

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HOUSE BILL 2155

AN ACT

AMENDING SECTIONS 9-462.01 AND 11-821.03, ARIZONA REVISED STATUTES; REPEALING LAWS 2005, CHAPTER 273, SECTION 4; RELATING TO TRANSFERS OF DEVELOPMENT RIGHTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 9-462.01, Arizona Revised Statutes, is amended to
3 read:

4 9-462.01. Zoning regulations; public hearing; definitions

5 A. Pursuant to ~~the provisions of~~ this article, the legislative body of
6 any municipality by ordinance may in order to conserve and promote the public
7 health, safety and general welfare:

8 1. Regulate the use of buildings, structures and land as between
9 agriculture, residence, industry, business and other purposes.

10 2. Regulate signs and billboards.

11 3. Regulate THE location, height, bulk, number of stories and size of
12 buildings and structures, the size and use of lots, yards, courts and other
13 open spaces, the percentage of a lot which may be occupied by a building or
14 structure, access to incident solar energy and the intensity of land use.

15 4. Establish requirements for off-street parking and loading.

16 5. Establish and maintain building setback lines.

17 6. Create civic districts around civic centers, public parks, public
18 buildings or public grounds and establish regulations therefor.

19 7. Require as a condition of rezoning public dedication of
20 rights-of-way as streets, alleys, public ways, drainage and public utilities
21 as are reasonably required by or related to the effect of the rezoning.

22 8. Establish floodplain zoning districts and regulations to protect
23 life and property from the hazards of periodic inundation. Regulations may
24 include variable lot sizes, special grading or drainage requirements, or
25 other requirements deemed necessary for the public health, safety or general
26 welfare.

27 9. Establish special zoning districts or regulations for certain lands
28 characterized by adverse topography, adverse soils, subsidence of the earth,
29 high water table, lack of water or other natural or man-made hazards to life
30 or property. Regulations may include variable lot sizes, special grading or
31 drainage requirements, or other requirements deemed necessary for the public
32 health, safety or general welfare.

33 10. Establish districts of historical significance provided that:

34 (a) The ordinances may require that special permission be obtained for
35 any development within the district if the legislative body has adopted a
36 plan for the preservation of districts of historical significance which meets
37 the requirements of subdivision (b) of this paragraph, and the criteria
38 contained in the ordinance are consistent with the objectives set forth in
39 the plan.

40 (b) A plan for the preservation of districts of historical
41 significance shall identify districts of special historical significance,
42 state the objectives to be sought concerning the development or preservation
43 of sites, area and structures within the district, and formulate a program
44 for public action including the provision of public facilities and the
45 regulation of private development and demolition necessary to realize these
46 objectives.

1 (c) The ordinance establishing districts of historical significance
2 shall set forth standards necessary to preserve the historical character of
3 the area so designated.

4 (d) The ordinances may designate or authorize any committee,
5 commission, department or person to designate structures or sites of special
6 historical significance in accordance with criteria contained in the
7 ordinance, and no designation shall be made except after a public hearing
8 upon notice of the owners of record of the property so designated. The
9 ordinances may require that special permission be obtained for any
10 development respecting the structures or sites.

11 11. Establish age specific community zoning districts in which
12 residency is restricted to a head of a household or spouse who must be of a
13 specific age or older and in which minors are prohibited from living in the
14 home. Age specific community zoning districts shall not be ~~overlaid~~
15 ~~OVERLAID~~ over property without the permission of all owners of property
16 included as part of the district unless all of the property in the district
17 has been developed, advertised and sold or rented under specific age
18 restrictions. The establishment of age specific community zoning districts
19 is subject to all of the public notice requirements and other procedures
20 prescribed by this article.

21 12. Establish procedures, methods and standards for the transfer of
22 development rights within its jurisdiction. Any proposed transfer of
23 development rights from the sending property or to the receiving property
24 shall be subject to the notice and hearing requirements of section 9-462.04
25 and shall be subject to the approval and consent of the property owners of
26 both the sending and receiving property. ~~Prior to~~ BEFORE any transfer of
27 development rights, a municipality shall adopt an ordinance providing for:

28 (a) The issuance and recordation of the instruments necessary to sever
29 development rights from the sending property and to affix development rights
30 to the receiving property. These instruments shall be executed by the
31 affected property owners and lienholders.

32 (b) The preservation of the character of the sending property and
33 assurance that the prohibitions against the use and development of the
34 sending property shall bind the landowner and every successor in interest to
35 the landowner.

36 (c) The severance of transferable development rights from the sending
37 property and the delayed transfer of development rights to a receiving
38 property.

39 (d) The purchase, sale, exchange or other conveyance of transferable
40 development rights prior to the rights being affixed to a receiving property.

41 (e) A system for monitoring the severance, ownership, assignment and
42 transfer of transferable development rights.

43 (f) The right of a municipality to purchase development rights and to
44 hold them for resale.

45 (g) ~~THE RIGHT OF A MUNICIPALITY AT ITS DISCRETION TO ENTER INTO AN~~
46 ~~INTERGOVERNMENTAL AGREEMENT WITH ANOTHER MUNICIPALITY OR A COUNTY FOR THE~~

1 TRANSFER OF DEVELOPMENT RIGHTS BETWEEN JURISDICTIONS. THE TRANSFER SHALL
2 COMPLY WITH THIS PARAGRAPH, EXCEPT THAT IF THE SENDING PROPERTY IS LOCATED IN
3 AN UNINCORPORATED AREA OF A COUNTY, THE APPROVAL OF THE DEVELOPMENT RIGHTS TO
4 BE SENT TO A MUNICIPALITY SHALL COMPLY WITH SECTION 11-821.03.

5 B. For the purposes prescribed in subsection A of this section, the
6 legislative body may divide a municipality, or portion of a municipality,
7 into zones of the number, shape and area it deems best suited to carry out
8 the purpose of this article and articles 6, 6.2 and 6.3 of this chapter.

9 C. All zoning regulations shall be uniform for each class or kind of
10 building or use of land throughout each zone, but the regulations in one type
11 of zone may differ from those in other types of zones as follows:

12 1. Within individual zones, there may be uses permitted on a
13 conditional basis under which additional requirements must be met, including
14 requiring site plan review and approval by the planning agency. The
15 conditional uses are generally characterized by any of the following:

- 16 (a) Infrequency of use.
- 17 (b) High degree of traffic generation.
- 18 (c) Requirement of large land area.

19 2. Within residential zones, the regulations may permit modifications
20 to minimum yard lot area and height requirements.

21 D. To carry out the purposes of this article and articles 6 and 6.2 of
22 this chapter, the legislative body may adopt overlay zoning districts and
23 regulations applicable to particular buildings, structures and land within
24 individual zones. For the purposes of this subsection, "overlay zoning
25 district" means a special zoning district that includes regulations which
26 modify regulations in another zoning district with which the overlay zoning
27 district is combined. Overlay zoning districts and regulations shall be
28 adopted pursuant to section 9-462.04.

29 E. The legislative body may approve a change of zone conditioned upon
30 a schedule for development of the specific use or uses for which rezoning is
31 requested. If at the expiration of this period the property has not been
32 improved for the use for which it was conditionally approved, the legislative
33 body, after notification by certified mail to the owner and applicant who
34 requested the rezoning, shall schedule a public hearing to take
35 administrative action to extend, remove or determine compliance with the
36 schedule for development or take legislative action to cause the property to
37 revert to its former zoning classification.

38 F. All zoning and rezoning ordinances or regulations adopted under
39 this article shall be consistent with and conform to the adopted general plan
40 of the municipality, if any, as adopted under article 6 of this chapter. In
41 the case of uncertainty in construing or applying the conformity of any part
42 of a proposed rezoning ordinance to the adopted general plan of the
43 municipality, the ordinance shall be construed in a manner that will further
44 the implementation of, and not be contrary to, the goals, policies and
45 applicable elements of the general plan. A rezoning ordinance conforms with
46 the land use element of the general plan if it proposes land uses, densities

1 or intensities within the range of identified uses, densities and intensities
2 of the land use element of the general plan.

3 G. No regulation or ordinance under this section may prevent or
4 restrict agricultural composting on farmland that is five or more contiguous
5 acres and that meets the requirements of this subsection. An agricultural
6 composting operation shall notify in writing the legislative body of the city
7 or town and the nearest fire department of the location of the composting
8 operation. If the nearest fire department is located in a different city or
9 town from the agricultural composting operation, the agricultural composting
10 operation shall also notify in writing the fire department of the city or
11 town in which the operation is located. Agricultural composting is subject
12 to ~~the provisions of~~ sections 3-112 and 49-141. Agricultural composting may
13 not be conducted within one thousand three hundred twenty feet of an existing
14 residential use, unless the operations are conducted on farmland or land
15 leased in association with farmland. Any disposal of manure shall comply
16 with section 49-247. For THE purposes of this subsection:

17 1. "Agricultural composting" means the controlled biological
18 decomposition of organic solid waste under in-vessel anaerobic or aerobic
19 conditions where all or part of the materials are generated on the farmland
20 or will be used on the farmland associated with the agricultural composting
21 operation.

22 2. "Farmland" has the same meaning prescribed in section 3-111 and is
23 subject to regulation under section 49-247.

24 H. For THE purposes of this section:

25 1. "Development rights" means the maximum development that would be
26 allowed on the sending property under any general or specific plan and local
27 zoning ordinance of a municipality in effect on the date the municipality
28 adopts an ordinance pursuant to subsection A, paragraph 12 of this section
29 respecting the permissible use, area, bulk or height of improvements made to
30 the lot or parcel. Development rights may be calculated and allocated in
31 accordance with factors including dwelling units, area, floor area, floor
32 area ratio, height limitations, traffic generation or any other criteria that
33 will quantify a value for the development rights in a manner that will carry
34 out the objectives of this section.

35 2. "Receiving property" means a lot or parcel within which development
36 rights are increased pursuant to a transfer of development rights. Receiving
37 property shall be appropriate and suitable for development and shall be
38 sufficient to accommodate the transferable development rights of the sending
39 property without substantial adverse environmental, economic or social impact
40 to the receiving property or to neighboring property.

41 3. "Sending property" means a lot or parcel with special
42 characteristics, including farmland, woodland, desert land, mountain land,
43 floodplain, natural habitats, recreation or parkland, including golf course
44 area, or land that has unique aesthetic, architectural or historic value that
45 a municipality desires to protect from future development.

1 4. "Transfer of development rights" means the process by which
2 development rights from a sending property are affixed to one or more
3 receiving properties.

4 Sec. 2. Section 11-821.03, Arizona Revised Statutes, is amended to
5 read:

6 11-821.03. Transfer of development rights; definitions

7 A. The board of supervisors may establish procedures, methods and
8 standards for the transfer of development rights within its jurisdiction.
9 Any proposed transfer of all or any portion of the development rights of a
10 sending property to a receiving property is subject to the written approval
11 and consent of the property owners of both the sending property and the
12 receiving property. A county may not condition a change of zone on a
13 property owner's consent to or other participation in a proposed transfer of
14 development rights, except that a change of zone may be required to implement
15 a development agreement if it is voluntarily entered into by a property owner
16 or owners with a county for the transfer of development rights concurrently
17 with the county's approval of the change of zone. Before any transfer of
18 development rights, a county shall adopt an ordinance providing for:

19 1. The establishment, execution and recordation of instruments to
20 sever development rights transferred from the sending property and to affix
21 ~~such~~ THE development rights to the receiving property. The instruments shall
22 be executed by the property owners of the sending and receiving property and
23 any lienholders.

24 2. The preservation of the characteristics of the sending property
25 lending to the transfer of development rights and assurance that any of the
26 prohibitions against particular uses or development of the sending property
27 determined to be necessary to preserve ~~such~~ THE characteristics shall bind
28 the property owner and every successor in interest to ~~such~~ THE property.

29 3. A delay ~~prior to~~ BEFORE transfer of development rights to a
30 receiving property after the severance of transferable development rights
31 from a sending property.

32 4. The purchase, sale, exchange or other conveyance of transferable
33 development rights before the rights are affixed to a receiving property.

34 5. Procedures for monitoring the severance, ownership and transfer of
35 transferable development rights.

36 6. Appropriate public participation procedures for each type of
37 transaction.

38 7. Use of development agreements as an option for implementation.

39 B. The resulting density or intensity of land use of the receiving
40 property shall conform to the adopted comprehensive plan, as amended, if
41 applicable. If a plan amendment is required prior to the transfer, it shall
42 not be considered a major plan amendment.

43 C. THE BOARD OF SUPERVISORS MAY AUTHORIZE THE TRANSFER OF DEVELOPMENT
44 RIGHTS FROM UNINCORPORATED AREAS OF A COUNTY TO A MUNICIPALITY PURSUANT TO AN
45 INTERGOVERNMENTAL AGREEMENT.

- 1 ~~C.~~ D. For the purposes of this section:
- 2 1. "Ancillary military facility" has the same meaning prescribed in
- 3 section 28-8461.
- 4 2. "Development rights" means the maximum development that would be
- 5 allowed on the sending property under the adopted comprehensive plan, the
- 6 specific plan, if any, or the zoning ordinance, whichever provides greater
- 7 density or intensity of use or, if applicable, both, in effect on the date
- 8 the county adopts an ordinance pursuant to subsection A **OF THIS SECTION**,
- 9 respecting the permissible use, area, bulk or height of improvements made to
- 10 one or more lots or parcels. Development rights may be calculated and
- 11 allocated in accordance with factors including dwelling units, area, floor
- 12 area, floor area ratio, height limitations, traffic generation or any other
- 13 criteria that will quantify a value for the development rights in a manner
- 14 that will carry out the objectives of this section.
- 15 3. "High noise or accident potential zone" has the same meaning ~~as~~
- 16 prescribed in section 28-8461.
- 17 4. "Military airport" has the same meaning ~~as~~ prescribed in section
- 18 28-8461.
- 19 5. "Receiving property" means one or more lots or parcels within which
- 20 development rights are increased under the adopted comprehensive plan, the
- 21 specific plan, if any, or the zoning ordinance, whichever provides greater
- 22 density or intensity of use or, if applicable, both, in effect ~~prior to~~
- 23 **BEFORE** a transfer of development rights and an amendment to the adopted
- 24 comprehensive plan, specific plan or zoning ordinance, or a rezone of the
- 25 property, whichever is required to implement the increase in development
- 26 rights. The receiving property shall be suitable for development that
- 27 includes the transferred development rights consistent with the adopted
- 28 comprehensive plan, as amended, if applicable. Receiving property does not
- 29 include lots or parcels that are partially or wholly located within, or that
- 30 include, a high noise or accident potential zone of a military airport or an
- 31 ancillary military facility.
- 32 6. "Sending property" means one or more lots or parcels that are
- 33 partially or wholly located within, or that include, a high noise or accident
- 34 potential zone of a military airport or an ancillary military facility, a
- 35 floodplain, natural habitat, geologic features, recreation area or parkland,
- 36 or land that has unique aesthetic, architectural or historic value, that a
- 37 county determines is appropriate and necessary to restrict against particular
- 38 uses or future development that would impair or preclude preservation of the
- 39 characteristic or characteristics of the property or to protect the public
- 40 because of health or safety concerns.
- 41 7. "Transfer of development rights" means the process by which
- 42 development rights from one or more sending properties are affixed to one or
- 43 more receiving properties.
- 44 Sec. 3. Repeal
- 45 Laws 2005, chapter 273, section 4 is repealed.