Trust Land Commercial Real Estate Leases Seminar: *An In-Depth Discussion of Opportunities, Strategies and Considerations.*

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Background

- Land Use / Real Estate Attorney
- Public Private Land Strategies, LLC
- Land Advisors Organization
- Instructor with Arizona School of Real Estate
- Former:
  - Deputy General Counsel for Governor Janice K. Brewer
  - Arizona Deputy State Land Commissioner
  - Arizona State Land Commissioner
  - Arizona State University—Faculty Associate & Executive Director

Public vs. Private Lease Considerations

- Legal Requirements
- Time
- Flexibility
- Competition
- Financing
- Negotiation
- Due Diligence
- Administrative Appeal Process

Background—Arizona State Trust Land

- 9.2 Million Acres
- Key Enabling Act, Constitutional & Statutory Considerations
- ”All monies”
- Budgetary Constraints
- Generate Revenue
- Trustee
- Public Records
- Liens
- Improvements
- Public Auction

Key Lease Provisions

- Term
- Rent
- Improvements
- Performance / Timing
- Restoration
- Assignments
- Infrastructure
- Land Use
- Pre-Payment

Key Lease Provisions

- Financing
  - Standard
  - Pros / Cons
- Subordination
- Pre-payment provisions
  - Risk / Benefit
- Bonding & restoration
  - General Requirements
  - Why?
  - Push-back

Lease Types

- General Commercial
  - See Term Sheet
- Solar
  - See Solar Lease Term Sheet
- Right of Way
  - Intensity of Use / Valuation Method
- Multi-Family
  - Appropriate for Lease?

Lease Types

- Mineral
  - Royalties
  - Environmental
  - Risk / Remediation
- Oil & Gas
- Water
- “Un-classified”
  - Novel Uses
  - Economic Impact Studies

Planning & Coordination

- Legal Requirements to Coordinate with Local Jurisdictions
- General Plan / Specific Plan / Zoning
- Conceptual Plans / Master Plans / Development Plans
- Infrastructure Planning
- Payback Agreements
- Development Agreements
- Entitlement Timing
- Zoning “Banks”
- Open Space & Public Land

Planning & Coordination

- Five Year Disposition Plan
- GIS Database of Information incorporating information on market demand, site constraints, core infrastructure, entitlements and area development trends
- Identify Primary Parcel Information in advance—i.e. entitlements, infrastructure, site constraints / opportunities to streamline and make purchase/lease process more efficient
- Parcels & Information in Interactive Map Form
- Flexible to allow inclusion of additional parcels
- Dynamic—includes protocol for updating parcel selections, time to market classifications, and underlying evaluation data

Planning & Coordination– 5YP

- Evaluation Database
- 19 Attributes Grouped into 6 Categories
  - General: Parcel Name: Lease, City, Comment, Area, Due Diligence
  - Site Constraints: Slope, Flood Plain, Leasing Status, Earth Fissures, Cultural Resources
  - Infrastructure: Access, Irrigation, Sewer Service Area, Sewer Lines, Electricity, Water Service Area, Water Lines, Water Quality Management Plan Areas, Lift Stations
  - Entitlements: General Plans, Zoning and Land Patterns
  - Market Feasibility
  - Non-categorized: Additional factors unique to parcels or areas to the state such as environmental study areas, proposed transmission corridors, etc.

Lessons Learned

- Recession
- Re-negotiation
- Long vs. Short Term Lease
- Improvements
- Extensions
- Financing
- Planning
- Uses
- Valuation
- Pre-qualification
- Risk Mitigation

Negotiating

- Don’t Rush It
- Know Target Price & Walkaway Terms
  - Advance Research
  - Pull Comps & appraisals
  - Know Area Activity
  - Don’t Hesitate to Be First to Define Terms
- Rank Order Your Priorities
  - Price?
  - Use?
  - Term?

Negotiating

- Make The First Offer
  - Becomes the anchor and target parties are negotiating around
  - Make or Break Known Early
- Counter to Re-Anchor
  - Re-set if Too Low
  - Drive discussion back to target terms
- Back and Forth Can Create Satisfaction
  - Buyer wants a good deal
  - Seller wants to drive a hard bargain
  - Parties will work harder