

**BOARD OF ALDERMEN**  
**AGENDA ITEM ABSTRACT**

ITEM NO. E(2)

**MEETING DATE: Tuesday, February 18, 2003**

**TITLE:** Work Session to discuss the “Land Use Ordinance Text Amendment to Require That The Adequacy Of Public School Facilities To Accommodate New Development Be Considered In The Approval Process” and the Memorandum of Understanding with an addendum.

<b>DEPARTMENT: PLANNING</b>	<b>PUBLIC HEARING: YES __ NO <u>X</u></b>
<b>ATTACHMENT:</b> <b>A. A. MOU</b> <b>B. B. Addendum To MOU</b> <b>C. C. Draft Ordinance</b>	<b>FOR INFORMATION CONTACT:</b> <b>Roy Williford, 918-7325</b>

**PURPOSE:**

The Board of Aldermen will hold a work session on February 18<sup>th</sup> to discuss the process, procedures and technical aspects associated with:

1. An amendment to the Carrboro Land Use Ordinance entitled “*AN ORDINANCE AMENDING THE CARRBORO LAND USE ORDINANCE TO REQUIRE THAT THE ADEQUACY OF PUBLIC SCHOOL FACILITIES TO ACCOMMODATE NEW DEVELOPMENT BE CONSIDERED IN THE APPROVAL PROCESS*”.
2. The Schools Adequate Public Facilities Memorandum of Understanding (MOU); and
3. An addendum to the MOU that incorporates additional provisions requested by the Carrboro Board of Aldermen in their May 14, 2002 resolution.

**INFORMATION:**

The Carrboro Board of Aldermen adopted a resolution on May 14, 2002 that approved, with conditions, the Schools Adequate Public Facilities Memorandum of Understanding (MOU) and instructed the town attorney to prepare a land use ordinance amendment incorporating the provisions of the adequate public school facilities ordinance. Carrboro’s recommended revisions have been included in an addendum (Attachment B) to the MOU (Attachment A) and should be considered and approved as part of a public hearing needed to amend the Town’s Land Use Ordinance.

The participants (Chapel Hill-Carrboro Board of Education, Town of Chapel Hill, Town of Carrboro and Orange County) must adopt the Schools Adequate Public Facilities MOU (including agreement of the Capital Investment Plan, projected student membership growth rate, projection methodology and student generation rate) and addendum before it becomes an effective agreement. Likewise, the two towns and the county must amend their respective land use ordinances to enact the Schools Adequate Public Facilities regulations. A

public hearing on the amended land use regulations must be held by each jurisdiction prior to their adoption. Orange County is in the process of evaluating the implementation of the third high school and following a March 4<sup>th</sup> work session with the CHCCS system may proceed with the adequate public facilities ordinance on March 24, 2003. Chapel Hill conducted their public hearing on January 22, 2003 and adopted the ordinance on February 10, 2003 effective upon the adoption of an adequate public facilities ordinance by the other parties. Carrboro has postponed its public hearing date originally scheduled for tonight.

## MEMORANDUM OF UNDERSTANDING

The attached Memorandum of Understanding represents an 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 commits all parties to support this cooperative approach (which includes the adoption of the proposed Adequate Public Facilities Ordinance for Schools).

### **The Memorandum of Understanding, section-by-section description:**

**Section 1** Direct all parties to work cooperatively to develop a realistic Capital Investment Plan for the construction of new school facilities such that the school membership level within each school level does not exceed the following:

School Level	Percent of Building Capacity
Elementary School	105%
Middle School	107%
High School	110%

**Section 1.a** Defines “school membership” as the actual number of students attending school as of November 15 of each year.

**Section 1.b** Defines “building capacity” as permanent buildings (excluding mobile classrooms) and specifies that the capacity will be determined by joint action of the School Board and the Orange County Board of Commissioners by reference to State and School District guidelines.

**Section 1.c** Prior to the adoption of the Adequate Public Facilities Ordinance for Schools the parties to the agreement shall reach agreement on the following:

**Section 1.c (i)** of the MOU requires that all parties reach agreement on a CIP that will achieve the objectives of the MOU prior to the adoption of the Adequate Public Facilities Ordinance. The current Orange County 2002-2012 CIP (adopted April 22, 2002) will be used to determine available capacity in this first year (February 15, 2003 to February 15, 2004). This CIP schedules the following new school facilities that will increase capacity in the Chapel Hill-Carrboro School District by fiscal year:

Project	2-03	03-04	04-05	05-06	06-07	07-08	08-09	09-10	10-11	11-12	Total
Acquire Site for High School # 3	1.35m										1.35m
High School # 3	500k	1.835m	10.45m	2.4m							15.2m
Elementary School # 9	12.6m										12.6m
Elementary			1.125m	9.225m	2.45m						12.8m

School # 10											
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\* Cost have been rounded, k=thousands & m=millions

Given this schedule:

- ○ Elementary school #9 should open for the 03-04 school year,
- ○ High School # 3 should open for the 06-07 school year, and
- ○ Elementary school #10 should open for the 07-08 school year
- ○ No Middle Schools have been programmed.

**Section 1.c (ii)** of the MOU requires that all parties reach agreement on a projected growth rate for student membership within the School District's three school levels during the 10-year life of the CIP. Orange County has recommended that the growth rate for student membership be derived for each school level from the average of the 5 ten-year student membership projection models.

### ELEMENTARY SCHOOL

School Year	02-03	03-04	04-05	05-06	06-07	07-08	08-09	09-10	10-11	11-12	12-13
Average	4,555	4,746	4,927	5,082	5,231	5,401	5,487	5,567	5,647	5,727	5,791
Rate of Increase		4.19%	3.18%	3.15%	2.93%	3.25%	1.59%	1.46%	1.44%	1.42%	1.12%

### MIDDLE SCHOOL

School Year	02-03	03-04	04-05	05-06	06-07	07-08	08-09	09-10	10-11	11-12	12-13
Average	2,604	2,699	2,724	2,810	2,916	3,000	3,138	3,273	3,432	3,496	3,559
Rate of Increase		3.65%	0.93%	3.16%	3.77%	2.88%	4.60%	4.30%	4.86%	1.86%	1.80%

### HIGH SCHOOL

School Year	02-03	03-04	04-05	05-06	06-07	07-08	08-09	09-10	10-11	11-12	12-13
Average	3,184	3,303	3,506	3,645	3,743	3,857	3,950	4,077	4,191	4,407	4,589
Rate of Increase		3.74%	6.15%	3.96%	2.69%	3.05%	2.41%	3.22%	2.80%	5.15%	4.13%

**Section 1.c (iii)** of the MOU requires that all parties reach agreement on a methodology for determining the projected growth rate for student membership. The method recommended by the County is to use the average of the projected student memberships produced by five models. The five models include the 3, 5 and 10 cohort survival methods, the Orange County Planning Department's projection, Liner Wave and Tischler Linear methods. The average of these projection methods is reflected in the preceding table.

**Section 1.c (iv)** of the MOU requires that all parties reach agreement on the number of students at each level expected to be generated by each new housing type (i.e., "student generation rate"). The recommended student generation rate source for the first year is the 2001 Tischler and Associates Student Generation Rates Report. This report provided the following student generation rates for the Chapel Hill-Carrboro School District:

### STUDENT GENERATION RATES

Housing Type	Grade Levels			
	Elementary	Middle	High	All Grades
Single Family	0.168	0.095	0.123	0.386
Other	0.094	0.042	0.043	0.179
All Housing Types	0.134	0.070	0.086	0.290

**Section 1.d** Specifies a procedure and circumstance that allows the Orange County Board of Commissioners to make changes in the projected student membership growth rate, the methodology or the student generation rate after the ordinance is adopted.

**Section 2** Specifies that each jurisdiction will adopt the Adequate Public Facilities Ordinance for Schools.

**Section 3** Provides the process that the School District will follow with regard to applications for Certificates of Adequacy of Public School Facilities or “CAPS”.

**Section 3.a** Requires the school district to make the following calculations in accordance with the remaining provisions of this section and section 1:

- ○ On February 15<sup>th</sup> of each year calculate building capacity and school membership of each school level as of November 15<sup>th</sup> of the previous year;
- ○ On February 15<sup>th</sup> of each year project the building capacity and school membership of each school level for November 15<sup>th</sup> over the next ten years.

**Section 3.b** Projected school memberships shall be determined by applying the projected school membership growth rates (provided in section 1) to the actual school membership numbers obtained on November 15 of the previous year (base year). These projections are provided in the table under **Section 1.c (ii)**;

**Section 3.c** Provides the school district with a method for calculating school building capacity resulting in the following:

#### ELEMENTARY SCHOOL

School Year	02-03	03-04	04-05	05-06	06-07	07-08	08-09	09-10	10-11	11-12	12-13
Building Capacity	4,302	4,921	4,921	4,921	5,521	5,521	5,521	5,521	5,521	5,521	5,521
105%	4,517	5,167	5,167	5,167	5,797	5,797	5,797	5,797	5,797	5,797	5,797

#### MIDDLE SCHOOL

School Year	02-03	03-04	04-05	05-06	06-07	07-08	08-09	09-10	10-11	11-12	12-13
Building Capacity	2,840	2,840	2,840	2,840	2,840	2,840	2,840	2,840	2,840	2,840	2,840
107%	3,039	3,039	3,039	3,039	3,039	3,039	3,039	3,039	3,039	3,039	3,039

#### HIGH SCHOOL

School Year	02-03	03-04	04-05	05-06	06-07	07-08	08-09	09-10	10-11	11-12	12-13
Building Capacity	3,035	3,035	3,035	3,035	4,035	4,035	4,035	4,035	4,035	4,035	4,035
110%	3,339	3,339	3,339	3,339	4,439	4,439	4,439	4,439	4,439	4,439	4,439

**Section 3.d** The school district should determine available school capacity by comparing the existing and projected school membership (table under **Section 1.c (ii)**) to the existing and projected school building capacity (table under **Section 3.c**). This comparison produces the available school capacity supplied in the following table for the February 15<sup>th</sup> 2003 to February 15<sup>th</sup> 2004 period:

**AVAILABLE SCHOOL CAPACITY**

Capacity Available on 2-15	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Elementary	-34	422	242	84	562	392	299	212	124	36	-47
Middle	431	352	327	256	156	85	-38	-158	-298	-351	-406
High	177	89	-86	-213	810	720	649	550	458	280	129

**Section 3.e** Requires the school system to account for the issuance of CAPS and to reduce the number of CAPS available over the 10-year projection as they are issued throughout the February 15<sup>th</sup> to February 14<sup>th</sup> period.

**Section 3.f** Requires the school district to determine the impact that an application for CAPS (by housing type) will have on each school membership level to assure that the added student demand generated by new construction does not exceed any of the school membership thresholds established under **Section 1** of the MOU (Elementary@ 105%, Middle@ 107% and High School@ 110% of building capacity). The school district will use the student generation rates provided for under **Section 1.c (iv)** of the MOU to determine the number of students at each level generated by housing type. The school district will take into account housing occupancy rates provided by the respective planning departments and phasing plans approved as part of the development permit when determining the impact of the development on school membership.

As an illustration of this process a 75-unit single family subdivision seeking approval of a Conditional Use Permit will first need to obtain CAPS from the school system to activate the land use permit authorizing all or part of the development. In this example the Planning Department recommended that the development be permitted in three phases (25 units annually) based on occupancy rates of similar size projects over the last 10 years. The Board of Aldermen approved the 75-unit subdivision as recommended by their planning department. Based on the phasing approval the developer makes a request of the school system for enough CAPS to authorize each of the 25 unit phases sequentially over the next three years beginning in 2003-04. The School system calculates the number of CAPS or seats required for 25 single family units by multiplying the student generation rate [Section 1.c (iv)] by the number of units requested as follows to yield the number of seats requested:

# of Single Family Units requested	School Level	Student Generation Rate by School Level	# of Seats needed by school level
25	Elementary	0.168	4.2
25	Middle	0.095	2.4
25	High	0.123	3.1

After determining the number of seats needed by the new development, the school system compares the number of seats needed to the number of seats available as determined in the “Available School Capacity “ table under Section 3.d above. Since 89 seats will be available in the year 2003-04, the school system will issue CAPS for the first phase of the development. The next two phases will not receive CAPS during 2005-06 and 2006-07 due to the negative “available capacity” at the High School level of -86 and -213 respectively. Once the third high school comes on line (according to the Orange

County CIP), additional capacity will be available for the next two years 2007-08 and 2008-09 allowing the school system to issue CAPS for the final two phases of the development.

**Section 3.g** Requires the school district to issue CAPS if each projected school level is sufficient to accommodate the additional membership resulting from the new development and to deny the CAPS if each or any one level is not sufficient. This section also provides that an applicant may seek a modification (i.e. a phasing plan or phase change) from a jurisdiction to reduce the number of CAPS needed over a certain time period if their CAPS application is denied.

**Section 3.h** Establishes a first-come-first-serve priority for the issuance of CAPS by the school district according to the date that a completed application for CAPS is received. If CAPS are not available and the application is denied, the development retains its priority based on its application date.

**Section 4** Establishes when CAPS become effective and when they expire. Basically CAPS run with the life of the permit.

**Section 5** Requires the county and the towns to share information with the school district.

**Section 6** Requires the School District to use its best efforts to construct new schools in accordance with the capital investment plan.

**Section 7** Requires the county to use its best efforts to provide funding to construct new schools in accordance with the capital investment plan.

**Section 8** Exempts certain residential developments (30 year commitment) from the CAPS requirement i.e. elderly/adult day care/adult special needs units; dormitory housing for university students.

**Section 9** Explains the non-binding but good faith intent of the MOU and the objective to provide adequate public school facilities for the children who reside in the school district.

## **ADDENDUM TO SCHOOLS ADEQUATE PUBLIC FACILITIES MEMORANDUM OF UNDERSTANDING**

The addendum to this agreement or MOU represents fundamental changes requested by the Town of Carrboro as reflected in its May 14, 2002 Adequate Public Facilities Resolution (Attachment E). The addendum adds the following provisions to the MOU:

**Provides an addendum to Section 1.d** to allow the governing boards to comment on any County Commissioner change to the projected student membership growth rate, the methodology used to determine this rate, or the student generation rate; and

**Provides an addendum to Section 9** to indicate that Carrboro will remain committed to the Memorandum of Understanding as long as Orange County continues to execute the Capital Investment Program as agreed to in the Memorandum.

## **ADEQUATE PUBLIC SCHOOL FACILITIES ORDINANCE**

In keeping with section 2 of the Memorandum of Understanding, the Town of Carrboro should adopt the Adequate Public School Facilities Ordinance by amending the Carrboro Land Use Ordinance to coordinate the

approval of residential developments within the school district with the adequacy of existing and proposed school facilities. The attached ordinance entitled *“AN ORDINANCE AMENDING THE CARRBORO LAND USE ORDINANCE TO REQUIRE THAT THE ADEQUACY OF PUBLIC SCHOOL FACILITIES TO ACCOMMODATE NEW DEVELOPMENT BE CONSIDERED IN THE APPROVAL PROCESS”* satisfies this proposed obligation.

The attached 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 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. This ordinance contains the following features:

- Requires 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 review the denial of a CAPS request by the School District.
- 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.
- Zoning Permits- The proposed APFO doesn’t require CAPS for projects of four or less units permissible with a zoning permit.
- Minor Subdivision Final Plats and Exempt Subdivisions will not require a CAPS.
- 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.
- Dormitory housing for university students, housing for the elderly/adult care living or adult special needs housing will not require a CAPS.
- 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.

- 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.
- Appeals to the denial of CAPS by the schools will be heard and decided upon by the Board of Aldermen.

### **Section by section description of the Adequate Public School Facilities Ordinance**

**Section 1**, of the ordinance incorporates the provisions of the “Model Adequate Public School Facilities Ordinance” by adding a new part III to Article V of the Carrboro Land Use Ordinance. The following new sections are provided under Part III Adequate Public Facilities:

#### **Section 15-88 Purpose**

Explains the purpose of Part III, which is basically to ensure that the approval of new residential development becomes effective in keeping with the availability of adequate public school facilities.

#### **Section 15-88.1 Certificate of Adequacy of Public School Facilities (CAPS)**

Subsection (a) requires that a CUP or SUP issued for residential developments greater than 5 lots do not become effective until CAPS are issued by the school district.

Subsection (b) makes it clear that CAPS are not required for a general use or conditional use rezoning or for a master land use plan approval. A statement will be provided on the application for the rezoning or master plan approval that will indicate that CAPS are required for subsequent land use permit approvals for residential developments greater than 5 lots.

Subsection (c) states that CAPS must be obtained from the School District in keeping with the MOU.

Subsection (d) makes it clear that CAPS are attached to the land in the same manner as land use permits and may not be severed or transferred separately.

#### **Section 15-88.2 Service Levels**

This section incorporates the school service levels as provided by the MOU and defines the terms “building capacity” and “school membership” as defined in the MOU.

#### **Section 15-88.3 Expiration of Certificates of Adequacy of Public School Facilities**

Caps are issued with and expire with the SUP or CUP.

#### **Section 15-88.4 Exemption From Certification Requirement for Development with Negligible Student Generation Rates**

As provided for in Section 8 of the MOU, exempts certain residential developments (30 year commitment) from the CAPS requirement i.e. elderly/adult day care/adult special needs units; dormitory housing for university students.

#### **Section 15-88.5 Applicability to Previously Approved Projects and Projects Pending Approval**

Subsection (a) CAPS are required projects that apply for a CUP or SUP after the effective date of this ordinance



Subsection (b) Amendments to previously approved projects will require CAPS if the number of units is increased by more than 5% of the permitted units or 5 units, whichever is less.

Subsection (c) allows the Board of Aldermen to issue a special exception to the CAPS requirement for the issuance of a CUP or SUP within a previously approved planned unit development or master plan development if the Board finds after an evidentiary hearing that: 1) the CAPS have been denied, 2) substantial expenditures or binding obligations have been made, and 3) would be unreasonably prejudiced. Five factors are provided to guide the Board in making its findings.

Subsection (d) the decision of the Board of Aldermen involving a special exception application is subject to the review by the Orange County Superior Court. This section provides filing procedures for the review.

Subsection (e) the Mayor or acting mayor may issue oaths concerning special exceptions.

#### Section 15-88.6 Appeal of School District denial of CAPS

This section provides a procedure for an applicant to appeal the denial of CAPS within 30 days to the Board of Aldermen and provides a procedure for further appeal to the Orange County Superior Court if the Board affirms the School District's decision to deny CAPS.

#### Section 15-88.7 Information Required of Applicants

Requires the applicant to submit information needed by the School District to issue CAPS; and to submit information needed by the Board of Aldermen to decide upon a special exception or an appeal. A copy of an applicant's request for a special exception or an appeal shall be served on the superintendent of the School District.

**Section 2** Repeals conflicting ordinance provisions.

**Section 3** Provides an effective date for this ordinance.

#### **RECOMMENDATION:**

The staff recommends that the Board of Aldermen provide direction on how they wish to proceed with the Adequate Public Facilities Ordinance.