Richard Babcock:

Clyde Forrest is prominently known in the American Planning Association and has written a large number of articles and books.

Next to him sits Judge Arthur Dunne. He is in the Chancery Division at the Cook County Circuit Court. As such come before him most of the zoning and the subdivision cases that are heard a rising in Chicago or in the Cook County suburbs.

Immediately to my left is Jack Seigel who is a practicing lawyer. He is an attorney for the city of Evanston, city of Arlington Heights and the city of Schaumburg. He is an excellent spokesman for municipalities in the state.

On my extreme right is representative Barbara Flynn Curry. She has been in the Illinois House of Representative since 1979 and serves on the environment committee among many other duties as such.

And immediately on my right is Charlie Siemon.

The way we are going to proceed is that I am going to put questions to the panel. After they have answered my questions and say what they want to say,
then other panelists can also join in and make observations and ask questions.

Now let me start with you, Judge Dunne.

I noticed that you put in this book in section 9 what has to be a note paper that you keep in cases and it has with great space beneath each one of the six tests of *LaSalle National Bank* case. I want to ask you and I realize you are bound by what *LaSalle National Bank* says, but do you feel uneasy about that? Are you uneasy about those standards?

**Judge Dunne:**

I am not uneasy about any standards that the appellate courts direct. I believe that common sense should guide the decision of the trial judge and to the extent that these standards are in assistance to me either to affirm or to deny relief requested, I use them. I really think they are merely guidelines. The judge has to use common sense and experience in the affairs of life in making decisions in zoning cases.

**Richard Babcock:**

Well, then do you apply one more strongly than another one of these standards?

**Judge Dunne:**

I agree with the last speaker that probably the most significant of the standards is the existing uses and nearby zoning. And probably one of the most effective devices for a land planner or a plaintiff in these cases is the use of demonstrative exhibits, photographs, mockups, things of that nature that help the judge understand the area where the zoning is sought. That is probably the most effective thing I can think of as far as persuading a trial judge.

**Richard Babcock:**

Are these criteria constitutional criteria? Could the legislature for example change these standards?

**Judge Dunne:**

I suspect the legislature could erect some standards by a legislative framework but I suspect they won't. They're too busy passing other incomprehensible laws we have to deal with. My experience with the legislature is that by the time they pass laws, it's after I've made a
decision and while its pending in the supreme court to correct some matter that I have given them instruction on like holding a statute unconstitutional or refusing to pay a certain legislator’s bills incurred while remapping. Sometimes they do that quite effectively. Those are the two experiences I’ve had in the legislature. I mean no disrespect for Representative Curry. She’s a fine legislator and a survivor just like I am.

Richard Babcock:

Well, Representative Curry, we'll give you a chance to reply. Let me ask you. Why is it that I get a feeling as though the state legislature in Illinois has been silent on the land use matters in the past, for the last two or three decades while other states have been acting very progressively in this regard? We still have a statute that is by and large as enacted in 1920. Why is that? What is the source for this indifference?

Rep. Curry:

I'm not sure of the whole list of reasons but I would say that in Illinois, the Illinois legislature and the Illinois Constitution, you'll find a great deal of respect for the local governments. It isn't just that there is a home rule provision in the constitution. Think about how that provision got there. In the state this has been an abiding view, one not necessarily shared by the totality of the legislators, but a dominant view in the legislature and among the peoples that decisions are best made at the local level of government. Best enforced. Best mapped out. I think that partly explains why we have not been as active as we might have been on the front of encouraging comprehensive planning at the local levels.

The speaker just before this panel talked about the Land Use Resources Management Planning Act. Clyde Forrest and I know something about that Act. That Act came out of the study commission that was created by the legislature in response to the loss of wetland, loss of prime agricultural land. After the study committee did its work, I inherited the bill. I inherited it because the lead person on the commission, Dick Magallion, failed in his reelection effort. We introduced a series of small-step bills and one of the prin-
cipal sponsors was a Republican representative, major farmer and banker in Illinois. When he asked what was in the bills, mild mannered though they were, he asked, "could we please take his name off them." I told him we couldn’t take his name off them. But I promised to shelve most of them. The only one of that whole set that survived is the one that the earlier speaker reported to you. One that would have provided planning grants for the local communities as the carrot to make planning work at the local level. As the speaker also pointed out, we have never spent one cent on that particular program. I think that the simple and most straight forward answer is that the state legislature is very responsive to local government and would rather let local government make their own decisions about whether a comprehensive program is appropriate or not.

Illinois is not the most progressive state in the nation. We did not ratify the Equal Rights Amendment. There are all kinds of things we have not done and I guess in that context, I am not surprised that it is difficult to put planning forward as an appropriate state responsibility if there are any teeth in requirements that local governments behave this way rather than in some other.

The judge mentioned how the legislature is reactive to his opinion. We are also somewhat reactive after there has been a crisis or a major problem when all the land around O’Hare was developing, without much in the way of comprehensive plans, and without much in the way of adequate zoning. What we discovered was that there were major invasions of very important flood plains. After the major flooding of 1988, the legislature said that maybe we should do something about it. Of course by the time we were getting around to doing something about it, the flood plains were essentially built up and the same forces that had acted to prevent us from doing something before it was too late were also effective in making sure that we didn’t "go overboard."

Richard Babcock:
Clyde, what is your theory as to why the legislature is so reluctant to take any measures to improve Illinois planning?

*Clyde Forrest:* I think Representative Curry has jumped on a couple of basic ideas. There does seem to be a considerable hesitancy to take on the idea of forethought in the state of Illinois. We don't seem to recognize, as she indicated, the water runs downhill and developments in flood plains cost us a lot of money and human suffering. There are many things like that we don't seem to acknowledge as an act of forethought. There is vested interest in confusion and lack of organization as an expression of forethought and stability in this system in the bar side of litigation, and many of the major interests that are involved in land development. Until there is enough citizen awareness of the actual costs in terms of health, safety, economics, and taxes, I don't think we are going to have a lot of progress. I think we do have a system here that responds, but it responded very slowly and it only responds to some ground swell of citizen expression or concern. I think we have not yet generated that kind of concern in a very effective way.

*Richard Babcock:* Jack, you're a strong supporter of municipal power. Are you worried at all about the lack of any requirement on the part of the legislature that we engage in planning?

*Jack Siegel:* I'm not concerned at all. When I see the title "What is Wrong With Illinois Land Use Law," my answer is: "nothing is wrong with land use law." I think as Mr. Zeigler pointed out: We have enough statutes on the books. We have a home rule provision for municipalities with populations over twenty five thousand and anybody else who, by referendum, wishes to become a home rule municipality. This gives us more than enough statutory and implied power to deal. The problem is either the unwillingness of local communities to take advantage of what is actually on the books or the desirability of the community not to regulate.
As you say, I am a staunch defender of local government. I don’t think that is all bad. I am not impressed with the concept that something is desperately wrong with Illinois law. Most of the larger communities have had flood plain ordinances for years. We have planned unit developments. We have special uses. We have got special development districts. We have performance standards and building codes. We have subdivision ordinances which tell you how thick the concrete should be.

Perhaps the philosophy in Illinois is that you don’t have to regulate everything that everybody does. I am not sure that is such a bad philosophy. So, in answer to your question “What is wrong with Illinois land use law?” perhaps the answer is: that there has been either a lack of knowledge on the part of the local government or an unwillingness, which may be appropriate on the part of local government, to utilize the tools that we have. So Barbara, I think the legislature should leave this alone. We are able to handle our own problems and I appreciate your concept that the legislature recognizes that these decisions should be made at a local level. I’m not against comprehensive planning. I took part in drafting of the legislation that created NIPSEY many many years ago. These white hairs are the result of all those problems but that doesn’t mean that there is something basically wrong with Illinois land use law.

Richard Babcock: Do you want to add anything to that?

Charles Siemon: Well, I think that as someone who practices both in Illinois and around the country, whether there is something wrong with Illinois land use law largely depends on your perspective. There are many who think that the judicial review system is part of the problem. I must tell you for the private sector, the system of judicial review is more efficient and more effective than it is in any of the states I work in. I have just represented a private sector client in a case that the trial court characterized as “shocking the conscience.” The decision was made on January 13th of 1987 and we just received a ruling on the merits of on February
13th of this year in Texas. That is not how it would be in Illinois.

I happen to be one who favors stricter judicial review. I think it strikes a balance and actually has a positive force toward planning. That is if you want to protect yourself, you do a good job of planning, you have good regulations, you keep them up to date, you do your homework, and you’re going to succeed in court. So, I think good judicial review is important. I am not able to reconcile the LaSalle National Bank standards and whether they are, in light of contemporary theory, the best set of standards that we could use to set both the framework against which local governments act and the judges, like Judge Dunn, act. But I do think the balance, whether you characterize it as a developer’s state, has some basic potential for good. I think I would be a little more critical than Jack would be about the adequacy of our planning. Generally, there are some communities which should improve. It is very difficult for one municipality to say: “We are going to take the lead and put up the dollars.” That is always the difficult part of getting them to work together. That’s the sort of legislative assistance, matching capital facilities grants, for example, which promotes coordination. The New Jersey state plan has a prioritization. Available capital dollars go to those local governments that have intergovernmental agreements for providing facilities.

Richard Babcock: Let me come back to Judge Dunne, Judge.

Judge Dunne: I was struck by the last speaker’s comment about this being about the judges or the decisions being developer oriented. I’m always skeptical of those kinds of broad sweeping statements. I mean no disrespect to the speaker. I think you are going to have to look at the kinds of cases that the judges have decided in favor of the developer and break out the nonsensible ones and the real ones. One of the problems that the court has, which was touched on by Dan Pierce, Mayor Pierce early today, is the fact that many municipalities abrogate their responsibilities in a hotly contested or dis-
puted situation to the court. Let the good old Judge Dunn or the grumpy Judge Dunn make that decision. I’ve tried zoning cases probably more years than any other judge in the metropolitan area. Most do a great job, there are many that don’t. I think, as shown at lunch, that is what’s very distressing about the inability of our existing institutions to coordinate municipal planning between municipalities to achieve economies of scale and to protect ourselves from what happens in adjacent communities.

**Jack Siegel:** Charlie, those are political decisions rather than lack of statutory authority to act.

**Charles Siemon:** Well, I’m not sure, Jack. In some states there are more facile institutions that provide greater incentives for intergovernmental coordination and I’m not sure that we shouldn’t get some assistance here in this state.

**Jack Siegel:** We have the strongest constitutional provisions and intergovernmental agreements of any state in the Union. We have statutes that implement the constitutional provisions and we have had statutes even before the 1970 constitution that permitted that. What I’m trying to say is that there is adequate statutory authority, and now home rule authority to do practically everything that needs to be done. If people are not doing it, it is either through choice or ignorance, not through lack of legal authority.

**Judge Dunne:** I think also, though, I would support or recommend that there be some funding available to initiate the bench in Cook County. You could tell what a real zoning case is and a zoning case that is just dumped into the court because the leadership of the various municipalities lack the courage to make a decision. That is a problem. And the developers cases, I’ve had cases involving what shade of green should be on a bank sign or what kind of fish should be in the retention pond. I could give you a litany of things that we important, highly paid judges decide on a daily...
basis which shouldn’t even be in court, but there we all are. That’s one of the problems.

Richard Babcock: I do think, Judge Dunne, it is not just the prior speaker who has characterized Illinois as a developers’ state. Norman Williams, who is an outstanding planner and lawyer in the field also describes Illinois as unique in being in favor of the developer. What’s the matter, Jack?

Jack Siegel: Dick, I don’t believe that. Maybe because I’m such a super lawyer, I have a pretty good record defending municipalities. Judge Dunn has heard many of the cases that I’ve tried. He will agree that there is not a bias in favor of developers or against municipalities. I’d almost say quite the contrary. I would think that the majority of cases are won by municipalities. It depends in many instances on the quality of the lawyers. As Judge Dunn says, “the manner in which the case is presented.” I don’t buy this idea that Illinois is a developer state. I’ve read Norman Williams’ books. I’ve all the seven or eight red volumes on my shelf. He keeps saying that if you look at the cases, “it ain’t necessarily so.” I would be interested, if Ed Zeigler is still here, as to whether he actually made a tabulation as to how many municipalities won and how many developers won over the years. Remember, as Judge Dunn says, there is a question of the quality of the cases.

Richard Babcock: Well, that is always hard to distinguish.

Jack Siegel: I don’t think we should leave folks with the impression that the developers win all the time. They don’t.

Rep. Curry: When we talk about Illinois as a developer state with the courts, do we have any empirical evidence about how developers fare at the local level in municipalities lacking comprehensive plans given that local governments can do what they want but may not choose to take advantage of all of those tools? Do we have a
sense as to how the state compares if the developer wants to do something? Whether our local governments are more responsive than average to that developer or less responsive than average? How does the structure of our laws and the political culture for our local governments work — for or against developer mentality?

*Jack Siegel:* I can only speak for my municipalities. I happen to represent the three largest in Cook County and we have fine planners on staff. We constantly update our comprehensive plans. The village boards of Arlington, Schaumburg, and the City Council of Evanston always ask, “how does this compare to the comprehensive plan.”

*Rep. Curry:* But they have a comprehensive plan.

*Jack Siegel:* Absolutely.

*Rep. Curry:* There are many communities as people pointed out, that although they have the opportunity to have a comprehensive plan, don’t take advantage of the opportunity.

*Jack Siegel:* But there are a couple of cases that say the presumption falls on the side of diversity if there is a lack of a comprehensive plan. So the courts have recognized that presumption.

*Richard Babcock:* Well, just barely. Homeowners’ associations like the Marlin Smith case. How often, Judge, do you find cases that come before you wherein they raise the issue of a comprehensive plan?

*Judge Dunne:* Almost invariably the plan is placed into evidence, almost invariably, it is brought to the attention of the court. Some of them are outdated. But it has been in my experience, at least in Cook County, that most have plans. I can’t remember a case where I didn’t see
some kind of comprehensive plan. In fact, the last person to do it is Cook County. The County elements of Cook County, the unincorporated elements of Cook County did not have a zoning plan until very recently and for obvious reasons. It gave the Zoning Board of Cook County a great deal of latitude to do whatever they wished to do. It became quite apparent that this was the reason.

_Clyde Forrest:_

I particularly appreciate the comment that the latitude to have unlimited range of decision is the primary strike against comprehensive planning. One thing that strikes me as we discuss this is that we are putting most of our focus on what is probably 5% to 10% at most of the land use issues that a zoning board or city council deals with. The ones that go to court. They instruct us but there is this whole undercurrent and that is kind of majority, I guess, the camel in all we are seeing is the hump that's there that shows duplicative procedures. It is not unusual in a zoning amendment to require formal hearings of the developer before three different bodies on multiple nights, with multiple hearings and with conflicting recommendations from advisory groups. This is sometimes called the "ping pong" approach to development approval.

Statutorily I think that it can be done properly. And I am sure that all of Jack's client communities do it properly. He wouldn't allow it to go any other way. But I know from 24 years of experience in Illinois that there are many communities where it is done in a way that brings not just planning and land use regulation into a bad light but the whole process of local government. When you talk to citizen groups, they indicate that they are relying on a group of elected officials and appointed officials to pursue their interests in the community on health, safety, and welfare quality of life. They see this sort of mixed message about how the decision is going to be made.

No criteria are established in those communities which don't have plans. Perhaps they don't want to establish criteria because they don't want to be constrained by any limits on their discretion. The function
of legislation is not just to correct problems that courts have had to address. It is to handle the camel. This whole procedure is not being addressed in a competent way in many jurisdictions.

Richard Babcock: Representative Curry, you said that there is a difference to the local governments and the legislature that counts for this reluctance to undertake any major steps to mandate planning or to require consistency or do other things that other states are doing. Yet New Jersey is in many respects similar to Illinois. It is a zoo in New Jersey. New Jersey is driven by municipalities and it is almost as broke as we are. Yet it is engaging right now in a major effort to prepare a statewide plan. Yet I see nothing like that in Illinois at all.

Rep. Curry: Perhaps it has a more enlightened citizenry. I really can’t explain it except, as I say, I think the political culture in this state has been very respectful of local government decisions. When you come to an issue like the siting of landfills, the siting of low-level radioactive waste repositories, the legislature in this state has effectively given local governments veto power over the decision whether there will be siting. Some could argue that those decisions are to be made primarily on environmental grounds, on safety grounds. But the legislature within the last decade has effectively said to local governments: “if you don’t want a landfill or solid waste disposal site within your boundaries, you don’t have to have one.” We’re now looking at the siting of a low-level radioactive waste disposal sites and again, the legislation was drawn with great deference to the local communities. So it may be because in Illinois some of the problems of untrammelled growth have not yet hit the majority of the citizens in a way that makes the politics responsive. That could be a difference. In New Jersey, there have been more environmental problems as a result of lack of adequate planning than we see in Illinois. In Illinois, my recollection is that we had the terrible floods a few years ago, we have continuing problems from the people who happen to buy houses right next to runways at
O'Hare. I guess no one told them that the airplanes do land and take off there from time to time. But the response even to that issue seems to be one of "let's shut down the runways." Maybe we can avoid these problems for homeowners someplace else by virtue of requiring some long-term planning. So I think I'll go visit New Jersey. Maybe the taxpayers will pay for a junket and I'll see if I can find out what makes comprehensive planning a sexier political issue in that area than it seems to be in our own.

Judge Dunne: I'd like to ask a question, Dick, of the panel. What drives development, what causes development and the need for land planning? What is the single cause do you think? I'm interested to know what the panel thinks drives this whole scheme which results in these planning problems and building.

Richard Babcock: Demand and available infrastructure. Sewer, water and price.


Judge Dunne: What do you think?

Clyde Forrest: Profit.

Judge Dunne: You got it and I agree with him. If the state legislature of this state would give some tax incentive to those of us who own wetlands, own buildable lots, own farms to encourage us to keep that property as it is, I would encourage them not to sell it to Dell Webb to build Old Folks East, or West, or North. We wouldn't have so many of these problems. But there are no incentives for anyone to preserve their open lands because money talks ladies and gentlemen. One simple thing the legislature could do is to establish greenbelt tax incentives. I've preached the gospel within Cook County without success and I'm now preaching it in DeKalb County, I'm sure without success. But that's the simple thing
that could be done and I really think that this is something that should be addressed. We all talk about the desirability of good planning and open spaces and recreational uses but no one gives consideration to the owner who is bearing the tax burden of these properties who are zoned to be developed as single family residences for $270,000 per quarter acre. That's the problem and nobody is willing to address it. I'm throwing it out to you now for your thoughts. I suspect that nothing will ever happen but it's something we should all be thinking about.

Jack Siegel:
You know, Judge, there is something called the Constitution lurking in the wings in the discussion of taking places and everything else. Although I'm not nearly as concerned as some people are. I think it's a warning to us, to planners and land use lawyers and municipalities that property rights are still to be considered in this country. To the extent that our plans ignore them, the plans aren't worth a damn.

Richard Babcock:
If you mean by that that a plan which decreases the value of property is not worth considering, I'd challenge you.

Jack Siegel:
Now, Dick, years ago you came up with the theory that maybe there should be compensation where there is down-zoning. I don't believe that. I didn't believe it when you first told me that 30 years ago and I don't believe it today.

Richard Babcock:
Look how farseeing I was.

Jack Siegel:
But, the point is, Nolan and First Evangelical say there is no taking unless you completely destroy any viable economic use of the property. In Illinois, the Van Dine case and the Equity case go even further. Sooner or later my planning friends are going to have to accept the fact that economics is ultimately going to drive the engine of development in this community and in this state. The planning that I've seen frequently ignores
that. As long as that happens planners and planning are generally going to remain in disrepute for a major segment of the population.

Clyde Forrest:

I believe what I said, that profit was the major driving force but I believe also that this is a choice, that there are other driving forces that we can pay greater attention to such as social equity and ecological reality. Lord knows we haven't exhausted our ability to destroy our environment. In looking through some public health data last week on a related research project I’m working on, I was surprised to find that Illinois ranks in the top group of states in 25 of the 26 cancers. We're the only state that ranks consistently in that number of the rate of cancer.

There are relationships here that go far beyond short term profits for the economic motivation. We must start looking at some of these ecological realities and some of these facts that are there for us to look at in making some of the decisions. Consider Larry Christmas’ point about a 45% increase in the amount of land for only 4% of the population. If we really want to be serious about economics, we should be thinking about who is paying for that. We are not paying for public infrastructure now at a rate that it needs to be provided. We’re not maintaining the existing infrastructure. And the tax burden is not going to go away. There has to be some reversal of this idea of individual profit as the driving motivation for the condition of our counties and cities in Illinois. I want to jump on this state in a minute and get off municipalities a little bit when that opportunity comes up.

Richard Babcock:

You want to pick up the issue of the state?

Clyde Forrest:

Sure. The state of Illinois has a typical organizational structure and we’re all aware of this. Our previous speaker referred to the term “vertical integration” and what we’re talking about here is the way decisions get made. Some states are moving aggressively to achieve some vertical integration of state decisions relating to
regional decisions relating to local decisions; they are not overpowering and canceling each other out. Each of these levels is still represented and I think made more effective by that idea of vertical integration but there's the companion of this horizontal integration or coordination.

The state of Illinois does like many municipalities, its building department cancels its street department and its street department cancels its sewer department. In Illinois, the IDOT cancels Department of Conservation policy. EPA tries to draw some things together but its going it's own way. A concept of integration of decision-making horizontally at the state level needs to be pursued.

Florida hasn't found all the answers but I would argue that the schematics at the back of your manual have some of the elements that Florida has adopted. They show the purpose of trying to achieve state-level integration and coordination between their departments. They have moved to the extent of having the state units adopt their own plan for state coordination and then each of the state departments must adopt a functional agency plan. That functional agency plan has to be coordinated with the other state departments. A very simple concept but a very rare concept in all of United States government. There are some agency cooperative agreements between some of our departments for some purposes, but again, they are voluntary. They are not mandated. So horizontal coordination through some procedural mechanism tied to resource management, social equity — responsiveness to the vertical integration input to the state is a way that the state could perhaps set the tone to achieve some better support for rational decision-making across all the issues that we have to deal with.

Richard Babcock: I suspect that one of the basic problems is that Illinois has lost two national representatives in Congress and that's because our population has declined. Therefore, the pressure is not on. The communities are very anxious to get development. They are eager for it, by and large, in Illinois. This may not be true in a built-
up community like Arlington Heights. You don’t have any more of these people coming in that want to put in some low-cost housing. They put it in over in some stranger’s corner.

Jack Siegel: That’s where it belonged. They tried to put in a single family district. They tried to put in multiple housing. It was very simple. That was the only thing the Arlington Heights case was ever about. They found them a nice spot, properly located. It’s a fine development and nobody was ever opposed to it. That was simply a land use question and was decided on fundamental land use principles. We had developed what we called the apartment policy which we had followed in practically every case. I went out to Schaumburg in 1959, we had 150 people. We had a plain tablet to write on and we carefully planned. We were able to get what we consider to be a balanced community. We have the second largest amount of sales tax in the state. We’ve never levied a property tax, We’ve done that through planning. Now everybody says the traffic problems are terrible. Why are they terrible? Because we don’t control the major streets.

To the extent that Clyde says there has got to be some kind of infrastructure planning statewide is obviously so because infrastructure, if it happens at all, is about five years after development. To the extent that the state gets on the stick, IDOT plans for those roads when Schaumburg is growing not after Schaumburg has grown, perhaps some of these problems can be solved. But to think that municipalities don’t plan is wrong. Schaumburg is the perfect example. It’s a planned community. Lots of people don’t like the way it has turned out. We’ve got all the sales tax and the surrounding communities got none but that was because we carefully planned.

Richard Babcock: To what extent do you take into consideration the impact of your development on neighboring communities?
Jack Siegel: We have raised the dollar per student in the school district which encompasses a couple of communities. We had the lowest assessed evaluation whereas now we are the highest. We did that because we planned for industry, for office, for commercial which increased the tax base to the school district which overlaps not only Schaumburg but Hoffman Estates and some of the neighboring communities. Everybody in that area has benefitted from what Schaumburg has done. It's produced jobs for people living in Elk Grove Village.

Richard Babcock: Where do you dump your garbage?

Jack Siegel: We have a private scavenger. We didn't even join the Northwest . . .

Richard Babcock: Where do you dump it?

Jack Siegel: I don't know. I don't worry about it. We've got a long-term contract.

Richard Babcock: Charlie, do you want to add anything to this exposition by Jack?

Charles Siemon: The question is: "what's wrong with Illinois zoning." And I think much of what I've heard today is it's not "what's wrong with Illinois zoning" so much as: "what's wrong with Illinois planning." There are good examples. Whether you are a fan of Schaumburg or not, no one can debate that they thought about where they wanted to go and they went there. As a resident of a nearby municipality, I probably haven't benefitted much — my trip home is now about five minutes longer. So I'm not sure that everybody has benefitted. But I think they are a good example. On the other hand, I can look to the north and northeast of Barrington. I have to tell you that what's happened to the countryside out there and in many municipalities because they haven't looked to the future with what they are doing is really unfortunate. I believe that a structure
that provides either mandatory requirements for planning and criteria for planning and provides funding for planning because I happen to think that funding planning saves us money, if we put in our capital infrastructure. I'd like to see the state have a comprehensive plan directed at providing infrastructure to support the growth which is planned for by municipalities. The metro council model is perhaps the best one. It didn't come in and say "municipalities you have to plan or zone this way, what are you going to do. This is what it's going to cost us all and how are we going to get there, on a greater than local basis."

I think if the State were spending it's money on a coordinated basis, if we were dealing with the economic consequences of those numbers that Larry gave us, I frankly think that Schaumburg would turn out to be a much better prototype of a new activity center than it is. And I agree with you, you make the policy decision that they make and it's a pretty good activity center. It has a good balance of uses but what's wrong is that the infrastructure around it didn't keep pace and isn't keeping pace. I would say, Dick, I look to the experience in New Jersey and Florida and I'm not suggesting that we take that direction but I think we could have a better planning structure at the state level. Start out spending those dollars to support the Schaumburgs, to support whatever community. Then the regional level ought not to be delving into municipal planning matters where there are conflicts between municipal objectives. We ought to find an efficient way, an incentive to get the communities that don’t do a good job, to participate.

Richard Babcock: Are there any states where you do have that incentive?

Charles Siemon: I'm struck by the New Jersey state plan which says that they are going to prioritize their state capital dollars. When they have a dollar to spend and they have to make a choice, they'll spend it on those municipalities that have a plan and are working with their adjacent municipalities. That's where that dollar will go. That assumes that there is not going to be a
ready source of dollars to serve every need and I think that’s a good incentive. And we’ve seen some positive responses in the communities because they’ve started lining up to say “hey, let’s get ourselves at the front end of this line for additional municipal dollars.”

Richard Babcock: Clyde, do you have anything to add to that?

Clyde Forrest: The gap between what we legislate and what we regulate and what actually happens is something we don’t want to overlook — that brings me nearly full circle I think. Public awareness and support is still fundamental to this idea. My idea is basically making government more effective across the board and at every level. By effectiveness I really mean using revenues more rationally. Regulating only those things that it needs to regulate for the health, safety or welfare of the community and forgetting about the things that clutter the agendas of plan commissions and city councils all over this state. If city councils and regional bodies and state legislative bodies and state agencies dealt more with policy issues instead of just continual fire-fights and doing their annual budgets, I think we would all see an amazing improvement in rationality and effectiveness.

Richard Babcock: Let me turn to a few specific questions. These are the gut issues that some of you may have come here hoping to get answers to. I’ll ask Jack. Can a home rule community totally ban a particular use from its borders in industrial use or commercial use?

Jack Siegel: The cases seem to indicate no. At least the cases prior to home rule enactment. I think those cases that are cited on constitutional grounds are good law even with the home rule. In other words, it is impossible in a community of any reasonable size to ban outright any use. We heard some discussion this morning in Steve’s presentation that that’s still the law. I don’t think home rule changes that at all because as I say there’s a basic constitution lurking out there somewhere. I’m
not talking about free speech. I don’t know that we have to have a trailer park in every community but I would think that an opportunity to put in a trailer park and an opportunity to show why a trailer park should not be banned has to be made available. Even if it’s by special use rather than districting or Euclidean. The opportunity to put in any type of industrial or commercial use ought to be there for most communities. I’m talking about home rule communities. Get out to Riverwoods, 3,000 people, I don’t know that Riverwoods has to be forced to put in a massage parlor, a landfill or a trailer park. But if you get into a town 75,000, legally, I don’t think we can say you don’t have an opportunity to show that there’s a logical place for it and that it will not infringe on the public health and safety.

I think Ed talked about the tests, the application of the LaSalle National Bank criteria and Judge Dunn decided the case in which I was involved and was properly held that underlying zoning may be invalid but the proposed use is not reasonable. There is a two tier test in Illinois on zoning cases. If you’re a plaintiff, you’ve got to show not only that the underlying zoning is unreasonable but that your proposed use is reasonable. That may be his builder’s remedy but you’ve got to first show that the underlying zoning is unreasonable before you even get that remedy. I think in direct answer to your question, I don’t think home rule changes the fundamental proposition that the property owner has a right to show why he should be permitted to use his property in a specific manner.

Richard Babcock: Judge Dunne, have you ever had a case in which the issue was solely aesthetics? How did it come out?

Judge Dunne: I touched on it in my earlier remarks, while I was being facetious, that was an actual case. The shade of green on the bank sign in the village. The aesthetics committee of Glenview felt that the shade of green on the alpine green bank sign was an inappropriate shade of green. That’s purely aesthetics. That’s about as pure as it can get. We had a decision on that. I don’t know
what the decision was. We are seeing more and more cases dealing with zoning based on aesthetics from the standpoint of light and air, especially in the large metropolitan area. I decided one not long ago along LaSalle Street. Two old row houses and the principal, the zoning board granted it, I can't remember what happened. I refused to allow the building on the ground that there was too much obstruction placed on the land and would interfere with the light and air residing in the new development. We are starting to see some of those which are pretty aesthetic. I also had a case recently out near Rollo where the fight was over whether the exhaust vents from the bathroom facility should be on the front of the house or on the back of the house, which I guess you would also consider that aesthetic.

Richard Babcock: Vision you mean?

Judge Dunne: Yes, the developer was offended by the owner of the property building his home so that there were white caps on the front of the house as opposed to the back of the house. And the requirements of the building subdivision clearly required these vents to be on the back of the house. We get those kinds of things.

Richard Babcock: I think these "pretty committees" are outrageous. You find them in the suburbs. The suburbs are supposed to be the last bastion of privacy and freedom and here are these suburbs requiring a guy to come in and show them a permit when he already has a building permit and he's allowed to put a house up there but they won't let him put up an "A" frame.

Judge Dunne: If you drive around communities, you’ll find in various communities houses that are totally offensive to the neighborhood but yet are considered to be architectural landmarks by the people that drive their Porsches by there everyday. A person has the right to build on his land whatever he wants to build.