

*Sprawl and Fair Housing:
New Jersey's Unfinished Agenda*

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The Annual Isadore Caneub
Memorial Lecture in Planning
New Brunswick, New Jersey
October 31, 2002

I have spoken in over 120 metropolitan areas in 36 states in the last decade. Though each community is unique, the problems regions face are typically the same: suburban sprawl and urban disinvestment, racial discrimination, concentrated poverty. And the policy recommendations I usually offer are similar: regional, anti-sprawl land use and transportation planning; regional fair share affordable housing; and regional tax base sharing or more equitable state revenue-sharing.

This is my eighth time in New Jersey, having previously spoken in Newark, Camden, Trenton, Atlantic City, and New Brunswick. For me it's always a change of pace to be in New Jersey, because you are already addressing these issues in a serious way here.

- Affordable housing. The path-breaking *Mt. Laurel* decisions, the Fair Housing Act of 1985, and the work of the Council on Affordable Housing represent an effort that is unmatched at any statewide level.
- The New Jersey State Plan. This is probably the only state (including national growth management leaders like Oregon and Florida) which has a state-wide land use plan.
- State revenue sharing to offset great local fiscal inequities, particularly that targeted on public schools through the *Abbott* decision, is significant.

Yet New Jersey may be like the coach who talks a good game, but who must ultimately asked "well, are you winning?" Despite what someone may have told us in our youth, neither sports nor public policy are about "building character." As Vince Lombardi said, "Winning isn't everything. It's the only thing."

Grading New Jersey's Efforts

So let's examine evidence as to whether, with all its efforts, New Jersey is winning or losing. I'll take the three issues in reverse order of importance.

State revenue sharing: The newly formed New Jersey Regional Coalition has commissioned a very important study, *New Jersey Metropatterns*, by Myron Orfield, that will be released shortly. As a measure of fiscal disparities among local governments, Myron reports that in 1993 the tax base per resident of the wealthiest towns was over six times higher (a ratio of 6.3 to 1) than the tax base per capita of the poorest towns. By last year the disparity between the wealthiest and poorest had widened to almost seven to one (a ratio of 6.8 to 1). State revenue sharing substantially offset this revenue disparity, but even with state revenue sharing the gap widened from a ratio of 3.9 to 1 to a ratio of 4.5 to 1 in just six years.

In other words, despite state revenue sharing, the revenue gap between the wealthiest and the poorest municipalities is widening steadily. You're losing ground in terms of revenue equalization.

The State Plan: The State Plan (first adopted in 1992) was the product of a complex process of voluntary "cross-acceptance" among 566 cities, towns, and townships, brokered by the State Planning Office. Though the state provides some incentives, compliance by local governments is purely voluntary.

How have you done under the State Plan? A legitimate question is: Compared to what? Let me compare New Jersey's land use patterns to New York and Pennsylvania, two neighboring states, and to Washington and Oregon, considered national leaders in anti-sprawl growth management.

Table 1 matches growth in population with growth in developed land from 1992 to 1997 (the most recent year for which the National Resources Inventory provides estimates of developed land).

In five years New Jersey's developed land grew over three times as fast (13.7 percent) as New Jersey's population (4.3 percent). That was a much less voracious rate of consumption of land compared to population growth than either New York (over eight times) or Pennsylvania (over nine times) that have no semblance of state growth management. However, New

Jersey's record was well short of Washington's performance (1.3 times) or Oregon's (1 to 1) – states with strong, state-regulated, mandatory systems.

Table 1
Growth of Population vs. Growth of Developed Land
For Selected States from 1992 to 1997

State	Population Growth	Land Growth	Land-to-Population Growth Ratio
New Jersey	4.3%	13.7%	3.2 to 1
New York*	1.4%	11.9%	8.5 to 1
Pennsylvania	1.7%	15.9%	9.5 to 1
Washington	10.1%	13.2%	1.3 to 1
Oregon	9.7%	9.3%	1.0 to 1

**without New York City*

During 1992-97, New Jersey developed 0.63 acres for every additional resident. That was far below the land consumption rate of New York (2.12 acres) or Pennsylvania (2.73 acres), but measurably above Washington's rate of consumption (0.47 acres) or Oregon's (0.36 acres). And New Jersey's rate of land consumption was twice as high during the first five years under the State Plan (as the local economy was heating up) than it had been during the five years before the plan's adoption!

The disparity is even more striking in light of the fact that, with half its land permanently protected as national parks and national forests, Oregon had only developed four percent of the remainder by 1997. With a minuscule three percent of New Jersey's land under federal ownership, New Jersey had developed 39 percent of the remainder.

By another measure, during that same five-year period, with more than twice the rate of population growth, Oregon lost farmland at half the rate (- 0.9 percent) that New Jersey did (- 1.8 percent).

The Garden State Preservation Trust's ambitious commitment to preserve another million acres over a 10-year period is laudable. However, even if that goal is achieved (and New Jersey Future estimates that the state will reach two-thirds of its farmland preservation target at best), New Jersey will have lost over 350,000 acres, or 40 percent, of its current farmland.

In short, with its voluntary State Plan, New Jersey compares very favorably with plan-less Pennsylvania and New York, but doesn't measure up to the achievement of Washington and Oregon with their strong regulatory regimes. And you are literally losing ground.

Fair share housing: Since *Mt. Laurel II* (1983), according to the Council on Affordable Housing, 28,855 new affordable housing units have been built and 11,249 affordable units have been rehabilitated under either the courts' or COAH's supervision. On the one hand, that's an impressive achievement. On the other hand, that's less than five percent of all new housing units built since 1983 (an estimated 625,000).

Forty thousand affordable units is about the same level produced by the mixed-income housing policies of just one county – Montgomery County, Maryland, a recognized pioneer in mixed-income housing. Over 11,000 of Montgomery County's affordable units are the result of its Moderately-Priced Dwelling Unit (MPDU) ordinance – a mandatory, *inclusionary* zoning law that New Jersey advocates have labeled “Growth Share.” Since 1973 Montgomery County has required that 12.5-15 percent of new housing must be affordable within any new housing development of 50 or more units. (The floor is currently being lowered to a minimum of 35 units.) Moreover, the law requires that one-third of the “MPDUs,” or five percent of every subdivision, must be sold to its county-wide public housing agency. Thus, the county's housing assistance policies reach below “workforce” housing to serve “welfare-to-workforce” families as well.

Had Montgomery County's “Growth Share” formula been in effect in New Jersey, it would have yielded over 46,000 newly constructed affordable units, or about 60 percent more than Mt. Laurel-COAH compliance produced. If the New Jersey Supreme Court's 80-20 standard were applied rather than Montgomery County's 85-15 standard, a New Jersey Growth Share law would have resulted in about 62,500 new affordable units – more than twice as many as Mt. Laurel/COAH policies.

And – a crucial step – were Montgomery County's practice of having its public housing authority acquire one-third of the MPDUs also adopted, thousands of very low-income families would have been integrated into new, overwhelmingly middle-class neighborhoods. Instead, with the exception of older city housing rehabilitated under Regional Contribution Agreements (RCAs), New Jersey's policies rarely aid desperately needy families.

The Mt. Laurel/COAH policies have produced substantial amounts of affordable housing as shelter. How well has the Supreme Court’s primary goal been achieved – greater racial and economic integration?

Housing Policy *Is* School Policy

This September the Century Foundation released an important book, *Divided We Fail*, outlining the dire consequences of greater economic segregation in the nation’s public elementary schools. For that book I analyzed enrollment trends in all of the country’s elementary schools during the 1990s by all 3,042 counties, by 320 metro areas, and by the 50 states. The state figures are intriguing because they provide an overview of where all public school children of different racial and income groups live.

Table 2 lists the five states with the most segregated elementary schools for African American, Hispanic, and low-income pupils. The segregation index (a common “dissimilarity index”) uses a scale of 0 to 100 on which 100 equals total apartheid. The higher the score, the more segregated the schools are. In brackets I’ve listed each state’s score at the beginning and the end of the 1990s.

Table 2
Five States with Most Segregated Elementary Schools
At Beginning (1989-91) and End of the 1990s (1997-99)

<u>Black Pupils</u>	<u>Hispanic Pupils</u>	<u>Low-Income Pupils</u>
Michigan [84-84]	New York [81-79]	New Jersey [61-62]
Illinois [81-82]	Illinois [77-75]	New York [na-59]
Wisconsin [82-81]	Rhode Island [75-73]	Connecticut [55*-58]
New York [79-80]	Pennsylvania [77-73]	Michigan [51**-55]
New Jersey [75-77]	New Jersey [75-73]	Rhode Island [54-54]
*1991-93	** 1992-94	

Statewide, New Jersey ranked as having the 5th most segregated elementary schools for blacks (and getting worse), 5th for Hispanics (and getting slightly less bad), and 1st for segregation of low-income pupils (and getting slightly worse).

Why is this important? It is vitally significant because, beginning with sociologist James Coleman’s massive study *Equality of Educational Opportunity* (1966), researchers have consistently found that the biggest

factor predicting success or failure in school is not expenditures per pupil, quality of school facilities, or even teacher qualifications, but who the kids are. More precisely, the key determinants are the socioeconomic status of a child's parents and of the child's classmates' parents.

In fact, Coleman found that “the educational resources provided by a child's fellow students are more important for his achievement than are the resources provided by the school board.” So important are fellow students, the report found, that “the social composition of the student body is more highly related to achievement, independent of the student's own social background, than is any school factor.”¹

Poor children learn best when surrounded by middle-class classmates. That finding has been confirmed by scores of studies, including my own. Most recently, I studied socioeconomic status and achievement in all sixty elementary schools in Madison and surrounding Dane County, Wisconsin. I found that shifting a low-income pupil from a school with 80 percent low-income classmates to a school with 80 percent middle-class classmates would increase the average odds of that child's reaching proficient or advanced levels in the standardized state tests by 30 to 48 percentage points.

For four decades there has been no more consistent finding of educational research than the dominant influence of socioeconomic status nor has there been any research finding more consistently – I would say, even deliberately – ignored by most politicians and many educators. They will not deal with the racial and class substructure of American society.

From today's vantage point or from 1985 (when it was enacted), New Jersey's Fair Housing Act was not intended to challenge that substructure either. Beyond having read an excellent history of the *Mt. Laurel* cases and that legislation, I base my judgment on two of the Act's provisions.

First, it contains not only an income ceiling for defining affordable housing but also an income floor. In other words, unlike Montgomery County's program, the housing assistance is not designed to help very low-income families.

¹ Quoted in Richard D. Kahlenberg. *All Together Now: Creating Middle-Class Schools through Public School Choice*. Brookings Institution Press: Washington, DC. (2001), page 28. Kahlenberg's 33 pages of footnotes to chapters 3 and 4 catalogue most major studies on the effects of racial and economic school integration.

Second, Regional Contribution Agreements allow wealthy suburbs to sell back up to half of their fair share allocation to poor cities. COAH reports that 7,772 RCA-financed units have been created (primarily through rehabilitation) in high-poverty cities.

Selling Back Failure

RCA proponents argue that suburban fair share targets are higher than they would otherwise be because the cities' needs are factored into the regional formula, that the cities are only voluntarily receiving back a portion of their own needs financed by suburban money (about \$20,000 a unit), and that RCAs have provided an infusion of over \$150 million of outside investment into city housing markets (which has undoubtedly leveraged many tens of millions of dollars more.)

All that is undoubtedly true. However, two years ago I reviewed a list of 72 RCA agreements to date. The 57 "sending" communities averaged almost three times the average income level of the "receiving" communities. The percentage of poor children in the wealthy, "sending" suburban school districts averaged just 6 percent; the percentage of poor children in the poverty-impacted, "receiving" city school districts exceeded 71 percent. Whatever else they may have achieved, rather than opening up mainstream opportunities, the RCAs literally cemented 15,000 to 20,000 poor children into poverty-impacted neighborhoods and school where they are doomed to fail in overwhelming numbers!

And you cannot spend enough money to overcome the effects of concentrated poverty. \$400 million in Abbott funds for the Camden schools? The state of Missouri spent a billion dollars extra in Kansas City's poverty-impacted schools with no discernible improvement. Meanwhile, on the other side of the state, 12,500 inner-city children from St. Louis annually attend 16 suburban districts (also at state expense), outperforming even those city students attending St. Louis's elite magnet schools.

What should you do with \$400 million in Abbott funds? A regional housing authority or state agency could buy 4,000 homes in suburban Camden, Burlington, and Gloucester counties at \$100,000 a piece (about 80 percent of the today's average price in the three-county area, excluding Camden itself). That would allow three-quarters of Camden's poor families to move with their children into safer neighborhoods with good, middle-class schools, and better access to where the job supply is growing.

The city of Camden could start over again, rebuilding its middle-class on the foundation of its high-quality, institutional employers (Rutgers-Camden, hospitals, state and federal agencies, etc.) and marketing its prime, riverfront location across the river from Centre City Philadelphia.

Is anybody in state government thinking in those terms? Certainly many, including your new governor, have talked about “re-gentrifying” Camden. But is anybody truly championing racial and economic diversification of Camden’s suburbs?

To sum up: by all evidence that I can see, the Mt. Laurel/COAH process has failed to advance greater racial and economic integration. Or maybe it has been a splendid success in achieving what New Jersey’s leaders have *really* wanted?

The “Home Rule” Cop-Out

Last week Governor McGreevey held his widely publicized Smart Growth Summit. He asked his assembled cabinet officers for ideas on how to get local governments to comply voluntarily with the State Plan. As reported to me, several Cabinet members cautioned him to remember that New Jersey is a strong “home rule” state.

Let me tell you. Every state is a strong “home rule” state, except maybe some places out West which fancy themselves as “no-rule” states. I’ve never met state legislators who don’t profess to be totally for “home rule” ... except whenever they aren’t. And they aren’t whenever they have a burr under their saddle or an itch to scratch. Then they pass laws telling local governments what they must do.

Let me offer an expert’s opinion. Professor Gerald Frug of Harvard Law School has written an excellent book, *City-Making*, that was published just down the road by Princeton University Press. He writes that

“Cities have only those powers delegated to them by state governments, and traditionally these powers have been rigorously limited by judicial interpretation. Even if cities act pursuant to an unquestionable delegation of power by the state, their actions remain subject to state control. Any city decision can be reversed by a contrary decision by the state, a process the legal system calls ‘preemption.’ Moreover, state power is not limited simply to the ability to determine the scope of city decision-making authority or to second guess the exercise of that authority whenever it seems

appropriate to do so. States have absolute power over cities, and the extent of that power has been extravagantly emphasized by the Supreme Court of the United States:

“The State ... at its pleasure may modify or withdraw all [city] powers, may take without compensation [city] property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the State is supreme, and its legislative body, conforming its action to the state constitution, may do as it will, unrestrained by any provision of the Constitution of the United States.”

“In an attempt to limit this subservience to the state, most state constitutions have been amended to grant cities the power to exercise ‘home rule.’ But cities are free of state control under home rule only on matters purely local in nature. And, nowadays, little if anything is sufficiently local to fall within such a definition of autonomy. As a result, cities are generally treated by American law as ‘creatures of the state.’”

This is true everywhere, and is particularly applicable to anti-sprawl, growth management goals. I’ve already discussed how New Jersey’s State Plan is really a compilation of 566 local plans developed through a process of voluntary “cross acceptance.” But effective growth management faces another hurdle common in New Jersey. Local zoning codes and infrastructure policies don’t legally have to conform to adopted land use plans. In fact, the common attitude throughout the Northeast is “planning is good as long it doesn’t count for anything.”

Oregon has the most effective, anti-sprawl, state land use laws. Oregon also has a lot of local governments – 42 counties and 240 municipalities. However, there’s nothing “voluntary” about Oregon’s system. State law requires local governments to develop land use plans that meet state-established goals, including drawing rigorous “urban growth boundaries.” Upon approval of the local plan by the Oregon Land Conservation and Development Commission, local governments must conform their zoning codes and maps, infrastructure investments, and other relevant local policies to the approved land use plan.

Oregonians embrace “home rule” no less than New Jerseyans; indeed, there are many Oregonians that are more “no-rule.” But Oregon has had politically courageous governors and legislators who have fought the hard battles and won.

Maryland Governor Parris Glendening was the luncheon speaker at last week’s Smart Growth Summit. Governor Glendening coined the phrase “Smart Growth” for his program in Maryland. Maryland also relies on incentives – though very substantial state incentives – to gain local governments’ adherence to state growth management goals.

But there is a vital difference between Maryland and New Jersey. County government, not municipal government, is the primary local government in Maryland. There are entire counties, for example, Baltimore County (750,000 residents in 600 square miles), without a single municipality. It’s just all county government – and unified, county-wide school districts – from border to border.

Long before Smart Growth, most county governments adopted county-wide land use plans. The typical local planning jurisdiction in Maryland is 455 square miles. Maryland counties are Big Boxes. The average local planning jurisdiction in New Jersey is less than 14 square miles in size. New Jersey municipalities are little boxes.

How can New Jersey expect to have an effective, anti-sprawl State Plan by relying on the *voluntary* actions of 566 little boxes that act as if they were sovereign within their own world – a world that is typically 14 square miles in scope? With their heavy reliance on property taxes, little box municipalities are rewarded for chasing desirable “rateables” – commercial, industrial, and high-end residential development – despite Smart Growth.

In response to polls, 67 percent of New Jerseyans want to steer new growth towards existing population centers and away from open land and farmlands. For that matter, 71 percent support setting aside 15 percent of all new subdivisions as affordable housing. How can your citizens’ desires be achieved as well within a system of 566 little boxes?

Let’s return to that list of most segregated states: New Jersey, New York, Pennsylvania, Connecticut, Rhode Island, Michigan, Illinois – all are little box states.

Across the USA, the more metropolitan regions are fragmented into little boxes, the more segregated their societies are by race and class. The unspoken mission of most little box town councils and most little box school boards is “to keep our town (or our schools) just the way they are for people just like *us* – whoever “us” happens to be.

By contrast, Big Box city councils and school boards tend to act with a sense of and accountability to a broader, more diverse constituency that must be served. Big box communities are typically less segregated by race and class and have higher levels of social and economic mobility.

In my judgment, New Jersey will never achieve either effective growth management or greater racial and economic integration through fair share housing by voluntary action of its 566 little boxes. You must turn to the only Big Box that you have – state government. Either the governor and legislature or the courts must exercise their constitutional responsibilities to lay down binding “rules of the game” for your 566 little boxes.

That will require building a strong grassroots movement to push for such changes. The recent formation of the New Jersey Regional Coalition, bringing together groups like Trenton’s ISLES, New Jersey Future, and Newark’s faith-based Jubilee movement, and committed to changing the “rules of the game” is a key step in this direction.

New Jersey’s 566 little boxes are the refuge for your darkest fears. State government – your Big Box – is the bridge to achieving your vision of a sustainable and more socially just New Jersey.