

## ARTICLE IV

### PERMITS AND FINAL PLAT APPROVAL

#### PART IV. ADEQUATE PUBLIC SCHOOL FACILITIES (JULY 17, 2003)

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

The purpose of this Part IV is to ensure that, to the maximum extent practical, approval of new residential development will become effective only when it can reasonably be expected that adequate public school facilities will be available to accommodate such new development.

##### **Section 15-88.1 Certificate of Adequacy of Public School Facilities.**

(a) Subject to the remaining provisions of this part, no approval under this ordinance of a conditional or special use permit for a residential development shall become effective unless and until Certificate of Adequacy of Public School Facilities (CAPS) for the project has been issued by the School District. Notwithstanding the foregoing, this subsection shall not apply to conditional use permits for residential developments less than five lots or dwelling units in the WR, B-5 and WM-3 zoning districts.

(b) A CAPS shall not be required for a general use or conditional use rezoning or for a master land use plan. However, even if a rezoning or master plan is approved, a CAPS will nevertheless be required before any of the permits or approvals identified in subsection (a) of this section shall become effective, and the rezoning of the property or approval of a master plan provides no indication as to whether the CAPS will be issued. The application for rezoning or master plan approval shall contain a statement to this effect.

(c) A CAPS must be obtained from the School District. The School District will issue or deny a CAPS in accordance with the provisions of the Memorandum of Understanding between Carrboro, Chapel Hill, Orange County, and the Chapel Hill Carrboro School District dated July 17, 2003.

(d) A CAPS attaches to the land in the same way that development permission attaches to the land. A CAPS may be transferred along with other interests in the property with respect to which such CAPS is issued, but may not be severed or transferred separately.

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

(a) This section describes the service levels regarded as adequate by the parties to the Memorandum of Understanding described in subsection (b) with respect to public school facilities.

*Art. IV PERMITS AND FINAL PLAT APPROVAL*

(b) As provided in the Memorandum of Understanding between Orange County, Chapel Hill, Carrboro, and the Chapel Hill/Carrboro School District, adequate service levels for public schools shall be deemed to exist with respect to a proposed new residential development if, given the number of school age children projected to reside in that development, and considering all the factors listed in the Memorandum of Understanding, projected school membership for the elementary schools, the middle schools, and the high school(s) within the Chapel Hill/Carrboro School District will not exceed the following percentages of the building capacities of each of the following three school levels:

Elementary school level	<u>105%</u>
Middle school level	<u>107%</u>
High school level	<u>110%</u>

For the period of time beginning the effective date of this ordinance and terminating on the day on which the third high school within the Chapel Hill-Carrboro City School District is first attended by high school students, the determination by the Chapel Hill-Carrboro City School District that adequate service levels for public schools exist shall be made without regard to whether or not projected capacity of the High School level exceeds 110% of Building Capacity. On and after the day on which the third high school within the Chapel Hill-Carrboro City School District is first attended by high school students, determination by the Chapel Hill-Carrboro City School District that adequate service levels for public schools exist shall be made only if projected capacity of each school level does not exceed the following:

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

For purposes of this ordinance, the terms "building capacity" and "school membership" shall have the same meaning attributed in the Schools Adequate Public Facilities Memorandum of Understanding among the Towns of Carrboro, Chapel Hill, Orange County, and the Chapel Hill/Carrboro Board of Education.

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

A CAPS issued in connection with approval of a conditional or special use permit shall expire automatically upon the expiration of such permit approval.

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

In recognition of the fact that some new development will have a negligible impact on school capacity, a CAPS shall not be required under the following circumstances:

*Art. IV PERMITS AND FINAL PLAT APPROVAL*

- a. For residential developments restricted by law and/or covenant for a period of at least thirty years to housing for the elderly and/or adult care living and/or adult special needs;
- b. For residential developments restricted for a period of at least thirty years to dormitory housing for university students.

If the use of a development restricted as provided above changes, then before a permit authorizing such change of use becomes effective, a CAPS must be issued just as if the development were being constructed initially.

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

(a) Except as otherwise provided herein, the provisions of this part shall only apply to applications for approval of conditional or special use permits that are submitted for approval after the effective date of this ordinance.

(b) The provisions of this part shall not apply to amendments to special or conditional use permit approvals issued prior to the effective date of this ordinance so long as the approvals have not expired and the proposed amendments do not increase the number of dwelling units authorized within the development by more than five percent or five dwelling units, whichever is less.

(c) The Board of Aldermen shall issue a special exception to the CAPS requirement to an applicant whose application for approval of a conditional or special use permit covers property within a planned unit development or master plan project that was approved prior to the effective date of this ordinance, if the Board of Aldermen finds, after an evidentiary hearing, that the applicant has (1) applied to the School District for a CAPS and the application has been denied, (2) in good faith made substantial expenditures or incurred substantial binding obligations in reasonable reliance on the previously obtained planned unit development or master plan approval, and (3) would be unreasonably prejudiced if development in accordance with the previously approved development or plan is delayed due to the provisions of this ordinance. In deciding whether these findings can be made, the Board of Aldermen shall consider the following, among other relevant factors:

- (1) Whether the developer has installed streets, utilities, or other facilities or expended substantial sums in the planning and preparation for installation of such facilities which were designed to serve or to be paid for in part by the development of portions of the planned unit development or master planned project that have not yet been approved for construction;
- (2) Whether the developer has installed streets, utilities, or other facilities or expended substantial sums in the planning and preparation for installation of such

*Art. IV PERMITS AND FINAL PLAT APPROVAL*

facilities that directly benefit other properties outside the development in question or the general public;

(3) Whether the developer has donated land to the School District for the construction of school facilities or otherwise dedicated land or made improvements deemed to benefit the School District and its public school system;

(4) Whether the developer has had development approval for a substantial amount of time and has in good faith worked to timely implement the plan in reasonable reliance on the previously obtained approval;

(5) The duration of the delay that will occur until public school facilities are improved or exist to such an extent that a CAPS can be issued for the project, and the effect of such delay on the development and the developer.

(d) The decision of the Board of Aldermen involving a special exception application under subsection (c) is subject to review by the Orange County Superior Court by proceedings in the nature of certiorari. Any petition for review by the Superior Court shall be filed with the Clerk of Superior Court within 30 days after a written copy of the decision of the Board of Aldermen is delivered to the applicant and every other party who has filed a written request for such copy with the Clerk to the Board of Aldermen at the time of its hearing on the application for a special exception. The written copy of the decision of the Board of Aldermen may be delivered either by personal service or by certified mail, return receipt requested.

(e) The Mayor or any member temporarily acting as Mayor may, in his or her official capacity, administer oaths to witnesses in any hearing before the Board of Aldermen concerning a special exception.

**Section 15-88.6 Appeal of School District Denial of a CAPS.**

The applicant for a CAPS which is denied by the School District may, within 30 days of the date of the denial, appeal the denial to the Board of Aldermen. Any such appeal shall be heard by the Board of Aldermen at an evidentiary hearing before it. At this hearing the School District will present its reasons for the denial of the CAPS and the evidence it relied on in denying the CAPS. The applicant appealing the denial may present its reasons why the CAPS application should have, in its view, been approved and the evidentiary basis it contends supports approval. The Board of Aldermen may (1) affirm the decision of the School District, (2) remand to the School District for further proceedings in the event evidence is presented at the hearing before the Board of Aldermen not brought before the School District, or (3) issue a CAPS. The Board of Aldermen will only issue a CAPS if it finds that the CAPS should have been issued by the School District as prescribed in the Memorandum of Understanding among the School District, Orange County and the towns of Carrboro and Chapel Hill. A decision of the Board of Aldermen affirming the School District may be appealed by the applicant for a CAPS by

*Art. IV PERMITS AND FINAL PLAT APPROVAL*

proceedings in the nature of certiorari and as prescribed for an appeal under section 15-88.5 of this part.

**Section 15-88.7 Information Required From Applicants.**

The applicant for a CAPS shall submit to the School District all information reasonably deemed necessary by the School District to determine whether a CAPS should be issued under the provision of the Memorandum of Understanding. An applicant for a CAPS special exception or an applicant appealing a CAPS denial by the School District shall submit to the Board of Aldermen all information reasonably deemed necessary by the Board of Aldermen to determine whether a special exception should be granted as provided in Section 15-88.5 or for the hearing of an appeal of a School District denial of a CAPS as provided in Section 15-88.6. A copy of a request for a CAPS special exception or of an appeal of a School District denial of a CAPS shall be served on the superintendent of the School District. Service may be made by personal delivery or certified mail, return receipt requested.

**Section 15-89 through 15-90 Reserved.**

## SCHOOLS ADEQUATE PUBLIC FACILITIES MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered into this 17 day of July, 2003, by and between the Town of Carrboro, the Town of Chapel Hill, the Chapel Hill-Carrboro City Board of Education (the "School District") and Orange County.

WHEREAS, the portion of Orange County, served by the Chapel Hill/Carrboro School System has for the past decade been experiencing rapid growth in population; and

WHEREAS, this growth, and that which is anticipated, creates a demand for additional school facilities to accommodate the children who reside within new developments; and

WHEREAS, the responsibility for planning for and constructing new school facilities lies primarily with the Chapel Hill/Carrboro School Board, with funding provided by Orange County; and

WHEREAS, Chapel Hill, Carrboro, Orange County and the Chapel Hill School District, have recognized the need to work together to ensure that new growth within the School District occurs at a pace that allows Orange County and the School District to provide adequate school facilities to serve the children within such new developments;

WHEREAS, the parties have worked cooperatively and developed a system wherein school facilities are currently adequate to meet the needs of the citizens of the county and will continue to maintain a Capital Investment Plan (CIP) that is financially feasible and synchronized with historical growth patterns;

NOW, THEREFORE, the parties to this Memorandum hereby agree as follows:

Section 1. The parties will work cooperatively to develop a realistic Capital Improvement Plan for the construction of schools such that, from the effective date of this Memorandum, school membership within each school level (i.e. elementary, middle or high) does not exceed the following:

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

- a. For purposes of this Memorandum, the term "school membership" means the actual number of students attending school as of November 15 of each year. The figure is determined by considering the number of students enrolled (i.e. registered, regardless of whether a student is no longer attending school) and making adjustments for withdrawals, dropouts, deaths, retentions and promotions. Students who are merely absent from

class on the date membership is determined as a result of sickness or some other temporary reason are included in school membership figures. Each year the School District shall transmit its school membership to the parties to this agreement no later than five (5) school days after November 15. Within fifteen (15) school days after receiving the school membership calculations from the School District, the Board of County Commissioners shall approve the School District's school membership calculations.

- b. For purposes of this Memorandum, "building capacity" will be determined by reference to State guidelines and the School District guidelines (consistent with CIP School Construction Guidelines/policies developed by the School District and the Board of County Commissioners) and will be determined by a joint action of the School Board and the Orange County Board of Commissioners. As used herein the term "building capacity" refers to permanent buildings. Mobile classrooms and other temporary student accommodating classroom spaces are not permanent buildings and may not be counted in determining the school districts building capacity. The School District shall transmit its building capacity to the parties to this agreement no later than five (5) school days after November 15. Within fifteen (15) school days after receiving the building capacity calculations from the School District, the Board of County Commissioners shall approve the School District's building capacity calculations.
- c. Prior to the adoption of the ordinances referenced in Section 2, the parties shall reach agreement on the following:
  - (i) A Capital Improvement Program (CIP) that will achieve the objectives of this Memorandum;
  - (ii) A projected growth rate for student membership within the School District's three school levels during the ten year life of the CIP;
  - (iii) A methodology for determining the projected growth rate for student membership; and
  - (iv) The number of students at each level expected to be generated by each new housing type (i.e., the "student generation rate").
- d. After the adoption of the ordinances referenced in Section 2, the Orange County Board of Commissioners may change the projected student membership growth rate, the methodology used to determine this rate, or the student generation rate if the Board concludes that such a change is necessary to predict growth more accurately. Before making any such change, the Board shall receive and consider the recommendation of a staff committee consisting of the planning directors of the Town(s) and the County and a representative of the School District appointed by the Superintendent. The committee shall provide, in a timely manner, a copy of its recommendation to the governing boards of the other parties to this memorandum at the time it provides such recommendation to the Board of

Commissioners and the Board of Commissioners shall provide an opportunity for those governing Boards to comment on the recommendation. In making its recommendation, the committee shall consider the following, and in making its determination, the Board of Commissioners shall consider the following:

- (i) The accuracy of the methodology and projected growth rate then in use, in projecting school membership for the current school year;
- (ii) The accuracy of the student generation rate then in use in predicting the number of students at each level actually generated by each new housing type;
- (iii) Approval of and issuance of CAPS for residential developments that, individually or collectively, are of sufficient magnitude to alter the previously agreed upon school membership growth projections; or
- (iv) Other trends and factors tending to alter the previously agreed upon projected growth rates.

If any such change is made in the projected growth rate, the methodology for determining this rate, or the student generation rate, the Orange County Board of Commissioners shall inform the other parties to this Memorandum prior to February 1<sup>st</sup> in any year in which such change is intended to become effective what change was made and why it was necessary.

- e. The Orange County Board of Commissioners shall provide a copy of the updated CIP to each of the parties to the Memorandum as soon as it is revised, annually or otherwise.

Section 2. The towns and the county will adopt amendments to their respective ordinances, conceptually similar to that attached hereto as Exhibit A, to coordinate the approval of residential developments within the School District with the adequacy of existing and proposed school facilities.

Section 3. The following process shall be followed by the School District to receive and take action upon applications for Certificates of Adequacy of Public School Facilities ("CAPS") submitted by persons who are required by an implementing ordinance conceptually similar to that attached as Exhibit A to have such certificates before the development permission they have received from the town or county becomes effective.

- a. On November 15<sup>th</sup> of each year, the School District shall calculate the building capacity of each school level and the school membership of each school level as of November 15<sup>th</sup> of that year. Also on November 15<sup>th</sup> of each year, the School District shall calculate the projected building capacity for each school level and the projected school membership for



each school level as of November 15<sup>th</sup> in each of the following ten years. These calculations shall be made in accordance with the provisions of Section 1.a and Section 1.b. and also in accordance with the remaining provisions of this section.

- b. On November 15<sup>th</sup> of the year in which the calculation above is made, the school building capacity numbers and the school membership numbers as of November 15<sup>th</sup> of that year are known figures (i.e. not projections). The twelve month period beginning on November 15<sup>th</sup> of the year in which the calculation is made and ending on November 14<sup>th</sup> of the following year is referred to as the "base year."
- c. Projections of school building capacity as of November 15<sup>th</sup> in each of the ten years following the base year shall be derived from the following:
  - (i) A calculation of the existing building capacity within each school level;
  - (ii) The anticipated opening date of schools under construction;
  - (iii) The anticipated opening date of schools on the ten-year CIP for which funding has been committed by the Board of Commissioners as a result of an approved bond issue, an approved installment purchase agreement, or otherwise; and
  - (iv) The anticipated closing dates of any schools within the School District.
- d. In the first year in which the ordinance adopted pursuant to this Memorandum becomes effective, school membership figures as of November 15<sup>th</sup> in each of the succeeding ten years shall initially be assumed to be the same school membership figures as are determined for the base year. As CAPS are issued during the base year, school membership figures for the base year and succeeding years shall be modified to reflect the additional students from the developments for which CAPS are issued.
- e. On each November 15<sup>th</sup> following the first year in which the ordinance adopted pursuant to this Memorandum becomes effective, school membership figures as of November 15<sup>th</sup> in each of the succeeding ten years shall be determined by adding to the school membership figures for the base year the number of students projected to be added to the schools in each successive year by developments for which CAPS have been issued in accordance with this section.
- f. When an application for a CAPS is submitted, the School District shall determine the impact on school membership for each school level as of November 15<sup>th</sup> in each year of the period-during which the development is expected to be adding new students to the school system as the result of such new construction. In making this determination, the School District shall rely upon the figures established under Section 1 of this Memorandum as to the number of students at each level expected to be generated by each housing type, and data furnished by the applicable

planning department as to the expected rate at which new dwellings within developments similar in size and type to the proposed development are likely to be occupied. Notwithstanding the foregoing, if, upon request of the applicant, the planning jurisdiction approving the development imposes enforceable conditions upon the development (such as a phasing schedule) to limit the rate at which new dwellings within the development are expected to be occupied, then the School District shall take such limitations into account in determining the impact of the development on school membership.

- g. The School District shall determine the amount of available capacity in each school level as of November 15<sup>th</sup> in the base year and each November 15<sup>th</sup> of the succeeding ten years by subtracting from the building capacity numbers for each of those years the student membership numbers for each of those years. The results shall then be compared with the number of students expected to be added to each school level as of November 15<sup>th</sup> in each year (as determined in accordance with subsection 3.f above). The School District shall make that information known to the parties to this agreement within 15 days of the comparison. If the School District determines that the projected remaining capacity of each school level is sufficient to accommodate the proposed development without exceeding the building capacity levels set forth in Section 1 of this Memorandum then the School District shall issue the CAPS. If the School District determines that the projected capacity of each school level is not sufficient to accommodate the proposed development without exceeding the building capacity levels set forth in Section 1, then the School District shall deny the CAPS. If a CAPS is denied, the applicant may seek approval from the appropriate planning jurisdiction of such modifications to the development as will allow for the issuance of a CAPS, and then reapply for a CAPS.
- h. The School District shall issue CAPS on a "first come first served" basis, according to the date a completed application for a CAPS is received. If projected building capacity is not available and an application for a CAPS is therefore denied, the development retains its priority in line based upon the CAPS application date.

- Section 4. A CAPS issued in connection with approval of a subdivision preliminary plat, minor subdivision final plat, site plan, or conditional or special use permit shall expire automatically upon the expiration of such plat, plan, or permit approval.
- Section 5. The towns and the county will provide to the School District all information reasonably requested by the School District to assist the District in making its determination as to whether the CAPS should be issued.
- Section 6. The School District will use its best efforts to construct new schools and permanent expansions or additions to existing schools in accordance with the CIP.
- Section 7. Orange County will use its best efforts to provide the funding to carry out the Capital Improvement Plan referenced in Section 1 above.

Section 8. In recognition of the fact that some new development will have a negligible impact on school capacity, a CAPS shall not be required under the following circumstances:

- a. For residential developments restricted by law and/or covenant for a period of at least thirty years to housing for the elderly and/or adult care living and/or adult special needs;
- b. For residential developments restricted for a period of at least thirty years to dormitory housing for university students.

If the use of a development restricted as provided above changes, then before a permit authorizing such change of use becomes effective, a CAPS must be issued just as if the development were being constructed initially.

Section 9. The parties acknowledge that this Memorandum of Understanding is not intended to and does not create legally binding obligations on any of the parties to act in accordance with its provisions. Rather, it constitutes a good faith statement of the intent of the parties to cooperate in a manner designed to meet the mutual objective of all the parties that the children who reside within the School District are able to attend school levels that satisfy the level of service standards set forth herein.

The Town of Carrboro and the Town of Chapel Hill intend to remain committed to the MOU only as long as Orange County continues to execute the CIP as agreed in the MOU. If the Carrboro Board of Aldermen finds Orange County is no longer in compliance with the CIP as outlined in the MOU, the Town of Carrboro will no longer consider itself bound by this MOU and may consider repealing the Ordinance referenced in Section 2 of this MOU. If the Chapel Hill Town Council finds Orange County is no longer in compliance with the CIP as outlined in the MOU, the Town of Chapel Hill will no longer consider itself bound by this MOU and may consider repealing the Ordinance referenced in Section 2 of this MOU.

This the 17 day of July, 2003.

TOWN OF CARRBORO

By: Michael R. Niles  
Mayor

Attest:

Town Clerk



TOWN OF CHAPEL HILL

SEAL

By: [Signature]  
Mayor

Attest:

[Signature]  
Town Clerk



Attest:

[Signature]  
Secretary

THE CHAPEL HILL-CARRBORO  
BOARD OF EDUCATION

By: [Signature]  
Chair



ORANGE COUNTY

By: [Signature]  
Chair, Board of Commissioners

Attest:

[Signature]  
Clerk to the Board of Commissioners

lsg:orangecounty\mou for chcs cb version with geg chgs clean.doc