



31 March 2008

The Hon Lau Wong Fat, GBM, GBS, JP
Chairman of Panel on Development
Legislative Council
Legislative Council Building
8 Jackson Road
Central, Hong Kong

(By Post and
by Fax no: 2185 7845)

cc:
Mrs Carrie Lam, JP
Secretary for Development
Development Bureau
8/F West Wing, Central Government Offices
11 Ice House Street
Central
Hong Kong

**Re: Proposals to lower the compulsory sale threshold for specified classes of lots
under the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545)**

In order to remain as leader of economic development in the region and maintain the robust local economy, we have to put our most scarce resource of our community – land, to the optimum use. Furthermore, private owners holding assets in properties would be striving for the opportunities to release the potential of these assets, which very likely are the greatest investment in their lifetime, that they have been hanging on for long time.

Most oppositions raised against the recent revision, in deed improvements, to the current Cap 545 operations claimed that this system of “private compulsory purchase” should be built on an enhanced and “human based” town planning mechanism. To this, we would remind them that there are certain districts in our urban area already under modern planning control with well instituted infrastructure yet because of the problem of “multiple ownership” in the land title, redevelopment has been frustrated and the building fabric are now left to deteriorate. Examples are some old industrial areas which experienced their prosperity in the times of “manufacturing economy” back in the 60’s and 70’s and now moving into their stage of “economically obsolete”. With a diminished functional value and coupled with the low incentive for repair and maintenance, these buildings are slowly stepping into their stage of “physical obsolete”.



There is the need of a mechanism to combat “multiple ownership” which is the fundamental blockage to urban redevelopment. There is a need for such mechanism as the life span of all buildings are limited though could be extended with all owners concerted efforts of repair and maintenance. After 10 years of operation of the Cap. 545 mechanism, we have seen slow progress of facilitating urban renewal. We are now expecting more redevelopment projects of certain decaying blocks and underutilized sites coming up with the increased number of “collective sales”. Most of such projects are in fact initiated by the owners themselves who are seeking realization of the potential of their property right on top of the strong desire of improving their living environment.

The lowering of the threshold from 90% to 80% will certainly increase the chance of such projects coming into fruition. In such cases of collective sale, we do not see the situation or the accusation of “extortion by developers”, instead we normally find certain minority owners taking obstruction against the majority owners. Our fair remark is that the rights of both of the “majority” and “minority” have to be respected as all their rights are interlocking and interactive.

After all, we have the full confidence and trust in our judiciary system in the operation of such Cap. 545 mechanism. In this regard, we would highlight a few points addressed by the Court of Final Appeal in the case of Capital Well Limited vs Bond Star Development Limited (Final Appeal No. 4 of 2005)(Civil).

The judgment confirmed that the objective of the Cap. 545 aims to facilitate urban renewal by preventing the infinite obstruction of a redevelopment by any minority owners who may seek to extract a wholly unreasonable price or “ransom” for permitting the redevelopment to proceed.

It was also acknowledged by the Court of final Appeal that the Ordinance aims to ensure that the minority owner received fair and reasonable compensation for his interest in the lot. Such compensation may be that which the minority owner agrees to accept or that which represents his share of the market value of the lot, reflecting its redevelopment value, as determined at a public auction, subject to a reserve price approved by the Lands Tribunal.

Before the Lands Tribunal can make a compulsory order, the majority owner should try to reach agreement with the minority to purchase the latter’s interest on fair and reasonable terms, the Court further clarified these basic principles.



The Court pointed out that if duly satisfied that the rejected offer of terms, from the majority owner, was fair and reasonable, the Lands Tribunal may make the order, leaving the value and level of compensation to be determined by the public auction. On this, we would point out that there was an actual case whereby the final price achieved from the auction was 40% over the reserve price approved by the Lands Tribunal. Under the provisions of the current mechanism, the enhancement was shared by all the owners.

In short, we are in support of the latest proposals to lower the threshold to 80% for the two classes of lots namely “all units but one” and “aged 40 years or above”. There is a need for such mechanism in Hong Kong and that it is opportune to make it more efficient.

Yours sincerely,

Yu Kam Hung
President
The Hong Kong Institute of Surveyors