

# Data

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cal Court that the text amendment be returned to the JPC due to it being “sufficiently defective.” “So, I have begun my letter to you today with the same beginning that I submitted to the Planning Commission on what I believe were the most serious failings of what’s in front of you,” said Graddy. “As I request that you recognize what the Planning Commission has sent you is inadequate, and it should be sent back to the Planning Commission so the Planning Commission does a better job of addressing the matters that need to be addressed in an adequate ordinance for Mason County and Maysville.” Graddy expressed that the “most serious problem” with the final draft of the text amendment is that it does not “adequately protect the citizens’ right to participate in the data center site selection process.” “The text that you have would allow a proposed data center in land currently zoned at I-3 rural industrial... simply by preparing a development plan,” he stated. “What that means is that the Planning Commission could approve the development plan, and in your ordinance as it’s currently written, does not require a public hearing.” Graddy then requested that the amendment to be changed to allow a public hearing so that the public may participate in what he described as the decision on whether there will be a data center in Mason County.

Additionally, Graddy expressed that he believes the text amendment “contains nothing that protects Mason County’s prime farmland and farmland of statewide importance,” requesting that language doing so be added to another amendment. Third, Graddy requested that the text amendment’s setback section be strengthened, noting that in Oldham County, its planning commission recommended 1,000-foot setbacks from residential zones or sites of residential use. He then suggested to the Mason County Fiscal Court the measurements of 500 feet from the outer perimeter and property lines and at least 1,500 feet from a sensitive use or boundary line of an agricultural district, residential or commercial area. “The Planning Commission finds the fact in conditional use, adopted Feb. 4 on a five-to-one vote, fails to comply with KRS 100 in general and KRS 102-13 in particular, where these proposed text amendments are not in agreement with the current comprehensive plan and do not recite either of the statutory exceptions when a zoning change is proposed that does not agree with the comprehensive plan,” said Graddy. He later expressed, “I believe it is a violation of KRS 100, the Mason County Fiscal Court, to seek to enact a data center ordinance, text amendment prior to amending the comprehensive plan to address data centers in Mason County. Where the current comprehensive plan has policies that expressly provide for protection of prime farmland or statewide important farmland. This proposed ordinance, which ignores that consideration, violates what is in the plan.” Graddy suggested to the court that data centers should be located in heavy industrial zoning districts, such as I-2, or the rural industrial zoning area of I-3, or that there be a special data center zoning district with a more stringent setback requirement and a community benefit agreement. He also recommended a 40 dB(A) and 45 PPA for the text amendment’s noise section. “I’m urging the community impact analysis include a community benefit agreement, which is actually... requires a developer to sign a document that he will actually do what he says he’s gonna do,” said Graddy. Tanner Nichols, an attorney at Frost Brown Todd and Gibbons who represents a potential data center developer in Mason County, was the second attorney to speak to the Mason County Fiscal Court on the text amendment. Nichols expressed that Mason County has been welcoming and highlighted the work that the JPC has done during the text amendment process. “Obviously, Mason County is much more than the JPC and the physical court and the judge. It’s the people, right? It’s the schools, the churches, the businesses and all the things that make Mason County great. And that’s why my client wants to plant roots here,” he said. Nichols stated that this is the first part of the process, and that if his client wants to come to Mason County and build a data center, there will also be a map amendment process. “I’ve heard several comments at the JPC that they said that the text amendment needs to be best in class. And I certainly understand that sentiment,” he said. Nichols expressed that although there are items he believes need to be reviewed more closely, he felt that the current proposal is a good start. He added that a non-explicit moratorium may exist if the rules are strict and the setbacks are big. He then mentioned the section of the text amendment that states generators must meet noise requirements. “Everybody knows if you have a generator at your home, typically, they make noise. And so, if you make a rule that just technically can’t be met, then that is, a sense, putting a moratorium on the development, so we have to look at those more closely,” said Nichols. He later said, “What we suggest is, for items that are more typically reviewed by state regulatory bodies or federal regulatory bodies, U.S. accounting should allow them to do... issue those permits and do their work. Don’t put that on George and the local officials. We believe the community is protected by those longstanding processes that are usually handled by state and regular and federal regulatory bodies.” Nichols stated that they are not opposed to Graddy’s position concerning the need for a public hearing for a data center and

that they are requesting the inclusion of a discussion of mechanical cooling structures as a principal structure. “When we talk about the setbacks, we’re saying that it applies to the data center principal structures. And it shouldn’t apply to the accessory structures,” he explained. “A data center campus, they may have a guardhouse, they may have some other smaller accessory structures that those aren’t the structures that make the noise, those aren’t the things. And so, we don’t think those should be included; there should be a carveout for those.” He then requested clarification on whether the proposed height regulations would include electrical poles and need carve-outs for construction, explaining that if the amendment is approved and construction begins, there will be noise and dust. “On the landscape buffer, we’ve asked that clearly where we have entrances, we don’t have to have a buffer because we’re gonna have roadways coming in, the buffer’s not gonna go, and we need to allow the buffer to meander to follow the topography,” said Nichols.

Nichols further requested that existing vegetation be allowed to be used as part of the buffer, suggesting that the post-construction noise study might not be needed due to a mechanism already built into the ordinance, as well as other noise studies that will be done. While discussing generators, Nichols claimed that a total amount of time for emergencies for the year “might be four days,” non-consecutively. He also recommended the removal of the community and environmental impact studies from the development process, mentioning that he did not think a decommissioning plan would be “appropriate.” After Nichols finished speaking, Graddy returned to the podium to share additional remarks during the time that he had reserved for a rebuttal. He also recommended that an application fee be included in data center applications, stating that it could be used to hire experts to help the local zoning office. Graddy concluded by expressing that he was glad to hear Nichols say that he thought adding public hearings was okay.



Lauren Tatman/The Ledger Independent

## Attorney Tanner Nichols

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