

# BOARD OF ALDERMEN

ITEM NO. E(1)

## 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>
ATTACHMENT: A. Resolution B. 2/8/02 Memo from Alice M. Gordon C. 5/4/99 Aldermen Minutes D. 3/30/00 Assembly of Governments Minutes E. 5/23/00 Resolution: Memorandum of Agreement for Coordinated Site and Facility Planning F. 2/27/01 Resolution G. Graph: <i>“Actual vs. Estimated New Dev. Student Population Change CHCCS 1990-2000”</i> H. <i>“Projections of Students Compared to Capacity by Year by Level”</i> I. <i>“CAPS Allocation”</i> J. Schools APFO Process-flow chart	FOR INFORMATION CONTACT: Roy Williford, 918-7325

### 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.

<b>February 27, 2001</b>	Town of Carrboro holds a work session on the proposed MOU and ordinance (Attachment F-Resolution);
<b>April 19, 2001</b>	Assembly of Governments meeting, Orange County presented an update regarding the proposed Adequate Public Facilities Ordinance.
<b>May 7, 2001</b>	<p>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:</p> <ol style="list-style-type: none"> <li>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.</li> <li>2. The proposed ordinance would allow the School System to determine capacity before an application can even be filed with the Town.</li> <li>3. Consideration should be given to developing a more accurate way to determine capacity.</li> </ol>
<b>October 2001</b>	Staff and Attorney Work Group completes work on revisions to documents; prepared for consideration by Schools and Land Use Council;
<b>November 14, 2001</b>	Schools and Land Use Council unanimously recommends approval of revised drafts and agrees to forward documents to local governments and school boards for consideration.
<b>November-February</b>	Adjustments made to documents by Orange County staff
<b>February 13, 2002</b>	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***

<b><i>Questions</i></b>	<b><i>Responses</i></b>
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

<i><b>Questions</b></i>	<i><b>Responses</b></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

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.

