

RUTGERS

Edward J. Bloustein School
of Planning and Public Policy

THE ISADORE CANDEUB MEMORIAL LECTURE IN PLANNING

What We Must Never Forget: The Social Equity Obligations of Planners and Planning Officials

presented by Dwight Merriam

Wednesday, November 9, 2011, 5:00 p.m.

Special Events Forum, Edward J. Bloustein School of Planning and Public Policy



I want to thank you for inviting me to talk with you today about what we collectively do as planners - as professional planners and as elected and appointed officials responsible for the planning and the regulation of land use here in The Garden State.

This is the annual Isadore Candebub Memorial Lecture. Isadore Candebub was chairman of the executive committee of Candebub, Fleissig & Associates, consultants in community development and environmental planning. He established the firm in 1953 with Morris B. Fleissig, a lawyer. He was born in Rumania and graduated in 1943 from City College of New York, where he was elected to Phi Beta Kappa. He attended graduate school at Columbia University and ultimately received a master's degree in 1948 from the School of Architecture and City Planning of the Massachusetts Institute of Technology. When he died 25 years ago, he was just 64.

His widow, Ruth, is here and to her I want to say how truly honored I am to be called upon to talk about the issues I believe were important to Isadore

Candeub, as we gather here today to remember him and his work, and to do so from the perspective of the issues we face today.

I knew of him and I expect we were together at events of the American Society of Planning Officials, the American Institute of Planners, and the American Planning Association. His reputation for being a consummate professional was widely-recognized. Isadore Candeub's writings were my way of connecting with him during the early part of my career.

His article, "Urban Design Related to Social Needs," in the 1972 book, Planning Urban Education: New Ideas and Techniques to Transform Learning in the City, edited by Dennis L. Roberts II, seems so on the mark today, almost four decades later. He speaks to us still. Let me read a passage for you and have you think about what he had to say as I relate to you my views about what we as planners must embrace as our most important obligations:

In the earlier decades of this century the problems of the city were considered to be primarily physical and financial. A listing of these problems would include such items as traffic congestion, slums, inadequate parks, obsolete schools and inadequate sewers. Unfortunately, these conditions and others of a similar nature still continue. But we seem to be moving into a period in which the priority order of a listing of city problems will be headed by those of a social nature, with the physical ones being delegated to positions far down the list.

It has been argued that physical design has little relevance to the social problems of our cities. These are said to be primarily influenced by such factors as social and economic inequality, the availability of economic opportunities, the quality of social services and the political cohesiveness of ethnic and economic groups. It has been further argued that man, next to the roach, is the most adaptable creature in the animal world and can readily adjust to *any* physical setting.

These arguments probably have considerable validity when urban design is viewed as an isolated element. They are not valid when we recognize that the physical environment is very much part of the set

of urban forces to which man reacts and with which he is involved as part of daily life. A few recent events may be indicative of this.

[At this point he gives several illustrations].

...

My first encounter with the effect of the interaction of people with their environment occurred in 1950. At that time, I was directing a study of housing conditions in Paterson, New Jersey, leading to the selection of redevelopment projects. As a first step, we made a review of U.S. Census data by rentals, availability of private bathrooms and density of population for each block in the older portions of the city. We supplemented this with information on land use, lot sizes and age of buildings. We completed our inventory of existing data prior to field surveys and then anticipated that the field review would support our initial office determinations on the location and extent of probable slum conditions in the city.

To our considerable surprise, there were major discrepancies between our expectations and what we encountered in our field examinations. Some of the areas in which we expected severely blighted conditions evidenced considerable vitality and neighborhood cohesion and were in the process of being upgraded through the individual efforts of property owners and tenants. Other areas where the census findings had not indicated major problems were in a very poor state of repair, seemed to have no neighborhood cohesion and were undergoing rapid and continuing change of occupancy.

Our observations indicated that there were significant differences in street layout, mixture of heavy commercial uses and the extent of commercial traffic between the areas that were retaining vitality and those that were declining rapidly.

But the most important difference was the reaction of families – individually – in how they rated the varying areas for living. Their collective judgment, applied to the whole range of variations in the characteristics of the different blocks under study, made the critical difference between the areas that would decline and the areas that would be improved. Without any observable organized group efforts, group reaction and group judgment were decisive.

What is Isadore Candebub telling us? His point is this: While the physical environment is important for the well-being of those who work and live there, it is the people and their social needs, now and in the future, that must be the object of our most concerted efforts.

By the way, Isadore Candebub's work and influence, as most of you doubtless know, ranged far beyond the borders of New Jersey. A LIFE magazine article on July 30, 1972, quoted him -- they described him as "a leading city planner" -- on a proposed oil refinery in Tiverton, Massachusetts:

The attitude of any town is typically "look at the gravy an industry will bring in." The irony is that the degree of destruction is unbelievable. Land development is forever. If you accept this proposal you will unalterably change the course of this community.

Remember his words when we turn to the obligations of planners to speak for generations not yet born.

I would like to start by making a couple of observations about how our work as planners has changed in the 45 years since I first learned about planning way back in 1966 as a sophomore in college when a friend recommended a course in the department of landscape architecture.

First, in many respects planning hasn't changed much at all. A good deal of what is taught about planning in planning schools and law schools today is not much different than what I studied first in graduate planning school starting in 1972 and then in law school beginning in 1975. As the lead author of the most widely-used casebook on land use law, I follow developments in planning and land use law nationally for our annual supplements and new editions. Another author of that casebook is Stuart Meck. He has made an immensely important contribution to it with his writing on planning and his work has greatly enhanced the popularity of the book. A law school casebook written by a planner – makes sense doesn't it?

Not much has changed over the years with the exception of greater concerns about the environment starting back about 40 years and the more recent interest in stopping sprawl and increasing sustainability. While these are big and important shifts, think about all that remains the same after even a half century: variances, neighborhood opposition, special permits, spot zoning, applicants saying one thing

and doing another, illegal signs, time- and money-wasting frivolous appeals, everything's a taking, and so on.

Most of planning is incremental. We seem to plan and regulate in baby steps, rather than giant leaps.

Planning is also inherently iterative and interactive. By iterative, I mean that almost every decision we make builds on something that was done earlier. By interactive, I mean that most of what we do is contextual; it is done with regard to conditions and concerns external to the matter directly considered. Plans and decisions do build upon prior ones and, they do affect and are affected by many other factors.

These three "I's" -- the incremental, iterative, and interactive nature of planning -- can be excruciatingly frustrating. You know it; you live it. I am exasperated at how little progress we've made in many areas -- housing equity and affordability, growth management, natural resource protection, sustainability, preservation of historic landscapes and structures, protection of prime agricultural soils and farmland, minimum habitat area protection, and the list goes on. Why even the debate about clustering continues 60 or more years after the concept began to be widely discussed, except now some people choose to call these "conservation subdivisions," as the New Jersey Department of Transportation does, for example, in its Route 57 Corridor Plan.

You've had your share of successes, failures, and continuing frustrations right here in New Jersey, and we can learn from all of them. However, I'm sure you didn't invite someone from Connecticut to come down here to New Jersey to tell what you are doing right and what you are doing wrong. I don't have those answers. I can only make a few observations from my direct experience, from what people here in New Jersey have told me, and from what I know knowledgeable people across the country say about your land use planning and regulation.

I worked on the Hackensack Meadows Special Area Management Plan for its wetlands, which plan was eventually abandoned given opposition, principally by environmental groups. The concept of the SAMP is being used in ocean zoning now in Rhode Island and would have been beneficial in the Meadowlands. Categorize that as a partial failure and a frustration.

The Pinelands District is admired across the country. Put that in the success column. You can also put on that list the New Jersey Department of Environmental Protection's Green Acres program, with 13 statewide successful ballot initiatives in 50 years protecting almost 640,000 acres of open space. Buying land or receiving it as gift is the best route to preservation. And while we're on the list of successes, write down Radburn and Roosevelt, as examples of lasting community designs.

The Highlands Act isn't working and needs to be legislatively reengineered. I had occasion to look at it in some detail shortly after it was enacted when a group came to me desiring to challenge the law. Andy Davis, who is here today, has written on the several problems, and has an op-ed piece in this week's New Jersey Law Journal. Though some land has been saved from development, the Highlands Council lacks the authority it needs to do the job -- maybe the State Planning Commission should take over that role -- and compensation for property owners is inadequate. The shame of it is that an areawide plan and regulatory controls are needed, but the Act is lacking in several respects. List the Highlands Act under failure and frustration.

I guess I would put the Mt. Laurel affordable housing cases and subsequent processes in the mostly success category because of the nationwide influence, but we need to orchestrate techniques for improving affordability and it has taken way too long to produce housing, still not enough to meet the needs, here in New Jersey and elsewhere.

The preservation of The Great Swamp through grassroots acquisition was begun over 50 years ago by the late Helen Fenske, a self-described Green Village housewife, following an uprising of 1,500 residents who packed the Madison High School gym a week before Christmas 1959 to oppose the airport plan. The effort is exemplary of a point I want to make about future generations and our obligations to them.

To illustrate how influential these initiatives can be over many generations, let me tell you of this one small connection. Patricia Giaimo, mother of my law partner Mike Giaimo, died October 30th in Summit where she lived for 50 years. After Mike's dad died in 2003 from a long, chronic illness that required Pat Giaimo's full-time attention, she devoted herself to work on the board of the Friends of

the Great Swamp. I had known for some time about the effort that resulted in the saving of The Great Swamp, but I knew nothing of this one-degree-of-separation until Pat Giaimo died and I read the obituary.

Now here's the thread that runs on through time. When Mike was a boy in the early 1970's, the Giaimo family would go to The Great Swamp in the Meyersville area and sit and watch the purple martins. Purple martins are, as you may know, the largest swallow and Neotropical migrants which in the Eastern United States today are completely dependent on supplied housing for breeding. That quiet enjoyment of nature, made possible at The Great Swamp, profoundly influenced Mike for his lifetime, leading him to his profession as an environmental lawyer.

These are all large matters covering expansive landscapes. Sometimes great things do happen on small parcels, as in the story related to me by Harvey Moskowitz and Peter Buchsbaum, both here this afternoon, both old friends, and how they succeeded in getting an approval for the Midland School in Branchburg. By the way, Harvey went to work for "Iz," as he calls him, in 1957 when Harvey left active duty with the Air Force. Harvey stayed on until 1962.

The Midland School is a New Jersey approved non-profit school for children with developmental disabilities serving approximately 215 students from public school districts throughout northern and central New Jersey. The short version is that Peter was the lawyer for the school and Harvey was the town's consulting planner. Harvey made his report directly to the ZBA which voted 7-0 in favor. The Planning Board was not pleased and Harvey expected to be fired, but he wasn't. One Planning Board member said Harvey did exactly what he should have.

Children needing a strong voice in the public forum got two of them with Peter and Harvey, and the Buchsbaums' son, Matt, someone I have been pleased to get to know well, had a place to go to school.

I started off by saying that much hasn't changed as to the issues in planning, but I must acknowledge that the practice of planning has changed dramatically. Electronic communications and data access enable planners to be so much more productive. When I started as a planner in 1968 right out of college, we did our population forecasting

with giant mechanical calculators, called “coffee grinders” because they had notched discs that worked mechanically. You would punch in your numbers, push a button, and it would literally grind away to do the calculations. And if it jammed, which it sometimes did, you had to go back and spend hours inputting those numbers for population forecasting.

In graduate planning school in the mid-1970’s, we had to wait in line at the statistical lab to use five-function calculators, the calculators that only a few years later gas stations gave away with oil changes. And of course there were no personal computers and no Internet. All of our maps and plans were done laboriously, with ink pens, Prisma-color pencils, zip-a-tone and the like. It was fun, but with the today’s technology you can do in a day what took us weeks to do. Really.

Search engines put the world's knowledge just a few keystrokes away. The ability to connect with others through the Internet and social networking has allowed us to create powerful networks that advance our knowledge and further scholarly debate. Regrettably, they also provide undue leverage to some, but that perhaps is the price we pay for open access for all.

I want to share with you two stories from my practice that I hope will help illustrate what I believe we must see as our principal role as planners.

A lawyer friend asked if I could help someone who had just come to him looking for a new lawyer after being tied up in litigation for over a year. He wanted to refer the matter to me because he knew of my experience in land use. I took it on. The client was a man in his 60s, a foundry worker, a short stocky man, bulldog-like, with full metal leg braces, the result of suffering polio as a young boy. He told me that his wife, who I would guess was in her 40s, and their 16-year-old daughter loved horses and desperately wanted to own and operate a riding academy and boarding stable. So, on the verge of his retirement, he took his life savings, every penny he had, and purchased a small operating stable and riding facility on 5 acres in a rural area, borrowing a large amount of money with a commercial mortgage based in part on the additional income expected from the riding lessons and boarding.

Shortly after they closed on the property and moved in, the zoning enforcement officer issued a cease-and-desist order saying that the use

was not permitted on 5 acres and that they would have to stop giving riding lessons and boarding horses. The family retained the local lawyer who had represented them in the real estate closing and he did what some lawyers do instinctively -- he just filed a lawsuit, in this case, against the sellers and the real estate broker claiming that they had misrepresented the property. The action languished in court for at least a year before the matter was referred to me. For more than a year, because riding lessons could not be given and horses not boarded, the family didn't have enough income to pay the mortgage. The bank began foreclosure proceedings.

I asked if anyone had looked at what surrounding towns had for standards for such facilities, whether there had been any talk about seeking a variance assuming that there was no vested right to continue to operate regardless, and whether it might be possible to amend the zoning ordinance to allow this use on this site. The answer was "no".

My client, seeing his life savings slipping away and his daughter's dream turn into a nightmare, was deeply distraught. I became increasingly concerned. I couldn't find anything in the lawyers' code of professional responsibility to tell me what I should do, so I just did what I thought I must and I called the parish priest, told him what was going on and asked him to watch out for the family, which he did.

I took a look at the towns around and found the several of them allowed riding academies and commercial boarding operations on properties as small as 5 acres. I called the chairman of the zoning commission, which commission has the final authority to make decisions on changes to the regulations, to discuss whether it might be possible to amend them. He told me he was a high school teacher and that the teenage daughter, who had been an excellent student, had seemed highly distracted during the last year and she was now failing in school. He told me how concerned he had been for her. He said he had not known about the zoning problem. It was now clear to him and to me that the daughter felt that she had put her family in this situation by her pleading, with her mother's support, to buy the property. We surmised that she must have felt that this disaster was all her fault.

The chairman of the zoning commission, when he saw the evidence from the surrounding communities, welcomed an amendment; we petitioned to change the zoning ordinance to allow commercial

equestrian facilities on 5 acres, and went to the public hearing to present the petition. The town hall was an old building with high ceilings, maybe 15 feet between floors, and the hearing room was on the second floor. There was no elevator. My client wanted to address the commission and, when he got to the long flight of stairs, he refused my assistance. I watched him pull himself up the stairs, hand over hand, with his braces clanging on the metal edge of each stair tread. We presented our petition, the commission closed the hearing, and voted unanimously to amend ordinance.

By this time, it was too late for the family to recover financially. The property was foreclosed. I don't know what happened to them. They left town.

Abraham Maslow, who founded humanistic psychology and conceptualized the Maslow hierarchy of needs, once said that "He that is good with a hammer tends to think everything is a nail." If you are trained as a lawyer, you are bound to start by suing someone. We as planners need to be mindful of our own biases and challenge our own thinking about how we might get to the results we want. More about this later.

The second story comes from a December 2004 conference convened by Prof. Daniel Mandelker at the School of Law at Washington University in St. Louis. Many of you know Prof. Mandelker from his land-use law teaching, writing and speaking. He was my mentor as I made my way up through the American Planning Association's leadership. I take every opportunity I can to thank him publicly for all he's done for me and so many others. We all have an obligation to be a mentor to others and help them along just as others have helped us.

Those proceedings became a book, *PLANNING REFORM IN THE NEW CENTURY*. My role was to provide a commentary on presentations by two leaders in the field of housing and regulatory streamlining, Anthony Downs of The Brookings Institution, whose speech and chapter were entitled "Trying to Remove Regulatory Barriers to Affordable Housing" and Prof. Charles E. Daye from the law school at the University North Carolina, whose speech and article were entitled "Intersections, Roadblocks, and Dead Ends -- Sketching a Housing Social Efficiency Analysis."

I read their materials, listened to their speeches, and commented, mostly agreeing with what they said but also straining a bit to be conspicuously critical on a couple points just to show I was listening and that I had my own views. The transcription of my remarks became a 15-page commentary in the book following their chapters.

Now, a little background. My wife and I owned a great apartment in downtown Hartford in The Linden, a National Register building where we could walk to everything but, when we had two children, it became clear that the 1,000 square feet we had, with no place for them to play outside, was not going to work. Also, the Hartford school system had many problems. Although we were somewhat uncomfortable about it, we decided to pick up and move to the suburbs, which we did 12 years ago, building a house right next to an elementary school in Simsbury just 10 miles from the center of Hartford, going from one of the worst school systems in the state to one of the best.

Two months after the conference and after I had submitted my written commentary, I had occasion to sit in on the "writer's workshop" as they called it in my youngest son's fourth grade class to hear the children read their essays on a wide variety of subjects.

Destinee Santiago, age 10, of Hartford, who at that time attended our local elementary school under a limited program that brings children from Hartford, wrote and recited her essay. I was so taken with what she said, of how compelling it was, that I went to Prof. Mandelker and the American Planning Association, which had the book in production, and insisted they include Destinee Santiago's essay. They did. Her essay is now forever preserved and she became the only published writer in the Latimer Lane fourth grade class.

Here's her essay entitled,

"Hartford Kids Should Get To Go To Other Schools"ⁱ

Do you live Hartford? Do you want to go to another school or does you parent or parents want to move to another school? Do you live too far away? Well I think Hartford kids should get to go to other schools because schools in the suburbs are safer, have a better education, and have parents that help a lot.

Schools like Latimer Lane in the suburbs are safer then Hartford schools. There are fewer bullies and more teachers around. In

Latimer Lane, there are only two floors so you can see everyone on the first floor. The teachers and other people who work at Latimer Lane School know you by name because there are fewer children to keep track of.

Another reason why Hartford kids should get to go to different schools is because they get a better education. The teachers do not stress the children about CMT's [parenthetically that's the Connecticut Mastery Test under the federal "No Child Left Behind" law]. The children that go to great schools like Latimer Lane can concentrate more on learning. The teachers give one on one attention and are expected to do their best! The schools have many fundraisers to help the homeless too. Latimer Lane has great ideas like birthday clubs, Scholastic News, and the list the teachers make for books they suggest for that grade.

Last but not least, parents at Latimer Lane School are very helpful. The parents help the after school program, fundraisers, and volunteer in classes. Many parents put in a lot of time because they want to, not because they have to. Parents also help with projects. They also bake and show up for hay rides, survivor, and other activities.

No matter where you live or where you or your parents want to send you, you should be able to go to different schools.

Destinee Santiago, age 10.

Destinee Santiago is now a high school junior and attends Simsbury High School, along with my son, Alexander.

What can we learn from the riding academy case and Destinee Santiago?

We as planners -- professional planners and elected and appointed public officials alike -- must never forget, we must never forget, that we have a job, that we have a mission that profoundly affects, touches and concerns the lives of people every minute of every day. Too many brightly-colored plans, too many pages of facts and figures, too much multivariate analysis, too much focus on the development applications demanding our attention this month to the point where we are not fully

considering the future needs of our communities, can blind us from the reality, I say again, can blind us from the reality that what we do profoundly affects people, real people, ordinary people, people whose homes, and neighborhoods, and schools and places of work are at the center of their lives, where they are grounded, people who can't just pick up and move to another place.

We cannot ever allow ourselves to strap on professional and political blinders that keep us from seeing those innovative solutions that address the real problems. When we pick up that hammer of planning practice, we must resist the ready route to the nail, and instead challenge ourselves each and every day to problem solve synoptically and sometimes leave the comfort of our core body of knowledge and experience.

Know this also, our clients, our constituents, the people we work for, the objects of our endeavors, are often people like Destinee Santiago, who have no voice in the forum in which we may work. They are the poor, they are the disenfranchised, they are people who live far away but wish to be our neighbors, they are the old, they are the young, they are the people working two and three jobs who have no time to go to public hearings or run a blog, they are the people who need our help in processing and applying complex information, they are the generations not yet born, they are the people who will live on this earth 50 years and 100 years and 200 years and 500 years from now.

No one, no one other than we as planners, has such a responsibility to speak for those who have no voice in the public forum today and to speak for future generations. No one, no one other than we as planners, has the responsibility for decisions today that will profoundly affect others. When you save a sole-source aquifer, when you preserve a critical habitat, when you make it possible for dense mixed-use development along public transit corridors that gets people out of their cars, when you save a ridge top from trophy home destruction, when you preserve the historic landscape, and when you plan and regulate in a way that keeps our foundry worker's family from being destroyed and makes it possible for children like Destinee Santiago to live where they want to live and to get the education they so desperately seek and deserve, then, I say to you, you have begun to do your job as a planner.

One way we might all assess whether we are doing what we must as planners is ask ourselves, what would Isadore Candebub tell us we should be doing?

You have my best wishes for the greatest success in your work. You have chosen to fill a most important role in our society and I hope you enjoy serving others in this way as much as I have enjoyed my life as a planner.

Thank you.

ⁱ The spelling and word choice are exactly what Destinee Santiago wrote.