

Contents

Article XXIII. Adequate Public Facilities Standards..... 2  
Section 360 Introduction..... 2  
Section 361 How to Use this Article..... 3  
Section 362 Definitions..... 3  
Section 363 Applicability. .... 9  
Section 364 Submittal Requirements..... 10  
Section 365 Processing. .... 11  
Section 366 Procedures for Determining Compliance with this Article..... 12  
Section 367 Mitigation..... 13  
Section 368 Impact Areas. .... 17  
Section 369 Scope of Determination; Reservation of Capacity..... 17  
Section 370 How to Determine the Impacts of Development. .... 19  
Section 371 How to Measure Available Capacity. .... 20  
Section 372 Appeals. .... 24

AN ORDINANCE AMENDING THE UNION COUNTY LAND USE ORDINANCE

BE IT ORDAINED by the Board of Commissioners of Union County, North Carolina, that the Union County Land Use Ordinance is amended as follows:

1. A new Article XXIII is hereby added to the Union County Land Use Ordinance, which Article shall read as follows:

**Article XXIII. Adequate Public Facilities Standards.**

**Section 360 Introduction.**

This Article:

- Establishes standards for the timing and Phasing of new development based on the carrying Capacity of Public Facilities; and
- Ensures that Public Facilities needed to support new development meet or exceed the Level of Service standards established in this section; and
- Ensures that no Applications for development approval are approved that would cause a reduction in the levels of service for any Public Facilities below the Adopted Level of Service established in this Section; and
- Ensures that Adequate Public Facilities needed to support new development are available concurrent with the impacts of such development, or within a reasonable period of time;
- Encourages development in areas where public services are available and underutilized; and
- Establishes uniform procedures for the review of development Applications subject to the standards and requirements of this Section; and
- Establishes standards for the timing and phasing of development, changes in site and development design, or proffering of public facilities in order to establish flexibility, avoid the unreasonable delay of development approval, and to promote the County's planning policies.

**Section 361 How to Use this Article.**

Information in this Article is organized as follows:

What do the words and phrases used in this Article mean?	Section 362
What types of uses and Permits does this Article apply to?	Section 363
What do I submit with my Application?	Section 364
How is my Application processed? Who determines whether facilities are Adequate?	Section 365
What happens if facilities are adequate? What if facilities are presently inadequate? What conditions will apply to my Application if facilities are inadequate?	Section 366
If facilities are not Adequate, do I always have to phase my development or wait until they are Adequate? Or, do I have the option to provide the facilities so that I can move my plans forward?	Section 367
Where (over what area) are facilities required to be Adequate? What if my project is located in a municipality in the County?	Section 368
If facilities are determined to be Adequate or conditions are imposed, how long does this determination last? What effect does it have on other Permits that I need? If my project does not build out for awhile, will I have to go through the determination again?	Section 369
How are the impacts of a development measured?	Section 370
What are the standards for assessing whether or not facilities are "Adequate"?	Section 371
What if I disagree with the Permit agency's determination about whether I comply with this Article?	Section 372

**Section 362 Definitions.**

For purposes of this Article certain terms and words are defined as follows:

**Adequate or Adequacy:** A determination that facilities that are considered Available comply with the Adopted Level of Service standard.

**Adjoining Property:** see Article II, Section 15 of the Union County Land Use Ordinance.

**Adjoining School Clusters:** School clusters that share a common geographic boundary. The geographic boundaries are designated on the "attendance district maps" that are published by the Union County Public Schools, which maps are hereby incorporated by this reference. The Planning Director or his designee shall maintain the most recent version of the attendance district maps for purposes of administering this Article.

**Adopted Level of Service:** A measurement that quantifies a specific amount, frequency, Capacity, or response time of a Public Facility. The Adopted Level of Service is established in Section 371(b).

**Anticipated Demand:** The Anticipated Demand created by permitted, but unbuilt development in the Applicable Attendance Areas.

**Applicable Attendance Areas:** The Attendance Area that includes the Proposed Development.

**Applicant:** Any person, corporation, or entity who submits an Application that is subject to this Article (refer to Section 363).

**Application:** see Application for Development Approval.

**Application for Development Approval:** Any Application that would allow the development or establishment of a use that is subject to this Article (refer to Section 363).

**Attendance Area:** The geographic attendance area that is designated by the Union County Public Schools board of education. This is the area where the student population is served by a specific high school, middle schools and elementary schools (refer to G.S. Section 115C-47). An Attendance Area typically includes at least one (1) high school, at least one middle school, and a group of elementary schools.

**Available:** "Available" means that a Public Facility either: (1) exists and is operational, or (2) the Public Facility is Planned Capacity that is included in the methodology for determining compliance with this Article for a specific facility (refer to Section 371).

**Available Capacity:** Existing capacity or Planned Capacity of Public Facilities that is not already committed to existing or planned development, as provided in Section 371.

**Capacity:** The maximum demand that can be accommodated by a Public Facility without exceeding the Adopted Level of Service.

**Capacity, Core:** The capacity of a school facility, as determined by the Union County Public Schools, that is determined by:

- (1) dividing the net square footage of the dining area by four, and
- (2) dividing the net square footage of the media center and main reading room by four.

The smaller of those two capacities is the "core capacity."

**Capacity, Existing:** 100% of Existing Capacity, in enrollment, for all school facilities within the Applicable Attendance Area, measured by the Adopted Level of Service (see Section 371(b)). This includes facilities that have been constructed and are fully functional.

**Capacity, Maximum:** Capacity that is computed by adding the Rated Capacity of permanent Capital Improvements to temporary enhancements of Capacity through the use of relocatable or mobile classroom units as permitted by G.S. Section 115C-521, split sessions, multi-tracking, or year-round education, which practices are currently in place by the Union County Public Schools or programmed in the Capital Improvements Program. The Maximum Capacity is determined by the Union County Public Schools and approved by the Board of Education.

**Capacity, Planned:** Planned Capacity, in enrollment, for funded but unbuilt elementary, middle and high schools within the Attendance Area based upon the first two (2) years of the Capital Improvements Program. Capacity is measured by the Adopted Level of Service (see Section 371(b)). Projects must be under construction to be considered as Planned Capacity.

**Capacity, Rated:** Capacity that is determined by multiplying the number of permanent classrooms by the Class size LEA Average Ratio per classroom or space, with adjustments based upon the programmed use of the space. If the programmed use has not been determined for a Planned Capital Improvement, then Core Capacity is the Rated Capacity. The Rated Capacity is determined by the Union County Public Schools.

**Capital Improvement:** A Public Facility with a life expectancy of three or more years, to be owned and operated by or on behalf of the County, or the Union County Public Schools District.

**Capital Improvement, Planned:** See "Planned Capital Improvement."

**Capital Improvements Program:** A plan that describes the Capital Improvements that will be provided over a given time period. A "Capital Improvements Program" may refer either to the plan for a particular service area or to the aggregation of Capital Improvements and the associated costs programmed for all service areas for a particular category of public facilities. The Capital Improvements Program includes the most recent long-range plan submitted by the Union County Public Schools to Union County pursuant to G.S. Section 115C-521.

**Class size LEA Average Ratio:** The maximum legal class size describe as the "Class size LEA Average Ratio" in the School Facilities Guidelines, "Teacher Allotment Ratios."

**Committed Development:** Approved but unbuilt development. The amount of Committed Development is determined in accordance with Section 371(c) of this Article.

**Common Ownership:** ownership by the same person, corporation, firm, entity, partnership, or unincorporated association; or ownership by different corporations, firms, partnerships, entities, or unincorporated associations, in which a stockbroker, partner, or

associate, or a member of his family owns an interest in each corporation, firm, partnership, entity, or unincorporated association.

**Consent Agreement:** An executed contract between the County and an Applicant that formally sets forth development approval and requirements to achieve Adequacy. A Consent Agreement is a regulatory document containing specific conditions of development approval designed to implement the policies and criteria contained in this Article and, where the denial or deferral of development approval is disputed by the Applicant, to effectuate the public policy favoring the settlement of disputes. A Consent Agreement includes any Reimbursement Agreement (G.S. Section 153A-451, 160A-499), Public Enterprise Improvement Agreements (G.S. Section 153A-280 or 160A-320), Development Agreement (G.S. Sections 153A-379.1 et. seq. or 160A-400.20 et seq), or Site Specific Development Plan or Phased Development Plan (G.S. Section 153A-344.1, 160A 385.1), in which the Applicant lawfully agrees to provide improvements that mitigate the impacts of the Proposed Development.

**Currently Available Revenue Sources:** An existing source or amount of revenue that:

- is presently available to the County or the entity providing a Public Facility; and
- may be allocated towards capital expenses; and
- has been budgeted for the capital disbursements or debt service account applicable to a Planned Capital Improvement.

This term does not refer to a mere intent to increase the future level or amount of a revenue source, nor to a revenue source that is contingent on ratification by a public referendum. Mitigation that is guaranteed in a Consent Agreement is considered a Currently Available Revenue Source.

**Development Order:** An official decision to approve any Application that is subject to this Article. This includes any decision to approve a rezoning, Subdivision plat, site plan, or development plan.

**Dwelling Unit:** Any "Dwelling Unit" as defined in Article II, Section 15 of the Union County Land Use Ordinance. A "Dwelling Unit" includes any Residential Development, or any development that would result in the construction of any of the following:

- Dwelling, Attached
- Dwelling, Detached
- Dwelling, Duplex
- Dwelling, Multi-Family
- Dwelling, Multi-Family Apartments
- Dwelling, Multi-Family Conversion
- Dwelling, Multi-Family Townhomes
- Dwelling, Patio Home

Dwelling, Primary with Accessory Apartment  
Dwelling, Single-Family Detached, More Than One Dwelling Per Lot  
Dwelling, Single-Family Detached, One Dwelling Unit Per Lot  
Dwelling, Two Family  
Dwelling, Two-Family Apartment  
Dwelling, Two-Family Conversion  
Family Care Home/Handicapped, Aged, Infirm Home  
Group Development that involves the construction of a Dwelling Unit as defined above  
Halfway House  
Handicapped, Aged or Infirm Institution/Independent Living Center/Group Care Facility/Group Home  
Manufactured Home (including any Manufactured Home, Class A; Manufactured Home, Class B; Manufactured Home, Class C; Manufactured Home, Class D; Manufactured Home Park; Manufactured Home Park or Subdivision, Existing; Manufactured Home Park or Subdivision, Expansion To; Manufactured Home Park or Subdivision, New; Manufactured Home Space; or Manufactured Home Subdivision)  
Multi-Family Dwelling  
Planned Residential Development or Planned Unit Development that involves the construction of a Dwelling Unit as defined above  
Residency Hotel/Motel  
Zero Lot Line

**Elementary School Cluster:** The geographic area that is designated by the Union County Public Schools where the student population is served by a group of elementary schools. Union County schools are grouped into secondary attendance areas called clusters. Elementary schools are roughly grouped into clusters that feed into secondary schools. Some elementary schools are assigned to more than one cluster, but the geographic area of the cluster is established by the Union County Public Schools.

**Existing Demand:** The present, actual utilization of Public Facilities Capacity from existing (built) development. Examples include existing school enrollment, trip counts, or calls for service.

**Impact Area:** The area in which a proposed residential development is presumed to create a demand for Public Facilities. This area is evaluated to determine Adequacy. (Refer to Sections 369 of this Section.)

**Level of Service:** Level of Service indicates the Capacity per unit of demand for each Public Facility. It is an indicator of the extent or degree of service provided by a facility. This indicator is based upon and related to the operational characteristics of the facility.

**Manufactured Home:** A "Manufactured Home" as defined in Article II, Section 15 of the Union County Land Use Ordinance.

**Manufactured Home Park:** A "Manufactured Home Park" as defined in Article II, Section 15 of the Union County Land Use Ordinance.

**Mitigation:** An agreement by the Applicant, either as a condition of approval or as part of a Consent Agreement, to advance Public Facilities by mitigating its impacts. (Refer to Section 367 for Mitigation conditions). Mitigation may involve a monetary payment to the County, the actual construction or provision of needed facilities for the Union County Public Schools, or any other mechanism that adds student Capacity to the Union County Public Schools.

**Permit:** For purposes of this Article, a "Permit" means any:

- Subdivision plat
- Conditional use permit
- Special use permit
- Major development permit
- Rezoning
- Parallel Conditional Use Zoning District

**Phasing:** A condition of approval that imposes a buildout schedule that is tied to future increments of Planned Capacity.

**Planned Capacity:** Unbuilt Capacity that is included in the Capital Improvements Program, consistent with the standards provided in Section 371(c).

**Planned Capital Improvement:** A Capital Improvement that is scheduled for completion of construction within a period not to exceed six (6) years in a Capital Improvements Program.

**Proposed Development:** The development that is proposed in an Application for Development Approval, including all Dwelling Units, non-residential floor area, or other increments of demand on Public Facilities that would be created if the Application were approved.

**Public Facility:** A Capital Improvement for a public school that enables the school to serve additional students.

**Rated Capacity:** see Capacity, Rated.

**Reserve Capacity or Reservation of Capacity:** A determination that Public Facilities are Adequate that remains valid for subsequent stages of the approval process, as described in Section 369(a)(2) of this Article.

**Reviewing Agency:** The agency that reviews and that has jurisdiction to approve, approve with conditions, or deny an Application for a Permit. (Refer to Section 365 for a summary of the Reviewing Agencies).

**School Facilities Guidelines:** the document published by the North Carolina Public Schools and entitled "Facilities Guidelines," and dated September 2003, which document is hereby incorporated by this reference.

**School Facility:** see "Public Facility."

**Student Generation Rate:** The figure (stated as the number of students per Dwelling Unit) to be multiplied by a given number of Dwelling Units, by type, in order to determine the projected enrollment that results from those Dwelling Units. This may be computed using the Union County Public Schools or North Carolina Student Information Management System data, Census data, or similar data, and actual numbers of dwellings to determine expected students/dwelling. For purposes of this Article, the Student Generation Rate is established in Section 370.

**Subdivision:** A "subdivision," as defined in Article II, Section 15 of the Union County Land Use Ordinance. Subdivision includes any Proposed Development that would result in the creation of more than five residential lots or more than five Dwelling Units if the Proposed Development project were combined with any adjacent property and sharing a common owner or developer.

**Voluntary Mitigation Payment:** A Mitigation measure in which the Applicant agrees to contribute money to the County to defray the per-unit impacts of school facilities.

### **Section 363 Applicability.**

(a) This Article applies to any Application for a Permit that would authorize the construction of a Dwelling Unit, unless otherwise provided below.

(b) This Article does not apply to any use, development, project, structure, fence, sign or activity that does not create an impact on public schools. In order to demonstrate that there is no impact on public schools, the Applicant must include a legally binding restriction on occupancy by school-age children as part of the Application.

*Commentary:*

*This Article applies to every form of residential development, unless otherwise exempted. Residential development that is exempt will be tracked for its impact on public schools.*

*This Article applies to any type of Permit that authorizes residential development. Most residential development requires Subdivision plat approval. For multi-family buildings or Manufactured Home Parks that do not require Subdivision plat approval, this Article applies to any "CUD" district rezoning, site plan or site development plan that is required for approval of the Proposed Development.*

- (c) This Article does not apply to any Application for a Subdivision that involves five (5) or fewer lots for any parcels or tracts that are not under Common Ownership with Adjoining Property.

**Section 364 Submittal Requirements.**

- (a) An Application for Development Approval must include all information required by this Article and all required processing fees. No Application for Development Approval subject to this Article will be accepted, approved, granted or issued unless it provides sufficient information to determine whether the Capacity of Public Facilities is Adequate to support the Proposed Development.
- (b) For purposes of this Article, the following information must be submitted with the Application for Development Approval:
  - (1) the number of proposed Dwelling Units; and
  - (2) the Applicable Attendance Area and Adjoining School Clusters; and
  - (3) a Phasing schedule for the Proposed Development; and
  - (4) if the Applicant has determined that public facilities are not presently Available after initial consultation with the Planning Director or his designee, any proposed Mitigation requirements such as advancement of Capacity.
- (c) The Planning Director or his designee will determine whether the Application is complete and whether it complies with the applicable submission requirements. If the Application is incomplete or the submission requirements have not been complied with, the Planning Director or his designee will notify the Applicant and specify the deficiencies.
- (d) If the Application is complete and the submission requirements have been complied with, the Planning Director or his designee will evaluate the Application for compliance with the Adopted Level of Service and submit a recommendation in the staff report. If the Application is incomplete, the Planning Director or his designee will return it to the Applicant with an explanation of the deficiencies, and no further processing will occur until the deficiencies are corrected.

## **Section 365 Processing.**

(a) Staff Review

If the Application is complete and the submission requirements have been complied with, the Planning Director or his designee will evaluate the Application for compliance with the Adopted Level of Service and submit a recommendation in the staff report.

(b) Determination

The determination of whether facilities are Adequate must be made at the time of preliminary plat or, if no subdivision review is required, at the time of site plan review. The determination of whether public facilities are Adequate is made as part of the procedure for approving the Application. No separate procedure is required, except for Consent Agreements.

*Note: the Reviewing Agencies are as follows:*

**Preliminary Plat** - Planning staff, and Planning Director review the plat and refer any recommendations to the Planning Board. The Planning Board is the Reviewing Agency.

**Site Plan** - The Reviewing Agency is the Planning Director or his designee. The site plan must be approved prior to the issuance of a Zoning Compliance Permit.

**"CUD" District rezoning** - The Board of Commissioners must approve rezoning required for CUD districts and the issuance of required conditional use permits in CUD districts. (see Article IV of the Land Use Ordinance).

(c) Decision

The Reviewing Agency's decision must include the following, based upon the evidence in the record:

- the number of Dwelling Units proposed by the Applicant, by type, for each Public Facility;
- the Phasing of the Proposed Development, if applicable;
- the specific Public Facilities impacted by the Proposed Development;
- the extent of the impact of the Proposed Development in the applicable Impact Areas;
- the Capacity of existing Public Facilities in the Impact Areas that will be impacted by the Proposed Development;
- the demand on existing Public Facilities in the Impact Areas from existing and approved development;
- the availability of Existing Capacity to accommodate the Proposed Development; and
- if Existing Capacity is not Available, Planned Capacity and the year in which such Planned Capacity is projected to be Available.

**Consent Agreement** - the Reviewing Agency is the Union County Board of Commissioners.

(d) Consent Agreements.

- (1) A Consent Agreement must contain an integrated development scheme for a particular phase or phases of development approval, along with maps, diagrams and other appropriate materials showing future conditions consistent with the provisions of this Article.

- (2) A Consent Agreement may be submitted along with the Application, or provided at a later stage in the approval process if the staff recommends, or the Reviewing Agency determines, that Public Facilities are not Adequate.
  - (3) If the Applicant requests a Consent Agreement, it must be approved by the Union County Board of Commissioners. The Consent Agreement will be reviewed at a normal meeting of the Board of Commissioners, unless a special meeting is convened for this purpose. The meeting may be continued from time to time as needed to resolve issues raised by the Applicant or Commissioners.
  - (4) A Consent Agreement may Reserve Capacity if Mitigation is provided for in the agreement (refer to Section 367 and 369(a)(2)).
- (e) Development Orders in Incorporated Areas

For any Development Order that is filed in an incorporated area of Union County and that is submitted to the County for a determination of compliance with this Article:

- (1) the Applicant must file an Application that includes the information required by Section 364 for the applicable Public Facilities; and
- (2) the Applicant must obtain approval of a Consent Agreement pursuant to subsection (d), above.

### **Section 366 Procedures for Determining Compliance with this Article.**

When the Application is reviewed, the Reviewing Agency will take one of the following actions:

- (a) Approval

If the Reviewing Agency concludes that public facilities are presently Available at the Adopted Level of Service, it must approve the Application without any conditions required by this Article.

- (b) Denial

If the Reviewing Agency determines that any Public Facility will not be Available at the Adopted Level of Service based upon Available Capacity, the Reviewing Agency must deny the Application, or as an alternative, the Reviewing Agency may approve the Application with conditions as provided in subsection (c), below.

- (c) Conditions

The Reviewing Agency may require, or the Applicant may consent to, conditions that reduce or mitigate the impacts of the Proposed Development. Conditions may include any or a combination of the following:

- (1) deferral of final plats, building permits or certificates of occupancy until all Public Facilities are Available and Adequate if Public Facilities in the Impact Area are not Adequate to meet the Adopted Level of Service for the entire development proposal, consistent with the requirements of this Article;
- (2) phasing of final plats, building Permits, or certificates of occupancy so that future increments of development are not constructed until future Capacity becomes Available;
- (3) reduction of the density or intensity of the Proposed Development to a level consistent with the Available Capacity of Public Facilities;
- (4) provision by the Applicant of the Public Facilities necessary to provide Capacity to accommodate the Proposed Development at the Adopted Level of Service and at the time that the impact of the development will occur;
- (5) conditions agreed upon by the Applicant to advance, or partially advance the Public Facilities necessary to provide Capacity to accommodate the Proposed Development at the Adopted Level of Service and at the time that the impact of the development will occur. Provisions for advancement of Capacity are included in Section 367; or
- (6) any other reasonable conditions to ensure that all Public Facilities will be Adequate and Available concurrent with the impacts of the Proposed Development.

### **Section 367 Mitigation.**

- (a) Applicants may propose Mitigation measures to overcome a failure to meet one or more Level of Service standards including, but not limited to, payment of a pro rata share of facility Capacity costs necessary to accommodate the demand generated by the Proposed Development. Mitigation shall include only Capital Improvements that are used in computing Rated Capacity, or Voluntary Mitigation Payments. Mitigation may not include Capital Facilities that are only used to determine Maximum Capacity.
- (b) Any Mitigation, including any monetary contribution, land donation or construction of Public Facilities, shall be paid or completed prior to the issuance of any affected final plat or major site plan approval within the subject development.

- (c) The Applicant must provide the Mitigation:
- (1) at the time that the Permit is found to comply with this Article, or
  - (2) subject to security as provided in subsection (d). The Planning Director may accept installments of at least fifty percent (50%) of the security established for Mitigation that relates to a phased preliminary plat or zoning action. For purposes of this subsection, a "phased preliminary plat or zoning action" means:
    - (a) A preliminary plat in which a final plat for a portion of the residential lots will not be submitted during the two (2) fiscal years after approval of the preliminary plat; and
    - (b) A site plan, conditional use permit, special use permit, major development permit, rezoning, or Parallel Conditional Use Zoning District in which building permits for a portion of the dwelling units will not be submitted during the two (2) fiscal years after approval of the site plan.

*Commentary: this section gives the applicant the flexibility to move the permitting process forward if facilities are not presently adequate, while ensuring that the facilities that are needed to accommodate project demands are programmed or will otherwise become available. Subsection (c)(2) allows the applicant to use installments to Reserve Capacity for future project phases without incurring unreasonable upfront expenses. This also requires some payment for security to ensure that the necessary infrastructure is provided, and to avoid reserving capacity for speculative developments. The two-year period is used because the first 2 years of Planned Capacity is already considered in the impact analysis (see Section 371(c)).*

- (d) If Mitigation involves the construction of Public Facilities and the Applicant does not construct the facilities before the Permit is issued, the Applicant shall commit to construct the Public Facilities prior to the issuance of a building Permit as a condition of the Permit. The determination must include the following, at a minimum:
- (1) a binding Consent Agreement; and
  - (2) an escrow or other security established by the Planning Director or his designee. The amount of such security shall be equal to 1.25 times the cost of constructing all required improvements, including all land acquisition, construction and improvement costs; and

- (3) a method to address Adequacy and a requirement that it shall be completed prior to building Permits being issued; and
  - (4) for Planned Capital Improvements, a finding that the Planned Capital Improvement is included within the Capital Improvements Program of the school district or applicable service provider; and
  - (5) an estimate of the total financial resources needed to construct the Planned Capital Improvement and a description of the cost participation associated with the improvement; and
  - (6) a schedule for commencement and completion of construction of the Planned Capital Improvement with specific target dates for multi-phase or large-scale Capital Improvement projects; and
  - (7) a statement, based on analysis, that the Planned Capital Improvement is consistent with the Union County Land Use Ordinance; and
  - (8) at the option of the County Board of Commissioners and only if the Planned Capital Improvement will provide Capacity exceeding the demand generated by the Proposed Development, reimbursement, or a method to affect reimbursement, to the Applicant for the pro rata cost of the excess Capacity.
- (e) Voluntary Mitigation Payments shall be determined as follows:
- (1) The payment shall be based on the following formula:

**Formula for Computing Voluntary Mitigation Payment**

*VAP = S - C, where*

<i>S</i> means	The capital costs per dwelling unit, based upon the Student Generation Rate for each category of school. These costs are based upon the costs identified in the Union County Public Schools Capital Improvement Plan (CIP), divided by the Rated Capacity of the school improvements, and then multiplied by the Student Generation Rate for each category of school. If the Rated Capacity has not been determined, the capacity shall be based on the Core Capacity.
<i>C</i> means	Any adjustment to the Voluntary Mitigation Payment pursuant to subsection (2), below.

- (2) The Board of Commissioners may reduce the Voluntary Mitigation Payment if the Applicant demonstrates that actual per-unit costs are less than the amount shown. This demonstration may take into consideration a reduction in the payments ("Reductions") due to other contributions of taxes, fees, or similar payments from the Proposed Development that are reserved for Capital Improvements. Reductions may include the following that are applied to School Facilities that add student capacity:
- (a) that portion of ad valorem taxes authorized by Chapter 105 of the North Carolina General Statutes that are levied and collected by the County through the Union County Tax Administrator's Office, Collection Division, and earmarked for the Capital Outlay Fund as defined set forth in the Uniform Chart of Accounts, North Carolina Department of Instruction, Financial and Business Services section, or for outstanding bond issues for school capital improvements; and
  - (b) Federal and State revenues that are applied to school capital costs including grants, bond revenue, and monetary contributions toward capital costs received pursuant to the School Facilities Finance Act of 1987 (Public School Building Capital Fund or Critical School Facilities Needs Fund); North Carolina School Budget and Fiscal Control Act; or the Public School Building Bond Act of 1996, or other contributions for capital improvements provided by the State of North Carolina or the federal government; and
  - (c) Credit shall be given for land donation or construction of public facilities that are limited to eligible facility improvements necessitated by the new development and to like-kind facilities as authorized by the County's Land Use Ordinance and Land Development Plan.
- (3) Voluntary Mitigation Payments shall be earmarked for school facilities within the same Attendance Area as the proposed development. The Attendance Areas are those in existence at the time that the Application is approved. Voluntary Mitigation Payments shall not be applied to school facilities outside of this area, unless:
- (a) The County finds that the school facilities to which payments are applied will reasonably benefit the residents of the Proposed Development; or
  - (b) The applicant consents in writing or in a Consent Agreement to a different application of the funds or a waiver of the earmarking requirement.

- (4) The Board of County Commissioners may publish a schedule of Voluntary Mitigation Payments, consistent with this subsection, by resolution.

**Section 368 Impact Areas.**

- (a) Generally.

Availability and Adequacy of Public Facilities are determined with respect to school facilities within the geographic area served by the Union County Public Schools, including municipalities located within Union County. For purposes of measuring Capacity (see Section 371, below), the "Impact Area" includes all school facilities within the Applicable Attendance Area and, for elementary schools, elementary school clusters.

- (b) Incorporated Areas.

The Planning Director or his designee may determine whether school facilities are Adequate for Proposed Development within any incorporated area of the County pursuant to an intergovernmental agreement or memorandum of understanding with the municipality that has zoning or Subdivision jurisdiction over that territory.

**Section 369 Scope of Determination; Reservation of Capacity.**

- (a) A determination of Adequacy of public facilities for a Development Order indicates that:
  - (1) Public Facilities are Available at the time of issuance of the determination; or
  - (2) If the Applicant provides Mitigation as provided in Section 367, that Public Facilities are considered Available and Adequate at all subsequent stages of the development approval process; or
  - (3) If the Applicant does not provide Mitigation:
    - (a) at the time of preliminary plat approval: Adequacy will be tested again before a final plat is issued; and
    - (b) at the time of rezoning (for Applications that do not involve a Subdivision): Adequacy will be tested again before a site plan is approved; and

*Note:*  
*This is referred to as a "reservation" of Capacity. An approval under this section that does not involve Mitigation simply means that Capacity is not reserved for subsequent stages of the approval process. Public facilities must still be Adequate in order to obtain approval. However, the failure to Reserve Capacity could result in the delay of Applications that*

- (c) at the time of site plan approval (for Applications that do not involve a Subdivision): Adequacy will be tested again before a building permit is approved.
- (b) Applicants may provide a partial payment of Mitigation in order to Reserve Capacity as provided in Section 367(c)(2).
- (c) Capacity that is not reserved will be allocated on a first-come, first-served basis. If Applicants choose not to reserve capacity for a future phase of the Proposed Development, the Applicant may request an tentative determination from the Planning Director as to the timing of Available Capacity (refer to Section 371(c) for the calculation of Available Capacity). This determination will have no binding effect on the Applicant, the County or the School District.
- (d) The determination of Adequacy expires when:
- (1) the Development Order to which it is attached expires, lapses or is waived or revoked, or if the Applicant has not complied with conditions attached to its issuance, or
  - (2) the time frame for submitting a subsequent Application for approval, recordation of a Subdivision plat, or issuance of a certificate of occupancy expires, unless an Application for a subsequent Development Order is submitted within the time frames set forth in this ordinance.
- (e) If no expiration date is provided in the Land Use Ordinance, the conditions attached to the determination of Adequacy of public facilities, or in the conditions of Permit approval, the determination expires within one (1) year after approval of the Development Order.
- (f) A determination of Adequacy of public facilities does not affect the need for the Applicant to meet all other requirements as set forth in this Ordinance.
- (g) If a determination of Adequacy of public facilities attached to a rezoning expires, the Planning Board or Board of Commissioners may initiate proceedings to rezone the property to its original zoning classification.
- (h) If a determination of Adequacy of public facilities attached to a zoning, special use or conditional use Permit expires, the zoning, special use or conditional use Permit shall expire and the use shall be discontinued unless and until a new determination of Adequacy is obtained. A determination of adequacy may be extended if the attached Permit has been extended pursuant to Section 62 of the Land Use Ordinance and the extension complies with the requirements of this Article.
- occur later in the approval process. This could occur if Applications that are approved after the determination take up the remaining Capacity.*

- (i) If an Applicant requests an extension of the effective period of a Development Order that is subject to this Article, the extension must comply with the requirements of this Article that are in effect at the time the request for extension is filed and approved.

**Section 370 How to Determine the Impacts of Development.**

- (a) For purposes of this Article, the impacts of development are based upon the additional student enrollment that results from the Proposed Development. This is measured by the *Student Generation Rate*.
- (b) For purposes of this Ordinance, the Student Generation Rate for each category of schools is:

<b>Type of Dwelling Unit</b>	<b>Elementary</b>	<b>Middle</b>	<b>High</b>
<b>Residence, single-family detached</b>	0.527	0.196	0.227
<b>Apartment</b>	0.296	0.081	0.071
<b>Townhouse</b>	0.419	0.135	0.119
<b>Manufactured Home</b>	0.630	0.174	0.125
<b>Multi-Family Dwelling</b>	0.482	0.126	0.099

This subsection is included only to provide standards for calculating the impact of a proposed development. It does not permit any type of Dwelling Unit in a zoning district where it is not permitted.

The terms used above have the following meanings (see definition of "Dwelling Unit" in Section 362, above):

"Residence, single-family detached" means any Single-Family Detached Dwelling (More Than One Dwelling Per Lot or One Dwelling Unit Per Lot); Detached Dwelling; Patio Home Dwelling; or Zero Lot Line.

"Apartment" means any Multi-Family Apartments; Multi-Family Development/Multi-Family Dwellings; Multi-Family Conversion Dwelling; Family Care Home/Handicapped, Aged, Infirm Home; Group Development that involves the construction of a Dwelling Unit; Handicapped, Aged or Infirm Institution/Independent Living Center/Group Care; Facility/Group Home; or Residency Hotel/Motel.

"Townhouse" means any Dwelling, Multi-Family Townhomes.

"Manufactured Home" means any including any Manufactured Home, Class A; Manufactured Home, Class B; Manufactured Home, Class C; Manufactured Home, Class D; Manufactured Home Park; Manufactured Home Park or Subdivision, Existing; Manufactured Home Park or Subdivision, Expansion To;

Manufactured Home Park or Subdivision, New; Manufactured Home Space; or Manufactured Home Subdivision.

"Multi-Family Dwelling" means any Attached Dwelling; Duplex Dwelling; Two-Family Apartment Dwelling; Two-Family Conversion Dwelling; Accessory Apartment; Two Family Dwelling; or any Multi-Family Dwelling not separately defined under "Apartment" or "Townhouse," above.

- (c) The above-referenced figures may be adjusted from time to time by the County Commission by amending this Ordinance to reflect updates to the Student Generation Rate calculated and provided by the Union County Public Schools.

### **Section 371 How to Measure Available Capacity.**

- (a) Generally.

The Application for Development Approval complies with this Article only if Public Facilities are:

- (1) Adequate, as measured by the Adopted Level of Service ("LOS"), as set forth in this Article; and
- (2) Available, as set forth in the subsections that relate to the individual Public Facilities, below.

- (b) Capacity.

The Capacity of Public Facilities is determined by the Adopted Level of Service. The Adopted Level of Service is the Capacity of school facilities that is computed in accordance with the School Facilities Guidelines compared to existing and projected enrollment as determined in accordance with subsection (c), below. This document is hereby incorporated by this reference and made a part of this Ordinance.

- (c) Available Capacity.

Available Capacity is Existing Capacity and Planned Capacity less Existing Demand and demand that will be generated by Committed Development. The Reviewing Agency will determine whether public schools within the County have sufficient Available Capacity to accommodate the demand generated by the proposed residential development at the Adopted Level of Service. Capacity is expressed in terms of student enrollment. Available Capacity shall be calculated separately for each category of school (Elementary, Middle and High) with the Applicable Attendance Areas. If a school is assigned to more than one Elementary School Cluster or Attendance Area, the proportion of that school's student enrollment and capacity that is assigned to each Elementary School Cluster or attendance area will be determined by the Union County Public Schools.

Available Capacity is determined in accordance with the following formula:

**Formula for determining Available Capacity:**

Formula 1:  $AC_R = (EC_R + PC_R) - (ED + CD)$

Formula 2:  $AC_M = (EC_M + PC_M) - (ED + CD)$

where:

<i>AC</i> means:	Available Capacity, or Existing plus Planned Capacity of Public Facilities that is not already committed to existing or Committed Development.
<i>AC<sub>R</sub></i> means:	Available Capacity based upon Rated Capacity.
<i>AC<sub>M</sub></i> means:	Available Capacity based upon Maximum Capacity.
<i>EC (existing capacity)</i> means:	100% of Existing Capacity, in enrollment, for all school facilities within the Applicable Attendance Area, measured by the Adopted Level of Service (see subsection (b), above). This includes facilities that have been constructed and are fully functional.
<i>EC<sub>R</sub></i> means:	The Rated Capacity of Existing Capacity.
<i>EC<sub>M</sub></i> means:	The Maximum Capacity of Existing Capacity.
<i>PC (planned capacity)</i> means:	Planned Capacity, in enrollment, for funded but unbuilt elementary, middle and high schools within the Attendance Area based upon the first two (2) years of the Capital Improvements Program. Capacity is measured by the Adopted Level of Service (see subsection (b), above). Projects must be under construction to be considered as Planned Capacity.
<i>PC<sub>R</sub></i> means:	The Rated Capacity of Planned Capacity.
<i>PC<sub>M</sub></i> means:	The Maximum Capacity of Planned Capacity.
<i>ED</i> means:	The present, actual utilization of public schools, based on existing school enrollment. School enrollment is determined by the 20 day enrollment data.
<i>CD</i> means:	<p>The <i>anticipated</i> demand created by Committed Development and the proposed development.</p> <p>The enrollment generated by Committed Development is based upon a 3-year inventory of building permits based on a weighted average. "Anticipated" means the permitted development that is expected to proceed to construction and occupancy over a given time period. For any year in which an Adequacy review occurs, "anticipated" development is derived as follows:</p> <p>(1) Take the immediately preceding 3-year weighted average of dwelling units approved by building permits (hereinafter "building permits") issued for each category of development (e.g., residential single-family detached Dwelling Units).</p> <p>The County finds and determines that most recent building permit data</p>

reflects current conditions to a greater extent than more remote data, and provides a more realistic portrayal of expected demands from Committed Development. The weighted average therefore assigns greater weight to the more recent building permit data. A weight of "3" is assigned to the immediately preceding year, "2" to the second preceding year, and "1" to the third preceding year. To calculate the weighted average of building permits, multiply the number of permits issued in each year by the weight associated with that year, then add the total, and then divide this total by the sum of the weights.

- (2) If total permitted development (in subdivision plats or zoning approvals) is less than the 3-year average (1), then total permitted development equals Committed Development.
  - (3) If total permitted development is greater than the 3-year average (1), then the 3-year average equals Committed Development for the current year.
  - (4) If (3) applies, the 3-year average is applied to the remaining permitted development for each ensuing year, until the supply of permitted development is exhausted.
- (d) If Available Capacity under Formula 1 in subsection (c) for any school category is **equal to or greater than zero (0)**, the Application complies with this section.
- (e) If Available Capacity under Formula 1 in subsection (c) for any school category is a **negative number**, Adequate Capacity does not currently exist to accommodate the enrollment projected to be generated by the Proposed Development, and the criteria in subsections (f) through (i) apply.
- (f) If subsection (e) applies for elementary schools, Available Capacity in the Adjoining Elementary School Cluster is added to Existing Capacity of elementary schools for purposes of the formula in subsection (c) (Formula 1). If Available Capacity is equal to or greater than zero for all school types, the Application complies with this section.
- (g) If Available Capacity pursuant to subsection (f)(for elementary schools) or (e)(for middle or high schools) is less than zero, Planned Capacity in the remaining years (after two years) of the Capital Improvements Program is added to existing Capacity (PC in the Formula 1 in subsection (c)). If Available Capacity under this formula is then greater than or equal to zero (0), the Application will only be approved with the following conditions:
- (1) that Currently Available Revenue Sources are committed to all school facilities in the Capital Improvements Program that are needed to accommodate the impacts of the development, and either subsection (2) or (3) apply; and

- (2) the application includes phasing conditions that link the timing of new development to Planned Capacity that will be Available, as shown in the Capital Improvements Program; or
  - (3) the Applicant has agreed to Mitigation for its pro-rata share of Planned Capacity for any category of schools that are presently under capacity; or
  - (4) the Applicant has agreed to a combination of phasing conditions and mitigation, including any installments toward future phasing (see Section 367(c)(2)), as described in subsections (2) and (3) above.
- (h) If Public Facilities are not Adequate under subsection (g), above, Applicants shall provide a Consent Agreement that includes the provisions of subsections (1) and (2), below.
- (1) The Consent Agreement shall include a Phasing schedule that includes an annual rate of buildout that does not exceed **ten (10) Dwelling Units per year**, or an alternative rate of buildout if the Board of Commissioners finds that the alternative rate is needed to preserve a reasonable economic use of the property. In order to avoid evasion of this Article through the parcelization of land, the Consent Agreement must apply to all Adjoining Property that is under Common Ownership.
  - (2) The Consent Agreement shall include Mitigation measures to overcome the failure to meet the Level of Service standards including, but not limited to, payment of a pro rata share of facility Capacity costs necessary to accommodate the demand generated by the Proposed Development.
- (i) The projected enrollment from the Proposed Development shall not cause enrollment to exceed the Available Capacity that is based upon the Maximum Capacity of public facilities (Formula 2), above. However, if this condition applies, the Applicant may provide a Consent Agreement that includes the provisions of subsections (1) and (2), below.
- (1) The Consent Agreement shall include a Phasing schedule that includes an annual rate of buildout that does not exceed **five (5) Dwelling Units per year**, or an alternative rate of buildout if the Board of Commissioners finds that the alternative rate is needed to preserve a reasonable economic use of the property. In order to avoid evasion of this Article through the parcelization of land, the Consent Agreement must apply to all Adjoining Property that is under Common Ownership.
  - (2) The Consent Agreement shall include Mitigation measures to overcome the failure to meet the Level of Service standards including, but not limited to, payment of a pro rata share of facility Capacity costs necessary to accommodate the demand generated by the Proposed Development.

**Section 372 Appeals.**

- (a) If the Reviewing Agency is the Planning Board, any person that is aggrieved by the decision of the Planning Board as it relates to this ordinance, may within thirty (30) days of the Planning Board's decision, petition the Board of Commissioners for review of the Planning Board decision. The Board of Commissioners may affirm, reverse, remand the decision of the Planning Board for further proceedings, or enter into Consent Agreements as provided for by this ordinance. The Board of Commissioners may reverse or remand the decision of the Planning Board if it finds that the decision was based on an error of law, an incorrect interpretation of this Article, or if the Application of this Article would resolve in a deprivation of the reasonable use of the Applicant's property.
- (b) If the Reviewing Agency is the Board of Commissioners, their decision may be appealed by any aggrieved person to the Superior Court of Union County.

\* \* \* \*

- (a) If any portion, clause or sentence of this ordinance shall be determined to be invalid or unconstitutional, such declaration of invalidity shall not affect the remaining portions of this ordinance.
- (b) This ordinance shall take effect and be in force from and after:

Adopted this the \_\_\_ day of \_\_\_, 2006.

\_\_\_\_\_  
, Chairman  
Union County Board of Commissioners

\_\_\_\_\_  
Clerk