

INNOVATIVE PARTNERSHIPS -- COMMERCIAL DEVELOPMENT AND SHARED USE

There are a number of ways innovative partnerships can be used to build school infrastructure or to leverage existing infrastructure in ways that free up capital for school construction. For example:

- Air-rights over existing school facilities in commercially developed areas can be leased to private entities.
- Historical tax credits associated with the renovation of older schools may be marketed to private investors if a commercial use is incorporated into the school concept. Eligibility for federal and state preservation tax credits for these unique partnerships would have to be verified by the Internal Revenue Service.
- Shared-use facilities which can leverage scarce local capital funds to build complementary facilities. For example, in Avalon, New Jersey, local leaders are proposing to opt-out of the county library system and use the related savings to meet debt service on bonds used to expand an elementary school to include both dedicated subject space and a new community library.
- Extension of current use of performance contracting to finance construction of new facilities.

The James F. Oyster Bilingual School

Perhaps the best known example of the way public-private partnerships can be used creatively to build schools is the Oyster School reconstruction in Washington, D.C.¹ Sitting on a 1.67 acres in the Woodley Park neighborhood, the James F. Oyster Elementary School was poised for closure. In the early 1990s, the District of Columbia Public Schools (DCPS) did not have a master plan for school infrastructure improvements nor the capital to fund one. The school, which was known for its dual-immersion program in Spanish and English, was overcrowded and deteriorating. There was insufficient classroom space for instruction and there was no space for the school's special education, physical education, arts and science programs. The school was not accessible to disabled students, teachers or parents.

Through a partnership with the DCPS and LCOR, Incorporated, a national real-estate firm specializing in public/private development, the community got a new school at no cost to taxpayers. DCPS agreed to deed

¹ Richard, Alan. "Developer, D.C. District Team Up to Build New Elementary School" *Education Week*. September 5, 2001.

over one half of the site to LCOR for commercial residential development in exchange for LCOR's construction of the new school.

The new Oyster School sits on a smaller 0.79 acre site but has an enlarged building with enhanced features:

	<i>Old Building</i>	<i>New Building</i>
Enrollment	300 students	350 students
Building size	26,591 sq. ft.	47,984 sq. ft..
Average classroom size	725 sq. ft.	900 sq. ft.
Library/Media center	900 sq. ft.	2,100 sq. ft.
Multipurpose room	2,400 sq. ft.	3,750 sq. ft.
Gymnasium	None	3,700 sq. ft.
Art room	900 sq. ft.	1,200 sq. ft.
Music room	None	950 sq. ft.
Parking	14 surface spaces	33 underground spaces
Outdoor play area	18,000 sq. ft.	8,000 sq. ft.

Source: *Building Outside the Box /Public-private partnership: A strategy for improved public school buildings.* 21st Century School Fund

To pay for the reconstruction, the District of Columbia raised \$11 million in 35-year tax-exempt revenue bonds. The \$804,000 annual debt service will be paid from property taxes and revenue generated by the 211 unit apartment building built by LCOR on the rest of the site.² Clearly this type of collaboration requires a special set of circumstances, however, in many urban areas of Maryland with high property values but limited funding capacity, this could hold promise.

Nova Scotia

Facing ongoing economic hardship and a freeze on its capital budget since 1990, Nova Scotia enacted legislation facilitating public-private partnerships for school construction in 1997. By 1998, eight schools

² *Building Outside the Box, Public-Private Partnership: A Strategy for Improved Public School Buildings.* 21st Century School Fund.

were built, 30 school projects were approved and 12 school projects were in the development phase. The province requested bids from qualified bidders to build schools according to Nova Scotia's specifications. The schools would be turnkey operations with the developers providing desks, blackboards, telephones and computers.

The school system leases the buildings from the developers for 20 years, however, building use covers school hours only (Monday through Friday, September through June, 8:30am to 3:30pm). More importantly, the school system's lease payments are only 85% of the capitalized cost of the building. The developer leases the building to other approved entities during non-school hours to make up the difference in cost and generate profit. This provides the developer an incentive to build cost-effectively as lower building costs reduce financing costs. At the same time, the developer must design and build competitive facilities in order to attract the necessary non-school lessees. Finally, as the school system is not required to purchase the building at the end of the lease (though it has an option to do so), it is in the developer's best interest to maintain and upgrade the building in order to maintain marketability.³

Public-Private Partnerships -- What's the Next Step?

There are a growing number of examples where public-private partnerships have been used to finance school construction projects for cash-strapped districts. However, the related policy question is of more significance to this report. How can the creativity present in private sector partnerships be harnessed to address the State's school construction needs? How can public-private partnerships be facilitated? Virginia's Public Private Education and Infrastructure Act (PPEA) attempts to do this.

PPEA was recently enacted in Virginia's 2002 legislative session. It was modeled after the 1995 Public Private Transportation Act which is credited with the development of large, complex and costly road projects which were not deemed possible via traditional financing methods. PPEA allows private parties to develop public projects under the approval of the responsible public entity. Additionally, qualified projects are exempted from Virginia's Public Procurement Act which, among other things, requires contracts be awarded to the lowest bidder.

³ Utt, PhD., Ronald D. "How Public-Private Partnerships can Facilitate Public School Construction" *The Heritage Foundation Backgrounder*. February 23, 1999. No. 1257.

A project may qualify for PPEA treatment if:

- (i) there is a public need for or benefit derived from the qualifying project of the type proposed by the private entity;
- (ii) the estimated cost of the qualifying project is reasonable in relation to similar facilities;
- (iii) the private entity's plans will result in the timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project.

The Task Force is scheduled to hear Virginia Delegate Preston Bryant discuss PPEA in detail at the November 22nd meeting. In advance of that meeting, this report recommends the attached framework for analyzing public-private partnership in the Maryland context.

ATTACHMENT

Public-Private Partnerships - A Framework for Analysis

The concept of public-private partnerships (PPPs) has come to incorporate a number of ideas. In order to understand its relevance for Maryland, PPP must be broken down into its component parts. Specifically, it is important to isolate savings or efficiencies stemming from the use of lease financing, from exemptions from public procurement regulations and from other provisions of PPPs. In preparation for Delegate Bryant's presentation, the author suggests the following as way to look at PPPs. Further details are forthcoming in a separate report by the author.

The following table provides a framework for evaluating PPPs in the Maryland context:

Benefits Unique to Public Private Partnerships	Benefits Attributed to Public Private Partnerships which are not Unique
<ul style="list-style-type: none"> ▪ Depreciation tax savings accrue to non-government entity which can benefit ▪ Cost overrun risk can be shifted from counties to developer ▪ Demographic risk can be shifted from counties to developer ▪ Incentives to design-in savings and generate revenues can be built in ▪ Non-traditional use of public school space during non-school time ▪ Non-traditional locations of school buildings ▪ Use of performance contracting 	<ul style="list-style-type: none"> ▪ Interest savings from shorter maturities used for leasing contracts ▪ Time and money savings from foregoing voter referendum for bond issue⁴ ▪ Time and money savings from circumventing existing procurement regulations ▪ State support of public school construction via contribution of lease payments
Costs Unique to Public Private Partnerships	Costs Attributed to Public Private Partnerships which are not Unique
<ul style="list-style-type: none"> ▪ Increased issue costs for certificates of participation and lease revenue bonds vs. general obligation bonds ▪ Increase interest costs due to non-appropriation clause in lease contracts 	<ul style="list-style-type: none"> ▪ Profit margins of developers are not different, in principal, from private sector returns from any public contract. Net benefit/cost to taxpayer is relevant.

⁴ In Maryland, bond issues for school construction do not usually require voter approval.