

DEAL MAKERS

Ballard Spahr, Tarabicos Grosso Lead on Charter-School Bond Deal

Gina Passarella, Delaware Law Weekly

March 4, 2015 | [0 Comments](#)

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Odyssey Charter School has been trying for nearly two years to find—and fund—a new location to expand its K-7 offerings into a K-12 school. And thanks to the efforts of real estate and land-use attorneys at **Tarabicos Grosso** and public finance and tax lawyers at **Ballard Spahr**, that goal was met last month through what one of the lawyers said was the largest charter-school bond financing in the state's history. On Feb. 18, the Wilmington charter school cleared the final hurdles of obtaining a \$34.6 million tax-exempt bond that largely went to closing on a real estate deal to purchase and renovate 35 acres of the Barley Mill Plaza office park.

Odyssey had purchased another property more than a year ago but had trouble getting necessary zoning approvals, **Geoffrey L. Grosso** of Tarabicos Grosso said. His partner, **Larry Tarabicos**, is involved in the local Greek community and was hired by the Greek charter school through those ties, Grosso said. The firm assisted with selling off that property and began the search for a new location for Odyssey.

That is where Barley Mill came in. The location, zoned for commercial use, had its own troubles getting plan approvals, with community groups challenging a previously pitched mixed-use development of the site over fears of increased traffic and congestion. The Delaware Supreme Court became involved and reversed zoning approvals for the mixed-use site, Grosso said.

Tarabicos led the land-use portion of the Barley Mill deal for Odyssey while Grosso and **Scott Matthews** handled the real estate financing end.

Grosso said the purchase agreement depended on both the financing and an approval from the county on the land use. Odyssey was changing the land use from office to a school and was retrofitting or tearing down certain buildings to make way for athletic fields. The school was a partial tenant of the property during the contingency period of the agreement, with part of the school operating on site and another portion in the school's old space, Grosso said.

"The whole thing was somewhat unique," Grosso said. "You're looking at an office park that you are converting to a school use and once that plan is recorded you can't go back ... so that was a little bit of a challenge just in the fact that the seller, rightly so, if the bond financing isn't approved and ready to go, he doesn't want to plan for a school that he couldn't do anything with, so there was an interesting twist on timing" in terms of when the plan approval could be submitted.

Odyssey put together its team for the deal. While it selected and paid for Ballard Spahr to serve as bond counsel, the firm technically represented bond issuer **Delaware Economic Development Authority**, said **Emilie Ninan**, managing partner of the firm's Wilmington office and lead partner on the bond deal. The DEDA was created as a conduit bond issuer to help fund projects that bring or keep jobs and economic development in Delaware, Ninan said. It often funds charter schools among other nonprofits. Ninan, who has represented the DEDA and most other bond issuers in Delaware, said Odyssey was a high-performing charter school that was recognized as improving education in the state and therefore helping the state be attractive to businesses.

Ninan said it was important to note this deal was not funded through taxpayer dollars and the DEDA or the state would not be on the hook in the event of a default. **Robert W. Baird & Co.** was the underwriter for the bond, purchasing the bond and selling it to its customers. The underwriter was represented by **Bridgette Keating** of **Quarles & Brady** in Milwaukee, Ninan said.

The DEDA also had its own counsel from the state Attorney General's Office, she said.

"It's quite a team to make sure there is a market [for the deal] and it's structured in a way that the terms are acceptable," Ninan said.

Ninan worked on the deal with Ballard Spahr tax and public finance partner **Kimberly C. Betterton**. Ninan said the firm has worked on several other charter-school bond deals in Delaware in recent years, including a recent deal for the Newark Charter School.

Ninan said tax-exempt bond financing is a critical resource for charter schools, which, unlike public schools, cannot receive separate government funding for construction or other capital needs.

Ninan said no bond deal is the same and this one had its own unique challenges. She said Odyssey felt it wasn't financially the best course for it to get rated, so it avoided selling to the general public and instead sought a sophisticated purchaser of the bond.

"It's important to have an underwriter like we did who does charter school [deals] all over the country," Ninan said of the ability to do the deal on such terms.

Odyssey, opened in 2006, plans to gradually expand into a full K-12 school. The school focuses on classical education through a curriculum centered on math and the Greek language, Ballard Spahr said in a statement on the deal.

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