

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.