

School Land Use: Acquiring, Maintaining, Leasing and Selling School Property

ASBA Law Conference

September 2019

Presenters:

Steve Highlen, ASBA

Jeff Gadd, SUSD

Jeff Stratman, Esq.

Important Considerations for the School Administrator or Board Member when Acquiring Property

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Steve Highlen, ASBA

I. Acquiring Real Property

A. The SFB Acquisition Process

- Purchase or Donation or Both

B. Assistance from your Lawyer

C. Assistance from a Licensed Architect

D. Relationship with City or County Planning Departments

II. Location Considerations

- A. Property Access, Configuration and Size
- B. Zoning Requirements
- C. Permitting Process
- D. Utility Access
 - Will you need utility access easements
- E. Road Access
 - Will you need road access easements

III. Other Land Use Considerations

A. Restrictions on Property Use

- Recorded Restrictive Covenants
- Agricultural Buffer Zone (A.R.S. § 3-365 and A.R.S. § 15-341(D))
 - Cannot build within ¼ mile of regulated agricultural land, UNLESS:
 - Owner of regulated agricultural land agrees to restrictive covenants in A.R.S. § 3-365—must be recorded in County Recorder's Office
- Existing Easements on the Property
- Existing Liens on the Property

B. Environmental Concerns

- Prior Hazardous Materials—Brownfield Areas
- Historic, Natural or Cultural Artifacts

C. Cost to Develop the Site

D. Concerns of Surrounding Residents

E. Developer Concerns

Financial Considerations for Acquiring, Maintaining, Leasing and Selling Property

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I. Acquiring

A. Funding Sources

- District Capital
- Bonds
- SFB
- Property Trades

B. How:

- Outright Purchase
- Installment Purchase

C. Location - Criteria

- Walking/Transporting
- Corner (Buses & Cars)

D. Environmental

II. Maintaining

- A. District (owner)
- B. Tenant
- C. Joint Use (City, County)
- D. Lease Back

III. Leasing

- A. Surplus Space
- B. Partial District Use (Tenant Compatibility)
- C. Base Premiums
- D. Administrative Effort
- E. Use of Funds
- F. Short Term Periods for M&O (Civic Center Funds); Long Term (School Plant Funds) - A.R.S. § 15-1134

IV. Selling Property

A. Voter Approved/Use of Proceeds

B. Establishing Fair Value

C. Method of Sale

- Direct
- Bid
- Auction

Legal Considerations for Acquiring, Maintaining, Leasing and Selling ▶ School Property

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Jeff Stratman, Esq.

Stratman Law Office

General Legal Authority

Found in A.R.S. § 15-341(A)(8):

- Gives the Governing Board general authority to do property conveyances
- “The governing board shall: make in the name of the district conveyances of property belonging to the district and sold by the board.”

Purchasing School Property

Purchasing School Sites under A.R.S. § 15-341(A)(9)

- **Requires voter authorization**
- Election conducted similar to budget override or bond elections (A.R.S. § 15-481 and A.R.S. § 15-491)
- Voter Authorization doesn't have to specify the exact site to be purchased

Purchase school sites from proceeds of sale of school property (A.R.S. § 15-341(A)(11))

- **Requires voter authorization.**

Purchasing School Property

Purchasing School Sites under A.R.S. § 15-341(A)(9)—
vote not required if under A.R.S. § 15-342(25)

- Does Not Require voter authorization, if the purchase is totally funded from:
 - Unrestricted Capital Outlay Fund;
 - Note: estimated cost to purchase shall not exceed \$250,000 for a “small” school district under A.R.S. § 15-949
 - Monies distributed from the SFB; OR
 - Monies specifically donated for constructing school buildings.

Exchange of School Properties

Exchange of Improved or Unimproved Property under A.R.S. § 15-342(23) where board determines property is unnecessary for continued operation of the school district

- Does Not Require voter authorization, if:
 - Board determines that exchange is necessary to protect health, safety or welfare of pupils; OR
 - Board determines exchange is for property of equal or greater value.

Lease of School Property

May enter a lease or lease-purchase for a period of less than Twenty (20) years (A.R.S. § 15-342(9))

- Note: Recent SB 1161 increased this lease term from fifteen (15) years to twenty (20) years—effective August 27, 2019
- No voter approval required for the lease agreement itself if less than 20-year term
 - However, voter approval is still required for construction of school buildings on the leased property (A.R.S. § 15-341(A)(7)).

Lease of School Property

May enter a lease or lease-purchase for a period of more than Twenty (20) years (A.R.S. § 15-342(10))

- Note: Recent SB 1161 increased this lease term from fifteen (15) years to twenty (20) years—effective August 27, 2019
- Requires voter approval for the lease agreement for a term of 20 to 99 years
 - Election conducted similar to budget override elections.

Lease of School Property

Voter approval is not required for the school district to lease or lease-purchase property for a lease term of 20 to 99 years if one of the following is met (A.R.S. § 15-342(10)):

- The lease or lease-purchase is procured through energy performance contracting or agreements for renewable energy under A.R.S. § 15-213.01; or
- The buildings and property sites are completely funded with monies from the SFB
 - not a likely scenario to be SFB-funded under a lease.

A Note About P3's to Acquire School Sites

School districts are authorized to fund school facilities through creative funding partnerships with private financing parties

- Authorized under A.R.S. § 15-342(33)
 - Referred to as Public Private Partnerships (P3's)
 - Often involve private financing through a lease-purchase agreement
- CAUTION: Complex financing agreements beyond the scope of this conference session
 - Seek advice from competent legal counsel on the very front end of these proposed transactions.

Options to Purchase School Sites

A.R.S. § 15-342(17) authorizes school districts to enter into option agreements for the future purchase of school sites

- Does not circumvent the legal process for purchase of school sites when the school district later exercises its option to purchase.

Sale or Lease to Public Entities

Authorized by A.R.S. § 15-342(7)

- **No voter authorization required to sell or lease school property to the state, county, another school district or a tribal government, if:**
 - the sale or lease will not affect the normal operations of a school within the school district.

Outright Sale of Real Property

A.R.S. § 15-342(10)

Sale requires voter authorization, unless one of the following:

- Market value of the property sold is less than \$50,000 (A.R.S. § 15-491(F));
- The sale transaction is with agreement of the SFB to transfer sale funds to the SFB to acquire a more suitable school site; or
- The sale transaction is part of a formally adopted plan and sale proceeds are used within two years of the original sale to purchase a replacement property, used for a similar purpose of the property that was originally sold, AND:
 - The school district is the sole owner of the sold property;
 - The sold property was not purchased with monies obtained from Title 15, Chapter 16: SFB Funding or State Revenue Bonds (School Facilities, School Improvement, or Impact Aid); and
 - The transaction does not reduce pupil square footage (A.R.S. § 15-341(G)).
 - Note: If replacement property isn't purchased within two years the original sale proceeds are used to pay any bonded indebtedness, if any, or to reduce the district's primary tax levy if there is no bonded indebtedness.

NEW LAW—SB 1161 (Sale or Lease)

Effective August 27, 2019

No voter authorization required to sell or lease a building or partially used building if the building has been “vacant” or “partially used” for at least three (3) years (A.R.S. § 15-342.04 added)

- Definitions found in new A.R.S. § 15-119(E):
- **“Partially Used Building”** means a building with at least four thousand five hundred square feet of contiguous, unused space
- **“Vacant Building”** means a building that has been vacant and unused for at least two years.

NEW LAW—SB 1161 (Sale or Lease)

A.R.S. § 15-119(B), if selling or leasing vacant or partially used school buildings:

- May not prohibit private or charter school from buying or leasing
- May not accept an offer for less than an offer from a private or charter school
- School district doesn't have to sell or lease its vacant or partially unused buildings, but if it does, it cannot prevent sale or lease to a private or charter school
 - School district may not withdraw its intent to sell or lease solely because a private or charter school is the highest bidder
- If a school district leases a building to a private or charter school, at the end of a lease term the school district must provide rationale for any proposed lease rate increases to the lessee.

NEW LAW—SB 1161 (Sale or Lease)

A.R.S. § 15-119(D), school buildings are not considered “partially used” if they are used for:

- Career and technical education;
- Special education services;
- Preschool programs;
- Magnet schools; or
- Schools that have been open for less than five years
 - Note: these exceptions may not be applied to more 25% of all the school district’s buildings.

NEW LAW—SB 1161 (“Partnerships”)

A.R.S. § 15-341(A)(3) requires the school district governing board to manage and control the school property within its district

- A school district may now choose to enter a “partnership” with an entity, including a charter school, another school district, or a military base:
 - to operate a school or to offer educational services
 - in the school district’s buildings, including a “vacant” or “partially used” building
 - or in any building on the entity’s property
- This “partnership” must be done pursuant to a written agreement between the school district and the other entity.

NEW LAW—SB 1161 (SFB List of Properties)

A.R.S. § 15-119(A) requires the SFB to annually publish a list of “vacant” or “partially used” school district buildings that are “suitable for the operation of a school”

- List is to be on SFB website
- List provided to Governor, Senate President, House Speaker, Secretary of State and the State Board for Charter Schools
- List available on request to any existing district or charter school, to any charter school applicants or to applicants to SFB for additional space
- Shall include address of the building, brief description of the building, capacity and vacancy of the building, and the name of the owner (the State or a school district within the State)

In addition to other annual SFB reporting requirements, A.R.S. § 15-2002(A)(2) now requires each school district to report to the SFB any “vacant” or “partially used” school buildings that have been leased to another entity or that operate as a charter school

In addition to other SFB inspection requirements, A.R.S. § 15-2002(A)(3) now requires the SFB to inspect school district buildings for compliance with school districts accuracy in reporting of vacant or partially used buildings

- inspect at least once every five years.

Reduction of Pupil Square Footage

Don't forget about the duty to report reductions in pupil square footage

- A.R.S. § 15-341(G) “**notwithstanding any other provision in Title 15**” a school district governing board shall not take any action that would result in a reduction of pupil square footage, unless:
 - The governing board first notifies the SFB; and
 - Receives written approval from the SFB to take the action.
- Don't sell or lease school buildings that are in your current pupil square footage calculation without complying with this SFB requirement.

Other “School Property” Legal Considerations

- A. A.R.S. § 15-341(A)(32)—Review the requirements for notice to parents and public meetings before closing a school within the school district
- B. A.R.S. § 15-341(A)(37)—Review the requirements under district policies for changing school attendance boundaries within the school district if you are closing, adding or reconfiguring school buildings within the school district (Policy JC)
- C. A.R.S. § 15-342(16)—Authorizes the school district to dedicate a public right-of-way to a city, town or county if:
 - The city, town or county confers benefits upon the school district that might include benefits related to zoning; and
 - The right-of-way dedication will not affect the normal operation of any school within the school district.

Summary to Purchase School Property

Requires an election and voter approval, unless the purchase is totally funded from:

- Unrestricted Capital Outlay Fund;
- Monies distributed from the SFB; OR
- Monies specifically donated for constructing school buildings.

Summary to Exchange School Property

- Does Not Require voter authorization, if:
 - Board determines that exchange is necessary to protect health, safety or welfare of pupils; OR
 - Board determines exchange is for property of equal or greater value.

Summary to Lease School Property

Lease requires an election and voter approval, unless:

- Lease of term less than 20 years;
- Lease procured through energy savings or renewable energy agreement;
- Monies for lease completely funded by SFB;
- Leasing to the state, county, another school district or a tribal government;
- Lease involves a “partnership” to operate a school or offer educational services in a school building;
OR
- Leased building has been vacant or partially used for at least three years.

Summary to Sell School Property

Sale requires an election and voter approval, unless:

- Market value is less than \$50,000;
- Sale involves the SFB and SFB uses sale proceeds to acquire a more suitable site;
- Sale proceeds are used within two years to purchase a replacement property;
- Sale is to the state, county, another school district or a tribal government; OR
- Sold building has been vacant or partially used for at least three years.

QUESTIONS

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