



American Planning Association  
**New Jersey Chapter**

*Making Great Communities Happen*

### **The Case for Allocation Reform:**

#### *Why the 3rd Round Model with 4<sup>th</sup> Round Data Fails as Housing Policy & What to Do About It*

##### APA New Jersey Housing Committee:

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Nothing would be easier than to proceed into future decades with the “allocation problem” having been solved once and for all by the fine work of Judge Jacobson and the many able planners and lawyers involved in the litigation that she oversaw (hereinafter the “3<sup>rd</sup> Round Model”). The first time we read a version of the bill, it struck us as right that we should move in this direction. However, the data frustrates the easy choice. The current data upon which the Nonresidential Real Estate Valuation and “Vacant Land” allocation factors are built do not work as intended to advance an appropriate housing policy. Fortunately, the solutions offered herein are rooted in the history of the Mount Laurel doctrine and are simple to implement.

#### **The Economic Factor Problem**

First, the “economic factor” that is part of the model is problematic. The Consensus Methodology (the first model developed by a panel of planners under the guidance of Judge Serpentelli) used a 4-factor model in which 2 of the factors – half the formula – were based on “covered employment” and the change in “covered employment” over a 10-year period.<sup>1</sup> This relied upon data that the Department of Labor and Workforce Development used in tracking unemployment claims and related programs. The model allocated 25% of the need based on current employment, which drove need numbers to major employment centers. It allocated 25% of the need based on the last decade of employment change, which drove need to the communities then experiencing rapid growth of major office-based employment centers. COAH’s 1<sup>st</sup> Round model retained this approach.<sup>2</sup>

This approach to the model was taken because the primary goal of the allocation exercise is to match future housing opportunities to areas with large and growing employment. Planners speak of Job/Housing balance ratios and shorter travel to work times as positive goals of a regional housing policy approach. However, these data had several problems. It covered only those jobs tracked by the Department of Labor, which were “private sector” jobs. In addition, there was a reporting gap in that filers in headquarters or main offices would often report employees as being located in that building rather than taking the extra effort to report employees by specific worksite, and the data was often reported by mailing address rather than actual location. This led to spikes in allocations to

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<sup>1</sup> See “Appendix H” by J. Creigh Rahenkamp in Mount Laurel II & the Fair Housing Act, Jeffrey R. Surenian, NJICLE (1987).

<sup>2</sup> NJAC 5:92-5.3.

municipalities with major headquarters locations or more prestigious mailing addresses. As a result, COAH “reformed” the approach for the 2<sup>nd</sup> Round Model, switching to nonresidential valuation of real estate used for local real estate tax obligations and the change in nonresidential valuation over a 10-year period.<sup>3</sup> In making this switch, COAH’s Appendix A asserted that: “property valuation ... has been found to be an excellent surrogate for the intensity of use or the number of employees in the structure”. This had the benefit of smoothing out the spikes due to the HQ bias and proved to be a very workable alternative.

Skipping over the COAH failures to the 3<sup>rd</sup> Round Model just used, we are down to a single economic factor, with economics now only driving 33% of the allocation rather than 50%, increasing the weight of the land and income allocation factors. While problematic from a housing policy perspective, this was certainly well-known by those contending before Judge Jacobson. What is new is the actual content of the data.

Over the past decade – or more really – we have lived through a great collapse of suburban offices as the core of our economy. In addition, with the COVID-19 impact speeding up the move to direct-to-consumer retail, we have seen the darkening of strip centers, malls, and other retailers statewide. This has led to significant property reevaluations and the conversion of substantial amounts of nonresidential property to residential uses. To evaluate the effect of these changes on the way the allocation would occur, we analyzed the change in valuation between 2015 and 2022 to calculate the nonresidential capacity factor using the Property Tax Tables published by the Division of Local Government Services at the Department of Community Affairs.<sup>4</sup> In this test run of the data, about 18% (1 in 6) of New Jersey’s municipalities had negative growth or were located in a region with overall regionwide negative growth for this factor. The allocation model used in the past rounds has never dealt with widespread negative numbers nor regional negative numbers, presenting a new challenge to the methodology. Do we let them run through the model as a “credit” against the other factors or, alternatively, “zero them out,” so allocation is based only on growth or a zero value for this factor in the overall formula? In the past rounds, the few scattered negative numbers would simply be zero-ed out, but when a large share of the pool is treated in that way, the allocation shares will be greatly distorted.

Further, when we look at the communities with growth in nonresidential valuations, the underlying stories in this round are tied to the building of warehouses (with limited employment) or idiosyncratic items like the American Dream Mall. The results present extremely spikey allocations with dramatic highs and lows, resulting in seemingly random locations for future housing. There may be some that experience a joy of sorts that those that chased warehouses caught a disproportionate housing obligation, but “revenge” is not the foundation for sound planning for housing, which needs to be located in proximity and relationship to actual job opportunities. The correlation asserted by COAH in 1994 between the nonresidential valuation of property and employment is thoroughly broken in 2023.

Additionally, the nonresidential valuation approach always embodied its own distortion, arguably as large as the data problems with the old employment data. Simply, the measure fails to capture tax-exempt employment locations – which may include institutes of higher education, hospitals, long-term care facilities, and other tax-exempt uses within the property tax database. Growth and employment changes in these uses have never been captured within the change in nonresidential valuation factor. And in New Jersey, these have been at the heart of

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<sup>3</sup> NJAC 5:93-2.3.

<sup>4</sup> Property Tax Information, Division of Local Government Services. See: [New Jersey Department of Community Affairs \(DCA\) | Property Tax Information \(nj.gov\)](#)

economic expansion in recent years.

### **Towards a Solution**

Two steps can be taken: 1) return to an employment-based factor that is now available in a form significantly less impacted by HQ bias, and 2) return to using two factors to put 50% of the weight on economic considerations, using a flow (the last ten years) and a stock (the current amount).

The old “covered employment” reports from the 1980s and early 1990s have evolved into the “quarterly census of employment and wages” (QCEW). The QCEW program is a product of the U.S. Bureau of Labor Statistics and is compiled in partnership between states and the federal government, aggregating employment data from private and government sectors covered by unemployment insurance and enhanced with additional survey efforts by BLS.<sup>5</sup> QCEW municipal reports, published by the Department of Labor and Workforce Development, report annual average employment by municipality including both private and public sector employment.<sup>6</sup> All employers with multiple worksites are now also required<sup>7</sup> to file a “Multiple Worksite Report” which specifies that the workers are to be assigned to business units and those units are to be identified by “street address (physical location)”.<sup>8</sup> Additionally, significant advancements since the early 2000s have been made in geographic information science (GIS) technology, enabling much improved geocoding of address locations to more accurately place employment on the map.<sup>9</sup> The old HQ bias has been substantially addressed. In short, the reasons that the employment data was dropped from the allocation model implementing Mount Laurel have been addressed by those gathering the data. To the extent that there will always remain imperfections in any specific data series or allocation factor, the use of the current employment data is far superior to the known and significant problems with using the nonresidential valuation data as the economic factor in the model. With the failure of nonresidential valuation to continue to be a rational surrogate given the nature of developed uses in this past decade, it is time to abandon the surrogate and return to the original intention of linking allocations to employment.

### **The Problem with the Land Factor**

The land factor for both the Consensus Methodology and COAH’s 1<sup>st</sup> Round Model was “total acres in the growth area” as mapped by the draft 1980 state plan and the then-current mapping of the Pinelands Commission and CAFRA under DEP. There was no effort to tease out the status of the land itself – environmentally constrained, vacant, or developed – it was all just total acres of land in the growth area. COAH’s 2<sup>nd</sup> Round Model introduced the idea that we should allocate to “vacant” land based on a 1991 analysis by researchers at Cook College using Landsat satellite imaging and Census TIGER files. This was a dramatically positive innovation that allowed the allocation of new growth to be guided by better information about where it could actually happen. This has been carried forward into the 3<sup>rd</sup> Round Model, and the draft bill relies on work now being conducted by Rowan based on DEP data that should fully incorporate estimates of environmental constraints.

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<sup>5</sup> Quarterly Census of Employment and Wages, Overview, U.S. Bureau of Labor Statistics  
<https://www.bls.gov/cew/overview.htm>

<sup>6</sup> See [Labor Market Information | Quarterly Census of Employment and Wages \(nj.gov\)](#)

<sup>7</sup> Required pursuant to 43:21-11. NJ is one of 31 states that required MWR filing. See: [The Multiple Worksite Report : U.S. Bureau of Labor Statistics \(bls.gov\)](#).

<sup>8</sup> The form itself can be found here: [Multiple Worksite Report - BLS 3020](#)

<sup>9</sup> See for example: [2005FCSM\\_Konigsberg\\_Talan\\_Clayton\\_VC.pdf](#)

While the quality of the results in estimating the amount and location of vacant land has dramatically improved with time and technology, the role of “vacant land” in determining where growth occurs is becoming less and less relevant. Tim Evans of New Jersey Future has been tracking where development has been occurring. Using land cover data from imaging in 2007, he created a list of communities that had, by that date, already achieved 90% development of their respective developable land areas. It turns out that 270 municipalities were approaching an initial “built out” by 2007. He then determined what percentage of the State’s total housing development occurred within those municipalities each year. In 1996, only 16.8% of all new housing, as measured by the issuance of a certificate of occupancy, occurred in these 270 towns. In other words, they contributed a small amount of the State’s housing growth that was largely focused on vacant land elsewhere in that year. Over the period from 2000 to 2007, the share of the State’s housing growth in these towns rose to 34.5%. For the period from 2008 through 2022, it rose to 54.7%. Looking at the most recent years for which data is available, in 2021, it reached 65.9%, and in 2022, it was 62.4%. In short, two-thirds of our current housing development is occurring in municipalities that were nearly “built out” already in 2007 through redevelopment and repurposing. Taking this one step further, Mr. Evans has reassessed how many municipalities hit 90% development based on a 2015 aerial analysis, a pool of 349 municipalities, and they have produced 76.8% of all new housing in 2022. Mr. Evans intends to assess the current number of municipalities that would fit the “built out” criteria using current land use data in the near future, which will increase the number of municipalities above the 270 used for the original analysis and the 349 for the spot check in 2022.

What this means is that the majority of our new housing growth created during the 3rd Round of compliance has not been dependent on the prior availability of “vacant land”. This is not to say that large inclusionary developments on vacant land do not happen – those of us working in this field know that there are many such sites still in the approval pipeline – but what it does mean is that the presence or absence of “vacant land” in allocating housing responsibility is no longer particularly useful as we look out to 2025 and beyond.

No longer should we say that an increasing share of our growth is redevelopment, but rather say now that a significant majority of our housing additions occur on already once-developed land. As an image of what is meant by this, Manhattan was “built out” well over a century ago, but it is a different place today. While nothing like Manhattan in form, land in NJ is constantly reused for different uses and housing types over time. Looking forward to the period from 2025 to 2035, our needs for more housing will largely be met – or failed to be met – as a result of what happens to already once developed land. What sense does it make that we will allocate housing responsibility based on “vacant land”, when the data already tells us that developable vacant land will largely be a marginal contributor to the housing production in the future decade?

There will be calls from many for an effort to add “redevelopment potential” to the inventory of vacant land to expand the allocation factor. While that is exactly what happens during compliance review, it is not feasible to do so in the allocation phase. There will never be a statewide estimate of “redevelopment potential” by municipality. For example, Mr. Rahenkamp once served as a court-appointed master in a town that sought to claim it had no ability to meet its needs. He followed a well-established process created by masters before him to obtain a property list and start calling landowners – if you got X zoning with a set aside, would you be interested? He recruited enough land to meet the need. How could such a process ever be done on a statewide basis? We don’t know what land might be available for redevelopment until we ask! And even then, it is an inherently dynamic process. Seeking to allocate on “redevelopment potential” is a fool’s errand. Determining actual redevelopment potential is inherently part of the town-by-town compliance process.

In addition, carrying “vacant land” as an allocation factor (33% of the weight if economics is still limited to one factor) produces results in 2023 that cannot be justified as housing policy. As there are fewer and fewer vacant, developable acres in growth areas, each acre carries more and more weight in the allocation model. And as fewer and fewer municipalities have significant vacant, developable acres within their borders, they will get crushingly high allocations. This immediately runs into the compliance caps, so the result will be that an increasing share of the overall need bleeds off into an instant credit and will go unfulfilled.

Finally, there is the issue of weighting and the “map.” The bill refers to a 20+-year-old State Plan map and weights by planning area and center status. The Impact Assessment for that version of the State Plan reported that over 300 centers with developable land identified within them would be required for the plan to meet its statutory requirements and not be a break on growth. While many counties actively identified centers, and some even drew boundaries around them during cross-acceptance, others did not. And either out of time or resources, the Commission decided to publish the plan without the centers being an official part of the plan and created a process to “designate” centers post-adoption. Not surprisingly, growth area municipalities overwhelmingly failed to participate. Our state has centers where regional cities like Millville, Vineland, Bridgeton, and Phillipsburg needed the designation to participate in programs with the bigger cities or in coastal areas where centers allowed towns to keep reasonable coverage requirements under CAFRA and a few scattered rural centers that proactively sought to limit future growth by getting a tight boundary before someone decided to add growth area to their designation, but we do not have the growth-focused centers that should receive additional weight under COAH’s rules or the bill on the map. There are areas within Planning Areas 3, 4, and 5 with sewer service that should receive growth weights that are not reflected on the map. We need something better.

### **Towards a Solution**

The solution is a simple one. Return to the original allocation approach of treating acres in a growth area<sup>10</sup> as the factor with no effort to sort out vacant from developed. This approach worked fine for the pre-COAH and 1<sup>st</sup> Round models when most of the land outside Urban Aid municipalities was vacant, and it will work again in the future when most of the land is already once-developed. Teasing out vacant land was useful in between, but not for our future.

It is worth further discussion on whether to additionally remove categories of environmentally constrained lands. There is a fairness argument that a town with 50% constrained land and one with 10% should see a different result. However, it appears that the majority of large area constraints are already factored into the intended future mapping of growth areas under the State Plan currently being updated. To the extent that “growth area” already excludes major systemic constraints, there is little need to estimate the effect of the kinds of constraints that are determined or verified site by site. The distribution throughout the growth area will be generally uniform so that at the allocation level, there is fairness between municipalities.

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<sup>10</sup> “Growth Area” has been defined in other legislation and agency rules and will not be addressed herein. Essentially it comes down to sewer service areas – existing and planned – as these are designated in state and regional agency plans.