

KENTUCKY DEPARTMENT OF EDUCATION STAFF NOTE

Topic: Jefferson County School District Request for Waiver of 702 KAR 4:050 & 702 KAR 4:090

Date: October 2023

Action Requested: Review Action/Consent Action/Discussion

Held In: Full Board State Schools United We Learn

SUMMARY OF ISSUE BEFORE THE BOARD:

Pursuant to KRS 156.160(2), the Jefferson 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 Section 2(2)(c) of **702 KAR 4:090 Property disposal** which requires the district to receive fair market value for an easement to be documented by an appraisal from a certified general real property appraiser commissioned by the district.

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; and (2) request for waiver of the regulation requirement for the appraisal to be commissioned by the district for a utility easement.

APPLICABLE STATUTE OR REGULATION:

KRS 156.160(2), 702 KAR 4:050, Section 4(4)(b) and 702 KAR 4:090, Section 2(2)(c)

BACKGROUND:

Existing Policy:

KRS 156.160(2) provides for the waiver of KBE regulations as follows:

(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... 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 4:050 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.

702 KAR 4:090 Section 2(2)(c) requires documentation regarding receipt of fair market value as determined by an appraisal from a certified general real property appraisal commissioned by the school district and obtained in connection with the disposal of the property or equivalent valuable consideration.

Summary of Issue:

The district requests a waiver of the regulation to acquire 3903 Atkinson Square Drive, a site with an existing building, parking lot and a 15' sanitary and drainage easement which traverses the property. The easement serves an adjacent property with an existing building owned by the district. As a developed site, the easement does not affect the district's ability to use the site for its intended purpose.

The district further requests a waiver of the regulation which requires an appraisal to be commissioned by the district for a utility easement for an extension of a distribution line. The proposed easement is adjacent to the south property line of Fairdale High School. The appraisal was prepared for the Louisville Water Company by a certified general property appraiser. The district has stated that the cost of an appraisal and related costs (\$1,200 - \$3,500) could approach the fair market value of the water company's appraisal (\$4,545) and result in less compensation to the district.

Because the easement does not affect the district's ability to use the site for its intended purpose and because requiring an independent appraisal would result in less compensation to the district from the water company, it is recommended that the KBE approve the above described district waiver requests.

Budget Impact:

There is no impact on KDE's budget.

GROUPS CONSULTED AND BRIEF SUMMARY OF RESPONSES:

Milestone Design Group, Richard C. Williamson, Jr., Licensed Professional Land Surveyor, #4050 for site survey of 3903 Atkinson Square Drive. The survey provided property boundaries, location of existing building, parking lot, and easement.

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