UIC Law Review

Volume 17 | Issue 1 Article 5

Winter 1984

Municipal Standing in Illinois: The Courts Move toward a Broader Perspective of Review for Local Land Use Decisions, 17 J. Marshall L. Rev. 145 (1984)

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MUNICIPAL STANDING IN ILLINOIS: THE COURTS MOVE TOWARD A BROADER PERSPECTIVE OF REVIEW FOR LOCAL LAND USE DECISIONS

In 1980 over 74% of the American population resided in urban and suburban areas.[1] By the year 2000, the population of the Chicago metropolitan area is expected to increase by more than 10%.[2] Increases in population inevitably cause a corresponding increase in the demand for land development. But the amount of developable land in a metropolitan area remains essentially constant. Consequently, suburban towns and villages faced with the pressure of continuing growth must ultimately decide where, how, and what kind of growth will take place. These issues present basic policy questions for local governing bodies—questions which invariably cause controversy and conflict. This is especially true when a zoning municipality's land use decisions result in burdens on neighboring municipalities.

Zoning is essentially a method of settling conflicts over the most appropriate uses of land.[3] Despite disagreement regarding the specific purposes of zoning,[4] it remains clear that zoning has

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1. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 14 (102d ed. 1981). The population of metropolitan areas nationwide has increased by approximately 10% per year since 1940. *Id.*

2. In 1980, the population of the Chicago metropolitan area was 7,103,000. The Northeastern Illinois Planning Commission projects that by the year 2000 the population of the Chicago metropolitan area will exceed 7,814,000. Interview with Mr. Max Dieber, Director of Research of the Northeastern Illinois Planning Commission (March 2, 1983). *See infra* notes 110-15 and accompanying text for a discussion of the Northeastern Illinois Planning Commission.

3. R. BABCOCK, THE ZONING GAME xvi (1966). Babcock notes that this neutral definition of the zoning process includes the formulation, administration and judicial review of zoning decisions. *Id.* Such a definition is useful in clearly distinguishing the process of zoning from the theoretical justifications for its use. The confusion of these two concepts would limit the use of the zoning process only to the attainment of specific goals—goals which may be theoretically invalid as well as unresponsive to local political and environmental needs. *See id.* at 124-25. *See also infra* note 4 for a further discussion of these issues.

4. *See* BABCOCK, *supra* note 3, at 115-25. *Compare* Dunham, *A Legal and Economic Basis for City Planning*, 58 COLUM. L. REV. 650, 670-71 (1958) (goal of zoning and planning is to maximize value of property in community) *and* O'HARROW, PLAN TALK AND PLAIN TALK 223-27 (1981) (zoning is a tool for implementing a comprehensive land use plan) *with* BABCOCK,

become an indispensable tool for managing urban and suburban growth.[5] To a large extent, the increased significance of zoning law is a result of the unprecedented suburban growth of the past three decades.[6] But, just as the problems facing urban and suburban communities are changing, so too are the scope and character of zoning issues.[7]

During the initial development and growth of the suburbs, most land use conflicts centered on peculiarly intra-municipal problems. It made little difference to a neighboring community whether a particular business intersection was best suited for a fast food franchise or a filling station; or whether a zoning municipality restricted construction to a specific style of architec-

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supra note 3, at 115-25 (property value theory of zoning is too restrictive and parochial; planning theory restricts use of zoning process to fulfillment of comprehensive plan which may have defects) *and* Harr, *Regionalism and Realism in Land-Use Planning*, 105 U. PA. L. REV. 515, 523 (1957) (realistically assessing the value of regional planning). For a useful overview of the law of zoning see generally Kratovil, *Zoning: A New Look*, 11 CREIGHTON L. REV. 433 (1977).

5. In Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926), the United States Supreme Court reflected on the modern necessity for comprehensive zoning laws, Justice Sutherland stated:

> Until recent years, urban life was comparatively simple; but, with the great increase and concentration of population, problems have developed, and constantly are developing, which require, and will continue to require, additional restrictions in respect of the use and occupation of private lands in urban communities. Regulations, the wisdom, necessity, and validity of which, as applied to existing conditions, are so apparent that they are now uniformly sustained, a century ago, or even half a century ago, probably would have been rejected as arbitrary and oppressive. Such regulations are sustained, under the complex conditions of our day, for reasons analogous to those which justify traffic regulations, which, before the advent of automobiles and rapid transit street railways, would have been condemned as fatally arbitrary and unreasonable. . . . In a changing world, it is impossible that it should be otherwise.

Id. at 386-87. All 50 states have enacted zoning enabling legislation. *See* Cunningham, *Land-Use Control—The State and Local Programs*, 50 IOWA L. REV. 367, 368-69 (1965) (providing an exhaustive survey of zoning enabling statutes in all fifty states).

6. *See* 1 P. ROHAN, ZONING AND LAND USE CONTROLS § 1.03 (1982); Cunningham, *supra* note 5, at 405-08. Cunningham suggests that the future of zoning lies in the regional administration and review of land use controls. *Id.* at 414. *See also*, Cribbet, *Changing Concepts in the Law of Land Use*, 50 IOWA L. REV. 245, 277 (1965) (concluding that some form of regional supervision of local land use decisions is a necessity, yet recommending that most land use decisions remain under local control).

7. *See* 1 A. RATHKOPF, THE LAW OF ZONING AND PLANNING § 2.02 (1975 & Supp. 1982). Rathkopf observes that the enlarging scope of zoning issues is a result of the increasing complexity of modern civilization and not merely a result of recent shifts in population. *Id.* at 2-19. Some commentators believe the present system of land use controls is inadequate to cope with the enlarging scope of land use issues. *See infra* note 13.

ture.[8] However, as each suburb reaches its capacity for growth, developable land becomes more scarce and the scope of land use conflicts gradually expands. Conflicts that once involved purely local interests now affect extra-local, regional and even statewide interests.[9] For example, the increased population resulting from the rezoning of a tract of land from single-family to multi-family dwellings can so overburden an area's infrastructure[10] that neighboring communities dependent upon the same facilities are adversely affected;[11] or the environmental consequences arising from the operation of landfulls are judged so grave that the state may decide to assume the primary obligation for their location and regulation.[12]

In answer to the expanding scope of land use conflicts, the American Law Institute's Model Land Development Code[13] advocates a significant restructuring of the local zoning process.[14]

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8. Approximately 95% of all land use decisions are of purely local consequence. Fox, *A Tentative Guide to the American Law Institute's Proposed Model Land Development Code*, 6 URBAN LAWYER 928, 930 (1974).

9. For the purposes of this comment, the term extra-local refers to an area outside the borders of the zoning municipality. Hence, a local land use decision which has an adverse extra-local impact is one which places additional burdens on property outside the borders of the zoning municipality.

10. An area's infrastructure is comprised of those services which form the basic or underlying physical framework of a community: such as, roads, sewers, schools and water supply facilities. *See* WEBSTER'S NEW UNIVERSAL UNABRIDGED DICTIONARY 941 (2d ed. 1979).

11. *See* Forestview Homeowner's Ass'n, Inc. v. County of Cook, 18 Ill. App. 3d 230, 309 N.E.2d 763 (1974). The plaintiffs in Forestview alleged, and the court agreed, that the rezoning of a single-family tract to accomodate multi-family apartment houses would have an adverse affect on the area's roads, sewers, schools and water supply. *Id.* at 244-47, 309 N.E.2d at 775-76.

See also infra notes 96-105 discussing Village of Barrington Hills v. Village of Hoffman Estates, 81 Ill. 2d 392, 410 N.E.2d 37 (1980), *cert. denied*, 449 U.S. 1126 (1981). Barrington Hills and Hoffman Estates have engaged in a 22-year feud regarding industrial development. Hoffman Estates has encouraged industrial development in order to broaden its tax base, while Barrington Hills has been adamant in its resistance to change. *See* Chicago Tribune, Aug. 26, 1983 at 5, col. 1.

12. In 1970 the Illinois legislature enacted the Environmental Protection Act. ILL. REV. STAT. ch. 111 1/2, §§ 1001-51 (1981). In its policy statement accompanying the Act, the legislature noted the necessity for a statewide program to resolve environmental problems "which do not respect political boundaries." *Id.* at § 1002(ii). *See also* County of Cook v. John Sexton Contractors Co., 75 Ill. 2d 494, 513-15, 389 N.E.2d 553, 560 (1979) (Environmental Protection Act was intended to set mandatory statewide minimum standards for pollution control).

13. MODEL LAND DEVELOPMENT CODE (*proposed Official Draft 1975*) [hereinafter cited as MODEL CODE].

14. *Id.* at ix-x. An American Law Institute conference group concluded:

> The present legal framework for decision making in the field of land use planning . . . remains a product of the twenties . . . when measured against the needs and aspirations of an increasingly urban and mobile society, this framework fails to provide the necessary guidance to local legislative and administrative bodies, . . . courts, . . . and . . . law-

The Code proposes that the states retain some of their zoning powers in order to address land use issues of statewide concern.[15] Further, the Code advocates the establishment of a regional authority to deal with regional land use needs and conflicts,[16] while allowing local zoning bodies to retain exclusive jurisdiction over issues of essentially local importance.[17] The Code also advocates a liberalization of the rules governing standing to attack and review local land use decisions when such decisions have extra-local effects.[18] Few state legislatures, however, have followed the suggestion outlined in the Model Code.[19] Consequently, the courts have been left to resolve the issues raised by the expanding scope of land use conflicts.

One important issue addressed in these cases is municipal standing to attack the land use decisions of a neighboring mu-

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yers. . . . This framework . . . is often incompatible with the . . . democratic process. This system . . . applied by local governments within a region, tends to disregard the greater interests of the regional community and in many instances fails to recognize and protect valid local needs.

Id. at viii.

15. *Id.* at §§ 7-201, 7-204, 7-207. *See also* Fox, *supra* note 8, at 940-41.

16. MODEL CODE, *supra* note 13, at §§ 7-301 to 7-305 and 8-101 to 8-205.

17. *Id.* at §§ 1-101, 1-102. Under the Code, local zoning bodies are given the primary authority to zone, but this authority is qualified in two ways. *Id.* at § 1-101(1). First, the Code provides a mechanism through which the state can retain jurisdiction over land use decisions of statewide interest. *Id.* at §§ 7-201, 7-204. Areas of statewide interest may include: sites of significant public concern such as environmental and wildlife preserves, or such inter-community facilities as airports and highway interchanges. *See generally* Fox, *supra* note 8, at 941-42.

Second, the local power to zone is further qualified by provisions for review of local ordinances which have an impact beyond local boundaries. MODEL CODE, *supra* note 13, at § 1-101(3). *See also* Fox, *supra* note 8, at 943-44. In such cases the Code provides for review of local land use decisions by a State Land Adjudicatory Board. MODEL CODE, *supra* note 13, at §§ 7-501 to 7-503. *See generally* Fox, *supra* note 8, at 943-48.

18. MODEL CODE, *supra* note 13, at §§ 7-501 to 7-503. The Code establishes a State Land Adjudicatory Board to review local land use decisions which have extra-local costs. Under the Code, a local decision which imposes burdens on property beyond the boundaries of the local zoning authority is said to have extra-local costs. *Id.* at § 7-301.

Standing to obtain review by the State Land Adjudicatory Board is provided to "any person who has a significant interest affected by the [local] order or rule." *Id.* at § 9-105(3). *See generally* Note, *Standing to Sue Under the Model Land Development Code*, 9 U. MICH. J.L. REF. 649, 656-57, 665 (1976) (suggesting standing requirements under Model Code be further liberalized by linking code's "significant interest" test to the federal law of standing).

19. Five states have adopted positions on state retention of zoning powers similar to those found in the Model Code. *E.g.*, FLA. ANN. STAT. § 380.05 (Supp. 1983); VT. ANN. STAT. tit. 10, § 6085(c) (Cumm. Supp. 1982). *See generally* MODEL CODE, *supra* note 13, at 284-91.

nicipality.[20] Recognizing that the effects of local zoning ordinances can spill-over into neighboring municipalities,[21] several courts have extended standing to neighboring municipalities to attack local zoning ordinances.[22] This trend has allowed munici-

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20. "Standing" is the "ticket of admission" to judicial review of local land use decisions. 3 A. RATHKOPF, *supra* note 7, at 43-1. Illinois courts regard standing as having two main requirements. First, each party must have a sufficient interest in the outcome of the controversy to assure the court of the necessary concrete adverseness. Underground Contractors Ass'n v. City of Chicago, 66 Ill. 2d 371, 375-76, 362 N.E.2d 298, 300 (1977); DiSanto v. City of Warrenville, 59 Ill. App. 3d 931, 935, 376 N.E.2d 288, 291 (1978); Commonwealth Edison Co. v. Community Unit School Dist., 44 Ill. App. 3d 665, 670, 358 N.E.2d 688, 691 (1976). Second, the parties must present an actual case or controversy for review. Exchange Nat'l Bank v. County of Cook, 6 Ill. 2d 419, 421-23, 129 N.E.2d 1, 3 (1955); Hill v. Butler, 107 Ill. App. 3d 721, 725, 437 N.E.2d 1307, 1311 (1982).

The most efficient analysis of issues raised by standing requirements in land use conflicts requires an identification of the fundamental interests involved. *See* 1 N. WILLIAMS, AMERICAN PLANNING LAW 71 (1974). The persons seeking standing in zoning litigation are generally of two kinds: the "developer" and the "neighbor." *Id.* at 71-72. In a "developer" case, a property developer requests the rezoning of a tract of land and the request has been denied by the local zoning authority. The developer then brings suit against the zoning authority, alleging the refusal to rezone is an unreasonable restriction of his property rights. *Id.* at 72. The developer will likely satisfy the requirements for standing in most jurisdictions because his property interests have been directly affected by the zoning authority's refusal to rezone. *See generally* 3 A. RATHKOPF, *supra* note 7, at § 43.03.

In a "neighbor" case, the developer is granted his rezoning request and a neighboring property owner brings suit against the zoning authority. The neighbor alleges the rezoning is inconsistent with nearby property uses and therefore is unreasonable and invalid. *See* 1 N. WILLIAMS, *supra*, at 71. If "neighbor" owns property adjacent to the zoned tract then he will also satisfy the requirements for standing in most jurisdictions. Anundson v. City of Chicago, 44 Ill. 2d 491, 495-96, 256 N.E.2d 1, 3 (1970); Bredberg v. City of Wheaton, 24 Ill. 2d 612, 623, 182 N.E.2d 742, 748 (1962). However, the greater the distance of the neighbor's property from the zoned tract the less likely it is that he will satisfy standing requirements. *See* Garner v. County of DuPage, 8 Ill. 2d 155, 159-60, 133 N.E.2d 303, 305 (1956); University Square, Ltd. v. City of Chicago, 73 Ill. App. 3d 872, 878-79, 392 N.E.2d 136, 140 (1979); Elmhurst-Chicago Stone Co. v. Village of Bartlett, 26 Ill. App. 3d 1021, 1025, 325 N.E.2d 412, 415 (1975). *See also* 3 A. RATHKOPF, *supra* note 7, at §§ 43.03-.04. *See generally* Nichol, *Causation as a Standing Requirement: The Unprincipled Use of Judicial Restraint*, 69 KY. L.J. 185 (1980); Parker & Stone, *Standing and Public Law Remedies*, 78 COLUM. L. REV. 771 (1978); Note, *The "Aggrieved Person" Requirement in Zoning*, 8 WM. & MARY L. REV. 294 (1974).

21. *E.g.*, Holt Civic Club v. City of Tuscaloosa, 439 U.S. 60, 69 (1978) ("The imaginary line defining a city's corporate limit cannot corral the influence of municipal actions.") *See also infra* note 25 and accompanying text.

22. Board of County Comm'rs v. City of Thornton, 629 P.2d 605, 610 (Colo. 1981) (same); City of Greely v. Board of County Comm'rs, 644 P.2d 76, 77 (Colo. Ct. App. 1981) (city standing to attack county zoning ordinance); Village of Claycomo v. City of Kansas City, 635 S.W.2d 365, 370 (Mo. Ct. App. 1982) (village standing to attack city zoning ordinance based on village's allegations of injury to as a landowner); Borough of Allendale v. Township Comm. of Mahwah, 169 N.J. Super. 34, 404 A.2d 50 (1979) (city standing to attack neighboring township's zoning ordinance); Stewart v. City of Eu-

palities to assert direct injury to extra-local interests as a basis for standing.[23] Once a municipality is granted standing to attack the zoning ordinances of its neighbors, however, a directly related issue arises regarding the appropriate standard of review to be applied to the ordinance under attack. The courts have traditionally taken a geographically limited perspective when testing the validity of zoning ordinances.[24] Such a perspective is usually limited to an area within several blocks of the zoned property. The trend in recent zoning decisions, however, is away from a purely local view and toward a broader perspective which includes extra-local interests.[25] This broader perspective considers land use conditions beyond the immediate vicinity of the zoned property, even if such conditions lie within the borders of neighboring municipalities.[26]

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gene, 57 Or. App. 627, 646 P.2d 74 (1982) (city standing to attack county zoning ordinance); Ruegg v. Board of County Comm'rs, 32 Or. App. 77, 573 P.2d 740 (1978) (city standing to attack county zoning ordinance).

For cases in which the potential for municipal standing was recognized, see Town of Somerset v. County Council of Montgomery, 229 Md. 42, 181 A.2d 671 (1962) (court implied municipality had standing to attack county zoning ordinance); Village of Franklin v. City of Southfield, 101 Mich. App. 554, 300 N.W.2d 634 (1981) (court implied city could have standing to attack neighboring village's ordinance if village alleged and proved special damages). *See also* Township of River Vale v. Township of Orangetown, 403 F.2d 684, 686 (2d Cir. 1968) (municipality was person within fourteenth amendment and thus had standing to attack zoning ordinance of adjacent municipality, even though each municipality was in a different state).

23. *See* cases cited *supra* note 22.

24. This judicial perspective may be a result of the traditional American precept that a landowner has an absolute right to use his property as he pleases. *See* Cribbet, *supra* note 6, at 251-53. *See also infra* notes 48-60 and accompanying text discussing the perspective of review used by Illinois courts.

25. All of the courts which have extended standing to municipalities representing extra-local interests have also tested the validity of the contested ordinance in the context of extra-local factors and conditions. *See* cases cited *supra* note 22.

26. Perhaps the earliest articulation of a broader perspective of review for local land use decisions appeared in Duffcon Concrete Prod., Inc. v. Borough of Cresskill, 1 N.J. 509, 64 A.2d 347 (1949). The Duffcon Products court stated:

> What may be the most appropriate use of any particular property depends not only on all the conditions, physical, economic and social, prevailing within the municipality and its needs, present and reasonably prospective, but also on the nature of the entire region in which the municipality is located and the use to which the land in that region has been or may be put most advantageously. The effective development of a region should not and cannot be made to depend upon the adventitious location of municipal boundaries, often prescribed decades or even centuries ago, and based in many instances on considerations of geography, of commerce, or of politics that are no longer significant with respect to zoning. The direction of growth . . . refuses to be governed by such artificial lines. Changes in methods of transportation as well as in living conditions have served to accentuate the unreality in

A number of recent Illinois decisions have followed the trend of extending standing to municipalities to attack the zoning ordinances of other governing bodies.[27] Moreover, these decisions indicate that Illinois courts are gradually moving away from their traditional use of a purely local perspective of review

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dealing with zoning problems on the basis of the territorial limits of a municipality.

Id. at 513, 64 A.2d at 349-50.

Early courts using a broader perspective of review were primarily concerned with the issue of whether industrial development was appropriate for newly developing residential areas. *See id.* at 514, 64 A.2d at 351 (finding industrial development unsuitable for residential community). *Cf.* City of Pleasant Ridge v. Cooper, 267 Mich. 603, 607, 255 N.W. 371, 372 (1934) (finding area dominated by industrial uses was suitable for further development of industry, rather than residential uses). Recent cases have used the *Duffcon Products* rationale as a method of limiting growth. *See* Forestview Homeowners Ass'n v. County of Cook, 18 Ill. App. 3d 230, 246-47, 309 N.E.2d 763, 775-76 (1974) (county rezoning for large apartment complex held unreasonable burden on regional water, transport and educational facilities); Cadoux v. Planning and Zoning Comm'n, 162 Conn. 425, 294 A.2d 582 (1972), *cert. denied*, 408 U.S. 924 (1972) (not unreasonable for town to refuse rezoning of residential area when property suitable for industrial development was available in surrounding area). Use of a broader perspective of review in this way is a method of preserving the status quo through limiting growth. *See* Comment, *The Regional Welfare Analysis in Zoning Actions: A Tool to Limit Development?*, 12 CONN. L. REV. 93, 100-05 (1979). *See generally* Haar, *Regionalism and Realism in Land-Use Planning*, 105 U. PA. L. REV. 515 (1957) (providing a useful overview of the necessity and limitations of regional planning and zoning).

However, several courts have adopted a broader perspective of the general welfare and invalidated local land use decisions which were inconsistent with conditions existing outside the zoning municipalities. Southern Burlington County NAACP v. Township of Mount Laurel, 67 N.J. 151, 336 A.2d 713 (1975) (township required to provide for low and moderate income housing, holding based on regional analysis of the general welfare); Berenson v. Town of New Castle, 38 N.Y. 2d 102, 341 N.E.2d 236, 378 N.Y.S. 2d 672 (1975) (town required to consider regional need for housing and could not totally forbid construction of multi-family housing). *See generally*, Recent Developments, *Zoning—Judicial Enforcement of the Duty to Serve the Regional Welfare in Zoning Decisions*, 55 WASH. L. REV. 485 (1980). Such a use of a broader perspective of review reverses the *Duffcon Products* rationale because it projects the extra-local needs of a region onto the land use decisions of local zoning authorities, rather than projecting local needs on extra-local interests.

27. Village of Barrington Hills v. Village of Hoffman Estates, 81 Ill. 2d 392, 398, 410 N.E.2d 37, 40 (1980), *cert. denied*, 449 U.S. 1126 (1981) (village had standing to attack neighboring village's zoning ordinance); City of Hickory Hills v. Village of Bridgeview, 67 Ill. 2d 399, 402-03, 367 N.E.2d 1305, 1307 (1977) (city had standing to attack village zoning ordinance); City of West Chicago v. County of DuPage, 67 Ill. App. 3d 924, 925-26, 385 N.E.2d 826, 827 (1979) (city had standing to attack county zoning ordinance); Forestview Homeowners Ass'n, Inc. v. County of Cook, 18 Ill. App. 3d 230, 233, 309 N.E.2d 763, 768 (1974) (village had standing to intervene in suit attacking county zoning ordinance). *But see* Hinckley-Big Rock School Dist. v. Village of Sugar Grove, 105 Ill. App. 3d 959, 961-65, 435 N.E.2d 216, 219-21 (1982) (after dismissing plaintiff's suit on other grounds, court went on to speculate that plaintiff school district could not meet requirements for standing).

for local land use decisions. This comment supports the judicial adoption of a broader perspective of review for local land use decisions and suggests that the use of a purely local standard of review would be inconsistent with the recent Illinois decisions which extend standing to municipalities representing extra-local interests. Further, this comment suggests that various legislative enactments establish an adequate policy and statutory basis for the judicial adoption of a broader perspective in the review of local land use decisions which conflict with extra-local interests.

THE FRAMEWORK FOR ILLINOIS ZONING

The general principle recognized in all jurisdictions is that local municipalities do not have an inherent zoning power.[28] A local government's power to zone is derived from the state's police power.[29] However, the specific statutory or constitutional grant of the zoning power varies from state to state.[30] Under the 1970 Illinois Constitution, certain municipalities are designated home rule units[31] and derive their power to zone directly from the constitution.[32] The non-home rule power to zone is exclusively statutory.[33] Both home rule and non-home rule powers may be limited by state legislative action.[34] Legislative limita-

28. People *ex rel.* Skokie Town House Builders, Inc. v. Village of Morton Grove, 16 Ill. 2d 183, 188, 157 N.E.2d 33, 35 (1959); 1 E. YOKLEY, ZONING LAW AND PRACTICE § 3-4 (4th ed. 1978); 1 R. ANDERSON, AMERICAN LAW OF ZONING § 3.02 (1968).

29. County of Cook v. Priester, 62 Ill. 2d 357, 367-68, 342 N.E.2d 41, 46 (1976); Pioneer Trust & Sav. Bank v. County of McHenry, 41 Ill. 2d 77, 85, 241 N.E.2d 454, 459 (1968); 1 R. ANDERSON, *supra* note 28, at §§ 3.04-3.07; 1 E. YOKLEY, *supra* note 28, at §§ 3-4, 3-5.

30. 1 E. YOKLEY, *supra* note 28, at § 3-5.

31. ILL. CONST. art. 7, § 6(a). Counties and municipalities with a population in excess of 25,000 are automatically designated home rule units. *Id.* A municipality with a population less than 25,000 may elect to become a home rule unit. *Id.* Any home rule unit may, by referendum, reject its designation as a home rule unit. *Id.* at § 6(b).

32. Thompson v. Cook County Zoning Bd. of Appeals, 96 Ill. App. 3d 561, 569, 421 N.E.2d 285, 292 (1981); City of Champaign v. Kroger Co., 88 Ill. App. 3d 498, 510-11, 410 N.E.2d 661, 671 (1980); Scandroli v. City of Rockford, 86 Ill. App. 3d 999, 1002-03, 408 N.E.2d 436, 439 (1980).

The home rule power to zone extraterritorially does not derive from the constitution, but must be provided by statute. City of Carbondale v. Van Natta, 61 Ill. 2d 483, 487-89, 338 N.E.2d 19, 21-23 (1975). *See* ILL. REV. STAT. ch. 24, § 11-13-1(1) (1981) (statutory extension and limitation of zoning up to one and one-half miles beyond municipal boundaries). *See generally* Hug, *Extraterritorial Powers of Illinois Municipalities and the 1970 Illinois Constitution*, 69 ILL. B.J. 32, (1980).

33. ILL. REV. STAT. ch. 24, § 11-13-1 (1981) (municipal zoning enabling act); ILL. REV. STAT. ch. 34, § 3151 (1981) (county zoning enabling act).

34. Home rule powers may be limited by legislative action in conformance with the constitution. ILL. CONST. art. 7, § 6(g), (h), (i), (l). *See infra*

tions on home rule powers, however, must conform to certain constitutional requirements.[35] Although the constitutional grant of home rule power is broader than that of the zoning enabling statutes,[36] the factors applied in testing the validity of local zoning ordinances are the same, regardless of the statutory or constitutional basis for the ordinance.[37]

The appropriate procedure for judicial review of a local land use decision is dependent upon the capacity in which the local governing body was acting when it made the decision. Judicial review of administrative land use decisions made by the local board of zoning appeals is governed by the Administrative Review Act.[38] Review of land use decisions which are legislative or quasi-legislative in character are by trial de novo in the circuit courts.[39]

Standing to obtain judicial review of local administrative decisions is limited to persons who were both a party to the admin-

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note 35. The non-home rule power to zone is subject to the limitations provided in ILL. REV. STAT. ch. 24, §§ 11-13-2 to 11-13-15 (1981). *See also*, Froehlich, *Illinois Home Rule in the Courts*, 63 ILL. B.J. 320 (1975).

35. The state legislature may limit home rule powers by a three-fifths vote of both houses. ILL. CONST. art. 7, § 6(g), (l). The legislature may preempt a local home rule power by enacting a statute which "specifically" provides for exclusive exercise of the power by the state. *Id.* at § 6(h). Home rule units may concurrently exercise any power which the state has not "specifically" preempted. *Id.* at § 6 (i). County of Cook v. John Sexton Contractors Co., 75 Ill. 2d 494, 513-15, 389 N.E.2d 553, 560 (1979) (holding that legislature's establishment of statewide environmental standards was intended to preempt home rule power to set such minimum standards).

36. ILL. CONST. art. 7, § 6(a) provides that "a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare." *Id.* The zoning enabling statutes, on the other hand, provide a broad but finite range of purposes for which non-home rule units may zone. ILL. REV. STAT. ch. 24, § 11-13-1 (1981). One court has used the broad grant of home rule powers as a basis for finding standing for home rule units in zoning actions. *See infra* notes 70-83 and accompanying text. More recently the distinction between home rule and non-home rule powers has become important in the area of state preemption of local zoning powers. *See* County of Cook v. John Sexton Contractors Co., 75 Ill. 2d 494, 513-15, 389 N.E.2d 553, 560 (1979). *See generally* Note, *County of Cook v. John Sexton Contractors Co.: Home Rule Triumphs Over Uniform Regulation of Sanitary Landfills*, 1979 SO. IL. U. L.J. 347.

37. For a discussion of the factors relevant in testing the validity of a zoning ordinance, see *infra* notes 48-51 and accompanying text.

38. ILL. REV. STAT. ch. 24, § 11-13-13 (1981). The Administrative Review Act confines judicial review of administrative decisions to the record of the administrative proceeding. ILL. REV. STAT. ch. 110, § 264 (1981). *See also*, Strohl v. Macon County Zoning Bd. of Appeals, 411 Ill. 559, 104 N.E.2d 612 (1952).

39. *See* People *ex rel.* Joseph Lumber Co. v. City of Chicago, 402 Ill. 321, 329-30, 83 N.E.2d 592, 597 (1949); Thompson v. Cook County Zoning Bd. of Appeals, 96 Ill. App. 3d 561, 575-76, 421 N.E.2d 285, 297 (1981).

istrative proceeding and were aggrieved by its decision.[40] A party attacking the validity of a local legislative land use decision need only show that he is aggrieved by that decision.[41] Regardless of the legislative or administrative character of the decision, the test for the necessary degree of aggrievement is the same.[42] The test is whether the party seeking relief has suffered or will suffer direct and adverse effects to a property interest as a result of the contested zoning ordinance.[43]

The contestant of a zoning ordinance has the burden of proving that the ordinance is arbitrary, capricious or unreasonable.[44] To sustain his burden of proof the contestant must overcome a presumption in favor of the ordinance's validity.[45] The contestant's burden is not sustained by proof that the "wisdom, necessity or expediency"[46] of the ordinance is debatable.[47] Instead, the contestant of a zoning ordinance must show that the ordinance is unreasonable because it does not bear a substantial relation to the public health, safety or welfare.[48] The courts have devised a litany of factors as an aid in determining the reasonableness of a zoning ordinance. The Illinois Supreme Court, in

40. Williams v. Department of Labor, 76 Ill. 2d 72, 79, 389 N.E.2d 1177, 1180 (1979). A party is "aggrieved" when his pecuniary or property rights are directly affected. BLACK'S LAW DICTIONARY 60 (rev. 5th ed. 1979).

41. *See* cases cited *supra* note 27.

42. See 3 A. RATHKOPF, *supra* note 7, at § 43.01. There appears to be no reason to distinguish the standing requirements for parties who originated their contest before a local zoning board of appeals and those who originally brought an action in a circuit court. *Id.* at 43-2.

43. Village of Barrington Hills v. Village of Hoffman Estates, 81 Ill. 2d 392, 397-98, 410 N.E.2d 37, 40 (1980) *cert. denied*, 449 U.S. 1126 (1981) (test for municipal standing is whether municipality has or will suffer direct adverse affects in its corporate capacity); Anundson v. City of Chicago, 44 Ill. 2d 491, 495-96, 256 N.E.2d 1, 3-4 (1970) (test for individual standing is whether individual has or will suffer direct injury to a property interest). *See generally* 3 A. RATHKOPF, *supra* note 7, at § 43.01.

44. Krom v. City of Elmhurst, 8 Ill. 2d 104, 111, 133 N.E.2d 1, 3 (1956); Kellett v. County of DuPage, 89 Ill. App. 2d 437, 442, 231 N.E.2d 706, 708 (1967).

The contestant of a zoning ordinance must sustain his burden of proof by clear and convincing evidence. *E.g.*, Tomasek v. City of Des Plaines, 64 Ill. 2d, 172, 179-80, 354 N.E.2d 899, 903 (1976); Parkway Bank & Trust Co. v. County of Lake, 71 Ill. App. 3d 421, 425-26, 389 N.E.2d 882, 885 (1979).

45. County of Cook v. Priester, 62 Ill. 2d 357, 368, 342 N.E.2d 41, 46 (1976); Mid-West Emery Freight Sys., Inc. v. City of Chicago, 120 Ill. App. 2d 425, 435, 257 N.E.2d 127, 132 (1970).

46. City of Carbondale v. Brewster, 78 Ill. 2d 111, 115, 398 N.E.2d 829, 831 (1979).

47. Grobman v. City of Des Plaines, 59 Ill. 2d 588, 593, 322 N.E.2d 443, 446 (1975); Krom v. City of Elmhurst, 8 Ill. 2d 104, 107, 133 N.E.2d 1, 3 (1956).

48. County of Cook v. Priester, 62 Ill. 2d 357, 368, 342 N.E.2d 41, 46 (1976); Parkway Bank & Trust Co. v. County of Lake, 71 Ill. App. 3d 421, 425, 389 N.E.2d 882, 885 (1979).

LaSalle National Bank v. County of Cook,[49] announced the following factors as significant:

1) the existing uses of nearby property;
2) the extent to which property values are diminished by the particular zoning ordinance;
3) the extent to which the destruction of the property values of the contestant promotes the health, safety, morals or general welfare of the public;
4) the relative gain to the public as compared to the hardship imposed upon the individual property owner;
5) the suitability of the zoned property for the zoned purposes;
6) the length of time the property has remained vacant as zoned, considered in the context of land development in the area in the vicinity of the subject property.[50]

Subsequent case law has resulted in two additional factors of significance:

7) the public need for the proposed use;[51] and
8) the thoroughness with which the legislative body planned and zoned the land use.[52]

Although none of the listed factors standing alone can serve to invalidate a zoning ordinance,[53] the courts are in substantial agreement on the method of their application.[54] First, application of the *LaSalle* test requires that all the factors be considered in the context of the specific facts in each case.[55] Second, the courts have consistently given the greatest weight to the first

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49. 12 Ill. 2d 40, 145 N.E.2d 65 (1957).

50. *Id.* at 46-47, 145 N.E.2d at 69.

51. Sinclair Pipe Line Co. v. Village of Richton Park, 19 Ill. 2d 370, 378, 167 N.E.2d 406, 411 (1960).

52. *Id.* at 378, 167 N.E.2d at 411. *See also* Parkway Bank & Trust Co. v. County of Lake, 71 Ill. App. 3d 421, 426, 389 N.E.2d 882, 886 (1979).

53. Virtually every Illinois zoning case cites this truism after listing the *LaSalle National Bank* factors. *E.g.*, LaGrange State Bank v. County of Cook, 75 Ill. 2d 301, 308, 388 N.E.2d 388, 391 (1979).

54. *See generally* 1 N. WILLIAMS, *supra* note 20, at § 6.17. The Illinois courts have gained a reputation as being relatively conservative on issues of zoning and planning. *Id.* at 145-46. Williams suggests that such a reputation is a result of a "reasonably consistent . . . hostility towards zoning" by the courts. *Id.* at 147. While this view appears to be consistent with the Illinois courts' strict adherence to the *LaSalle National Bank* analysis and the courts' willingness to protect the residential character of zoned areas, such a view appears to be inconsistent with recent trends in Illinois land use law. *Compare infra* notes 65-106 and accompanying text (discussing recent Illinois standing cases) *and* 3 A. RATHKOPF, *supra* note 7, at 43-47 (suggesting Illinois has become one of the most liberal jurisdictions in extending standing to municipalities) *with* 1 N. WILLIAMS, *supra* note 20, at 147 (suggesting Illinois courts are conservative and developer oriented in land use matters).

55. Krom v. City of Elmhurst, 8 Ill. 2d 104, 107, 133 N.E.2d 1, 3 (1956); Kellet v. County of DuPage, 89 Ill. App. 2d 437, 442, 231 N.E.2d 706, 709 (1967). *See also* 1 N. WILLIAMS, *supra* note 20, at 146-47 (noting the intense factual analysis used by Illinois courts in applying the *LaSalle National Bank* factors).

factor, the uses of nearby property. In analyzing the nearby uses, however, the courts have been content to limit their examination to a relatively small geographical area.[56] In a few rare cases though, the courts have allowed into evidence the character of property beyond the immediate vicinity of the zoned tract.[57] Thus, the general rule appears to be that "nearby" property means "neighboring" property within several blocks of the zoned tract.[58]

A similar geographically limited perspective is utilized in applying the remaining *LaSalle* factors. For example, in applying the third[59] and fourth[60] *LaSalle* factors, the courts have limited their perspective to purely local elements. These factors have been used as a balancing device in which "the gain to the public is . . . compared with the hardship imposed upon the individual property owner."[61] Moreover, in defining the term "public" the courts have taken a similarly narrow perspective, confining the meaning of the term to the immediate area of the

56. Pioneer Trust & Sav. Bank v. Village of Oak Park, 408 Ill. 458, 459-62, 97 N.E.2d 302, 303-04 (1951) (court considered area within several blocks of zoned property); Forbes v. Hubbard, 348 Ill. 166, 167-71, 180 N.E. 767, 771-72 (1932) (same); Thompson v. Cook County Zoning Bd. of Appeals, 96 Ill. App. 3d 561, 578-79, 421 N.E.2d 285, 299 (1981) (court considered property up to one-half mile from zoned tract); Amalgamated Trust & Sav. Bank v. County of Cook, 82 Ill. App. 3d 370, 372-75, 402 N.E.2d 719, 722-24 (1980) (court considered property adjacent to and across street from zoned tract); Mid-West Emery Freight Sys., Inc. v. City of Chicago, 120 Ill. App. 2d 425, 429-34, 257 N.E.2d 127, 130-31 (1970) (same).

57. County of Cook v. Priester, 62 Ill. 2d 357, 363-67, 342 N.E.2d 41, 44-46 (1976) (court considered property in airport flight path on issue of limits on allowable aircraft landing weights); Gordon v. City of Wheaton, 12 Ill. 2d 284, 288, 146 N.E.2d 37, 39-40 (1957) (evidence of land uses two miles away on issue of proper zoning for undeveloped area was of little probative value, but did not mislead jury); Hannifin Corp. v. City of Berwyn, 1 Ill. 2d 28, 32-35, 115 N.E.2d 315, 316-18 (1953) (evidence of industrial development up to one mile from zoned site used to emphasize unsuitability of area for residential use); LaSalle Nat'l Bank v. Village of Palatine, 92 Ill. App. 2d 327, 329-31, 236 N.E.2d 1, 2-3 (1968) (because property surrounding zoned tract was undeveloped, court considered area up to two miles from zoned tract).

58. *See* cases cited *supra* note 56.

59. *See supra* note 50 and accompanying text.

60. *See id.*

61. Pioneer Trust & Sav. Bank v. County of McHenry, 41 Ill. 2d 77, 85, 241 N.E.2d 454, 459 (1968). *See also* LaGrange State Bank v. County of Cook, 75 Ill. 2d 301, 309, 388 N.E.2d 388, 391 (1979) (loss to property owner resulting from zoning ordinance only significant when public welfare does not require such an ordinance); Parkway Bank & Trust Co. v. County of Lake, 71 Ill. App. 3d 421, 424-25, 389 N.E.2d 882, 886 (1979) (property owner must show loss in value of his property is not balanced by benefit to public); Mid-West Emery Freight Sys., Inc. v. City of Chicago, 120 Ill. App. 2d 425, 442, 257 N.E.2d 127, 137 (1970) (issue is whether benefit to public justifies loss in value of owner's property).

zoned property or the boundaries of the zoning municipality.[62]

The practical result of using the *LaSalle* test is to give the courts wide discretion over an essentially factual analysis of each specific zoning conflict.[63] Although the test works well in the most common kinds of zoning conflicts, where both parties represent local interests,[64] the test has major inadequacies when one of the parties alleges that a local zoning ordinance violates an extra-local interest. In these cases, continued reliance on wholly local facts and conditions as a yardstick of an ordinance's reasonableness addresses only part of the issue presented for review.

ILLINOIS MUNICIPAL STANDING

A cursory examination of the recent Illinois decisions extending standing to neighboring municipalities suggests that Illinois courts are expanding the spectrum of interests they will allow to be represented in zoning conflicts. A careful examination of these cases, however, suggests that in addition to allowing the representation of a broader range of interests in zoning conflicts, the courts are signaling that they will take a broader perspective in reviewing the validity of local land use decisions.[65] By all indications this broader perspective will include extra-local factors and interests.[66]

The theory that the recent line of Illinois standing cases indicates a trend toward a broader perspective of review rests on three observations. First, throughout these standing cases the

62. *See* cases cited *supra* note 50. *But see* County of Cook v. Priester, 62 Ill. 2d 357, 363-64, 342 N.E.2d 41, 44-45 (1976) (court considered national need for intermediate service airports as a basis for its decision).

63. *See* 1 N. WILLIAMS, *supra* note 20, at 146.

64. *Id.* at § 2.01. According to Williams, the two most common kinds of zoning litigation can be broadly categorized as "developer" and "neighbor" conflicts. *See supra* note 20 for a discussion of "developer" and "neighbor" conflicts in the context of standing to sue.

65. See *supra* note 25 for a discussion of how other jurisdictions have applied a broader perspective of review to land use conflicts between local and extra-local interests. *See generally* 1 A. RATHKOPF, *supra* note 7, at § 43.08; 3 N. WILLIAMS, *supra* note 20, at § 66.12(c) (Supp. 1982).

66. Extra-local factors and interests recognized in other jurisdictions include: water and sewer services, multi-family and low income housing, preservation of a community's residential character, and preservation of aesthetic and environmental values. *See generally* Note, *The Regional Welfare Analysis in Zoning Actions: A Tool to Limit Development*, 12 CONN. L. REV. 93 (1979); Note, *A Regional Perspective of the General Welfare*, 14 SAN DIEGO L. REV. 1227 (1977); Note, *Zoning: Looking Beyond Municipal Borders*, 1965 WASH. U.L.Q. 108; Note, *The Duty of a Municipality to Consider the Environmental Effect of its Land Use Planning Decisions Upon the Regional Welfare: Judicial Balancing in the Absence of Interjurisdictional Planning Legislation*, 25 WAYNE L. REV. 1253 (1979).

Illinois Supreme Court has formulated a broad test for municipal standing.[67] Second, the court has refused to accept a narrow reading of the requirements for municipal standing.[68] Third, the continued use of a purely local perspective[69] in the review of land use decisions which conflict with extra-local interests is inconsistent with the courts' extension of standing to parties representing extra-local interests.[70]

The first case which held a neighboring municipality had standing to attack another municipality's land use decision was *Forestview Homeowners Association v. County of Cook*.[71] Prior to *Forestview*, Illinois courts regularly held that a neighboring municipality did not have standing to attack the legislative or administrative land use decisions of its neighbors.[72] These holdings were predicated on the rationale of Dillon's rule[73] which viewed local government bodies as mere statutory creations of the state.[74] As such, a municipality could only exercise powers which were specifically or impliedly granted to it by statute.[75] Therefore, since the legislature had not granted a general municipal power to sue in zoning matters, and none could be implied, the municipalities were without standing.[76] The court in *Forestview*, however, viewed the broad grant of home rule powers in the 1970 Illinois Constitution[77] as taking home rule units outside the restrictions of Dillon's rule.[78]

In *Forestview*, a developer sought the rezoning of a tract of land located in unincorporated Cook County.[79] The county re-

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67. *See infra* notes 71-106 and accompanying text.

68. *See infra* notes 100-04 and accompanying text.

69. *See supra* notes 49-64 and accompanying text for a discussion of the factors used by Illinois courts in testing the validity of local zoning ordinances.

70. For a discussion of the inconsistency between the extension of standing based on extra-local factors and the review of zoning conflicts based on purely local factors, see *infra* notes 105-07 and accompanying text. *See also infra* notes 107-15 for a discussion of the statutory and policy bases for adoption of a broader perspective of review.

71. 18 Ill. App. 3d 230, 236-38, 309 N.E.2d 763, 768-69 (1974).

72. *E.g.*, Village of Arlington Heights v. County of Cook, 31 Ill. App. 3d 213, 214-15, 278 N.E.2d 841, 842 (1971); Village of Arlington Heights v. County of Cook, 133 Ill. App. 2d 673, 675-77, 273 N.E.2d 706, 709 (1971); Krembs v. County of Cook, 121 Ill. App. 2d 148, 257 N.E.2d 120 (1970).

73. 1 DILLON, MUNICIPAL CORPORATIONS 448 (1911).

74. *Id. See, e.g.*, Ives v. City of Chicago, 30 Ill. 2d 582, 584, 198 N.E.2d 518, 519 (1964).

75. *See* cases cited *supra* note 72.

76. *See* cases cited *supra* note 72.

77. ILL. CONST. art. 7, § 6(a). *See supra* notes 30-35 and accompanying text for a discussion of home rule powers under the Illinois constitution.

78. Forestview Homeowners Ass'n, Inc. v. County of Cook, 18 Ill. App. 3d 230, 240-41, 309 N.E.2d 763, 768-69 (1974).

79. *Id.* at 235, 309 N.E.2d at 766.

zoned the land from single family to multi-family residences. The developer then proceeded with plans to build a 2,500 unit apartment complex. The Village of Northbrook sought to intervene in an action brought by private homeowner associations against the developer.[80] The village argued that increased population resulting from the proposed apartment complex would overburden the area's education, sanitary and transportation facilities.[81] In finding that the village had standing, the appellate court relied on the village's home rule powers in combination with its general municipal power to sue in equity for the protection of public rights grounded in municipal ordinances.[82] Essentially the court reasoned that a municipality is acting in a governmental capacity when it enters into litigation to enforce public policies grounded in its ordinances. Because such litigation necessarily pertains to its "government and affairs,"[83] standing to sue falls within the broad grant of Article VII home rule powers.[84]

Implicit in this rationale is the recognition that the village had a substantial interest in the continued vitality of the area's infrastructure. The *Forestview* decision suggests that municipal allegations of injury to an extra-local interest will satisfy standing requirements, but only if the municipality can allege a connection between such an interest and a municipal policy grounded in an official ordinance. The *Forestview* rationale therefore extends standing to home rule units whenever their official policies implicate an extra-local interest. Although the *Forestview* decision represented a liberalization of municipal standing requirements, the practical effect of the decision was to restrict standing to a relatively small number of Illinois munici-

80. *Id.* at 236, 309 N.E.2d at 768. The Village sought to intervene under ILL. REV. STAT. ch. 110, § 1(2)(b) (1981) which provides: "upon timely application anyone may in the discretion of the court be permitted to intervene in an action . . . (b) when an applicant's claim or defense and the main action have a question of law or fact in common." *Id.*

81. Forestview Homeowners Ass'n, Inc. v. County of Cook, 18 Ill. App. 3d 230, 240, 309 N.E.2d 763, 775 (1974). *See supra* notes 30-35 discussing home rule powers. In the absence of a statutory prohibition, a municipality may seek injunctive relief for the protection of public rights. *See* Chicago, Burlington & Quincy R.R. Co. v. Quincy, 136 Ill. 489, 493, 27 N.E. 232, 233 (1891); 17 MCQUILLEN, THE LAW OF MUNICIPAL CORPORATIONS § 49.57 (3rd ed. 1982).

82. Forestview Homeowners Ass'n, Inc. v. County of Cook, 18 Ill. App. 3d 230, 309 N.E.2d 763 (1974).

83. Home rule units are permitted to exercise any power and perform any function pertaining to their government and affairs. ILL. CONST. art. 7, § 6(a).

84. Forestview Homeowners Ass'n, Inc. v. County of Cook, 18 Ill. App. 3d 230, 237, 309 N.E.2d 763, 768 (1974).

palities.[85] The basis for municipal standing in *Forestview* was premised on a home rule unit's constitutional power to act on matters within its government and affairs. The decision therefore did not affect the majority of local governments which were not home rule units. Consequently, without a statutory grant of standing, non-home rule municipalities remained under the restrictions of Dillon's rule.[86]

In two later decisions, the Illinois Supreme Court accepted the *Forestview* result but implicitly rejected its restrictive rationale. In *City of Hickory Hills v. Village of Bridgeview*,[87] the court accepted the rule that an " 'aggrieved person' with a real interest in the subject matter of the controversy may challenge a zoning ordinance."[88] The facts indicated that Hickory Hills was required by a prior judgment to provide water and sewer services to a geographically isolated section of Bridgeview. Hickory Hills supplied services to the tract but objected when Bridgeview rezoned the area for single-family residences.[89] Hickory Hills challenged the validity of the rezoning, alleging that the development of single-family residences would require it to make large expenditures to supply the area with sanitary hookups. In concluding that Hickory Hills had standing to challenge the rezoning, the court noted that a city would necessarily have a "real interest" in a land use decision which tended to increase its obligation under a prior court order.[90]

The significance of the *Hickory Hills* decision lies in what the court did *not* decide. Although the *Hickory Hills* court cited *Forestview* with approval, the court did *not* adopt the *Forestview* rationale that conditioned standing on a municipal-

85. In 1982, only 102 of approximately 1,050 municipalities in northeastern Illinois were home rule units. Therefore, the *Forestview* rule for standing would have precluded a sizeable majority of municipalities from satisfying standing requirements to contest the validity of their neighbor's zoning ordinances. Interview with Mr. Max Dieber, Director of Research of the Northeastern Illinois Planning Commission (March 2, 1983).

86. 1 DILLON, MUNICIPAL CORPORATIONS 488 (1911). Dillon's rule restricts municipalities to the exercise of those powers which are specifically or impliedly granted to them by the state legislature. *See supra* note 73 and accompanying text.

87. 67 Ill. 2d 399, 367 N.E.2d 1305 (1977).

88. *Id.* at 403, 367 N.E.2d at 1307.

89. *Id.* at 400, 367 N.E.2d at 1306.

90. *Id.* at 403, 367 N.E.2d at 1307. Instead of using *Forestview* as a basis for its holding, the court cited Annot. 49 A.L.R.3d 1126 (1973), which lists cases from other jurisdictions extending standing to municipalities under a more liberal rationale. *See supra* notes 20-25 and accompanying text for a discussion of the more liberal requirements for municipal standing in foreign jurisdictions.

ity's status as a home rule unit.[91] Instead, the court equated municipal standing with the traditional test for the standing of real persons, *viz*, direct injury to a property interest.[92] The lasting impact of *Hickory Hills* has been to lift the home rule condition to standing imposed by *Forestview* and extend the capacity to attack land use decisions to all Illinois municipalities. However, the broad implications of the holding in *Hickory Hills* initially caused a division among the appellate courts. One court viewed *Hickory Hills* as establishing the general standard for municipal standing, while another viewed the decision as an exception to the general rule that municipalities do not have standing to attack the zoning ordinances of other co-equal municipalities.

In *City of West Chicago v. County of Du Page*,[93] the Appellate Court for the Second District concluded that the "aggrieved person" rule stated in *Hickory Hills* was generally applicable to muncipalities.[94] There West Chicago contested the validity of a special use permit granted by Du Page County for the construction of a garage and office complex within one and one-half miles of the city. In concluding that West Chicago had standing, the court insisted that the clear implication of the Illinois Supreme Court's decision in *Hickory Hills* was that any municipality had the capacity to contest the validity of another governing body's zoning ordinance.[95]

The Appellate Court for the First District, on the other hand, took an entirely different position in *Village of Barrington Hills v. Village of Hoffman Estates*.[96] There Hoffman Estates had annexed and rezoned a tract of land near Barrington Hills. The rezoning of the tract permitted the construction of an open air music theatre. Barrington Hills contested the validity of the Hoffman Estates rezoning ordinance, alleging that the rezoning was inconsistent with the trend in development of the area.[97]

In concluding that Barrington Hills did not have standing, the appellate court attempted to distinguish the extension of municipal standing in *Forestview* and *Hickory Hills*. According to the appellate court, a fundamental difference existed between

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91. A restriction of standing to attack land use decisions to only those municipalities which qualified as home rule units would have given the larger home rule units a disproportionate influence in controlling regional development. *See supra* note 85.

92. *See supra* notes 39-42.

93. 67 Ill. App. 3d 924, 385 N.E.2d 826 (1979).

94. *Id.* at 926, 385 N.E.2d at 827.

95. *Id.*

96. Village of Barrington Hills v. Village of Hoffman Estates, 75 Ill. App. 3d 461, 394 N.E.2d 599 (1979), *rev'd*, 81 Ill. 2d 392, 410 N.E.2d 37 (1980), *cert. denied*, 449 U.S. 1126 (1981).

97. *Id.* at 463, 394 N.E.2d at 601.

the municipal attack of a county zoning ordinance in *Forestview* and the municipal attack of a co-equal municipality's zoning ordinance in the present case.[98] Consequently, the appellate court viewed *Hickory Hills* as an *exception* to the general rule that municipalities did not have standing to attack the zoning ordinances of a co-equal municipality.[99] As perceived by the first district, the "aggrieved person" *exception* in *Hickory Hills* could apply only if the contesting municipality was under a legal obligation to furnish services to the zoning municipality. Therefore, since Barrington Hills was not obligated to furnish services to Hoffman Estates, the *Hickory Hills exception* clearly did not apply. As support for its decision the court articulated a localist rationale:

> In the development of suburban areas, with municipalities adjoining and contiguous one to another, the boundary lines must start and stop at some point. The rights and powers of each municipality must be paramount and superior to adjoining municipalities. Otherwise the mischievous activities of one municipality could hold in hostage the governmental functions of another municipality.[100]

The Illinois Supreme Court rejected the first district's "unduly narrow reading of *Hickory Hills*."[101] The court reaffirmed its position that municipal standing is predicated on allegations which demonstrate the contesting municipality will suffer direct injury as a result of the contested ordinance.[102] The court found the special damages alleged by Barrington Hills (lost revenues,

98. *Id.* at 466-67, 394 N.E.2d at 602-03. The court viewed *Forestview* as establishing the rule for municipal standing in cases where a municipality was attacking a county zoning ordinance. *Id.* According to the court, such a rule was permissible because the Illinois zoning enabling statutes established a priority for municipal zoning over county zoning. *Id.* *See supra* notes 27-36 discussing the mechanics of Illinois zoning. This novel view of the hierarchy of Illinois municipal law was not addressed by the Illinois Supreme Court in its review of the appellate court's decision. *See* Village of Barrington Hills v. Village of Hoffman Estates, 81 Ill. 2d 392, 410 N.E.2d 37 (1980), *cert. denied*, 449 U.S. 1126 (1981).

99. Village of Barrington Hills v. Village of Hoffman Estates, 75 Ill. App. 3d 461, 467, 394 N.E.2d 599, 603 (1979), *rev'd*, 81 Ill. 2d 392, 410 N.E.2d 37 (1980), *cert. denied*, 449 U.S. 1126 (1981).

100. *Id.* at 466, 394 N.E.2d at 603. During periods of rapid growth and development, the appellate court's rationale appears to place an inordinate value on *absolute* local autonomy. *See supra* note 26. Notwithstanding the fact that such a rationale has received severe criticism for over three decades, is the fact that *absolute* local autonomy is inherently undemocratic and, most likely, self-defeating. *See supra* notes 13-19 and accompanying text discussing the American Law Institute's MODEL CODE. *See also supra* note 26.

101. Village of Barrington Hills v. Village of Hoffman Estates, 81 Ill. 2d 392, 396, 410 N.E.2d 37, 39 (1980), *cert. denied*, 449 U.S. 1126 (1981).

102. *Id.* at 397, 410 N.E.2d at 40. The court further clarified the requirements for municipal standing by stating that a municipality must demonstrate "that it would be substantially, directly and adversely affected in its

increased expenditures and environmental damages resulting from air and noise pollution)[103] from construction of the planned open air music theatre in Hoffman Estates were sufficient to satisfy the requirements for standing.[104]

The specific allegations which the court accepted in *Barrington Hills*, when viewed in conjunction with the court's prior decisions, is evidence that the court is shifting toward an extra-local perspective. Since *Forestview*, the court has had several opportunities to narrow the requirements for municipal standing.[105] Instead, at each opportunity, the court has liberalized municipal standing requirements and has thus provided municipalities representing extra-local interests access to the judicial forum. Considering this recent liberalization it would be anomalous for the court to take several steps backward by using a purely local perspective in the review of conflicts between local land use decisions and extra-local interests. This is especially true in light of the national trend toward a broader perspective in the review of such conflicts.[106]

Moreover, use of a purely local perspective in such cases would needlessly add confusion and complexity to land use litigation. Municipalities attacking another governing body's zoning ordinances would be required to satisfy two sets of unrelated requirements. First, the contesting municipality would be required to allege direct injury to an extra-local interest to satisfy standing requirements. Second, the contesting municipality would be required to prove the invalidity of the local ordinance on the basis of wholly local factors. Such separate and unrelated requirements for standing and testing the validity of the contested ordinance avoids addressing the injury upon which the contesting municipality was originally granted standing. These problems are avoided when a court assumes a broader perspective and frankly addresses the issue of the local

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corporate capacity" by the contested zoning ordinance. *Id.* at 398, 410 N.E.2d at 40.

103. *Id.* at 395-96, 410 N.E.2d at 39. Barrington Hills alleged that operation of the planned open air music theatre (Poplar Creek) in Hoffman Estates would cause traffic congestion. In turn, the village would be required to spend $42,000 for additional police to control such traffic and disorderly conduct by patrons of the theatre. *Id.* at 395, 410 N.E.2d at 39. Further, the village alleged that it would be required to expend additional monies to clean up the litter and debris deposited along the roads by patrons entering and leaving the theatre. *Id.* at 396, 410 N.E.2d at 39. In addition, the village claimed that fumes from passing autos and sound levels from the live entertainment planned for the theatre would result in decreased property values within the village and thus cause a decline in property tax revenue. *Id.*

104. *Id.* at 398, 410 N.E.2d at 40.

105. *See supra* notes 71-96 and accompanying text.

106. *See supra* notes 21-24 and accompanying text.

ordinance's validity in the context of the injury to the extra-local interest.

STATUTORY AND POLICY BASES FOR A BROADER PERSPECTIVE OF REVIEW

The 1970 Illinois Constitution provides a broad policy statement in favor of intermunicipal cooperation.[107] Similarly, provisions in the county zoning enabling act[108] implicitly recognize municipal interests in county land use decisions which affect property near municipal borders. Under the county zoning enabling act, a municipality is entitled to protest all county zoning ordinances which affect property within one and one-half miles of the municipality's borders.[109] Any county ordinance subject to such a protest may be passed only by an extraordinary majority of the county board.[110] This legislative recognition of a municipality's interest in the zoning of property outside its borders represents a legislative understanding that county land use decisions must be considered in the context of extra-local municipal interests.

Further, the legislature provided another method of intermunicipal cooperation with its enactment of the Northeastern[111] and Southwestern Illinois Metropolitan and Regional Planning Acts.[112] The Acts establish two planning commissions

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107. ILL. CONST. art. 7, § 10(c) provides: "The State shall encourage intergovernmental cooperation and use its . . . resources to assist intergovernmental activities." *Id.* Section 10(c) was intended to remove any prior statutory or constitutional obstructions to intergovernmental cooperation. Village of Elmwood Park v. Forest Preserve Dist. of Cook County, 21 Ill. App. 3d 597, 316 N.E.2d 140 (1974) (section 10 intended to encourage intergovernmental cooperation and remove restrictions of Dillon's rule); RECORD OF PROCEEDINGS, SIXTH ILLINOIS CONSTITUTIONAL CONVENTION, Vol. VII, at 1750-52 (1970) (same). *See generally* Hall & Wallack, *Intergovernmental Cooperation and the Transfer of Powers*, 1981 U.ILL. L. REV. 775.

108. ILL. REV. STAT. ch. 34, §§ 3151, 3162 (1981).

109. *Id.* at § 3152(2). The contesting municipality is entitled to appear at a hearing before the county zoning board and submit alternatives to the board's proposed ordinance. *Id.*

110. If the alternatives suggested by the contesting municipality are not incorporated within the final draft of the proposed ordinance, then the county board is required to pass the proposal by a three-quarters vote of all members. *Id.*

Because the board is elected from the entire county, the procedure outlined in section 2 of the county zoning enabling Act allows a municipality to exert a degree of political pressure in opposing the county ordinance. *See* City of Canton v. County of Fulton, 11 Ill. App. 3d 171, 175-76, 296 N.E.2d 97, 100 (1973) (city with one-third population of county could have prevented enactment of county zoning ordinance by negative vote of its own representatives on county board).

111. ILL. REV. STAT. ch. 85, §§ 1101 to 1139 (1981).

112. *Id.*, §§ 1151 to 1189.

to assess regional needs[113] and to prepare and adopt a regional plan of development.[114] The regional plan is made available to local governing authorities in an advisory capacity.[115] But, even though the plan is advisory, the legislature clearly recognized the necessity for maintaining a geographically broad perspective regarding development of the northeastern and southwestern regions of Illinois.[116]

The use of a purely local perspective in reviewing conflicts between local land use decisions and extra-local interests is inconsistent with these constitutional and legislative policies. Such a perspective does not foster intermunicipal cooperation and planning but only serves to protect and insulate local land use decisions from consideration in a broader context. Thus far, Illinois courts have rejected a narrow perspective on issues of municipal standing, but the courts need to go further in order to implement these legislative and constitutional policies. By judicially adopting a broader perspective of review which includes extra-local interests, the courts can promote intermunicipal cooperation and planning.

CONCLUSION

The extension of standing to municipalities representing extra-local interests in land use conflicts is a recognition that local land use decisions can have significant extra-local effects. Further, the extension of such standing is the first step toward requiring local zoning authorities to adequately consider the wider implications of their land use decisions. The Illinois courts have taken the first step toward insuring the representation of extra-local interests in land use conflicts. But the extension of standing to neighboring municipalities will prove meaningless unless the courts also adopt a broader perspective of review for local land use decisions.

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113. *Id.*, §§ 1119, 1125, 1169, 1179. Both commissions are required to research and make available data regarding population trends, and social, economic, physical, aesthetic and governmental factors affecting development of the areas they represent. *Id.*

114. *Id.*, §§ 1121 to 1128, and §§ 1171 to 1182.

115. *Id.*, §§ 1120, 1170.

116. *Id.*, §§ 1102, 1152. The legislature's statement of policy provides:

> It is determined and declared by the General Assembly that the welfare, health, prosperity, moral and general well-being of all the people of this State are, in a large measure, dependent upon the sound and orderly development of the northeastern [and southwestern] Illinois counties area. In order to provide for such development it is essential that a sound and comprehensive general plan for such area be devised to guide and coordinate . . . development.

Id. at § 1102.

The current pattern of metropolitan growth and development has created a series of interdependencies among neighboring municipalities.[117] Regional services such as highways, water lines, and sanitary districts serve neighboring municipalities over large areas. Business and residential districts often spread over municipal boundaries and make one village indistinguishable from the next.[118] To allow an individual municipality the total freedom to make land use decisions without consideration of the extra-local impact would disregard the municipality's relationship with the metropolitan area which surrounds it.[119]

Similarly, a purely local perspective of judicial review for local land use decisions would, in effect, treat each municipality in isolation and without regard for its relationship to the larger metropolitan area. A broader perspective of review places local land use decisions in a more realistic context. Such a perspective is a flexible approach to the review of land use issues which range from purely local significance to matters of statewide concern. Zoning and planning provide a rational basis for the land use decision making process. In order to preserve that rational basis, the courts can no longer afford to ignore the extra-local effects of local land use decisions.

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117. NORTHEASTERN ILLINOIS PLANNING COMMISSION, REGIONAL LAND USE POLICY PLAN § 5.06 (1978).

118. *See supra* note 26.

119. The Northeastern Illinois Planning Commission advocates greater use of the municipal power to make intermunicipal compacts as a method of dealing with local land use decisions which are likely to have an extra-local impact. *See* NORTHEASTERN ILLINOIS PLANNING COMMISSION, REGIONAL LAND USE POLICY PLAN § 5.06 (b), (d). *See also supra* note 107.