



By Matthew L. Sagone

department: legal

Best Practices for Acquiring Real Estate

Purchasing real estate takes careful planning and research, and should not be done in haste. When considering buying land, whether it be for the construction of a new school building or for the construction of athletic improvements, one should observe the misfortunes of Sir Lancelot in Monty Python and the Holy Grail when he stubbornly failed to heed the good advice from other kings against building a castle in a swamp. What happened? The first two sank into the swamp. The third one “burned down, fell over, then sank into the swamp.” It was only the fourth one that finally “stayed up!”

Before proceeding with the purchase of property, we recommend retaining the services of an architect or engineer.

That person can be invaluable in evaluating different properties that would best meet your design and in retaining the consultants who will help to evaluate the condition of the property. Remember that in selecting an architect or engineer, you must follow the competitive selection process for hiring professional design services under Revised Code 153.65.

As you evaluate different properties, you will need to keep your budget in mind. Keep your options open by considering multiple

properties in an effort to get the best price. Appraisals can help in establishing a benchmark for negotiating a purchase price. An experienced real estate broker can help you with this.

Get your purchase agreement in writing. However, be careful about simply accepting a standard form agreement that is generated by a real estate broker. The agreement should be reviewed by the board of education’s legal counsel.

Make sure that the agreement allows you ample time to conduct your “due diligence” evaluation of the property and that the agreement gives you an “out” if you determine the property is unsatisfactory. The agreement should set out who pays for a survey, recording the deed and other title company costs, and when the closing on the sale will take place. If you are planning on purchasing the land using the proceeds of a bond issue that is to be placed on the ballot, add a provision in your purchase agreement that makes the closing contingent on the passage of the bond issue.

The agreement should be approved by your board of education. The board may go into executive session to discuss the purchase of the property (but be careful that this may not necessarily exempt the draft purchase agreement and related documents from disclosure under a public records request such as the appraisal and reports that you obtain during your evaluation of the property).

As you evaluate the suitability of the property, bear in mind that land with poor conditions and conditions that would need to be remediated could add to your construction costs.

Continued on next page.



As such, you will minimally want to consider the following:



Evaluate the available access to the property, the availability of utilities, including water and sewer, the cost of bringing utilities to the property, and the flood zone designation (and whether the property may be prone to flooding).



Confirm whether there are hazardous materials by undertaking an environmental evaluation of the property. Depending on the results of the initial evaluation, additional testing of the soil and groundwater may be required.



Test the suitability of the soil for construction. Having to fix poor soil conditions could add to your construction costs.



Confirm if there are any wetlands and plan your development accordingly. Minimizing the impact on wetlands can help contain costs and lessen schedule impacts.



If you are buying a building, evaluate the condition to determine what improvements will be necessary.



Obtain a title search from a reputable title company. A title search will show who owns the property, if there are any liens, mortgages or use restrictions affecting the property, if anyone else has the right to use the property (such as under a lease or an easement) and if there are any defects in the title. If third parties have the right to use the property, you will need to evaluate whether that use could conflict with your intended use.



Get a title insurance policy. This helps to protect against loss and related expenses in the event there is a defect in the title to your property that is covered by the policy. You may also be able to obtain endorsements to the policy which are added protections against possible deficiencies that are revealed in the title search.



Be mindful of who controls the mineral rights. If there are any oil and gas wells on the properties, you will want to determine who has the right to receive the rents and royalties, who controls the right to grant future oil and gas leases, and where future oil and gas wells may be located.



Obtain a survey which will show the boundary lines of the property, the location of easements and rights of way, structures which may be on the property, and encroachments with adjacent properties.



Zoning. It is a misnomer that a school district is absolutely exempt from complying with zoning requirements. Instead, a school district must make a good faith effort to comply with such requirements. If the school district and the zoning enforcement authority are at an impasse, courts will resolve the dispute in favor of the use that will best serve the public.



Taxes and assessments should be prorated to the date of the closing. Also, if you are buying land that is receiving a Current Agricultural Use Valuation, a tax savings for land being used for agricultural purposes, a recoupment charge may be assessed following the closing equal to the prior three years tax savings if the agricultural use ceases.

Following the closing, do not forget to file the tax exemption application with the county in the following calendar year.

Buying real estate can be quite a process, but if you follow these best practices, it should make it all work smoother. 🍷

Matthew L. Sagone is Senior Attorney at Squire Patton Boggs (US) LLP. 614.365.2701 | matthew.sagone@squirepb.com

Squire Patton Boggs is an OASBO Strategic Partner.

