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**COMMONWEALTH OF KENTUCKY
SIMPSON CIRCUIT COURT
DIVISION I
CIVIL ACTION No. __-CI-_____
*ELECTRONICALLY FILED***

WNKY

**FRANKLIN CITIZENS FOR
RESPONSIBLE DEVELOPMENT, INC.,**

PLAINTIFF

vs.

**COMPLAINT, APPEAL, AND
PETITION FOR DECLARATION OF RIGHTS**

**CITY OF FRANKLIN PLANNING AND
ZONING COMMISSION**

**Serve: Debbie Thornton, Chair
City of Franklin Planning and Zoning
Commission
117 W. Cedar St.
Franklin, Kentucky 42134**

TENKEY LANDCO I LLC

**Serve: Registered Agents, Inc.
212 N. 2nd St., Ste. 100
Richmond, Kentucky 40475**

SPDJ PARTNERS, LLC

**Serve: Registered Agents, Inc.
212 N. 2nd St., Ste. 100
Richmond, Kentucky 40475**

OTN DEVELOPMENT COMPANY LLC

**Serve: Hon. Michael Adams
Secretary of State, Commonwealth of Kentucky
Summons Branch
1025 Capital Center Drive, Ste. 201
Frankfort, Kentucky 40601**

**For Service On: Registered Agents Inc.
7901 4th St. N., Ste. 300
St. Petersburg, Florida 33702**

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OTN GROUP

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**Serve: Hon. Michael Adams
Secretary of State, Commonwealth of Kentucky
Summons Branch
1025 Capital Center Drive, Ste. 201
Frankfort, Kentucky 40601**

**For Service On: Adam DeSimone
960 Penn Ave., Ste. 301
Pittsburgh, Pennsylvania 15222**

DEFENDANTS

For Service Only:

**RUSSELL COLEMAN, ATTORNEY GENERAL
Kentucky Office of the Attorney General
700 Capital Ave., Ste. 118
Frankfort, Kentucky 40601 Service and Notice Pursuant to CR 24.03**

* * * * *

INTRODUCTION

1. This action arises out of an application submitted by one or more of Defendants, TenKey LandCo I LLC, SPDJ Partners, LLC, OTN Development Company, LLC, and OTN Group, for approval of a preliminary development plan to construct a data storage and service center with associated power manufacturing, consisting of four units, located at 421 Steele Road, Franklin, Kentucky 42134, and commonly referred to as “Project Lionsgate/Blackjack.” The application for the preliminary development plan was approved by Defendant, City of Franklin Planning and Zoning Commission, on March 3, 2026, and this Complaint and Appeal is timely filed pursuant to KRS 100.347.

2. This action challenges the Planning Commission’s approval of the preliminary development plan on the grounds that the Commission improperly treated the proposed use as a permitted use under the applicable zoning ordinance. Several months prior to approving the preliminary development plan, the Planning Commission considered

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and rejected a proposed text amendment generated by one or more of the Defendant applicants that would have expressly authorized data centers and associated power generation as permitted uses, and in doing so indicated that such a use should instead be subject to conditional-use review. Notwithstanding that prior determination, the Planning Commission approved the preliminary development plan without identifying any change in the ordinance, the proposed use, or the evidentiary record, and without providing any reasoned explanation for treating the use as permitted.

3. The proposed development poses a threat to the health, safety, and welfare of nearby residents and businesses, including members of the Plaintiff, due to its scale, associated power generation, and anticipated impacts on the surrounding area.

4. The Planning Commission’s approval of the preliminary development plan was therefore arbitrary, capricious, and inconsistent with the City of Franklin Zoning Ordinance and KRS Chapter 100.

PARTIES

5. Plaintiff, Franklin Citizens for Responsible Development, Inc., is an active, nonprofit organization, organized and existing under the laws of the Commonwealth of Kentucky, in good standing with the Office of the Kentucky Secretary of State, and with its principal office located at PO Box 1007, Franklin, Kentucky 42135. Plaintiff’s purpose includes representing the interests of its members with respect to land use, zoning, and development matters within the City of Franklin and surrounding areas. Plaintiff has associational standing to bring this case on behalf of its members, as its members would otherwise have standing to sue in their own right and the interests at stake are germane to Plaintiff’s purpose. Plaintiff and its members are injured and aggrieved by the approval of

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the preliminary development plan and the actions of the Franklin Planning and Zoning Commission.

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6. Defendant, City of Franklin Planning and Zoning Commission (“Commission”), is a governmental body organized under the laws of the Commonwealth of Kentucky, with its principal office located at 117 West Cedar St., Franklin, Kentucky 42134. The Commission is made up of five residents of the City of Franklin appointed by the Mayor with the approval of the Franklin City Commission. The Chair of the Commission is Debbie Thornton.

7. Defendant, TenKey LandCo I, LLC is an active, for-profit, foreign limited liability company, in good standing with the Office of the Kentucky Secretary of State, and is authorized to conduct business in the Commonwealth of Kentucky, with its principal office located at 4325 Hillsboro Pike, Ste. 300-622, Nashville, Tennessee 37125. Upon information and belief, TenKey LandCo I, LLC, is an owner of real property located at 421 Steele Road, Franklin Kentucky 42134 which is the subject of the approval of the preliminary development plan by the Commission. Upon information and belief, TenKey LandCo I, LLC may also be the applicant for the preliminary development plan approved by the Commission. Its registered agent is Registered Agents, Inc., 212 N. 2nd St., Ste. 100, Richmond, Kentucky 40475.

8. Defendant, SPDJ Partners, LLC, is an active, for-profit, foreign limited liability company, organized under the laws of the State of Delaware, in good standing with the Office of the Kentucky Secretary of State, and is authorized to conduct business in the Commonwealth of Kentucky, with its principal office located at 4325 Hillsboro Pike, Ste. 300-622, Nashville, Tennessee 37215. Upon information and belief, SPDJ Partners,

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LLC is the applicant for the preliminary development plan approved by the Franklin Planning and Zoning Commission. Its registered agent is Registered Agents, Inc., 212 N. 2nd St., Ste. 100, Richmond, Kentucky 40475.

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9. Defendant, OTN Development Company LLC, is an active, foreign limited liability company organized pursuant to the laws of the State of Florida with a principal office address of 3954 W. Riverside Drive, Fort Myers, Florida 33901. Upon information and belief, OTN Development Company LLC is the applicant for the preliminary development plan approved by the Franklin Planning and Zoning Commission. Its registered agent is Registered Agents, Inc., 7901 4th St. N., Ste. 300, St. Petersburg, Florida 33702.

10. Defendant, OTN Group is, upon information and belief, a business entity of unknown form and state of organization, with an address of 960 Penn Ave., Ste. 301, Pittsburgh, Pennsylvania 15222, and is associated with Adam DeSimone, who is identified as a representative of the entity.

PERSONAL JURISDICTION

11. Defendant, OTN Development Company, LLC, is a foreign business entity that has purposefully availed itself of the privilege of conducting activities within the Commonwealth of Kentucky in connection with the proposed development at issue in this action.

12. Defendant, OTN Development Company, LLC, is identified as the developer of the proposed project in materials submitted to and reviewed by the Commission.

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13. Defendant, OTN Development Company, LLC, has transacted business in Kentucky in connection with the proposed development, including participating in the application process and coordinating with local governmental entities in Franklin, Kentucky.

14. Plaintiff's claims arise directly out of Defendant, OTN Development Company, LLC's activities within the Commonwealth.

15. Accordingly, this Court has personal jurisdiction over Defendant, OTN Development Company, LLC, pursuant to KRS 454.210 and consistent with due process.

16. Defendant, OTN Group, is, upon information and belief, a business entity of unknown form that has purposefully directed activities toward the Commonwealth of Kentucky in connection with the proposed development at issue in this action.

17. Upon information and belief, Defendant, OTN Group, has engaged in coordination with local utility providers in Kentucky concerning the proposed development, including communications with Warren Rural Electric Cooperative Corporation and the Simpson County Water District.

18. Plaintiff's claims arise out of Defendant, OTN Group's, contacts with the Commonwealth.

19. Accordingly, this Court has personal jurisdiction over Defendant, OTN Group, pursuant to KRS 454.210 and consistent with due process.

JURISDICTION AND VENUE

20. Pursuant to KRS 100.347(2), a party that is injured or aggrieved by final action of a planning commission may appeal to the circuit court of the county in which the property subject to the action of the planning commission lies.

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21. KRS 418.040 vests this court with jurisdiction over an action by a plaintiff seeking a declaration of rights where an actual controversy exists. KRS 418.045 provides that any person “whose rights are affected by statute, municipal ordinance, or other government regulation . . . or who is concerned with any title to property” may apply to secure a declaration of rights and duties. Declaratory relief is appropriate in this case under KRS 418.045 because the requested declaration of rights will terminate the uncertainty and controversy that exists in this case.

22. Venue is proper in this Court pursuant to KRS 100.347(2) because the subject property that is the basis of the Planning and Zoning Commission’s final action is located within this county.

STANDING

23. One of Plaintiff’s members, B&B, Inc., is a for-profit business that owns and operates an antique mall and outdoor flea market known as Bright’s Antique World located at 281 Steele Road in Franklin, Kentucky and is located adjacent to the subject property proposed for development as a data center.

24. The property owned and operated by B&B, Inc. is used for commercial purposes and depends on customer access, outdoor activity, and a suitable environment for retail and vendor operations. A true and accurate copy of the Affidavit of Riley Bright, President of B&B, Inc., is attached hereto as Exhibit A.

25. The operation of the proposed data center and its associated on-site power generation facility, including natural gas turbines or similar equipment, will generate noise, odors, and other disturbances causing damage to B&B, Inc. *See* Exhibit A.

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26. B&B, Inc. reasonably believes that such noise and disturbances will constitute a nuisance and will injure its business operations, customer experience, and economic viability. *See* Exhibit A.

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27. Plaintiff brings this action on behalf of its members, including B&B, Inc. whose interests are directly affected by the Planning Commission's approval of the proposed development.

**STATEMENT OF FACTS COMMON
TO ALL COUNTS**

28. On or about August 22, 2025, Tim Crocker, an attorney believed to be local counsel for one or more of the Defendant applicants, sent an email to Scott Crabtree, the City Attorney of the City of Franklin, attaching a proposed text amendment to the City's zoning ordinance for review, a true and correct copy of which is attached hereto as Exhibit B.¹ The proposed text amendment attached to the August 22, 2025 email is attached hereto as Exhibit C.

29. The proposed text amendment sought to modify Section 8.16 of the City of Franklin Zoning Code governing the Heavy Industrial District (I-2) by adding language, in bold and italicized text, that would expressly reference and authorize data centers and associated on-site power generation within the district. Specifically, the amendment would have identified "data centers and power generation" as contemplated uses and created new permitted use categories, including "Advanced Technology Centers," encompassing data centers and related infrastructure such as cooling systems, power supply equipment, data

¹ The email chain attached as Exhibit B reflects that the proposed text amendment originated with counsel for the applicant and was forwarded by the City Attorney to members of the City Commission on October 17, 2025, noting that it was the first time he had seen the amendment and stating, "so you can see I didn't draft it."

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storage systems, and on-site power generation systems, and “Integrated Energy Systems,” encompassing on-site energy generation and distribution infrastructure capable of operating independently or in connection with the electrical grid. The effect of the proposed text amendment was to expressly authorize data centers and associated on-site power generation as permitted uses within the I-2 zoning district.

30. On or about August 25, 2025, the City Commission of the City of Franklin held a regular meeting at which it considered the proposed text amendment. At that meeting, the City Commission voted to “recommend the proposed text amendment”, as presented, by a vote of four (4) to one (1). A true and correct copy of the minutes of the August 25, 2025 meeting of the City Commission is attached hereto as Exhibit D.

31. On or about August 25, 2025, the City Attorney for the City of Franklin sent an email to the Planning Administrator and members of the Franklin Planning and Zoning Commission regarding the proposed text amendment. In that email, the City Attorney advised that the City Commission had approved a motion to recommend the proposed text amendment to the Planning and Zoning regulations. The City Attorney further requested that the Planning and Zoning Commission schedule a hearing on the proposed text amendment and provide its recommendation. The email attached the proposed text amendment for the Commission’s consideration. A true and correct copy of the August 25, 2025 email, including the attached proposed text amendment, is attached hereto as Exhibit E.

32. On October 21, 2025, the Franklin Planning and Zoning Commission held a special-called meeting to consider the proposed text amendment. At that meeting, Mr. Crocker, provided an oral presentation regarding the proposed data center and the text

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amendment on behalf of one or more of the Defendant applicants.² Mr. Crocker examined multiple witnesses concerning the proposed text amendment and the proposed data center over the course of approximately one hour, despite there being no pending application before the Commission for approval of a preliminary development plan or other development approval for a data center on the subject property. Following the presentation and examination of witnesses, members of the public were permitted to provide comment. At the conclusion of the hearing, the Planning and Zoning Commission voted unanimously to not approve the proposed text amendment. A true and correct copy of the minutes of the October 21, 2025 meeting is attached hereto as Exhibit F.

33. On November 12, 2025, the Planning and Zoning Commission issued a written letter reiterating its reasons for rejecting the proposed text amendment, a true and correct copy of which is attached hereto as Exhibit G. In that letter, the Commission stated that the proposed text amendment was too vague and did not provide sufficient controls or safeguards for the construction and operation of a data center or associated energy production facility. The Commission further stated that, if such a facility were to be approved, it should be done through a conditional use permit so that appropriate controls could be imposed on the construction and operation of the facility. The Commission also stated that it had not been presented with sufficient information to allow unrestricted power generation in an I-2 zoning district. The Commission further expressed concerns regarding the potential impact of such a facility on water resources and the sufficiency of electrical power for the proposed development.

² The proceedings of the October 21, 2025 meeting are publicly available via video recording at: <https://www.youtube.com/watch?v=00k-WntNQU4&t=1831s>.

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34. The Franklin Zoning Ordinance does not allow the proposed land use in any zoning district as a permitted, accessory, conditional, or any other use.

35. On or about November 24, 2025, the Defendant applicants, TenKey LandCo I LLC, OTN Development Company LLC, SPDJ Partners LLC, and/or OTN Group submitted an application to the Defendant, Franklin Planning and Zoning Commission for approval of a preliminary development plan, identifying the proposed use as a “data storage and service center with power manufacturing” and the development as “Blackjack-Lionsgate.” The proposed development consists of a large-scale data storage and service center coupled with an associated on-site power generation facility, planned as a multi-building project on approximately 147 acres located at 421 Steele Road in Franklin, including multiple data center buildings and a separate facility for power generation. The data center portion of the project includes multiple large buildings designed to house computer servers, networking equipment, and related infrastructure necessary for data processing and storage, while the power generation component is intended to supply energy to the data center operations. The proposed development further includes substantial site infrastructure, including extensive building footprints, parking areas, and multiple access points from a newly proposed roadway. A true and correct copy of the application is attached hereto as Exhibit H. A true and correct copy of the concept drawing for the site and submitted with the application is attached hereto as Exhibit I.

36. On January 20, 2026, the Defendant, Franklin Planning and Zoning Commission held a meeting to consider the application for approval of a preliminary development plan. Following a presentation by the applicant, questioning by the Commission, and public comment, the Commission voted unanimously to table the

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application. A true and correct copy of the minutes of the January 20, 2026 meeting is attached hereto as Exhibit J.

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37. On February 5, 2026, the Commission reconvened to consider the application after it had been tabled. Following additional questioning by the Commission and further discussion, the Commission again voted to table the application, this time by a vote of three (3) to one (1). A true and correct copy of the minutes of the February 5, 2026 meeting is attached hereto as Exhibit K.

38. On March 3, 2026, the Commission held a meeting to consider the application for approval of a preliminary development plan after it had been previously tabled. The Commission conducted the meeting over the course of approximately three hours.³ During the meeting, the Commission questioned the applicant, the applicant's counsel, the Commission's counsel, and the Planning Administrator. The Commission did not permit public comment at the March 3, 2026 meeting in spite of obtaining new evidence from the applicant. During the meeting, multiple commissioners questioned how the proposed data center and associated power generation could be treated as a permitted use under the zoning ordinance. Despite no basis for concluding the proposed uses are recognized conditional uses under the Zoning Ordinance, Commissioners further expressed the view that the proposed use should be treated as a conditional use so that conditions could be imposed to provide greater local control over the development. Toward the conclusion of the meeting, a motion was made to approve the preliminary development plan with stipulations as a permitted use. The motion to approve the preliminary

³ A video recording of the March 3, 2026 meeting is publicly available at: <https://www.youtube.com/watch?v=AuGXxNxEnRU&t=947s>

development plan passed unanimously. The stipulations included, among other things, limitations on water usage, restrictions on power generation to ancillary use, a prohibition on the sale of power back to the grid, and ongoing reporting and coordination with planning staff. Following passage of the motion, Commissioner Kepley stated, “our counsel is telling us we have to legally do it,” referring to approval of the preliminary development plan.⁴

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39. The Commission did not make findings of fact supporting its approval of the preliminary development plan.⁵

40. The Commission did not address or explain its departure from its prior determination, as set forth in its November 12, 2025 letter, that such a use should proceed through conditional-use review.

41. Plaintiff’s members are injured and aggrieved persons as contemplated by KRS 100.347(2) and may appeal a final action of the Franklin Planning and Zoning Commission approving a preliminary development plan.

**COUNT I – Appeal of Planning
Commission Decision**

42. Plaintiff incorporates by reference the preceding paragraphs as if fully set forth herein.

⁴ At 3:21:36. During the March 3, 2026 meeting, counsel for the Planning and Zoning Commission advised the Commission that tabling the application would not be consistent with Robert’s Rules of Order and further expressed the opinion that the applicant “have met all of the qualifications for a preliminary development plan” (at 1:50:44, 1:52:56, 1:55:58, and 1:57:15). Indeed, during discussion of a motion to deny the preliminary development plan, counsel for the Commission expressed the view that a conditional use “was not a valid reason to deny” the application (at 2:17:01).

⁵ The minutes of the March 3, 2026 Planning and Zoning Commission meeting were unavailable to Plaintiff at the time of filing this action.

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43. The Commission acted arbitrarily, capriciously, and without substantial evidence in the record in approving the Preliminary Development Plan.

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44. The Commission has jurisdiction to consider and approve preliminary development plans only for uses that are permitted under the applicable zoning ordinance.

45. On October 21, 2025, the Commission considered a proposed text amendment that would have expressly permitted data centers and associated on-site power generation in the I-2 zoning district.

46. Following that hearing, the Commission issued a written determination on November 12, 2025, declining to recommend adoption of the proposed text amendment.

47. In its written determination, the Planning Commission stated that any such use, if approved, should proceed through conditional use review so that appropriate controls and safeguards could be imposed.

48. The Commission further expressed concerns regarding the lack of safeguards, the need for oversight, and the impacts of such facilities on water and electrical infrastructure.

49. Pursuant to KRS 100.237 and Article 12 of the City of Franklin Zoning Regulations, only the Board of Adjustments possesses the authority to grant conditional use permits.

50. On March 3, 2026, the Commission approved the preliminary development plan for the same proposed use.

51. There was no change in the zoning ordinance between November 12, 2025 and March 3, 2026.

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52. There was no material change in the nature or scope of the proposed use between those dates.

53. The Commission did not identify any new evidence in the record supporting a different classification of the use.

54. The Commission did not articulate any findings or reasoning explaining its departure from its prior determination that the use should be subject to conditional use review.

55. The Commission did not make a supported finding, grounded in the ordinance, that the proposed use qualified as a permitted use.

56. The Commission was required to base its decision on the zoning ordinance and substantial evidence in the record and to provide a rational basis for its decision.

57. The Commission’s approval of the preliminary development plan therefore constitutes an unexplained and inconsistent decision that is not supported by substantial evidence in the record.

58. The Commission’s approval of the preliminary development plan also constitutes action in excess of its statutory authority, a failure to follow applicable law, and action without substantial evidentiary support. The approval violates the Planning Commission’s own Zoning Ordinance.

59. The Planning Commission also failed to make findings of fact supporting its approval of the preliminary development plan with stipulations. This was also action in excess of its statutory authority, a failure to follow applicable law, and action without substantial evidentiary support.

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60. The Planning Commission's approval of the preliminary development plan was arbitrary, capricious, and contrary to law.

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**COUNT II – Declaratory Judgment (KRS
418.040 et seq.)**

61. Plaintiff incorporates by reference the preceding paragraphs as if fully set forth herein.

62. An actual controversy exists between the parties regarding the proper classification of the proposed use under the City of Franklin Zoning Ordinance.

63. The controversy includes whether the proposed data center and associated on-site power generation constitute a permitted use within the I-2 zoning district or a conditional use subject to review by the Board of Adjustment.

64. Plaintiff's rights are affected by the Commission's determination that the proposed use is permitted and by its approval of the Preliminary Development Plan.

65. The Commission has taken the position that the proposed use is a permitted use under Section 8.16.2 of the Franklin Zoning Ordinance.

66. Plaintiff contends that the proposed use is not a permitted use under the zoning ordinance.

67. Plaintiff further contends that, at a minimum, the proposed use would be subject to conditional use review under Section 8.16.3.

68. The proper classification of the proposed use presents a question of construction and application of the zoning ordinance appropriate for declaratory relief.

69. Plaintiff is entitled to a declaration that the proposed use is not a permitted use within the I-2 zoning district.

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70. Plaintiff is further entitled to a declaration that the Commission lacked authority to approve the Preliminary Development Plan for a use that is not permitted under the zoning ordinance.

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71. Plaintiff requests all further relief to which it may be entitled.

COUNT III – Violation of KRS 14A.9-010(1) (Transacting Business without Authority)

72. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

73. Defendants OTN Development Company, LLC and OTN Group are foreign business entities that have engaged in activities within the Commonwealth of Kentucky in connection with the proposed development at issue in this action.

74. Upon information and belief, Defendants OTN Development Company, LLC and OTN Group have not obtained a certificate of authority from the Kentucky Secretary of State authorizing them to transact business within the Commonwealth of Kentucky.

75. Kentucky law provides that a foreign entity shall not transact business in the Commonwealth without first obtaining a certificate of authority from the Secretary of State. KRS 14A.9-010(1).

76. Despite lacking such authority, Defendants, OTN Development Company, LLC, and OTN Group, have transacted business within the Commonwealth, including but not limited to participating in the development application process, coordinating with local governmental entities, and engaging in activities related to the proposed data center project.

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77. As a result of Defendants’ unauthorized transaction of business within the Commonwealth, the actions taken in furtherance of the proposed development—including the application for and approval of the preliminary development plan—are unlawful or otherwise improper.

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78. Plaintiff seeks a declaration that Defendants, OTN Development Company, LLC, and OTN Group, are not authorized to transact business within the Commonwealth and that their actions in connection with the proposed development violate KRS 14A.9-010.

79. Plaintiff further seeks such other relief as the Court deems just and proper, including appropriate equitable relief.

**COUNT IV – Arbitrary and Capricious
Action (Approval of Application
Submitted by Unauthorized Entity)**

80. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

81. Upon information and belief, Defendants OTN Development Company and OTN Group are foreign business entities that have not obtained a certificate of authority from the Kentucky Secretary of State to transact business within the Commonwealth of Kentucky.

82. Despite lacking such authority, those entities participated in and were identified as the developer and/or applicant in connection with the preliminary development plan at issue, including communications with local governmental entities and utility providers relating to the proposed development.

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83. The Planning and Zoning Commission approved the preliminary development plan submitted and advanced by those entities without determining whether the applicant or developer was authorized to transact business in the Commonwealth as required by Kentucky law.

84. An administrative agency acts arbitrarily when it acts in excess of its statutory authority, fails to follow applicable law, or acts without substantial evidentiary support. *Am. Beauty Homes Corp. v. Louisville & Jefferson Cnty. Plan. & Zoning Comm'n*, 379 S.W.2d 450, 456 (Ky. 1964).

85. By approving a preliminary development plan submitted and advanced by entities not authorized to transact business in Kentucky, the Planning and Zoning Commission failed to ensure compliance with applicable law and acted in excess of its lawful authority.

86. The Planning and Zoning Commission's approval of the preliminary development plan under these circumstances was arbitrary, capricious, and contrary to law.

87. Plaintiff is entitled to relief from the Commission's arbitrary action, including reversal or vacatur of the approval of the preliminary development plan.

**COUNT V – Declaratory Judgment
(Constitutionality of KRS 100.347(2))**

88. Plaintiff incorporates by reference the preceding paragraphs as if fully set forth herein.

89. Defendants may assert that Plaintiff lacks standing to appeal under KRS 100.347(2) because Plaintiff does not own real property within the same zoning district as the subject property.

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90. KRS 100.347(2) purports to limit the right to appeal a final action of a planning commission to persons who own real property within the same “zone” as the subject property.

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91. The term “zone” is not defined by KRS Chapter 100 and lacks a clear and uniform statutory meaning.

92. Plaintiff is a nonprofit organization whose members include at least one business injured or aggrieved by the Commission’s final action, and that member owns real property directly across from the subject property proposed for development as a data center, which is zoned I-2, while that member’s property is located in a different zoning district.

93. An actual controversy exists regarding whether KRS 100.347(2) bars Plaintiff from seeking judicial review of the Commission’s action.

94. KRS 100.347(2), if applied to bar Plaintiff’s claim, is unconstitutional because it arbitrarily and unreasonably restricts access to judicial review based on zoning classification rather than actual injury, proximity, or impact, and thereby creates an irrational classification that permits some similarly situated aggrieved persons to seek review while denying it to others.

95. KRS 100.347(2), if applied to bar Plaintiff’s claim, is further unconstitutional because it denies Plaintiff a remedy for injuries caused by governmental action in violation of Section 14 of the Kentucky Constitution, violates Section 2 of the Kentucky Constitution by permitting arbitrary governmental action, and deprives Plaintiff of due process and equal protection under the United States Constitution and the Kentucky Constitution.

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96. To the extent that any Defendant asserts that Plaintiff lacks statutory standing to maintain an appeal under KRS 100.347(2) as not being an owner of “real property within the same zone where the property that is the subject of the final action is located,” or otherwise failing to fall within the class of persons permitted to seek judicial review under the 2025 amendments to KRS 100.347, notice is hereby given to the Attorney General of Kentucky that Plaintiff asserts that KRS 100.347(2), as amended by House Bill 321, Ky. Acts Ch. 83, is unconstitutional because it is void for vagueness, arbitrarily limits the right to judicial review under KRS Chapter 100 based on zoning classification or ownership status rather than actual injury, denies equal protection under law, and constitutes unconstitutional special legislation.

97. KRS 100.347(2), as amended in 2025, further constitutes an unconstitutional infringement by the legislative branch upon the authority of the judicial branch of Kentucky government in derogation of the separation of powers under the Kentucky Constitution, as it impermissibly restricts the courts’ ability to review administrative action. KRS 100.347(2) encroaches on the powers of the judiciary in violation of Ky. Const. Sections 27, 28, 109, 112, and 116, and constitutes special legislation in violation of Ky. Const. Section 59.

98. In the alternative, to the extent that this Court concludes that statutory jurisdiction under KRS 100.347(2) is unavailable to Plaintiff, this Court has subject matter jurisdiction over this action pursuant to Sections 2 and 14 of the Kentucky Constitution, which guarantee a citizen an inherent right of appeal from administrative decisions. *Louisville Historical League, Inc. v. Louisville/Jefferson County Metro Government*, 709 S.W.3d 213, 226–27 (Ky. 2025).

99. Plaintiff is entitled to a declaration that KRS 100.347(2) is unconstitutional as applied to Plaintiff.

WNKY

100. Plaintiff requests all further relief to which it may be entitled.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays this Court as follows:

1. Accept jurisdiction over this Complaint, Appeal and Petition for a Declaration of Rights;

2. Require Defendant, Franklin Planning and Zoning Commission, certify the complete and official record of the proceeding below related to the subject application within thirty days of the filing of this Complaint, including;

- a. All copies of the application and Planning and Zoning Commission staff reports;
- b. All exhibits, records, and documents related to the application;
- c. All exhibits, memorandums, photographs, videos, reports, documents, and records submitted in support and opposition to the application;
- d. All minutes, transcripts, and recordings of Planning and Zoning Commission hearings related to the application and the text amendment; and
- e. All records of correspondence and communication including letters, emails, phone logs, and meeting notes;

3. Find, conclude, and declare that the action of the Franklin Planning and Zoning Commission to approve the preliminary development plan is contrary to law and arbitrary and should be voided;

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4. Find, conclude, and declare that the action of the Franklin Planning and Zoning Commission to approve the preliminary development plan is unsupported by substantial evidence in the record;

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5. Find, conclude, and declare that the action of the Franklin Planning and Zoning Commission to approve the preliminary development plan violates the Franklin County Zoning Ordinance;

6. Declare that the Planning Commission acted arbitrarily, capriciously, and contrary to law by approving a preliminary development plan submitted or advanced by entities not authorized to transact business in the Commonwealth of Kentucky;

7. Declare that entities seeking approval of development plans before the Planning Commission must be authorized to transact business in the Commonwealth of Kentucky as required by law;

8. Find, conclude, and declare KRS § 100.347(2) is facially unconstitutional insofar as it would preclude the Plaintiff from appealing as a result of not owning property in the same zone as the subject property;

9. Find, conclude, and declare the decision of the Franklin Planning Commission is null and void;

10. To grant injunctive relief;

11. To hold a jury trial on all issues so triable;

12. Award the Plaintiff attorney's fees, litigation expenses and costs; and

13. For any and all other relief to which the Plaintiff is entitled.

Respectfully submitted,

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/s/ Timothy J. Mayer

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Presiding Judge: HON. MARK A. THURMOND (649413)

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