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DARKNESS ON THE EDGE OF TOWN¹: REFORMING MUNICIPAL EXTRATERRITORIAL PLANNING & ZONING IN ILLINOIS TO ENSURE REGIONAL EFFECTIVENESS & REPRESENTATION

The City of Collinsville, Illinois, is famous for many things. Collinsville, a municipality of 24,707 people just east of the Mississippi River,² is home to the world's largest bottle of ketchup—a steel 100,000 gallon capacity, twenty-five foot diameter roadside attraction listed on the National Register of Historic Places, complete with a website and dedicated fan club.³ Collinsville's prominence in the mind of the condiment conscious is further elevated by its status as the Horseradish Capital of the World—fulfilling sixty percent of the world's horseradish demand and hosting the annual International Horseradish Festival.⁴ This suburban community, twelve miles east of St. Louis, Missouri, is attempting to add to its already global resume—as home to a major professional soccer franchise.⁵

Collinsville's international prominence in horseradish is not enough of a draw for Major League Soccer to consider putting down roots. Rather, league requirements and expectations demand the provision of a proper sporting venue to showcase any potential expansion team. Collinsville plans to deliver on these expectations and then some.⁶ The efforts of the city include the construction of an 18,500 seat soccer-specific stadium in a 400-acre complex.⁷ Additional economic development plans for the surrounding complex include the construction of two 120-room hotels and 500,000 square feet of retail and

1. BRUCE SPRINGSTEEN, *DARKNESS ON THE EDGE OF TOWN* (Columbia Records 1978).

2. U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, *PROFILES OF GENERAL DEMOGRAPHIC CHARACTERISTICS: ILLINOIS CENSUS OF POPULATION AND HOUSING 1784* (2001), available at <http://www.census.gov/prod/cen2000/dp1/2kh17.pdf>.

3. See generally *The World's Largest Catsup Bottle*, <http://www.catsupbottle.com/faqs/index.html> (last visited Feb. 15, 2009).

4. See generally *International Horseradish Festival*, <http://www.horseradishfestival.com/id14.html> (last visited Feb. 15, 2009).

5. See generally *Press Release, City of Collinsville, Ill., City of Collinsville, St. Louis Soccer United Detail Numbers Related to Pre-Annexation Agreement* (Aug. 31, 2007), available at <http://216.8.64.82/portals/0/Press%20Releases/AnnexationAgtRelease.pdf>.

6. *Id.* at 1–2.

7. *Id.*

office space.⁸ All of this planned development is to be intermingled with 1,600 residential housing units in a new-urbanist neighborhood design.⁹

Various common development vehicles have been adopted by the city,¹⁰ including the creation of a tax increment financing district and enterprise zone tax benefits.¹¹ Public reporting of the projected upside for the city includes two million dollars worth of profits on the stadium as well as the sales tax revenues generated from one million visitors a year and their consequent 130,000 hotel stays and forty-three million dollars in spending within the development.¹²

Clearly, a development of such size and visibility will serve as not only a boon to the economy of Collinsville, but as a generator of tourist dollars and improvements given its economically regional scope. Inevitably, the potential team will draw on the identity and cache of the deep soccer tradition in nearby St. Louis. By identifying the team with the greater St. Louis metropolitan area, the organization will hold itself out to the rest of the country as representative of the St. Louis region, rendering the project regional in a cultural sense as well.

What makes these efforts by the City of Collinsville unusual is that they are directed toward a development which is not wholly within their municipal limits. This reaching out across jurisdictional boundaries represents a movement by the city beyond what is normally considered its domestic interests and into a region-impacting development affecting a variety of stakeholders from residents, counties and cities sharing extraterritorial jurisdiction, making the project also regional politically.

8. *Id.* at 2.

9. *Id.*

10. *Collinsville Approves TIF to Fund Soccer Stadium*, ST. LOUIS BUS. J., Jan. 30, 2008, at XX, available at <http://stlouis.bizjournals.com/stlouis/stories/2008/01/28/daily38.html>. See generally ILL. DEP'T OF COMMERCE AND ECON. OPPORTUNITY, ENTERPRISE ZONE FISCAL YEAR ANNUAL REPORT 1–2 (2006) [hereinafter ENTERPRISE ZONE FISCAL YEAR ANNUAL REPORT], available at http://www.commerce.state.il.us/NR/rdonlyres/9325D298-0ABE-4376-A17A-67E96591A027/0/EZAnnRept_06.pdf.

11. An Enterprise Zone is a specific designation of an area by the Illinois Department of Commerce and Economic Opportunity which provides a variety of tax incentives to existing and potential employers for expanding or locating their operations within the boundaries of the zone. State tax incentives include exemptions to utility taxes, machinery and equipment/pollution control sales taxes, credits for qualified investments and job creation, and income tax deductions to dividends for business located in the zone, interest to financial institutions providing financing in the zone, and for qualified contributions to organizations located within the zone. Potential local incentives include waivers to licensing requirements, property taxes, and streamlined permitting and zoning requirements among others. ENTERPRISE ZONE FISCAL YEAR ANNUAL REPORT, *supra* note 10, at 1–3.

12. Alex Fees, *Collinsville Takes Step Toward Soccer Stadium* (Sept. 10, 2007), http://www.ksdk.com/news/news_article.aspx?storyid=129129.

The City of Collinsville is assisted in this cross-jurisdictional endeavor by statutory grants of power providing cities with the ability to develop and implement comprehensive plans for contiguous lands within a one and a half mile radius from their corporate limits,¹³ as well as zoning authority for the regulation of such land.¹⁴ This statutory reach across jurisdictional boundaries is a clear recognition of the potential regional impact of a single municipality's development efforts.

Today, large and sophisticated developments are rarely purely private initiatives. When major developments take the form of a public-private partnership, their impact becomes regional economically, culturally and politically. The Collinsville soccer stadium is but a recent example serving as a useful impetus for rethinking the statutory scheme which makes these cross-jurisdictional, region-impacting developments possible in Illinois. Further, it provides an opportunity to devise reforms to ensure that these regional decisions are being made by the proper authority and that the interests of the various stakeholders are protected while the full potential of the regional development is realized. This may be accomplished, as this article proposes, by focusing on two main prongs of statutory reform: ensuring effective regionalism and representation.

This article will explore the current statutory provisions in Illinois which provide for extraterritorial exercise of powers for effecting land development—including provisions for extraterritorial zoning as well as comprehensive planning and subdivision regulation—and will propose statutory reforms to maintain two key elements: effectiveness and representation of all involved.

Part I of this article will examine extraterritorial zoning in the United States. Attention will be paid to the extent of use and its purported justifications—both legitimate and illegitimate. This section will then focus on the constitutionality of extraterritorial zoning and the general exercise of extraterritorial power as established by the Supreme Court.

Part II will analyze the development of extraterritorial powers in Illinois regarding zoning and comprehensive planning. The article will then discuss the scope and operation of these statutes as they exist today. Finally, an analysis will be made of the decisions of Illinois courts which have interpreted these statutes when adjudicating the frequent conflicts arising out of the exercise of extraterritorial authority.

Part III of the article will critique the current statutory scheme of extraterritorial zoning and land regulation in Illinois. The article focuses

13. 65 ILL. COMP. STAT. 5/11-12-5 (2007). In Illinois, a municipality's extraterritorial jurisdiction is identified as those contiguous lands which lie within unincorporated area and are contained within a one-and-a-half mile radius from the corporate limits of the municipality.

14. § 5/11-13-1.

particularly on issues of adequate representation of all the interested regional stakeholders in cross-jurisdictional developments and also on the effectiveness of the current scheme in effectuating well-planned and thoughtful regional development. Through this critique, the article will demonstrate how the current scheme is particularly detrimental to the promotion of a coherent regional development plan and is a mechanism for continuations of local parochialism and its attendant consequences to the economic health of the region. Further, though the current statutory scheme provides some mechanisms for intergovernmental relations, this section will note that these mechanisms are either procedural systems of checks and balances or illusory in their ability to promote intergovernmental cooperation. While the current legislative scheme may be adequate, and certainly preferable to an absence of intergovernmental considerations, considerable room exists for improving a cooperative form of representation which can address the concerns of all stakeholders.

Finally, Part IV will offer a variety of potential reforms to these statutes in order to provide a greater degree of representation to the affected stakeholders in extraterritorial developments and consequently, provide a heightened degree of validity and community support to the goals and objectives of the comprehensive plans, developments, and zoning regulations in the extraterritorial jurisdiction. Particular attention will be paid to comparative statutes in North Carolina and Missouri which can serve as models for Illinois. Also, suggested reforms will be made to promote a more cooperative approach to extraterritorial land use decisions so that regional considerations will be emphasized in extraterritorial decision making rather than the damaging effects of local parochialism normally inherent in the exercise of extraterritorial powers.¹⁵

I. EXTRATERRITORIAL PLANNING AND ZONING

A. *Justifications & Uses of Extraterritorial Power*

Statutes granting municipalities extraterritorial police power, as planning and zoning regulations are generally considered,¹⁶ have been in existence for well over one hundred years.¹⁷ Their modern-day incarnations have their roots

15. See generally Nestor Davidson, *Cooperative Localism: Federal-Local Collaboration in an Era of State Sovereignty*, 93 VA. L. REV. 959 (2007); Laurie Reynolds, *Intergovernmental Cooperation, Metropolitan Equity and the New Regionalism*, 78 WASH. L. REV. 93 (2003); Sheryll Cashin, *Localism, Self-Interest, and the Tyranny of the Favored Quarter: Addressing the Barriers to New Regionalism*, 88 GEO. L.J. 1985 (2000).

16. 8 EUGENE MCQUILLIN, *THE LAW OF MUNICIPAL CORPORATIONS* § 25.17 (3d ed. 2000).

17. David E. Hunt, Comment, *The Constitutionality of the Exercise of Extraterritorial Powers by Municipalities*, 45 U. CHI. L. REV. 151, 157 (1977).

in post-World War II development booms on the fringes of the nation's urban areas.¹⁸

Traditionally, exercise of this power by a municipality has both selfish and charitable, justifications: the protection of residents by controlling development beyond its borders, and the well-being of those residents residing in the extraterritorial jurisdiction who would normally lack municipal-level "services."¹⁹ Municipal motivation, however, is a secondary impetus. The primary interest advanced in extraterritorial regulation is that of the state, the local government acting as its arm.²⁰ Examples of land use-related justifications of extraterritorial power include easing transitions between urban and rural areas, the protection of property values, the facilitation of infrastructure and natural resource coordination and planning.²¹ Such extraterritorial powers are also purported to improve intergovernmental cooperation.²² The extent to which these powers foster cooperation among local governments, however, is largely a function of the statutory scheme granting the extraterritorial power.²³

The purported uses, while logical and accepted as genuine interests of state and local government regulation, are not the sole targets toward which such statutes have been aimed. For example, extraterritorial land regulation has also been an integral tool in the continued racial segregation of many areas of the country.²⁴ Despite any questions of the legitimacy of local government motivations, it is clear that extraterritorial authority has an established place in the regulation of land beyond municipal limits. As established tools of regulation, extraterritorial zoning and planning statutes will likely remain as long as communities continue to expand and there are development pressures on the peripheries of more urban communities. Consequently, to ensure the validity of the regulations, it is important that they are structured in ways to address concerns of representation and effective regional planning.

18. David W. Owens, Extraterritorial Zoning Authority (Mar. 2006), <http://www.sog.unc.edu/organizations/planning/keyissues/extra.htm>.

19. Hunt, *supra* note 17, at 151–52.

20. Richard Briffault, *The Local Government Boundary Problem in Metropolitan Areas*, 48 STAN. L. REV. 1115, 1131 (1996).

21. Washington County Cooperative Extension, Extraterritorial Fact Sheet (Jan. 31, 2007), available at <http://washington.uwex.edu/cnred/growth/ETZ.html>.

22. *Id.*

23. See discussion *infra* Part III.

24. See generally Allen M. Parnell et al., The Persistence of Political Segregation: Racial Underbunding in North Carolina (Oct. 24, 2004), available at http://www.voicesforjusticenc.org/resources/26d7695192efc5900b4019a7ab32ace1_regional_underbunding.pdf.

B. *Constitutionality of Extraterritorial Power*

The concept of representation is central to our democratic system of governance.²⁵ The ability to alter the composition of our legislatures when our interests are not being represented is the foundation of democracy, and the denial of representation has been anathema to American values since our founding. Indeed, the ability of citizens to influence their governance in accordance with their own self-interest or with the interest of society is central to democracy.²⁶ A statutory mechanism which grants power to a governmental entity over citizens with no commensurate representation is surely bound to encounter challenges, practically and constitutionally. Extraterritorial power-granting statutes are precisely these sorts of mechanisms. The residents living in extraterritorial jurisdictions receive no representation that may be reflected in the composition of the planning commissions responsible for developing the comprehensive plans and implementing binding zoning regulations for their neighborhoods.²⁷ As would be expected, extraterritorial statutes have been the target of numerous challenges, and the Supreme Court has held them to be valid under multiple lines of constitutional attack.²⁸

In *Holt Civic Club*, a small unincorporated civic association and several individual residents brought a statewide class action to challenge the constitutionality of a variety of Alabama statutes granting extraterritorial authority to municipalities within the state.²⁹ The residents claimed that the exercise of these powers by the City of Tuscaloosa over their unincorporated area constituted a violation of their Due Process and Equal Protection rights under the Fourteenth Amendment.³⁰ The facts in *Holt Civic Club* lent

25. Briffault, *supra* note 20, at 1132 (citing ROBERT A. DAHL, *AFTER THE REVOLUTION?: AUTHORITY IN A GOOD SOCIETY* 64 (1970)).

26. G. Sidney Buchanan, *Upping the Procedural Ante: A Study in Conflicting Democratic Values*, 37 BRANDEIS L.J. 175, 175–76 (1999) (“Preserving equal access to the political process also promotes an important democratic value: procedural equality among citizens in their efforts to move the political system in the direction that they deem best for themselves and society.”).

27. This is specifically the case in Illinois where the statutes granting municipalities extraterritorial authority to develop comprehensive plans as well as binding zoning ordinances, contain no provision which would provide for the direct involvement or representation of the residents in the affected extraterritorial jurisdiction. Statutes provide for a method of representation for municipalities themselves in the zoning process in their extraterritorial jurisdiction where the zoning authority properly rests with the county government—resulting in a situation where regardless of the locus of zoning authority, the residents of the extraterritorial jurisdiction are subject to the direct authority or indirect procedural influence of a city in which they receive no representation. *See* discussion *infra* Part II.

28. *Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60 (1978) (holding that Alabama statutes providing cities with extraterritorial police powers do not violate due process or equal protection rights of residents of the extraterritorial jurisdiction).

29. *Id.* at 62–63.

30. *Id.*

themselves to the prediction of an Equal Protection challenge, being characterized as a “truly hard case.”³¹ Because the extraterritorial residents were subject to the same effects of the specific regulations as those lying within the municipal limits, it would seem to follow that if the Constitution did not provide them complete franchise, neither did it completely deny it in circumstances where extraterritorial residents are equally affected.³²

Despite the Supreme Court’s characterization of this argument as one with “logical appeal,” the Court nevertheless upheld the constitutionality of the extraterritorial statutes on other grounds.³³ The Court based its decision almost purely on geographic grounds, contending that the “‘one man, one vote’ principle” had never been extended “beyond the geographic confines of the governmental entity concerned . . .” and that “the line [establishing] voter qualifications . . . coincides with the geographical boundary of the governmental unit at issue. . . .”³⁴ Further, the court dismissed the argument that the binding nature of the municipal regulations on the extraterritorial residents required extension of voting rights for those residents.³⁵ The Court reasoned that municipal regulation inevitably impacts territory beyond its borders and such impacts have never previously provided grounds for franchise to those affected individuals.³⁶

Justice Brennan attacked both the strict geographic and collateral-effect lines of reasoning given by the majority.³⁷ Accusing the majority of ascribing a “talismanic significance” to corporate boundaries, Justice Brennan identified the proper scope of the franchise as extending to a “political community” rather than state law residency determinations.³⁸ Because a political community is characterized by a relationship between a governing body and those living within its jurisdiction, and Alabama cities had binding authority to regulate its extraterritorial jurisdiction, it followed that the Holt residents were part of the political community. Thus, they were properly due the extension of the franchise in municipal elections.³⁹ Finally, Justice Brennan found the majority’s reasoning that the principle of non-residents subject to the side-effects of municipal action not being extended voting rights to be applicable to the extraterritorial residents unconvincing.⁴⁰ The residents of Holt, Justice

31. Hunt, *supra* note 17, at 171.

32. *Id.*

33. *Holt Civic Club*, 439 U.S. at 70, 75.

34. *Id.* at 69.

35. *Id.*

36. *Id.*

37. *Id.* at 81–88 (Brennan, J., dissenting).

38. *Holt Civic Club*, 439 U.S. at 81–82 (Brennan, J., dissenting).

39. *Id.* at 82–85.

40. *Id.* at 87–88.

Brennan distinguished, were not merely experiencing the side effects of municipal action—but were the direct subjects of regulation.⁴¹

Illinois courts have followed the Supreme Court's holding in *Holt Civic Club* when hearing challenges to municipal extraterritorial authority on representational grounds.⁴² In *Town of Northville*, the Township of Northville and the individual plaintiffs claimed a violation of their voting rights due to their inability to vote in Sheridan municipal elections despite being subject to Sheridan's extraterritorial zoning ordinance.⁴³ The court explicitly found *Holt Civic Club* to be controlling and adopted the analysis given by the Supreme Court.⁴⁴ Agreeing with the rationale that because municipal effects on surrounding areas do not normally give rise to franchisement for the affected area, the franchise should similarly not extend to those non-residents in Sheridan's extraterritorial jurisdiction affected by the municipality's zoning ordinance.⁴⁵ Thus, the court held that extraterritorial zoning without representation of extraterritorial residents does not violate the voting rights of those residents.⁴⁶

The Supreme Court's decision in *Holt Civic Club* has clearly provided constitutional authority to municipal exercises of extraterritorial power. While this decision has largely precluded extraterritorial power granting statutes from further constitutional challenges, it has not done much to soften what is an intuitive abrasiveness to our core democratic ideals of what constitutes proper representation.⁴⁷ As such, extraterritorial zoning is still subject to many of the same criticisms today as those claimed by the residents of Holt, Alabama, in the 1970s. Despite their validity at law, these extraterritorial statutes, without representational provisions, will continue to inhibit the validity of the land use plans and policies necessary to promote smart regional growth.

41. *Id.* at 87.

42. *Town of Northville v. Vill. of Sheridan*, 655 N.E.2d 22, 25 (Ill. App. Ct. 1995).

43. *Id.* at 23–24.

44. *Id.* at 25.

45. *Id.*

46. *Id.*

47. Memorandum from North Dakota Legislative Council on Extraterritorial Zoning Authority of Cities to Advisory Commission on Intergovernmental Relations 1 (July 2007) (noting that the impetus for a moratorium and study on extraterritorial authority stems from representational concerns of extraterritorial residents), available at <http://www.legis.nd.gov/assembly/60-2007/docs/pdf/99013.pdf>; Minnehaha County, South Dakota, Comprehensive Development Plan 9-4-1 (Dec. 1998), available at http://www.minnehahacounty.org/dept/pl/comprehensive_plan/comprehensive_plan/9-4-1general_overview.pdf.

II. OPERATION OF THE CURRENT EXTRATERRITORIAL STATUTORY SCHEME

A. *Extraterritorial Zoning*

It is widely accepted that municipalities, as subdivisions of the state, have the ability to exercise only those powers granted to it by the state.⁴⁸ Prior to the adoption of the amendments to the Illinois Municipal Code in July 1961,⁴⁹ extraterritorial zoning was a municipal power which went unrecognized by the Illinois courts.⁵⁰ In *Village of Bensenville v. County of DuPage*, for example, the court decided whether the village had the “power to attack” county zoning regulations.⁵¹ The Village claimed an implied zoning authority over the unincorporated area sought to be zoned by the county based on the provision of other statutory extraterritorial grants of power.⁵² Strictly construing the statutes, the court reasoned that no express zoning power to the Village and the express grant to the County, required that no implied zoning authority for the Village could be found.⁵³

Within months after the *Bensenville* decision, the legislature enacted an express grant of power to Illinois municipalities to implement zoning regulations on their extraterritorial jurisdiction.⁵⁴ This ability on the part of municipalities, however, is not without certain limitations. The most basic limitation of extraterritorial zoning is the size of the jurisdiction. The enabling statute provides that Illinois municipalities may extend their zoning authority on those lands “within contiguous territory not more than one and one-half miles beyond the corporate limits” of the municipality.⁵⁵ This language is strictly construed, as non-contiguous land within the designated radius has been found by Illinois courts to be outside the reach of municipal action.⁵⁶ Additionally, the land must not be part of any other municipality.⁵⁷ Further, no other municipality may have already implemented a zoning ordinance within the original city’s extraterritorial jurisdiction.⁵⁸ Finally, and perhaps most limiting, is the prohibition of extraterritorial zoning by municipalities which lie

48. 2A EUGENE MCQUILLIN, THE LAW OF MUNICIPAL CORPORATIONS § 10:8 (3d ed.).

49. See 1961 Ill. Laws 3697.

50. See generally *Vill. of Bensenville v. County of DuPage*, 174 N.E.2d 403 (Ill. App. Ct. 1961).

51. *Id.*

52. *Id.*

53. *Id.*

54. 65 ILL. COMP. STAT. 5/11-13-1 (2007).

55. *Id.*

56. *Vill. of Bensenville*, 174 N.E.2d at 403.

57. § 5/11-13-1.

58. *Id.*

in a county that has enacted its own zoning code for unincorporated areas.⁵⁹ However, the prohibition is subject to a particularly narrow exception.⁶⁰

B. Extraterritorial Comprehensive Planning & Subdivision Regulation

A predecessor, and now contemporary, statutory provision of extraterritorial power to regulate land is section 5/11-12-5 of the Illinois Municipal Code. This section provides municipalities with the ability to establish planning commissions for the development of comprehensive plans to guide the future development of the municipality.⁶¹ The statute provides that the planning commission may extend its focus of a comprehensive plan to include contiguous lands within a one-and-a-half mile radius of the corporate boundary.⁶² Further, the commission may identify such land suitable for annexation and provide recommendations for zoning classifications of the land should annexation occur.⁶³

C. Jurisdictional Conflicts in Extraterritorial Developments

With multiple statutes providing authority for the regulation of unincorporated extraterritorial jurisdictions, it is inevitable that confusion and conflict occurs where multiple municipalities and counties lay claim to binding regulations for the area.⁶⁴ These disputes have been the subject of a

59. *Id.* This restriction on extraterritorial zoning authority is particularly difficult for municipalities seeking to exercise their zoning power because the Illinois municipalities with the highest populations, most intensive land use and consequent need for zoning regulation to control peripheral development, also lie predominantly in counties which have enacted their own binding zoning ordinances for their unincorporated land.

60. *Id.* The statute provides for the exception where municipalities with a population in excess of 112,000 which reside in counties with a population less than 185,000 may continue to exert their zoning influence onto their extraterritorial jurisdiction despite the existence of a county-level zoning ordinance. Only five cities had a 2000 Census population greater than 112,000 (Aurora, Chicago, Naperville, Peoria, and Rockford). ILL. DEP'T OF COMMERCE & ECONOMIC OPPORTUNITY, 2000 CENSUS POPULATION COMPARED TO 1990: ILLINOIS MUNICIPALITIES 1, available at <http://illinoisgis.ito.state.il.us/census2000/censusData/2000/docs/munipop.pdf>. Further, of those municipalities, only Peoria (112,936) lies completely within a county with a 2000 Census population of less than 185,000 (Peoria County, 183,433). U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, PUBL'N NO. PHC-1-15, ILLINOIS: 2000 SUMMARY POPULATION AND HOUSING CHARACTERISTICS 63, 88 (Aug. 2002) [hereinafter ILLINOIS SUMMARY POPULATION AND HOUSING CHARACTERISTICS], available at <http://www.census.gov/prod/cen2000/phc-1-15.pdf>. Aurora lies partially within Kendall County (Population 54,544). *Id.* at 88.

61. § 5/11-12-5.

62. *Id.*

63. *Id.*

64. For example, Madison County, Illinois, a county with a zoning code governing the land use of unincorporated area, is also home to thirty municipalities. ILLINOIS SUMMARY POPULATION AND HOUSING CHARACTERISTICS, *supra* note 60, at 52. Each of these

considerable amount of jurisprudence in the Illinois courts despite the provision of possible resolutions to such extraterritorial jurisdictional conflicts in the statutes.

1. Extraterritorial Conflict Between Municipalities

Discrepancies between municipalities with overlapping extraterritorial jurisdictions are clearly addressed by the statutes. The court articulated the outcomes of various jurisdictional conflicts in the late 1960s in *Village of Mount Prospect v. County of Cook*.⁶⁵ In discussing these potential conflicts between municipalities, the court identified three different statutory provisions created by the legislature which provide municipalities with means to resolve extraterritorial zoning disputes.⁶⁶ These methods range from cooperational to a purely first-come, first-served grounds for authority.⁶⁷ First, the court addressed the cooperative approach which municipalities could take by coming to an agreement among themselves as to a new boundary where the extraterritorial jurisdiction of one municipality ends and the other begins, thus eliminating any overlap and subsequent zoning conflict between them.⁶⁸ Should the municipalities fail to come to an agreement, the statute provided that it was acceptable for the cities to literally draw a line on a map to a point equidistant between the conflicting municipalities to determine the extent of the extraterritorial jurisdiction of each.⁶⁹

Second, the legislature identifies an approach which benefits the faster municipality in implementing an annexation of the disputed area. If a municipality has zoned its extraterritorial jurisdiction in accordance with a comprehensive plan, that zoning will be nullified when a different municipality annexes the extraterritorial jurisdiction into its own corporate boundaries, thus rewarding the annexing city.⁷⁰ Finally, the legislature applies the first-come, first-served approach by providing that once a municipality has established a comprehensive plan with recommended zoning classifications for its

municipalities will have the ability to institute zoning regulations within their extraterritorial jurisdiction. With Madison County being 725 square miles, it is easy to see how frequently extraterritorial jurisdictions may overlap—giving rise to considerable contention in determining the proper land use planning of unincorporated area. *Id.* at 590. The City of Collinsville straddles both Madison and St. Clair Counties, making the city's extraterritorial land use planning dependant on multiple county actors. *Id.* at 52, 68.

65. *Vill. of Mount Prospect v. County of Cook*, 252 N.E.2d 106 (Ill. App. Ct. 1969) (where a municipality's challenge to county authority to grant a change of zoning to property within the city's extraterritorial jurisdiction was defeated).

66. *Id.* at 109–10.

67. *Id.*

68. *Id.* at 109.

69. *Id.*

70. *Vill. of Mount Prospect*, 252 N.E.2d at 109.

extraterritorial jurisdiction, municipalities with overlapping jurisdictions were barred from developing and implementing a comprehensive plan of their own over the area, even if the original municipality has not annexed the area.⁷¹ There is no indication, however, that a second municipality without a comprehensive plan cannot annex the area covered by a comprehensive plan, as development of a comprehensive plan for extraterritorial jurisdiction is not a “condition precedent” to annexation.⁷²

Given the lack of pertinent case law, the provision by the statutes of explicit terms for reconciling extraterritorial conflict between municipalities has been effective at curbing these disputes. These varied provisions, however, while creating harmony among municipal neighbors, do little to foster true intergovernmental cooperation.⁷³ Consequently, reform of the method of municipal interaction in extraterritorial land use regulation has the potential to disrupt a relatively comfortable status quo.

2. Extraterritorial Conflict Between Municipalities & Counties

Despite statutory accommodations for resolving municipal conflict with county zoning ordinances in extraterritorial jurisdictions, Illinois courts have been resolving disputes over the proper zoning authority in these territories for decades.⁷⁴

As noted earlier, prior to any explicit grant of zoning power in extraterritorial jurisdictions, the court generally denied Illinois municipalities the ability to implement a binding zoning regime.⁷⁵ Consequently, zoning authority of a city’s unincorporated extraterritorial jurisdiction remained vested at the county level.⁷⁶

With the implementation of an express grant of extraterritorial zoning power came further challenges by municipalities to county zoning authority in their extraterritorial jurisdictions.⁷⁷ Despite this grant of power, Illinois courts have continuously found the zoning authority of the county to supersede any zoning ordinance sought to be enacted by a municipality.⁷⁸ The courts relied on clear statutory language.⁷⁹ Addressing the challenge to a county zoning

71. *Id.*

72. *Id.* at 110.

73. See discussion *infra* Part III.A.i.

74. See generally *City of Urbana v. County of Champaign*, 389 N.E.2d 1185 (Ill. 1979); *County of Will v. City of Naperville*, 589 N.E.2d 1090 (Ill. App. Ct. 1992); *City of Canton v. County of Fulton*, 296 N.E.2d 97 (Ill. App. Ct. 1973); *Vill. of Mount Prospect*, 252 N.E.2d at 106; *Vill. of Bensenville v. County of DuPage*, 174 N.E.2d 403 (Ill. App. Ct. 1961).

75. *Vill. of Bensenville*, 174 N.E.2d at 403.

76. *Id.*

77. See generally, *Vill. of Mount Prospect*, 252 N.E.2d at 106.

78. *Id.* at 111.

79. *Id.* at 109.

change in *Village of Mount Prospect*, the court acknowledged that the legislature had provided municipalities with the general ability to zone property in their extraterritorial jurisdiction.⁸⁰ This ability, however, was clearly without validity in unincorporated areas within counties which have enacted their own zoning regulations.⁸¹ The ability of municipalities to develop a comprehensive plan and subdivision regulations for the area created no special authority to preempt this ordering of county superiority.⁸² Ultimately, the county's zoning authority in unincorporated territory is "paramount" regardless of it being situated in a municipality's extraterritorial jurisdiction.⁸³

As clear as the relationship seems to have been established by statute, the interplay between the extraterritorial interests of municipalities and counties is not without significant influence on one another. The fact that a county government has enacted a zoning ordinance in the extraterritorial jurisdiction of a municipality does not completely preclude the municipality from exerting any influence on the area's zoning. Rather, the statute provides for a veto-style mechanism through which a municipality may exercise enough influence to hinder the passage of unfavorable zoning changes in the jurisdiction.⁸⁴

The first requirement in this mechanism is the timely notice from the county to the municipality of a proposed change in the county's zoning ordinance within the municipality's extraterritorial jurisdiction.⁸⁵ Upon receiving notice of the proposed change, it is then incumbent upon the municipality to take advantage of the opportunity to influence the zoning. It does so through a formalized protest of the zoning alteration and the development of alternative proposals for consideration by the county's commission tasked with the change.⁸⁶ The municipality's protest must take place at the requisite public hearing held by the county.⁸⁷ At this hearing, the municipality must submit its alternative zoning recommendations for the subject area in writing.⁸⁸

The effect of mounting this protest and provision of zoning alternative is less substantive than procedural, yet still an effective check on the county's zoning power. If the county commission, upon receipt of the protest and alternatives, continues with the change to the objectionable zoning

80. *Id.*

81. *Id.*

82. *Vill. of Mount Prospect*, 252 N.E.2d at 110.

83. *City of Canton v. County of Fulton*, 296 N.E.2d 97, 100 (Ill. App. Ct. 1973).

84. 55 ILL. COMP. STAT. 5/5-12007 (2006).

85. *Id.* Timely notice is considered that which is given fifteen days prior to the public hearing and published in a newspaper of general circulation.

86. *Id.*

87. *Id.*

88. *Id.*

classification, the statute requires a heightened majority of the commission for the change to take effect—from a simple majority to a three-fourths majority.⁸⁹ In this sense, the municipality's ability to affect zoning in its extraterritorial jurisdiction is akin to a presidential veto of legislation which gives rise to a requisite greater majority to pass legislation in the face of such disapproval. The final result of this mechanism preserves the primacy of the county's zoning ordinance while providing the affected municipality with a mere procedural check. This check may affect the ability of the county to pass a zoning ordinance which is detrimental in the opinions of, or more importantly, to the realization of, the municipal comprehensive plan provided for by statute.

The court has found this procedural redress to be evidence of the legislature's intention for resolving zoning disputes between municipal and county zoning objectives in extraterritorial jurisdictions.⁹⁰ Further, the scheme demonstrates the legislature's plan to maintain the supremacy of county zoning where conflict arises with municipal land use objectives, though not to maintain supremacy without at least a consideration and ultimate limitation on the process of enacting an ordinance.⁹¹ The court characterized this procedural limitation as a reasonable requirement in the face of a county's practical need to control land use in unincorporated areas.⁹²

Contrary to the dominant nature of county zoning ordinances over municipal extraterritorial zoning, municipal subdivision regulatory power pursuant to section 5/11-12-5 takes precedent over any county subdivision control ordinance.⁹³ Today, however, with the use of more complicated developments which include multiple uses, building schemes, specialized platting and internal streets, the line between zoning regulations and subdivision regulations has become harder to determine.

The Collinsville development is just such a complex development. Designated as a "Planned Unit Development,"⁹⁴ many aspects are integrated into the plan. These include platting and street networks, traditional subdivision regulations,⁹⁵ and designated placement and mixing of various land uses, which are normally regulated through zoning. Thus, the question of

89. § 5/5-12007.

90. *Village of Mount Prospect v. County of Cook*, 252 N.E.2d 106, 111 (Ill. App. Ct. 1969).

91. *City of Canton v. County of Fulton*, 296 N.E.2d 97, 100 (Ill. App. Ct. 1973).

92. *Id.*

93. *City of Urbana v. County of Champaign*, 389 N.E.2d 1185, 1187 (Ill. 1979).

94. Clyde W. Forrest, *Planned Unit Development and Takings Post Dolan*, 15 N. ILL. U. L. REV. 571, 572-73 (1995) (describing Planned Unit Developments as a relatively modern form of land development which seeks to incorporate "1. [g]reater use and design flexibility, 2. [c]lustering and reductions in standards, 3. [p]hasing of investment for the market, 4. [t]ailored conditions for compatibility, 5. [c]ost sharing in public improvements, and 6. [e]fficiency and economy of infrastructure").

95. *Id.* at 579.

the proper authority for regulating such a development hinges on whether the regulations driving the development constitute zoning or subdivision regulations.

The Illinois Supreme Court made just such a distinction in the case of Planned Unit Developments.⁹⁶ In *City of Urbana*, the city sought to require a developer to submit his development in the city's extraterritorial jurisdiction, characterized as a planned unit development and approved by county authorities, to municipal subdivision controls.⁹⁷ The court, in making its determination of the nature of the development, determined that a city's ability to subject an extraterritorial development to subdivision regulations to be determined not by the presence of subdivided parcels, but by the "developmental impact upon existing facilities protecting the health and safety of the municipal residents."⁹⁸ By this metric, the court concluded that the planned unit development was a subdivision under the statute and consequently subject to municipal subdivision regulation.⁹⁹

Municipal and county conflict in extraterritorial land regulation has persisted despite statutory and common law guidance. As more sophisticated developments are demanded by the market and made possible by developers, more flexible land use regulatory schemes for governing these developments will be necessary. There is no reason to expect that new innovations in land development will fit the subdivision/zoning dichotomy any more neatly than the well-established Planned Unit Development. Likewise, with the growing complexity and intensity of new developments,¹⁰⁰ the current procedural character of a municipality's representation is likely due for reform into something more substantive in nature.

96. *City of Urbana*, 389 N.E.2d at 1186–87.

97. *Id.* at 1186.

98. *Id.* at 1188.

99. *Id.*

100. See National Association of Home Builders, Mixed Use and Compact Development, <http://www.nahb.org/page.aspx/category/sectionID=628> (last visited May 28, 2009) ("The scarcity of land for development has necessitated the intensification of the use of available land to accommodate future needs. Mixed-use and compact development have become attractive approaches, especially in towns and villages where services and transportation are most available.") The Collinsville development characterizes itself as a new-urbanist development, providing for greater density and more intense land use with the potential for connection to mass transit.

III. CRITIQUE OF THE CURRENT EXTRATERRITORIAL STATUTORY SCHEME

A. *Barriers to Regional Effectiveness*

1. Lack of True Cooperative Mechanisms

Many issues regarding the current scheme's inability to address regional concerns are the same issues which have been addressed in extraterritorial land use provisions since the 1960s. One such long-running difficulty facing regional planning efforts is the considerable proliferation and subsequent abundance of municipal governments within a metropolitan area.¹⁰¹ Despite the general recognition of the various regional drawbacks to excessive political fragmentation,¹⁰² local governments continue to proliferate, and various efforts to curb the multiplication of jurisdictions has been largely ineffective.¹⁰³

This trend also holds true for the St. Louis metropolitan area, of which Collinsville is a part. The metropolitan area is home to well over one hundred individual municipal governments as well as a variety of regional bodies, both governmental and private, which are charged with promoting and fostering the planned development of the region as a whole.¹⁰⁴

Problems of growth and development are regional in their impact as the benefits and externalities of local developments give no consideration to

101. Charles M. Haar, *Regionalism and Realism in Land-Use Planning*, 105 U. PA. L. REV. 515, 515 (1957).

102. See generally Myron Orfield, *The Region and Taxation: School Finance, Cities, and the Hope for Regional Reform*, 55 BUFF. L. REV. 91, 94–102 (2007) (discussing the detrimental effects of both horizontal and vertical political fragmentation).

103. Reynolds, *supra* note 15, at 93–94 (noting that the increase in demand for “local government consolidation, regional legislatures, strengthened municipal annexation powers, and anti-sprawl growth policies” have all failed to prevent the proliferation of government fragmentation within metropolitan regions).

104. Madison and St. Clair Counties in southwestern Illinois are served by at least three significant organizations with missions of fostering regional cooperation concerning the challenges of growth and economic development. The Southwestern Illinois Development Authority is an agency created by the state government for the promotion of economic development in the region. Southwestern Illinois Development Authority, <http://www.swida.org/aboutus.htm> (last visited Feb. 15, 2009). Other agencies include the East-West Gateway Council of Governments—a collection of regional local government leaders designed to promote cooperation in regional planning and growth decisions, East-West Gateway Council of Governments, <http://www.ewgateway.org/aboutus/Staff/Mission/mission.htm> (last visited Feb. 15, 2009), as well as the St. Louis Regional Commerce and Growth Association, a private organization with a similar mission of promoting the development of the region as a whole. St. Louis Regional Commerce and Growth Association, <http://www.stlrcga.org/x64.xml> (last visited Feb. 15, 2009). None of these agencies or organizations has any binding authority on the planning decisions of the localities in their area of interest. Additionally, as entities created for the promotion of regional development and problem solving, none of the agencies reach into the detailed local functions of zoning and comprehensive plan formulation.

municipal boundaries when creating their real world effect.¹⁰⁵ This is clearly evidenced in the regional character of the Collinsville soccer development which stretches beyond municipal boundaries and encompasses a regional scope economically, culturally and politically.

As masters of political subdivisions, states have not implemented any serious form of legislation which would place a premium on regional solutions.¹⁰⁶ Rather, the focus has remained on keeping decisionmaking powers vested in local governments by creating statutory frameworks of municipal operation which are “decidedly anti-regional.”¹⁰⁷ When local governments are not required to address the needs of their neighbors, the result is generally in the form of self-interested municipal legislation and a distinct turn toward policies of isolationism from the greater region.¹⁰⁸ In effect, municipal boundaries have served as artificial “blindness” toward identifying and exercising proper regional decisionmaking.¹⁰⁹ The resulting operation of local government in land use and planning decisions in Illinois is no different.

The current statutory scheme in Illinois does little to advance any intergovernmental cooperation between municipalities with overlapping extraterritorial jurisdiction or between municipalities and counties with binding zoning ordinances for the area. As discussed earlier, a municipality’s ability to affect county zoning decisions in its police jurisdiction is largely limited to a procedural role, essentially one of checks and balances.¹¹⁰ This scheme regulates the municipality whose police jurisdiction is being zoned to a procedural veto-style form of participation that can effectively be overridden. Noticeably absent from the county/municipal relationship in extraterritorial zoning is any collaborative mechanism that would provide the ability of counties and municipalities to cooperate and come to a mutually agreeable consensus on these zoning decisions. Rather, the procedural checks and balances are non-cooperative in nature if not potentially adversarial. Further, the statute does not place the relationship on equal footing. The binding nature of the county zoning ordinance and ability to override any municipal concern—concerns that are fully recognized by the legislature in the event of a non-existent county zoning ordinance—in the extraterritorial jurisdiction effectively subordinates the municipal interest to the regulatory designs of the county.¹¹¹

105. David M. Becker, *Municipal Boundaries and Zoning: Controlling Regional Land Development*, 1966 WASH. U. L.Q. 1, 4 (1966).

106. Reynolds, *supra* note 15, at 97.

107. *Id.*

108. Becker, *supra* note 105, at 12.

109. Haar, *supra* note 101, at 526.

110. See discussion *supra* Part II.C.ii.

111. 65 ILL. COMP. STAT. 5/11-13-1 (2007).

Even further, the available procedural participation of the municipality in county zoning decisions has no corollary in the statute providing for the development of municipal comprehensive plans in the extraterritorial jurisdiction. Municipal extraterritorial comprehensive planning is less dramatic than the lack of cooperation in the zoning context, due to the various natures of comprehensive land use plans as a guide for driving land use decisions.¹¹² The subdivision regulations available to the municipality to bring about that plan, however, are still of significance to the county whose unincorporated territory is being regulated. Yet, there is no statutory provision providing the county with any similar procedural participation in the imposition of the regulations, much less any actual cooperative function.

The statutory provisions for municipal cooperation among cities with overlapping extraterritorial jurisdictions, while varied as discussed in *Mt. Prospect*,¹¹³ are in their practical effects no greater at facilitating intergovernmental cooperation than they are in the municipal/county context. The statutes provided that municipalities with overlapping extraterritorial jurisdictions could resolve any dispute over authority to implement land use regulations by voluntarily agreeing as to a proper boundary line delineating the extent of the extraterritorial jurisdiction of each.¹¹⁴ Further, they could have a line drawn equidistantly from their respective corporate limits, which would provide the division of the unincorporated area.¹¹⁵ Both of these options for resolving extraterritorial disputes provide a means for dividing the jurisdiction, which the respective municipalities may then independently, and without reciprocal consideration, regulate as they see fit. As such, the statutory provision does provide for a level of cooperation regarding extraterritorial planning and zoning. This “cooperation,” however, merely allows for municipalities to cooperate in determining the areas in which they may unilaterally exercise their authority.

Despite the regional nature of the economic, political and cultural effects of large economic development projects such as the Collinsville soccer development, the current extraterritorial scheme is one which primarily empowers the individual municipality to implement local solutions and plans

112. See generally Edward J. Sullivan, *Recent Developments in Comprehensive Planning Law*, 39 URB. LAW. 681 (2007). Sullivan identifies three broad categories in which the role of the municipal comprehensive plan may be placed. *Id.* at 681. The first such role being a unitary one with local zoning controls in which the comprehensive plan is meaningless when separate from the zoning ordinance. *Id.* A second role is as a factor for consideration when devising land use planning regulations. *Id.* Additionally, the comprehensive plan may be categorized as a “quasi-constitutional” document which drives the formulation of municipal zoning, subdivision, and other land use planning regulations. *Id.*

113. *Vill. of Mount Prospect v. County of Cook*, 252 N.E.2d 106, 109 (Ill. App. Ct. 1969).

114. *Id.*

115. *Id.*

to regional issues without any recognition of the interdependence between Illinois municipalities, their neighbors and counties.¹¹⁶ Such unilateral exercise by a local government, be it at the county or municipal level, of a development decision ignores the legitimate interests of the multiple stakeholders affected by the development, which could be addressed through intergovernmental cooperation. This is the antithesis of regionalism.¹¹⁷

2. Susceptibility to Local Parochialism

In addition to the lack of cooperative measures inherent in the statutory scheme, the general self-interest of the local governments involved in extraterritorial development have the potential to create a barrier to the normal bargaining process which typically takes place between local units of government in such decisions.¹¹⁸ Because the statutory scheme provides for no mechanism by which local governments may, or must, enter into cooperative agreements or negotiations, the ultimate decisionmaking authority remains vested in the individual municipal or county government. Where the control of functions such as planning and zoning have been vested in a singular local entity, that authority has generally been used by that entity to reinforce particularly local policy at the expense of its extraterritorial and municipal neighbors.¹¹⁹

Land use decisions, in particular, have been noted for the great amount of externalities they create on regional actors when the authority is carried out on a purely local level.¹²⁰ Nevertheless, cooperation between municipalities with overlapping extraterritorial jurisdictions, or between municipalities and counties, is particularly rare.¹²¹ The cause for this scarcity is simple self-interest as “[l]ocalities simply do not enter into cooperative arrangements under which some localities accept regionally necessary but locally undesirable land uses.”¹²² These self-interested actions without regard or input for regional concerns are the hallmarks of local parochialism.¹²³

116. Becker, *supra* note 105, at 7.

117. *Id.* at 13.

118. Haar, *supra* note 101, at 532.

119. Davidson, *supra* note 15, at 1024.

120. Briffault, *supra* note 20, at 1147.

121. *Id.* (noting that there are “few, if any, voluntary interlocal agreements concerning land use, zoning, planning, or housing).

122. *Id.* This rationale makes intuitive sense as well. Considering that the purpose of municipal police powers is to protect the general health, safety and welfare of a community, it makes little sense that a locality charged with this power would accept a detrimental land use in an area of their jurisdiction, such as a landfill, trash transfer station or similar use.

123. Cashin, *supra* note 15, at 2015. Professor Cashin illustrates the theory of local parochialism as one “that rests on a belief that fragmented political borders, arising from five

Local parochialism is particularly problematic when it results in the shifting of detrimental externalities of local land use regulations onto neighboring communities.¹²⁴ This lack of regional consideration of externalities is readily apparent in the economic development context.¹²⁵ While cities, it is argued, will naturally consider the impact of new development to existing commercial activity within its own borders, there is little motivation, and no requirement, to consider the economic externalities the development creates beyond its borders.¹²⁶ While the concept of requiring a municipality to consider the external effects of its development plans is not without precedent,¹²⁷ this concept has gained little traction as a practical matter.¹²⁸

Even if the local governments of Illinois were provided with meaningful mechanisms of intergovernmental cooperation in extraterritorial planning and zoning, local self-interests would likely make these voluntary associations unattractive to any governmental unit adversely affected by the ceding of regulatory authority. Consequently, such arrangements would continue to be rare, particularly where the benefits of cooperation are not readily apparent.¹²⁹ Given the rather indirect and subtle nature of the benefits of regional

decades of suburban development, entrench a narrow, ill-conceived conception of self-interest that blinds citizens to the real potential benefits of collective alliances across borders.” *Id.*

124. See Amnon Lehavi, *Intergovernmental Liability Rules*, 92 VA. L. REV. 929, 941 (2006) (Lehavi notes that cities will reduce their own internal costs by shifting unwanted but lucrative development to its fringe in an effort to slough off the externalities of the development—be they pollution or noise, or other similar problem—onto its neighbors. They are less likely to consider the economic impacts on their neighbors.)

125. *Id.*

126. *Id.*

127. See Haar *supra* note 101, at 526–27 (discussing *Borough of Cresskill v. Borough of Dumont*, 104 A.2d 441 (N.J. 1954)).

128. The Collinsville soccer development is illustrative of local parochial behavior in an economic development context. As has been seen in numerous other developments, this development is subsidized in part through tax increment financing by the City of Collinsville. Developments financed through TIF which incorporate residential development, as Collinsville does, are regularly criticized by the affected school districts as the property taxes normally collected from the residents to support the influx of new students is frozen—leaving the school district with an increase in student body without the commensurate increase in tax revenue to fund their educations—resulting in a net decrease in expenditures per pupil within the district. See Chris Coates, *City Council Green-Lights TIF: School Officials ‘Disappointed’ by Vote*, COLLINSVILLE HERALD, Jan. 30, 2008, available at http://collinsvilleherald.stltoday.com/articles/2008/01/30/news/sj2tn20080130-0130cvj_collinscouncil.ii1.txt. There is some history to indicate that some of the frozen tax dollars may be passed through to the district, but such possibility has not alleviated the concerns of the affected school district. *Id.*

129. Briffault, *supra* note 20, at 1149.

cooperation in land use regulation, there is no reason to believe that this would not continue to be the case.¹³⁰

There are arguments in defense of maintaining greater local control in planning and zoning decisions rather than divesting this authority to a regional governing body.¹³¹ Nevertheless, increased local authority over the planning and zoning decisions in extraterritorial jurisdictions retains a risk of “exacerbating economic, racial, ethnic and cultural divisions that local fragmentation engenders, can threaten individual liberties, and may generate significant externalities on neighboring communities.”¹³²

In sum, extraterritorial planning and zoning are functions with clear regional impact yet no mandatory regional considerations.¹³³ When power is vested locally, the potential for community self-interest to prevail over regional concerns is problematic.¹³⁴ Consequently, not only must any reforms address the structural defects of intergovernmental cooperation, they must also address the human elements capable of frustrating regionally sensitive land use development in the form of local parochialism.

B. *Representational Concerns*

As a matter of democratic theory, “[e]veryone who is affected by the decisions of a government should have the right to participate in that government.”¹³⁵ Under this principle, and despite the holding of the Supreme Court in *Holt Civic Club*,¹³⁶ it is clear that representational concerns in the exercise of extraterritorial power have been, and remain, a common concern

130. *Id.* (He notes that “[t]he benefits of ceding local control over local land use regulation . . . [is] likely to be far less obvious.” Consequently, “the loss of zoning autonomy . . . would require a major effort to persuade local residents of the benefits of interlocal cooperation.”).

131. See Reynolds, *supra* note 15, at 102–03. Professor Reynolds provides a description of two established rationales promoting greater local autonomy including the “public choice” approach put forward by Professor Clayton Gillette and the “participation theory” promoted by Professor Gerald Frug. The former champions autonomy for localities as actors in a marketplace for municipal services—eliminating inefficiencies and abuses. *Id.* at 102. The latter theory, while rejecting the service provider role of municipalities, champions local control as a means of enhancing citizen involvement in the actions and decisions of government. *Id.* at 102–03.

132. Davidson, *supra* note 15, at 1023–24.

133. *Id.* at 1024 (“Local government decisions in most areas of typical local authority, including land use, housing, transportation, and economic development, have external effects on neighboring communities, shaping regional economies without any imperative that the extraterritorial consequences of local decision making be taken into account.”).

134. *Id.*

135. Briffault, *supra* note 20, at 1132 (quoting DAHL, *supra* note 25)).

136. See discussion *supra* Part I.B.

for the affected citizens of the extraterritorial jurisdiction.¹³⁷ While the Supreme Court has determined that the rights of extraterritorial residents are satisfied as a matter of constitutional law, the lack of representation remains on a personal and emotional level for those individuals affected in the extraterritorial jurisdiction. In addition to the barriers to regional effectiveness currently experienced by the Illinois extraterritorial statutory scheme, the statutes also suffer from a lack of comprehensive representation of the affected stakeholders in extraterritorial decisions including residents of the extraterritorial jurisdiction, municipalities in county zoning decisions, and counties and other regional concerns in municipal planning functions.

The current statutory scheme of extraterritorial authority provides very little in the way of representation neither for the residents of the jurisdiction nor for the regional interests affected by a local unit's land use planning and regulation. Perhaps the lone instance of direct representation of the residents of an extraterritorial jurisdiction is during the county zoning process, where as residents of unincorporated county area, the regulations imposed are derived from those which the residents have political recourse. Illinois statutes do not preclude the direct representation of extraterritorial residents on municipal planning commissions. The statute provides that residential eligibility for service on municipal commissions extends to the limits of a municipality's extraterritorial jurisdiction.¹³⁸ It does not, however, require the membership of any individual from the extraterritorial area.¹³⁹

As previously discussed, municipal interests are represented in county level planning and zoning decisions through a procedural mechanism of checks and balances.¹⁴⁰ Conversely, county and other regional interests are without any meaningful representation in municipal extraterritorial comprehensive planning decisions at all. Rather, representation of larger regional concerns may be reflected in local land use regulations through the development of regional planning commissions.¹⁴¹ Any county board which determines there is a need, may create such a regional commission to bring about the "co-ordinated, adjusted and harmonious development" of the region.¹⁴² The enabling statute characterizes this regional commission as a fact-finding body and, consequently, contains no provision which would be binding upon the

137. DAVID W. OWENS, U. N.C. SCH. OF GOV'T, SPECIAL SERIES NO. 20, THE NORTH CAROLINA EXPERIENCE WITH MUNICIPAL EXTRATERRITORIAL PLANNING JURISDICTION 4 (2006), available at <http://www.sog.unc.edu/pubs/electronicversions/pdfs/ss20.pdf>.

138. 65 ILL. COMP. STAT. 5/11-12-4 (2007).

139. *Id.*

140. See discussion *supra* Part II.C.

141. 55 ILL. COMP. STAT. 5/5-14001.

142. *Id.*

various municipal planning and development authorities within the designated region.¹⁴³

Additionally, regional concerns may be represented by a joint regional planning body created by multiple counties to guide the planning process of their jointly affected regions.¹⁴⁴ This joint regional authority is vested with the ability to coordinate with the encompassed planning bodies in order to guide coherent regional development.¹⁴⁵ This coordination is relegated, however, to the encouragement of various planning bodies to cooperate with one another,¹⁴⁶ a particularly dubious power considering the previously discussed influence of parochialism against which such a regional interest must contend.¹⁴⁷

So long as extraterritorial representation is limited to these narrow procedural confines or toothless regional fact-finding bodies, it remains unlikely that local governments in Illinois will “consciously forego intrajurisdictional benefits to prevent interjurisdictional harms.”¹⁴⁸ The lack of representation in the current statutory scheme is a great barrier to the incorporation of individual and regional concerns and demands in comprehensive planning and land use decisionmaking. Reform to provide for greater representation of extraterritorial stakeholders is central to maintaining the popular validity of the land use regulations, which the scheme makes possible.

IV. SUGGESTED REFORMS TO THE EXTRATERRITORIAL STATUTORY SCHEME

The following section will focus on two narrow, yet particularly effective, statutory reforms which would provide for greater regional consideration and representation in extraterritorial planning and zoning decisions. The first proposed reform involves various reconfigurations of planning commission membership in order to more accurately reflect the affected interests of commission decisions. The second proposed reform would mandate the inclusion of extraterritorial residents, businesses, and governmental units with overlapping jurisdictions in the formation of municipal comprehensive plans. This final reform, it will be suggested, will provide the requisite legitimacy to municipal regulation in the extraterritorial jurisdiction by taking into account the interests and concerns of extraterritorial stakeholders.

143. *Id.*

144. § 5/5-14003.

145. § 5/5-14005.

146. *Id.*

147. *See* discussion *supra* Part III.A.

148. Lehavi, *supra* note 124, at 931 (explaining that this lack of altruism on the part of municipalities is a function of the lack of legal mechanisms and political checks on municipal actors by those beyond its corporate limits).

A. *Extraterritorial Planning Commissions*

There is little reason to suspect voluntary cooperation among local units of government where the benefit to the individual locality is not clearly visible.¹⁴⁹ Consequently, for statutory reform to ensure any form of regional cooperation and representation, some mandatory mechanism must be incorporated into the statutory scheme by which local governments will take into account the considerations of other extraterritorial stakeholders.

One possible method of ensuring this cooperation is through a requirement that the make-up of the local planning commission consist of a member or members representing the municipality's extraterritorial jurisdiction. This requirement would mandate the currently permissive appointment of extraterritorial residents to municipal planning commissions.¹⁵⁰ The quantity of extraterritorial representatives and their subsequent participation in planning commission activities and decisions could be allowed considerable flexibility while still providing sufficient participation and input in the region.

Extraterritorial considerations could be represented through a sole commissioner from the jurisdiction, or perhaps more democratically, by a proportional number of commissioners relative to population. This latter proportional approach is currently in operation in North Carolina.¹⁵¹ In North Carolina, for a city to exercise its extraterritorial authority over planning and zoning matters, it must expand membership of the pertinent governing bodies to provide for extraterritorial representation.¹⁵² The amount of extraterritorial representatives appointed to these entities is based on the proportional representation provided by each non-extraterritorial commissioner of municipal residents.¹⁵³ Difficulties of implementing proportional extraterritorial representation have arisen due to the difficulties of establishing extraterritorial population figures.¹⁵⁴ This approach would, however, provide a proper level of representation to extraterritorial residents on par with those in the municipality.

Further, frequency of service by extraterritorial representatives on municipal commissions may be permanent or contingent on whether the

149. Briffault, *supra* note 20, at 1149.

150. 65 ILL. COMP. STAT. 5/11-12-4.

151. N.C. GEN. STAT. § 32A-362 (2007).

152. OWENS, *supra* note 137, at 11.

153. *Id.* Owens provides the example of a municipality of 5,000 residents with five commissioners and thus a proportional representation of one commissioner per 1,000 residents. *Id.* If the extraterritorial jurisdiction had 2,000 residents, two commissioners will be required from the extraterritorial jurisdiction. Assuming a hypothetical extraterritorial population of 5,000, under this apportionment of commissioners, the City of Collinsville, with a 2006 estimated population of 25,610 and a planning commission consisting of twelve members, would require at least two extraterritorial representatives on the commission.

154. *Id.*

commission is hearing an extraterritorial land use issue. As appointed officials, a citizen's representational recourse to planning commission decisions is through the elected appointing official. Thus, to ensure the accountability of the extraterritorial representatives, appointment to the municipal commission should come from an office that extraterritorial residents may hold accountable at the polls—most likely from some position of county authority.¹⁵⁵

It is important to remember, however, that there are more stakeholders in the extraterritorial land use decisions than the residents. Neighboring municipalities, counties, school districts and a variety of other special districts are also affected by municipal decisions in these areas. Consequently, the mere inclusion of a proportional representation of residents on municipal commissions may not be the most effective reform for ensuring truly regional considerations. Rather, another, and perhaps more representative, approach is through the creation of a special commission for the planning and zoning decisions of the extraterritorial jurisdiction.

This special planning commission could draw significant inspiration from the model set by Missouri's tax increment financing statutes. Missouri's TIF Act vests power in a special commission to hold public hearings and make recommendations regarding the adoption of public financing by the municipality administering the TIF.¹⁵⁶ The make-up of the TIF Commission is required to consist, not only of municipal residents appointed by city officials,¹⁵⁷ but also of representatives from affected school districts,¹⁵⁸ other districts imposing ad valorem taxes,¹⁵⁹ and various numbers of county-level representatives.¹⁶⁰ This commission make up provides representation for not only those residents affected by the potential development to be funded by the TIF, but also to the regional governmental units affected by the development as well.

155. *Id.* In North Carolina, the Board of County Commissioners for the affected county makes the appointment of representatives to the municipal planning authority.

156. MO. REV. STAT. § 99.820.3 (2008).

157. § 99.820.2(3).

158. § 99.820.2(1) (The statute allows each affected school district to place two representatives on the municipal TIF Commission.).

159. § 99.820.2(2) (The statute provides that taxing districts, besides school districts and counties, are represented through a shared representative whose selection is determined by whatever means agreed upon by those districts being affected by the development project.).

160. § 99.820.2(4), (6). As of January 1, 2008, amendments to the TIF statute will require a heightened county presence on certain municipal commissions in municipalities which are under the authority of the East-West Gateway Council of Governments. These reforms will likely merit future study to determine their effect at fostering regionally minded economic development incentives. *See* § 99.820(7)–(8).

A similar special planning commission to decide the land use issues facing a municipality's extraterritorial jurisdiction would provide the level of regional considerations and representation unavailable in the current statutory scheme.¹⁶¹ The dominant number of municipal representatives ensures that the city retains its primary role in the comprehensive planning of the extraterritorial jurisdiction.¹⁶² Unlike Missouri's TIF commissions, however, these extraterritorial planning commissions should be vested with binding authority.¹⁶³ To limit the role of such a commission to a recommending function would be both duplicitous and defeating as there are already mechanisms to develop regional planning recommending bodies¹⁶⁴ and such bodies are historically ineffective.¹⁶⁵ This form of special planning commission would allow for full representation of all affected parties as well as true intergovernmental cooperation in the land use planning decisions of the municipality's extraterritorial jurisdiction—compelled cooperation that is currently lacking.

1. Concerns of Organizational Self-Interest

One potential concern of the proposed extraterritorial planning commission stems from its very nature as a forum for intergovernmental cooperation. It has been argued that a lack of intergovernmental cooperation does not necessarily engender negative regional consequences. Rather, intergovernmental cooperation may exacerbate the regional concerns which the extraterritorial planning commission would seek to address.¹⁶⁶ Professor Reynolds posits that there are currently many regional governmental units and special districts similar to the proposed extraterritorial planning commission.¹⁶⁷ Further, the narrowness of the mission of these individual governing bodies requires that they consider only those goals which they are designed to meet.¹⁶⁸

161. See discussion *supra* Part III.

162. One particular problem with this special form of planning commission arises in the case where there are municipalities with overlapping extraterritorial jurisdictions. By establishing the primacy of the municipality on the commission, the notion that the city has the greatest interest to be considered is preserved. The extraterritorial interests of neighboring municipalities, however, are no less valid than those of the municipality convening the special commission. In such a case, it may be admitted that the current statutory scheme provides at least a minimally workable solution for determining which municipal comprehensive plan governs. So as not to preclude other municipal interests completely, the special commission could provide membership for those municipalities similar to the representation provided to other taxing districts and regional interests.

163. § 99.820.3.

164. See discussion *supra* Part III.B.

165. Briffault, *supra* note 20, at 1148.

166. Reynolds, *supra* note 15, at 98.

167. *Id.* at 137–38.

168. See *id.* at 137–43.

Presumably, since the extraterritorial commission would be charged with the narrow mission of comprehensive planning and zoning in the extraterritorial jurisdiction, it would only make decisions based on the best interest of its own organizational goal.¹⁶⁹ Consequently, the ad hoc intergovernmental cooperation exercised by the commission would reduce the need for the participating localities to think regionally on a more regular basis and subsequently exacerbate regional disparities.¹⁷⁰

While a special district's narrow mission may result in another self-interested actor disregarding regional interests, such concerns are likely not a factor for the proposed extraterritorial planning commission due to the nature of its mission as a developer of regulations, comprehensive land use plans and its structure in general. The nature of comprehensive planning is one with an eye toward permanence in the proper use of land.¹⁷¹ The resulting plan is a policy statement to direct future land use decisions.¹⁷² Even the individual zoning actions taken by the extraterritorial commission are done with an eye toward the implementation of the comprehensive plan.¹⁷³ Consequently, the mission of the extraterritorial commission is not one of addressing short-term interests, but instead to address the long-range considerations of all the affected stakeholders. Thus, the proposed commission cannot avoid continually addressing regional concerns, even if only focusing on its narrow mission.

Additionally, the structure of the proposed extraterritorial commission itself is distinguishable from regional special districts. The proposed commission does not come with an attendant bureaucracy or leadership hierarchy. There is little semblance of an organizational identity intended in the proposed commission. The commission is less an individual institution susceptible to self-preservation than it is a compelled forum for discrete interests to negotiate and develop mutually agreeable land use policies and regulations.¹⁷⁴

2. Concerns of Local Parochialism & Intergovernmental Competition

Another concern of the proposed commission is the practical effect it would have in curbing the promotion of self-interested policies by localities at

169. *Id.* at 144–46.

170. *Id.* at 123.

171. MCQUILLIN, *supra* note 16, § 25.79.

172. *Id.*

173. *Id.*

174. The structure and role of the proposed extraterritorial planning commission as a forum for negotiation is similar to that of the proposed regional legislatures advanced by Professor Jerry Frug. See Jerry Frug, *Decentering Decentralization*, 60 U. CHI. L. REV. 253, 297 (1993). One key difference, however, is that the proposed extraterritorial planning commission would have a binding authority to implement land use regulation.

the expense of other extraterritorial stakeholders. Local governments “rarely, if ever, agree to desist from competing for development against other localities in the same metropolitan area.”¹⁷⁵ Regional governments have done little to reduce local land use policies with adverse regional affects.¹⁷⁶ Further, they are rarely capable of constraining or displacing the authority of local government to use land use regulations in order to compete with their neighbors for new economic development.¹⁷⁷

When evaluating the potential effectiveness of the proposed extraterritorial commission to curb self-interest and intergovernmental competition relative to other regional bodies, it is important to consider that the proposed commission is not expansively regional in scope, but regional in the sense that it crosses jurisdictional boundaries of extraterritorial stakeholders. As such, the proposed extraterritorial commission would likely be particularly effective as the extent covered by the commission is an area over which localities are likely to agree to cooperate voluntarily, given their shared interests in the land use decisions of the territory.¹⁷⁸ Further, by constraining representation to neighboring governmental units, control remains local, thus satisfying the broad objective of most land use regulations that they be made principally by the local governments in whose jurisdiction the territory falls.¹⁷⁹ Additionally, the regional representation on the commission would keep the municipality from pushing costs of development outside its borders.¹⁸⁰

Further, there is no presumption in the recommendation that the extraterritorial planning commission would eliminate the predisposition of local governments to act in their self-interests. To the contrary, the commission would provide a forum for the exercise of the market forces of intergovernmental bargaining and for bringing about the regionally sensitive policies such negotiations would create.¹⁸¹ The regional benefits of these negotiations would not be manifested in the regulations of a more traditional regional planning body acting without the advocacy of self-interested parties.

175. Briffault, *supra* note 20, at 1147.

176. Quintin Johnstone, *Government Control of Urban Land Use: A Comparative Major Program Analysis*, 39 N.Y.L. SCH. L. REV. 373, 412 (1994).

177. Briffault, *supra* note 20, at 1147–48.

178. *Id.* at 1148.

179. Johnstone, *supra* note 176, at 409.

180. Lehavi, *supra* note 124, at 942 (characterizing the tendency of local government officials to push the costs of internal land use regulation across borders as a “fiscal illusion” from which there is no incentive to refrain).

181. Haar, *supra* note 101, at 532. *See also* Gerald E. Frug, *Beyond Regional Government*, 115 HARV. L. REV. 1763, 1785 (explaining that in the context of voluntary agreements between local governments, negotiations “allow problems to be addressed with considerable geographic flexibility”).

The binding nature of the proposed extraterritorial commission would give the teeth to regional planning decisions that has historically been lacking.¹⁸²

The proposed extraterritorial planning commission would act as a check to the natural exercise of local parochialism. Further, it would provide a forum for intergovernmental cooperation while the scope and binding nature would foster a level of regional effectiveness and representation not currently realized by most regional planning bodies, thus avoiding the silence normally accompanying the regional commission's ability to affectuate a plan.¹⁸³

B. Extraterritorial Participation in the Comprehensive Planning Process

Another proposed statutory reform is the provision of a requirement which would compel the extraterritorial planning commission, or if the previous recommendation were not adopted, the current municipal planning commission, to solicit and incorporate the involvement of the residents and businesses of the extraterritorial jurisdiction. Contrary to the drastic structural reform suggested for representative planning commissions, required involvement of the extraterritorial residents would simply be a matter of requiring sound planning practice.

Comprehensive planning serves an important role as a guide for land use planning policy decisionmaking—particularly when attempting to implement Smart Growth policies.¹⁸⁴ Central to the formulation of a comprehensive plan is the presence of adequate public participation. Public participation “ensures that planning outcomes are equitable and based on collective decision making.”¹⁸⁵ Currently, municipal comprehensive plans cannot be adopted until after proper public notice and public hearing is held.¹⁸⁶ Notice must not only reach the municipal areas, but contiguous unincorporated areas as well.¹⁸⁷ These public hearings, however, do not rise to the level of meaningful, strategic participation which provides a “common ground for decision-making.”¹⁸⁸

182. Haar, *supra* note 101, at 522.

183. *Id.* at 521.

184. AMERICAN PLANNING ASSOCIATION, POLICY GUIDE ON SMART GROWTH 5 (2002) available at <http://www.planning.org/policy/guides/pdf/SmartGrowth.pdf>. (“Absent the collective decision-making processes inherent in effective comprehensive planning, those who would implement smart growth measures are limited to a series of short-term, geographically isolated, and disconnected decisions. The comprehensive planning process achieves this through collective decisions about the intensity, the density and the character of development and the level of public services to be provided.”).

185. *Id.* at 2.

186. 65 ILL. COMP. STAT. 5/11-12-7 (2007).

187. *Id.*

188. AMERICAN PLANNING ASSOCIATION, *supra* note 184 at 2.

The American Planning Association's Growing Smart Initiative provides a statutory model for incorporating public participation in the comprehensive planning process.¹⁸⁹ The Initiative's model statutes for local comprehensive planning call for the "establishment of formal citizen participation processes to inform plan-making. . . ."¹⁹⁰ Examples of participation include resident and business owner surveys, public workshops, focus groups, newsletters, media broadcasts, web presence, written comment, and the creation of advisory task forces.¹⁹¹

In addition to these model statutes, Illinois may also draw from comparative statutes which currently provide for greater public participation in the comprehensive planning process.¹⁹² The key, of course, to ensuring regional effectiveness and extraterritorial representation, is to extend these forms of public inclusion to the residents and other stakeholders of the extraterritorial jurisdiction. By incorporating extraterritorial participation in the comprehensive planning process, whatever the statutory mechanism, a greater understanding of the potential externalities of municipal action would be gained.¹⁹³ Further, extraterritorial participation would constitute a more expansive use of democratic processes resulting in the "understanding and acceptance by the people who are affected by the planning" as well.¹⁹⁴

C. *Other Suggested Reforms*

The recommendations for planning commission reform and extraterritorial resident participation in comprehensive planning are by no means exhaustive of the potential remedies to ensure greater regional effectiveness and

189. AMERICAN PLANNING ASSOCIATION, GROWING SMART LEGISLATIVE GUIDEBOOK, MODEL STATUTES FOR PLANNING AND THE MANAGEMENT OF CHANGE 7-1 (Stuart Meck gen. ed., 2002)

190. *Id.* at 7-63. The statutes, while calling for citizen participation, leave the determination of appropriate methods of implementing such participation to the discretion of the local planning authority.

191. *Id.* at 7-199.

192. The Legislative Guidebook identifies a number of states currently requiring public participation in the comprehensive planning process including: Arizona (ARIZ. REV. STAT. ANN. § 9-461.06(E) (2008)); District of Columbia (D.C. CODE ANN. § 2-1002(3), (4)(A) (2008)); FLORIDA (FLA. STAT. § 163.3181(1) (2006)); IDAHO (IDAHO CODE ANN. § 67-6507 (2006)); Maine (ME. REV. STAT. ANN. tit. 30-A, § 4324(3) (1996)); OREGON (OR. REV. STAT. § 197.160(B) (2007)); and Washington (WASH. REV. CODE § 36.70A.140 (2003)).

193. See Charles M. Haar, *The Master Plan: An Impermanent Constitution*, 20 LAW & CONTEMP. PROBS. 353, 360 (1955) (Haar notes that "the chief purpose of the master plan is that of mutual education. In the process of making a master plan, the planner may learn which issues are the relevant ones so far as the people are concerned, what terms are meaningful to them, and which alternatives make sense as they view them. This education of the planning board and staff is crucial for any plan to survive.").

194. *Id.*

representation. Various alternatives have been found in the literature but not included within the scope of this article. One such alternative consists of establishing a system of liability between intraregional units of local government.¹⁹⁵ This system would recognize a compensable claim against a municipality if a particular zoning, development or other enacted land use planning regulation is found to be the cause of a measurable harm to a neighboring municipality.¹⁹⁶ The potential for intergovernmental liability for land use planning regulations, it is argued, would result in the fiscalization of zoning decisions¹⁹⁷ and subsequent internalization by municipalities of the costs of their regulation, thus driving intergovernmental competition in a positive direction.¹⁹⁸

Another proposed alternative which would ensure greater extraterritorial representation is the extension of voting rights to extraterritorial residents.¹⁹⁹ While there has been no recognized right of extraterritorial residents to vote in municipal elections,²⁰⁰ limiting electoral participation to the extent of corporate boundaries remains an arbitrary constraint on the franchise—particularly when the consequences of municipal actions are felt beyond its borders.²⁰¹

Finally, the American Planning Association has promoted the potential reorganization and consolidation of local governments.²⁰² By reducing political fragmentation, consolidation of local governments would facilitate the requisite coordination for implementing “Smart Growth” policies.²⁰³ At a minimum, the American Planning Association suggests placing the issues of urban growth through an intergovernmental planning process, such as the proposed commission, to generate cooperative, “mutually beneficial decisions.”²⁰⁴

195. Lehari, *supra* note 124, at 933.

196. *Id.*

197. *Id.* at 949.

198. *Id.* at 934.

199. Briffault, *supra* note 20, at 1120–21. Professor Briffault identifies the contention put forward by Professors Ford and Frug that the extension of the franchise to extraterritorial voters “would improve metropolitan area governance without creating undesirable regional institutions or shifting local power to higher levels of government.” *Id.* at 1121.

200. *Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60, 68–69 (1978) (“No decision of this Court has extended the ‘one man, one vote’ principle to individuals residing beyond the geographic confines of the governmental entity concerned, be it the State or its political subdivisions.”).

201. Note, *The Right to Vote in Municipal Annexations*, 88 HARV. L. REV. 1571, 1577 (1975) (identifying that “except for the [municipal] boundary itself, there is ordinarily no clear line to separate the substantially from the peripherally affected [by municipal actions]”).

202. AMERICAN PLANNING ASSOCIATION, *supra* note 184 at 5–6.

203. *Id.*

204. *Id.*

While the literature certainly contains more examples which would ensure regional effectiveness and representation, these few proposals are illustrative of the creative options available to Illinois lawmakers when developing potential statutory reforms to municipal extraterritorial planning and zoning.

CONCLUSION

The concept of representation is at the core of our country's democratic process. Democratic processes are essential to the legitimacy of local comprehensive planning efforts. The current Illinois statutory scheme of extraterritorial planning and zoning provides little in the way of meaningful representation of, or cooperation with, neighboring local governmental units or extraterritorial residents. Consequently, parochial land use decisions and development may create significant regional externalities. Through the proposed restructuring and creation of extraterritorial planning commissions as well as the required solicitation of extraterritorial participation in the comprehensive planning process, the land use decisions affecting increasingly sophisticated and regionally impacting developments will enjoy an increased level of legitimacy and public support. While not exhaustive of the possibilities, these proposed statutory reforms present small, manageable steps for avoiding a future "tragedy of the regional 'commons'"²⁰⁵ in Illinois.

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205. Briffault, *supra* note 20, at 1149.

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