

LAW OFFICES  
**FRYMIRE, EVANS, PEYTON, TEAGUE & CARTWRIGHT**  
US BANK BUILDING  
P.O. BOX 695, ONE SOUTH MAIN STREET, THIRD FLOOR  
MADISONVILLE, KY 42431-0695

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August 17, 2016

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NEVILLE MOORE (1899-1982)  
CARROLL MORROW (1907-1990)

Gregory C. Dunbar, AIA, Manager  
District Facilities Branch  
Division of District Support  
Kentucky Department of Education  
500 Mero Street – Capitol Plaza Tower 15th Floor  
Frankfort, KY 40601  
Sent via email to: [greg.dunbar@education.ky.gov](mailto:greg.dunbar@education.ky.gov)

Re: Hopkins County Board of Education  
Acquisition of 1118 Hayes Avenue, Madisonville, Kentucky

Dear Mr. Dunbar:

I am writing this letter in my capacity as the Hopkins County Board of Education attorney and on behalf of Superintendent Deanna D. Ashby and Assistant Superintendent for Facilities Tommy Burrough. The Board of Education is taking steps to acquire real estate adjoining Grapevine Elementary School commonly identified as 1118 Hayes Avenue, Madisonville, Kentucky, 42431.

By this letter this is to request that the Kentucky Department of Education approve a waiver of the 702 KAR 4:050 requirement for a forbearance agreement relative to the mineral rights associated with this property.


This real estate is a residential house in the City limits of Madisonville and we are providing a copy of the title opinion showing that the mineral rights were severed many years ago and the owner of the minerals cannot be readily identified.

We are also providing a copy of Chapter 114 of the Ordinances from the City of Madisonville prohibiting underground or surface mining within the City limits of Madisonville. I hereby certify that the property lies within the boundaries of the City of Madisonville and is governed by this Ordinance and in my opinion this would result in the inability for anyone with mineral rights to be able to exercise those rights on this property.

Given the prior approvals that have been granted under these circumstances this is to request that this matter be submitted to the Kentucky Department of Education for approval of a waiver of a forbearance agreement and a waiver of the requirement to acquire the mineral rights.

Respectfully,

FRYMIRE, EVANS, PEYTON,  
TEAGUE & CARTWRIGHT



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J. Keith Cartwright  
[kcartwright@feptc.com](mailto:kcartwright@feptc.com)

Enclosures

JKC.alt.2016Board.0817Dunbar.KDE.HayesAvenue.letter

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Hopkins County Board of Education  
320 South Seminary Street  
Madisonville, KY 42431  
Attn: Tommy Burrough

Re: 1118 Hayes Avenue  
Madisonville, Kentucky, 42431  
Tax Map M-34-18-20

Dear Mr. Burrough:

At your request we have examined the properly indexed records of the Hopkins County Court Clerk's Office for a period exceeding sixty (60) years affecting the title to the following described property located in Hopkins County, Kentucky, more particularly bounded and described as follows:

Lot No. 33 as shown on Amended Plat of Park View Addition of record in Deed Book 238, page 380 (now Cabinet 1, Slide 56), and described as follows:

Beginning at an iron pin in the right of way line of Hayes Avenue, corner to Lot No. 32; running thence with line of Lot 32, South 86-50 East 300 feet to an iron pin, corner of Lots 32, 33, 35 and 36; thence with line of Lot 36 South 12-17 East 75 feet to an iron pin in line of Hopkins County Board of Education; thence with said line North 86-50 West 300 feet to an iron pin in the line of Hayes Avenue; thence with Hayes Avenue North 12-17 West 75 feet to the beginning.

There is reserved and excepted from the above described property, and from this conveyance all of the coal, oil, gases, salt water and other minerals of every kind and character in and underlying the above described real estate, with the right to extract same without entry upon the surface, together with the right of subjacent support of the surface of said

land, all damage to said surface by reason of the subsidence of said land being hereby expressly waived by the Grantees by the acceptance of this deed and as a condition subsequent.

Being the same property conveyed to Charles T. Ellis and his wife, Vivian J. Ellis, by Louise Oates, a widow, by deed dated October 12, 1976 of record in Deed Book 383, page 74 of the Hopkins County Court Clerk's Office. Vivian J. Ellis died and pursuant to the survivorship provisions of said deed all interest in the property passed to Charles Thomas Ellis. Charles Thomas Ellis died in 2010 and pursuant to his Will of record in Will Book 65, page 298, his interest passed to Harriet Denise Melton.

Based upon our examination of the properly indexed records of the Hopkins County Court Clerk's Office, it is our opinion that Harriet Denise Melton is the owner of a good and valid, merchantable title in and to the above described property, subject only to the following exceptions:


1. We have made no examination of the mineral estate and certify no matter with respect thereto, nor do we express an opinion concerning zoning regulations or the rights or claims of the parties which are not shown of record.
2. Unrecorded easements, if any, on, above or below the surface.
3. The 2016 state, county, city, and school ad valorem property taxes, although not currently due and payable, constitute a lien against the subject property. We will prorate the property taxes and have the Seller pay their share as of the date of closing.
4. Although we do not certify who owns the minerals we do note that the captioned property is subject to a mineral reservation as is contained in Deed Book 383, page 74 which includes but is not limited to a severance of the coal, oil, gas, saltwater and other 'minerals of every kind and character together with the right of subjacent support of the surface and all damage to the surface by reason of the subsidence of said land as being expressly waived by the acceptance of the deed. We are providing a specific letter requesting a waiver to the 702 KAR 4:050 requirement for ownership of minerals or a forbearance agreement.
5. The captioned property is subject to the provision in Deed Book 383, page 74 that no building can be constructed closer than 45 feet to Hayes Avenue.
6. In the Last Will and Testament of Charles Thomas Ellis in Will Book 65, page 298 he gave his wife, Mary G. Ellis, the right to live in the house for her lifetime. There will need to be a waiver or a quitclaim deed from her relinquishing her right to live in the house for her lifetime.

This title opinion was made at the request of and is intended solely for the benefit of Tommy Burrough for the Hopkins County Board of Education and others may not rely upon the opinions herein expressed.

Our examination continued until August 17, 2016 at 7:50 a.m.

Respectfully,

FRYMIRE, EVANS, PEYTON,  
TEAGUE & CARTWRIGHT

  
\_\_\_\_\_  
J. Keith Cartwright

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## CHAPTER 114: MINING

### Section

114.01 Purpose

114.02 Findings of fact

114.03 Regulations

114.99 Penalty

### *Statutory reference:*

**Minig**, see KRS Chapter 352

### § 114.01 PURPOSE.

It is the purpose of this chapter to regulate and control the **minig** of coal in and underlying the city and to regulate and control the injurious effects on the people and resources of this city.  
(74 Code, § 16-1) (Ord. passed 12-28-70)

### § 114.02 FINDINGS OF FACT.

(A) The City Council finds that the underground **minig** of coal underlying the city has caused subsidence of the land and has resulted in damage to the property of its citizens, and in general, creates hazardous conditions dangerous to life and property so as to constitute an imminent and inordinate peril to the welfare of its citizens, and property and the people and property within the city and Commonwealth of Kentucky.

(B) The City Council further finds that subsidence of the surface of the earth has occurred on numerous occasions in areas where coal has been mined by the underground method of **minig** within the city, including but not limited to known and recent subsidence in the Parkwood, Brentwood, and Crestview subdivisions to the city and that these incidents of subsidence have caused damage to the property and imperiled the well-being of the citizens of the city.

(C) The Council further finds that in order to prevent future generations of its citizens from exposure to known and existing hazards caused by underground **minig** that it is in the interest of the general welfare that further **minig** in and underlying the city be prohibited.

(D) The Council further advises that the strip **minig** of coal has caused and will cause soil erosion, damage from overburden, landslides, stream pollution, accumulation of stagnant water and seepage of contaminated water, danger from detonation of explosives used in the **minig** process, destroys the value of land for aesthetic reasons, and in general impairs the property rights of its citizens and creates hazards dangerous to life and property so as to constitute an imminent and inordinate peril to the persons and property lying and being within the city.

(74 Code, § 16-2) (Ord. passed 12-28-70)

### § 114.03 REGULATIONS.

(A) It shall be unlawful to mine coal by the surface, auger, or strip method of **minig** within the city limits of the city.

(B) It shall be unlawful to mine coal by the underground or deep shaft method of **minig** within the city limits of the city.

(74 Code, § 16-3) (Ord. passed 12-28-70) Penalty, see § 114.99

### *Cross-reference:*

*Erection and maintenance of coal mine loading tipples prohibited, see § 130.10*

### § 114.99 PENALTY.

Any person who violates § 114.03 shall be guilty of a misdemeanor and shall be subject to a fine of not less than two hundred fifty dollars (\$250.00) nor more than five hundred dollars (\$500.00) for each violation hereof.

('74 Code, § 16-4) (Ord. passed 12-28-70)

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