

Neighborhoods getting smarter at negotiating gas leases

We all have learned a lot about urban leasing in the past several years.

Today, there is gas-leasing activity in almost every part of Fort Worth and Tarrant County, and the drilling activity will not be far behind.

The financial terms of lease offers per acre and per lot have increased significantly during the past year, partly as a result of competition among gas companies and partly as a result of better negotiating by mineral owners.

The large tracts are mostly leased up, so the push now is into the neighborhoods, where it usually takes several lots to make an acre. During the past year or two, many neighborhood groups have had landmen or lawyers or both make presentations about gas leasing.

Because my law practice includes both gas leasing and representation of property owners' associations, I have been asked to offer tips for how neighborhoods can best work together to negotiate a lease. My comments relate both to the process involved and to the content of the lease itself.

Tips to Neighborhoods for Lease Negotiation and Decision-Making Process

1. Organize quickly when the lease offers first arrive.

Many people will sign a lease as soon as it is offered to them unless they know that they may get more if they wait. Distribute a flier encouraging people to wait at least until a group educational meeting can be held.

2. Negotiate as a group, not as individuals, to increase bargaining power. A single-lot owner has no leverage, but



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a neighborhood group of many lot owners has significant leverage if they work together.

The larger the area represented, the better the lease terms can be for the benefit of all property owners involved. We are now seeing not just single neighborhoods working together, but several adjoining neighborhood associations or other property owners (businesses, churches, golf courses, etc.) working together to form larger negotiating groups. Even such governmental entities as cities and school districts are now cooperating to achieve greater bargaining strength on lease negotiations. Basically, "more acres" means "more leverage."



3. Use a negotiating committee of knowledgeable members. Almost every neighborhood group has people who are experienced in negotiations or in the energy industry. Use the talent that is in your group. Talk to other neighborhood groups about the processes they have used in negotiating leases, and learn from their experience. After the lease is signed, the committee may have an ongoing function to monitor the gas company's activity and enforce lease terms, if that becomes necessary.

4. Use a knowledgeable gas leasing attorney as a consultant or negotiator beginning early in the process. Let the attorney

give advice to your negotiating committee on what the issues are and what the current business terms are in your area. If you do not have any experienced negotiators in your group, then the attorney can be the negotiator on your behalf.

5. Communicate with your group – often. Have educational meetings. Send written messages by e-mail or fliers. Frequent communication keeps your group together. It is better to send small bits of information frequently, rather than waiting for everything to get resolved at once. People want to know what is going on. Use the process as a team-building project, and celebrate the signing of the leases with an appropriate social event.

6. Respect that individual owners may make their own decisions whether to sign a gas lease.

Neighborhood groups have no power to compel anyone to sign a lease. Every group with which I have worked so far has at least some members who do not want to sign a gas lease, for reasons that are important to them. And that is their right.

7. Understand that no lease deal is perfect. No matter how strong your bargaining power or how experienced your negotiating team — or how good your attorney — the

terms of the gas lease that you sign are probably not going to be perfect. A lease might not be as good as that which some other neighborhood has received or will later receive. There are still many factors involved, and the lease bonuses, royalties and other terms are changing rapidly. A good deal today may not look so good in hindsight a few months later. Do the best that you can. Most people do not expect to get a perfect lease; they just want to know that they got a fair price and fair lease terms. Being part of a group helps to give them the comfort level they need to make a decision.

8. BE PATIENT! The neighborhoods that are having the greatest success are taking many months — or even a year or more — to negotiate the terms of their leases.

Tips on Lease Terms

Neighborhoods and all other property owners obviously want to get the best possible signing bonus, royalty and other terms. The following tips are intended to help in negotiations on several key financial and other terms. This is not intended as a complete list of all the provisions that may need to be negotiated.

1. Every lease is subject to negotiation.

There is no “standard form” of lease. Not every provision needs to be negotiated, but each proposed lease should be read carefully and understood and negotiated as needed.

Get all agreements in writing. A gas lease is a contract that is likely to last for many years, so take time to do it right. If you need good sample language, look at leases being signed by cities, school districts, and other public bodies, which are a matter of public record, or the leases of other neighborhood associations which are often on their websites.

2. Try to get competing offers. Find out which gas companies have been leasing the parks, schools, and other public facilities near your area since those companies already are committed and probably already have drill sites and pipelines near you. The prices and terms of public bids are a matter of public record which you can learn with a little research.

3. Limit the lease to oil, gas and other hydrocarbons, rather than just “all minerals.”

4. Make sure the lease provides for no surface use. A “no surface use” provision is now written into most proposed urban leases, but the language may need to be expanded or clarified.

5. Delete or limit the warranty of title.

6. When calculating the area of your lot for bonus and royalty, make sure that your part of any platted street and alley is included.

7. On royalty, try to avoid or limit charges

for pipeline transportation and other “post-production” expenses.

8. Put a time limit on any offer made. Since it may take several months to negotiate the terms of the lease, make it clear that the amount of bonus and royalty are subject to change based on market conditions until the lease is signed. This is similar to what is typically done on house sale contracts, where the offer to purchase or sell is good for only a limited time.

9. Consider putting limitations in the lease on drill site locations, setback requirements, and other matters of particular interest to your neighborhood.

10. Get the gas company to sign as “lessee” and keep a counterpart of the fully-signed lease.

11. Get payment check for bonus when the lease is signed, not at an indefinite later date.

And in conclusion ...

I hope these tips will help you and your neighborhood group to understand and handle the lease negotiating and decision-making processes, and to obtain lease terms that are more favorable than what is initially offered.

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