



EMINENT DOMAIN

ARIZONA SUPREME COURT CLARIFIES DAMAGES FOR LOSS OF ACCESS

Access – the ability to get to one’s property from a public road – is a vital part of property ownership and often impacted by the actions of government. If access is restricted or completely eliminated, that loss can have a significant, negative impact on the value of the land. On April 17, 2014, the Arizona Supreme Court issued a decision in *City of Phoenix v. Garretson* that could open the door for many landowners to receive compensation when a government action results in 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 being 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 being 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 means of access. Accordingly, the downtown Phoenix landowner in *Garretson* was entitled to pursue a claim for the loss of value

to his property caused by the City’s complete elimination of access to Jefferson Street for its light rail project even though the property remains accessible via Madison Street.

In addition to loss of direct access to a public street, the Court also reaffirmed the rule that a property owner may also be entitled to compensation if the value of the land is reduced by a change that substantially impairs access. However, a property owner who claims only substantial impairment of access is not entitled to compensation unless the remaining access is “unreasonably circuitous,” which will depend on the facts of each case.

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, such as light rail, 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.

FOR FURTHER INFORMATION, PLEASE CONTACT:

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