

***Palmer v. City of Phoenix*, 1 CA-CV 16-0398 (Ariz. Ct. App. March 30, 2017)**

The Arizona Court of Appeals recently determined that Arizona Municipalities may exercise their discretion to abandon roadways that they may determine are no longer needed through the process of public sales.

*Palmer* addresses the validity of the City of Phoenix's decision to abandon a roadway through public sale to Grand Canyon University. The roadway at issue was near GCU's campus. GCU owned all the property abutting the roadway except for three parcels held by private landowners. Although GCU was willing to accommodate the private landowners by agreeing to several access and easement stipulations, they filed suit after the City of Phoenix provisionally granted GCU's abandonment application.

On appeal from dismissal of their complaint, the private land owners argued: (1) the City did not have the authority to abandon the roadway, (2) that the abandonment violated state law because the roadway was still required for "public use," and (3) the public sale violated state law because the stipulations virtually ensured that GCU would be the only bidder. The Court rejected each of these contentions and affirmed the lower court's dismissal of the private landowners' action.

First, The City of Phoenix had, and still has, the right to abandon property it determines is no longer needed for public use. Our history and statutes clearly demonstrate that municipalities can abandon property as its character changes over time. In this case, the dedication of the roadway was received subject to the City's right to vacate or abandon it, in its discretion. Importantly, the Court recognized that Arizona's Supreme Court has consistently *rejected* the argument that once a roadway is dedicated to a city, that city must hold it in public trust in perpetuity. Instead, as the character of the property changes, a city may choose to abandon a roadway.

Second, the private land owners argument that the roadway is still required for public use failed because they could not show "special damages." Under Arizona law, unless the roadway conveyance "absolutely illegal" it cannot be challenged unless the property owner shows the conveyance will result in special damage to him. In *Palmer*, the private landowners could not, and did not, show special damage by demonstrating fraud, illegality, or that Phoenix lacked jurisdiction to abandon the roadway. Accordingly, their second argument failed.

Finally, the public sale did not violate Arizona law. The statutes and City Code provisions governing the roadway's abandonment allowed Phoenix to impose conditions on the public-sale purchase, but did not mandate the substance or content of those conditions. Accordingly, Phoenix had the discretion to impose whatever conditions it determined were necessary, and the Court would not second-guess those determinations—even where the stipulations virtually ensured only one potential purchaser.