

KENTUCKY REAL ESTATE DISCLOSURES & MILITARY INSTALLATIONS

Introduction

This paper outlines the need for updates to the Commonwealth of Kentucky's real estate disclosure form - 402 - *Seller's Disclosure of Property Conditions*. In particular, enhancing the ability to promote compatible land use around military installations that will protect both the military's mission and potential homeowners from unnecessary conflicts.

Background

In 2019, Lincoln Trail Area Development District in cooperation with Fort Knox, initiated a review and update of the 2008 Joint Land Use Study (JLUS). This prior study provided background and analysis of potential concerns in the surrounding region that might inhibit Fort Knox's missions. This new study, now referred to as a Compatible Use Plan (CUP), was funded via a grant from the DoD's Office of Local Defense Community Cooperation (OLDCC). The new study, currently in a draft format, presents a broad look at many factors that can contribute to incompatible land use policies. This study is currently available for review and comment at missionknox.org. Several issues were identified and evaluated. They included examples such as, frequency spectrum availability, light pollution, habitat and agricultural lands preservation. This paper focuses on one tool to provide insight to and mitigation of the issue of dense residential development and its adverse effects on the military's national defense missions, particularly in Kentucky.

Residential development is needed in support of Fort Knox and the growing economy of the region. This area in central Kentucky has seen tremendous growth that places pressure on the housing market. The construction of the Nucor Steel mill in Meade County with over 400 direct jobs scheduled to open in 2022. The continued warehousing and logistics expansions in Bullitt County of millions of square feet and the ongoing distillery growth in Nelson County all contribute to this issue. In addition, the recent announcement by Ford Motor Company of the location of two new facilities in the Glendale - Hardin County area will create unprecedented stress on the existing housing market. These battery manufacturing facilities are slated to create 5,000 full-time jobs when they come online in 2025. This would be a 4% increase of the entire civilian employment in the region even without consideration of the offshoot businesses that will be created as a result.

These new facilities, only 25 miles south of Fort Knox's main gate via US31W, will place further stress on the area's available housing stock. The distances involved are not a large factor in the region. As an example, per the 2018 U.S. Census' American Community Survey (ACS), 17 % of workers in Hardin County already travel between 10 and 24 miles to work one-way. An additional 24% travel up to 50 miles and another 17% travel over 50 miles, to their worksite. The current quality of roads and low congestion factors in the Elizabethtown-Fort Knox Metropolitan Statistical Area (MSA) allow for an average commute time of only 23 minutes even with the distances involved.

The four-county CUP Study Area (Bullitt, Hardin, Meade, and Nelson) had 12,479 residential building permits issued between 2010 and 2020, thus over 11% of the current 111,032 units were built in the last 10 years. Fort Knox estimates from March 2021, posit that they are almost 200 homes short of their current need, even with over 2,300 single-family homes currently on post. Fort Knox has committed an additional \$80 million to build 60 new residences and provide renovations to the existing homes. The study area has an occupancy rate of almost 94% with its per unit population of 2.43, both in excess of the statewide average of 90% and only 2.26 persons per unit rate. Looking at the 5-Year unemployment rate, even with the Covid-19 induced spike, the four-county

area is still only at 4.9%. These factors combine to highlight a need for additional housing in the region that would need to exceed the current growth rate.

Primary Concern

The aforementioned data is presented to underscore our awareness of the ongoing need for housing in the region. Our concern becomes the location of this housing. The area in the immediate vicinity of Fort Knox is very susceptible to residential growth which in turn creates tremendous pressure on the continuation of Fort Knox's missions. Noise complaints, light pollution, and general encroachment "against the fence" are all factors that can contribute to downgrading or elimination of these missions.

The ability to formally make new residents aware of the noise and other issues that arise from active military training is crucial to limiting these complaints and maintaining the missions – both current and potential future ones. Since the departure of the Armor School, existing residents have perhaps become immune to the concept of ongoing noise in the area. Training activities have been more sporadic and not perhaps as continuous as in prior years. Persons new to the area may not be aware of the potential for noise, dust, overflights, etc., associated with Fort Knox's training.

The primary concern is complaints and conflicts will escalate. When the converted Yano Range area in the southeast corner of Fort Knox reopens in 2023 as the Digital Air Ground Integration Range (DAGIR), the level of training at the post is going to increase dramatically. A \$52 million investment, it will allow for multiple air and ground units to operate and fire weapons simultaneously. This will be only the second of this type of range in the U.S., and the only one east of the Rockies. It will be used by units from all across the country for training.

Potential Mitigation Measure

Many states have rules in place that require disclosures during the transfer of residential real estate. In this case specific ones for being near a military installation or airfield and the potential issues that could arise. In Kentucky the disclosure form is 402 - *Seller's Disclosure of Property Conditions* (<https://krec.ky.gov/Documents/402-SellersDisclosureofPropertyCondition.pdf>) It is hosted by the Kentucky Real Estate Commission under the Public Protection Cabinet. KRS-324.360 is the primary statute that governs the design of form 402. Some requirements on the form are federally mandated such as issues involving lead paint. Others, such as asbestos, are state regulations. Radon, flood plains, physical condition of the home, home-owners associations, and water/sewer capabilities are other common examples. An unusually extreme but necessary example, if the home previously contained a meth lab, is a required disclosure on Kentucky's form. This form does not apply to all transactions, only ones that may involve a realtor and some other selected cases. Court ordered foreclosures and sales by owner directly are examples that are not covered by this form. Thus, it is not a perfect catchall solution but one tool available to help with mitigation.

The following examples of such regulations from other states are provided to assist with the discussion.

Tennessee has statute 66-5-210, Disclosure Form, that lays out the requirements for:

...anyone transferring title to residential real property must provide information about the condition of the property. This completed form constitutes that disclosure by the seller.

Their form includes a section requiring the seller to answer if they are aware of "Neighborhood noise problems or other nuisances?" The state also notes that regarding airport noise:

Buyers should investigate the impact of airport flight paths and the noise levels at different times of the day over that property. For more information on airport noise, contact the Tennessee Department of Transportation.

Virginia statute 55.1-704. Required disclosures pertaining to a military air installation.

The owner of residential real property located in any locality in which a military air installation is located shall disclose to the purchaser whether the subject parcel is located in a noise zone or accident potential zone, or both, if so designated on the official zoning map by the locality in which the property is located. Such disclosure shall be provided to the purchaser on a form provided by the Real Estate Board on its website. Such disclosure shall state the specific noise zone or accident potential zone, or both, in which the property is located according to the official zoning map.

Texas Property Code § 5.008, Seller's Disclosure of Property Condition, provides that:

A seller of residential real property comprising not more than one dwelling unit located in this state shall give to the purchaser of the property a written notice as prescribed by this section or a written notice substantially similar to the notice prescribed by this section which contains, at a minimum, all of the items in the notice prescribed by this section...

The Texas Real Estate Commission's Form No. OP-H provides the buyer information on this specific issue in section 11 as follows:

This property may be located near a military installation and may be affected by high noise or air installation compatible use zones or other operations. Information relating to high noise and compatible use zones is available in the most recent Air Installation Compatible Use Zone Study or Joint Land Use Study prepared for a military installation and may be accessed on the Internet website of the military installation and of the county and any municipality in which the military installation is located.

North Carolina's general statute Chapter 47E provides general information on residential property disclosures to include the requirement that sellers respond to the following in item 26.

Is there any noise, odor, smoke, etc. from commercial, industrial, or military sources which affects the property?

Summary

This describes just one tool that is available to assist in mitigating issues between military installations and their surrounding communities. This tool may only be implemented at the state level as there is no local authority for real estate disclosures to be implemented. We are working with local officials on other specific concerns that can be addressed via various policies and regulations that are available to them.

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