



The Fayette Alliance

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Knox van Nagell

LFUCG Board of Adjustment
LFUCG Government Center
200 East Main Street
Lexington, KY 40507

December 16th, 2011

Dear Board of Adjustment Members,

My name is Knox van Nagell, and I am here on behalf of The Fayette Alliance.

The Fayette Alliance is Lexington's only land-use advocacy organization dedicated to achieving a sustainable Lexington that benefits all of us by preserving our renowned farmland and related agricultural industries in Fayette County, while strengthening our city through innovative development and adequate infrastructure.

If responsibly pursued, this growth approach will achieve a world-class city in a world-class Bluegrass landscape—creating a quality of life crucial to Lexington-Fayette County's economic and environmental success today and beyond.

In furtherance of this mission, **The Fayette Alliance respectfully requests that the applicant WITHDRAW C-2011-70: Boone Creek Adventures, LLC**—An appeal for a conditional use permit to construct and operate an outdoor recreational facility with accessory camping facilities in the Agricultural Rural (A-R) zone, on property located at 8291 and 8385 Old Richmond Road, and 8385 Durbin Road (Council District 12)—**until such time the following legal issue is resolved:**

1. The proposed tree canopy is an “amusement park”, and Section 8-1 (e) 6 of the LFUCG Zoning Ordinance expressly prohibits this use in the Agricultural-Rural (A-R) zone. Although our local ordinance fails to define amusement parks, they are defined in Kentucky's state statutes and case law—and therefore these authorities govern this case. *Keogh vs. Woodford County Board of Adjustments*, 243 SW.3d 369 (KY 2007).

The proposed canopy tour facility (complete with catwalks, suspension bridges, zip lines, tree platforms, ropes courses, and other elevated structures through which people may use a mechanized device or combination of devices to carry them along, around, or over a fixed or restricted course for amusement, pleasure, thrills, or excitement) **is deemed an “amusement ride” under KRS 247.232(1), and KAR 16:091.** See Appendix 1, memo from Nicole Liberto, Deputy General Counsel for the KY Department of Agriculture.

In addition, the canopy tour industry itself promotes the experience for public pleasure, excitement, and adventure—affirming its definition as an amusement ride. www.canopy-tours.com; www.navitat.com

Moreover, the canopy tour not only constitutes an amusement ride, but also an amusement park under KY law—as its public facilities are permanent in nature, cover a large tract of land, and its users must pay a fee. *Lone Star Shows Inc., v. Commissioner of Sinking Fund of City of Louisville et al.*, 171 SW.2d 28 (KY 1943).

Therefore, to grant a conditional use permit for the proposed “amusement park” will allow an otherwise prohibited use in the A-R zone, and the Board of Adjustment does not have the legal authority to take such legislative action under KRS 100.247 or Article 7-6(b) of the Zoning Ordinance.

The Fayette Alliance respectfully requests that the applicant withdraw his application until this fundamental matter is resolved—in furtherance of our community’s health, welfare, and safety.

If the “canopy tour” is allowed without first amending our local laws, it will set a dangerous countywide precedent by violating several key provisions of our Zoning Ordinance, Rural Land Management Plan, and Comprehensive Plan. In theory, the canopy tour may be a good thing that creates cultural appreciation for the Bluegrass and its remarkable natural resources—however, it is a premature one in light of our current land-use requirements and authorities.

More time and thought is needed on how to establish this facility on a countywide level, without jeopardizing our signature farmland, sensitive environmental resources and watersheds, and acclaimed agricultural industries.

The Fayette Alliance is committed, in good faith, to work with leaders in the agricultural community and the applicant to have this discussion. We appreciate Mr. Carey’s earnest efforts and understand that eco-tourism could be a great thing for Lexington-Fayette County and the Bluegrass—but it must be done carefully and in concert with the land-use traditions that have served our community so well for so long.

We thank the applicant for his proposal, and look forward to working with him in the future.

I appreciate your consideration, and dedication to responsible land-use planning in Lexington-Fayette County.

Sincerely,

Knox van Nagell, J.D.

Executive Director, The Fayette Alliance