sup> The ministerial regulation (2518 BE) issued as according to the Town Planning Act 2518 BE, the second issue of the ministerial regulation (2519BE) issued as according the Town Planning Act 2518 BE, and the third issue of ministerial regulation. (2520BE) issued as according to the Town Planning Act 2518 BE.

the regulation regarding utilization of the land of the concerned town plan) within 90 days after the day of notice publication<sup>16</sup>. The points of opposition being proposed need to be considered by the Town Planning Committee<sup>17</sup>.

The point noteworthy is that the Town Planning Act 2518 BE has not provided directly about the examination in public (EIP) and the examination in locality (or local inquiry) as in the provisions of the Town and Country Planning Act 1990 of the UK. However, the lack of such direct provision is not likely to be a pitfall of considerable significance, since the law has already provided to have meeting to hear public opinion of the local people and has authorized the minister to issue ministerial regulation to specify the principle and method of the concerned meeting. The minister therefore can determine the appropriate detail of the ministerial regulation. In this point it is needed to recall that in the Town and Country Planning Act 1990 of the UK the EIP or local inquiry is conducted by minister-appointed persons who thus are free from the local. If we see neutrality as an important issue we can designate in the Town Planning Act 2518 BE that the meeting to hear the public opinion of the local people as provided in the article 19 of the Act must be conducted by neutral persons (at the moment, the third issue of the ministerial regulation which is issued according to the article 19 of the Town Planning Act 2518 does not stipulation about the qualification of persons who conduct the said meeting).

### 3.2.5 The Enforcement of Town Plan

We can see that the Town and Country Planning Act 1990 of the UK has the mechanism in enforcing to ensure that things are going as the town plan in a systematic way. It is stipulated that operations of construction, engineering, mining or other undertakings in, on, over, or beneath the land, need permission from the local officials; or even the change in utilization of buildings or lands also need

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<sup>16</sup> The article 23 of the Town Planning Act 2518 BE.

<sup>17</sup> The article 24 of the Town Planning Act 2518 BE.

permission from the local officials. In compelling the law offenders are to comply, the local officials will send out enforcement notice to the offenders and stipulate them to stop the undertaking on the buildings or lands, or to demolish what have been done. From the example case it is seen that the said enforcement is being carried out very strictly, even putting automatic vending machine in one's garage without permission is considered an act that has effect on the condition of dwellability of the community since there is change of building utilization from car repairing place to selling place of other goods<sup>18</sup>. The legal mechanism in enforcing to ensure compliance to the town plan is therefore characterized as integration into one law of the law regarding town planning and the law regarding building control, so that the local officials can supervise and control to ensure town planning compliance.

In Thailand, the enforcement mechanism of the law appears in the articles 27 and 48 of the Town Planning Act 2518 BE. The article 27 forbids any persons from "utilizing lands which deviates from what is stipulated in the principle town plan or doing any thing which contradicts the stipulations of the principle town plan"; and the article 48 forbids any person from "utilizing land or changing or modifying real estates in ways which are deviate from the stipulations of the act of enforcing specific town plans or the ministerial regulation issued as according to the articles 42 or 45". However, the provisions in the two articles are only broadly stated; while in building control the state officials need to rely on authority of supervision and control of other law, which is the Building Control Act. The fact that the bases of authority of law are in different laws may not have negative effect on the officials if they exercise the authority of building control law in permitting or controlling buildings in ways which are line with the town plan, but at the moment the officials do not control buildings in the conformant ways; therefore the problem is in the personnel not in the law at all.

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<sup>18</sup> See *Bendles Motors Ltd. V. Bristol Corporation* [1963] 1 WLR 247 in 8.1.2.2.

### 3.3 Comparison of Town Plannings between France and Thailand<sup>19</sup>

#### Comparison of Town Planning between France and Thailand

##### Comparison of Town Planning Laws between France and Thailand

This study aims to compare the scope, structure, and mechanism of the laws regarding town planning between France and Thailand to see the similarities and differences in the following points and observation:

#### 3.3.1 Scope and Contents of the Town Planning Law

The French town planning law has wider scope in content than town planning and enforcing town plan. Instead it is seen that town planning is a process involving many factors and mechanisms other than town plan in a way that lands are best utilized in development and conservation. Therefore, in the code of law of the French there are stipulations about the mechanisms which facilitate conforming effectively to the town plan; for example, mechanism of land use administration, the specification of specially controlled areas etc.; these mechanisms are necessary to be applied along side with the town plan. Besides, important aspects of construction are also controlled, like the beautiful looking of buildings which is important factor of beautiful landscape and the “dwellability” of community.

While in Thai town planning law as in the Town Planning Act 2518 BE, emphasis is put on preparation of principle town plan and specific town plans, and the mechanism and procedure of planning and enforcing only.

#### 3.3.2 The Philosophy of Town Planning

in controlling to ensure compliance of the town plan in France, the law stipulate it clearly that town planning needs holistic strategic planning in which different areas'

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<sup>19</sup> Chulalongkorn University “Interim Report Study on Principle of Town Plan and Town Plan System of U.S.A., Wales, France” February 2004.

planning will head in one unified direction, the combination of the adjacent areas is also considered; and the utilization of land for economic purposes and for social purpose must be balanced and achieve the highest possible benefit. The purpose is to achieve sustainable development in the areas. After considering these, plan is devised so it is used as an instrument to achieve the objectives planned before hand.

In Thailand, the town planning law aims to designate the objectives of land uses without stipulating to have research and study for the purpose of strategic planning which then is used as the master of the other plans.

### 3.3.3 Preparation of Plan

In France, beside the development plan such as Contract de Plan which is a document of regional level which states the direction and structure of the economy and society for the purpose of development, each type of document always consists of planning part and plan part in parallel, no matter they are documents of town planning used in ordinary areas or those used in special areas.

As for planning and town planning, local authorities are deployed, like the municipalities, the state (central), and the private sector always take parts in the planning.

As for the region plan, the law is enforced in the areas of special nature of geography and economy.

Planning of any fashion must use the important principle of the town planning which is designated in law as the framework, otherwise the resulted plan will be deemed illegal.

in Thailand, the law does not compel to have strategic planning for the town planning so the town plan embodies the strategy. Also there is no important principle that town planning must obey. Though in practice many laws need to be

considered, like environment, the public health, building control, there is clear framework in the principle of law which is the backbone of town planning.

In preparing plan, it is mainly done by the central rather than the local despite the fact that the law empowers the locals.

#### **3.3.4 Land Uses Administration**

In the town planning law of France, “Administration of land uses” is a mechanism which must be always applied in parallel with the town plan, in order that lands are used with the highest benefit. Methods of different forms are designated in administering lands. Mechanism of acquiring lands, like expropriation of land; it is separated from the plan.

In Thailand, there is no idea in regarding “administration of land uses”, there is only enforcement to ensure compliance of the plan. Others are that the designations in the specific town plans which result in expropriation is applying of different principles of law together which then resulting in law enforcement that have effects on rights in general; thus it is not just and is an obstacle in operation.

#### **3.3.5 Controlling to Ensure Compliance of Plan**

In France the town planning law designates the mechanism of permitting construction within the code of town planning law, since the looking of buildings is a factor needing regulation of the town plan. In addition, there is control of land use which specifies whether special limitation of land utilization will be imposed or not.

In the Thai town planning law, permission of construction is within the Building Control Act.

### **3.3.6 Coordination among Concerned Agencies**

The French code of town planning law designates clear about levels of administration and the state organizations which are responsible in different aspects of town planning. There are specifications of the policy formation, town planning, and plan preparation, control to ensure compliance of plan, mechanism coordination among operation agencies, both in forms of clear legal regulation or inter-agency agreements in certain issues.

According to the Town Planning Act 2518 BE, though there is designation of responsibilities of town planning, its scope is not very broad, since town planning involves many different agencies but inter-agency coordination mechanism is lacking.

### **3.3.7 Financial burden of Town Planning**

The French law designates the state to allocate budget to the locals in regard of town planning administration; it also designates private constructors to pay taxes and other duties so as to finance the local public works

In Thai law, aside from land maintenance taxes, there is lack of mechanism to pool private funds from the private parties which take parts in imposing effects on the town plan and the condition of the communities.

## Chapter 4

### Analysis of the Research Problem

#### 4.1 The Legal Problems of Conflict of Law between Announcement of the Department of Public Works and Town & Country Planning on Ministerial Regulations of Sa-Kaew Community

##### *Announcement of the Department of Public Works and Town Planning Regarding Designating Criteria of Utilizing Properties for Benefit of Laying and Devising Principle Town Plan in the Areas of Sa-Kaew Province*

As it is legislated the act regarding specifying land for the purpose of surveying order to lay down and devise the principle town plan in the areas of the 72 provinces in 2546; and the act is applied in Sa-Kaew province. For the benefit of laying and devising principle town planning according to the act; by relying on the authority provided by the article 15(3) of the Town Planning Act 2518 which is an act that has some provisions relating to limiting freedom and right of person which is provided to be possible by the articles 29, 35, 36, 48, 50 and 56 of the Constitution of the Kingdom of Thailand. By advice of the Committee of Town Planning, the deputy-chief of the Department of Public Works and Town Planning, under the status of planning officials, issues the announcement as follows,

Item 1. In this announcement,

“Commercial buildings of whole sale and retail” means the building of commercial use under the same roof or different roofs which have common use areas for the activities of whole sale and retail of daily-used consumer products of various types; it does not include market as by the law regarding the public welfare or building which is used for promoting or selling merchandises which are produces or products of community.

Item 2. This announcement shall be enforced publicly within the areas of Sa-Kaew Province; this does not cover the areas over which the principle town plan is enforced and those over which the principle town plan has been enforced.

Item 3. The areas of more than 300 sqm covered in the item 2 are prohibited the utilization of land for the purposes of construction, modification, use or changes of use of commercial buildings for the activities of whole sale and retail of daily-used consumer products of various types, except the following areas,

1. the areas within the municipality area of Sa-Kaew, Ampur Meung Sa-Kaew
2. the areas within the municipality area of Tumbol Tha-Kasem, Ampur Meung Sa-Kaew
3. the areas within the municipality area of Tumbol Salalumduan, Ampur Meung Sa-Kaew
4. the areas within the municipality area of Tumbol Watthananakhorn, Ampur Watthananakhorn
5. the areas within the municipality area of Tumbol Taphraya, Ampur Taphraya
6. the areas within the municipality area of Tumbol Khaochakan, Ampur Khaochakan
7. the areas within the municipality area of Tumbol Wangnamyen, Ampur Wangnamyen
8. the areas within the area of Tumbol Watthananakhorn, Ampur Watthananakhorn

In here the areas from 1 to 7 may be constructed onto them commercial buildings of wholesale and retail activities according to the sizes and standard provided in the item4. The areas of 8 may be constructed onto them commercial buildings of wholesale and retail activities according to the sizes and standard provided in the item4 and item 5.

Item 4. Land utilization for construction, modification, use or changes of use of commercial buildings for the activities of whole sale and retail of daily-used consumer products of various types of area of equal to or more than 300 sqm but not exceeding 1,000 sqm, needs to comply to the following regulations,

1. The building site shall be on the land connected to public road of not less than 4 lanes, or of the road size of not less than 20 meters in width, which must meet public road of equal or larger sizes.

2. The center of the vehicle exit/entrance way shall be located not less than 100 meters away from the road intersection of public roads of sizes larger than 14 meters in width.
3. the ratio of building-covered area to the area of the whole land plot in which the building sits shall not exceed 0.3.
4. the ratio of common area of the building to the area of the whole land plot in which the building sits shall not exceed 1.5.
5. the ratio of unoccupied area for garden or for tree planting or for recreation to the area of the whole land plot in which the building sits shall not less than 20%.
6. there shall be unoccupied area, in the front of building, between the building and the public road, of not less than 50 meters in distance measured from the outer most edge of the building to the edge of the road which is connected to the land of the building.
7. there shall be unoccupied areas on the sides and the back of the building shall be of the distances from other people's lands or the public road area of not less than 15 meters measured from the outer most edges of the building to the edges of other people's lands, or of the public road, which are connected to the land of the building.
8. if the building is taller than 10 meters, there shall be a distance of not less than 500 meters from the boundary of the land where the main government building of the province or Ampur, a religious building, an antique building, or an academic building sits, by measuring from the out most edge of the building of permit to the boundary of the lands of the concerned buildings.
9. there shall be not less than 1 car-park paragraph per 20 sqm of the building's area, fraction of 20 sqm is counted as 20 sqm.
10. there shall be rubbish resting area being distanced from the area of other people's lands not less than 10 meters; and must be not less than 4 meters away from the location of food preparing and food storing, if the rubbish resting area is of more than 3 Cubic Metre of capacity, the distance from the above areas shall be not less than 10 meters; and the rubbish can be transported easily.

Item 5. Land utilization for construction, modification, use or changes of use of commercial buildings for the activities of whole sale and retail of daily-used consumer products of various types of area of more than 1,000 sqm, needs to comply to the following regulations,

1. The building site shall be on the land connected to public road of not less than 4 lanes, or of the road size of not less than 40 meters in width, which must meet public road of equal or larger sizes.
2. The center of the vehicle exit/entrance way shall be located not less than 500 meters away from the road intersection of public roads of sizes larger than 14 meters in width.
3. the ratio of building-covered area to the area of the whole land plot in which the building sits shall not exceed 0.2.
4. the ratio of common area of the building to the area of the whole land plot in which the building sits shall not exceed 1.5.
5. the ratio of unoccupied area for garden or for tree planting or for recreation to the area of the whole land plot in which the building sits shall not less than 20%.
6. there shall be unoccupied area, in the front of building, between the building and the public road, of not less than 75 meters in distance measured from the outer most edge of the building to the edge of the road which is connected to the land of the building.
7. there shall be unoccupied areas on the sides and the back of the building shall be of the distances from other people's lands or the public road area of not less than 20 meters measured from the outer most edges of the building to the edges of other people's lands, or of the public road, which are connected to the land of the building.
8. if the building is taller than 10 meters, there shall be a distance of not less than 500 meters from the boundary of the land where the main government building of the province or Ampur, a religious building, an antique building, or an academic building sits, by measuring from the out most edge of the building of permit to the boundary of the lands of the concerned buildings.
9. there shall be not less than 1 car-park paragraph per 40 sqm of the building's area, fraction of 40 sqm is counted as 40 sqm.

10. there shall be rubbish resting area being distanced from the area of other people's lands not less than 10 meters; and must be not less than 4 meters away from the location of food preparing and food storing, if the rubbish resting area is of more than 3 Cubic Metre of capacity, the distance from the above areas shall be not less than 10 meters; and the rubbish can be transported easily.

Item 6. in the cases where the permit petitioners cannot comply to the regulations of 4(6), item 4(7), item 4(8), item 5(6), item 5(7), and item 5(8), the permit petitioners may petition to the authorized official as stated in the item 7 so that the petition may be presented to the provincial town planning considering sub-committee of to consider the suitability; this process is subject to the following regulations,

- (1) the regulation as in the item 4(6), the unoccupied area, in the front of building, between the building and the public road, may be less than 50 meters but shall be not less than 40 meters in distance measured from the outer most edge of the building to the edge of the road which is connected to the land of the building.
- (2) the regulation as in the item 4(7), the unoccupied areas on the sides and the back of the building shall be of the distances from other people's lands or the public road area may be less than 15 meters but must not be less than 10 meters measured from the outer most edges of the building to the edges of other people's lands, or of the public road, which are connected to the land of the building.
- (3) the regulation as in the item 4(8) and item 5(8), for the building taller than 10 meters, the distance from the boundary of the land where the main government building of the province or Ampur, a religious building, an antique building, or an academic building sits, may be less than 500 meters but must not be less than 300 meters.
- (4) The regulation as in the item 5(6), the paragraph in the building front may be less than 75 but must not be less than 50 in distance from the public road.
- (5) The regulation as in the item 5(7), the unoccupied areas on the sides and the back of the building shall be of the distances from other people's lands or

the public road area may be less than 20 meters but must not be less than 15 meters.

Item 7. The authorized persons in controlling or issuing permit of building construction, or the authorized persons in controlling or issuing permits to business in the areas of Sa-kaew province, observe this announcement.

Item 8. This enforcement of this announcement shall be effective on the next day of the day of announcement.

Announced on 18<sup>th</sup> day of August 2546 B.E.

Swang Srisakul

Deputy-chief of the Department of Public Works and Town Planning

***The Ministerial Regulation to Enforce the Principle Town Plan of Sa-kaew 2547 B.E.***

By the authority as in the article 5 and article 26 paragraph 1 of the Town Planning Act 2518 and the annexed article 26 paragraph 1 of the Town Planning Act 2518 (issue3) 2535 B.E. which has some provisions relating to limiting freedom and right of person which is provided by the articles 29, 35, 36, 48, and 50 of the Constitution of the Kingdom of Thailand; limiting freedom and right of person can be done by the authority provided by the provision of law. The minister of Interior has issued the ministerial regulations as follows.

Item 1. The concerned ministerial regulation is called “The Ministerial Regulation of Enforcing the Town Planning of Sa-Kaew 2547”.

Item 2. The ministerial regulation of enforcement has 5 year term.

Item 3. the principle town plan shall be applied in the areas of Tumbol Salalumduan, Tumbol Nongbon, Tumbol Sa-kaew, Tumbol Tha-kasem, and

Tumbol Sa-Khuan, Ampur mueng Sa-kaew Sa-kaew Province, and in the areas stated at the end of this ministerial regulation.

Item 4. the laying and preparing of the town plan under this ministerial regulation has the objectives for guiding development, and sustaining the town and the concerned areas or rurality, in the aspects of property utilization, transportation and logistics, public utilities, public services and environment in the areas in the item 3; so that it is in line with the National Development Plan of Economy and Society.

Item 5. the principle town plan according to this ministerial regulation has the policy and measure of efficient land utilization, and being able to accommodate comply to future community growth, promoting and developing economy and network of the public services. It has the following main points.

- (1) To promote and develop the urban community to be a center of administration, governing, education, commuting and logistics of Sa-kaew Province.
- (2) To promote the development of residence and commerce in line with the expansion of the community and economy.
- (3) To develop the social service, public utility, and public assistance so it is adequately up to standard.
- (4) To protect the natural resources and the environment.

Item 6. The land utilization within the areas of the principle town plan shall follow the plan which designates the types of land use and illustrates projects of transportation and logistics and the attached items at the end of this ministerial regulation.

Item 7. The land utilization according to the plan of categorized land use and the illustrated projects of transportation and logistics in this ministerial regulation shall be as follows.

- (1) The land in the areas number 1.1 to 1.10 which is designated to be yellow shall be of the category of low density residence.
- (2) The land in the areas number 2.1 to 2.12 which is designated to be orange shall be of the category of medium density residence.
- (3) The land in the areas number 3.1 to 3.6 which is designated to be red shall be of the category of commerce and high density residence.
- (4) The land in the areas number 4.1 to 4.11 which is designated to be green shall be of the category of rurality and agriculture.
- (5) The land in the areas number 5.1 to 5.7 which is designated to be light green shall be of the category of open area for recreation and protection of quality of the environment.
- (6) The land in the areas number 6.1 to 6.10 which is designated to be olive green shall be of the category of academic institutes.
- (7) The land in the areas number 7.1 to 7.8 which is designated to be light grey shall be of the category of religious institutes.
- (8) The land in the areas number 8.1 to 8.24 which is designated to be blue shall be of the category of institutes of public administration, public utility, and public assistance.
- (9) The land in the areas number 9 which is designated to be pink shall be of the category of projects of transportation and logistics.

Item 8. Land of the category of low density residence shall be utilized for residence, institutes of public administration, public utility, and public assistance on most part of land, the types of land utilization shall not be more than 25% of the area of the land to be permitted.

On land of this category, the followings land uses are prohibited:

- (1) All kinds of factory as specified in factory law; except the factory of the types and kinds that is permitted by this ministerial regulation and water treatment factory of the community.

- (2) Gas filling place, gas storing place, and room for gas filling according to the law of liquidified petroleum gas filling, but this does not include service station, gas shop, gas using place, food shop that uses gas.
- (3) Place that is used to store fuel oil for selling that requires permit by law of fuel oil control, except the fuel oil station
- (4) Raising of horse, cow, buffalo, pig, goat, sheep, swan, duck, chicken, snake, crocodile or wild animal according to law of conserving and protecting wild animals from commercial activities.
- (5) Grave yard and cremation place as in the law regarding grave yard and cremation place
- (6) Partitioning land for commercial and industrial activities
- (7) Animal killing place
- (8) Silo
- (9) Rubbish treatment
- (10) Disposed parts selling and buying

The utilization of lands on sides of Suwan-nakhorn Road, land highway no.33 Hinkong-Aranyaprates route, land highway no.317 Chantaburi-Sa-kaew route, and Charernphrakiat Rama IX Road, shall be left paragraph on sides of road of not less than 15 meters in distance from the road boundary lines; while the utilization of land along the sides of land highway no.3462, the divert route of the land highway no.33 (Sa-kaew)-Phuwong, shall be left a paragraph of 10 meters wide along the road boundary lines.

Item 9. Land of the category of medium density residence shall be utilized for residence, institutes of public administration, public utility, and public assistance on most part of land; while the types of land utilization shall not be more than 20% of the area of the land to be permitted.

- (1) All kinds of factory as specified in factory law; except the factory of the types and kinds that is permitted by this ministerial regulation and water treatment factory of the community.

- (2) Gas filling place, gas storing place, and room for gas filling according to the law of liquidified petroleum gas filling, but this does not include service station, gas shop, gas using place, food shop that uses gas.
- (3) Place that is used to store fuel oil for selling that requires permit by law of fuel oil control, except the fuel oil station
- (4) Raising of horse, cow, buffalo, pig, goat, sheep, swan, duck, chicken, snake, crocodile or wild animal according to law of conserving and protecting wild animals from commercial activities.
- (5) Grave yard and cremation place as in the law regarding grave yard and cremation place
- (6) Partitioning land for commercial and industrial activities
- (7) Animal killing place
- (8) Silo
- (9) Rubbish treatment
- (10) Disposed parts selling and buying

The utilization of lands on sides of Suwan-nakhorn Road, land highway no.33 Hinkong-Aranyaprates route, shall leave a paragraph of not less than 6 meters from the road boundary lines.

Item 10. Land of the category of commerce and high density residence shall utilized for the purpose of commerce, residence, government institutes, public utility, and public assistance for most of the land, while other land litizations shall not exceed 15% of the area of land to be permitted.

On the land of this category, the following land utilizations are prohibited:

- (1) All kinds of factory as specified in factory law; except the factory of the types and kinds that is permitted by this ministerial regulation and water treatment factory of the community.
- (2) Gas filling place, gas storing place, and room for gas filling according to the law of liquidified petroleum gas filling, but this does not include service station, gas shop, gas using place, food shop that uses gas.

- (3) Place that is used to store fuel oil for selling that requires permit by law of fuel oil control, except the fuel oil station
- (4) Raising of horse, cow, buffalo, pig, goat, sheep, swan, duck, chicken, snake, crocodile or wild animal according to law of conserving and protecting wild animals from commercial activities.
- (5) Grave yard and cremation place as in the law regarding grave yard and cremation place
- (6) Partitioning land for industrial activities
- (7) Animal killing place
- (8) Silo
- (9) Rubbish treatment
- (10) Disposed parts selling and buying

The utilization of lands on sides of Suwan-nakhorn Road, and municipal road 17, shall be left a paragraph of not less than 6 meters from the road boundary lines.

Item 11. Land of the category of rurality and agriculture shall utilized for the purpose of agriculture, government institutes, public utility, and public assistance for most of the land, while other land utilizations shall not exceed 25% of the area of land to be permitted.

On the land of this category, the following land utilizations are prohibited:

- (1) All kinds of factory as specified in factory law; except the factory of the types and kinds that is permitted by this ministerial regulation and water treatment factory of the community.
- (2) Gas filling place, gas storing place, and room for gas filling according to the law of liquidified petroleum gas filling, but this does not include service station, gas shop, gas using place, food shop that uses gas.
- (3) Place that is used to store fuel oil for selling that requires permit by law of fuel oil control, except the fuel oil station
- (4) Hotel as in the hotel law

- (5) Partitioning of land for industrial use
- (6) Partitioning of land for commercial use, except to be as a part of residential use and of area of not more than 5% of the total project land area
- (7) Large-scale building for residence and commercial purposes
- (8) Residence and commercial use of the category of row apartment or row building, except to be as a part of project of portioning land for residential use and of area of not more than 5% of the total project land area
- (9) Residence of category apartment, flat or dormitory
- (10) Residence of the category of row house, except to be as a part of project of portioning land for residential use and of area of not more than 10% of the total project land area

If there is land utilization for the purpose partitioning land for commercial purpose as in (6) and for residence and commercial uses of the category of row apartment or row building as in (8) which take place in the same project of partitioning land for residence, such land utilization must not exceed 5% of the total project area.

The prohibition of land utilization as in (7) and (9) shall not be enforced in the cases of the operation of National Housing which is subsidized from the government for purpose of migrating community.

The utilization of lands on sides of Suwan-nakhorn Road, land highway no.33 Hinkong-Aranyaprates route, and land highway no.317 Chantaburi-Sa-kaew route, shall be left paragraph on sides of road of not less than 15 meters in distance from the road boundary lines; while the utilization of land along the sides of land highway no.3462, the divert route of the land highway no.33 (Sa-kaew)-Phuwong, shall be left a paragraph of 10 meters wide along the road boundary lines.

Item 12. Land of the category of open area for recreation and protection of quality of the environment which is the government's land shall be utilized for

purposes of recreation and protection of quality of the environment or public benefits only.

For the land of this category where the owners or legal occupiers are private parties, land shall be utilized for purposes of recreation and protection of quality of the environment, residence, agriculture or agriculture-related activities, public utility, public assistance or public benefit only; and land utilizations of the followings are prohibited:

- (1) Raising of horse, cow, buffalo, pig, goat, sheep, swan, duck, chicken, snake, crocodile or wild animal according to law of conserving and protecting wild animals from commercial activities.
- (2) Partition of land for residence
- (3) Large-scale residential building
- (4) Residence of type row apartment, row building or row house
- (5) Residence of type condominium, apartment or dormitory

The land utilization along the sides of municipal road 17 shall leave paragraphs of 6 meter wide along the road boundary lines.

Land utilization along sides of natural canals or water sources shall leave paragraphs of not less than 6 meters along the side boundary lines of the natural canals or water sources, except only for the construction for water commuting or public utility. Land utilization along sides of the Phrasatheung Canal and Yang Canal shall leave paragraphs of not less than 50 meters along the side boundary lines of the concerned canals, except only for the construction for water commuting or public utility.

Item 13. Land of the category of academic institutes shall be used for the purpose of education or education related activities, government institutes, or public benefits only.

Item 14. Land of the category of religious institutes shall be used for the purposes of religions or religion-related activities, education, government institutes, or public benefits only

Item 15. Land of the category of institutes of public administration, public utility, and public assistance, shall be used for purposes of state affairs, affairs of public utility and public assistance or public benefit only.

The utilization of lands on sides of Suwan-nakhorn Road, land highway no.33 Hinkong-Aranyaprates route, shall leave paragraphs of 15 meter wide along the road boundary lines; land utilization along the sides of municipal road 17 shall leave paragraphs of 6 meter wide along the road boundary lines.

Item 16. Land of the category of projects of transportation and logistics shall be used for purposes of road construction, related public utility and public assistances, or agriculture only.

Item 17. the authorized parties in controlling building construction or affairs of principle town planning shall follow this ministerial regulation.

Given at the 10<sup>th</sup> day of August 2547 B.E.

Phokhin Phalakul

Minister of Interior

The petitioning for permits to construct commercial buildings of category of wholesale and retail within Sa-kaew Province, the Siam Makro Pcl. has filed a petition to report of the intention to build a concrete-iron building of one storey and of 8,332 sqm for purpose of wholesale and retail but without filing petition following the article 39(bis); the Sa-kaew Municipality has issued receipt of report acknowledgement of building construction as according the article 39(bis) of Building Control Act 2522 on the 16<sup>th</sup> day of March 2548 B.E.

Eventually on 13 July 2547, Mr. Chairatn Boonchuey, deputy mayor, the care-taking Sa-kaew Municipality Mayor, had a letter to Macro stating that the Municipality would proceed as according to the announcement of the Department of Public Works and Town Planning, the main points are as follows,

- (1) The announcement of the Department of Public Works and Town Planning regarding the regulation of property utilization for the purpose of town planning matters in Sa-kaew Province, dated 18<sup>th</sup> August 2546, has been enforced by the authority provided in article 15(3) of the Town Planning Act 2518 together with the royal decree regarding the designation of land zones which will be surveyed for the purpose of principle town planning in the areas of the 72 provinces in 2546 B.E. Therefore as long as the ministerial regulation of Sa-kaew principle town planning (Town Plan of Sa-kaew) is not promulgated or the above royal decree has not been expired yet (to be expired on 19<sup>th</sup> May 2549), the above announcement of the Department of Public Works and Town Planning is still effective.
- (2) And the item 2 of the announcement of the Department of Public Works and Town Planning states that “it will be enforced in the locality of Sa-kaew which does not include the areas where the principle town plan is or has been enforced”. This means that the announcement of the Department of Public Works and Town Planning is enforced in the areas where the ministerial regulation of principle town planning is enforced on the day the announcement is enforced, or in the areas where the ministerial regulation of principle town planning has been enforced despite of its expiration before the enforcement of the announcement. In the case the Department of Public Works and Town Planning advises that the ministerial regulation of Sa-kaew town planning was enforced on 7<sup>th</sup> October 2547 which is a period after the announcement of the Department of Public Works and Town Planning had been enforced, therefore it does not render the announcement of the Department of Public Works and Town Planning ineffective in any way.
- (3) According to the announcement of the Department of Public Works and Town Planning & country in the item 3 and 4 concluding is in the locality

of Sa-kaew can using building permit for retail and wholesale business not more than 1,000 sqm.

The Problem of Siam Makro pcl. Is can construction permit more than 1,000 sqm. or not ? According to The Ministerial regulation to enforce the principle town plan of Sa-kaew 2547 B.E. can do it.

These are my opinion as follows:

- (1) Regarding the definition of “principle town plan”, in the Town Planning Act there is no wordings or provisions stating that it is the principle town plan of the areas of the whole province only; the ministerial regulation issued by the article 26 does not either provide that it is practicable only in the case of town plan as that of the areas of the whole province; and it is provided that if there is issuance of ministerial regulation of principle town planning of the various areas of the province which eventually covers all the areas in the province, there must be another additional issuance of ministerial regulation of principle town plan of the whole province in order to be a lawfully effective principle town plan. Due to the above reason, in preparing town planning and issuance of ministerial regulation to enforce the town plan, it is not necessary to prepare town planning and issuance of ministerial regulation to enforce the town plan for the province as a whole. The ministerial regulation regarding enforcement of principle town planning in Sa-kaew is thus effective lawfully in the areas of Sa-kaew municipality as stated in the ministerial regulation. The decision of the department of Public Works and Town Planning is therefore a denial of the lawful authority of the above ministerial regulation.
- (2) Being lawful the issuance of the ministerial regulation of enforcing the principle town planning of Sa-kaew, the article 26 of the law thus conform with the article 27 which provides “in the areas where the ministerial regulation of enforcing the principle town planning is effective, it is prohibited any one to utilize the land otherwise than stated in the principle town plan, or doing anything which contradicts the specification of the

principle town plan". The announcement of the Department of Public Works and Town Planning regarding the Sa-kaew Municipality is therefore no longer enforceable since it contradicts with the provision as stated in the article 27 (the article 27 uses the term "Khet" not "province" as referred to in the decision of the Department of Public Works and Town Planning).

- (3) The ministerial regulation of enforcing the principle town planning of Sa-kaew 2547 has specified the details of land utilization in each specified area in the areas of the principle town plan, which includes the land utilization for commercial activities; and there is provided the detailed limitation and utilization of land in it. When the announcement of the Department of Public Works and Town Planning which is enacted by the authority of the Town Planning Act contradicts with the ministerial regulation which is issued by the authority of same issue of law but of higher ranking, the announcement of the Department of Public Works and Town Planning thus is not effective starting from the day of 7<sup>th</sup> October 2547 when the ministerial regulation came to be effective. The article 27 has provided to accommodate the enforcement authority of the town planning enforcing ministerial regulation so it is above any regulation which contradicts the town planning which is already lawfully enforced.
- (4) The announcement of the Department of Public Works and Town Planning which is enacted by the authority the article 15(3) of the Town Planning Act has the condition of exercising authority specified in the article 15 paragraph 1 stating "during the period of specification time during which the royal decree designates the land areas to be surveyed, the planning officials shall have the following authority ...." And in that very announcement the objectives of the announcement are stated "according to the enacting of royal decree designating areas of land to be surveyed for principle town planning purpose in the 72 provinces which has been promulgated in the areas of Sa-kaew Province... and for the benefit of town planning as according to the royal decree ... thus to announce the following...". This shows that the Department of Public Works and Town Planning has the authority to issue announcements designating regulation in

utilizing properties for the purpose of land survey for principle town planning only over the areas which are specified in the royal decree. The Sa-kaew Municipality has been promulgated the ministerial regulation of enforcing the principle town plan as according to the article 26, the effect of legal enforcement of the royal decree will be in accordance with the provision of the article 16 that “the royal decree which is announced following the article 14 shall be expired as soon as the ministerial regulation of enforcing the principle town plan... in the areas stated in the royal decree herein”; the royal decree thus ceases to be effective in the part that designates the land to be surveyed for town planning purpose in Sa-kaew Municipality areas (the article 14 uses the term “Khet” not “province” as referred to in the decision of the Department of Public Works and Town Planning). This therefore leads to the Department of Public Works and Town Planning no longer having any legal authority to support the designations the land to be surveyed or land uses for town planning purpose in Sa-kaew Municipality areas; it has been left only authority to survey land or to regulate in the areas outside the enforcement scope of the ministerial regulation and only in the areas under the enforcement of the royal decree.

- (5) In the interpretation of the item 2 of the announcement of the Department of Public Works and Town Planning which states that only the areas in which there is or has been enforced the ministerial regulation are exempt case by case from the enforcement; while the ministerial regulation of enforcing the principle town planning of Sa-kaew 2547 is enforced after the announcement of the Department of Public Works and Town Planning, it does not thus fall into the exemption, and therefore does not render the announcement ineffective in enforcing over the said areas. In fact according to the abovementioned legal provisions, the ministerial regulation of enforcing the principle town planning of Sa-kaew 2547 has higher rank than the announcement of the Department of Public Works and Town Planning which is enacted as according to the article 15, on matter it is promulgated before or after the announcement. The article 15 which authorizes the Department of Public Works and Town Planning to issue

announcement does not authorize it to issue announcement to exempt the enforcement of the ministerial regulation which enacted by the authority provided in the article 26 in any way. The interpretation to allow the department announcement to have higher enforcement power over that of the ministerial regulation therefore contradicts the principle of law and the article 27. due to the legal reason abovementioned, in the areas of Sa-kaew Municipality which include the areas of tumbol Sa-kaew where the principle town planning ministerial regulation is enforced lawfully, the land use therein must follow the regulation of the principle town plan of Sa-kaew, where the department announcement above is therefore no longer effective.

### **Legal Opinion**

The royal decree regarding the designation of land zones which will be surveyed for the purpose of principle town planning in the areas of the 72 provinces in 2546 B.E. has the following promulgation reasons, to guide the development and protection of the city and the connected areas or rural areas in the aspects of property utilization, transportation, and logistics; therefore in order for the planning official or the persons authorized by the planning official to do needed things to survey and specify utilizations of property for the purpose of principle town planning which is approved by the Committee of Town Planning; this royal decree is therefore enacted.

This royal decree authorizes the planning officials or the persons delegated to survey or specify regulation for the principle town planning, therefore after the promulgation of the ministerial regulation of the principle town plan of Sa-kaew Province, regulations must be devised as in the ministerial regulation to do or not to do. While there is no provision prohibiting the construction of commercial building for wholesale and retail, the said building may be constructed.

In the item 2 of the announcement of the Department of Public Works and Town Planning regarding the regulation in property utilization for the purpose of principle town planning in Sa-kaew Province, it is stated that this announcement is enforced within the areas of Sa-kaew Province, but it does not include the areas in which there is or has been enforced the principle town planning. What does “To be enforced the principle town planning” mean? Since this issue concerns ministerial regulation of town planning enforcement, not announcement, therefore the literal interpretation would yield another different understanding, and thus the announcement of Public Works and Town planning Department is not effective.

If the Public Works and Town planning Department interprets that “To be enforced the principle town planning” means the ministerial regulation provides the enforcement of the principle town plan, it is not enforceable either; since the item 2 the announcement of the Department of Public Works and Town Planning does not include the areas where the principle town plan is or has been enforced. It is likely to be the case where the announcement is not enforceable to ministerial regulation which has been promulgated no matter before or after, since it is not provided that in the areas of the principle town plan enforcement after the announcement of the Public Works and Town planning Department but that only the areas which are enforced principle town plan. Therefore the enforceability of the ministerial regulation regarding enforcement of the principle town plan in Sa-kaew has already been exempted [from the Department announcement].

Since the announcement of the Department of Public Works and Town Planning has the objective of principle town planning in the areas of Sa-kaew Province, therefore after there is preparation of principle town planning and is publicly enforced, the said announcement is likely to be no longer effective, but effective only in the areas outside the principle town planning enforcement areas. When the fact shows itself that the land to be permitted is within the principle town planning enforcement areas, the department announcement cannot be enforced on such areas. Additionally, the article 16 of the Town Planning Act 2518 provides that the announcement of Public Works and Town Planning Department shall be expired

upon the promulgation of the ministerial regulation regarding enforcing the principle town plan.... in the areas of the said royal decree. Therefore, when the fact is that the ministerial regulation regarding enforcing the principle town plan in Sa-kaew has been promulgated the said announcement of Public Works and Town Planning Department ceases to be effective within the areas of the principle town planning.

According the opinion of the Public Works and Town Planning Department which is that the principle town planning of Sa-kaew is enforced after the announcement of Public Works and Town Planning Department, rendering to not expiring of the announcement; this should be incorrect. It is because the said announcement is a regulation of property utilization for the purpose of town planning in the areas of Sa-kaew Province which is a kind of town planning being provided in the ministerial regulation regarding enforcing the principle town plan in Sa-kaew 2547, as soon as the ministerial regulation is enforced, the announcement expires in the ministerial regulation promulgation areas. Another observation is that announcement should have low rank and the ministerial regulation, and the ministerial regulation is promulgated, the stipulations of the announcement should be included in the ministerial regulation which thus can be observed if there is no prohibition from doing so, and no action will contradict the ministerial regulation.

## **Chapter 5**

### **Conclusion and Recommendations**

#### **5.1 Conclusion**

To conclude the problem of the case of the Makro Sa-kaew branch, it is an indictment concerning the right to petition for permit of constructing commercial building for conducting commercial activities of wholesale and retail in the Sa-kaew Municipality and the legal conflict of the announcement of Public Works and Town Planning Department regarding the property utilization for the purpose of principle town planning in Sa-kaew Province dated 18 August 2546 by the authority of 15(3) of the Town Planning Act 2518, and the ministerial regulation regarding enforcing the principle town plan in Sa-kaew 2547 which is enacted by the authority of the articles 5 and 26 of the Town Planning Act 2518.

The announcement of Public Works and Town Planning Department is promulgated on 23<sup>rd</sup> August 2546 which has the detail that the announcement allows commercial building for conducting commercial activities of wholesale and retail of the area of not more than 1,000 sqm Sa-kaew Province, and in the item 2 of the said announcement states that it shall not be enforced in the areas of Sa-kaew which the principle town is or has been enforced.

The ministerial regulation regarding enforcing the principle town plan in Sa-kaew 2547 is effective on 8<sup>th</sup> October 2547; and when Makro file petition for permit to construction within the principle town planning area of Sa-kaew to the Sa-kaew Municipality, the officials thought that on the date of 16<sup>th</sup> March 2548 the principle town plan of Sa-kaew (item 3) was effective already therefore exemption was applied and the enforcement of the announcement of Public Works and Town Planning Department was not applied.

Public Works and Town Planning Department opiniates that the principle town plan of Sa-kaew was effective since 8<sup>th</sup> October 2547 which was a da y after the promulgation of

the department announcement (dated 23<sup>rd</sup> August 2546), thus it does not fall into the item 2 of the announcement and the announcement will cease to be effective once the Sa-kaew's principle town plan was promulgated.

To conclude the opinion of the researcher, the ministerial regulation regarding enforcing the principle town plan in Sa-kaew 2547 has regulated the details of land utilization in every areas of the principle town planning areas, which includes also the details of land utilization for commercial purpose with details of designation and prohibition of land use. When the announcement of Public Works and Town Planning Department which is issued by the authority of the Town Planning Act contradicts with the ministerial regulation which is enacted by the authority of the same Act and is of higher rank; the announcement thus is not effective legally starting from 7<sup>th</sup> October 2547 when the ministerial regulation regarding enforcing the principle town plan in Sa-kaew is effective. Regarding the interpretation of the item 2 of the announcement of Public Works and Town Planning Department which states that the enforcement of the announcement is exempted case by case only in the areas where ministerial regulation is or has been promulgated at the same time of effectiveness of the announcement. The ministerial regulation regarding enforcing the principle town plan in Sa-kaew is promulgated after the announcement thus does not fall into condition of exemption. The ministerial regulation regarding enforcing the principle town plan over-rules the enforcement of the announcement of Public Works and Town Planning Department which is issued by the article 15. No matter it is issued before or after, the article 15 of the Town Planning Act 2518, the authority of which the Public Works and Town Planning Department relies in issuing the announcement, does not provide the authority to the Public Works and Town Planning Department to issue announcement to exempt the enforcement of the principle town planning which is issued by the article 26 in any way. The interpretation to allow the announcement of Public Works and Town Planning Department to over-rule the ministerial regulation which is a higher rank law is therefore contradictory to the principle of law and contradicts the article 27 that states "in the areas where the principle town plan is enforced already, it is prohibited of any one utilizing land otherwise than stipulated by the principle town plan or doing anything which breaks the stipulation of the principle town plan".

The announcement of the Public Works and Town Planning Department regarding designating property utilization for the purpose of town planning in the areas of Sa-kaew, the issue dated 18<sup>th</sup> August 2546; in the part that concerns the Sa-kaew Municipality areas, it is not enforceable any longer since it contradicts the provision as in the article 27 which uses the term “Khet” rather than “province” as in the argument in the decision of the Public Works and Town Planning Department, issue Mo Tho 0706/2992 dated 25<sup>th</sup> April 2548.

## 5.2 Recommendations

The recommendation for the case of petitioning for permit to conduct commercial activities of wholesale and retail as the abovementioned cases are as follows.

5.2.1 The laws concerning the petitioning for permit to conduct commercial activities of wholesale and retail by separating them from the Building Control Act 2522 clearly. It is seen that when comparing with laws of the other countries, the foreign laws have laws regarding wholesale and retail business which is separate from other laws. The appending laws regarding permit of wholesale and retail business to building control law is because Thai town planning law does not provide punishment for the offenders, and the building control law has punishment.

5.2.2 The details of contents and main themes of the newly enacted provisions should incorporate and prioritize the interests the practitioners and consumers equally in enacting; bias must be avoided.

5.2.3 Public hearing should be done like in the foreign countries to hear opinions of the local people and communities for the benefits of the practitioners and consumers, to see if they really want a modern trade establishment in their communities or not.

5.2.4 The contents and main themes of the newly enacted provisions should be in tune with the town planning law.

5.2.5 timeframe for law revision and annex should be designated so that the laws are kept up to date and suitable to the local community's demands.



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