

1-1-2003

## The Affordable Housing Element in Comprehensive Plans

Daniel R. Mandelker

Follow this and additional works at: <http://lawdigitalcommons.bc.edu/ealr>

 Part of the [Housing Law Commons](#)

---

### Recommended Citation

Daniel R. Mandelker, *The Affordable Housing Element in Comprehensive Plans*, 30 B.C. Envtl. Aff. L. Rev. 555 (2003), <http://lawdigitalcommons.bc.edu/ealr/vol30/iss3/6>

This Symposium Article is brought to you for free and open access by the Law Journals at Digital Commons @ Boston College Law School. It has been accepted for inclusion in Boston College Environmental Affairs Law Review by an authorized administrator of Digital Commons @ Boston College Law School. For more information, please contact [nick.szydowski@bc.edu](mailto:nick.szydowski@bc.edu).

# THE AFFORDABLE HOUSING ELEMENT IN COMPREHENSIVE PLANS

DANIEL R. MANDELKER\*

**Abstract:** The New Jersey Supreme Court's *Mount Laurel* doctrine requires all municipalities in the state to accept their fair share of regional housing need. Planning statutes that require housing elements in comprehensive plans have adopted the fair-share doctrine as a basis for assigning local affordable housing obligations. This Article argues that the assignment of numerical fair shares is not an acceptable basis for affordable housing policies in comprehensive plans. Alternate strategies should be considered.

## INTRODUCTION

The name of this Symposium is "Twists in the Path from *Mount Laurel*," and I want to talk about the *Mount Laurel*<sup>1</sup> fair-share doctrine and how it has been included in comprehensive-plan legislation. There is no speaker from New Jersey at this Symposium, but I have worked with Professor John Payne at the Rutgers Law School as co-author and colleague, who has been very influential in *Mount Laurel* litigation, and I want to bring you his insights on *Mount Laurel*<sup>2</sup> as well as some comments of my own.<sup>3</sup>

The reason I'm talking about the *Mount Laurel* doctrine is that the New Jersey court developed a methodology for dealing with affordable housing problems that has been picked up and used nation-

---

\* Stamper Professor of Law, Washington University at St. Louis. Professor Mandelker is the author of *Land Use Law* (5th ed. 2003) and co-author with Professor John Payne of a widely-used law school casebook, *Planning and Control of Land Development* (5th ed. 2001), both published by Lexis Publishing. This Article is based on a speech given at a Symposium entitled "Twists in the Path from *Mount Laurel*," held at Boston College Law School on January 16, 2003.

<sup>1</sup> *S. Burlington Township NAACP v. Township of Mount Laurel*, 336 A.2d 713 (N.J. 1975).

<sup>2</sup> John M. Payne, *Remedies for Affordable Housing: From Fair Share to Growth Share*, LAND USE L. & ZONING DIG., June 1997, at 3. Many of the ideas in this article appear in this speech.

<sup>3</sup> I also want to thank Stuart Meck and Peter Buchsbaum for their valuable ideas and comments. Of course, the ideas presented are my own. I would also like to thank Arianne Aughey for her editorial assistance.

ally in many parts of the country.<sup>4</sup> After looking at that methodology again when preparing for this Symposium, and beginning with the assumption that I would tell you why it is such a good idea, I came to something of the opposite conclusion. I've come here to refute or question some of the conventional wisdom in the field insofar as the affordable housing idea is concerned.

## I. THE FAIR SHARE CONCEPT

*Mount Laurel* adopted a regional fair-share concept, which is the notion that every municipality must bear its fair share of regional affordable housing need.<sup>5</sup> This was a very simple doctrine. It was very attractive when it was announced, first in the mid-70s and reaffirmed in the early 1980s. All of us who were there then applauded it and were pleased about it and worked hard to reinforce it and carry it through. What is unfortunate is that *Mount Laurel* is a leading case without a following.<sup>6</sup> And I think it is a leading case without a following because I think it has some problems in the way it's been implemented and carried out in the New Jersey context.

I want to talk about the *Mount Laurel* doctrine and how it has been implemented, and then I want to talk about the comprehensive plan and how planning statutes have accepted the fair-share strategy.

There really are only about twelve states that actually mandate the adoption of a comprehensive plan and that zoning be consistent with the comprehensive plan.<sup>7</sup> There are about twenty-five states that require housing elements in local comprehensive plans.<sup>8</sup> That's a different story. Some of them follow the *Mount Laurel* idea, but some do not. I want to talk about those that follow the *Mount Laurel* idea.

The *Mount Laurel* fair-share doctrine is a case-specific doctrine that grew out of the *Mount Laurel* case. As you may know, New Jersey is the most highly urbanized state in the country.<sup>9</sup> It consists of some

<sup>4</sup> See, e.g., Charles B. Ferguson, Jr., *Hamlets: Expanding the Fair Share Doctrine Under Strict Home Rule Constitutions*, 49 EMORY L.J. 255, 257 (2000); Peter H. Schuck, *Judging Remedies: Judicial Approaches to Housing Segregation*, 37 HARV. C.R.-C.L. L. REV. 289, 309 (2002).

<sup>5</sup> See *S. Burlington Township NAACP*, 336 A.2d at 727-28.

<sup>6</sup> Payne, *supra* note 2, at 3.

<sup>7</sup> Stuart Meck, *The Legislative Requirement that Zoning and Land Use Controls Be Consistent with an Independently Adopted Local Comprehensive Plan: A Model Statute*, 3 WASH. U. J.L. & POL'Y 295, 306-15 (2000); see also MASS. GEN. LAWS ch. 41, § 81D (2000).

<sup>8</sup> See generally STUART MECK ET AL., REGIONAL APPROACHES TO AFFORDABLE HOUSING (Am. Planning Ass'n, Planning Advisory Service Report No. 513/514 2003).

<sup>9</sup> Terrence D. Moore, *New Jersey's Special Place: The Pinclands National Reserve*, N.J. LAW., Apr. 1995, at 25-26.

566 municipalities laid out under the English system.<sup>10</sup> About 460 of these municipalities are very small. Because they are so very small, and because the state is so highly urbanized, this situation created an environment in which municipalities could be highly exclusionary and could use their land use restrictions to keep out affordable housing. That was true in Mount Laurel, a suburb of Camden across the river from Pennsylvania, where the NAACP sued to challenge the township zoning ordinance as exclusionary.<sup>11</sup> This lawsuit was focused on making land available in the suburbs for housing production, and the *Mount Laurel* doctrine has been carried out pretty much to implement that idea. This doctrine assigns housing requirements to municipalities based on an affordability test,<sup>12</sup> and in so doing has become a preemptive strike that overrides the planning process which is ordinarily used to make land use decisions.

## II. THE PLANNING PROCESS

The next question is to decide what planning does. I've said that *Mount Laurel* provides a preemptive strike against the planning process with the implication that this is not a good idea and that putting planning priorities first is preferable. As it has been pointed out at this Symposium, the comprehensive plan is the overall guide to zoning and the development of land within a community.<sup>13</sup> It provides general policies for carrying out development in a community and balances different needs within the community against each other: the need for housing, the need for environmental protection, the need for growth, and, in some cases, the need for restriction.<sup>14</sup> That is the comprehensive plan.

To carry out the comprehensive plan, statutes always require what we call "elements" to be included in the comprehensive plan document.<sup>15</sup> All states require a land use element and a transportation element. The housing element is a newer idea. As I said, about

---

<sup>10</sup> Henry A. Span, *How the Courts Should Fight Exclusionary Zoning*, 32 SETON HALL L. REV. 1, 62 n.259 (2001).

<sup>11</sup> *Mount Laurel I*, 336 A.2d 713, 717 (N.J. 1975).

<sup>12</sup> *Id.* at 724.

<sup>13</sup> Mark Bobrowski, *Affordable Housing vs. Open Space: A Proposal for Reconciliation*, 30 B.C. ENVTL. L. REV. 497, 500 (2003).

<sup>14</sup> James E. Holloway & Donald C. Guy, *Smart Growth and Limits on Government Powers: Effecting Nature, Markets, and the Quality of Life under the Takings and Other Provisions*, 9 DICK. J. ENVTL. L. & POL'Y 421, 443-47 (2001).

<sup>15</sup> Meck, *supra* note 7, at 306-15 (outlining the legislative requirements of comprehensive plans in twelve states).

twenty-five states require the housing element in their comprehensive plans.<sup>16</sup> What is different about the housing element, as compared with the other comprehensive plan elements, is that the other elements the statutes prescribe must include a policy on a particular issue, such as transportation, but the statute does not tell municipalities what that policy should be. The housing element tells municipalities what their housing policy should be,<sup>17</sup> and so it is what we call a “substantive planning element” and not an element that simply requires a planning process. For that reason, there can be a conflict between what the housing element requires for housing and what the rest of the comprehensive plan requires for other problems in the community.

Judicial deference has been mentioned at this Symposium, and of course that is an important point to remember. If we go from a site-specific program, like the Massachusetts Anti-Snob Zoning program,<sup>18</sup> and move to a program that relies on comprehensive planning policies, we will then find that courts will pay judicial deference to the policies that are adopted.<sup>19</sup> That gives municipalities a certain freedom in deciding what their housing policy should be. In California, for example, a comprehensive plan adoption is legislative,<sup>20</sup> and courts do generally pay deference to what is in the comprehensive plan.<sup>21</sup>

There has also been talk here about applying a presumption of correctness to local land use decisions, and judicial deference to planning decisions is an example of how courts apply the presumption. In many cases the presumption is deservedly applied. But, in the case of affordable housing, we sometimes have to be aware of the necessity for using policies and programs and legal strategies that reverse that presumption or somehow qualify it. To some extent, that is

---

<sup>16</sup> See *supra* note 8 and accompanying text.

<sup>17</sup> See, e.g., CAL. GOV'T CODE §§ 65300, 65302 (West 1995); FLA. STAT. ch. 163.3177(6)(f)(1)(d) (2000) (requiring that all municipal comprehensive plans include a housing element with plans for the “provision of adequate sites for . . . housing for low-income, very low-income, and moderate-income families”); N.J. STAT. ANN. §§ 52:27D-301 to -329 (West 2001 & Supp. 2002).

<sup>18</sup> Low and Moderate Income Housing Act, MASS. GEN. LAWS ch. 40B, §§ 20–23 (2000).

<sup>19</sup> James H. Wickersham, Note, *The Quiet Revolution Continues: The Emerging New Model for State Growth Management Statutes*, 18 HARV. ENVTL. L. REV. 489, 535–36 (1994).

<sup>20</sup> CAL. GOV'T CODE § 65301.5 (West 1995).

<sup>21</sup> See *Buena Vista Gardens Apartment Ass'n v. City of San Diego Planning Dep't*, 220 Cal. Rptr. 732, 737 (Ct. App. 1985) (noting that valid precedent prohibits courts from examining the “merits” of an element in the comprehensive plan).

the approach in the Massachusetts Snob Zoning law. So if we go to the comprehensive plan as a way of providing affordable housing, we're going to need specific and correct legislative directives that can specify how the affordable housing goal is to be achieved.

The consistency issue has also been mentioned, by which we mean a requirement that zoning must be consistent with the comprehensive plan, including the housing element in the plan.<sup>22</sup> But there's one more point to make here that comes out of the earlier discussion, which is important in understanding the consistency problem, and in developing a zoning strategy that can make the housing element a reality. We are still using the Standard Zoning Act<sup>23</sup> strategy to implement the comprehensive plan in many states. That Act created an eighty-year-old strategy of pre-zoning municipalities with zoning districts that allowed development to occur as a matter of right as permitted by the zoning-district restrictions.<sup>24</sup> We have not, in many places, moved beyond this strategy to develop other types of zoning strategies, such as mixed-use development, and master-planned development, that can provide a basis for affordable housing projects.

These new ideas have not always been given a place in affordable housing strategies and in the zoning process, which provide the basis for housing development. So I think in using and implementing the housing element in a comprehensive plan, we have to think through the kinds of strategies we need to use to make that element a success.

### III. THE HOUSING ELEMENT

Let's talk about the housing element. I want to talk about the California<sup>25</sup> and New Jersey<sup>26</sup> statutes, and I also want to talk about the model proposed by the American Planning Association in its new model planning and zoning legislation.<sup>27</sup> The California and New Jersey statutes, and the model law, all use the *Mount Laurel* fair-share approach in prescribing the housing element for local comprehensive

---

<sup>22</sup> Bobrowski, *supra* note 13, at 500.

<sup>23</sup> STANDARD ZONING ENABLING ACT § 3 (U.S. Dep't of Commerce, rev. 1926).

<sup>24</sup> *Id.* § 8.

<sup>25</sup> CAL. GOV'T CODE § 65583 (West Supp. 2002).

<sup>26</sup> N.J. STAT. ANN. §§ 40:55D-28, 52:27D-310 (West 2000 & Supp. 2002).

<sup>27</sup> *Sec AM. PLANNING ASS'N, GROWING SMART LEGISLATIVE GUIDEBOOK: MODEL STATUTES FOR PLANNING AND MANAGEMENT OF CHANGE* § 4-208.9, at 4-92 (Stuart Meck ed., 2002) [hereinafter *APA GUIDEBOOK*] (discussing the contents of a "housing element"); MECK ET AL., *supra* note 8, at app. (summarizing the housing elements in various comprehensive planning statutes).

plans, and the assignment of housing need is done on a state or regional basis.<sup>28</sup> A state agency, the Council on Affordable Housing, has this responsibility in New Jersey.<sup>29</sup> In California, the need assignment is made at the state level and is then sent down to the regions for allocation on a regional level.<sup>30</sup> But the basis for the comprehensive plan's housing element in these states is the numerical allocation of a fair-share quota.<sup>31</sup>

Once more, this housing-need allocation will preempt the local planning process because it is a mandatory override that municipalities must take into account in their comprehensive plans. In addition, particularly under the California statute, the housing element must designate sites within the municipality where affordable housing can be built.<sup>32</sup> There is an emphasis on production because these strategies require the removal of zoning constraints on the production of housing, so that the allocated fair-share housing need can be achieved. The term "constraint" has become a very important buzzword in this field, and the California statute is specific on this point.<sup>33</sup>

You can see, if you think about the Massachusetts Anti-Snob Zoning law for a moment, that the housing elements in these planning statutes were conceived as a method for dealing with zoning constraints that were perceived as an obstacle to affordable housing programs. The zoning system was viewed by reformers as a barrier to be overcome.<sup>34</sup> These statutory housing elements are production-oriented, as evidenced by the requirement in the California law that the housing element designate sites where affordable housing can be built.<sup>35</sup>

The implementation side of housing elements in comprehensive plan is usually a statutory shopping list of strategies. They range all the way from inclusionary zoning, under which a certain percentage

---

<sup>28</sup> See CAL. GOV'T CODE § 65583; N.J. STAT. ANN. §§ 40:55D-28, 52-27D-307(c)(1); APA GUIDEBOOK, *supra* note 27, § 4-208.9, at 4-92.

<sup>29</sup> N.J. STAT. ANN. § 52:27D-301 (stating that the duties of the Council on Affordable Housing are, in part, to "[e]stimate the present and prospective need for low and moderate income housing at the state and regional levels.").

<sup>30</sup> CAL. GOV'T CODE §§ 65583, 65583.1.

<sup>31</sup> See CAL. GOV'T CODE § 65583; N.J. STAT. ANN. § 52:27D-307c(1).

<sup>32</sup> CAL. GOV'T. CODE § 65583.

<sup>33</sup> *Id.* § 65583(a)(4).

<sup>34</sup> See Zoning Bd. of Appeals v. Hous. Appeals Comm., 446 N.E.2d 748, 750-51 (Mass. App. Ct. 1983) (indicating that the purpose of the Massachusetts Anti-Snob Zoning statute is to provide swift relief from exclusionary local zoning practices that might curb construction of low- and moderate-income housing).

<sup>35</sup> See CAL. GOV'T CODE § 65583.

of housing in any development has to be made available at the affordable level,<sup>36</sup> to a variety of other strategies such as accessory housing<sup>37</sup> and the rehabilitation of existing housing.<sup>38</sup> The APA model legislation is similar.<sup>39</sup>

What issues are presented by this kind of housing element? Again, I'm not opposed to the housing element idea in the comprehensive plan—I think it is essential. What I'm talking about today is a particular kind of housing element that is based on the fair-share model that came out of the New Jersey *Mount Laurel* case and the issues it presents. I want to talk about those issues and then make some suggestions for perhaps modifying the way these housing elements are constructed.

#### IV. PLANNING ISSUES

The first issue under this kind of fair-share housing element is that the fair-share doctrine itself is problematic. The notion of fair shares has a strong appeal, of course, in the judicial system. It appeals to equity, it appeals to fairness, and it appeals to what is right and what is just. But we all know about the inequality of equality problem, and I think the fair-share idea is an example of that kind of problem.<sup>40</sup> First of all, the affordability test that it uses may be incorrect. The cost-burden test for housing need, which is based on the percentage of personal income that should be devoted to housing, is probably a better and fairer way of measuring housing need. Housing-cost burden is increasing significantly in this country and is mammoth.<sup>41</sup>

Even if low- and moderate-income housing need is the basis for determining fair shares, the need is so high that achievement is very difficult.<sup>42</sup> And so it is possible to point to a city and say, "You're not

---

<sup>36</sup> DANIEL R. MANDELKER, *LAND USE LAW* § 7.27, at 7-24 (5th ed. 2003).

<sup>37</sup> George W. Liebmann, *Suburban Zoning—Two Modest Proposals*, 25 *REAL PROP. PROB. & TR. J.* 1, 5 (1990) (explaining that the allowance of accessory housing uses in existing structures expands the housing stock by adding accessory apartments).

<sup>38</sup> Peter W. Salsich, Jr., *Thinking Regionally About Affordable Housing and Neighborhood Development*, 28 *STETSON L. REV.* 577, 585 (1999) (stating that a number of states have enacted "smart growth" legislation, which encourages rehabilitation before outward growth takes place).

<sup>39</sup> APA *GUIDEBOOK*, *supra* note 27, § 7-207, at 7-121 to -127.

<sup>40</sup> Payne, *supra* note 2, at 4.

<sup>41</sup> Barbara J. Lipman et al., *Paycheck to Paycheck: Working Families and the Cost of Housing in America*, *NEW CENTURY HOUSING* (Ctr. for Hous. Policy, Washington, D.C.), June 2001, at 9, available at <http://www.nhc.org/nhcimages/paycheck.pdf> (last visited Feb. 7, 2003).

<sup>42</sup> Payne, *supra* note 2, at 3-4.



meeting your fair-share allocation needs,” when that fair-share allocation need is not a reasonable approximation of what that goal ought to be. I submit that so long as we stay with a concept that is inherently incapable of being realized, we’re not going to provide a basis for public discourse. That was evident in the first panel today: We are not talking from, or moving from, some kind of common ideology or theory on which we all agree, so we do not have some common reasonable basis to critique what is being done.

Another problem with the fair-share doctrine is that there is a disconnect between comprehensive planning and the fair-share assignment of housing need. This happens because housing need, as determined by the fair-share allocation method, may occur where the land use policy is not supportive or in places where there is no infrastructure or a need for environmental protection.<sup>43</sup> So there is a disconnect, because a numerical allocation is used to determine fair share, between the land use policies of the comprehensive plan and the implementation of the fair-share assignment.

Next, the production focus is problematic. These statutory housing elements, and programs like the Massachusetts Anti-Snob Zoning law, focus on production and assume we are solving the affordable housing problem by producing new housing at affordable levels. The housing market is much more complex than that. Some think the production of affordable housing has an effect on the market because of the filtering process and the idea that households who move into affordable housing will leave other housing units vacant for other households.<sup>44</sup> In fact, the filtering process has come under criticism.<sup>45</sup> But the point is that dealing with housing markets solely by looking at new production is limited and very short-sighted. There is a necessity to look at other issues, including the locations where affordable housing is needed in a community.

Furthermore, if the entire focus is on affordable housing production, then we may encourage sprawl because there will be a push toward suburban and outer areas for sites to build affordable housing rather than near the cities and the developed areas where affordable housing need may be greater. This problem comes again from the fair-share idea—from the notion of opening up the suburbs to the

---

<sup>43</sup> *Id.* at 4.

<sup>44</sup> *S. Burlington Township NAACP v. Township of Mount Laurel*, 336 A.2d 713, 733 (N.J. 1975).

<sup>45</sup> Andrew G. Dieterich, *An Egalitarian's Market: The Economics of Inclusionary Zoning Reclaimed*, 24 *FORDHAM URB. L.J.* 23, 72 (1996).

poor. But when you look at where people work, where they live, and where their needs are, the idea of pushing affordable housing into suburban areas does not track very well with the idea of really providing affordable housing for people where they need it. That is why a lot, if not most, of the affordable housing built in New Jersey is built in the suburbs and occupied by residents of those suburbs.<sup>46</sup> Minorities occupy very little of this housing because they're not out there. So that is another problem.

The sprawl problem is created, by the way, because of an assumption, at least in New Jersey, that there is a three-to-one ratio between the number of market-housing and affordable housing units in an inclusionary housing development, which means that affordable housing will make up twenty-five percent of the housing units built in an inclusionary housing development.<sup>47</sup> This means that for every housing unit that's affordable three more must be built, and that takes more land perhaps than we would like.

There is also a land availability problem because many municipalities in New Jersey simply don't have the land available to provide new production sites for the production of their fair share of regional affordable housing need. They are given zero allocations in the system, and, as a result, their share of affordable housing is lost because these older suburbs without land availability do not have to provide sites for the production of affordable housing.<sup>48</sup> Yet the housing-cost burden in these older municipalities may be significant, and they may have serious housing needs.

Finally, there is an implementation issue. As I've said earlier, there is often a disconnect between the housing element of a comprehensive plan and the housing strategies that are required to implement that element.<sup>49</sup> Some of the strategies that are used I think are desperate, such as the "accessory housing" or "second home" strategy—the idea that second homes be set up throughout the community. That is not always a good idea because this kind of housing

---

<sup>46</sup> CHARLES M. HAAR, *SUBURBS UNDER SIEGE: RACE, SPACE, AND AUDACIOUS JUDGES* 190 (1996) (stating that by 1993, fourteen thousand units of low- and moderate-income housing had been or were being built in the New Jersey suburbs, equal to nine percent of total New Jersey housing permits during the period).

<sup>47</sup> See John R. Nolon, *A Comparative Analysis of New Jersey's Mount Laurel Cases with the Berenson Cases in New York*, 4 PACE ENVTL. L. REV. 3, 4 (1986).

<sup>48</sup> See N.J. STAT. ANN. § 52:27D-307 (West 2001 & Supp. 2002).

<sup>49</sup> See *supra* text accompanying notes 35–37.

may increase congestion and is not really suitable for families;<sup>50</sup> it's suitable for older people and others who can use a smaller accessory unit.<sup>51</sup> That's just an example of what I think are the difficulties or the failures to think through a strategy to implement the housing element, which would really be helpful.

### SOME PROPOSALS

So what suggestions can I make? Let me say first of all that I certainly can't stand here and say that I've thought this all through and have everything worked out. But I can make some suggestions for what I think would be a better way of coming at the affordable housing problem.

As a beginning, planning must come first. I think this point has been made. And when I say planning must come first, I mean there must be attention and priority given to a plan that can balance competing needs within a community properly. And I think that balancing housing need against other needs within the community is necessary so that the preemptive strike problem can go away and no longer be an issue. And that means planning must occur without being limited by a one-dimensional housing affordability requirement.

The New Jersey Supreme Court itself said that the *Mount Laurel* doctrine was not intended to disrupt the planning policies of local governments.<sup>52</sup> However, some claim it has done so in many places by pushing development out to the mountaintops and unsuitable areas. Housing advocates disagree. They point out that the *Mount Laurel* doctrine does not require bad planning and allows municipalities to

---

<sup>50</sup> Paul J. Weinberg & Nola McGuire, "Granny Flats" and Second Unit Housing: Who Speaks for the Neighborhood?, 23 ZONING & PLAN. L. REP. 25 (2000).

<sup>51</sup> See generally George W. Liebmann, *The Modernization of Zoning: Enabling Act Revision as a Means to Reform*, 23 URB. LAW. 1, 17 (1991); George W. Liebmann, *Suburban Zoning—Two Modest Proposals*, 25 REAL PROP. PROB. & TR. J. 1, 3–5 (1990); Alan Weinstein, *The Challenge of Providing Adequate Housing for the Elderly . . . Along with Everyone Else*, 11 J.L. & HEALTH 133, 140 (1996–97).

<sup>52</sup> S. Burlington Township NAACP v. Township of Mount Laurel, 336 A.2d 713, 733 (N.J. 1975). The *Mount Laurel* court noted:

There is no reason why developing municipalities like Mount Laurel, required by this opinion to afford the opportunity for all types of housing to meet the needs of various categories of people, may not become and remain attractive, viable communities providing good living and adequate services for all their residents in the kind of atmosphere which a democracy and free institutions demand.

reject poorly-planned developments. They complain municipalities sometimes use the doctrine as a convenient excuse for their poor planning decisions. This disagreement suggests, at the least, that modification of the *Mount Laurel* doctrine to clarify the preeminent role of planning choice and the planning process is needed.

The role of affordable housing policy in comprehensive plans should be rethought. I would personally abandon any attempt to make numerical assignments of affordable housing need. I don't think that's a realistic way of approaching the problem, partly because of the land availability issue in older suburbs and partly because I think it becomes a holy grail that's never found or never achieved. Instead of that, I think there should be a focus on land-based policies, such as mixed-use and transit-oriented development, which can bring affordable housing to places where affordable housing is needed in communities.

Finally, I think we should reconsider the Standard Act zoning system we are using to carry out our comprehensive plans. All of the progressive statutes, including that of your sister state Rhode Island,<sup>53</sup> authorize new innovative techniques that go beyond the standard zoning system. They move beyond the notion of eliminating barriers and constraints and create more appropriate opportunities for affordable housing. If we're going to have land-based, affordable housing policies that link development priorities and strategies to remedy housing need, then we will have to rethink the Standard Act zoning techniques and find new techniques we can use to make affordable housing become a reality.

---

<sup>53</sup> R.I. GEN. LAWS § 45-24 (1999).

