

# BOARD OF ALDERMEN

ITEM NO. D(2)

## AGENDA ITEM ABSTRACT

**MEETING DATE: Tuesday, June 24, 2003**

**TITLE: Public Hearing on: A “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 “Schools Adequate Public Facilities Memorandum of Understanding”.**

<b>DEPARTMENT: PLANNING</b>	<b>PUBLIC HEARING: YES <u>X</u> NO <u>  </u></b>
<b>ATTACHMENTS:</b> A. MOU B. MOU Addendum C. Ordinance D. 5/13/03 Memo from Mike Brough E. Resolution F. Planning Board Recommendation G. Merged School System Projection H. 4/29/03 Letter from Margaret Brown I. 6/16/03 Memo from Margaret Brown	<b>FOR INFORMATION CONTACT:</b> Roy Williford, 918-7325 Mike Brough

### **PURPOSE:**

The Board of Aldermen set this public hearing on June 03, 2003 to consider the adoption of:

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 Schools Adequate Public Facilities Memorandum of Understanding.

### **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 May 14, 2002 revisions that were previously included in a separate addendum have been incorporated into the revised MOU (Attachment A). In addition, the MOU contains revisions to section 3 resulting from the Aldermen’s February 18, 2003 work session that incorporates changes to the process for the school system to follow in the issuance of Certificates of Adequacy of Public School Facilities or “CAPS”. An additional provision has been included entitled “Addendum to Schools Adequate Public Facilities Memorandum of Understanding” (Attachment B) that delays the requirement for additional high school capacity until high school #3 opens. A companion

provision has been added to the proposed land use ordinance amendment under section 15-88.2(b) that suspends the high school threshold until such time that high school #3 opens. The added provision is shown as bold-underlined text on the top of the third page of the amendment (Attachment C). These new provisions should help prevent one developer from taking all available CAPS at once since a larger project will be projected to phase in over a period of several years so it will not take all the CAPS available in the first year. That will leave CAPS available for smaller projects, which will build out in the earlier years. In addition, the new enrollment projection method proposed under section 3 of the MOU will eliminate the double counting produced by the former projection method and initially increase the supply of CAPS. The addendum that suspends the high school threshold will also initially increase the supply of CAPS.

The Carrboro Board of Aldermen during their February 18<sup>th</sup> work-session stated that they would like to see how the school projections play out for a merged school district. Attachment G provides the result of a merged school system. This spread sheet produces projections for a merged system by combining the January 30, 2003 certified school capacity projections for the Chapel Hill/Carrboro City Schools with the projections for the Orange County Schools. The merged system shows a positive capacity for all three school levels throughout the projection period.

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) before it becomes an effective agreement. Orange County anticipates adopting the 2003-2013 CIP as part of the budget adoption process scheduled for June 24 or 26, 2003. As of 6/19/03 the County has not produced a draft CIP that contains a schedule for new school facilities. Answers to questions posed by the Aldermen regarding future school improvements cannot be fully addressed until a new CIP is adopted by the Orange County Commissioners.

The two towns and the county must amend their respective land use ordinances to enact the Schools Adequate Public Facilities regulations (Attachment C). A public hearing on the amended land use regulations must be held by each jurisdiction prior to their adoption. Orange County held a public hearing on January 21, 2003 and anticipates taking action on the revised MOU and Ordinance on or about June 26, 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. Chapel Hill will need to adopt the revised MOU (scheduled for June 23, 2003) since it contains revisions to Sections 1(d), 3 and 9 as well as adopt the 6/4/03 addendum regarding the construction of High School number 3.

## **MEMORANDUM OF UNDERSTANDING**

The attached (Attachment A) Memorandum of Understanding (MOU) represents an agreement among Orange County, the Chapel Hill/Carrboro City Schools, and the municipalities of Chapel Hill and Carrboro to work together to ensure that new growth within the school district occurs at a pace that allows the County and the School District to provide adequate school facilities to serve the children within such new developments. 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 proposed Orange County 2003-2013 CIP (proposed for adoption on June 24 or 26, 2003) will be used to determine available capacity in the base year (November 2003 to November 14, 2004). For illustration purposes the current 2002-2012 CIP will be used for this analysis since the 2003-2013 CIP hasn’t been adopted. 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 School # 10			1.125m	9.225m	2.45m						12.8m

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

Given the 2002-12 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 County recommends a method that averages 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 tables.

**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
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**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 1.d has been modified in accordance with a previous addendum 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

**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".

**Section3.a** Requires the school district to make the following calculations in accordance with the remaining provisions of this section and section 1:

- On November 15<sup>th</sup> of each year calculate building capacity and school membership of each school level;
- On November 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.

**Section3.b** Defines base year as Nov 15 in the current year to Nov 14 of the next calendar year;

**Section3.c** Provides the school district with a method for projecting school building capacity over the 10 years following the base year;

## BUILDING CAPACITY

### **ELEMENTARY SCHOOL**

School Year	02-03 base Yr	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 base Yr	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 base Yr	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** Provides a method for calculating school membership. In the first year (base year) the school membership is that determined on November 15 in which the ordinance is adopted. For illustration purposes the Nov 15<sup>th</sup> 2002 memberships will be used. These membership numbers will be shown across the projection period as provided below. As Caps are issued the membership will be increased according to the number of students generated by anticipated new housing types by grade level by year.

#### SCHOOL MEMBERSHIP

Capacity Available on 2-15	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Elementary	4,555	4,555	4,555	4,555	4,555	4,555	4,555	4,555	4,555	4,555	4,555
Middle	2,604	2,604	2,604	2,604	2,604	2,604	2,604	2,604	2,604	2,604	2,604
High	3,184	3,184	3,184	3,184	3,184	3,184	3,184	3,184	3,184	3,184	3,184

**Section 3.e** This section calls for the membership figures to be recalibrated as certified membership figures, which will be included in succeeding base years. The membership increases produced from previously issued CAPS will be added to the new base year figures according to their respective effective year.

**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 (for example 4 Certificates of Occupancy per month with the first CO issued 2 years after Land Use Permit/CUP Approval) and phasing plans approved as part of the development permit when determining the impact of the development on school membership.

# 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

**Section 3.g** Requires the school district to determine the amount of available capacity on November 15 for each school level throughout the ten-year projection period beginning with the base year

For an example as to how the school district will determine available capacity see Attachment D (May 13, 2003 Memo from Mike Brough).

The school district will issue CAPS if each projected school level is sufficient to accommodate the additional membership resulting from the new development and 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. Section 9 has been modified per an earlier addendum, to indicate that Carrboro and/or Chapel Hill will remain committed to the Memorandum of Understanding as long as Orange County continues to execute the Capital Investment Program (CIP) as agreed to in the Memorandum.

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

The attached Addendum to the Memorandum of Understanding (Attachment B) temporarily amends section 3(g) by allowing the Chapel Hill/Carrboro School District to issue CAPS without regard to whether or not school membership within the High School Level exceeds 110% of building capacity. If adopted, this provision will remain in effect until the day that the third high school within the district is first attended by high school students. It is anticipated that the third high school should be ready to receive new high school students when the 2006-07 school year begins

## **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 (Attachment C) 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.

A provision has been added to the proposed land use ordinance amendment under section 15-88.2(b) that suspends the high school threshold until such time that high school #3 opens. The added provision is shown as bold-underlined text on the top of the third page of the amendment (Attachment C).

#### **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 adopt:

1. The attached resolution (Attachment E) which adopts and authorizes the Mayor to sign the "Schools Adequate Public Facilities Memorandum of Understanding" and the "Addendum to Schools Adequate Public Facilities Memorandum of Understanding"; and
2. The attached ordinance (Attachment C) entitled "*Land Use Ordinance Text Amendment to Require That The Adequacy Of Public School Facilities To Accommodate New Development Be Considered In The Approval Process*".