

LEGAL ISSUES: REAL ESTATE AND MICHIGAN PUBLIC SCHOOLS



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What's on Tap?

- **Overview of Legal Requirements**
- **Sale of Surplus Real Property**
- **Purchase of Real Property**
- **Hybrid Method of Sale**
- **What could go wrong?**



This document is comprised of general information relative to the subject matters discussed herein. It is not intended to give legal advice and does not establish any attorney-client relationship. School Districts facing specific issues should seek the assistance of an experienced attorney.

Overview of Legal Requirements



Legal Aspects: Revised School Code

The Broad Powers under the Revised School Code – MCL 380.11a

- **General Powers School Districts**
- School districts have express powers, and may exercise those powers that are implied or incidental to those express powers, and may also exercise a power incidental or appropriate to the performance of any function related to the operation of the school district in the interest of public elementary and secondary education within the school district.
- **Express Powers:**
MCL 380.11a(3)(c) – “Acquiring, constructing, maintaining, repairing, renovating, **disposing of, or conveying school property**, facilities, equipment, technology, or furnishings.”

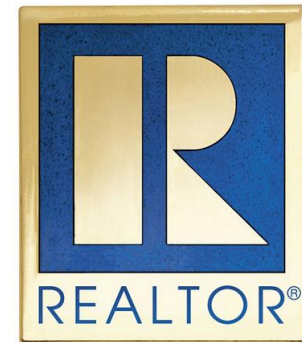
Legal Aspects: Sale of Real Property

- **Surplus Property**
- **School Code is silent as to methods or criteria**
- **Attorney General Opinion Number 5522 of 1979:**
 - **Infers requirement to sell land for valuable consideration**
 - **Considers \$1.00 to be valuable consideration for sale of land to a city to be used as a park for joint recreational purposes**
- **General Fiduciary Responsibilities of Board of Education: to properly maintain and care for the assets and fiscal conditions of the District**
- **Review Relevant School District Policies and/or Resolutions**
- **Independent Appraisal v Opinion of Value**
 - **Not legally required**
 - **Practical and political advisability**
 - **Sets parameters of fair market value**
 - **Helps insulate Board of Education from public criticism of purchase price**

Legal Aspects: Sale of Real Property

Methods of Sale

- **Marketing Real Property**
 - No requirement to competitively bid or seek proposals
 - For sale by owner
 - Saves brokerage fee - BEWARE – Brokers Protected Signage!
 - Burdens time of district employees
 - May not reach qualified prospective purchasers
- **Traditional brokerage approach**
 - Listing with broker exposes parcel to wide variety of brokers in the mul
 - Broker responsible for all “leg work” associated with sale
 - Broker charges commission
 - Traditionally 6% for improved and 10% for vacant property
 - May be negotiable
 - Earned when broker provides a willing and able purchaser



Legal Aspects: Sale of Real Property

Methods of Sale

- **Hybrid brokerage approach**
 - Hire broker/consultant on an hourly basis
 - Perform certain levels of due diligence to determine developability of property:
 - title work
 - environmental
 - zoning
 - municipal input
- Prepare an RFP
- Accept bids
- Negotiate transaction
- Select developer who will best meet the District's goals for development



Legal Aspects: Purchase of Real Property

- **Site Selection: Use of a broker**
 - Traditional broker relationship
 - Hybrid arrangement
- **Initial contact with property owner**
 - Decision to disclose principal
 - Determination of owner's willingness to sell
- **Obtaining the appraisal**
 - Set parameters of purchase price
 - Lay foundation for condemnation considerations

Legal Aspects: Purchase of Real Property

- **Negotiations with the owner**
 - **The Offer to Purchase**
 - **Financial aspects of the transaction**
 - 1) **Form of the purchase**
 - a) **Outright cash purchase**
 - b) **Land contract transaction**
 - 2) **Purchase price**
 - 3) **Down payment**
 - **Inspecting the property**
 - 1) **Title review**
 - 2) **Zoning review**
 - 3) **Environmental review - innocent land owner defense (Phase I Environmental; Phase II Environmental; and Baseline Environmental Assessment “BEA”)**
 - 4) **Suitability review**

Hybrid Method of Sale



- **Maximize sales proceeds by understanding actual value of property versus appraised value through school district initiated due diligence.**
- **Encourage development of property after sale to increase student enrollment within school district.**
- **Politics can be sensitive.**

Hybrid Method of Sale

Phase I: Pre-Sale Investigation

- Meet with Municipality to discuss uses of the site, including existing zoning and potential upgrades to zoning
- Meet with DPW to discuss utilities and availability, location and capacity of water, storm sewer and sanitary sewer, well and septic fields
- Determine approval process and work necessary for approval process for re-use or re-development
- Determine if any development incentives are available from City, Township and/or County
- Prepare budget for proposed planning and due diligence items with recommendations
- Determine highest and best use for the site
- **Determine Estimated Market Value**
- Review existing surveys if available
- Work with legal counsel on title work
- Review existing environmental information, if available
- Prepare report with recommendations and budget for Due Diligence and Marketing

Hybrid Method of Sale

Phase II: Planning and Due Diligence

- **Complete approved Due Diligence**
- **Prepare report on results of Due Diligence and Recommendations for Marketing**

Hybrid Method of Sale

Phase III: Marketing

- **Determine method of sale/lease RFP**
- **Create marketing plan/mailling list**
- **Create informational signs for the sites directing interested parties to District's Website**
- **Determine deadlines, if any**
- **Create marketing package (RFP) and duplicate for distribution**
- **Create e-package for distribution**
- **Post RFP Package on District's Website**
- **Field inquiries from signs and Web visits**
- **Distribution of marketing packages/via hard copies, CD-ROMS and e-packages**
- **Prepare decision Matrix**
- **Make recommendations to District**

Hybrid Method of Sale

Phase IV: Hourly Consulting

- **After initial marketing set up consultant may provide the following services, as needed, on an hourly basis approved by the School District:**
 - **Meetings with qualified purchasers**
 - **Assist purchasers with Municipal approvals, if necessary**
 - **Assist in negotiations**
 - **Attend Board meetings**

What Could Go Wrong?



What Could Go Wrong?

- District may not have record title to all of the land: Now what? (e.g., the owner of Lot 299 died in 1943)
- Reversionary interests of State of Michigan – Public Use Lands
- The neighbor's basketball court is on the back corner of the playground (and they want to keep it there)
- Building and Use Restrictions
- School Closings and too many lawyers: Mushovic v Bloomfield Hills Schools (Oakland Circuit Court and Michigan Court of Appeals). Mae Callow and her 1955 deed to the District: "...subject to the restriction that these premises shall be used for School purpose only." A cautionary tale involving a deed restriction, a capital "S", injunctions, real and imaginary rights of reverter, a fictitious "charitable trust", the Michigan Attorney General and a surprise ending.

THANK YOU! Any Questions?



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