**Hershey Trust bought neighboring land for well above market value**

*Philadelphia Inquirer*

By Bob Fernandez
October 25, 2010

The Milton S. Hershey School, whose mission for 100 years has been educating impoverished children, is also the owner of Pumpkin World USA, a roadside attraction north of Hershey where you can buy vegetables, country crafts, and gourds galore.

Pumpkin World sits rather humbly on a 27-acre tract off Route 39, but to the members of the board of the charitable Hershey Trust, which administers the school, the property had value well beyond its bucolic charms.

So in 2006, the Hershey Trust paid a total of $8.6 million in school money for Pumpkin World - a sum more than nine times greater than the property's fair-market value, according to the Dauphin County tax office.

Officials of the Hershey Trust defend the purchase as part of a land-buying strategy to provide "buffer land" for an expansion of the Hershey School campus, and say Route 39 was a fast-growing commercial corridor.

Nonetheless, it is the second purchase of property at what would seem a highly inflated price. The other was $12 million for a money-losing golf course, on which the board then spent $5 million more to build a clubhouse and restaurant/bar.

The deal for the struggling Wren Dale Golf Club was reported by The Inquirer on Oct. 3 and included the fact that Richard H. Lenny, then the chief executive officer of the Hershey candy company, was an original investor in Wren Dale who profited from the golf course's sale.

A spokesman for state Attorney General Tom Corbett confirmed an investigation into a land deal the trust made Oct. 6, without specifying that it was the golf course. Deputy press secretary Nils Frederiksen said the investigation began in September, but sources familiar with the investigation say the Attorney General's Office has not requested records from the trust.

The attorney general is the only official - except people in the trust - who can challenge decisions by the trust in Dauphin County Orphans Court.

Corbett is the Republican candidate for governor. The chairman of the Hershey Trust is LeRoy S. Zimmerman, the former two-term attorney general and a political ally of Corbett. Other prominent Republicans, including former Gov. Tom Ridge, serve on Hershey-related boards and earn hundreds of thousands of dollars a year in director fees.

Frederiksen said Friday that he could not comment on the status of the investigation.
He has said the Attorney General's Office does not "micromanage" charities or run them day-to-day. As to whether it was appropriate for the trust to buy Pumpkin World, Frederiksen said the legal standard is: "At the time the decision was made, was it in the authority of the trust, was it an informed decision, and was it the product of due diligence?"

The purchases of Pumpkin World and Wren Dale Golf Club would seem to violate the strictly worded directives of Milton S. Hershey, the billionaire philanthropist who founded the candy company. His deed of trust emphasizes that the Hershey Trust must spend money only on the direct care and education of the students of the Hershey School. School officials say using the golf course as buffer land to ensure student safety falls under Milton Hershey's mission regarding care of children.

The Hershey realm, which includes the chocolate company and an entertainment company, is complicated. Each is directed by its own board but both exist, in the wishes of Milton Hershey, to subsidize the school, which is administered directly by the $7.5 billion trust.

One complexity in the Pumpkin World purchase was that a third party had an agreement to develop a portion of the property into a Jungle Joey's water park, which could compete with Hersheypark.

If buying Pumpkin World with school money was a hedge against a potential competitor for Hersheypark, that would seem counter to the directives of the deed of trust.

The Pumpkin World property fair-market value of about $920,000, listed in a state tax document, was based on a 2002 county assessment and adjusted for inflation.

County estimates in Pennsylvania are not perfect, but the difference in the property's sale price appears to be well beyond any standard error ranges. Based on data from the State Tax Equalization Board, the Dauphin County estimates of value are typically within 25 percent of actual sales.

The charitable trust has not said whether it independently appraised the property, which includes several buildings and a retail store selling Amish and homemade crafts, lawn ornaments, pumpkins, and gourds. It said that it bought the property as a buffer to ensure student safety between the community and new student housing, and that it bought other property in the area as investments.

"Paying eight to nine times the assessed value requires an extraordinary explanation," said Robert Sitkoff, a Harvard law professor and national expert on trusts. "For example, a competing bidder and a credible private appraisal, plus an urgent programmatic need for the property might justify the purchase."

Sitkoff said trustees in a charitable trust are held to a high standard. "You can be whimsical, feckless, or irresponsible with your own property. But when you are a fiduciary, you are managing the beneficiary's property, hence you must act prudently and in the best interests of the beneficiary. As regards a charitable trust, what this means is that the trustees must act prudently
and in the best interests of the charitable purpose and the attorney general is meant to enforce these obligations."

It "strains credulity" that the trust would earn an investment return paying the price it did for Pumpkin World, said William Brown, visiting professor at the Duquesne University School of Law. "Zany with a capital Z," he said of the Pumpkin World purchase.

Pumpkin World was bought while the institution was spending hundreds of millions of dollars to boost its real estate holdings, renovate buildings, and construct student housing. That expansion is now on hold because of the economy. The school enrolls poor students free of charge.

Hershey Trust officials declined to comment directly on Pumpkin World. In an open letter to the community posted on the Hershey School website Oct. 18, Zimmerman said he believed the attorney general would find that the institution acted properly in its land dealings and that the deed of trust gave the charitable board flexibility in buying land.

Zimmerman said the land around its new campus "was of prime interest to developers, and we wanted to ensure that we acquired the critical land we needed for the school's use before we lost the chance to do so."

He noted that the school and its trust board "are required to look at every decision through the lens of perpetuity. We are keenly aware that our actions today must position the school for the students of not just this century, but the next." The school has expanded its enrollment to 1,800 students from 1,250 in 2004, he noted. "We believed this land was absolutely necessary as we planned not just for our current growth, but for potential growth 50 to 100 years from now," he said.

Regarding the investors in Wren Dale who were facing substantial losses before the trust bought the course, Zimmerman said: "Some have suggested that the trust company purchased the property to bail out wealthy friends. It is unfortunate that improper motives are sometimes ascribed where they don't exist."

Though the school says it acquired Pumpkin World and Wren Dale as buffers for student safety, the real estate has been useful to Hershey Entertainment & Resort Co., a for-profit subsidiary of the Hershey School.

Hershey Entertainment, a major leisure and amusement company, operates Hersheypark, Hotel Hershey, the Hershey Lodge, a campground, and golf courses. The company exists to financially support school operations through cash dividends. Since 2006, Hershey Entertainment has generated more than $1 billion in revenue and returned only $2 million in cash dividends to the school, according to IRS records and the Hershey organization.

After buying the Wren Dale course for $12 million, the Hershey School built a $5 million clubhouse, restaurant, and bar on the property, and then leased it to Hershey Entertainment at below-market rates. It is open to the public.
The Inquirer initially reported that the trust bought Pumpkin World from its longtime owner, the Retherford family, for $7.5 million. But the purchase from the Retherfords was only the first part of the transaction, according to property records.

When the trust agreed to buy the roadside market, the Pumpkin World owners were talking with local developer Nick Pendolino, who had proposed the water park on part of the property. Pendolino's partners were his wife, Jodi, and another couple, Donald R. Walker Jr. and Kimberly S. Walker.

Jungle Joey's was to be a Chuck E. Cheese-like facility with an indoor pool, 125-room hotel, and children's restaurant. Hersheypark is about a mile from the planned site.

In a phone interview last week, Pendolino said the Hershey Trust bought Pumpkin World from the Retherford family without his knowledge. Earl Retherford Jr., who runs Pumpkin World, did not return several phone calls seeking comment.

Pendolino said the "thought crossed our mind" that the trust wanted to eliminate potential competition for Hersheypark. But trust officials told him they wanted it for buffer.

The trust agreed to honor his contract with the Retherfords to buy 6.7 acres of the site. Pendolino, in turn, agreed to offer the trust the tract if he opted to sell.

The trust bought Pumpkin World for $7.5 million in February 2006 and then sold the 6.7 acres to Pendolino for $2 million in May 2006, according to property records.

In August, the trust repurchased the same property for $3.1 million, netting Pendolino and his partners more than a 50 percent investment gain in about four months.

Hershey Trust spokeswoman Connie McNamara said, "The new owner presented the trust company with a valid sales agreement in 2006 for $3.1 million. The trust company decided to exercise its right of first refusal." Pendolino said he had an offer from a hotelier for the $3.1 million.

He declined to name the hotel.