

## Law and real estate

# How are developers building taller, denser dwellings? Art!

**PARKER LEAVITT**  
SPECIAL FOR THE ABG

At least a dozen Scottsdale development projects have taken advantage of a lesser-known provision in the city's zoning code that allows taller buildings and greater density in exchange for public art and other improvements since the ordinance was adopted five years ago, records show.

A seven-story office tower planned for downtown will be 30 feet taller than zoning would typically allow. An apartment complex on Scottsdale Road was granted 33 additional units. A mixed-use development under construction near WestWorld is rising 65 feet, standing taller than any of its surroundings.

In a community where many residents take pride in a skyline dominated by desert mountains rather than skyscrapers, an influx of urban-style development in recent years has sparked backlash and taken center stage during political campaigns. Critics say the City Council is giving away Scottsdale's unique flavor. Others say the developments are bringing renewed vitality to aging neighborhoods.

### Height and density bonuses in Scottsdale

The idea to generate public art funding through private developer contributions dates back to the 1980s in Scottsdale, when the City Council approved an ordinance that required certain large-scale projects to donate 1 percent of their capital cost, according to city planner Dan Symer.

While that requirement continues today, the city in 2012 added the provision outlining potential height and density bonuses for downtown developers willing to pay more. In 2013, such bonuses were extended to projects within the Airpark area, too.

City planners have fielded 94 general zoning requests since the start of 2013, but only a handful have sought height or density bonuses. The provision rarely generates public debate, but is concerning to some, including Scottsdale City Councilman David Smith.

"We should not have an ordinance that announces Scottsdale's zoning requirements are for sale," Smith told *The Republic*. "We should be willing to work with developers to solve individual, unique site problems. In return, we must negotiate a meaningful return for our client — the citizens of Scottsdale."

So far, the return for Scottsdale taxpayers has included millions of dollars from developers for special improvements intended to benefit the public. That has included art pieces, energy-efficient buildings, sidewalk improvements, buried power lines and cash payments into a city trust fund.

Sometimes, however, it's the private developments themselves that benefit the most from the public improvements.

Sculptures can be erected within the project's own courtyard. Energy efficiency becomes a selling point that increases a residential unit's sales appeal.

"Too often, the public art that is accepted in return for zoning variances is actually private art installed primarily for the benefit of residents or employees associated with an approved project," Smith said. "This is particularly unfair to our citizens at large."

### Lego bricks for taller lofts

Several oversized Lego-style sculptures weighing more than 1,800 pounds each will soon arrive at Soho Scottsdale, a swanky loft and townhouse project at Bahia Drive and 92nd Street. The bricks — available in red, yellow, purple, green and blue — are part of the developer's public art commitment that landed the project a bonus for taller and bigger buildings.

Soho Scottsdale's Lego blocks will adorn landscaped areas mostly on the exterior of the development, so they'll be visible to people passing through the surrounding business park. Tucked out of sight from any major thoroughfare, though, the project could easily escape the gaze of most Scottsdale residents.

In addition to the sculptures, four murals by local artist Lauren Lee will help draw people to Soho Scottsdale, and the project will feature artistically-designed concrete on sidewalks and courtyards, according to developer Irene Clary.

"It will be an environment that isn't just a stark development," Clary said. "It will have color and it will have culture."

When the City Council initially awarded zoning bonuses for Clary's project in 2014, the developer agreed to pay for \$800,000 of infrastructure in and around the WestWorld event center, including an acoustic wall for the event hall and landscaping at the equestrian center. That changed a year later when the city altered the plan to allow on-site public art instead, along with compliance with the International Green Construction Code.

"So, not only did we get the density and height, we got the ability to utilize the funds that we gave and really put the public art on our site," Clary said. The project includes some commercial space in a "live-work" environment, which provided justification for putting the public art on private property, she said.

Soho Scottsdale's first model units are expected to open in March, and the first residents could move in this summer, Clary said.

### Cash payment for more apartments

A four-story apartment complex called Alta Osborn won approval from the Scottsdale City Council in Novem-

ber, including a development bonus that allows Texas-based Wood Partners to build 277 units instead of the 244 permitted by the zoning code.

The project will replace the vacant Luxor Auto Group dealership on Scottsdale Road north of Earll Drive and feature a pool area, 7,000-square-foot clubhouse and 3,000-square-foot fitness center.

In exchange for increased density, Wood Partners will pay \$388,000 into a trust fund for cultural improvements in downtown Scottsdale. Developer contributions for public art are managed by Scottsdale Arts, a non-profit group that also runs the Scottsdale Center for the Performing Arts and Scottsdale Museum of Contemporary Art.

The group oversaw the completion of three permanent public art projects in fiscal year 2016, including roadside sculptures along Thomas Road at Indian Bend Wash and the "Diamond Bloom" sculpture on Marshall Way downtown, according to the group's annual report.

Several other developments have received zoning bonuses in recent years including:

» Galleria Corporate Centre: In 2015, Scottsdale raised allowable building height to 90 feet from 69 feet. The property owner agreed to set aside 60 parking spaces for public use between 5 p.m. and 3 a.m.

» Shoeman Office Tower: Scottsdale City Council last year increased building height to 96 feet from 66 feet in exchange for compliance with the city's "green building" program, streetscape improvements and a \$269,000 payment to the downtown trust fund.

» WaterView: The project will receive an additional 24 feet of allowed building height for a proposed hotel or 33 additional residential units if the hotel is not built. The developer will pay between \$266,000 and \$366,000 to bury power lines underground in order to qualify for the bonus.

### Mixed opinions on practice

City officials received numerous emails from the business community in support of the bonus ordinance when it was introduced to the Scottsdale Airpark in 2013. Councilwoman Virginia Korte, at the time, had said the ordinance would send a message to investors and provide clarity for developers.

Others, including Councilman Guy Phillips and then-Councilman Bob Littlefield, had called the ordinance "terrible" and "irresponsible" before casting the dissenting votes in the 5-2 decision.

Smith, who began his first City Council term in January 2015, echoed the concerns over zoning bonuses.

"I don't think citizens expect, or even know, the city has a published 'rate card' for zoning variances," Smith said. "To incentivize the arts through the sale of zoning variances is not what citizens had in mind."

### Ask the Experts

DON JOHNSEN AND  
MARIAN M. ZAPATA-ROSSA

## Breakup gets messy in the workplace

*I was in a relationship with a co-worker, which company policy does not forbid as long as we fill out a form with HR stating we are dating, which we did. The relationship ended messily and my ex filed a complaint saying I'm creating a "hostile work environment" and wants the company to transfer me to another city. I told them I don't want to move. Can they force me to move — or even fire me — all based on my ex's complaint?*

### Answer: Employer must respond



You may not have many options.

All employers in Arizona are obligated to respond to complaints that someone is discriminat-

ing against a worker on the basis of his or her legally protected class status — such as race, religion, sex, national origin, age or disability — by creating a "hostile work environment" for the worker. Management must review the matter carefully, make a good faith judgment about whether any improper behavior has occurred and if so, take timely and appropriate action to stop the behavior and preventing it from recurring.

Management has significant discretion about how to remedy any given situation. Sometimes a warning, transfer or other discipline will suffice. But sometimes management may feel that the situation calls for termination.

If management has reviewed the matter and concluded that you acted improperly, it has significant discretion to do what it thinks is best. If management decides that a transfer is appropriate, it has the legal right to make that call. If you refuse to accept it, management would have the legal right to terminate.

It's not clear here that the "hostility" actually is based on the ex's legally protected class status. If the complaint arises only from the unfortunate deterioration in the personal relationship between two workers, then that's not necessarily a "legal" claim.

But even in that case, management has significant discretion to deal with such a personality clash as it deems appropriate.

— Don Johnsen, Gallagher & Kennedy

### Answer: Policies help prevent harassment

Without knowing the details of your ex's complaint, the short answer to your question is yes, an employee may be terminated or required to move locations, as the result of a harassment investigation.



Harassment in the workplace is unlawful. If your ex's complaint is substantiated and your conduct is found to constitute harassment or otherwise violate any policy the company has prohibiting harassment in the workplace, the company must take appropriate actions to remedy the situation. Depending on the particular facts and circumstances of your situation, such remedial actions may include moving or terminating your employment. Advising the company you two were dating does not necessarily change the analysis.

Preventing harassment in the workplace by having an anti-harassment policy, investigating any complaints and taking appropriate actions to correct harassment allows an employer to legally defend itself against claims of harassment among employees.

The U.S. Supreme Court has long held that not every inappropriate incident constitutes harassment. The conduct must be unwelcome, verbal or physical conduct of a harassing nature that is sufficiently severe or pervasive to alter the conditions of the employee's employment and create an abusive working environment. The conduct must also be based on a legally protected category. Although not all conduct that violates an employer's anti-harassment policy rises to the level of being legally actionable, such policies are intended to prevent unlawful harassment from occurring in the first place.

— Marian M. Zapata-Rossa, Quarles & Brady

Compiled by Georgann Yara.

## Trans

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plying to more than 40 jobs before landing his current marketing position at another firm. There, the Maricopa resident has told only his boss that he is transgender. He's afraid of opening himself up to another tense work environment if more people find out.

Smith's experiences aren't an anomaly. Every transgender Arizonan interviewed by *The Arizona Republic* for this article reported experiencing discrimination in hiring or employment based on their gender identities, as well as fears of being outed and fired at work.

Their stories reflect data from the largest study ever devoted to the lives of transgender people — the 2015 U.S. Transgender Survey — which found that 16 percent of Arizona respondents were unemployed and 28 percent lived in poverty.

That's almost three times the 2015 unemployment rate for the Arizona population at large and almost twice the poverty rate, with transgender people of color faring even worse. The study's Arizona results were released last month.

"Those numbers don't surprise me at all," said Ashton Skinner, transgender outreach coordinator for diversity-and-inclusion coalition One Community. "A lot of people don't realize that in Arizona you can still be fired or otherwise flat-out discriminated against based on your sexual orientation or gender identity."

### Persistent challenges

For some transgender Arizonans, the road to low wages or unemployment begins in grade school.

Roughly 17 percent of survey respondents said they faced so much harassment during their K-12 years, they dropped out before getting a high school diploma, limiting their employment options.

Transgender people with post-secondary degrees and work experience can face job-hunting obstacles, too. One of the most common is inconsistencies in documentation, such as a mismatch between the name on their job applications and the name on their driver's licenses, especially if they transitioned later in life.

"Something most (non-transgender) people take for granted is the ability to have ID," said Mara Keisling, executive director of the National Center for Transgender Equality, the organization behind the survey.

"If your name is Leticia, but your ID document clearly says your name is Marcus, you're going to have to out yourself as trans to get a job, setting yourself up for discrimination," she said.

The cost and requirements to change names and genders on driver's licenses, diplomas, birth certificates and other documents vary widely by state and institution.

Arizona is one of 23 states that require proof of transition surgery before issuing a new birth certificate with a revised name and gender, according to the NCTE. LGBT rights advocates consider the rule a major barrier because not ev-

ery transgender person can afford or chooses to undergo sex-reassignment operations.

Though Arizona doesn't require proof of surgery to change the gender on a driver's license, applicants must submit a doctor's letter saying they are "irrevocably committed" to a gender transition.

Transgender people seeking to update multiple forms of ID can quickly spend hundreds of dollars on the required fees. Nearly 40 percent of transgender Arizonans who had not changed their legal names or updated their gender on ID documents cited cost as an obstacle in the survey.

### Looking ahead

LGBT rights advocates see a state-wide anti-discrimination law as a critical step in facilitating fair hiring and employment processes for transgender Arizonans. But they acknowledge it could be years before such a measure passes.

In the meantime, they say, there's plenty that employers and human-resources teams can do to create safer and more comfortable work environments.

"Trainings that help people understand gender identity, and how to treat trans applicants or employees with sensitivity, are a big one," said Skinner, with One Community. "For a trans person, just knowing your HR department is providing training could be that first step toward feeling comfortable sharing about your transition."

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