

Elmwood Village Charter School

Building Acquisition

FEBRUARY 2018



OFFICE OF THE NEW YORK STATE COMPTROLLER
Thomas P. DiNapoli, State Comptroller

Contents

- Report Highlights 1**

- Building Acquisition 2**
 - How Should the School Properly Acquire a Building? 2
 - The Board and School Officials Did Not Conduct a Thorough
Analysis When Selecting a New Building 2
 - The Board Did Not Obtain the New Building at a Reasonable Price . 5
 - What Do We Recommend? 7

- Appendix A – Response From School Officials 8**

- Appendix B – Audit Methodology and Standards 10**

- Appendix C – Resources and Services 11**

Report Highlights

Elmwood Village Charter School

Audit Objective

Determine if the Board and School officials adequately and appropriately acquired a building in the most cost-beneficial manner that also met the School's needs.

Key Findings

- The Board did not conduct a thorough site selection review and cost-benefit analysis when selecting a building.
- The Board did not pay a reasonable price for the building, by paying more than the appraised value.

Key Recommendation

- Conduct and document site selection reviews and cost-benefit analyses for real estate transactions to ensure it is conducting its proceedings in the School's best interest.

School officials agreed with our recommendations and indicated they planned to initiate corrective action.

Background

The Elmwood Village Charter School (School) is located in the City of Buffalo (City) in Erie County.

A 10-member Board of Trustees (Board) is responsible for the general management and control of the School's financial and educational affairs. Board members are appointed by other Board members and approved by the State University of New York (SUNY) Charter Schools Institute (CSI).¹ The Directors at each school and an Operations Manager are responsible for the School's day-to-day management under the Board's direction.

Quick Facts

2016-17 Enrollment	400
2016-17 Employees	68
2017-18 Budgeted Expenses	\$6 million
Number of Schools in operation (2017-18)	2

Audit Period

July 1, 2015 – August 28, 2017

¹ SUNY CSI is the authorizer for the current Elmwood Village Charter Schools. The New York State Board of Regents was the original authorizer for Days Park.

Building Acquisition

Due to the long enrollment waiting lists and the need for more capacity, the Board and School officials began the process of replicating² the Elmwood Village Charter School Days Park (Days Park) in August 2014. The Days Park school was successfully replicated with the second charter for the Elmwood Village Charter School Hertel (Hertel), which was approved by the SUNY CSI in April 2016 with a projected opening of September 2017. In January 2017, the Days Park and Hertel Boards, which are composed of the same members, approved an agreement to merge the Days Park and Hertel schools under one education corporation authorized by the SUNY CSI, effective July 1, 2017, named the Elmwood Village Charter Schools.

In the search for a second location School officials created a facilities requirements checklist which identified key items the Board was looking for. With an anticipated enrollment totaling 450 students within six years, the Board's checklist included a building with at least 46,000 square feet, 18 regular classrooms, a cafeteria, gym, playground, parking and several other key items.

How Should the School Properly Acquire a Building?

New York State (NYS) Education Law allows charter schools to operate more than one school, in one or more buildings. When selecting an existing building for acquisition, the Board should establish a process to properly identify the School's needs (including location, building size, suitability for intended use and future expansion) and determine whether related costs are appropriate to help ensure the School's long-term financial viability. The Board should analyze all cost aspects for each potential site to assist in evaluating all of the proposals, including considering current market conditions.

The NYS Office of General Services (OGS) annually publishes a list of vacant and unused State-owned buildings that may be suitable for the operation of a charter school which, when requested, shall be provided to a charter school. Further, at a charter school's request, a school district is required to make available a list of vacant and unused district buildings that may be suitable for a charter school's operation.

The Board and School Officials Did Not Conduct a Thorough Analysis When Selecting a New Building

The Board began the search process for the second building in September 2014. While the Board minutes include a statement that several building options were

² Replication is when an existing, successful charter school applies for and opens a new school, authorized by SUNY CSI, based on the performance of the original school.

identified, the minutes specifically identify three locations. The minutes note that School officials toured the buildings between September 2014 and April 2016. The Operations Manager indicated that the School's Facilities Committee³ toured six buildings, including the building purchased. However, she could only verbally provide tour dates for three buildings; no documentation was available to corroborate when these buildings were toured, nor was there any documentation available to indicate that the other buildings were actually toured by the Facilities Committee. In November 2014, the Operations Manager obtained a listing of vacant and available buildings from the Buffalo City School District, of which three buildings were noted in the Board minutes or by the Operations Manager as having been toured. While the Operations Manager was aware that the OGS resource existed, she did not obtain the list of available buildings from OGS. In addition, the November 2015 Board minutes indicate that the School was approached by an anonymous developer with a possible location for its second school. However, there was no further mention of this developer in the Board minutes.

The May 11, 2016 Board minutes stated that the Board intended to submit a letter of intent to purchase an unspecified building. The Operations Manager stated that she found the building through her review of locations on Internet maps and by driving around the City. She stated the Facilities Committee toured this same building on May 10, 2016. However, there was no documentation in the Board minutes or otherwise indicating where the building was or when it was first identified or toured. Board members provided various time frames for when this building was identified, ranging from dates in 2015 to the summer of 2016.

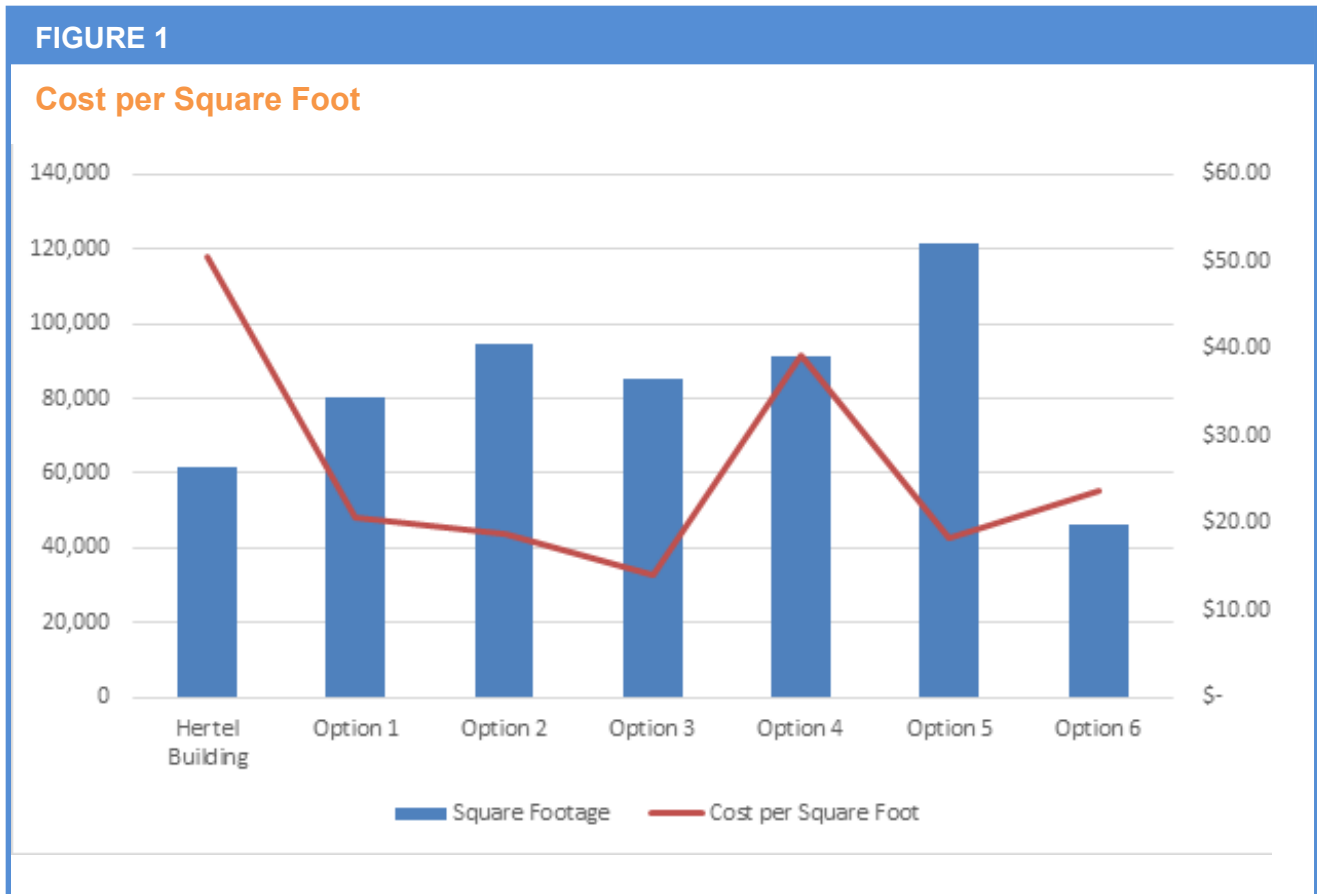
While the building selected by the Board appears to meet all of the needs identified on the School's facilities requirements checklist, a sufficient cost-benefit analysis of this or other buildings was not completed. The Operations Manager provided the Board a two-page comparison table of potential buildings identified. However, the table did not include sufficient detail of whether the buildings met the School's requirements or a sufficient analysis of the costs associated with leasing or buying the listed buildings. The Operations Manager stated that the Board and officials relied on the School's broker⁴ to provide cost estimates for each building, but all estimates were provided orally to the Operations Manager and Board, with no documentation to substantiate them.

3 The Facilities Committee is composed of the Board Chair, Board Vice Chair, two Board members and the Director of Days Park.

4 The School did not have a contract in place with the company serving as its broker until September 2016; further, the scope of this contract did not include brokerage or realtor services.

We analyzed the six buildings included in the comparison table that the School had toured, as well as one building that was included as a comparison in the appraisal of the selected building, to determine if the School could have acquired a comparative building for a lower price. While there are certain other factors to be considered, such as site location and the facilities included (e.g., parking, play area) for perspective, the School's comparison of available buildings did not include sufficient information on such factors. Only three of the buildings included on their comparison mentioned facilities such as parking, green space and location.

Due to the lack of a detailed analysis based on these multiple factors, we performed an analysis based on square footage and cost per square foot. It appears that the School could have paid between \$14 and \$39 per square foot for other buildings ranging in size from 46,000 to 120,000 square feet, compared to the nearly \$51 per square foot actually paid for the 61,000 square foot Hertel building that was selected. In just looking at cost, if one of these buildings had been selected, the cost per square foot would have been between \$12 to \$37 lower.



The May 11, 2016 Board minutes indicate that the total cost to purchase and renovate the selected building would be comparable to the cost paid for the Days Park building. However, no actual or estimated costs were documented in the minutes. Per the building appraisal and one design-build team proposal, the builder⁵ provided an estimate of renovation costs for the Hertel building, prior to the building's purchase and the Board's request for proposals for design-build teams in July 2016. However, no such estimates were obtained for the other buildings reviewed, other than the verbal information received from the broker. As such, without a sufficient, detailed and documented cost-benefit analysis, the Board cannot be assured that it obtained the building that best fit the School's needs for the lowest price.

The Board Did Not Obtain the New Building at a Reasonable Price

The Board purchased the Hertel building from a local developer (developer) in July 2016. The developer purchased the building from a local non-profit affiliated with the Catholic Diocese of Buffalo (Diocese) in January 2016 for a total purchase price of \$1.1 million. The Board was aware of the developer's \$1.1 million purchase price when it initiated its purchase of the building from the same developer in May 2016, with the sale finalized in July 2016 for a total price of \$3.1 million, an increase of \$2 million within a six-month time frame. The final purchase was approved by Board resolution on June 15, 2016. However, while the building purchase was approved, no purchase price was included in the minutes. The Board Chair signed the purchase agreement totaling \$3.1 million.

The Operations Manager stated that the building was not for sale when the Board wanted to purchase it. Instead, the developer gave the Board the option to lease the building. However, the Operations Manager told us that the Board was able to convince him to sell. We found no discussion of a lease option in the Board minutes and a documented lease versus purchase analysis was not prepared. The Operations Manager stated that because the first school building⁶ still has a 20-year lease agreement, the Board did not want to enter into another lease agreement.

5 The School did not have a contract with the builder, who was part of the design-build team selected by the School, until September 2016.

6 Referred to as the Elmwood building

Additionally, the Operations Manager stated that it was unusual for the School to have been able to purchase the building given that the previous owner was affiliated with the Diocese. She indicated that the Diocese does not sell buildings to charter schools and will sometimes include in purchase contracts for their buildings that the new owners also cannot sell the building to charter schools. However, the Board Vice Chair stated that this was not an issue for the School because the Board knew that the building had been purchased by the developer. We contacted the Diocese and the affiliated non-profit and found that there were no restrictions on the non-profit being able to sell the building directly to a charter school.

We also found that the appraised value of the building “as is,” at the time the School purchased it, was \$2.45 million, which is \$650,000 lower than the purchase price. Per the appraiser, appraised values are typically determined based on the building’s condition, as well as a comparison to the recent sales prices of similar buildings in the area. Similar buildings used in the appraisal all sold for approximately \$5 to \$30 per square foot less than what the School purchased the building for, meaning, for perspective, the School could have paid a range of \$300,000 to \$1.8 million less for the Hertel building.

Board members stated that they were aware of the \$2.45 million appraised value but based on list prices and renovation costs, they believed the total cost was comparable to or lower than the other buildings reviewed. The Operations Manager and several Board members stated that the developer’s asking price was \$3.1 million and that they were unsuccessful when working with the broker to negotiate a lower purchase price.

We reviewed the two offers the Board made to the developer on May 11, 2016 and May 13, 2016. Based on the Board members’ assertion that they attempted to negotiate a lower price, we would expect the Board to have submitted several offers that started well below the \$3.1 million asking price as the developer had purchased the building only four months prior for \$1.1 million. However, we found that the initial offer, made on the day after the School’s facilities committee’s initial tour of the building, was \$3 million and the second offer was \$3.1 million. Because the School did not make an offer substantially lower than the asking price, and the initial offer was made less than 24 hours after touring the building for the first time, we question how seriously the Board attempted to negotiate the building’s price.

Based on the timeline of events leading up to the building’s purchase, the purchase price of \$3.1 million as compared to the appraised value and developer’s purchase price, we question whether this purchase was in the School’s best interest.

As a result, due to the lack of a sufficiently itemized cost-benefit analysis, the purchase price of the building substantially exceeding the appraised value and the developer's purchase price, and the lack of evidence of due diligence in negotiating the purchase price for the building, the School could not demonstrate this purchase was made in the most cost beneficial manner possible and in the School's best interest.

What Do We Recommend?

The Board should:

1. Conduct and document a thorough analysis of alternatives before making major financial commitments.
2. Conduct and document site selection reviews and cost-benefit analyses for real estate transactions to ensure it is conducting its proceedings in the School's best interest.
3. Ensure that all Board proceedings are properly documented in the minutes and all such records are maintained by the Board Secretary.

Appendix A: Response From School Officials



ELMWOOD VILLAGE
CHARTER SCHOOL

February 7, 2018

Jeffrey D. Mazula
Chief Examiner of Local Government and School Accountability
Office of the NYS Comptroller, Buffalo Regional Office
295 Main St., Suite 1032
Buffalo, NY 14203-2510

Dear Mr. Mazula:

The Board of Trustees and the Administration of the Elmwood Village Charter Schools (EVCS) have reviewed the draft report of Building Acquisition Report of Examination for the period from July 1, 2015 through August 28, 2017 (2017M-237). We appreciate your input and welcome the opportunity to strengthen the existing internal controls of the Schools.

We also appreciate the opportunity to have met with auditors from your office at the exit conference on January 16, 2018, which afforded us the opportunity to address findings and further clarify certain items noted in your preliminary report. We believe the following responses address the matters reported in the preliminary draft and we are committed to developing a corrective action plan with 90 days of the date of the preliminary report. We now present for you our responses to the State Comptroller's recommendations:

Auditor Recommendations:

1. Conduct and document a thorough analysis of alternatives before making major financial commitments.
2. Conduct and document site selection reviews and cost-benefit analyses for real estate transactions to ensure it is conducting its proceedings in the School's best interest.
3. Ensure that all Board proceedings are properly documented in the minutes and all such records are maintained by the Board Secretary.

Responses:

1. While the Board of Trustees of EVCS does not anticipate the purchase of another building in the foreseeable future, they will conduct and document a thorough analysis of alternatives before making major financial commitments.
2. In the future, the Management and Board of Trustees of EVCS will conduct and document all of its site selection reviews and cost benefit analyses for any and all real estate transactions to ensure that it is conducting its proceedings in the School's best interest.
3. In the future, the Management and Board of Trustees of EVCS will ensure that all Board proceedings are properly documented in the minutes and all such records are maintained by the Board Secretary.

EVCS's Board and Administration do recognize that despite the fact that the building cost was more than the appraised price, we do not believe we would have been able to purchase and renovate another suitable building at lesser cost. With the accelerating real estate market, and the buildings that were available to purchase in the

time frame between approval and opening, we feel certain that our other options were not suitable, and did not meet our need for green space, parking and bus traffic.

Sincerely,

Mimi Barnes-Coppola
Chair, Board of Trustees
cc: Matthew Moscati
Danielle Bruno
Kathy Jamil
Elizabeth Evans

Appendix B: Audit Methodology and Standards

We conducted this audit pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Section 2854 of the New York State Education Law, as amended by Chapter 56 of the Laws of 2014. To achieve the audit objective and obtain valid audit evidence, we performed the following audit procedures:

- We interviewed School officials and reviewed Board policies and minutes to gain an understanding of the School's process for purchasing the building.
- We reviewed the building comparison compiled by the Operations Manager and reviewed by the Board, the building appraisal and performed Internet searches to perform a cost-benefit analysis of potential buildings to determine if the building was purchased for the best price and also met the School's needs.
- We reviewed cash receipt and disbursement reports, bank statements, invoices, canceled checks and purchase agreements to determine how the purchase was financed.

We conducted this performance audit in accordance with GAGAS (generally accepted government auditing standards). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

The Board has the responsibility to initiate corrective action. We encourage the Board to prepare a plan of action that addresses the recommendations in this report and forward the plan to our office within 90 days.

Appendix C: Resources and Services

Regional Office Directory

www.osc.state.ny.us/localgov/regional_directory.pdf

Cost-Saving Ideas – Resources, advice and assistance on cost-saving ideas

www.osc.state.ny.us/localgov/costsavings/index.htm

Fiscal Stress Monitoring – Resources for local government officials experiencing fiscal problems

www.osc.state.ny.us/localgov/fiscalmonitoring/index.htm

Local Government Management Guides – Series of publications that include technical information and suggested practices for local government management

www.osc.state.ny.us/localgov/pubs/listacctg.htm#lgmg

Planning and Budgeting Guides – Resources for developing multiyear financial, capital, strategic and other plans

www.osc.state.ny.us/localgov/planbudget/index.htm

Protecting Sensitive Data and Other Local Government Assets – A non-technical cybersecurity guide for local government leaders

www.osc.state.ny.us/localgov/lgli/pdf/cybersecurityguide.pdf

Required Reporting – Information and resources for reports and forms that are filed with the Office of the State Comptroller

www.osc.state.ny.us/localgov/finreporting/index.htm

Research Reports/Publications – Reports on major policy issues facing local governments and State policy-makers

www.osc.state.ny.us/localgov/researchpubs/index.htm

Training – Resources for local government officials on in-person and online training opportunities on a wide range of topics

www.osc.state.ny.us/localgov/academy/index.htm

Contact

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