

KENTUCKY DEPARTMENT OF EDUCATION STAFF NOTE

Topic: Henry County School District Request for Waiver of 702 KAR 4:180

Date: April 2023

Action Requested: Review Action/Consent Action/Discussion

Held In: Full Board Curriculum, Instruction and Assessment Operations

SUMMARY OF ISSUE BEFORE THE BOARD:

Pursuant to KRS 156.160(2), the Henry County Board of Education requests:

1. Waiver of Section 4(4)(b) of 702 KAR 4:050 Building sites; inspection, approval which states “The property shall not have easements traversing the site. Commitments to relocate easement from traversing site to perimeter shall be considered.”
2. Waiver of the Kentucky School Facilities Planning Manual (Planning Manual) incorporated by reference in 702 KAR 4:180 to allow a new central office to be included in Priority 2 of its proposed new district facilities plan rather than in Priority 4.

COMMISSIONER’S RECOMMENDATION:

The Commissioner recommends that the Kentucky Board of Education (KBE) approve the following:

1. Request for waiver of the regulation requirements regarding the prohibition of an easement traversing a site and consideration of relocation to the perimeter of the site for the proposed acquisition of property for the new central office.
2. Request for waiver of the requirements of the Planning Manual to allow a new central office to be included in Priority 2 and therefore eligible for a School Facilities Construction Commission (SFCC) offer of assistance.

APPLICABLE STATUTE OR REGULATION:

702 KAR 4:050 Building sites; inspection, approval.

KRS 156.160 Promulgation of administrative regulation by Kentucky Board of Education – Voluntary compliance – Penalty. KRS 156.160(2) states:

(a) At the request of a local board of education or a school council, a local school district superintendent shall request that the Kentucky Board of Education waive any administrative regulation promulgated by that board. Beginning in the 1996-97 school year, a request for waiver of any administrative regulation shall be submitted to the Kentucky Board of Education in writing with appropriate justification for the waiver. The Kentucky Board of Education may approve the request when the school district or school has demonstrated circumstances that may include but are not limited to the following:

1. An alternative approach will achieve the same result required by the administrative regulation;

2. Implementation of the administrative regulation will cause a hardship on the school district or school or jeopardize the continuation or development of programs; or

3. There is a finding of good cause for the waiver.

(b) The following shall not be subject to waiver:

1. Administrative regulations relating to health and safety;

2. Administrative regulations relating to civil rights;

3. Administrative regulations required by federal law; and

4. Administrative regulations promulgated in accordance with KRS 158.6451, 158.6453, 158.6455, and this section, relating to measurement of performance outcomes and determination of successful districts or schools, except upon issues relating to the grade configuration of schools.

702 KAR 4:180 Implementation guidelines – Kentucky School Facilities Planning Manual. KRS 157.622 Assistance to school districts – Priority of needs – Exception – Reallocation of funds – Disposition of bond savings and refinancing savings. KRS 157.622(3) states:

Each eligible district which has otherwise complied with the provisions of KRS 157.615 and 157.620 shall be offered sufficient funding to finance construction of the portion of its unmet need computed by applying the ratio determined in subsection (2) of this section to the total unmet need of the district. The funds shall be applied to the projects listed on the most current facility plan approved by the Kentucky Board of Education, and the funds shall be applied to projects in the priority order listed on the plan. Exceptions to the priority order of projects may be approved by the School Facilities Construction Commission when it is documented by the local board of education and approved by the Kentucky Board of Education upon the recommendation of the chief state school officer that the school district's priority order of needs has changed.

BACKGROUND:

Existing Policy:

Section 202 of the Planning Manual establishes district facility plan (DFP) priorities. Educational facilities have higher priorities than management support facilities (such as a central office project). Priorities 1 and 2 include projects to meet student capacity; further implementation of established programs; complete approved projects constructed in phases; replace inadequate spaces; expand existing or new buildings for educational purposes; consolidate schools; replace deteriorated facilities; and to address life safety, accessibility by the physically handicapped and compliance with the Kentucky Building Code. Priority 4 - Management Support Facilities includes central offices, bus garages and central storage facilities. The district initially requested a "Finding" (a minor change) to the current DFP to move the central office from Priority 4 to Priority 2. Findings which are compliant with the Planning Manual are approved by the District Facility Branch. The district's request was not compliant with the priorities established in the Planning Manual and could not be approved by the District Facility Branch. KBE approval to modify an existing DFP is required, based on the recommendation of the chief state school officer that the

school district's priority order of needs has changed pursuant to KRS 157.622(3). The district has remaining Need in Priority 2 of its current DFP related to its educational facilities.

702 KAR 4:040 Section 4(4)(b) prohibits easements from traversing a proposed building site and provides consideration if the easement can be moved to the perimeter of the site. In general, easements limit the ability of the property owner to fully develop property. Easements traversing a property can significantly impact site development. Section 4(4)(d) requires a letter from an architect or engineer relating to any potential environmental or safety hazards and that within the vicinity of a selected site, there shall not be any hazards to health or environment as deemed by state agencies having jurisdiction.

Summary of Issue:

The district requests a waiver of the regulation to acquire property adjacent to the existing campus on which the high school, middle school, bus garage, football, baseball and softball fields are located. The proposed uses of the property include the new central office, future expansion of the high school and bus parking, supplementary athletic practice fields and fields to support the agricultural program. The twenty (20) acre "L" shaped site adjoins the campus on its northern and partial western property lines. A sixty (60) foot wide right of way (easement) for a 22-inch diameter interstate crude oil pipeline runs through both legs of the property and essentially divides it in half. This large pipeline cannot be relocated to the perimeter of the site. The district's architect has stated that "We believe the needs to accommodate the easement can be addressed through thoughtful development of the site with minimal impact to cost or use" and that it "found no evidence of environmental or safety hazards regarding the future school use of the property." The district has proposed a preliminary site plan which limits the primary development to the north side of the oil pipeline right of way. The district has indicated that there is no plan to develop or build a structure on the right of way.

The district also request a waiver of the regulation to allow a new central office project to be included in Priority 2 rather than Priority 4 of its DFP. KRS 157.622(3) requires SFCC Offers to be applied to projects in DFP priority order. The district seeks an approved waiver which would enable the district to utilize a 2014 School Facilities Construction Commission (SFCC) Offer of Assistance to finance a new central office. The SFCC Offer will lapse unless a bond is sold by January 8, 2024.

The district's current highest priority is a new elementary school. However, due to the district's current debt structure it is not financially viable to issue bonds for a new elementary school. The projected cost of a new elementary school is \$22-23 million. Based upon the anticipated payoff of existing debt, it is estimated that the district could issue bonds for that project by the summer of 2028. The central office is projected to cost \$4-5 million, and the district's fiscal agent has stated that the central office project would not impact the district's ability to issue bonds in 2028 for the new elementary school.

The district's existing central office was constructed in 1902 and is in poor condition with ongoing challenges related to water leaks and damage related to water. The poor condition of the building prevents the use of the upper floor.

Budget Impact:

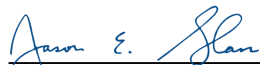
There is no impact on KDE's budget.

GROUPS CONSULTED AND BRIEF SUMMARY OF RESPONSES:

1. The School Facilities Construction Commission (SFCC) indicates that it would approve the use of the 2014 Offer of Assistance contingent on KBE approval of the waiver request.
Superintendent Jim Masters engaged stakeholders at each elementary school in order to explain the reasoning behind the central office project. Since the last DFP submission, a significant amount of priority 2 work has taken place at the other school facilities in Henry County. A draft district facility plan, which has been approved by the district Local Planning Committee, will be submitted to KDE for further review. The draft plan indicates that the Local Planning Committee has prioritized the central office project.
2. Matthew D. Sibole, Surveying, for the required plat.
Chelsey S. Brammell, Attorney, regarding the title search and commitment for title insurance by Old Republic National Title Insurance Company.
Sherman Carter Barnhart, Architects, regarding the site acquisition process.
CMTA, Consulting Engineers, regarding the availability of utilities.
JRA Architects regarding the site development plan.
The Kentucky Transportation Cabinet regarding roadway adequacy and funding for improvements on a state maintained right of way.
Energy Transfer Company General Guidelines for Third-Party Construction or Maintenance Activities related to site development on or around the pipeline and right of way.

CONTACT PERSON(S):

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