

MEMORANDUM

TO: Chris Anderson
FROM: Joseph Langel, City Attorney
DATE: January 24, 2018
RE: Existing PUD Zoning

You asked for an opinion on the following:

Facts

In 2006, the City rezoned property from R-1 to PUD for the Shadetree Cottages development. The PUD zoning contained specific standards unique to this property, such as lot size, lot width, street width, front and side setback, and cul-de-sac length. The project never moved forward and the final plat and approved site plan have long since lapsed. The developer is now interested in moving the project forward again. The zoning standards for PUD's changed since the original rezoning, including the addition of new requirements that did not exist in 2006 (e.g., wetland setback and lot depth minimum). Also, the road alignment for Potassium Street will change from the original plan due to subsequent issues with new owners of the adjacent property.

Issue

Is the existing PUD zoning still valid?

Analysis

No, not under these circumstances. As a general rule, zoning does not expire or change on its own. Once a property is zoned in a particular manner, it remains in that zoning category unless and until it is changed again by the City Council. Technically, the property at issue is still zoned PUD. PUD zoning, however, is tied to the site plan that was approved by the Council at the time the zoning was approved. *See generally, City Code § 117-123(d) (rezoning to PUD is driven by site plan review and approval).*

Here, the approved site plan was never acted on and it lapsed. The Council has the right to restore the zoning to what it was previously. *City Code § 117-123(i).* Given the lapse, there is

no approved site plan in place and the developer has to start over. The developer is seeking to use the prior site plan again, but development applications must adhere to the current zoning standards, and the old site plan does not reflect newer wetland setbacks. Also, the road alignment is necessarily changing somewhat from the original plan. The old plan is therefore non-compliant and inaccurate, and a revised plan must be submitted.

It may also be noted that the revised plan would be considered a “major change” from the former (but now lapsed) plan because of the change in road location and the fact that the original development schedule expired long ago. *See City Code § 117-123(e) (describing major changes requiring re-submission of a site plan and a rezoning application)*. The new wetland setback is also a major change to the plan. While this Code provision refers to major changes between preliminary and final site plans, it also logically supports the notion that a significantly changed new plan must go through the rezoning process.