

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.