Cell towers on private property

By Tyler J. Carrell

If you drive through Phoenix on a warm summer night, you won't have to go far to see the glow of tall, white light poles, shining on a school's baseball fields. If you look closer, you might notice that one pole looks slightly different than the others. It may be slightly larger, or have more equipment on it than simply lights at the top. These unique characteristics likely mean the pole is a cell phone tower.

As cell phone use has exploded over the last few decades, cell phone companies have scrambled to build more towers to support the coverage needed for customers. While it's fairly easy to build towers in less populated areas where there are large expanses of land and a tower won't be an eyesore, there are challenges doing the same thing in more urban areas such as Phoenix.

To solve this issue, cell phone companies have approached school districts and private landowners, offering compensation in exchange for building a tower on their property. Cell phone companies usually ask school districts or private land owners to sign a long-term lease that in short, allows the cell phone company to do two things: (1) construct a cell phone tower on the property, and (2) have access to the property, often called an easement, to repair or improve the tower.

Initially, this seems like a great way to make extra income for a district or as a landowner. However, before signing any agreement with a cell phone company, there are several issues the district or landowner should carefully consider.

First, an owner should consider what, if any, impact the cell phone tower could have on the value of the owner's land. Will the presence of the tower make the property difficult to sell? The term of a cell phone tower lease can last up to 30 years, so if the owner signs the lease, there are – for better or worse – lasting consequences. Both private landowners and school districts should also contemplate the impact of the tower on neighbors. A large, ugly cell phone tower could lead to neighborhood strife, and for a

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school board, political backlash. In Phoenix, most school districts have made a concerted effort to force the cell phone company to build and paint any cell phone tower so that it closely matches their athletic field lights. If the tower is an eyesore, neighbors will not appreciate the possible decline in their property value and could take legal action.

Second, the owner or district should review the section(s) of the lease that allow the cell phone company to replace the tower equipment, alter the appearance of the tower, or expand the tower or the land that it covers. Many of these leases give the cell phone company the right, at their sole and absolute discretion, to expand the space that they are leasing. This can be problematic, as the cell phone company may have the right to install fencing or equipment on areas of the land the private owner or district wants to keep clear. Perhaps even more concerning, the lease may allow the cell phone company to add additional equipment to the tower without permission from the owner or district. Thus, even if the tower was built to blend in with the surroundings, a cell phone company might want to improve or increase the capacity of the tower, and change the tower to be larger, bulky and unattractive.

Lastly, a school district or owner should consider what access the cell phone company should have to the property. If allowed, a cell phone company may include a provision in the lease where they may enter the property whenever they wish. An owner may want to consider a 24-hour notice provision, a restriction of 9 a.m. to 5 p.m. work hours, or a limitation that any work must be done on the weekends.

Overall, entering into a lease with a cell phone company and allowing a tower to be built can be a lucrative enterprise. For a school district, it can provide much needed funds to support education, and for a private landowner, it can be a nice supplemental income. As with any contract, I advise my clients to carefully review what rights and privileges they will grant to the cell phone company to ensure that the benefits of entering into the lease outweigh the costs.

— Tyler J. Carrell is an associate at Gallagher & Kennedy. For more information about Mr. Carrell, please visit www.gknet.com/attorneys/tylercarrell.