State Planning in New Jersey (A)

Sam I am, that Sam I am!
I do not like that new State Plan ...
You do not like it, so you say.
Try it! Try it! And you may! ...
Sam, if you let me, I will try.
"Cross-acceptance" though sounding dry,
is a process to open senses.
It permits a peek through novel lenses.
In a manner non-contentious.
It has enhanced consensus.
For the house, and for the park,
I will take the train and leave my car.
I will clean up tox, and save the fox,
And create the town, so that jobs abound.
I will like it here and there,
Say, I will like it everywhere.
I do so like the new state plan.
Thank you, Thank you, Sam I am!

Martin Bierbaum
Assistant Director
New Jersey Office of State Planning
(With apologies to Dr. Seuss)

Bierbaum's poem—read at a 1990 conference on state planning in New Jersey—was greeted with knowing laughter because many conference attendees had been active participants in the more than five-year effort to pass a State Planning Act and to produce a state plan. They were intimately familiar with the controversy that surrounded both the substance of the plan and the debates over how, if at all, the plan would be implemented.

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They knew, for example, that in enacting the State Planning Act in 1985, Governor Thomas Kean and the state legislature had called for the development of a state land use plan but explicitly rejected provisions requiring localities and state agencies to be guided by the new plan. They knew, moreover, that in the late 1980s, local governments and powerful real estate interests had easily rebuffed a draft state plan that would, if officially adopted, have mandated that both localities and other state agencies comply with the state plan. Now, the plan’s supporters were hoping that “cross-acceptance”—required mutual efforts by the State Planning Commission, localities, and counties to reconcile their plans—would produce a state plan that local governments and key state agencies would implement voluntarily. Many were skeptical, however, that this approach would produce significant results. Speaking in 1988, when the plan was still being developed, for example, Princeton University Professor Michael Danielson, a long-time student of politics and planning, warned:

I’m not at all sure that we can expect widespread acceptance [of the plan] merely because we’ve gone through [an intricate political] process. We’ve had all kinds of complicated processes that have produced pretty ineffective results.¹

By 1996, four years after the plan was officially adopted, however, at least one prominent scholar asserted that Danielson and other skeptics had been wrong. Professor Judith Innes of the University of California at Berkeley judged that the cross-acceptance process in New Jersey demonstrated the feasibility of effective, democratic comprehensive planning solidly rooted in consensus among all pertinent stakeholders.²

But what exactly has New Jersey’s planning process accomplished? The answer lies in a close reading of the history of state planning in New Jersey.

Context: Suburbanization and The Changing Economy

The nation’s fourth smallest state but its ninth largest in terms of population, New Jersey is an small older industrial state sandwiched between New York City and Philadelphia. (See Figure 1). Once a center of industry and agriculture, the state became increasingly suburban in the four decades after World War II. Between 1950 and 1985, for example, more than half of all farmland in New Jersey was converted to residential and commercial uses, while the state’s six largest cities lost about 13 percent of their population and one-quarter of their jobs.³

Initially, the urban decline meant that large areas of the state were effectively suburbs of New York and Philadelphia. Subsequently, a growing number of the state’s residents both lived and worked in suburban locales. These patterns accelerated during an unprecedented economic boom and restructuring from about

¹ Program for New Jersey Affairs (1989).
² Innes (1996).
³ The cities are Camden, Elizabeth, Jersey City, Newark, Paterson, and Trenton.
1982 until 1989. During this period, the state added 541,000 private-sector jobs, an increase of about 20 percent (from 2.6 million to 3.1 million).
These figures, moreover, mask a profound transformation in the state’s economy. Manufacturing, which was the leading source of employment in the state in 1982, lost more than 88,000 jobs (a decline of about 12 percent), many of them in the state’s cities. Meanwhile, the state gained more than 500,000 jobs in the service and financial sectors, most of them in the suburbs. Accommodating these new workers required massive new construction. Office space in the state, for example, grew by 50 percent during the 1980s and as of 1990, northern New Jersey alone had more office space than midtown Manhattan.\footnote{Fishman (1990).}

The state’s population grew much more slowly than employment in the 1980s, increasing by only about 5 percent (from 7.4 million to 7.7 million). Major shifts occurred, however, in the geographic distribution of population. Nine counties in central and southern New Jersey each grew by more than ten percent, while the three counties closest to New York City all lost population.\footnote{Data provided by the New Jersey Office of State Planning.}

As a result of this growth and these shifts, more than 60 percent of the state’s roads were congested by the mid-1980s.\footnote{Eppling (1993).} The growth also put great strains on other infrastructure systems. In 1988, for example,
167 of the state's 567 municipalities faced at least a partial ban on further sewage hookups pending upgrades of their treatment plants. In this context, public concern about development and sprawl began to show up as a major voter concern in surveys.

Local Governments and State Planning

The structure of New Jersey government encouraged the demographic changes (and the problems they created) in three notable ways. First, as a bastion of "home rule," the state allowed its cities and towns to grow without state or regional guidance. Second, the state built an extensive highway system, opening up previously rural areas for development. Third, since the state's local governments rely on property taxes for most their revenues, there has been fierce competition for "ratables," land uses such as offices, shopping centers, and luxury housing that appear to produce net fiscal surpluses for their host communities.7

These factors led some to conclude that growth in New Jersey has generally been "unplanned." State law has long required comprehensive planning at the municipal level, however, and a state office of planning has been in operation since the mid-1930s (except for a brief period during the mid-1980s). This office, moreover, produced a variety of important plans over the years, such as the 1951 State Development Plan, which included proposals for what later became the Garden State Parkway and the New Jersey Turnpike—roads that facilitated suburban growth.

The state legislature has been willing on occasion, furthermore, to supersede "home rule" in the service of explicit goals such as environmental protection and economic development. In 1968, for example, it established the Hackensack Meadowlands Development Commission to encourage economic development in the Meadowlands, 20,000 acres of undeveloped salt meadows and marshes spread over 14 older industrial communities in northern New Jersey. The commission has extensive powers including the authority to develop and implement a master plan for the area, review and regulate local subdivision and development plans for parcels within the district, and create tax-sharing schemes so that all the affected communities may benefit from the development in the Meadowlands.

In 1979, after a long battle, New Jersey also adopted the Pinelands Protection Act, which placed 1.1 million acres of ecologically unique and fragile land in southeastern New Jersey under direct state control. This act established a Pinelands Commission, charged it with developing a comprehensive management plan for this area, and authorized it to review and approve all local land use plans within its jurisdiction.8

These two state programs, and a third program protecting coastal areas, covered almost 50 percent of the state's land area by 1980. Statutes governing flood control, wastewater treatment, drinking water supplies and other natural resources also impacted almost every other community in the state.

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7 See Michael Danielson and Doig, Jameson (1982).
The legislature has steadfastly refused, however, to authorize state intervention to address many other land use issues, including the regional impacts of local land use policies, the decay of older urban places, exclusionary zoning, affordable housing, and inequalities in the state’s education system. Where the legislature has been reticent, though. New Jersey’s State Supreme Court has occasionally stepped in. In 1973, for example, the court ruled that the state’s locally based education finance system was unconstitutional because it led to wide disparities in education spending among communities. In response the state enacted its first income tax and used much of the money to reduce the amount of inequality in public school expenditures across school districts.

In 1975 the court also ruled (in the Mt. Laurel I case) that growing suburban communities had a responsibility to meet regional needs for affordable housing and were not legally empowered to engage in exclusionary zoning. In its landmark Mt. Laurel II ruling of 1983, the court ruled further that communities had an affirmative obligation to help create affordable housing through such measures as zoning incentives for builders. In seeking a basis for the allocation of obligations among local communities, the court seized on the State Development Guide Plan (SDGP), an obscure (and never implemented) state plan developed in the late 1970s to comply with the requirements of several federal-aid grant programs. In particular, the court relied on the SDGP’s population and employment projections and its establishment of “growth” and “no-growth” areas, noting that the SDGP: “represents the only official determination of the state’s plan for its own future development and growth.” The court, moreover, took the position that statewide comprehensive planning had become a “necessity,” noting:

The lessons of history are clear, even if rarely learned. One of those lessons is that unplanned growth has a price: natural resources are destroyed, open spaces are despoiled, agricultural land is rendered forever unproductive, and people settle without regard to the enormous cost of the public facilities needed to support them. Cities decay; established infrastructure deteriorates for lack of funds; and taxpayers shudder under a financial burden of public expenditures resulting in part from uncontrolled migration to anywhere anyone wants to settle. Statewide comprehensive planning is no longer simply desirable, it is a necessity, recognized by both the federal and state governments.

9 See Robinson v. Cahill, 118 NJ. Super, 223, 227-29.
12 Court use of the guide plan meant that about 100 of the state’s 567 communities became targets of fair share housing allocations. See Bierbaum and Nowicki (1991).
Finally, the court specified that unless the state maintained an ongoing planning process, the court—using the State Development Guide Plan—would determine where affordable housing should be built. In addition, the court opened the door to "builder's remedy" lawsuits—enabling builders to obtain a court override of local zoning requirements if their proposed projects included units set aside as affordable housing and the locality concerned was failing to meet its "fair-share" obligations.

The State Planning Act

Governor Thomas Kean, a moderate Republican who had been elected in 1981, bitterly criticized the court's Mt. Laurel II decision and ignored the planning mandate. Indeed, only weeks after the court decision he abolished the state agency that had written the SDGP (citing budget constraints and the agency's failure to engage in meaningful dialogue with local officials as his ostensible reasons).

Though the Kean administration was disinclined to comply with the court's mandate, the decision energized a number of people who had long believed that the state should exercise stronger land use authority. Many local officials, moreover, were pressing for development of a new state plan as a way to reclaim some control over land use from the courts. In mid-1983 a small group of these planning advocates and local officials met with W. Cary Edwards, Kean's chief counsel, to discuss responses to Mt. Laurel II. Together they agreed to convene an Ad Hoc Committee on state planning that would receive staff support from state employees.14

Working over the next year, this committee considered three basic approaches. The first—backed by planning advocacy groups and environmentalists—would have mandated comprehensive state planning, local compliance with the state plan, and arbitration by the state planning agency of disputes among state agencies and local governments.15 Key constituencies, such as the New Jersey Builders Association and its League of Municipalities, opposed this approach for two reasons. First, they were unwilling to limit development. Second, the localities wanted to make it clear for Mt. Laurel purposes that localities were not bound by an official state plan.

The second approach envisioned a state plan intended mainly to guide the state's own capital investment decisions. Though this idea had considerable appeal within the Ad Hoc Committee, the home builders and the League of Municipalities balked at its potential to prevent development in rural areas and the Kean administration opposed making the plan more than advisory to state agencies.

14 Among the organizations represented on the committee were the NJ Federation of Planning Officials, the County Planners Association, the New Jersey Bar Association, the Consulting Planners Group, the Land Use Section of the New Jersey Bar Association, the League of Municipalities, the New Jersey Builders Association, the Regional Plan Association, the Mercer-Somerset-Middlesex Regional Study Council, the New Jersey Conservation Foundation, and representatives from the state's departments of transportation, environmental protection, and community affairs.

The third alternative, which the committee ultimately accepted, sought to win state agency support for the plan by making the heads of those agencies members of the commission that would develop the plan. To further strengthen state agency use of the plan, the new Office of State Planning was to be located in the powerful Treasury Department, which oversees all state capital spending. Finally, rather than mandating local compliance with the plan, the committee agreed that the new state planning commission would, in the language of statute eventually enacted, "negotiate plan cross-acceptance with each county planning board, which shall [in turn] solicit and receive findings, recommendations, and objections concerning the plan from local planning bodies." The legislation went on to describe cross-acceptance as:

... a process of comparison of planning policies among governmental levels ... The process is designed to result in a written statement specifying areas of agreement or disagreement and areas requiring modification by parties to cross-acceptance.17

These provisions overcame the concerns of many long-time state planning foes. John Trafford, then the executive director of the New Jersey League of Municipalities for example, commented that the League "signed off on the bill ... because there were no real teeth in it."18

With such powerful opponents neutralized, the State Planning Act easily passed in late 1985.19 The law established a 17-member, gubernatorially-appointed planning commission, to include six citizens, four state and county officials, and seven members of the administration, including representatives of the governor's office and key state agencies such as the departments of transportation and environmental protection.

The Battle over Implementation

The new commission and John Epling,20 the new state planning director, had two distinct tasks. First, they had to perform the technical work needed to develop the plan. Though this was an arduous and difficult task, the State Planning Act provided significant guidance. It envisioned channeling development into older cities with underutilized infrastructure, new mixed-use centers in suburban locales, and, in rural areas lacking environmental infrastructure, compact villages and hamlets rather than sprawling new subdivisions.

16 The planning division eliminated by Kean had been housed in the state's Department of Community Affairs.
17 State Planning Act, Section 7.
18 Unless otherwise noted, all quotations come from interviews done by the author in late 1990 and early 1991.
19 The committee had reached agreement on the bill months earlier. Passage was delayed, however, because legislators also demanded another bill that would move oversight of communities' response to the Mt. Laurel decision from the courts to a new state entity. See Kirp (1996), Haar (1996) and Rose (1986).
20 Epling was not from New Jersey. Rather, he had directed a regional planning agency in northern Virginia.
The more difficult question was how to achieve this vision. Did the absence of implementation language in the State Planning Act give the commission only a limited mandate for action? Alternatively, did the act’s sweeping mandate provide leverage to establish a powerful state growth management system? The commission, with Epling’s support, adopted the latter interpretation, instructing the staff to prepare a plan mandating local and state agency compliance. Epling says they did so for political, strategic, moral, and legal reasons.

Politically, some key members of the planning commission, such as long time environmental activist Candace Ashman, believed that the public really wanted an aggressive growth management system. She based this view in part on a poll that the State Planning Commission had commissioned. Conducted by the Gallup organization, the survey indicated that a majority of New Jersey’s residents felt that the state’s natural areas were threatened by development and that controls on growth should be stricter. When asked which level of government could best manage growth, 35 percent said local cities and towns; 23 percent named counties; and 30 percent named the state.21

Strategically, some advocates of a strong growth management system believed the commission had to outline an aggressive compliance strategy so that people would pay attention to the planning process. According to Epling:

> When you think about going into cross-acceptance and no one takes you seriously the whole process could fall apart. So I just felt that we needed to come out and really tell the story of ... what it is going to take and shock some people.

Morally, Epling believed the commission had an obligation to call for mandatory compliance with aggressive policies as the only way to achieve the explicit goals of the State Planning Act. Not to do so, he explained, “would be like asking the Surgeon General not to come out against cigarettes because it might hurt the tobacco industry.”

Legally, it seemed possible that the commission had more statutory power than it appeared. Robert Freilich, a noted land use lawyer, advised the commission that it had considerable implied implementation power because the state planning act stated that the commission “shall take all actions necessary and proper to carry out the provisions of this act.”22

In April 1987 the staff presented the commission with a draft plan dividing the state into eight tiers (ranging from urban centers to conservation areas). The plan called for directing growth to urban areas and to compact developments in suburban and rural tiers using a combination of infrastructure investments, state regulations, and local actions.

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22 State Planning Act, Section 4g.
Local compliance was to be mandatory—a proposal that quickly generated vociferous opposition from municipal leaders, builders, and agricultural interests. The League of Municipalities' John Trafford recalled, for example that:

We were absolutely appalled by the tone [of the document]. I told John [Epling] he was using a faulty word processor that kept sticking on the words "shall," "will," and "must." We weren't going to be happy until they removed the "shallis" and changed them to "shoulds."  

Responding to the critics, state legislators filed several bills calling for legislative oversight of the planning process. The most notable of these, sponsored by Republican State Representative Robert Franks, a member of the Assembly's leadership team, called for the state plan to become effective only upon formal adoption by the legislature. To head off such legislation, the planning commission let it be known that the offensive implementation language would be removed from subsequent drafts of the plan. The Franks bill easily passed but Governor Kean vetoed it, reiterating his support for state planning, and no effort was made to override his veto. The point had been made, however. The state plan would be merely advisory.

The next version of the plan, labeled the "draft preliminary" plan, was released in January 1988. It was followed eleven months later by the three-volume "preliminary" plan, released in November 1988. Both of these plans divided the state into seven "tiers" (vs. eight in the staff's April 1987 plan). Specific tier designation was based on planners' estimates of how much development an area's infrastructure and ecology could support. Land was classified as agricultural, for example, on the basis of prime soils; environmentally sensitive areas were chosen on the basis of any one of a broad array of characteristics, such as aquifers, scenic views, and steep slopes. The plan also created a "regional design system" designed to "organize growth within the tiers in a hierarchy of central places, such as cities, towns, and villages."

Though the plan did not mandate local consistency, it included more than 500 pages of suggested guidelines and regulations. State, county, and local entities, for example, were urged to coordinate water supply programs with development approvals. Counties and municipalities were advised to define acceptable levels of service on local roads and ensure that land use regulations were in keeping with level-of-service guidelines. Rural localities were counseled to avoid densities that would, by generating congestion, reduce peak-hour travel speeds below 35 mph or make left-turning cars wait longer than 15 seconds.

To plan critics, it appeared that the state planners were now seeking mandatory compliance by the back door. Consequently, development and agricultural interests continued their vociferous opposition to the state plan and the League of Municipalities continued to express its concerns. Meanwhile, urban leaders were

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24 Kean and the planning commission did accept a bill requiring an expert assessment of the plan's impacts before final adoption. Kean also agreed to appoint a developer to the commission.