

Private Sale Of Real Property Voided Where District Rejected “Substantially Higher” Offer From Charter School

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In re: Private Property Sale by the Millcreek Township School District, 143 A.3d 1037 (Pa. Commw. Ct. 2016) (Decided July 20, 2016). The Commonwealth Court of Pennsylvania reversed the decision of the trial court which had approved a private sale of District property where the District has been presented with a substantially higher offer from a charter school.

SUMMARY AND FACTUAL BACKGROUND

Millcreek Township School District (“District”) owned a 7.9 acre parcel of land (“Property”) upon which the District operated an elementary school for over 60 years. The elementary school was closed in 2013. In July 2014, the District listed the Property for sale.

The first offer that the District received came from Montessori, the only charter school in Millcreek Township. Montessori offered the District \$1.1 Million. The District rejected the offer. A few months later, VNet Holdings, LLC (“VNet”) matched the Montessori offer, contingent on a re-zoning of the Property so that VNet could use the school building for a commercial business. After receiving the offer from VNet, the District subdivided the Property into three lots: Lot 1, which contained 5.9 acres and the school building and parking lots, and Lots 2 and 3, each of which consisted of approximately 1 acre of vacant land.

Montessori made a second offer to purchase the entire Property (Lots 1, 2 and 3) in January of 2015 for \$1.1 Million, and in addition, Montessori would convey other real property owned by Montessori to the District as part of the deal. The assessed value of the Montessori property to be included in the deal was \$689,000. As part of the deal, Montessori would lease back the former Montessori property from the District for up to five years. The District rejected Montessori’s second offer.

The District’s School Board voted to accept an offer of VNet to purchase only Lot 1 for \$1.1 Million in February 2015. Shortly thereafter, the District placed a restrictive covenant on Lot 1 to prohibit the sale or lease of the school building on Lot 1 to a charter school. Montessori challenged the deed restriction by filing a declaratory judgment action in the Erie County Court of Common Pleas.

In July of 2015, the District petitioned the trial court for approval of the private sale of Lot 1 to VNet as required by the Pennsylvania School Code. Included with the District’s petition were two affidavits from real estate appraisers who opined that the price offered by VNet was “fair and reasonable and was a better price than the School District could obtain at public sale.” Montessori intervened in the proceeding and moved to stay the sale to VNet because the offer was conditioned on a re-zoning of Lot 1 and also because Montessori’s challenge to the deed restriction was still pending.

At the public hearing on the District’s petition for approval of the sale, the Superintendent of the District testified that the District accepted the offer from VNet because, among other things, the District wanted to return Lot 1 to the tax rolls, to maintain Lots 2 and 3 as a buffer and green space for the neighborhood and because the charter school would reduce the student population of the District and negatively impact the District’s budget and would be detrimental to taxpayers.

During his testimony, the CEO of Montessori disputed the District's position that selling the Property to Montessori would affect the District's budget and would be detrimental to taxpayers since only 17% of Montessori's students come from the District and Montessori's enrollment was capped at 600 students. Montessori's CEO also testified that Montessori was willing to increase its offer to purchase the Property to \$1.6 Million in cash with an immediate closing.

The trial court approved the sale to VNet, finding that the sale was in the public interest. The court refused to consider Montessori's offer of \$1.6 Million because it was submitted "last minute" and the offer was not memorialized in writing. Four days after the order was issued by the trial court, the District and VNet amended their sales agreement to extend the closing date for 2.5 years. Montessori presented a motion to the trial court seeking to supplement the record to include evidence of this revision and to submit its \$1.6 Million offer in writing. The trial court denied the motion, finding that the amendment to the sales agreement was a collateral matter that was irrelevant to the court's analysis and that the written offer was submitted too late to be considered.

Montessori filed an appeal of the trial court's decision arguing that the court abused in its discretion (1) by refusing to consider Montessori's substantially higher offer to purchase the Property; and (2) by denying Montessori's motion to supplement the record with evidence that the District and VNet had extended the closing date for 2.5 years.

DISCUSSION

The Commonwealth Court began by reviewing the School Code requirements for the sale of unused and unnecessary land and buildings. The Court summarized the requirements of Section 707 of the School Code as follows:

[S]chool districts are expected to sell their unused property to the highest bidder. They are also expected to sell their unused property at a public auction, after extensive notice to the public, or by sealed bids. A private sale will be allowed so long as there is a public hearing before a trial court, which determines whether the price offered in the private sale is "fair and reasonable" and a "better price than could be obtained at public sale."

The Commonwealth Court acknowledged that there are instances where a private sale may be approved despite another higher offer: (1) when the difference in price is small, or (2) "where other circumstances regarding the sale...appeal to the court's sound discretion."

Comparing the offers from Montessori and VNet, the Commonwealth Court characterized the difference in price (\$500,000) as "substantial" and found that the fact that Montessori's offer included the purchase of Lots 2 and 3 was irrelevant. The Court stated that the higher offer submitted by Montessori at the public hearing should have stopped the proceedings and that the trial court should have either ordered the District to conduct further negotiations or, preferably, ordered a public sale of the Property – or at least Lot 1 in the event that the District wanted to keep Lots 2 and 3.

Rejecting the trial court's conclusion that the sale was "in the public interest," the Commonwealth Court noted that such phrase does not appear in Section 707 of the School Code and that the overriding consideration for the trial court should have been whether the District was obtaining a "better price than could be obtained at public sale." The Court further explained that where the difference in price is not substantial, a court could take into account equitable considerations to determine whether the interests of the public would be served by approving the lesser offer.

Based on the foregoing, the Commonwealth Court remanded the case and directed the trial court to order a public sale of the Property.

PRACTICAL ADVICE

When selling district property at a private sale, the district will generally be required to take the highest offer presented. Where the difference between two offers is not substantial, the district may look at other factors to determine whether the

sale to one party or the other is in the public interest. Alternatively, the District may sell the property by way of public auction or sealed bids as provided in Section 707 of the School Code.

For additional information contact Gavin Robb, or any member of our Municipal and School Practice Group.