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real estate REPORT

Cell Towers: Retaining Rental Income Without a Subdivision

By Erik M. Hume, Smigel, Anderson & Sacks, LLP



For many landowners, cell tower leases provide a steady, reliable stream of income for a piece of their property that would otherwise sit unused. When it comes time to sell a property, some landlords don't want to lose the regular payments they receive from the tower company. Fortunately, when it comes to cell tower rental income, you can take it with you – without a subdivision.

Many people think that if you want to keep a portion of the land for yourself when you sell it, you must obtain subdivision approval. If you want complete and unfettered

use of the property, a subdivision is your best bet. But subdividing off a small piece of land holding a cell tower can be extremely difficult under modern zoning requirements. Instead, what if a landowner reserves just certain rights in the property, rather than the dirt itself? Fortunately, the law provides for such a mechanism.

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Most people are familiar with easements. The power company may have one to string power lines over your property. Or you may have an easement over your neighbor's property for a shared driveway. And easement rights have been in the news lately in connection with the construction of pipelines. In short, an easement is a right to use someone else's property. But easements aren't limited to utilities or access. An easement can be created to cover any number of uses.

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Audi Kimmel, left, is not a licensed REALTOR.



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New Listings



NEW Land Sale - Gettysburg Pike & Spring Lane Road, Dillsburg

- Developable site adjacent to restaurants, convenience stores, office, and residential units
- Property has good highway visibility and access via traffic controlled intersection
- Owner will consider subdividing the site



NEW Office Lease - 1801 Oberlin Road, Middletown

- Charming three-story stone structure with professional office tenants
- Convenient access to both Harrisburg and Lancaster
- Easy access to Harrisburg International Airport

Industrial Listings



Sublease - 507 N. York Street, Suite 7, Mechanicsburg

- 270+/- SF of office space and 3,831+/- SF of warehouse space available
- This property offers a clean, open space
- 1 Drive-in door (10 x 12) and a common dock area available



Sale/Lease - 20 Woodcraft Drive, Mount Holly Springs

- Industrial building located just off of Route 34 with easy access to Route 15, I-81 and the PA Turnpike
- The property has varying ceiling heights and offers several drive-in doors and a dock door
- Building sits on 1.28+/- acres and is zoned Industrial

Commercial Listings



Lease - 1421 N. Third Street, Harrisburg

- Great leasing opportunity in completely renovated and updated building in the heart of thriving Midtown Harrisburg
- Neighbors include HACC Technology & Trade Campus, Susquehanna Art Museum, Midtown Cinema, Broad Street Market, The Midtown Scholar Bookstore (two blocks away), Millworks, Yellow Bird Cafe and much more



Lease - 5129 E. Trindle Road, Mechanicsburg

- Brand new retail or office space along Trindle Road
- Great visibility and parking
- The 4,000+/- SF is an open shell - ready for your finishing touches

(Featured article...Continued from page 1)

Cell tower lease buyout companies, who pay landowners large, upfront payments in order to purchase the future rents generated by the leases, have known about and used easements for years. When a landowner enters into a buyout agreement, typically the landowner conveys to the buyout company an easement over their land for the use and operation of a cell tower. The easement boundaries generally match those of the leased premises for the cell tower. The easement allows the buyout company to maintain control of the tower area, and to receive the income generated by the lease. But the landowner still owns the underlying dirt, subject to the buyout company's rights.

A landowner looking to sell her property can do the same thing as the buyout company, except she would be transferring the easement rights to herself. What the landowner would do is have prepared and filed in the courthouse a "Declaration of Easements" that would create the easement rights for the cell tower. The Declaration must provide specific rights related to the cell tower and the income generated by it. The Declaration should also address what happens with the current lease and what rights the easement holder has to enter into amendments and new leases. The terms and conditions of the Declaration are extremely important, and a landowner should work closely with legal counsel in preparing the document.

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Once those easement rights are created, they then need to be transferred. The transfer can be handled in several ways. In some instances, a landowner will want to keep them for herself, which she could accomplish by reserving the easement rights in the deed conveying the property. A landowner could also transfer the rights to an entity created by her, such as an LLC or a trust, by recording an instrument in the county courthouse. How those rights are held in the future could have significant tax consequences, so landowners should consult with their tax advisors on how to structure such a transaction.

Reserving the cell tower income sounds simple enough, but what are the drawbacks? There are several factors a landowner needs to consider. First, she needs to confirm that her lease permits such a scheme. A cell tower lease, like most commercial contracts, is a negotiated agreement between two parties. There is no set "form" for a cell tower lease. It is possible that the existing lease could include language that would make it difficult to or even impossible to reserve the income by easement. For example, a lease may say that only the "fee owner" (that is, the person that owns the dirt) may be the landlord under the lease. If that's the case, it would be much more difficult to use the easement model. Review of the lease by legal counsel is very important early in the process.

Even if the lease doesn't expressly prohibit the easement model, its terms could present issues moving forward. Careful attention needs to be paid to the lease provisions governing who receives notices, who receives insurance protection and what the tower company can and cannot do. Again, an attorney can help in reviewing the lease and identifying these issues.

(Continued on page 4)

Commercial Listings



Sale - 5 N. Market Street, Duncannon

- Prime retail/commercial space in the Borough of Duncannon
- Former bank boasts a notable exterior facade and a clean, functional interior with vault
- Call for additional details to view floorplans and schedule a tour



Lease - 7040 Jonestown Road, Harrisburg

- Former bank located at a signalized intersection on the corner of Jonestown Road and Allentown Boulevard
- Well-maintained property with a large, open reception area and multiple private offices
- It is hereby disclosed that the owner is a PA Licensed Real Estate Agent affiliated with NAI CIR



Lease - 415 Market Street, Harrisburg

- First floor space available in the Harrisburg Transportation Center in Downtown Harrisburg
- Within walking distance to all the downtown restaurants, amenities, and Riverfront Park

(Featured article...Continued from page 3)

Another important concern is the effect the easement scheme would have on the marketability of your property. Properties with cell towers on them are not attractive to some buyers. Separating the income generated by the tower from ownership of the property will have an effect on value and could make a property less desirable to certain buyers. Furthermore, many buyers will want a say in the terms and conditions of the Declaration of Easements as a condition to closing. Before electing to retain the tower rental income, a seller should discuss with the listing agent the effect retaining the income may have on efforts to sell the property.

Property owners should also realize that in addition to receiving rental checks, they will also likely have certain responsibilities. Using the easement model, the person receiving the rent checks must work with both the cell tower company and the new property owner. While the cell tower company is usually responsible for its site, if it fails to maintain the site or if there is another problem, the new landowner will look to the old landowner to address any issues. Furthermore, an astute buyer will require that the seller include indemnification and insurance language in the Declaration of Easements to provide additional protections. While a landowner may be willing to accept the risks associated with a cell tower if she is the beneficiary of the income generated by it, if she is not receiving the rent, she will expect the party that is to make her whole.

The easement model for retaining cell tower rental income is a convenient way to keep a revenue stream while still permitting the sale of the underlying property. It can even be used outside of a sale situation, such as in conjunction with estate planning. Before embarking on such a program, however, landowners should consult with legal counsel experienced in this area, as well as real estate professionals experienced in the sale and marketing of real property. While the easement model does not have many of the barriers faced in the subdivision process, it is still a complex mechanism that can have long-lasting effects on your property and finances. ■

About the Author:



Erik Hume is a partner at Smigel, Anderson & Sacks, LLP in Harrisburg. A graduate of Lehigh University and the University of Pittsburgh School of Law, he has almost 20 years of experience in the areas of real estate law, business law, municipal law, zoning and land use and commercial finance. In his career, Erik has represented commercial developers, colleges and universities, municipalities, financial institutions and large national and international corporations. He regularly works with clients in the purchase, sale, leasing and development of commercial and residential real estate. He can be reached at (717) 234-2401, ext. 149, or by e-mail at ehume@sasllp.com.

Investment Listings



Sale - 100 Chestnut Street, Harrisburg

- Great investment opportunity available
- Prominent downtown location in the Central Business District
- A short walk to nearby restaurants, Federal Building, State Capitol Complex, Strawberry Square, Pinnacle Hospital campus, hotels, and other attractions
- This is a multi-tenanted office building which is 100% leased



Sale - 1773 & 1779 W. Trindle Road, Carlisle

- Multi-tenant investment property for sale along busy Trindle Road
- Easy access to I-81 and the rapidly growing Carlisle area
- Located right in the heart of new retail and industrial parks
- Adjacent to Target anchored Carlisle Crossing Shopping Center



Sale - Confidential, Camp Hill

- Great investment opportunity now available
- Additional details available with a signed confidentiality agreement
- Call for additional details and financials

Seeking New Articles



The Bill Gladstone Group of NAI CIR is looking to fill editorial content in our quarterly magazine and monthly newsletter publications for 2018.

What Are We Looking For?

Industry related articles that our readership of over 4,500 business decision makers and industry leaders would benefit from reading in print and online through social media. Articles are typically 1,200 – 1,500 words and include an author bio, headshot, and mentioning of your company.

Topics Can Include: Finance, development, law, architecture, technology, engineering, environmental, wellness, current trends, security, business operations, and much more.

Need Assistance With A Topic?

We can suggest one that would be a good fit for your expertise.

Contact: Leah Wentz (717) 761-5070, ext. 116 or lwentz@naicir.com.

Please forward this information to any colleagues you feel could be a good fit for our publications as well. We look forward to hearing from you and wish you continued success through 2018.

Office Listings



192 - 1,359 SF

Lease - 208 N. Third Street, Harrisburg

- Remodeled office space in prime Central Business District
- Historic building faces the Capitol Complex with the largest expanse of glass window lines in privately owned building
- Downtown amenities are just a few steps away and parking is a block in every direction
- Additional 4,542 SF available for sublease



Price Reduced

7,320 SF

Sale - 1 Rutherford Road, Harrisburg

- Corner property at the signalized intersection of Rutherford Road and Locust Lane
- Great visibility and parking
- Single-story, brick office building can easily be utilized by a single user or multiple tenants



2,023 SF

Sale/Lease - 2151 Linglestown Road, Harrisburg

- First floor condominium in the Saratoga Office Center now available
- Currently built for a medical user, but would work well for other office users
- Located close to Colonial Park, Downtown Harrisburg and all Interstate Highways in the general area



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Office Listings



1,835 - 2,746 SF

Lease - 3425 Simpson Ferry Road, Camp Hill

- Two suites available
- Office areas have great perimeter window lines designed for professional users
- Ample parking on-site and easy access to Route 15, Route 581, and the PA Turnpike (I-76)
- Amenities close by including banks, restaurants, shopping, and convenience stores



1,200 SF

Lease - 3507 Market Street, Camp Hill

- Located within the heart of the West Shore, this aesthetically pleasing building now has one suite available for lease
- 45 Surface parking spaces available
- The property is centralized on Camp Hill's main artery and is close to many restaurants and businesses



2,318 - 7,018 SF

Lease - 5275 E. Trindle Road, Mechanicsburg

- Open corner office suite offers functionality and usability
- There are many private offices and large conference room(s) lining the perimeter
- Professional office space features executive sized offices, private in-suite restrooms and two entrances
- Space can be left as one large suite or made into two suites; Suite A - 2,318 RSF and Suite B - 4,133 RSF



Price Reduced

3,600 SF

Lease - 4386 Sturbridge Drive, Harrisburg

- Class A office space for medical or professional use
- Space in shell condition, ready to accept a build-out designed to suit tenant
- Located along Route 39 with access to amenities such as lodging, eateries, gas, banking and all major transportation corridors



900 - 5,500 SF

Lease - 142 Reno Avenue, New Cumberland

- Good space for a light manufacturing or small warehousing operation
- Located in the heart of New Cumberland with good access to I-83, and the PA Turnpike (I-76)
- There is both a shared dock door and a ramped drive-in door available with the space



20,000 SF

Lease - 535 E. Chocolate Avenue, Hershey

- Class A, build-to-suit office in desirable Hershey location
- Excellent opportunity for user/tenant to help design and customize their new facility to meet their unique space needs
- Over 50 parking spaces available and more available in shared parking area



2,523 SF

Sublease - 3405 Rosstown Road, Wellsville

- Former bank branch office available for sublease
- Located in Rosstown Commercial Center with several other commercial users
- Brick, end-cap could be utilized by a retail or office user

Office Listing



Lease - 800 N. Third Street, Harrisburg

- Prominent downtown office building across from the State Museum
- One block from the Capitol Complex; perfect location for attorneys and associations
- On-site parking and many other amenities are available to tenants

Featured Land



Sale - Eisenhower Boulevard & Highspire Road, Harrisburg

- Nice 10-acre site on Eisenhower Boulevard with easy access to Route 283, I-83 and PA Turnpike (I-76)
- This site is surrounded by commercial, retail and industrial development and the Commercial General zoning permits virtually any of these like uses for future development
- New pricing available

Land Listings

Location	Acres	Zoning	Type
370 W. Main Street, Leola, Lancaster County	1.3 - 2.8	General Commercial	Sale/Lease
300 S. Sporting Hill Road, Mechanicsburg, Cumberland County	1.19	Apartment Office Limited (AOL)	Sale
Allentown Boulevard and N. Hershey Road, Harrisburg, Dauphin County	1.35 (1 lot)	Business Enterprise District	Sale
Bent Creek Boulevard, Lot 2, Mechanicsburg, Cumberland County	2.02	Community Commercial	Lease
7700 Derry Street, Harrisburg, Dauphin County	2.12 (lot 4)	Commercial District General	Sale
I-81 and W. Trindle Road, Carlisle, Cumberland County	2.18 (2 parcels)	Commercial Highway	Sale
East Cumberland Street (Route 422), Lebanon, Lebanon County	2.2	Commercial	Sale
8001 Grayson Road, Harrisburg, Dauphin County	2.25	Commercial	Lease
7700 Derry Street, Harrisburg, Dauphin County	2.3 (lot 8)	Commercial District General	Lease
2600 Delta Road, Brogue, York County	2.5	General Commercial	Sale/Lease
Route 114 & Gettysburg Pike (NEC), Mechanicsburg, Cumberland County	2.996	Highway Commercial District	Sale
W. Trindle Road, Mechanicsburg, Cumberland County	4.13	Highway Commercial	Sale
700 S. Baltimore Street, Dillsburg, York County	5.23 - 57.5	Agricultural - Conservation (AC)	Sale
Eisenhower Boulevard, Harrisburg, Dauphin County	5.39	Commercial General	Sale
Route 114 & Gettysburg Pike (NWC), Mechanicsburg, Cumberland County	7.12	Highway Commercial District	Sale
Lancer Street Extended, Harrisburg, Dauphin County	7.52	Medium Density Residential (R-2)	Sale
Route 441 and Orchard Drive, Harrisburg, Dauphin County	8.34	Single Family Residential District	Sale
Price Reduced - 730 Limekiln Road, New Cumberland, York County	8.64	Commercial Business	Sale
Eisenhower Blvd & Highspire Road, Harrisburg, Dauphin County	10	Commercial District General	Sale
Route 75 & William Penn Highway, Mifflintown, Juniata County	11	Industrial Commercial	Sale/Lease
NEW - Gettysburg Pike & Spring Lane Road, Dillsburg	15.64	Commercial	Sale
Carlisle Pike (Route 11) Waterford Square, Mechanicsburg, Cumberland County	16.16 (13 lots)	Community Commercial (C2)	Sale
Price Reduced - Allentown Boulevard, Harrisburg, Dauphin County	17+	Commercial Highway (CH)	Sale
3050 Heidlersburg Road, York Springs, York County	18.16	Highway Commercial	Sale/Lease

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Check Out Our Recent Deals

Visit www.billgladstone.com to view listings not included in this issue.



LEASED – 1335 N. Front Street, Harrisburg

The National Alliance for Model State Drug Laws leased 2,000+/- SF of office space located at 1335 N. Front Street in Harrisburg. The Bill Gladstone Group of NAI CIR handled the transaction.



LEASED – 415 Market Street, Suite 210, Harrisburg

PA Orthopaedic Society leased 888+/- SF of office space located at 415 Market Street in the City of Harrisburg. The Bill Gladstone Group of NAI CIR handled the transaction. Space still remains available, please contact us for details.



LEASED – 7981 Paxton Street, Harrisburg

Raul's Auto Sales, LLC leased 960+/- SF of office space and 828+/- SF 2-bay garage located at 7981 Paxton Street in Harrisburg. The Bill Gladstone Group of NAI CIR handled the transaction.