

During the time devoted to this course, we will talk about the following matters.

To get started, we will address some background matters. We will:

- Present a short history of joint municipal planning in Pennsylvania.
- Review judicial decisions related to cooperative planning.
- Explain why multi-municipal planning is important and helpful to municipalities.

We'll begin to focus on multi-municipal land use planning. We will:

- Identify the three planning areas noted in the MPC.
- Review the definitions of each of the planning areas from Article I of the MPC.
- Review the purposes of each planning area under Article XI of the MPC.
- Review a few other definitions related to multi-municipal land use planning.

We will discuss planning for Designated Growth Areas. We will:

- Review how these areas are intended to accommodate much of the regions' growth.
- Define various aspects related to the issue of exclusion.
- Discuss how municipalities can plan more effectively to accommodate all land uses.
- Explain how the courts have viewed the adequacy of municipal planning.
- Discuss evolution from land area evaluation to accommodation of housing in judicial decisions.
- Explain the *Surrick* decision's "analytical matrix."
- Discuss the court's updated view based on the *Dolington Land Group* decision.
- Review the fair share analysis method from the *Dolington Land Group* decision.
- Describe an adaptation that addresses a multi-municipal groups' multiple zoning districts.
- Describe methodologies developed for two other planning programs.
- Review related planning principles offered in the *Dolington Land Group* decision.
- Review judicial decisions related to nonresidential exclusion and fair share issues.

We will discuss planning for Future Growth Areas. We will:

- Describe the purposes of the Future Growth Areas.
- Discuss why, when & where a Future Growth Area is converted into a Designated Growth Area.

We will discuss planning for Rural Resource Areas. We will:

- Describe the purposes of the Rural Resource Areas.
- Discuss legal issues related to landowners' rights.
- Review a series of court cases based on reasonable use, confiscation and "takings."
- Compare the PA Supreme Court's decisions in *C&M Developers* and *Dolington Land*.
- Raise issues related to publicly financed services and facilities in rural resource areas.

We will discuss planning for "Older Pennsylvania" Communities. We will:

- Explain why cities, boroughs & villages are important in multi-municipal planning.
- Review the recommendations from the Brookings Institution Report.

We will discuss Special Implementation Tools identified in the MPC. We will:

- Learn about Developments of Area-wide Significance and Impact.
- Talk about transferable development rights.
- Explore sharing of tax revenues and fees.
- Explain how "Specific Plans" may help foster economic development goals.

The Pennsylvania Supreme Court adopted a 3-pronged “analytical matrix” for the evaluation of fair share compliance: The evaluation includes the following steps:

1. Is the township a logical area for development and population growth?
What is the proximity to a large metropolis?
What are the community’s and the region’s projected population growth figures?
2. If the community is located within the path of growth, need to look at:
Is this a fully developed community? Fully developed communities would not need to accommodate a fair share of the regional housing growth.
What is the population density?
What is the percentage of totally developed land?
What is the percentage of land available for multi-family dwellings?
3. Is the total percentage of land zoned for multi-family development disproportionately small in relation to the population growth pressures and present level of development?

Surrick v. Upper Providence ZHB. 382 A.2d 105 (Supreme Court 1977)

Adapted from an exhibit used in the Dolington Land Group and Toll Bros. Substantive Challenge to the Newtown Area Joint Municipal Zoning Ordinance

COMPARISON OF THE ACREAGE NEEDED TO ACCOMMODATE THE PROJECTED NUMBER OF MULTIFAMILY DWELLINGS WITH THE UNDEVELOPED ACREAGE OF PROPERTIES IN THE R-2 ZONING DISTRICT

Step 1 Set the Time Horizon

The time horizon is 2000 to 2010.

Step 2 Determine the Total Number of Projected Housing Units 2000 to 2010
 Combined Housing Projections for Newtown, Upper Makefield and Wrightstown Townships

| <u>Projection Series</u> | <u>2010</u> | | <u>2000</u> | | <u>Increase</u> |
|--------------------------|-------------|---|-------------|---|-----------------|
| Low Series | 14,030 | - | 11,970 | = | 2,060 |
| Middle Series | 14,560 | - | 12,270 | = | 2,290 |
| High Series | 15,050 | - | 12,410 | = | 2,640 |

Sources: BCPC: 90:MP-8B
 Bucks County Planning Commission Housing Projections May 1993

Check the Growth Rate Against the Estimated Housing Growth
 Combined Estimated Housing Growth for Newtown, Upper Makefield and Wrightstown Townships for the following time periods:
 1990 to 1995 – Used in the Comprehensive Plan of 1997 (5.75 years),
 1990 to 1998 – Most Recent Estimate (8.75 years)

Increase 1990 to 1995
 $1,230 / 5.75 \text{ years} = 213.91 \text{ units/year}$
 $213.91 \text{ units/year} \times 10 \text{ years} = 2,139 \text{ units in a 10-year period}$

Increase 1990 to 1998
 $1,764 / 8.75 \text{ years} = 201.6 \text{ units/year}$
 $201.6 \text{ units/year} \times 10 \text{ years} = 2,016 \text{ units in a 10-year period}$

Both estimates would fall below the middle projection series.

Sources: BCPC 95:MH-3B
 BCPC 98:MH-3B

Step 3 Determine the Portion of the Total Number of Projected Housing Units That Are Anticipated for Multifamily Housing Units for the 2000 to 2010 Period

In the Comprehensive Plan of 1997, 25.012 percent was used based on the a proportion estimated for very low, low, and moderate income households as used for the Newtown Planning Area in the Bucks County Office of Community Development’s Comprehensive Housing Assistance Strategy.

According to the 1990 Federal Census, 32.9 percent of the Bucks County housing stock was in attached and multifamily types.

The higher factor, 32.9 percent, was used in this evaluation.

| <u>Projection Series</u> | <u>Increase</u> | | <u>Ratio</u> | = | <u>Multifamily</u> |
|--------------------------|-----------------|---|--------------|---|--------------------|
| Low Series | 2,060 | x | 0.329 | = | 678 |
| Middle Series | 2,290 | x | 0.329 | = | 753 |
| High Series | 2,640 | x | 0.329 | = | 869 |

Step 4 Convert the Projected Number of Multifamily Dwelling Units to an Area of Land Needed to Accommodate the Projected Multifamily Housing Growth

To determine the number of acres needed to accommodate the projected number of multifamily dwellings, divide the projected number of multifamily dwellings by the maximum density permitted in the R-2 zoning district.

| <u>Projection Series</u> | <u>Multifamily</u> | | <u>Density</u> | = | <u>Acres Needed</u> |
|--------------------------|--------------------|---|----------------|---|---------------------|
| Low Series | 678 | / | 3.9 | = | 173.85 |
| Middle Series | 753 | / | 3.9 | = | 193.08 |
| High Series | 869 | / | 3.9 | = | 222.82 |

Step 5 Add a Safety Factor

As recommended by the Bucks County Planning Commission and included in the Newtown Area Comprehensive Plan of 1997, a 50 percent safety factor was added to account for various uncertainties.

| <u>Projection Series</u> | <u>Acres Needed</u> | | <u>Safety Factor</u> | = | <u>Total Acres</u> |
|--------------------------|---------------------|---|----------------------|---|--------------------|
| Low Series | 173.85 | x | 1.5 | = | 260.78 |
| Middle Series | 193.08 | x | 1.5 | = | 289.62 |
| High Series | 222.82 | x | 1.5 | = | 334.23 |

Step 6 Determine the Number of Acres in the Undeveloped Properties in the R-2 Zoning District

These properties met the minimum site area requirement for multifamily development or were adjoining properties that in combination met the minimum site area requirement. The features of the properties were checked to ensure there were no physical limitations that would result in a less than the maximum dwelling unit yield or only the developable portion of the site was included in the inventory.

| <u>Municipality</u> | <u>Parcel Number</u> | <u>Acres</u> |
|---------------------|----------------------|---------------|
| Newtown | 29-10-55 | 31.924 |
| | 29-10-52-2 | 27.513 |
| | 29-9-3-1, 29-9-7 | 19.2 |
| Upper Makefield | 47-9-43 | 30.7385 |
| | 47-9-32 | 33.79 |
| | 47-20-8 (part) | 84.5 |
| | 47-8-16 | 32.226 |
| Wrightstown | 53-1-61 | 58.62 |
| | 53-1-59 | 23.14 |
| | 53-1-89 | <u>78.955</u> |
| Totals | | 420.6065 |

Step 7 Compare the Acreage Needed to Accommodate the Projected Number of Multifamily Dwellings in the 2000 to 2010 Period with the Number of Undeveloped Acres in the R-2 Zoning District

In Step 5, it was determined that 334.23 acres would be needed to accommodate the high projection for multifamily dwellings plus a 50 percent safety factor.

In Step 6, the inventory of available undeveloped land in the R-2 zoning district showed that 420.61 acres were available.

The undeveloped acreage is 86.38 acres larger than needed to accommodate the high projection for multifamily dwellings plus a 50 percent safety factor.

As such, the undeveloped land was 25.8 percent greater than needed to accommodate the high projection for multifamily dwellings plus a 50 percent safety factor

Adapted from an exhibit used in the Dolington Land Group and Toll Bros. Substantive Challenge to the Newtown Area Joint Municipal Zoning Ordinance

COMPARISON OF THE NUMBER OF PROJECTED MULTIFAMILY DWELLING UNITS WITH THE DWELLING UNIT CAPACITY OF THE DEVELOPABLE PROPERTIES IN THE R-2 ZONING DISTRICT

Step 1 Set the Time Horizon

The time horizon is 2000 to 2010.

Step 2 Determine the Total Number of Projected Housing Units 2000 to 2010

Combined Housing Projections for Newtown, Upper Makefield and Wrightstown Townships

| <u>Projection Series</u> | <u>2010</u> | | <u>2000</u> | | <u>Increase</u> |
|--------------------------|-------------|---|-------------|---|-----------------|
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Sources: BCPC: 90:MP-8B
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Check the Growth Rate Against the Estimated Housing Growth
 Combined Estimated Housing Growth for Newtown, Upper Makefield and Wrightstown Townships for the following time periods:
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Increase 1990 to 1995
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 $213.91 \text{ units/year} \times 10 \text{ years} = 2,139 \text{ units in a 10-year period}$

Increase 1990 to 1998
 $1,764 / 8.75 \text{ years} = 201.6 \text{ units/year}$
 $201.6 \text{ units/year} \times 10 \text{ years} = 2,016 \text{ units in a 10-year period}$

Both estimates would fall below the middle projection series.

Sources: BCPC 95:MH-3B
 BCPC 98:MH-3B

Step 3 Determine the Portion of the Total Number of Projected Housing Units That Are Anticipated for Multifamily Housing Units for the 2000 to 2010 Period

In the Comprehensive Plan of 1997, 25.012 percent was used based on the a proportion estimated for very low, low, and moderate income households as used for the Newtown Planning Area in the Bucks County Office of Community Development’s Comprehensive Housing Assistance Strategy.

According to the 1990 Federal Census, 32.9 percent of the Bucks County housing stock was in attached and multifamily types.

The higher factor, 32.9 percent, was used in this evaluation.

| <u>Projection Series</u> | <u>Increase</u> | | <u>Ratio</u> | = | <u>Multifamily</u> |
|--------------------------|-----------------|---|--------------|---|--------------------|
| Low Series | 2,060 | x | 0.329 | = | 678 |
| Middle Series | 2,290 | x | 0.329 | = | 753 |
| High Series | 2,640 | x | 0.329 | = | 869 |

Step 4 Add a Safety Factor

As recommended by the Bucks County Planning Commission and included in the Newtown Area Comprehensive Plan of 1997, a 50 percent safety factor was added to account for various uncertainties.

| <u>Projection Series</u> | <u>Multifamily Units</u> | | <u>Safety Factor</u> | = | <u>Total Units</u> |
|--------------------------|--------------------------|---|----------------------|---|--------------------|
| Low Series | 678 | x | 1.5 | = | 1,017 |
| Middle Series | 753 | x | 1.5 | = | 1,130 |
| High Series | 869 | x | 1.5 | = | 1,304 |

Step 5 Determine the Dwelling Unit Capacity of the Undeveloped Properties in the R-2 Zoning District

Multiply the acreage of undeveloped parcels by the maximum density of the R-2 district to determine the potential dwelling unit yield. If multifamily dwellings are permitted in other zoning districts, include those parcels, the acreage and multiply by the permitted density.

| <u>Municipality</u> | <u>Parcel Number</u> | <u>Acres</u> | | <u>Density</u> | | <u>Dwelling Unit Capacity</u> |
|---------------------|----------------------|---------------|---|----------------|---|-------------------------------|
| Newtown | 29-10-55 | 31.924 | x | 3.9 | = | 124 |
| | 29-10-52-2 | 27.513 | x | 3.9 | = | 107 |
| | 29-9-3-1, | 19.2 | x | 3.9 | = | 75 |
| | 29-9-7 | | | | | |
| Upper Makefield | 47-9-43 | 30.7385 | x | 3.9 | = | 120 |
| | 47-9-32 | 33.79 | x | 3.9 | = | 131 |
| | 47-20-8 (part) | 84.5 | x | 3.9 | = | 330 |
| | 47-8-16 | 32.226 | x | 3.9 | = | 125 |
| Wrightstown | 53-1-61 | 58.62 | x | 3.9 | = | 229 |
| | 53-1-59 | 23.14 | x | 3.9 | = | 90 |
| | 53-1-89 | <u>78.955</u> | x | 3.9 | = | <u>308</u> |
| Totals | | 420.6065 | | | | 1,639 |

Step 6. Compare the Projected Number of Multifamily Dwellings for the 2000 to 2010 Period with the Number of Multifamily Dwelling Units That Could Be Developed in the R-2 Zoning District

In Step 4, it was determined that 1,304 multifamily dwelling units would be needed to accommodate the high projection for multifamily dwellings plus a 50 percent safety factor.

In Step 5, it was determined that the undeveloped land in the R-2 zoning district had a capacity of 1,639 multifamily dwelling units.

The capacity of the undeveloped land in the R-2 zoning districts would yield 335 more units than needed to accommodate the high projection for multifamily dwellings plus a 50 percent safety factor.

As such, the R-2 zoning district’s capacity is 25.7 percent greater than needed to accommodate the high projections for multifamily dwellings plus a 50 percent safety factor.

**Exhibit E Hints and Clues from the *Dolington Land* Decision for
Multi-Municipal Comprehensive Planning**

Develop projections for future growth and land allocated for various purposes based on sound data and evaluation procedures. Rely on sound data sources. Test the data. Explain the evaluation rationale and methodology in the multi-municipal comprehensive plan.

In the multi-municipal comprehensive plan, describe reasons why certain municipalities would be considered to be in the “path of growth” and others would not.

In evaluating land available for development, prime agricultural land under active cultivation may be considered developed and, as such, is not available for future development.

Prime agricultural soils are deserving of zoning protection, as are other sensitive environmental lands and resources, such as wetlands, flood plains, floodplain soils, steep slopes, and mature woodlands.

It is important to undertake a periodic analytic process of the ability to provide for the regional need for higher density, multi-family housing. Make sure there is land available for a variety of housing types on a continuous basis.

The courts are likely to consider the protection of sensitive environmental features, agricultural activities and prime agricultural soils, as well as the regional housing issues, in determining the adequacy of the multi-municipal comprehensive plan and the implementing ordinances. Help the courts by clearly explaining any protection goals included in the plan.

It is likely the courts will consider what the communities have done over time to accommodate housing needs. It is more than a “snapshot in time.” The multi-municipal comprehensive plan might explain what has been done over time to address housing and population growth.

Exhibit F

**Comparison of
C&M Developers Decision with the *Dolington Land* Decision**

Make sure protection goals and implementing zoning provisions are balanced with the ability of property owners to realize reasonable use of their lands. Contrast *Dolington Land* (Upper Makefield Township) with *C&M Developers* (Bedminster Township).

C&M Developers
Bedminster

Dolington Land
Upper Makefield

Affected intensity
(dwelling unit yield)

Affected layout and design

Permitted one
development type

Permitted three development
options with density incentives

Added “one clear acre”
and building envelope
requirements

Number of dwelling units calculated without
deducting natural features and agricultural lands