

AZ Supreme Court clarifies damages for loss of access

By Jennifer A. Cranston



Access, the ability to get to one's property from a public road, is a vital part of property ownership and often impacted by government actions. If the government restricts or completely eliminates access, that loss can have a significant, negative impact on the property's value. Recently, the Arizona Supreme Court issued a decision in *City of Phoenix v. Garretson* that could open the door for many landowners to receive compensation for loss of access to a public street.

Before the Court's ruling in *Garretson*, a common notion among Arizona condemnation attorneys was that property owners were entitled to compensation for loss of access under very limited circumstances. Specifically, earlier cases suggested that loss of access was not compensable unless (1) some of the landowner's property was actually acquired for a public project, and (2) the loss of access left the property totally or effectively landlocked.

In *Garretson*, the Court clarified that a property owner is entitled to just compensation under the Arizona Constitution for loss of access even if no portion of the property is taken for a government project. And the property owner may have a claim for compensation if access to a public street is destroyed even though the property has other points of access.

Under the specific facts presented in *Garretson*, the Court ruled that the downtown Phoenix landowner could pursue his claim against the city for the decreased value of his property caused by the light rail project's elimination of the property's access to Jefferson Street. The Court held that *Garretson* could make this claim even though his property still had access points on Madison Street.

In addition to addressing elimination

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of access, the Court also reaffirmed the rule that, under certain circumstances, a property owner may be entitled to compensation for reduced land value caused by a government roadway project that substantially impairs access to a public street.

The Court's decision in *Garretson* can provide a means of recourse to landowners whose access is impacted by a government act. The Court has made it clear that cities, counties and the state are no longer free to cut off a property's access to a street as part of a public project without paying just compensation.

Additionally, the reach of *Garretson* may go beyond the realm of traditional condemnation. Because compensation may be available to landowners whose property is not actually acquired for a public project or is restricted only temporarily, it is especially important for all landowners to remain informed about anything that could potentially impact their property values.

Special thanks to fellow G&K attorney, Jeff Gross, for his assistance and collaboration on this column.

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