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I. GENERAL PROBLEMS

American governmental systems are remarkable for their ability to undergo significant changes or to adopt unique features within constitutional legal constraints. Illinois land use laws are often leaders in local peculiarities, a fact that dismays both the development industry and the planning profession. While the flexibility of home rule[1] authority and creative advice serve some municipalities well, most local government land use programs are limited to the scope and procedures of outmoded enabling legislation. Illinois' enabling acts establish structures and procedures based on the Standard State Acts of the 1920's.[2] The Acts are permissive, ill-defined and weak where it counts. Serious limitations persist, particularly in the ability to deliver effective land use programs in a coordinated and consistent manner.

Due to virtual abdication of responsibility by the state legislature, local government is free to make fundamental decisions about property rights on an ad hoc, unplanned, and often unreasonable basis. Disputes flourish in such an atmosphere and result in excessive time delays, costs, and disruption of work to the detriment of both general welfare and private property interests. While some counties and municipalities perform well in the current Illinois legislative system, with a better system all would benefit. The problems have been documented since 1971.[3]

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1. *See generally* DANIEL R. MANDELKER, LAND USE LAW § 4.27 (1988) (addressing constitutional home rule provisions of several states).

2. *See infra* fig. 1.

3. *See* ZONING LAWS STUDY COMMISSION, REPORT TO THE ILLINOIS 77TH GEN. ASSEMBLY, at 10-24 (Mar. 1971) (chaired by Rep. Eugene F. Schlickman; Staff Coordinator was Professor Clyde C.W. Forrest); LAND RESOURCES MANAGEMENT STUDY COMMISSION, REPORT TO THE ILLINOIS 82ND GEN. ASSEMBLY, at 25-40 (June 1981) (chaired by Rep. Richard A. Mugalian; directed by Professor C.W. Forrest).

II. STANDARD STATE PLAN AND ZONING ENABLING ACT DEFECTS

The Standard State Acts (SSA's) have served as the model at one time or another for all of the states. Limited in scope and procedural requirements, the SSA's are inadequate to serve as a basis for finding solutions to complex interrelated problems.[4] The model in Figure 1 shows the major components of the SSA's planning and land use regulatory structure in context. The SSA's contain major defects.

1. As indicated in block 1, the role of the state is essentially to enable and to *permit* local government action. Most local governments have engaged in land use regulation on an ad hoc basis because there is no planning requirement. Separate acts for planning and zoning have contributed to a system that minimizes the need for pre-establishing a legitimate public purpose. When a consistent plan exists, municipalities use the plans to provide ad hoc justification for zoning decisions. When the plans are inconsistent, municipalities ignore them completely. Traditionally, Illinois courts have gone along with this sometimes advisory, but easily explained away, view of planning. This view of planning is fully supported by the lack of requirements in the legislation.[5]

Recently the courts have recognized the usefulness of planning in several cases, thereby establishing planning as a way to avoid the ad hoc proclivities of some local governments.[6] Thus, courts are called on to fill a gap in the Illinois Zoning Act which does not contain the SSA's provision stating "zoning shall be in accord with a comprehensive plan." Bosselman indicates that failing to provide general policy background for regulations was no mere omission; but rather the decision was influenced by Park, a sociologist who disagreed with the idea of planning.[7]

2. The state legislature and the executive branch are disconnected from the attempts of local government to deal with problems (refer to block 2 of Figure 1). In addition, departments in the executive branch are not required to plan and are exempt from control by the best of local plans and regulations under the preemption doctrine. For example, the state permitted gravel mining adjacent to a local elementary school

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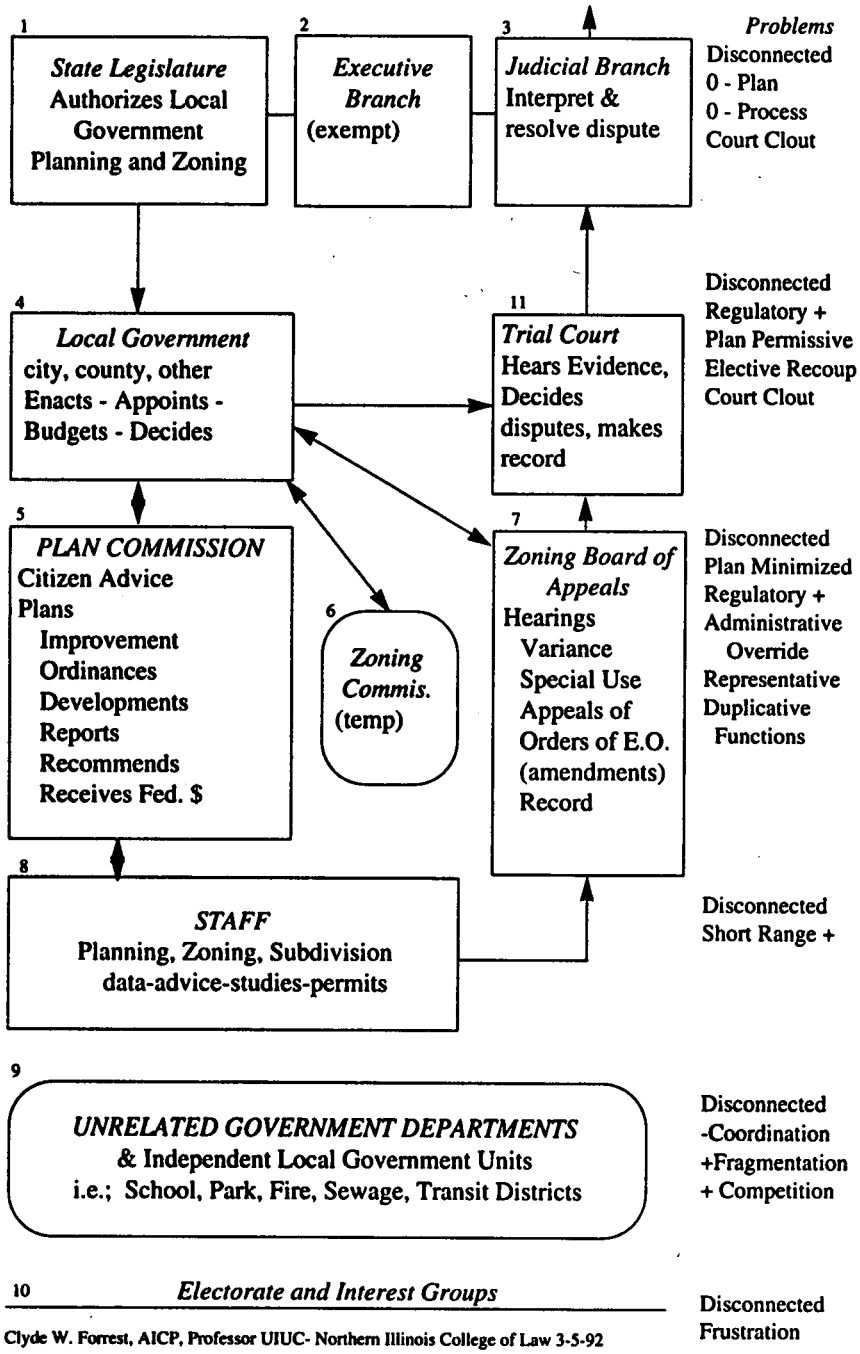
4. *See infra* fig. 1.

5. *See generally* Galt v. Cook County, 91 N.E.2d 395 (Ill. 1950) (overruling a Cook County Superior Court decree that upheld the zoning of the plaintiff's land as residential, despite being located in a predominantly business district).

6. *See* Clyde W. Forrest, *Planning-Purpose and Implementation, Illinois Land Use Law*, ILLINOIS INSTITUTE FOR CONTINUING LEGAL EDUCATION 1-1, at 1-6 (1984).

7. *See* Fred P. Bosselman, *The Commodification of 'Natures's Metropolis': The Historical Context of Illinois' Unique Zoning Standards*, 12 N. ILL. U.L. REV. 527 (1992).

Fig 1. STANDARD STATE PLAN AND ZONING ENABLING ACTS
1926 MODEL



Clyde W. Forrest, AICP, Professor UIUC- Northern Illinois College of Law 3-5-92

in a residential area despite a violation of the municipal plan and the lack of harmony with existing development. The legislature persists in creating additional special function units of government that are exempt from local plans and police power regulations. In addition, the state does not require its own departments to develop plans to *improve coordination* between themselves. A state departmental planning requirement would prevent interdepartmental conflicts. Florida has required Agency Functional Plans to coordinate their efforts through horizontal *integration*.[8]

3. What role the courts will play in this model is not established in the planning and zoning enabling acts, but rather by other statutes. Some states have decided to make planning and zoning decision-making less a matter for the courts. These approaches incorporate the techniques common in environmental law. For example, Florida created an administrative hearing process that aims to expedite decisions and keep them focused on the planning objectives. While the Florida system has an unfortunate political appellate route through the governor and cabinet, the administrative law hearing route and direct appeals to the Circuit Court of Appeals would improve the record, expedite decisions and reduce cost.[9]

4. Illinois has at least six different planning and land use control enabling acts. All must be reviewed to understand the authority delegated to the municipalities, counties or townships involved. Special provisions also exist that apply only to Chicago, and separate acts apply only to several multi-county planning agencies. Complexity abounds. For example, in a strange twist of confusion, an agricultural use that is exempt from county zoning and municipal zoning in the extraterritorial area of a municipality may still be subjected to municipal regulation under a 'land development code' if the municipality has adopted a plan.

Minimizing the effect of the plan results in far more time and attention spent on the regulatory aspects of the process than the planning aspects. Local government understands that it must be prepared to defend its decisions in court, but most fail to appreciate the evidentiary value of a consistent plan.[10] Delegation of the planning process and hearings to a planning commission is regarded as a way of

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8. *See* FLORIDA DEP'T OF COMMUNITY AFFAIRS, FROM CROWDS TO COMMUNITIES: AGENCY FUNCTIONAL PLAN 70 (1991).

9. *See* AMERICAN PLANNING ASSOCIATION-FLORIDA CHAPTER, THE FLORIDA PLANNING AND GROWTH MANAGEMENT HANDBOOK (1991).

10. *See* Forestview Homeowners Ass'n v. County of Cook, 309 N.E.2d 763 (Ill. App. Ct. 1974).

responding to citizen concerns without being bound by any of the commission's advice.

5. The Plan Commission is delegated little authority and a small budget to accomplish a complex task. Staff, space and equipment are comparatively scant. Despite the best motivation and personal integrity, such commissions and boards are severely limited by time and lack of training to perform technical work. During the federal funding years, the justification for its function was as a funding source and to provide eligibility for additional funds. The tendency for most communities is to load the agenda of the commission and the staff with administrative duties of permits and hearings at which no final decision can be made. Thus, citizen input is diverted from questions of what should be, to the tasks of dealing with the next application or defusing a current issue.

6. Zoning Commission provisions require the termination of the body when the initial zoning ordinance is adopted by the municipality. The loss of the persons who sat through the hearings, debates and compromises are examples of wasted citizen resources. The living memory is lost to the community and to the public interest. Little wonder that most commissions and boards can give no defensible reason for a side or back yard requirement.

7. Zoning Board of Appeals (ZBA's) serve as quasi judicial/ administrative hearing bodies on a range of planning and land use matters that elected officials delegate to them. Their procedures range from the most informal to near judicial in character. Over time this board can become either a defender of good land use policy or the complete opposite. In many communities it constitutes just another hoop for an application to jump through without regard to any plan or consistent rationale. It is doubtful that hearings before the board that result in advice to the elected officials, who often require another hearing, is worth the time, money, stress and effort. In at least one city in Illinois, the ZBA's hearing was only one of four groups before whom a petition for rezoning was required to be heard. Conflicting advice from duplicative hearings is unnecessary and destructive of public confidence.

8. The Planning Act assumes that the lay, appointive and unfunded Planning Commission will appoint a planning staff. This may be a politically unrealistic view of local government in many communities. The staff of planning commissions may be unsure about who they really work for. Is it the public interest, the commission, the mayor, the city majority leader, or the engineering department? The line of responsibility is often indefinite and the political reality is confused. In short, it is easy to please no one and displease everyone

else in a subordinated, unstructured organization. In addition, after over fifty years of planning, education and accreditation of degrees, there are no qualifications for the position of staff planner established by legislation.

9. Unrelated Departments and Units are the weakest link in the planning process established by the SSA's. Problems of fragmentation are multiplied where elected officials do not see planning as a method of achieving coordination of priorities, budgets, works and staff efforts. The most likely result is the continuation of conflicting decisions by uncoordinated units of government. Typical of this problem would be a School District closing an elementary school in an area where family housing is being funded by the Community Development Department. A frequent result of noncoordination occurs where new streets completed by the Street Department are ripped out for a new storm sewer by the Sanitary Department. A mandatory Capital Improvement element in a comprehensive plan would decrease such conflicts and provide private developers with information to plan investments. Citizens know about these problems and see them as government waste and ineffectiveness.

10. The electorate and public interest groups are stimulated by witnessing problems that waste money and resources and show the general ineffectiveness of the municipalities' approach to development. Small wonder that Local Government litigation is a growth industry. Courts are asked if they can make a better decision than the local government. Through the use of the "developer's remedy" courts have effectively preempted the role of local government in deciding the details of a development.[11] It is sometimes easy to gain organizational and financial support to "fight City Hall" in order to challenge unreasonable decisions and actions. The "presumption of validity" operating in most planning cases often leaves citizens surprised and frustrated with how difficult it is to defeat a government.[12] In court, a "better alternative" is not enough; one must be prepared to prove the government wrong. In another example of confusion of the issues, the Illinois courts have adopted the so called *Lasalle* factors as a way of opening the presumption to more numerous tests, thus giving well prepared developers a series of ways to attack the presumption. It is recognized that Illinois courts, while considering constitutional principles in a zoning case, frequently reach the merits of the local government decision.[13]

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11. *See* Sinclair Pipe Line Co. v. Village of Richton Park, 167 N.E.2d 406 (1960).

12. *See* La Salle National Bank v. County of Cook, 145 N.E.2d 65 (1967).

13. *See* R. MARLIN SMITH ET AL., BUREAU OF URBAN AND REGIONAL PLANNING RESEARCH, UNIVERSITY OF ILLINOIS AT URBANA-CHAMPAIGN 10-43 (1972).

11. Courts are weary of "another zoning case." Is reversal of the local government decision surprising where a judge is presented with *post hoc evidence* that was not used by the decision makers? The wisdom of a governmental decision is a nonissue when an inadequate record is presented by the government. At this fundamental evidentiary level, the well done plan and the planning process is most crucial in establishing reasonableness and the interrelation to important public purposes.

In addition to the above and the summary in Table 1, the Standard State Acts fail in the following respects:

A. They do not integrate governmental decision making through either substantive or procedural requirements.
B. They do not define or require planning or a planning process that can deal with complex related problems.
C. They do not deal with the need for state level Departmental Planning.
D. They exempt major land uses that profoundly affect the welfare of a community (governmental, agricultural and utilities and some environmental).
E. They limit physical and functional jurisdiction in a manner that ignores major quality of life determinants for the future.
F. They do not address either the accountability or competence of decision makers, citizen advisors, or staff.
G. They do not create an effective process to quickly resolve disputes between inevitably competing interests.
H. They do not sufficiently support governmental effectiveness, efficiency or responsiveness.

III. State Improvements

Ten states have made significant changes in their planning and land use legislation.[14] Changes differ in each and they have responded to different factors. However, problems that were intended to be addressed in most of these states include tourism economy threats, agricultural land use interference, threats to forestry, fishery or ground water, unemployment and industrial decline, tax rates and urban development costs, traffic congestion, safety and commuter costs, lack of community services, air and water pollution or environmental quality declines, threats to public trust property, decline in scenic beauty, social

14. The ten states include: Hawaii, Florida, Oregon, Washington, California, Maine, Vermont, New Jersey, New York, Colorado.

Table 1.

ZONING LAWS STUDY COMMISSION
Report of Findings and Recommendations to the State of Illinois 77th General Assembly
March 1971

Paraphrase of Problems Identified, p. 10-24

1. Existing legislation is unnecessarily duplicative.
2. Substantive purposes of the legislation are similar.
3. Procedural distinctions in the Acts promote unnecessary confusion.
4. Legislation establishes no relationship between planning and zoning.
5. Natural areas and open space are inadequately dealt with.
6. Zoning does not address economic redevelopment.
7. Zoning misused to promote economic and racial segregation.
8. The necessity of zoning is not articulated.
9. Aesthetic and environmental issues are not sufficiently addressed.
10. The Legislation causes jurisdictional conflicts.
11. Legislation permits time delays in decisions.
12. Many jurisdictions have duplicated procedures.
13. Conditions and criteria for judicial review are inadequate.
14. Local zoning is often inflexible and ineffective.
15. Zoning is not coordinated with other regulations.
16. Legal standing is inadequately addressed.
17. Notice provisions are inadequate.
18. Records and copies are often inadequate or unavailable.
19. Personnel are inadequately trained or overloaded.
20. Joint programs are not favored.
21. Special Use and Planned Development provisions are inadequate.
22. Performance standard zoning authority unclear.
23. Low cost housing including Mobile Homes and industrialized buildings are often prevented.
24. Traffic impact and parking are ignored.
25. Exemptions cause lack or coordination and nuisances.
26. There is no provision to work out state relations with local zoning, automatic preemption is the rule.

perceptions contributing to urban sprawl and center city decline.

While each state perceives problems from different perspectives, it must be understood that no state is immune from the problems. This understanding can serve as a basis for reviewing the legislation of states that have acted, thus informing decisions about what may work better. Based on past and ongoing study, I conclude that our existing legislative model is obsolete and fails to address common problems that other states have addressed. The primary fault is the failure to define and mandate planning at each level of our governmental system as a central point for achieving integration of decision making and coordination of effective programs.

IV. Integrated Planning Model Act

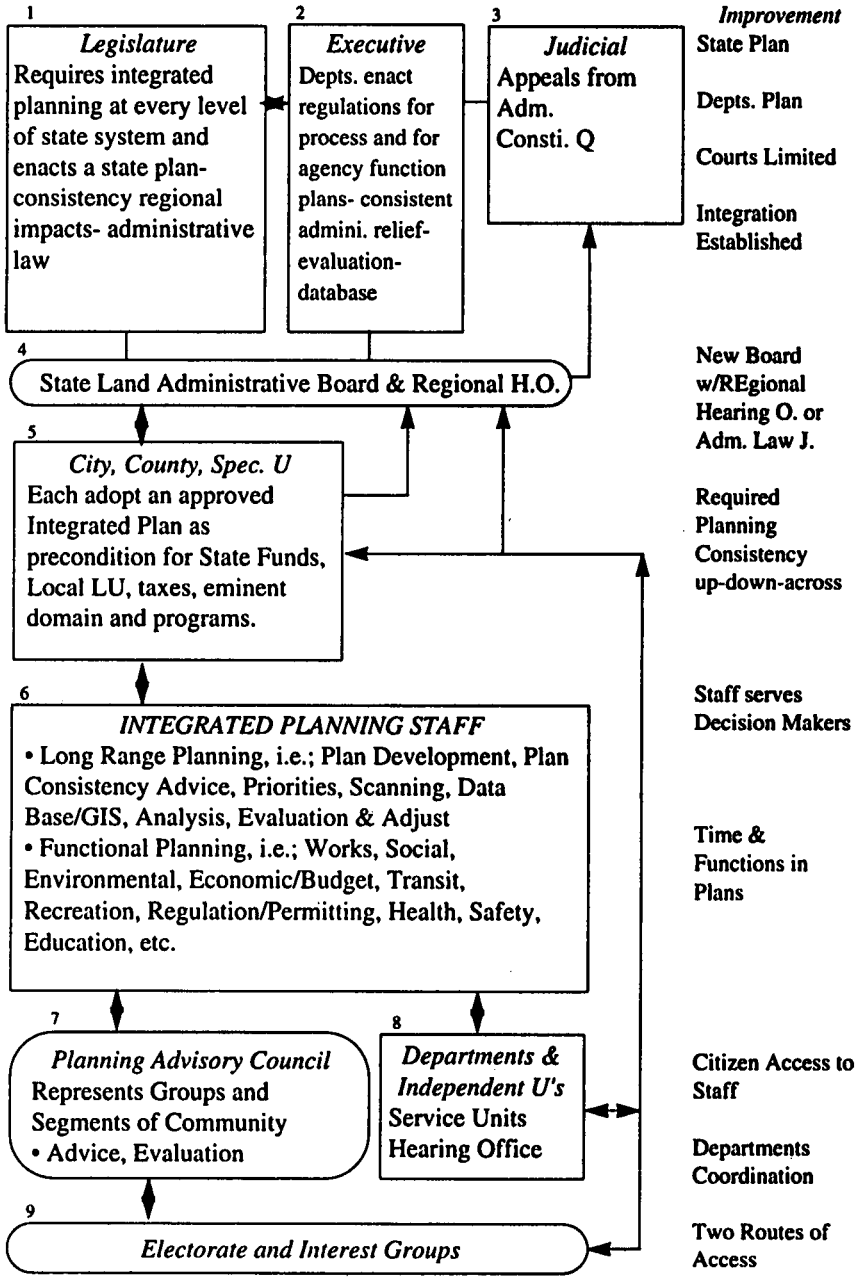
Integrated planning establishes an organizational system that requires planning at each level of government to provide a basis for coordination of activities and resources. For the purposes of this model, planning can be defined as an advanced organization, utilizing procedures and credible evidence from across environmental, economic and social interests in order to recognize opportunities to be pursued or impacts to be avoided in order to achieve goals consistent with societal values. Planning should be an enhancement of governmental effectiveness, efficiency and responsiveness. The definition is open-ended and may take different forms at different levels of government. Differences in procedures will avoid duplication and achieve advantages of scale while maintaining the integrity of each level of government.

As indicated in Figure 2, the model proposes changes in the elements of the SSA's. Eliminated are the Zoning Board of Appeals and the Trial Courts. Dispute resolution will be an administrative process discussed in paragraph 4. In addition, Staff is changed to relate primarily to the elected body rather than the Plan Commission. Each element has several new implications that will be discussed in turn:

1. The Legislature will become a major player in the process by requiring planning at each level of government including the state departments. The state will also adopt a State Integrated Policy Plan that will establish goals appropriate for the state and guide the formulation of Agency Functional Plans (AFP) to be adopted by each state department. The state act will require horizontal and vertical consistency of plans of subordinate units.

2. The Executive Branch and each of its departments will be required to adopt an AFP. Consistency of the AFP's and implementing programs with the State Plan will be determined on an annual basis as part of the budget and appropriations process. Departments will be authorized to adopt Regulations consistent with their AFP.

Fig 2. INTEGRATED PLANNING MODEL ACT



Two way mandatory integrated planning permits coordination, priority setting, and streamlining of disputes

3. The judicial review function will be limited to consideration of appeals from the administrative law procedures established by the new act.

4. A State Land Adjudicatory Board will be established to resolve disputes in planning and land use issues. Similar to the Pollution Control Board, but limited in its regulatory functions, the Land Board will be a dispute resolution body with powers to enforce its decisions. The Land Board will serve as the appellate level review in an administrative law system operated by Regional Land Use Law Hearing Officers. Funds generated from costs and application fees will fund the system after its initial establishment.

5. The general units of Local Government (Municipalities & Counties) will gain authority and retain existing authority. They will serve to achieve local government integration, but also be responsible for supervising the Local Special Function Agency plans required by the state of each Special Unit of Government. An approved Integrated Plan and Implementation Program will be a prerequisite to eligibility for state funds and a precondition to enactment of local zoning and subdivision ordinances or the exercise of eminent domain. The planning process will be based on the elements of Figure 3, the Municipal Integrated Strategic Planning Model.

6. Staffing of the planning process will be concentrated in a department that has both current and future concerns across functions of local, general and special units of government. The Professional Staff will be qualified for their positions as planners by both education and experience. Support staff, space, furnishings and equipment shall also be provided to effectively operate the Planning Department. The Municipality or the County shall establish personnel policies for the staff that include position descriptions, organizational relationships, selection qualifications, evaluation criteria, training opportunities, personnel rules and salary and benefit schedules.

7. The Citizens Advisory Council shall be representative of the demographics and established interest groups within the jurisdiction. The primary purpose of the council will be to advise the elected officials and staff on the goals of the Integrated Plan, to consider revisions to the Plan, and to advise on a biannual update/evaluation of the Plan.

8. The Delivery Units of all local governments will coordinate their programs with the Integrated Plan as a condition of continued funding. In addition, an Office of Land Use Hearings (OLUH) will be established in each county. This OLUH will be authorized to conduct hearings, resolve and negotiate the settlement of disputes concerning the Integrated Plan or any regulations implementing the Plan. The

Hearing Office may be combined as necessary with adjacent counties by approval of the State Land Adjudicatory Board.

9. The Electorate and Interest Groups will be guaranteed access to the Planning Advisory Council and will be provided with regular information through the public media of the activities and agenda of the Council and of the elected bodies. Citizens shall also have the right to file complaints concerning violations of the Plan or its ordinances and such complaints will be investigated by the Planning Staff. If a complaint is valid the matter will be referred for enforcement action as established by ordinance. Citizens may also petition the elected officials with respect to any complaint or request a hearing by the Hearing Office.

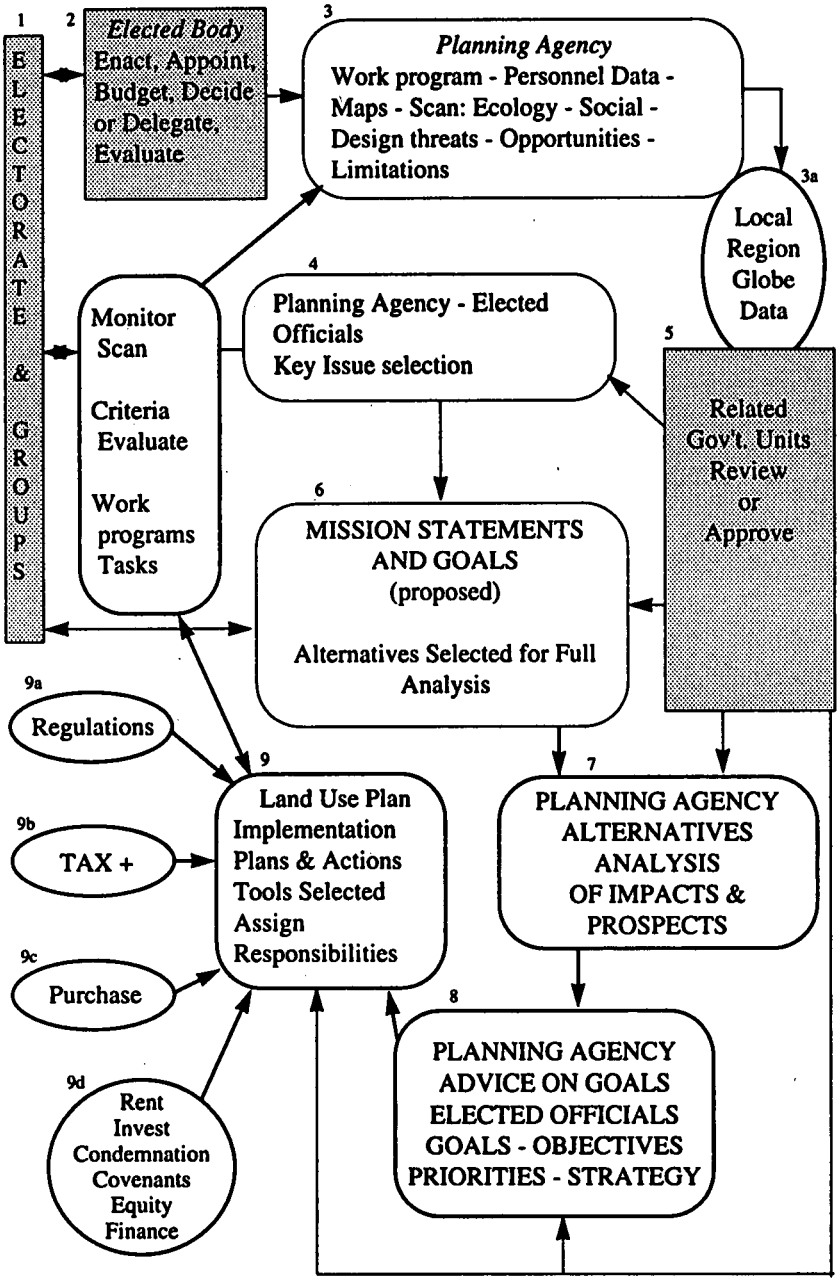
The Integrated Planning Act will establish the requirement and functions necessary to make municipalities and counties the primary coordinators of the health, safety and general welfare of their citizens. In order to accomplish this express state goal, municipalities and counties will be required to establish a strategic planning process that can achieve coordination.

V. Municipal Integrated Strategic Planning Model

The organizational relationships of Figure 2 must be understood in light of the *process* outlined in Figure 3. Municipalities and counties or combinations shall be required to engage in the elements of strategic and integrated planning described in Figure 3. The primary reason for this requirement is to enhance coordination between agencies of local government to better serve its citizens. A Local Land Use Plan with statutorily specified elements will be the focus of the process. This will be supplemented by the necessary ordinances, but disputes should always be resolved on the basis of the plan. It is intended that if a private development proposal or a public work is consistent with the Land Use Plan, it will be entitled to approval. However, where the activity is not consistent with the Land Use Plan, then it will not be permitted. A Determination of Consistency will result in the issuance of a permit as of right. Such a determination will be subject to broad public notice and shall be final if not contested.

The process incorporates the concepts of strategic planning of the Scan and Impact of Alternatives, but it also builds in an Evaluation or Control step that will be required on a regular basis with participation by all interests in the electorate. The importance of an Evaluation step should not be overlooked. It is basic to the whole concept. How do we evaluate policy and set priorities now? We pass a budget, or new law to fix it, or we go to court, or we have an election. Does this do

Fig 3. MUNICIPAL INTEGRATED STRATEGIC PLANNING MODEL



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(For strategic planning elements, see: Kaufman & Jacobs JAPA Vol. 53 No. 1

it? I do not think so and I suspect that a root cause of disaffection with our institutions is our failure to be clearly rational. Understanding how we are doing depends on evaluating results of a process, based on the goals established, and on an understanding of current constraints and opportunities. Presently, we are not accomplishing superior evaluation.

VI. Need for Action

Illinois, like many states and major private businesses, is in need of serious debate on its future priorities and programs. Governmental program downsizing is a new reality. Which ones are needed most? Which ones are efficient? Which programs are broken? Could we save money through coordination? What does it really cost in dollars and negative consequences? Will a particular use aid the community or be a net loss? Is transit the answer? Where does the waste go? Answers to these and similar questions require a process which allows existing organizations and interests to participate.

VII. Conclusion

These proposals are designed to provide a new process of decision making within the existing state and local government framework by a coordinated process for addressing and preventing problems. Disputes in land use issues are inevitable, therefore a more expeditious means of resolving them is also proposed. As *Business Week* editorialized, what is needed is government that pursues the Quality Imperative of a competitive business and "delivers more and wastes less."[15] Planning effectiveness, efficiency and responsiveness to the current needs of citizens and their dreams for the future are worth the effort. We can do better!

15. Stephen B. Shepard, *The Quality Imperative*, Business Week, Oct. 25, 1991, at 4 (Special Issue).