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OPINION NO. 93-12

TO: Philip V. Bloom, Development Services Director
FROM: Stephen M. Kemp, City Attorney
DATE: December 7, 1993
SUBJECT: PZ Case 86-42, Site Plan Approval

QUESTION:

What provisions govern the effect of site plan approvals.

OPINION:

The following factual basis is provided. In February, 1987, a site plan was approved by the City Council. Subsequently, in 1990, the site plan was amended by the City Council. Both resolutions did not contain restrictions on the effective period of approval. Since 1990, the site plan provisions have been amended repeatedly. The question now arises as to whether a new site plan would have to be filed.

Site plan review is governed by Article 14-32 of the Peoria Zoning Code. There are two relevant provisions:

Section 14-32-7 Building Permits based upon Approved Site Plan

Base upon the approved Site Plan, a building permit for the site may be requested and may be granted provided such building permit is granted within one year of Site Plan approval. If more than one year has elapsed since Site Plan approval, such Site Plan shall be resubmitted to the approving body to confirm or modify the previously approved site plan prior to

the issuance of a building permit.

Section 14-32-8 Amendments to approved site plans.

Any amendment or modification to an approved site plan shall be submitted for approval. All amendments shall be shown on a revised site plan drawing.

Amendments to minor site plans shall be submitted to the Plans Review Committee who may, if authorized by the Commission, approved such amendment(s) if they determine that such amendment(s) are acceptable to the City.

Amendments to Major Site Plans or Minor Site Plans not authorized for Plans Review Committee action previously approved by the Planning and Zoning Commission may be approved by the Chairperson and Secretary of the Commission that the amended Site Plan is in substantial compliance with the originally approved site plan. If it is determined that the amended Site Plan is not in substantial compliance with the originally approved Site Plan, the application shall be resubmitted and shall be subject to Sections 14-32-3, 14-32-4 and 14-32-5 of this Article.

In this case, no building has occurred within the one year as required under Section 14-32-7. As such, the Development Services Department does not have jurisdiction under this section to issue any building permit, unless the site plan is resubmitted to the commission for confirmation.

Even if the department continued to have jurisdiction, the issue is whether the existing site plan would remain in substantial compliance if the buildings were altered to face a different direction. Such a change could conceivably alter any or all of the factors contained in Section 14-32-6. Therefore I would have to conclude that the change is a substantial one and the Plan would have to be resubmitted under the provisions of this Article.

Due to the fact that this is a new application, the staff should evaluate the application under the development standards in effect at the time that the application is filed. This would include the applicable provisions on landscaping and drainage. Unlike Zoning, clearly the right in a site plan would not appear to vest until issuance of a building permit. Town of Paradise Valley, v. Gulf Leisure Corporation, 27 Ariz.App. 600, 557 P.2d 532 (1976)

Therefore, it is our opinion that a new site plan must be submitted and that the site plan should be evaluated based on the standards in place on the date of submittal. If you should have any questions, please do not hesitate to contact me.

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cc: Honorable Mayor and Council

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