

CHILDERS & BAXTER PLLC

ATTORNEYS AT LAW
THE LEXINGTON BUILDING

201 West Short Street, Suite 300
Lexington, Kentucky 40507

Telephone: (859) 253-9824
Facsimile: (859) 258-9288

JOE F. CHILDERS, ESQ.
JOE@JCHILDERSLAW.COM

December 3, 2021

Tim Turney, Chair
David Prewitt
Ken Winkfield
Lonnie Estes
Bart Shockley
Members, Board of Adjustments
Woodford County, Kentucky

RE: Application for Amendment to Conditional Use Permit
Kentucky Bluegrass Experience Resort RV Park

Dear BOA Members:

I am writing on behalf of my clients, Midway Concerned Citizens, to oppose the recent application by Kentucky Bluegrass Experience Resort (“KBER”) for an amendment to the conditional use permit for operation of an RV park in Midway, which was approved by the BOA at its May 3, 2021, meeting, and which was filed with the Woodford County Clerk on or about May 24, 2021. As I understand it, the application is to amend two conditions of the permit, one requiring the development to obtain city water, and the other requiring the development to obtain city sewer service. As you know, on October 18, 2021, the Midway City Council voted 6-0 to turn down the request by KBER to provide city water and sewer service to the proposed RV park. The BOA is scheduled to consider this request at its December 6, 2021, meeting.

The conditional use permit, approved by this board on May 3, 2021, states as a condition of approval that: “. . . 15. All campsites and facilities shall have City public water and sewer.” For its request for amendment to these conditions, KBER has indicated that as far as water service, it intends to contract directly with Kentucky American Water Company for the necessary service. My clients do not take issue with this portion of the proposed amendment.

SEWER SERVICE

KBER is vague on its plan to provide sewer service to the more than 1,000 sites (Woodford and Scott Counties) of the proposed RV park. According to the BOA agenda for the upcoming meeting, KBER now proposes that “all wastewater will be treated by a KY Division of Water KPDS (sic) Permitted Facility in compliance with the Clean Water Act.” As of this date, however, no application for a private wastewater treatment plant (“package plant”) has been submitted to the Kentucky Energy and Environment Cabinet, Division of Water (“DOW”). The

CHILDERS & BAXTER

ATTORNEYS AT LAW

Members, Board of Adjustments

December 3, 2021

Page 2

applicant is asking this board to approve a change to the condition of “City public sewer” to a private package plant without knowing any details as to how that package plant will be constructed, operated, or maintained.

You should refuse to approve this change blindly, without the benefit of at least advance preliminary approval from DOW of an application for approval of the developers’ plan to construct, operate, and maintain the package plant in such a way as to protect important water features in the area, including Elkhorn Creek and a “stream/sink” located on the property itself.

In its original application to the BOA, KBER referred to these water features as follows:

1. There is a natural Spring Stream Sink on the eastern side of the property that runs south-westerly and then falls into a sink. Along the stream are several smaller ponds in poor health. This area is going to be created as an interactive education and heritage garden where native flora and fauna will be reintroduced in the landscape to help stabilize the stream banks and filter any pollutants before they enter the stream.
2. The South Elkhorn Creek is an iconic landmark for the region and the anchor for agri-tourism to Eklwood (sic) Farm. The South Elkhorn will be a great undertaking as invasive species will be removed, banks will need stabilization and implementing best practices for storm water runoff are ways the waterway will be preserved, cleaned and enhanced as a private conservation area.

Now, apparently KBER is proposing to build, operate, and themselves maintain a private sewage package plant that will discharge directly into Elkhorn Creek. This private treatment of sewage will further degrade both Elkhorn Creek and the stream/sink located on the property, which also flows into Elkhorn Creek. In order to construct and operate such a facility, KBER will have to obtain permits from DOW. These permit applications should first be required to undergo the rigorous review process required by the Clean Water Act before this Board makes its decision on this request for elimination of the permit condition requiring hookup to city public sewer.

KBER should be required to seek and obtain all necessary permits and regulatory approval before this board is asked to change an important condition of the conditional use permit, the necessity for city public sewer service. 401 KAR 5:005 regulates the construction, design and operation of wastewater treatment facilities, and sets forth detailed and specific

CHILDERS & BAXTER

ATTORNEYS AT LAW

Members, Board of Adjustments

December 3, 2021

Page 3

requirements, including meeting the 2014 edition of “Recommended Standards for Wastewater Facilities,” also referred to as “Ten State Standards.” The Ten State Standards, consisting of 175 pages, can be viewed at the following link (depress the Control button on your keyboard and click the cursor simultaneously): [Recommended Standards for Wastewater Facilities, 2014 Edition \(ky.gov\)](#).

My clients have requested KBER to delay this application to the BOA until they have held a public meeting at which KBER provides the public their detailed plans for the type of wastewater treatment plant they are proposing. The developers have refused both the request to delay their application and to provide details of the proposal to the public. Transparency is sorely lacking.

DOW And BOA Must Consider Public Comments

401 KAR 5:005 Section 4(8) requires DOW to take into account public comments on any application for a KPDES permit to operate a wastewater treatment plant. The citizens of Midway and surrounding areas have overwhelmingly opposed the construction of this RV park, *even if the park was served by city public sewers*, as indicated in public comments to the Midway City Council. The City Council has voted unanimously to deny the developers’ request for city public sewer service. Opposition to this proposed package plant will likewise be overwhelming, as evidenced by the letter written to BOA members from Chase Azevedo, General Manager of Georgetown Municipal Water and Sewer Service (“GMWSS”) on behalf of Scott County, the cities of Georgetown, Midway, and Versailles, WEDCO District Health Department, and the GMWSS Board of Commissioners.

Just as DOW is required to consider public comments for or against a proposed private wastewater treatment plant, so should you. The public does not want this large RV park in Midway for a myriad of reasons, including the great potential for degradation of Elkhorn Creek. A private sewage treatment plant, serving more than 1,000 residences, would further degrade this “iconic landmark for the region.”

This Proposal Conflicts With Regional Planning

DOW is required to consider the availability of a regional sewage treatment facility in its review of applications for private package plants. 401 KAR 5:005 Section 4(7) states:

CHILDERS & BAXTER

ATTORNEYS AT LAW

Members, Board of Adjustments

December 3, 2021

Page 4

The cabinet may condition or deny a permit to construct or expand a facility based on its *compatibility with a regional facility plan* or the availability of a regional facility. (a) Permits to construct, expand, or operate a sewage system *shall require* connection to a regional facility if one (1) becomes available and shall not be renewed, reissued, or modified to remove that requirement unless a regional facility is no longer available. (emphasis added).

The City of Midway operates a municipal sewage treatment plant that is capable of serving the proposed RV park. However, the City has turned down KBER's request that the City provide service. As a result, the application of KBER for approval of a private sewage package plant is not compatible with the City's facility plan, the "regional facility plan" contemplated by the regulation.

Private sewage treatment plants are not favored. As demonstrated by the problems Scott County has faced with such facilities, they are often neglected and not properly maintained by private developers. For this reason, the stated regulation requires connection to a regional facility operated by a governmental entity, such as the Midway sewage treatment plant, if one is available.

KPDES Application

In order to operate a private sewage package plant, KBER is required by the Clean Water Act to obtain a Kentucky Pollutant Discharge Elimination System ("KPDES") permit from the DOW. This is an extensive process designed to protect the waters of the Commonwealth. Part of the requirement to obtain a KPDES permit is to provide a "Socioeconomic Demonstration and Alternatives Analysis." Pursuant to the "Antidegradation Implementation Procedure" found in 401 KAR 10:0230, Section 1(3)(b)3, the developer must demonstrate the socioeconomic need for the project which justifies the necessity of lowering local water quality to accommodate important economic or social development in the area where the water is located. KBER has not demonstrated the socioeconomic need for this project as required by this regulation. As a result, DOW will not be able to approve KBER's application for a KPDES permit, if such an application is ever submitted.

CHILDERS & BAXTER

ATTORNEYS AT LAW

Members, Board of Adjustments

December 3, 2021

Page 5

KBER is attempting to place you, members of the BOA, in the middle of this controversial project by sidestepping important conditions that you in good faith believed were necessary for approval of the conditional use permit, that the project obtain city public water and sewer. Before you consider such a proposal, you should require the developer to obtain at least preliminary approval from the DOW for a package plant designed to treat 90,000 gallons of raw sewage per day. With all due respect, you all are not experts as to the environmental impact such a privately operated package plant would have on the environment, particularly Elkhorn Creek. My clients submit that this consideration should be left to the experts at DOW, who will likely conclude that this project is too large for a privately operated wastewater package plant.

Midway Concerned Citizens respectfully requests that you, members of BOA, take into account the overwhelming opposition to this RV park demonstrated in both a public meeting called by the developers, and in a public hearing conducted by the Midway City Council. The public does not want this facility in Midway even if it is connected to a city public sewer service. The fact that the developer is now attempting to side-step the requirement, wisely conditioned by this board, that city public sewer service be obtained, will further harden the community's opposition to the facility. The public loves the "iconic landmark for the region" that is South Elkhorn Creek. Further degradation of this beloved waterway is not in the public interest.

For all of these reasons, my clients implore you to reject this request to amend the conditional use permit conditions. Alternatively, my clients request that you delay any consideration of this request until such time as the developer obtains at least preliminary approval of all permits required by the Kentucky DOW.

Sincerely,

 by Bethany
Baxter, Esq.
with permission

Joe F. Childers
Attorney for Midway Concerned Citizens

Cc: Clients
JFC/ds