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Expert Witness for Plaintiff/Counterdefendant Town of Florence

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

Town of Florence,
Plaintiff/
Counterdefendant,

vs.

Florence Copper, Inc. fka Curis
Resources (Arizona), Inc.,
Defendant/
Counterclaimant

NO. CV2015-000325

Grady Gammage Jr., being first duly sworn, upon his oath deposes and says:

1. I am an attorney with the law firm of Gammage & Burnham in Phoenix. I have been licensed to practice law in the State of Arizona since 1976 and have specialized in zoning, land-use and real estate matters since about 1978. While I most typically represent property owners and developers, I have also often represented cities and towns with regard to land use issues.
2. Attached as Exhibit A is my resume. In addition to practicing in the land-use area, I have taught land-use law at the Sandra Day O'Connor College of Law at Arizona State University since 1993. I have also taught various aspects of land-use regulation in the W.P. Carey School of Business Masters of Real Estate Development program and in the undergraduate and masters of planning programs in the Herberger Institute of Design and the Arts.

3. In the course of my career as land-use attorney in Arizona I have dealt with dozens of nonconforming use situations under the Arizona statutes, constitution and common law interpretations. I have also been involved in negotiating many development agreements with cities and in working in the state legislature on modifications of the development agreement statutes and updates to the planning and zoning enabling acts.
4. In connection with this report, I have reviewed the pleadings which have been filed in the *Town of Florence v. Florence Copper Inc.*, No. CV 2015-000325, 2016 WL 6270819 (Ariz. Super. Sep. 16, 2016), including the following: the court's ruling on cross-motions for summary judgment dated 8-14-2017; the resolutions and actions of the Town of Florence approving the preannexation and development agreement in 2003, including the subsequent amendments; the 2003 Planned Unit Development Approval, including the first and second amendments; the 2007 Town Ordinance Number 460-07; the 2007 Planned Unit Development Approval; and the deposition of Harrison Merrill dated 10/2/15.
5. I have also read the expert report of Julie Tappendorf. While I am impressed with Ms. Tappendorf's background and expertise, I believe her opinion misstates Arizona Law. As she notes, there is little case law in Arizona about the relationships between zoning ordinances and development agreements. The one Arizona case she cites, *Home Builders Ass'n of Central Arizona v. City of Maricopa*, 158 P.3d 869 (Ariz. App. 2007), was handled by my office (representing the Homebuilders Association). That case dealt with infrastructure funding and impact fees, which can clearly be controlled by a development agreement. It is not nearly so clear in Arizona that development agreements can overrule local zoning as her opinion represents. While development agreements are often drafted with language purporting to do so, Arizona's strong position that zoning is legislative in character makes such an absolute conclusion as she represents very unlikely. *See Wait v. City of Scottsdale*, 618 P.2d 601, 602 (Ariz. App. 1980) ("the enactment and amendment of zoning ordinances constitute legislative action.").
6. I do not believe any knowledgeable zoning practitioner in Arizona will give a legal opinion that a development agreement is always controlling over conflicting zoning provisions. The Arizona statute on development agreements, A.R.S. § 9-500.05, provides that development agreements may contain provisions regarding "the permitted uses of property subject to the development agreement." *Id.* The statute is silent, however, on

the relationship of such an agreement to the zoning on the property. The generally accepted interpretation in Arizona is that the development agreement does not change or overrule zoning, and must be implemented through a zoning change. Zoning changes must go through the required advertising, notice and hearing process (including being heard by the jurisdiction's Planning Commission) before they can become effective.

7. This case concerns whether Florence Copper Inc. continues to have a nonconforming right to mine the subject property which is now in the Town of Florence. The original right to mine was established in Pinal County. Counties in Arizona by statute are not allowed to prohibit or extensively regulate mining operations. Cities by contrast are allowed such regulation. This is an expression of long-standing public policy in Arizona. Mining is a highly favored historical use in the state, and therefore exempt from county regulations; but, because of the negative externalities of mining to nearby properties, cities and towns are given the right to regulate mining.
8. In this case, when the property was annexed into the Town of Florence in 2003, the preannexation development agreement itself did not explicitly recognize the continuing right to mine copper on the property. Rather, language in the 2003 PUD, an exhibit to the Development Agreement, recognizes mining as a nonconforming right. The language in paragraph 7 of the PUD varied from the Town Ordinance then in effect, and excepted copper mining operations from the presumptive abandonment period. The recognition of a nonconforming use right represented an acknowledgment of the right to mine which had been established under the statutory exemption in the county. The court's ruling on cross-motions for summary judgment in August of 2017 recognizes that as of the 2003 annexation Florence Copper had established and protected its nonconforming right to a mining operation.
9. The Court has ruled that the remaining question presented in the case is whether, through any subsequent actions, the nonconforming use right to mine on the property has been abandoned. In denying cross-motions for summary judgment, the court recognized that there is available evidence regarding the intent of the owner of the property ("Merrill") regarding abandonment of the nonconforming use. It is with regard to this question that my opinion is offered.

10. My opinion in connection with this case may be summarized as follows:
- a. Under the Arizona law of non-conforming use, the burden is on the property owner to affirmatively maintain or preserve the use. Abandonment of the use may be presumed from periods of non-use or from actions or statements inconsistent with preserving the nonconforming use.
 - b. In this case, the right to mine recognized in the Court's ruling was abandoned by the property owner because of a failure to explicitly preserve it as a nonconforming use. The presumptive period of abandonment and the strong legal presumption against nonconforming uses both operate to create a presumption that this nonconforming use was not preserved.
 - c. Harrison Merrill's repeated expression that, in the processing of the 2007 PUD, no one was "giving any thought whatsoever" to preserving the nonconforming mining use rights is a sufficient expression of intent to abandon the nonconforming use to find that it has been abandoned. His actions in seeking inconsistent zoning is further evidence of abandonment.
 - d. The relationship between development agreements and zoning is not so clear-cut as represented in Ms. Tappendorf's opinion. In Arizona, whether a development agreement may simply overrule either existing or subsequently enacted zoning is not clear. While there is not an Arizona case on point, it is likely that an Arizona court would allow subsequent legislative action in contravention of a development agreement, but might view it as a breach of the development agreement. Here, since the property owner requested the rezoning, such a remedy would be hard to justify.

11. The Doctrine of Nonconforming Use

Arizona zoning law has from its earliest days recognized the doctrine of legal nonconforming uses. Protections for such uses were built into the original Standard Zoning Enabling Act promulgated by the Department of Commerce in the 1920s and ultimately adopted by Arizona as its enabling legislation. The non-confirming use doctrine reconciles the rights of property owners to continue uses of their property that were legally established with the government's desire to regulate or eliminate specific uses over time in response to changes in urban development patterns. A.R.S. § 9-462.02 establishes the right to continue nonconforming uses in cities and authorizes

condemnation as the only municipal action permissible to terminate such uses. This is in contrast to many other American jurisdictions which create a right of municipalities to “amortize” nonconforming uses; that is to say *put them out of business* over a period of many years. Arizona’s disavowal of the doctrine of amortization is an expression of Arizona’s pro-property rights orientation.

12. Arizona law recognizes that nonconforming uses should be eliminated or brought into conformity as quickly as possible within the limits of fairness and justice. *City of Glendale v. Aldabbagh*, 939 P.2d 418, 421 (Ariz. 1997) (“Public policy encourages the elimination of nonconforming uses primarily because they detract from the effectiveness of comprehensive land use regulation, often resulting in lower property values and blight.”) (internal quotation marks omitted); *see also Stagecoach Trails MHC, L.L.C. v. City of Benson*, 307 P.3d 989, 992 (Ariz. App. 2013) (nonconforming uses are not favored by the law and should be eliminated or reduced to conformity as quickly as possible; but such elimination may be accomplished only within the limits of fairness and justice.”) (internal quotation marks omitted).
13. While Arizona has a strong recognition of the doctrine of nonconforming use, it is limited in two critical ways. In order to give effect to the public policy favoring the eventual elimination of nonconforming uses, regulations governing nonconforming uses are held to be exceptions to the general rule that zoning ordinances should be strictly construed in favor of the property owner. *Outdoor Systems, Inc. v. City of Mesa*, 819 P.2d 44, 50 (“regulations governing nonconforming uses are excepted from the general rule that zoning ordinances should be strictly construed in favor of the property owner.”). Application of the rule of strict construction of the zoning ordinance in favor of property owners does not apply to regulations governing nonconforming uses. *See City of Tucson v. Clear Channel Outdoor, Inc.*, 181 P.3d 219, 228 (“despite the general rule that courts should strictly construe zoning ordinances in favor of an affected property owner, application of this rule to regulations governing nonconforming uses is precluded by the public policy encouraging the elimination of nonconforming uses.”). These and other Arizona cases make clear that the general presumption construing zoning ordinances in favor of a property owner is reversed with regard to nonconforming uses: the burden of showing the right to a nonconforming use continues is a burden borne by the property owner.

14. A second limitation on the doctrine of nonconforming use is that the right to expand a nonconforming use exists only if it is explicitly granted by the law and it is limited by any restrictions therein. A nonconforming use is limited to the site or area that is nonconforming when the ordinance prohibiting the use was enacted. *See Rotter v. Coconino County*, 818 P.2d 704, 712 (Ariz. 1991) (“a nonconforming use generally may not be extended to encompass land or property that was not in use at the time the zoning ordinance was enacted.”). Municipalities are explicitly allowed to restrict or regulate the expansion or enlargement of a nonconforming use. *See Rotter*, 818 P.2d at 714 (holding that a local ordinance barring the expansion of a nonconforming use did not conflict with the statute governing nonconforming uses.).
15. While the evidence in this case is clear that no actual mining—i.e., extraction for commercial purposes—has taken place on the property since its annexation in 2003; In the August 14, 2017 ruling, the court stated its finding:

“The Court finds that the 2003 Development Agreement unambiguously provided the Owner a vested right to mine copper on the Property, provided that the copper mining did not extend beyond the limits established by the BHP Copper Mine Overlay area”.

It is in the context of this ruling that my opinion is presented.

16. Abandonment of the Nonconforming Use.
 - a. Arizona Law has long recognized that the right to a nonconforming use may be lost as a result of abandonment. *See Kubby v. Hammon*, 198 P.2d 134 (Ariz. 1948). Many cities in Arizona have zoning ordinances which provide that a nonconforming use is deemed abandoned if the use is discontinued for a specified period of time. Courts generally interpret the discontinuance of a use for the specified period under the ordinance as creating a rebuttable presumption of intent to abandon the nonconforming use. Thus, the burden to establish that a nonconforming use continues is on the property owner, and any ambiguity as to continuance should be interpreted in the favor of abandonment. The treatise on Arizona Zoning Law, DOUGLAS A. JORDEN & FRANK J. CASSIDY, ARIZONA LAND USE LAW (7th ed. 2017), published by the State Bar of Arizona, states the rule:

“Zoning ordinances sometimes provide that a nonconforming use is deemed abandoned if the use is discontinued for a specified period of time. These ordinances create a rebuttable presumption of intent to abandon a nonconforming use. Where a city lacks significant evidence of a property owner's subjective intent to abandon, it can make a prima facie case merely by establishing that the use has been unused for the required time. The burden then shifts to the property

owner to rebut the presumption. If the owner does not come forward with evidence of intent not to abandon, the use is terminated. However, if the owner appears and establishes that the use was not abandoned the presumption is extinguished.”

Id. at 7–7 (citing *Aldabbagh*, 939 P.2d at 418).

b. At all times relevant to the instant case, the Town of Florence ordinance provided:

“REGULATIONS

PART 1. GENERAL PROVISIONS

§ 150.080 NONCONFORMING USE.

- (A) *Continuance of use of land; abandonment.* The lawful use of land existing on July 19, 2006, although not conforming to the provisions hereof for the land, may be continued, but if the nonconforming use is abandoned, and a nonconforming use discontinued for a period of three months, it is presumed abandoned, then any future use of the land shall be in conformity with the provisions of this Development Code.
- (B) *Continuance of use of building or land.* The lawful use of a building or land existing on July 19, 2006 may be continued, although the use does not conform with the provisions of this Development Code for the building or land and the use may be continued providing only reasonable repairs and alterations are made. Whenever a nonconforming use of a building or land has been changed to a more restricted use or to a conforming use, the use shall not thereafter be changed to a less restricted use or a nonconforming use.
- (C) *Abandonment of use of building or land.* In the event that a nonconforming use of any building is abandoned, and a nonconforming use discontinued for a period of three months is presumed abandoned, then any future use of the building or land shall be in conformity with the provisions of this Development Code.”
(Prior Code, Ch. 4, Art. IV, § 4-91) (Ord. 432-06, passed 6-19-2006)

Thus, the Town’s zoning ordinance explicitly recognizes that “abandonment” may be presumed from a three-month discontinuance, but also that, as recognized in *Aldabbagh*, evidence of a subjective intent to abandon may satisfy the test without a presumptive time period. In the instant case, the Court’s ruling in section D, Page 13 concludes that the language of the Development Agreement (specifically, sections 7 and 12) essentially overrules the presumptive abandonment period, leaving subjective intent to abandon as the single triable issue.

c. Since the section of the Town’s zoning ordinance cited above was in effect throughout the period at issue, I do not believe the language in the Development Agreement should be read to overrule the ordinance. For it to do so, the Development Agreement would need to have been treated as a zoning text amendment. The requirement that zoning be uniform for all areas of land within a given district (ARS § 9-462.01 (C)) would not allow a development agreement to create different nonconforming use rules for a specific

location. To create different rules, such a change would need to amend the text of the zoning ordinance, be advertised as such, and be voted upon by the Planning Commission for recommendation to the City Council. Thus, I believe the presumptive abandonment period in the ordinance was still in effect after the property was annexed into the Town.

d. From the record it appears that there may be numerous occasions when no mining related activity took place on the site for extended periods of three months or more. If so, these periods would invoke the presumption of abandonment.

17. Testimony in the instant case by the owner of the property, Harrison Merrill, is that, as he was processing the 2007 PUD, the parties were simply giving no thought whatsoever to the issue of mining the property. In the Superior Court's opinion, Merrill's testimony is quoted:

“Question: ...And the copper mining never came up in the discussion of the 2007 PUD because it just wasn't on anybody's mind, right?

Answer: No, again, the mining question was never an issue ever.”

In addition to the language quoted by the court, Merrill's deposition is replete with statements indicating that in the 2006-2007 time frame there was no thought given to preserving the right to mine. See, e.g.:

Page 58-59:

“I don't think we thought a lot about it [the right to mine] one way or the other because we didn't plan to do that...”

Page 101:

“...we always thought that it could be mined and that is there was a problem, there wouldn't be a problem with the Town....”

Page 119-120:

“I don't think we ever really thought we didn't have the right, or if we didn't have the right we couldn't get the right from the State and the Town.”

Page 121:

“It's more if I didn't think they had the right to mine the property. I think they had the right to mine the property if we assigned it or if they didn't, they would get it or they wouldn't close it.

Page 169:

“Q. Okay. And in the 2007 master development plan amending the 2003 PUD, all references to non-conforming uses including mining are deleted. Are you aware of that, sir?

A. Yes, sir. I was told of that.

Q. Do you know that of your own personal knowledge.

A. Again, when we got it, it wasn't really an issue from our perspective so there was really no discussion with the town about whether it would be kept or it wouldn't be kept. It was just—we were looking for higher destiny. That was the focus of what we were doing and also flexibility.

Q. And higher density and flexibility would have been inconsistent with an in situ mining operation on the site; is that true?

A. Well certainly on the higher density parcel which was the parcel of south of Hunt Highway.

Q. And the parcel south of Hunt Highway is the same parcel that had previously had the BHP mine overlay that Mr. Campbell asked you about on it, right?

A: Yes, sir.”

Page 180-181:

“Q. So let's just cut to the chase because this is what this case is really all about. Sir, do you believe that at the time that you had the PUD amended to eliminate any references to non-conforming uses in mining or drilling or the BHP overlay, that those rights were removed from the PUD?

A. There were really no discussions on that issue.

Q. Do you believe that it would have been following the adoption of the 2007 PUD for a buyer wishing to mine the property that was now the subject of the increased density you described to go back to the Town and obtain proper zoning?

MR. CAMPBELL: Object to form.

THE WITNESS: It's a question I had not thought about and certainly wasn't thinking about at the time and had I thought about it, I would have presumed, as I mentioned earlier, that there wouldn't have been an issue and they could have gotten that.

BY MR. KRAMER:

Q. So whether or not the zoning was in place at the time you entered into these negotiations, you in good faith believed that if it weren't, the buyer would still be able to get that zoning?

MR. CAMPBELL: Objection as to form.

THE WITNESS: Yes.”

Page 183-184:

“Q. Mr. Merrill, before we go on to Exhibit 61, the fact of the matter is that once you owned this property that's the subject of this litigation, you could sell it to anybody for any purpose if the price was right, correct?

A. Yes, sir.

Q. And that wasn't dependent on what the entitlements happened to be at the time, was it?

A. That would affect perhaps what they were willing to pay but other than that, no, sir.

Q. But you will agree with me that the residential densities reflected in the 2007 PUD are inconsistent with a mining operation on that same property?

MR. CAMPBELL: Objection as to form.

THE WITNESS: Yes, sir.”

17. This action and testimony is a clear expression that the property owner did not think about or attempt to preserve the right to mine. The statements by Merrill clearly indicate that in 2007-2008 he was not thinking about mining. He applied for zoning inconsistent with mining. He thought that if an entity subsequently wanted to mine, they would go back to the town and get such use approved. This concept of seeking a new approval to mine (which in fact was attempted) should be seen as an admission that the right to mine has been abandoned. Under Arizona's view disfavoring nonconforming uses, it is my opinion that taken together, this behavior and testimony establishes a clear abandonment of the nonconforming right to mine. This testimony by Harrison Merrill regarding his intent is critical, whether viewed in the context of rebutting a presumed abandonment or as simple direct evidence of intent to abandon. Either way, the nonconforming use right was lost as a result of actions in 2007 and a clear failure to preserve the right.
18. In 2008, Merrill lost the property to a bank lender, which thereafter marketed the property for residential use—more evidence of abandonment of the right to mine. Furthermore, Merrill actually applied for the residential rezoning in 2006—an act itself which is evident of an intent not to mine the property.
19. The Court has stated that the triable issue of fact is whether the property owner abandoned the nonconforming use right. Under the Arizona law of nonconforming uses, the question should be phrased: “Did the owner take the appropriate steps to preserve a non-confirming use?” The burden is clearly on the property owner to affirmatively preserve the right.

20. Relationship between Development Agreement and Zoning Regulations.

- a. Because the law in Arizona does not clearly permit a development agreement to overrule legislative enactments, I also believe that Ms. Tappendorf's affidavit and the Court's ruling overstate the extent to which the development agreement prohibits the Town of Florence from passing any subsequent zoning regulations on the property which may overrule the Development Agreement. The Development Agreement did include, among other relevant provisions, the following paragraph:

“(f) the ordinances, rules, regulations, permit requirements, policies or other requirements of the Town applicable to the Property and the development of the Property shall be those that are now existing and in force for the Town as of the date of the recording of the Agreement. Town shall not apply to the Property any legislative or administrative land use regulations adopted by the Town or pursuant to an initiated measure that would change, alter, impair, prevent, diminish, delay or otherwise impact the development or use of the Property as set forth in the Development Plan except as follows: 1) as specifically agreed in writing by the Owner; 2) future generally applicable ordinances, rules, regulations, and permit requirements. . . of the Town reasonably necessary to alleviate legitimate threats to public health and safety. . . 3) adoption and enforcement of zoning ordinance provisions governing nonconforming property or uses; 4) future planned use ordinances, rules, regulations, permit requirements and other requirements and official policies of the Town enacted as necessary to comply with mandatory requirements imposed on the Town by County, state or federal laws and regulations. . . and 5) future updates of, and amendments to, existing building, plumbing, mechanical, electrical, and similar construction and safety related codes adopted by the Town.”

- b. Numerous Arizona development agreements contain provisions similar to that cited above. But it is far from clear under Arizona law that such a provision can bar a city from subsequently enacting, and applying, zoning regulations inconsistent with such a provision. In 2007, upon application of the property owner, the Town rezoned the property at issue in this case from I-1 (which itself did NOT permit mining) to residential, which clearly did not permit mining. Even if the property owner had objected (as he did not, and in fact asked for the rezoning he requested), the strong Arizona doctrine that zoning is a purely legislative matter does not mean, as Ms. Tappendorf suggests, that this subsequent enactment is void as to the property. Actions by a prior city council are generally not binding as against future legislative enactments. *See, e.g., Sedona Private Property Owners Ass'n v. City of Sedona*, 961 P.2d 1074 (Ariz. App. 1998) (another case handled by our office). Rather, the impact of that subsequent zoning would be a possible

breach of the earlier development agreement, giving rise to a damage action or other remedy. And, such a cause of action would be hard to maintain where the rezoning was at the property owner's request.

- c. The subsequent enactment would also be limited by the common law doctrine of non-conforming use, as recognized by the Court in its ruling. The correct analysis, therefore, leads back to the inquiry of whether the property owner's action in 2007 evidenced an intent to preserve the nonconforming use.

DATED this 13th day of February, 2018.

GAMMAGE & BURNHAM, P.L.C.

By 

Grady Gammage, Jr.

Expert Witness

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LEGAL PRACTICE:

Gammage & Burnham P.L.C.: 1983 to Present. One of the founders of a firm which has since grown to 33 lawyers. Practice primarily limited to real estate, zoning, land use and public/private relationships.

Jennings, Strouss & Salmon: 1976-1983 (Associate 1976-79, Partner 1979-83).

PUBLIC OFFICES:

Board of Directors, Central Arizona Water Conservation District, a three-county governmental entity which operates the Central Arizona Project, (1993-2005) President of the Board, 1995 – 99.

Member, Arizona Water Banking Authority, 1996 – 99.

ACADEMIC EXPERIENCE:

Senior Fellow, Morrison Institute for Public Policy, School of Public Affairs, College of Public Programs, Arizona State University, 2003 – Present; Kyl Institute for Water Policy, 2015 – Present.

Senior Sustainability Scholar, Julie Ann Wrigley Global Institute of Sustainability, Arizona State University, 2003 – 2016.

Adjunct Faculty, Masters of Real Estate Development program, Arizona State University, 2006 – Present.

Adjunct Faculty, Sandra Day O'Connor College of Law, Arizona State University, 1993 – Present. Courses taught: "Land Use Regulation" (2d/3d yr); "Property II" (1st Year).

Adjunct Faculty, Herberger Institute of Arts and Design, Arizona State University, 1990 – 2013. Course: "Preservation Planning".

School of Sustainability, Arizona State University, "Urban Sustainability Policy" Class, Fall 2011.

Co-Principal Investigator, Decision Center for a Desert City, National Science Foundation funded Center, Arizona State University, 2005 – 2010.

Sabbatical Fellow, Herberger Institute for Design Excellence, College of Architecture and Environmental Design, Arizona State University, Spring Semester 1998.

Visiting Faculty Member, Arizona State University College of Law, Spring Semester 1996.

REAL ESTATE DEVELOPMENT EXPERIENCE:

Developer and owner of Studios 5c in Tempe, Arizona. This urban, mixed use office/retail building of about 25,000 square feet was developed in 2000-2001. The building won awards from Valley Forward Association and the City of Tempe, and was the earliest transit oriented development along the Valley Metro Lightrail.

Owner Representative (volunteer), Arizona State University Foundation Building, six story office building and parking garage built in 2005 which serves as headquarters of Arizona State University Foundation and senior Arizona State University management, including the President's office. This LEEDS certified building received

awards from Southwest Contractor Magazine, The National Association of Industrial and Office Properties and The City of Tempe.

AWARDS

Lifetime Award of Excellence, NAIOP, 2017.

Arizona Business Leaders, Real Estate Law, AZ Big Media, 2016.

Wright Spirit Award, Frank Lloyd Wright Building Conservancy, 2014.

Richard Ely Distinguished Educator Award, Lambda Alpha International, 2013.

Named "One of the Ten Most Influential People in the History of Arizona Commercial Real Estate" by AZRE Magazine, 2011.

Valley's Most Admired CEO's and Executives, Phoenix Business Journal, 2010.

Lawyer of the Year, Land Use, Best Lawyers in America, 2010 and 2014.

Historic Planning Pioneer Award, Arizona Planning Association, 2007.

Valley Forward Leadership Award, 2002.

James W. Creasman Award of Excellence, ASU Alumni Association, Fall, 1998.

Southwest Airlines "Smart Award," for contributions to heritage education in Arizona, 1992.

Distinguished Achievement Award, Arizona State University College of Architecture and Environmental Design, 1991.

CURRENT CIVIC ACTIVITIES:

Governor's Water Augmentation Council, 2016 – Present, GWAC

Advisory Board, Kyl Center for Water Policy, 2014 – present

Advisory Board, Center for the Study of Race and Democracy, 2012 – present

Board of Directors, Aquila Municipal Trust

Board of Directors, Aquila Funds Trust

Gammage Scholars Selection Committee, Arizona State University, 1985 to Present; Chair, 1990 to present

ASU Gammage Fifty Year Leadership Board

PREVIOUS CIVIC ACTIVITIES:

Board of Directors, Celebracion Artisticas de las Americas, 2010 – 2104

Governor's Sustainable State Parks Task Force, 2008 – 2010

Board of Directors, Arizona State University Foundation, 1998 – 2009, Secretary 2001 – 2002

Board of Advisors, Morrison Institute for Public Policy, Arizona State University, 1997 – 2007

Advisory Council, Arizona Trust for Public Land, 2002 – 2008

KAET Channel 8 Advisory Board, 2000 - 2010

Board of Directors, Maricopa Partnership for Arts and Culture, 2004 – 2010

Board of Directors, Public Architecture, 2005 – 2009

Campaign Chair, Harry Mitchell for Congress, 2006

Board of Advisors, Think Arizona, 2002 – 2005

Governor's Water Management Commission, 2000 – 2002

Board Member, Salt River Pima Maricopa Indian Community Asset Management and Land Disposition Enterprise (Salt River Devco), 1999 - 2003

Member, Phoenix Ad Hoc Committee on Historic Preservation, 2000

Board of Directors, Arizona Town Hall, 1998 – 2000

Co-Chair, Old Main Restoration Campaign, Arizona State University, 1996 - 2000

Arizona Advisor (one of two from each state), National Trust for Historic Preservation, 1992 - 2000

Board of Directors, Orpheum Theatre Foundation, Inc, 1993 - 1999

Dean's Advisory Council, ASU Honors College, 1993 - 1999

Chair, City of Phoenix Design Review Standards Committee, 1989-92; reappointed 1996, Chair 1996 - 1998 The 1997-98 effort to change single family home design regulation in the City of Phoenix received Valley Forward's Crescordia award

Member, Phoenix Historic Preservation Commission, 1987-93; Vice Chair, 1987-91

President, Phoenix Chapter, Lambda Alpha International (Real Estate Economics Honorary), 1991-92

Director, Ahwatukee Custom Estates Homeowner's Association, 1990-97

Executive Board, Phoenix Community Alliance, 1988-90

City of Phoenix Zoning Ordinance Revision Committee, 1986-88

Board of Directors, Arizona Center for Law in the Public Interest, 1987-89

Graduate, Valley Leadership Class IV, 1984

Board of Directors, Arizona Historical Society, 1983-85

SELECTED PRESENTATIONS:

“Suburban Cities,” CEO’s for Cities Annual Conference, Phoenix, November 2017.

“Arizona Water Issues: of Plumbers and Planners,” Keynote Address, American Planning Association Annual State Conference, Fort McDowell, October 2017.

“Lessons From Sustaining Phoenix,” Western States League of Cities & Towns, Phoenix, October 2017.

“Suburban Cities,” for Gensler, June 2017.

“Arizona’s Colorful History of Real Estate Fraud,” Arizona/ Mexico Commission, Phoenix, June 2017.

“Legal Issues of Golf Course Redevelopment,” Arizona Association for Economic Development, Phoenix, May 2017.

“College Towns,” IDA National College Town Summit, Tempe, Arizona, April 2017.

“The Future of the Suburban City,” North Carolina State University Urban Development Conference, Raleigh, North Carolina, March 2017.

“Regulation & The Sharing Economy,” Federalist Society Debate, Sandra Day O’Connor College of Law, Phoenix, March 2017.

“National Politics and the Future of Real Estate,” ULI Trends Day, Phoenix, February 2017.

“The Suburban City, Clean Air, and Transportation,” Keynote Address for Valley Metro Clean Air Campaign Annual Event, Phoenix, AZ, November 2016.

“Sustaining the Suburban City,” 4th Annual IEEE Conference on Technologies for Sustainability, Phoenix, AZ, October 2016.

“Sustaining the Suburban City,” Julie Ann Wrigley Global Institute of Sustainability, Keynote Speaker Series, Tempe, AZ, September 2016.

“Sustaining the Suburban City,” Arizona Public Works Association Statewide Conference, Keynote Address, August 2016.

“Sustaining the Suburban City,” Utah National Public Radio, Interview, June 2016.

“Sustaining the Suburban City,” Arizona Association for Economic Development, Tucson, AZ, May 2016

“Security and Sustainability,” Webinar, Island Press, April 2016.

- “Water Resources and Land Use Planning,” American Planning Association National Conference, Phoenix, AZ, March 2016.
- “Arizona Water Issues,” Protect the Flows Conference, Phoenix, AZ, March 2016.
- “The Sun Corridor,” Create Oklahoma City Chamber of Commerce, Phoenix, AZ, February 2016.
- “Southwestern Water Issues Panel,” ULI Arizona Trends Day, Moderate, Phoenix, AZ, January 2016.
- “Arizona’s Permanent Fund: A Dilemma of Intergenerational Equity,” Real Estate Council/Morrison Institute, Scottsdale, AZ, December 2015.
- “Western Water Rights Status,” Western Growers Annual Meeting, San Diego, CA, November 2015.
- “Arizona and The River,” 10th Colorado River Symposium, Santa Fe, NM, September 2015.
- “Phoenix and Orlando,” Orlando Business Leader visit, Phoenix, AZ, June 2015.
- “Phoenix, Tucson, and the Sun Corridor,” Tucson SALC meeting, Tucson, AZ, May 2015.
- “Looking Into the Future,” Annual Colorado River Conference, Las Vegas, NV, April 2015.
- “The Sun Corridor,” Presentation for New Orleans/Baton Rouge Study Trip to Arizona, Phoenix, AZ, April 2015.
- “Arizona’s Non Profit Sector,” Keynote for Organization of Non Profit Executives, Phoenix, AZ, March 2015.
- “Pinal County Water and Growth Issues,” Keynote for SRP Economic Forum, Mesa, AZ, March 2015.
- “Status of the Sun Corridor,” Prescott Valley, AZ, March 2015.
- “Water in The Sun Corridor,” Arizona Women in Commercial Real Estate, Phoenix, AZ, March 2015.
- “Can Phoenix’ Past Predict Its Future?” Lambda Alpha Chapter, Phoenix, AZ, February 2015.
- “ULI Trends Day 2015 Debate: The Use of Economic Incentives,” Phoenix, AZ, January 2015.
- “Colorado Basin Issues,” Arizona Forward Luncheon Conference, Phoenix, AZ, October 2014.
- “Challenges of Preserving Modern Architecture,” Frank Lloyd Wright Conservancy Annual Conference, Phoenix, AZ, October 2014.
- “Arizona Water Issues,” Rocky Mountain Land Use Institute Conference, Denver, CO, November 2013.
- “The Fourth Generation of Arizona Water,” Panel Discussion with Senator Jon Kyl, ASU Morrison Institute State of our State, Phoenix, AZ, November 2013.

“Arizona Sustainability: A 21st Century Case Study,” American Council of Engineering Companies National Conference, Scottsdale, AZ, October 2013.

“Arizona Perspective,” for the Minneapolis/St. Paul Chamber of Commerce visit to Phoenix, AZ, October 2013.

“Sustaining Arizona,” The Hal W. Hunt Memorial Lecture, Deep Foundations Institute National Conference, Phoenix, AZ, September 2013.

“Arizona Water Myths and Realities,” Arizona Hydrological Society Annual Meeting, Tucson, AZ, September 2013.

“Watering the Sun Corridor,” Arizona Water Reuse Conference, Flagstaff, AZ, July, 2013.

Keynote Speaker: National Conference of the Water Reuse Foundation, Phoenix, AZ, May, 2013.

Keynote Speaker: US Public Health Service Scientific and Training Symposium, Glendale, AZ, May 2013.

“Arizona 3.0,” Arizona Business & Education Coalition Annual Conference, Phoenix, AZ, May 2013.

Keynote Speaker: WaterReuse Foundation Water Reuse & Desalination Research Conference, Phoenix, AZ, May 2013.

Keynote Speaker: Alliance for Construction Excellence Public/Private Partnership Conference, Phoenix, AZ, March 2013.

Keynote Speaker: ASA Fall Superintendency/Higher Ed Conference, Prescott, AZ, October 2012.

“Arizona State of our State” 9th Annual Arizona Pavements and Materials Conference, Tempe, AZ, October 2012.

“Arizona’s Sun Corridor,” Verde Valley Regional Economic Organization Speakers Series, Sedona, AZ, September 2012.

“Arizona’s First One Hundred Years,” Arizona Mortgage Lenders Association Annual Luncheon, Scottsdale, AZ, September 2012.

“Supreme Court Decision on City of Tucson v. State of Arizona: What This Means for Arizona Cities and Towns,” League of Cities Conference, Scottsdale, AZ, August 2012.

Keynote Speaker: Continuing Legal Education International's 20th Annual AZ Water Law Conference, Phoenix, AZ, August 2012.

Keynote Speaker: Arizona American Public Works Association/Solid Waste Association of North America Annual Symposium, Phoenix, AZ, August 2012.

“What’s the Deal with Arizona?” Arizona Business Education Council Meeting, Tempe, AZ, June 2012.

“Watering the Sun Corridor,” National Federation of Municipal Analysts Annual Meeting, Las Vegas, NV, April 2012.

- “Is Phoenix Sustainable?” PURL debate with Andrew Ross, author of *Bird on Fire*; Phoenix, AZ, April 2012.
- “Broadacre City and Phoenix,” Panel at Phoenix Art Museum in connection with Frank Lloyd Wright Exhibit, Phoenix, AZ, March 2012.
- “Tucson’s Place in the Sun Corridor”, Tucson Metro Chamber of Commerce, Tucson, AZ, March 2012.
- “Rehousing the American Dream,” Panel discussion at the Museum of Modern Art, New York, March 2012.
- “Watering the Sun Corridor,” Water Resources Research Center Annual Conference, Tucson, AZ, January 2012.
- “Public Lands: The Dysfunctional Lessons of Attempts at State Trust land Reform,” American Family Farm Foundation, Sedona, AZ, January 2012.
- “What’s the Deal with Arizona?,” Morrison Institute State of our State Address, Phoenix, AZ, November 2011.
- “Arizona and Water Sustainability,” American Water Works Association Annual Conference, Phoenix, AZ, November 2011.
- “Water, Agriculture and the Future of the Southwest,” National Association of Wheat Growers, Tucson, AZ, November 2011.
- “Changing the Dialogue: Thinking About Arizona Water Sustainability,” Arizona Hydrological Conference, Flagstaff, AZ, September 2011.
- “Water, Conflict and Climate Change: A Conversation about Western Water,” Sponsored by Discover Magazine and the Weather Channel, Tempe, AZ, August 2011. Featured as “Water Wranglers” in Discover Magazine, December 2011.
- “Watering the Sun Corridor,” Project Central International Conference, Tucson, AZ, August 2011.
- “Arizona’s Gift Clause,” Rocky Mountain Land Use Institute, Denver, CO, March 2011.
- “Future of Water Partnerships in AZ,” National Public/Private Association, Phoenix, AZ, September 2010.
- “The Value of Open Space,” Pinal Open Space Conference, Coolidge, AZ, September 2010.
- “God and Zoning: The Use of RLUIPA,” State Bar of Arizona Land Use Panel, Phoenix, AZ, June 2010.
- “CityNorth and Arizona’s Gift Clause,” Arizona Association for Economic Development, Phoenix AZ, May 2010.
- “ASU: The New American University and Metro Phoenix,” Atlanta Leadership Council, Phoenix AZ, April 2010.
- “Arizona’s Gift Clause and the CityNorth Decision,” Arizona League of Cities and Towns, Phoenix, AZ, March 2010.
- “Arizona Perspective on Western Water Issues,” WAMCA, Santa Barbara, CA, March 2010.
- “Real Estate Trends: The CityNorth Decision,” ULI, Phoenix, AZ, January 2010.

- “The Future of Agriculture in Central Arizona,” Decision Center for a Desert City, Tempe AZ, January 2010.
- “Northern Gila County Economic Sustainability,” Northern Gila County Economic Development Organization, Payson AZ, December 2009.
- “Connecting Water and Land Use,” Urban Land Institute, Las Vegas, NV, December 2009.
- “Rethinking Arizona,” Arizona Planning Association Annual Conference, Prescott, AZ, October 2009.
- “Responding to a Changing Economy,” National Association of Regional Councils, Phoenix, AZ, October, 2009.
- “Sustainability, Water and Development,” State Capitol Museum, Phoenix, AZ, September, 2009.
- “Rethinking Arizona,” Arizona Transit Association, Tempe, AZ, April 2009.
- “Prop 207 and Transit Oriented Development,” EPA, Phoenix, AZ, April 2009.
- “Arizona Water Issues,” Water Resource Research Center, Tucson, AZ, March 2009.
- “Arizona Water – Canalscape,” Arizona State University Canalscape Symposium, Phoenix, AZ, February 2009.
- “Arizona Water – The Big Picture,” Little Colorado Watershed Conference, Show Low, AZ, January 2009.
- “State Trust Land Reform,” McDowell Sonoran Land Conservancy, Scottsdale, AZ, February 2008.
- “Will Phoenix go the way of the Hohokam?,” Panel discussion hosted by High Country News, January 2008.
- “Comparing Phoenix and Denver,” Denver Leadership (including Mayor of Denver and Governor of Colorado), October 2007.
- “Arizona’s Counties and the Future,” County Supervisors’ Association, Flagstaff, October, 2007.
- “Growth and Water: Is Conservation Enough?,” Panel discussion at the Colorado River Symposium, Santa Fe, September 2007.
- “Arizona Home Rule,” Arizona League of Cities and Towns Conference, Scottsdale, August 2007.
- “Superstition Vistas: Scenarios for the Future,” Pinal County Economic Foundation, Casa Grande, February 2007.
- “Downtown Phoenix Development Challenges,” American Institute of Architects State Conference, Phoenix, November 2006.
- “The University and the City,” Association of Urban Historians National Conference, Tempe, October 2006.
- “Public Policy Choices,” Boise Chamber of Commerce Retreat, Sun Valley, Idaho, May 2006.
- “Economic Development in Arizona: Past and Future,” Arizona Association of Economic Development Annual Conference, Pinetop, May 2006.
- “Water and Growth in the West,” Nevada Water Resources Association, Mesquite, Nevada, February 2006.

- “Phoenix and Sustainability,” Western Fulbright Students from Foreign Countries, Tempe, February 2006.
- “Urban Growth and Water,” Keynote address at Colorado River Water User’s Association Annual Conference, Las Vegas, Nevada, December 2005.
- “Growth, Resources and Greater Phoenix,” Association of Pacific Coast Geographers, Phoenix, October 2005.
- “Report from the Lower Basin,” Western States Water Forum, Gunnison, Colorado, July 2005.
- “Confessions of a Water Buffalo,” American Bar Association Natural Resources Law Section, San Diego, February 2005.
- “Phoenix in Perspective,” Goldwater Lecture, Arizona Historical Foundation, Phoenix, February 2005.
- “Introduction to Phoenix,” Chinese Planning Delegation to U.S., Portland, Oregon, September 2004.
- “Experiment Phoenix,” Land Use Planning in the West – Then and Now, Stanford University, April 2004.
- “Arizona’s Growing Smarter Experience,” - American Planning Association National Conference, March 2003
- “Which Way Scottsdale?” - Televised Public Forum, April 2003
- “Preservation Issues at Arizona State,” - Campus Heritage Preservation: A National Conference; University of Oregon, Chicago, June 2002
- “Trust Land Conservation,” - Sustainable Landscapes Conference, Utah State University, Logan, Utah, May 2002
- “Phoenix in Perspective Revisited” - The Annual Herberger Lecture, Arizona State University College of Architecture, March 2002
- “Issues in Conservation: The Post War Suburb” - Getty Lecture Series, Getty Museum, Los Angeles, March 2002
- “The Politics of Recharge” - Arizona Hydrological Symposium, June 2001
- “Planning by Plebescite” - Rocky Mountain Land Use Institute, Denver, April 2001
- “Conveying Land Use and Environmental Decision Making” - ABA Section on Natural Resources, Las Vegas, March 2001
- “Basic Due Process and Takings” - National Historic Preservation Conference, Los Angeles, November 2000
- “Legal Standards for Preservation Commissions” - National Alliance of Preservation Commissions” Pittsburgh, August 2000
- “Water, Land and Growth” – American Planning Association, Five Corners Conference, Flagstaff, 1999
- “Arizona, The CAP and the Colorado River” – Rocky Mountain Mineral Law Foundation, Tenth Institute For Natural Resources Law Teachers, Las Vegas, 1999

"When Sprawl Becomes Historic" – National Historic Preservation Conference, Washington, D.C., 1999

"A Debate on the Quality of Life, Controlling Growth and Defining the Phoenix Style" – Outlook '99, Phoenix Metro Chamber of Commerce (with Reed Kroloff, Editor, Architecture Magazine), October 1998

"Sun, Water, Land: Thoughts on Guiding Southwestern Growth" – Keynote address at New Mexico Town Hall, 1997

"Legal Issues in Neighborhood Preservation" – America Planning Association, National Conference, San Diego, 1997

"The Future of The Central Arizona Project" – CAP Twenty-fifth Anniversary Celebration, September 1996

"Arizona's Proposition 300 & Property Rights" – Plenary Session, National Historic Preservation Conference, Ft. Worth, Texas, October 1995

"Sprawl: Pro and Con" – National Trust for Historic Preservation Advisors Meeting, Washington, D.C., May 1995

"Has Direct Democracy Gone Too Far? Should there be Limits on Initiative and Referendum?" – The 1992 Great Debate, sponsored by Valley Partnership

"Economic Hardship in Preservation Hearings" – National Historic Preservation Conference, Miami, Florida, October 1992

Symposium on Economic Hardship, Preservation League of New York State, Vassar College, May 1992

"Should Your Tax Dollars be used to Support Sports, Arts and Entertainment?" – The 1991 Great Debate, sponsored by Valley Partnership, 1991

"Can Phoenix Ever be a Great City?" – The Dickie Penguin Memorial Debate; Arizona State University College of Architecture and Environmental Design, 1990

"Master Planning State Trust Lands" – Western State Land Commissioner's Association, Rapid City, South Dakota, 1990

SELECTED PUBLICATIONS:

Morrison Institute Reports:

Principal Author:

"Sustaining Phoenix: Beyond Desert Survival," April, 2013, 19 p.

"Watering the Sun Corridor: Managing Choices in Arizona's Megapolitan Area," July, 2011, 38 p.

"The Price of Stewardship: The Future of Arizona's State Parks," October, 2009, 46 p.

"Megapolitan: Arizona's Sun Corridor," May 2008, 51 p.

"The Treasure of the Superstitions: Scenarios for the Future of Superstition Vistas," April 2006

"The Future at Pinal: Making Choices / Making Places," July 2007, 47 p.

"We are L.A.?" for Morrison Institute series *Forum 411*. September, 2008, 8 pages.

Contributor:

State Trust Lands and Education Funding, 2015.

"Sun Corridor: A Competitive Mindset," 2014.

"Sustainability for Arizona: The Issue of Our Age," November 2007

"Hits and Misses: Fast Growth in Metropolitan Phoenix," September 2007

"Arizona Ideas," September 2006

"Phoenix and the Vision Thing" – *Arizona Policy Choices*, Morrison Institute, Fall 1998

Books:

The Future of the Suburban City: Lessons from Sustaining Phoenix; – Island Press, April, 2016.

Phoenix in Perspective: Reflections on Developing The Desert; – Herberger Center for Design Excellence, Arizona State University, 1999, 180 pp. Second Edition, 2003

Historic Preservation in California: A Legal Handbook – Stanford Environmental Law Society and The National Trust for Historic Preservation, 1975, 145 pages, with Stephen and Philip Jones

Articles, Chapters and Papers:

"Just Add Water," in *The Environmental Forum*, www.eli.org, November/December 2016.

"Proposition 207," in *Land Use Challenges and Choices for the 21st Century*, Report for the Ninety First Arizona Town Hall, October 2007

"Shaped by Water: An Arizona Historical Perspective," with Jack L. August, Jr., in *Colby & Jacobs Arizona Water Policy Resources for the Future*, Press 2007

"Our Water Legacy," in *Greater Phoenix Regional Atlas*, Arizona State University, 2003

"Thoughts on Urban Growth Boundaries" – *Arizona Planning*, February, 1998

Greater Phoenix 2100: The Arizona State University Urban Atlas; ASU Center for Study of Rapidly Urbanizing Regions, April 2003.

"Growing Weary?" – *Phoenix Magazine*, November 1996

"Squareacre, Broaddesert: Visions of Phoenix" – *Frank Lloyd Wright: The Phoenix Papers*, Vol. 1: Broadacre City, Arizona State University, The Herberger Center for Design Excellence, 1995

"The Property Rights Debate: A Preservationist's Guide" – *Forum News*, Vol. 1, No. 4, National Trust for Historic Preservation, May/June 1995

"Design Review Comes to Phoenix" – Chapter 8 in Scheer and Preiser, ed., *Design Review: Challenging Urban Aesthetic Control*, Chapman and Hall, 1994

"The Changing Role of the Central Arizona Water Conservation District" – *WaterWords*, Vol. 13, No. 2, Southern Arizona Water Resources Association, March/April, 1995

"Design Review: A Perspective from the West" – *Historic Preservation Forum*, The Journal of the National Trust for Historic Preservation, Vol. 5, September/October 1991, with Deborah Edge Abele

"Phoenix Does It Citywide; A Primer for Writing Design Guidelines" – *Planning*, American Planning Association, Vol. 57, No. 5, May 1991

"Land Use Decisions: Context and Conflict" – *FORUM*, Arizona Real Estate Center, College of Business, Arizona State University, Vol. 2, No. 3, 1989

"The Bureaucrat as Developer: Arizona's Urban Lands Act" – *Arizona Bar Journal*, February, 1989, with Karen L Schroeder

"State Trust Land and the Enabling Act Reconsidered" – *Arizona Bar Journal*, April/May, 1986, with Karen L Schroeder

"The State Urban Lands Act" – *Arizona Bar Journal*, February, 1982

EDUCATION:

Stanford Law School, J.D., 1976. Honors and Activities:

Order of the Coif (top 10% of class)
Co-chairman, Environmental Law Society
Internship, Natural Resources Defense Council
Member, University Committee on Land and Building Development (functioned as the Planning Commission for 6,000 acres of the San Francisco Peninsula owned by Stanford University)

Occidental College, B.A., Magna Cum Laude, 1973 Honors and Activities:

Phi Beta Kappa
Departmental Honors, American Studies
Richter Fellowship to study architectural history of American railroad stations
Student Member, Faculty Committee on Educational Policy and Curriculum

PROFILED IN:

Southwest Super Lawyers, 2005 – Present
The Best Lawyers in America, 1991 – Present; Woodward/White
The American Lawyer, March, 1985
Northwest Orient Magazine, November, 1983

PERSONAL:

Born October 1, 1951, Phoenix, Arizona
Married, three children
Wife: Karen Marie Gammage