



ABSTAINED: (0)

DISQUALIFIED: (0)

Motion for Approval of the staff alternative text of PLN-ZOTA-20-00001 carried.

Enclosures:      Initiation Minutes  
                      Staff Report  
                      Recommended Text  
                      Applicable excerpts of minutes of above meetings

Ms. Mundy asked if solar panels can be on towers, posts, or poles. Ms. Kerr said that free-standing panels are allowed, but it would depend on the placement and the size of the site, and have no adverse effect on the property or neighbors.

**Commission Discussion** – Mr. Owens announced that if the board chooses to withdraw any properties, to do so before a motion is made. He reiterated that this will be heard by the Urban County Council, who cannot add any properties back in, however they can also withdraw properties.

Ms. Plumlee thanked the citizens in the neighborhood for their dedication in this long process and wished them success with their neighborhood.

**Motion to Remove** - A motion was made by Ms. Plumlee, seconded by Mr. de Movellan, and carried 7-0 (Brewer, Nicol, Pohl, and Wilson) to withdraw 1733, 1737, and 1739 Nicholasville Road, for the findings provided by the attorneys, Mr. Walbourn and Mr. Clendenen, such findings should also include 1739 Nicholasville Road

1. 1733, 1737, and 1739 Nicholasville Road are presently zoned for denser development and possess different zoning restrictions than virtually every other parcel contemplated for inclusion in the historic overlay.
2. The adjacent properties to 1733, 1737, and 1739 Nicholasville Road are more intense uses, making the preservation of the existing single-family homes on these properties less appropriate.
3. The properties at 1733, 1737, and 1739 Nicholasville Road are not integrated in to the remainder of the Pensacola Park neighborhood. Their sole access is to Nicholasville Road.
4. The 2018 Comprehensive Plan calls for barriers to infill development to be reduced, and inclusion of these properties in the historic overlay would not facilitate that goal.
5. There is a study currently being conducted regarding the Nicholasville Road corridor by the Lexington Metropolitan Planning Organization. The study includes 1733, 1737, and 1739 Nicholasville Road. As that study remains outstanding at this time, it would be inappropriate to make determinations regarding the appropriateness of the preservation of single-family properties until such time as the study is completed.

**Motion to Remove** - A motion was made by Mr. Penn, seconded by Mr. Bell, and carried 7-0 (Brewer, Nicol, Pohl, and Wilson) to withdraw 1915 Nicholasville Road, for the reasons provided by the staff.

**Zoning Action** – A motion was made by Ms. Plumlee, seconded by Mr. Bell, and carried 7-0 (Brewer, Nicol, Pohl, and Wilson) to approve PLN-MAR-19-00015: URBAN COUNTY PLANNING COMMISSION (PENSACOLA PARK), for the reasons provided by the staff.

*Note: Mr. Forester left the meeting at 5:00 p.m.*

**VI. COMMISSION ITEMS** - The Chair will announce that any item a Commission member would like to present will be heard at this time.

- a. **ADOPTION OF 2020 MEETING & FILING SCHEDULE** - The Chair will announce that the Commission will consider adoption of the "Official Meeting and Filing Schedule for 2020" at this time. Once adopted, the staff will distribute copies of the 2020 schedule for use by the Commission and the general public.

**Staff Zoning** - Ms. Wade said that the meeting and filing schedule of the 2020 was reviewed at the October 17, 2019 Planning Commission Work Session.

**Action** – A motion was made by Mr. Penn, seconded by Ms. Mundy, and carried 6-0 (Brewer, Forester, Nicol, Pohl and Wilson absent) to adopt the ADOPTION OF 2020 MEETING & FILING SCHEDULE.

- b. **INITIATION OF ZONING ORDINANCE TEXT AMENDMENT FOR ARTICLE 23 OF THE ZONING ORDINANCE** - Staff will report at the meeting.

**Staff Zoning** – Ms. Wade said that the staff is asking the Planning Commission to initiate a text amendment to update Article 23C-7(c) of the Zoning Ordinance. She said that the proposed text had been distributed to the Planning Commission. She said that this will be in regards to how credits are claimed in the exactions process.

**Zoning Action** – A motion was made by Mr. Penn, seconded by Mr. Bell, and carried 6-0 (Brewer, Forester, Nicol, Pohl and Wilson absent) for the INITIATION OF ZONING ORDINANCE TEXT AMENDMENT TO UPDATE ARTICLE 23.

**VII. STAFF ITEMS** - The staff will report at the meeting.

- a. **Article 4-5(b) IMPROVEMENT PLAN PROGRESS REPORT** - When the project engineer has completed approximately fifty percent (50%) of the infrastructure design for the development, the project engineer shall submit a preliminary report to the Planning

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\* - Denotes date by which Commission must either approve or disapprove request, unless agreed to a longer time by the applicant.



## **STAFF REPORT ON PETITION FOR ZONING ORDINANCE TEXT AMENDMENT**

### **PLN-ZOTA-20-00001: AMENDMENT TO ARTICLE 23C-7(c) REGARDING REALLOCATION OF EXACTION CREDITS**

REQUESTED BY: LFUCG Planning Staff  
INITIATED BY: Urban County Planning Commission  
PROPOSED TEXT: See attached

(Note: Text underlined indicates an addition to the existing Zoning Ordinance; text ~~stricken through~~ indicates a deletion.)

#### **STAFF REVIEW:**

A request to amend the LFUCG Zoning Ordinance was made by the planning staff and was initiated by the Urban County Planning Commission on October 24, 2019. In the request to initiate the text amendment, the staff expressed a desire to update Article 23C-7(c) of the Zoning Ordinance to clarify the application and reallocation of exaction credits in the Expansion Areas of the Urban County.

Article 23C-Expansion Areas Development Exactions was established to implement and facilitate orderly growth consistent with the Expansion Area Master Plan (EAMP) by assuring that new development activity is served by adequate public facilities and bears a proportionate share of the cost of improvements necessary to provide roads, parks, open space and sanitary sewer treatment, sanitary sewer transmission capacity and storm water management facilities in the Expansion Areas of Lexington-Fayette County; and to mitigate the loss of rural landscape in the Expansion Areas by providing for an exaction for preservation of undeveloped land within the Rural Service Area in the vicinity of the Expansion Areas or of community-wide significance. Exactions are defined as a fee or a land dedication in lieu of a fee, and calculated based upon the cost of capital improvements in reasonable relationship and in a proportionate share to new development activities creating the need for such capital improvements.

Section 23C-7 outlines the system improvements and the calculation of credits against exactions. Those improvements, costs, and credits are noted on development plans and subdivision plats, and are subsequently recorded in the EAMP Database. Over the course of the exactions program, developers have been able to reallocate applied exaction credits from one property to another. This has resulted in the information reflected on development plans and subdivision becoming incorrect overtime, and creates opportunities for error due to repeated reallocation and tracking of remaining exaction credits. The addition of the proposed language is focused on maintaining correct documentation of the available credits applied to properties. By requiring that credits be applied against exactions once, and that credits may only be reallocated subsequent to the recordation of an amended plat or development plan that results in lot or development reconfiguration, staff can maintain proper records of the changes, while also maintaining the accuracy of development plans and subdivision plats.

Staff is recommending a slight modification to the language that was originally initiated by the Planning Commission, which is italicized below.



23C-7(c)(9) Unless otherwise provided for in this Article, credits shall only be applied against exactions due once. Exaction credits may only be reallocated subsequent to the recordation of an amended plat or development plan that results in lot *or development* reconfiguration.

Staff recommends the staff alternative, as it encompasses all potential modifications to plans or plats.

The Staff Recommends: **Approval** of the staff alternative, for the following reasons:

1. The proposed text amendments will satisfy the intent of Article 23 by providing an accurate depiction of the improvements, costs, and credits associate with the development in the expansion areas.
2. The proposed text streamlines the government process, providing the public with the most accurate information on official documentation.

## **APPENDIX 23C - EXPANSION AREAS DEVELOPMENT EXACTIONS**

**23C-1 INTENT** - This Article is intended to implement and facilitate orderly growth consistent with the Expansion Area Master Plan element of the 1996 Lexington-Fayette Urban County Comprehensive Plan by assuring that new development activity is served by adequate public facilities and bears a proportionate share of the cost of improvements necessary to provide roads, parks, open space and sanitary sewer treatment, sanitary sewer transmission capacity and storm water management facilities in the Expansion Areas of Lexington-Fayette County; and to mitigate the loss of rural landscape in the Expansion Areas by providing for an exaction for preservation of undeveloped land within the Rural Service Area in the vicinity of the Expansion Areas or of community-wide significance. The provisions of this Article are intended to implement the infrastructure financing concepts contained in the Expansion Area Master Plan in a manner consistent with the laws of the Commonwealth of Kentucky. The Expansion Area Master Plan financing concepts included allocation of certain exactions at 50% to be paid prior to building permit, with the remaining 50% to be obtained from ultimate users of the property. The provisions of Section 23C-6(b) are designed to address this concept by providing mechanisms which allow for the direct or indirect recovery of exactions paid by builders/developers from such ultimate users.

**23C-2 DEFINITIONS** - The terms as defined herein shall apply to all of Article 23.

**BUILDING PERMIT** - A document issued by the Lexington-Fayette Urban County Government, pursuant to its zoning regulations, authorizing the construction, repair, alteration or addition to a structure; or authorizing the placement or relocation of a mobile home.

**CAPITAL IMPROVEMENTS** - Those capital improvements necessary to support new development activity and which are identified in that portion of the Lexington-Fayette Urban County Expansion Area Master Plan as public facilities which are to be financed by the imposition of an exaction.

**CAPITAL IMPROVEMENT PLAN** - A plan reviewed and updated annually by the Lexington-Fayette Urban County Government, which in addition to other facilities, designates the size, extent, location, need and estimated cost of public facilities to serve the need created by new development activities.

**DEVELOPER** - Any person who engages in development activity.

**DEVELOPMENT ACTIVITY** - Any construction, modification or expansion of a building, structure or use that will generate additional impact or demand on the Urban

County Government's public facilities for which an exaction is imposed pursuant to this Article, which is governed by the Lexington-Fayette Urban County Zoning Ordinance and/or the Lexington-Fayette Urban County Land Subdivision Regulations.

**ENCUMBER** - To legally obligate by contract or otherwise commit to use by appropriation or other official act of the Lexington-Fayette Urban County Government.

**EXACTION** - A fee or a land dedication in lieu of a fee required pursuant to this Article, and calculated based upon the cost of capital improvements in reasonable relationship and in a proportionate share to new development activities creating the need for such capital improvements.

**EXACTION CREDIT** - An obligation owed by the Lexington-Fayette Urban County Government to a developer for construction of system improvements.

**EXACTION CREDIT, APPLICATION OF** - The act of redeeming an approved exaction credit for the payment of exactions due under this Article, and in a manner permitted under this Article.

**EXACTION CREDIT, CLAIMED** - The written declaration by a developer of the construction (or proposed construction) of a system improvement eligible for an exaction credit.

**EXACTION CREDIT CERTIFICATES** - Instruments issued to the developer by the Lexington-Fayette Urban County Government, payable only from the exaction fund in amounts equal to the actual cost of system improvements constructed by the developer, or contributions or dedication of land by the developer, which exceeds the other exactions due with respect to the developer's property. These certificates shall be used only for the payment of exactions as provided herein; or may be surrendered for payment from the Exaction Fund in an order based upon the date of surrender. Exaction credit certificates are for the expressed purpose of reimbursing a developer for credits due for system improvements; and unless otherwise specified under a development agreement, shall not accrue interest or any other increase in value over the face amount stated in the certificate.

**EXACTION DISTRICT** - A geographic area identified by the Expansion Area Master Plan in which a defined set of public facilities is required to provide service to new growth and development. Any road right-of-way used to define exaction district boundaries may be considered to

be within any exaction district it bounds for the purpose of using the funds collected pursuant to this Article.

EXACTION FUND - A separate fund established by the Lexington-Fayette Urban County Government exclusively to hold or pay out exactions.

EXPANSION - Means the expansion of the capacity of a public facility, and applies to all modifications designed to accommodate increased capacity, or to any capacity enhancements made reasonably necessary by new development activities.

FEEPAYOR - That person who pays an exaction, or his successor in interest.

OPEN SPACE - As used for exaction purposes only, this term is applied to undeveloped land within the Rural Service Area to be acquired or otherwise preserved in its undeveloped state and which may be used only for purposes which include recreation, agriculture, or aesthetic preservation.

PARK - A system improvement which consists of land identified in the Expansion Area Master Plan intended for acquisition by the Lexington-Fayette Urban County Government for use as a public park, or any land acquired by the Lexington-Fayette Urban County government for such purpose. For the purposes of this Article, the term "park," and the exactions attendant thereto, shall also include lands which meet all of the following criteria: 1) the land is designated as a greenway in the Expansion Area Master Plan, or has been designated as a greenway by the Planning Commission on an approved development plan; 2) the land lies outside of the post-development floodplain; and 3) the land lies outside of an area measured 100 feet in both directions from the center of the greenway.

PERSON - An individual, a corporation, a partnership, an incorporated association, or any other similar entity.

PROJECT IMPROVEMENTS - Site improvements and facilities that are planned and designed to provide service for a particular development which are not system improvements and which are necessary solely for the use and convenience for the occupants or users of the project.

PROPORTIONATE SHARE - That portion of the cost of system improvements which is reasonably related to the demands and needs of a project.

PUBLIC FACILITY - Those facilities identified in the Expansion Area Master Plan for which exactions are imposed to pay the cost of capital improvements and include road improvements, open space acquisition, park acquisition, storm water management facilities, sanitary

sewer treatment facilities and sanitary sewer transmission facilities.

PUBLIC FACILITY COSTS - Includes, but is not limited to, costs incurred to provide additional public facility capacity needed to serve new growth and development. Costs attributable to planning, design and construction, land acquisition, land improvement, design and engineering related thereto, including the cost of constructing or reconstructing system improvements or facility expansions; including, but not limited to, the construction contract price, surveying and engineering fees, related land acquisition costs (including land purchasers, court awards and costs, attorney fees, and expert witness fees) and costs associated with the provisions of Section 23C-7(b). Costs may also include expenses incurred for qualified staff or professional consultants necessary to prepare or update the Capital Improvement Plan; and administrative costs equal to five percent (5%) of the total amount of the project costs for system improvements. Public facility costs also include projected interest charges and other finance costs for system improvements if and to the extent the exactions are to be used for the payment of principal and interest on bonds, notes, or other financial obligations issued by or on behalf of the Lexington-Fayette Urban County Government to finance the Capital Improvement Plan. Such costs do not include routine and periodic maintenance expenditures, personnel training, and other operating costs.

ROADS - Streets which have been designated as required roads in the Infrastructure Element of the Expansion Area Master Plan together with all necessary appurtenances; including, but not limited to, bridges and traffic control improvements.

SANITARY SEWER TRANSMISSION LINES AND SANITARY SEWER TREATMENT FACILITIES - Those sanitary sewer system improvements identified in the Expansion Area Master Plan to serve new growth and development activity in the Expansion Areas. These public improvements are, or will be, part of the sanitary sewer system owned and operated by the Lexington-Fayette Urban County Government.

STORM WATER MANAGEMENT FACILITIES - A system improvement which provides watershed-wide management of post-development storm water, including storage, treatment, water quality facilities and discharge runoff.

SYSTEM IMPROVEMENTS - Public facilities which are designed to provide service to the Expansion Area "at large," rather than project improvements which substantially or exclusively benefit only a single project. If an improvement or facility provides or will provide more than incidental service or facilities capacity to persons

other than users or occupants of a particular project, the improvement or facility is a system improvement and shall not be considered a project improvement. The character of the improvement shall control a determination of whether an improvement is a project improvement or system improvement; and the physical location of the improvement, on-site or off-site, shall not be considered determinative of whether an improvement is a project improvement or a system improvement. The costs of system improvements, but not project improvements, are calculated as the basis for the determination of the exaction schedule.

23C-3 IMPOSITION OF EXACTIONS - Except as specifically exempted under 23C-9 herein below, any person who, after the effective date of this Article, engages in development activity within a designated Expansion Area shall pay an exaction in the manner and amount set forth herein. No exaction or other fee charge related to the construction of Expansion Area system improvements may be imposed as a condition of development activity approval except pursuant to this Article. No building permit for any development activity shall be issued by the Division of Building Inspection unless and until the required developer exaction has been paid or the Lexington-Fayette Urban County Government has approved a development agreement, pursuant to Section 23C-7(d) herein, setting out in detail how the cost of the system improvements is to be paid.

23C-4 EXACTION DISTRICTS ESTABLISHED - Exaction Districts for each public facility for which an exaction is required pursuant to this Article are hereby established as follows:

23C-4(a) ROAD EXACTION DISTRICTS:

Road Exaction District 2-A/2-B - This exaction district is composed of Expansion Areas 2-A and 2-B.

Road Exaction District 2-C - This exaction district is composed of Expansion Area 2-C.

Road Exaction District 3 - This exaction district is composed of Expansion Area 3.

23C-4(b) OPEN SPACE EXACTION DISTRICT: This exaction district is composed of Expansion Areas 1, 2-A, 2-B, 2-C and 3.

23C-4(c) SANITARY SEWER TREATMENT CAPACITY EXACTION DISTRICT: This exaction district is composed of Expansion Areas 1, 2-A, 2-B, 2-C and 3.

23C-4(d) SANITARY SEWER TRANSMISSION CAPACITY DISTRICTS:

Sanitary Sewer Transmission Capacity Exaction District 1 - This exaction district is composed of Expansion Area 1.

Sanitary Sewer Transmission Capacity Exaction District 2-A - This exaction district is composed of Expansion Area 2-A.

Sanitary Sewer Transmission Capacity Exaction District 2-B - This exaction district is composed of Expansion Area 2-B.

Sanitary Sewer Transmission Capacity Exaction District 2-C - This exaction district is composed of Expansion Area 2-C.

Sanitary Sewer Transmission Capacity Exaction District 3 - This exaction district is composed of Expansion Area 3.

23C-4(e) PARK EXACTION DISTRICTS:

Park Expansion Exaction District 2-A/2-B - This exaction district is composed of Expansion Areas 2-A and 2-B.

Park Expansion Exaction District 2-C - This exaction district is composed of Expansion Area 2-C.

23C-4(f) STORM WATER MANAGEMENT FACILITIES EXACTION DISTRICTS:

Storm Water Exaction District 2-A - This exaction district is composed of Expansion Area 2-A.

Storm Water Exaction District 2-B - This exaction district is composed of Expansion Area 2-B.

Storm Water Exaction District 2-C - This exaction district is composed of Expansion Area 2-C.

23C-5 COMPUTATION OF THE AMOUNT OF THE EXACTION - The amount of exactions shall be determined by zoning, public facility cost and acreage in accordance with a schedule adopted by resolution of the Lexington-Fayette Urban County Council. Any amendments to the Exaction Schedule, as specified under 23C-5(b), shall also be adopted by resolution of the Council.

3C-5(a) MISCELLANEOUS EXACTION PROVISIONS - The following special circumstances shall be addressed as provided below:

- (1) Inasmuch as land in the Conservation District (CD) zone is proposed for future public acquisition, there shall be no exactions imposed for any use permitted in the CD zone.
- (2) Land developed in the Transition Area (TA) zone shall be subject to an exaction based on the underlying zone.
- (3) The Exaction Schedule shall include an adjustment for the exactions of any EAR-1 property which lies in its entirety within a Scenic Resource Area. The adjustment shall be based proportionally upon the reduced on-site density. Should such density be recaptured under a Density Transfer Right, exactions shall be paid for such unit as a part of obtaining a Certificate of DTR under Article 23A-2(m)(2)(g).



- (4) In the event a zone change is granted to a category where no exaction is shown in the adopted Exaction Schedule, no development activity shall occur until the Urban County Council has amended this Article and/or the Exaction Schedule, as necessary, to create an appropriate exaction.

23C-5(b) REVIEW, ADJUSTMENT AND AMENDMENT OF EXACTIONS - The exactions set forth in this Article are based upon good faith estimates of the costs of acquiring lands for open space, parks, and infrastructure, and the costs of constructing system improvements. The Lexington-Fayette Urban County Government acknowledges that a cost estimate, which as closely as possible approximates the actual construction cost, is in the best interest of the operation of the exaction program. Therefore, beginning four months after the date of the adoption of the resolution establishing the Exaction Schedule, and on a quarterly basis thereafter, the Department of Finance and the Department of Public Works shall review the methodology report and recommend the increase or decrease of all exactions, with the exception of the Open Space Exaction, based upon the actual costs of acquiring properties or interests in properties and the actual costs of constructing system improvements. The methodology for calculation of the estimated public facility cost and exaction shall entail:

- (1) Adjusting the total estimated cost of the facility by factoring the actual costs for system improvements constructed as of the date of the calculation into the estimated cost of the system improvement to the extent those improvements have been constructed;
- (2) Subtracting from this adjusted total estimated facility cost the total committed exactions paid or due as calculated by totaling the exactions on previously recorded subdivision plats; and
- (3) Subsequently recalculating the Exaction Schedule based upon the calculations described under (1) and (2) by apportioning the remaining cost by zone and acreage of all land in the exaction district not accounted for in section 2 above.

Beginning January 1, 2002, and at least at five-year intervals thereafter, the Open Space Exaction shall be subject to such review and adjustment based on the actual cost of acquiring the interest in property. The failure to review such exactions and methodology report shall not invalidate this Article or exactions imposed pursuant to this Article. The Department of Finance shall consult with the Divisions of Engineering, Planning and other Divisions of the Urban County Government, as appropriate, in the review of the methodology report and the determination of the adjustments to the exactions.

23C-6 PAYMENT OF EXACTIONS - Any person required to pay exactions pursuant to this Article shall render such exaction to the Director of Building Inspection prior to the issuance of a building permit, except as permitted herein.

23C-6(a) EXACTIONS DUE - The amount of the exaction applicable to the property shall be shown on the final record plan of each subdivision in the Expansion Area. The calculation of the amount due may include the direct application of approved credits against such exaction, pursuant to Section 23C-7 herein; provide for deferred or phased payment of the exaction if so specified in a development agreement, or for the contribution or dedication of land in lieu of payment of exactions.

23C-6(b) PERMITTED INSTALLMENTS - Except where a development agreement provides otherwise, feepayers shall be entitled to make the entire exaction payment at the time of building permit or to pay in two equal installments. Under this installment option, 50% of the exactions due shall be paid prior to the issuance of the building permit. The second payment shall be made no later than one year from the date of issuance of the building permit. In consideration of such installment payment, the owner shall enter into a contract with the Urban County Government, which shall include agreement to the placement of a lien against the property for the exaction amount outstanding. The lien shall be subordinate to any financing for construction purposes. No interest shall be assessed against such installment payment as long as it is fully paid within one year of the issuance of the building permit. After one year, interest shall accrue on a monthly basis at a rate equal to the current interest rate of the three-month United States Treasury bill, plus 2%.

23C-6(c) DEPOSIT OF FUNDS - All exactions collected pursuant to this Article shall be identified by the Exaction District from which they were collected and promptly transferred for deposit into the appropriate Exaction Account to be held and used as provided for in this Article. Exactions shall be used solely for the purposes specified in this Article.

23C-7 DEVELOPER PROVISION OF SYSTEM IMPROVEMENTS: CALCULATION OF CREDITS AGAINST EXACTIONS - Developers seeking to construct and/or dedicate system improvements or land, and to receive credit for such against exactions otherwise due, shall be subject to the provisions of this section.

23C-7(a) CREDITS AGAINST EXACTIONS - Shall be determined as follows:

- (1) A developer shall construct and dedicate, as necessary, all project improvements required for the

development. No credit shall be given for project improvements. A developer shall be entitled to construct all system improvements reflected in the Expansion Area Master Plan for the property proposed for development activity. Stormwater management facilities which are constructed in conformance with the Expansion Area Stormwater Facilities Master Plan may be constructed by the developer, and the cost of such improvement shall be credited as provided herein against exactions which would be otherwise owed. Credits shall be given for the actual cost of the construction of system improvements or contribution or dedication of land as outlined in Section 23C-7(b) by a developer at any time subsequent to the effective date of this Article and required or accepted by the Lexington-Fayette Urban County Government from the developer or predecessor in title for system improvements.

- (2) Developers wishing to claim credits for system improvements shall be subject to the procedures outlined in 23C-7(b) below. A developer shall be entitled to receive exaction credits for the construction of a system improvement only upon executing a "System Improvement Design and Construction Memorandum" or a "Development Agreement" as provided below. The system improvement design and construction memorandum shall be used only for projects not involving "special circumstances," as defined herein. Development agreements shall be required for all other system improvement projects. "Special circumstances," as used herein, shall mean any case where the system improvement involves a material deviation from the Expansion Area Master Plan; deviation from the provisions of Article 23C-7(b), its subsections, or other relevant sections of this ordinance for the calculation of exactions owed; the type or extent of system improvements; the design of the system improvements; the payment of exactions; the application of exaction credits; refunds from an Exaction Fund; the transfer of exaction credits; or the apportionment of costs or construction responsibilities between developers, or between a developer and the Urban County Government.

23C-7(b) SYSTEM IMPROVEMENT DESIGN AND CONSTRUCTION MEMORANDUM - Prior to commencement of the design of system improvements, the developer and the Urban County Government, as represented by the Chief Administrative Officer or authorized agent, shall jointly execute a system improvement design and construction memorandum. A developer claiming credits for system improvements shall submit to the Chief Administrative Officer a detailed

project description, including engineering and construction cost estimates prepared by a licensed professional engineer. In addition, the developer shall submit property appraisals prepared by professional appraisers to determine the cost of land acquisition or right-of-way dedication for system improvements. All construction must be publicly bid and must be carried out in accordance with applicable development and design standards. The Chief Administrative Officer shall refer all land and construction cost estimates to the Exaction Credit Advisory Committee, who shall review all materials and make recommendation to the Chief Administrative Officer as to their appropriateness. The Exaction Credit Advisory Committee shall consist of the following individuals or their designees: the Commissioner of Finance, the Commissioner of Public Works, the Commissioner of Law, the Director of the Division of Engineering, the Director of the Division of Planning, and the Urban County Council Administrator. The Chief Administrative Officer has the right to confirm the amount proposed to be credited by having engineering and construction cost estimates and/or property appraisals prepared for those system improvements, and by having verification of developer expenses claimed. The system improvement design and construction memorandum shall include provisions which shall establish:

- (1) The specific nature and extent of the system improvements to be constructed and eligible for credit.
- (2) That the developer shall receive credit for construction of full or partial system improvements, or for contribution or dedication of land as outlined in this Article. This credit shall take the form of either direct application against the required exaction or as exaction credit certificates in an amount which cannot exceed the eligible credits. Credits shall be permitted to be used as authorized by 23C-7(c)(3) and (4) herein below.
- (3) If the amount of the credit created by such construction, contribution or dedication is in excess of the exaction which would have been otherwise due and owing for that improvement, the developer shall be reimbursed for such excess contribution from the Exaction Fund as provided herein.
- (4) The public bid process to be used for selection of the contractor and estimated cost for the system improvements.
- (5) The developer's management/overhead fee cost to be included in the exaction-eligible cost of the construction equal to 5% of total cost of the system improvements.

- (6) The procedures to be used to submit, evaluate and approve (if warranted) change orders to any contracted system improvement.
- (7) A statement establishing that the actual cost of the system improvement construction and/or dedication as calculated at the time of recording of the plat shall be the basis for any credits. For any system improvements not in place at the time of recording, the cost of the completion shall be covered by surety as provided generally for subdivision improvements in the Land Subdivision Regulations. For these items, the bid price for the completion of such improvements shall be used to calculate the cost of the system improvement. The memorandum shall also provide for verification through documentation required of the developer by the LFUCG; including, but not limited to, periodic submittal of invoices, proof of payment, audits or other means determined necessary by the LFUCG to ensure validity of claimed credit amounts. All such materials shall be referred to the Exaction Credit Advisory Committee, who shall make recommendations to the Chief Administrative Officer. The Chief Administrative Officer shall approve the final amount of such actual costs prior to plat recording.
- (8) A developer proposing credits for land dedication shall present property appraisals prepared by qualified professionals and a certified copy of the most recent property valuation administration assessment of the property to the Chief Administrative Officer to be used in determining the amount of credit. The Chief Administrative Officer shall have a review appraisal prepared by a professional MAI to confirm the accuracy of the appraisals submitted by the developer, and shall refer all such materials to the Exaction Credit Advisory Committee, who shall make a recommendation to the Chief Administrative Officer.
- (9) A statement affirming the understanding that no credits shall be given for project improvements.
- (10) That the total exactions required under this ordinance and the amount of exactions due after the application of any credits authorized under 23C-7(b)(2) or provisions of a development agreement shall be shown on the final plat of the subdivision. The exaction rate schedule to be used shall be the one in effect as of the date the Division of Engineering transmits its certified original of the final plat to the Division of Planning for final certification, provided the plat is recorded within 30 days of that date; otherwise, the net exaction shall be calculated upon any amended rate schedule adopted

by the Urban County Council in the intervening time.

23C-7(c) CLAIMING AND APPLICATION OF CREDITS - The application of credits shall be as follows:

- (1) The dollar amount of any credits shall be applied either as a credit against exactions due for the development providing the system improvement, or for the issuance of exaction credit certificates as outlined under 23C-7(b)(2) above.
- (2) Credits must be claimed by no later than the time of the certification of the final record plan. Any credits not so claimed shall be deemed waived.
- (3) The credits for roads, parks, open space or storm water management facilities may be applied against all exactions for roads, parks, stormwater management facilities and open space owed by the developer with respect to the development. To the extent that the total credits for roads, parks, open space or storm water management facilities exceed exactions due for roads, parks stormwater management facilities and open space with respect to the developer's property, the development agreement may provide for the developer to receive a refund from the exaction fund, as outlined in 23C-7(c)(8) below.

Credits for roads, parks, stormwater management facilities and open space may be applied as follows:

- a. Credits earned in either Expansion Area 2-A or 2-B may be applied only against stormwater facilities, road, park and open space exactions in either Expansion Area 2-A or 2-B.
- b. The stormwater credit is only applicable within the specific exaction district as noted in Table A.
- c. Credits earned in Expansion Area 2-C may be applied only in Expansion Area 2-C.
- d. Credits earned in Expansion Area 3 may be applied only in Expansion Area 3.

<b>Table A</b>	
<b>Application of Credits for System Improvements (Other than)</b>	
	<i>Credits for system improvements constructed in Expansion Area:</i>
	Expansion Area 1
	Expansion Area 2-A

**Table B**  
**Application of Exaction Credits for Sanitary Sewer Transmission and Treatment Capacity**

<i>Credits for Sanitary Sewer Transmission and Capacity system improvements constructed in Expansion Area:</i>	<i>May be applied against exactions due in the Sanitary Sewer Treatment Capacity District and in the following Transmission Capacity Districts:</i>
Expansion Area 1	Sanitary Sewer Transmission Capacity in Expansion Area 1
Expansion Area 2-A	Sanitary Sewer Transmission Capacity in Expansion Area 2-A
Expansion Area 2-B	Sanitary Sewer Transmission Capacity in Expansion Area 2-B
Expansion Area 2-C	Sanitary Sewer Transmission Capacity in Expansion Area 2-C
Expansion Area 3	Sanitary Sewer Transmission Capacity in Expansion Area 3

- (4) The credits for sanitary sewer transmission capacity may only be applied against exactions due for sanitary sewer transmission capacity in the Expansion Area from which credit originates, or against exactions due for sanitary sewer treatment capacity in any Expansion Area.
- (5) If the area proposed for development includes lands designated for parks in the Expansion Area Master Plan, the developer shall dedicate such lands to the Lexington-Fayette Urban County Government with credit given for the value of the land against the required exaction. If an area proposed for development includes land which is located outside the horizontal limits of the greenway and which is designated in the Expansion Area Stormwater Facilities Master Plan for stormwater management facilities, the developer shall dedicate such land. The developer shall obtain a credit for the value of such lands against any open space, park or road exactions which may be due. The value of such credit shall be computed as set forth in Article 23C-7(b)(7) and shall be applied in the same manner as credits for constructed system improvements.
- (6) In cases where the land proposed for development is entirely or substantially in an area designated in the Expansion Area Master Plan for park land, and the extent of the designation is such as to render the development of the land infeasible, the developer may enter into an agreement with the Lexington-Fayette Urban County Government establishing interim uses of the property in conformance with the Conservation District (CD) Zone, timing of acquisition, schedule of payments, and other related uses.
- (7) In the event a building permit is abandoned, credits shall be given for the full amount of any exactions paid against future exactions for the same parcel of land paid upon issuance of such building permit. A building permit shall be deemed abandoned if no construction has been commenced prior to the expiration of the building permit.
- (8) If the application of all credits against exactions exceeds the amount of the exactions due, the developer shall be repaid for the actual cost of system improvements from the Exaction Fund as monies become available with the order of payment to be the order of the date of award of the credit. Alternatively, the developer may be reimbursed in Exaction Credit certificates, which shall be used as specified within this Article. Developers desiring any other arrange-

ment shall be required to enter into a development agreement with the LFUCG as outlined below.

(9) Unless otherwise provided for in this Article, credits shall only be applied against exactions due once. Exaction credits may only be reallocated subsequent to the recordation of an amended plat or development plan that results in lot or development reconfiguration.

23C-7(d) DEVELOPMENT AGREEMENTS - A fee-payer may propose, and the Lexington-Fayette Urban County Government may approve, a development agreement which provides for the deferred or phased payment of exactions which were not eligible for application of credits, as provided under 23C-7(c), provides for credits, provides for the dedication of land in lieu of cash payment, provides for the construction of system improvements in lieu of cash payment, provides for the repayment of credits from the exaction fund, provides for payment of interest, provides for the issuance of exaction credit certificates, or provides for any combination thereof. Any developer contemplating an activity which involves a development agreement shall submit a proposed agreement to the Chief Administrative Officer, who shall solicit comments from the Exaction Credit Advisory Committee for the determination of compliance with the provisions of this Article and the Expansion Area Master Plan. The Chief Administrative Officer shall review the proposed development agreement and transmit the proposed development agreement, together with a recommendation and the comments of the Exaction Credit Advisory Committee, to the Lexington-Fayette Urban County Council for appropriate action. The Lexington-Fayette Urban County Council shall not approve a development agreement unless it determines that the development agreement satisfies the intent and purpose of this Article, is in compliance with the Expansion Area Master Plan, is in the best interest of the Lexington-Fayette Urban County Government and is consistent with the public health, safety and welfare of the citizens of Lexington-Fayette County. The Lexington-Fayette Urban County Council has sixty (60) days from receipt of the fully completed draft development agreement to take final action on the development agreement.

23C-7(e) - Exaction Credit Certificates are transferable from one developer to another, from a developer to a property owner, and from one project to another, provided that such credits only be used in conformance with 23C-7(c)(3, 4, and 5), or as authorized under a development agreement pursuant to Article 23C-7(d).

23C-8 USE OF FUNDS - Funds collected as exactions shall be used for system improvements. No funds shall be

used for periodic or routine maintenance or repair of capital facilities. Exactions shall be used exclusively for system improvements within the Exaction District which contains the project for which the fees were paid or for reimbursement from credits against exactions as authorized elsewhere in this Article. In the case of open space exactions, funds collected shall be used to acquire open space; including, but not limited to, conservation easements in the Rural Service Area, with priority to be given to land within a one-mile radius of the boundary of the Expansion Area from which the funds were collected or pursuant to a duly adopted rural land management program. The open space funds may also be used as reimbursement for credits against exactions as authorized elsewhere in this Article. Exaction funds collected for Sanitary Sewer Transmission Capacity and for Sanitary Sewer Treatment Capacity shall be transferred to the Sanitary Sewer fund established by the Lexington-Fayette Urban County Government for sanitary sewer system improvements designed to increase capacity or otherwise accommodate sewage generated in the Expansion Areas.

Each fiscal year the Department of Finance shall present to the Lexington-Fayette Urban County Council an annual report describing the amount of exactions collected, encumbered and used during the preceding year. Monies, including any accrued interest, not encumbered in any fiscal period shall be retained in the same Exaction Fund(s) until the next fiscal year, except as provided in Section 23C-9 below. Exactions may be used for the payment of principal and interest on bonds, notes or other financial obligations issued by or on behalf of the Lexington-Fayette Urban County Government to finance system improvements.

23C-9 EXEMPTIONS - After an exaction requirement has been paid, no further exactions shall be required for any development activity. In addition, the following shall be exempted from payment of exactions:

- (a) The alteration or expansion of an existing building or use of land where no additional living units are created, where the use is not changed, where no development activity takes place, or where the proposed use shall not result in need for increased public facilities.
- (b) The construction of accessory buildings, excluding accessory dwelling units; attached garages in conjunction with a residential use; additions to structures existing at the time of adoption of this Article; or structures which will not produce additional impact on the roads, parks, open space, storm water management facilities, sanitary sewer transmission lines and sanitary sewer treatment facilities over and above those produced by the

principal building, accessory dwelling units, or use of the land.

- (c) The replacement of a building, mobile home or structure that was in place on the effective date of this Article, or the replacement of a building, mobile home or structure that was constructed subsequent thereto and for which the correct exactions had been paid or otherwise provided for, with a new building, mobile home, or structure of the same use; provided that no additional impact on the roads, parks, open space, storm water management facilities, and sanitary sewer transmission lines and sanitary sewer treatment facilities will be produced over and above those produced by the original use of the land.
- (d) The construction, alteration or expansion of publicly owned and operated school buildings or other public buildings owned, operated and occupied by local, state, or federal government agencies.
- (e) Affordable housing shall be eligible for a reduced exaction if the developer can demonstrate that the housing to be constructed will be used to provide housing for low income persons for a period of no less than fifteen (15) years. Factors to be considered in determining the amount of reduction shall include the size and scope of the project, whether other funds are available to pay for the portion of the developer exaction which is otherwise due, and whether the proposal will fulfill established goals or policies in the Comprehensive Plan and the Expansion Area Master Plan to ensure a wide range of housing options to the citizens of Lexington-Fayette County. The determination of the reduction shall be by appeal to the Exaction Appeals Committee, as outlined in Article 23C-12.
- (f) Developments located within a Scenic Resource Area which are not included in the pre-calculated reduced exaction in the Exaction Schedule shall be eligible for a reduced exaction if the developer can demonstrate that the permitted units to be developed are so low as to cause an unfair burden relative to the impact of the development. Factors to be considered in determining the amount of the reduction shall include the size and scope of the project, whether or not the right to sell density transfer rights has been forfeited, and whether the proposal will fulfill established goals or policies in the Comprehensive Plan and the Expansion Area Master Plan. The determination of the reduction shall be by appeal to the Exaction Appeals Committee as outlined in Article 23C-12.

- (g) Any person claiming exemption(s) pursuant to Section 23C-9(a) through (f) above shall submit to the Chief Administrative Officer information and documentation sufficient to permit a determination of whether such exemption claimed is proper and, if so, the extent of such exemption. Exemptions must be applied for by no later than the time of the application for a building permit. Any exemptions not so applied for shall be deemed waived.

23C-10 EXACTION FUNDS - There is hereby established an exaction fund, containing separate accounts for each Exaction District as set forth in Section 23C-4. Funds shall be deposited and maintained in one or more interest bearing accounts. Interest earned on funds shall be funds of the account on which it is earned and is subject to all restrictions imposed by Section 23C-8. Funds withdrawn from these accounts must be used in accordance with the provisions of Section 23C-8.

23C-11 REFUNDS - Exactions collected shall be encumbered for public facilities cost within six (6) years of the date of collection. In the absence of a development agreement, and in the event the exactions are not encumbered within six (6) years from the date of collection, the Lexington-Fayette Urban County Government shall refund the amount of the exaction to the feepayor. The exactions collected pursuant to this Article shall be returned to the feepayor through submission of a refund application to the Department of Finance by no later than the calendar quarter following seven (7) years from the date the exactions were paid. The refund application shall include the following information:

- (a) a notarized sworn statement that the feepayor paid the exactions for the property and the amount paid;
- (b) a copy of the dated receipt issued by the Lexington-Fayette Urban County Government for payment of the exactions;
- (c) a certified copy of the latest recorded deed for the property;
- (d) a copy of the most recent ad valorem tax bill; and
- (e) a sworn statement of entitlement.

Within thirty (30) working days of receipt of a refund application, the Department of Finance shall determine if it is complete. If the Department of Finance determines the refund application is not complete, the Department of Finance shall send a written statement specifying the deficiencies by mail to the person submitting the refund application. Unless the deficiencies are corrected, the Department of Finance shall take no further action on the refund application.

When the Department of Finance determines the refund application is complete, it shall review it within fifteen (15) working days, and shall approve the proposed refund if it determines the feepayor has paid an exaction which the Lexington-Fayette Urban County Government has not spent or encumbered within six (6) years from the date the exactions were paid. The exactions shall be returned, less five percent (5%) of the total, to defray the costs of administration. Feepayors who are owed a refund for exactions paid or credits given shall receive refunds in the order, by date, that contributions were made.

23C-12 ADMINISTRATIVE APPEALS - Shall be as follows:

- (a) Any person directly aggrieved by a decision of the Lexington-Fayette Urban County Government with respect to any of the following determinations, or is seeking an adjustment to exactions as provided elsewhere in this Article, shall have the right to appeal the decision to the Exaction Appeals Committee:

- (1) the imposition of an exaction,
- (2) the amount of an exaction,
- (3) the entitlement to and/or the amount of credits to an exaction,
- (4) the entitlement to an exemption from an exaction,
- (5) the entitlement to and/or the amount of a refund of an exaction, or,
- (6) the adjustment of exactions under 23C-5(b), 23C-9(e) or 23C-9(f).

The Committee shall consist of a representative of the Mayor's Office, the Commissioner of Public Works, the Commissioner of Finance, and the Commissioner of General Services (or their designated representatives), one member of the Urban County Council, and one member of the Planning Commission. The Committee shall forward its recommendations on any appeal to the Urban County Council as set forth under 23C-12(d) herein.

Prior to any appeal to the Exaction Appeal Committee, the aggrieved party shall file a request for reconsideration with the Department of the Lexington-Fayette Urban County Government which took the action giving rise to the appeal. Such Department shall take final action affirming, modifying, or denying the request within fifteen (15) working days. The file shall constitute the record and shall include all documentation submitted by the developer, as well as any information including appraisals or estimates prepared for the Lexington-Fayette Urban County Government, and which formed a basis for the Department's decision.

- (b) Any appeal shall be taken within fifteen (15) working days of the reconsideration decision by filing a notice of appeal with the Exaction Appeal Committee, setting forth the grounds therefor. The Department shall forthwith transmit to the Exaction Appeal Committee all papers constituting the record upon which the action appealed from is taken. The Exaction Appeal Committee shall thereafter establish a reasonable date and time for a hearing on the appeal, and give due notice thereof to the parties in interest. Any party taking an appeal shall have the right to appear at the hearing to present evidence and may be represented by counsel. The Exaction Appeal Committee shall render a decision granting, modifying, or denying the appeal within ten (10) working days of the hearing.
- (c) A developer may pay an exaction under protest to obtain a building permit, and by making such payment shall not be estopped from exercising his right of appeal or receiving a refund of any amount determined to have been improperly collected.
- (d) The Exaction Appeal Committee shall be required to maintain records of its actions, including minutes of any official meeting. Such records shall be available for public inspection, and shall be distributed on a routine basis to the Planning Commission and the Urban County Council.

23C-13 PENALTY AND ENFORCEMENT - Any violations of this Article shall be subject to the penalties provided in Article 5 of the Zoning Ordinance. In addition to those remedies, the Lexington-Fayette Urban County Government retains the right to enforce the provisions of this Article by filing an enforcement action in civil court. Knowingly furnishing false information to the Lexington-Fayette Urban County Government on any matter relating to the administration of this Article shall constitute a violation thereof.



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**C. PUBLIC HEARINGS ON ZONING ORDINANCE TEXT AMENDMENTS**

1. **PLN-ZOTA 20-00001: ARTICLE 23 - REALLOCATION OF EXACTION CREDITS (9/2/20)\*** – a petition for a Zoning Ordinance text amendment to update Article 23C-7(c) of the Zoning Ordinance to clarify the application and reallocation of exaction credits in the Expansion Areas of the Urban County.

INITIATED BY: URBAN COUNTY PLANNING COMMISSION

PROPOSED TEXT: Copies are available from the staff.

The Zoning Committee Recommended: Approval.

The Staff Recommends: Approval, of the staff alternative text for the following reasons:

1. The proposed text amendments will satisfy the intent of Article 23 by providing an accurate depiction of the improvements, costs, and credits associate with the development in the expansion areas.
2. The proposed text streamlines the government process, providing the public with the most accurate information on official documentation.

Staff Presentation – Mr. Baillie presented a PowerPoint presentation, and said that this update is for Article 23C-7(c) regarding allocation of exaction credits. The request to amend the LFUCG Zoning Ordinance was made by the planning staff and was initiated by the Urban County Planning Commission on October 24, 2019. He said that Article 23C-Expansion Areas Development Exactions was established to implement and facilitate orderly growth consistent with the Expansion Area Master Plan (EAMP) by assuring that new development activity is served by adequate public facilities and bears a proportionate share of the cost of improvements necessary to provide roads, parks, open space and sanitary sewer treatment, sanitary sewer transmission capacity and storm water management facilities in the Expansion Areas of Lexington-Fayette County; and to mitigate the loss of rural landscape in the Expansion Areas by providing for an exaction for preservation of undeveloped land within the Rural Service Area in the vicinity of the Expansion Areas or of community-wide significance. Exactions are defined as a fee or a land dedication in lieu of a fee, and calculated based upon the cost of capital improvements in reasonable relationship and in a proportionate share to new development activities creating the need for such capital improvements.

Mr. Baillie said that Section 23C-7 outlines the system improvements and the calculation of credits against exactions. Those improvements, costs, and credits are noted on development plans and subdivision plats, and are subsequently recorded in the EAMP Database. Over the course of the exactions program, developers have been able to reallocate applied exaction credits from one property to another. This has often created some of the issues that are present in the accounting program, which is essentially creating a mismatched number at times and the need for further accounting. Additionally, once a plat or development plan is recorded, it records those aspects of the agreement and the credits applied to certain areas. The allocations of those credits have often been reapplied or reallocated and those development plans and subdivision plats become out of date.

Mr. Baillie said the Staff is recommending a slight modification to the language that was originally initiated by the Planning Commission, which is italicized below.

23C-7(c)(9) Unless otherwise provided for in this Article, credits shall only be applied against exactions due once. Exaction credits may only be reallocated subsequent to the recordation of an amended plat or development plan that results in lot or *development* reconfiguration.

He said that this change is proposed primarily to make sure that the development plans and subdivision plats are correct, and staff has the appropriate information for the accounting of all of these exaction credits. He said that the staff is recommending approval of the staff alternative.

Zoning Action – A motion was made by Mr. Forester, seconded by Mr. Bell, and carried 8-0 (Brewer, Mundy, and Pohl absent) to approve **PLN-ZOTA 20-00001: ARTICLE 23 - REALLOCATION OF EXACTION CREDITS**, for the reasons provided by the staff.

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\* - Denotes date by which Commission must either approve or disapprove request, unless agreed to a longer time by the applicant.