

**MEMORANDUM**

TO: Mayor and Town Council

FROM: W. Calvin Horton, Town Manager

SUBJECT: Schools Adequate Public Facility Ordinance – Memorandum of Agreement

DATE: February 18, 2002

**INTRODUCTION**

The Town Council scheduled this Public Hearing to consider materials related to a proposal to create an Adequate Public Facilities Ordinance for the Chapel Hill-Carrboro City Schools District. We note that work on this issue is one of the Council’s adopted goals, and is also a recommendation of the adopted Comprehensive Plan.

There are two parts to this proposal. A draft Memorandum of Understanding has been prepared which, if approved and executed by each of the following elected Boards, would establish a framework for an Adequate Public Facilities Ordinance for schools. The Boards that would need to approve and execute the Memorandum of Understanding are the Chapel Hill Town Council, the Carrboro Board of Aldermen, the Orange County Board of Commissioners, and the Chapel Hill-Carrboro City Schools Board of Education.

The second part of the proposal is a model ordinance which could be adapted to fit into the zoning regulations of Chapel Hill, Carrboro, and Orange County. The Schools Adequate Public Facilities Ordinance would not become operational until all four Boards listed above sign the Memorandum of Understanding, and all three jurisdictions with zoning authority in the Chapel Hill-Carrboro City Schools district amend their zoning regulations to include language similar to that proposed in the model ordinance.

We note that the Planning Board has not reviewed these documents. We received the attached documents from Orange County on February 13, 2002, and accordingly there has been no opportunity for other reviews prior to tonight’s meeting. We suggest that the Council discuss the documents tonight and refer them to the Planning Board for consideration and recommendation.

**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, county-wide 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.

We attach here several background pieces that were previously on Town Council agendas. The documents offer a comprehensive discussion of the history of this project. We particularly call attention to a list of questions and answers that was presented on April 23, 2001, and a status report that was presented to the Council on September 24, 2001.

Orange County has taken the lead on this proposal. The County held a Public Hearing for consideration of a set of proposed regulations on November 27, 2000, and transmitted the Memorandum of Understanding and Draft Ordinance to the other boards for review.

On December 11, 2000, the Chapel Hill Town Council called a Public Hearing for consideration of the proposed regulations. The hearing was held on February 19, 2001. A key feature of the proposal was a proposed new requirement that developers of residential projects would need to obtain a Certificate of Capacity from the appropriate school district prior to making application to a town or the county for development approval.

A number of issues were raised at the 2001 hearing, most notably:

- Timing (e.g., - When would the ordinance become effective? What happens to a Certificate if the underlying development approval expires?)
- Application of new ordinance to University development.
- How much of the growth in school population is attributable to new development?
- Are schools overcrowded now? How does that affect operation of this ordinance?
- How would this affect proposals for mixed-use development?
- How would a possible delay in residential construction affect revenues available for construction of new facilities?
- What is the current status of use of mobile classrooms? How is that treated in the proposed ordinance?
- How would "Certificates of Adequate School Capacity" be issued?

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.

On May 7, 2001, the Council considered and endorsed the list of concerns, and a letter was sent on May 8 transmitting the concerns to the intergovernmental work group. A copy of the May 8, 2001 letter is attached. The main points in the letter were:

1. The proposed ordinance and memorandum of understanding would appear to allow a 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.

A series of meetings from May through October of 2001, involving staff and attorneys from Chapel Hill, Carrboro, Hillsborough, Orange County, and the two school systems, resulted in completion of a revised proposal: a revised draft Memorandum of Understanding, and a revised draft model ordinance. Both revised documents, dated November, 2001, are attached here. The Town Council called a Public Hearing for February 18 to consider these documents.

#### **ATTACHED DOCUMENTS**

A set of documents was sent out on February 13 by Orange County Commissioner Alice Gordon, Chair of the Schools and Land Use Council, and is attached here. The set of documents includes:

1. Letter of transmittal from Commissioner Gordon (dated 2/8/02)
2. Draft Memorandum of Understanding (dated 2/8/02)
3. Draft Model Ordinance (dated 2/8/02)
4. Memorandum from Work Group to transmit documents (dated October 11, 2001)
5. Letter from County Commissioners Chairman Moses Carey, transmitting documents (dated 11/22/00)

The sequence of events and meeting leading to this collection is as follows:

- November, 2000: First Drafts of Memorandum of Understanding and Model Ordinance transmitted to local governments for consideration.
- Spring, 2001: Meetings in Chapel Hill and Carrboro to discuss proposal, resulting in requests for revisions.
- 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.

### **THE PROPOSAL**

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 attached draft Adequate Public Facilities Ordinance for Schools is a development regulation tool which 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 such that the growth matches the availability of school facilities as noted in the school district's Capital Improvement Plans.

### **KEY FEATURES OF THE MEMORANDUM OF UNDERSTANDING**

The proposed Memorandum of Understanding would:

- 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 would 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.

### **KEY FEATURES OF THE DRAFT ORDINANCE AMENDMENT**

The proposed Adequate Public School Facilities text amendment would:

- Include provisions in our Development Ordinance that require that, following Town Council approval of a new residential subdivision, a Special Use Permit, or a Site Plan Review that contains a residential component, a developer would need to obtain a Certificate of Adequacy of Public School Facilities from the Chapel Hill Carrboro City Schools prior to issuance of a Zoning Compliance Permit authorizing construction.
- Require that a Certificate of Adequate Public School Facilities is to be requested from the Chapel Hill/Carrboro School Board. The Memorandum of Understanding addresses the allowable capacity for the district.
- Allow a Certificate of Adequate Public School Facilities to run with the land (it could not be transferred to another parcel).
- Provide the Town Council with the authority to grant special exceptions.
- Provide the Town Council with the authority to review the denial of a Certificate request by the School District.

#### **EFFECTIVE DATE**

We have previously recommended to the Council that, if a Schools Adequate Public Facilities Ordinance is adopted, the effective date of the new ordinance be:

- Upon adoption by Carrboro, Orange County and the Chapel Hill/Carrboro School Board of the Memorandum of Understanding; and
- Upon adoption by Carrboro and Orange County of similar regulations; and
- Upon adoption of a resolution by the Chapel Hill/Carrboro School Board certifying adequate school capacity.

#### **KEY CHANGES SINCE FEBRUARY, 2001**

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

- Certificate of Capacity (to be obtained from the school system) now is proposed to be required after Town approval of a development, but before a Zoning Compliance Permit is issued that would authorize construction.
- Each year, on November 15, the School District would certify enrollment and capacity at each level of school: elementary, middle, and high school, and determine expected enrollment and capacity for each of the subsequent 10 years (using a methodology agreed to by all parties to the Memorandum of Agreement). By comparing enrollment and capacity, a projected available capacity would be calculated for each year in the ten year period.

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- Each year after the first year of implementation, it would be the responsibility of the Orange County Board of Commissioners to review and, if necessary, update projections.
- If capacity is determined by the School District to be available, Certificates of Adequate Public Schools would be issued on a first come-first served basis to approved developments 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 that would allow for the issuance of a certificate, and then re-apply.

### **RECOMMENDATION**

We recommend that the Town Council review the attached Memorandum of Understanding and accompanying model Development Ordinance, hear public comment on these documents, and refer the documents and comments to the Planning Board for consideration and recommendation.

### **NEXT STEPS**

We suggest that the Town Council receive a presentation on these materials tonight, hear public comment, and discuss the issues that are presented. We recommend that the Council recess this hearing to April 8, and refer the attached documents to the Planning Board. We recommend that the Council include this item on its April 8 agenda to hear the Planning Board's comments along with citizens who wish to comment at that time.

### **ATTACHMENTS**

1. Materials transmitted by Chair of Schools and Land Use Council, including: (p. 7).
  - Letter of transmittal from Commissioner Alice Gordon (dated 2/8/02)
  - Draft Memorandum of Understanding (dated 2/8/02)
  - Draft Model Ordinance (dated 2/8/02)
  - Memorandum from Work Group to transmit documents (dated October 11, 2001)
  - Letter from County Commissioners Chairman Moses Carey, transmitting documents (dated 11/22/00)
2. September 24, 2001 Council memorandum on Status(p. 30).
3. May 8, 2001 Letter from Town Attorney (p. 33).
4. April 23, 2001, Council memorandum reporting on Status (36).
5. April 23, 2001 list of questions and answers from February, 2001 meeting (p. 40).
6. Letter from Chamber of Commerce (p. 51).