

APRIL 23, 2001

**SCHOOLS ADEQUATE PUBLIC FACILITIES
DEVELOPMENT ORDINANCE TEXT AMENDMENT****Questions/Issues Raised at the February 19, 2001 Public Hearing**

1. At the February 19 Public Hearing, a citizen asked about the impact of a Preliminary Plat approval expiration, if the proposed Ordinance was in place.

Manager's Comment: Once a "Certificate of Adequate Public Schools" has been issued by the school district, the developer must submit an application to Chapel Hill, Carrboro, or Orange County within 90 days. That would "lock-in" the Certificate. If a developer gains approval of a project, a right to the project becomes vested. The Certificate at that point would not expire unless the approval expires. If the developer seeks extensions of time limits, those can be granted in the way that they are now. As long as the development approval remains valid, the Certificate is valid.

Currently, Major Subdivision approval is valid for one year. The Town Manager has the authority to administratively grant one-year extensions of the approval.

2. At the February 19 Public Hearing, a University official provided a Position Statement from the University (copy attached) and asked if the University gave land at Horace Williams for future school use, if that could be taken into consideration.

Manager's Comment: The first point in the Position Statement is that non-residential growth will occur in Chapel Hill-Carrboro area, both because of University facilities and other reasons; and if a Schools Adequate Public Facilities Ordinance results in delaying the construction of housing, the result could be increasing housing prices. We acknowledge that, if housing construction is delayed, there could be accompanying increased pressure on the cost of existing housing. A key public policy choice that is presented with this proposal is the weighing of competing objectives (in this case, avoiding the overcrowding of schools versus increasing the supply of housing).

The second point in the letter is a suggestion that this proposed system would increase the length of the development review/approval process, further increasing housing costs. We acknowledge that this proposed system would add an additional step to the process of seeking approval of new housing developments. We do not agree that the length of time added would be significant enough to be reflected in the cost of housing that is built.

The third point is to ask that all University-constructed housing be exempted from this ordinance if it is adopted. We note that the proposed ordinance in its current form exempts Residence Halls and also residential development permanently restricted to housing for the elderly or adult special-needs populations. The reason for these exemptions is that these types of housing do not generate increases in the number of school-age children. We do not believe that it would be possible to exempt any type of family housing based on who it is that is constructing it. We note that this position is consistent with not exempting new affordable housing initiatives from the proposed ordinance.

The final point in the letter raises questions about timing: “We are concerned about the situation where a developer would receive a certificate for a development project, reserving school capacity, and then not develop the project for a number of years.” We note that the proposed ordinance specifies that an approved Certificate of Adequate Public Schools will expire unless a development application is submitted within 90 days and approved within two years. A Certificate would also automatically expire upon the expiration of a plat, plan, or permit approval.

An additional question has been raised that could affect possible University development: What affect would donating a school site have on the Adequate Public Schools requirement? We note that the proposed ordinance does not offer relief from the requirements in exchange for donated sites when a request is made for a Certificate of Adequate Public Schools from the School District for a new development. However, if a site is donated and plans are approved/funded for construction of a school, that school could be added to the district-wide capacity calculations.

We note that in Section 16.7 (d) of the proposed Ordinance does provide that the Town Council may take into consideration the dedication of land for a school site when considering a special exception to the Certificate of Adequacy of Public School Facilities requirement for **previously** obtained development approvals. Specifically 16.7 (d)(3) provides donation of land as a consideration when reviewing previously approved development approvals. This special exception consideration would not apply to new developments.

- (d) “The Town Council shall issue a special exception to the Certificate of Adequacy of Public School Facilities requirement to an applicant whose application for approval of a subdivision preliminary plat, minor subdivision final plat, site plan, special use permit or special use permit modification covering property within a planned development or master plan project that was approved prior to the effective date of this article, if the Town Council finds, after an evidentiary hearing, that the applicant has (1) applied to the School District for a Certificate of Adequacy of Public School Facilities 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 preliminary plat approval, planned 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 Town Council 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 preliminary plat, planned 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 Certificate of Adequacy of Public School Facilities can be issued for the project, and the effect of such delay on the development and the developer.”
3. Following the February 19 Public Hearing, the Carrboro Attorney provided a letter to the Town Attorney (copy attached). The letter asked for clarification about our proposal to make the ordinance effective “upon certification by the school district of adequate school capacity.” In addition, the letter indicated that, as Carrboro and Hillsborough Attorney, he will be advising the respective boards to adopt the memorandum of understanding first and then the ordinance shortly thereafter, following some exchange of information and agreement by the various parties as to the capital facilities plan and the assumed rate of growth upon which the capital facilities plan is based.

Manager's Comment: We have recommended that the effective date of a new Schools Adequate Public Facilities Ordinance for Chapel Hill 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.

The adequacy of school capacity is defined in the proposed Memorandum of Understanding, Section 1. We believe that the adequacy of school capacity is defined by these percentages. We note that, according to the proposed Memorandum of Understanding, 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. We would anticipate a letter from the School District certifying capacity to satisfy this last effective date requirement.

Regarding the Carrboro Attorney's recommendation to Carrboro that the Memorandum of Understanding be executed first, and then the ordinance shortly thereafter, following some exchange of information and agreement by the various parties as to the capital facilities plan, we believe that the Town Council may adopt the proposed Ordinance immediately following adoption of the Memorandum of Understanding because of the proposed language of the Memorandum of Understanding. Section 1 of the proposed Memorandum of Understanding states that "The capital facilities program shall utilize a projected growth rate for student enrollment agreed upon by the parties, which growth rate may differ from one school level to another (i.e., number of students per level per year)." Because the proposed Memorandum of Understanding provided that the capital facilities program utilize a projected growth rate agreed upon by all parties, we believe that it is not necessary to delay adoption until the numbers are agreed upon. We believe we have sufficient assurance that these discussions will occur. However, the approach recommended by the Carrboro Attorney would be an option available to the Council as well.

We note that Attachment 6 provides a chart identifying the schedule for adoption of the Memorandum of Understanding and the Ordinance by the various parties.

4. Following the February 19 Public Hearing, the County Attorney provided a letter to the Town Attorney (copy attached). The letter provided three specific suggestions: First, the letter expressed concern about two sentences we included in the Public Hearing version of the draft Ordinance which allow the specific service level percentages to be adjusted by agreement of the parties to the Memorandum of Understanding. Second, the County Attorney suggested that we adjust the term "dormitory-style housing" in the exemption section provided in Section 16.7 of the draft Ordinance. Third, the County Attorney expressed concern about an opening sentence provided in the draft ordinance transmitted by the County which has been modified in the Manager's recommended Ordinance. A fourth point made by the County Attorney indicated agreement with the Carrboro Attorney's statement that school service levels should be within the service level limits established in the Memorandum of Understanding and in the Ordinance such that we are not effectively creating a moratorium upon adoption thus allowing the ordinance to work as intended.

Manager's Comment: Regarding the County Attorney's first concern, about two sentences we included in the Public Hearing version of the draft Ordinance, Section 16.5 (previously Section 16.4), which allow the specific service level percentages to be adjusted by agreement of the parties to the Memorandum of Understanding. We understand the concern and objectives

identified by the County Attorney and the revised Ordinance does not include the two sentences. The two sentences are now identified with "strike-through" in the attached Ordinance.

The County Attorney's second point was a suggestion that we adjust the term "dormitory-style housing" in the exemption section, Section 16.7, of the draft Ordinance. Because the Chapel Hill Development Ordinance does not define the term "dormitory housing," the Public Hearing version of the draft Ordinance included the term "dormitory-style housing." We have revised the Ordinance language to instead reference "Residence Halls" which are defined in the Development Ordinance. This revised language is identified with "strike-through" and bold in the attached Ordinance.

The County Attorney's third item expressed concern about an opening sentence provided in the draft ordinance transmitted by the County which has been modified in the Manager's recommended Ordinance. The paragraph recommended by the County stated:

"(a) This ordinance and the Memorandum of Understanding between the [governing body], Orange County and the School District are general in nature and applicable to all property subject to land use regulation by the [governing body]. Except as otherwise provided herein, the provisions of this ordinance shall apply to applications for approval of subdivision preliminary plats, site plans and conditional or special use permits that are submitted for approval after [_____].
effective date of this ordinance"

The language provided in the Manager's recommended ordinance instead states:

(a) Except as otherwise provided herein, the provisions of this article shall apply to applications for approval of subdivision preliminary plat, site plans, special use permit, and special use permit modification that are submitted for approval after the effective date of this article.

The Town Attorney has indicated that the adjustments to the sentence regarding general applicability are acceptable and do not impose a threat to the Town's ability to defend the Ordinance if a legal challenge occurs.

5. Following the February 19 Public Hearing, several Council members received an e-mail from Ms. Jill Blackburn asking if the language of the proposed Ordinance could be adjusted to prohibit further development until the City Schools are in balance.

Manager's Comment: We have recommended that the effective date of a new Schools Adequate Public Facilities 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.

We believe that certifying the adequacy of school capacity prior to the ordinance becoming effective is an important component of the proposal. Otherwise, the proposal would effectively be a moratorium on development. A temporary moratorium is generally considered reasonable when the agency imposing it has a reasonable plan to cure the reason the moratoria was created. The Town is not legally responsible for providing public schools. Therefore, we do not believe it would be reasonable for the ordinance to establish a moratorium.

In addition to these comments, a Council member presented a list of written questions during the February 19 Public Hearing and asked that the Manager prepare information about the questions. All were referred to the Manager to prepare a response to each. We offer our responses below.

Request for Explanations

1. In both the Memorandum of Understanding and the Ordinance it states that this is needed due to the "demand created by new development." Is this really true? Please supply documentation when this is brought back to the Council. Could this be the issue creating the problem which the school board is dealing with presently in projecting that this past year there would be an increase of 400 students and in reality it was 600 students? How much of the growth in the school population is attributable to "new" development and how much to existing?

Manager's Comment: We believe that growth in student enrollment in the Chapel Hill-Carrboro City Schools is due to several factors. This school district has a national reputation for high levels of achievement and services, and this draws families with school-age children to our community. Many of those families move into new housing, many move into existing housing. It is clear that most of the growth in enrollment is directly attributable to new development; but it is also likely that some of the growth results from shifting demographics, where families with school-age children move into an existing dwelling unit that was previously occupied by a household without school-age children. There is no measure available district-wide about how much growth comes from which type of situation.

We note that Orange County has commissioned a study on student generation rates (ratios comparing number of housing units with number of school-age children living in those units). Community-wide for the Chapel Hill-Carrboro district, the student generation rate for single-family houses is .57. That is, for every 100 houses in the community, there are likely to be 57 school-age children. However, a recent Chapel Hill-Carrboro City Schools study showed that for new development, the ratio is considerably higher. The student generation rate for new single family homes in a development currently being built is .98. That is, for every 100 new homes built in this new development, there are 98 new school-age children.

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2. The memorandum states that Orange County has experienced “rapid growth.” Should this phrase be used? Define “rapid growth.” Or is it necessary to state this in order to legally establish a nexus between new housing units and school growth? Historically, our growth is slower now than in the 60’s and 70’s. More information and documentation is needed.

Manager’s Comment: There is not a definition of the term “rapid growth” in the proposed Memorandum of Agreement. We believe that the phrase is intended to be generally descriptive. We note that one rule-of-thumb in planning theory suggests that an annual growth rate of 2-3% is generally sustainable and relatively easily managed. In this area, growth rates vary by location and over time. During the past decade Chapel Hill’s rate of growth has been about 2% annually. However, growth rates in Carrboro and the County are higher. Chapel Hill’s highest years of growth, numerically, were in 1983 and 1984, when the housing stock grew by 10% and 12% in successive years. The growth in student enrollment for each of the last several years has hovered around 5-6% annually.

3. Do all schools in the district need to meet the “adequate level of service”? When is this projected to be true in the Chapel Hill/Carrboro school system? In the County?

Manager’s Comment: This proposed Adequate Public Facilities Ordinance is structured to measure school capacity by level: elementary, middle school, high school. Capacities and levels of service are determined by level. This means that there can be variation from school to school. For example, it would be possible for Ephesus Road Elementary School to be over-capacity at a given point in time; but if at that same point there is excess capacity at Glenwood and Frank Porter Graham, it could be that there is overall excess capacity at the elementary level. The proposed ordinance would establish that there must be capacity at all three levels in order for a “Certificate of Adequate Public Schools” to be issued to a developer. Regarding the current levels of service for Chapel Hill-Carrboro City Schools: There currently is available capacity at the high school level, and at the middle school level. (Note that while our existing middle schools are overcrowded, the new Smith school will come on-line in August, 2001; Smith is counted as capacity, because any un-built school for which plans have been made and funding established can be counted as capacity.) The school system is over-capacity at the elementary level at present, which means that if the ordinance were in place today, no “Certificates of Adequate Public Schools” could be issued. If additional elementary capacity is part of a bond package placed before the voters this fall, and if the bond referendum passes, that new elementary capacity would be added to calculations immediately and then there would be capacity at all three levels for the Chapel Hill-Carrboro City Schools. It is for this reason that we have recommended an effective date for this proposed ordinance that would be after a November bond referendum. It is our understanding that there is current excess capacity at all levels for the Orange County school district.

4. Does transfer of Certificates of Adequacy have development time restrictions? Development can be delayed by many factors – weather, economy, job transfers, employment, etc. Will the Manager no longer be able to issue time extensions or the Council? Will this result in requests for longer construction periods?

Manager's Comment: Once a "Certificate of Adequate Public Schools" has been issued by the school district, the developer must submit an application to Chapel Hill, Carrboro, or Orange County within 90 days. That would "lock-in" the Certificate. If a developer gains approval of a project a right to the project becomes vested. The Certificate at that point would not expire unless the approval expires. If the developer seeks extensions of time limits, those can be granted in the way that they are now. As long as the development approval remains valid, the Certificate is valid.

5. Our new Comprehensive Plan calls for better integration of uses and encourages mixed-use development. If the mixed-use includes residential, retail, and office, and if receiving CAPS were delayed or impossible, wouldn't this ordinance encourage and result in more individual use projects?

Manager's Comment: If school capacity were found to be inadequate at any given time with respect to a particular proposed development, a Certificate of Adequate Public Schools could not be issued. If the development being proposed is a mixed-use project that involves a residential component, the Town could not accept the application without a Certificate. So, in this situation, the mixed use proposal would have to be delayed or altered to eliminate the residential component.

6. During the time when schools were determined not to have adequate facilities and therefore permits not issued, what would be the effect on the community? Increased traffic because demand would push more residential development outside of school district, sprawl, increase in property values, increase in rental rates, increasing loss of affordable housing, etc.

Manager's Comment: If the proposed ordinance were to be adopted, the effect of inadequate school facilities would be delay of new residential projects until the County identifies additional resources for school construction. All of the possible related effects listed above would be possibilities, depending on the extent of delay.

7. During a potential residential development halt, how would the income derived from impact fees be replaced? Taxes? Amount was stated to be 2.7 million.

Manager's Comment: There is not a plan for replacing revenues from impact fees during a period when no new residential construction would be permitted, if that situation occurred. We note that, during the 1999-00 fiscal year, the Chapel Hill-Carrboro school district received \$2,733,000 in revenue from the school impact fee.

Questions

1. How many schools have mobile classrooms, have classes held in offices, auditoriums, or cafeterias? It is my understanding that these situations will all have to be removed before the school can meet the criteria.

Manager's Comment: According to school officials, non-conventional classrooms are not counted in determinations of capacity.

For example: At the elementary level, current permanent capacity in the Chapel Hill-Carrboro School District is 4,302 seats. Current elementary enrollment (as of 4/6/01) is 4,510. The proposed Memorandum of Understanding would establish that school enrollment should not exceed 105% of permanent school capacity. Therefore, under the current situation, 105% of current permanent capacity would be 4,517, only 7 students above the current enrollment. This means that as of today, there is effectively no capacity left at the elementary level, and a Certificate of Adequate Public Schools could not be issued unless, at the elementary level, there is additional planned-and-funded classroom capacity.

We note that, according to this approach, mobiles are not counted as permanent capacity but are useful in dealing with the over-capacity situations. Once new facilities are constructed and capacity returns to an acceptable level, some mobile classrooms that exist at some schools may be removed. At other schools the mobiles may stay, to be available in case enrollment exceeds capacity again at some point in the future. A current list of mobile units at each school is attached.

2. How many mobile classrooms are there in the system? Will they all have to be removed?

Manager's Comment: See above.

3. How many residential units have already received approval? In Chapel Hill/Carrboro school district and County.

Manager's Comment: There are residential developments in all jurisdictions that have been approved but are not yet constructed. We do not currently keep or compile information that tells us how many. These units would not be affected by the Adequate Public Facilities Ordinance, since they are already approved. We note that these un-built units will generate students once they are constructed, which will increase enrollment. The proposed ordinance would treat this component of enrollment growth in the same way as enrollment growth that may occur within existing housing.

For example, we note that the following residential developments have been approved in Chapel Hill but are not yet built/occupied, or only partially occupied: Northwoods Phase 5, Parkside Phase 2, 100 Oaks Phase 2, Pickard Oaks, Southern Village, Meadowmont, Chapel Ridge, Providence Glen.

4. How would all of these issues (adequate facilities, residential units) be affected by redistricting? By merger of County and Town school system? Are the districts the same for Elementary, Middle, and High Schools? Would a proposed development meet CAPS for one type of school and not another and therefore be denied? What if there are adequate facilities in one district, but the development is being proposed in another district?

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Manager's Comment: Redistricting would not affect any of these issues. For example: Because capacity is determined by level (e.g., elementary) and not by school (e.g., Glenwood), changing attendance zones for individual elementary schools would not change the overall capacity at the elementary level.

Merger of the County and Town school system would mean that this proposed ordinance, if adopted, would have to be revisited and amended because it is specific to the Chapel Hill-Carrboro School district with specific references to that district.

Attendance zones are not the same for elementary, middle, and high schools. They are established distinctly at each level.

If, for a proposed development, capacity exists at one type of school (e.g., middle school) but capacity did not exist for another type of school (e.g., elementary), the Certificate of Adequate Public Schools would not be issued; capacity must exist at all three levels for a certificate to be issued.

If capacity exists for an individual school (e.g., Glenwood), and development is proposed in that school's attendance zone, but capacity is inadequate district-wide at that or any other level, a certificate would not be issued (i.e., it is possible that capacity might temporarily exist at one elementary school while district-wide the system is over-capacity at the elementary level).

5. Who would issue CAPS? It should not be done by a political body.

Manager's Comment: The proposed ordinance calls for the Certificate of Adequate Public Schools to be issued by the Chapel Hill-Carrboro School District. It does not specify how the district would process and act on applications.

6. In the past 40 years, how many years would the Chapel Hill/Carrboro school system have met the standards for "level of standards set forth herein"?

Manager's Comment: We attach information that has been provided by the school district listing available historical data about school capacity and enrollment. "Level of Service" capacity calculations of the type called for and defined in this ordinance have not been made historically. We know that Chapel Hill Carrboro Schools are over capacity now at the elementary level. Last year, capacity existed at all three levels. Prior to the decision to fund Smith Middle School, there was inadequate capacity at the Middle School level. Prior to the decision to fund Scroggs Elementary School, there was inadequate capacity at the elementary level. An important component of this proposed ordinance is the Memorandum of Agreement in which the County agrees to a regular process of planning for and funding new needed facilities.

7. Has the issue of development or expansion of private schools been addressed? What about boarding schools?

Manager's Comment: There are several private schools in and around Chapel Hill: St. Thomas More, Friend's School, and several charter schools. Enrollment at those schools has no relationship to this proposed ordinance. This ordinance focuses on the capacities of public schools in the Chapel Hill-Carrboro School District, and the number of students enrolled in these public schools. It is possible that growth or closing of private schools could affect enrollment in the public schools. We do not know of any boarding schools in Chapel Hill (other than the University and group-care facilities).

8. Is the approval time realistic?

Manager's Comment: The reference in the ordinance to approval time is that, once a Certificate of Adequate Public Facilities has been issued, it expires unless a development application is submitted within 90 days. We believe that time frame is realistic.

9. What permits are needed for mobile homes? I have been told that mobile homes bring more children to the school system than the traditional stick built house. Information needed.

Manager's Comment: Chapel Hill's Development Ordinance generally treats mobile homes in the same manner as homes built by other means of construction. Building Permits are needed for location of a mobile home, and Certificates of Occupancy are needed prior to occupancy. If a mobile home is placed on an existing lot, this Adequate Public Facilities Ordinance would not apply, since it does not apply to the simple issuance of a Building Permit. If, however, a new subdivision were proposed with the intent of locating mobile homes, the subdivision application would be covered by this proposed new ordinance in the same way that a conventional subdivision would be covered. In other words, for the purposes of this proposed Adequate Public Facilities Ordinance, it does not matter if a house is stick-built or manufactured off-site.

10. How to pay for "funding"?

Manager's Comment: Funding for public school facilities in North Carolina is a County responsibility. The draft Memorandum of Agreement sets forth the responsibility of Orange County, under this Adequate Public Facilities Ordinance system, to make funding available for school construction on a timely basis.