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An Inflection Point for Affordable Housing: The Promise of Inclusionary Mixed-Use Redevelopment, 52 UIC J. MARSHALL L. REV. 581 (2019)

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AN INFLECTION POINT FOR AFFORDABLE HOUSING: THE PROMISE OF INCLUSIONARY MIXED-USE REDEVELOPMENT

PAULA A. FRANZESE*

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I. INTRODUCTION

America's suburbs have not caught up to the changes wrought by twenty-first century market shifts that have transformed the housing needs, preferences and workplaces of whole segments of the population. Built during the New Deal and post-World War II baby boom, suburbs quickly emerged as the lifeblood of white middle-class and upper middle-class America.¹ Billed as a sanctuary from the office (which was located in a nearby suburban office park² or city) where one worked until retirement, the single-family home in an exclusively residential zone became the primary source of housing for the upwardly mobile family.³ As laws and policies precluded people of color from participating in the promise of suburbanization,⁴ government poured billions of dollars into road construction and infrastructure development to support suburban growth. By 1970, bedroom communities had mushroomed in territorial size and the homogeneous populations they housed.⁵

Today, the aims of inclusionary housing are converging with the new realities of both the workplace and consumer housing preferences. This century finds neither viable nor likely the

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1. LIZABETH COHEN, *A CONSUMERS' REPUBLIC: THE POLITICS OF MASS CONSUMPTION 202* (2002). See discussion *infra* Part I (discussing the systematic *de facto* and *de jure* racial segregation that excluded African Americans from the promises of suburban development).

2. See, e.g., Chris Matthews, *The Reincarnation of Bell Labs*, FORTUNE (Feb. 2, 2015), fortune.com/2015/02/02/bell-labs-real-estate-revival/; Miranda S. Spivack, *The Old Office Park is Getting a Big Reboot*, N.Y. TIMES (Dec. 5, 2017), www.nytimes.com/2017/12/05/business/office-park-real-estate.html.

3. KENNETH T. JACKSON, *CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES 4* (1985).

4. See *infra* Part I.

5. COHEN, *supra* note 1.

prospect of having a life-long job at a blue-chip company and settling down in a nearby single-family home in an exclusively residential subdivision. Demographic trends reveal a growing population of millennials and their successors whose digital conversancy, lifestyles and work routines favor accessibility, flexibility, independence, mobility, environmental conservation and ease of access to work, housing, recreation, goods, services and transportation.⁶ Indeed, digital connectivity finds the new and emerging work force just as likely to be doing business at a WeWork⁷ facility or local Starbucks as in a traditional office building. Meanwhile, baby boomers are living longer, retiring later and seeking more compact housing in mixed-use centers with some of the same amenities as those favored by millennials.⁸ As those who are sixty or older downsize, they are relocating to denser parts of towns that bring a sense of urbanism to the suburbs.⁹ Sprawling suburban office parks and shopping malls, now underutilized or vacant, are fast becoming relics of the past.

Simultaneously, the demand for affordable housing remains acute, compounded by rising gentrification, mounting student and consumer debt, escalating housing costs and increasing costs of living. In cities, the last several decades' cultural preference for urbanism has displaced or shut out low-income residents, as "wealthier buyers and sellers, seeking the same dense, walkable, transit-accessible neighborhoods that lower-income communities sought or were stuck in before then began competing with these communities for limited housing."¹⁰ As race-based segregation gradually lessens, class-based segregation is growing.¹¹ Economic housing segregation denies whole segments of the working poor and middle-class the opportunity to reap the benefits that neighborhood

6. See *infra* notes 86-89 and accompanying text.

7. WeWork is "an American company that provides shared workspaces for rent to service professionals ranging from individual entrepreneurs to large enterprises." WEWORK, www.wework.com/ (last visited May 14, 2019); see, e.g., Larry Alton, *Why More Millennials Are Flocking to Shared Office Spaces*, FORBES (May 9, 2017, 3:55 A.M.), www.forbes.com/sites/larryalton/2017/05/09/why-more-millennials-are-flocking-to-shared-office-spaces/#43e0ddf769e8.

8. See Ben Leshner, *The Potential Impact of Baby Boomer Housing and Community Preferences on Downtown Revitalization*, UNC SCH. GOVERNMENT (Apr. 17, 2004), ced.sog.unc.edu/the-potential-impact-of-baby-boomer-housing-and-community-preferences-on-downtown-revitalization/.

9. Joanne Kaufman, *Their Ownership Days Are Over*, N.Y. TIMES, May 5, 2019, at RE1. In 2017, close to a third of New York City's rental population was comprised of renters who were sixty or older, a twenty percent jump from 2016. *Id.*

10. Alanna Schubach, *Stop Blaming the Hipsters. Here's How Gentrification Really Happens*, BRICK UNDERGROUND (Feb. 15, 2018, 1:00 P.M.), www.brickunderground.com/rent/what-causes-gentrification-nyc.

11. ROBERT D. PUTNAM, OUR KIDS: THE AMERICAN DREAM IN CRISIS 38 (2015).

housing equity can achieve.¹²

In prime suburban and city locations, the need for affordable inclusionary housing can be met in partnership with the wants of growing populations across all income levels for denser, walkable, mixed-use communities. It is happening in New Jersey, as bustling and inclusionary mixed-use sites in the State's cities, towns and suburbs are sprouting up on prime properties that once housed shopping malls and suburban office parks. Those tracts are situated near transportation and supported by ample infrastructure already in place. Today they are being transformed into vibrant and efficient multi-use centers that mix residential, commercial and recreational uses with attractive housing opportunities available at both market rate and developer-subsidized rates for those of very low, low and moderate income.

With its decades-old Mount Laurel mandate stridently obliging economically exclusionary municipalities to satisfy their fair share of overall regional needs for low and moderate-income housing, New Jersey finds itself at the forefront of the sort of inclusionary land use reinvention achievable by mixed-use redevelopment.¹³ That redevelopment is providing an opportunity to remediate the wrongs of racial and economic housing segregation and make real the promises of inclusionary zoning. Converting properties that have outlived their utility, it is helping to achieve housing equity as it responds to market demands for more compact multi-use communities. Its emerging model can and should become a basis for national replication.

II. PART I: ECONOMIC EXCLUSION IN HOUSING

The legacy of *de facto* and *de jure* race-based housing discrimination that denied African Americans the New Deal's promise of home ownership continues to shape the harsh realities of housing exclusion today. Laws and policies in place for much of the twentieth century drew maps where "redlines" separated cities and towns into black and white zones.¹⁴ Franklin Delano Roosevelt's Federal Housing Authority explicitly denied home-lending to African Americans while disassembling neighborhoods that were integrating organically, relegating displaced African Americans to government housing projects in low-income neighborhoods. It sanctioned the practice known as redlining, whereby housing brokers, agents and developers steered black prospective home buyers and renters into the least desirable zones redlined on Federal Housing Authority maps.¹⁵ Whites, by contrast, were

12. *Id.*

13. See discussion *infra* Part II.

14. See RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUT GOVERNMENT SEGREGATED AMERICA* 63 (2017).

15. *Id.* at 62–63.

directed to home-buying opportunities in the prime parts of newly emerging suburbs, towns and cities.¹⁶ In 1968, a national commission charged with assessing the consequences of housing exclusion rendered the damning conclusion that government and social engineering had produced “two societies, one black, and one white – separate and unequal.”¹⁷

In his acclaimed book, *The Color of Law*, Richard Rothstein details the litany of discriminatory federal and state laws and policies put into place throughout the twentieth century to build the nation’s segregated public housing projects.¹⁸ FDR’s Federal Housing Administration mandated racial separation in housing, denying mortgages to qualifying African Americans and precluding blacks from the promise of homeownership.¹⁹ Government programs such as the “Own-Your-Own-Home” campaign sought to promote homeownership, but only for white families.²⁰

Exclusionary zoning regulations were widely promulgated to further ensure that black families would be kept out of white neighborhoods. Economic zoning emerged in the twentieth century to circumvent the U.S. Supreme Court’s 1917 ruling in *Buchanan v. Warley*, which deemed race-based zoning unconstitutional.²¹ In that case, a Louisville, Kentucky zoning ordinance forbade “colored” persons from moving into majority-white areas.²² The Court invalidated the ordinance as a denial of property without due process, ruling that “colored persons are citizens of the United States and have the right to purchase property and enjoy and use the same without laws discriminating against them solely on account of color.”²³ With explicitly race-based zoning thereby impermissible, local governments resorted to economic zoning to achieve many of the same exclusionary ends.

Economic zoning gained its legal foothold with the 1926 Supreme Court ruling in *Village of Euclid v. Ambler Realty*.²⁴ In that case, the Court deemed it a valid exercise of state and local governments’ police powers for municipalities to enact zoning ordinances to ban apartment buildings and other “less desirable” uses from zones relegated exclusively for single-and two-family homes.²⁵ The Court found unpersuasive the lower court’s determination that the zoning scheme was impermissible and, if condoned, would “classify the population and segregate them

16. *Id.* at 63.

17. NAT’L ADVISORY COMM’N ON CIVIL DISORDERS, REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 1 (1968).

18. ROTHSTEIN, *supra* note 14, at 60.

19. *Id.* at 62–64.

20. *See id.* at 60.

21. *Buchanan v. Warley*, 245 U.S. 60 (1917).

22. *Id.*

23. *Id.* at 78–79.

24. *See Village of Euclid v. Ambler Realty*, 272 U.S. 365 (1926).

25. *Id.* at 394–95.

according to their income or situation in life.” Instead, in *dicta* fraught with class bias, the Court likened the apartment building to “a mere parasite,” opportunistically built to take advantage of a residential district’s attractive character.²⁶

Exclusionary zoning all but assured that America’s emerging suburbs would be closed to whole segments of the population. Economic exclusion achieves many of the same results as race-based exclusion because African Americans and Hispanics disproportionately live in poverty.²⁷ First racially segregated by law and then, after passage in 1968 of the Fair Housing Act (hereinafter “the Act”),²⁸ by *de facto* practices and economic barriers, those suburbs became the lifeblood of white middle-class and upper middle-class America. A haven from the office that was now a modest commute away thanks to the government’s massive investment in supporting infrastructure, the single-family home in exclusively residential, large-lot-size-only zones became the primary source of housing for the white upwardly mobile family. As whites were given a hand up with generous home mortgage opportunities, more and more blacks were forced to remain dependent on public housing built in inner cities.

The Act aimed to remediate past wrongs by ending race-based housing exclusion.²⁹ But it did not address economic discrimination in housing, nor did it prescribe where and how fair housing ought to be built. In the decades since the Act’s passage, economic segregation has grown, exacerbated by gentrification, rising housing costs and escalating costs of living. Economic gains have left behind the poor, wage workers and the “middle precariat.”³⁰ The last forty years have yielded “the gilded age of inequality,” as “the rich have gotten fabulously richer, while the middle class has struggled and more workers have fallen into poverty.”³¹

The Economic Policy Institute report on the state of working America finds that African Americans suffer the highest rates of poverty (at more than 27 percent and double the national rate at 15 percent), followed closely by Hispanics (at 26 percent) and whites

26. *Id.* at 394.

27. See *The State Of Working America*, ECON. POL’Y INST., www.stateofworkingamerica.org/index.html%3Fp=4193.html (last visited Aug. 2, 2019) (noting disproportionately higher poverty rates for African Americans and Hispanics).

28. The Fair Housing Act, 42 U.S.C. §§ 3601-31 (2012) (also commonly known as Title VIII of the Civil Rights Act of 1968).

29. See Paula A. Franzese & Stephanie J. Beach, *Promises Still to Keep: The Fair Housing Act Fifty Years Later*, 40 CARDOZO L. REV. 1207 (2019) (noting that the Fair Housing Act “aimed to undo the shameful legacy of *de jure* and *de facto* race-based housing discrimination”).

30. ALISSA QUART, *SQUEEZED: WHY OUR FAMILIES CAN’T AFFORD AMERICA* (2018) (chronicling the financial struggles of the teetering middle class).

31. Sheldon H. Danziger, *When Economic Growth Benefits Only a Few*, N.Y. TIMES (Oct. 19, 2012), www.nytimes.com/roomfordebate/2012/10/18/shrink-inequality-to-grow-the-economy/when-economic-growth-benefits-only-a-few.

(at 10 percent).³² Nearly half (46 percent) of black children under the age of six live in poverty, compared to 14.5 percent of white children.³³ Entrenched systems of disadvantage find that “more than half of black adults raised at the bottom of the income scale remain stuck there as adults, compared to a third of whites.”³⁴ What is more, in the last 20 years “there has been a 145 percent increase among non-Hispanic whites living in high-poverty neighborhoods.”³⁵ An “incipient class apartheid”³⁶ is expanding across the nation, contributing to tears in our social fabric and the erosion of civic life.³⁷

Exclusionary zoning denies millions of low-income persons the advantages of neighborhood housing equity.³⁸ Where one lives determines *how* one lives, affecting one’s quality of life in countless ways. It ordains one’s range of employment and recreational opportunities and whether one has access to quality health care, good schools, safe water and healthy foods. The segregated poor suffer from higher rates of cancer, cardiac disease, depression and diabetes.³⁹ Fewer than half of children born into poverty are ready for school at age five, and schools located in low-income neighborhoods are failing their students.⁴⁰ By contrast, inclusionary economic zoning has been found to reduce the achievement gap in schools, raise property values, lower crime rates and decrease rates of welfare dependency.⁴¹

Various state and local governments have advanced initiatives to promote economic inclusion in housing. Massachusetts’ Anti-Snob Zoning Act mandates that at least 10 percent of every city and town’s housing stock be affordable.⁴² Maryland’s land use law authorizes counties to promulgate inclusionary zoning ordinances,

32. See *The State Of Working America*, *supra* note 277.

33. *Id.*

34. Richard V. Reeves, *The Other American Dream: Social Mobility, Race and Opportunity*, BROOKINGS (Aug. 28, 2013), www.brookings.edu/blog/social-mobility-memos/2013/08/28/the-other-american-dream-social-mobility-race-and-opportunity/.

35. Richard D. Kahlenberg, *The Walls We Won’t Tear Down*, N.Y. TIMES, Aug. 6, 2017, at SR3.

36. PUTNAM, *supra* note 11, at 39.

37. JOSEPH STIGLITZ, *THE PRICE OF INEQUALITY: HOW TODAY’S DIVIDED SOCIETY ENDANGERS OUR FUTURE* (2013).

38. Kahlenberg, *supra* note 35, and accompanying text.

39. *The Uncomfortable Truth: Racism, Injustice, and Poverty in New Jersey*, ANTI-POVERTY NETWORK OF N.J. (Sept. 2017), www.anti-poverty-network.org/resources/Documents/The%20Uncomfortable%20Truth%20Final%20-%20web.pdf.

40. *The Cycle of Educational Failure and Poverty*, STAND TOGETHER (Jan. 24, 2017), www.stand-together.org/cycle-educational-failure/.

41. See DOUGLAS S. MASSEY ET AL., *CLIMBING MOUNT LAUREL: THE STRUGGLE FOR AFFORDABLE HOUSING AND SOCIAL MOBILITY IN AN AMERICAN SUBURB* (2013).

42. MASS. GEN. LAWS ch. 40B, §§ 20–23 (1998).

award density bonuses and create affordable housing units.⁴³ New York City's recently enacted Affordable Housing Plan requires that new residential developments set aside a percentage of units for those of low- and moderate-income.⁴⁴ But no other state's foray into the depths and peaks of inclusionary zoning approximates the fits and strides of the New Jersey experience. New Jersey's 40-plus year and counting *Mount Laurel*⁴⁵ epic provides essential object lessons on what to do (and not do) to effectively advance the salutary aims of housing inclusion.

Today in New Jersey, mixed-use redevelopment of prime suburban properties that have outlived their utility is helping to achieve housing equity. This is its response to demands of growing populations across all income levels for denser and more compact multi-use communities. The sites for redevelopment capitalize on empty or soon defunct properties situated in prime areas with ready access to transportation and ample infrastructure already in place. Today they are being transformed into desirable and efficient multi-use centers that mix residential, commercial and passive uses as well as active recreational uses with housing available across all income levels.

III. PART II: NEW JERSEY'S PIONEERING SOCIAL EXPERIMENT: *MOUNT LAUREL*

Mount Laurel is a place on the map in southern New Jersey, a sprawling township 22 square miles, or 14,000 acres large. In 1950, it had a population of less than 3,000. It was a primarily low- to moderate-income farming community. Situated close to a network of highways, by the 1960s it found itself the preferred situs for the suburban expansion that marked much of twentieth-century residential development. Within commuting distance to Philadelphia and other cities, Mount Laurel was considered a perfect spot for working baby boomers seeking to lay down roots. So ideal, that by 1970, its population had quadrupled.

To take advantage of the opportunities presented by that growth, in 1964, Mount Laurel changed its zoning laws to spur development of the then-American ideal of the big picket-fenced home in the suburbs.⁴⁶ Commercial, industrial and agricultural uses were now permitted only on one-third of the Township's acreage on the outskirts of the town. The other more desirable two-

43. MD. CODE ANN., LAND USE § 7-401 (West 2015).

44. *Mayor de Blasio to Complete Affordable Housing Plan 2 Years Ahead of Schedule, Accelerate Pace and Expand Goals*, CITY N.Y. (Oct. 24, 2017), www1.nyc.gov/office-of-the-mayor/news/682-17/mayor-de-blasio-complete-affordable-housing-plan-2-years-ahead-schedule-accelerate-pace-and#/0.

45. See discussion *infra* Part II.

46. See JACKSON, *supra* note 3; *What is the American Dream?*, CNN MONEY, money.cnn.com/infographic/economy/my-american-dream/index.html.

thirds of land was zoned exclusively for single-family, detached homes built on large lots. The new zoning restrictions banned townhouses, apartment buildings and mobile homes. The result: intensive but low-density development affordable only to those of considerable means, with no opportunity for decent housing for the Township's own low- to moderate-income population.⁴⁷ Those who worked in Mount Laurel, for the large part, could no longer afford to live there.

Residents whose families had lived and worked in Mount Laurel for generations found themselves displaced. Their appeals for inclusion were met with outright hostility. At a 1970 meeting held at an African American church in the town, then Mayor Bill Haines said in response to calls for affordable housing: "If you people can't afford to live in our town, then you'll just have to leave."⁴⁸

With its 1975 groundbreaking ruling in *Southern Burlington County NAACP v. Mount Laurel*,⁴⁹ the New Jersey Supreme Court issued a stern retort. Transforming what was brought as a race-based discrimination case into one of economic discrimination, the court ruled that the state constitutional guarantees of due process and equal protection require that Mount Laurel, and indeed every one of the State's developing municipalities, satisfy their fair share of the present and prospective regional need for low- and moderate-income housing.⁵⁰ Well ahead of other states' efforts to promote economic inclusion in housing, the court understood that economic exclusion *is* racial exclusion. What is more, by casting the inclusionary mandate in terms of economic fair housing, its ruling could extend broadly to all working poor and moderate-income populations. Mindful of "the advanced view of zoning law as applied to housing laid down by this opinion,"⁵¹ the court left it to the coordinating branches of state and municipal government to vindicate the mandate without judicial supervision.⁵²

While heralded as the case that could undo the economic segregation wrought by exclusionary zoning, little changed after the ruling was announced.⁵³ Few units of affordable housing were built, while zoning laws that precluded economic diversity in housing remained in place. Not a single unit of low- and moderate-income housing was built in Mount Laurel itself.⁵⁴

47. *S. Burlington Cty. NAACP v. Mt. Laurel*, 336 A.2d 713 (N.J. 1975), *cert. denied*, 1975 U.S. LEXIS 2244 (1975).

48. DAVID L. KIRP, *OUR TOWN: RACE, HOUSING AND THE SOUL OF AMERICA* (1st ed. 1997).

49. *S. Burlington Cty. NAACP*, 336 A.2d at 720.

50. *Id.* at 724–25.

51. *Id.*

52. *Id.* at 734.

53. *S. Burlington Cty. NAACP v. Mt. Laurel*, 456 A.2d 390 (N.J. 1983).

54. Mount Laurel's first inclusionary units were not built until the year 2000, with the opening of the Ethel Lawrence Homes. *See* Douglas Massey,

The vociferous and organized opposition to the *Mount Laurel* mandate invoked the “not in my backyard (NIMBY)” pathos to considerable ill effect. Suburban residents equated the prospect of affordable housing opportunities with gang activity, criminality and blight. Town Council meetings on the inclusion of affordable housing provoked comments like, “It will be a breeding ground for violent crime and drug abuse,” and protests of “reverse discrimination.”⁵⁵ Affordable housing advocates suffered threats and violence. Ethel Lawrence, a low-income African American resident and leading advocate, had gunshots fired into her home and endured repeated vandalism.⁵⁶

Throughout the State, municipalities recoiled at the prospect of having to open their doors to low- and moderate-income residents.⁵⁷ As is often the case, much of the resistance to economic integration was invoked under the banner of home rule, homeowner privilege and taxpayer rights.⁵⁸ But antagonism toward affordable housing is a product more of prejudice, ignorance, fear and false characterizations about the poor and those of lesser means. Those fears are refuted by data and experience.⁵⁹

Poverty is not a pathology. Conclusions to the contrary misunderstand the complexities that conspire to all but assure entrenched systems of economic subjugation. This as widening chasms between the affluent and those just getting by (including the increasing “middle precariat”)⁶⁰ continue to grow and upward mobility becomes more illusion than fact. Still, biases based on income and wealth die hard. At town council meetings across New Jersey and elsewhere, one finds residents and elected officials eager to trot out the standard tropes that affordable housing will bring increased crime, drugs, neglect and diminished property values.⁶¹ This compelling data shows that those fears yield to the facts of

Learning from Mount Laurel, SHELTERFORCE (Oct. 10, 2012), shelterforce.org/2012/10/10/learning_from_mount_laurel/ (finding that Mount Laurel’s Ethel Lawrence homes were an “unequivocal success”).

55. KIRP, *supra* note 48.

56. *Id.*

57. Star Ledger Editorial Board, *N.J. Mayor, Like Your Crazy Uncle, Calls Affordable Housing a ‘Socialist Scheme’*, NJ.COM (Apr. 14, 2019), www.nj.com/opinion/2019/04/nj-mayor-like-your-crazy-uncle-calls-affordable-housing-a-socialist-scheme-editorial.html (explaining how Englewood Cliffs, N.J. mayor described *Mount Laurel* rules that require “rich and exclusive towns to build their fair share of housing that is affordable for lower income people [as] nothing more than a ‘socialist scheme’”).

58. Lily Geismer & Matthew D. Lassiter, *Turning Affluent Suburbs Blue Isn’t Worth the Cost*, N.Y. TIMES, June 9, 2018, at SR7.

59. See MASSEY ET AL., *supra* note 41, and accompanying text.

60. See QUART, *supra* note 30, at 1224 (detailing the middle-class fall).

61. Kriston Cap, *Putting a Price on NIMBYism*, CITYLAB (Dec. 19, 2018), www.citylab.com/equity/2018/12/cap-and-trade-solve-low-income-housing-mount-laurel-doctrine/578335/; N.Y. Times Editorial Bd., *Towns that Defy Fair Housing Laws*, N.Y. TIMES, July 27, 2016, at A26.

housing inclusion and its capacity to redound to the benefit of *all* residents.⁶²

In response to the defiance that followed its first ruling, in 1983 in *Mount Laurel II*⁶³ the New Jersey Supreme Court was determined to put some steel into its affordable housing mandate. There, in a stern rebuke, the court stated:

After all this time, ten years after the trial court's initial order invalidating its zoning ordinance, Mount Laurel remains afflicted with a blatantly exclusionary ordinance. Papered over with studies, rationalized by hired experts, the ordinance at its core is true to nothing but Mount Laurel's determination to exclude the poor. Mount Laurel is not alone; we believe that there is widespread non-compliance with the constitutional mandate of the original opinion in this case.⁶⁴

The court added, "We may not build houses but we do enforce the Constitution."⁶⁵ To do that, the case introduced a series of bold policy prescriptions and remedies intended to compel meaningful local compliance with the directive to provide low- and moderate-income housing.⁶⁶ Those included the "builder's remedy," a judicial remedy that gave incentives to builder-developers to challenge townships for failure to meet the fair share mandate. Successful suits awarded the builder the opportunity to build housing at higher densities than otherwise permitted, provided that a designated percentage of units built were subsidized by the builder and set aside for those of low- and moderate-income.

The builder's remedy litigation that quickly followed sparked a resolve to get the courts out of the business of land use planning. Hence, in 1985 the New Jersey legislature enacted the Fair Housing Act (FHA).⁶⁷ That statute created the Council on Affordable Housing (COAH), an administrative agency to replace the courts in implementing the *Mount Laurel* mandate. In *Mount Laurel III*,⁶⁸ noting its preference for legislative and executive action to vindicate the intent of its rulings, the New Jersey Supreme Court sustained the FHA's constitutionality.⁶⁹

Vested with broad powers, COAH was responsible for determining municipalities' fair share obligation of the state and regional need for affordable housing and promulgating rules to

62. See MASSEY ET AL., *supra* note 41 (detailing the benefits of affordable housing development in Mount Laurel Township). Mount Laurel raised its tax base, saw higher achievement for its school-age children, a significant decline in welfare dependency and preservation of property values. *Id.*

63. *S. Burlington Cty. NAACP*, 456 A.2d at 410.

64. *Id.*

65. *Id.*

66. Paula A. Franzese, *Mount Laurel III: The New Jersey Supreme Court's Judicious Retreat*, 18 SETON HALL L. REV. 30 (1988).

67. N.J. STAT. ANN. §§ 52:27D-301–29 (2019).

68. *Hills Dev. Co. v. Bernards*, 510 A.2d 621 (N.J. 1986).

69. *Id.* at 632.

assure local government compliance with the obligation. Still, the FHA gave COAH considerable discretion to approve townships' efforts to buy their way out of the *Mount Laurel* duty by transferring up to fifty percent of the given municipality's affordable housing obligation to a designated receiving municipality to use to build affordable housing within their borders.⁷⁰ In considerable part, receiving municipalities were found in older urban areas within New Jersey.

Those so-called Regional Contribution Agreements or RCA's, which could have helped the task of urban revitalization, largely failed due to improper management and oversight. What is more, the concept itself frustrated the primary aims of economic integration and the creation of affordable housing opportunities in municipalities otherwise closed to whole segments of the population. Other statutory mechanisms contained in the FHA promoted understatement of the true extent of qualifying municipalities' fair share obligation by using as pretexts the statute's allowance of downward reductions in fair share for reasons that included promotion of open spaces, recreational and agricultural areas and the preservation of historic areas. Once again, delay became a principal tactic to avoid the inclusionary housing imperative, and the suburbs' doors remained closed to affordable housing.

COAH was obliged by the FHA to adopt regulations establishing a fair share formula for municipalities to calculate their respective affordable housing obligations. The enabling legislation included procedures for townships to petition COAH for "substantive certification," which if granted would shield them for a designated period from future *Mount Laurel* challenges. COAH promulgated those so-called "Round One" regulations in 1986. Those provisions contained a fair share formula and included allowances for municipalities to rezone sites suitable for inclusionary housing for higher densities if those new developments set aside at least twenty percent of units for those of low- and moderate-income. Problematically, COAH was without a means to compel municipal compliance with fair share mandates. Moreover, it allowed RCAs to go forth without adequate oversight and, with its Round One regulations, added opportunities for townships to further reduce their assessed fair share on such grounds as "insufficient land."

In 1994, COAH announced its Round Two regulations. Again, those made allowance for downward adjustment of fair share based on what was now called "realistic development potential" or "RDP." COAH deemed the difference between allocated fair share and RDP "unmet need." Now, unmet need would not be forgiven as it had been under the Round One scheme. Still, fulfillment of the assessed

70. N.J. STAT. ANN. § 52:27D-307(e) (2019).

unmet need was not mandatory, once again rendering those needs inadequately addressed.

Third Round regulations were promulgated in 2004. Some of those rules were subsequently invalidated by the courts as inadequate to assure vindication of fair share obligations.⁷¹ In 2008, COAH finally approved new Third Round rules which suffered from many of the same deficiencies and loopholes that rendered their earlier iteration invalid. Not surprisingly, in 2013 those new Third Round rules were invalidated by the New Jersey Supreme Court.⁷² Frustrated by the delays and inadequacies of the regulatory scheme, the court forcefully sought to spur “a new affordable housing approach.”⁷³ Rules to govern the third round cannot wait further while time is lost during legislative deliberations on a new affordable housing approach. A remedy must be put in place to eliminate the limbo in which municipalities, New Jersey citizens, developers and affordable housing interest groups have lived for too long.⁷⁴

Once more, the court deferred to COAH to finally arrive at a regulatory scheme able to remediate past inadequacies and the harms imposed by delay. Meanwhile, New Jersey had elected a governor strenuously opposed to the very *Mount Laurel* mandate itself.⁷⁵ Thereafter, the state Supreme Court, frustrated by COAH’s failure to adopt appropriate Round Three regulations, issued its ruling in *Mount Laurel IV*⁷⁶ declaring the agency “moribund.”⁷⁷ Decided in 2015, in *Mount Laurel IV* the court deemed COAH no longer equipped to process municipalities’ petitions for substantive certifications. The court determined that COAH’s functions would now be performed by fifteen designated trial court judges (one in each of the State’s vicinages) and left it to those judges to develop specific formulas to calculate third round affordable housing obligations, overall regional need and qualifying municipalities’ fair share responsibilities.⁷⁸

71. In re Adoption of N.J.A.C. 5:94 & 5:95 *By N.J. Council on Affordable Hous.*, 914 A.2d 348, 354 (N.J. Super. Ct. App. Div. 2007).

72. In re Adoption of N.J.A.C. 5:96, 74 A.3d 893 (N.J. 2013).

73. *Id.* at 917.

74. *Id.*

75. Colleen O’Dea, *Christie’s No Friend to Housing for Poor and Middle-Income New Jerseyans*, N.J. SPOTLIGHT (May 6, 2015), www.njspotlight.com/stories/15/05/05/christie-s-no-friend-to-housing-for-poor-and-middle-income-new-jerseyans/.

76. In re N.J.A.C. 5:96 & 5:97, 110 A.3d 31, 34 (N.J. 2015).

77. Colleen O’Dea, *COAH Is History: State’s Top Court Declares Troubled Agency “Moribund”*, N.J. SPOTLIGHT (Mar. 11, 2015), www.njspotlight.com/stories/15/03/11/coah-is-history-supreme-court-declares-troubled-state-agency-moribund/.

78. Colleen O’Dea, *NJ Court Determines How Many Affordable Housing Units Needed by 2025*, N.J. SPOTLIGHT (Mar. 12, 2018), www.njspotlight.com/stories/18/03/11/nj-superior-court-determines-how-many-affordable-housing-units-needed-by-2025/.

The judges who now oversee municipal compliance with the *Mount Laurel* mandate are assisted by a Special Master. The Special Master is a professional planner tasked with overseeing and monitoring municipal compliance and mediating settlements between the Fair Share Housing Center⁷⁹ and municipalities alleged to be non-compliant with the inclusionary housing mandate. When settlement talks fail, the given challenge is heard by that vicinage's judge tasked with presiding over *Mount Laurel* litigation.

In 2017, the court reaffirmed the state constitutional obligation imposed on economically exclusionary towns to add to stocks of low- and moderate-income housing within their borders and redress deficiencies in existing stocks,⁸⁰ approving mandatory set-asides of 15 percent for residential rental development projects of five or more units and 20 percent set-asides for projects which include for sale units. In return for making those affordable housing subsidies, developers are awarded density bonuses that can assure "a reasonable profit" on their investment. What is or is not "a reasonable profit" is the subject of fierce debate during mediation and, when mediation fails, litigated in court. Municipalities seek to keep added density to a minimum to avoid the burdens on essential services. Developers in turn aim to drive up density awards to widen profit margins. Mindful of the burdens that additional density can impose, the New Jersey Supreme Court for now has left it to the state legislature to determine an effective response. Indeed, in its 2017 ruling the court noted once again, "We recognize, as we have before, that the Legislature is not foreclosed from considering alternative methods for calculating and assigning a municipal fair share of affordable housing, and to that end, we welcome legislative attention to this important social and economic constitutional matter."⁸¹

While townships, developers and affordable housing advocates continue to wrestle with fair share obligations,⁸² public interest advocacy groups and most notably the Fair Share Housing Center have used the *Mount Laurel* mandate and the courts' willingness to zealously enforce it to some good effect. To date, approximately 65,000 units of low- and moderate-income housing have been built in New Jersey.⁸³ Compelled to comply, towns like Mount Laurel that

79. See Kiersten Marek, *Behind the Fund for New Jersey's Support of a Housing Rights Group*, INSIDE PHILANTHROPY (Oct. 7, 2014), www.insidephilanthropy.com/housing/2014/10/7/behind-the-fund-for-new-jerseys-support-of-a-housing-rights.html (explaining how the Fair Share Housing Center is New Jersey's strongest affordable housing advocacy group).

80. In re Declaratory Judgment Actions, 152 A. 3d 915, 918 (N.J. 2017).

81. *Id.*

82. Maddie Hanna, *Forty Years Later N.J. Courts, Towns Still Wrestling with Affordable Housing*, PHILA. INQUIRER (Oct. 13, 2017), www.inquirer.com/philly/news/40-years-later-n-j-courts-towns-still-wrestling-with-affordable-housing-20171013.html.

83. *The Mount Laurel Doctrine*, N.Y. TIMES (Jan. 28, 2013),

previously had shut their doors to low- and moderate-income housing are gradually realizing part of the inclusionary housing mandate.⁸⁴

Still, because of loose interpretations of the *Mount Laurel* regulations and developer shortcuts, affordable units built during the decades of COAH ineptitude and municipal resistance could be constructed in separate, less desirable parts of residential subdivisions. The regulations provide that inclusionary development should be consistent “with the mandate of the Fair Housing Act regarding *unnecessary cost generating features*.”⁸⁵ That clause could be employed by developers to legitimize the use of cheaper construction materials, appliances, landscape design and interiors for the inclusionary units. As a result, the very aims of inclusion could be frustrated, with “*us/them*” lines drawn into the lesser quality and fringe locations of the affordable housing that was built.

With COAH’s dissolution, strict judicial oversight is once again putting some steel into *Mount Laurel’s* mandate. What is more, market forces and changing demographics are conspiring to make realization of the letter and spirit of that mandate a more hopeful prospect. The promise of economically integrated housing finds ready ground as part of the mixed-use reinvention of prime but now underutilized properties. Those tracts are mixing residential, commercial and recreational uses to create vibrant and inclusionary domains in desirable places previously closed to all but those of considerable means.

IV. PART III: THE RISE OF MIXED-USE REDEVELOPMENT AND THE PROMISE OF INCLUSION

Mixed-use redevelopment projects are providing opportunities for cities and towns to breathe new life into dormant properties in prime locations *and* meet fair share requirements for inclusionary housing. Their success to date demonstrates that economic integration may well be achievable as cities and towns engage in the task of reinvention. That reinvention is responding to shifting demographic preferences as it advances the moral and legal imperative to provide economically integrated fair housing opportunity.

Today’s housing preferences favor environmentally sensitive, walkable places to live near work, shopping, recreational areas,

www.nytimes.com/2013/01/29/opinion/the-mount-laurel-doctrine.html.

84. *Id.*; see also MASSEY ET AL., *supra* note 41 (explaining how, as result of inclusionary housing, Mount Laurel raised its tax base and saw higher achievement for its school-age children, a significant decline in welfare dependency and preservation of property values).

85. N.J. Admin. Code § 5:93-10.1 (2019) (emphasis added).

parks, restaurants, coffee shops and even sporting venues.⁸⁶ Millennials, Gen X and downsizing baby boomers are the largest market drivers here, with millennials leading in home purchases.⁸⁷ Concurrently, baby boomers are living longer, retiring later and looking for more compact housing in multi-use centers with the same sorts of features as those favored by younger groups.⁸⁸ As those who are sixty or older downsize, they are relocating to denser parts of towns that bring a sense of urbanism to the suburbs.⁸⁹

This as the need for affordable housing continues to rise.⁹⁰ New Jersey ranks among the most expensive places to own or rent. Last year, Crossroads New Jersey, a not-for-profit public interest advocacy group, reported that only twenty-nine affordable dwellings are available for every one hundred families making less than 30,000 dollars a year.⁹¹ New Jersey's rents have spiked to the sixth most expensive in the United States.⁹² Recent reports conclude that "[m]ore than 343,000 of New Jersey's 1.1 million tenant households spend at least half of their pre-tax income on rent and utilities," a percentage exceeded only by Florida.⁹³ Economic exclusion persists throughout whole swaths of the State, rendering

86. See Ben Leshner, *The Potential Impact of Baby Boomer Housing and Community Preferences on Downtown Revitalization*, U.N.C. GOV'T CTR. (Apr. 17, 2014), ced.sog.unc.edu/the-potential-impact-of-baby-boomer-housing-and-community-preferences-on-downtown-revitalization/ (explaining that downtown redevelopment to attract millennials has become an important and popular economic development policy in many cities across the country).

87. *Millennials Lead All Homebuyers, Even as Some Can't Escape Their Parents*, NAT'L ASS'N REALTORS (Mar. 14, 2018), www.nar.realtor/newsroom/millennials-lead-all-homebuyers-even-as-some-can-t-escape-their-parents. That study by the National Association of Realtors (hereinafter "NAR") found that in 2018 a full 36 percent of all home purchases were made by millennials, up from 34 percent the year before. *Id.* Gen X buyers ranked second at 26 percent, while baby boomers made only 14 percent of all home purchases and their predecessors, those born between 1925 and 1945, only six percent. *Id.*

88. See Leshner, *supra* note 86.

89. See Kaufman, *supra* note 9, at 2. In 2017, close to a third of New York City's rental population was comprised of renters who were 60 or older, a 20 percent jump from 2016. *Id.*

90. *Communities of Opportunity: New Jerseyans Need More Affordable, Convenient, and Safe Places to Call Home*, CROSSROADS N.J. (2017), www.fundfornj.org/sites/default/files/crossroadsnj/Cross_HOUSINGt_1.3%20JS.pdf (estimating that an additional 155,000 low and moderate-income units are needed throughout the State); Joseph Atmonavage, *New Jersey Needs to Build 155,000 Affordable Housing Units. No One Can Agree on How or Where*, NJ.COM (July 25, 2018), www.nj.com/news/2018/07/affordable_housing_new_jersey_fair_share_housing_c.html.

91. *Id.*

92. *How Much do You Need to Earn to Afford a Modest Apartment in Your State?*, NHLIC, reports.nlhic.org/oor/ (last visited May 14, 2019).

93. Erin O'Neil, *Rent Eats Up at Least Half the Paycheck of 343,000 NJ Residents, Study Says*, NJ.COM (June 2, 2015), www.nj.com/business/2015/06/rent_eats_up_at_least_half_the_paycheck_of_343000_nj_residents_study_says.html.

New Jersey still “one of the most segregated states in the country.”⁹⁴

As housing costs become increasingly prohibitive, demands for affordable housing are growing across all age groups and demographics. Saddled with significant student and consumer debt and hindered by wages that are not keeping up with rising costs of living, millennials find themselves priced out of housing markets.⁹⁵ A recent National Association of Realtors study found that while vast numbers of millennials are reaching home-buying age, fewer can afford a starter-home than those of previous generations at a comparable age.⁹⁶ Nationally, prices for starter homes are up by 57 percent as upwards of 45 million Americans reach first-time home-buying age in the next 10 years.⁹⁷ At the same time, dwindling pensions and disappearing retirement benefits are contributing to a rise in senior poverty. Today, more than two million women over the age of 65 live at or below the poverty line.⁹⁸ A recent study concluded that women, and particularly women of color, “are more likely to age into poverty than men.”⁹⁹

Rising housing costs, mounting debt service and escalating costs of living find many Americans just one paycheck or medical bill away from financial insecurity. “*Us/them*” lines drawn by income and wealth are blurring as “*the other*” – the economically insecure – become not “*them*” but “*me*.” The growing universality of the need for economically inclusionary places to live suggests that YIMBY – “*yes, in my backyard*” – may well replace the NIMBY protests that have marked much of inclusionary zoning’s fraught history.

Mixed-use redevelopment readily aligns with both the imperative that cities and towns provide economically integrated housing and with the desire of growing populations across all economic strata for denser, compact multi-use communities. That redevelopment is transforming desirable suburban and urban tracts that once housed single-use sites like massive office parks and shopping malls. Today, those are largely becoming relics of history. Whether vacant, underutilized or abandoned, in many aspects, they have outlived the conditions that prompted their very creation. Yet the properties on which they were built are prime real estate,

94. See *The Uncomfortable Truth: Racism, Injustice, and Poverty in New Jersey*, *supra* note 39, at 12.

95. Erin Petenko, *New Jersey Tops Nation in Number of Millennials Living with their Parents*, N.J. ADVANCE MEDIA (Sept. 15, 2016), www.nj.com/news/2016/09/new_jersey_tops_nation_in_number_of_millennials_living_with_their_parents.html.

96. See Nadia Evangelou, *Where is the Workforce Moving?*, NAT’L ASS’N REALTORS (Aug. 6, 2018), economistsoutlook.blogs.realtor.org/2018/08/06/where-is-the-workforce-moving/.

97. *Id.*

98. *Senior Poverty*, JUST. AGING, www.justiceinaging.org/senior-poverty/ (last visited May 14, 2019).

99. *Id.*

surrounded by essential infrastructure and situated close to transportation hubs and major roadways. Initially zoned only for commercial uses, those properties are ripe for reinvention responsive to the changing demographics, lifestyle-related and work-related preferences of the contemporary marketplace and the need for affordable housing.

In New Jersey, mixed-use inclusionary redevelopment is reinventing those spaces to render them accessible places to work, play and live. Those emerging multi-use centers are melding residential, commercial and recreational uses in economically inclusive ways. Empty or underutilized single-use subdivisions, office parks and malls that sit in prime suburban and city locations today have the potential to become economically integrated centers. Fair share housing obligations are being met as low- and moderate-income housing is woven into the fabric of these emerging sites. As a result, *Mount Laurel's* future is looking brighter. With effective planning and watchful courts, suburbs and towns once designed to exclude whole segments of the population may finally be opening their doors.

For example, located close to New York City, townships in Bergen County, New Jersey have long ranked as among the most economically exclusionary in the State, with vastly poorer towns “just a stone’s throw away.”¹⁰⁰ Today, desirable places throughout the county are transforming into mixed-use town centers that meet affordable housing obligations. Within the county, Garden State Plaza (New Jersey’s largest mall) is transforming as part of its developer’s strategy to achieve “concentration, differentiation and innovation.”¹⁰¹ The mall’s operator recently announced that “[a]partments, offices, public parks, additional shopping and dining, and a transit center are all part of a multi-year redevelopment plan that would make the 2.1 million square foot shopping center a ‘modern-day town center for Bergen County.’”¹⁰² The residential neighborhood within the development will feature “tree-lined streets and a promenade. A public park will be a centerpiece and lead to an open-air plaza and adjoining fields.”¹⁰³ The development will include recreational centers, workplaces, restaurants, coffee

100. Erin Petenko, *The Twenty Most Expensive Real Estate Markets, Ranked*, NJ ADVANCE MEDIA (July 2019), www.nj.com/data/2018/09/the_20_most_expensive_nj_real_estate_markets_ranked.html; Jean Folger, *The 24 Most Expensive Towns & Zip Codes in New Jersey*, INVESTOPEDIA (May 4, 2019), www.investopedia.com/articles/managing-wealth/042916/10-most-expensive-zip-codes-new-jersey.asp (showing the most expensive areas in New Jersey by median income and home value).

101. Allison Pries, *Garden State Plaza, NJ's Biggest Mall, is Getting a Massive Makeover*, NJ ADVANCE MEDIA (May 1, 2019), expo.nj.com/news/g66l-2019/05/7057532b107299/garden-state-plaza-njs-biggest-mall-is-getting-a-massive-makeover.html.

102. *Id.*

103. *Id.*

shops and retailers.

Originally built during suburban development's heyday with its attendant investment in supporting infrastructure, the mall is already located at the intersection of major roads and highways. The new plans include the addition of a public transportation hub on site. The redevelopment falls within the property's recent re-zoning which now renders it mixed-use. The re-zoning was implemented to facilitate attainment of *Mount Laurel's* inclusionary housing mandate.¹⁰⁴

In Monmouth County, New Jersey, redevelopment aims to transform a now-vacant strip mall in a prime shorefront community into a mixed-use center that includes apartments, shops, parks and entertainment facilities.¹⁰⁵ Similarly situated at the intersection of key roads, the redevelopment plans to include a half-dozen environmentally friendly low-rise residential buildings comprised of one- and two-bedroom condominium apartments. That construction design includes low- and moderate-income units.

North American Properties, a Cincinnati commercial real estate firm focused on mixed-use redevelopments since 2010, has its sights set on renovating 418 acres of waterfront property in Sayreville located in Burlington County, New Jersey.¹⁰⁶ The developer deems the project the "next-generation, mixed-used development, placing 'heart share over market share' in creating America's next great hometown."¹⁰⁷ The project, called "Riverton," is scheduled to create a 2.5 billion dollar community that mixes residential, retail, entertainment, office, hotel and recreational uses on more than two miles of waterfront, making it the largest mixed-use project in the State.¹⁰⁸ Riverton will include market-rate, as well as low- and moderate-income single-family and multi-family housing,¹⁰⁹ together with retail options across all price points.¹¹⁰

In Holmdel, New Jersey, what was once Bell Labs' sprawling (but then defunct) suburban office park has been transformed into a vibrant multi-use center.¹¹¹ Now a bustling city-like center within

104. *Id.*

105. Steve Strunsky, *Sad, Empty Strip Mall at Busy Traffic Circle Near Jersey Shore Could be Replaced by Hotel, Apartments*, NJ ADVANCE MEDIA (May 3, 2019), www.nj.com/business/2019/05/sad-empty-strip-mall-at-busy-traffic-circle-could-be-replaced-by-hotel-apartments.html.

106. *Riverton*, N. AM. PROPS., www.naproperties.com/projects/riverton/ (last visited (May 14, 2019)).

107. *Id.*

108. *Id.*

109. Susan Loyer, *\$2.5 Billion Waterfront Project will Create Town Within a Town in Sayreville*, MY CENT. JERSEY (Mar. 16, 2018), www.mycentraljersey.com/story/news/local/development/2018/03/16/riverton-waterfront-project-sayreville/422849002/.

110. *Id.* (quoting North American Properties partner, David Weinert: "We're going to have everything from off price, value, big box, theater, food hall, market, gym and electronics. We are going to cover all areas of merchandise").

111. Chris Matthews, *The Reincarnation of Bell Labs*, FORTUNE (Feb. 2,

the suburb of Holmdel, the repurposed and renamed Bell Works is referred to on the tract's website as a "metroburbs."¹¹² The property was once the standard-bearer for the twentieth-century single-use suburban corporate office campus.¹¹³ Having outlived its purpose, when the site was purchased in 2013 it was vacant and in declining condition.¹¹⁴ Today the thriving two million-square-foot center boasts a public library, a range of corporate tenants, offices, more than 20 shops and restaurants and two markets. The development includes a nearby 280-unit apartment building that integrates *Mount Laurel* units throughout.¹¹⁵

Scores of similar mixed-use redevelopment projects are changing New Jersey's exclusionary housing landscape for the better. Thanks to the judiciary's unyielding resolve to enforce the inclusionary housing mandate, changing market preferences for housing and lifestyle and the opportunities for reinvention presented by vast, once bustling spaces left behind by those market shifts, New Jersey is finally realizing the *Mount Laurel* mandate. Mixed-use inclusionary redevelopment is transforming vacant, abandoned and underutilized properties into vibrant, state-of-the-art centers. The redevelopment redounds to the benefit of the environment, developers, municipalities, local taxpayers and, most essentially, the State's residents.

The projects underway are equipped with energy-efficient infrastructure, LED lighting and improved stormwater management systems. Many are designed in accordance with exacting LEED standards.¹¹⁶ Redevelopment is taking place on disturbed parcels already covered with buildings and impervious surfaces, thereby allowing for the preservation of more pristine and undeveloped areas of the State. Local taxpayers are poised to reap

2015), fortune.com/2015/02/02/bell-labs-real-estate-revival/ (outlining the changes of Bell Labs from a research laboratory to a new multipurpose center).

112. BELL WORKS, bell.works (last visited May 15, 2019).

113. See *Bell Laboratories – Holmdel*, NAT'L PARK SERV. (July 25, 2018), www.nps.gov/places/bell-laboratories-holmdel.htm (explaining what Bell Laboratories is and its development).

114. Michael L. Diamond, *Bell Labs to Bell Works: How One Man Saved the Historic Site and Made it a Tech Mecca*, APP (Nov. 15, 2017), www.app.com/story/news/local/redevelopment/2017/11/15/bell-labs-bell-works-tech-jobs-holmdel/337632001/.

115. *Putting the "Live" in the Bell Works' Live. Work. Play Motto*, BELL WORKS (Feb. 15, 2018), blog.bell.works/putting-live-bell-works-live-work-play-motto.

116. Leadership in Energy and Environmental Design ("LEED") is the most widely used green building rating system in the world. See *What is LEED*, U.S. GREEN BLDG. COUNCIL, www.usgbc.org/help/what-lead (last visited May 14, 2019) (explaining the requirements of LEED and its standards). Available for virtually all building project types, from new construction to interior fit-outs and operation and maintenance, LEED provides a framework that project teams can apply to create healthy, highly efficient, and cost-saving green buildings. *Id.* LEED certification is a globally recognized symbol of sustainability achievement. *Id.*

the benefits of an enhanced municipal tax base as previously vacant or underutilized sites are reassessed based on their revivification.

Affordable housing units are an integrated part of these emerging neighborhoods. Residents of very low-, low- and moderate-income are not merely living on the same floor or next door to market-rate residents. Irrespective of income level, all residents have access to the same community, with its nearby schools, places to work, shop, eat, play and, simply, interact. The benefits of housing equity are given the chance to accrue as mixed-use redevelopment becomes neighborhood-level integration.¹¹⁷ People prosper when given the opportunity to reap the advantages of quality education, desirable housing, safer neighborhoods and the advantages otherwise afforded only to those of greater means. So does civic life.

V. CONCLUSION

Innovative mixed-use redevelopment has emerged as a promising land-use model that is transforming vacant and underused single-use properties into thriving mixed-use residential and commercial communities. More significantly, mixed-use redevelopment offers an opportunity to remediate the wrongs of economic housing segregation and make real the promises of inclusionary zoning. Indeed, it provides a platform on which to reinvent the ways in which inclusionary housing can achieve neighborhood integration. Mitigating the exclusionary consequences of rising housing costs and neighborhood gentrification, it provides opportunities for the poor and those of modest-income to live, work and play in higher-income neighborhoods where NIMBY had long denied access. With its *Mount Laurel* mandate stridently in place, New Jersey is leading the mixed-use redevelopment movement to reimagine its small-town centers, cities and suburbs while advancing the long overdue attainment of housing equity.

Fair and inclusive housing opportunities are intrinsic to the cause of human dignity. Where we live deeply affects the determinants of *how* we live and the very quality of our lives. When exclusionary zoning bars entry to whole segments of the population because of income, social and economic costs are imposed on all. We share a collective destiny, but when denied proximity to each other because of how much or how little we have, we forget that what we do to the “*other*” we do to ourselves — that forgetfulness tears at the fabric of civic life and the very promise of democracy.

Without proximity to each other, we are without a basis to

117. See Rick Jacobus, *In Defense of the ‘Poor Door’*, SHELTERFORCE (Oct. 14, 2015), shelterforce.org/2015/10/14/in_defense_of_the_poor_door/ (stating housing equity is best achieved by integrating neighborhoods).

understand that no matter our differences we all want a better life for our children, dream the same dreams and hope to awaken from the same nightmares. It is indeed difficult to hate from up close. But from a distance, it is easy to submit to the delusion that the burdens we carry somehow relieve us of the responsibility to know the struggles endured by others. That veil of ignorance, in turn, denies us our innate capacity for empathy. It is then that we decide to live only for ourselves. Pernicious strands of narcissism have infected all spheres of engagement, contributing to divides of class, race and politics that taken to their extreme come with a once unimaginable price – the soul of our nation.

We can do better. Economic fair housing is achievable. As New Jersey's *Mount Laurel* experience shows, courts can meaningfully advance the aims of inclusionary zoning no matter the logjams of the coordinating branches' dysfunction and class-based biases that die hard. What is more, significant demographic shifts and changing suburban landscapes present ripe opportunities to vindicate those aims through mixed-use economically inclusive redevelopment. The redevelopments' integrative designs seamlessly incorporate low- and moderate-income housing without separation or stigma.

Using the prime spaces that once were home to shopping malls and sprawling office parks, New Jersey has allowed re-design necessity to spark mixed-use redevelopment reinvention. Against the backdrop of firm judicial mandates to make low- and moderate-income housing a part of that reinvention, fair share obligations are being met in ways that redound to the benefit of all. In view of *Mount Laurel's* fraught history of defiance and delay, the reinvention of inclusionary mandates that is now underway here is cause for considerable optimism. It is not merely possible to undo the harmful legacy of exclusionary zoning and economic segregation in housing. It is a moral and legal imperative.

