

AGENDA ITEM ABSTRACT

MEETING DATE: Tuesday, March 26, 2002

TITLE: Work Session on the Adequate Public School Facilities Memorandum of Understanding and Ordinance

DEPARTMENT: PLANNING	PUBLIC HEARING: YES ___ NO <u>X</u>
<p>ATTACHMENT:</p> <ul style="list-style-type: none"> <li>A. Resolution</li> <li>B. 2/8/02 Memo from Alice M. Gordon</li> <li>C. 5/4/99 Aldermen Minutes</li> <li>D. 3/30/00 Assembly of Governments Minutes</li> <li>E. 5/23/00 Resolution: Memorandum of Agreement for Coordinated Site and Facility Planning</li> <li>F. 2/27/01 Resolution</li> <li>G. Graph: "Actual vs. Estimated New Dev. Student Population Change CHCCS 1990-2000"</li> <li>H. "Projections of Students Compared to Capacity by Year by Level"</li> <li>I. "CAPS Allocation"</li> <li>J. Schools APFO Process-flow chart</li> </ul>	<p>FOR INFORMATION CONTACT: Roy Williford, 918-7325</p>

**PURPOSE:**

The purpose of this item is to provide the Board of Aldermen with a presentation and review of the "Schools Adequate Public Facilities Memorandum of Understanding" (MOU) and the accompanying "Adequate Public School Facilities Ordinance"(Ordinance). The memorandum and ordinance were approved by the Schools and Land Use Council on 11/14/01 and submitted by the Chair, Alice M. Gordon, for consideration on 2/8/02 (Attachment B). A member of the Orange County Planning Staff will be in attendance to demonstrate a computer spreadsheet of a standard formula to be used in the implementation of the "Adequate Public School Facilities Ordinance". The following recent handouts have been included: "Projections of Students Compared to Capacity by Year by Level" (Attachment H), the "CAPS Allocation" (Attachment I), and the "Schools APFO Process" (Attachment J). Following the presentation and discussion, the Board of Aldermen may wish to consider the adoption of the attached resolution (Attachment A) that instructs the staff to work with Orange County, Chapel Hill and the Chapel Hill Carrboro City Schools, to obtain information that will assure the Town that sufficient school capacity will be available to allow CAPS to be issued upon the adoption of the MOU and Ordinance.

**INFORMATION:**

***BACKGROUND***

Approximately four years ago, at the suggestion of the Orange County Board of Commissioners, a “Schools and Land Use Council” was formed. The purpose of the group was to discuss issues related to school location, school capacity, land use issues and new development proposals. A primary function was that of information sharing. The Schools and Land Use Council is made up of elected representatives from the Chapel Hill Town Council, the Carrboro Board of Aldermen, the Orange County Board of Commissioners, and representatives from the two school systems operating in Orange County.

From this group, a concern arose that capacity of schools historically has not kept pace with development in our two school districts. The group formed a technical committee to develop a draft, countywide Schools Adequate Public Facilities Ordinance. The technical committee was made up of attorneys from each jurisdiction as well as the two school systems, the Planning Directors of the three jurisdictions, and the Facility Planners from the two school districts. The technical committee met over the course of a year. The product of the committee included two pieces: A proposed Memorandum of Understanding and a draft Ordinance.

Following is a brief chronology of events associated with the review of the Adequate Public School Facilities MOU and Ordinance:

- |                           |  |
|---------------------------|--|
| <b>May 4, 1999</b>        | Board of Aldermen receive and review materials on adequate public facilities requirements (Attachment C-minutes);  |
| <b>February 24, 2000</b>  | Joint meeting of the Carrboro Board of Aldermen and the Chapel Hill Town Council to receive a report from the Orange County Planning Director on Adequate Public Facilities Ordinances;  |
| <b>March 30, 2000</b>     | Assembly of Governments Meeting held to discuss the development of an Adequate Public Facilities Ordinance (Attachment D-minutes);   |
| <b>May 23, 2000</b>       | At the request of the Schools and Land Use Council the Board of Aldermen authorized the Mayor to sign a “Memorandum of Agreement for Providing Coordinated Site and Facility Planning” (Attachment E-memorandum of agreement);   |
| <b>September 13, 2000</b> | Schools and Land Use Council approved a final draft of the MOU and Ordinance and sent to Orange County Board of Commissioners for review;  |
| <b>October 2, 2000</b>    | Orange County Board of Commissioners holds a work session to review the MOU and Ordinance;   |
| <b>November 22, 2000</b>  | MOU and Ordinance transmitted for consideration by Moses Carey, Chair Orange County Commissioners;   |
| <b>November 27, 2000</b>  | Orange County Commissioners held a public hearing on the proposed MOU and ordinance;   |
| <b>February 19, 2001</b>  | The Chapel Hill Town Council Holds a Public Hearing; at the conclusion of the hearing, the Council asked the Manager and Town Attorney to bring a follow-up report to the Council, discussing the issues that had been raised. This follow-up report was presented to the Town Council on April 23, 2001, at which time the Council asked the Manager and Town Attorney to draft a list of specific concerns about the proposal to send to the staff group working on this project, so that revisions might be considered. |

- February 27, 2001** Town of Carrboro holds a work session on the proposed MOU and ordinance (Attachment F-Resolution);
- April 19,2001** Assembly of Governments meeting, Orange County presented an update regarding the proposed Adequate Public Facilities Ordinance.
- May 7, 2001** The Chapel Hill Town Council considered and endorsed the list of concerns, and a letter was sent on May 8 transmitting the concerns to the intergovernmental work group. The main points in the letter were:
1. The proposed ordinance and memorandum of understanding would appear to allow single developer to go to the School System and tie up all of the allowance for new residential development, thereby precluding other applicants.
  2. The proposed ordinance would allow the School System to determine capacity before an application can even be filed with the Town.
  3. Consideration should be given to developing a more accurate way to determine capacity.
- October 2001** Staff and Attorney Work Group completes work on revisions to documents; prepared for consideration by Schools and Land Use Council;
- November 14, 2001** Schools and Land Use Council unanimously recommends approval of revised drafts and agrees to forward documents to local governments and school boards for consideration.
- November-February** Adjustments made to documents by Orange County staff
- February 13, 2002** Drafts transmitted to Mayors, County Commissioners Chairman, and School Board Chairs by Alice Gordon, Chair of the Schools and Land Use Council.

**QUESTIONS AND RESPONSES**

<i>Questions</i>	<i>Responses</i>
1. Timing: When would the ordinance become effective?	<ul style="list-style-type: none"> <li>• Upon adoption by Carrboro, Orange County and the Chapel Hill/Carrboro School Board of the Memorandum of Understanding; <u>and</u></li> <li>• Upon adoption by Carrboro and Orange County of similar regulations; <u>and</u></li> <li>• Upon adoption of a resolution by the Chapel Hill/Carrboro School Board certifying adequate school capacity.</li> </ul>
2. Timing: What happens to a Certificate (CAPS) if the underlying development approval expires?	The MOU (Section 4) and Ordinance (Section 4) have been modified to tie the expiration of the CAPS with the expiration of the permit authorizing the development. For example in Carrboro’s case a CUP expires 2 years after it is issued if no substantial activity has taken place as authorized by the permit. The CAPS will expire along with the permit or the CAPS will extend along with an extension of the permit, if granted by the Town.
3. Application of new ordinance to University development.	The MOU (Section 8.b) and the Ordinance (Section 5.b) exempts residential developments restricted for a period of at least 30 years to dormitory housing for university students. Other types of university

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<i>Questions</i>	<i>Responses</i>
	housing (except for elderly, adult care/special needs) would be subject to obtaining CAPS.
4. How much of the growth in school population is attributable to new development?	According to a population projection report conducted by Tischler and Associates for Orange County the average single-family unit generates 0.39 students and multifamily generates 0.18 students. The attached graph (Attachment G) illustrates the total student population change and the amount of student population change from new development (Co's multiplied by student generation rates).
5. Are schools overcrowded now? How does that affect operation of this ordinance?	The 105% capacity level for elementary schools has been exceeded in the CHCCS district and is not expected to fall below capacity until the planned elementary #9 comes on line in 2004. The high school level is expected to exceed the 110% level of service between 2004 and 2006. The ordinance should not become effective until the Chapel Hill/Carrboro School Board adopts a resolution certifying that adequate school capacity exists as envisioned under section 2 of the MOU.
6. How would this affect a proposal for a village mixed-use (VMU) development?	A village mixed use (VMU) development could be approved under the Master Plan or Conditional Use Zoning approach without obtaining CAPS (Ordinance section 2.b). The land use permit for the VMU or master plan would not become effective until CAPS are obtained for the proposed residential units (Ordinance section 2.a). The developer will need to phase the development of the VMU with the anticipated supply of CAPS over time.
7. What is the current status of use of mobile classrooms? How is that treated in the proposed ordinance?	According to the MOU (section 1.b), "Mobile classrooms and other temporary student accommodating classroom spaces are not permanent buildings and may not be counted in determining the school districts building capacity."
8. How would "Certificates of Adequate School Capacity" (CAPS) be issued?	The school district will issue or deny CAPS (Ordinance section 2.c) as provided for in the MOU (section 3). According to the MOU, the CAPS will be issued on a "first come first serve basis" and if no CAPS are available then the development retracts its priority in line base upon their application date. Each phase of a development will require CAPS before the phase becomes effective.
9. Will the school boards have approval power over new development?	No, the power to approve and deny subdivision and development requests will still reside with the elected officials for each municipality. The CAPS approval will not be determined until after a development is approved by the local government.

<i>Questions</i>	<i>Responses</i>
10. Will Orange County determine the pace of growth in Chapel Hill and Carrboro?	The School APFO is a joint agreement among all of the municipalities of Orange County with the county government. The pace of growth will in part be determined by the Capital Improvement Plan for schools that is currently determined by the Board of County Commissioners. In that sense, the determinant of school growth will not change. One of the goals of the School APFO is to create a CIP that matches statistical projections of school demand so that CAPS will not need to be denied.
11. Will a CIP be created to ensure that a moratorium is not enacted due to the APFO? If so, how will that CIP be determined/created?	The current discussions on the APFO would include a clause that the APFO not go into effect until all school levels in both jurisdictions (OCS and CHCCS) are below capacity. This is to avoid a moratorium in the ordinance's inception.
12. Will a building moratorium be enacted as soon as the APFO is put into effect based on the fact that both school districts are currently over capacity?	This scenario would be avoided by delaying the APFO's effect until all school levels in both jurisdictions are below capacity.
13. If a developer is given a CAPS based upon the premise that a school will be built in the future and is included in the CIP and then, for whatever reason, the school is not built, will the developer's CAPS be revoked?	CAPS would not be revoked for this reason since the developer would be acting on good faith of the school board that a school would be built by the time the houses are constructed.
14. Are there exceptions for residential developments that do not produce as many students (student housing, elderly house, e.g.)?	Student dormitories for university students and housing for the elderly that will not produce school age children are exempt from CAPS review.

### KEY CHANGES SINCE FEBRUARY 2001

The following points highlight the key areas of change between the February 2001 documents and the February 2002 documents:

- The Certificate of Adequacy of Public School Facilities (CAPS) that must be obtained from the school system is proposed to be required after Town approval of a development, but before a Conditional Use or Special Use Permit for a residential development becomes effective.

- The School District will certify the school membership of each school level (elementary, middle, and high) on November 15 of each year. The School District will by February 15<sup>th</sup>, determine expected membership and capacity for each of the subsequent 10 years (using a methodology agreed to by all parties to the Memorandum of Agreement). By comparing membership and capacity, a projected available capacity will be calculated for each year in the ten-year period. Attachment H, "Projections of Students Compared to Capacity by Year by Level", was distributed in the March 18<sup>th</sup> meeting with the Chapel Hill-Carrboro Chamber of Commerce. These projections show that the elementary schools are expected to exceed the 105% threshold in the upcoming 02-03 school year and that the high school enrollment is expected to reach the 110% threshold in the following year 03-04.

If these projections become true then CAPS could not be issued until sufficient capacity is generated through the construction of new schools to satisfy enrollment needs for each school category or the capacity thresholds need to be adjusted upward.

- Updates and Changes to projected growth rates, growth rate methodologies, building capacity, and student generation rates:
  - a) A staff committee consisting of the planning directors and a representative from each school district shall meet annually between November 1<sup>st</sup> and November 21<sup>st</sup> to determine changes needed in the projected growth rate, methodology or student generation rate. The staff Committee will make its recommendation to the Orange County Board of Commissioners with copies to the governing boards.
  - b) The Orange County Board of Commissioners may change the projected membership growth rate, the methodology used to determine the growth rate, the student generation rate if they conclude that such a change is necessary to predict growth more accurately. The Board of County Commissioners must inform the other parties prior to February 1st of any changes and the reason for the change.
  
- If capacity is determined by the School District to be available, CAPS will be issued on a first come-first served basis to developments approved during the ensuing 12 months, or until available capacity is gone.
  
- If capacity is not available and a request for a certificate is denied, the developer may seek approval from the appropriate planning jurisdiction of modifications to the development (i.e. a phasing plan) that would allow for the issuance of a certificate, and then re-apply.

**MEMORANDUM OF UNDERSTANDING**

The attached Memorandum of Understanding is a proposed agreement between the County, the Chapel Hill/Carrboro City Schools, and the municipalities of Chapel Hill and Carrboro. The Memorandum provides the framework for this initiative, and would commit all parties to support this cooperative approach (which includes the adoption of the proposed Adequate Public Facilities Ordinance for Schools).

The Board of Aldermen may wish to consider the following items regarding the adoption of a MOU:

- i) A Capital Improvements Program that will achieve the objectives of the proposed MOU, i.e. is financially feasible, synchronized with historical growth patterns, and provides a realistic plan for the construction of schools such that the school membership within each school level (elementary, middle and high school) does not exceed the following:
  - (1) Elementary 105% of the Building Capacity
  - (2) Middle 107% of the Building Capacity
  - (3) High 110% of the Building Capacity
- ii) A projected growth rate for student membership (students registered on November 15 of each year) within the School District’s three levels during the ten year life of the CIP (Orange County Capital Investment Plan);
- iii) A methodology for determining the projected growth rate for student membership; and
- iv) The number of students at each level expected to be generated by each new housing type (i.e., the “student generation rate”);
- v) The Board of Aldermen, after reaching agreement on the previously listed items, may adopt the MOU by resolution.

During the SLUC's (Schools and Land Use Councils) March 13, 2002 meeting, the first four items were discussed. The council reiterated that these items must be agreed upon before an agreement can be reached on the mutual adoption of the MOU and before each governing body can adopt an ordinance. As previously discussed the building capacity thresholds may need to be adjusted upward.

The proposed Memorandum of Understanding if adopted will:

- Direct all parties to work cooperatively to develop a realistic Capital Improvement Plan for the construction of new school facilities.
- Establish the levels of crowding that define "over capacity."
- Establish the process for determining projections of student enrollment, key to determination of whether capacity will be available in future years.
- Establish the sequence and process for a developer obtaining a certificate of capacity.
- Direct parties with zoning jurisdiction to incorporate implementing language in their respective zoning regulations.

**ADEQUATE PUBLIC FACILITIES ORDINANCE AMENDMENT**

The attached draft Adequate Public Facilities Ordinance for Schools is a development regulation tool that proposes to synchronize new residential development with the availability of school facilities. The draft Ordinance proposes to pace growth by affecting the timing of development in keeping with the availability of school facilities as noted in the school district's Capital Improvement Plans.

The Board of Aldermen may wish to consider the following items regarding the adoption of an Adequate Public School Facilities Ordinance:

- a) Assure that CAPS will be available prior to the projected ordinance adoption date;
- b) Instruct the Town Attorney to prepare APFO as a text amendment to the Carrboro Land Use Ordinance;
- c) Hold a work session to receive the APFO text amendment and staff report.
- d) Set a date for a public hearing and refer the ordinance amendment to the Planning Board and Orange County for review;
- e) Planning Board and Orange County complete their review and make recommendations;
- f) The Board of Aldermen hold a public hearing, receive comments from the Planning Board, Orange County, citizens and the staff;
- g) Aldermen Adopt the APFO text amendment that will coordinate the approval of residential development with the adequacy of existing and proposed school facilities;
- h) Staff incorporates ordinance amendment and forwards the approved agreement to all parties.

The Adequate Public School Facilities text amendment:

- Proposes new provisions that require a developer to obtain a Certificate of Adequacy of Public School Facilities (CAPS) from the Chapel Hill Carrboro City Schools before a Conditional Use Permit or Special Use Permit become effective. The Board of Aldermen or Board of Adjustment will

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continue to process permit approvals for new residential developments as they do now, except the permit will not become effective until CAPS are issued.

- Requires that CAPS be requested by a developer from the Chapel Hill/Carrboro School Board. The Memorandum of Understanding addresses the allowable capacity for the district.
- Allows a CAPS to run with the land (it could not be transferred to another parcel).
- Provides the Board of Aldermen with the authority to grant special exceptions.
- Provides the Board of Aldermen with the authority to review the denial of a CAPS request by the School District.

Administration of the Adequate Public School Facilities Ordinance:

- a) Land Use Permits -The staff will continue to process applications for residential projects requiring SUP's and CUP's as before and the Board of Adjustment or Board of Aldermen will act on applications as they presently do. The permit; however, will not become effective until the applicant applies for and obtains a Certificate of Adequacy of Public School Facilities ("CAPS") from the Chapel Hill-Carrboro Schools. The staff will process the CUP or SUP as approved once the applicant submits a number of CAPS that matches the number of lots or units authorized by the permit or a phase authorized by the permit. If a permit expires as provided for by the Land Use Ordinance then the CAPS expire as well.
- b) Zoning Permits- The proposed APFO doesn't require CAPS for projects of four or less units permissible with a zoning permit.
- c) Minor Subdivision Final Plats will require CAPS but Exempt Subdivisions will not require a CAPS.
- d) A general rezoning or conditional use rezoning for a master land use plan is not subject to the APFO but subsequent CUP's or SUP's will require CAPS.
- e) Dormitory housing for university students, housing for the elderly/adult care living or adult special needs housing will not require a CAPS.
- f) Amendments for projects approved before the effective date of the ordinance (that have not expired and do not propose an increase in the number of units beyond 5 units or 5% whichever is less) will not require a CAPS.
- g) The Board of Aldermen shall issue a special exception to the CAPS requirement for permits needed to complete a planned unit development or a master plan project approved before the effective date of the ordinance where the CAPS have been denied by the schools, where substantial expenditures have been made and where the applicant would be unreasonably prejudiced due to the ordinance provisions.
- h) Appeals to the denial of CAPS by the schools will be heard and decided upon by the Board of Aldermen.

**EFFECTIVE DATE**

In the 2/8/02 memo from the Chair of the Schools and Land Use Councils (Attachment B) an effective date of November 15, 2002 is proposed for the implementation of the Schools Adequate Public Facilities Ordinance. During the March 13<sup>th</sup> SLUC meeting it was suggested that an effective date around February



2003 may be more realistic. Once assurances are made that CAPS can be issued, the following actions need to take place prior to implementation:

- Adoption by Chapel Hill, Carrboro, Orange County and the Chapel Hill/Carrboro School Board of the Memorandum of Understanding; and
- Adoption of the Schools Adequate Public Facilities Ordinance by Chapel Hill, Carrboro and Orange County; and
- Adoption of a resolution certifying adequate school capacity by the Chapel Hill/Carrboro School Board.

**RECOMMENDATION**

The administration recommends that the Board of Aldermen:

- 1) Receive a report from the Orange County Planning staff regarding the attached Memorandum of Understanding, accompanying Schools Adequate Public Facilities Ordinance and a demonstration of the computer spreadsheet to be used in the implementation of the ordinance.
- 2) Adopt the attached resolution that:
  - a) Accepts the report on the Adequate Public School Facilities Memorandum of Understanding and Ordinance, and
  - b) Instructs the staff to obtain additional information regarding student membership projections and school capacity for consideration in a future work session.

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A RESOLUTION ACCEPTING A REPORT ON:  
Adequate Public School Facilities Memorandum of Understanding and Ordinance  
Resolution No. 122/2001-02

WHEREAS, the Town of Carrboro, through its representation on the Orange County Schools and Land Use Council, has been working cooperatively with the Town of Chapel Hill, the Town of Hillsborough, Orange County, the Chapel Hill/Carrboro School District and the Orange County School District to create a policy and an ordinance that will promote a balance among anticipated student enrollment and school capacity;

WHEREAS, adequate schools support the high quality of education that serves as a linchpin to the quality of life throughout Orange County;

WHEREAS, the Attorneys/Planning Directors/School Administrators (APS) Work Group as requested by the Orange County Schools and Land Use Council, worked over the past three years to develop an Adequate Public School Facilities Memorandum of Understanding and Ordinance;

WHEREAS, the Orange County Schools and Land Use Council on November 14, 2001 unanimously recommended approval of an Adequate Public School Facilities Memorandum of Understanding and model Ordinance;

WHEREAS, the Town received a report and explanation of the associated documents and mathematical models; and

WHEREAS, information regarding school capacity and projected student membership indicate that sufficient school facilities may not be available for the issuance of CAPS within the next few years;

NOW, THEREFORE, BE IT RESOLVED by the Carrboro Board of Aldermen that:

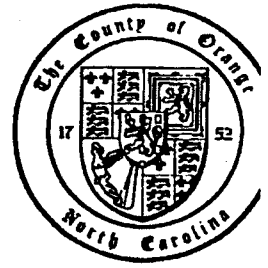
1. They have received and accept the report on the Adequate Public School Facilities Memorandum of Understanding and Ordinance,
2. The staff is instructed to work with Orange County, Chapel Hill and the Chapel Hill Carrboro City Schools, to obtain information that will assure the Town that sufficient school capacity will be available to allow CAPS to be issued upon the adoption of the MOU and Ordinance.
3. That the staff will provide additional information in the form of a recommendation from the Schools and Land Use Councils that includes:
  - i. The adopted Orange County CIP (Capital Investments Plan) that will achieve the objectives of the proposed MOU, i.e. is financially feasible, synchronized with historical growth patterns, and provides a realistic plan for the construction of schools such that the school membership within each school level (elementary, middle and high school) does not exceed building capacities adjusted to provide for the issuance of CAPS by the Chapel Hill Carrboro City Schools as prescribed by the MOU and Ordinance;

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- ii. A projected growth rate for student membership (students registered on November 15 of each year) within the School District's three levels during the ten year life of the CIP (Orange County Capital Investment Plan);
  - iii. A methodology for determining the projected growth rate for student membership; and
  - iv. The number of students at each level expected to be generated by each new housing type (i.e., the "student generation rate");
4. All additional information will be provided in a future work session for further consideration by the board.

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BARRY JACOBS, CHAIR  
 STEPHEN H. HALKIOTIS, VICE CHAIR  
 MARGARET W. BROWN  
 MOSES CAREY, JR.  
 ALICE M. GORDON

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## MEMORANDUM

**TO:** *The Honorable Mike Nelson, Mayor, Town of Carrboro and Board of Aldermen*  
*The Honorable Kevin Foy, Mayor, Town of Chapel Hill and Chapel Hill Town Council*  
*The Honorable Valerie Foushee, Chair, Chapel Hill-Carrboro Board of Education and Board Members*  
*The Honorable Joe Phelps, Mayor, Town of Hillsborough and Board of Commissioners*  
*The Honorable Barry Jacobs, Chair, Orange County Board of Commissioners and Board Members*  
*The Honorable Brenda Stephens, Chair, Orange County Board of Education and Board Members*

**FROM:** *Alice M. Gordon, Chair, Schools and Land Use Councils*

**DATE:** *February 8, 2002*

**SUBJECT:** *Schools Adequate Public Facilities Memorandum of Understanding and Ordinance*

**COPIES:** *Schools and Land Use Councils Members, Planning Directors, School Superintendents*

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On November 14, 2001 the Schools and Land Use Councils (SLUC) unanimously recommended approval and forwarding of the Schools Adequate Public Facilities Memorandum of Understanding (MOU) and model Ordinance (Schools APFO) to the respective local governments and school boards. The two year process of developing these documents has been an important and progressive collaboration of many parties to create a policy and ordinance that will help maintain the high quality of education that serves as a linchpin to the quality of life in Orange County.

### Amendments

Over the four months preceding the SLUC meeting, these two documents were amended from the earlier drafts by an Attorneys/Planning Directors/School Administrators (APS) Work Group composed of representatives from the local governments and school boards. The amendments, drafted to address comments from various public hearings, are summarized below:

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1. Changing the timing of receipt of the Certificate of Adequate Public School Facilities (CAPS) to reduce upfront "locking up" of capacity
2. Phasing of development to synchronize the impacts with available capacity
3. Defining the Schools APFO implementing methodology and subsequent maintenance or revisions to the methodology

On November 14, the Schools and Land Use Councils (SLUC) made a few additional modifications before approving the MOU and the Schools APFO for transmittal. Since November 14, the staff has revised the agreement to reflect the changes made at the November 14 SLUC meeting and to clarify the timing of implementation contained in certain sections of the documents.

Transmittal of Documents

Accompanying this memorandum are the following documents:

1. Schools Adequate Public Facilities Memorandum of Understanding (Approved 11/14/01 by SLUC; Drafted 2/08/02 by staff)
2. Schools Adequate Public Facilities Model Ordinance (Approved 11/14/01 by SLUC; Drafted 2/08/02 by staff)
3. Memorandum from the APS Work Group to the Schools and Land Use Councils (10/11/01)

The MOU includes all of the general understandings used in the proposed implementing model ordinance (Schools APFO). However, there are four elements of the MOU that need to be decided prior to ordinance adoption to provide the technical basis and resulting methodology for the Schools APFO system. These elements are listed in Section 1c of the MOU.

The memorandum from the APS Work Group elaborates on the changes made by that group, and should be read with the understanding that further changes were made by the SLUC on November 14.

Adoption and Implementation

Because of the changes to the Schools Adequate Public Facilities documents, the approval process is likely to include an additional public hearing and adoption meeting. The MOU and ordinance can be evaluated in two phases, since it is anticipated that the MOU could be approved with the chosen four elements (in Section 1c) prior to the adoption of the ordinance. It is suggested that the time for implementing the ordinance be November 15, 2002. That should allow time for the necessary preliminary work and approvals.

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Craig Benedict, Orange County Planning and Inspections Director (and one of the APS work group team members that included your attorney and planning director or other representative), is available to meet with you or your board to answer questions as the public hearing and adoption process continues. He can also explain the ongoing preliminary work necessary for implementation.

Conclusion

The preparation of the Schools Adequate Public Facilities MOU and model Ordinance represents a major effort of many contributing boards, committees, and work groups. There have been many benefits already from improved data standardization, collection, and reporting and from cooperative planning and discussion among all the parties. The proposed ordinance can help us ensure that our school construction keeps pace with our rapid growth, so that our children can be educated in facilities that truly meet their needs. Excellent schools are essential elements of our quality of life here in Orange County.

Thank you very much for your consideration of the Memorandum of Understanding and Schools Adequate Public Facilities Ordinance.

**SCHOOLS ADEQUATE PUBLIC FACILITIES  
MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between the Town of \_\_\_\_\_, the Town of \_\_\_\_\_, Orange County, and the \_\_\_\_\_ (the "School District").

WHEREAS, the portion of Orange County, served by the [Chapel Hill/Carrboro] [Orange County] School System has for the past decade been experiencing rapid growth in population; and

WHEREAS, this growth, and that which is anticipated, creates a demand for additional school facilities to accommodate the children who reside within new developments; and

WHEREAS, the responsibility for planning for and constructing new school facilities lies primarily with the [Chapel Hill/Carrboro] [Orange County] School Board, with funding provided by Orange County; and

WHEREAS, [Chapel Hill, Carrboro, Orange County and the Chapel Hill School District] [Orange County, Hillsborough, and the Orange County School District], have recognized the need to work together to ensure that new growth within the School District occurs at a pace that allows Orange County and the School District to provide adequate school facilities to serve the children within such new developments;

WHEREAS, the parties have worked cooperatively and developed a system wherein school facilities are currently adequate to meet the needs of the citizens of the county and will continue to maintain a Capital Investment Plan (CIP) that is financially feasible and synchronized with historical growth patterns;

NOW, THEREFORE, the parties to this Memorandum hereby agree as follows:

Section 1. The parties will work cooperatively to develop a realistic Capital Improvement Plan for the construction of schools such that, from the effective date of this Memorandum, school membership within each school level (i.e. elementary, middle or high) does not exceed the following:

Elementary School	105% of Building Capacity
Middle School	107% of Building Capacity
High School	110% of Building Capacity

- a. For purposes of this Memorandum, the term "school membership" means the actual number of students attending school as of November 15 of each year. The figure is determined by considering the number of students enrolled (i.e. registered, regardless of whether a student is no longer attending school) and making adjustments for withdrawals, dropouts, deaths, retentions and promotions. Students who are merely absent from

class on the date membership is determined as a result of sickness or some other temporary reason are included in school membership figures. Each year the School District shall transmit its school membership to the parties to this agreement no later than five (5) school days after November 15.

- b. For purposes of this Memorandum, "building capacity" will be determined by reference to State guidelines and the School District guidelines (consistent with CIP School Construction Guidelines/policies developed by the School District and the Board of County Commissioners) and will be determined by a joint action of the School Board and the Orange County Board of Commissioners. As used herein the term "building capacity" refers to permanent buildings. Mobile classrooms and other temporary student accommodating classroom spaces are not permanent buildings and may not be counted in determining the school districts building capacity.
  
- c. Prior to the adoption of the ordinances referenced in Section 2, the parties shall reach agreement on the following:
  - (i) A Capital Improvement Program (CIP) that will achieve the objectives of this Memorandum;
  - (ii) A projected growth rate for student membership within the School District's three school levels during the ten year life of the CIP;
  - (iii) A methodology for determining the projected growth rate for student membership; and
  - (iv) The number of students at each level expected to be generated by each new housing type (i.e., the "student generation rate").
  
- d. After the adoption of the ordinances referenced in Section 2, the Orange County Board of Commissioners may change the projected student membership growth rate, the methodology used to determine this rate, or the student generation rate if the Board concludes that such a change is necessary to predict growth more accurately. Before making any such change, the Board shall receive and consider the recommendation of a staff committee consisting of the planning directors of the Town(s) and the County and a representative of the School District appointed by the Superintendent. The committee shall provide a copy of its recommendation to the governing boards of the other parties to this memorandum at the time it provides such recommendation to the Board of Commissioners. In making its recommendation, the committee shall consider the following, and in making its determination, the Board of Commissioners shall consider the following:



- (i) The accuracy of the methodology and projected growth rate then in use in projecting school membership for the current school year;
- (ii) The accuracy of the student generation rate then in use in predicting the number of students at each level actually generated by each new housing type;
- (iii) Approval of and issuance of CAPS for residential developments that, individually or collectively, are of sufficient magnitude to alter the previously agreed upon school membership growth projections; or
- (iv) Other trends and factors tending to alter the previously agreed upon projected growth rates.

If any such change is made in the projected growth rate, the methodology for determining this rate, or the student generation rate, the Orange County Board of Commissioners shall inform the other parties to this Memorandum prior to February 1<sup>st</sup> in any year in which such change is intended to become effective what change was made and why it was necessary.

- e. The Orange County Board of Commissioners shall provide a copy of the updated CIP to each of the parties to the Memorandum as soon as it is revised, annually or otherwise.

**Section 2.** The towns and the county will adopt amendments to their respective ordinances, in substantially the form attached hereto as Exhibit A, to coordinate the approval of residential developments within the School District with the adequacy of existing and proposed school facilities.

**Section 3.** The following process shall be followed by the School District to receive and take action upon applications for Certificates of Adequacy of Public School Facilities ("CAPS") submitted by persons who are required by an implementing ordinance conceptually similar to that attached as Exhibit A to have such certificates before the development permission they have received from the town or county becomes effective.

- a. On February 15<sup>th</sup> of each year, the School District shall calculate the building capacity of each school level and the school membership of each school level as of November 15<sup>th</sup> of the previous year. Also on February 15<sup>th</sup> of each year, the School District shall calculate the anticipated school membership for each school level and the anticipated building capacity for each school level as of November 15<sup>th</sup> in each of the following ten years. These calculations shall be made in accordance with the provisions of Section 1 and also in accordance with the remaining provisions of this section.

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- b. School membership calculations made on February 15<sup>th</sup> (utilizing the previous November 15<sup>th</sup> data) for each of the ten years following the year in which the calculation is made (the base year) shall be determined by applying the projected school membership growth rates determined in accordance with Section 1 of this Memorandum to the actual school membership numbers of the base year.
- c. The school building capacity calculations shall be based upon the following:
  - (i) A calculation of the existing building capacity within each school level;
  - (ii) The anticipated opening date of schools under construction;
  - (iii) The anticipated opening date of schools on the ten-year CIP for which funding has been committed by the Board of Commissioners as a result of an approved bond issue, an approved installment purchase agreement, or otherwise; and
  - (iv) The anticipated closing dates of any schools within the School District.
- d. By comparing the existing and calculated school membership to the existing and calculated school building capacity each year, the School District shall determine what remaining capacity (if any) exists or is projected to exist to accommodate new development. The School District shall make that information known to the local governments within 15 days of the comparison.
- e. As CAPS are issued for new developments during the course of the twelve month period from February 15<sup>th</sup> of one year to February 15<sup>th</sup> of the next year, the School District shall continually reduce the remaining available school building capacity in each of the ensuing years wherein new students are projected to be added to the school system by the developments for which the CAPS are given during that year.
- f. When an application for a CAPS is submitted, the School District shall determine the impact on school membership for each school level as calculated on February 15<sup>th</sup> in each year of the period during which the development is expected to be adding new students to the school system as the result of such new construction. In making this determination, the School District shall rely upon the figures established under Section 1 of this Memorandum as to the number of students at each level expected to be generated by each housing type, and data furnished by the applicable planning department as to the expected rate at which new dwellings within developments similar in size and type to the proposed development are

likely to be occupied. Notwithstanding the foregoing, if, upon request of the applicant, the planning jurisdiction approving the development imposes enforceable conditions upon the development (such as a phasing schedule) to limit the rate at which new dwellings within the development are expected to be occupied, then the School District shall take such limitations into account in determining the impact of the development on school membership.

- g. If the School District determines that the projected capacity of each school level is sufficient to accommodate the proposed development without exceeding the building capacity levels set forth in Section 1 of this Memorandum, then the School District shall issue the CAPS. If the School District determines that the projected capacity of each school level is not sufficient to accommodate the proposed development without exceeding the building capacity levels set forth in Section 1, then the School District shall deny the CAPS. If a CAPS is denied, the applicant may seek approval from the appropriate planning jurisdiction of such modifications to the development as will allow for the issuance of a CAPS, and then reapply for a CAPS.
- h. The School District shall issue CAPS on a "first come first served" basis, according to the date a completed application for a CAPS is received. If projected building capacity is not available and an application for a CAPS is therefore denied, the development retains its priority in line based upon the CAPS application date.

Section 4. A CAPS issued in connection with approval of a subdivision preliminary plat, minor subdivision final plat, site plan, or conditional or special use permit shall expire automatically upon the expiration of such plat, plan, or permit approval.

Section 5. The towns and the county will provide to the School District all information reasonably requested by the School District to assist the District in making its determination as to whether the CAPS should be issued.

Section 6. The School District will use its best efforts to construct new schools and permanent expansions or additions to existing schools in accordance with the CIP.

Section 7. Orange County will use its best efforts to provide the funding to carry out the Capital Improvement Plan referenced in Section 1 above.

Section 8. In recognition of the fact that some new development will have a negligible impact on school capacity, a CAPS shall not be required under the following circumstances:

- a. For residential developments restricted by law and/or covenant for a period of at least thirty years to housing for the elderly and/or adult care living and/or adult special needs;

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- b. For residential developments restricted for a period of at least thirty years to dormitory housing for university students.

If the use of a development restricted as provided above changes, then before a permit authorizing such change of use becomes effective, a CAPS must be issued just as if the development were being constructed initially.

**Section 9.** The parties acknowledge that this Memorandum of Understanding is not intended to and does not create legally binding obligations on any of the parties to act in accordance with its provisions. Rather, it constitutes a good faith statement of the intent of the parties to cooperate in a manner designed to meet the mutual objective of all the parties that the children who reside within the School District are able to attend school levels that satisfy the level of service standards set forth herein.

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Exhibit A

**AN ORDINANCE AMENDING THE \_\_\_\_\_ DEVELOPMENT  
ORDINANCE TO REQUIRE THAT THE ADEQUACY OF PUBLIC  
SCHOOL FACILITIES TO ACCOMMODATE NEW DEVELOPMENT  
BE CONSIDERED IN THE APPROVAL PROCESS**

WHEREAS, the portion of Orange County served by the [Chapel Hill/Carrboro] [Orange County] school system, has for the past decade been experiencing rapid growth in population; and

WHEREAS, this rapid growth, and that which is anticipated, creates a demand for additional school facilities to accommodate the children who reside within new developments; and

WHEREAS, the responsibility for planning for and constructing new school facilities lies primarily with the [Chapel Hill/Carrboro School Board] [Orange County School Board], with funding provided by Orange County; and

WHEREAS, [Chapel Hill, Carrboro, Orange County and the Chapel Hill/Carrboro School District] [Orange County, Hillsborough, and the Orange County School District] have recognized the need to work together to ensure that new growth within the School District occurs at a pace that allows Orange County and the School District to provide adequate school facilities to serve the children within such new developments; and

WHEREAS, to implement the Memorandum of Understanding between [Orange County, Chapel Hill, Carrboro, and the Chapel Hill/Carrboro School Board] [Orange County, Hillsborough, and the Orange County School Board], the [governing body] desires to provide a mechanism to assure that, to the extent possible, new development will take place only when there are adequate public school facilities available, or planned, which will accommodate such new development;

NOW THEREFORE, \_\_\_\_\_ ORDAINS:

Section 1. Section \_\_\_\_\_ of the \_\_\_\_\_ Development Ordinance is amended by adding a new \_\_\_\_\_ to read as follows:

**ADEQUATE PUBLIC SCHOOL FACILITIES**

**1. Purpose.**

The purpose of this ordinance is to ensure that, to the maximum extent practical, approval of new residential development will become effective only when it can reasonably be expected that adequate public school facilities will be available to accommodate such new development.

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**2. Certificate of Adequacy of Public School Facilities.**

(a) Subject to the remaining provisions of this [article], no approval under this ordinance of a subdivision preliminary plat, minor subdivision final plat, site plan, or conditional or special use permit for a residential development shall become effective unless and until Certificate of Adequacy of Public School Facilities (CAPS) for the project has been issued by the School District.

(b) A CAPS shall not be required for a general use or conditional use rezoning or for a master land use plan. However, even if a rezoning or master plan is approved, a CAPS will nevertheless be required before any of the permits or approvals identified in subsection (a) of this section shall become effective, and the rezoning of the property or approval of a master plan provides no indication as to whether the CAPS will be issued. The application for rezoning or master plan approval shall contain a statement to this effect.

(c) A CAPS must be obtained from the School District. The School District will issue or deny a CAPS in accordance with the provisions of the Memorandum of Understanding between [Chapel Hill, Carrboro, Orange County, and the Chapel Hill Carrboro School District] [Orange County, Hillsborough, and the Orange County School District] dated \_\_\_\_\_.

(d) A CAPS attaches to the land in the same way that development permission attaches to the land. A CAPS may be transferred along with other interests in the property with respect to which such CAPS is issued, but may not be severed or transferred separately.

**3. Service Levels.**

(a) This section describes the service levels regarded as adequate by the parties to the Memorandum of Understanding described in subsection (b) with respect to public school facilities.

(b) As provided in the Memorandum of Understanding between [Orange County, Chapel Hill, Carrboro, and the Chapel Hill/Carrboro School District] [Orange County, Hillsborough, and the Orange County School District], adequate services levels for public schools shall be deemed to exist with respect to a proposed new residential development if, given the number of school age children projected to reside in that development, and considering all the factors listed in the Memorandum of Understanding, projected school membership for the elementary schools, the middle schools, and the high school(s) within the [Chapel Hill/Carrboro] [Orange County] School District will not exceed the following percentages of the building capacities of each of the following three school levels:

elementary school level	<u>105%</u>
middle school level	<u>107%</u>
high school level	<u>110%</u>

For purposes of this ordinance, the terms "building capacity" and "school membership" shall have the same meaning attributed in the Schools Adequate Public Facilities Memorandum of Understanding among the Towns of \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_, Orange County and the \_\_\_\_\_ Board of Education.

**4. Expiration of Certificates of Adequacy of Public School Facilities.**

A CAPS issued in connection with approval of a subdivision preliminary plat, minor subdivision final plat, site plan, or conditional or special use permit shall expire automatically upon the expiration of such plat, plan, or permit approval.

**5. Exemption From Certification Requirement for Development with Negligible Student Generation Rates**

In recognition of the fact that some new development will have a negligible impact on school capacity, a CAPS shall not be required under the following circumstances:

- a. For residential developments restricted by law and/or covenant for a period of at least thirty years to housing for the elderly and/or adult care living and/or adult special needs;
- b. For residential developments restricted for a period of at least thirty years to dormitory housing for university students.

If the use of a development restricted as provided above changes, then before a permit authorizing such change of use becomes effective, a CAPS must be issued just as if the development were being constructed initially.

**6. Applicability to Previously Approved Projects and Projects Pending Approval.**

(a) Except as otherwise provided herein, the provisions of this ordinance shall only apply to applications for approval of subdivision preliminary plats, minor subdivision final plats, site plans and conditional or special use permits that are submitted for approval after the effective date of this ordinance

(b) The provisions of this ordinance shall not apply to amendments to subdivision preliminary plats, minor subdivision final plats, site plans, or special or conditional use permit approvals issued prior to the effective date of this ordinance so long as the approvals have not expired and the proposed amendments do not increase the number of dwelling units authorized within the development by more than five percent or five dwelling units, whichever is less.

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(c) The [governing body] shall issue a special exception to the CAPS requirement to an applicant whose application for approval of a subdivision preliminary plat, minor subdivision final plat, site plan or conditional or special use permit covers property within a planned unit development or master plan project that was approved prior to the effective date of this ordinance, if the [governing body] finds, after an evidentiary hearing, that the applicant has (1) applied to the School District for a CAPS and the application has been denied, (2) in good faith made substantial expenditures or incurred substantial binding obligations in reasonable reliance on the previously obtained planned unit development or master plan approval, and (3) would be unreasonably prejudiced if development in accordance with the previously approved development or plan is delayed due to the provisions of this ordinance. In deciding whether these findings can be made, the [governing body] shall consider the following, among other relevant factors:

(1) Whether the developer has installed streets, utilities, or other facilities or expended substantial sums in the planning and preparation for installation of such facilities which were designed to serve or to be paid for in part by the development of portions of the planned unit development or master planned project that have not yet been approved for construction;

(2) Whether the developer has installed streets, utilities, or other facilities or expended substantial sums in the planning and preparation for installation of such facilities that directly benefit other properties outside the development in question or the general public;

(3) Whether the developer has donated land to the School District for the construction of school facilities or otherwise dedicated land or made improvements deemed to benefit the School District and its public school system;

(4) Whether the developer has had development approval for a substantial amount of time and has in good faith worked to timely implement the plan in reasonable reliance on the previously obtained approval;

(5) The duration of the delay that will occur until public school facilities are improved or exist to such an extent that a CAPS can be issued for the project, and the effect of such delay on the development and the developer.

(d) The decision of the [governing body] involving a special exception application under subsection (c) is subject to review by the Orange County Superior Court by proceedings in the nature of certiorari. Any petition for review by the Superior Court shall be filed with the Clerk of Superior Court within 30 days after a written copy of the

decision [of the governing body] is delivered to the applicant and every other party who has filed a written request for such copy with the Clerk to the [governing body] at the time of its hearing on the application for a special exception. The written copy of the decision of the [governing body] may be delivered either by personal service or by certified mail, return receipt requested.



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(e) The [chair or the mayor] of the [governing body] or any member temporarily acting as [chair or mayor] may, in his or her official capacity, administer oaths to witnesses in any hearing before the [governing body] concerning a special exception.

**7. Appeal of School District Denial of a CAPS.**

The applicant for a CAPS which is denied by the School District may, within 30 days of the date of the denial, appeal the denial to the [governing body] of [local government from which development permit is sought]. Any such appeal shall be heard by the [governing body] at an evidentiary hearing before it. At this hearing the School District will present its reasons for the denial of the CAPS and the evidence it relied on in denying the CAPS. The applicant appealing the denial may present its reasons why the CAPS application should have, in its view, been approved and the evidentiary basis it contends supports approval. The [governing body] may (1) affirm the decision of the School District, (2) remand to the School District for further proceedings in the event evidence is presented at the hearing before the [governing body] not brought before the School District, or (3) issue a CAPS. The [governing body] will only issue a CAPS if it finds that the CAPS should have been issued by the School District as prescribed in the Memorandum of Understanding among the School District, Orange County and the [governing body]. A decision of the [governing body] affirming the School District may be appealed by the applicant for a CAPS by proceedings in the nature of certiorari and as prescribed for an appeal under Section 6(d) of this ordinance.

**8. Information Required From Applicants.**

The applicant for a CAPS shall submit to the School District all information reasonably deemed necessary by the School District to determine whether a CAPS should be issued under the provision of the Memorandum of Understanding between the [governing body], Orange County, and the School District. An applicant for a CAPS special exception or an applicant appealing a CAPS denial by the School District shall submit to the [governing body] all information reasonably deemed necessary by the [governing body] to determine whether a special exception should be granted as provided in Section 6(d) of this ordinance or for the hearing of an appeal of a School District denial of a CAPS as provided in Section 7 of this ordinance. A copy of a request for a CAPS special exception or of an appeal of a School District denial of a CAPS shall be served on the superintendent of the School District. Service may be made by personal delivery or certified mail, return receipt requested.

Section 2. This ordinance shall become effective \_\_\_\_\_.

The foregoing ordinance, having been submitted to a vote, received the following vote and was duly adopted this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

Ayes:

Noes:

Absent or Excused:

**MEMO**

✓  
Date: October 11, 2001  
To: Schools and Land Use Councils  
From: Adequate Public School Facilities Program  
Planners, School Administrators and Attorney Work  
Group

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Enclosed with this memorandum are revised versions of the model Ordinance and model MOU to implement the Adequate Public School Facilities program in Orange County. They have been revised since the last time you looked at these documents to address concerns about the ability under previous drafts for larger developments to obtain certificates of adequate public schools and "lock up" school capacity. One of the concerns expressed was that other projects which contain amenities, for example, affordable housing, might not be able to be built because the school capacity is reserved for one or more large projects. The other concern expressed was that as proposed, the MOU and the Ordinance could result in certificates being issued significantly prior to development approval so as to "lock up" school capacity unnecessarily.

The new documents address these concerns by requiring local government approval of a development before the certificate of adequate public schools facilities application is made. Local government approval of the development will be contingent on the development applicant thereafter receiving the necessary certificate from the Board of Education. Furthermore, the documents provide that the certificate can be issued according to a phasing plan that is incorporated into the development approval and which would limit the rate at which new dwellings within the development could be constructed.

These changes to the structure of the documents, in the opinion of the members of the work group, address the concerns as far as they can be addressed. In that regard, consideration was given to limiting the life of

certificates. However, this idea was not incorporated into the documents because of a concern about the risk of vesting or other due process claims associated with time limiting the certificates. These issues could arise because of the fact that preliminary plan approval typically is a "green light" for development infrastructure to be constructed by the development applicant. If a development receives preliminary approval and receives a certificate from the Board of Education, the development applicant will be prompted to construct infrastructure and to begin other development activities. A certificate expiring thereafter raises the vesting/due process question. On the other hand, the MOU and Ordinance provide that if the development approval lapses, the certificate from the Board of Education lapses with it. The work group thought that the lapsing of certificates should be linked to the development lapse and not independent from it.

The work group also refined the documents to make clear the methodology for determining building capacity and the process for applying student membership information to determine whether a certificate should be issued by the Board of Education. Particularly, the work group recommends, consistent with the recommendation of the School Facilities Task Force to the Board of Commissioners, that school membership be the benchmark for calculating school capacity. The MOU selects November 15 as the date to determine school membership because it was deemed to be far enough into the school year to be reliable. Further, the MOU envisions that agreement would be reached on a projected growth rate for student membership within each school district's three school levels and agreement would be reached on the methodology for determining the projected growth rate for student membership. Once agreement is reached on the projected growth rate and the methodology for determining the projected growth rate, maintenance and recalibration of those indicators would become a staff function with regular reports to the governing boards. Any concern about the results of staff maintenance or recalibration could be addressed as needed by the governing board parties to the MOU.

The work group also developed alternatives to this staff approach. One alternative would make this

methodology maintenance and calibration a function of the Orange County Board of Commissioners with notice to the other MOU parties of any methodology change and the reasons for the change. In the other alternative, the Orange County Board of Commissioners would perform the methodology maintenance and calibration and provide the other MOU parties with an opportunity to object to any change. Any objection would call for the changed parameter to be approved by all MOU parties before it is effective. As to the methodology maintenance and calibration, it is worth noting that the long term viability of the Adequate Public Facilities MOU and Ordinance depends on long term agreement among the parties of the methodology used in their application.

School building capacity will be founded on State and school district guidelines, the latter being developed by the School Boards and the Board of County Commissioners and approved by each. School building capacity projections will combine school building capacity with projected opening dates of schools under construction, closing dates of any schools proposed to be closed and projected opening dates of schools in the 10 year CIP for which funding has been committed as the result of an approved bond issue, an approved installment purchase agreement or other funding source.

The work group also offers the following comments with respect to concerns about affordable housing and capacity within a school district among towns.

1. Affordable housing. Affordable housing is addressed in the November 2000 letter from Moses Carey to the Mayors of Carrboro, Chapel Hill and Hillsborough and the Chapel Hill-Carrboro and Orange County Board of Education Chairs that is with this memorandum. It continues to be the opinion of the work group members that what is stated in that November 2000 letter pertains. Reserving certificates to accomplish other, albeit very worthy public policies, subjects the adequate public schools facilities program to substantial legal risk. The members of the work group also think that stand-alone affordable housing projects, because of their small size, are unlikely to be denied a certificate and therefore will have minimal impact

on school facilities planning. This is especially true with the modifications to the MOU and Ordinance proposed that are designed to minimize certificate "hoarding."

2. Allocating school capacity among jurisdictions. Allocating school capacity within a school district by the use of an adequate public schools facility program draws the adequate public school facilities program into attendance zone issues. These issues are wholly independent of school level capacity. The concern of school capacity is whether there is school capacity in the school district and taking steps to insure that there is. Whether school capacity is absorbed by one town's development or another town's development, although important, is not pertinent to facilities capacity in the school district. Similarly other attendance zone issues which may or may not cross town boundaries, neighborhood schools and minimizing busing are examples, are not part of the adequate public schools facilities program. The program must be designed to deal only with capacity of school buildings on school level and school district bases. Allocating school capacity among or between towns and the rural part of the county therefore must be accomplished with some other "tool."

The charts that follow are designed to aid in your review of the draft Memorandum of Understanding and Ordinance.

GEG/lsg  
Enclosure

lsg:memos\adeqpubfacwkgroup#2.mem

(99)

ORANGE COUNTY  
HILLSBOROUGH  
NORTH CAROLINA

*Established 1752*

November 22, 2000

The Honorable Mike Nelson,  
Mayor, Town of Carrboro and  
Board of Aldermen  
Town Hall  
301 W. Main Street  
Carrboro, North Carolina 27510

The Honorable Rosemary I. Waldorf  
Mayor, Town of Chapel Hill and  
Chapel Hill Town Council  
306 N. Columbia Street  
Chapel Hill, North Carolina 27516

The Honorable Horace Johnson  
Mayor, Town of Hillsborough and  
Board of Commissioners  
Town Hall  
101 E. Orange Street  
Hillsborough, North Carolina 27278

The Honorable Elizabeth Carter, Chair and  
Board Members, Chapel Hill-Carrboro  
Board of Education  
Lincoln Center, Merritt Mill Road  
Chapel Hill, North Carolina 27516

The Honorable Keith Cook, Chair and  
Board Members, Orange County  
Board of Education  
200 E. King Street  
Hillsborough, North Carolina 27278

**RE: Adequate Public School Facilities**

Dear Elected Officials:

Enclosed with this letter is the form of the SCHOOLS  
ADEQUATE PUBLIC FACILITIES MEMORANDUM OF UNDERSTANDING ("MOU")  
and the form of AN ORDINANCE AMENDING THE \_\_\_\_\_  
DEVELOPMENT ORDINANCE TO REQUIRE THAT THE ADEQUACY OF PUBLIC

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November 22, 2000

SCHOOL FACILITIES TO ACCOMMODATE NEW DEVELOPMENT BE CONSIDERED IN THE APPROVAL PROCESS ("the Ordinance") recommended for your consideration by the Orange County Board of Commissioners. The Board of Commissioners will present these documents for public comment at a public hearing scheduled for November 27, 2000. The public hearing will begin at 7:30 p.m. and be held in the Gordon Battle Courtroom in Hillsborough.

The form of the MOU and the Ordinance are, for the most part, the same as was recommended by resolution of the Schools and Land Use Councils. The two documents differ from that recommended by the Schools and Land Use Councils in several important respects. This letter will explain those differences. As to the points of difference, the documents that are being transmitted here are in the form recommended by the planners, school administrators and attorneys when that group developed the documents and transmitted them to the Schools and Land Use Council for consideration. The recommendation coming from the Schools and Land Use Councils was submitted to the attorneys for final legal review. The comments received from our attorneys were consistent; their recommendation is reflected in the documents as they appear here.

Affordable Housing

The Ordinance and the MOU omit altogether consideration of affordable housing. It is not reasonable to think that the Ordinance and MOU can be sustained if they create an exception or an exemption for the certificates (CAPS) for affordable housing projects or affordable housing units. This is so because affordable housing impacts public school facilities in the same way that non-affordable housing does. Therefore any attempt to exempt affordable housing units or to reserve space in public schools for affordable housing projects or affordable housing units would put the program at risk of being determined to be unlawful.

It is not contemplated by an adequate public schools facilities program that the tools, the Ordinances and the MOU, are growth-limiting devices. Rather, the chief objective of these tools is to provide a reasonable amount of time for the County as the fiscal "agent" and the schools as the education "agent" to respond to the impact of residential growth on the

November 22, 2000

schools. That is, they allow both the County and the Boards of Education to reasonably respond to the pace of development. In that context, it is not likely that affordable housing will be adversely impacted by the CAPS requirement. Affordable housing projects have not historically been and are not predicted to be large enough to in and of themselves cause a CAPS denial. And, if these projects come along at a time when the School System is denying all of the CAPS applications it receives, the response cannot be to increase the overcrowding of the schools by approving projects which will have that result. The response also cannot be that the schools and the County must build a school solely to move an affordable housing project through the process.

The only sound approach to balancing school facilities and residential growth (student generation) is to regularly chart the school children "generated" by growth to see what school construction will be required. This can be compared with a fiscal limiting chart (the amount of money reasonably available for public school facilities). If the two charted lines "cross," work needs to be done. More money must be found for school construction or countywide (County and Towns) growth-limiting land use regulations must be implemented.

Although the Schools Adequate Public Facilities Ordinances and Memorandum of Agreement are not an appropriate place to address affordable housing, that does not mean that the County Commissioners along with the other elected officials in Orange County are not committed to affordable housing. The opposite is, as we all know, true.

#### Appeal of a CAPS Denial

Another important change in the documents from that which was recommended by the Schools and Land Use Councils is the way in which the documents handle appeals of CAPS denials. As developed by the lawyers, planners and school administrators, the final administrative decision regarding a CAPS denial rests with the governing board responsible for issuing development permits. The Schools and Land Use Councils recommendation was that that final decision be made by the Boards of Education. Again, our attorneys advise that the final administrative



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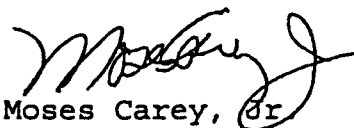
Page 4  
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decision from which an appeal moves to the courts should be with the governing board responsible for the development permitting. This is consistent with the legislation enabling the County and the Towns to issue development permits. Furthermore, it is not the responsibility of the board of education to "take on" developers when developments are stopped as the result of a CAPS denial. Since the planning government is ultimately responsible for the planning decision, any litigation related to the planning decision should follow a final administrative decision of the planning government. A final concern about the recommendation from the Schools and Land Use Councils on this point is that its proposal creates a never-ending loop. That is, there is no stopping point in the review by the planning government governing board of a CAPS denial decision.

There is one other point of clarification in the MOU from that recommended by the Schools and Land Use Councils. The MOU recommended by the Board of County Commissioners calls for school district building capacity to be determined by joint action of the applicable Board of Education and the Orange County Board of Commissioners. These two governmental units partner in school facilities. There must be agreement between them with respect to the all-important school district building capacity determination.

On behalf of the Board of Commissioners, we look forward to the public hearing process regarding the Adequate Public School Facilities program and ultimately implementing the program. We look forward to your continued support.

Sincerely,



Moses Carey, Jr.  
Chair, Orange County Board of  
Commissioners

MC/lsg  
Enclosures

lsg:letters\mosescareyletterreschoolsadeqpubfac.ltr

(103)

Alderman Gist expressed concern about how short the proposed route would be, and stated that bringing citizens into downtown would seem more logical.

Mayor Nelson suggested that citizens be allowed to catch the trolley anywhere along the route rather than just at the stops.

Alex Hitt, representing the Carrboro Farmers' Market, stated the Market would like to try this short route as a trial since there is a parking problem for the Market currently. Mr. Hitt stated that he would like to see the route extended in the future. Mr. Hitt stated that they would encourage patrons to use the trolley.

Mayor Nelson mentioned that the parking on Fidelity Street is currently underutilized.

Alderman McDuffee asked what kind of ridership would be deemed successful.

Mr. Hitt stated that the Farmers' Market folks would have to monitor the trolley usage.

MOTION WAS MADE BY ALEX ZAFFRON AND SECONDED BY HILLIARD CALDWELL TO AUTHORIZE THE TOWN MANAGER TO ENTER INTO AN AGREEMENT WITH CHAPEL HILL TRANSIT FOR TROLLEY SERVICE DURING THE FOURTH QUARTER OF THE 1998-99 FISCAL YEAR AT A COST OF \$1,348 AND THE FIRST QUARTER OF THE 1999-2000 FISCAL YEAR AT A COST OF \$2,502. VOTE: AFFIRMATIVE FOUR, NEGATIVE THREE (MCDUFFEE, GIST, SPALT)

ALDERMAN SPALT PROPOSED AN AMENDMENT TO ALDERMAN ZAFFRON'S MOTION TO REQUEST THAT THE TOWN STAFF PROPOSE AN EXPANDED ROUTE, WHICH WOULD GO INTO SOME NEIGHBORHOODS WITH A 15-MINUTE HEADWAY. (THIS AMENDMENT WAS NOT ACCEPTED.)

It was the consensus of the Board to request that the Transportation Advisory Board consider the Board's comments regarding expansion of the trolley route and that Heidi Perry be asked to participate in these discussions.

\*\*\*\*\*

#### DISCUSSION OF AN ADEQUATE PUBLIC FACILITIES ORDINANCE

The purpose of this item was to review materials on adequate public facilities requirements.

Mike Brough presented a proposed school concurrency agreement and accompanying ordinance. This agreement would establish a more formal mechanism for ensuring cooperation between Orange County, Chapel Hill, Carrboro and the Chapel Hill-Carrboro School District in making decisions on the approval of residential developments and the provision of the school facilities necessary to handle the school children who will reside in these developments.

Alderman Zaffron expressed concern that this ordinance would encourage development of 2-acre estate lots to avoid the requirements of this ordinance.

Alderman McDuffee suggested that senior housing and, housing targeted for students, and multi-family housing that is not going to generate a lot of school children should be exempted from the requirements of the ordinance.

(104)

Alderman Gist expressed concern that the proposal would encourage construction of more expensive housing. In addition, Alderman Gist expressed concern that requiring the developer to donate land to the school system would cause developers to pass along the cost of the donated land to the homeowners.

Alderman Spalt stated that discussion had been that two of these concurrency agreements would be signed—one for the Chapel Hill-Carrboro City Schools and one for the Orange County School System. This process would allow for planning what schools and other facilities would be needed, with adjustments made along the way. Schools would not be built in crisis modes any longer, which would allow for cost savings.

Alderman Broun expressed concern about the social and economic implications of this agreement. Sometimes centralized planning does not work. Is it safe to assume that the growth will continue at the same rate as it's been in the past? This could be a back-end way of controlling growth. This could be a way of shifting the responsibility from those who should make the decisions.

Alderman Caldwell stated that growth is outgrowing the school system and that he was not sure he wanted to give the control proposed in the agreement to the school system. Alderman Caldwell asked that this proposal be sent to the homebuilders association.

Mayor Nelson stated that the town could back out of this agreement in the future if it so choose.

Mike Brough stated that the town could repeal the ordinance.

Mayor Nelson stated that this is a tool to control growth. This is not ideal, but continuing without some type of agreement between the towns and the school system is not ideal either. It is important to have the school system's input.

Alderman Zaffron stated the idea is great, but in essence the school board would be put in a position of making land use functions and school boards are political bodies. Land use will become a realm of the school board.

Alderman Spalt stated that a capital improvement program would have to be developed by all bodies. This will make growth measured.

Alderman Zaffron requested information on how the school system will evaluate whether to issue CEF's or not, including information about the demographics of cities and counties in which similar ordinances have been implemented and whether the implementation has changed the demographics.

Alderman Caldwell requested that his proposal be forwarded to the HomeBuilders Association.

MOTION WAS MADE BY JACQUELYN GIST AND SECONDED BY DIANA MCDUFFEE TO DELETE SUBSECTION 6(e)(3) RELATING TO DONATION OF LAND TO THE SCHOOL SYSTEM, AND THAT 5 BE AMENDED TO READ "UP TO 13 HOUSES" AND THAT LANGUAGE BE INCLUDED TO EXEMPT HOUSING TARGETED TO A POPULATION THAT IS NOT LIKELY TO HAVE SCHOOL-AGE CHILDREN. (MOTION WITHDRAWN)

MOTION WAS MADE BY JACQUELYN GIST AND SECONDED BY DIANA MCDUFFEE TO FORWARD THE BOARD'S COMMENTS TO THE ATTORNEYS, MANAGERS AND SCHOOLS AND LAND USE COUNCIL. VOTE: AFFIRMATIVE ALL

\*\*\*\*\*

1 DRAFT

2 MINUTES  
 3 ORANGE COUNTY BOARD OF COMMISSIONERS  
 4 ASSEMBLY OF GOVERNMENTS MEETING  
 5 March 30, 2000  
 6

7  
 8 The Orange County Board of Commissioners met with the Chapel Hill Town Council and  
 9 staff, Chapel Hill-Carrboro School Board, Carrboro Board of Aldermen and staff, and Hillsborough  
 10 Town Board and staff on Thursday, March 30, 2000 at 7:30 p.m. in the boardroom of the Southern  
 11 Human Services Center, Homestead Road, Chapel Hill, North Carolina.

12  
 13 **COUNTY COMMISSIONERS PRESENT:** Chair Moses Carey, Jr., and Commissioners Margaret  
 14 W. Brown, Alice M. Gordon, and Barry Jacobs

15 **COUNTY COMMISSIONER ABSENT:** Stephen H. Halkiotis

16 **COUNTY ATTORNEY PRESENT:** Geoffrey Gledhill

17 **COUNTY STAFF PRESENT:** County Manager John Link, Planning Director Craig Benedict,  
 18 Planner Gene Bell, Assistant to County Manager Greg Wilder

19 **CHAPEL HILL STAFF PRESENT:** Town Manager Cal Horton, Assistant to Town Manager Bill ??

20 **CHAPEL HILL TOWN COUNCIL PRESENT:** Pat Evans, Bill Strom, Flicka Bateman, Mayor Pro  
 21 Tem Lee Pavao, Jim Ward, Kevin Foy, Edith Wiggins

22 **CHAPEL HILL-CARRBORO SCHOOL BOARD MEMBERS PRESENT:** Superintendent Neil  
 23 Pederson, Assistant Superintendent Steve Scroggs and board members Teresa Williams,  
 24 Maryanne Rosenman, Gloria Faley

25 **CARRBORO BOARD OF ALDERMEN PRESENT:** Joal Broun, Diana McDuffee, Mayor Pro Tem  
 26 Jacquelyn Gist, Allen Spalt, Alex Zaffron, Mark Dorosin

27 **CARRBORO STAFF PRESENT:** Town Manager Robert Morgan, Planning Director Roy  
 28 Walliford??

29 **HILLSBOROUGH TOWN BOARD MEMBERS PRESENT:** Frances Dancy, Mark Sheridan, Brian  
 30 Lowen, Ken Chavious

31 **HILLSBOROUGH STAFF PRESENT:** Town Manager Eric Peterson, Planning Director Margaret  
 32 Hauth

33  
 34 **1. Introduction of Topic and Brief History; Purpose and Intent; NEXT STEPS**

35 Chair Carey called the meeting to order. None of the Mayors were present at the meeting,  
 36 but Chair Carey offered any of the Mayor Pro Tems the opportunity to make opening statements.  
 37 Mayor Waldorf and Mayor Nelson were both ill. The Mebane Town Council was also invited  
 38 tonight because 20% of the Town of Mebane is in Orange County. The Mebane Town Council  
 39 could not be here tonight because they had a Town Council meeting.

40 Chair Carey said that Planning Director Craig Benedict would not be duplicating the  
 41 presentations that have been made to each of the jurisdictions regarding the Schools Adequate  
 42 Public Facilities Ordinance, but would provide a brief introduction, history, and intent of the  
 43 ordinance.

44 Mayor Pro Tem of Chapel Hill Lee Pavao said that Mayor Waldorf apologizes for not being  
 45 here tonight.

46 Mayor Pro Tem of Carrboro Jackie Gist said that Mayor Nelson was also under the  
 47 weather. She said that the Carrboro Town Council was excited about this issue because they  
 48 have been grappling with it for years. Carrboro is looking forward to working together to tackle the  
 49 problem of adequate facilities.

50 Mayor Pro Tem of Hillsborough Ken Chavious said that Mayor Johnson regretted not being  
 51 at the meeting. He said that Hillsborough thinks the ordinance is a good plan.

52  
 53 **2.**

1 **a. Memorandum of Understanding including a draft School Adequate Public**  
2 **Facilities Ordinance**

3  
4  
5 **b. Attorney/Planners/School Representatives Workgroup letter to Schools and Land**  
6 **Use Councils (SLUC) Chair**  
7

8 Craig Benedict said that the format for the discussion would follow what is on the green  
9 sheet. He said that the Schools and Land Use Council has put forth a very strong effort in the  
10 past year to develop the joint coordination with the representatives from the various towns and  
11 school districts to address the Schools Adequate Public Facilities Ordinance. The Schools and  
12 Land Use Council has charged a variety of tasks for the different staffs to work on a two-part  
13 process. The first part is a memorandum of understanding and the second part is a draft  
14 ordinance. The MOU is very similar to what the towns and school districts worked with through the  
15 Schools and Land Use Council when they were working on joint facilities for recreation and  
16 schools. The specifics of the ordinance will be plugged into the land development code of the  
17 various jurisdictions. He said that the MOU would not create an adoption of the APFO. All of the  
18 comments and questions received at the meetings with the various jurisdictions have been  
19 wrapped into the process that the attorneys, planning directors, and school representatives have  
20 been working on. This group has met 8-10 times to work on the MOU and APFO.  
21 He said that he needed further direction from the elected boards before proceeding.

22 Flicka Bateman asked when the boards would hear from the school boards. Commissioner  
23 Gordon said that this Schools and Land Use Council draft would come back for further work. She  
24 said that tonight the Schools and Land Use Council wanted to know if the boards were ready to  
25 give a thumbs up on the concept of the Schools APFO. She said that the details still needed to be  
26 worked out.

27 Alex Zaffron said that he would not be ready to support the ordinance to deal with some of  
28 the issues because the details were not played out yet.  
29

30 **2. Secondary Benefits of Schools APFO:**  
31

32 Craig Benedict said that the issue of reasonable student projections was one of the hardest  
33 issues to grapple with. Equitable funding is also an issue. The Schools APFO has a way of  
34 smoothing out the critical periods when spikes occur in school enrollment. He said that the  
35 projections for the next five years would be very tight because capital funding would depend on it.  
36 He said that a manageable database was being put together from the various jurisdictions. This  
37 information should be on the Internet within a year. This information will also be plugged into the  
38 comprehensive plan so the County can accommodate for the growth. He said that the growth  
39 pressures on the towns and the County have been laying in wait. He said that there was a certain  
40 degree of urgency because there were some large subdivisions coming to Orange County in the  
41 near future. He said that if Orange County gets ahead of all of the growth, it would be easier to  
42 manage and easier for the tax payers.

43 Craig Benedict said that it is anticipated that there will be two memorandums of  
44 understanding that would be signed - one with Orange County, Hillsborough, Mebane, and the  
45 Orange County school district and the other with Chapel Hill, Carrboro, Chapel Hill-Carrboro  
46 school district, and Orange County. He said that there were really only two blanks within the entire  
47 ordinance. One question is the issue of over capacity in the schools. This issue will be sent back  
48 to the Schools and Land Use Council to work with the school districts. He said that capacity would  
49 not include having mobile classrooms. The other question is that the towns would be adopting the  
50 APFO into their subdivision and zoning codes and the school districts would actually be the  
51 administrator of this. It is going to be a challenging task to keep track of the development that is  
52 occurring in the County. All of the information about potential subdivisions would have to be made  
53 readily available to the school district so that they can issue a Certificate of Adequate Public  
54 Schools (CAPS). The latter parts of the MOU indicate that it is not a mandate, but an interlocal

agreement. If a party to the interlocal agreement wants out of it, there is no penalty clause. He said that it was the most progressive APFO in North Carolina.

3. School APFO Decision Matrix

Craig Benedict said that this section shows where some of the decisions are centered in the Schools APFO. The two school districts will have to decide whether the level of service is per school or the capacities of all the schools put together.

Chair Carey made reference to the level of service threshold and asked if it should only be decided by the school boards. Craig Benedict said that this level of service would primarily be decided by the school districts. The implications of building new schools when there are existing schools that are not at capacity would be an issue for the funding source, which is the County.

Allen Spalt said that it seemed to him that the school districts should have the primary job of determining the point they consider themselves overcrowded. Craig Benedict said that most likely the people who do the student enrollment projections (school districts, County, towns, attorneys) may be part of the subgroup that makes decisions.

Jackie Gist made reference to the enrollment projections and said that they seemed to be steady. She asked how the University's growth had been figured into the enrollment projections. Craig Benedict said that the enrollment projections had not been done yet and the figures were hypothetical at this time. The University's growth will be factored into the student projections.

Jackie Gist said that she had an overall uneasiness because it was concerned mainly with what was good for schools. She said that the Town Council's primary concern was the good of the whole community. She is not opposed to the Schools APFO, but she thinks the issue of the schools overshadows how things have been written and researched. She said that she had not seen anything about the side effects or detriments of the Schools APFO. She is concerned about the effect this will have on market forces. She would like to see more real research on how it affects the community as a whole, including housing stock availability and housing affordability. Craig Benedict said that the MOU had an understanding in it that all of the parties would agree. He said that it was a cooperative agreement and some language could be added to say that all of the parties had to agree on the projections, etc.

Jackie Gist said that she would like to see the issues of housing affordability and availability addressed.

Alex Zaffron said that the hypothetical growth projections were linear and they did not account for the issue of spikes. He would like information on how the projections relate to some land use planning philosophies that have been adopted that would result in spikes and concentrated density to prevent sprawl. Craig Benedict said that this issue was discussed and was a concern of all the planners in the sub group. He said that larger scale development was not being discouraged. He said that there was sensitivity in the discussions to make sure that these regulations did not promote a pattern of growth that was not consistent with the land use plan. He can address these issues in the question and answer brochure.

Joal Broun said that she would like to see some data with regards to the type of housing stock that developers develop after such an ordinance is put in place. She is concerned about affordable housing.

Diana McDuffie said that she was not sharing the same concerns as her colleagues. She urged the boards not to put everything on this ordinance in terms of affecting affordable housing.

Craig Benedict said that the promotion of larger scale development gives the towns and the County an opportunity to plug in an affordable housing component. Regarding the question about balancing the needs of the schools versus other needs of the County and the towns, he said that this issue has come up within the Schools and Land Use Council meetings. He said that if this ordinance smoothes out the educational needs, there is more of an opportunity to focus on the

1 other issues in the County and towns. He said that he would put research together on the issues  
2 of affordable housing and housing types.

3 Craig Benedict said that as this information gets sent back to the Schools and Land Use  
4 Council and to the sub committees, these decisions make some critical issues. He showed the  
5 capacity levels of the schools on a display board.

6 Several questions were asked about the student projections and answered satisfactorily by  
7 Craig Benedict.

8 Commissioner Gordon said that the situation at this time was that there was no long term  
9 planning or coordination. Therefore, as development comes on line, the Commissioners are  
10 supposed to come up with the funding for the schools. Generally, there is a bond referendum, and  
11 if it fails, then the schools go into over capacity. She said that the need for new schools was  
12 accelerating. She said that each board would make its own decision about the Schools APFO,  
13 and no one would force any board to do anything.

14 Mark Sheridan said that the discussion tonight suggests that some additional focus should  
15 be put on what can be done cooperatively to moderate and check growth in the area.

16 Jim Ward said that the Schools APFO was only indicating when the problem was going to  
17 come but did not address the problem of the inability to fund the schools. He agrees that there  
18 needs to be a way of moderating the growth. Craig Benedict said that the Schools APFO was a  
19 way of monitoring and synchronizing growth. He said that the ordinance did address the funding  
20 and student projection issues. He said that the enrollment in Orange County per year could be  
21 higher than Chapel Hill-Carrboro 20 years from now.

22 Pat Evans asked if there was anything about the ordinance that encouraged growth further  
23 out from the urban areas. Craig Benedict said that the pattern and location of the growth was  
24 controlled by the land use and comprehensive plans of the towns. He said that during the  
25 comprehensive plan process, the County would try to direct growth to where there are adequate  
26 public facilities.

27

28 **4. School Site Needs Analysis (briefing by Chapel Hill/Carrboro School District**

29

30 Craig Benedict talked about the limited opportunities of land acquisition for schools.

31 Steve Scroggs said that the Chapel Hill-Carrboro School System perceived the need for  
32 having sites to build schools in the future. He showed four potential school sites on a map.

33 Mark Dorosin asked if there was any consideration to build taller schools since the land  
34 was so scarce. Steve Scroggs said that there were certain state requirements that prohibited the  
35 placement of kindergarten, first grade, or preschool aged children on the second floor of any  
36 classroom space.

37 Several other questions were answered satisfactorily about the potential school sites.

38

39 Craig Benedict explained the process of a developer obtaining a CAPS.

40

41 **Next Steps**

42

43 Craig Benedict explained the next steps as follows:

44

45 1) include any additional comments heard tonight in a report to the Schools and Land Use  
46 Council with some additional information and research;

47 2) direct the Schools and Land Use Council and the staffs to work on the capacity level of  
48 service and the enrollment projections; and

49 3) (tape ended and I didn't get it)

50 4) give Planning Director direction on whether he should move forward and begin talking  
51 to some developers, realtors, and citizens

52

2 Allen Spalt said that the overall concept and the planning that has gone into this ordinance  
3 is impressive. He thinks it would be good to go forward with this quickly and for the Planning  
4 Director to speak to outside groups about the broad concepts even if every detail is not yet settled.

5 Kevin Foy asked if Craig Benedict were asking for something formal from the boards.

6 Chair Carey said that the Assembly of Governments has never been a decision-making  
7 group. He said that unless there was violent objection, we would move forward. He asked Craig  
8 Benedict to explain what would happen if some of the jurisdictions participated and some did not.

9 Craig Benedict said that if the County was not interested in both documents it would fall  
10 apart because it is the funding mechanism. He said that there could be modifications to the  
11 agreement each year if the enrollment projections needed to be modified or if the level of service  
12 needed to be addressed again. He said that if one unit dropped out of the agreement, then the  
13 whole area would drop out.

14 Jackie Gist said that she was interested in moving ahead, but she needs the information  
15 she has asked for. She really wants to understand how this ordinance is going to affect the  
16 market.

17 Lee Pavao agrees that Craig Benedict should move forward with the ordinance. He said  
18 that there were still a lot of questions to be answered.

19 Alex Zaffron agrees to move forward also. He said that he understood that it was  
20 unrealistic to nail down a capital investment plan at this point, but he would like to see some sort of  
21 realistically fundable program of school expansion. He said that if the current land use plans  
22 would generate needs that are not fundable, then something has to give.

23 Jim Ward would like clarification at some point about the issue of Chapel Hill and Carrboro  
24 being two distinct units as towns and one unit as a school district.

25 It was the consensus of the Assembly of Governments to move forward with the Schools  
26 Adequate Public Facilities Ordinance.

27

28 **5. Adjournment**

29 With no further items to discuss, the meeting was adjourned.

30

31

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33

34

Beverly A. Blythe, CMC

35

Moses Carey, Jr., Chair



110

## TOWN OF CARRBORO

NORTH CAROLINA



The following resolution was introduced by Alderman Joal Hall Broun and duly seconded by Alderman Allen Spalt.

A RESOLUTION ADOPTING AND AUTHORIZING THE MAYOR TO SIGN  
"A MEMORANDUM OF AGREEMENT FOR PROVIDING  
COORDINATED SITE & FACILITY PLANNING".  
Resolution No. 158/1999-2000

WHEREAS, the *Joint Schools and Land Use Councils* requested that each member unit consider approving "A Memorandum of Agreement for Providing Coordinated Site & Facility Planning".

WHEREAS, the Town of Carrboro is a member of the *Joint Schools and Land Use Councils*;

WHEREAS, the sharing of public information and facilities is in the best interest of the public at large;

WHEREAS, the Town of Carrboro has supported the coordination of facility planning and efforts to maximize the use of public assets through the co-location of facilities where possible and appropriate;

WHEREAS, "A Memorandum of Agreement for Providing Coordinated Site & Facility Planning" establishes and implements a coordinated site and facility planning process for schools and compatible government facilities

NOW, THEREFORE, BE IT RESOLVED by the Carrboro Board of Aldermen that "A Memorandum of Agreement for Providing Coordinated Site & Facility Planning" is hereby adopted and the Mayor is authorized to sign the agreement as the Town's Chief Elected Official.

The foregoing resolution having been submitted to a vote, received the following vote and was duly adopted this 23rd day of May, 2000:

Ayes: Joal Hall Broun, Mark Dorosin, Diana McDuffee, Jacquelyn Gist, Michael Nelson, Allen Spalt, Alex Zaffron

Noes: None

Absent or Excused: None



## DRAFT

### MEMORANDUM OF AGREEMENT FOR PROVIDING COORDINATED SITE AND FACILITY PLANNING

This agreement between the Orange County and Chapel Hill/ Carrboro Boards of Education and the governing Boards of Orange County and the Towns of Chapel Hill, Carrboro and Hillsborough is intended to establish and implement a coordinated site and facility planning process for schools and compatible government facilities. The purpose of the coordinated planning process is to share information among the parties to the agreement, optimize the collocation and use of schools and other public facilities in a way that builds community, provides public services where they are most needed, assures the compatibility of collocated services, and efficiently uses public resources.

This agreement recognizes the existence of two school districts - the Chapel Hill/Carrboro School District and the Orange County School District - and a Schools and Land Use Council for each district. Decisions on collocation of facilities in the Chapel Hill/Carrboro School District may involve the Chapel Hill/Carrboro Board of Education and any or all of the following units of local government: the Town of Chapel Hill, the Town of Carrboro, and Orange County. Decisions on collocation of facilities in the Orange County School District may involve the Orange County Board of Education and one, or both, of the following units of local government: the Town of Hillsborough and Orange County. Wherever possible, agreement/cooperation across school district lines shall be pursued.

To further these goals, the Orange County and Chapel Hill/ Carrboro Boards of Education and the governing Boards of Orange County and the Towns of Chapel Hill, Carrboro and Hillsborough do hereby agree to the following separate and shared responsibilities for coordinated facility planning to the extent that it does not delay time critical construction of either school or government facilities. These statements of responsibilities are intended to be consistent with all applicable laws and regulations; where they are not, they are superseded by those applicable laws and regulations. Specifically, this agreement is not intended to supersede the statutory authority of either Board of Education to select school sites or to build, maintain or repair school facilities or the other governing Boards to approve the amounts to be spent for sites and to determine the funds available for school and county or municipal facilities. This agreement does not supersede local government planning and zoning authority and/or land use planning and zoning requirements.

- I. The Orange County and/or Chapel Hill/Carrboro Boards of Education will:
  - A. Identify appropriate site criteria for public school facilities; and
  - B. Identify interior and exterior space and exterior site requirements for school facilities; and
  - C. Begin a planning process after the internal/external space needs for collocated facilities are determined; and

- D. Recommend school-facility priorities, timetables for completion, and related funding needs; and
- E. Determine the most appropriate means of managing the construction, renovation, or repair of public school facilities, within the funding available for these activities; and
- F. Whenever possible, address joint collocation of facilities on each parcel of land being considered for development; and
- G. Assign to the superintendent the responsibility of providing the necessary staffing and other resources to participate in a joint facility planning process.

II. When joint development (or cooperative development) of facilities are planned for a school site, the Governing Boards of Orange County and/or the Towns of Chapel Hill, Carrboro and Hillsborough will, as appropriate and in their respective interests:

- A. Identify appropriate site criteria for county and municipal government facilities and facilities in which contracted county or municipal services are provided; and
- B. Identify interior space and exterior site requirements for county or municipal government facilities and facilities in which contracted county or municipal services are provided; and
- C. Determine priorities, timetables for completion, and related funding requirements for county or municipal government facilities; and
- D. Determine the most appropriate means of managing the construction, renovation, or repair of county or municipal government facilities; and
- E. Determine the funding available for school and county or municipal government facilities; and
- F. Assign to the County and/or Town Managers the responsibility of providing the necessary staffing and other resources to participate in a coordinated facility planning process; and
- G. Whenever possible, address joint collocation of facilities on each parcel of land being considered for development.

III. The Orange County and/or Chapel Hill/Carrboro Boards of Education and the governing Boards of Orange County and/or the Towns of Chapel Hill, Carrboro, and/or Hillsborough will jointly:

- A. Identify opportunities for collocating compatible public facilities on sites, including facilities for schools, county government, municipal governments, state and federal government, and other public authorities providing complementary public services; and

- B. Develop master site plans on which public facilities will be collocated; and
  - C. Determine the most appropriate means of relating various public services on sites, considering all program needs, and including opportunities for sharing spaces; and
  - D. Designate a lead jurisdiction in designing common facilities and include other jurisdictions in design; and
  - E. Determine the most appropriate and effective means of coordinating the construction of shared facilities located on common sites; and
  - F. Determine the most appropriate and effective means of coordinating maintenance of shared public facilities located on common sites; and
  - G. Determine the most appropriate and effective means of scheduling and establishing fees for usage of any shared public facilities on common sites; and
  - H. Determine the most appropriate and practical means of sharing operating costs for shared public facilities on common sites; and
  - I. Determine the most appropriate and practical means of providing public ownership of sites and site improvements where public facilities are collocated. Public ownership of sites will be implemented in the following manner:
    - 1. School sites will be owned in fee simple by the Orange County School Board and/or the Chapel Hill-Carrboro City Schools Board or Orange County in those instances where the financing of the purchase of the site or the financing of the cost of the facilities on the site requires Orange County ownership.
    - 2. Park sites will be owned in fee simple by the appropriate jurisdiction (i.e., County, town) unless otherwise agreed.A joint lease agreement will be signed between the appropriate parties setting forth the conditions of the joint use area and facilities. Language will be included in the agreement to address review and approval of joint use facilities and who bears the cost of installation/construction and maintenance.
- IV. The Orange County and Chapel Hill/Carrboro Boards of Education and the governing Boards of Orange County and the Towns of Chapel Hill, Carrboro, and Hillsborough will, as appropriate, jointly develop any interlocal agreements or understandings needed to allow participation of other units of government in the collocation of public facilities.
- V. This Memorandum of Agreement shall become effective upon approval by each governing board and school board. It shall remain in effect until terminated by all parties to it. A party may not withdraw from this agreement until it holds a public hearing on the proposed withdrawal followed by written notices to the other parties within thirty (30) days of the public hearing. The withdrawal shall be effective one (1) year following receipt by the other parties of the written notice. Withdrawal of one party shall not invalidate the Memorandum

of Agreement with respect to the remaining parties.

SCHOOLS AND LAND USE COUNCIL FOR  
CHAPEL HILL/CARRBORO SCHOOL  
DISTRICT

CHAPEL HILL/CARRBORO  
BOARD OF EDUCATION

ORANGE COUNTY

TOWN OF CARRBORO

TOWN OF CHAPEL HILL

SCHOOLS AND LAND USE COUNCIL  
FOR ORANGE COUNTY SCHOOL  
DISTRICT

ORANGE COUNTY  
BOARD OF EDUCATION

ORANGE COUNTY

TOWN OF HILLSBOROUGH

(115)

A RESOLUTION SPECIFYING FURTHER ACTION ON THE DRAFT SCHOOLS  
ADEQUATE PUBLIC FACILITIES ORDINANCE  
Resolution No. 107/2000-01

WHEREAS, the Board of Aldermen has expressed concern about the adequacy of school facilities; and

WHEREAS, the Board of Aldermen has contributed board, staff and attorney resources to a collaborative effort of the local governments and school boards in Orange County to develop a program to coordinate planning for new residential development and school facilities; and

WHEREAS, the Board of Aldermen wishes to receive public comment on a memorandum of agreement and draft ordinance provisions.

NOW, THEREFORE, BE IT RESOLVED by the Carrboro Board of Aldermen

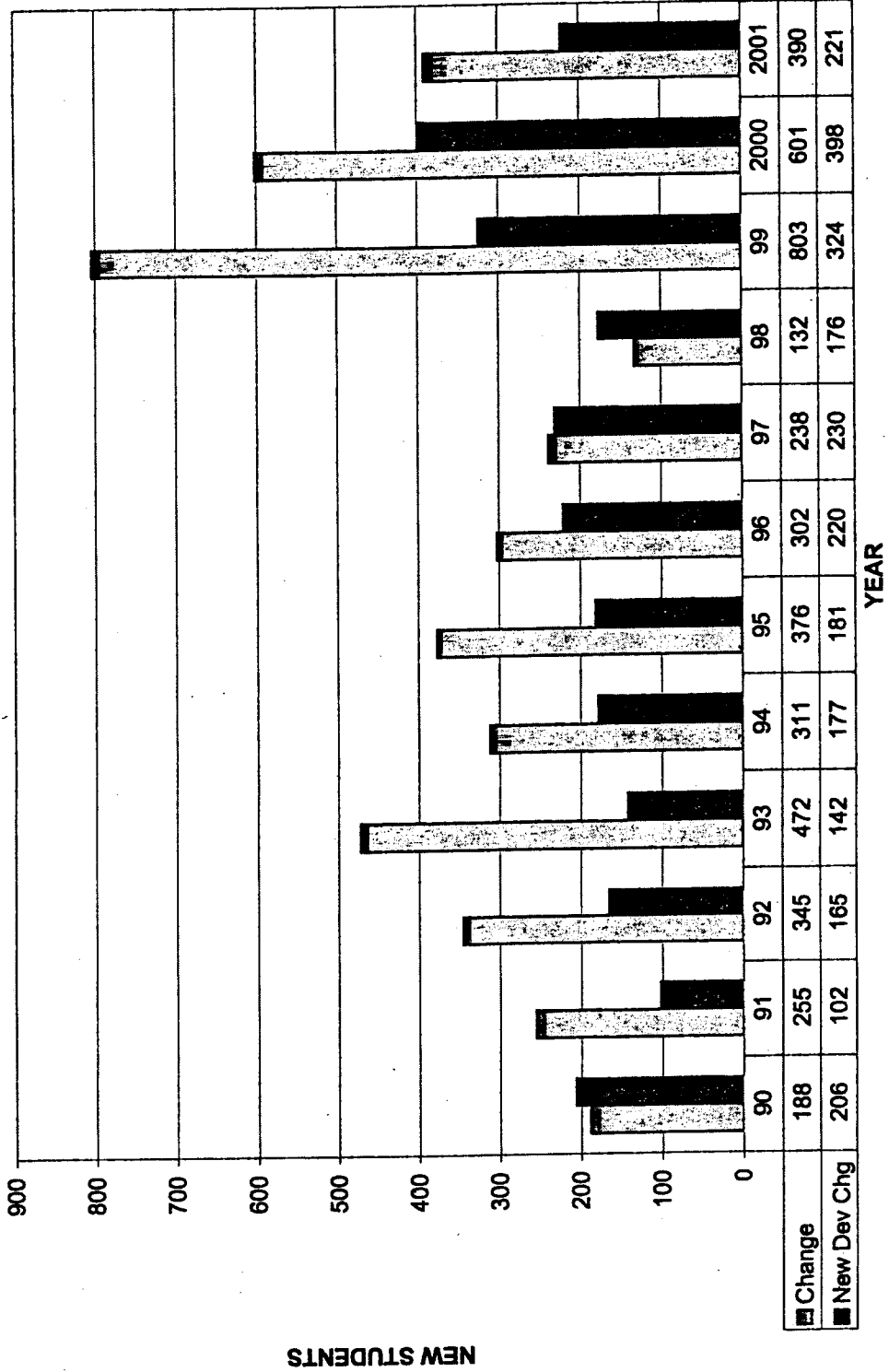
1. That the Board identifies the following areas where additional information or clarification is needed:
  - ◆ Include the student generation formula in the ordinance;
  - ◆ To ensure equity, reach agreement between the two towns and the county regarding the first-come, first-serve policy for the issuance of CAPS;
  - ◆ Determine how the APFO will impact village mixed use developments (review model to make projections for small developments versus village mixed use developments with regard to smoothing the "spikes.")
  - ◆ Recommend a projection scheme for future growth.
  - ◆ Clarify dormitory housing and include under exemptions housing for disabled (special needs) and single-room occupancy housing.
  - ◆ Explore the possibility of moving projects with an affordable housing component "to the front of the line" with regard to the issuance of CAPS.
  - ◆ Explore the options and implications with regard to the effective date of the ordinance.
  - ◆ Consider the reasonableness of the time limits under Section 4 of APFO.
2. That the Town Attorney draft appropriate revisions to the Land Use Ordinance for consideration as soon as possible. That The Memorandum of Understanding be referred to staff to work with parties identified in the MOU to make recommendations pertaining to building capacity, growth rates, administrative mechanisms, data sharing and reporting.

The foregoing resolution having been submitted to a vote, received the following vote and was duly adopted this 27th day of February, 2001:

Ayes: Joal Hall Broun, Mark Dorosin, Diana McDuffee, Jacquelyn Gist, Michael Nelson, Allen Spalt, Alex Zaffron

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**ACTUAL VS. ESTIMATED NEW DEV.  
STUDENT POPULATION CHANGE  
CHCCS 1990-2000**



NEW STUDENTS

Change  
New Dev Chg

YEAR

# Projections of Students Compared to Capacity, by Year, by Level

Level of School	Current Capacity	Students in 01/02 Year	Students in 02/03 Year	Students in 03/04 Year
Elem.	4,302 (4902 in '03)	4,472 (104%)	4,567 (106%)	4,695 (96%)
Middle	2,840	2,548 (90%)	2,678 (94%)	2,793 (98%)
High	3,035	2,955 (97%)	3,174 (105%)	3,325 (110%)



# CAPS Allocation

$$AC = SC - (ADM + ND)$$

Available Capacity (variable AC) is the result of the equation  
School Capacity (variable SC) is determined by joint action of  
county commission and school boards

(4)

Average Daily Membership (variable ADM) is determined by  
school boards and DPI; highest average daily membership in  
a month of the first two months; projections are used for  
estimation of ADM in subsequent years

New Developments (variable ND) are based upon local  
government approvals

# Schools APFO Process

