



Long-term leasing of public buildings: developing a program

by Robert J. Niccum

What do you do with a closed school? Politically difficult as closure was, even more distasteful was the prospect of selling the schools.

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Infrequently do public agencies find themselves in the position of leasing out their buildings. More frequently, when an agency no longer has need for a facility, the property is sold.

However, occasions arise where an agency wishes to retain ownership of a building for which it has no immediate use. The rarity of the situation may mean that the organization does not have a well-defined procedure for finding a tenant and leasing the facility.

The purpose of this paper is to describe the approach used by one agency in developing a program for leasing several of its facilities. While some of the issues that arose may not apply to other organizations, the process as a whole should be instructive to any public entity preparing to lease its property.

Background

The Los Angeles Unified School District, with 826 schools and 674,270 stu-

dents, is the largest school district in California and the second largest in the United States. Among the areas within the 708 square mile expanse of the district is the western San Fernando Valley, where school enrollment has declined dramatically since the early 1970s.

Beginning in 1982, the Board of Education voted to close a number of low-enrollment schools. This action was not taken lightly, since many parents, teachers, and administrators opposed the closure. Nevertheless, financial hardship and pressure from state "watchdogs" persuaded the board to shutter schools whose population had dwindled.

What do you do with a closed school? Politically difficult as closure was, even more distasteful to many was the prospect of selling the schools. Therefore, the board decided that schools which were not needed for other purposes — such as administrative centers — should be offered for lease. While the real estate staff of the school district had extensive experience in writing leases, we had never before leased out an entire school. The prospect called for long and careful forethought.

Because California schools are governed by architectural standards that are among the strictest to be found any-

where, and because the district might reopen these schools when the leases expired, we realized that lessees would have to use the buildings virtually unchanged. This fact, combined with city zoning ordinances, eliminated a number of alternative uses for the schools, such as office complexes and light industrial facilities.

Ironically, it soon became apparent that the only likely lessees were private schools: the district's competition! Private schools had contributed significantly to the enrollment losses which had closed our public schools. But legal counsel advised that operators of private schools could not be prevented from participating if the district's schools were offered for lease.

Ground rules

The California Education Code governs the procedures by which school districts dispose of their property. In general, districts intending to lease their real property must establish a minimum bid for the property, fix a date when bids will be received, and publish notice of the property's availability. The law requires that sealed bids be received, but also provides that oral bids must be solicited. So, in effect, the process becomes an auction.



Oso Avenue School in Woodland Hills, Ca.

The Los Angeles Unified School District writes about 140 such leases each year, involving use of auditoriums, classrooms, and athletic facilities at operating schools. However, although the opportunity is always provided in accordance with the law, there is virtually never competitive bidding for these leases. With hundreds of auditoriums and thousands of classrooms in the district, there are plenty of available facilities and little need to compete for their use.

Not only state law but local zoning ordinances had to be taken into account. In most residential areas of the City of Los Angeles, schools are a conditional use. Approval must be obtained from the planning commission before siting a school at a particular location. Since public and private schools constitute different conditional uses, any lessee intending to operate a private school at the former site of a public school would have to apply to the city planning department for a new approval.

With state law, local zoning, and Board of Education policy as starting points, we set out to develop a program for leasing the closed schools. The planning focused on three sets of activities: (1) establishing the parameters of the leases; (2) writing the lease documents; and (3) letting potential lessees know that the schools were available.

Establishing the parameters

There were many decisions to make

before any action could begin. Some details of the leases were dictated by law, policy, or common sense. Others required careful analysis, and a few came down to arbitrary choices.

Most discussion of the optimum duration of the leases revolved around terms of five to ten years. The final compromise was a five year lease with a five year option. During the second five years (if the option was exercised), the school district could cancel the lease on one year's notice. This arrangement would give a lessee sufficient time to establish its operation, develop a clientele, and amortize its investment in equipment and alterations, while allowing the district to regain possession of the school if enrollment trends reversed.

Next we had to establish the minimum bids. Having never leased an entire school, we contacted a number of nearby school districts to ascertain the "going rate" for a closed school. The marketplace was woefully inconsistent. One school was leased for \$16,500 per year, while another, virtually identical in size and only 16 miles away, brought in \$160,000 per year.

Amid this great spread was a small cluster of leases in the range of \$40,000 to \$50,000 per year. We decided to set the minimum bid for our two largest schools at \$40,000, and lowered the rate to \$30,000 and \$35,000 for the remaining schools, depending on their size. Given the auction format dictated by

state law, we felt that the best strategy was to establish the minimum bids at the low end of the probable range, because competition would bid the rates up to whatever price the market perceived to be economically sound. On the other hand, if the minimum was set too high, no one would enter the bidding, and we would have to repeat the long, costly process at the lower figure.

It was clear that any likely rent would not represent a reasonable return on the value of a \$6.5 million school. The problem, of course, was that use as a school did not represent the highest and best use of the real property. Having decided not to sell the sites, the school district would have to be content with a minuscule return on these assets.

As noted earlier, any lessee would have to obtain a new conditional use permit from the city before beginning operations. We therefore provided for a rent-free period of up to 120 days, starting from the acceptance of the bids, to allow the lessees time to obtain the necessary permits.

Writing the lease

Having established the major parameters, the next step was to develop a lease document incorporating these features, in addition to the numerous minor details and boilerplate that characterize any long-term lease.

The school district had several varieties of standard leases, but none that was adequate for this purpose. A form lease used for renting out a school auditorium for one evening does not begin to address issues that will arise when a lessee occupies an entire campus for ten years.

We obtained examples of long-term leases from a number of sources. Our own files contained lease documents drafted by lessors' attorneys in situations where the school district leased private property for use as warehouses, offices, etc. Several other school districts supplied copies of the leases they had use in leasing out their closed schools.

Finally, we found an excellent resource in the "Standard Industrial Lease" copyrighted by the American Industrial Real Estate Association. Although a school has little in common with a factory, the industrial lease was useful for two reasons: first, because it

deals with most of the major issues that will arise when a tenant occupies an entire building for a number of years; and second, because it is definitely a "landlord's lease," focusing on the *rights* of the lessor and the *obligations* of the lessee. This perspective was important in preserving the school district's facilities for future re-use.

Drawing upon all of these sources, we drafted a model lease that spanned 13 pages of single-spaced type on legal-size paper. Because the same lease format would be used for all five schools, blanks were left in strategic locations for such specifics as the name of the lessee, amount of property insurance to be carried, and so on.

The final act in preparing the document was review by the school district's attorney. Once he approved the model lease, we were ready for the next phase.

Publicity

Knowing that there would be a great deal of interest in leasing the schools, we needed to be well prepared with information and materials before any publicity began. People had been calling our office for several years, since the first discussions of possible school closures, inquiring about buying or leasing a school. Though unable at that time to say when — or if — schools might be put on the market, we had taken callers' names and addresses, and had assembled a mailing list of over 300 interested parties. The size of this list made it essential that the material we sent out be accurate and comprehensive, since we did not want to send out more than one mailing.

Our staff was too small to accommodate the anticipated volume of requests to inspect the schools. Therefore, we scheduled a series of "open houses" where prospective lessees could view the facilities. There would be two opportunities to see each school; requests for inspections on other dates could not be honored. By arranging these viewings well in advance the schedule could be included in the mailing and other publicity.

The mailing consisted of the following items:

1. A Notice to Bidders, outlining the bidding procedure and lease conditions, with a schedule of inspection dates.

2. A description of the school facilities, listing such facts as land area, number of classrooms, and building area.

3. A vicinity map showing the locations of the schools.

4. A bid form, to be used for making a written bid to lease a school.

Because of the size of the lease document, it was not feasible to mail copies to everyone on the list. Instead, the Notice to Bidders advised interested parties that they could obtain a copy at our office or at one of the open houses.

Each member of our staff, technical and clerical, was given a summary of facts about the process, including the open house schedule, minimum bids, and directions to the schools. Most of the telephone calls we received could be handled by our clerical staff without referral to the technical personnel.

Thus prepared, we began the publicity campaign. Once the mailing had been sent, we placed display advertisements in the major newspapers and sent news releases to the principal media in the area. The publicity began about eight

weeks before the date set for receipt of bids, and generated hundreds of telephone calls.

Two open houses, three weeks apart, were held at each school. Bid packets, leases, and plot plans were available at these events, and both real estate staff and maintenance personnel were on hand to answer questions about the leasing process and the condition of the facilities. On average, about 15 people attended each inspection.

The auction

The publicity campaign worked superbly. On the morning of the auction, we walked down the hall to the meeting room and found the place filled with bidders and observers. In addition, two television camera crews had come to tape the proceedings for the evening news.

After introducing the officials present (including the school district's attorney, who was on hand to advise on legal questions that might arise), we reviewed some of the important conditions of the lease, then answered questions about those conditions. Next, the bidding pro-

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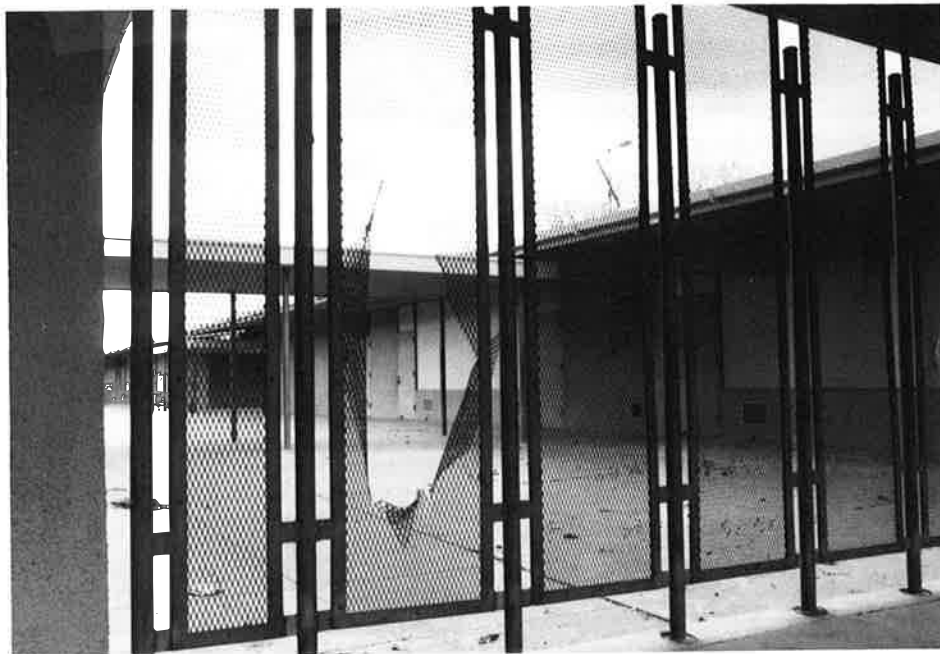
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cedure was explained, and our book-keeper gave numbered bidding cards to people who intended to bid and who could demonstrate that they had with them the required deposit: \$20,000 in the form of cash, a money order, or a cashier's check. No one, it might be noted, brought cash.

With these preliminaries out of the way, we moved on to the focal point of the agenda: the bidding. For one school at a time, we opened any sealed bids, announced the highest of these, and entertained oral bids.

Competition propelled the bidding for each school steadily upward. In one case the high bid topped out at 20% above the minimum bid. The remaining schools drew at least double the minimum, and the intense interest in one school drove the price to \$140,000 per year — four times the minimum.

Following the auction, we led the successful bidders to our office to sign the leases. The clerical staff had been primed for the burst of activity, since some details of the leases remained to be typed in: lessee's name and address,



Highlander Road School, Canoga Park, Ca.

rental rate, etc. To speed this task, we had prepared a sheet onto which we could transcribe this information from the bid form, keyed to the page and paragraph where the data should be entered.

Despite this preparation, pandemo-

nium reigned for an hour or so. Five delegations of successful bidders camped in various corners of the office, awaiting their leases and all asking questions at once. The technical staff darted around, trying to simultaneously answer the questions and monitor the typing.

Finally the last lessee was correctly paired with the last completed lease, the document was signed, and the lessee was thanked and let out the door. At the expense of some frayed staff nerves, the school district could anticipate additional revenue of \$419,000 per year.

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Aftermath

The expectation that lessees could obtain zoning approval within four months — the duration of the rent moratorium — proved overly optimistic. Only one organization completed the conditional use permit process within that period. Others required from five months to a year, depending on the speed with which the lessee filed its application, the nature of community reaction, and whether it was necessary to appeal the decision of the zoning administrator. The school district extended the rent moratorium until approval was obtained.

Homeowners near one school contested the lessee's application vigorously. Concerned about traffic, noise, and security, they persuaded the zoning administrator to impose a number of

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limitations on the enrollment and the operation of the private school. The lessee appealed. Again the homeowners filled the hearing room, and in the end, the zoning appeals board made the restrictions even more severe. Limited to an uneconomical student capacity, the lessee asked to be released from his contract, and the Board of Education consented. The school remains vacant, pending a new decision regarding its disposition.

Shortly before each lessee took possession, school district staff — from both the real estate and maintenance departments — conducted a “walk-through” with the lessee. Vandalism and other damage was noted and scheduled for repair by the school district. Other problem conditions that would not be repaired were documented, since the lease required the lessee to return the property at the end of the lease term in the same condition as when it took possession.

Conclusion

Leasing public buildings can be a complicated business. When there is a substantial demand for the facilities, and where the lease will commit the use of the property for many years, the process may be overwhelming unless the agency has taken two important, early steps.

First, all available information should be sought from other organizations with similar experiences. Sample leases, advertisements, bid forms and the like will serve as starting points for preparing the agency's own materials, and may point up considerations that might not otherwise have come to mind. Checklist 1 presents some examples of information that should be assembled before publicity begins, so that inquiries can be handled quickly and accurately.

Checklist 1

Information to have available

- Site map and plot plan
- Vicinity map
- Legal description of the property
- Directions to the property
- Property summary: address, acreage, building area, utilities, etc.
- Where can building plans be reviewed?
- When can the building be inspected?
- Telephone number of local zoning department for referral of questions
- Copies of proposed lease
- Bid form
- Notice to Bidders: outlining bidding procedure, lease conditions, minimum bid, etc.

Checklist 2

Issues to resolve In advance

- How long will the property be advertised? How many open houses will be held?
- Will copies of the building plans be made available before or after the bidding? How and where?
- How will persons qualify to participate in the bidding?
- What amount of security deposit will be required? On what conditions can it be retained?
- Will assignment of the lease be permitted? Will multiple tenants be allowed?
- What limitations will be placed on alterations to the buildings?
- What support will the agency give the lessee in applying for a zone change?
- Will the lessee be released from the contract if a zone change is denied?
- When will possession be given to the lessee?
- What access will be permitted to lessee prior to the date of possession?
- What will be the policy on releasing to media or public inquiries the name, address, and other information about the lessee?

Secondly, it is essential that decision-makers and staff think through the leasing process thoroughly, from the contents of the first announcement to the return of the property at the end of the lease term. A whole array of issues must be decided in advance: it would be unfortunate to reach the day of the bidding and be confronted with significant policy questions which had not been resolved. A sampling of such questions is set out in Checklist 2.

Unusual and complex as the process can be, the leasing of public buildings may prove attractive to the agency as a source of income while the future need for the property is being assessed. Like any other intricate activity, it can be rendered manageable by an alert administrator who takes the time beforehand to develop a program. There will always be surprises, but with a well-conceived plan, the unexpected will be a ripple instead of a tidal wave.