

# Oxford, Georgia



## **Group 10**

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## **I. INTRODUCTION AND JURISDICTIONAL FOCUS**

Founded in 1839, Oxford, Georgia is home to Emory University's Oxford College and a population of approximately 2,100 people. At first glance it appears to be a typical small town. Oxford has one bookstore, one restaurant, and the kind of environment where you can expect to see a familiar face around every turn.

However, the little town of Oxford expects a great deal of population growth in the very near future. Oxford anticipates this growth due to several factors. First and foremost, Oxford College plans to significantly increase its enrollment over the next ten years. With a current enrollment accounting for about one third of Oxford's population, the increased enrollment will have a significant impact on the city. Second, Oxford is located along Interstate 20, about thirty minutes east of Atlanta. The close proximity to Metro Atlanta and location along the interstate make the area an appealing place for daily commuters looking for a small town lifestyle to accompany their big city job. Newton County, the county in which Oxford is located, has already begun to experience a great deal of growth. According to some sources, Newton County is the eighth fastest growing county in the United States.<sup>1</sup>

Faced with the prospect of losing its sense of community over the coming years, the town of Oxford decided to address the situation in order to gracefully accommodate the population growth. Oxford's foresight and willingness to address the imminent population increase is no surprise, as both the city and college's motto is "Let us stand by what is good and make it better if we can." The quote sums up the city's desire in a

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<sup>1</sup> The Center (Facilitating Community Preservation and Planning). <http://www.thecenter-newton.org/home.html>.

nutshell; maintain the current small-community feel while increasing the population and resources available to it.

In order to accomplish this goal, Oxford looked to the University of Georgia Landscape and Architecture School. Students in the program formulated a design project meeting several of Oxford's desires, including the development of a town center, plans for a new bookstore and student center, a city-wide pedestrian trail, and traffic calming measures along the city's main road, Highway 81. While several of the plan's aspects appealed to Oxford, the implementation of the plans has proved to be a problem.

This paper discusses the various tools needed to implement the design projects formulated by the University of Georgia Landscape and Architecture School that Oxford wishes to pursue. The paper first examines strategies to implement the aspects of the plan that Oxford found appealing. The paper then assesses the legality of the various implementation measures. **[John Ammons, Law Student]**

## **II. PLANNING AND IMPLEMENTATION RECOMMENDATIONS**

### **A. Affordable Housing**

One of Oxford's main goals is to diversify their housing stock. In order to do this there must be a conscious effort to promote the development of affordable housing. The term "affordable housing" can be ambiguous and is used to describe housing for households with incomes ranging from \$25,000 to \$85,000. When we talk about affordable housing we usually talk in terms of area mean income, or ami. In Atlanta the ami is \$51,186 while the national median income is \$42,209.<sup>2</sup> 33% of a household's ami should be used for housing. Many affordable housing programs focus on providing

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<sup>2</sup> Center for Housing Policy. *Paycheck to Paycheck: Wages and the Cost of Housing in the Counties, 2004*. [http://www.nhc.org/pdf/pub\\_pp\\_07\\_04.pdf](http://www.nhc.org/pdf/pub_pp_07_04.pdf).

“workforce” housing for teachers, fireman, and policeman, who make between 70 to 100% ami. However, working fulltime at minimum wage will earn less than 30% ami. The City of Oxford will have to define their own levels of affordability, be we encourage them to take into account “affordable” housing for all income levels.

Assuring an affordable housing stock is important for several reasons. The housing/jobs balance will be skewed if the City of Oxford is unable to provide affordable units. This will ultimately hinder Oxford’s economic growth as employees move to areas where housing is more affordable. Table One, from the Center for Housing Policy, displays the amount of income needed to afford the median priced home in Fulton County. A police officer earns \$45,000/year but needs an annual income of \$69,000 to buy a median priced home. Not only will police officers, firefighters and teachers move to more affordable areas, but those working retail, construction, and maintenance will as well. This will leave Oxford with a dearth of people to teach their children, put out their fires and re-stock their groceries.

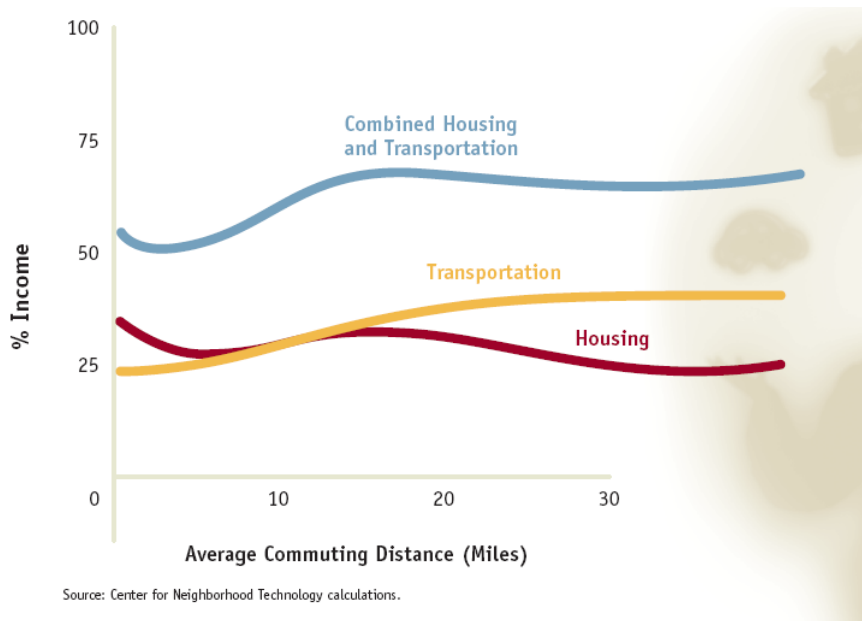
The current solution to affordability is to move farther from the central business district. There are two problems with this solution. The first is the environmental cost of an hour and half long commute as well as continual sprawl. The second is the fact there is a point of diminishing returns as people move farther out from city center. According to the Center for Housing Policy, for every dollar a working family saves on housing, it spends \$.77 more on transportation.<sup>3</sup> Graph One shows us that at around 15 miles from city center the housing cost decreases but transportation costs rise rapidly. According to the Center for Neighborhood Technology, working families in Atlanta with an income

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<sup>3</sup> The Center for Housing Policy. The Heavy Load: The Combined Housing and Transportation Burdens of Working Families. [http://www.nhc.org/pdf/pub\\_heavy\\_load\\_10\\_06.pdf](http://www.nhc.org/pdf/pub_heavy_load_10_06.pdf).

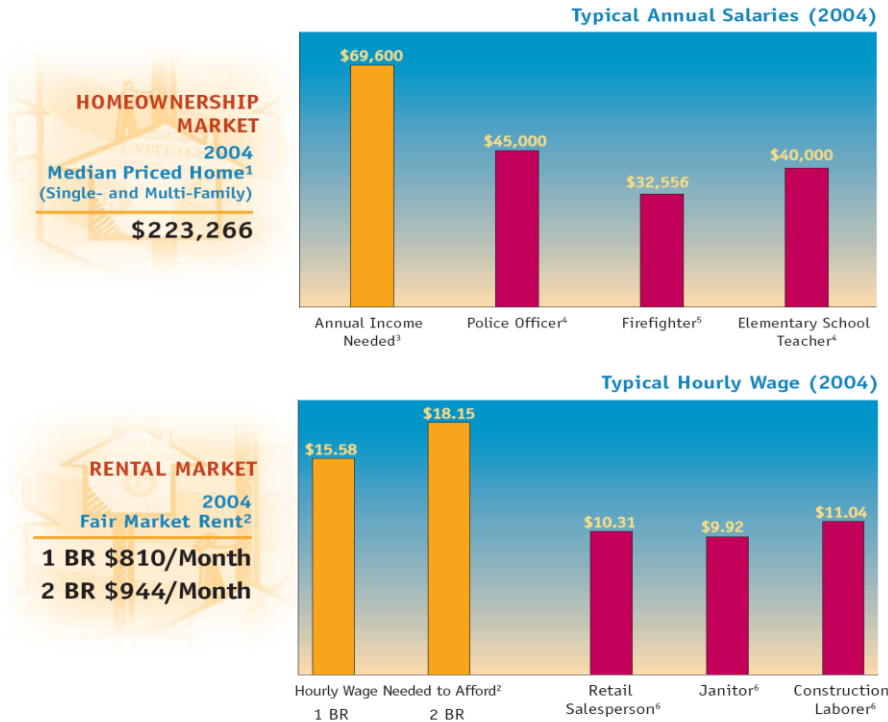
between \$20,000 and \$50,000 spend 61% of their income on the combined cost of transportation and housing. 29% of their income goes to housing while 32% goes to transportation. For an income of \$50,000 this only leaves \$24,500 a year for health care, food, clothing, entertainment, and furnishings, not to mention any catastrophic events.

### Graph One



## Graph Two

### Wages and the Cost of Housing in Fulton County, GA (Atlanta, GA Metropolitan Area)



**Source:** Center for Housing Policy. *Paycheck to Paycheck: Wages and the Cost of Housing in the Counties, 2004.* [http://www.nhc.org/pdf/pub\\_pp\\_07\\_04.pdf](http://www.nhc.org/pdf/pub_pp_07_04.pdf).

There are several passive measures the City of Oxford can take to encourage the construction of affordable housing. First, Oxford must revisit and update their zoning codes. Traditionally, zoning codes have excluded affordable housing by requiring large minimum lot sizes and FAR. They often place a maximum on the number of people who can live in a single unit or prohibit accessory units, such as cottages. Manufactured housing, which can now be built at the same quality as stick frame but at the fraction of the cost, is often prohibited as well.

Encouraging shared equity programs is another way Oxford can encourage affordability. Shared equity basically means that a homeowner own his or her home with an organization that provides an initial subsidy that made homeownership possible.

Families can purchase a home with a subsidy if they agree that when they sell the home, a portion of the home's appreciation will be returned to the entity that provided the subsidy. These funds ensure continued support of the affordable housing stock.

Zoning code changes and shared equity programs are measures the City of Oxford can take to encourage a diverse housing stock, but alone, they will not *ensure* the production of affordable units. There are several more pro-active approaches the City of Oxford can use to mitigate its affordable housing need. These approaches place the responsibility on the developers of residential, as well as non-residential, new developments. These mitigation programs act like impact fees by requiring developers to pay for the added strain a new development places on a community. Rather than merely addressing the strain these developments place on sewer and road infrastructure, these tactics address the strain that is placed on the affordable housing stock. There are three main tactics that are being used throughout the country that could be utilized by the City of Oxford: inclusionary housing requirements, linkage fees, and comprehensive mitigation.

An inclusionary housing requirement places the responsibility on the developers of new residential development to provide affordable housing units. It requires that a certain percentage, usually 5 to 30%, of new residential development be set aside for affordable housing. Before enacting an inclusionary housing ordinance, the City of Oxford must examine several key issues. The City needs to decide if the requirement will be mandatory or voluntary, at what number of units the requirement will be triggered, the types of incentives they will offer, whether the affordable housing will be built on or off-site, and finally the possibility of in-lieu of fees.



Some local governments have made inclusionary requirements mandatory, such as Montgomery County, Maryland. Montgomery County enacted the nation's first mandatory inclusionary zoning act in 1974 and has since seen the creation of an estimated 2,000 housing units available to low and very low income renters.<sup>4</sup> Other cities, such as Cambridge, MASS., have enacted voluntary inclusionary housing requirements that do not force developers to build affordable units, but rather offers incentives to those who do. Cambridge enacted this voluntary ordinance in 1988 and over the course of the next ten years did not see the creation of a single affordable unit. In 1998 they changed their ordinance into a mandatory requirement and have since seen the creation of over 200 units. We encourage the City of Oxford to adopt a mandatory inclusionary ordinance since a voluntary requirement simply does not have the teeth behind it to have a significant impact on the affordable housing stock.

The City of Oxford must also decide the number of units that will trigger the requirement and the percentage of affordable units the ordinance will mandate. There are several inclusionary ordinance models that Oxford can look to in order to determine their specific requirements. For example, an ordinance in Tallahassee, FL is triggered for any new development that consists of 50 or more units. Montgomery County, Maryland initially placed their trigger at 50 units but has since decreased the minimum to 25 units. Some inclusionary requirements are triggered at a minimum of five units. Clearly, more affordable units will be built with a lower trigger number. The percentage of the total number of units of a new development that must be affordable also varies; however, the

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<sup>4</sup> Keating, Larry. An Analysis of Exclusionary Practices in Residential Zoning in Metropolitan Atlanta. Presented at the Atlanta Regional Housing Forum, March 1, 2006.

national average is 15%.<sup>5</sup> Again, more affordable units will be built with higher percentages. Whether or not the ordinance applies only to new development must be looked at as, well. In areas experiencing mostly *re*-development an ordinance that only addresses new development will not be as productive.

Most inclusionary zoning requirements offer incentives or bonuses to developers in order to off-set some of the additional housing costs. Arlington, Virginia's inclusionary ordinance offers some incentive ideas that could also be used by the City of Oxford. Incentives include density bonuses that allow a 25% increase in the density of the new development. They also offer a bonus to the floor area ratio from 1.5 FAR to 2.0 FAR, which allows for more square footage of development.<sup>6</sup> Other incentives might include relaxed parking requirements, design flexibility, fee waivers, faster permitting, and unit size reductions.

In further attempts to alleviate some of the burden inclusionary requirements can have on developers, ordinances can give developers the option of building affordable units on the site of the primary development, build an off-site location, provide a buildable plot of land in the primary development, or pay a fee in-lieu of building inclusionary units. It should be noted that not all development should be subject to inclusionary zoning requirements. Developments that can be considered non-traditional forms of housing, such as manufactured homes, multi-unit homes and residential care facilities, as well as developments that are already providing affordable units should be exempt from the inclusionary requirements.

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<sup>5</sup> Rusk, David. "Inclusionary Zoning: A Key Tool in the Search for Workable Affordable Housing Programs." *Public Management*. April 2006.

<sup>6</sup> The Department of Community Planning, Housing and Development Housing Division. *Arlington County's Affordable Housing Development Tools*. Presented at the American Planning Association Conference. April 2007.

An inclusionary requirement is the most common affordable housing mitigation strategy, but areas in California and Colorado are utilizing other tools, such as linkage fees, to address their housing needs. Linkage fees are imposed on non-residential development to address the housing needs created by the new development. Traditionally, affordable housing shortages have been associated with the rising cost of new residential developments but the link between affordable housing and employment must also be made. For example, a study done of Lee County, FL. by Dr. James C. Nicholas, shows that every 1,000 ft<sup>2</sup> of retail space requires 1.296 households for employment. Every 1,000 ft<sup>2</sup> of office space requires .856 households and every 1,000ft<sup>2</sup> of industrial space requires .624 households. Linkage fees use a formula to calculate exactly how many households will need housing based on the type and size of the new development and then charge the developers based on this number. An alternative to this fee includes actually building the correct square footage of affordable housing. For example, in Sacramento, CA. developers are required to build .000127 square feet of housing for each square foot of developed office space.

Comprehensive mitigation places the responsibility on both residential and non-residential new development to address affordable housing needs created by the development. In the same study of Lee County, Dr. James C. Nicholas also linked the number of employees needed to maintain a house based on square footage. For example, a 500 square foot house requires .022 households for its upkeep while a 10,000 square foot house requires .428 households. Employment created by housing might include maid service, pool maintenance, construction, education of the family, and financial services. As in linkage fees, a formula is used to calculate exactly how many square feet

of affordable housing needs to be provided for each square foot of new market rate residential development.<sup>7</sup>

There are several laws that will help the City of Oxford obtain more affordable housing. The Anit-NIMBY law restricts the ability of local governments to deny or reject affordable housing projects unless the project is in violation of federal state law or the project has specific adverse affects on the community that cannot be mitigated without creating unreasonable additional cost to the project. The redevelopment law requires the replacement of affordable units that are removed through the redevelopment process. Finally, the density bonus law allows an increase in density if the development includes a percentage of affordable units. This law also allows for a reduction in development standards such as set backs and height and parking restrictions. **[Heather McCarey, Planning Student]**

#### **B. Conservation Subdivisions**

Preserving green spaces, forestland, agricultural lands, and other natural areas in Georgia is an increasingly difficult challenge as the needs of society for development expand urban and suburban areas further and further. ‘Sprawl’ is the common term that characterizes this further expansion, and most would agree that it is not a good thing. But how can we continue to have economic prosperity and growth without sacrificing untouched natural areas we need for various economic purposes and desire for recreation and beauty? Conservation subdivisions balance growth and conservation by clustering residential units and keeping open spaces undeveloped that would have been developed

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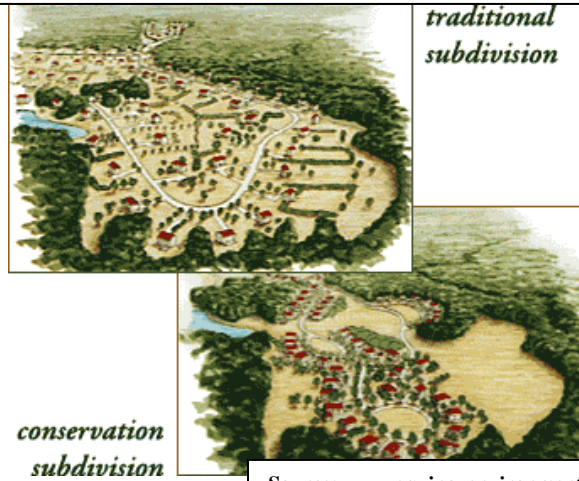
<sup>7</sup> Richardson, C., Nicholas, J. & King, L. *Inclusionary and Affordable Housing Mitigation: The State of Practice Nationally*. American Planning Association National Planning Conference. April 2007.

in traditional subdivisions. By enacting a conservation subdivision ordinance, Oxford could enable growth while maintaining their rural character.

Traditional subdivisions in Georgia and elsewhere take a large piece of land and divide up the land into parcels over the whole property that will each have a single-family house built on the parcel. In contrast, conservation subdivisions cluster the residential units in an area where development will make the least impact on the natural area.

**Figure 1** illustrates the result of preserved open spaces that would otherwise have houses on them. Forested areas, wetlands, meadows, et al. are saved for communal space for the subdivision whereas in traditional subdivisions they would be houses, yards, roads, or leftover land that could not be developed.

**Figure 1-Traditional Subdivisions vs. Conservation Subdivisions**



Source: [www.equinoxenvironmental.com](http://www.equinoxenvironmental.com)

The amount of open space preserved varies, but most conservation subdivision ordinances usually have minimum requirements of about forty percent or more open space. Fulton County in Georgia has a Conservation Subdivision Ordinance that requires a minimum of forty percent open space conservation along with other requirements that are explained further in the paper. The open communal space is then owned and maintained by the homeowner's association in the neighborhood or a conservation easement is sold to a conservation organization.<sup>8</sup> [Thomas McCracken, Planning Student]

<sup>8</sup> Chattahoochee Hill Country. <http://www.chatthillcountry.org/SusDev/cons-sub.htm>.

## **1. Advantages of Conservation Subdivisions**

Conservation subdivisions actually make as many residential units as a traditional subdivision. Since the units are clustered, a developer can fit more into smaller space to make the same amount of profit as a traditional subdivision. It may actually be cheaper for a developer since they do not have to clear as much land, and for the county/city infrastructure costs will be reduced as well.

Whether or not the development of a conservation subdivision is economically viable for developers is one of the key issues. Preserving land most often means people must live in denser areas, which may not be desirable for many. A developer may say that they will build residential units more densely if people will choose to buy the property and live there. This means that the benefits of conservation subdivisions must be greater than the cost of giving up a large yard and larger house.

There are many benefits to living in a conservation subdivision that increase the quality of life so that people will want to live in them. Besides being environmentally friendly, conservation subdivisions offer amenities traditional subdivisions cannot. And, importantly, these amenities are usually ones individual homeowners cannot afford, but in the conservation subdivision everyone has equity and access to.

First, they preserve the rural character of the land that many cherish and wish to keep for their children and following generations. Since the impact of development on the natural area has been minimized, the surrounding lands are untouched and can be enjoyed by successive generations. In a traditional subdivision, all the land is used so that it instantly becomes 'suburbanized.' Land can quickly go from being rural to 'suburbanized', but afterwards it is rare to ever revert back to a rural setting.

Second, the communal areas provide places for recreation, gardening, and nice views of the countryside. The open communal areas offer fields for children to play sports in, or trails for hiking or riding bikes through areas that would otherwise be backyards. They can also be used for community gardens or gathering places for the neighborhood. One particular conservation neighborhood in Virginia named *Greenway* offers its residents a future 3,600 square foot community center converted from a barn, a barn and stable with almost fifteen acres of pasture, hiking and exercise trails, gardens, and eight acres of fenced forest. Instead of mowing, they have goats that keep the underbrush down, and residents themselves are encouraged to have livestock and gardens on the property.<sup>9</sup>

Perhaps one of the biggest reasons suburbs are so popular is that people feel they are escaping the ills of the city, and are ‘closer’ to nature in a sense. And this is an advantage conservation subdivisions have over traditional ones. Traditional subdivisions cannot really offer a rural, natural lifestyle where one can escape the city. Conservation subdivisions, on the other hand, offer the chance for people to garden, explore a forest or meadow, and enjoy pristine views out their back window. Conservation subdivisions create the rural lifestyle that traditional subdivisions attempted to. Overall, this leads to a higher quality of life than in traditional subdivisions.

A third benefit that conservation subdivisions offer is an increased sense of community. By living more closely and sharing space, people are able to connect more often than in a traditional subdivisions. In traditional subdivisions, people are shut off and isolated from their neighbors. People drive mostly so that they cannot get any

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<sup>9</sup> Green Way News. [www.greenwaynews.com](http://www.greenwaynews.com).

interaction on the streets; backyards are usually fenced in for privacy; and people generally have nowhere to go to meet their neighbors should they choose to do so.

In conservation subdivisions, people have the chance to interact in the shared space doing similar activities so that they can get to know one another. They have places to meet, and places where they can walk and talk with other people in the subdivision. This is not to say there is no privacy, however. People still have backyards, and in conservation subdivisions, they can even find a quiet spot somewhere in the surrounding green space if they want to be alone. Overall, this gives people more choice to live how they desire without being isolated from the community and thus creating a higher quality of life. [Thomas McCracken, Planning Student]

## 2. Fulton County's Conservation Subdivision Ordinance

Luckily, conservation subdivisions have already begun being developed in Georgia. Fulton County has already created a Conservation Subdivision Ordinance that has enabled the creation of a conservation subdivision named Serenbe in the Chattahoochee Hill Country southwest of Atlanta. Let's examine how a community can make a subdivision ordinance using Fulton County's as an example and how they should be designed using Randall G. Arendt's *Growing Greener* as a guide.<sup>10</sup>

Arendt gives a four-step process in *Growing Greener*. The first step is to identify the land that should be permanently protected. The developer first identifies all the constrained lands such as wetlands, floodplains, steep slopes, etc. Arendt identifies these as primary conservation areas in *Growing Greener*, and, similarly, the Fulton County Ordinance does also. The developer then identifies *secondary conservation areas* that have noteworthy characteristics such as mature woodlands, greenways and trails, river

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<sup>10</sup> Randall G. Arendt, *Growing Greener*.



and stream corridors, prime farmland, wildlife habitats, et al. Fulton County's Ordinance specifies open space and gives minimum requirements for developers to ensure the developer includes valuable open space to the subdivision.

Fulton County's open space networks configuration specifies the following: the minimum width of any open space area is 25 feet; paths shall be a minimum of 20 feet from any property line; open space shall provide connectivity; and others. The purpose of this is to ensure that open space is not disconnected or connected loosely with 1-inch wide areas of 'open space.'

After identifying *primary and secondary areas* for conservation, the next step is to locate the sites of the individual houses in the development area so that their views of the open space are maximized. The density permitted depends on the zoning of the area. In Fulton County's ordinance a table is provided that lists the current zoning along with the additional lots allowed per development for each acre of protected open space greater than forty percent.

The third step is to connect the area with streets and trails, and the fourth is to draw the lot lines on the plat of the property. Fulton County's ordinance also provides the regulations that traditional subdivision ordinances have. It has requirements for setbacks, street design, lot coverage, etc. that accommodate the conservation subdivision.<sup>11</sup>

In conclusion, conservation subdivisions are valuable tool to the Oxford community that wishes to conserve land and preserve a rural character that they can pass on to the next generations. They allow for continued economic growth and create a higher quality of life and greater sense of community than traditional subdivisions. The only sacrifice is that people will give up large yards and 5,000 square foot McMansions.

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<sup>11</sup> Green Prospects. [www.greenerprospects.com](http://www.greenerprospects.com); and supra note 8, Chattahoochee Hill County.

And With greater traffic congestion and less green space close by, conservation subdivisions will more than likely become a very popular alternative to traditional subdivisions. [Thomas McCracken, Planning Student]

### C. Oxford's Public Finance Problem

The town of Oxford wants to prepare itself for the growth that is coming. The town however is currently facing some effects of the oncoming sprawl: increased traffic, higher home prices that marginalize a high income “buyer class,” and an increasing demand for public services. Oxford City officials wanted our group to come up with the following measures to combat the on-coming sprawl, and/or manage growth in general: traffic-calming measures, diversifying the housing stock, conservation policies, and revenue-raising for the city’s capital projects. The revenue-raising goal is more than reasonable considering all the measures and goals they want us to deal with will more than likely involve city money.

In order to develop an adequate picture of where Oxford is financially, I asked for Mr. Erik Oliver, a City of Oxford official, for a copy of the city budget. I also scheduled two appointments with Dr. John Matthews of the Fiscal Research Center in the Andrew Young School of Policy Studies at Georgia State University. I met with Dr. Matthews before, and after the budget arrived. During the first meeting we discussed various ways municipalities raise money/cut costs: franchise public utilities, joint ventures of open-spaces, having a lawyer on retainer rather than a city attorney, examining the fee structure, and even looking for partnerships with Oxford College to cut costs.

Then I received the budget. What I got was a spreadsheet of numbers—nothing else. After correcting some math errors, I prepared a list of questions and went for a

second appointment with Dr. Matthews to further analyze the budget. What we found was a very large cost-collection problem. The property tax rate, 5.538 mills, is below average the state average 7.036 mills, but that could be considered a political choice<sup>12</sup>. The bigger issue was with the collection of tax. According to the County Tax Digest, the city should have collected \$151,353.48<sup>13</sup>; they reported collecting \$110,000<sup>14</sup>. Instead of collecting 95-100% of all the property tax, Oxford is only collecting 80%. Transfer payments from the utilities to the General Fund were another problem. ‘Water and Sewer’ shows a \$5,000 transfer to the General Fund<sup>15</sup>; the justification, for which is missing from the document, yet the General Fund has them paying in \$15,000<sup>16</sup>. ‘Electric’ shows both a \$232,769 transfer for amortization, and a \$135,000 transfer out, but the General fund shows only a \$60,388 and a \$150,000 transfer in, respectively<sup>17</sup>. ‘Sanitation’ has a \$1,650 transfer to the General Fund. The General Fund meanwhile has them sending a \$22,000 transfer<sup>18</sup>. Those aren’t the only budget shortcomings. For the year 2006, the state sent a check equaling \$332,000 for the Local Option Sales Tax (LOST)<sup>19</sup>. Oxford records revenue of \$270,000<sup>20</sup> (80% collected).

What is happening to all this money? More importantly is the question of “How are they showing a balanced budget with so many shortfalls and no cash carryover?” It’s hard to tell with the information given to the group (just the spreadsheet). A good budget

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<sup>12</sup> Dr. John Matthews, personal interview, April 11, 2007

<sup>13</sup> Georgia Department of Revenue: Property Tax Division-County Digest Section, *2006 Tax Digest Consolidated Summary*, (<http://www.state.ga.us/dor/ptd/cds/csheets/digest/digest.cgi>)

<sup>14</sup> City of Oxford, e-mail message to author, April 6, 2007

<sup>15</sup> Ibid

<sup>16</sup> Ibid

<sup>17</sup> Ibid

<sup>18</sup> Ibid

<sup>19</sup> Dr. John Matthews, personal interview, April 11, 2007

<sup>20</sup> Ibid

document consists of text, tables, figures, charts, and/or plenty of footnotes informing the average citizen of where his/her money is being sent, and what it's providing. Dr. John Matthews said it best when he told me the following: "A good budget is a (1) policy document, (2) a tool controlling spending, (3) a plan for the future, and (4) a communication device between the government and the citizens"<sup>21</sup>. The Oxford spreadsheet should contain more explanations of why the amounts are what they are, where the money is, and where it's going. It takes more than a spreadsheet with numbers on them to make a budget. Clarity is important; something the Oxford document is lacking. Considerable revision of the budget, and possible investigations are necessary, to give Oxford official a better benchmark of where they are financially before they think about raising more money. [ **Carl Mickalonis, Planning Student**]

### **III. LEGAL CONSIDERATIONS\***

The City of Oxford has seen the writing on the wall, the impending growth of Atlanta, and its suburbs, into Newton County, Georgia, particularly the City of Oxford. However, Oxford saw the approaching storm and took cover; they realized that planning early for growth is preferable to planning too late. The City of Oxford recently hired the University of Georgia's School of Environmental Design's Metropolitan Design Studio ("UGA") to provide a future land use plan ("the charrette")<sup>22</sup> on how Oxford should move forward with changing their existing growth management plan, and how to practically prepare for growth in this old and quaint city. Oxford, after the charrette was

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<sup>21</sup> Ibid

\* DISCLAIMER: Note this section of the paper is written by law students not licensed to practice law in Georgia, nor any state for that matter, thus, this section should not be relied upon as legal advice and to the extent it is used it should be with advice from an attorney who is licensed to practice in Georgia, or some other appropriate jurisdiction.

<sup>22</sup> Charrette is a French word meaning "litte cart", which has come to define a quick collaborative urban design solution.

completed, felt inept to implement the plan as written; furthermore, they did not think that some of the UGA plan was viable in the City of Oxford.<sup>23</sup> This portion of the paper deals with the plan's implementation, the legal implications of our planning suggestions, and the overarching legal issues facing Oxford's land use planning. Thus, this portion of the paper offers practical advice on how to implement, revise, and draft Oxford's future land use plan legally. **[Henry ("Dee") DeBardeleben, Law Student]**

**A. Home Rule**

In 1954, the State of Georgia adopted an amendment to its Constitution that granted municipalities "home rule."<sup>24</sup> In 1965, the General Assembly exercised its power granted in the 1954 Amendment and adopted the Municipal Home Rule Act of 1965.<sup>25</sup>

In its simplest form, home rule provides a measure of local autonomy that the United States Constitution does not offer. According to the United States Constitution, all power not reserved by the Federal Government resides in the states. Home rule, however, allows a state to delegate some of its power to local governments. The theory is that these counties and municipalities, through self-government, will function more efficiently for the people of Georgia.

The Municipal Home Rule Act of 1965 authorizes cities to adopt "clearly reasonable ordinances, resolutions, or regulations . . . for which no provision has been made by general law and which is not inconsistent with" the Constitution of Georgia.<sup>26</sup> As it applies specifically to this situation, the act grants the town of Oxford broad

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<sup>23</sup> See Appendix A, The Charrette.

<sup>24</sup> Ga. Const. Art. IX, § II, Para. II (2007).

<sup>25</sup> O.C.G.A. § 36-35-1 to 8 (2007).

<sup>26</sup> O.C.G.A. § 36-35-3(a) (2007).

discretion local decisions in that Oxford has the power to create its own zoning and planning ordinances.

Oxford's ability to draft its own zoning and planning ordinances is particularly beneficial due to the town's unique relationship with Emory University's Oxford College. Many college towns are often at odds with the schools they surround; however, the town of Oxford and Oxford College enjoy a positive relationship with one another. For example, Oxford College's former Dean is currently the Mayor of Oxford. Because of the stable relationship between the college and the town, local officials should meet little if any opposition when attempting to implement the town's desired plans. **[John Ammons, Law Student]**

#### **B. Funding and Taxation**

Currently, the majority of Oxford's revenue comes from utilities paid by the college. Property taxes are extremely low and contribute very little to Oxford's overall budget. One possible solution to the funding issue would be to raise property taxes. Although Oxford residents might not initially jump at the proposal, it could be a temporary bump in the tax rate in order to accomplish the long term goals for the town.

There is legal precedent for a tax increase, so this could be a reasonable solution to the budget problem. Both county governments and municipalities may levy taxes for public purposes connected with the administration of county and city government in Peacock v. Georgia Municipal Association.<sup>27</sup> Peacock also held that counties and municipalities may appropriate and expend money for such public purposes. While the town might want to pursue other possible avenues, the option of a tax increase appears to be legally sound. **[John Ammons, Law Student]**

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<sup>27</sup> 247 Ga. 740 (Ga. 1981).

### C. Charrette and Smart Code Implementation

Oxford's main concern, when they contacted UGA, was how to revise or overhaul their existing comprehensive zoning map and zoning code for their present situation. Accordingly, the question presented is whether or not the City of Oxford has inherent, implied, delegated, or any power whatsoever to create a new zoning code for the City of Oxford. The seminal question is what authority does Oxford have, as a municipality, to overhaul or revise their existing plan and zoning code? The Georgia Constitution assumes the creation of municipalities and grants the General Assembly the power to delegate its power, including self-government, to municipalities.<sup>28</sup> The Constitution provides various expressed powers of municipalities in addition to the conferred powers to be granted by the General Assembly, including the power of zoning.<sup>29</sup> The Official Code of Georgia Annotated provides more detailed laws for the establishment of municipalities and their powers, particularly home rule.<sup>30</sup> Georgia law expressly provides that a municipality may draft ordinances and then repeal and reenact new ordinances.<sup>31</sup> Thus, a municipality in Georgia may enact a zoning code for tracts of land within its jurisdiction, and it may repeal and reenact a new zoning code.

The UGA Metropolitan Design Studio suggested that the City of Oxford repeal its current zoning law<sup>32</sup>, and adopt the Smartcode<sup>33</sup>.<sup>34</sup> The Smartcode may be a great

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<sup>28</sup> Ga. Const. Art. IX, § II, Para. II (2007).

<sup>29</sup> Ga. Const. Art. IX, § II, Para. III & IV (Paragraph IV mentions that the General Assembly is not prohibited from enacting laws which establish procedures which govern the exercise of the zoning powers).

<sup>30</sup> See O.C.G.A. § 36-31-1 to 12 (2007) (laws governing the establishment of municipalities); O.C.G.A. § 36-35-1 to 8 (2007) (laws governing the home rule power of municipalities).

<sup>31</sup> O.C.G.A. § 36-35-3.

<sup>32</sup> See Appendix B, The Comprehensive Zoning Ordinance of the City of Oxford, Georgia, § 10.1-2007 (2007).

<sup>33</sup> The Smartcode was principally authored by Andres Duany and was created to provide a zoning code alternative to use and bulk restriction zoning (i.e. Euclidean Zoning). The Smartcode focuses on flexibility of zoning; including mixed uses, urban/rural transacts, and local calibration.

alternative for Oxford, compared to its existing bulk/use (Euclidean) zoning, due to the codes flexibility and form-based zoning. The Smartcode touts itself as being a unified land development ordinance which subsumes the need for separate zoning ordinances, subdivision regulations, urban design codes, and architectural standards ordinances.<sup>35</sup> The Smartcode's developers wanted a zoning code which encouraged community vision, local character, transit options, walkable and mixed-use options, and preservation of rural lands.<sup>36</sup> The Smartcode's developers' believed that the implementation of the Smartcode would reduce urban sprawl, poor land use decisions, and preserve the mix of dense urban cores against the urban/rural transects.<sup>37</sup> The concerns of the City are that the Smartcode is not exactly what they want. However, the City really needs to consider the Smartcode, due to its flexibility, to ensure their goals (i.e. a town center with dense housing coupled with the protection of rural lands) are met. Many of the concerns of the City could be addressed by simply calibrating the Smartcode to fit their purposes. Furthermore, the City can always adopt ancillary zoning ordinances which ensure that the community's goals are met. The problem with the Smartcode in Oxford is that the town is very small comparatively; thus, they do not need all six zones, including 3 urban zones. However, Oxford, due to its early planning and development, will benefit more from a code such as the Smartcode than traditional Euclidean zoning. Thus, the City has no legal impediments to repealing their existing code and adopting the Smartcode. However, the City needs to devote significant time and resources into deciding how they should

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<sup>34</sup> See Appendix A, The Charrette.

<sup>35</sup> Smartcode Complete, <http://www.smartcodecomplete.com/>.

<sup>36</sup> Id.

<sup>37</sup> Id. (for an example see the City of Portland, Oregon)



calibrate the Smartcode to fit their community's purposes and desires.<sup>38</sup> [Henry ("Dee") DeBardleben, Law Student]

**D. Relocation of Highway 81**<sup>39</sup>

The City of Oxford, also, had significant concerns about the traffic coming down their main arterial road, State Highway 81 or Emory Street.<sup>40</sup> The City would like Highway 81 diverted, so as to encourage people who would normally pass through Oxford to take the bypass, Highway 149 East, to Interstate 20.<sup>41</sup> Eventually, the Georgia Department of Transportation intends to create a bypass all the way around Oxford and Covington; however, it would be beneficial, in the intervening time, to encourage people, not bound for Oxford, to take the bypass. The City simply wants Highway 81, as it approaches from the north, to no longer go straight through the City. The City would prefer that Highway 81 merge with Highway 149, the east bypass, north of the City, to force people to take Highway 149. Persons wanting to reenter Highway 81, from the north, could do so by taking a right turn on another county road which would eventually link back up with Highway 81.

The Official Code of Georgia Annotated allows for the Georgia Department of Transportation, counties, and municipalities to substitute for, abandon, or relocate public roads, under its respective jurisdiction, when it is in the public's best interest.<sup>42</sup> The ability to relocate a public road has been granted to municipalities provided they: (1) assure that the relocation is in the public's interest; and (2) that the relocated public road

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<sup>38</sup> The Charrette's calibration of the Smartcode for Oxford is a good starting place. See Appendix A, the Charrette, pg. 32-33.

<sup>39</sup> See Appendix E, Newton County roads.

<sup>40</sup> See Appendix A, The Charrette, pg. 24.

<sup>41</sup> Id.

<sup>42</sup> O.C.G.A. § 32-7-1 (2007).

is within the respective jurisdiction of the municipality.<sup>43</sup> First, the City of Oxford should have no trouble in establishing that the relocation of Highway 81 is in the public's interest. Accordingly, it is always in the public's interest to reduce traffic which is harmful to pedestrians in the municipality. Next, the City will not be able to meet the second prong of the statute because Highway 81 is not within its respective jurisdiction. Highway 81 is part of the Georgia State Highway System and is, thus, regulated by the Georgia Department of Transportation.<sup>44</sup> The City of Oxford would only have power to relocate municipal streets within its jurisdiction.<sup>45</sup> Thus, it would be in the City's best interest to lobby its local representatives and the Georgia Department of Transportation to effectuate its desire to reroute Highway 81. **[Henry ("Dee") DeBardeleben, Law Student]**

**E. Design/Architecture Zoning and Historical Preservation**

The quaint small town and historical feel of Oxford is something the City is desirous to protect. The City is full of historic homes and buildings dating back to the early 1800's. The City wants to protect its existing historic structures and also wants to promote new building design which is consistent with the existing historic buildings, to enhance the natural beauty of the town. The City by adopting the Smartcode will be able to calibrate design standards within the Smartcode to meet the needs of the town fairly simply and quite effectively. One of the many advantages of the Smartcode is that it is

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<sup>43</sup> See McIntosh County v. Fisher, 242 Ga. 66, 247 S.E.2d 863 (1978) (where the court held that the General Assembly only intended such power to be exercised within the political subdivision's respective jurisdiction, and the exercise of such power should be in the public's interest).

<sup>44</sup> O.C.G.A. § 32-2-2 (2007) (Powers of the Georgia Department of Transportation, Generally).

<sup>45</sup> O.C.G.A. § 32-4-92 (2007) (Powers of Municipalities Regarding Municipal Streets).

quite comprehensive, including the merger of zoning and design codes. Historical preservation, on the other hand, is more complicated.<sup>46</sup>

Historic preservation regulations are usually accomplished as part of the zoning ordinances and the comprehensive plan, particularly in overlay zones.<sup>47</sup> Historic preservation regulations have often been challenged as a constitutional taking<sup>48</sup>; however, the Penn Central<sup>49</sup> decision assured municipalities that challenge resistant historic preservation ordinances could be drafted. Essential to the success of Oxford developing a historic preservation ordinance is their ability to carefully draft an ordinance which is resistant to challenges. Most successful historic preservation ordinances have: (1) a survey to establish historic designations; (2) technical and economic assistance to landowners burdened by such ordinances; and (3) some sort of synchronization with the comprehensive plan.<sup>50</sup> In order to meet these standards, Oxford would need to survey the historic properties they wanted to regulate. They would also want to ensure some economic assistance, perhaps a TDR program, to the prospectively burdened properties. Lastly, the City would want to ensure synchronization between their preservation ordinance and their comprehensive plan. The City has already created a historic district in their comprehensive plan. Thus, the City may legally create a historic preservation ordinance which is viable and unchallengeable but they must carefully draft such ordinance. **[Henry (“Dee”) DeBardleben, Law Student]**

#### **F. TDR and Conservation Districts**

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<sup>46</sup> Due to time and space constraints, brevity will be key in my discussion of historic preservation.

<sup>47</sup> See Julian Conrad Juergensmeyer and Thomas E. Roberts, Land Use Planning and Development Regulation Law (Hornbook Series) Chapter 11.

<sup>48</sup> The United States Constitution, Fifth Amendment (providing "nor shall private property be taken for public use, without just compensation.").

<sup>49</sup> Penn Central Transportation Company v. New York, 438 U.S. 103 (1978).

<sup>50</sup> Supra Note 25, Juergensmeyer.

The City of Oxford now, through great early planning, has de facto transect boundaries between their more urban and residential areas and their rural and farm areas. The City desperately wants to keep it that way, furthermore, they would like to add more green spaces, trails, parks, and nature preserves within their community. The City has recently been promised a large tract of property, the largest solely held undeveloped tract in the municipality, by a citizen. The City, due to its low budget, wants practical ways to increase the density in the urban areas of the municipality while at the same time assuring that the municipality will keep its rural boundary.

First, the City needs to ensure that the citizen who is promising this generous gift of land has done what is legally required to effectuate the transfer. The City would be wise to consult with the citizen and discuss the different options he has in divesting his property to the City; furthermore, it may be wise to furnish him with counsel who would be able to draft an irrevocable trust, which would protect the City's interest in the property and give the landowner present tax benefits.<sup>51</sup>

Second, notwithstanding whether they get this large tract of land or not, they must consider planning/legal tools which will insure increased density in their quasi-urban core and promotion of their rural fringe. The City may try to use conservations easements in the rural fringe to effectuate their plan. Conservations easements are negative restrictions on a parcel of land which run with the land, thus, they are binding on future potential landowners.<sup>52</sup> Conservation easements typically require the purchaser of the easement to pay a significant sum of money to the landowner, who in turn burdens his land by

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<sup>51</sup> This paragraph brings up issues which are outside the scope of this paper, such as issues of taxation, wills and trusts law, and conflicts of interest. The City would be wise to consult its city attorney or outside counsel in making such complicated decisions.

<sup>52</sup>Supra Note 25, Juergensmeyer at Chapter 12.

restricting the land's uses to rural, farm, or some low density use. Conservation easements could be a very effective method for promoting the City's goals, if the City has the requisite funds to buy the conservation easements. Here, the City of Oxford is unlikely to have sufficient funds to develop this kind of program.

The City, in lieu of a conservation easement program, may want to consider a transfer of development rights program ("TDR"). A TDR program allows a municipality to limit development on certain lands, sending areas; thereby, giving the burdened landowners transferable development rights which could be sold to developers or landowners seeking to increase their allowable density in land which the municipality would like to see increased density, receiving areas. Georgia law allows municipalities to create a TDR program for its jurisdiction and then prescribes certain elements which must be within a TDR program in Georgia.<sup>53</sup> Georgia law requires the TDR be in an instrument of transfer, that it be binding on successive landowners, that it be an interest in land, that the rights be purchased, exchanged, or the like, that a municipality or a person can hold a TDR for conservation purposes, that there would be a monitoring system, and that the sending and receiving areas be mapped on the comprehensive plan.<sup>54</sup> Traditionally, TDR programs have been quite successful; however, some TDR programs have failed in their respective areas. The difficulties for Oxford are the limited size of Oxford and the economic viability of the program. A TDR program may be able to work in Oxford if the governing body successfully monitors the TDR system to ensure that no end roads circumvent the program. Furthermore, the potential growth in the area just might sustain a small scale TDR program. Moreover, a TDR program for Oxford would

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<sup>53</sup> O.C.G.A. § 36-66A-2 (2007).

<sup>54</sup> *Id.*

be much more cost effective than the City having to purchase conservation easements; moreover, the City may always purchase the transferable development rights themselves and use them practically as a conservation easements. **[Henry (“Dee”) DeBardeleben, Law Student]**

**G. Annexation of Islands of Unincorporated Land Parcels**

The City of Oxford has a great deal of concern about unincorporated islands of land within its municipal limits surrounded on all sides by the City of Oxford, or at least partially surrounded.<sup>55</sup> The City has two major concerns about unincorporated islands of land within its municipal borders: (1) the islands could allow land uses completely inconsistent with the City’s land use plan; and (2) the City needs to incorporate these lands to ensure that the City can carry out its existing land use plan. Accordingly, some of the unincorporated islands, located in Oxford, are located in areas the City wants to use for green ways.<sup>56</sup>

Georgia law provides that the governing body of each municipality may annex existing unincorporated islands of land within its jurisdiction into its municipality.<sup>57</sup> Georgia law also defines what is an unincorporated island: generally, (1) unincorporated land, since 1991, with aggregate external boundaries abutting the annexing municipality; (2) unincorporated land, since 1991, with aggregate external boundaries abutting one or more municipalities, including the annexing municipality; and (3) unincorporated land, since 1991, to which the county has no reasonable means of physical access for the provision of services otherwise provided by the county governing authority solely to the

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<sup>55</sup> See Appendix C, Oxford’s Comprehensive Zoning Map.

<sup>56</sup> See Appendix A, The Charrette, pg. 16.

<sup>57</sup> O.C.G.A. § 36-36-92 (2007).

unincorporated area of the county.<sup>58</sup> The governing body of the City of Oxford must accomplish such annexation by an ordinance at a regular meeting, 30 days after noticing the owner/owners of such property/properties by written mail to their address found on their last ad valorem tax bill.<sup>59</sup> Further, they must give notice to the Department of Community Affairs and the governing body of the county in which the annexing property is located.<sup>60</sup> Annexations under this section of Georgia law are at the sole discretion of the governing bodies of the municipality attempting such annexation; however, upon annexation the municipality must provide the same or substantially the same services it provides the rest of its constituents.<sup>61</sup> Moreover, “the implementation of each annexation pursuant to this article is contingent upon preclearance of each annexation by the U.S. Justice Department pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973(c)”.<sup>62</sup> Thus, if the City follows Georgia law, and assuming preclearance is granted by the Justice Department, they should have no trouble annexing existing unincorporated islands of land within their municipality. **[Henry (“Dee”) DeBardleben, Law Student]**

#### **H. Fair Housing Implementation**

The planning members of our team, as part and parcel of the charrette’s implementation, have recommended implementation of fair housing.<sup>63</sup> Fair housing is an issue similar to historic preservation, in that careful ordinance drafting, informed decision making, and adequate factual inquiry may ward off a takings challenge.<sup>64</sup> Various states have implemented fair/workforce housing ordinances which have been upheld

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<sup>58</sup> O.C.G.A. § 36-36-90 (2007).

<sup>59</sup> O.C.G.A. § 36-36-92.

<sup>60</sup> Id.

<sup>61</sup> Id.

<sup>62</sup> Id.

<sup>63</sup> See Supra ¶ I, § A.

<sup>64</sup> Due to the potential for lengthy discussion, brevity will be the course which I will pursue.

judicially<sup>65</sup>; however, they can be ripe for legal challenges. The City would be wise to use their fair housing ordinance as more of an incentive based approach than one which proscribes development without the provision of fair housing. **[Henry (“Dee”) DeBardeleben, Law Student]**

#### **IV. CONCLUSION**

The City of Oxford’s growth management future is hanging on by a thread: with budget shortfalls; sprawl threatening from Atlanta; and lack of collective motivation to see a new plan through to implementation. However, Oxford, unlike so many other municipalities, has seen that growth is coming and has actively sought out ways to preserve the spirit of their quaint town. Thus, Oxford need only act upon the resolutions of the people’s representatives to ensure a bright future for all Oxfordians. **[Henry (“Dee”) DeBardeleben, Law Student]**

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<sup>65</sup> See Florida’s Fair Housing Act.



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## Appendix A

# The UGA Charrette

(See pdf file named *the%20plan.pdf*, attached hereto)

## **Appendix B**

## ZONING\*

### Article 1. General

- Sec. 101. Short title.
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**\*Editor's note** Printed herein is the city's zoning rules and regulations as set forth in an ordinance adopted May 6, 1996. Amendments to the ordinance are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original ordinance. Obvious misspellings and punctuation errors have been corrected without notation. For stylistic purposes, a uniform system of headings, catchlines, capitalization, citation to state statutes, and expression of numbers in text has been used to conform to the Code of Ordinances. Additions made for clarity are indicated by brackets.

**Cross references**-Any zoning ordinance saved from repeal, § 1-7(10); administration, ch. 2; buildings and building regulations, ch. 14; adherence to city zoning ordinance in building chapter, § 14-2; environment, ch. 38; floods, ch. 46; streets, sidewalks and other public places, ch. 62; subdivisions, ch. 66.

**State law references**-The Zoning Procedures Law, O.C.G.A. § 36-66-1 et seq.; local government zoning powers, O.C.G.A. § 36-66-2; conflicts of interest in zoning actions, O.C.G.A. § 36-67A-1 et seq.; effect of zoning laws on covenants running with the land, O.C.G.A. § 44-5-60; authority to adopt plans and exercise the power of zoning, Ga. Const. art. IX, § II, Para. IV.

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- Sec. 503. Boundaries of R-30 districts.



Sec. 504. Development standards for R-30 districts.  
Sec. 505. Uses in R-30 districts.

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Sec. 602. Boundaries of R-20 districts.  
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[Article 21.] Comparison of Selected Development Standards by Zoning District

## Appendix C



## **Appendix D**











## **Appendix E**

