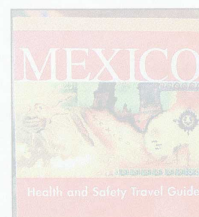


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The business resource



Health care in Mexico

Two Tempe physicians have written a book for the U.S. traveler to Mexico.

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Aging Tempe area going upscale

THE VALE PROJECT BLENDS VARIETY OF CONDOMINIUMS WITH A SELECTION OF SMALL SHOPS

By ERICA SAGON
Arizona Business Gazette

Urban infill housing is a hot market for Tempe developers, and buyers wasted no time snapping up one of the latest developments a mile west of Arizona State University. Contracts for The Vale will not be signed for a couple of weeks, but most of the 46 residential units and four commercial spaces are spoken for.

The \$11 million, 11-building development broke ground about a month ago at the southeast corner of University Drive and Beck Avenue.

Designed by architect Will Bruder, The Vale is the latest of a few infill housing developments at the intersection, which is surrounded by aging apartments and transient houses.

Merrion Square is under construction on the northwest corner and will feature condominium-style lofts and commercial units on the ground floor. Abby Lane townhomes are north of Merrion Square on Beck Avenue.

The small-scale urban revitalization will be pedestrian friendly and offer the mix of housing, restaurants and retail shops that made similar city-living style developments successful in downtown

The Vale

Location: Southeastern corner of University Drive and Beck Avenue.
Features: 46 condominiums, one-, two- and three-bedroom units ranging from 622 square feet to 2,263 square feet. Four retail units totaling 4,000 square feet.
Price: \$152,800 to \$510,800.
Architect: Will Bruder.
Developer: Beck Developments LLC.
Builder: Wespac Communities Inc.

Tempe, said Steve Venker, city planning and zoning manager.

"These developments are responding to interest that was expressed by the neighborhoods that are north and south of University (Drive) to bring more buildings up to the street, to bring more residents to that corridor," Venker said.

The Vale is one of the few mixed-use developments in Tempe, said Scott Jarson of Jarson & Jarson, the real estate firm for the development. Wespac Communities Inc. is the builder. Some buildings will be complete in eight to 10 months, and others will finish in 12 to 14



The Vale Condominiums in Tempe is a mixed-use development of residential units and retail space.

months.

The Vale is a mile west of Arizona State University, but typical students won't be able to afford the condos, which start at \$152,800 and sell for as much as \$510,800. Most fall between \$200,000 and \$300,000, Jarson said.

The Vale offers one-, two- and three-bedroom units, ranging from 622-square-foot studios to 2,263-square-foot homes. Two specially designed units offer 22-foot ceilings and curved walls.

The Vale will include seven working/living units for people with home-based businesses. The floor plan calls for a front office with access to the ground level and living space in the rear.

"With seven units, we thought that should be enough, but the demand has stripped the supply," Jarson said. "We have reservations on all of them."

Nicole Roberts, project developer

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Tougher county plant laws OK

APPEALS COURT RULES THAT STATE ALLOWS LEEWAY

By HOWARD FISCHER
Capital Media Services

Counties can restrict developers from destroying native plants even though state preservation laws are less restrictive, the Arizona Court of Appeals has ruled.

The three-judge panel rejected the contention of owners of property near Tucson that the

code is superseded by state statutes.

Judge Jan Florez said lawmakers crafted the law to permit counties to have their own, more restrictive rules.

Florez also rejected attorney Robin Carter's argument that the county ordinance amounts to an unconstitutional taking of the property rights of his clients. She said the trust owned by Kent and Judith Wonders still can develop the 174 acres but not as fully as the Wonders wanted.

Carter said he believes the appellate court is wrong and may seek review by the state Supreme Court.

The state native plant law says that before a property owner can destroy certain listed plants, he or she must notify the state Department of Agriculture. That leads to public notice, which gives others the opportunity to salvage the plants.

The statute also says that if no takers emerge, there is no restriction against destroying the plants.

By contrast, a Pima County ordinance requires property owners to comply with one of three preservation methods.

One provides for selective plant preservation, designed to keep some in place and the sal-

vage and transplanting onto the same parcel of other specimens. A second plant appraisal method has similar requirements.

The third option requires a property owner to evaluate all the specimens on site and then permanently set aside 30 percent of the property with the highest "resource value" where no development is permitted.

Carter argued this amounts to an unconstitutional taking of his property without compensation. Florez said, however, that to meet that burden, a property

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Court: Tire company must pay

BRIDGESTONE/FIRESTONE ORDERED TO REIMBURSE CAR RENTAL FIRM

By **HOWARD FISCHER**
Capitol Media Services

Bridgestone/Firestone North American Tire LLC has to contribute to a \$9.5 million jury verdict against APS Rent-A-Car & Leasing Inc. after a tire failed, causing an accident that killed one person and injured several others.

The Arizona Court of Appeals says Bridgestone/Firestone cannot refuse to do its part in defending a product liability claim brought against a customer and then argue it has no obligation to indemnify that customer when there is a successful lawsuit.

The case arose from an accident involving a vehicle APS rented to a family.

Appellate Judge John Pelander said Bridgestone had a chance to join in the defense when the family sued the car rental company but the company refused.

Had it joined the case, he said, the company would have been able to litigate the question of its own liability for the allegedly faulty tire. But by leaving APS to defend the claim itself, Bridgestone cannot now claim that the car rental firm did not properly defend the tire company against claims of product liability.

The claim says APS rented a

van to the Naranjo family.

A few days later, one family member was killed and several others were injured when the van's right rear tire failed, causing the vehicle to roll and crash. The failed tire was manufactured in Mexico in 1998.

In March 2001, the Naranjos sued only APS, alleging negligence and strict liability in tort. APS sent a letter to Bridgestone, the tire's manufacturer, by sending a letter and a copy of the complaint to Bridgestone headquarters in Tennessee. Bridgestone received the tender of defense but did not formally respond. APS defended itself in the Naranjo case and named Bridgestone as a non-party at fault.

During the trial, APS essentially admitted the tire was defective and never disputed that the tire was unreasonably dangerous when the van was rented. In fact, Pelander said APS presented expert testimony and argued that the tire was defective due to a design or manufacturing defect.

After a seven-day trial, the jury awarded \$9,539,838 in compensatory damages to the Naranjos. Jurors said 70 percent of the blame was based on the Naranjos' negligence claim and 30 percent on their product liability claim.

Bridgestone then went to

court and said it is not obligated to reimburse APS because the tire was manufactured by a Mexican subsidiary, meaning the rental car company's letter to Bridgestone on the issue was legally ineffective.

Beyond that, attorneys for Bridgestone said APS had not diligently defended the product liability claim but instead blamed the tire company.

But a trial judge ordered Bridgestone to pay APS more than \$2.8 million, 30 percent of what the company paid to the Naranjos. Bridgestone appealed.

On the first point, Pelander said Bridgestone provided evidence that the company was, in fact, the parent company of the wholly owned Mexican subsidiary and that the tire was manufactured to Bridgestone standards.

Pelander acknowledged there was a conflict between the interests of APS, which defended the case, and Bridgestone, which did not. But he said state laws say that once a manufacturer refuses to enter a defense in a case, it is required by state product liability law to indemnify the seller — in this case, APS — against any judgments.

"The statute does not include a 'conflict of interest' exception or defense," Pelander wrote. "If the legislature had wanted to include such an exception, it could

and presumably would have done so."

The judge also noted that, from a practical standpoint, that conflict of interest did not require Bridgestone to reject the rental car company's offer of defense.

"Had Bridgestone instead accepted the tender, it presumably could and would have retained counsel of its choice to defend APS in the Naranjo case," Pelander wrote.

"And, in that event, neither the handling of the defense nor the outcome of that case necessarily would have been any different," the judge continued. "Even if defended by counsel retained by Bridgestone, APS still would have sought to decrease the percentage of fault allocated to the Naranjos' negligence claim and increase the percentage allocated to their product liability claim."

He said even if Bridgestone had entered the case, "APS presumably would have done precisely what it actually did: present a defense that in essence blamed the accident on a manufacturing or design defect in the tire, rather than on any independent negligence on APS' part."

The case is *Bridgestone/Firestone vs. APS Rent-A-Car* (2 CA-CV 2003-0115).

The Vale

Continued/Page BQ1

with Beck Developments LLC, said Tempe was the perfect site for these units.

"I think a lot of people are working from home now, using a home as a satellite office," Roberts said. "I would say based on our success with reservations, there is definitely more of a market for this type of housing."

Amenities include a fitness

center, lap pool and spa, storage units and underground parking.

Jarson would not give the names of the retail tenants, which will be independently owned businesses. One unit is marked for a community bakery, café and grocery, similar to La Grande Orange Grocery in east Phoenix. A bookstore, salon and retail office could fill the remaining spaces.

"This project is sort of independent in nature, and we feel

the residents will respond better to the individual shop owner instead of the chains," Jarson said.

Bruder, best known for designing the Burton Barr Central Library in Phoenix, used galvanized metals and bright yellow, orange and green materials to give The Vale an edgy, industrial feel.

"The materials are awesome," Jarson said. "It is a construction system you just don't see often here."

A long, narrow courtyard splits the buildings.

"Within the development community, it's the general consensus that you can't afford to build these kind of projects," Roberts said. "We were able to build a project like this and offer it to the buyers at a competitive price point."

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Plant laws

Continued/Page BQ1

owner must show that there is no longer any economically beneficial use of the property.

The judge said the Wonders' concede that, even with having to set aside 30 percent of their land, nothing precludes them from using the rest of it.

"When each of the two parcels is viewed as a whole, the

trust clearly is able to make beneficial use of its land, and we therefore conclude no regulatory taking has occurred," the judge wrote.

Florez said other cases that have overruled laws mandating the preservation of open space on private property have been conditioned on making the land available for use by others. But the Pima County ordinance, she

said, does not preclude the couple from keeping others off the property.

The court also rejected the argument that the state law precludes the more stringent county ordinance. Florez said, though, there is nothing in the statute that shows state lawmakers intended to preclude local control over native plant preservation.

"In fact, it has done the opposite," the judge said, specifically authorizing county supervisors to "adopt and enforce ordinances not in conflict with law for the preservation of protected groups of plants." That, she said, shows lawmakers recognized that there may be local legislation on the same subject.

The case is *Wonders vs. Pima County* (2 CA-CV 203-0090).

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