

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.