

# St. John's Law Review

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Volume 73  
Number 4 *Volume 73, Fall 1999, Number 4*

Article 1

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## Foreword

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## FOREWORD

PHILIP WEINBERG\*

In recent years Americans have come to recognize that our use of land without adequate controls or planning has led to vast suburban sprawl, strip mall development, and prodigious loss of farmland, forest, and wetlands. In addition, the lack of affordable housing, largely the result of failing to plan and regulate land use at a regional level, has placed many suburbs off-limits to the people who work in them, condemning them to long and arduous commutes.

This symposium on State and Regional Land Use Planning, subtitled "An Idea Whose Time Has Come," brought to St. John's a distinguished group of scholars and public officials to focus on this issue, which has moved to the front burner in political debate this year. There is increased recognition that just as war, in Clemenceau's words, is too important to leave to the generals, land-use issues ought not to be left exclusively to local governments, as they have narrow, and frequently competing interests.

Professor John R. Nolon of Pace University Law School, author of numerous books and articles on land-use planning, commences this Symposium issue by discussing the need for a regional approach to land use controls in New York. This state has lagged behind several others in moving beyond local zoning and enacting land use regulation at the state level, to protect natural resources and curb competition among towns seeking to broaden their tax base. As he points out, the courts have recognized the responsibility of local governments to make affordable housing available. New York's attempts to legislate over local zoning have so far not solved the problem. Professor Nolon urges the increased use of intermunicipal compacts, citing the success of the Cooperative Tug Hill Council, among ten upstate towns in protecting their landscape and farmlands.

Dean Patricia E. Salkin, who directs the Government Law

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Center at Albany Law School, contributed a thoughtful piece on the politics of land-use reform, noting the difficulties regional planning has met—especially when the explosive proposal that towns share their tax bases has been broached. She nonetheless ends on a note of optimism, describing the Hudson River Greenway Communities Council as an example of effective regional planning in New York that embraces the towns, rather than dictating to them from the Olympian level of state government.

A nationwide view of this issue is furnished by Professor James C. Nicholas of the University of Florida Law School. As he points out, systematic urban planning in this country dates back to city plans for Philadelphia and Williamsburg in the seventeenth century. Unfortunately, our enthusiasm for planning was lost in our affair with the automobile, which has led to suburban sprawl and urban blight. Several states have, however, adopted land-use planning and controls, in what Professor Nicholas describes as a "quiet revolution." His article details the varied approaches of Hawaii, Oregon and Florida—all far ahead of New York in curbing suburban sprawl.

Another mechanism, adopted in Cape Cod, is that of a regional commission employing both public and private mechanisms to limit undue development. Patricia Daley, Counsel to the Cape Cod Commission, describes these techniques in her contribution. The private controls she discusses include the increasingly popular conservation easement, through which landowners may convey their right to develop and receive either cash or tax benefits—enabling them to do good and do well at once.

Professor John Payne of Rutgers School of Law-Newark deals thoughtfully with the thorny issue of affordable housing. His article relates the dramatic history of the *Mt. Laurel* decisions,<sup>1</sup> a major victory for affordable housing which he helped achieve, and how they resulted in an effective state land-use plan for New Jersey.

Finally, Professor Terry Tondro of the University of Connecticut School of Law describes his state's attempts to grapple with affordable housing, regional planning, and limiting sprawl. As he notes, Connecticut was an early front-runner in

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<sup>1</sup> 336 A.2d 713 (N.J. 1975), *cert. denied*, 423 U.S. 808 (1975); 456 A.2d 390 (N.J. 1983).

legislation to promote affordable housing. Yet, a 1999 decision of that state's Supreme Court<sup>2</sup> undercut the effectiveness of the statute by ruling that towns have no responsibility to furnish affordable homes for non-residents, despite statutory language seemingly imposing that very responsibility.

Land use issues, and particularly controlling sprawl and fostering regional planning, now high on the national political agenda, could hardly be more timely. We hope this symposium will help illuminate these varied legal, social and economic concerns and light the way for legislatures and courts to deal with them effectively.

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<sup>2</sup> See *Christian Activities Council v. Town of Glastonbury*, 735 A.2d 231 (Conn. 1999).

