

YMCA entangled in unorthodox land deal

By Michael Braga and Bob Mahlborg

Staff Writers

Sarasota Herald-Tribune

August 12, 2007

michael.braga@heraldtribune.com

bob.mahlburg@heraldtribune.com

SARASOTA -- A complex real estate deal between the Sarasota Family YMCA and one of its fundraising foundation board members made the charity at least \$250,000.

But the deal also turned out good for the board member, Sarasota attorney David Band.

Together with four partners, Band sold half of a run-down office building on land tainted by groundwater pollution to the YMCA for \$830,000 and donated the other half to the nonprofit as an \$830,000 gift that could save Band and his partners at least \$200,000 on their tax bills.

The same day, the YMCA made a quick profit by selling the entire building for \$1.3 million, receiving \$300,000 in cash, while providing the buyers with a \$1 million interest-only loan.

Band and his partners benefited by transferring the risk of the loan to the YMCA, leaving the Y exposed to losses if the new owners cannot meet their obligations.

That does not count the \$39,150 in real estate commissions that went to Band's son, Steven Band, and the thousands more in fees paid to Band's law firm -- all paid for by the YMCA.

Now the YMCA finds itself playing lender to the buyers, who would have had trouble getting a bank loan on the building on their own because of environmental problems.

Two experts say the transaction raises concerns about whether a nonprofit group should engage in real estate deals or act as a banker. They ask whether a YMCA fundraising board member should use a nonprofit he serves to generate profits for himself, his family, his partners or his firm.

The experts question how much independent review was made of the deal, and whether Band and his partners got a bigger tax write-off than their contributions deserved.

"The whole thing stinks," said Aaron Dorfman, executive director of the National Committee for Responsive Philanthropy, a Washington-based nonprofit watchdog group. Nonprofits typically are cautious with money and rarely venture into real estate investments, much less financing land deals or buying and selling a building the same day, he said.

Scrupulously avoiding business conflicts also is standard practice for most nonprofits, he said.

"Board members should not be profiting from interaction on boards they serve," Dorfman said. "That's a given. It is supposed to be a public service. It's not supposed to be a way to make money."

Band and the YMCA's president and chief executive officer, Carl Weinrich, say the land deal they put together was completely aboveboard, and they see no reason it should be questioned.

Weinrich says as long as people who do business with nonprofits offer products or services for below-market rates, there should be no problem.

"Our rule is to make sure all deals are below market," Weinrich said.

He said the deal was reviewed by Williams Parker Harrison Dietz & Getzen, a law firm that includes a prominent attorney who sits on the YMCA's main board of directors.

Band said nothing should stop board members from benefiting from business with nonprofits: Such arrangements encourage everyone to be more generous.

"I've been in charities for 40 years," Band said. "I have given a lot away, and I've never known a one-way street that worked. Everyone ends up getting something out of it."

But Fred Moss, a law professor who teaches ethics at Southern Methodist University, said allowing board members to do business with their own charity carries dangers.

"There's a lot of risk of self-dealing by people on the board that could skew their advice away from what's best for the nonprofit," Moss said.

Moss said the Band land deal could raise risks to the YMCA, including tax issues, liability and more.

"It's hard to believe the board of the nonprofit would simply say, 'We're making money and there's no problem,' when it's got environmental problems and a land flip. From the outside, it looks pretty fishy."

A difficult building to lease

Band and his partners, who include Daryl Brown, Harvey Abel, Jeffrey Russell and Robert Rosin, bought the building at 2196 Princeton St., just north of downtown Sarasota, for \$231,000 in May 1981. Band said the partners spent a lot of money fixing it and dividing it into two addresses, one with 14,000 square feet and the other with 8,000 square feet.

About four years ago, Band, while serving on the YMCA board, suggested Weinrich rent about 9,000 square feet in the building to store records for \$75,000 per year.

"We have to store foster care records for 50 years and we were looking for cheap rent," Weinrich said. "These people were trying to help us."

Band and Weinrich said the rent was lower than the YMCA could have gotten anywhere else.

"They only paid \$6 per square foot," Band said. "That was a great deal. Show me any place in town that was leasing for \$6."

One commercial real estate agent contacted by the Herald-Tribune agreed that \$6 per square foot was a good deal for the YMCA, but three others said the price was the going rate at the time.

"That was about the norm out there," said Bob Kolton, an agent with Michael Saunders Commercial.

Weinrich said when the YMCA signed the lease agreement, it was given an option to buy the building. But the YMCA put off its decision to buy because Weinrich thought the state might allow the YMCA to make computer images of records, which would avoid the need for so much storage space. That did not happen.

In the meantime, Robert Fletcher, who was one of the ultimate buyers, saw a "for sale" sign outside the building and contacted the listing agent, Steven Band. Fletcher said the property caught his eye because it was an office building that did not seem to fit an industrial area.

"David Band has a lot of real estate holdings and this property was kind of a turd," said Fletcher,

an appraiser with Bass & Associates in Sarasota. "It was old. You could tell the former owners (Band and his partners) skimmed on maintenance. There was a lot of vacancy. Some of the tenants weren't that good and there was a lot of garbage on site."

The goal, Fletcher said, was to rehabilitate the building, get rid of bad tenants and eventually sell units as office condominiums.

A contaminated site

By selling the property, Band got rid of an environmental headache.

The Princeton Street property has been contaminated by chemicals, including oil and industrial solvents, for at least a decade, state and county officials said.

Levels of some cancer-causing petroleum chemicals, such as benzene, are three times the legal levels.

Cleaning up petroleum contamination at the property has cost the state more than \$42,000 in the past five years -- and that is the cheapest part of the work, said Susie Murray, Sarasota County environmental supervisor.

Cleaning solvents are more difficult and expensive than removing oil because solvents are deeper underground and spread across a larger area under the building and a nearby street, officials said.

The YMCA contributed \$50,000 from its profits toward the cleanup cost. That cleanup could go on for years, officials said.

Future costs apparently will fall to Fletcher and his partner, Todd Sweet. Property owners are generally responsible for removing chemicals like solvents, said Pamala Vazquez of the Florida Department of Environmental Protection.

"We escrowed that money," Fletcher said. "It was the best estimate of the cleanup cost over the life of the property."

The deal

To finance its \$830,000 purchase of half the building, the YMCA borrowed \$690,000 from Band and his partners. The loan is to be fully repaid by September 2008 at an interest rate of 6.5 percent the first year, 7 percent the second year and 7.5 percent the third.

On that same day, the YMCA sold the full property -- the part it purchased and the part that was donated -- to Fletcher and Sweet, a Sarasota architect, for \$1.3 million. The YMCA got \$300,000 in cash and lent Fletcher and Sweet \$1 million with the same interest rate formula as the loan from Band and his partners.

The YMCA's loan to Fletcher and Sweet was critical to the deal, because environmental problems would have made it difficult for the partners to get financing.

"The environmental problems wouldn't have precluded the deal, but they did make it more difficult," Fletcher said. "It was such a beat-up property, and it wasn't producing much income. So lenders either would not have done it, or they would have wanted more than we could have afforded."

Fletcher said that he and Sweet are novice real estate investors and do not have established banking relationships.

Though the deal gave the YMCA a \$475,000 gain, Weinrich said the actual amount the YMCA

collected was much lower because the nonprofit paid fees and commissions.

It is hard to say how much the YMCA actually paid because Weinrich and his accountant, Rob Lane of Kerkering Barberio, gave several different numbers.

Weinrich initially said the YMCA wound up with \$250,000, which suggests it paid out \$225,000 in fees and commissions. He later said he was mistaken and referred questions to Lane.

Lane said fees and commissions amounted to \$137,000, leaving the YMCA with \$333,000. Lane said \$78,000 of the \$137,000 went to real estate commissions, but he could not recall who got the money.

Fletcher said one of the agents was Band's son, Steven. He got 3 percent, or \$39,150, for selling the building, while Fletcher, who also is a real estate agent, collected \$39,150 for representing himself as the buyer.

"Even though Steve is related, you can't get around the commission," David Band said. "What he does for a living is sell real estate."

Rather than gaining from the deal, Band said he and his partners lost money: If they had sold directly to Fletcher and Sweet, they would have received \$1.3 million. Instead, they got \$830,000 in cash for half the building, and a tax write-off of at least \$200,000.

That comes to \$1.03 million, about \$270,000 less than \$1.3 million sale to Fletcher and Sweet.

"We didn't really lose the money," Band said. "That's what we gave to charity. It basically cost us \$60,000 apiece."

A capital gains benefit from the way Band did the deal could also have saved him and his partners as much as \$70,500.

And the structure of the financing gives Band and his partners additional protection. If Fletcher and Sweet fail to meet their obligations, the YMCA must still make interest payments to Band and his partners on the \$690,000 loan.

Weinrich said he is not worried about the YMCA's risk.

"If these guys default, the property would come back to us and we would have to sell it," Weinrich said. "In recent years, the real estate market has been going up and I think we would not have trouble selling the building. I'm sure we would break even and I suspect we would make a profit."

(Photo: The building at 2196 Princeton St., just north of downtown Sarasota, is on land tainted by groundwater pollution.)

© 2007 Sarasota Herald-Tribune. All rights reserved.

<http://www.heraldtribune.com/article/20070812/NEWS/708120621>