

FCR 9

Office of the President
February 17, 2023

Members, Board of Trustees:

APPROVAL TO ACQUIRE PROPERTY THROUGH EMINENT DOMAIN

Recommendation: that the Board of Trustees, acting pursuant to its statutory authority under Kentucky Revised Statutes (KRS) Sections 164.260 and 164.410 and the Eminent Domain Act of Kentucky, (i) authorize and direct the acquisition through condemnation proceedings of properties located at 136, 138 and 144 State Street, and 122, 134, 136, 138 and 141 University Avenue in Lexington, Kentucky (the "Properties"); and (ii) authorize the university's Executive Vice President for Finance and Administration to approve and execute all documents needed to acquire these Properties before or after filing condemnation proceedings. These Properties are essential to the university's purpose and mission in providing healthcare through a new Cancer Treatment Center/Ambulatory Surgery Center Capital Project, for which the Board approved design work on May 4, 2021 and construction on December 13, 2022.

Background: To accommodate expansion of UK HealthCare, including the new cancer treatment center/ambulatory surgery center, the university needs to acquire 41 residential parcels most of which are located in the 100 block of Conn Terrace, State Street, University Avenue and Waller Avenue. To date, the university has acquired 30 of these parcels with three more proceeding to acquisition. The university has already commenced demolition of acquired parcels. To continue with the construction schedule, the university needs possession of the remaining parcels by early summer 2023.

Acting in good faith, the university initially notified the 41 parcel owners of its need to acquire their properties in April 2021. KRS §164A.575(6) states, in part, "Upon the approval of the secretary of the Finance and Administration Cabinet, the governing board may purchase or otherwise acquire all real property determined to be needed for the institution's use. The amount paid shall not exceed the fair market value as determined by a qualified appraiser or the value set by the eminent domain procedure."

The Properties listed above (136, 138 and 144 State Street, and 122, 134, 136, 138 and 141 University Avenue) are rental properties and most of them are already vacant. The university has obtained appraisals of each of the Properties by two appraisers on Kentucky's prequalified appraiser list. The university has offered to purchase the Properties for fair market value based on those appraisals. The property owners have rejected these offers and made counteroffers at prices the secretary of the Finance and Administration Cabinet will not approve without a supporting appraisal using reasonable appraisal methods and techniques.

The university has explained the requirements of KRS §164A.575(6) to the parcel owners. The university encouraged the parcel owners to get their own appraisals from an appraiser licensed or certified in Kentucky that could be considered when determining an acceptable fair market value.

KRS §164.260 states in relevant part that “When unable to contract with the owner of land or other property or material necessary for the purposes of the university, it may acquire the same by condemnation proceedings in the manner provided in the Eminent Domain Act of Kentucky.” Because the parcel owners have refused to negotiate in the manner required by KRS §164A.575(6), the eminent domain procedure will be required to determine the value.

The university has informed the owners that if the parties are unable to reach agreement on a fair market value purchase price for their respective Properties, the university will request authorization from its Board of Trustees to condemn the Properties. Because these Properties are crucial to this project and the proposed schedule for construction, and due to the good faith efforts of the university to this point, the university administration recommends that the Board of Trustees authorize condemnation.

Additional efforts will be made to reach agreement with the property owners prior to filing the formal condemnation proceedings. Accordingly, the university administration further recommends that the Board of Trustees authorize the Executive Vice President of Finance and Administration to approve and execute all documents needed to acquire the Properties before or after filing eminent domain court proceedings.

The acquisition of these parcels has been authorized by the 2022 Session of the Kentucky General Assembly as part of the Acquire Land (Land Acquisition Pool).

Action taken: Approved Disapproved Other _____