



Acquiring or Developing Government Property

by Patrick R. Hughes

phughes@dbllaw.com

If you are considering a development in Kentucky on real property owned by a government, you should hope that a city is the owner. Let's say you're contemplating a development in Northern Kentucky, and you have three site options. Site 1 is owned by Kentucky (the "State Site"), Site 2 is owned by a County (the "County Site"), and Site 3 is owned by a City (the "City Site"). Let's also say that all of the other development factors are relatively equal and that it's just a matter of choosing the site and which owner you want to deal with. We start our analysis with the State Site. Under Kentucky law, the State has the authority to sell property that is not needed or that is more suitable for some other use, consistent with the public interest.

All such sales must be made in accordance with KRS 45A.045. It's clear the state can sell its real property if: (1) the property is not needed, and (2) the sale is done according to KRS 45A.045. Under that statute, however, all interests in real property must be sold either by invitation of sealed bids or by public auction. Under the approach of a sealed bid, the State must advertise the State Site as being available for purchase and sell it to the highest bidder. Obviously, a proactive developer is in a less than advantageous position if the land owner tells everyone about the opportunity, but that's the reality of pursuing the State Site.

In some cases, counties can be easier to deal with than state government. This unfortunately is not always the case when trying to acquire county-owned property. Under relevant law, a county may sell real property by sealed bids in accordance with the procedure for sealed bids under state law. This makes it just as difficult to acquire the County Site as it is to acquire the State Site.

Given the cost and the risk of losing a competitive edge when acquiring a State Site or a County Site, let's take a look at buying the City Site. Unlike counties and the State of Kentucky, cities have virtually wide open authority to sell their real property. The law provides that a city may sell any of its real or personal property. There is no requirement that a city conduct a sealed bid process. In fact, once a city determines it is in the public interest to sell property, it may do so with or without compensation for economic development purposes.

Based on the applicable statutes, it will be easiest to acquire, and perhaps develop, the City Site. Of course this assumes all other factors are equal. Unfortunately, when dealing with the government at any level, there are innumerable variables at play, e.g., politics, bureaucrats, budgets, community opposition, etc. Also, it can be difficult to predict how a particular government will choose to interpret the applicable law. In general, though, it is easiest to deal with a city government when acquiring government property.