



CITY OF SAN ANTONIO  
**DEVELOPMENT SERVICES DEPARTMENT**  
P.O. BOX 839966 | SAN ANTONIO TEXAS 78283-3966



September 15, 2022

Emilie Weissler  
10101 Reunion Place, Suite 250  
San Antonio, TX 78216

RE: Overlook Town Center  
Continuation of Land Use Rights  
Generally located in the 25000 Block of US Hwy 281 N

Ms. Weissler,

After careful review of the information and materials presented related to your request for recognition of the continuation of land use rights dated August 15, the Development Services Department does not find evidence to support recognition and thus the request has been denied.

While you cite sections of state law related to continuation of use rights, it is important to note that Section 43.002 states "A municipality may not, after annexing an area, prohibit a person from: "...beginning to use land in the area in the manner **that was planned** for the land...". Your MDP references "Commercial" and "Open Space". Additionally, your Rights Determination Application ("RD application") references "Up to 2,800,000 ground floor sq. ft. of *non-residential use*" and "*general commercial uses*." The RD application specifically requests that the applicant specify if the project is "mixed use" but there is no specific mention of a "mixed use" involving residential in the response. As you likely are aware, our UDC states "An "MXD" [Mixed Use District] shall include both residential and commercial uses." (35-341 (b) (1)). Thus, it is not the change in zoning itself that triggered the denial but rather the change in proposed use and/or planned project (which now seems to include residential) that is applicable. This is true whether you are viewing your request through a lens of Local Government Code 43.002 or Local Government Code 245, both of which are mentioned in your letter. Additionally, you state that there is "no request for the City to confirm rights for residential uses." Based on the facts as we understand them, it would not be possible for the City to confirm residential rights prior to the recent rezoning of the properties (when the properties were changed from C-2 and C-3 to MXD). In short, change of use/project (as evidenced by the requested change in zoning) does impact a continuation of rights, including commercial, under 43.002.

Additionally, we bring your attention to Section 35-703 (c) of the UDC which states "Newly annexed areas may be entitled to nonconforming rights for a master development plan upon favorable consideration by the zoning commission...If the zoning commission approves the master development plan, construction in conformance with the plan must begin within one (1) year, with all portions of the plan either completed or under construction within five (5) years from the date of annexation. After that time, the nonconforming rights shall expire." Per your application and city records, the properties in question were annexed into City limits effective December 31, 2016 and have not met the construction requirements of Section 35-703(c).

Sincerely,

Kristie Flores  
Planning Manager  
Development Services  
City of San Antonio  
210.207.5889 office