


## M E M O

To Council Committee on Lots 2 and 5  
From Janet Kagan   
Member, Chapel Hill Public Arts Commission (CHPAC)  
Chair Percent for Art, CHPAC  
Date 1 November 2004  
Re Public Art in Private Development

Thank you for your contributions to the redevelopment of downtown Chapel Hill. The proposed development of Parking Lots 2, 5, and the Wallace Deck will change our experiences and expectations of Franklin and Rosemary Streets. Public art also realigns our expectations and perceptions of our collective environment. As a member of the Chapel Hill Public Arts Commission (CHPAC), Chair of the CHPAC Percent for Art Committee, and an active community resident, I have followed the planning of this project with a specific focus on the integration of public artworks and spaces throughout the project, and the potential each designed element offers to engage and stimulate our sense of community.

The current Percent for Art Ordinance (No. 2002-03-04/O-1) and Resolution (No. 2002-03-04/R-8) apply to public projects of the Town of Chapel Hill (please see attached Ordinance and Resolution.) Although the language does not prohibit the implementation of public art in privately financed projects, Council has not previously discussed the application of the Ordinance in this context. As noted above, there are several compelling reasons why the Town may wish to request that public art be firmly incorporated in the project. Should the Council decide to request that the selected developer integrate public art on the project sites, I have identified several policy issues that could guide an approach to this effort. Based on a review of 25 Public Art in Private Development Ordinances enacted in small towns and metropolitan areas across America, I find that most Ordinances incorporate the following guidelines:

- The value of the percent for art is derived either from thresholds established by the total building permit valuation of all development costs, project square footages greater than 25,000, or combinations thereof.
- The ordinance applies to building projects in which renovations and/or alterations are greater than 50% of an existing facility or area.
- Communities typically exempt low-income housing, hospitals, public schools, religious institutions, tenant improvements of less than \$25,000 (based on building permit valuation), and non-profit organizations.
- Public artworks must be accessible to the public at all times.
- Developers are informed of the percent for art requirement during a pre-proposal/pre-development plan review, in the text of the request for qualifications, and/or in the request for proposal.

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- Developers are required to enter into a contract with the Town that defines covenants that include public ownership of all on-site public artworks, and/or deeds granting title and ownership of the artworks to the Town and records these artworks as coterminous with the land, thereby binding on all purchasers/successors/transferees/assignees.
- Certificates of Occupancy are dependent upon approved installation of the public artworks.
- The local public arts commission, agency, or other similar authority or program organization manages the artist selection process and can be asked to take responsibility for project administration throughout the selection, design, installation, and approval processes. The selected developer is a voting member of the artist selection committee along with other community representatives.

It is important to note that many ordinances establishing public art in private development offer developers the option to make a payment or contribution to the local public art fund or public entity in lieu of incorporating public artworks at the project site. Although North Carolina State law may interpret this as a tax, the Town of Chapel Hill could alternatively authorize the inclusion of public art in private development as a design requirement in the same way that any new development must comply with Town zoning restrictions and requirements. This public art approval process could resemble the Town's current special use permit process, in which selected Town Boards and Commissions review new development projects for compliance, approval, or modification.

I hope that this overview is helpful in your current deliberations concerning the inclusion of public art requirements in the design and development of this project.

(19)

**AN ORDINANCE ESTABLISHING A PERCENT FOR PUBLIC ART PROGRAM  
FOR TOWN FUNDED CAPITAL IMPROVEMENT PROJECTS (2002-03-04/O-1)**

BE IT ORDAINED by the Town Council of the Town Of Chapel Hill that the Council does hereby establish a program for supporting art in public places as follows:

**Section 1. Findings and purposes.**

The Town Council does hereby find that:

- (a) Expanding the opportunity for the citizens to experience public art will promote the general welfare of the community; and,
- (b) Providing for art in public places will enhance the aesthetic quality of public buildings and spaces; and,
- (c) Supporting public art will further the objectives of the Town established in the Town's Comprehensive Plan.
- (d) Enhancing the appearance of buildings and spaces provides benefits to the community by expanding the historical, cultural and creative knowledge of citizens.
- (e) Providing art accessible to the public and to the users of Town buildings and parks will improve of the quality of life in Chapel Hill, and more specifically will
  - help define the community's identity and sense of place,
  - promote social interaction and discourse,
  - bring the arts into everyday life and
  - memorialize the past while expressing shared values for the future.

**Section 2. Percent for Public Art Program Established.**

A Percent for Public Art Program is hereby established to help define the community's identity and sense of place, promote social interaction and discourse, bring the arts into everyday life and memorialize the past while expressing shared values for the future.

**Section 3. Selection of Sites for Public Art Annually.**

The Council shall decide annually which capital budgets shall include 1% or another amount for public art, and on which sites the artwork should be located.

**Section 4. Authorization to Commission, Acquire, Maintain and Conserve Art**

The Town Council's authorization to commission, acquire, maintain and conserve art shall be consistent with Council adopted policy and shall include input from the public as well as from the Chapel Hill Public Arts Commission.

**Section 5. Policies for Implementation of Percent for Public Art Program by Council.**

The Council's Policies for implementation of the Percent for Public Art Program shall be established by the Council in writing and shall be available upon request.

This the 4<sup>th</sup> day of March, 2002.

(20)

**A RESOLUTION DEFINING A PERCENT FOR PUBLIC ART PROGRAM AND THE GENERAL POLICIES OF THE PROGRAM (2002-03-04/R-8)**

WHEREAS, the Comprehensive Plan of the Town of Chapel Hill includes public art as part of the section on Community Character; and

WHEREAS, the Town Council has included a Percent for Public Art Program in the short-term implementation measures adopted on July 5, 2000; and

WHEREAS, the Public Arts Commission and its subgroups have been working with the Town staff to develop policies and procedures for a Percent for Public Art Program;

NOW, THEREFORE, BE IT RESOLVED by the Council of the Town of Chapel Hill that the Council hereby establishes a Percent for Public Art Program:

to help define the community's identity and sense of place,  
to promote social interaction and discourse,  
to bring the arts into everyday life and  
to memorialize the past while expressing shared values for the future.

BE IT FURTHER RESOLVED that the program shall be guided by the following policies:

1. Program Objective: To provide art accessible to the public and to the users of Town buildings and parks, for the improvement of the quality of life in Chapel Hill, and more specifically to:

- help define the community's identity and sense of place,
- promote social interaction and discourse,
- bring the arts into everyday life and
- memorialize the past while expressing shared values for the future.

2. Annual Public Art Plan: The Town Council shall meet at least annually to consider a Public Art Plan recommended by the Public Arts Commission. The recommended Public Art Plan shall include:

- a. Those capital projects which should include 1% of their project budgets for public art.
- b. The distinction between those capital projects which should include public art on-site and which should contribute 1% of their budget to a pool of funds reserved for public art commission, acquisition, maintenance and conservation.
- c. General location(s) for the art not recommended for the site of a capital project.
- d. The Town Council shall decide on which capital budgets shall include 1% for art and the general site(s) of the art, and shall appropriate funds. This set of decisions shall be known as the Public Art Plan for the given year.

3. <sup>(21)</sup> Budget: 1% of the annual Capital Improvements Program shall be considered by the Council for reservation for public art. However, the base from which the 1% is calculated shall exclude grant funds for which the Town provides a local match, bond funds which do not allow such a use, and any other funds whose source would prevent their use for public art.

- a. The project budget shall include all costs funded by the Town for designing, building and equipping the facility, including site work but excluding the acquisition of land.
- b. The public art budget shall include all costs of artist selection; artist fee; fabrication; installation, including special plumbing, wiring or lighting; publicity; celebration; and any other cost related to the public art project.

4. Location:

- a. Location of artwork shall generally be on the site of the capital project unless specified otherwise in the adopted Public Art Plan. Specific location within the specified site shall be considered by the Public Arts Commission as part of the selection of the artwork and review of its design development.
- b. Consideration shall be given to the unique site, surrounding uses and development, function of the facility, users of the facility, style of the facility, visibility to the public, maintenance and security issues. Artwork should be selected and placed to enhance the project as a whole.

5. Selection of Artists and Art:

- a. The Public Arts Commission shall establish a process with written guidelines, available to the public, for the selection of artists and the review of the art proposed for acquisition. The process shall be open to the public and shall encourage participation by as wide a variety of citizens as possible.
- b. The Public Arts Commission shall appoint a committee to be chaired by a Commission member and to include at least one representative each of the Public Arts Commission, Town Council, the designer of the capital project (if relevant), the host department, the public at large; and two art professionals.
- c. The committee shall make its recommendation to the full Public Arts Commission.
- d. The Public Arts Commission shall present to the Town Council the artist and his/her style, the type of artwork which would be expected to result from a commission; or the specific artwork it recommends be acquired; or the artwork which it recommends be maintained or conserved. The Town Council shall authorize a contract as recommended, with or without its own conditions, or shall request another recommendation from the Public Arts Commission.

6. Execution of Artist's Commission:

- a. The artist's contract shall define a process for his/her design development.
- b. The artist's contract shall define the review points during the design development
- c. The artist shall be involved with the design development of the capital project if relevant and if the artist is chosen in time.
- d. The process shall include a means of involving the public, including a public forum to consider the design concept.
- e. It is possible that, after the Public Arts Commission or its committee, Town staff and the public review of the artist's design concept, the artist will be asked to modify the design concept before being authorized to begin fabrication.

7. Acceptance of Art: The Town Manager shall accept the artwork before the final payment is made to the artist.

8. Accounting: Funds appropriated for public art shall be placed in a project budget or multi-year account(s) specified for this purpose. Grants, gifts and other revenue the Town may receive for the selection, establishment, maintenance and deaccessioning of public art shall also be placed in this multi-year fund.

**This the 4<sup>th</sup> day of March, 2002.**