

AN ORDINANCE AMENDING ARTICLE 5 OF THE ZONING ORDINANCE AND ARTICLES 4 AND 6 OF THE LAND SUBDIVISION REGULATIONS TO ACCOUNT FOR CHANGES REQUIRED BY THE NEW LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT CAPACITY ASSURANCE PROGRAM. (PLANNING COMMISSION).

WHEREAS, the Lexington-Fayette Urban County Planning Commission has considered text amendments to Article 5 of the Zoning Ordinance and Articles 4 and 6 of the Land Subdivision Regulations to account for changes required by the new Lexington-Fayette Urban County Government Capacity Assurance Program; and

WHEREAS, the Planning Commission did hold a public hearing on this proposed text amendment on May 9, 2013; and

WHEREAS, the Planning Commission did recommend APPROVAL of the staff alternative text amendment by a vote of 9-0; and

WHEREAS, this Council agrees with the recommendation of the Planning Commission; and

WHEREAS, the recommendation form of the Planning Commission is attached hereto and incorporated by reference herein.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 – That Article 5 of the Zoning Ordinance of the Lexington-Fayette Urban County Government is hereby amended to read as follows:

**ARTICLE 5: ADMINISTRATION, ENFORCEMENT
AND VIOLATIONS**

5-2(h) SANITARY SEWER CAPACITY PERMIT – No development shall commence without a permit from the Division of Water Quality in conformance with the LFUCG Capacity Assurance Program documenting that adequate sanitary sewer service is available.

5-2(i) OTHER PERMITS - Additional permits may be required by the responsible Divisions to enforce the provisions of this Ordinance.

Section 2 – That Articles 4 and 6 of the Land Subdivision Regulations of the Lexington-Fayette Urban County Government are hereby amended to read as follows:

ARTICLE 4: MAJOR SUBDIVISION PLAN PROCEDURE

4-5 IMPROVEMENT PLAN PROCEDURE - All improvement plans shall be prepared and filed in accordance with the following procedure:

4-5(a) INFRASTRUCTURE DEVELOPMENT AGREEMENT - Prior to commencing the engineering design for the public infrastructure of any major subdivision, the project engineer, developer and the Lexington-Fayette Urban County Government, acting by and

through its Urban County Engineer, shall enter into an infrastructure development agreement in a form and containing the provisions contained in the Procedures Manual. A new infrastructure development agreement shall be required in the event the developer of the property is changed to another development entity, or in the event the private agreement for infrastructure development services between the developer and the project engineer are terminated. All infrastructure development agreements shall provide that the subject development has sanitary sewer capacity in compliance with the requirements of Section 6-2 of these regulations.

ARTICLE 6: DESIGN AND IMPROVEMENT STANDARDS FOR MAJOR SUBDIVISIONS

6-2 ADEQUATE PUBLIC FACILITY STANDARDS - In addition to the specific design standards and requirements contained herein, the following minimum site conditions shall exist prior to Planning Commission approval of any subdivision, whether such facilities are provided by the developer, a private utility, or the Urban County Government.

6-2(a) PUBLIC SANITARY SEWERS - Shall be provided as follows:

(1) **TREATMENT PLANT CAPACITY** - The projected amount of sewage effluent generated by the proposed development shall not cause the allocated capacity of the treatment plant that will serve the projected development to be exceeded, nor will it cause any violation of Federal, State or local water quality laws or standards in effect at the time of development.

(2) **SEWAGE COLLECTION SYSTEM** - The proposed development shall be served by a sewer collection line of sufficient size and capacity to accommodate the effluent projected to be generated by the proposed development in addition to the demands placed on the system by existing development, without exceeding the design capacity of the sewer line and/or sewage pump stations.

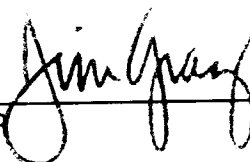
For purposes of making this determination, "served" means that there is a sewage collection line in the public way on which the proposed development will have frontage or there is a sanitary sewage collection line otherwise available to serve serving the proposed development; or the developer will finance and will, at the appropriate time, execute a bond or other surety to guarantee the extension, in accordance with the 201 Master Sewer Plan and any sanitary sewer guidelines established by the Urban County Council, of a sewer line to serve the proposed development; or that construction of the sewer line is scheduled for completion within one year.

(3) **DOCUMENTATION** - Not later than at the time of execution of the Development Agreement, the developer shall provide written documentation from the Division of Water Quality that adequate sanitary sewer treatment plant capacity exists for the proposed development and that the proposed development is served by a sewer collection line of sufficient size and capacity as required by the LFUCG Capacity Assurance Program.

Section 3 - That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: June 20, 2013

MAYOR



ATTEST:



Clerk of Urban County Council

TWJ:X:\Cases\PLANNING\13-LE0001\LEG\00393650.DOC

PUBLISHED: June 27, 2013-1t

Recd by _____

Date: _____

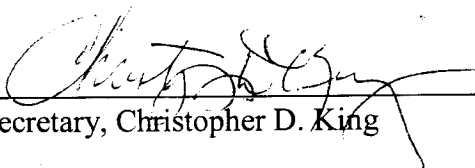
RECOMMENDATION OF THE
URBAN COUNTY PLANNING COMMISSION
OF LEXINGTON-FAYETTE COUNTY, KENTUCKY

IN RE: ZOTA 2013-1 & SRA 2013-1: AMENDMENTS RELATED TO THE CAPACITY ASSURANCE PROGRAM - amendments to the Zoning Ordinance and Land Subdivision Regulations to account for changes required by the new LFUCG Capacity Assurance Program.

Having considered the above matter on **May 9, 2013**, at a Public Hearing and having voted **9-0** that this Recommendation be submitted to the Lexington-Fayette Urban County Council, the Urban County Planning Commission does hereby recommend **APPROVAL of the Staff Alternative Text**, for the following reasons:

1. These text amendments will put the Zoning Ordinance and Land Subdivision Regulations into better alignment with the provisions of the Capacity Assurance Program – an integral part of the Consent Decree with the EPA.
2. These changes will eliminate the need for the Commission to spend their time reviewing final subdivision plans, or otherwise reapproving such plans, that have not originally qualified for sanitary sewer service or treatment capacity.

ATTEST: This 22nd day of May, 2013.



Secretary, Christopher D. King

MIKE OWENS
CHAIR

At the Public Hearing before the Urban County Planning Commission, this text amendment was presented by **Bill Sallee, Planning Manager**.

OBJECTORS _____

- None

OBJECTIONS _____

- None

VOTES WERE AS FOLLOWS:

AYES: (9) Beatty, Berkley, Brewer, Cravens, Mundy, Owens, Penn, Plumlee,
Wilson

NAYS: (0)

ABSENT: (2) Blanton and Roche-Phillips

ABSTAINED: (0)

DISQUALIFIED: (0)

Motion for **Approval of the Staff Alternative Text** of **ZOTA 2013-1 & SRA 2013-1** carried.

Enclosures: Initiation Minutes
 Staff Report
 Supplemental Staff Report
 Applicable excerpts of minutes of above public hearing

TEXT AMENDMENT RECOMMENDED BY PLANNING COMMISSION (May 9, 2013)

ZOTA 2013-1 & SRA 2013-1: AMENDMENTS RELATED TO THE CAPACITY ASSURANCE PROGRAM

PROPOSED TEXT: Text underlined indicates an addition, while ~~text dashed through~~ indicates a deletion to the current Zoning Ordinance and Land Subdivision Regulations.

ZONING ORDINANCE

5-2(h) SANITARY SEWER CAPACITY PERMIT – No development shall commence without a permit from the Division of Water Quality in conformance with the LFUCG Capacity Assurance Program documenting that adequate sanitary sewer service is available.

5-2(i) OTHER PERMITS - Additional permits may be required by the responsible Divisions to enforce the provisions of this Ordinance.

LAND SUBDIVISION REGULATIONS

4-5 IMPROVEMENT PLAN PROCEDURE - All improvement plans shall be prepared and filed in accordance with the following procedure:

4-5(a) INFRASTRUCTURE DEVELOPMENT AGREEMENT - Prior to commencing the engineering design for the public infrastructure of any major subdivision, the project engineer, developer and the Lexington-Fayette Urban County Government, acting by and through its Urban County Engineer, shall enter into an infrastructure development agreement in a form and containing the provisions contained in the Procedures Manual. A new infrastructure development agreement shall be required in the event the developer of the property is changed to another development entity, or in the event the private agreement for infrastructure development services between the developer and the project engineer are terminated. All infrastructure development agreements shall provide that the subject development has sanitary sewer capacity in compliance with the requirements of Section 6-2 of these regulations.

6-2 ADEQUATE PUBLIC FACILITY STANDARDS - In addition to the specific design standards and requirements contained herein, the following minimum site conditions shall exist prior to Planning Commission approval of any subdivision, whether such facilities are provided by the developer, a private utility, or the Urban County Government.

6-2(a) PUBLIC SANITARY SEWERS - Shall be provided as follows:

(1) TREATMENT PLANT CAPACITY - The projected amount of sewage effluent generated by the proposed development shall not cause the allocated capacity of the treatment plant that will serve the projected development to be exceeded, nor will it cause any violation of Federal, State or local water quality laws or standards in effect at the time of development.

(2) SEWAGE COLLECTION SYSTEM - The proposed development shall be served by a sewer collection line of sufficient size and capacity to accommodate the effluent projected to be generated by the proposed development in addition to the demands placed on the system by existing development, without exceeding the design capacity of the sewer line and/or sewage pump stations.

For purposes of making this determination, "served" means that there is a sewage collection line in the public way on which the proposed development will have frontage or there is a sanitary sewage collection line otherwise available to serve serving the proposed development; or the developer will finance and will, at the appropriate time, execute a bond or other surety to guarantee the extension, in accordance with the 201 Master Sewer Plan and any sanitary sewer guidelines established by the Urban County Council, of a sewer line to serve the proposed development; or that construction of the sewer line is scheduled for completion within one year.

(3) DOCUMENTATION – Not later than at the time of execution of the Development Agreement, the developer shall provide written documentation from the Division of Water Quality that adequate sanitary sewer treatment plant capacity exists for the proposed development and that the proposed development is served by a sewer collection line of sufficient size and capacity as required by the LFUCG Capacity Assurance Program.

VI. COMMISSION ITEMS

- A. INITIATION OF TEXT AMENDMENTS RELATED TO THE SANITARY SEWER CAPACITY ASSURANCE PROGRAM – The staff will request Planning Commission initiation of text amendments to Articles 5-2 and 21-4 of the Zoning Ordinance, and Sections 4-5 and 6-2 of the Land Subdivision Regulations. These amendments are related to the new LFUCG Capacity Assurance Program (CAP) that will be fully implemented in July of this year. If initiated, the Commission's requisite public hearing on these amendments would be scheduled for the spring.

Staff Presentation: Mr. Sallee stated that the staff was asking the Commission to consider the initiation of text amendments to the Zoning Ordinance and Land Subdivision Regulations in order to further implement the Capacity Assurance Program that is expected to go into effect in 2013. He noted that he had distributed to the Commission members a revised draft text of two sections of the Zoning Ordinance and two sections of the Land Subdivision Regulations, the initial draft of which the staff presented at the most recent work session. The only change proposed to that draft is to Article 21-4(b) of the Zoning Ordinance, adding the words, "or has been reserved." Mr. Sallee explained that that change was prompted by a question from Mr. Cravens at the work session about the possible delays between plan filings and how they relate to the capacity requirements for a final development plan. When the Commission approves a development plan, the petitioner has up to one year to meet all of the conditions attached, and certify the plan. In discussion with the Law Department, the Division of Water Quality, and the consultant hired to fully implement the Capacity Assurance Program, the staff has determined that the proposed language will enable an applicant to reserve capacity under the program as it is designed, and have the assurance that they can then proceed on their project accordingly.

Mr. Sallee said that, should the Commission choose to initiate this text amendment today, the public hearing would likely be scheduled in a couple of months.

Commission Questions: Ms. Blanton asked if there were any instances in which a petitioner might need to be exempt from the regulations, but could still bring a plan before the Commission for approval, which should be noted in the proposed language. Mr. Sallee answered that there is a component of the Capacity Assurance Program that will allow essential public facilities to proceed with their development, whether or not full capacity exists. It is anticipated that, even with this language, those public facilities should be able to provide the necessary documentation that their facility is "essential" and capacity should be granted to them.

Ms. Roche-Phillips asked if any changes had been made to address the possible need for a waiver to the Land Subdivision Regulations. Mr. Sallee responded that the general consensus of the group who reviewed the Commission members' concerns was that it is possible that an applicant could request a waiver of the CAP regulations. He noted that it is difficult to anticipate at this time how, and in what form, such a waiver request might be made. Ms. Roche-Phillips asked if the CAP has any type of guidance for the Planning Commission with regard to how to address such a waiver or exemption request. Mr. Sallee answered that the program itself will provide some guidance, and there will be other Code of Ordinance changes made as well. The key feature of the program, in the staff's opinion, is the ability for LFUCG to impose fines if the program is not followed. The staff expects, therefore, that the number of those requests will be low.

Ms. Mundy asked if the proposed text amendment had been reviewed by the Zoning Committee. Mr. Sallee answered that it had not yet been reviewed by the Zoning Committee, adding that that meeting, should the Commission choose to initiate the text amendment, would be the next step in the ZOTA process. Prior to that meeting, the staff would notify all of the registered neighborhood associations of the proposed text amendment.

Ms. Beatty asked if the proposed text amendment would then come back before the Planning Commission. Mr. Sallee responded that the Zoning Committee would likely make a recommendation to the full Commission, and the text amendment would be placed on the Commission's agenda for a public hearing.

Mr. Cravens asked if the Expansion Area #2 would be exempted from the CAP requirements. Mr. Sallee answered that the staff expects that exemption to be automatic. Under the language in Article 21-4(b), such a plan could then be approved, having been "grandfathered in" under the program. There would still need to be some level of evaluation as to whether that new plan submission would be compliant with the originally grandfathered plan. The staff who performed the evaluation would then decide whether or not they could issue the required documentation of CAP compliance. Mr. Cravens asked if it should be spelled out in the Ordinance that the Expansion Areas are exempt from the CAP requirements. Mr. Sallee responded that the Expansion Areas are exempted in the current CAP, so the same "documentation" should apply, regardless. Mr. Cravens asked if the proposed text amendment had been reviewed by the CAP committee. Mr. Sallee answered that the draft had not been reviewed by the entire CAP Committee, since it was drafted following the conclusion of their meetings last December. The internal work group, however, including the consultants; Division of Water Quality; Department of Law; and Planning, have reviewed the entirety of the draft. Mr. Cravens stated that the proposed text amendment "went on a pretty fast track," and he was concerned that the Zoning Committee had not yet reviewed the draft text.

Ms. Plumlee asked what measures were in place for oversight of the CAP, in case of infractions. Mr. Sallee responded that many staff members will likely be involved in implementing the program, and that it will require a substantial change in how those types of plans are reviewed.

Director Comments: Mr. King stated that a new position will be created in the Division of Water Quality to oversee the CAP and the other elements of the Consent Decree and the associated Agreed Judgment.

Mr. Owens stated that, at this time, this text amendment is only being proposed to be initiated; there will still be opportunities to revise the language as necessary during the normal review process. He said that he would be willing to go forward with initiation at this time.

Motion: A motion was made by Mr. Cravens to postpone this request, in order for: 1) language to be added to address the exemption of the Expansion Areas; 2) the draft text to be reviewed by Charlie Martin; and 3) the draft text to be reviewed by the Zoning Committee. Mr. Cravens' motion was seconded by Ms. Mundy.

Director Comments: Mr. King stated, for clarification, that Charlie Martin, the Law Department, and the consultants, as well as Division of Planning staff, have spent extensive time working on this initial draft.

Discussion of Motion: Ms. Blanton asked if the Zoning Committee typically reviews draft text amendments prior to their initiation by the Planning Commission. Mr. Sallee answered that after initiation, a draft text amendment is always reviewed by the Zoning Committee prior to consideration by the full Commission. He added that draft text amendments are typically presented first to the Commission at a work session prior to initiation, knowing that the Zoning Committee will review it later in the process.

Ms. Beatty asked if the Planning Commission would have the opportunity to vote on the proposed text amendment after it is reviewed by the Zoning Committee. Mr. Sallee answered affirmatively, explaining that the Zoning Committee makes a recommendation on all map amendments and text amendments prior to the Commission's scheduled public hearing.

Mr. Berkley stated that he heard a presentation by Charlie Martin about the Capacity Assurance Program, during which he heavily emphasized the Expansion Areas. He asked why the Expansion Areas are not specifically addressed in the draft text. Mr. Sallee responded that the applicable term in the text is "including documentation" in Article 21-4. He said that the "documentation" will be the result of the new CAP review process. Mr. Berkley asked what would need to be reviewed, if properties in the Expansion Area will be exempt from the CAP.

Director Comments: Mr. King stated that all of the Expansion Areas will be considered exempt. He explained that the proposed amendments to the Zoning Ordinance and Subdivision Regulations are just one small part of all of the documentation, Ordinances, and policies that will be enacted relating to the CAP; not everything needs to be spelled out in the Zoning Ordinance text. Mr. King said that the CAP task force was comfortable that all of those issues will be addressed appropriately in other manuals and Ordinances, and they don't need to be enumerated in the Zoning Ordinance. Mr. Sallee added that, just because an item is not mentioned specifically in this section of the Zoning Ordinance, it does not mean that it will not be applicable under the CAP.

Ms. Plumlee asked if the proposed text amendments will need to be in place by July 1st, to coincide with the beginning of the CAP. Mr. King answered that they do not have to be, but the task force agreed upon that date, because all of the elements need to be in place within a certain timeframe following the EPA's acceptance of the information submitted by LFUCG on January 3, 2013. He said that time is of the essence in this case, noting that the Commission will have the opportunity, as part of the public hearing process, to make modifications to the proposed text before their recommendation is sent for final action by the Urban County Council.

Ms. Beatty asked if there would be other documentation, accessory to the proposed text amendments, noting how exemptions, which situations will be grandfathered, and non-compliance with the regulations will be handled. Mr. Sallee answered that it would be more appropriate to think of these proposed text amendments as the accessory documents to the other new Capacity Assurance regulations. He added that the Council has already adopted the program; and that there will be other additions to the Code of Ordinances to implement the processes Mr. King outlined. These proposed text amendments were intended to clarify the Zoning Ordinance, primarily for design professionals working outside of Lexington-Fayette County who might be reviewing the regulations online, to signal to them that they will be required to obtain a new type of permit as part of any development project.

Mr. Cravens stated that he did not understand why the text could not specifically exempt the Expansion Area, since it comprises the bulk of undeveloped land in the county. He said that he believes that the proposed text amendment needs more work.

Ms. Blanton stated that she would be comfortable moving forward with the initiation of the proposed text amendment, adding that she thinks it would be helpful to add more detail to simplify the text for those who might not be familiar with the regulations.

Director Comments: Mr. King said that Charlie Martin and members of the consulting team would be available at the subcommittee meetings and at the public hearing to explain the full array of regulations required for the CAP, so that the Commission can see the proposed text amendments in the context of the overall Capacity Assurance Program.

Action: Mr. Cravens' motion failed, 6-3 (Brewer and Penn absent; Beatty, Blanton, Owens, Plumlee, Roche-Phillips, and Wilson opposed).

Motion: A motion was made by Ms. Roche-Phillips, seconded by Mr. Wilson, and carried 6-3 (Penn absent; Berkley, Cravens, and Mundy opposed) to initiate the proposed text amendments to the Zoning Ordinance and Land Subdivision Regulations, as requested by the staff.

STAFF REPORT ON PETITION FOR ZONING ORDINANCE & LAND SUBDIVISION REGULATIONS TEXT AMENDMENT

ZOTA 2013-1 & SRA 2013-1: AMENDMENTS RELATED TO THE CAPACITY ASSURANCE PROGRAM

INITIATED BY: Urban County Planning Commission

PROPOSED TEXT: Note: Text underlined indicates an addition, while ~~text dashed-through~~ indicates a deletion to the current Zoning Ordinance and Land Subdivision Regulations.

ZONING ORDINANCE

5-2(h) SANITARY SEWER CAPACITY PERMIT – No development shall commence without a permit from the Division of Water Quality in conformance with the LFUCG Capacity Assurance Program documenting that adequate sanitary sewer service is available.

5-2(i) OTHER PERMITS - Additional permits may be required by the responsible Divisions to enforce the provisions of this Ordinance.

21-4 DEVELOPMENT PLAN PROCEDURES - The following shall be the procedure for Planning Commission consideration of any development plan.

21-4(a) ON-SITE MEETING - Prior to the submission of a development plan, the owner/developer shall contact the Urban Forester, who will determine if an on-site meeting with the developer's design professional and/or other pertinent Urban County Government staff is necessary.

21-4(b) FILING - To formally request Planning Commission action on the development plan, the developer shall file a completed application form (including documentation with any Final Development Plan that adequate sanitary sewer treatment capacity and service exists or has been reserved for the subject property), filing fee and copies of the plans as required by the Commission's adopted filing and fee schedules with the Division of Planning. The Division of Planning shall make copies of the plan available to all other concerned agencies.

LAND SUBDIVISION REGULATIONS

4-5 IMPROVEMENT PLAN PROCEDURE - All improvement plans shall be prepared and filed in accordance with the following procedure:

4-5(a) INFRASTRUCTURE DEVELOPMENT AGREEMENT - Prior to commencing the engineering design for the public infrastructure of any major subdivision, the project engineer, developer and the Lexington-Fayette Urban County Government, acting by and through its Urban County Engineer, shall enter into an infrastructure development agreement in a form and containing the provisions contained in the Procedures Manual. A new infrastructure development agreement shall be required in the event the developer of the property is changed to another development entity, or in the event the private agreement for infrastructure development services between the developer and the project engineer are terminated. All infrastructure development agreements shall provide that the subject development has sanitary sewer capacity in compliance with the requirements of Section 6-2 of these regulations.

6-2 ADEQUATE PUBLIC FACILITY STANDARDS - In addition to the specific design standards and requirements contained herein, the following minimum site conditions shall exist prior to Planning Commission approval of any subdivision, whether such facilities are provided by the developer, a private utility, or the Urban County Government.

6-2(a) PUBLIC SANITARY SEWERS - Shall be provided as follows:

(1) TREATMENT PLANT CAPACITY - The projected amount of sewage effluent generated by the proposed development shall not cause the allocated capacity of the treatment plant that will serve the projected development to be exceeded, nor will it cause any violation of Federal, State or local water quality laws or standards in effect at the time of development.

(2) SEWAGE COLLECTION SYSTEM - The proposed development shall be served by a sewer collection line of sufficient size and capacity to accommodate the effluent projected to be generated by the proposed development in addition to the demands placed on the system by existing development, without exceeding the design capacity of the sewer line and/or sewage pump stations.

For purposes of making this determination, "served" means that there is a sewage collection line in the public way on which the proposed development will have frontage or there is a sanitary sewage collection line otherwise available to serve serving the proposed development; or the developer will finance and will, at the appropriate time, execute a bond or other surety to guarantee the extension, in accordance with the 201 Master Sewer Plan and any sanitary sewer guidelines established by the Urban County Council, of a sewer line to serve the proposed development; or that construction of the sewer line is scheduled for completion within one year.

(3) DOCUMENTATION – Not later than at the time of execution of the Development Agreement, the developer shall provide written documentation from the Division of Water Quality that adequate sanitary sewer treatment plant capacity exists for the proposed development and that the proposed development is served by a sewer collection line of sufficient size and capacity as required by the LFUCG Capacity Assurance Program.

STAFF REVIEW:

The Urban County Planning Commission, at the request of the staff, recently initiated a text amendment to make several amendments to the Zoning Ordinance and Land Subdivision Regulations due to the changes coming in July as a result of the Capacity Assurance Program – a requirement of the adopted Consent Decree approved by the Kentucky Division of Water and the United States Environmental Protection Agency (EPA).

These changes (above) will accompany the main ordinance intended to outline the process and procedures of the Capacity Assurance Program (CAP), which is also under development, and has begun to be reviewed by different stakeholder groups. At the staff's introduction to the above changes, the staff characterized the changes proposed to the Zoning Ordinance and Subdivision Regulations as being "accessory" (i.e.: incidental and subordinate) to the new, larger ordinance under development and consideration. The staff plans to provide the latest draft of that ordinance, clearly a "work in progress," to Commission members at the scheduled public hearing on these amendments.

The Urban County Council established the CAP program with a Resolution they approved last December, following months of work by a Task Force designated to review the Consent Decree recommendations in detail. That Resolution has since been submitted to the EPA, and is set to go into effect on July 3rd of this year. The Task Force report was issued last fall, and has been posted for some time on the lexingtonky.gov website. This text amendment is intended to provide necessary "linkage" to these new programs and requirements that will soon be implemented for those reviewing our development-related ordinances in the future. Should the LFUCG not comply with the provisions of the Consent Decree, then the local government will be liable for severe fines and penalties.

In amending the Zoning Ordinance, changes proposed to Article 5-2 (entitled "Permits Required for Construction, Demolition, and Location of Structures") will list the name of a new Permit resulting from the CAP program. The proposed change to Article 21 of the Zoning Ordinance is perhaps the most significant. It will require that an applicant for a Final Development Plan provide documentation that their proposal has capacity for sanitary sewer services, or has an approved reservation for such capacity. This change was discussed during the Task Force meetings to prevent the Planning Commission and LFUCG staff from spending time reviewing development plan proposals that are not likely to begin in the one-year time period allowable for certification from the date of Commission approval. Failure to enact this provision would result in a number of "reapproval" requests for development plans, which could not be authorized under the CAP requirements. This could entail a great deal of time for the Commission members.

The two changes proposed to the Land Subdivision Regulations are related. Once the Commission approves a Preliminary Subdivision Plan, a developer must enter into an agreement with the LFUCG to construct the infrastructure necessary for that development. This formal, written agreement is negotiated and executed prior to the commencement of any development activities on a site, other than basic site grading. These negotiations are unnecessary unless sanitary sewer capacity exists for the location in question.

The Staff Recommends: Approval, for the following reasons:

1. These text amendments will put the Zoning Ordinance and Land Subdivision Regulations into better alignment with the provisions of the Capacity Assurance Program – an integral part of the Consent Decree with the EPA.
2. Some of these changes will eliminate the need for the Commission to spend their time reviewing plans, or otherwise reapproving plans, that have not originally qualified for sanitary sewer service or treatment capacity.

**SUPPLEMENTAL STAFF REPORT ON PETITION FOR ZONING ORDINANCE TEXT AMENDMENT
& LAND SUBDIVISION REGULATIONS TEXT AMENDMENT**

ZOTA 2013-1 & SRA 2013-1: AMENDMENTS RELATED TO THE CAPACITY ASSURANCE PROGRAM

INITIATED BY: Urban County Planning Commission

PROPOSED TEXT: Available on original Staff Report and on Planning Commission agenda

STAFF REVIEW:

A team of staff members in the Urban County Government's Divisions of Water Quality and Planning, and the Department of Law have been meeting in a collaborative fashion for about the past two months – working on a comprehensive ordinance to fully implement the Capacity Assurance Program. This new program is an essential component of the Consent Decree approved by the Kentucky Division of Water and the United States Environmental Protection Agency (EPA).

The larger ordinance has been reviewed by several stakeholders in the community, along with the four changes proposed (two each) to the Zoning Ordinance and to the Land Subdivision Regulations. One set of review comments identified a potential conflict in one set of plans that are subject to review by the Planning Commission. The conflict would have been on the rare, but not unprecedented plans that are *both* a Preliminary Subdivision Plan (PSP) *and* a Final Development Plan (DP). Under the Subdivision Regulations, the PSP could be approved by the Commission without capacity assurance or a reservation for capacity. However, under the proposed draft change to Article 21-4(b), the Final DP could not be filed without one of these determinations.

In order to resolve the conflict, the staff now recommends that the proposed change to Article 21-4(b) not be adopted. This may result in more development plans being requested for one-year extensions or for reapproval (perhaps because capacity will not be available) for those locations. However, it is hoped that that will not be the case.

The Staff Recommends: Approval of the changes to Art. 5-2 of the Zoning Ordinance, and to Sec. 4-5(a) & 6-2(a) of the Land Subdivision Regulations, for the following reasons:

1. These text amendments will put the Zoning Ordinance and Land Subdivision Regulations into better alignment with the provisions of the Capacity Assurance Program – an integral part of the Consent Decree with the EPA.
2. These changes will eliminate the need for the Commission to spend their time reviewing final subdivision plans, or otherwise reapproving such plans, that have not originally qualified for sanitary sewer service or treatment capacity.

V. **ZONING ITEMS** - The Zoning Committee met on Thursday, May 2, 2013, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Carla Blanton, Mike Cravens, Lynn Roche-Phillips, and Bill Wilson. The Committee reviewed applications, and made recommendations on zoning items as noted.

A. **PUBLIC HEARING ON ZONING ORDINANCE TEXT AMENDMENT REQUEST**

Note: The Planning Commission postponed this item at their April 25, 2013 meeting.

- 1. **ZOTA 2013-1 & SRA 2013-1: AMENDMENTS RELATED TO THE CAPACITY ASSURANCE PROGRAM** - amendments to the Zoning Ordinance and Land Subdivision Regulations to account for changes required by the new LFUCG Capacity Assurance Program.

INITIATED BY: Urban County Planning Commission

PROPOSED TEXT: Note: Text underlined indicates an addition, while ~~text dashed through~~ indicates a deletion to the current Zoning Ordinance and Land Subdivision Regulations.

ZONING ORDINANCE

5-2(h) SANITARY SEWER CAPACITY PERMIT – No development shall commence without a permit from the Division of Water Quality in conformance with the LFUCG Capacity Assurance Program documenting that adequate sanitary sewer service is available.

5-2(i) OTHER PERMITS - Additional permits may be required by the responsible Divisions to enforce the provisions of this Ordinance.

21-4 DEVELOPMENT PLAN PROCEDURES - The following shall be the procedure for Planning Commission consideration of any development plan.

21-4(a) ON-SITE MEETING - Prior to the submission of a development plan, the owner/developer shall contact the Urban Forester, who will determine if an on-site meeting with the developer's design professional and/or other pertinent Urban County Government staff is necessary.

21-4(b) FILING - To formally request Planning Commission action on the development plan, the developer shall file a completed application form (including documentation with any Final Development Plan that adequate sanitary sewer treatment capacity and service exists or has been reserved for the subject property), filing fee and copies of the plans as required by the Commission's adopted filing and fee schedules with the Division of Planning. The Division of Planning shall make copies of the plan available to all other concerned agencies.

LAND SUBDIVISION REGULATIONS

4-5 IMPROVEMENT PLAN PROCEDURE - All improvement plans shall be prepared and filed in accordance with the following procedure:

4-5(a) INFRASTRUCTURE DEVELOPMENT AGREEMENT - Prior to commencing the engineering design for the public infrastructure of any major subdivision, the project engineer, developer and the Lexington-Fayette Urban County Government, acting by and through its Urban County Engineer, shall enter into an infrastructure development agreement in a form and containing the provisions contained in the Procedures Manual. A new infrastructure development agreement shall be required in the event the developer of the property is changed to another development entity, or in the event the private agreement for infrastructure development services between the developer and the project engineer are terminated. All infrastructure development agreements shall provide that the subject development has sanitary sewer capacity in compliance with the requirements of Section 6-2 of these regulations.

6-2 ADEQUATE PUBLIC FACILITY STANDARDS - In addition to the specific design standards and requirements contained herein, the following minimum site conditions shall exist prior to Planning Commission approval of any subdivision, whether such facilities are provided by the developer, a private utility, or the Urban County Government.

6-2(a) PUBLIC SANITARY SEWERS - Shall be provided as follows:

(1) TREATMENT PLANT CAPACITY - The projected amount of sewage effluent generated by the proposed development shall not cause the allocated capacity of the treatment plant that will serve the projected development to be exceeded, nor will it cause any violation of Federal, State or local water quality laws or standards in effect at the time of development.

(2) SEWAGE COLLECTION SYSTEM - The proposed development shall be served by a sewer collection line of sufficient size and capacity to accommodate the effluent projected to be generated by the proposed

* - Denotes date by which Commission must either approve or disapprove request.

development in addition to the demands placed on the system by existing development, without exceeding the design capacity of the sewer line and/or sewage pump stations.

For purposes of making this determination, "served" means that there is a sewage collection line in the public way on which the proposed development will have frontage or there is a sanitary sewage collection line otherwise available to serve serving the proposed development; or the developer will finance and will, at the appropriate time, execute a bond or other surety to guarantee the extension, in accordance with the 201 Master Sewer Plan and any sanitary sewer guidelines established by the Urban County Council, of a sewer line to serve the proposed development; or that construction of the sewer line is scheduled for completion within one year.

(3) DOCUMENTATION – Not later than at the time of execution of the Development Agreement, the developer shall provide written documentation from the Division of Water Quality that adequate sanitary sewer treatment plant capacity exists for the proposed development and that the proposed development is served by a sewer collection line of sufficient size and capacity as required by the LFUCG Capacity Assurance Program.

The Zoning Committee Recommended: Approval, for the reasons provided by staff.

The Staff Recommends: Approval of the changes to Art. 5-2 of the Zoning Ordinance, and to Sec. 4-5(a) & 6-2(a) of the Land Subdivision Regulations, for the following reasons:

1. These text amendments will put the Zoning Ordinance and Land Subdivision Regulations into better alignment with the provisions of the Capacity Assurance Program – an integral part of the Consent Decree with the EPA.
2. These changes will eliminate the need for the Commission to spend their time reviewing final subdivision plans, or otherwise reapproving such plans, that have not originally qualified for sanitary sewer service or treatment capacity.

Staff Presentation - Mr. Sallee directed the Commission's attention to the staff report for ZOTA 2013-1 & SRA 2013-1, and explained that this request is a text amendment to both the Zoning Ordinance and to the Land Subdivision Regulations. He said that this text amendment was initiated by the Planning Commission, at the request of the staff, and it proposes to make two changes to the Zoning Ordinance and two changes to the Land Subdivision Regulations.

Mr. Sallee said that these changes were designed to reflect the work from the Task Force that was appointed by the Urban County Council, which concluded its work late in 2012. He then said that the work from the Task Force directly led to the Resolution that was passed by the Council to authorize the Capacity Assurance Program (CAP) - an important component of the Consent Decree between the Lexington-Fayette Urban County Government, the Kentucky Division of Water and the United States Environmental Protection Agency (EPA).

Mr. Sallee said that this text amendment would provide a linkage between a much larger Ordinance under development for the Capacity Assurance Program (CAP) and the Zoning Ordinance and Land Subdivision Regulations. He then said that over the last two months, the staff has presented the Commission information on this proposed text amendment and it has been reviewed by local stakeholder groups, as well. He added that the text amendment for the Zoning Ordinance, as it is proposed in Article 5-2(h), would add to the section that speaks to the required permits. This change would add a permit entitled "Sanitary Sewer Capacity Permit," which would state that no development could be done locally after the Capacity Assurance Program was adopted without that type of permit.

Mr. Sallee said that the two proposed changes to the Land Subdivision Regulations are related to each other. The first change would be to Article 4-5(a), which references the required infrastructure development agreements. This is done as part of the improvement plan process when property transforms from raw land to a developed subdivision. He said that that there would be a provision between the developer and the Lexington-Fayette Urban County Government that an infrastructure development agreement would be provided only if sanitary sewer capacity could be granted in accordance with the Capacity Assurance Program.

Mr. Sallee said that the second proposed change to the Land Subdivision Regulations would be to Article 6-2(a), and this change would clarify that the capacity of the sewage collection system was available to serve all appropriate developments. More importantly, it would create a new sub-section (#3) that would outline the documentation from the Division of Water Quality, who would be the oversight agency for the implementation of the Capacity Assurance Program.

Mr. Sallee said that the final change proposed would be to Article 21-4(b) of the Zoning Ordinance, and this was designed to require that capacity assurance be demonstrated before a final development plan is submitted to the Planning Commission. He directed the Commission's attention to two staff exhibits, also presented on the overhead projector, and briefly explained the process as to how this could be done prior to improvement plans under the infrastructure development agreement, which is the point when capacity assurance is to be determined. He added that the change to Article 21-4(b) of the Zoning Ordinance would also require this to be done prior to a final development plan. Mr. Sallee said that during the review of the larger Ordinance, a "catch 22" was identified with the proposed procedure. He explained that sometimes the Commission is presented with a request that is both a preliminary subdivision plan and a final development plan. In such an instance, there would have been some confusion as to which set of rules would apply. He said that the question was if the capacity assurance would be done prior to the final development plan or post Planning Commission consideration of a preliminary development plan. In reviewing this conflict, the staff believes it is best not to create that situation and go ahead

and have the capacity assurance determination performed after the final development plans are reviewed by the Planning Commission. Mr. Sallee said that it is the staff's recommendation now that the proposed change to Article 21-4(b) of the Zoning Ordinance not be recommended for approval. He added, however, the other three sections are still being recommended for approval. He noted that this is a change from the staff's recommendation that was presented at the Zoning Committee meeting in April versus the Zoning Committee meeting held last week.

Mr. Sallee directed the Commission's attention to the supplemental staff report, as well as the draft Capacity Assurance Program Ordinance, and said that the larger Ordinance has been reviewed by local stakeholders; and it is expected that there will be another draft written and distributed in the next week. He added that once the draft is made available, the staff would be updating the Planning Commission at that time.

Mr. Sallee said that the staff is recommending approval of the changes to Article 5-2 of the Zoning Ordinance, and to Sections 4-5(a) and 6-2(a) of the Land Subdivision Regulations, for the following reasons:

1. These text amendments will put the Zoning Ordinance and Land Subdivision Regulations into better alignment with the provisions of the Capacity Assurance Program – an integral part of the Consent Decree with the EPA.
2. These changes will eliminate the need for the Commission to spend their time reviewing final subdivision plans, or otherwise reapproving such plans, that have not originally qualified for sanitary sewer service or treatment capacity.

Mr. Sallee concluded by saying that the Zoning Committee had recommended approval of the staff alternative text, supporting three of the four originally drafted sections.

Planning Commission Question – Mr. Cravens asked if the underlined section listed in 21-4(b) would not be included. Mr. Sallee said that it is the staff's recommendation that that change would not be adopted and that section would remain as is.

Mr. Berkley asked if the CAP would be approved with the final development plan. Mr. Sallee said that, in most situations, the applicant would already know if there is sanitary sewer capacity to a site; but it is possible that the Commission would be asked to review and approve a development plan, perhaps for financing purposes, where that determination has not been made. He said that prior to that plan being able to go forward and the project being built, that assurance would have to be made. He then said that, in operation, it would be after the Commission has approved the request and would likely be a condition of approval prior to certification of the plan, but it would not be required prior to the Commission consideration of a final development plan. Mr. Berkley commented that it would come at the same time and trying to get financing without it would be difficult. He then said that the Planning Commission does not want to put people in the position of doing the engineering and there not be sewer capacity.

Mr. Penn said that this would not be a good policy for the Planning Commission to approve a final development plan without knowing the capacity assurance. He then said that he agreed with what the staff has done; and for this to work, it needs to be worked out before the Planning Commission reviews final development plans. He indicated that he is in support of the staff's recommendation.

The Chair clarified that the staff is recommending approval, in the supplemental staff report, of ZOTA 2013-1 & SRA 2013-1. Mr. Sallee said that the staff recommendations are listed on the supplemental report, as well as on today's agenda. He then said that the staff is recommending approval of three of the four changes originally proposed.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request. There was no response.

Action - A motion was made by Mr. Penn, seconded by Mr. Brewer to approve ZOTA 2013-1 & SRA 2013-1: AMENDMENTS RELATED TO THE CAPACITY ASSURANCE PROGRAM, as presented by the staff.

Discussion of motion – Mr. Cravens asked if the motion on the floor included the underlined portion as noted in Article 21-4(b). The Chair replied that the supplemental staff report removes that underlined section from the text amendment. Mr. Sallee replied affirmatively.

The motion carried 9-0 (Blanton and Roche-Phillips absent).

VI. COMMISSION ITEM – The Chair announced that any item a Commission member would like to present would be heard at this time.

A. PLANNING COMMISSION WORK SESSION – At the conclusion of today's meeting, a work session with the Long Range Planning staff, related to the ongoing update to the Comprehensive Plan, was conducted. Minutes of that work session are contained in a separate document.

B. CHAIR COMMENTS – The Chair reminded the Commission members that on May 15th there would be an APA audio conference held in the Division of Planning, as well as David Pike would be hosting a seminar at the Embassy Suites Hotel on June 8th, both of which will count toward HB55 training requirements.