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## The National Quest for Smart Growth: How Does New Jersey Stack Up?

How New Jersey's approach will impact the environment and the economy remains to be seen

By Janet S. Kole

"Smart growth" is the new buzz phrase for states all across the country. Some states, like New Jersey and Pennsylvania, have tried to develop statewide initiatives to prevent urban sprawl from gobbling up green fields and to promote growth in areas that have no sensitive ecological receptors. Others rely on local regulation at the municipal or county level to keep environmentally valuable areas from being degraded.

Regulation has taken, broadly speaking, two forms—the carrot (providing incentives) or the stick (enforcing laws and prosecuting violators). Which is the most effective approach? How does New Jersey's approach look in comparison to other programs cur-

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*Kole is a shareholder in the Cherry Hill and Philadelphia offices of Flaster/Greenberg. She concentrates her practice in environmental and land use law. She is a vice chair of the Special Committee on Smart Growth and Urban Policy of the ABA's Section of Environment, Energy and Resources.*

rently in existence? Is New Jersey's anti-sprawl bias going to work to protect its environment? Will the emphasis on smart growth depress the state's economic growth? It depends on whom you talk to and which study you believe.

A compendium of what's going on nationally, prepared by the American Planning Association, and co-authored by American Bar Association staff and a professor and associate dean of Albany Law School, shows that in general, anti-sprawl programs focus on statewide planning reforms, although many of the states' efforts are aimed at strengthening the ability of regions or local municipalities to control where development takes place. As the authors of *Planning for Smart Growth* note, "the approaches to planning reforms are as varied as the states themselves." APA: 2002, p. 9. In fact, some states, particularly in the Wild West, have chosen to do nothing about planned growth in their states. For example, Wyoming's legislature has yet to pass any planning legislation, despite its governor's concern that even Wyoming, with its vast open spaces, should be concerned about untrammelled growth.

At this year's Temple Environmental Law and Technology Journal Symposium, co-sponsored by the Special Committee on Smart Growth and Urban Policy (ABA

Section of Environment, Energy and Resources), a standing-room-only crowd heard state regulators, planning professionals and academics speak on a full day's worth of topics, including which programs, regional or local, are more successful and whether carrots are more successful motivators to halt sprawl than sticks.

Although some panel members vigorously disagreed with each other over some specific details, such as whether or not land use regulation aimed at preventing sprawl would halt development altogether, they were in remarkable agreement on most of the issues they discussed. All the speakers agreed that, one way or another, money talks, and that states can limit sprawl, encourage brownfields cleanups and ensure affordable housing by creating financial incentives to reward municipalities and developers that direct growth into specific planning areas. The incentives can be direct — outright grants, low-interest loans, tax abatements — or indirect (transportation grants for planning and infrastructure development).

William Buzbee, Professor of Law at Emory University, provided both a dissent and a broad-based statement of the truism that carrots work better than sticks in encouraging compliance with anti-sprawl measures. Unlike some other speakers, he believes that no wholesale rewriting of zoning or environmental laws is needed to prevent sprawl. Instead, regulators need only to refocus or modestly change the rules; coupled with financial incentives, said Professor Buzbee, that's enough to motivate developers, whose mantra is "just let me know what the rules are,

and I'll find a way to make a profit."

The speakers agreed that sprawl is inevitable unless planning occurs on a regional rather than local basis, and that financial incentives, whether in the form of grants, loans or tax abatements, are crucial to saving green space.

Our neighbor to the west, Pennsylvania, is a poster child for the "carrot" approach to land use goals. The Commonwealth has used carrots to control sprawl and preserve green space and to encourage brownfield cleanup and reuse. The Pennsylvania legislature has allocated many millions of dollars for local land use planning, farmland preservation, watershed protection, and brownfield cleanups (through performance-based loans and outright grants). By any measure, Pennsylvania's is a success story; in the six years since the beginning of its incentive-based program, close to 1,500 sites have been cleaned up and returned to productive use, protecting pristine green acres in the process, and planning for growth has been regionalized at the county level, by providing incentives for municipalities to work together for regional planning efforts.

Given that the "experts" believe financial carrots work better than enforcement sticks, and they agree that regional planning is much more successful than local efforts, how does the state of New Jersey stack up?

New Jersey has formulated several different initiatives so far in its attempt to halt sprawl. In 1998, Governor Christie Whitman signed into law the Brownfield and Contaminated Site Remediation Act that purported to make it easier and less expensive to clean up contaminated sites, so that they could be put back into circulation and prevent the use of greenfields. The centerpiece of the legislation was a "carrot" — a voluntary cleanup, even by a responsible party, would be subject to state oversight informed by the motive to be cost effective as well as protective of human health. The legislature directed New Jersey's Department of Environmental Protection to be flexible — to recognize that requiring that cleanups remove all contamination was neither feasible nor desirable in many

situations.

Despite the best-laid plans of the legislature, however, New Jersey's Brownfields initiative has begun to desert the carrot and focus instead on the stick. At the end of last year, for example, the Department of Environmental Protection announced that it was ordering three companies that refused an invitation to "voluntarily" clean up under the Brownfields Development Area Initiative to clean up their property, subject to hefty penalties if they do not comply. Further, over time, the Department has demonstrated an unwillingness to be flexible; its site managers still show a preference for a complete cleanup to a pristine level. In contrast to Pennsylvania's success story, the number of brownfield sites put back into productive use in New Jersey is small.

In another recent initiative aimed directly at curbing sprawl, Bradley Campbell, the Commissioner of New Jersey's Department of Environmental Protection, threw the real estate community into turmoil when shortly after he was appointed he introduced the so-called BIG map, a map of New Jersey colored in red, green and yellow, showing where growth would be banned (in red) and where growth was preferred (green). Mr. Campbell made it clear that governmental approvals for development in the green areas would come quickly, while permits for red area developments would be mired in bureaucracy, utilizing both a carrot and a stick. The BIG map concept has been all but abandoned, because of intense lobbying by the regulated community crying that it would be put out of business and that if it was, a domino effect would cripple the state's economy.

Yet the BIG map put into visual form what the so-called experts believe is the most effective form of planning—it offered carrots (speedier approvals) for development in acceptable areas, and the planning was both regional and statewide. Why was it a failure?

The BIG map concept probably failed because it was too much too fast. Critics pointed out that the BIG map should have been called the RED map, since most of the state was colored red,

meaning no further development could take place. It was also unclear whether red meant absolutely no development, or that in certain circumstances, some kinds of development could occur. As Professor Buzbee pointed out in his speech on smart growth initiatives, a developer/entrepreneur is used to dealing with rules and making money as long as the rules are clear. The BIG map was, in some ways, lawless.

Despite this initial misstep, the Department, the governor and the legislature have continued to grapple with the issue of sprawl and to attempt to create a plan to slow it, if not to halt it altogether. New Jersey has long been in the forefront of smart growth planning, starting with its State Development and Redevelopment Plan and its use of grants to encourage municipalities to plan for growth (the so-called "Smart Growth Planning Grants Program"). The legislature has appropriated millions of dollars for farmland preservation, for direct acquisition of land and for purchase of farmland "development rights."

So far the biggest hindrance to a statewide plan for "smart growth" is the role politics plays in the mix. Legislators split along party lines each time a new anti-sprawl measure is introduced; the fight concerns who controls development in each region of the state. Critics of each new piece of legislation contend that the controlling party will funnel growth opportunities to their cronies, making smart growth legislation one more arena for the "pay to play" debate.

The current attempt by the legislature to craft a statute to protect the New Jersey Highlands from overdevelopment is a prime example of the role of politics. The new Highlands Water Protection and Planning Act will protect 800,000 acres spanning 87 municipalities by, inter alia, creating a regional council of 15 people which would develop a growth plan for the Highlands, limiting dense development to 15,000 acres. The Boards of Chosen Freeholders from two counties impacted by the legislation, Warren and Hunterdon, opposed the Act, claiming that while they agree in principle with preservation, they cannot agree with the

way the Act provides for what they perceive to be a partisan council directing development in the region. The Boards are both Republican-controlled.

Further hindering the success of New Jersey's efforts is confusion: how will the State Plan, the new Highlands initiative, and the requirements for affordable housing created by the courts decades ago in the Mount Laurel decisions interconnect? Can a municipality satisfy requirements to limit

growth while providing its fair share of affordable housing?

Some cynics might say that the confusion and the partisan wrangling are accomplishing, better than any statute, a slowdown in development. Builders, predictably, fiercely opposed the Highlands legislation. They have warned that the Act will cripple development, and cause housing prices to become unaffordable. That criticism "puts the bunny in the hat": if develop-

ment is too expensive for both builders and buyers, it won't happen, which is the aim of smart growth protections. There is no "stick" here, but the financial inducement is a negative one: if you want to make money, develop property somewhere else.

Once the rules become clearer, it remains to be seen if Professor Buzbee's formulation holds true, and developers can still make a profit in the Garden State. ■