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Northern Illinois University Center for Government Studies

Roger K. Dahlstrom

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- *Continued high volume of new housing starts in Illinois is threatening to lead to two shifts a day in many of the state's public schools and a decline in public services at the community level.*
- *One of the least active states in growth management, Illinois' approach is limited and uneven in its focus.*
- *Illinois' attempt at development impact fee legislation limits rather than enables communities.*
- *Illinois' mandated use of roadway advisory committees contributes to a "disconnect" between road planning and comprehensive development planning.*



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## CENTER FOR GOVERNMENTAL STUDIES Northern Illinois University

### **issue:** *Growth Management in Illinois: A Perspective on Statutory Authority*

**Roger K. Dahlstrom**

**Editor's Note:** This Profile is the second in a new series of Policy Profiles dealing with the impacts of the rapid spread of urban development into Illinois' rich rural farmland. The first Profile in the series looked at the effect of such growth on adjacent farmland. This second of the series examines the adequacy of Illinois' statutory law authorizing and controlling local government efforts to manage the processes of urban growth and expansion.

Economists call large numbers of new housing starts a healthy sign for the economy, but it is not at all clear that the new housing currently being build in Illinois' suburban and exurban areas is good either for the state's fiscally strapped governments or for its system of public education. Most new housing traditionally does not pay enough in real estate taxes to cover the costs of the public services that must be provided to the housing's residents.

Schools in tax cap counties, such as Chicago's suburbs, are particularly threatened. Without voter willingness to approve school tax increases in excess of cap limitations, the school districts can not increase taxes fast enough to build the facilities needed to accommodate new residents. And voters, themselves feeling fiscally strapped, have often not been willing to approve higher taxes.

#### **What does this mean for Illinois?**

The result promises a new era in Illinois, one characterized by schools going on two shifts a day and communities rejecting new subdivisions for lack of funds to provide public services to the new developments. Especially given the current fiscal crisis facing Illinois governments, the likelihood of such an era will only raise new questions about the adequacy of Illinois' growth management tools.

An assessment of such tools B i.e. the adequacy of Illinois state statutes authorizing and controlling community planning and development management efforts B is the purpose of this Profile.

Although growth management is a task performed primarily at the local level, a look at state statutes is important because local governments derive all of their authority from the state. Further, given historical precedents in the courts, and especially in Illinois courts, to interpret

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state statutes bestowing authority to Illinois local governments very narrowly, the language of state statutes is particularly critical. This is true even for Illinois' home rule governments, which have a much broader grant of authority backed by constitutional language directing the courts to interpret home rule powers liberally, because the Illinois General Assembly retains the authority to narrow the breadth of home rule powers by statute.

As used here, the term "community" refers to all local governments (principally counties and municipalities, although some special districts can also be involved) actively trying to manage growth using their legal authority to review and approve land development proposals. Although the principal focus is on land development, the term growth management is used in order to convey the broader scope of activities that must precede and follow development, and those actions that must be carried-out by government agencies such as school districts, fire protection districts, and public works and utility agencies, which must increase their services to accommodate the new growth.

## What is growth management?

The term growth management has been defined and redefined, again and again, by those involved in the planning process. Growth management policies and programs have surfaced in a variety of forms and under many names including smart growth, sustainable growth, and sensible growth. Basically,

growth management can be defined as a development planning process that builds on traditional methods such as comprehensive plans and land development regulations (primarily zoning and subdivision) while incorporating greater "hands-on" public guidance particularly in mitigating the potential physical, fiscal, and other effects of development.

The emergence of growth management as a current issue seems to be associated with both practical and political forces. The real costs of providing public services and infrastructure improvements to support new development have become painfully apparent as governments and public service districts at all levels report or project funding shortfalls. Communication technology and a growing core of generally well-informed community residents have created a forum for discussion and evaluation of development proposals that was unprecedented only a few years ago even though the nation's experience with the concept of growth management has historical roots.

For practical purposes, the evolution of planning and development control - growth management - in the United States reaches back to a national conference on city planning held in Chicago in the early part of the 20<sup>th</sup> century. The conference led to the development of A Standard State Zoning Enabling Act (SZEA) first printed in 1926 and A Standard City Planning Enabling Act (SCPEA) published in

final form in 1928. Ultimately, these model acts formed the basis for enabling legislation in all 50 states granting planning and land use authority (police power) to local governments.

## Have local governments been equal to the task?

As time passed and planning and land development issues became more complex, a series of studies funded by private institutions, state agencies, and the federal government, was conducted to identify alternative approaches. Although the ultimate recommendations of these studies varied significantly, all seemed to suggest the need for reform, especially reform designed to shift more control in planning and land development from local governments to the states.

Evidence of that shift was presented in the 1971 publication *The Quiet Revolution in Land Use Controls*. That publication documented trends toward more active state control over planning and land use and concluded that the states were taking action based on:

- The need for states to address development issues that were regional or state-wide in scope.
- The growing perception of land as a resource and a commodity rather than simply a commodity.
- An increased emphasis on the linkage between planning and land use (possibly motivated by legal challenges).

- The necessity for a state presence in the implementation of various functional state plans.

With the benefit of 30 years of observation since the publication of *The Quiet Revolution in Land Use Controls*, it may be said that the first of these conditions, the inability of local governments to deal with regionally-based environmental and economic problems, has been the primary influence in fostering an increasing role for state government in the growth management process.

### **What roles have the states played in growth management?**

Many states have acted to address the growing complexities and costs associated with growth management. In nearly all instances, the state efforts have included some attempts to bring about a greater level of regional cooperation.<sup>5</sup> In her article *Interlocal Approaches to Land Use Decision Making*,<sup>6</sup> author Patricia Salkin identified four principal approaches employed by state governments to encourage and facilitate regional cooperation in growth management: the mandated approach, the voluntary approach, the compact approach, and the hybrid approach.

### **What is Illinois doing?**

A basic review of each approach seems to suggest that the growth management situation in Illinois reflects elements of three of the basic forms.

**Mandated Approach** - In fact, there are limited instances of this approach in the State of Illinois. The statute affecting storm water control in the five collar counties (DuPage, Kane, Lake, McHenry, and Will) of the Chicago metropolitan area is one example. The law is intended to allow for the management and mitigation of the effects of urbanization on storm water drainage by consolidating the existing storm water management framework into a united, county-wide structure; setting minimum standards for floodplain and storm water management, and preparing a county-wide plan for the management of storm water runoff, including the management of natural and man-made drainways. A municipality located within a county adopting a storm water management control ordinance consistent with the law must either seek certification to enforce its ordinance or defer to the county ordinance for permit review and enforcement.

**Voluntary Approach** - The Local Land Resource Management Planning Act (Act) provides a good example of this approach in Illinois. The stated purpose of the Act is to "...encourage municipalities and counties to protect the land, air, water, natural resources, and environment of the State and to

encourage the use of such resources in a manner which is socially and economically desirable through the adoption of joint or compatible local land resource management plans."

The Act grants broad authority to local governments in designing and implementing such plans. In addition, the Act expresses an intent to provide local governments with immunity from liability under federal antitrust laws when acting in accordance with the Act. The Local Land Resource Management Planning Act has become the cornerstone of several local land resource management agreements including a recent example involving two municipalities and a county (City of St. Charles, Village of South Elgin, and County of Kane).

**Compact Approach** - Essentially, the compact approach relies on a combination of state-based incentives and the grant of extended authority to induce local governments to adopt prudent growth management programs. Although an isolated element of this approach is incorporated in the Local Land Resource Management Planning Act (liability immunity), there do not appear to be any specific examples of this approach in Illinois.

**Hybrid Approach** - This approach involves statutory authority given by a state to its local governments to challenge the application of the land use

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authority of another local government in court. There is no specific Illinois statute granting a local government the authority to challenge the land use authority of another local government. However, case law provides an example of a municipality successfully challenging the zoning authority of a neighboring municipality. That example dates to 1980 when the Village of South Barrington alleged that the adverse impacts (diminished revenues, increased police services, damage to local roads, increased storm water runoff, and increased noise and light) associated with the approval of the Poplar Creek Music Theater by the Village of Hoffman Estates would greatly diminish South Barrington's ability to provide adequate public services to its residents.

The challenge (*Village of South Barrington v. Village of Hoffman Estates*) made its way to the Illinois Supreme Court for final resolution. In that decision, the Illinois Supreme Court established that a municipality has standing to challenge the zoning of another municipality upon a clear demonstration that the challenging municipality would be "...substantially, directly, and adversely affected in its corporate capacity", because of the proposed zoning. Interestingly, a similar, recent challenge by South Barrington regarding a Meijer "superstore" in Hoffman Estates was unsuccessful.

## **Does Illinois have good statutory law governing growth management?**

The fragmented responses illustrated above seem to be indicative of the general state of growth management legislation in Illinois. Even when legislation exists, it tends to be limited and uneven in its focus.

The Illinois Roadway Impact Fee Law represents a good example of Illinois' random approach to growth management issues, and it is readily apparent that the law is constructed in a manner that limits rather than enables. Although the stated general purpose of the legislation is "...to create the authority for units of local government to adopt and implement road improvement impact fee ordinances and resolutions.", units of local government covered under the law are defined to include only those counties with a population over 400,000 and home rule municipalities. That provision effectively precludes most local governments in Illinois from implementing a roadway impact fee program by ordinance.

It is commonly acknowledged that development impact fees can be one the more effective, although often controversial, tools for implementing growth management principles. However, the effectiveness of development impact fees relates directly to their linkage to well-designed comprehensive plans and capital

improvement programs addressing the full range of capital facility needs likely to result from growth. Yet, the law considers roadways as a singular capital requirement, omitting any reference to other community needs. No mention is made of other publicly financed capital improvements required to support development; and although the law includes requirements for "land use assumptions" and a "Comprehensive Road Improvement Plan", linkage to a comprehensive plan is implied at best.

At worst, it appears that the law was intended to limit the ability of home rule municipalities to use road impact fees. At best, the law is a disjointed response to growth management, reinforced through mandatory procedures such as the creation of a special-purpose "Advisory Committee" to provide recommendations to the corporate authorities regarding all aspects of a roadway impact fee program. These advisory committees must be comprised of between 10 and 20 individuals with not less than 40% of their membership representing industries and associations that could be considered "special interests" with respect to the implementation of a roadway impact fee program. Also, it is interesting to note that the representatives of the special interest groups are to be chosen by the groups themselves rather than by local government officials.

The narrow focus of such roadway advisory committee's procedure is in stark contrast to the broad perspective

of a plan commission. The latter are charged with balanced review and recommendation responsibilities within the context of a multi-functional, community-based comprehensive plan.

### **How do such roadway advisory committees hurt growth management?**

Mandated reliance on the recommendations of such an advisory committee rather than the plan commission contributes to the potential for a "disconnect" between the comprehensive road improvement plan and the comprehensive plan.

Further, the Illinois' law insures an influential role for affected special interests. For instance, the local plan commission may serve as the mandated roadway advisory committee only in the unlikely event that the commission membership includes the prescribed percentage of special interest representation. Alternatively, the plan commission may serve as the advisory committee if additional ad hoc voting members are appointed to the commission from the special interest groups.

In addition, the duties of the Advisory Commission are extensive, including items such as preparing detailed written reports and recommendations regarding the Comprehensive Road Improvement Plan, monitoring and evaluation of the Plan and fee structure, annual reports,

and advice on program updates. Fulfilling such research and reporting duties would require substantial staff support for a development impact fee program with limited scope.

On a still more practical basis, Illinois' advisory committee concept implies the need for an extraordinarily cumbersome, multi-committee approach for the full range of capital facility needs associated with community growth and development. If one applied the advisory committee procedures to all elements of a municipal capital improvement program and the capital improvement programs of all government agencies required to support development, the resultant committees' membership could number in the hundreds. That, combined with the law's elaborate public notification and public hearing process, would effectively stifle growth management efforts for all but the most sophisticated and affluent local governments even if the stringent limitations regarding county population and home rule status were not in effect.

### **How does Illinois compare to other states?**

It is possible to compare the status of Illinois' growth management statutes and pending legislation with the status of other states. The American Planning Association (APA) publication, *Planning for Smart Growth, 2002 State of the States*,<sup>7</sup> provides an available source of such information. Essentially, that APA publication places states in one of four categories as follows:

- States implementing moderate to substantial growth management reform.
- States pursuing additional regional or local growth management reforms.
- States pursuing initial, major growth management reforms.
- States not pursuing any growth management reform efforts.

Those states that are considered leaders in growth management legislation by the APA and others include Delaware, Florida, Georgia, Maine, Maryland, New Jersey, Oregon, Rhode Island, Tennessee, Vermont, and Washington. In general, those states have assumed new and expanded roles in a variety of areas including:

- Establishing comprehensive state-wide growth management plans.
- Establishing basic requirements for local comprehensive plans.
- Requiring general conformance of local comprehensive plans with state plans.
- Targeting state funding on a geographic and functional basis in support of growth management.



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In some instances, the legislative responses have become far more pronounced and include concepts such as urban growth boundaries, adequate public facility planning requirements, and state planning commissions.

## Where does Illinois place in the APA comparisons?

The APA places Illinois among those states pursuing initial growth management reforms based on several legislative initiatives introduced into the Illinois General Assembly over the course of the last two years. However, it should be noted that, among those several pieces of proposed legislation, only one gained sufficient political support for approval: the Local Planning Technical Assistance Act.

## What is the Illinois Local Planning Technical Assistance Act?

Basically, the Local Planning Technical Assistance Act (Act) has six objectives: to provide technical assistance to local governments in developing planning ordinances and regulations, to encourage local governments to engage in planning and policies that promote comprehensive planning, to develop model ordinances and technical publications that will promote comprehensive planning, to report on the impact of activities funded by state demonstration grants, to support local planning in communities with limited finances, and to support coordinated local planning efforts.

The Act authorizes the Illinois Department of Commerce and Economic Opportunity (DCEO), formerly the Department of Commerce and Community Affairs, to offer planning-related technical assistance and funding to local governments. Although the Act has been lauded by the Illinois chapter of the APA, DCEO officials point out that technical assistance has been a component of the agency's responsibilities for some time. In addition, it is unlikely that the state will be able to offer substantive monetary inducements for smart growth to local governments in light of current fiscal conditions.

As a result, the immediate significance of the Act may be limited to two factors: (1) that Illinois has a law intended to advance planning legislation beyond the Standard City Planning Enabling Act; and (2) that, for the first time in its history, Illinois has defined the basic contents of a comprehensive plan. According to the Act, comprehensive plans should include 10 elements: issues and opportunities, land use and natural resources, transportation, community facilities, telecommunications, infrastructure, housing, economic development, natural resources, and public participation.

## Is there any prospect for improvement in Illinois' situation?

Given the apparent reluctance of Illinois' legislators to adopt all but minimal growth management legislation, APA notes that Illinois, like several other states, is turning to the creation of appointed "task forces" to examine growth management issues and provide insights regarding those issues. A recent example is the work of the Illinois Growth Management Task Force which is comprised of a bipartisan group of legislators. The Task Force process spanned a three-year period resulting in a series of findings including, but not limited to, the following:

- There is concern across the state regarding the lack of a cohesive growth management policy.
- Current growth management practice in Illinois is uncoordinated and inefficient, and often frustrates participants.
- Elevating the technical resources and decision-making capacities of residents, landowners, planners, policy-makers, and legislators should be a priority for the state.
- The state has a role in guiding development policy.

Clearly, the findings of the Task Force imply the need for new and more comprehensive legislative actions regarding growth management. Yet, the future direction of such actions remains unclear and, at least in the near term, local government officials should focus on the development and adoption of voluntary interlocal agreements that fairly advance their own regional growth management interests.

*Notes:*

1. The judicial practice of strict or narrow construction of local government powers is well established under a rule of law, called "Dillon's Rule" which dates back to a 19<sup>th</sup> century ruling of the Iowa courts. Illinois courts have been particularly rigorous in applying the concept to the interpretation of the powers of Illinois' counties and municipalities.
  2. Porter, Douglas, "Performance Standards for Growth Management", Planning Advisory Service Report Number 461, American Planning Association, 1996.
  3. Bosselman, Fred, and David, Callies, "The Quiet Revolution in Land Use Control", Washington, D.C.: Council on Environmental Quality, 1971.
  4. Cobb, Rodney, "Toward Modern Statutes: A Survey of State Laws on Local Land Use Planning", Modernizing State Planning Statutes: The Growing Smart Working Papers, Vol 2, American Planning Association, 1998.
  5. Ibid.
  6. Salkin, Patricia, "Interlocal Approaches to Land Use Decision Making", Modernizing State Planning Statutes: The Growing Smart Working Papers, Vol 1, American Planning Association, 1996.
  7. Planning for Smart Growth, 2002 State of the States, American Planning Association, 2002.
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## ABOUT THE CONTRIBUTOR:

Roger Dahlstrom, AICP, has 28 years of professional city planning experience specializing in both development and redevelopment work. Currently a senior research associate at the Center for Governmental Studies at Northern Illinois University, he served for 17 years as the Director of Planning for the City of Elgin, Illinois. The principal author of the Illinois Municipal League's proposed development impact fee legislation, his work has earned an Urban Innovations Award from the University of Chicago and an Innovative Problem Solving Award from the DuKane Valley Council of Governments. He has designed numerous computer applications in his areas of specialization, which include growth management, land use planning, capital improvement programming, community and fiscal analysis, development impact fee design and analysis, and tax increment financing. He has published research in the fields of site and land capacity analysis, growth management, and local economic development planning.

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**Director:** ?????

**Editor:** James M. Banovetz

**Contributor:** Roger Dahlstrom

**Design:** Trittenhaus Design

**For more information contact:**  
Center for Governmental Studies  
815-753-1907  
fax 815-753-2305  
[www.cgsniu.org](http://www.cgsniu.org)

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