

Board of Adjustment and Appeals

Appeal of Decision of the Director of Planning and Zoning to accept the Application for a Conditional Use by Western Hospitality Partners - Kentucky LLC on the grounds that a Data Center is not specifically listed as Conditional Use in AG-1 and is by definition not a Private Utility, and finally is not compatible or in harmony with the Comprehensive Plan and should have been accepted as qualifying to be considered for a Conditional Use Permit (CUP).

Support for Appeal

1. Conditional Use Must Be Listed or Compatible

- Under Kentucky law (KRS 100.237), the BOA can **only grant CUPs for uses specifically listed as conditional** in the local zoning ordinance for that zoning district.
- The Director of Planning and Zoning should not have accepted the application as the filing does not fit the definition of a Private Utility.
- If a “data center” or something analogous (e.g., “utility infrastructure” or “communications facility”) is **not listed as a conditional use** in AG-1, the BOA **may be acting beyond its authority**.
- Even if it’s listed, the BOA must **find that the use is compatible** with surrounding uses and is consistent with the **Comprehensive Plan**.

Therefore if the court deems that a Data Center does not qualify as a “private utility building” any subsequent decision by the Board of Adjustment would be null and void as it would have then acted beyond its authority and Board of Adjustments was put in this situation because the Director of Planning and Zoning incorrectly accepted this application.

Kentucky courts have ruled that the **Comprehensive Plan guides zoning decisions**, but it's **not legally binding** on its own ([KRS 100.197(1)]). However:

- CUPs **must be in harmony** with the Comprehensive Plan under KRS 100.241.
- If the Comprehensive Plan clearly envisions the area for agriculture or residential use, a CUP for an industrial-scale data center would likely be considered inconsistent and subsequently overturned in circuit court.

2. Grounds for Legal Challenge

If a CUP is granted under these circumstances, opponents (neighbors, local government, advocacy groups) could challenge it in Circuit Court on grounds such as:

- **Ultra vires**: The BOA exceeded its legal authority.
- **Not in harmony** with the Comprehensive Plan.
- **Lack of substantial evidence** supporting the decision.
- **Failure to consider impacts** on traffic, noise, water, runoff, etc

Private utility facilities, buildings, or structures necessary for the provision of services, but not including business offices, storage yards, or maintenance buildings

Defining a Data Center as a private Utility is legally considered to be an arbitrary interpretation of the ordinance and is capricious to consider as the interpretation is far reaching.

Private Utility building is defined in KRS as directly providing essential services to the local community.

Duke Energy and LG&E ARE EXAMPLES OF PRIVATE UTILITIES

Data Centers serve global and national clients and are not directly providing services locally.

1. Definition of Utilities in Kentucky:

Kentucky Revised Statutes (KRS) Chapter 278 outlines the regulation of utilities within the state. According to KRS §278.010, a "utility" encompasses entities that provide services such as electricity, gas, water, or sewage to the public for compensation. These services are essential for the community's daily functioning and are subject to state regulation.

2. Examples of Private Utilities:

A "private utility" refers to a privately owned entity that delivers essential services to the public. These services are typically regulated to ensure they meet certain standards and are provided at reasonable rates. For example, private companies supplying electricity or water to communities operate as private utilities.

3. Data Centers and Utility Classification:

Data centers primarily function as facilities for storing, processing, and managing digital data. They are crucial for the operation of various digital services but do not typically provide direct utility services to the public. Instead, they consume significant amounts of energy to operate servers and related equipment.

4. Regulatory Considerations:

While data centers are vital for digital infrastructure, they do not fall under the traditional definition of utilities that provide essential services directly to the public. Therefore, they are generally not classified as "private utilities" in the regulatory sense. Data Centers do not provide telecommunications services or municipal telephone services.

Zoning Changes -

1. Kentucky Law Requires Zoning to Align with the Comprehensive Plan

Under **KRS Chapter 100**, specifically:

- **KRS 100.213** requires that any **zoning map amendment (rezoning)** be justified based on **findings of fact**, including whether the change is **in agreement with the adopted Comprehensive Plan**.
- If it **isn't**, the Planning Commission or Fiscal Court must make specific findings that:
 - The **current zoning is inappropriate**, or
 - There have been **major changes in economic, social, or physical conditions** that justify the change.

American Beauty Homes Corp. v. Louisville & Jefferson County Planning & Zoning Commission, 379 S.W.2d 450 (Ky. 1964): The court held zoning decisions must not be arbitrary and must be supported by substantial evidence.

One notable case is **Campbell County & Municipal Planning & Zoning Commission v. Armstrong**.

Case Overview:

- **Background:** On June 1, 2022, the Campbell County Fiscal Court rezoned approximately fifty acres of rural land, known as the Burns Farm, from agricultural to residential use. This decision was challenged by local residents and the Campbell County & Municipal Planning & Zoning Commission.
- **Circuit Court Decision:** The Campbell Circuit Court found that the rezoning was inconsistent with the county's comprehensive plan, which designated the area for agricultural purposes. Consequently, the court ruled that the fiscal court's decision was arbitrary and capricious, leading to the rezoning ordinance being overturned.
- **Appeal:** The fiscal court appealed the decision, but the appellate court upheld the circuit court's ruling, emphasizing the necessity for zoning decisions to align with the comprehensive plan.

This case underscores the legal principle that zoning changes must be in harmony with the comprehensive plan, and deviations can be successfully challenged in court.

Yes, there have been instances in Kentucky where fiscal courts' decisions to rezone agricultural land (AG-1) to industrial use were overturned by courts due to conflicts with comprehensive plans. A pertinent case is **Ridenour v. Jessamine County Fiscal Court**.

Case Overview:

- **Background:** In this case, applicants sought to rezone a 2.5-acre tract from agricultural (A-1) to light industrial (I-1) in Jessamine County. The Planning Commission held a public hearing and recommended denial of the rezoning request, citing inconsistency with the county's comprehensive plan. Despite this, the Jessamine County Fiscal Court approved the rezoning.
- **Circuit Court Decision:** Opponents of the rezoning appealed the fiscal court's decision. The circuit court reviewed the case and found that the rezoning was indeed inconsistent with the comprehensive plan. Consequently, the court overturned the fiscal court's decision.

This case underscores the principle that zoning changes must align with the comprehensive plan, and deviations can be successfully challenged in court.