



Center for Innovative School Facilities of Oregon

A Project of Innovation Partnership

Buying and Selling Real Estate

The following was excerpted from the comments Tom DeChenne of Norris, Beggs & Simpson, an expert in the field of real estate. Tom offers his own unique point of view on the topic of real estate. This information was prepared for the 2008 Bonds & Ballots Conference in Salem, OR.

Understand the Overall Objective

Understanding the overall objective of buying and selling real estate begins with the School District (SD), comprised of the Superintendent, Business Manager and Board of Directors, starting the project or process with a clear objective such as a sale, purchase, lease, trade or analysis. This understanding also includes clear communication by the SD with their partners, such as brokers and service providers. Having a clear timeline of goals to be accomplished and completed is of utmost importance in understanding the overall objective.

Representation Agreement in Place

If applicable, a representation agreement needs to be in place at the beginning of a project. Each project will vary so an appropriate agreement is necessary. With acquisitions for property (site and/or building) searches, the SD needs to determine a clear understanding of work, timeframes and compensation terms. There are various forms, such as the representation agreement itself, to consider in this process. For property dispositions, the SD needs to consider a standard listing agreement.

Financing

For financing to be effective, the SD needs to have a clear understanding of the funding availability for purchases or the use of funds generated for sale of excess property. The SD also needs to provide a clear understanding of funding sources and availability to their real estate agent.

Understanding the Local Real Estate Market and the Transaction Process

A real estate agent should provide as much information as reasonably possible to educate the SD and the Board. This information can be about present and potential values, how supply and demand affects values, current trends, transitional issues and how the overall economy affects the real estate market. The agent should also be able to distinguish the differences between commercial and residential properties as well as the differences between improved and unimproved vacant land. A real estate agent should provide the SD with special jurisdictional information. This information may not be directly related to the specific property but it still can affect SD real estate dealings. This includes information on urban growth boundaries,

transportation systems, existing and potential infrastructures, the timing of any anticipated or significant changes and being able to provide sources of this type of information.

An agent should also help SD personnel identify the potential structure of a purchase or sale. This structure includes five parts, the first of which are the differences between commercial and residential properties. Next, the agent needs to help the SD understand all the aspects affecting the property, such as zoning, use restrictions and transitional aspects. The real estate agent also needs to guide the SD in their understanding of the due diligence aspects and the timing of the process, which deals mainly with sales and leases. The agent must also make the SD aware of the timing of the property's closing and the effects it has on the potential building and/or development of the property. Finally, the agent must inform the SD about condemnation and the importance of its applicability. This can include figuring out if the procedure is necessary, how to effectively proceed with the procedure, legal representation and timing.

An agent needs to explain the intricacies of the major components of a lease transaction, whether the SD is the lessor or lessee. The agent must also compare the risks and timing of leasing, which may be quite different. The negotiation process is another important aspect that the real estate agent must inform the SD about. What is most critical about the negotiation process is remembering that it is more than just the price. In order for the process to be successful, both party's objectives must be met. With this, it is important to understand the other party's objective or else a deal may not happen. Timing is also crucial for the negotiation process especially regarding when a commitment, such as Board approval, can be made. Often times, real estate decisions need to be made quickly and approval may be lengthy or take too long to be actually effective. The terms of the leases or sale agreements need to be clear, as well as the contingencies of the process. These can include due diligence process and other specific items. It is imperative that the real estate agent can maintain flexibility for the SD in determining the sale/purchase of a building versus simply leasing a building. This is important when considering the future needs of the school's community as the growth or retraction of the student population occurs. This change in the student population will affect the use of the facilities.

Help the SD Understand Jurisdictional Objectives and Challenges

An agent must be able to help the SD comprehend jurisdictional challenges that are otherwise unknown to them. This can be done by thoroughly reviewing the plans, restrictions and other related matters of the City, County or other jurisdictions. The agent must review how other agency's plans and actions affect the SD's plans. These can include plans such as road changes and water/sewer plans.

Long Term Versus Short Term Uses of Facilities

If a change of use for an existing property is anticipated, there are considerations that should be taken into account to make the best decision. These considerations depend on if the SD is the lessor or if they are the lessee. To lease out the property as lessor, the following items are of significant importance: the length of the term, the potential use, type of tenancy (what kind of entity will lease and how that will affect the property), rental rate, timing of when the SD may need the property back for its own use and other various terms of a potential lease. As a lessee,

when a SD needs additional property and is going to lease, major considerations are: the length of the term, budgeting and the rental rate.

Every Real Estate Transaction is Different

It is important to know that transactions are very different and that every property is at least slightly different if not totally and wholly different. Each purchase/sale or each lease has different components and different needs. These must be viewed on an individual basis. It is important to keep this all in mind when determining the objective and the necessary plans to meet that objective.

Communication is of Utmost Importance

As an agent deals with a quasi-public entity, the decision making process is extracted from the Business Manager, Superintendent or other various service providers to the SD and their attorneys and contractors. This process is then ultimately given to the Board of Directors. It is very important for each service provider to keep the SD totally informed of the process and for the SD to keep the providers informed. The SD can act as the providers' representative, thus best representing their service providers in these real estate dealings.

Examples of Various Projects

When an SD has excess property, they can list and then sell it with the guidance of a real estate agent. Prior to redevelopment, an SD can lease out any excess building that may occur. In some scenarios, there was a site search for land where availability was limited but zoning was in place. This example had no anticipated changes. Another scenario involved a site search for land where zoning, road improvements and other infrastructure was not fully determined. In this situation, a real estate agent then needs to inform the involved parties of the correct course of action and how to implement it.

Conclusion

Successful buying and selling of real estate involves being informed of the situation at every step of the process. Understanding what the objective of the SD is early on will help set the groundwork for the whole buying or selling process. It is important for the SD to be informed of all the challenges and requirements in dealing with real estate so they do not have to lose valuable time and money on any setbacks or mistakes. Communication between the SD and the real estate agent is crucial to making the process as easy as possible. With proper planning, the right information, and a strong relationship between SD and real estate agent, buying and selling real estate can be rather simple and beneficial to all parties involved.