

**ORANGE COUNTY
BOARD OF EDUCATION**

AGENDA ITEM ABSTRACT

Meeting Date: February 11, 2013

AGENDA ITEM No. 13-02-19

ACTION ITEM: (Y/N) N

SUBJECT: Schools Adequate Public Facilities Ordinance (SAPFO) Proposed Changes

INFO. CONTACT: Donna Coffey **PHONE:** 919-732-8126

ATTACHMENTS:

1. Letter from Orange County Attorney John Roberts – January 22, 2013.
 2. Proposed Amendment to SAPFO Memorandum of Understanding.
 3. Schools Adequate Public Facilities Memorandum of Understanding.
 4. County/Schools Collaboration Work Group Meeting Minutes – August 29, 2012.
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PURPOSE: The purpose of this agenda item is to provide the Board of Education an opportunity to discuss proposed changes to the SAPFO Ordinance.

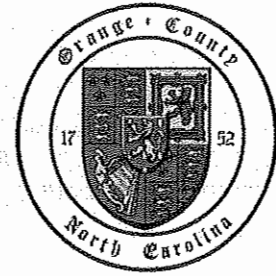
BACKGROUND: The Schools Adequate Public Facilities Ordinance was entered into by the Orange County Board of Education on July 17, 2003. See Attachment #4. According to a June 16, 2003 Memorandum to the town mayors and school board chairs from Margaret Brown, chair of the Orange County Board of County Commissioners at that time, "The preparation of the Schools Adequate Public Facilities MOU and model Ordinance represents a major effort of many elected officials, contributing boards, committees, and work groups. There have been many benefits already from improved data standardization, collection, and reporting and from cooperative planning and discussion among all the parties. The proposed ordinance can help us ensure that our school construction keeps pace with our rapid growth, so that our children can be educated in facilities that truly meet their needs. Excellent schools are essential elements of our quality of life here in Orange County." The SAPFO Ordinance was discussed during the August 29, 2012 collaboration meeting and the minutes of this discussion can be found in Attachment #5. The proposed changes to the current SAPFO Ordinance include amending the Ordinance to rescind the authority of Boards of Education to deny issuance of CAPS (Certificate of Adequate Public Facilities) sheets. Rationale for the proposed changes is explained in greater detail in the letter from John Roberts. See Attachment #1.

FINANCIAL IMPACT: This discussion does not create any financial impact.

RECOMMENDATION: The Superintendent recommends the Board of Education discuss the proposed changes to the SAPFO Ordinance.

Office of the County
Attorney

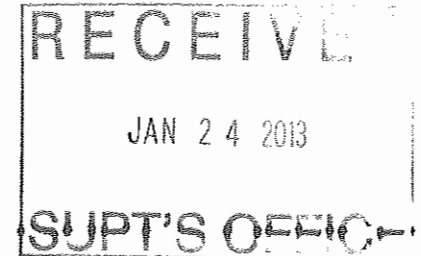
ORANGE COUNTY
P.O. BOX 8181
200 S. CAMERON STREET
HILLSBOROUGH, NC 27278



January 22, 2013

Patrick Rhodes, Superintendent
Orange County Schools
200 East King Street
Hillsborough, NC 27278

Tom Forcella, Superintendent
Chapel Hill/Carrboro City Schools
750 S. Merritt Mill Road
Chapel Hill, NC 27516



Dear Messrs Rhodes and Forcella:

In August the North Carolina Supreme Court published its decision in the case of *Lanvale Properties, LLC and Cabarrus County Building Industry Association v. County of Cabarrus and City of Locust*, 731 S.E.2d 800 (2012). The case was directly focused on the legality of Cabarrus County's adequate public facilities ordinance. In its holding the Court, although primarily focused on the exaction of fees to offset development impacts, declared the county's adoption of an adequate public facilities ordinance to be statutorily unauthorized. Cabarrus County petitioned the Court to revisit the decision in an effort to sever the fee exaction provisions from the ordinance and to leave intact the provisions of their ordinance allowing the county to delay construction of new projects until school facilities could adequately meet the demand created by those new projects. The Court denied the petition.

I recently met with the attorneys for Carrboro, Chapel Hill, and Hillsborough to discuss the ramifications of this case on Orange County. Orange County's Schools Adequate Public Facilities Ordinance ("Ordinance") does not provide for fee exaction. However, the Ordinance authorizes the Boards of Education for Orange County and Chapel Hill/Carrboro to deny Certificates of Adequate Public Facilities ("CAPS") in situations wherein school capacity is exceeded by a certain amount. Any such denial would have the direct impact of delaying a project until such time as school facilities, whether through construction of new schools or otherwise, could meet the demand of that project.

After reviewing the case and discussing its potential impact to Orange County and the Towns the Towns' attorneys and I agreed it is necessary to amend the Ordinance to rescind the authority of the Boards of Education to deny issuance of CAPS. Each of us subsequently made that recommendation to our clients. We agreed there is a need to maintain the CAPS application process as a planning procedure for school construction. For this reason the proposed amendments to the Ordinance will be minor and primarily delete the offending provision, that being the denial of CAPS. This amendment will necessitate a corresponding revision to the memoranda of understanding by and among the Boards of Education,

County, and Towns. The revised memoranda will be circulated immediately upon adoption of the Ordinance amendments.

The proposed amendment to the Ordinance is scheduled for public hearing before the Board of County Commissioners on February 25, 2013. The Towns will each have separate processes for amending the Ordinance and you may wish to contact them to determine when they will consider the proposed amendment.

Please let me know if you have any questions.

Yours truly,

A handwritten signature in cursive script that reads "John L. Roberts". The signature is written in black ink and is positioned above the typed name.

John L. Roberts
Orange County Attorney

cc: Frank Clifton

AMENDMENT TO SCHOOLS ADEQUATE PUBLIC FACILITIES MEMORANDUM OF UNDERSTANDING

This Amendment to the Schools Adequate Public Facilities Memorandum of Understanding is entered into this _____ day of _____, 20__ by and between the Town of Carrboro, the Town of Chapel Hill, Orange County, and the Chapel Hill-Carrboro City Board of Education.

The parties agree that the Schools Adequate Public Facilities Memorandum of Understanding, dated July 17, 2003, is amended as follows:

1. Section 2 of the MOU is amended to read:

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.

2. Section 3 of the MOU is amended to read:

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.

3. Subsection 3.g and 3.h of the MOU are amended to read:

g. The School District shall determine the amount of available capacity in each school level as of November 15th in the base year and each November 15th 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 15th 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 without qualification. 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 issue the CAPS subject to the qualification that the project may be affected by a lack of school capacity and shall so inform each of the parties to this MOU, 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.~~

TOWN OF CARRBORO

ATTEST

By _____
Mayor

Town Clerk

TOWN OF CHAPEL HILL

ATTEST

By _____
Mayor

Town Clerk

ORANGE COUNTY

ATTEST

By _____
Chair, Board of Commissioners

Clerk to the Board of Commissioners

CHAPEL HILL CARRBORO BOARD
OF EDUCATION

By _____
Chair

ATTEST

Secretary

AN ORDINANCE AMENDING ARTICLE IV, PART IV (ADEQUATE PUBLIC SCHOOL FACILITIES) OF THE CARRBORO LAND USE ORDINANCE

THE CARRBORO BOARD OF ALDERMEN ORDAINS:

Section 1. Sections 15-88 and 15-88.1 of the Carrboro Land Use Ordinance are amended to read as follows:

Section 15-88 Purpose.

The purpose of this Part IV is to ensure that, to the maximum extent practical, approval of new residential development ~~is coordinated with the construction of new school facilities~~ ~~will become effective only when it can reasonably be expected~~ so 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 a 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, as amended.

(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 2. Section 15-88.6 of the Carrboro Land Use Ordinance (Appeal of School District Denial of a CAPS) is repealed.

Section 3. Section 15-88.7 is amended to read:

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 in order for a CAPS to be issued to determine whether a CAPS should be issued under the provisions 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 4. All provisions of any Town ordinance in conflict with this provision are repealed.

Section 5. This ordinance shall become effective upon adoption.

A RESOLUTION APPROVING AN AMENDMENT TO THE SCHOOLS ADEQUATE
PUBLIC FACILITIES MEMORANDUM OF UNDERSTANDING

THE CARRBORO BOARD OF ALDERMEN RESOLVES:

Section 1. The attached Amendment to the Schools Adequate Public Facilities Memorandum of Understanding is hereby approved, and the Mayor and Town Clerk are authorized to execute the same on behalf of the Town of Carrboro.

Section 2. This resolution is effective upon adoption.

**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 Hillsborough, the Orange County Board of Education (the "School District") and Orange County

WHEREAS, the portion of Orange County, served by the Orange County 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 Orange County School Board, with funding provided by Orange County; and

WHEREAS, Orange County, Hillsborough, and the Orange County 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 1st 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 15th 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 15th of that year. Also on November 15th 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 15th 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 15th of the year in which the calculation above is made, the school building capacity numbers and the school membership numbers as of November 15th of that year are known figures (i.e. not projections). The twelve month period beginning on November 15th of the year in which the calculation is made and ending on November 14th of the following year is referred to as the "base year."
- c. Projections of school building capacity as of November 15th 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 15th 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 15th following the first year in which the ordinance adopted pursuant to this Memorandum becomes effective, school membership figures as of November 15th 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 15th 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 15th in the base year and each November 15th 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 15th 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:

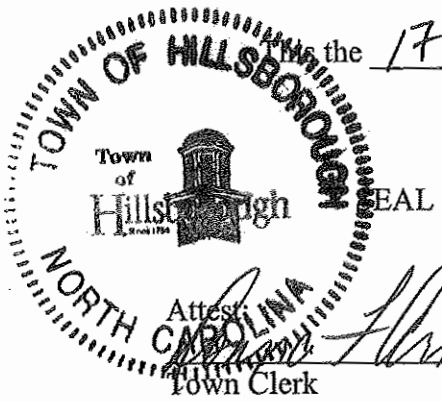
- a. For residential developments restricted by law and/or covenant for a period of at least thirty years to housing for the elderly and/or adult care living and/or adult special needs;
- b. For residential developments restricted for a period of at least thirty years to dormitory housing for university 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 Hillsborough intends to remain committed to the MOU only as long as Orange County continues to execute the CIP as agreed in the MOU. If the Hillsborough Board of Commissioners finds Orange County is no longer in compliance with the CIP as outlined in the MOU, the Town of Hillsborough will no longer consider itself bound by this MOU and may consider repealing the Ordinance referenced in Section 2 of this MOU.

the 17 day of July, 2003.



Attest: [Signature]
Town Clerk

TOWN OF HILLSBOROUGH

By: [Signature]
Mayor

ORANGE COUNTY BOARD OF EDUCATION

By: [Signature]
Chair

SEAL

Attest: [Signature]
Secretary



ORANGE COUNTY

By: Margaret W. Brown
Chair, Board of Commissioners

Attest:

[Signature]
Clerk to the Board of Commissioners

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

This Addendum to the Schools Adequate Public Facilities Memorandum of Understanding is entered into this 17 day of July, 2003, by and among the Town of Hillsborough, the Orange County Board of Education and Orange County.

WHEREAS, school membership within the middle school level in the Orange County School District for the 2002-2003 school year exceeds 107% of building capacity; and

WHEREAS, a third middle school for the Orange County School District is in the planning stage, on the Orange County 10-year CIP and funding has been committed to the Orange County Board of Education capital expense fund for this school by Orange County as a result of an approved bond issue; and

WHEREAS, it is anticipated that the third middle school in the Orange County School District will be completed and middle school students will begin attending this school when the 2006-2007 school year begins; and

WHEREAS, it is in the interest of the parties to the Schools Adequate Public Facilities Memorandum of Understanding among the Town of Hillsborough, the Orange County Board of Education and Orange County (hereinafter "the MOU") and to the citizens of Orange County that the Schools Adequate Public Facilities Program be implemented for the Orange County School District in 2003 in tandem with the implementation of the Program for the Chapel Hill-Carrboro City School District;

NOW, THEREFORE, the parties to this Addendum to the MOU and to the MOU hereby agree that Section 3.g. of the MOU is amended by deleting Section 3.g. and replacing it with the following:

Section 3.

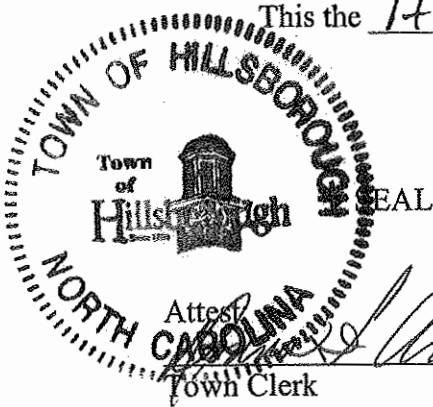
- g. The School District shall determine the amount of available capacity in each school level as of November 15th in the base year and each November 15th of the succeeding ten years by subtracting from the building capacity numbers for each of those years the student membership numbers for each of those years. The results shall then be compared with the number of students expected to be added to each school level as of November 15th 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.

For the period of time beginning the effective date of the ordinances referred to in Section 2 of this MOU and terminating on the day on which the third middle school within the Orange County School District is first attended by middle school students, the determination by the Orange County School District that adequate service levels for public schools exist shall be made without regard to whether or not school membership within the Middle School level exceeds 107% of Building Capacity. On and after the day on which the third middle school within the Orange County School District is first attended by middle school students, determination by the Orange County School District that adequate service levels for public schools exist shall be made only if school membership within 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

This the 17 day of July, 2003



TOWN OF HILLSBOROUGH

By: Joe Phelps
Mayor

ORANGE COUNTY BOARD OF
EDUCATION

By: Keith D. Cook
Chair

SEAL

Attest: [Signature]
Secretary



ORANGE COUNTY

By: Margaret W Brown
Chair, Board of Commissioners

Attest: Deanna S Boh
Clerk to the Board of Commissioners

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County/Schools Collaboration Work Group Meeting
Tuesday, August 29, 2012
Lincoln Center, Chapel Hill

Attendees: Work Group Members present: Michelle Brownstein, Mia Burroughs, Frank Clifton, Donna Coffey, Tom Forcella, Stephen Halkiotis, Pam Hemminger, Bernadette Pelissier, Patrick Rhodes. Staff present: Donna Brinkley, Clarence Grier, Paul Laughton, Todd LoFrese, George McFarley, Jr., Michael Talbert, Greg Wilder, Andy Sachs (facilitator).

From: Minutes pages 2,3 &4

SAPFO and CAPS

The Work Group decided to move this agenda item to earlier in the meeting.

Ms. Burroughs reported that she had communicated with Mayors Chilton and Kleinschmidt, and that the mayors did not appear to be alarmed by the district's position with respect to CAPS. Mr. LoFrese reported that he spoke with the Chapel Hill and Carrboro Planning Departments with similar results.

Mr. Clifton predicted that if the City Schools board denies a CAPS then SAPFO will be challenged in court and overturned. Legal or not, it's a great planning tool and it would be great to keep something like it, he said.

Mr. LoFrese said that the City Schools' attorney suggested continued communication among the districts, County, and municipalities. The student population attendance figures will be updated November 15, he said. Multi-family units appear to be where the growth is coming from. Some need two school buses.

Mr. Clifton said that the questions appear to be whether it makes sense to retain CAPS, and whether we can keep SAPFO as a planning tool. I would hate to see the schools put their foot down and get into an expensive legal challenge, he said.

Commissioner Pelissier reported that she and Commissioner Hemminger had met earlier this spring with Mayor Glendel Stephenson of Mebane, two city council members, and City Manager Robert Wilson. There was discussion of opportunities for Mebane to collaborate in identifying a potential school site and Mebane expressed interest. Commissioner Hemminger said that Mebane is interested in water and sewer services to support commercial growth. Those services would be needed for new school facilities as well, she said. We suggested that the City talk with the Orange County Schools about sites for elementary schools as a way of integrating the two jurisdictions' respective needs. But Mebane is not interested in participating in SAPFO, as it would leave the City vulnerable to "artificial" growth limits from what it sees as an external actor. Commissioner Hemminger added that she's concerned about the Chapel

Hill 2020 vision, which includes higher densities (and taller residential development) that will add population pressure to the City Schools.

Dr. Halkiotis reported that OCS had contacted Margaret Hauth, the Hillsborough Planning Director, about CAPS and SAPFO. She explained that a new hospital is about to break ground in town, as well as a new Senior Center at the SportsPlex. Mr. Rhodes elaborated: there are 103 more students in OCS this year. 167 new single family homes and 128 multi-family homes are expected to come on line in the next year. Also, he said, the proposed Hillsborough Station development is expected to add students.

Dr. Halkiotis said that Mebane had not in the past expressed any interest in sharing information with OCS. Commissioner Pelissier said that Orange County now has a good working relationship with the City. It is different now from what it has been in the past, she said. We're cooperating on economic development and on border issues with Alamance County. Mebane has offered to get us the information we need. They're open. Mr. Clifton said that Mebane is not interested in increasing residential development in Orange County. Their goal is to expand their commercial base here.

Dr. Brownstein asked for an explicit consensus on the proposal for the three jurisdictions to convene their respective attorneys to clarify a way forward with respect to CAPS and SAPFO. Ms. Burroughs said that she'd like to know whether the City Schools would incur extraordinary legal costs if it denied CAPS and then backed off after a developer challenged SAPFO. Mr. LoFrese said that SAPFO is a lengthy document, and that he thinks it includes a pre-litigation appeals process. Dr. Bernstein said that the attorneys should confer together to clarify the jurisdictions' vulnerabilities. What would happen if we were challenged? Mr. LoFrese said that the risks would depend upon the type of developer whose CAPS were denied: one might wait a year, another might sue on principle. Dr. Halkiotis said that the Home Builders Association and Realtors would be aggressive.

Commissioner Hemminger agreed with the proposal to convene the attorneys. Mr. Clifton said that he would ask the County attorney to contact the school districts' in-house attorneys, and consider including the in-house attorneys from the towns as well; the County Planning Director will be available to assist them. Ms. Burroughs suggested that the item also be placed on the Joint Boards agenda for September 13.