

KENTUCKY DEPARTMENT OF EDUCATION STAFF NOTE

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

Date: August 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 Bracken 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.”

COMMISSIONER’S RECOMMENDATION:

The Commissioner recommends that the Kentucky Board of Education (KBE) approve the following: 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 tennis courts and athletic practice fields.

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.

BACKGROUND:

Existing Policy:

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

Summary of Issue:

The district requests a waiver of the regulation to acquire a 52-acre property adjacent to the existing building in which the central office and bus garage are located for the construction of tennis courts and athletic practice fields. A thirty (30) foot wide perpetual easement has been deeded to the Bracken County Water District for a water main. A ten (10) foot wide unrecorded permanent utility easement runs within the thirty-foot easement. These easements enter the site from KY 1159 adjacent to the district’s property and run parallel to a property corner at which point they continue and traverse the site. The water main cannot be relocated to the perimeter of the site. A preliminary site plan indicated that the property can be developed as desired. The district stated current and future plans do not call for any building structure in the easements. The district has confirmed that there are no plans to build on the right of way. Further, the preliminary site plan that is currently proposed does not disrupt the right of way.

Budget Impact:

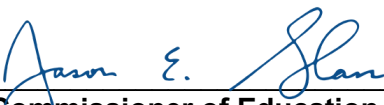
There is no impact on KDE’s budget.

GROUPS CONSULTED AND BRIEF SUMMARY OF RESPONSES:

1. M & H Survey, Rickey E. Hickle, PLS No. 3416, for the plat required by Section 4(4) for property boundaries, acreage, road access, easements and 100-year flood plain.
2. REH Architects regarding the preliminary site development plan.

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Commissioner of Education

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