

**A RESOLUTION THAT ACCEPTS THE REPORT ON THE  
JOINT PLANNING AGREEMENT  
Resolution No. 18/2002-03**

WHEREAS, the Town of Carrboro partnered with Orange County and Chapel Hill in 1987 in establishing a method, typically referred to as "Joint Planning," for ensuring the controlled and appropriate development of land areas north of Carrboro that were in a period of transition from rural to urban land uses; and

WHEREAS, County Attorney, Geoff Gledhill, has found that annexation of property that is located within the Transition Areas removes such property from the joint planning process.

WHEREAS, the Board of Aldermen has reviewed this finding and a follow-up memorandum prepared by the Town Attorney.

NOW THEREFORE, BE IT RESOLVED, by the Board of Aldermen of the Town of Carrboro that the Board of Aldermen accepts the report on the Joint Planning Agreement.

This the 17<sup>th</sup> day of September in the year 2002.

## ATTACHMENT 'B'

**ARTICLE 5. ESTABLISHMENT OF DIMENSIONAL REQUIREMENTS****Establishment of Dimensional Requirements**

Regulations governing the required minimum lot size, minimum lot width, required front, side and rear setbacks, maximum building height and maximum lot coverage and permitted intensity of development for each of the general districts shall be as shown in the Schedule of Dimensional Requirements.

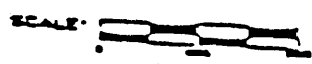
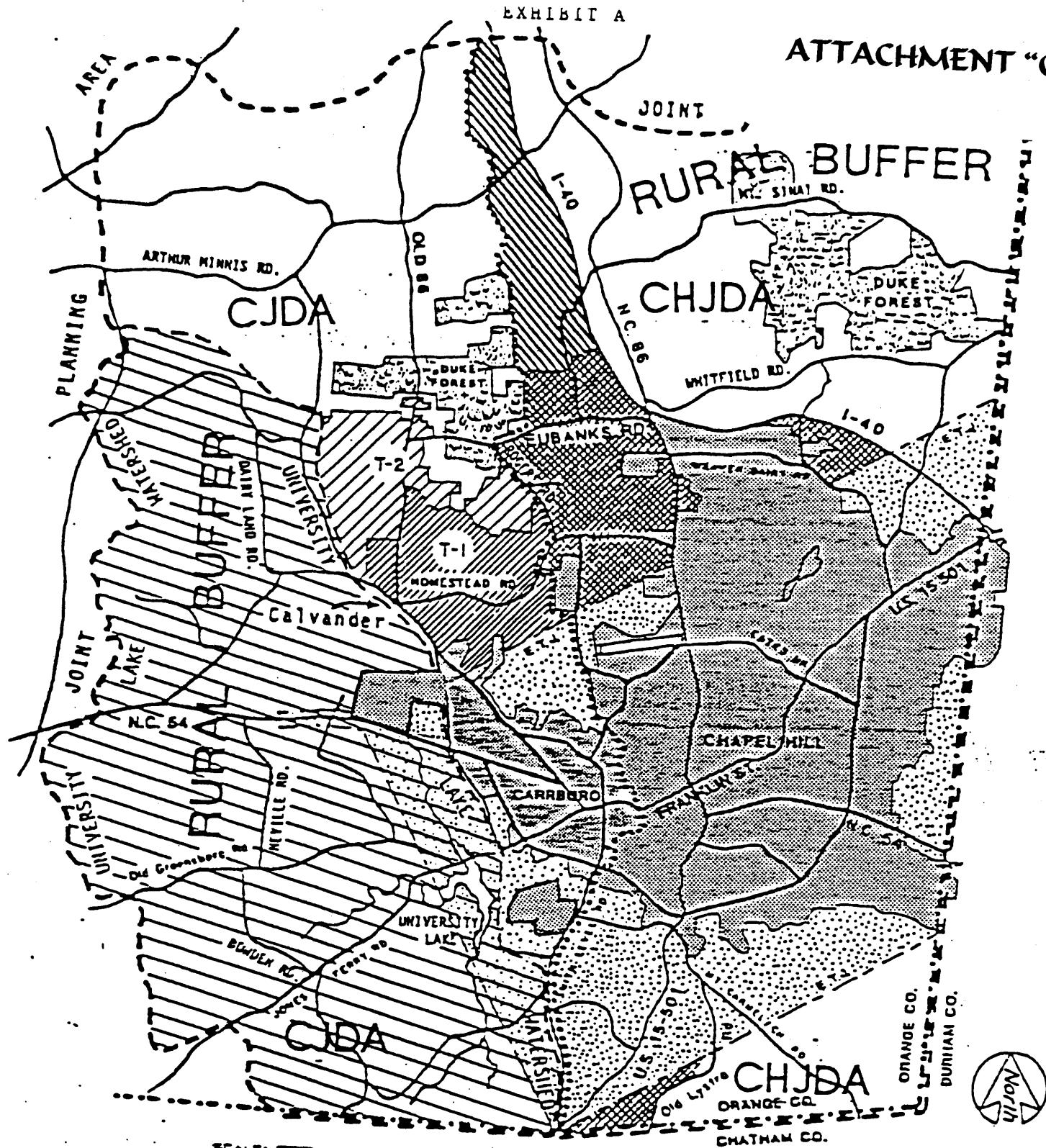
Further explanation of the Land Use Intensity System is available in Section 6.12 and in Article 22.

**\*5.1.1 Town of Chapel Hill Land Development Standards**

\*Amended 10-18-88 The regulations governing minimum lot size, minimum lot width, required yard setbacks, maximum building height and other dimensional requirements controlling the permitted intensity of development as contained in the Town of Chapel Hill Land Development Ordinance are hereby adopted by reference as fully as though set forth herein. The regulations shall be applicable to that portion of the Transition Area located within the Chapel Hill Joint Development Review Area as prescribed in the adopted Joint Planning Area Land Use Plan and the adopted Joint Planning Area Land Use Map.

**\*5.1.2 Town of Carrboro Land Development Standards**

\*Amended 10-18-88 The regulations governing minimum lot size, minimum lot width, required yard setbacks, maximum building height and other dimensional requirements controlling the permitted intensity of development as contained in the Town of Carrboro Land Use Ordinance are hereby adopted by reference as fully as though set forth herein. The regulations shall be applicable to that portion of the Transition Area located within the Carrboro Joint Development Review Area as prescribed in the adopted Joint Planning Area Land Use Plan and the adopted Joint Planning Area Land Use Map.



- |  |  |  |  |
|--|--|--|--|
|  | Carrboro Transition Area 1                   |  | University Lake Watershed in Orange County   |
|  | Carrboro Transition Area 2                   |  | University Lake Watershed in Carrboro E.T.J. |
|  | Chapel Hill Transition Area                  |  | Chapel Hill/Carrboro Corporate Limits        |
|  | Carrboro/Chapel Hill Joint Planning Boundary |  | Joint Courtesy Review Area                   |
|  | Extraterritorial Jurisdiction (Existing)     |  |  |
- CHJDA Chapel Hill Joint Development Review Area  
 CJDA Carrboro " " " "

**MAP #2:**  
**Small Area Study Area Boundary**

ATTACHMENT D

**SMALL AREA  
STUDY BOUNDARIES**

Transition  
Area 2

Transition  
Area 1

University Lake  
Watershed

Bolin  
Creek

ETJ

Carrboro

Chapel Hill

**LEGEND**

- Streams
- Carrboro City Limits
- Study Area
- Planning Boundary
- Lakes and Ponds
- In City Limits

- Transition Area 1
- Transition Area 2
- Watershed
- Greene Tract
- Landfill
- Chapel Hill City Limits

- Chapel Hill ETJ Area
- Planning Boundary
- Carrboro ETJ Limits
- Duke Forest
- Joint Review Area
- Orange County



100 Boundary Conditions Survey Map  
March/April 1997  
Scale 1:25,000



**"THIS MAP IS NOT A CERTIFIED  
SURVEY AND NO RELIANCE MAY  
BE PLACED IN ITS ACCURACY"**

This map was prepared by the staff of the Town of Carrboro, North Carolina, and is not a certified survey. It is intended for informational purposes only and should not be used for legal or financial decisions. The map is based on the best available information and is subject to change without notice. The map is not a substitute for a professional survey and should not be used for any purpose requiring a high degree of accuracy. The map is the property of the Town of Carrboro and is loaned to you for informational purposes only. It is to be returned to the Town of Carrboro upon request.

Prepared by: CARRBORO  
Date: 10/1/97  
Scale: 1:25,000  
Map No. 100

## MEMORANDUM

TO: Mayor and Carrboro Board of Aldermen

FROM: Michael B. Brough *MAB*

RE: Winmore and Objections of HOTZ

DATE: July 9, 2002

## Enclosed are:

- (1) The May 17, 2002 memo from attorney Brian D. Voyce to the HOTZ Steering Committee, expressing his view point that, even if Carrboro annexes the Winmore property, the development would nevertheless have to proceed through the joint planning process;
- (2) A June 7, 2002 letter from County Attorney Geoff Gledhill to the Board of Commissioners disagreeing with Mr. Voyce's conclusion; and
- (3) A June 21, 2002 letter from Mr. Voyce to Commissioner Barry Jacobs, disagreeing with Mr. Gledhill's analysis.

I concur completely with Mr. Gledhill's view that, once property is annexed into the Town, then it is no longer subject to the constraints of the joint planning agreement. The lack of an explicit statement to this effect in the agreement reflects only the fact that this conclusion was so obvious to those who drafted and adopted the joint planning agreement that it never occurred to anyone that such a statement was necessary. After all, the purpose of the agreement was to expand the planning and zoning authority of the towns (albeit to a lesser extent than would have been available had the county been willing to expand their extraterritorial planning jurisdictions under the general statutes), not to restrict the authority the town already had upon annexing areas outside their previous corporate boundaries.

I would be happy to answer any questions the Board may have about this matter.

LAW OFFICES

**COLEMAN, GLEDHILL & HARGRAVE**

A PROFESSIONAL CORPORATION

129 E. TRYON STREET  
P.O. DRAWER 1529  
HILLSBOROUGH, NORTH CAROLINA 27278  
919-732-2196  
FAX 919-732-7997  
WEBSITE WWW.CGANDH.COM

July 3, 2002

FROM THE DESK OF  
GEOFFREY E. GLEDHILL  
E-MAIL: geoffreygledhill@cgandh.com

**VIA FACSIMILE**

Michael B. Brough  
Carrboro Town Attorney  
The Brough Law Firm  
1829 East Franklin Street, 800A  
Chapel Hill, North Carolina 27514

Ralph D. Karpinos  
Chapel Hill Town Attorney  
306 North Columbia Street  
Chapel Hill, North Carolina 27516

**RE: Joint Planning and Annexation into Transition Areas**

Dear Mike and Ralph:

I previously provided you with copies of a May 17, 2002 letter from Brian Voyce to "Members of the HOTZ Steering Committee" and my June 7, 2002 letter to the members of the Orange County Board of Commissioners on the referenced topic. Enclosed is a copy of a June 21, 2002 letter from Mr. Voyce to Commissioner Jacobs on the same topic.

Very truly yours,

**COLEMAN, GLEDHILL & HARGRAVE, P.C.**

  
Geoffrey E. Gledhill

GEG/lsg

Enclosure

xc: Barry Jacobs  
Margaret Brown  
Moses Carey, Jr.  
Alice Gordon  
Steve Halkiotis  
John M. Link, Jr.

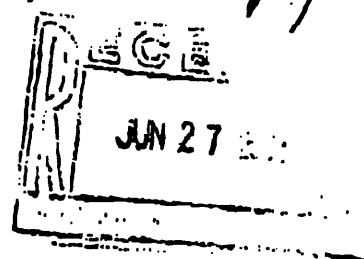
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07-03-02 16:23 FROM-Coleman Gledhill &amp; H +9197327997

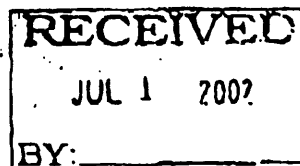
T-541 P03/04 U-344

**HOTZ**

June 21, 2002



Commissioner Barry Jacobs  
 C/o Orange County Government  
 P. O. Box 8181  
 Hillsborough, NC 27278



RE: Tuesday's Homestead Road Meeting

Dear Commissioner:

I am writing on behalf of the Homesteaders of the Transition Zone (HOTZ) organization. Thank you and the rest of the Board of Commissioners (Board) for your continued support of the principle that the proposed Winmore developments should undergo joint planning by the town of Carrboro and Orange County.

HOTZ respectfully requests that Orange County (through the Board) hold a public meeting as soon as practical regarding the recently approved text amendments to the Carrboro land use ordinances, particularly as they affect the properties, residents, and neighborhoods of the Carrboro Joint Development Area (CJDA) portion of the Northern Transition Area. A written reply to this request is appreciated.

While HOTZ welcomed the opportunity to continue the dialogus regarding the proposed Winmore developments, Tuesday's meeting is notable for what did not occur. Although the meeting agenda was available on the County web site (a most helpful means for distributing information, one that is much appreciated by HOTZ members), there was one exception - the availability of the letter from the County Attorney. Despite the letter having been written and apparently distributed to the Board over a week earlier (on or about June 7<sup>th</sup>) and also being a prime subject matter of the meeting, HOTZ members were afforded the courtesy of access to the letter just minutes before the meeting. For the record, I must state that despite contacting the County Attorney on Monday in an attempt to get a copy of the letter, the call was not returned until minutes before all of us had to head for the meeting site. Moreover, from the absence of the Winmore developers, the same does not appear to be true for the developers.

With respect to the County Attorney's letter, the consensus of those in the audience attending the meeting and the HOTZ Steering Committee is that, sadly, the letter is merely a history lesson tied to a description of the law as if the Joint Planning Agreement did not exist. All in all, the letter is not a substantive legal opinion of merit. Not only does the letter lack any citation to the Joint Planning Agreement, it lacks any constructive argument from which a neutral party can find support for the conclusions set forth in the letter as to the effect of the Joint Planning Agreement. Most unfortunately from the perspective of the general public, the letter fails to

**Commissioner Jacobs****Winmore****June 21, 2002**

rebut a single contention based on the clear and unambiguous language of the Joint Planning Agreement, as set forth in the HOTZ opinion letter.

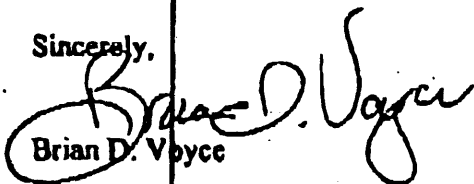
Tuesday's meeting was equally disappointing in that, as noted above, the developers failed to show. At the June 4<sup>th</sup> meeting, Commissioner Brown asked Mr. Chapman, one of the developers, if the developers would agree to put the Winmore project through the joint planning process by simply not having an annexation petition re-filed. That question was not answered, citing the need to confer with partners. Tuesday's absence continues the shadow boxing of issues experienced by HOTZ members in their numerous meetings with the developers.

HOTZ respectfully requests that the Board (through you) send a formal letter to the developers requesting that the Winmore developments remain in the joint planning process. The letter should ask for a reply acknowledging written acceptance of this condition. Such a letter and the acceptance thereof would go a long way to restoring public confidence in the viability of the joint planning process. HOTZ members have a fervent desire for such a definitive acceptance.

While the sunny side of the street is preferred, the affairs of people dictate that we must carry umbrellas even while walking there. Thus, HOTZ must be prepared for the worst - that the developers will resubmit a petition to Carrboro for annexation of the Winmore properties, continuing to avoid joint planning. If this happens, then, regretfully but with resolve, HOTZ will seek judicial enforcement of the Board's joint planning rights (which apply even if a CJDA property is annexed) under the Joint Planning Agreement, confident (particularly having consulted with various legal experts with municipal and contract law experience) that the conventionally accepted judicial standard of a plain language interpretation of the rights, duties, and obligations of a contract within the four corners of the contract will prevail over historical anecdote and avoidance of the specific terms and conditions of the contract. Hopefully, your letter to the developers can settle the issue of joint planning for the Winmore properties.

Again, thank you for your listening to HOTZ and its members.

Sincerely,



Brian D. Voyce

8401 Sterling Bridge Road  
Chapel Hill, North Carolina 27516  
919.968.6306

Cc: Commissioner Margaret W. Brown  
Commissioner Moses Carey, Jr.  
Commissioner Alice M. Gordon  
Commissioner Stephen H. Halkiotis  
HOTZ



## LAW OFFICES

## COLEMAN, GLEDHILL &amp; HARGRAVE

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FROM THE DESK OF  
GEOFFREY E. GLEDHILL  
E-MAIL: geoffreygledhill@cgandh.com

June 7, 2002

## VIA FACSIMILE AND U.S. MAIL

Barry Jacobs, Chair  
Margaret W. Brown  
Moses Carey, Jr.  
Alice M. Gordon  
Stephen H. Halkiotis  
Orange County Board of Commissioners  
Post Office Box 8181  
Hillsborough, North Carolina 27278

## RE: The Joint Planning Agreement and Annexations

Dear Board Members:

I have been asked by the Board to respond to the June 4, 2002 presentation made by Brian Voice. Mr. Voice, a lawyer, opined during his presentation that any change in the zoning classification of the Winmore Subdivision property (for example, from R-20 to VMU) must be jointly made by Carrboro and Orange County even if the decision to change the zoning occurs after the Winmore Subdivision property is annexed by the Town of Carrboro.

I carefully listened to Mr. Voice's presentation. I carefully read Mr. Voice's May 17, 2002 memo to the HOTZ Steering Committee titled "Re: Annexation and Joint Approval." Although I understand Mr. Voice's arguments, I respectfully disagree with the conclusion that he reached that a zoning map amendment affecting property located in the Carrboro Northern Transition Area before annexation is nevertheless subject to joint Carrboro-Orange County approval after annexation. Notwithstanding the statements made by Mr. Voice concerning the

Orange County Board of Commissioners

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June 7, 2002

intentions of Carrboro, Chapel Hill and Orange County with respect to the Joint Planning Agreement, apparently gleaned from his reading of the Agreement, it was not the intent of any of the parties to the Agreement that zoning change decisions with respect to property located either in the extraterritorial planning jurisdiction of the Towns or with respect to property located within the corporate limits of the Towns would be joint decisions.

The Joint Planning Agreement was a joint response by Orange County, Carrboro and Chapel Hill to extraterritoriality, a statutory process and practice used everywhere else in North Carolina to accomplish a Town's continual and, from the point of view of the citizens affected, undemocratic expansion of its zoning authority beyond its corporate limits. The Joint Planning Agreement also created an "urban" boundary beyond which the Towns of Carrboro and Chapel Hill would not grow. The southern and eastern limits of the Rural Buffer as it wraps around the Transition Areas of Carrboro and Chapel Hill mark this boundary.

Prior to the September 1987 enactment of the Joint Planning Agreement, there was a political "war" over extraterritoriality with Chapel Hill and Carrboro on one side claiming the need to plan development beyond their corporate limits that would some day be part of the Towns and the County on the other side, claiming the people located outside of the Towns that would be planned by the Towns could not vote for those planning them. The solution embodied in the Joint Planning Agreement was for Orange County to cede some of its planning power in so-called Transition Areas and the Rural Buffer to the Towns, for Land Use Plan and zoning map decisions affecting property within the Transition Areas to be jointly made and for the Towns to give up their ability to annex land beyond the Transition Areas.<sup>1</sup>

It was not the intention of Carrboro, Chapel Hill and Orange County to restrict otherwise lawful annexations into the Transition Areas. Neither was it the intention of the Towns and the County to continue to jointly approve zoning changes to land formerly located in Transition Areas after it was annexed. In a

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<sup>1</sup> The Towns also agreed on an annexation boundary between them for future annexation by them of land located in the Transition Areas.

## Orange County Board of Commissioners

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June 7, 2002

political sense, once annexed, the citizens/residents of the annexed area are able to vote for the annexing Town board members who are planning them.

The text of the Joint Planning Agreement is consistent with this scheme and with the historical intent of Orange County, Carrboro and Chapel Hill:

1. The Joint Planning Area Land Use Map (Exhibit A to the Joint Planning Agreement) includes and maps (1) the Rural Buffer area, (2) the Transition areas, (3) the Extraterritorial planning areas and (4) the Chapel Hill-Carrboro Corporate Limits.

2. Annexation rules in the Agreement pertain only to the Rural Buffer areas and, as between Chapel Hill and Carrboro, the Transition areas.

3. There are no annexation prohibitions in the Agreement concerning the Town extraterritorial areas and, except as between Carrboro and Chapel Hill, concerning the Transition areas.

4. Annexation by Carrboro or Chapel Hill from either the extraterritorial areas or the Transition areas changes the nature and the character of the land annexed from ETJ or Transition to "Corporate."

5. Since the Joint Planning Agreement does not provide for joint decisions on zoning changes in corporate Chapel Hill or Carrboro, annexation by Chapel Hill or Carrboro consistent with the Agreement removes the land from either ETJ or Transition as the case may be and, from joint decisions on zoning map changes.

Since Carrboro and Chapel Hill have the power under the Joint Planning Agreement to annex into the Transition areas without Orange County approval, the Towns have the power under the Agreement to amend the Joint Planning Area Land Use Map without Orange County approval, to the extent the corporate boundaries of the Towns change. In effect, an annexation authorized by the Joint Planning Agreement is a Joint Planning

Orange County Board of Commissioners

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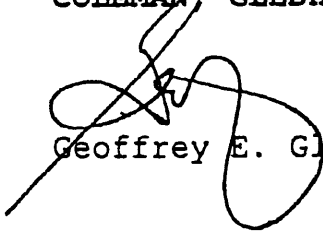
June 7, 2002

Area Land Use Map amendment authorized by the Joint Planning Agreement.

I think that it is safe to say that Carrboro and Orange County, at the time of adoption of the Joint Planning Agreement, expected that Transition area developments requesting or requiring zoning map amendments would receive joint review and would be required to obtain joint approval. It is also safe to say that Orange County expects joint review following joint public hearing(s) of any project requiring a zoning map change that is located in what is now the Carrboro Transition Area. I know that Orange County also expects Carrboro to annex any Transition area project developed to urban densities. Orange County expressed this annexation expectation to Carrboro when it signed off on the amendments to the Carrboro Development Ordinance designed to implement the Northern Study Area amendments to the JPA Land Use Plan. Copies of the minutes of the May 4, 1999 Board of Commissioners meeting and staff correspondence concerning that expectation are enclosed. Expectations concerning joint review and approval of what are now Transition area zoning changes should be pursued with Carrboro as the Board elects. However, they do not preclude Carrboro from annexing property that can be annexed consistent with the Joint Planning Agreement. When annexation occurs, the property annexed is no longer "Transition" and therefore is no longer subject to the Joint Planning Agreement requirements for the Transition areas.

Very truly yours,

COLEMAN, GLEDHILL & HARGRAVE, P.C.



Geoffrey E. Gledhill

GEG/lsg

Enclosures

xc: Craig Benedict

Michael B. Brough, Esquire ✓

Ralph D. Karpinos, Esquire

John M. Link, Jr.

lsg:letters\bdoofcommnortherntrans.ltr

May 17, 2002

RE: Annexation and joint approval

Dear Members of the HOTZ Steering Committee:

The question has been raised as to whether or not a move by the developers of Winmore to have the Town of Carrboro annex the Winmore Property would remove the requirement that the Orange County Commissioners approve the rezoning classification from R-20 (two units per acre) to VMU (village mixed use).

In my opinion, annexation does not relieve Orange County from approving any rezoning classification on the Winmore property. The bases for my opinion are set forth below.

To understand how annexation affects rezoning approval, one must look to the Joint Planning Agreement (JPA) of 1987 (and as amended) between Orange County, the Town of Chapel Hill (Chapel Hill), and the Town of Carrboro (Carrboro). The JPA is the seminal document that transformed normal statutory authority for approving rezoning classifications. In essence, the JPA transferred authority normally vested solely in Orange County into a joint authority shared with Chapel Hill and Carrboro.

As stated in the JPA preamble, the purpose of the JPA is to establish "a coordinated and comprehensive system of planning". The JPA established by contractual definition a Joint Planning Area (JP Area, Section 1.2 A) comprised of an eastern district (the Chapel Hill Joint Development Review Area (CHJDA, see Section 1.2 E) and a western district (the Carrboro Joint Development Review Area (CJDA, see Section 1.2 D).

Upon executing the JPA, each municipality agreed to adopt zoning maps and land use ordinances that put the JPA articles into effect (Section 1.3 C). Carrboro was charged with preparing a zoning map for the CJDA. The Winmore property fell within an R-20 zoning within the CJDA. Orange County then amended its zoning map to accept that designation as administered under the Carrboro land use ordinances.

The CJDA can be changed, but only by amending the Orange County-Chapel Hill- Carrboro Joint Planning Land Use Map (Map, see Section 1.2 C). To amend the Map, any party must submit an amendment request to Orange County, which in turn, must refer it to Chapel Hill and Carrboro. The map is not amended until adoption by all three governments after having had a joint public hearing (Section 2.6 A).

The JPA remains in effect until terminated by mutual agreement or withdrawal by one of the parties. Withdrawal requires a public hearing and a one-year notice period (Section 1.3 B).

The JPA makes clear that the approval of developments within the JPA was a joint effort, with primary administrative responsibility belonging to either of the towns. Development permits within the CJDA were to be handled by Carrboro, with Carrboro under an obligation to forward a copy to Orange County for comment (Section 2.3 B).

HOTZ Steering Committee  
May 17, 2002

Annexation and JPA

A change in rezoning in CJDA is expressly dealt with in Section 2.6 E - "... *With respect to property that is located within the CJDA Transition area, changes in zoning classifications may not be made unless and until an ordinance approving such zoning map amendment has been approved both by Orange County and Carrboro following a joint public hearing by the two governing bodies.*" There is no room for equivocation.

One should note that the JPA parties amended Section 2.6E in 1999 to read - "... *With respect to property that is located within the CJDA Transition area, changes in zoning classifications, including the creation of or changes to the 'floating' conditional use districts designed to implement the recommendations of the 'Facilitated Small Area Plan for Carrboro's Northern Study Area' (Village Mixed Use conditional use districts or Office/Assembly conditional use districts) may not be made unless and until an ordinance approving such zoning map amendment has been approved both by Orange County and Carrboro following a joint public hearing by the two governing bodies.* [Added language is underlined.]" A VMU rezoning option is specifically included in the Section. Even as amended for VMUs, there is no exemption for land that is annexed by Carrboro.

The JPA does address annexation. The JPA includes definitions of Voluntary Annexation (Section 1.2 K) and Involuntary Annexation (Section 1.2 J) that reference the North Carolina General Statutes. In particular, Chapel Hill and Carrboro surrendered the right to annex into the Rural Buffer, on the periphery of the JP Area (Section 3.1). The towns also surrendered the right to poach land in the other joint planning review area (Section 3.2). The JPA makes no other contractual obligation or exemption from JPA obligation regarding annexation.

In my opinion, any property falling within the CJDA falls within the requirements of the JPA regardless of annexation. Thus, CJDA rezoning classifications require a joint hearing and joint approval.

The purpose of the JPA is clearly to put a defined territory (JP Area) under a joint approval procedure. Orange County gave up certain administrative and/or legislative prerogatives to the respective signatory towns. In turn, the towns did likewise. Whereas, annexation of a property outside the CJDA removed jurisdiction for rezoning from Orange County, the JPA parties agreed to a different regimen in which joint planning occurs in the JP Area.

If the parties intended for annexation to remove a property from the joint planning scheme set forth in the JPA, then they could have simply included language transferring an annexed property from the definition of the JP Area, the CHJDA, or the CJDA. They did not. The parties included express language regarding annexation, but did not choose to exempt an annexed property from the JPA by automatic operation. Thus, the subject of annexation was considered, but joint planning (the basis for the agreement) was not to be affected by annexation.

In my opinion, the reason is clear why the parties did not want annexation to provide for automatic exclusion of a property from the JPA. The intent of the JPA, an orderly joint approval process, would be easily avoided if either Chapel Hill or Carrboro could simply annex a

HOTZ Steering Committee  
May 17, 2002

## Annexation and JPA

property. The routine would become one of annexation, not joint planning. The JPA recognized that this as just another form of territorial poaching, part of the business-as-usual problem, that should be avoided in administering the JP Area.

To those who ask what is the point in town annexation if the property is within a joint planning area requiring joint approval, I would point out that the JPA has two answers. The draconian answer is for a town to withdraw from the JPA, freeing itself from all JPA obligations. The simpler answer is that a town can seek to remove annexed property from the JPA by amending the Map. However, just as with rezoning classifications, Map changes require a joint public hearing and mutual approval.

I would suggest that HOTZ approach Orange County to ensure that it review the JPA so as to understand the County's obligations. HOTZ, through property owners in the Northern Transition Zone has the option of suing the County and Carrboro so as to ensure that they honor the JPA. However, I have no reason to believe that either government will not honor its commitments, once either stops assuming what they are.

Sincerely,



Brian D. Voyce

APPROVED 12/7/99

**MINUTES  
ORANGE COUNTY BOARD OF COMMISSIONERS  
REGULAR MEETING  
May 4, 1999**

The Orange County Board of Commissioners met in regular session on Tuesday, May 4, 1999 at 7:30 p.m. in the F. Gordon Battle Courtroom, Hillsborough, North Carolina.

**COUNTY COMMISSIONERS PRESENT:** Chair Alice M. Gordon, and Commissioners Margaret W. Brown, Moses Carey, Jr., Stephen H. Halkiotis and Barry Jacobs

**COUNTY ATTORNEY PRESENT:** Geoffrey Gledhill

**COUNTY STAFF PRESENT:** County Manager John M. Link, Jr., Assistant County Managers Rod Visser and Albert Kittrell and Clerk to the Board Beverly A. Blythe (All other staff members will be identified appropriately below)

**NOTE:** ALL DOCUMENTS REFERRED TO IN THESE MINUTES ARE IN THE AGENDA FILE IN THE CLERK'S OFFICE. ALL RECORDINGS OF THE MEETING WILL BE KEPT FOR 5 YEARS.

**1. ADDITIONS OR CHANGES TO THE AGENDA**

Commissioner Brown added a Resolution Regarding Civil Discourse in Orange County. This Resolution was added as item "3-E".

Commissioner Jacobs asked to have the Board discuss a matter of procedure regarding the structure of the agenda. Chair Gordon indicated that there was a proposal on the agenda that Board Comments be heard after reports but there does not seem to be unanimity on this suggestion. There was a consensus on the Board that "Board Comments" be returned to its original position on the agenda.

**2. CITIZEN & AUDIENCE COMMENTS**

**a. Matters on the Printed Agenda**

Chair Gordon stated that citizens who have indicated a desire to speak on an item that appear on the printed agenda will be recognized at the appropriate time.

**b. Matters not on the Printed Agenda**

Ms. Rea Kobota, Assistant Professor in the UNC School of Education and a member of the Chapel Hill/Carrboro City Schools English as a Second Language (ESL) Task Force, spoke in support of the Task Force's recommendations. She said that ESL students bring rich cultural and linguistic resources to the community. It takes between five and ten years for limited English proficient students to develop skills at the same level as their peers, however, these students are required to participate in the statewide testing after two years. She stressed that helping these students with academic development is crucial for the countywide educational process. Research clearly shows that ESL programs, based on sound educational theory, are far more effective than submerging these students in regular classroom with no language support. The Task Force's proposal is in line with the compliance guidelines of the Office of Civil Rights. She asked the Commissioners to adopt the recommendations of the Task Force.

Commissioner Brown asked Ms. Kobota to discuss the difficulty older children, particularly high school children, is having. Ms. Kobota said that older children have a larger academic gap between the English speaking peers and themselves. Sometimes older children do not have the educational background from their home country which causes an even wider gap.

Commissioner Halkiotis noted that at budget time, the County Commissioners would set the tax rate and decide on a budget but that the County Commissioners do not approve or disapprove individual items in the schools budget. The school board decides how to spend the dollars that they get. He asked Ms. Kobota to encourage the Chapel Hill/Carrboro City School Board to adopt ESL as one of their priorities.



**BOARD COMMENTS: (These comments were made after the discussion on collocation of facilities)**

Commissioner Halkiotis thanked those members of the Board of Commissioners who supported the resolution for Mr. Jose Campos. He has been returned to the United States and resumed the productive citizen roles that he had before he was deported. This is a classic example of federal, state and local government, as well as other local groups, working together for a cause that everyone agreed with.

Commissioner Jacobs asked about the status of the discussions on the Interlocal Agreement on Solid Waste Management.

John Link said that a meeting was held today. Chair Gordon led the group through a process whereby the Towns response to the County Commissioners "Elements of Expectation" was reviewed. This issue could be addressed at the next meeting or the first meeting in June. It is hoped to have the Memorandum of Agreement signed before the summer break. The Towns are motivated to meet that deadline as well.

Commissioner Jacobs stated that he had received an e-mail from Representative Insko about a bill that advanced in the Senate allowing the Transfer of Development Rights (TDR) for Huntersville. County Attorney Gledhill has indicated that we do not need legislative authority to initiate a TDR program. However, based on this e-mail it appears that the legislators and the elected officials in Huntersville think that special enabling legislation is required. He asked the County Attorney to let the Board of Commissioners know if local legislation is required and if it would be possible to add Orange County to the Huntersville request

Geoffrey Gledhill stated that it is not necessary to request enabling legislation for a TDR program.

Commissioner Carey suggested that Orange County participate in the Huntersville request because having local legislation would clarify the issue. He said that it looks like the law will be passed for Huntersville and he feels that Orange County should be involved in the request as well.

**PUBLIC CHARGE**

Chair Gordon dispensed with the reading of the public charge.

**3. RESOLUTIONS/PROCLAMATIONS**

**a. Purchase of Site for New High School**

The County Commissioners considered approving the purchase of a 64.8-acre site on the north side of Grady Brown School Road in the amount of \$603,200. This site will be used for a new high school in the Orange County School District.

Randy Bridges, Superintendent of the Orange County Schools, said that the Chair of the Orange County School Board, Delores Simpson and the Vice-Chair Susan Dovenbarger, attorney Mike Parker and construction consultant Ray DeBruhl were in attendance and available to answer questions. He presented some of the factors that they considered in choosing the site.

- The acreage requirement from the Department of Public Instruction (DPI) is that there be a minimum of 30-acres of useable land plus one acre per 100 students beyond the thirty acres. The high school they intend to build would house one thousand students. That would require a minimum of forty-acres. For the athletic complex, parking, physical education fields and future growth an additional ten to fifteen acres would be added to that. That would require fifty-five acres minimum and the tract that is being recommended consists of sixty-four acres.
- Availability of water and sewer is also extremely important and this site would be able to tap-on at the Grady Brown site which would reduce the cost of construction considerably.
- Availability of land is another issue that limits and directs their choices. There are two landowners involved with this site and both are willing to sell to the School System for a reasonable price.

Bridges stated that they had budgeted approximately \$600,000 to buy the site for the high school and the cost of this site is \$603,200. They feel that the price is very good compared to other sites that they have investigated. It is also possible that a school built on this site would easily lend itself to expansion from

<u>NAME</u>	<u>ACCOUNT #</u>	<u>AMOUNT</u>
Freeland, Theodore Hatton Jr.	E69506	\$ 36.44
Dixon, Robbie Jean	F68317	\$ 140.57
Honda Lease Trust	F25675	\$ 315.22

**d. Petition for Addition — Deerfield Trail in Chapel Hill Township**

The Board approved a petition from NCDOT to add Deerfield Trail in Chapel Hill Township to the state-maintained secondary road system.

**e. Contract for Archeological Survey of St. Mary's Road Corridor**

The Board approved and authorized the Manager to sign a contract with L.F. Stine in the amount of \$6475.96 to conduct an archeological survey of the St. Mary's Road corridor.

VOTE ON THE CONSENT AGENDA: UNANIMOUS

**ITEMS REMOVED FROM THE CONSENT AGENDA**

**a. Minutes**

After a brief discussion it was agreed by consensus that the minutes will be distributed to all Board members at the same time and will be presented no later than 30 days from the meeting date.

A motion was made by Commissioner Jacobs, seconded by Commissioner Halkiotis to approved the minutes from its Oct. 13, 1998 work session and February 22, 1999 Quarterly Public Hearing.

VOTE: UNANIMOUS

**7. ITEMS FOR DECISION - REGULAR AGENDA**

**a. Proposed Amendments to the Carrboro Land Use Ordinance Related to Implementation of the Facilitated Small Area Plan**

The County Commissioners considered proposed amendments to the Carrboro Land Use Ordinance related to the Proposed Facilitated Small Area Plan for the Northern Study Area.

Planning Director Craig Benedict mentioned that the Northern Study Area originated in 1992 and reports were presented in 1996, 1997, and 1998. He stated that there were three primary issues that need to be discussed. They are listed below.

▪ **PRIMARY ISSUES**

- County Involvement in the Development Review Process. A letter from the County Attorney was mentioned and is in the permanent agenda file in the Clerk's office.
  - Conditional Use Process (Section 15-141.2 (b) (g) (2) (4))
  - Master Planning Process (Section 15-141.2 (g) (1) (2) (3)(5)(6))
- Office/Assembly (O/A) District (minimum size) (Section 15-36(11))
- Village Mixed Use (VMU) Districts
  - Density
  - Location

Craig Benedict stated that the Board of Commissioners is being requested to make a decision as to whether the Carrboro Land Use Ordinance is consistent with the Northern Study Area Plan. Those areas of consistency were presented at earlier meetings. The exceptions were those mentioned above. A subcommittee has incorporated suggestions and comments from prior Board of County Commissioners meetings. The subcommittee's report is included in the agenda packet. This report includes three primary issues and eight separate recommendations.

The first issue pertains to whether or not the master plan process allows the County to have full review from start to finish of the entire process for Village Mixed Use. In the original wording, the Town of Carrboro had the potential during the Conditional Use Process of amending the Master Plan. The subcommittee has recommended deleting that language. New language is being recommended which would state that any modification of the Master Plan would be a re-consideration of the rezoning and would come back in front of the Board of Commissioners. Also, the subcommittee suggested criteria so that any impact

that would increase traffic, number of units or decrease open space would be considered significant impact which would bring the item back before the Board of County Commissioners. Also, there is an opportunity in Carrboro's Code at this time, that when a project is first brought forward, the applicant meets with the Carrboro staff on an informal basis. It was suggested by the subcommittee that Orange County become involved early in the process, prior to an application being presented. At that point, staff from each unit of government and the applicant could discuss issues that are important to the incorporated residents and the Board of County Commissioners.

The second area had to do with Office-Assembly and the Conditional Use permit. Office Assembly is a district that exists in Carrboro that could be located within the Town or in the Northern Study Area. If an application were received for the Northern Study Area, it would be presented to the Board of County Commissioners for approval. The rezoning to Office Assembly District would be a legislative decision under the jurisdiction of the Commissioners. A special district was created by the Northern Study Area that was to be more appropriate for this area and that was the Office-Assembly-Conditional Use. That district does not differ too much from the Office-Assembly except for two issues: 1) architectural standards were included that would have it look closer to a residential look, and 2) it limited the total amount of area in the Northern Study Area to 25 acres.

(sic) - speaking of OA/CU not VMU/CU

The final issue was what a Village Mixed Use (VMU) would look like. The subcommittee recommended a minimum of four-acres per tract and a maximum of 25-acres in the Northern Study Area. Also, only one Village Mixed Use should be approved at any one time, so that the effect could be evaluated before the next VMU proceeded.

Lastly, what a Village Mixed Use should look like was at issue. This district could be up to 200 acres in size. It is being recommended that the projects be phased so that before 80% of a project is complete it would be reviewed. After the review, the next project could start. As an example, if a Village Mixed-Use project came in at between 50 and 100 acres, 80% would have to be completed before another one could start. Another issue had to do with the location of the density in a VMU development. The subcommittee recommended that if there are 60 acres of buildable land, the density cannot be spread to adjacent open space land. The subcommittee also suggested reserving a section for Transfer of Development Rights, although they did not recommend wording at this time.

In order to facilitate incorporating all of these suggestions into the Carrboro Land Use Ordinance, the amendments were written as specific as possible so that Carrboro could somewhat easily incorporate them into the text of the amendment. The subcommittee suggested reserving the opportunity to present their nine recommendations in order to see the effect of changing the language in the implementing ordinance.

The comprehensive recommendation includes a request that Carrboro incorporate the aforesaid recommendations into the text of their land use ordinance and resubmit to the County Attorney and Planning Director for review by May 13, 1999. This would allow enough time for review and consistency determination so that a Board of County Commissioners meeting can be held if necessary.

Commissioner Brown asked about including some commentary on annexation for both the Assembly-Office and the Village Mixed Use. She stated that if these are proposed and adopted, Carrboro should annex both Assembly-Office and Village Mixed Use. It is important that they agree to supply the infrastructure and not leave it to the County to provide.

Geoffrey Gledhill said that the Board of Commissioners could indicate that they desire annexation to happen but the County Commissioners could not require a linkage between the zoning and the annexation.

Commissioner Jacobs asked if Carrboro could be asked if they agree with the principal of annexation of Village Mixed-Use developments and Gledhill said that Carrboro could be asked that question.

John Link said it might be more pertinent to ask Carrboro to develop a report on the viability of annexation.

Commissioner Brown asked if viability of annexation could be a part of the Conditional Use Application.

John Link said that there could be reference to viability of annexation as a part of the process.

Geoffrey Gledhill said that the Office-Assembly-Conditional Use proposal would be more problematic because they will be small and not practical annexation targets.

Commissioner Brown commented that the subcommittee had discussed contiguous open space and greenways to assure that Office-Assembly development did not block contiguous open space or greenways.

Craig Benedict stated that the implementing Ordinance does not require open space in Office-Assembly, however, if there is a primary or secondary conservation area it must be preserved, especially in the Office-Assembly where it is a conditional use requirement.

Commissioner Brown referred to the facilitated meetings held earlier in the Small Area Planning process. In those meetings it was clear that the neighborhood residents did not specifically address the enlarged commercial aspect of this plan. They talked about small commercial and village sectors. The concept of having a larger commercial area results in a much higher density and a larger non-residential area than had been discussed. She indicated that she would vote for this plan but wants the Board to understand that it is more dense than what the residents discussed. The review of the Board of County Commissioners at every level seems adequate and is very important as a means of protecting the Commissioner's constituents.

Commissioner Gordon mentioned that the recommendation is as stated in the agenda packet material in Item 7a, plus the recommendation on the green sheet having to do with the Village Mixed Use district, the Transfer of Development rights and the Viability of Annexation. The Board of County Commissioners' strong preference is that the Village Mixed Use be annexed and that Carrboro respond in principle to that concept and their annexation as the Village Mixed Use come up.

A motion was made by Commissioner Jacobs, seconded by Commissioner Brown to approve the proposed amendments to the Carrboro Land Use Ordinance related to implementation of the facilitated small area plan as presented consistent with the subcommittee and administration comments noted in the agenda plus the recommendations as listed on the green sheet which is herein incorporated by reference.

VOTE: UNANIMOUS

**b. Consolidated Housing Plan Annual Update/1999 HOME Program**

This item was presented so that the Board of commissioners could consider approving the 1999 Consolidated Housing Plan Update and proposed HOME Program activities for 1999-2000.

Housing and Community Development Director Tara Fikes reviewed the plan as included in the agenda. She stated that this resolution was being presented to the Board of County Commissioners for their approval of the 1999 Consolidated Housing Plan Annual Update as well as approving the proposed HOME Program Activities. In March the Board held a public hearing to receive citizen comment regarding the Update and to develop the HOME program design. She reviewed the resolution that outlined the proposed HOME program design. The Orange County HOME Consortium is scheduled to receive approximately \$437,000 in federal housing program funding. There is also available approximately \$20,000 in program income for a total of \$457,000. The total local government match is \$98,328 of which Orange County's share is \$41,297. A copy of this Resolution is in the permanent agenda file in the Clerk's office.

In response to a question, Tara Fikes reported that all of these homes will be aligned with the

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ORANGE COUNTY PLANNING DEPARTMENT

306F REVERE ROAD  
HILLSBOROUGH, NORTH CAROLINA 27278



MAY 10 1999

May 7, 1999

Roy Williford, Planning Director  
Town of Carrboro  
301 W. Main Street  
Carrboro, NC 27510

Mike Brough, Attorney  
1829 E. Franklin Street - Suite 800A  
Chapel Hill, NC 27514

Re: Addendum to Carrboro Northern Study Area (NSA) Land Use Ordinance  
Correspondence dated May 6, 1999

Dear Gentlemen:

The Commission did add to the original recommendations a required report on the annexation feasibility of a Village Mixed Use (VMU) District. This report would address the impacts of service provision and could be added as part of the master plan or conditional use process. The Board also urges that the Town of Carrboro strongly consider annexation of VMU's to provide the efficient provision of urban service.

Please attach the above recommendation to yesterday's letter.

Thank you for your cooperation.

Sincerely,

A handwritten signature in cursive script, reading "Craig N. Benedict".

Craig N. Benedict, AICP  
Planning Director

CNB/dg

xc: John M. Link, Jr., County Manager  
Geoffrey Gledhill, County Attorney  
✓Patricia McGuire, Carrboro Planning

E-19

*Due to the broad, discretionary power afforded the permit-issuing authority in the conditional use rezoning process; the requested change is unnecessary. At any time the Boards may choose to withhold approval of a proposed VMU until the construction of another has reached a certain point. However, the amendment procedures described in item 5 also allow the Boards an opportunity to evaluate a requested rezoning and determine whether they wish to see it proceed.*

9. Administration recommends that a section of the Carrboro Land Use Ordinance be reserved for Transfer of Development Rights.

*A new Section 28 should be included in the draft NSA Ordinance, as follows:*

*Section 28. A new section is added to Article XI of the Land Use Ordinance, as follows:*

Section 15-176.3 Reserved for Transfer of Development Rights

10. Request for a "response in principle" noting the Town's intentions regarding annexation of VMU and O/A developments, as described in the attached letter from Mr. Benedict (Attachment F).

*For some time, the policy of the Board of Aldermen has been to request the submittal of petitions for voluntary annexation, and to annex properties as they seek development approval. On May 11, 1999, the Board reconfirmed its intention to follow this policy with respect to VMU and O/A developments.*

rezoning:

- (1) Comprises at least fifty, but not more than two hundred, contiguous acres. For purposes of this subsection, acreage is not "contiguous" to other acreage if separated by a public street or connected only at a point less than one hundred feet in width; and
- (2) Is so located in relationship to existing or proposed public streets that traffic generated by the development of the tract proposed for rezoning can be accommodated without endangering the public health, safety, or welfare; and
- (3) Will be served by OWASA water and sewer lines when developed;
- (e) No more than 350 gross acres may be rezoned to the VMU district and no more than three villages may be approved.
- (f) Nothing in this section is intended to limit the discretion of the board of aldermen to deny an application to rezone property to a VMU district if it determines that the proposed rezoning is not in the public interest.
- (g) When a VMU rezoning application is submitted (in accordance with Article XX of this ordinance), the applicant shall simultaneously submit ~~either (i) a conditional use permit application for a village mixed use development in accordance with the provisions of Section 15-176.1 of this chapter, or (ii)~~ an application for approval of a master plan for the proposed village mixed use development, in accordance with the following provisions.
  - (1) The master plan shall show, through a combination of graphic means and text (including without limitation proposed conditions to be included in the conditional use permit for the proposed development):
    - a. The location, types, and densities of residential uses;
    - b. The location, types, and maximum floor areas and impervious surface areas for non-residential uses;
    - c. The location and orientation of buildings, parking areas, recreational facilities, and open spaces;
    - d. Access and circulation systems for vehicles and pedestrians;
    - e. How the development proposes to satisfy the objectives of and comply with the regulations applicable to a village mixed use development as set forth in Section 15-176.1 of this chapter;
    - f. How the development proposes to minimize or mitigate any adverse impacts on neighboring properties and the environment, including without limitation impacts from traffic and stormwater runoff; and