



FAYETTE ALLIANCE

603 W. Short Street
Lexington, Kentucky 40508
info@fayettealliance.com
fayettealliance.com

October 20, 2016

Dear Vice Mayor Kay and Council Members,

Please accept this letter on behalf of the Fayette Alliance with respect to ZOTA 2016-4: Amendments to Articles 23A-10 to the Economic Development (ED) Zone (ED ZOTA).

Founded in 2006, the Fayette Alliance is a coalition of citizens dedicated to achieving sustainable growth in Lexington-Fayette County through land use advocacy, education, and promotion. The Fayette Alliance believes that preserving our unique and productive Bluegrass farmland, advancing innovative development, and improving our infrastructure are essential to our collective success in Lexington.

The majority of the proposed amendments contained in the ED ZOTA conflict with the intent of the Zone and the requirements of the Expansion Area Master Plan (EAMP). The proposed ED ZOTA imports virtually every principal use currently contained in the B4 Zone, along with a number of other “supportive uses,” which, by definition, are not directly related to economic development and are not compatible with the overall character of the EAMP. Should the Council amend the Zone at all, we respectfully request that the amendments we propose below be adopted.

I. The Economic Development Zone

In 1996, the Comprehensive Plan added 5,400 acres to the Urban Service Area, creating three “Expansion Areas” (EA).¹ The vast majority of the land was designated as residential (4,832 acres), comprised of the various densities—low, medium, and high. A portion of EA 2a (approximately 215 acres) and the majority of EA 3 (approximately 353 acres) were specifically designated as “economic development” land (ED land), which is described in the Zoning Ordinance as “land within the Expansion Area for employment opportunities compatible with the overall character of development as provided in the Expansion Area Master Plan.”² According to the EAMP, ED land was to be comprised generally of industrial, warehousing and office uses.³

¹ See LFUCG Expansion Area Master Plan, June 18, 1996 (hereinafter cited as “EAMP”).

² Zoning Ordinance, Article 23A-10(a).

³ EAMP, pg. 7.

Board Members

Eunice A. Beatty, PhD
James G. Bell
Price Bell, Jr.
Sandra Noble Canon
Todd Clark
Kip Cornett
Susan Enlow
Greg Goodman
Gay Haggin VanMeter
Stan Harvey
Barry Holmes
Matt Hovekamp
Chauncey Morris
John Phillips
Tom Poskin
Walt Robertson
Don Robinson
Jack van Nagell
Knox van Nagell
Griffin VanMeter
Holly Wiedemann
Anthony Wright

Sustainers

Josephine Abercrombie
Helen Alexander
Andover Management Group
Ann Bakhaus
Ian Banwell
Antony & Angela Beck
Gary Biszantz
Alex Campbell
Darley
Fayette Co. Farm Bureau
David & Philippa Fogg
Greg Goodman
Dave Harper
John Hendrickson
Larry & Marsha Hester
Watts & Sally Humphrey
Bill Justice
Keeneland Association
KTA
Murray & Teri Kessler
Lane's End Farm
Langley Properties Co.
Lisa Lourie
Deirdre Lyons
Richard & Sue Ann Masson
Joe & Jacqueline Murphy
Don Robinson
Dr. Kim & Robert Rosenstein
Bill Shively
Tom VanMeter
Derek Vaughan
Fra Vaughan
Brian & Lori Wood
Misdee Wrigley Miller
Chris & Josefina Young



Since Lexington is largely dependent upon payroll taxes for its general fund, the availability of land to accommodate economic development or “jobs land” is critical. According to Commerce Lexington, Lexington loses business prospects because we do not have “shovel ready” ED land.⁴ Thus, preserving and incentivizing development of existing ED land is critical to our community’s economic success.

However, the EAMP recognized the challenges created by the Expansion Areas and imposed restrictions on the land in those areas to protect agricultural operations and scenic resources in the rural service area.

The boundaries of the Expansion Areas with the rural service area represent special challenges in terms of land use compatibility. It is generally understood that non-agricultural residential uses, even at relatively modest densities, are not “good neighbors” for agricultural uses, particularly equine agriculture.⁵

The EAMP also established design principles to ensure, among other things, that “[d]evelopment adjacent to the rural service area should be limited and designed to ensure that the agricultural viability of such lands is not compromised.”⁶

With respect to Expansion Area 3, the EAMP specifically provided:

In Expansion Area 3, design limitations should be imposed on economic development between Newtown Pike Road and Russell Cave Road to ensure that development of those lands does not have an adverse impact on the agricultural use of lands immediately to the north of the Expansion Area.⁷

From its inception, the ED Zone was intended to be a buffer zone between urban and rural areas. To accomplish these goals, the ED Zone was designed to accommodate campus-like settings that intentionally did not include retail, residential, or other high-intensity uses. As noted in the EAMP, those types of uses are often incompatible with agricultural operations and threaten the “agricultural

⁴ See summary notes for the Economic Development Work Group meetings, 2-4-15 meeting notes attached hereto as Appendix A.

⁵ EAMP, pg. 41.

⁶ EAMP, pg. 20.

⁷ EAMP, pg. 41.

viability of such lands.”⁸ In addition, the EAMP sought to preserve the scenic resources and rural roads from “incompatible development.”⁹

When the Urban Service Boundary was expanded and the ED Zone was created, a delicate balance was struck—between providing land for economic development and protecting the agricultural and scenic value of adjacent land in the rural service area. The EAMP protects this balance, which must be upheld. “The purpose of [the] Zoning Ordinance is to implement the adopted Comprehensive Plan and other adopted Community Plans of Lexington-Fayette Urban County.”¹⁰

Since 1996, the vast majority of the land zoned or designated ED has not developed. In 2014 Commissioner of Planning, Preservation and Development, Derek Paulsen, convened a work group (ED Work Group) to examine the ED zone category and to consider reasons why the ED Zone has not developed as intended.¹¹ Two ground rules were established to focus discussion and potential solutions to issues that were identified.¹² First, regardless of the issues raised, the intent of the zone was not to be altered. Second, any actions directed to encouraging development should focus on the ED zone generally, and not on specific properties currently zoned ED.

The Work Group identified the following main reasons why the ED Zone has not developed:

- Exactions and Infrastructure Costs;
- Additional Development Costs Associated with Development Process; and
- Flexibility of Uses Permitted in the Zone.

The Work Group recommended solutions to address these issues. The solutions included the following:

⁸ EAMP, pg. 20.

⁹ EAMP, pg. 20.

¹⁰ Article 1-3.

¹¹ The ED Zone was amended in 2007 to add additional uses including: Computer and data processing centers; medical and dental offices, clinics and laboratories; regional medical campus and other attendant facilities; colleges and other academic institutions; offices of purchasers, processors, and handlers of agriculture products; meeting and conference centers. In 2013, hospices were also added to the Zone. The Fayette Alliance supported inclusion of all these uses.

¹² See “Economic Development Land Work Group Executive Summary” attached hereto as Appendix B.

- Infrastructure Fund. In order to address the issue of exactions and the costs associated with building public infrastructure, the Work Group recommended creating a Public Infrastructure Fund.¹³
- Economic Development Team. This team would consist of representatives of Planning, Building Inspection, Engineering, Fire, Traffic Engineering, Division of Water Quality, the Chief Development Officer and the officer of the Commissioner of Planning, Preservation and Development. The team would be available to address quickly questions associated with economic development prospects and be empowered to make binding decisions associated with properties.
- Flexibility of Principal and Conditional Uses. In addition to adding principal uses, the Work Group came up with a new set of uses termed “supportive uses.” By definition, these uses are not directly related to economic development. Some members of the Work Group wanted to include “supportive uses” so that mixed-use type developments would be permitted.¹⁴

There is plenty of evidence to support the effectiveness of incentives and streamlined development processes.¹⁵ If done correctly, the Fayette Alliance wholeheartedly supports creation and implementation of an Infrastructure Fund and the Economic Development Team. These are the types of solutions that will help make our “jobs land” “shovel ready.” In order to remain competitive and attract the types of high-paying jobs that benefit our community, focus and resources should be committed to implementing these solutions. Fayette Alliance is committed to assisting in the process.

II. ED ZOTA

We recognize the hard work of the Work Group, the Planning Commission and planning staff in crafting the ZOTA. However, despite the ground rules, the majority of the amendments proposed in the ED ZOTA conflict with the intent of the Zone and the EAMP, and transform the Zone into a hybrid B4/ED mixed-use zone.

¹³ Commissioner Paulsen proposed the creation of just such a fund at the September 27, 2016, Budget and Finance Committee meeting.

¹⁴ The Work Group also recommended increasing floor area ratio from .75 to 1.0 and increasing the maximum building height from 90 feet to 120 feet. The proposal also provides some flexibility with respect to how the 25% open space requirement can be achieved.

¹⁵ Commerce Lexington made a presentation to the ED Work Group on January 15, 2015. See PowerPoint of presentation attached hereto as Appendix C. Two factors identified as keys to business attraction were “rapidly available buildings and sites,” and “willingness to use real estate and infrastructure as an incentive.” See slide entitled “Competitive Realities-Real Estate.”

The evidence presented to the Work Group and Planning Commission in support of adding new uses was largely anecdotal and based on factors specific to the parcels in question. Our zoning laws and policies must take a broad view and consider community needs as a whole. In addition to violating the intent of the Zone, it simply makes no sense to reduce the available inventory of ED land by permitting non-ED uses—particularly given the fact that Commerce Lexington, and others in the economic development community, take the position that we lack available ED land.

The current permitted principal uses contained in the ED ZOTA provide flexibility of uses while maintaining the ED intent of the Zone. The current permitted principal uses include the following: Offices; computer and data processing centers; medical and dental offices, clinics, hospices, and laboratories; research development and testing laboratories; manufacturing, processing, packaging uses; other industrial uses; colleges, universities, business colleges, technical or trade schools, and other schools and institutions for academic instruction; offices of purchasers, processors, and handlers of agricultural products limited to administrative uses only; regional medical campus, hospitals, in-patient treatment facilities (which may include accessory cafeterias, pharmacies, and gift shops), outpatient clinics and treatment facilities, surgery centers, nursing homes, medically supervised assisted living facilities, and extended-stay hotels.

Importantly, the uses permitted in the ED Zone support the primary pillars of our economy—health care, high-tech, and agriculture—and provide flexibility to attract many other types of businesses.

These uses are marketable, create high-wage paying jobs, and are less intensive than retail and residential uses. These are the types of uses for which the Urban Service Boundary was expanded, and the Zone was created. When the Urban Service Boundary was expanded to create this Zone, a promise was made to the community. That promise should be honored.

The vast majority of uses proposed in the ED ZOTA do not support the intent of the zone, and are not compatible with the overall character of development provided in the Expansion Area Master Plan.

A. Proposed Additional Principal Uses

The proposed additional principal uses are as follows:

- Breweries, wineries, and distilleries;
- Nursing homes and assisted living facilities not attached to a regional medical campus;
- Flex Space Projects as further regulated in Article 8-21(o)(5); and

- Office/warehouse mixed-use projects as further regulated by Article 8-21(o)(3).

The Fayette Alliance would support inclusion of breweries, wineries and distilleries,¹⁶ as well as nursing homes and assisted living facilities because these uses fit within the intent of the zone.

However, we do not support the wholesale inclusion of Flex Space Projects¹⁷ or Office/Warehouse Mixed-Use Projects.¹⁸

These uses are zoning categories in and of themselves and contained within the B4 zone. Including these zoning categories as principal uses in the ED Zone would result in transporting virtually every B4 principal use into the ED Zone.¹⁹ Principal permitted uses in the B4 Zone include such uses as wholesale establishments, warehouses, storage facilities, car lots, gas stations, spas, health clubs, kennels,

¹⁶ Lexington is experiencing exponential growth in tourism around our signature Bourbon and agricultural industries. Breweries, wineries, and distilleries contribute directly to economic development by increasing tourism and recreation opportunities, supporting entrepreneurship, and promoting our agricultural economic base.

¹⁷ Pursuant to Article 8-21(o)(5), "Flex Space Projects" include the following principal uses: schools; libraries; museums; art galleries; studios for work or teaching of fine arts, metal work, photography, dance, drama or theater; churches; private clubs; establishments for the retail sale of merchandise, food and food products if under 20,000 square feet in area; restaurants if under 4,000 square feet in area; offices; health clubs, athletic clubs and spas.

¹⁸ Pursuant to Article 8-21(o)(3), "Office/Warehouse mixed-use projects" include the following principal uses: wholesale establishments, wholesale establishments with warehouses, storage, and warehousing; shops of special trade and general contractors; laundry (excluding self-service laundry), clothes cleaning or dyeing shop; ice plant; tire re-treading and recapping; parking lots and structures; machine shop; kennels, animal hospitals, or clinics; offices of purchasers, processors and handlers of agricultural products; sales of feed, grain, or other agricultural supplies; garden centers; establishments for the sale, lease, rental, repair of farm equipment, cars, trucks, mobile homes, recreational vehicles, motorcycles, boats; truck terminals; automobile service stations and repair shops; establishments for the display and sale of precut, prefabricated, or shell homes; carnivals on a temporary basis; lumber yards; mail order business; offices, laboratories, and data processing centers.

¹⁹ The introductory paragraph to Article 8-21(o)(3) provides in relevant part: "In addition to the uses permitted in Article 8-21(b) [Wholesale and Warehouse Business (B-4) Zone Principal Uses], the following uses shall also be permitted in an Office/Warehouse Project."

garden centers and temporary carnivals.²⁰ Should a landowner wish to construct B4 or mixed-use type developments, the proper action is for the land owner to request a zone change.

B. Proposed “Supportive Uses” and Conditional Use

The ED ZOTA creates a new category of uses called “supportive uses,” which, by definition, are not directly related to economic development. These uses were created due to the desire of some members of the ED Work Group to allow mixed-use type developments on these parcels. “Supportive uses” include uses such as gas stations, banks, barber/beauty shops, hotels/motels, kennels, libraries, and restaurants with or without drive-through facilities.

Inclusion of the “supportive uses” in any percentage clearly violates the stated intent of the Zone and the EAMP. These are precisely the types of high-intensity uses the EAMP sought to exclude from the ED Zone.

Furthermore, no data was presented to support the claim made by some members of the ED Work Group that inclusion of these uses would help attract ED uses. On the contrary, the data supplied by Commerce Lexington to the ED Work Group establishes that the following factors (listed in order of importance) are considered important or very important by corporate executives when considering potential locations:

- Availability of skilled labor;
- Highway accessibility;
- Labor costs;
- Occupancy or construction costs;
- Availability of advanced ICT services;
- Available buildings;
- Corporate tax rate;
- State and local incentives;
- Low union profile;
- Energy availability and costs.²¹

“Supportive uses” also includes multi-family residential uses. Residential uses clearly violate both the intent of the Zone and the EAMP. When the expansion areas were created in 1996, approximately 4,832 acres were designated for residential uses of all densities.²² According to the last inventory in 2011, there

²⁰ Article 8-21(b).

²¹ See slide entitled “Competitive Realities-Real Estate,” Commerce Lexington PowerPoint, Appendix C.

²² EAMP.

were 4,506 acres of vacant residential land inside the Urban Service Boundary.²³ There is plenty of vacant residential land.

The ED ZOTA also recommends inclusion of dormitories as a conditional use. Dormitories are also a residential use and were specifically excluded from the ED Zone when colleges and academic institutions were included in 2007. Like other residential uses, dormitories are the kind of high-intensity use that was not contemplated by the EAMP when the ED Zone was created.

The “supportive uses” included in the ED ZOTA are uses that are already permitted in a number of different zones and are widely available throughout the Urban Service Boundary. Reducing the amount of ED land to allow more of these types of uses does not promote economic development and does not honor the promise made in 1996.

Fayette Alliance is committed to working together to craft real solutions to encourage development of our existing ED Zone. This can and should be accomplished without violating the intent of the Zone and the EAMP. Including uses that do not uphold the intent of the Zone and that transform the Zone into a mixed-use, hybrid ED/B4 Zone constitutes a de facto zone change—without satisfaction of the public notice and other legal requirements.

III. Conclusion

Fayette Alliance opposes inclusion of any uses in the ED Zone that conflict with the intent of the Zone and the EAMP. Therefore, we respectfully oppose inclusion of the following:

- Inclusion of “Flex Space Projects” as a principal permitted use;
- Inclusion of “Office/warehouse mixed-use projects” as principal permitted use;
- Inclusion of any “supportive uses,” including any residential uses;
- Inclusion of dormitories as a conditional use.

We do not oppose the following:

- Inclusion of “breweries, wineries and distilleries” as principal permitted uses;
- Inclusion of “nursing homes and assisted living facilities” as principal permitted uses;
- Clarification that “agricultural research and experimentation facilities” are permitted under the “research development and testing laboratories or centers” principal use;
- Increasing the maximum height of the buildings to 120 feet;
- Increasing the floor area ratio to a maximum of 1.0;

²³ LFUCG, 2013 Comprehensive Plan, pg. 14.

- Allowing the 25% open space to be “clustered across multiple lots or tracts to facilitate the common use of the land,” so long as the design elements in the EAMP and ED Zone are upheld.

Again, we appreciate the hard work of the ED Work Group and Planning Commission in looking for ways to encourage the development of land in the ED Zone. However, the integrity of the Zone and its intent cannot be compromised. Adoption of the ED ZOTA as proposed would violate the intent of the Zone and the overall character of development as provided in the Expansion Area Master Plan. It would renege on the promise made to the community when the land was included in the Urban Service Boundary. This sets a dangerous precedent.

Much is at stake, and we respectfully request that, should you amend the Zone at all, you incorporate our recommendations. Thank you for your consideration and commitment to our community.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Susan B. Speckert". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Susan B. Speckert, J.D.
Executive Director

cc: Mayor Jim Gray
Derek Paulsen