



ATTACHMENT 5

**TOWN OF CHAPEL HILL**  
**OFFICE OF THE TOWN ATTORNEY**

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May 8, 2001

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**RE: Public Schools Facilities Ordinance**

Dear Geoff and Mike:

On April 23, 2001, the Chapel Hill Town Council considered at length the proposed Public Schools Facilities Ordinance. At the end of that discussion the Council voted to refer the Ordinance to the staff for further consideration and directed that I consult with you on a number of issues. (I believe it may be of some value for you or a member of the staff of your clients' respective planning departments to review the video tape of the public comments and Town Council discussion.) On May 7, 2001, the Council considered this matter again and directed Cal Horton and me to request that the staff working group reconvene for further discussion. (I understand that members of the Joint Schools and Land Use Council will be considering this Ordinance on June 12.)

Although many Council members expressed general support for the concept of an ordinance under which school capacity would be considered in development decisions, the Council indicated an interest in seeing some changes to the proposal. The two matters of particular concern to the Council are:

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. It was noted during the Council's discussion that some of the applicants precluded by such a step could be offering amenities that the Council might find particularly desirable, such as affordable housing.
2. The proposed ordinance allows the School System to determine capacity before an application can even be filed with the Town. The Council is interested in whether the ordinance can be adjusted to allow the Council to process a development application and then, just before the Council is prepared to vote on the application, have the applicant seek a certificate from the School System. One point raised was that this method would preclude a developer from reserving all the available capacity and then holding on to those certificates.

One additional comment made on this issue was that this alternative might allow a more accurate calculation to be made as to whether there is capacity for the development as proposed. Adjustments are often made in the number of lots or dwelling units and their size as an application proceeds through the Town's development review process. By delaying the requirement for a certificate until the Council has determined how many units it will likely be considering for approval, the impact on the school system can be judged more precisely.

As can be seen from viewing the video tape, there was concern among Council members that the system as proposed would preclude some applications from ever getting to the Council when the Council might find those applications as ones which would provide benefits to the community.

The current proposed Memorandum of Understanding and Ordinance were developed by a joint staff committee including representatives of local governments and both school boards. During those discussions it was generally understood that for the proposed regulations to work effectively it would be necessary for all planning jurisdictions to adopt essentially the same regulations and agree with the school boards to similar Memoranda of Understanding.

The Town Council, on May 7, 2001, adopted a resolution asking me to request that we reconvene the staff committee to revisit the Ordinance and consider the issues raised by the Chapel Hill Town Council and the citizens attending the Council's meeting, along with any issues that have been raised by other jurisdictions. At the same time the Council affirmed its general support for the Ordinance.

The Chapel Hill Town Council also expressed its interest in having a revised version of the Ordinance which addresses its concerns and those concerns raised by other governing boards ready for consideration and possible adoption by July 2, its final meeting before the summer break. A copy of the Council's May 7 Resolution is attached.

At the direction of the Council, I am sending a copy of this letter to members of your governing boards. I look forward to hearing your thoughts on these matters.

Sincerely,



Ralph D. Karpinos  
Town Attorney

RDK/tcp  
Enclosure

cc: Chapel Hill Mayor and Town Council  
Orange County Board of Commissioners  
Carrboro Board of Aldermen  
Hillsborough Town Board  
Chapel Hill Town Manager  
John McCormick, Attorney for Chapel Hill-Carrboro Schools  
Michael Parker, Attorney for Orange County Schools