



Reuse, Recycle and Reduce: A New Life For Closed School Buildings

By Lauren M. Trialonas, Esq., Associate, Squire Sanders (US) LLP

With the increasing strain on school budgets, decline in building aid and shrinking student enrollment, many school districts ("districts") in New York State (the "State") are considering school closings as the best way to consolidate educational services and reduce operating costs. A November 2012 survey by the New York State School Boards Associations found that 29% of districts with at least 5,000 students reported closing a school within the last three years.¹

As more districts consider closing school buildings permanently, host communities are left with vacant structures that pose security/safety risks and unforeseen liability. These communities are turning to approaches to prevent closed buildings from becoming eyesores and turn them into functioning assets and revenue generators. When considering school building closure, a board of education ("BOE") should ask the following questions:

1. Can the building be sold or leased to another govern-

ment unit, a non-profit organization or to a private sector business, or a combination of these entities? Can the building be "repurposed?"

2. Can the district, a municipality or a local public benefit corporation finance improvements or modifications for the building's new use?
3. Was the building financed with the district's tax-exempt bonds which remain unpaid?

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Leasing a Closed Building

BOEs may be reluctant to sell a closed building if its reuse for educational purposes in the near future is likely. So a short-term net lease may be a good option, leaving the tenant with obligations to maintain the facility and generating rental income

- a new revenue stream. Education Law §403-a authorizes BOEs to lease unneeded school district property if they determine that leasing is in the best interest of the district. This section requires: (i) the rent must be at least fair market value, as determined by the BOE; (ii) the lease cannot be for more than 10 years (except that the voters can approve a longer term or it can be renewed for up to 10 years with

¹ www.nyssba.org/news/2012/12/14/on-board-on

the consent of the Commissioner of Education); and (iii) the tenant is obligated to restore the property to its original condition with certain exceptions. CAUTION: If the new tenant is a private sector entity, the tax-exemption on the district's bonds could be in jeopardy. Additionally, leased and repurposed buildings no longer used for educational purposes may be subject to local zoning and other land use laws and regulations.

Sale to a Government Entity

The district may convey the building to another public entity pursuant to Education Law 405 without consideration (no money needed) on the condition that the other public entity redevelop the property for a new public use. The district could require that the other public entity convey part of the redeveloped property (or an interest therein) back to the district for educational purposes (e.g., a BOCES facility). Here, ideas of shared services and intergovernmental cooperation come to mind. Think of the old schools around the State which have been converted to town/village/county office buildings.

Sale to a Private Entity

The district may convey the building to a private sector or non-profit entity subject to voter approval pursuant to Education Law §1709(11) (union free school districts) and §§402 and 1804(6) (central school districts). Additionally, a central school district may sell property without voter approval if the building has been unused for school purposes for five or more years. When § 1804(6) is read with Education Law §§402 and 1520, the conveyance to a private sector or non-profit entity can be done without public bidding (however, a "request for proposals" may be advised to solicit the best developers and ideas). These laws provide the BOE with implied economic development powers. With a valuable asset to contribute to community revitalization, the district can be a player. Old schools have been repurposed into senior assisted facilities and hotels. CAUTION: Selling the building to a new private sector or non-profit entity may put the district's tax-exempt bonds in jeopardy. But a well-built building no longer needed for educational purposes can be a developer's dream-come true: the cost of rehabilitating an existing building is almost always less expensive than new construction.

Coordinating with a Local Development Corporation ("LDC")

LDCs are special purpose not-for-profit corporations authorized under §1411 of the Not-for-Profit Corporation Law, and deemed to be public benefit corporations, which may be established by municipalities, not school districts, to "lessen the burdens of government." They are the closest entities available in New York to local revenue bond agencies available in other states² although the State Comptroller is on record that their use violates the State Constitution when financing an object or purpose which can be financed under the Local Finance Law.³ An LDC may issue tax-exempt revenue bonds on behalf of a municipality in the context of a joint municipal/school district shared facilities project. Here the district's closed building becomes a candidate for community redevelopment. In a common

example repeated throughout the State, one or more municipalities and the district may wish to consolidate facilities to reduce costs and improve efficiency in delivering services. The district may convey its building to an LDC (with voter approval) to an LDC pursuant to Education Law §405.

The LDC would issue revenue bonds to buy the building (and the district can use the proceeds of the LDC bonds to pay off its own bonds or pay for a new school building). The LDC can reconstruct the building for joint government offices or community purposes (i.e., performing arts center, recreation center, senior center, municipal courts). In some cases, the building can be repurposed for "mixed-use" which includes private sector business uses. Securing the revenues to pay for the LDC bonds could be a challenge but recent amendments to Title 18-C (tax increment financing) provide a method for securing tax-like revenues when applied in the context of economic development.

Debt issued by an LDC does not count against the Constitutional debt limit of the district or the municipalities.

2 I.e., N.J.S.A., 40A: 12A-64 et seq (Redevelopment Bond Law, New Jersey)

3 *Municipal Use of Local Development Corporations and Other Private Entities: Background, Issues and Recommendations*, Report of the NYS Comptroller, Division of Local Government and School Accountability, April 2011.

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Through a project development agreement (similar to an inter-municipal agreement with the district added as a party) the government entities can provide for each entity to share a portion of the development, maintenance and LDC debt service costs. If in this consolidation and repurposing process other government buildings are found to be unneeded, they can be sold to private sector entities, often without voter approval or public bidding. The proceeds of sale can be applied to repay the government entity's debt issued to finance these buildings or applied to future capital projects. In the hands of the private sector, these buildings can be rehabilitated and added to government entities' tax rolls – a showing of economic growth important to school districts in expanding their tax levy under burdensome tax levy limit laws.⁴

CAUTION: An LDC may not be used to acquire and

construct a school building without special State legislation or voter approval.⁵

Although the laws reviewed above are antiquated and often cumbersome to apply, and the structures under which these repurposing efforts are undertaking complex, school districts do not have to board up their unneeded school buildings. These buildings are often hidden community assets requiring thoughtful reconfiguration for another valuable use which will benefit public education as well as the community at large. ◀

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Lauren Trialonas is a senior associate attorney with Squire Sanders (US) LLP in New York in the Public and Infrastructure Finance Practice Group. She represents municipalities, school districts, public benefit corporations and state agencies as bond counsel in tax-exempt bond financings. She is a graduate of the University of Massachusetts, cum laude, and Hofstra University School of Law. She is a member of the Bar in New York and New Jersey.

⁴ Ch. 97, L. 2011

⁵ *Corning City School District v. Commissioner of Education*, Decisions of the NYS Commissioner of Education, No. 14,857 (April 1, 2003)

