

KENTUCKY DEPARTMENT OF EDUCATION

STAFF NOTE

Action/Consent Item:

Request for Waiver from 702 KAR 4:050, Section 4(4)(a), Requirement that the Hopkins County Board of Education Acquire Mineral Rights Forbearance Prior to Purchasing a Property in Madisonville, Kentucky

Commissioner's Recommendation:

The Commissioner recommends that the Kentucky Board of Education (KBE) approve the request from the Hopkins County Board of Education for a waiver of the requirement for a forbearance agreement related to the mineral rights associated with the property located at 1118 Hayes Avenue, Madisonville, Kentucky.

Rationale:

To allow the school district to proceed with the property acquisition. The subject property is a residence adjoining Grapevine Elementary School in Madisonville. The City of Madisonville Ordinance 114.03 does not allow surface or underground mining in the city limits, making the waiver an appropriate alternative approach.

Action Question:

Should the KBE approve the request for a waiver to the requirement for a forbearance agreement related to mineral rights associated with the Hopkins County property located at 1118 Hayes Avenue, Madisonville, Kentucky?

Applicable Statute or Regulation:

KRS 162.010, 702 KAR 4:050, KRS 156.160

History/Background:

Existing Policy: 702 KAR 4:050 Section 4(4)(a), 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. Pursuant to that statute, the KBE may waive requirements of regulations not affecting health and safety when the requesting school district demonstrates that an alternative approach will achieve the same result required by the administrative regulation. The KBE approved a similar waiver for Hopkins County at the August 4, 2016 board meeting for a different piece of property.

Summary: The subject property is a 0.5 acre lot in the Park View Addition of Madisonville with a one-story residence on it of approximately 1,200 square feet. The Hopkins County Board of Education intends to utilize the property to expand parking for the elementary school campus. A waiver to the forbearance agreement is appropriate because the property is subject to the City of Madisonville Ordinance 114.3 that prohibits surface and underground mining in the city limits. Furthermore, locating the mineral owner would be expensive and difficult. Included is 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. In addition, the attorney letter requesting the waiver is attached, along with the applicable ordinance from the Madisonville Code of Ordinances.

Budget Impact: There is no budget impact at the state level.

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Commissioner of Education

Date:

October 2016