

## **KENTUCKY DEPARTMENT OF EDUCATION**

### **STAFF NOTE**

#### **Action/Consent Item:**

Waiver of 702 KAR 4:050, Section 4 (4) (a), to allow for site approval for the proposed new high school in Martin County

#### **Applicable Statute and Regulation:**

702 KAR 4:050, Building Sites, Inspection, Approvals, and KRS 162.010, Title to School Property

#### **Action Question:**

Should the Kentucky Board of Education (KBE) approve a waiver to the requirement for a forbearance agreement related to the mineral rights associated with the Martin County Fiscal Court property located on KY 645 in Inez, Martin County, KY (known as the Hollybush site) for the acquisition by the Martin County Board of Education for the site of the proposed new high school?

#### **History/Background:**

***Existing Policy.*** 702 KAR 4:050 requires that local boards obtain fee simple title for school property. If mineral rights are not acquired and fee simple title is not available, forbearance agreements are required to ensure surface support. KRS 156.160 (2) provides a local board of education the ability to request a waiver from any administrative regulation promulgated by the KBE and provides the KBE the authority to waive requirements of regulations which do not affect health and safety when the school district has demonstrated circumstances that an alternative approach will achieve the same result required by the administrative regulation.

The current District Facility Plan, approved by the KBE in June 2008 (waiver approved June 2013 and findings approved January 2014 and March 2014) identifies the construction of a new 700-student high school to be located on a new site to be determined in Priority 2b.1 (New construction to replace inadequate spaces; expand existing or new buildings for educational purposes; consolidate schools; or replace deteriorated facilities) to accommodate the students from Sheldon Clark High School, a transitional facility, which is currently not occupied by the district.

The site is part of a larger tract recently transferred by the Kentucky Transportation Cabinet (KYTC) as surplus property to the Martin County Fiscal Court and a smaller tract recently purchased by the fiscal court. The property was acquired by KYTC for the construction of a section of KY 645 and included the mineral rights to a depth of one hundred fifty feet (150'). KYTC has transferred the surface rights to the fiscal court and has agreed to provide a forbearance agreement related to these mineral rights to Martin County Schools. This

action requires approval by the Finance Cabinet and the Governor's office. The mineral rights for the coal below this level are owned by one hundred twenty-six (126) individuals.

The proposed site meets many of the other regulatory requirements. It contains approximately fifty-six (56) acres which exceeds the 17 acre minimum requirement for a high school serving 700 students. It is above the 100-year floodplain. The fiscal court has provided a letter of road funding commitment for the connection to KY 645. The majority of the site is level because it is predominantly fill. The fill was placed in a manner intended to support future development by the local economic development entity. The Martin County Fiscal Court and Big Sandy Area Development are pursuing funding for the construction of water and wastewater infrastructure for which the district will contribute a proportionate share.

The district has requested a waiver to the requirement to secure fee simple title by obtaining title to the coal below 150', or obtaining forbearance agreements from the 126 individual owners. Documentation related to the potential and/or feasibility of extracting the coal below 150' was presented.

#### **Staff Recommendation and Rationale:**

Staff recommends conditional approval by KBE of the district's waiver request regarding forbearance agreements from the one hundred twenty-six (126) individuals who own the coal below one hundred fifty feet (150') of the property. This approval is conditional depending upon the district obtaining the promised forbearance agreement from KYTC for the mineral rights down to 150'.

Documentation (attachment) was submitted with this request that substantiates that this coal is neither mineable nor merchantable and therefore presents no risk of subsidence or other impact upon facilities to be constructed on the site. Further, due to the size and depth of the coal deposits, extraction of those coal reserves is doubtful. In the unlikely event that a subsequent effort is made to mine the coal below the 150' level, 405 KAR 18:210 (4)(1) prohibits underground mining beneath or adjacent to schools unless the subsidence control plan demonstrates that subsidence will not cause material damage to, or reduce the reasonably foreseeable use of the features or facilities.

#### **Impact on Getting to Proficiency:**

Good school facilities are a necessary component for academic success: a school's physical environment has an impact on student achievement, and the attitude of teachers and staff. The construction of the new high school will improve the instructional environment and favorably affect district progress toward reaching proficiency.

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**Interim Commissioner of Education**

**Date:**

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