CHOOSE YOUR EXPERIENCE

CGP CONFERENCE 2021

Gifts of Real Estate--
They Don't Have to Be Perfect

Pete Sommerfeld

NATIONAL ASSOCIATION of Charitable Gift Planners

Gifts of Real Estate – They Don't Have to Be Perfect

Introduction: What Would You Do?

In 2004 Oregon Health & Science University was offered a gift that had the potential of being one of the largest it had received to that point. A high-profile Portland family offered the University 19 acres of undeveloped, or underdeveloped, land on the western bank of the Willamette River, just south of downtown Portland. Approximate value of the whole parcel was in excess of $30,000,000. Sounds great, right?

Before you answer, let me add several bits of information that were disclosed or discovered during the gift consideration process. First, and primarily: the property was listed as an Environmental Protection Agency Super Fund Site. Years of use as an industrial site, including the dismantling of US ships after World War II, had left it seriously contaminated and in need of serious remediation, expensive remediation, in order to make it viable for any new use. Second, a land survey revealed that virtually the entire area is included in the Federal Emergency Management Agency 100 Year Flood Plain. Finally, the donors were less than satisfied with the valuation of the property established by the qualified appraisal they had ordered.

So, what did OHSU do with this flawed, but still potentially valuable property? Who needed to be involved in the decision-making process? And, what additional information did those people need in order to make the wisest decision? Those questions will be answered, and the process will be revealed later – at the live presentation in Orlando. For now, let us consider the reasons real estate can make good gifts, why your donors might choose to suggest gifts of real estate, and what procedures are advisable in the evaluation and processing of such gifts.

Why Gifts of Real Estate

Question One, if your organization is not already accepting gifts of real estate, why would you want to jump into that pool? First, according to a study done by the Brookings Institute in 2018, at that time US households held approximately $113 Trillion in assets. The study further stated that 25% of those assets were held in "non-financial" assets, the vast majority of which was held in real estate. If you do the math, that is approximately $28 Trillion – looked at another way that is $28,000,000,000,000. That is a sizeable pool to fish in. And, that does not include real estate held by companies, both publically traded and privately held.

If that weren't enough motivation, why else might your organization consider accepting gifts of real estate? Frankly, because many times it is the best, or the only, asset with which your donor can fund a gift. In addition, using real estate to fund a gift might provide a way for the donor to make the largest gift possible. (See illustration above)

Why Donors Might Make Gifts of Real Estate

Looking from the donor's side, what might be their motivation for considering a gift of real estate to your organization? In some ways, the highest and best motivation is to have an impact on your organization and its mission. If that is the case, you might consider broadening the discussion to examine their entire portfolio (if they are open to that). That way you, in conjunction with their professional advisors, can help them make the wisest decision about which asset(s) make the most sense to donate.

On the other hand, many donors have more pragmatic goals in mind when they are considering gifts of real estate. Do they have tax issues? Have they recently experienced a significant taxable event, like Rothing an IRA or selling other highly appreciated assets? Or, do they desire to liquidate the real estate in question in the near future?

Are your donors seeking a simplified lifestyle? This can be, but is not necessarily, linked to tax issues. Have they grown tired of being landlords? Many individuals enjoy the process of discovering, purchasing and improving properties, but tire of the day-to-day operations, and long to move on to other more exciting projects.

Similarly, some donors are land rich and cash poor. They purchased a property, or properties, with the goal of developing it for a profit. But, for whatever reason, lack of liquidity or motivation, or changes in business or family situations, they have not followed through. So they ask, "Is there a way I can still benefit from this disappointment?"

Not far from that, though, is what can be referred to as "portfolio cleansing." Honestly, some donors simply wish to turn their "dog" into a tax deduction while relieving themselves of the hassle of liquidating it.

Some combination of all these factors may play a role in forming the constellation of your donor's motivation. The OHSU Foundation has seen them all. Recognizing them can go a long way in helping you navigate the decision-making process.

Evaluating Gifts of Real Estate

So, with that as background, what are the factors you need to consider in evaluating a potential gift of real estate? Many of the following are interrelated.

1. Begin with the basics: Who actually is the owner? Is the donor the sole owner of the property? Is it debt free? How is the property titled?
2. What is the physical condition of the property? If there are buildings on the property, are there obvious major repairs or updates that need to be made? Are there structural concerns? If there are no buildings on the property, is there evidence of former buildings or former uses that could cause concern? Which leads to:
3. Are there environmental concerns? Were there any former uses (which sometimes are not discovered until a Phase 1 Environmental Study is completed) that caused pollution or other

environmental damage? Is there an underground fuel tank that will need to be decommissioned? Has the property ever functioned as an orchard? If so, were pesticides used, and is there residual contamination on either the property in question or those adjacent to it? Does the property contain wetlands which will require remediation or will adversely affect the value and marketability of the property?

4. Speaking of marketability, is this a desirable property in a desirable location? What type of activity, buying and selling, has occurred in the area recently? Does the donor want to restriction the sale or future use of the property?

None of these concerns will automatically disqualify the property as an acceptable charitable gift. (Well, the last one can, if the donor is not willing to drop those restrictions – also known as *instances of ownership.)*

The primary question is: what level of risk and elements of complexity is your organization comfortable in assuming in order to receive the gift? To begin that process the organization needs to decide who has the authority to give the thumbs up or thumbs down to a gift of real estate. In addition, what information do they need in order to make that decision and what due diligence is needed to acquire that information? (This presentation includes several documents addressing these issues that are available as source material in shaping or updating those guidelines and procedures.)

Procedures for Processing Gifts of Real Estate

Once your organization has decided to accept a gift of real estate, the job is just beginning. How will the property be transferred to your organization? What type of deed will be used? Your state's laws will provide guidelines for some of these questions. In addition, depending upon the sophistication of your donors, you may need to assist them in identifying a qualified appraiser to determine the value of the property.

Hopefully, before your organization took ownership of the property it was determined whether you would retain it, or immediately sell it. If the former, you can hand the responsibilities off to whoever in your organization manages your real estate holdings. If the latter, the process of marketing begins. I have only one bit of advice on that: Unless you personally have experience in this field, or your organization is large enough to employ a person full time to liquidate real estate – Hire a Real Estate Professional. Period. There are more than a few potential pitfalls in the process, and you likely do not have the time or expertise to handle them – in addition to your other duties.

Whether your organization will retain or sell the property, be sure to do the following things. Thank your donor, and anyone else involved in the process, in ways that they will hear *Thank You*. That can include, but is not limited to, their official receipt, a personal note from you, dinner with an executive of your organization, a letter of appreciation from one of your constituents who benefitted from the gift, whatever it is that clearly communicates your appreciation and gratitude.

On a more pragmatic level, be sure to change the name on the utilities, make sure the property is properly insured, and work with the appraiser on completing IRS Form 8283 and making sure it gets to your donor. And, don't forget IRS Form 8282, if your organization sells the property in question.

Full disclosure: if an issue is mentioned above, you can be relatively confident it has been a problem at one time or another (and maybe more than once) for the author.

Conclusion

All development work is as much art as it is science. This is certainly true when considering gifts of real estate. There are rules that must be followed, laws that must be observed, and principles that can be incredibly helpful. However, it is your thoughtful interaction with your donors, your nuanced evaluation of the pros and cons of accepting a particular property (and it will be different for each one), and your skill in communicating the decision and working with all those involved going forward that will help determine your success in this challenging, sometimes frustrating, yet highly profitable field.