



Andy Beshear  
GOVERNOR

## TRANSPORTATION CABINET

200 Mero Street  
Frankfort, Kentucky 40601

Jim Gray  
SECRETARY

To Whom it May Concern:

The Kentucky Transportation Cabinet (hereinafter "KYTC") is currently widening Newtown Pike (KY 922) from New Circle Road (KY 4) to Interstate 75/ 64. As part of the widening of Newtown Pike, KYTC will construct a tunnel that will go under Newtown Pike and allow for the users of the Legacy Trail to traverse Newtown Pike without having to cross six (6) to eight (8) lanes of travel. The expectation is that by constructing a tunnel, motor vehicle traffic on Newtown Pike will not interact with pedestrian and bicycle traffic on the Legacy Trail.

To construct the tunnel and the rerouted Legacy Trail, KYTC first needs to acquire property in fee simple along the eastern side of Newtown Pike between Newtown Springs Drive and Citation. Attached hereto as Exhibit A are KYTC's Right-of-Way Plans showing the construction plans as well as the property needed by KYTC for said construction.

The additional property, being part of the property designated as 1445, 1433, 1425, and 1419 Newtown Center Way and 789 Newtown Springs Drive, Lexington, Kentucky (hereinafter "the Properties"), needed by KYTC is currently owned in fee simple by Newtown Springs, LLC, who has leased or will in the future lease portions of the property to different and various tenants. Again, KYTC cannot construct the tunnel and rerouted Legacy Trail without acquiring this fee simple property from Newtown Springs, LLC.

This area of Newtown Pike is currently subject to Lexington-Fayette Urban County Government (hereinafter "LFUCG") Ordinance 85-2008 (hereinafter "Ordinance"), attached hereto as Exhibit B. The Ordinance requires that any property abutting Newtown Pike provide a landscape buffer area, certain landscaping and a wooden four (4) plank fence as part of any development.

In 2010, Newtown Springs, LLC, and LFUCG entered into a Grant of Easement, attached hereto as Exhibit C, for the construction of the Legacy Trail. Through the Grant of Easement, LFUCG acquired permanent easements for the construction and maintenance of the Legacy Trail as well as temporary easements for the original construction. Also included in the Grant of Easement are certain obligations placed upon each party. Specifically referenced in these obligations is how Newtown Springs, LLC, can satisfy the requirements of the Ordinance. These requirements appear to be the construction of three (3) plank fencing with stone columns by Newtown Springs, LLC, and adhering to the seventy-five (75) foot landscaping buffer set forth in the Preliminary Development Plan for Newtown Springs, as certified on June 12, 2001.

As part of KYTC's acquisition, KYTC will be acquiring the area previously obtained by LFUCG in the Grant of Easement as permanent easements as well as almost all of the remaining area that makes up the seventy-five (75) foot landscaping buffer adjacent to KYTC's current right of way. KYTC will not be acquiring the area where the existing three (3) plank fencing is located as this property will remain with Newtown Springs, LLC.

As detailed above, KYTC's fee simple acquisition will greatly impact and nearly eliminate the existing seventy-five (75) foot landscaping buffer previously agreed to and provided by Newtown Springs, LLC. By all accounts, Newtown Springs, LLC, went to great lengths and efforts to comply with the landscaping requirements of LFUCG. KYTC's acquisition was not contemplated nor requested by Newtown Springs, LLC. Newtown Springs, LLC is essentially the property owner from which KYTC needs property for a public project. As such, KYTC requests an Amendment to the Ordinance to effectuate the following with respect to the Properties:

1. Exemption from the requirements of the Ordinance as to set-back, buffering, easements, ect...
2. All set-backs, landscaping, buffering, sign locations, open space and other requirements of the land use ordinances and regulations of LFUCG regarding the Newtown Pike property line of the Properties after the acquisition made by KYTC shall be treated the same as if the acquisition by KYTC had not occurred.
3. The Properties shall have the right to connect a walkway/bike path to the Legacy Trail and any connected ancillary/ spur path adjacent to the Properties.
4. Newtown Springs, LLC will maintain the current three (3) plank fence on the developed Properties and construct and maintain the extension of the three (3) plank fence to the undeveloped Properties as they develop.
5. KYTC will replace the trees and other plantings currently located in the seventy-five (75) foot landscaping buffer with an in-kind replacement.