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Luncheon Address

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Luncheon Address Presented by

LAWRENCE B. CHRISTMAS*

On behalf of the Northeastern Illinois Planning Commission, I am pleased to be participating in your symposium because I share your interest in the topic, "What's Wrong with Illinois Land Use Law?". By a fortunate coincidence, the Commission is currently updating its own *Regional Land Use Policy Plan*¹ and we are giving special attention to the laws that seem at least partly responsible for many of today's land resource management problems.

First, you should know that the Commission, or NIPC, was created by the Illinois General Assembly in 1957² to provide planning services for the region composed of Cook, DuPage, Lake, Kane, McHenry and Will counties. In response to the widespread fears of metropolitan governments that existed at that time, the General Assembly made NIPC dependent upon the voluntary financial support of local government; gave it a board membership dominated by local elected officials; and, later, declared that the Commission was only advisory and that its recommendations "shall have no binding effect."³

Nevertheless, the Commission has managed to prepare plans from both a regional and a local perspective, including plans which speak to the politically delicate topic of land use. Be aware that NIPC's recommendations for changes to Illinois law stem from its perspective as a council of local governments, whose first premise is to preserve the state's long-standing delegation of land use authority to municipal and county governments.

This delegation has proven to be a mixed blessing at the local level. Problems continually arise among competing local governments, between counties and municipalities and between municipalities themselves. In 1988, the county-municipal conflict was brought to the

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2. ILL. REV. STAT. ch. 85, para. 1101-39 (1991).

3. ILL. REV. STAT. ch. 85, para. 1117 (1991).

public's attention through a report prepared for Lake County by the law firm of Siemon, Larsen & Purdy.⁴ That report examined the difficulties faced by Lake County in its attempts to implement the county's land use or "Framework Plan":

Unfortunately, the laws of the State of Illinois have been very successful in ensuring that municipal actions can and do frustrate the noble objectives of the Framework Plan. If a municipality decides it wants to act in a particular way, even if that course of action is inconsistent with the Framework Plan, then the municipality so acts with impunity, often with serious adverse impacts on the residents of adjacent jurisdictions and in direct contradiction of the Framework Plan. On numerous occasions Lake County has taken courageous stands to defend the integrity of their countywide plan, based on municipal input, and at nearly every turn municipalities and the courts have ignored the logic and coherence of a countywide, comprehensive plan and have responded to developer initiatives through annexation petitions or applications for development approval, by ignoring the substance of the Framework Plan.⁵

Soon after, the Northwest Municipal Conference with member communities in Lake County, included the following position statement in their annual legislative program document:

The critical interest of a municipality in planning and regulating the use of land within its borders cannot be denied, and its ability to do so must be maintained. The Northwest Municipal Conference will strongly and actively oppose any measure which erodes traditional and legitimate municipal land use and zoning authority by either weakening municipal controls or vesting land use decision-making in another governmental body.⁶

Soon after, the four major municipal conferences in northeastern Illinois adopted an expanded version of the above statement, ranking it among their most important legislative priorities for 1988.

4. SIEMON, LARSEN & PURDY, LAKE COUNTY FRAMEWORK PLAN IMPLEMENTATION WHITE PAPER (1988). The firm is now named Siemon, Larsen & Marsh of Chicago, Illinois.

5. *Id.* at 154.

6. NORTHWEST MUNICIPAL CONFERENCE, 1988 LEGISLATIVE PROGRAM 3 (1988).

In the midst of this battle of words, NIPC was already feeling the need to update its own views on various land use policy issues, if only because its 1986 plan was becoming rapidly outdated. Moreover, according to an inter-agency agreement, NIPC is obligated to provide land use plans and growth assumptions as a foundation for the region's federally mandated transportation planning process.

Since NIPC was, as usual, short of cash to pay for an intensive staff production, and, since any successful plan would require popular support, a largely volunteer effort was required. In order to trigger public interest and support, in October of 1990, a series of public hearings was held on the question, "What is wrong with Illinois' land development process?". The response was heartwarming to the NIPC reformers because each of the fifty-seven pieces of testimony expressed unhappiness over some aspect of how northeastern Illinois was managing its land. Some examples of the discontent include:

West Central Municipal Conference: "The Plan should recognize the need to promote redevelopment throughout the region . . . where infrastructure is already in place. It is important to take advantage of the efficiencies of higher density development. Urban sprawl and leapfrog development should be discouraged."⁷

Kane County Development Department: "There is one issue that is really one of the major causes of our poor planning, [namely] tax based planning and the resultant dearth of enforceable intergovernmental agreements on land use. As long as we in the State of Illinois continue to fund our local governments as we do, we will continue to implement [land use] plans that encourage the continuation of our urban problems."⁸

McHenry County Regional Planning Commission: "[T]he encroachment of residential developments in a scattered 'shotgun' pattern erodes at [sic] the viability of agricultural land and presents land use conflicts. If development is allowed to significantly increase within remote areas, the cost of services will increase."⁹

South Suburban Mayors and Managers Association: "Intergovernmental agreements should foster the sharing of infrastructure development costs and benefits."¹⁰

7. NORTHEASTERN ILLINOIS PLANNING COMMISSION, PUBLIC HEARING RECORD REGARDING PUBLIC POLICY ON THE USE OF LAND IN NORTHEASTERN ILLINOIS (1990) (testimony of West Central Municipal Conference).

8. *Id.* (written testimony of Lawrence Stinek, Director, Planning Commission, Kane County Development Department).

9. *Id.* (written testimony of Herbert J. Schiller, Chairman, McHenry County Regional Planning Commission).

10. *Id.* (written testimony of Beth Ruyle, Executive Director, South Suburban Mayors and Managers Association).

DuPage County Regional Planning Commission: "NIPC has long been an advocate of . . . intergovernmental land use agreements. [T]wo flaws in this approach have been (a) the difficulty in reaching agreement . . . ; and (b) the inability to assure that agreements are enforced."¹¹

Lake County Department of Planning, Zoning and Environmental Quality: "We therefore suggest that NIPC primarily focus its efforts at modernizing planning enabling legislation We believe that such legislative efforts should be focused on 1) establishing a mandatory regional review and approval process for proposed developments that would have substantial, greater-than-local impacts, and 2) linking the provision of necessary public improvements to local development approvals."¹²

Barrington Area Council of Governments: "We must convene immediately a state commission on annexation and disannexation and develop new legislation that protects the integrity of town planning" We should change the authority of the Tollway Commission, let them be as responsible to environmental considerations and the local hearing process, as is IDOT.¹³

Shortly after these hearings, NIPC recruited five task forces, composed of 190 volunteers from both the public and private sectors. The staff drafted a set of assumptions about future conditions pertaining to the region which, after extensive debate and modification, were approved as a basis for the new plan. The staff then focused task force members' attention on the estimated quantity of vacant and agricultural land that had been consumed over the period from 1970 to 1990. It was observed that while the region's population had grown only 4.1 percent, land consumption had increased by at least 45 percent. Commercial and industrial land in combination increased an estimated 74 percent. Farmland declined by 440 square miles or 23 percent.

Data from the 1990 census and the Illinois Department of Employment Security further documented explosive collar county growth during the 20-year period, even while 90 older municipalities were losing population. Task force members readily saw that many of the land resource management problems they were identifying were simply a byproduct of the regional decentralization process — whether the

11. *Id.* (written testimony of DuPage County Regional Planning Commission).

12. *Id.* (written testimony of Robert W. Chave, Director, Lake County Department of Planning, Zoning and Environmental Quality).

13. *Id.* (written testimony of Don Klein, Barrington Area Council of Governments).

subject was loss of farmland, the decline of older cities, or the increase in suburban auto congestion.

On October 28, 1991, the Commission hosted an assembly of the five task forces. A survey form, completed by 87 of those attending, showed consistently high approval ratings for the 52 growth management recommendations developed by that time. Drafts of a "strategic plan" were produced soon after, under close task force scrutiny. Final public hearings on the strategic plan were scheduled during the week of May 18, 1992.

Of the 68 recommendations contained in the public hearing version of the plan, several call for legislative change:

1. It is recommended that a private sector consortium, the Regional-Partnership, examine an array of state, regional, and local revenue measures for their potential in reducing the need for tax base planning. The plan also calls for the elimination of the recently imposed state cap on local property taxes because this will further inspire municipal expansions into underdeveloped areas.

2. The Illinois Farmland Preservation Act is recommended to be amended to cover a wider range of state actions, including wastewater facility planning area amendments, affecting agricultural protection areas in northeastern Illinois as defined by NIPC and county governments.

3. The act creating the Illinois Environmental Protection Agency is proposed to be amended to allow consideration of adopted regional land resource management policies and forecasts as a basis for evaluating proposed amendments to the *Illinois Water Quality Management Plan* wherein future wastewater facility planning areas are specified.

4. Intergovernmental land resource planning and management are proposed to be given a boost 1) through state appropriations or authorization for special local levies, and 2) by requiring local intergovernmental planning as a prerequisite for major state infrastructure investments such as highways and airports.

5. Uniform state legislation is called for which would authorize comprehensive, regional impact fees to be applied to large scale developments whose impacts would extend beyond their host jurisdiction's boundaries.

6. A consolidation of current state permitting processes is recommended for developments of regional impact and for developments affecting geographic areas of regional concern

in northeastern Illinois. Consolidated permit applications should be subject to notification and review through both the state and metropolitan clearinghouses.

7. The General Assembly is asked to authorize NIPC to convene a special commission to evaluate the array of jurisdictional boundary laws and regulations including those governing municipal annexations and disconnections, special district boundaries, and facility planning area boundaries for wastewater services.

8. Any major highway facility proposed by any sponsor — including the Illinois State Toll Highway Authority (ISTHA) — should be required to be consistent with the NIPC-Chicago Area Transportation Study long range transportation plan, which in turn must be consistent with any applicable NIPC land use plans. Today, the ISTHA is subject to no such requirement.

And, as a proposed compromise on the municipal-county dispute related above, the following is offered:

9. The Illinois Municipal Code regarding annexation agreements should be amended to encourage county/municipal agreements on land use and development. This could be accomplished by allowing municipalities to exercise control and jurisdiction over properties within the extraterritorial area if the municipality has entered into an agreement with the county regarding zoning that reflects consensus on land use and type of development, and if the municipalities have entered into binding jurisdictional boundary agreements with all jurisdictions within 1 1/2 miles.

The plan calls for an implementation task force representing various interest groups to pursue these and other recommendations in Springfield and elsewhere. Successful passage of the proposed legislation is by no means assured even though the recommendations are quite modest in comparison to legislation which has passed in Georgia, Florida, Vermont, and Oregon.¹⁴

14. FLA. STAT. ch. 163.161-.3215 (1991); OR. REV. STAT. § 197.005-860 (1992); GA. CODE ANN. § 36-70-1 to 70-5 (Michie 1991); VT. STAT. ANN. tit. 24 § 4302-4495 (1991).

The task forces' reluctance to seek greater "reform" of Illinois land use law through more state mandates or by assigning more important roles to state or regional agencies, such as happened in these other states, begs a question. Why have civic and environmental groups largely ignored the land use issues in Illinois, conceding the leadership to NIPC, an organization whose local government constituency could be presumed to favor the status quo? Is it that land planning and development are still minor issues because growth, itself, has impacted only a fraction of northeastern Illinois? Or is it that the sort of "reform" that has been instituted in these other states runs contrary, in Illinois, to a widely shared belief in the principle of home rule?

