

Appendix 5-A

Fair Share Analysis

The Basic Concept of Fair Share

The 1988 amendments to the Pennsylvania Municipalities Planning Code (MPC) require that through zoning, each municipality provide "...for residential housing of various dwelling types encompassing all basic forms of housing, including single family and two family dwellings, and a reasonable range of multiple family dwellings in various arrangements..." (MPC Section 604.4). This amendment stemmed from the judicial determination that local governments are required to plan for and implement land use regulations that meet the legitimate needs of the range of people who may desire to live in the community. In spite of this "fair share" mandate, however, the Pennsylvania Legislature has not specified the necessary amount of any residential use, nor has the legislature offered guidance for a municipality to determine if it has met its obligation to provide for each residential use.

The courts, however, have been more instructive on how a community may determine if it has met its fair share obligations. In 1977, the Pennsylvania Supreme Court decided the landmark case, *Surrick v. Zoning Hearing Board of Upper Providence Township* 776 Pa. 182, 382 A.2d 105, which laid out an analytical "fair share" test, or methodology, to help determine if a municipality is allowing only a token provision of a residential housing type, particularly multi-family dwellings¹, or whether a municipality is meeting its fair share obligation. The process by which to determine if a municipality has met such a responsibility is termed a "fair share" analysis. A fair share analysis attempts to assess, based on available information, whether a municipality is providing for its "fair share" of all housing types, particularly multi-family housing, and whether the municipality is attempting to meet its obligation to accommodate future growth.

This fair share analysis considers the availability of land and the provision for multi-family housing from several different perspectives to ensure the Oxford Region has designated a reasonable amount of land for multi-family dwellings, based upon the Land Use Plan recommendations. (See Chapter 5: Land Use) The analysis is intended to prevent the Region from directly or indirectly excluding any common form of residential housing, particularly multi-family housing from within its borders.

¹ Note that in the context of this fair share analysis, the term "multi-family" means any housing type of three (3) or more dwelling units, including but not limited to townhouses, quadruplexes and apartments. The definition does not include twins or two-family units. This distinction is based on the MPC language in Section 604(4) which supports distinguishing 2-family homes from structures with 3 or more dwelling units.

The Fair Share Test

The fair share analysis is comprised of a three-tier test laid out by the *Surrick* Court. This test is not appropriate if a municipality or region completely excludes multi-family housing. A zoning ordinance that completely excludes a type of residential use will be found invalid. Rather, the fair share test is to determine if the amount of multi-family units provided for is token or “de facto” exclusionary (permitted as a specific use, but does not allocate sufficient land for that use or otherwise negates the actual provision of the use).

While the case law following *Surrick* has provided some general principles of law, neither the courts nor the legislature has developed clear standards for meeting fair share. Indeed, even with the three-tier *Surrick* fair share test, “the question of whether or not a zoning ordinance is exclusionary in its effect...always depends on the unique facts in each case and, thus, can only be decided on a case-by-case basis.”² Notwithstanding the individual nature of each municipality, the courts have established the following tiers for determining if a municipality is providing for its fair share obligation:

- Tier 1** Is the Region a logical area for population growth and development? (i.e., is it in the path of growth?)
- Tier 2** Is the Region a developed or developing community?
- Tier 3** Is the amount of land available for multi-family development disproportionately small, in relation to population growth pressure and present level of development?

Tier 1 - Path of Growth *Is the Region in the Path of Growth?*

The first tier of the *Surrick* test examines whether a community is a logical area for development and population growth or “in the path of growth.” There are several factors to consider in determining whether the Oxford Region is in the path of growth. The Region’s past and projected population is a factor in the Tier 1 analysis. Another growth factor is the transportation network and accessibility to the Region and surrounding area. The Region’s proximity to a larger metropolitan region or fast growing areas is another consideration.

The Oxford Region is a logical area for population growth and development. In terms of the Region’s location, development history, and growth patterns, the Region is in the path of growth. Table 1, below shows a steady increase in population over the last fifty years. This growth is most significant in the last decade of the last century when the Region’s population grew by 4,563 residents or 29% (1990-2000). The growth rate continued at a similar rate of 27% between 2000 and 2010. Based on current population projections, this growth is expected to continue, although at a slower rate. In terms of location, the Region is accessible from U.S. Route 1, an interstate highway that serves to link Philadelphia to Baltimore and areas further

² *Kaiserman v. Springfield Township*, 22 Pa. Cmwlth. 287, 348 A.2d 467 (1975) at 470.

north and south and State Routes 896, 10, 472, 272, and 842 that provide access to the surrounding region.

Conclusion: Based on the above analysis, the Oxford Region is located in the path of growth.

**Table 1: Population Trends
Oxford Region, 1960-2030**

Year	Population	Numeric Increase	Percent Increase
1960	10,354	-	-
1970	12,089	1,735	17%
1980	13,659	1,570	13%
1990	15,801	2,142	16%
2000	20,364	4,563	29%
2010	25,814	5,450	27%
2020*	28,157	2,343	9.0%
2030*	32,186	4,029	14.3%

Source: U.S. Census Bureau (1970-2010); *2020 and 2030 Projections (DVRPC, 2012)

Tier 2 - Present Level of Development *Is the Region Developed or Developing?*

The second tier of the fair share analysis looks at the present level of development within the Region. The following key factors should be examined to help make this determination. (See Table 2 for a summary of the Tier 2 analysis.)

- A. The percentage of **remaining developable land**, which essentially shows the degree to which the Region is “built out.”
- B. Existing and **potential multi-family** housing units and projected housing needs.
- C. The **amount of land available** for multi-family development.

A. Developable Land Remaining in the Oxford Region

Based on the developable land analysis (See Chapter 5, pg. 5-8), approximately 20,807 acres or 42% of the Region is potentially developable. Developable land is defined as land that is not naturally constrained, protected through easements or some other mechanism, or already developed. Courts have held that, until a community is almost fully developed (i.e., 95% plus), it is still a developing community and, therefore, is still obligated to provide for its fair share of multi-family housing.

Conclusion: With 42% of its land area potentially developable, Oxford Region is considered a developing community.

B. Existing and Potential Multi-Family Units and Projected Housing Needs

There are two basic factors that should be reviewed when considering existing and projected housing stock: 1) current multi-family units as a percentage of all housing; and 2)

number of housing units (both single and multi-family) needed to accommodate the projected population. These factors are explored below.

B.1 Current Multi-Family Units as a Percentage of Existing Housing Stock The amount of multi-family housing currently on the ground offers the Region a snapshot of its current mix of housing, what the market has thus far dictated, and is a consideration in assessing where the Region stands in meeting its fair share obligation. While market factors (in addition to zoning) drive what type of housing is built, the current ratio of multi-family housing to all other residential housing types gives some insight into whether the Region has been accommodating its share of multi-family housing, and how much more, ultimately, at build-out the Region should accommodate.

According to the 2006 – 2010 American Community Survey (U.S. Census Bureau), the Oxford Region had 1,255 multi-family units in 2010. Therefore, approximately 15.7% of the housing stock in the Oxford Region consisted of multi-family units.

Conclusion: The percentage of multi-family units in the Oxford Region as of 2010 is generally consistent with the 15% fair share benchmark (see B.2.b for explanation of this benchmark). This indicates that the Oxford Region has been accommodating its fair share of multi-family units.

Table 5A-1: Potential Future Development by Land Use Plan Categories and Map

Land Use Category	Density ³ Range	Developable Lands in Category	Reduction for Infrastructure (15%)	Net Developable Land in Acres	Potential Residential Units	
Resource Protection Areas						
Agricultural	1 du/5 acres	10,416	1,562	8,854	1,770	
Rural	1 du/2 acres	5,928	889	5,039	2,520	
Village	2 du/acre	158	24	134	268	
Designated Growth Areas						
Residential	Suburban	1 du/acre	2,302	345	1,957	1,957
	Town Center	6 du/acre	6	1	5	30
	Town Res.	3 du/acre	120	18	102	306
	Village Ctr.	8 du/acre	287	43	244	1,952
Total Potential Units in Designated Growth Areas					4,245	
Total Potential Units in all land use categories above					8,803	
Commerce	1 du/acre	1,590	239	1,351	1,351	

Source: Oxford Region Future Land Use Map/Designations and Municipal Ordinances,

³ Where a range of densities has been provided in the Land Use Plan, the density used represents a median density.

B.2 Needed and Potential New Multi-Family Units

B.2.a Multi-Family Units Needed to Accommodate Projected Population

The number of multi-family units needed to accommodate the projected population to 2020 is the first factor to consider in terms of potential multi-family units. According to the information in Table 6-B (Chapter 6, pg. 6-4), **770** new homes will be needed in the Region to accommodate the projected population growth to 2020. A review of Pennsylvania case law indicates that planning for at least **15%** of these projected units to consist of multi-family units should fall within the parameters of the fair share test. Therefore, of the approximately 770 total housing units needed to accommodate the Region's projected population to the year 2020, the Region should allow for a potential minimum of **121** additional **multi-family units**.

This analysis only considers the new multi-family housing units possible in the Suburban (S), Town Center (TC), Town Residential (TR), and Village Center (VC) designations of the Land Use Plan (Chapter 5), as they are the residential designated growth areas. Within the S, TC, TR, and VC land use categories, based on the Potential Residential Units shown in Table 5A-1, the Region can accommodate an additional **4,245** housing units. **Any or all** of those could be multi-family units based upon future land use policies and projected densities. If the current ratio of multi-family units as a percentage of existing house stock (15.7%) is continued with future development that would yield **665** multi-family units.

Conclusion: Based on the above analysis, the Oxford Region can accommodate projected multi-family housing needs through the time horizon of the land use plan.

B.2.b. Percentage of Multi-Family Units at Build-out

The potential percentage of multi-family in relation to other types of housing at build-out is examined in this portion of the analysis. The courts have upheld different percentages of multi-family units at build-out as satisfying fair share obligations as they determine fair share obligations on a case-by-case basis. Based on review and interpretation of this case law, it is recommended that the Oxford Region **allow for 15 to 20 percent** of all units to be multi-family at build-out.

Based on the information in Table 5A-1, at build-out the potential percentage of multi-family units in the Region (excluding the Commerce land use category) is estimated to be 32.7% (5,500 multifamily units out of 16,785 total units⁴). This exceeds the 15 to 20 percent recommended range. It is difficult, however, to predict with much certainty the percentage of multi-family units at build-out because there are many market factors which will determine what type of housing is built. Therefore, while an initial conclusion may be that the Region is "over allowing" for multi-family housing the reality is that market factors may produce a smaller percentage of that number.

⁴ 7,982 existing units + 8,803 additional = 16,785 total possible units; 1,255 existing + 4,245 additional = 5,500 total possible multifamily.

However, it is not unreasonable to project that an additional 1,425 units could be accommodated within the S, TC, TR, and VC land use designations.

Conclusion: Under a build-out scenario, the Oxford Region allows for a reasonable mix of multi-family versus single-family units.

C. Amount of Land Available for Multi-Family Dwellings

The amount of land available for multi-family dwellings is the final consideration under this tier of the fair share analysis. The courts have not specifically defined the term “available” as used in *Surrick*. While the courts may have assumed a general definition of the word, and intended it to mean developable land only, the cases include discussions on total lands whether already developed or not. Because of this discrepancy, this analysis uses two approaches in determining how much land is available for multi-family development. These approaches are based on review and interpretation of the fair share case law.

The two approaches, described below, primarily differ in how they define “available” land:

C.1 Approach 1 - “Developable Lands”

This approach to determining how much land is available for multi-family housing includes only developable lands; i.e., those lands that have not already been developed in the S, TC, TR, and VC designations and that are not protected or naturally constrained. This definition of “available” lands is considered the more conservative of the two approaches and is probably the most relevant in a community like the Oxford Region which has a significant amount of developable land remaining (42%).

The Oxford Region Land Use Plan (Chapter 5, pg. 5-11) designates 2,308⁵ acres or 11% of all developable lands in the Region for multi-family development. While the case law does not prescribe a set percentage of land for multi-family use, when using the more conservative “developable lands” approach, the percentage of land designated for multi-family uses should ideally equal **at least five percent and no less than four percent**.

Conclusion: The Oxford Region provides an adequate amount of developable lands for multi-family housing.

C.2 Approach 2 - “Total Lands”

This approach to determining how much land within the Region is available for multi-family housing includes all lands designated for multi-family uses, including developed, developable, constrained, and protected lands. This approach is the less conservative of the two because it includes already developed areas and land that cannot be further developed.

⁵ Developable acres in the S, TC, TR, VC future land use designations.

The Oxford Region (S, TC, TR, and VC) designates 8,540 acres⁶ or 16% of its total lands for multi-family development. In the case of the less conservative “total lands” approach, it is recommended that at least **seven percent** of the land be designated for multi-family uses.

Conclusion: As demonstrated by the numbers above, the Oxford Region provides an adequate amount of total lands for multi-family housing.

Table 5A-2: Summary of Fair Share Analysis Results

Section Reference	Description	Acres/Units/Percent	
A.	Developable Land Remaining in Region:		
	Total acres of developable land and percentage of developable land	20,807 acres 42 percent	
B.	Existing Multi-Family Units:		
B.1	Current multi-family units as a percentage of existing housing stock	1,255 mf/7,982 all units 15.7% mf units	
B.2	Additional housing units of all types needed to accommodate projected population growth to 2030.	770 units	
B.2.a	Estimated number of potential new multi-family units	4,245 mf units	
B.2.b	Total housing units of all types possible under the future land use categories at build-out	16,785 units	
B.2.b	Total multi-family units possible at build-out <i>(Recommended minimum - 15% to 20% of total possible units)</i>	5,500 mf units 32.7% mf units	
C.	Percentage of Land Available for Multi-Family Development:		
C.1	Developable land designated for multi-family units <i>(Recommended minimum - 5% of developable land)</i>	Acres	Percent
		2,308	11%
C.1	Total land designated for multi-family units <i>(Recommended minimum - 7% of total land)</i>	8,540	16%

Source: CCPC, 2012

Tier 3 - The Extent of Any Exclusion

Is the amount of land available for multi-family development disproportionately small in relation to population growth pressure and present level of development?

The third tier of the fair share analysis is to determine the extent, if any, of the exclusion of multi-family housing in the Region. It is a balancing test, in essence, to determine if the amount of land designated for multi-family development is disproportionately small, in relation to population growth pressure and present level of development. To do so, it is necessary to consider the percentage of land available under the future land use categories for multi-family dwellings in light of the current population growth pressure and in light of the total amount of developable land in the Region.

⁶ Total acres in the S, TC, TR, VC future land use designations.

Conclusion: As demonstrated by the number of units and percentages of land (both developable and total) and the population growth pressure in Tier 2, there is no exclusion of multi-family housing in the Region and the proposed Future Land Use Plan adequately accommodates future residential housing needs of all types.