

KENTUCKY DEPARTMENT OF EDUCATION STAFF NOTE

Topic: Ludlow Ind. School District Request for Waiver of 702 KAR 4:050

Date: June 2024

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 Ludlow Independent Board of Education requests approval by the Kentucky Board of Education (KBE) of a waiver of 702 KAR 4:050 Section 4(4) which states: With tentative approval the district shall provide the following documentation....(b) Plat by registered surveyor indicating..."certification that property is above the 100-year flood plain"...and "Consideration may be given if filling of the site will bring building floor level and appurtenances above 100-year elevation."

COMMISSIONER'S RECOMMENDATION:

The Commissioner recommends that the KBE approve the request for waiver of the regulation requirement regarding the surveyor's certification that the property is above the 100-year flood plain and filling of the site to bring the building and appurtenances above the 100-year elevation.

APPLICABLE STATUTE OR REGULATION:

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 1996-1997 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 4:050 Building sites; inspection, approval states "...the district shall provide the following documentation to the Division of Facilities Management:... (b) Plat by registered surveyor indicating... certification that property is above the 100-year flood plain..."

BACKGROUND:

Existing Policy:

Property acquired by a school district is to be above the 100-year flood plain; or filling the site or a portion thereof will allow construction of the building and appurtenances to be above the 100-year flood plain; or the site is of sufficient area that the portion within the 100-year flood plain will not significantly limit the development of the site for its intended purpose.

Summary of Issue:

The district is located within the densely developed urban area of Northern Kentucky. The district's athletic fields have been located adjacent to the Ohio River and within its 100-year flood plain for many years and may predate the regulation requirement. The district requests a waiver of the regulation to purchase 0.36 acres of property at 479 Victoria Street to construct additional parking. The site is directly across Victoria Street from the district's athletic facilities. Filling the site to raise it above the 100-year flood plain is cost prohibitive and is not feasible for the intended use as surface parking.

Budget Impact:

There is no impact on KDE's budget.

GROUPS CONSULTED AND BRIEF SUMMARY OF RESPONSES: Robert Ehmet Hayes & Associates, PLLC, Viox & Viox, Civil Engineers, Surveyors, and Landscape Architects. The plat prepared by Viox & Viox indicates the subject property to be "within areas having a Zone Designation of "AE – Regulatory Floodway" by the Federal Emergency Management Agency on Flood Insurance Rate Map No. 2117C0008F having an effective date of May 16, 2013 for Community Number 210266, City of Ludlow, Kenton County, Commonwealth of Kentucky, which is the current Flood Insurance Rate Map for the community in which said property is situated."

CONTACT PERSON(S):

Matthew T. Ross, Associate Commissioner
Office of Finance and Operations
Email: Matt.Ross@education.ky.gov
(502) 564-1976 Ext. 4321

Robin Fields Kinney
Commissioner of Education

Category: <input type="checkbox"/> Educator Workforce Diversity <input type="checkbox"/> Portrait of a Graduate Partnerships <input type="checkbox"/> Racial Equity Commitment <input type="checkbox"/> Student-Centered Accountability System <input type="checkbox"/> Early Childhood <input checked="" type="checkbox"/> District Support
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