

STAFF REPORT ON PETITION FOR ZONING ORDINANCE TEXT AMENDMENT

ZOTA 2016-1: AMENDMENTS TO ARTICLES 7, 23, AND 26 FOR ENVIRONMENTALLY SENSITIVE AREAS

INITIATED BY: Urban County Planning Commission

PROPOSED TEXT: See Attached

STAFF REVIEW:

The Urban County Planning Commission recently initiated a text amendment to Article 26 and related sections, to strengthen oversight by the Urban County Board of Adjustment (BOA) for the protection of environmentally sensitive areas (ESAs) within the community. The proposed amendment will modify portions of three articles of the Zoning Ordinance. First, Article 7-6(a) which outlines the Board of Adjustment's responsible and authority in terms of reviewing conditional use permit applications. Second, Article 23A-2(c) which references environmentally sensitive lands and includes outdated Land Subdivision Regulations references (Expansion Area Zoning Categories and Restrictions). Third, Article 26 which mentions environmentally sensitive areas multiple times, as well as the same Land Subdivision Regulations references (Under Tree Protection Standards).

During the course of the Planning Commission's consideration of another text amendment, a local planning advocacy organization proposed that the Commission consider an "environmental surety" (bond) ordinance to improve the protection of environmentally sensitive areas. The organization believed that a surety or bond would "certify that businesses use best management practices while operating on environmentally sensitive lands. Additionally, such bonds would bridge the gap between the competing goals of conservation and public recreation in fragile natural areas." As a result, The Planning Commission Chairman created an Ad Hoc Committee to further study the recommendation and consider alternative possibilities in late 2014.

The Ad Hoc Committee was chaired by Planning Commission Parliamentarian Bill Wilson and met between December 2014 and February 2015. After a great deal of research, review and discussion, the group determined that requiring a surety bond as a condition (specifically associated with Board of Adjustment actions) was not a viable option for myriad of reasons. However, the Committee agreed that alternative measures should be considered to improve the ability of LFUCG to address environmental violations and degradation, especially as it related to conditional use permits deliberated by the Board of Adjustment. Their research indicated that there were very few issues related to development considered by the Planning Commission due to the extensive technical review associated with their usual applications. Ultimately, the Ad Hoc Committee wanted all review bodies/agencies to have the necessary tools to protect our environmentally sensitive land in Fayette County.

To that end, the Ad Hoc Committee developed three recommendations:

1. **Revise the Zoning Ordinance to require applications that impact an environmentally sensitive area (ESA) include a site plan for Board of Adjustment (BOA) consideration of a conditional use permit.** When deemed necessary to ensure the proper addressing of environmentally sensitive areas, the site plan shall be prepared by a registered engineer, or other professional qualified to assess and make recommendations for protection of the specific ESA in question. The proposed regulations should be drafted to ensure that small scale applications with minimal potential for environmental disruption are not automatically required to provide excessive levels of site plan detail or professional expertise.
2. **Revise the Zoning Ordinance to include language indicating that in conjunction with a conditional use permit involving an ESA, the BOA may impose a condition establishing "gateway" or "checkpoint" certifications for proceeding with exercising the conditional use permit during pre-construction, active construction and/or post construction phases of the development.** This requirement should be drafted to permit verification by either a public enforcement agency or qualified private contractor as deemed appropriate by the BOA on a case-by-case basis.
3. **Revise the Zoning Ordinance to indicate that within ESAs in the Rural Area, the BOA may consider a requirement that non-habitable structures and facilities, natural feature modifications and paving installed in conjunction with a conditional use permit may be required to be removed and/or restored if**

the conditional use ceases operation. In such cases, the BOA should provide specific conditions as to what event(s) would constitute the cessation of the conditional use permit; specific listing of the structures or facilities subject to the condition; and the responsible party for such removal action(s).

The Ad Hoc Committee chairman presented the recommendations to the full Planning Commission in May 2015, and the Commission requested that the staff draft a text amendment to address the report of the Committee. The three, very specific recommendations listed herein were incorporated into Article 7-6(a)(4) of the Zoning Ordinance. This new sub-section of the Ordinance strengthens the BOA's existing authority and will give the BOA the necessary information to make knowledgeable decisions. Changes to Article 23 and 26 were suggested by the staff to eliminate any ambiguity and correct outdated references to the Land Subdivision Regulations, where the core of the regulations related to environmentally sensitive areas and geologic hazard areas exists for LFUCG.

The staff agrees with the recommendations of the Ad Hoc Committee and suggests adoption of the proposed text amendment in whole, without modification. The proposed text amendment is consistent with the direction set by the 2013 Comprehensive Plan, which recognizes the importance of our environmentally sensitive land by establishing a number of Goals and Objectives which directly relate, including:

- (1) promoting the protection of natural features and landscapes prior to development (Theme A, Goal #3c. and Theme B, Goal #3a.);
- (2) reducing the community's carbon footprint (Theme B, Goal #1);
- (3) encouraging environmentally sustainable uses of natural resources (Theme B, Goal #1b.); and
- (4) protecting and enhancing the natural, cultural, historic, and environmental resources of the Rural Service Area and rural farmland (Theme E, Goal #2b.).

Although text amendments are not legally required to make a finding that they be consistent with the Comprehensive Plan, it is wise to consider text amendments in light of the Plan because zoning is the primary mechanism by which the Plan is implemented.

The Staff Recommends: **Approval**, for the following reasons:

1. The proposed text amendment will help to guide the Board of Adjustment in their review of conditional use permit applications, specifically for properties that may be environmentally sensitive and could be impacted by a future land use, and strengthen the Board's oversight of our environmentally sensitive land in Fayette County.
2. The 2013 Comprehensive Plan's Goals and Objectives related to protection of environmentally sensitive land are advanced by implementing the proposed text amendments. If approved, the Board of Adjustment will be able to assist in promoting the protection of natural features and landscapes prior to development (Theme A, Goal #3c. and Theme B, Goal #3a.); reducing the community's carbon footprint (Theme B, Goal #1); encouraging environmentally sustainable uses of natural resources (Theme B, Goal #1b.); and protecting and enhancing the natural, cultural, historic, and environmental resources of the Rural Service Area and rural farmland (Theme E, Goal #2b.).
3. The proposed text amendment will correct outdated references to the Land Subdivision Regulations as it relates to environmentally sensitive areas and geologic hazard areas.

TLW/BJR/WLS

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