

**From:** [Matt Goldbach](#)  
**To:** [Deb Estrada](#)  
**Subject:** Declaration in support of Mercer Island Code Interpretation File# APL22-004  
**Date:** Tuesday, January 17, 2023 4:32:14 PM  
**Attachments:** [Declaration of Matthew Goldbach with Exhibits 1-17-2023-compressed 1.pdf](#)

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Please find my attached declaration for the above referenced appeal. Please confirm receipt.

Thanks in advance

Matt Goldbach

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8 BEFORE THE HEARING EXAMINER  
9 FOR THE CITY OF MERCER ISLAND

10 In the Matter of:

11 **Development Code Interpretation No. 22-004**

Hearing Examiner File No.: APL 22-004  
(Interpretation No. 22-004)

12 **DECLARATION OF MATTHEW**  
13 **GOLDBACH, NEIGHBOR OF THE**  
14 **JEWISH COMMUNITY CENTER IN**  
15 **SUPPORT OF MERCER ISLAND'S**  
16 **CODE INTERPRETATION**

17 Comes forth Matthew Goldbach, and states under penalty of perjury of the laws of the  
18 State of Washington as follows:

19 1.1 I am over 18 and competent to testify herein. I make these declarations upon my  
20 personal knowledge of the facts. I support the City of Mercer Island's interpretation that a  
21 conditional use in a residential neighborhood may not request a variance for regulatory limits.  
22 Attached to this declaration is an exhibit index and true and accurate copies of the documents.  
23 The exhibits attached to and discussed in this declaration are true and accurate copies of the  
24 original documents.

25 **DECLARATION OF MATTHEW GOLDBACH, NEIGHBOR OF**  
26 **THE JEWISH COMMUNITY CENTER IN SUPPORT OF MERCER**  
**ISLAND'S CODE INTERPRETATION - 1**

1 1.2 I am a resident of Mercer Island. I have lived on Mercer Island since 2014. My wife  
2 and I currently reside at 9980 S.E. 40<sup>th</sup> St. Mercer Island, WA. We have resided in this house  
3 for the last 8 years. Our house is adjacent to the southeast property line of the JCC in a  
4 community called Mercerwood. My neighbor is John Hall. I am a member of the JCC.

5 1.3 This Declaration is to set forth my participation in the JCC's attempts to obtain  
6 preferential regulatory limits since approximately 2016, the huge increases in intensity of use  
7 of its property just since I have lived here, and the harm to the neighborhood.

8 1.4 Attached in **Exhibit 1** is a GANTT chart with an easy-to-read timeline of the JCC's  
9 proposals since 2016 to obtain preferential regulatory limits including the amendment to the  
10 comprehensive plan to establish the Community Facilities Zone, The "Hill Amendment"  
11 discussed in the Declaration of John Hall and discussed further in this declaration, and the  
12 current application for variances.

13 1.5 I am the neighbor of John Hall. I have read his declaration. I was a member of the  
14 Concerned Neighbors for the Preservation our Community in our appeal of the Community  
15 Facilities Zone. This declaration and exhibits will address the period found in the GANTT  
16 chart, starting with the adoption of the rewrite of the Residential Development Standards  
17 (RDS), the Community Facilities Zone adoption, appeal, and repeal, the docketing ordinance  
18 adopted after the appeal to the Growth Management Hearing Board and adoption requiring  
19 any comprehensive plan or code amendment to be docketed once per year in October, and  
20 "The Hill" code amendment application by the attorney for the JCC to create a spot zone for  
21 the JCC with increased regulatory limits.

22 1.6 As noted in the JCC's Notice of Appeal, due to past code interpretations regarding  
23 deviations for impervious surfaces, and exemptions of gross floor area from the gross floor  
24 area to lot floor area ratio, new houses in the residential zone were suddenly out of scale and

25 **DECLARATION OF MATTHEW GOLDBACH, NEIGHBOR OF**  
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**ISLAND'S CODE INTERPRETATION - 2**

1 created a large amount of citizen anger. The rewrite of RDS began in 2015 but did not  
2 become effective until October 31, 2017. During this time there were numerous public  
3 meetings, and social media on Mercer Island was quite animated at their anger towards the  
4 City, the City Planning Department (called the Development Services Group at that time), and  
5 the City Council.

### 6 **Adoption of Development Standards**

7 2.1 Attached in **Exhibit 2** are the City Council minutes from June 5, 2017. As noted and  
8 highlighted on page 4 is the summary of the planning commission's recommendations  
9 for the code that addressed four main areas.

- 10 1) Eliminating deviations in the RDS that had been abused by  
11 the City Planning Department (Development Services  
12 Group, later renamed to Community Planning Department).
- 13 2) Reduce gross floor area to lot area ratio from 45% to 40%.
- 14 3) Create a strict limit on impervious surfaces.
- 15 4) Remove all permit appeals from the planning commission  
16 to a hearing examiner.
- 17 5) Require much better notice and transparency of permit  
18 applications and code amendments that citizens felt had  
19 been abused

20 2.2 Attached in **Exhibit 3** is the September 19, 2017 City Council minutes noting  
21 adoption of the new RDS.

### 23 **Comprehensive Plan Amendments Creating the Community Facilities Zone**

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25 **DECLARATION OF MATTHEW GOLDBACH, NEIGHBOR OF**  
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**ISLAND'S CODE INTERPRETATION - 3**



1 3.1 Even before the adoption of the new RDS, the JCC was working with the  
2 Development Services Group at the City to obtain preferential regulatory limits for the JCC.  
3 Attached in **Exhibit 4** are emails from the architect for the JCC, Ed Weinstein, dated August  
4 12, 2016 and August 23, 2016, summarizing his meeting with the Development Services  
5 Group. As noted in the emails, a primary concern at this time was to adopt some type of  
6 amendment that flew under the radar and did not require any type of Council review or public  
7 process. As documented in the August 23, 2016 email, was the noncompliance of the existing  
8 JCC development for impervious surface limits and gross floor area to lot area ratios as well  
9 as parking.

10 3.2 The JCC in its appeal states:

11  
12 *"6.4 The Department erred when it did not cite to the findings and*  
13 *purposes section of Ordinance 17C-1 5, which passed the mega-house*  
14 *regulations. This section states: "WHEREAS, the Mercer Island City*  
15 *Council determined that amendments to the development regulations*  
16 *were necessary to ensure that residential development was occurring*  
17 *consistent with the provisions of the Mercer Island Comprehensive*  
18 *Plan; and ... " Ordinance 1 7C-1 5, p. 1., See Exhibit C. **The plain***  
19 *language of the purpose statement of the Ordinance clearly only*  
20 *applies to residential development, not nonresidential development.*  
21 *Further bolstering this statement of legislative intent is Section 4 of the*  
22 *Ordinance, which states in part: "This section shall apply to all building*  
23 *and other construction permits associated with single family*  
24 *development received on or after the effective date of this ordinance."*  
25 *Id., p. 2. The clear intent of the ordinance is stated by the drafters*  
26 *(CITE). The Department's finding regarding statutory construction is in*  
*error.*

JCC Appeal page 16, Lines LL 6-19

23 3.3 Anyone who was living on Mercer Island and in any way involved with the multi-year  
24 process to adopt a new RDS knows that the JCC's statement in its appeal is patently false. It is

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**ISLAND'S CODE INTERPRETATION - 4**

1 absurd to think that the citizens were up in arms due to out of scale residential construction in  
2 the residential zone, but in favor of out of scale and non-compliant construction and  
3 development on conditional use properties.

4 3.4 Attached in **Exhibit 5** is the JCC's September 29, 2016 application for a code  
5 amendment to create the Community Facilities Zone. There was no concurrent development  
6 code amendments filed with this application. In essence, this amendment would create a  
7 Community Facilities Zone applicable to CUP's in the residential zone that would have  
8 different and preferential regulatory limits compared to residential development in the  
9 residential zone.

10 3.5 Attached in **Exhibit 6** are the Planning Commission minutes from October 18, 2017.  
11 The citizens at this time had not been informed about the proposal for the Community  
12 Facilities Zone, which is found at number 8 on the bottom of page 1.

13 3.6 Attached in **Exhibit 7** are the City Council Minutes of October 2, 2018. As noted on  
14 page 2, the citizens began to object to the Community Facilities Zone, and on page 4 is a  
15 summary of the discussion, which had already become contentious.

16 3.7 In **Exhibit 8** are the City Council Minutes dated November 20, 2018. By this time,  
17 citizen objection to the Community Facilities Zone had increased, as noted on page 2 and 3. A  
18 motion to remove the Community Facilities Zone on page 3 failed and the CFZ amendment  
19 was adopted.

20 3.8 In **Exhibit 9** is the petition for review to the GMHB filed by Concerned Neighbors for  
21 the Preservation of our Community, which was a collection of residents from Mercerwood,  
22 where I live. This was an enormous financial burden for our community to obtain a land use  
23 attorney named Alex Sidles. If there is one thing throughout the JCC's efforts to obtain  
24 preferential regulatory limits, it is they never paid for any attorney's fees to defend their

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1 actions, whereas the citizens are constantly forced to hire attorneys and accrue expenses. One  
2 of the primary concerns for our neighborhood and citizens in general was the comprehensive  
3 plan amendment creating the CFZ had no concurrent implementing development regulations,  
4 so the citizens had no idea what these new regulations would be, which would apply to every  
5 conditional use in the residential zone, especially since the citizens, City, and Council had just  
6 gone through a multiyear wrenching process to rewrite the RDS. The JCC refused to disclose  
7 the zoning code changes it wanted.

8 3.9 In **Exhibit 10** are selected pages from the Final Decision And Order from the GMHB  
9 dated August 5, 2019. On pages 1-3 is a synopsis of the appeal. On Page 33 is the finding  
10 “that the adoption of the Community Facilities designation for the JCC property without  
11 implementing development regulations failed to comply with RCW 36.70(a).040.”

12 3.10 Attached in **Exhibit 11** are the City Council minutes dated February 18, 2020. The  
13 City Council had held an emergency joint session with the Planning Commission over the  
14 proposed regulations submitted by the JCC that were being discussed at the Planning  
15 Commission that were beyond abusive, and included strange tricks in which property setbacks  
16 were measured not from the JCC's property line but from properties across the road. As noted  
17 on page 3 of the minutes, the DSG director, Evan Maxim, noted several different options  
18 whether to continue with the process to draft and adopt implementing development  
19 regulations. In the end, the Council voted unanimously to repeal the Community Facilities  
20 Zone. As noted on page 2, both Ed Weinstein, the architect for the JCC, and Rich Hill, the  
21 long term attorney for the JCC, were hoping the council would direct the planning  
22 commission to continue with drafting and adopting the implementing regulations including  
23 greater gross floor area to lot area ratio, one for height and one for increased lot area coverage,  
24 but as Mayor Wong noted, **“The Solution had become the Problem.”**

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**ISLAND'S CODE INTERPRETATION - 6**



1 **The "Hill Amendment"**

2 4.1 After the repeal of the Community Facilities Zone, the JCC turned its attention to a  
3 site specific "spot zone" amendment to the development code that would provide the JCC  
4 with preferential regulatory limits.

5 4.2 Attached in **Exhibit 12** is an order finding noncompliance from the GMHB requiring  
6 the city to adopt a docketing ordinance. The citizens had become frustrated at the DSG's  
7 biweekly code amendments at 11 PM, and the inability to suggest or propose their own code  
8 amendments. This order required the city to implement one docket every October for all code  
9 and comprehensive plan amendments.

10 4.3 It then became apparent to the JCC that they had missed the 2019 code docket.  
11 Attached in **Exhibit 13** is an email from Amy Lavin, CEO of the JCC, to the city manager,  
12 planning staff, and council requesting preferential treatment, and requesting the council  
13 amend the ordinance to grandfather in their projects and allow the JCC to submit an  
14 application to amend the code past the deadline to be added to the Planning Commission's  
15 2020 docket.

16 4.4 Attached in **Exhibit 14** are the City Council Minutes Special Meeting dated December  
17 10, 2019, adopting the code and comprehensive docket for 2020 in order to comply with  
18 GMHB order dated February 18, 2020. As noted on page 3, the council voted unanimously to  
19 not docket any items for the 2020 comprehensive plan docket, and to adopt the proposed  
20 timely amendments to the development code.

21 4.5 In **Exhibit 15** is the (undated) application for code amendment filed by G. Richard  
22 Hill, the long-term land use attorney for the JCC. Although this amendment would only apply  
23 to the JCC/FAS property due to the fact that it limits the new code amendment to properties  
24 abutting a PBZ zone, which only includes the JCC, the JCC after the Community Facilities

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1 Zone did not want to be the applicant and therefore this code amendment application became  
2 known as the "Hill Amendment." As noted on page 1 of the application itself, Mr. Hill had  
3 completed his pre-application meeting with Community Planning and Development  
4 department (renamed from Development Services Group) and a project narrative was given on  
5 pages 1-2 that basically would allow the JCC preferential regulatory limits for gross floor area  
6 to lot area ratio, parking, impervious surfaces, and height. In **Exhibit A** to the application to  
7 zoning code text amendments sets out a chart showing the proposed amendments for the JCC,  
8 and the rest of the exhibit is interlined amendments to the existing Residential Development  
9 Standards the council had just adopted.

10 4.6 Similar to the CFZ, the citizens and other CUP's in the residential zone opposed the  
11 Hill Amendment and its preferential treatment for the JCC. Attached in **Exhibit 16** is the City  
12 Council Summary dated February 18, 2020. Noted on page 2, the recommendation was to  
13 abandon the original community facilities rezone and development regulations. Noted on page  
14 3 the JCC and FAS would be applying for a code amendment to be submitted by February 18,  
15 2020 and requesting the extraordinary treatment of backdating the application to add it to the  
16 2020 planning commission amendment docket.

17 4.7 In **Exhibit 17** is a chart from Mr. Weinstein showing the proposed amendments. Some  
18 of the amendments were allowing a parking garage extending four feet above grade to be  
19 exempt from gross floor area limits, increasing set backs, and increasing lot coverage and  
20 impervious surface limits.

21 4.8 Attached in **Exhibit 18** is the request for legal opinion filed by citizen attorney Bob  
22 Medved. Mr. Medved was counsel or co-counsel in the appeals to the GMHB to require the  
23 city to establish a transportation concurrency ordinance, docketing ordinance, and repeal of  
24 the Community Facilities Zone. Mr. Medved's request for legal opinion addressed the

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1 docketing of the Hill Amendment, and the fact that it was a spot zone applicable only to the  
2 JCC and several other legal deficiencies.

3 4.9 In **Exhibit 19** is an exhibit to Mr. Medved's request for legal opinion with maps  
4 showing the location of the JCC and how the terms of the proposed Hill Amendment created a  
5 spot zone applicable only to the JCC.

6 4.10 In **Exhibit 20** is a letter dated March 6, 2020, from Alex Sidles, a land use attorney.  
7 Mr. Sidles was the attorney of record for the Concerned Neighbors for Preservation of our  
8 Community who successfully challenged the Community Facilities Zone. Mr. Sidles filed this  
9 letter setting forth his legal challenges to the Hill Amendment.

10 4.11 Attached in **Exhibit 21** is an email dated September 9, 2020, from Rich Hill to City  
11 Manager Jesse Bond. After the submission of Mr. Medved's request for legal opinion, the  
12 letter from Mr. Sidles, and city opposition to the Hill Amendment, Mr. Hill despite being  
13 given preferential treatment to submit his application on February 11, 2020 after the deadline  
14 for the 2020 code amendment docket requested that the Hill Amendment be postponed and  
15 addressed by March 15, 2021.

16 4.12 Attached in **Exhibit 22** is the City Council agenda for September 15, 2020. As noted  
17 on page 2, the Council addressed 3 alternative motions for the Hill Amendment without  
18 making a decision, although the writing was on the wall.

19 4.13 Attached in **Exhibit 23** are the City Council minutes from September 15, 2020, noting  
20 citizen opposition to the Hill Amendment, a motion to decline further review of the Hill  
21 Amendment failing 4 to 3 and a compromised motion to postpone initial action and set a new  
22 City Council review date.

23 4.14 Attached in **Exhibit 24** are a series of emails between Mr. Hill and the City of Mercer  
24 Island noting that Mr. Hill would withdraw the Hill Amendment and the city's extraordinary

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**ISLAND'S CODE INTERPRETATION - 9**

1 decision to refund Mr. Hill the \$2,657 a SEPA fee and \$20,902.22 code amendment  
2 application fee despite the enormous staff time and effort put into the Hill Amendment, and  
3 additional attorney's fees our neighborhood once again incurred for the services of Alex  
4 Sidles.

### 5 JCC Variances

6 5.1 After withdrawal of the Hill Amendment, the JCC met with the City Planning  
7 Department. By this time almost the entire Planning Department had been replaced, the City  
8 had a new City Manager Jessi Bon, and many of the old council members had been replaced.  
9 Attached in **Exhibit 25** is the pre-application meeting between Mr. Weinstein and the City  
10 Planning Department setting forth the City's position that a new CUP would be required, the  
11 regulatory limits applicable in the residential zone, and setting forth the current regulatory  
12 limits for a CUP on the residential zone, and further steps the JCC would be required to take  
13 to pursue any variances or additional regulatory limits.

14 5.2 Attached in **Exhibit 26** is the pre-application meeting request – design review  
15 prepared by Mr. Weinstein on behalf of the JCC, Basically the request is no different than any  
16 request over the last two decades: the JCC begins with its preferred development and seeks to  
17 amend the development code and regulatory limits to accommodate its desires.

18 5.3 In **Exhibit 27** is the design concepts and schematics for the JCC's proposals with the  
19 "hardship" variances noting the additional gross floor area to lot ratio, impervious surfaces,  
20 and lot coverage.

21 5.4 In **Exhibit 28** is an email from Amy Lavin, CEO of the JCC, to all the other  
22 Conditional Use Permit organizations in the residential zone on Mercer Island, informing  
23 them of the appeal and requesting that they join the appeal and claiming on page 2, as  
24 underlined, "this interpretation means that none of the Islands institutions located in single

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1 family zones will be able to do any sort of meaningful remodel or redevelopment outside of  
2 their existing structures,” which of course is not true.

3 5.5 For decades now the JCC has sought preferential treatment and special regulatory  
4 limits in order to develop its property out of scale with the surrounding zones and residential  
5 development standards. As noted in the exhibits discussed above, the JCC already enjoys  
6 regulatory limits for gross floor area to lot area ratio, impervious surfaces, lot coverage, and  
7 parking above the prior and current code allowances.

8 5.6 For years the city has informed the JCC that the solutions to the JCC's desired  
9 development are simple:

- 10 1) Purchase some of the commercially zoned property to the  
11 north, which the JCC did for one parcel but then leased it to  
12 the French American School
- 13 2) Not lease that commercial property to the French American  
14 School and incorporate it into the JCC's development  
15 plans, which would give it the necessary lot area and  
16 impervious surface area limits and parking to pursue its  
17 development plans.

18 Instead the JCC wants to keep the revenue from the French American School and instead  
19 obtain preferential regulatory limits that allow it to obtain even more preferential and more  
20 out of scale development, which will lead to a more out of scale intensity of use for traffic,  
21 parking, lighting, and noise that are currently part of a compliance review by the City of  
22 Mercer Island that was suspended during the pandemic.

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25 **DECLARATION OF MATTHEW GOLDBACH, NEIGHBOR OF**  
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**ISLAND'S CODE INTERPRETATION - 11**

DATED this 17<sup>th</sup> day of January, 2023.



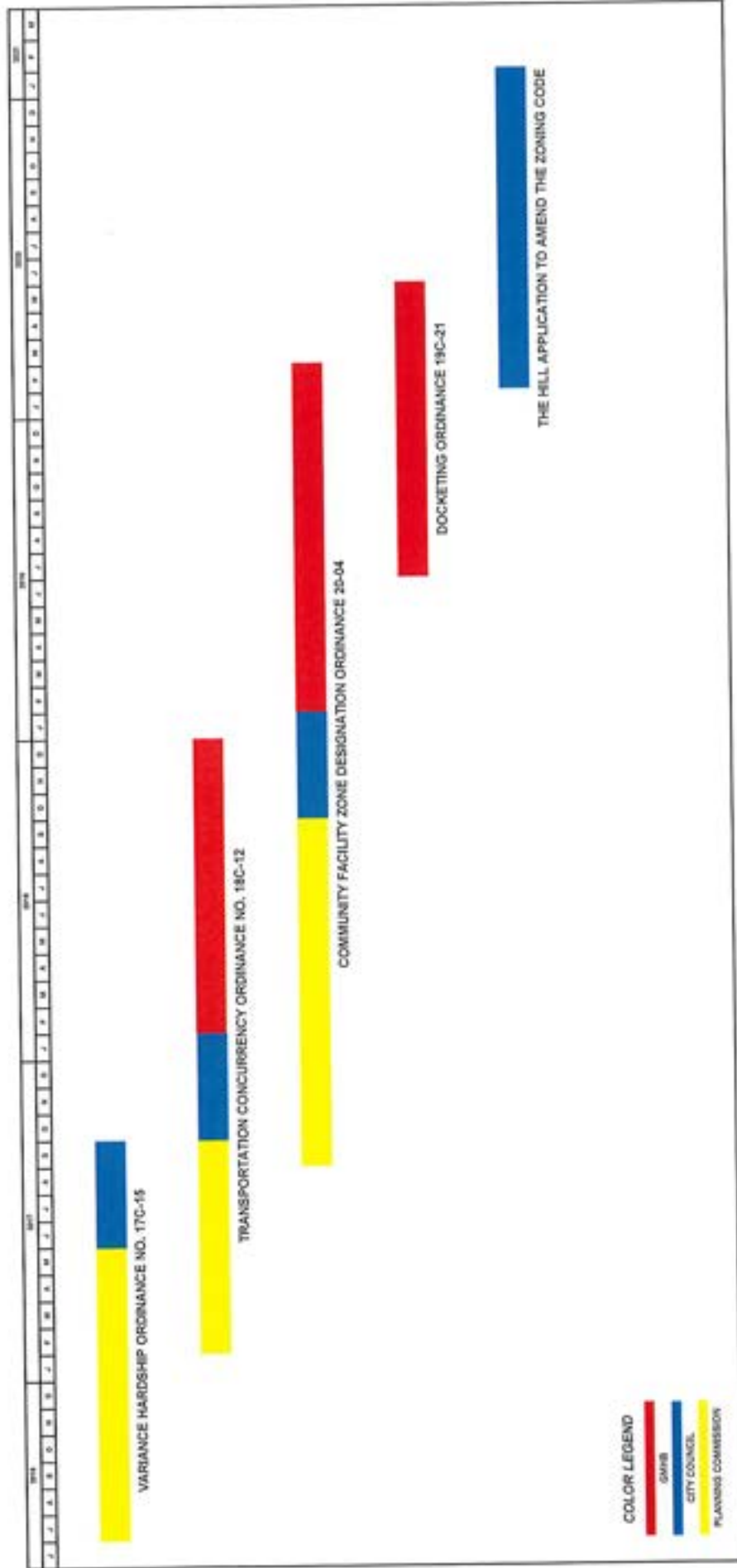
Matthew Goldbach

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**EXHIBIT 1**



# GANTT CHART



**EXHIBIT 2**



**CITY COUNCIL MINUTES**  
**REGULAR MEETING**  
**JUNE 5, 2017**

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**CALL TO ORDER & ROLL CALL**

Mayor Bruce Bassett called the meeting to order at 5:01 pm in the Council Chambers of City Hall, 9611 SE 36th Street, Mercer Island, Washington.

Mayor Bruce Bassett, Deputy Mayor Debbie Berlin, and Councilmembers Dan Grausz, Wendy Weiker (arrived at 7:05 pm), David Wisenteiner (arrived 6:22 pm), and Benson Wong were present. Councilmember Jeff Sanderson was absent.

**AGENDA APPROVAL**

Mayor Bassett noted that staff requested removing AB 5310: NPDES Stormwater Code Update (2nd Reading & Adoption) from the consent calendar.

It was moved by Wong; seconded by Grausz to:  
**Approve the agenda as amended.**  
Passed 4-0  
FOR: 4 (Bassett, Berlin, Grausz, Wong)  
ABSENT: 3 (Sanderson, Weiker, Wisenteiner)

**EXECUTIVE SESSION**

**Executive Session #1 to discuss (with legal counsel) pending or potential litigation pursuant to RCW 42.30.110(1)(i) for 30 minutes.**

At 5:04 pm, Mayor Bassett convened Executive Session #1 to discuss (with legal counsel) pending or potential litigation pursuant to RCW 42.30.110(1)(i) for 30 minutes.

At 5:22 pm, Mayor Bassett adjourned Executive Session #1 and convened Executive Session #2 to discuss (with legal counsel) pending or potential litigation pursuant to RCW 42.30.110(1)(i) for 38 minutes.

At 6:00 pm, Mayor Bassett adjourned Executive Session #2 and the Regular Meeting reconvened.

**STUDY SESSION**

**AB 5307 CenturyLink Cable Franchise Agreement**

City Attorney Kari Sand presented a franchise agreement allowing CenturyLink to provide its new cable service – "Prism TV" – to Mercer Island residents. The franchise agreement allows CenturyLink to locate its facilities (either on utility poles or underground) in City rights-of-ways and, as part of the agreement, CenturyLink will pay a 5% franchise fee and other consideration for use of City right-of-way. She noted that staff has negotiated a proposed franchise agreement with CenturyLink with terms that comply with federal law and meet the needs and interests of the community.

City Attorney Sand introduced Torry Somers, Associate General Counsel for CenturyLink who explained the "Prism TV" product.

## SPECIAL BUSINESS

The Mercer Island City Council presented the 2016 Citizen of the Year Award to Terry Moreman.

Mayor Bassett spoke about the contributions Terry has made in community during her 38 years of residence on Mercer Island. Serving on numerous boards and committees, Terry has served as an advocate for many valuable causes. He noted Terry's service as the Executive Director of the Mercer Island Chamber of Commerce for over 25 years. Bringing the community great events like Town Center trick-or-treating and Art UnCorked. In addition to building a strong and respected business core in Mercer Island, she has played a significant role in the success of organizations like the Historical Society, Sister City Association, Farmers Market, Boys and Girls Club, PTA, Mercer Island Preschool Association, Community Fund, and Mercer Island Schools Foundation.

Terry thanked the Council for the award and their kind words.

## CITY MANAGER REPORT

City Manager Underwood provided a report on the following items:

- ALERT King County, the City's emergency notification system
- Thank you to Public Works and Fire for Truck Day at the JCC
- Congratulation to Youth and Family Services for being recognized by the Island-wide PTA for the Communities That Care program
- Council candidate orientation on June 15
- Farmers Market is open!

## APPEARANCES

Bahrat Shyam, 8405 SE 34th Pl, thanked staff and Council for their efforts in I-90 negotiations. He thinks the Council is in a good place with a few months to work out the details of an agreement with Sound Transit. He requested the Council to consider use tolling if Congress wouldn't act to grandfather SOV access to the HOV ramp. He asked the Council to keep their focus on last mile efforts such as Island only transit, stand-alone transit, or ride services to encourage Island residents to utilize the light rail once it is complete.

Sam Shyam, 8405 SE 34th Pl, spoke about proposed installation of more stoplights in the north end. He asked Council to consider roundabouts instead to improve traffic safety and reduce traffic speeds.

Meg Lippert, 5042, read statements from Mark Hall (6018 East Mercer Way) asking the Council to consider the ramifications and cost regarding restriping 77th Ave SE and Jeff Bender (2438 74th Ave SE) expressing concern about potential dangers presented by replacing bike lanes with sharrows on 77th Ave SE.

Elizabeth Buckley, 15 Brook Bay, spoke about tentative agreement with Sound Transit regarding I-90 loss of mobility. She is satisfied with the Park & Ride and removal of a bus turnaround portions of the proposed agreement. She expressed concern that the agreement doesn't compare financially to what other communities have received as mitigation for the East Link Project.

Jackie Dunbar, 7116 82nd Ave SE, spoke about the restriping 77th Ave SE proposal and questioned why the City is considering a large restriping project when the community is trying to assess the impacts of the East Link Project. She believes this is an effort to provide parking for MICA and asked the Council and City staff to be transparent for the community.

Scott Kuznicki, 7650 SE 27th St, thanked the Council for their investment of time in negotiating with Sound Transit. He asked the Council to consider using the mitigation funds dedicated to parking improvements related to the Park and Ride to build parking above the light rail station itself.

David Youssefnia, 8214 SE 30th St, spoke briefly about Residential Code Updates and expressed support for happy, healthy, and family friendly activities. He asked the Council to support the Planning Commission's recommendation of making a gross floor area exception for pervious sports courts.



John Tiscornia, 5646 E Mercer Way, thanked the Council for work in negotiating agreement. He appreciates plans for MI parking permits. He asked the Council to ensure the parking permit program is strongly enforced. He is concerned that bike paths on Mercer Way are filled with parked cars.

Steve Orr, 7376 SE 71st St, incoming President of MI Baseball Booster Club, supports MI High School baseball team, also spoke on behalf of Becky Shaddle (President of MI Football Booster Club). He spoke about Island Crest Park field improvements and requested the Council fund turf for the new outfield and lights at the same time. He advised that MI Baseball Booster Club is willing to make a \$10,000 donation to South Field turf improvements and that the MI Football Booster Club has committed to making a \$10,000 donation as well. He noted that the MI Baseball Booster Club has also donated the funds necessary to purchase a new scoreboard for the North Field.

Jodi McCarthy, 7665 80th Pl SE, representing Nowland Premier Soccer Academy, spoke in support of option 3A (new lights, shock pad and cork fill for outfield) on the Island Crest Park Field Improvement Agenda Bill.

Dan Syrdal, 6650 East Mercer Way, spoke about the settlement agreement with Sound Transit. He is concerned that it does not solve SOV/HOV access because that decision needs to be made by the Federal Highway Administration. He requested that Council consider making a takings claim against the Federal Highway Administration demanding compensation for loss of access under the fifth amendment.

David Hoffman, representing the Master Builders Association, spoke about Residential Code Updates. He complimented the Planning Commission for their work on such a massive project. He advised that the Master Builders Association is supportive of most of the Planning Commission's draft recommendations. And he appreciated the clarity that is provided in the tree language of the draft recommendations.

Jim Eames, 2930 76th Ave SE, spoke about restriping on 77th Ave SE and asked Council to consider diagonal parking, which has shown to improve sales for local businesses.

Ira Appelman, 9039 E. Shorewood Drive, spoke in opposition to the settlement agreement with Sound Transit.

## **CONSENT CALENDAR**

**Payables: \$1,231,685.71 (05/11/2017), \$1,184,494.17 (05/25/2017), \$102,572.61 (06/01/2017)**

**Recommendation:** Certify that the materials or services hereinbefore specified have been received and that all warrant numbers listed are approved for payment.

**Payroll: \$809,644.42 (05/26/2017)**

**Recommendation:** Certify that the materials or services specified have been received and that all fund warrants are approved for payment.

**Minutes: May 8, 2017 Special Meeting Minutes, May 16, 2017 Special Meeting Minutes, May 22, 2017 Special Meeting Minutes, May 23, 2017 Special Meeting Minutes, May 24, 2017 Special Meeting Minutes, and May 31, 2017 Special Meeting Minutes**

**Recommendation:** Adopt the May 8, 2017 Special Meeting Minutes, May 16, 2017 Special Meeting Minutes, May 22, 2017 Special Meeting Minutes, May 23, 2017 Special Meeting Minutes, May 24, 2017 Special Meeting Minutes, and May 31, 2017 Special Meeting Minutes as written.

**AB 5309 Arts Council 2016 Annual Report and 2017 Work Plan**

**Recommendation:** Receive the Arts Council 2016 Annual Report and the 2017 Work Plan.

It was moved by Wisenteiner; seconded by Wong to:

**Approve the Consent Calendar and the recommendations contained therein as amended.**

Passed 6-0

FOR: 6 (Bassett, Bertlin, Grausz, Welker, Wisenteiner, Wong)

ABSENT: 1 (Sanderson)



## REGULAR BUSINESS

### AB 5312 I-90 Loss of Mobility Status Report

City Manager Julie Underwood provided an update on I-90 Loss of Mobility. She spoke about the center roadway closure on June 3 and reported on the traffic impacts so far.

Ed Holmes, Police Chief provided a report on Monday's morning traffic due the I-90 center roadway closure.

### AB 5308 CenturyLink Cable Franchise Agreement (1st Reading)

It was moved by Weiker; seconded by Bertlin to:

**Set Ordinance No. 17-14 to June 19, 2017 for second reading and adoption as amended.**

Passed 6-0

FOR: 6 (Bassett, Bertlin, Grausz, Weiker, Wisenteiner, Wong)

ABSENT: 1 (Sanderson)

It was moved by Grausz; seconded by Wisenteiner to:

**Amend Ordinance No. 17-14 to include the Crown Castle tree and location provisions, making them only effective if similar language is included in a future Comcast agreement.**

Passed 6-0

FOR: 6 (Bassett, Bertlin, Grausz, Weiker, Wisenteiner, Wong)

ABSENT: 1 (Sanderson)

### AB 5311 Island Crest Park North Outfield Project

Parks & Recreation Director Bruce Fletcher and Parks Superintendent Paul West presented the Island Crest Park North Outfield project for the Council's consideration. They spoke about the projects options and alternatives and staff's recommendation of Option 3A (cork infill + shock pad + lighting for north field).

It was moved by Bertlin; seconded by Wisenteiner to:

**Authorize the City Manager to proceed with Option 3A for the construction of new synthetic turf and the installation of lighting at Island Crest Park north field through the King County Directors Association purchasing cooperative, and set the project budget to \$2,596,350, with \$511,190 in additional funding coming from surplus General Fund and real estate excise tax revenues in 2015 and 2016, King County Parks, Trails & Open Space Levy monies, community donations, and other one-time funding sources and every effort will be made to replace the Mercerdale playground no later than 2020.**

Passed 6-0

FOR: 6 (Bassett, Bertlin, Grausz, Weiker, Wisenteiner, Wong)

ABSENT: 1 (Sanderson)

### AB 5313 Planning Commission's Recommendation for Residential Development Standards Code Amendments (1st Reading)

Planning Manager Evan Maxim presented a brief review of the Planning Commission's draft recommendations for Residential Code Updates. He noted that the Planning Commission has held 15 regular and special meetings, three Community Meetings, and one Public Hearing. He reviewed the following policies for the Council to consider during their deliberations of the recommendations:

#### Current Code

- 45% allowed Gross Floor Area
- 40% impervious surface with allowed deviation of 5%
- 15-foot side yard setbacks
- Reasonable best efforts for tree retention
- No limit on accessory buildings
- Generous construction hours & permit renewals

#### Planning Commission Recommendation

- 40% allowed Gross Floor Area; caps on maximum
- 60% landscaping required, no deviations
- Wider lots = wider setbacks
- 30% retention minimum + reasonable best efforts
- Limits on height and area
- 7PM end of construction, limited permit renewal, proactive scheduling

It was moved by Grausz; seconded by Weiker to:  
**Conduct Public Hearing for June 12 and Set Ordinance No. 17C-15 for a continuation of the first reading on June 19, 2017.**

Passed 6-0

FOR: 6 (Bassett, Bertlin, Grausz, Weiker, Wisenteiner, Wong)

ABSENT: 1 (Sanderson)

## **OTHER BUSINESS**

### **Councilmember Absences**

Councilmember Sanderson's absence was excused.

Councilmember Grausz will be absent at the June 12 Special Meeting.

### **Planning Schedule**

City Manager Julie Underwood advised that at the June 19 meeting, she is hoping to schedule a brief presentation by King County Access for All Program to explain to the community their arts proposal expected to be on the August primary ballot.

City Manager Underwood noted that she is also hoping to schedule a brief presentation by King County to explain to the community the renewal of the Veterans and Human Services levy that is expected on the November ballot.

Deputy Mayor Bertlin requested an update from staff on whether the Fire Chief will approve the sale of fireworks this summer on Mercer Island.

### **Board Appointments**

It was moved by Bertlin; seconded by Wong to:

**Confirm the appointment of the following individuals to the City Boards and Commissions:**

#### **ARTS COUNCIL**

Position 7, Erin Vivion, Expiring 5/31/2021

Position 8, An Tootill, Expiring 5/31/2021

Position 11, Xi Tian, Expiring 5/31/2018

#### **COMMUNITY SERVICES BOARD (ADULT)**

Position 2, Shabai Li, Expiring 5/31/2018

Position 3, Meg Kerrigan, Expiring 5/31/2018

Position 9, Martina Kozar, Expiring 5/31/2020

Position 10, James Schwab, Expiring 5/31/2020

Position 11, Teri Jones, Expiring 5/31/

Position 12, Harry Dingwall, Expiring 5/31/2020

#### **COMMUNITY SERVICES BOARD (YOUTH)**

9th Grade, Renee White, Expiring 5/31/2019

9th Grade, Evan Dickstein, Expiring 5/31/2019

9th Grade, Liliana Szafir, Expiring 5/31/2019

11th Grade, Christopher Elliott, Expiring 5/31/2019

11th Grade, Alex White, Expiring 5/31/2019

10th Grade, Sarah Wang, Expiring 5/31/2019

#### **DESIGN COMMISSION**

Position 5, Suzanne Zahr, Expiring 5/31/2021

Position 6, Richard Erwin, Expiring 5/31/2021

#### **OPEN SPACE CONSERVANCY TRUST**

Position 5, Marie Bender, Expiring 5/31/2021

Position 7, Geraldine Poor, Expiring 5/31/2021

#### **PLANNING COMMISSION**

Position 5, Carolyn Boatsman, Expiring 5/31/2021

Position 7, Ted Weinberg, Expiring 5/31/2018

**UTILITY BOARD**

Position 3, Tim O'Connell, Expiring 5/31/2021

Position 4, Mary Grady, Expiring 5/31/2021

Position 5, Stephen Milton, Expiring 5/31/2021

Passed 6-0

FOR: 6 (Bassett, Berlin, Grausz, Weiker, Wisenteiner, Wong)

ABSENT: 1 (Sanderson)

**Councilmember Reports**

Councilmember Weiker noted that a retirement party for MISD Superintendent Gary Plano scheduled for June 15 at 6 pm.

Mayor Bassett invited the Council to attend a high school civics class on the coming Wednesday. He thanked staff and Council for their work on I-90 negotiations.

**ADJOURNMENT**

The Regular Meeting was adjourned at 10:20 pm.

Attest:

\_\_\_\_\_  
Bruce Bassett, Mayor

\_\_\_\_\_  
Ellie Hooman, Deputy City Clerk

**EXHIBIT 3**





## CITY COUNCIL MINUTES REGULAR MEETING SEPTEMBER 19, 2017

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### CALL TO ORDER & ROLL CALL

Mayor Bruce Bassett called the meeting to order at 5:00 pm in the Council Chambers of City Hall, 9611 SE 36th Street, Mercer Island, Washington.

Mayor Bruce Bassett, Deputy Mayor Debbie Bertlin, and Councilmembers Dan Grausz, Salim Nice, Wendy Weiker (arrived 5:29 pm), and Benson Wong (arrived 5:05 pm) were present. Councilmember David Wisenteiner was absent.

### AGENDA APPROVAL

It was moved by Grausz; seconded by Bertlin to:

**Amend the agenda to include a second Executive Session after the first Executive Session to discuss, with legal counsel, pending or potential litigation pursuant to RCW 42.30.110 (1)(i) for 15 minutes.**

Passed 4-0

FOR: 4 (Bassett, Bertlin, Grausz, Nice)

ABSENT: 3 (Weiker, Wisenteiner, Wong)

### EXECUTIVE SESSION

**Executive Session to discuss (with legal counsel) pending or potential litigation pursuant to RCW 42.30.110(1)(i) for one hour**

At 5:02 pm, Mayor Bassett convened Executive Session #1 to discuss (with legal counsel) pending or potential litigation pursuant to RCW 42.30.110(1)(i) for 60 minutes.

At 6:02 pm, Mayor Bassett adjourned Executive Session #1

**Executive Session #2 to discuss, with legal counsel, pending or potential litigation pursuant to RCW 42.30.110(1)(i) for 15 minutes.**

At 6:03 pm, Mayor Bassett convened Executive Session #2 to discuss (with legal counsel) pending or potential litigation pursuant to RCW 42.30.110(1)(i) for 15 minutes.

At 6:18 pm, Mayor Bassett adjourned Executive Session #2 and the Regular Meeting reconvened.

### STUDY SESSION

#### **AB 5344 Right of Way (ROW) Services Report**

Public Works Director Jason Kintner, Right of Way Services Manager Brian Hartvigson and Arborist Hannah Van Pelt provided a general overview of right of way (ROW) services in over 84 miles of roadway and over 300 acres of undeveloped ROW, which are maintained by the ROW Team. Director Kintner noted that the ROW team is responsible for: pavement markings, street sign maintenance, pothole repairs, roadway shoulder work, street sweeping, street light maintenance, sidewalk maintenance, vegetation work, planter bed beautification, and special event & emergency services support.

He spoke about the ROW team staffing history, the ROW tree assessment program, and where the team is headed using new technology, revamping business process, identifying future reinvestment opportunities, and



enhancing the Town Center tree program. Public Works staff will return to Council with recommendations on service levels and input on ROW tree program during the 2019-2020 Budget development in 2018.

At 6:49 pm, the Council took a break. The Regular Meeting reconvened at 7pm.

## **CITY MANAGER REPORT**

City Manager Julie Underwood reported on the following:

- Community Center Drainage & Asphalt Repair Project
- The deadline to submit an application for the Financial Challenges Community Advisory Group (CAG) is October 27.
- The City's first Telephone Town Hall to learn more about the City's Financial Challenges will be held on Wednesday, October 11, 2017 – 7:00-8:00 pm
- The City issued the MICA – SEPA Determination - The Planning Commission will hold a public hearing on Wednesday, October 18, 6:00 pm at City Hall
- A new art exhibit, from the Seattle Chapter of the Colored Pencil Society of America, runs through October 27, 2017 at the Community and Event Center's Mercer Gallery.
- Sand at Island Crest Park is being recycled throughout City Parks and School District fields.
- The City will launch NextRequest in October to help the public access and request public records. The goal is to implement a system that is efficient and streamlined – ultimately saving taxpayer money and requesters' time.
- Thanked the City's CERT Volunteers and expressed that thoughts are with emergency responders who are helping those throughout our country and abroad. You can help, by making a donation to the Red Cross at [redcross.org](http://redcross.org). Give cash and not supplies.

Deputy Mayor Bertlin spoke about Bob Bersos, who had a long history with the City as a Volunteer Firefighter. He served eight years as an Emergency Volunteer. He also served as a Bus Driver for 13 years for the School District. She noted that Bob's service is Friday, Sept. 22, at 4:00 pm at Emmanuel Episcopal Church.

## **APPEARANCES**

Tom Gallagher, 4243 Shoreclub Drive, builder, spoke for his clients who he does not think have been represented in the code amendments process. He stated that the following three items are a disservice to citizens: (1) eliminate concurrent review, (2) not allowing people to buy multiple lots and build large houses, (3) review idea of bigger incentive for daylight basement.

Trevor Reed, 8210 SE 65th Street, spoke in opposition to the Residential Development Standards code update. He stated that if the Council fails to allow development, then it will undermine the provision of amenities in the Town Center that citizens have come to appreciate.

Kathryn Jerkovich, BCRA Plan Designer, 414 Stewart Street, Seattle, spoke about results from analysis of proposed FAR and tree code code rewrite conducted on behalf of JayMarc Homes. BCRA found that individually each proposed change didn't have a large impact, but cumulatively they resulted in an average reduction in buildable area of 24%.

Allen Hovsepian, 4344 90th Ave SE, spoke in opposition to the Residential Development Standards code update. He asked the Council to consider the financial impact this change will have on home values on the Island.

Randy Koehler, 3056 70th Ave SE, RKK Construction, spoke in opposition to the Residential Development Standards code update. He feels that the proposed changes are too restrictive. He expressed concern with buyers choosing to purchase homes somewhere else to avoid Mercer Island's building restrictions.

Jackie Dunbar, 7116 82nd Ave SE, spoke against the portion of the Residential Development Standards code update changing the rules for long platting. She asked the Council to allow for more citizen involvement in the code rewrite process.

Carolyn Boatsman, 3210 74th Ave SE, thanked the Council for their work on the Residential Development Standards and tree code update. She spoke in support of approval of the proposed changes.

Lynn Hagerman, 3058 61st Ave SE, spoke in support of approving the proposed changes.

Manny Cawaling, Executive Director for Youth Theatre Northwest, announced that the 30th Anniversary for YTN begins in November. He advised that enrollment in the groups programs is up. To be able to allow more kids to participate the group needs a larger facility here on the Island. He asked that the Council and the community continue to support MICA so that groups like Youth Theater Northwest can remain on Mercer Island.

Ira Appelman, 9039 E. Shorewood Drive, spoke in support of the changes in the Residential Development Standards code in general. He disagreed with regulating trees on flat lots and still allowing people to purchase multiple lots and combining them to build larger homes. He asked the Council to do more to educate the community on how the code changes will affect development.

Dennis Dahl, 2530 70th Ave SE, spoke in opposition to the Residential Development Standards code update. He advised that the comments listed on the City website in support of more restrictive development codes are from only 1% of Mercer Island's population. He asked the Council to consider the impact this update will have on all of Mercer Island's residents.

#### **CONSENT CALENDAR**

**Payables: \$392,835.76 (08/03/2017), \$531,223.43 (09/07/2017)**

**Recommendation:** Certify that the materials or services hereinbefore specified have been received and that all warrant numbers listed are approved for payment.

**Payroll: \$811,962.76 (09/01/2017)**

**Recommendation:** Certify that the materials or services specified have been received and that all fund warrants are approved for payment.

**Minutes: September 5, 2017 Regular Meeting Minutes**

**Recommendation:** Adopt the September 5, 2017 Regular Meeting Minutes as written.

**AB 5342 Port of Seattle Grant Acceptance for Wayfinding Sign Program**

**Recommendation:** Accept the grant from the Port of Seattle, authorize the City Manager to enter into an agreement with the Port of Seattle, and appropriate \$35,490 from the Beautification Fund for the project.

It was moved by Bertlin; seconded by Wong to:

**Approve the Consent Calendar and the recommendations contained therein.**

Passed 6-0

FOR: 6 (Bassett, Bertlin, Grausz, Nice, Weiker, Wong)

ABSENT: 1 (Wisenteiner)

#### **REGULAR BUSINESS**

**AB 5345 Residential Development Standards Code Amendments (7th Reading and Adoption)**

Planning Manager Evan Maxim presented Ordinance No. 17C-15 for adoption by the City Council.

It was moved by Wong; seconded by Grausz to:

**Adopt Ordinance No. 17C-15, amending Mercer Island City Code Titles 8, 17, and 19 on Residential Development Standards as amended, which shall take effect five days after the date of publication, provided the effective date for Attachment A shall be on November 1, 2017.**

It was moved by Weiker; seconded by Bassett to:

**Amend the previous motion to:**

**Remove sections 3 and 4 of Ordinance No. 17C-15.**



Motion to Amend Failed 2-4  
FOR: 2 (Bassett, Weiker)  
AGAINST: 4 (Berlin, Grausz, Nice, Wong)  
ABSENT: 1 (Wisenteiner)

It was moved by Grausz; seconded by Wong to:

**Amend the previous motion to:**

- **Amend Section 3 of Ordinance No. 17C-15 to read as follows: "Pursuant to the Revised Code of Washington (RCW) 36.70B.140, the City Council hereby excludes building and other construction permits associated with single family development from consolidated permit review. This section shall apply to all building and other construction permits associated with single family development received on or after the effective date of this ordinance."**
- **Amend Section 4 of Ordinance No. 17C-15 to read as follows: "An existing lot shall be a condition precedent for determination of complete application for a building and other construction permit associated with single family home development. This section shall apply to all building and other construction permits associated with single family development received on or after the effective date of this ordinance."**

Motion to Amend Passed 4-2  
FOR: 4 (Berlin, Grausz, Nice, Wong)  
AGAINST: 2 (Bassett, Weiker)  
ABSENT: 1 (Wisenteiner)

It was moved by Nice; seconded by Grausz to:

**Amend the previous motion to:**

**Amend Attachment A to Ordinance No. 17C-15 to read as follows:**

**Amend the sentence starting with the word "permit" on lines 10-13 of page 50 to read: "Permit applications shall be accompanied by documentation of the imminent threat to life or property, ideally in the form of a report by a qualified arborist, but at least in the form of photographs that clearly depict the threat."**

Motion to Amend Passed 6-0  
FOR: 6 (Bassett, Berlin, Grausz, Nice, Weiker, Wong)  
ABSENT: 1 (Wisenteiner)

It was moved by Nice; seconded by Grausz to:

**Amend the previous motion to:**

**Amend Attachment A to Ordinance No. 17C-15 to read as follows:**

**Amend the sentence starting with the word "permit" on lines 10-11 of page 50 to read: "Permit approval to remove one or more trees that pose an imminent threat to life or property, such as tree limbs or trunks that are demonstrably cracked, leaning toward overhead utility lines or structures, or are uprooted by flooding, heavy winds or storm events, in which event the permit must be applied for within fourteen (14) days of the removal"**

Motion to Amend Passed 6-0  
FOR: 6 (Bassett, Berlin, Grausz, Nice, Weiker, Wong)  
ABSENT: 1 (Wisenteiner)

It was moved by Grausz; seconded by Nice to:

**Amend the previous motion to:**

**Amend Attachment A to Ordinance No. 17C-15 to read as follows:**

**Amend the sentence starting with the word "permit" in footnote 1 of page 75 to read: "Tree removal associated with a development proposal and authorized through the issuance of a tree removal permit, shall not commence until the later of the end of the appeal period associated with the tree removal permit, or a decision is issued on an administrative appeal of the tree removal permit."**

Motion to Amend Passed 5-1  
FOR: 5 (Bassett, Berlin, Grausz, Nice, Wong)  
AGAINST: 1 (Weiker)  
ABSENT: 1 (Wisenteiner)

The Council discussed "very large homes" in the R-15 zone and remanded the issue back to the Planning Commission for further review and recommendation.

It was moved by Grausz; seconded by Wong to:

**Amend the previous motion to:**

**Amend Attachment A to Ordinance No. 17C-15 to read as follows:**

**Further amend Section 3 of Ordinance No. 17C-15 to read as follows: "Pursuant to the Revised Code of Washington (RCW) 36.70B.140, the City Council hereby excludes building and other construction permits associated with single family development of a preliminary short subdivision or preliminary long subdivision from consolidated permit review. This section shall apply to all building and other construction permits associated with single family development of a preliminary short subdivision or preliminary long subdivision received on or after the effective date of this ordinance."**

Motion to Amend Passed 6-0

FOR: 6 (Bassett, Berlin, Grausz, Nice, Weiker, Wong)

ABSENT: 1 (Wisenteiner)

It was moved by Weiker; seconded by Wong to:

**Amend the previous motion to:**

**Amend Attachment A to Ordinance No. 17C-15 to read as follows:**

**Amend page 25, line 38, to change 40 percent to 50 percent for the length of the structure's external walls for all new construction and remodels (MICC 19.01.050(D) regarding non-conforming structures will also need to be amended).**

Motion to Amend Failed 1-5

FOR: 1 (Weiker)

AGAINST: 5 (Bassett, Berlin, Grausz, Nice, Wong)

ABSENT: 1 (Wisenteiner)

Main Motion as Amended Passed 5-1

FOR: 5 (Bassett, Berlin, Grausz, Nice, Wong)

AGAINST: 1 (Weiker)

ABSENT: 1 (Wisenteiner)

The Council decided to move the discussion of the Planning Commission Accompanying Recommendations to their 2018 Planning Session in January for incorporation into DSG and the Planning Commission's work plans.

It was moved by Grausz; seconded by Berlin to:

**Authorize expansion of the arborist and code compliance officer positions to full-time equivalent positions.**

Passed 5-1

FOR: 5 (Bassett, Berlin, Grausz, Nice, Wong)

AGAINST: 1 (Weiker)

ABSENT: 1 (Wisenteiner)

It was moved by Wong; seconded by Weiker to:

**Direct staff to monitor the implementation of the Residential Development Standards and report back to the City Council in 3 to 5 years on the effectiveness of the proposed amendments. Further direct staff to provide the public with information and resources on the adopted regulations and to engage in continuous improvement of the adopted regulations, using the "user group" process.**

Passed 5-1

FOR: 5 (Bassett, Berlin, Nice, Weiker, Wong)

AGAINST: 1 (Grausz)

ABSENT: 1 (Wisenteiner)

#### **AB 5339 2016 General Fund & REET Year-End Surplus Disposition**

Finance Director Chip Corder presented the 2016 year-end surplus balances which were driven by a high level of development activity on the Island. He noted that this surplus provides the Council with an opportunity to address one-time operating, capital, and reserve funding needs outside of the biennial budget process. He explained that



the major funding are:

- Projected \$2.0 million deficit in General Fund and Youth & Family Services Fund combined.
- Contingency Fund 2017 needs \$199,115 to meet target balance goal of 10% of General Fund budgeted expenditures.
- Open Space/Vegetation Management Program needs \$160,000 in 2018 to address a dramatic increase in the cost of contracted restoration work.
- Soil remediation at Maintenance Center/Honeywell property is estimated to cost between \$392,000 and \$788,000.
- Maintenance Center renovation/expansion is estimated to cost \$5.92 million.

It was moved by Weiker; seconded by Wong to:

**Direct staff to transfer all of the available General Fund surplus from the 2015 and 2016 fiscal years, which amounts to \$1,035,704, to the Contingency Fund, leaving the one-time funding there until the outcome of placing an operating levy lid lift on the November 6, 2018 ballot is known.**

It was moved by Bertlin; seconded by Weiker to:

**Amend the previous motion as follows:**

**Direct staff to transfer all of the available General Fund surplus from the 2015 and 2016 fiscal years, which amounts to \$1,035,704, to the Contingency Fund.**

Motion to Amend Passed 4-2

FOR: 4 (Bassett, Bertlin, Weiker, Wong)

AGAINST: 2 (Grausz, Nice)

ABSENT: 1 (Wisenteiner)

Amended Main Motion Passed 4-2.

FOR: 4 (Bassett, Bertlin, Weiker, Wong)

AGAINST: 2 (Grausz, Nice)

ABSENT: 1 (Wisenteiner)

It was moved by Wong; seconded by Grausz to:

**Direct staff to transfer \$160,000 from the 2017 REET surplus toward the City's open space vegetation management program.**

Passed 4-2

FOR: 4 (Bertlin, Grausz, Nice, Wong)

AGAINST: 2 (Bassett, Weiker)

ABSENT: 1 (Wisenteiner)

## **OTHER BUSINESS**

### **Councilmember Absences**

Councilmember Wisenteiner's absence was excused.

Mayor Bassett will be absent October 17 and October 26.

### **Planning Schedule**

City Manager Underwood spoke about:

- Possible Study Session on October 3 regarding the Last & First Mile Study Session
- Upcoming code amendments on October 3
- The Aubrey Davis Park Master Plan Study Session on October 17
- The Joint Meeting with the MISD Board on October 26
- Executive Sessions on October 3 starting at 5pm.

### **Board Appointments**

There were no appointments.

### **Councilmember Reports**

Councilmember Grausz attended the JRC meeting discussing the Community Development Block Grant Program.

Nothing of significance to report.

Deputy Mayor Bertlin attended the Eastside Transportation Partner meeting. She advised that they are currently

building their legislative agenda for 2018, and it is her hope to introduce to the group the idea of the I-90 bike/pedestrian corridor. She also noted that Former Mayor Alan Merkle was recently named as the recipient of the Chevalier de l'Ordre National du Merite by the government of France. This award confers the rank of Knight, and is one of the highest awards given to non-French natives.

Councilmember Nice, along with Deputy Mayor Bertlin and City Manager Underwood, attended an ARCH workshop. He noted that the group shared some recent accomplishments, and some unique ideas in how contributing cities can participate in the program through a fee in lieu role.

Councilmember Weiker attended an Eastside Legislative Forum, noting one of topics discussed was the impact the McCleary school funding decision will have on Eastside communities. She asked City Manager Underwood to collaborate with Superintendent Colosky to determine what these changes will look like for Mercer Island residents. She noted two upcoming candidate forums: Thursday, September 21, 2017, 12pm at the Community Center hosted by Mercer Island Chamber of Commerce and Tuesday, October 10, 2017, 7pm at West Mercer Elementary hosted by the Mercer Island League of Women Voters.

Councilmember Wong attended the Lincoln Landing Community Meeting put on by the Parks and Recreation Department. He attended the SCA Public Issues Committee meeting, noting the main topic of discussion was the opioid crisis in King County and how it ties to the rise in property crime. He plans to attend an impacts of self-driving cars training talk by Forterra on September 20, 2017.

Mayor Bassett, along with several other councilmembers attended "Meeting of the Greens". He commended Sustainability & Communications Manager Ross Freeman for his work in putting the event together.

#### **EXECUTIVE SESSION**

**Executive Session to review the performance of a public employee pursuant to RCW 42.30.110(1)(g) for one hour**

This Executive Session was moved to October 3.

#### **ADJOURNMENT**

The Regular Meeting adjourned at 10:57 pm.

\_\_\_\_\_  
Bruce Bassett, Mayor

Attest:

\_\_\_\_\_  
Allison Spietz, City Clerk

**EXHIBIT 4**

From: /O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7ED30A5234EE4C0B82CA08B70BB10EE9-SCOTT.GREEN  
To: EdWeinstein  
Cc:  
Subject: RE\_ SJCC Contract Rezone  
Date: 8/12/2016 12:01:12 PM  
Attachments:

---

Hi Ed. I don't think a development agreement would work, unless we amend our code first. That leaves a contract rezone or conditional use permit.

Our code is silent on how to do a contract rezone, and the SJCC's use may not be allowed in the C-O zone (which is what I assume you would be requesting). A contract rezone would also require a comprehensive plan amendment, which would be reviewed sometime in 2017. A code amendment may be required to allow the SJCC use. I assume the use is noncommercial recreation area? What was the use called in your prior permits?

A conditional use permit would work, but I recall you would also need some variances for setbacks and maybe impervious surface?

A final option we discussed was a code amendment to create a "master plan" process (or something like that), which would allow the City to approve the overall layout, uses, etc. and modify development standards as part of that process. This code amendment may not occur until sometime in 2017.

Maybe it would make sense to meet again, with some of my new staff, to discuss the SJCC's plans? Let me know if we could do that sometime next week or the week after.

Thanks.  
Scott

From: Ed Weinstein [mailto:edw@weinsteinaw.com]  
Sent: Thursday, August 11, 2016 9:09 AM  
To: Scott Greenberg <Scott.Greenberg@mercergov.org>  
Cc: Kim Waldbaum <kmuscatel@aol.com>; Judy Neuman <JudyN@sjcc.org>  
Subject: Re: SJCC Contract Rezone

Scott,

When we met a few months ago, you indicated that you would research the alternatives for a Contract Rezone or a Development Agreement for the Stroum Jewish Community Center. The leadership of the SJCC would like to move ahead with this process, so it is important for our purposes that we sort out your preferred process. Please let me know when we might meet to advance this discussion.

**Ed Weinstein, FAIA**  
Principal  
(206) 443-8806 (office)  
(206) 454-8487 (direct)



From: [redacted]  
To: Nicole Gaudette; Scott Greenberg  
Cc: Judy Neuman; Kim Waldbaum  
Subject: Storm Jewish Community Center  
Date: 8/23/2016 8:01:39 AM  
Attachments:

---

Scott and Nicole,

Thank you very much for taking the time to meet with me yesterday to discuss alternative entitlement routes for establishing the increased development potential for the Stroum Jewish Community Center. I greatly appreciated that Scott had taken the time to meet previously with Nicole to orient her to the project circumstances and to investigate potential entitlement possibilities. As I indicated at the conclusion of our meeting yesterday afternoon, I am writing this e-mail to document our discussion and to give you both the opportunity to edit my comments if they contradict your recollection of our conversation.

We began the meeting with me giving a brief presentation of the site circumstances and our potential ambitions for the future development of the site. I indicated that we were aware that our impervious surface calculations demonstrated that we were over the 40% threshold for the R-8.4 (47%) and R-9.6 (49%) portions of the site, but below the 60% threshold for the C-O (52%) portion of the site. I also indicated that we were aware, from numerous previous conversations with the City of Mercer Island, that we probably had a parking shortfall for the current uses on the site and that we had been previously advised that both the impervious surface limitations and the parking shortfall would need to be addressed as part of the next phase of development of the site.

In this regard, I then indicated that I assumed that an important component of our entitlement would be a Conditional Use Permit Amendment to the existing Conditional Use Permit. Scott then discussed our need to establish the definition of the existing use for the facility as it would be important for our ongoing entitlement purposes. A quick review of the copies of the existing Conditional Use Permit did not clarify this issue. In a quick discussion, Scott indicated that the use might be best described as a Private Club, which is an Allowable Use in the Residential Zones, but that further research will be required. We all agreed that the resolution of this use issue should not be problematic.

We then discussed the challenges of the impervious surface non-compliance and discussed three alternative scenarios: a Contract Rezone to C-O to increase the maximum impervious surface area to 60%, a variance to the ordinance to exceed the existing 40% maximum impervious surface area for the R-8.4 and R-9.6 parcels, or the purchase of the French American School Parcels to increase the SJCC overall pervious area.

A quick discussion ensued. Regarding the first alternative for the Contract Rezone, Scott indicated further complexities to this approach, especially the City Council review, which would make it a lengthy and potentially contentious process. Regarding the third alternative for the acquisition of the FAS properties, I indicated that this was currently not financially feasible and out of the SJCC's

control. Therefore, we collectively focused on the variance to the impervious surface limitation as the most appropriate mechanism to increase the development potential for the site. Scott indicated that there will be a comprehensive review of the Impervious Surface limitations in the Residential Zones that the City of Mercer Island is intending to take up shortly and that it is conceivable that the area limitations might be increased as part of this process, thereby diminishing the need for a variance. But, we also agreed that the timing and outcome of this process is also indeterminate, so we then agreed that the variance was probably the most effective strategy for addressing the impervious surface non-compliance in the near future.

In relation to these discussions, Scott and Nicole recommended the following actions that we should pursue **comprehensively and concurrently**:

1. SEPA Threshold Determination
2. **Conditional Use Permit Amendment**
3. Impervious Surface Variance

The Sepa Threshold Determination is a straightforward process with the determination being made by the City of MI staff, with appeal to the Planning Commission. The CUP Amendment is Heard by the Planning Commission, with an appeal heard by the Hearing Examiner. And, the Variance is reviewed by the Hearing Examiner, with appeals being heard in State Superior Court. **None of these processes involve the City Council.**

Scott and Nicole proposed that this process be initiated with a Pre-Application meeting previous to filing the individual applications. In addition to the participation of Scott Greenberg, Development Services Group Director, and Nicole Gaudette, Senior Planner, others who might participate include Patrick Yamashita, City Engineer, Ding Ruji, Senior Development Engineer, and Herschel Rostov, Fire Marshall. With the clarification of issues, the application for all three actions could proceed. A Development Application Coversheet should be attached to all three applications.

Scott offered his opinion that this was probably the most expedient and appropriate mechanism for resolving the land use issues associated with the future expansion of the Stroum Jewish Community Center property. He indicated that this process might only require 4-5 months from application to issuance of the SEPA Threshold Determination, the CUP Amendment, and the Impervious Surface Variance. **As indicated, there would be no need for review by the City Council.** Also, there would be no need for advanced design to be reviewed by the Design Commission as the only design-related issues for the CUP Amendment process would include the approximate size and location of proposed facilities, their use, and their related parking and traffic impacts. Design Commission review would be required as part of the Building Permit process. I assured Scott and Nicole that the SJCC would reach out to adjacent neighbors who live along SE 40th ST. to proactively address their concerns and to propose mitigation strategies previous to the Planning Commission review.

We concluded the meeting with me expressing my appreciation for **Scott and Nicole's research and suggestions that led us to consensus agreement for the viability of this approach.** I indicated that I would review this recommendation with the SJCC leadership and upon their agreement, I would follow up by scheduling the Pre-Application meeting and the submission of the comprehensive



applications.

**Ed Weinstein, FAIA**

Principal

(206) 443-8606 (office)

(206) 454-8487 (direct)

2200 Western Avenue, Suite 301 Seattle, WA 98121

[www.edweinstein.com](http://www.edweinstein.com)

**EXHIBIT 5**



**CITY OF MERCER ISLAND**  
**DEVELOPMENT SERVICES GROUP**  
 9611 SE 36TH STREET | MERCER ISLAND, WA 98040  
 PHONE: 206.275.7605 | [www.mercer.gov.org](http://www.mercer.gov.org)



CITY USE ONLY		
PERMIT #	RECEIPT #	FEE
CPA17-002		434.66
Date Received:		<b>RECEIVED</b>

<b>DEVELOPMENT APPLICATION</b>	Received By: <b>SEP 29 2017</b>
--------------------------------	---------------------------------

STREET ADDRESS/LOCATION 3801, 3700, 3795 E. Mercer Way		R-8.4, R-9.6, C-0
COUNTY ASSESSOR PARCEL #'S See Attached Exhibit A		PARCEL SIZE (SQ. FT.) Approximately 18 Acres
PROPERTY OWNER (required) Stroum Jewish Community Center	ADDRESS (required) 7795 E. Mercer Way	CELL/OFFICE (required) 206-930-7828 E-MAIL (required) rich@mhseattle.com
PROJECT CONTACT NAME G. Richard Hill	ADDRESS 701 Fifth Avenue, Ste. 6600, Seattle 98104	CELL/OFFICE 206-930-7828 E-MAIL rich@mhseattle.com
TENANT NAME	ADDRESS	CELL PHONE E-MAIL

**DECLARATION: I HEREBY STATE THAT I AM THE OWNER OF THE SUBJECT PROPERTY OR I HAVE BEEN AUTHORIZED BY THE OWNER(S) OF THE SUBJECT PROPERTY TO REPRESENT THIS APPLICATION, AND THAT THE INFORMATION FURNISHED BY ME IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.**

SIGNATURE *G. Richard Hill*

DATE 9/29/17

PROPOSED APPLICATION(S) AND CLEAR DESCRIPTION OF PROPOSAL (PLEASE USE ADDITIONAL PAPER IF NEEDED):

See Attached Exhibit B

ATTACH RESPONSE TO DECISION CRITERIA IF APPLICABLE

CHECK TYPE OF LAND USE APPROVAL REQUESTED:

- |   |  |  |
|---|--|--|
| <p><b>APPEALS</b></p> <p><input type="checkbox"/> Building (+cost of file preparation)</p> <p><input type="checkbox"/> Land use (+cost of verbatim transcript)</p> <p><input type="checkbox"/> Code Interpretation</p> <p><b>CRITICAL AREAS</b></p> <p><input type="checkbox"/> Determination</p> <p><input type="checkbox"/> Reasonable Use Exception</p> <p><b>DESIGN REVIEW</b></p> <p><input type="checkbox"/> Administrative Review</p> <p><input type="checkbox"/> Design Review – Major</p> <p><input type="checkbox"/> Design Review – Minor</p> <p><b>WIRELESS COMMUNICATIONS FACILITIES</b></p> <p><input type="checkbox"/> Wireless Communications Facilities-6409 Exemption</p> <p><input type="checkbox"/> New Wireless Communications Facility</p> <p><b>DEVIATIONS</b></p> <p><input type="checkbox"/> Changes to Antenna requirements</p> <p><input type="checkbox"/> Changes to Open Space</p> <p><input type="checkbox"/> Fence Height</p> <p><input type="checkbox"/> Critical Areas Setback</p> | <p><b>DEVIATIONS Continued</b></p> <p><input type="checkbox"/> Impervious Surface (5% Lot coverage)</p> <p><input type="checkbox"/> Shoreline</p> <p><input type="checkbox"/> Wet Season Construction Moratorium</p> <p><b>ENVIRONMENTAL REVIEW (SEPA)</b></p> <p><input type="checkbox"/> Checklist: Single Family Residential Use</p> <p><input type="checkbox"/> Checklist: Non-Single Family Residential Use</p> <p><input type="checkbox"/> Environmental Impact Statement</p> <p><b>SHORELINE MANAGEMENT</b></p> <p><input type="checkbox"/> Exemption</p> <p><input type="checkbox"/> Semi-Private Recreation Tract (modification)</p> <p><input type="checkbox"/> Semi-Private Recreation Tract (new)</p> <p><input type="checkbox"/> Substantial Dev. Permit</p> <p><b>SUBDIVISION LONG PLAT</b></p> <p><input type="checkbox"/> Long Plat</p> <p><input type="checkbox"/> Subdivision Alteration to Existing Plat</p> <p><input type="checkbox"/> Final Subdivision Review</p> <p><b>SUBDIVISION SHORT PLAT</b></p> <p><input type="checkbox"/> Short Plat</p> <p><input type="checkbox"/> Deviation of Acreage Limitation</p> | <p><b>SUBDIVISION SHORT PLAT Continued</b></p> <p><input type="checkbox"/> Short Plat Amendment</p> <p><input type="checkbox"/> Final Short Plat Approval</p> <p><b>VARIANCES (Plus Hearing Examiner Fee)</b></p> <p><input type="checkbox"/> Type 1**</p> <p><input type="checkbox"/> Type 2***</p> <p><b>OTHER LAND USE</b></p> <p><input type="checkbox"/> Accessory Dwelling Unit</p> <p><input type="checkbox"/> Code Interpretation Request</p> <p><input checked="" type="checkbox"/> Comprehensive Plan Amendment (CPA)</p> <p><input type="checkbox"/> Conditional Use (CUP)</p> <p><input type="checkbox"/> Lot Line Revision</p> <p><input type="checkbox"/> Lot Consolidation</p> <p><input type="checkbox"/> Noise Exception</p> <p><input checked="" type="checkbox"/> Reclassification of Property (Rezoning)</p> <p><input type="checkbox"/> ROW Encroachment Agreement (requires separate ROW Use Permit)</p> <p><input checked="" type="checkbox"/> Zoning Code Text Amendment</p> |
|---|--|--|

\*\*Includes all variances of any type or purpose in all zones other than single family residential zone: B, C-0, PBZ, MF-2, MF2L, MF-2L, MF-3, TC, P

\*\*\*Includes all variances of any type or purpose in single family residential zone: R-8.4, R-9.6, R-12, R-15

## DECISION CRITERIA SHEET

Describe the requested change to the current Mercer Island Comprehensive Plan. If possible, identify (by section: element, policy or goal) the existing provisions of the Code, which would be changed or identify (by section: element, policy or goal) where the proposed amendment would be located within the existing Comprehensive Plan. The decision criteria pursuant to ULDC 19.15.020(G) 1. listed below shall be addressed for any proposed Comprehensive Plan amendment. *Your response does not have to be limited to the space provided below and can be provided in a separate written response.*

- a. There exists obvious technical error in the information contained in the comprehensive plan;

See Attachment B

- b. The amendment is consistent with the Growth Management Act, the county-wide planning policies, and the other provisions of the comprehensive plan and city policies;

See Attachment B

- c. The amendment addresses changing circumstances of the city as a whole;

See Attachment B

- d. If the amendment is directed at a specific property, the following additional findings shall be determined:

- i. The amendment is compatible with the adjacent land use and development pattern;

See Attachment B

- ii. The property is suitable for development in conformance with the standards under the potential zoning;

See Attachment B

- iii. The amendment will benefit the community as a whole and will not adversely affect community facilities or the public health, safety, and general welfare.

See Attachment B

**EXHIBIT A**

3795 and 3801 E. Mercer Way

Tax Parcel Numbers: 265550-137, 265550-0115, 265550-167-02

Abbreviated Legal Description:

Ptn Lt 17, Blk 1, Fruitland Acres

3700 E. Mercer Way

Tax Parcel Numbers: 2107000010, 1515600010

Abbreviated Legal Description:

Addition Rec. In Vol. 75 of Plats, Page 24, & Lots 1 Thru 7, Channel Crest Recorded in Vol. 72 of Plats, Page 63, Together with that portion of tract A, Channel Crest, Vol. 72, Page 63, all in King County.



## EXHIBIT B

### APPLICATION FOR COMPREHENSIVE PLAN AMENDMENT

#### Proposed Application and Clear Description of Proposal:

This proposal affects three contiguous properties on Mercer Island located at 3801 E. Mercer Way (currently occupied by Stroum Jewish Community Center), 3700 E. Mercer Way (currently occupied by Herzl-Ner Tamid), and 3795 E. Mercer Way (currently occupied by French American School). The three properties together comprise approximately 18 acres.

The owners of the properties are interested in the possibility of working together to develop a comprehensive master plan to coordinate future development and improvement of the properties for continued private community facilities uses. The properties are currently designated on the Comprehensive Plan, and zoned, R-8.4, R-9.6, B and C-O. All three properties are proximate to the E. Mercer Way intersection with I-90. See Exhibit C, Vicinity Map and Existing Site Plan.

There is currently no private community facilities category in the City's Comprehensive Plan or Zoning Code. The applicants propose an Amendment to the City's Comprehensive Plan and Zoning Code to create a new Private Community Facilities designation that will enable the applicants to work with each other and with the City to develop a master plan for phased development of existing and future private community facilities on the properties, encompassing private school, religious institution, and non-profit community and recreational facilities. The applicants propose that these Plan and Zoning changes would accommodate flexible design and dimensional standards to encourage superior site and building design outcomes.



(a) How is the proposed amendment consistent with the Growth Management Act, the county-wide planning policies, and the other provisions of the Comprehensive Plan and City policies?

The proposed amendment is consistent with the Growth Management Act, RCW 36.70A, because it will facilitate development of private community facilities, including community centers, recreational facilities, schools and educational uses, serving Mercer Island urban residents within the urban area. Allowing comprehensive master planning of the properties will facilitate the efficient use of land. The proposed amendments are consistent with the county-wide planning policies for the same reasons.

The proposed amendments will further encourage and implement the City's Comprehensive Plan, in particular Land Use Goal 17.4, which recognizes that "social and recreation clubs, schools and religious institutions are predominantly located in single family residential areas of the Island," and that "development regulation should reflect the desire to retain valuable and healthy social, recreational, educational, and religious organizations as community assets which are essential for the mental, physical and spiritual health of Mercer Island."

(b) Is there an obvious technical error in the information contained in the Comprehensive Plan, or does the amendment address changing circumstances of the City as a whole?

The existing Comprehensive Plan does not have a designation for Private Community Facilities. Adding such a designation and applying it to the properties owned by the applicants

will correct a deficiency in the current Comprehensive Plan and assist in the implementation of Land Use Goal 17.4.

(c) Is the amendment directed at a specific property? If so, address the following questions:

1. Is the amendment compatible with the adjacent land use and development pattern?

Yes. The properties are adjacent to I-90 to the north, and residential zoned properties to the south, east and west. The uses proposed have been present on the site for many years and are recognized in the Comprehensive Plan as consistent with being located in single family residential areas of the Island. Land Use Goal 17.4

2. Is the property suitable for development in conformance with the standards under the potential zoning?

Yes. The properties are already developed for private community facilities. The amendments, if adopted, will ensure superior site planning and phased development with standards adopted to address pertinent City policies and priorities.

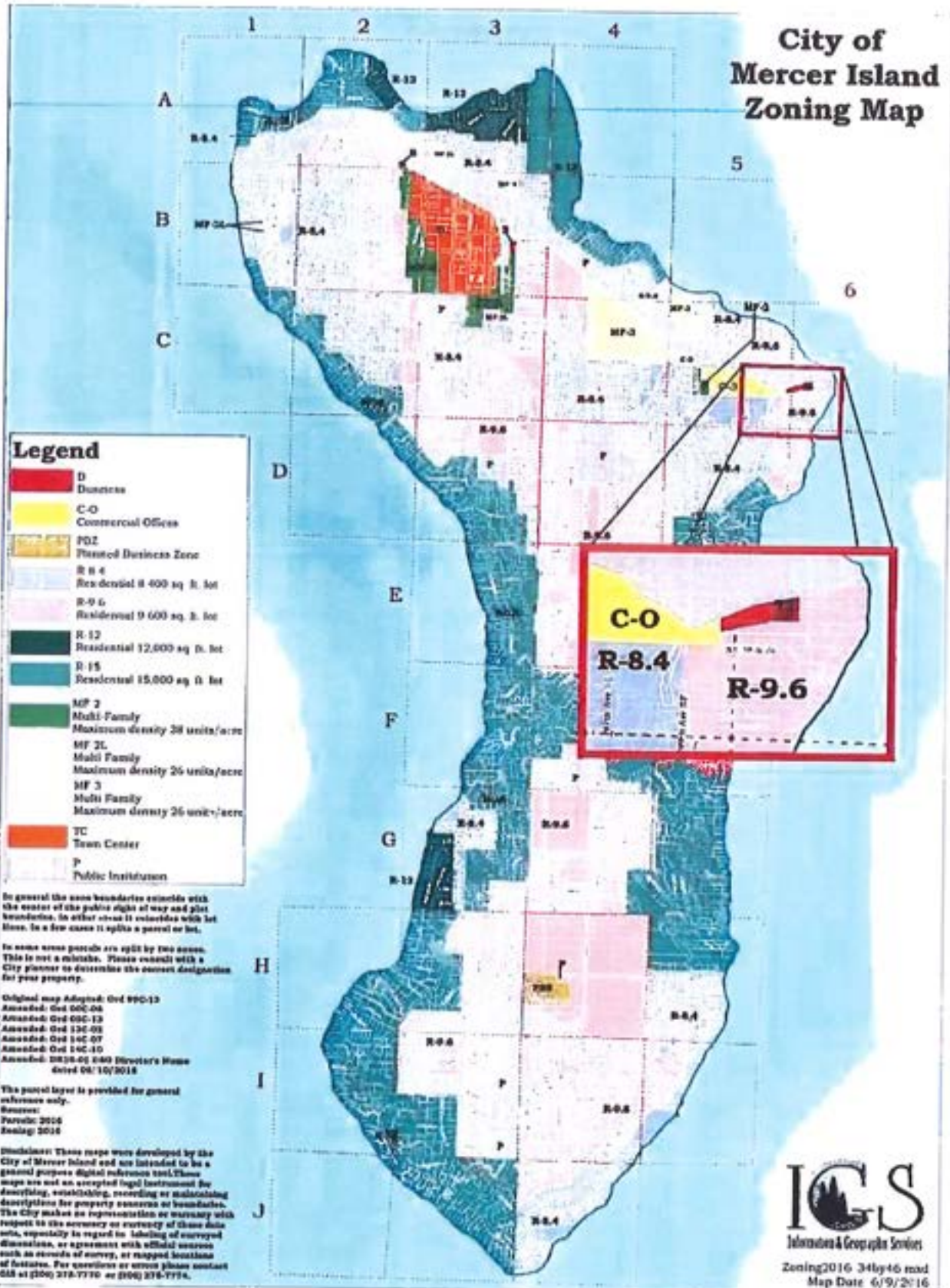
3. Will the amendment benefit the community as a whole and not adversely affect community facilities or the public health, safety, and general welfare.

The amendment will benefit the community as a whole and the public welfare by facilitating the renovation and improvement of site planning for the properties to serve as resources for the recreational, educational, and spiritual needs of Mercer Island.

EXHIBIT C



# City of Mercer Island Zoning Map



**Legend**

	D Downtown
	C-O Commercial Offices
	POZ Planned Business Zone
	R-8.4 Residential 8 400 sq. ft. lot
	R-9.6 Residential 9 600 sq. ft. lot
	R-12 Residential 12,600 sq. ft. lot
	R-15 Residential 15,000 sq. ft. lot
	MF-2 Multi Family Maximum density 28 units/acre
	MF-2L Multi Family Maximum density 26 units/acre
	MF-3 Multi Family Maximum density 26 units/acre
	TC Town Center
	P Public Institution

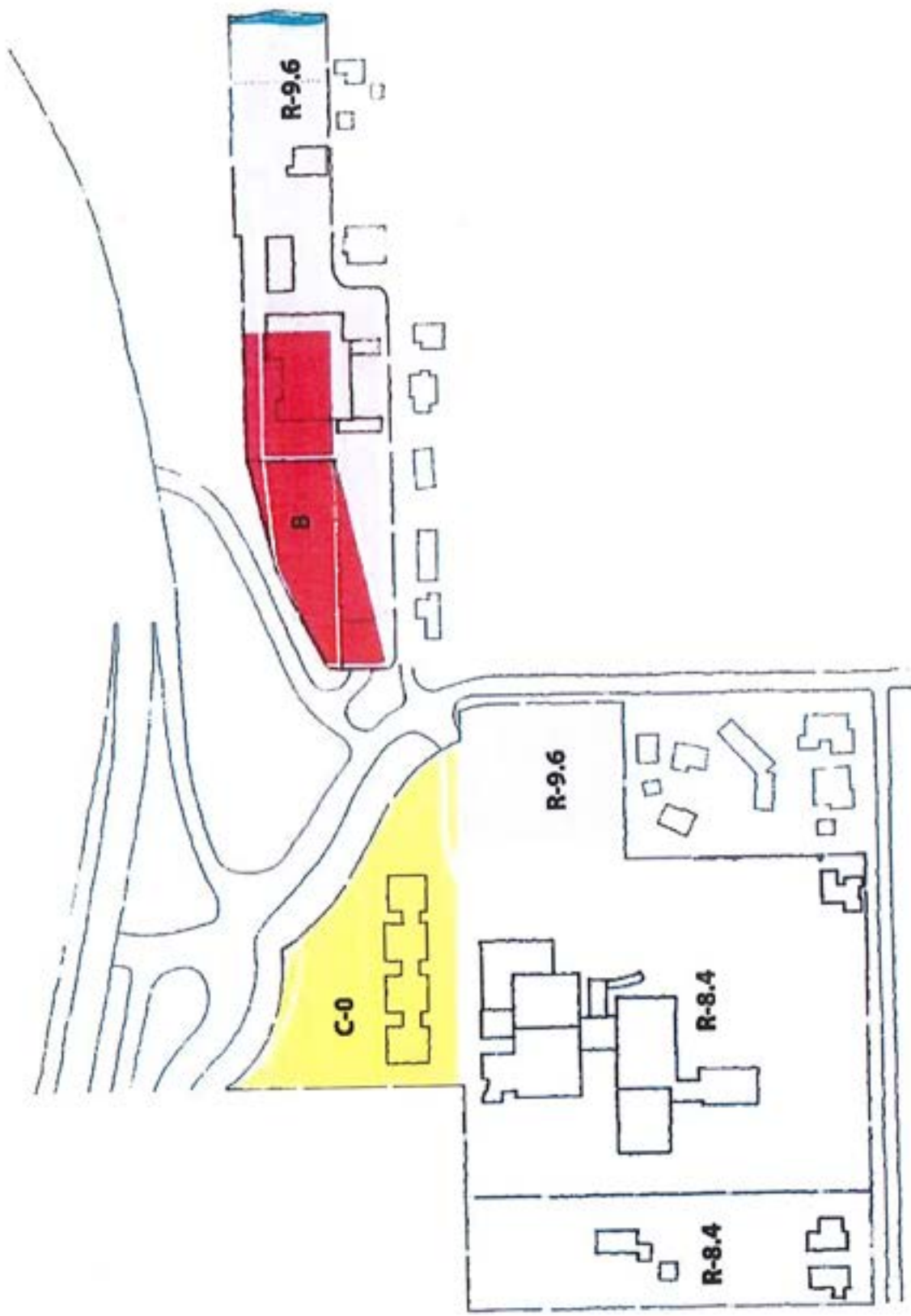
In general the zone boundaries coincide with the center of the public right of way and plot boundaries. In other cases it coincides with lot lines. In a few cases it splits a parcel or lot.

In some cases parcels are split by two zones. This is not a mistake. Please consult with a City planner to determine the correct designation for your property.

Original map Adopted: Ord 890-13  
 Amended: Ord 900-04  
 Amended: Ord 900-13  
 Amended: Ord 130-09  
 Amended: Ord 100-07  
 Amended: Ord 100-10  
 Amended: DR10-01 240 Director's Home  
 dated 04/10/2018

The parcel layer is provided for general reference only.  
 Source:  
 Parcel: 2016  
 Zoning: 2016

**Disclaimer:** These maps were developed by the City of Mercer Island and are intended to be a general purpose digital reference tool. These maps are not an accepted legal instrument for describing, establishing, recording or maintaining descriptions for property corners or boundaries. The City makes no representation or warranty with respect to the accuracy or currency of these data sets, especially as regard to labeling of surveyed dimensions, or agreement with official records such as records of survey, or mapped locations of features. For questions or errors please contact GIS at (206) 218-7730 or (206) 218-7734.



**EXHIBIT 6**





## PLANNING COMMISSION MEETING MINUTES OCTOBER 18, 2017

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### CALL TO ORDER:

The Planning Commission was called to order by Chair Dan Hubbell at 6:06 PM in the Council Chambers at 9611 SE 36th Street, Mercer Island, Washington.

### ROLL CALL:

Chair Dan Hubbell, Vice Chair Tiffin Goodman, Commissioner Ted Weinberg, Jennifer Mechem, Lucia Pirzio-Biroli, Bryan Cairns and Carolyn Boatsman were present.

City staff was represented by Evan Maxim, Planning Manager, Lauren Anderson, Assistant Planner, Bio Park, Assistant City Attorney, Andrea Larson, Administrative Assistant, and Kelsey Salvo, Administrative Assistant.

Commissioner Carolyn Boatsman moved to approve the September 27, 2017 minutes. Commissioner Bryan Cairns seconded move to approve minutes. 7-0 minutes passed.

Commissioner Jennifer Mechem motioned to approve the October 4, 2017 minutes. Commissioner Carolyn Boatsman seconded to approve the minutes. 7-0 minutes passed.

### APPEARANCES:

No public appearances.

### REGULAR BUSINESS:

#### **Agenda Item #1: ZTR16-002 MICA Zoning Text Amendment Public Hearing- Cancelled**

Evan Maxim, Planning Manager, discussed the pause for the exploration of alternative sites. Rescheduling will likely happen in December 2017 or January 2018.

#### **Agenda Item #2: 2018 Comprehensive Plan Amendments – Preliminary Docket**

Evan Maxim, Planning Manager, reviewed the history of the Comprehensive Plan Amendment review process, docket criteria, provided an overview of the amendments on the docket, and fielded questions from the Planning Commission. Public Notice was August 16, 2017 and the deadline for submitting requests was October 1, 2017. November 6, 2017 is the scheduled City Council review.

The docket items includes the following:

1. Update the Land Use Element / Land Use Map for clarity and accuracy of map designations
2. Update the Capital Facilities Plan with the budget
3. Update to address traffic modeling, LOS, non-motorized (pedestrian and bike), and I-90 changes
4. Add policy support for participation in the King County Public Benefit Rating System
5. Develop goals and policies supporting the requirements of the City National Pollution Discharge Elimination System (NPDES) permit and supporting low impact development
6. Develop goals and policies supporting the cultural arts
7. Critical areas ordinance update – placeholder
8. Create a new land use map designation "Private Community Facilities" or similar, for the properties currently occupied by the JCC, French American School, and Herzl-Ner Tamid

(approximately 18 acres). This amendment to be accompanied by a zoning map and zoning code amendment.

Referring to docket item number 8, the applicant, Richard Hill, discussed why the proposal was requested to be added to the docket (6:41pm). Richard then introduced Ed Weinstein, the architect and planner, who then presented the proposed phasing of the project.

Following the applicant's presentation, the Commission then asked for clarification on certain items. Ed Weinstein, Richard Hill, and Evan Maxim responded to the Commission's questions.

Three representatives of the three stakeholders were present. Dave Cutler, board of trustees for the French American School, Michelle Glasser, Co-President at Herzl Ner Tamid, and Amy Lavin the Chief Executive Officer of the SJCC spoke to recommend the Planning Commission move to put item number 8 on the docket.

Commissioner Bryan Cairns motioned to recommend approval of the preliminary docket of Comprehensive Plan Amendments to the City Council for creation of a final docket of Comprehensive Plan Amendments, for review in 2018. Seconded by Commissioner Lucia Pirzio-Biroli.

Chair Hubbell opened for discussion. Commissioner Lucia Pirzio-Biroli recommended considering to include housing for a care taker for example for item 8. Vice Chair Tiffin Goodman recommended to add disaster/hazard planning to the docket. Commissioner Jennifer Mechem agreed with Vice Chair Tiffin Goodman, and also recommended to consider smaller housing and cottage housing into the docket. Commissioner Jennifer Mechem recommended to add accessibility into the Comprehensive Plan.

Commissioner Lucia Pirzio-Biroli motioned to add to the docket a 9<sup>th</sup> item, to develop goals and policies for disaster planning and recovery. Seconded by Vice Chair Tiffin Goodman. Amendment passes 7-0.

Commissioner Jennifer Mechem motioned to add item 10 to the docket to review Comprehensive Plan to identify and recommend policy to promote accessibility, universal design, and age friendly planning throughout the City. Seconded by Commissioner Carolyn Boatsman. Commissioner Lucia recommended to add this item to the purpose section as a blanket statement for the entire Comprehensive Plan. Amendment passes 7-0.

Chair Daniel Hubbell motioned to recommend approval of all 10 items in the preliminary docket of Comprehensive Plan Amendments to the City Council for creation of a final docket of Comprehensive Plan Amendments, for review in 2018. The recommended docket was passed 7-0.

#### **OTHER BUSINESS:**

Discussed the City Council's response to the Planning Commission's recommendation for Cohen's proposed amendment.

#### **NEXT MEETING:**

The next regularly scheduled Planning Commission meeting will be November 1, 2017 at 6:00PM at Mercer Island City Hall. The next meeting currently has no items so far on the agenda, and most likely will be cancelled. Chair Dan Hubbell will not be present on November 1, 2017. Next meeting will be on November 15, 2017.



**ADJOURNMENT:** Chair Dan Hubbell adjourned the meeting at 7:46 pm.



**EXHIBIT 7**



**CITY COUNCIL MINUTES**  
**REGULAR MEETING**  
**OCTOBER 2, 2018**

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**CALL TO ORDER & ROLL CALL**

Mayor Debbie Bertlin called the meeting to order at 5:00 pm in the Council Chambers of City Hall, 9611 SE 36th Street, Mercer Island, Washington.

Mayor Debbie Bertlin, Deputy Mayor Salim Nice, and Councilmembers Bruce Bassett (5:05 pm), Wendy Weiker (5:15 pm), David Wisenteiner, and Benson Wong were present.

Position #4 is vacant.

**AGENDA APPROVAL**

Mayor Bertlin amended the agenda explain that King County Councilmember Claudia Balducci would not be available to present to the Council under Special Business.

It was moved by Wong; seconded by Wisenteiner to:  
**Approve the agenda as amended.**  
Passed 4-0  
FOR: 4 (Bertlin, Nice, Wisenteiner, and Wong)  
ABSENT: 2 (Bassett and Weiker)  
VACANT: 1 (Position 4)

**EXECUTIVE SESSION**

**Executive Session to discuss with legal counsel pending or potential litigation pursuant to RCW 42.30.110(1)(i) for 60 minutes.**

At 5:02 pm, Mayor Bertlin convened the Executive Session to discuss with legal counsel pending or potential litigation pursuant to RCW 42.30.110(1)(i) for approximately 60 minutes.

At 6:05 pm, Mayor Bertlin adjourned the Executive Session and recessed the meeting for five minutes.

**STUDY SESSION**

**AB 5481: Transportation Concurrency Revised Ordinance**

Mayor Bertlin started the Study Session at 6:11 pm.

Interim Development Services Director Evan Maxim provided a brief overview of concurrency, summarized the first reading and Council's direction at its October 3, 2017 meeting, and the Transportation Concurrency revised ordinance. He further explained that impact fees are assessed per vehicle trip and that concurrency mitigation is only required when an intersection fails to meet level of service (LOS) post development.

The revised ordinance does the following:

- Requires a concurrency certificate on all development generating a net new vehicle trip;
- Allows for denial of a concurrency review, and describes remedies available to an applicant; and
- Creates a basis for timely updates to the transportation model and associated LOS.

The Concurrency Ordinance relies on the Transportation LOS and will take effect on December 3, 2018.

Michael Lapham, consultant with KPG, responded to Council questions regarding planned improvement projects and the Six-Year Transportation Improvement Plan.

The Council discussed proposed amendments to the ordinance as suggested by Councilmember Wong.

The Study Session concluded and Mayor Bertlin recessed the meeting until 7:00 pm.

## SPECIAL BUSINESS

### AB 5484: Domestic Violence Action Month Proclamation

YFS Senior Programs Manager and Clinical Supervisor Derek Franklin introduced Ward Urion, Social Change Manager with Lifewire to join him and Mayor Bertlin and receive the proclamation.

Mayor Bertlin proclaimed October 2018 as Domestic Violence Action Month and called upon residents of Mercer Island to speak out against domestic violence and support efforts to prevent and end domestic abuse and the indifference that sustains it.

## CITY MANAGER REPORT

City Manager Julie Underwood reported on the following items:

- **Aubrey Davis Park Master Plan** process going on now through the fall of 2019
- **Coffee with a Cop**, Wednesday, October 3, 4 pm to 6 pm
- **Mercer Island's Proposition 1 Pro & Con Committee Forums:**
  - Monthly Chamber Luncheon, Thursday, October 4, 12 pm to 1:30 pm
  - Mercer Island Beach Club, Tuesday, October 9, 7 pm to 8 pm
- **Final Farmers Market** of the Season, Sunday, October 7, 10 am to 3 pm, Mercerdale Park
- **MICA's Community Visioning Report Session**, Monday, October 8, 7 pm to 8:30 pm, Mercer Island Boys & Girls Club
- **Final Solarize 2.0 Meeting**, Tuesday, October 9, 6 pm to 7:30 pm, Mercer Island Congregational Church
- Proposed **"Community Facilities" Listening Session**, Thursday, October 11, 6 pm, Mercer Island Community Center
- **Birding Trip**, Hawks Fall Color, Back Roads, Thursday, October 11, 6:30 am to 6:00 pm, depart from Community Center
- **Arbor Day & Tree Planting Celebration**, Saturday, October 20, 9 am to 2 pm, Luther Burbank Park
- **ARCH** (A Regional Coalition of Housing) Seeking Volunteers, visit [www.archhousing.org](http://www.archhousing.org) for more information
- **Commuter Parking & Town Center Project Open House**, Monday, October 22, 6 pm to 9 pm, Community Center Mercer Room
- **YFS: Celebrating 30 Years, Sharing 30 Stories**, February 13, 2019, **MIYFS Foundation Annual Breakfast**
- **Congratulations Roanoke Inn**, 2018 King County Executive's John D. Spellman Excellence in Historic Preservation Award

## APPEARANCES

Judy Ross, Bellevue, spoke to the Council regarding the changes she has seen to Mercer Island over the past 50 years.

The following people spoke in opposition to Comprehensive Plan Amendment 8 (Private Community Facilities):

- Julie Garwood, Mercer Island
- Ryan Rahlfs, Mercer Island
- John Hall, Mercer Island



Rene Stratton, Mercer Island, spoke in support of Comprehensive Plan Amendment 6 (Arts and Culture).

The following people spoke in favor of Comprehensive Plan Amendment 8 (Private Community Facilities):

- Joel Mezistrano, Mercer Island
- Carin Jacobson, Mercer Island
- Eric Thuau, Mercer Island
- Tristan Vingdeux, Mercer Island, French/American School Alum
- Ben Orillon, Mercer Island, French/American School Alum
- Liz Friedman, Stroum Jewish Community Center Board Chair
- Laura Mousseau, Bellevue, French/American School Administrator
- Amy Lavin, Mercer Island, Stroum Jewish Community Center CEO

Cheryl D'Ambrosio, Mercer Island, apologized for not being available to meet with Mayor Bertlin and City Manager Underwood. She expressed concern regarding traffic safety by her home.

Daniel Thompson, Mercer Island, provided his opinions on the Comprehensive Plan amendments.

**Mark Coen, Mercer Island, spoke in opposition to Comprehensive Plan Amendments 1 (Land Use Designations), 6 (Arts and Culture), 8 (Private Community Facilities), 10 (Universal Design, Disability Access, and Age-Friendly Planning), 11 (Green Building Introduction), 13 (Town Center Height & Public Amenities), 14 (PUD / Pilot Program), and 15 (Commuter Parking in Town Center) as they are inconsistent with the law, injurious to his property, and prejudicial towards him.**

Ira Appleman, Mercer Island, spoke in opposition Comprehensive Plan Amendments 6 (Arts and Culture) and 8 (Private Community Facilities).

## CONSENT AGENDA

**Payables: \$1,019,581.67 (09/13/2018) & \$1,213,880.17 (09/20/2018)**

**Recommendation:** Certify that the materials or services hereinbefore specified have been received and that all warrant numbers listed are approved for payment.

**Payroll: \$801,612.14 (09/28/18)**

**Recommendation:** Certify that the materials or services specified have been received and that all fund warrants are approved for payment.

**Minutes: July 17, 2018 Regular Meeting**

**Recommendation:** Adopt the July 17, 2018 Regular Meeting Minutes as written.

It was moved by Wisenteiner; seconded by Wong to:

**Approve the Consent Calendar and the recommendations contained therein.**

Passed 6-0

FOR: 6 (Bassett, Bertlin, Nice, Weiker, Wisenteiner, Wong)

VACANT: 1 (Position 4)

## REGULAR BUSINESS

**AB 5482: Code Amendment Regarding Transportation Concurrency (2nd Reading)**

It was moved by Wong; seconded by Nice to:

**Adopt Ordinance No. 18C-12 establishing a new Chapter 19.20 and amending Chapters 19.15 and 19.16 of the Mercer Island City Code to provide for a Transportation Concurrency Management System as required by the Growth Management Act.**

It was moved by Wong; seconded by Wisenteiner to:

**Amend the previous motion to:**

**Amend the following sections of the ordinance as follows:**

1. MICC 19.20.050(A): change "subsection D" to "subsection C"
2. MICC 19.20.050(B): add to (B)(1): "A project shall be deemed abandoned by the City, if an applicant does not proceed under subsection 2 or 3 below."
3. MICC 19.20.050(C)(1)(a): change "may" to "shall"
4. MICC 19.20.050(C)(2): change "may" to "shall"
5. MICC 19.20.050(C)(2): (a): add "schedule that is satisfactory to the code official." at the end and (b): add "performance that is satisfactory to the code official." at the end.
6. MICC 19.20.070(B): add "to" between "impact" and "other"
7. MICC 19.20.080(B): change "shall" to "should" and delete ", provided funding for the update is available"

Motion to Amend Passed 6-0

FOR: 6 (Bassett, Berlin, Nice, Weiker, Wisenteiner, Wong)

VACANT: 1 (Position 4)

Main Motion Passed 6-0

FOR: 6 (Bassett, Berlin, Nice, Weiker, Wisenteiner, Wong)

VACANT: 1 (Position 4)

### **AB 5483: 2018 Comprehensive Plan Amendments and Accompanying Zoning Code Amendments (1st Reading)**

Interim DSG Director Evan Maxim presented the Planning Commission's recommendation on fifteen amendments to the Comprehensive Plan. Michael Lapham from KPG reviewed the proposed amendments to the Transportation Element. Planning Commissioner Chair Daniel Hubbel assisted in answering questions from the Council.

The Council discussed the proposed Amendments in the following order:

- Amendment 3: Transportation Element Update
- **Amendment 8: Community Facilities (SJCC / FASPS / Herzl-Ner Tamid)**
- Amendment 6: Arts & Culture
- Amendment 15: Tully's / Parcel 12 Re-Designation and Zoning
- Amendment 7: Critical Areas Update
- Amendment 10: Universal Design
- Amendment 12: STAR Analysis Framework
- Amendment 14: Pilot Program / PUD
- Amendment 1: Land Use Map Clarification
- Amendment 2: CIP Cross Reference
- Amendment 4: Private Conservation / PBRS
- Amendment 5: NPDES Policy Support
- Amendment 9: Disaster Planning
- Amendment 11: Green Building

In addition to minor edits to the Amendments, the Council directed staff to make the following major edits:

- **Amendment 3: Transportation Element Update**  
The Council discussed the rumble strips recommendation. Staff noted that the Planning Commission's discussion was focused on the traffic pattern changes, number of vehicles traveling on the roadway, and felt it warranted more discussion. Mayor Berlin noted that this discussion and any changes should be part of the Transportation Improvement Program review and an updated Bicycle and Facilities Plan. Council directed staff to remove references to rumble strips.
- **Amendment 8: Community Facilities (SJCC / FASPS / Herzl-Ner Tamid)**  
Following staff's presentation on the proposed Community Facilities zoning designation the Council asked questions about who could ask for this designation and expressed desire to have a collaborative process. Council directed staff to delete "private" from the proposed zoning designation.
- **Amendment 6: Arts and Culture**  
The Council discussed incorporating public arts in to capital projects versus using the 1% for the Arts Fund and directed staff to propose language for second reading.



Director Maxim noted that on October 11, 2018 the City would be hosting a community meeting regarding **Amendment 8 – Community Facilities** and that all are welcome to attend. He stated that the second reading of the amendments would be on October 16, 2018. He anticipates Department of Commerce approval on November 11, 2018, allowing for Council's third reading and adoption of the amendments on November 20, 2018.

It was moved by Bassett; seconded by Weiker to:  
**Set Ordinance Nos.18-13 and 18C-14 for second reading on October 16, 2018.**  
Passed 6-0  
FOR: (Bassett, Bertlin, Nice, Weiker, Wisenteiner, Wong)  
VACANT: 1 (Position 4)

#### **AB 5487: City Council Vacancy Process and Timeline for Position #4**

Mayor Bertlin reviewed the proposed process and timeline for appointment to vacant Position #4 on the Mercer Island City Council as follows:

The City will advertise the vacancy and replacement process in the Mercer Island Reporter, on the City's website, the City's social media accounts, and to the Council's agenda email list. The proposed timeline for filling the Council vacancy is as follows:

- Monday, October 8, 2018: Advertising begins and applications available
  - Wednesday, November 21, 2018: Applications due to City Clerk by 5:00 pm
  - Thursday, December 6, 2018 (Special Meeting, 6:00 pm): Candidate speeches/interviews; Council deliberation in Executive Session to follow
  - Tuesday, December 11, 2018 (Special Meeting, 6:00 pm): City Council vote prior to Joint Meeting with MISD)
  - Tuesday, December 18, 2018: Swearing in of new Councilmember (Regular Meeting)\*
- \*The selected candidate will be expected to stay and participate in this meeting.

It was moved by Bassett; seconded by Nice to:  
**Approve the proposed process and timeline for appointment to vacant Position #4 on the Mercer Island City Council as outlined in AB 5487 and direct staff to begin advertising.**  
Passed 6-0  
FOR: 6 (Bassett, Bertlin, Nice, Weiker, Wisenteiner, Wong)  
VACANT: 1 (Position 4)

#### **OTHER BUSINESS**

##### **Councilmember Absences**

Councilmember Bassett and Councilmember Wisenteiner will be absent October 16.

##### **Planning Schedule**

There were no changes.

##### **Board Appointments**

There were no appointments.

##### **Councilmember Reports**

Councilmember Wong thanked Evan Maxim for his work and presentation on the Comprehensive Plan.

Councilmember Bassett spoke about the recent K4C meeting.

Councilmember Wisenteiner gave a shout out to MI Junior Football team who beat Bellevue, the first team to do that in 14 years.



**ADJOURNMENT**

The Regular Meeting adjourned at 11:39 pm.

Attest:

\_\_\_\_\_  
Deborah A. Estrada, City Clerk

\_\_\_\_\_  
Debbie Bertlin, Mayor

**EXHIBIT 8**



## CITY COUNCIL MINUTES REGULAR MEETING NOVEMBER 20, 2018

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### CALL TO ORDER & ROLL CALL

Mayor Debbie Bertlin called the meeting to order at 6:00 pm in the Council Chambers of City Hall, 9611 SE 36th Street, Mercer Island, Washington.

Mayor Debbie Bertlin, Deputy Mayor Salim Nice, and Councilmembers Bruce Bassett, Wendy Weiker (6:39 pm), David Wisenteiner, and Benson Wong were present.

### AGENDA APPROVAL

It was moved by Wong; seconded by Wisenteiner to:

**Approve the agenda as presented.**

Passed 5-0

FOR: 5 (Bertlin, Nice, Bassett, Wisenteiner, and Wong)

ABSENT: 1 (Weiker)

VACANT: 1 (Position 4)

### EXECUTIVE SESSION

**Executive Session to discuss with legal counsel pending or potential litigation pursuant to RCW 42.30.110(1)(i) for approximately 60 minutes.**

At 6:01 pm, Mayor Bertlin convened the Executive Session to discuss with legal counsel pending or potential litigation pursuant to RCW 42.30.110(1)(i) for 60 minutes.

At 7:04 pm, Mayor Bertlin adjourned the Executive Session.

### CITY MANAGER REPORT

City Manager Julie Underwood reported on the following items:

- Mercer Island's Neighbors In Motion arranged for the City to collect 6 free bike racks to repurpose around the Island.
- A member of the Parks staff remodeled the play area at the Community Center.
- Volunteer for a city related program like Neighborhood Watch, Thrift Shop, Meals on Wheels, and more.
- Council vacancy deadline is tomorrow -applications must be received by 5:00pm, November 21.
- City facilities closed for Thanksgiving – Thursday and Friday, November 22–23.
- Community Dance – Saturday, November 24, 7 – 11pm.
- Reception Honoring Rep. Judy Clibborn – Monday, November 26, 5:30-6:30pm.
- Ribbon Cutting Ceremony celebrating successful completion of the SE 40th Street Corridor Project – December 6, at 10am.
- Tree Lighting & Firehouse Munch – Friday, December 7 at 6:30pm.
- Parents Night Out Holiday Party with Santa – Saturday, December 8, 5-10pm.

### APPEARANCES

The following owner and residents for/of 7800 Plaza condominiums spoke against changing the Comprehensive Plan, rezoning Parcel 12, and the Tully's project:

- Julie Green, 7800 Plaza
- Gabe Goldberg, 7800 Plaza, supports MICA, parking, but opposed public park



- Willie Mullins, 7800 Plaza
- Jim Schwab, 7800 SE 27th Street, owner

The following people spoke in opposition to the proposed Comp Plan Amendments:

- Mark Hall, 6018 E. Mercer Way, specifically with regards to the proposed "private facilities zone."
- Matt Goldbach, 9580 SE 40th Street, specifically with regards to Amendments 8 and 15.
- Peter Struck, 9130 SE 54th Street, spoke in opposition to Amendments 8 and 15.
- Cheryl D'Ambrosio, 3712 East Mercer Way, specifically with regards to zoning at JCC.
- Mark Coen, 73rd Ave SE, he believes the proposed Comp Plan Amendments violate the Growth Management Act.
- Ryan Rahifs, 970 SE 40th, specifically with regards to Amendment 8 and encouraged Council to delay a vote on the Comp Plan.

The following people spoke in favor of retaining funding for school counselors:

- Erin & Elliot Vivion, 2278 72nd Ave SE
- Bharat Shyam, 8405 SE 34th Place, he also thanked Council for the work on the Aubrey Davis Park and the MICA project.
- Olivia Stovall, MISD student
- Noah Bernside, MISD student
- Kelly Goodejohn, 4224 94th Ave SE
- Heather Cartwright, 8204 SE 62nd Street
- Sarah Smith, Mercer Island
- Nancy S. 8320 SE 34th Street
- Gwen Loosmore, 6125 79th Ave SE
- Kathy Muffet McDonald, Mercer Island
- Dina Holan, 6121 85th Place SE
- Ralph Jorgenson, Mercer Island
- Diane Barrett Tien, 6110 86th Ave SE

Alec Sidles, Attorney for Bricklin Newman, representing 7800 Plaza and Concerned Neighbors for the Preservation of the Community spoke in opposition to the Comprehensive Plan amendments.

Amy Lavin, 7835 SE 22nd Place, spoke in support of the Comprehensive Plan amendments and its positive impacts on the JCC.

Gary Robinson, 6026 Mercer Way, encouraged Council and the City Manager to focus on bringing people together on the Island. He indicated that the Levy Lid Lift was not about the community, but rather about the Council and the City Manager.

Nicole Kelly, 9821 SE 40th Street, spoke in opposition to Amendment 8 and the adoption of the Comprehensive Plan. She also spoke in support of school counselors and encouraged Council to consider their vote.

Ira Appleman, Mercer Island, reported that Proposition 1 was the first levy lost in 20 years. He went on to outline levy statistics and survey data and encouraged Council to find efficiencies.

Eric Thuau, Head of the French American School, was impressed by the community engagement and applauded the Planning Commission for recommending Amendment 8.

Laura Mousseau, Board Chair at the French American School, urged Council to support Amendment 8.

There being no additional public comments, Mayor Bertlin closed Appearances.

## CONSENT CALENDAR

Councilmember Wisenteiner asked to remove AB5501, Comprehensive Plan amendment from the Consent Calendar.

**Payables: \$594,684.53 (11/08/2018) & \$58,803.52 (11/15/2018)**

**Recommendation:** Certify that the materials or services hereinbefore specified have been received and that all warrant numbers listed are approved for payment.

**Payroll: \$799,221.92 (11/09/2018)**

**Recommendation:** Certify that the materials or services specified have been received and that all fund warrants are approved for payment.

**Minutes: June 19, 2018 Regular Meeting and November 5, 2018 Special Meeting**

**Recommendation:** Adopt the June 19, 2018 Regular Meeting and November 5, 2018 Special Meeting minutes as written.

It was moved by Bassett; seconded by Welker to:

**Approve the Consent Calendar, as amended, and the recommendations contained therein.**

Passed 6-0

FOR: 6 (Bassett, Bertlin, Nice, Welker, Wisenteiner, and Wong)

VACANT: 1 (Position 4)

#### **AB 5501: 2018 Comprehensive Plan Amendments (3<sup>rd</sup> Reading & Adoption)**

Councilmember Wisenteiner made a motion to remove Amendment 8 from the Comprehensive Plan. The motion failed for lack of a second.

It was moved by Bassett; seconded by Wong to:

**Adopt Ordinance No. 18-13 with Attachments A and B amending the Comprehensive Plan and Land Use Map.**

Passed 5-1

FOR: 5 (Bassett, Bertlin, Nice, Welker, and Wong)

AGAINST: 1 (Wisenteiner)

VACANT: 1 (Position 4)

It was moved by Bassett; seconded by Wong to:

**Adopt Ordinance No. 18C-14 with Attachment A amending chapter 19.11 MICC and the Mercer Island Zoning Map.**

Passed 6-0

FOR: 6 (Bassett, Bertlin, Nice, Welker, Wisenteiner and Wong)

VACANT: 1 (Position 4)

Mayor Bertlin recessed the meeting at 8:45 pm. The meeting resumed at 8:55 pm.

#### **PUBLIC HEARING**

Finance Director/Assistant City Manager Chip Corder briefly introduced AB 5500, 2019-2020 Proposed Budget.

Mayor Bertlin opened the final public hearing for the 2019-2020 Proposed Budget at 8:49 pm.

Meg Lippert, 4052 94th Avenue SE, stated that she was inspired by what she had heard and spoke in support of funding the school counselors.

Tim O'Connell, Utility Board Chair, explained that the costs reflected in the proposed changes are costs that the City is incurring. He noted that the City's sewage is treated by King County and that the County is increasing its rates by 2.5%. The recommendation to increase the rates was a unanimous recommendation from the Utility Board.

Peter Struck, 9130 SE 54th Street, reminded Council of the number of residents that voted no on the levy and encouraged Council to reconsider the fiscal sustainability plan and minimize non-essential employees.

Mike Cero, Mercer Island, reiterated the number of residents that voted no on the levy and encouraged the Council to reduce budget expenditures by 2.5%. He also distributed a 2017 Salary Data report to Council for



consideration.

Jared Lundell, 7474 85<sup>th</sup> Place SE, explained that he voted yes on the Levy and supports YFS; however, he struggles to understand how the City comes out of this situation without making cuts to YFS.

Janelle Honeycut, 8636 SE 75<sup>th</sup> Place, encouraged the Council to maintain the YFS counselors.

Erin Gurney, 4550 E Mercer Way, spoke in support of retaining funding for school counselors.

Ira Appleman, Mercer Island, encouraged Council to focus more on tracking staff time and encouraged the Council to increase the City Attorney's budget.

Johan Valentin, 4346 E. Mercer Way, spoke in support of funding school counselors.

There being no additional public comments, Mayor Bertlin closed the public hearing at 9:19 pm.

#### **AB 5500: 2019-2020 Proposed Budget: Finalize Changes and Approve 2019 Resolutions and Property Tax Ordinances**

City Attorney Kari Sand reported on the status of the Prevailing Wage Issue and the advisory meeting held on November 9<sup>th</sup>, explaining that to date, Labor and Industries had not responded to cities regarding the prevailing wage issue.

Parks and Recreation Director Jessi Bon noted that the City will budget for the increase.

Parks and Recreation Director Bon reported that the Luther Burbank Shoreline Improvements mistakenly showed Phase 3 (Swim Beach) as funded. The budget was corrected to include \$55,000 to address that expense.

Information Services Director Mike Kaser responded to questions regarding the Network Communications Infrastructure.

Finance Director Chip Corder reported on the updated REET forecast explaining that the 2018-2024 REET forecast incorporated October 2018 receipts. As a result of the updated REET forecast, he noted that projected fund balances were updated to include a 44/55 split between the Street Fund and Capital Improvement Fund.

Mayor Bertlin explained that in order to amend the budget, Council would follow the same motion procedures as with other matters before Council. The process was outlined as follows:

- Specify the proposed budget amendment by motion. Prior to Council discussion, the motion to amend the budget would require a second.
- Each motion to amend the budget must include a recommended funding source – or offsetting expenditure reduction (budget cut) - and information regarding the timeline for implementation (when within the biennium).
- In order for motions to pass, support from 4 Councilmembers (a majority of the whole Council) would be required.

It was moved by Wisenteiner; seconded by Nice to:

**Direct the City Manager to reduce deficit spending by an additional \$1.2M which would leave \$800K in deficit spending within the 2019-2020 biennium and that further reductions shall be based on Guiding Budget Reduction Principles which shall be developed, reviewed, and approved by the Council before the Second Quarter 2019 Financial Status Report and Budget Adjustments.**

Passed 5-1

FOR: 5 (Bassett, Bertlin, Nice, Wisenteiner, and Wong)

AGAINST: 1 (Weiker)

VACANT: 1 (Position #4)

Following the direction from Council on the 2019-2020 Biennium Budget, Mayor Bertlin provided the following guidance to Council and staff:



- The City is at the beginning of defining a "new normal" given the failure of Proposition 1.
- There can be nothing sacred in terms of cuts and measures considered by the Council because the projected deficits in 2021-2022 are significantly greater.
- The Council is committed to providing a path forward for future Councils and beginning the process of transitioning to new lower levels of service. This path will not excuse the current Council from making difficult decisions now.
- The City will use the Financial Sustainability Plan, which will be kicked off on December 18, 2018, to guide the Council and staff in making difficult decisions regarding service levels in 2019-2020.

It was moved by Wong; seconded by Weiker to:

**Raise the Utility Tax from 5.3% to 6.1% to fund school counselors for 2019-2020 biennium.**

Failed 4-2

AGAINST: 4 (Bassett, Bertlin, Nice, and Wisenteiner)

FOR: 2 (Wong, Weiker)

It was moved by Wong; seconded by Weiker to:

**Strike \$55,000 from 2020 Organizational Assessment**

FAILED 4-2

AGAINST: 4 (Bassett, Nice, Wisenteiner, Bertlin)

FOR: 2 (Wong, Weiker)

VACANT: 1 (Position #4)

**COUNCIL DIRECTION** – Council directed City Manager Underwood to meet with the Mercer Island School District Superintendent to discuss a return to an equitable (50-50) funding arrangement of school counselors.

It was moved by Weiker; seconded by Wong to:

**Use \$150 from contingency fund to support counselors.**

Failed 4-2

AGAINST: 4 (Bassett, Bertlin, Nice, Wisenteiner)

FOR: 2 (Wong, Weiker)

VACANT: 1 (Position #4)

There being no further service reductions that Council wished to consider, Mayor Bertlin recessed the meeting at 10:38 pm.

Mayor Bertlin reconvened the meeting at 11:00 pm and Finance Director Chip Corder introduced the Capital Improvement Program (CIP) Discussion.

It was moved by Bassett; seconded by Nice to:

**Adopt the Alternative Budget Proposal with 4% inflation only.**

Passed 6-0

FOR: 6 (Bassett, Bertlin, Nice, Weiker, Wisenteiner, Wong)

Vacant: 1 (Position #4)

It was moved by Bassett; seconded by Wong to:

**Adopt the \$145,000 Network Communications Infrastructure budget as proposed by staff.**

It was moved by Nice; seconded by Wisenteiner to:

**Amend the motion to remove the \$21,000 for replacment of fiber between City Hall and Maintenance Building.**

Motion to Amend failed 4-2

AGAINST: 4 (Basset, Bertlin, Weiker, and Wong)

FOR: 2 (Nice, Wisenteiner)

VACANT: 1 (Position #4)

It was moved by Nice; seconded by Wisenteiner to:

**Remove \$99K for conduit design and \$10K for conduit across 77th Avenue overpass from the \$145K Network Communications Infrastructure budget.**

Motion to Amend failed 4-2  
AGAINST: 4 (Basset, Berlin, Wong, and Weiker)  
FOR: 2 (Nice, Wisenteiner)  
VACANT: 1 (Position #4)

Main Motion Passed 4-2  
FOR: 4 (Bassett, Berlin, Wong, and Weiker)  
AGAINST: 2 (Wisenteiner and Nice)  
VACANT: 1 (Position #4)

It was moved by Nice; seconded by Wong to:  
**Reduce the General Fund contribution to the YFS Fund (Thrift Shop Project) by \$137,000 to support a police patrol officer position.**

Passed 6-0  
FOR: 6 (Bassett, Berlin, Nice, Weiker, Wisenteiner, and Wong)  
VACANT: 1 (Position #4)

It was moved by Wisenteiner; seconded by Bassett to:

1. **Approve Resolution No. 1553, which approves NORCOM's 2019 budget allocation to the City of Mercer Island.**
2. **Approve Resolution No. 1549, which establishes classifications of water users and a schedule of charges for water usage, a schedule of rates for fire service, a schedule of special service charges, meter and service installation charges, and connection charges effective January 1, 2019 and thereafter.**
3. **Approve Resolution No. 1550, which establishes rates and connection charges for sewerage disposal services provided by the City of Mercer Island effective January 1, 2019 and thereafter.**
4. **Approve Resolution No. 1551, which establishes the bi-monthly service charge for storm and surface water services provided by the City of Mercer Island effective January 1, 2019 and thereafter.**
5. **Approve Resolution No. 1552, which establishes the bi-monthly utility fee for the emergency medical and ambulance services supplied by the City of Mercer Island effective January 1, 2019 and thereafter.**
6. **Approve Resolution No. 1555, which adjusts development and construction permit fees effective January 1, 2019 and thereafter.**
7. **Suspend the City Council Rules of Procedure 6.3, requiring a second reading for an ordinance.**
8. **Adopt Ordinance No. 18-16, which establishes the total amount of property taxes to be levied for the year 2019.**
9. **Adopt Ordinance No. 18-17, which identifies the dollar and percent increases of the total property tax levy for the year 2019 relative to the total property tax levy for the year 2018.**

PASSED 6-0  
FOR: 6 (Bassett, Berlin, Nice, Weiker, Wisenteiner, and Wong)  
VACANT: 1 (Position #4)

## **REGULAR BUSINESS**

### **AB 5502: 2019 Comprehensive Plan Amendment Final Docket**

It was moved by Wong; seconded by Nice to:  
**Approve Resolution No. 1554, establishing the 2019 Comprehensive Plan amendment final docket.**  
Passed 6-0  
FOR: 6 (Berlin, Nice, Bassett, Weiker, Wisenteiner, and Wong)  
VACANT: 1 (Position 4)

## **OTHER BUSINESS**

### **Councilmember Absences**

Councilmember Wisenteiner will be absent at the November 26, 2018 Special Meeting.

## Planning Schedule

City Manager Underwood reviewed items scheduled for the following Council meetings:

- **November 26 Special Meeting** - Reception for Representative Judy Clibborn, Legislative Priorities Discussion with 41<sup>st</sup> Delegation, and RFQ finalists regarding the commuter project
- **December 4 Regular Meeting** - Solid Waste Contract discussion
- **December 6 Special Meeting** - Council Position No. 4 Vacancy Interviews
- **December 11 Special Meeting** - Council Position No. 4 Vacancy Appointment
- **December 18 Regular Meeting** - City Manager Review, Councilmember Position No. 4 Swearing In, Fiscal Sustainability Plan, and Board and Commission Committee Recommendations, and 3<sup>rd</sup> Quarter 2018 Financial Status Report

## Board Appointments

Mayor Bertlin reported that the application process for Vacant Council Position No. 4 was scheduled to close on Wednesday, November 21 at 5 p.m.

## Councilmember Reports

Councilmember Welker reported on King County Conservation District's strategic planning efforts.

## ADJOURNMENT

The regular Council Meeting adjourned at 11:51 pm.

---

Debbie Bertlin, Mayor

Attest:

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Deborah A. Estrada, City Clerk



**EXHIBIT 9**

RECEIVED

JAN 29 2019

GROWTH MANAGEMENT  
HEARINGS BOARD

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BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD  
CENTRAL PUGET SOUND REGION  
STATE OF WASHINGTON

CONCERNED NEIGHBORS FOR THE  
PRESERVATION OF OUR  
COMMUNITY

Petitioner,

v.

CITY OF MERCER ISLAND, a

Respondent.

NO. 19-3-0002c

PETITION FOR REVIEW

**I. PETITIONER**

Petitioner Concerned Neighbors for the Preservation of Our Community (CNPC) is an unincorporated citizens' group with the following mailing address:

Concerned Neighbors for the Preservation of Our Community  
Attn: Matthew Goldbach  
9980 SE 40th St.  
Mercer Island, WA 98040  
Telephone: (954) 806-2489  
Email: matt@bitmax.net

Bricklin and Newman, LLP, by Alex Sidles, represents CNPC in this matter. The firm's contact information is:

David Bricklin  
Alex Sidles  
Bricklin and Newman, LLP  
1424 Fourth Avenue, Suite 500  
Seattle, Washington 98101

1 Telephone: (206) 264-8600  
2 Email: bricklin@bnd-law.com; sidles@bnd-law.com

3 **II. THE CHALLENGED ACTION**

4 The challenged action is Mercer Island's November 20, 2018 adoption of Ordinance No. 18-  
5 13, which amends the Mercer Island Comprehensive Plan. In accordance with WAC 242-03-210(3),  
6 only the challenged portions of the ordinance are attached to this petition as Exhibit A.

7 **III. DETAILED STATEMENT OF THE ISSUES**

8  
9 1. By failing to provide mailed notice of the Planning Commission hearings regarding  
10 the ordinance, did the City violate its own public participation program, described in MICC 3.46.080;  
11 19.15.050.D.2.d; 19.15.010; 19.15.020.D, E (former)<sup>1</sup>; MICC 19.15.269.A (current), in violation of  
12 the GMA, RCW 36.70A.035; RCW 36.70A.140; and the GMA implementing regulations, WAC 365-  
13 196-600(3); WAC 365-196-600(10)?

14  
15 2. By failing to identify "obvious technical error in the information contained in the  
16 comprehensive plan" or "changing circumstances in the city as a whole" that would justify this  
17 ordinance, as required by MICC 19.15.020.G.1 (former); MICC 19.15.230.F (current), did the City  
18 disregard its own procedures for amending its comprehensive plans, in violation of RCW 36.70A.130;  
19 RCW 36.70A.140; WAC 365-196-600(3); WAC 365-196-600(10)?

20  
21 3. By adopting a site-specific amendment to its comprehensive plan without making the  
22 additional findings for site-specific amendments required by MICC 19.15.020.G.1.b (former); MICC  
23 19.15.230.F.2 (current), did the City disregard its own procedures for amending comprehensive plans,  
24 in violation of RCW 36.70A.130; RCW 36.70A.140; WAC 365-196-600(3); WAC 365-196-600(10)?

25  
26 <sup>1</sup> Note on citations to the Mercer Island code: On September 17, 2018, the City adopted a large-scale reorganization of its land use code in ordinance numbers 18C-06 and 18C-08. The reorganized code took effect October 1, 2018. In this petition, citations to the pre-October 1, 2018 code are given as MICC (former), whereas citation to the post-October 1, 2018 code are given as MICC (current).



1 4. By adopting a site-specific comprehensive plan amendment without a site-specific  
2 rezone, even though the City acknowledges that a rezone will ultimately be required, did the City  
3 violate the requirement to consider an amendment and a rezone together when both are required,  
4 MICC 19.15.050.F (former); MICC 19.15.230.G (current), in violation of RCW 36.70A.130; RCW  
5 36.70A.140; WAC 365-196-600(3); WAC 365-196-600(10)?

6  
7 5. Is the amendment inconsistent with county-wide planning policies DP-39 and DP-44,  
8 and GMA policy WAC 365-196-405(2)(k), all of which allow only compatible growth, in violation  
9 of MICC 19.15.020.G.1 (former); MICC 19.15.230.F.1 (current); RCW 36.70A.100; RCW  
10 36.70A.130; RCW 36.70A.140; RCW 36.70A.210(1); WAC 365-106-040(2); WAC 365-196-  
11 010(1)(d); WAC 365-196-600(3); WAC 365-196-305(3); WAC 365-196-600(10)?

12  
13 6. Is the amendment inconsistent with Mercer Island Comprehensive Plan goals and  
14 policies LU 15; LU 15.1; LU 15.2; LU 15.4; LU 16; LU 16.1, all of which protect single-family  
15 neighborhoods, thereby creating an internally consistent comprehensive plan in violation of MICC  
16 19.15.020.G.1 (former); MICC 19.15.230.F.1 (current), RCW 36.70A.070; RCW 36.70A.130; RCW  
17 36.70A.140; WAC 365-196-500; WAC 365-196-600(3); WAC 365-196-600(10)?

18  
19 10. By analyzing Mercer Island Comprehensive Plan policy LU 17.4 but failing to analyze  
20 the broader policy LU 17, which promises not to change existing commercial designations and uses,  
21 did the City disregard the criteria of MICC 19.15.020.G.1 (former); MICC 19.15.230.F.1 (current),  
22 and create an internally inconsistent comprehensive plan, in violation of RCW 36.70A.070; RCW  
23 36.70A.130; RCW 36.70A.140; WAC 365-196-500; WAC 365-196-600(3); WAC 365-196-600(10)?

24  
25 11. By applying a new land use designation (community facilities) to a specific property,  
26 even though no zoning regulations currently exist that will apply to the new designation because there  
is not yet any community facilities zone in the land use code, did the City fail to show that "The

1 property is suitable for development in conformance with the standards under the potential zoning,"  
2 MICC 19.15.020.G.1.b.ii (former); MICC 19.15.230.F.2.b (current), in violation of RCW  
3 36.70A.130; RCW 36.70A.140; WAC 365-196-600(3); WAC 365-196-600(10)?  
4

5 12. By creating a new land use designation (community facilities), and applying that new  
6 designation to a specific property, but without adopting new development regulations that would apply  
7 to the new designation, did the City create an inconsistency between its comprehensive plan and its  
8 zoning regulations, in violation of RCW 36.70A.040 and the holding in *City of Bremerton v. Kitsap*  
9 *County*, GMHB 04-3-0009c, at 10 (Final Decision and Order, Aug. 9, 2004)?

10 **IV. STANDING**

11 13. CPNC has participation standing under RCW 36.70A.280(2)(b) in that CNPC  
12 submitted written comments to the City regarding this ordinance prior to its adoption and gave  
13 repeated oral testimony to the City Council and Planning Commission.  
14

15 14. Throughout this process, CNPC repeatedly advised the City that it was acting in  
16 violation of the above-mentioned provisions of law. However, CNPC was unsuccessful in persuading  
17 the City to change course.

18 15. CNPC also has standing under RCW 36.70A.280(2)(d) in that the CNPC's members  
19 live immediately adjacent to the property. They will be affected by the negative effects of increased  
20 development, including more traffic, blocked views, more noise.  
21

22 **V. ESTIMATED TIME FOR THE HEARING ON THE MERITS**

23 16. Four hours, or such additional time as the Board may deem necessary.

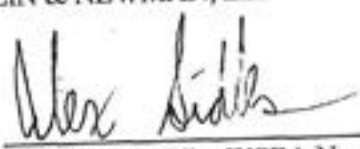
24 **VI. RELIEF SOUGHT**

1 17. CNPC requests that the Board rule the challenged ordinance to be noncompliant with  
2 the GMA; and remand the challenged ordinance to the City to take the necessary legislative actions  
3 for it to be compliant with the GMA; and issue an order of invalidity.  
4

5 The Petitioner has read the Petition for Review and believes the contents to be true.  
6

7 Respectfully submitted this 29th day of January, 2019.  
8

9 BRICKLIN & NEWMAN, LLP

10  
11 By:   
12 David A. Bricklin, WSBA No. 7583  
13 Alex Sidles, WSBA No. 52832  
14 *Attorneys for Petitioner*  
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**EXHIBIT 10**

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BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD  
CENTRAL PUGET SOUND REGION  
STATE OF WASHINGTON

OWNERS AND NEIGHBORS, et al.  
(COEN III),

Petitioners,

v.

CITY OF MERCER ISLAND,

Respondent,

and

STROUM JEWISH COMMUNITY  
CENTER, FRENCH AMERICAN SCHOOL  
OF PUGET SOUND, HERZL-  
NER TAMID CONSERVATIVE  
CONGREGATION, AND  
MERCER ISLAND CENTER FOR THE  
ARTS,

Intervenors.

Case No. 19-3-0003c

**FINAL DECISION AND ORDER**

**SYNOPSIS**

*7800 Plaza Owners Association (Owners), Concerned Neighbors for the Preservation of Our Community (Neighbors), and Mark Coen (Coen) challenged the City of Mercer Island (City) Ordinance No. 18-13, an annual update to the City's Comprehensive Plan which included 15 amendments, and Ordinance No. 18C-14, a legislative action which rezoned property consistent with Amendment 15 to the City's Comprehensive Plan and included an updated land use map. The Board concluded that the City did not have development regulations to implement its new comprehensive plan provisions as required by RCW 36.70A.040.*

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## I. INTRODUCTION

Petitioners *Owners* and *Neighbors* challenge related actions involving amendments to the City's Comprehensive Plan in a number of issues, specifically<sup>1</sup>:

- Ordinance 18-13, constituting an annual update to the City's Comprehensive Plan, which included
  - Amendments 1 and 8, creating a "Community Facilities" (CF) designation.
  - Amendment 15, changing the land use designation of property from Public Institution (PI) to Town Center (TC).
- Ordinance 18C-14, which, consistent with Amendment 15 to the Comprehensive Plan, rezoned a property known collectively as "Parcel 12" from "Public Institution" (PI) to "Town Center" (TC).

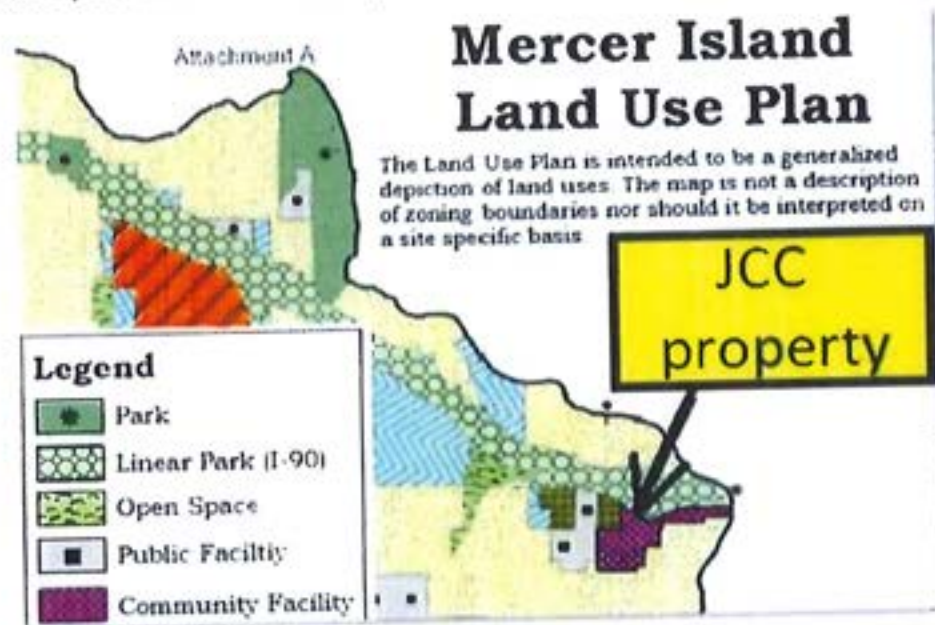
Petitioner *Owners'* concern is that the City's actions will enable a mixed-use development in conjunction with a future light rail station near I-90. Part of this development will be on Parcel 12. Owners challenge the City's actions in laying the land use groundwork for the development as violating provisions of the GMA (Amendment 15, Ordinance 18C-14).



<sup>1</sup> The chronology of the challenged actions appears at pages 3-9 of the City's Prehearing Brief.



1 Petitioner **Neighbors'** challenge relates to the City's identification of a new land use  
2 designation, "Community Facilities" (CF) to address expansion plans by the Stroum Jewish  
3 Community Center, the French American School and the Herzi-Ner Tamid Conservative  
4 Congregation. This collection of interests will hereafter be referred to as "JCC." Neighbors  
5 challenge the site-specific actions taken by the city in Amendment 1 and Amendment 8.  
6



20 Petitioner **Coen** joins in some of the issues presented by Owners and Neighbors, but  
21 challenges other aspects of Ordinance No. 18-13 and Ordinance No. 18C-14, in particular  
22

- 23
- 24 • Amendments 6, 10, 11, 12, and 14 due to the lack of rezone applications or development regulations
  - 25 • Resolution 1545, declaring an emergency.

26 Procedural matters relevant to the case are detailed in Appendix A.

27 Legal issues relevant to the case are detailed in Appendix B.

28 Issues 7, 13, and 27 were not briefed or otherwise abandoned and will not be further  
29 dealt with in this order.  
30  
31  
32

1 As we noted in our earlier order in *Coen II*, the adoption of the procedural ordinance  
2 anticipating a delay between the adoption of a comprehensive plan amendment and  
3 implementing development regulations did not violate the GMA; following the process there  
4 adopted will undoubtedly create an inconsistency of some duration.

5 **The Board finds and concludes** that Petitioner Coen has not met its burden to  
6 show violation of the GMA in issues 26 and 29. **The Board also finds and concludes that**  
7 **Petitioners Owners and Neighbors has carried its burden in Issue 25 to show that the**  
8 **adoption of the Community Facilities designation for the JCC property without implementing**  
9 **development regulations fails to comply with RCW 36.70A.040.**

#### 11 V. ORDER

12  
13 Based upon review of the Petition for Review, the briefs and exhibits submitted by the  
14 parties, the GMA, prior Board orders and case law, having considered the arguments of the  
15 parties, and having deliberated on the matter, the Board finds:

16 The Petitioners have met their burden in Issue 15, showing that the adoption of  
17 challenged ordinances resulted in an inconsistency between the comprehensive plan and  
18 the development regulations concerning Parcel 12, in violation of RCW 36.70A.040.

19  
20 The Petitioners have met their burden in Issue 25 showing that adoption of the  
21 challenged ordinances created an inconsistency between the comprehensive plan and the  
22 development regulations concerning JCC property, in violation of RCW 36.70A.040.

23 The Petitioners have failed to carry their burden to establish violation of the GMA in  
24 any other issue pleaded, and those issues are dismissed.

25 The matter is remanded to the City for compliance actions.

26  
27

28 Item	29 Date Due
30 Compliance due	31 October 9, 2019
32 Compliance Report/Statement of Actions Taken to Comply and Index to Compliance Record	October 23, 2019



1	Objections to a Finding of Compliance	November 6, 2019
2	Response to Objections	November 18, 2019
3	<b>Telephonic Compliance Hearing</b>	<b>December 4, 2019</b>
4	1 (800) 704-9804 and use pin code 7864979#	<b>10:00 a.m.</b>

5  
6 Length of Briefs – A brief of 15 pages or longer shall have a table of exhibits. WAC  
7 242-03-590(3) states: "Clarity and brevity are expected to assist a board in meeting its  
8 statutorily imposed time limits. A presiding officer may limit the length of a brief and impose  
9 format restrictions." **Compliance Report/Statement of Actions Taken to Comply shall be**  
10 **limited to 10 pages, 15 pages for Objections to Finding of Compliance, and 5 pages**  
11 **for the Response to Objections.**

12  
13  
14 SO ORDERED this 5<sup>th</sup> day of August 2019.

15  
16   
17 Deb Eddy, Board Member

18  
19   
20 Bill Hinkle, Board Member

21 I concur in the results of the Board's decision.

22  
23   
24 Cheryl Pflug, Board Member

25 **Note: This is a final decision and order of the Growth Management Hearings Board**  
26 **issued pursuant to RCW 36.70A.300.<sup>96</sup>**

27  
28  
29 <sup>96</sup> Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all  
30 parties within ten days of mailing of the final order, WAC 242-03-830(1), WAC 242-03-840. A party aggrieved  
31 by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in  
32 RCW 34.05.514 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent upon the  
parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not  
authorized to provide legal advice.



**EXHIBIT 11**



## CITY COUNCIL MINUTES REGULAR MEETING FEBRUARY 18, 2020

---

### CALL TO ORDER & ROLL CALL

Mayor Benson Wong called the meeting to order at 5:30 pm in the Council Chambers of City Hall, 9611 SE 36<sup>th</sup> Street, Mercer Island, Washington.

Mayor Benson Wong, Deputy Mayor Wendy Weiker, and Councilmembers Lisa Anderl, Jake Jacobson, Salim Nice, Craig Reynolds, and David Rosenbaum were present.

### AGENDA APPROVAL

It was moved by Anderl; seconded by Jacobson to:  
**Approve the agenda as presented.**

Passed 7-0

FOR: 7 (Anderl, Jacobson, Nice, Reynolds, Rosenbaum, Weiker and Wong)

### STUDY SESSION

#### AB 5664: Classification and Compensation Discussion

Chief of Administration Ali Spietz explained that the purpose of the Study Session was to facilitate a project scoping discussion with the City Council prior to issuance of a Request for Proposals, explaining that the additional work would require a budget appropriation to be authorized at a future meeting. She further explained that the City had not completed a classification and compensation study in over 20 years.

Spietz explained that the compensation and classification study would examine and evaluate the City's current salary schedule and classification system and provide recommendations for modifications. She then reviewed the key objectives for the consultant.

Council expressed support for the project and requested that the City Manager remain involved throughout the process.

### CITY MANAGER REPORT

Interim City Manager Bon reported on the following:

- New Sewer Truck
- King / Xing Hua Property
- East Seattle School – 30 day public comment period is open through March 11
- Debris on Lake Washington
- Life Jacket Loaner Stations
- Gallagher Hill Crosswalk Installation Construction
- Recology Tour
- Athletic Field Maintenance Review
- 2019 (Preliminary) Year-End Financial Report – Available at the March 17 meeting
- YFS Breakfast – over 600 Islanders attended

## APPEARANCES

Joy Matsura: She expressed concern for the Town Center and the limited designation of retail space.

Josh Knopp (President for Citizens for Reasonable Shoreline Policies): He addressed the Shoreline Master Plan, explaining that he is anxiously waiting for the new SMP to move forward.

Dan Sitman: In his opinion, most of the traffic is not associated with the SJCC and that it is wrong to blame the SJCC. He further described the French American School as a great amenity for the island.

The following individuals participate in the Sister City trip to France and spoke very favorably of the trip:

- Roberta Lewandowski
- Ted Weinberg
- Jane Meyer-Brahm
- Eric Thuau

Ed Weinstein (SJCC Architect). He explained that he is prepared to abandon the Community Facility Zone and return to the Conditional Use Permit, explaining that code amendments are still needed. He further stated that valuable community organizations should be supported.

Rich Hill (SJCC / FAS / Herzl-Ner Tamid counsel): He asked the Council to direct staff and the Planning Commission to review the proposed amendments this year, explaining that the proposed amendment is a narrowly tailored amendment to the code. Mr. Hill then outlined three changes, including one to GFA, one to height, and one to lot coverage.

David Fain: He spoke in support of the SJCC

Traci Granbois (French American School Member): She express three concerns: 1) she believes it is an illegal spot zone, 2) It is an improper process to rezone, and 3) it provides for different rules for non-residential uses in a residential zone.

## CONSENT CALENDAR

It was requested that Resolution No. 1580 Appointing City Manager be removed from the consent calendar. Mayor Wong moved it to the first item of Regular Business.

**Payables: \$623,808.15 (1/31/2020) and \$1,307,133.83 (2/7/2020)**

**Recommendation:** Certify that the materials or services herein before specified have been received and that all warrant numbers listed are approved for payment.

**Payroll: \$909,621.85 (2/14/2020)**

**Recommendation:** Certify that the materials or services specified have been received and that all fund warrants are approved for payment.

**Minutes of the February 4, 2020 Regular Meeting.**

**Recommendation:** Approve the February 4, 2020 Regular Meeting minutes as written.

**AB 5662: ROW Fleet Appropriation**

**Recommendation:** Authorize the appropriation of \$32,917 from the Equipment Rental Fund to purchase the upgraded hydraulic driven drop-in sander as part of the previously authorized replacement of FL-0422.

It was moved by Anderl; seconded by Jacobson to:

**Approve the Consent Calendar as revised.**

Passed 7-0

FOR: 7 (Anderl, Jacobson, Reynolds, Rosenbaum, Nice, Weiker, and Wong)



## REGULAR BUSINESS

### AB 5658: Resolution No. 1580 Appointing City Manager

Each councilmember expressed strong support and gratitude for City Manager Bon's leadership over the past 8 months and thanked her for accepting the position.

It was moved and duly seconded to:

**Approve Resolution No. 1580 appointing Jessi Bon as City Manager and authorizing the Mayor to execute the City Manager Employment Agreement thereto attached.**

Passed 7-0

FOR: 7 (Anderl, Jacobson, Reynolds, Rosenbaum, Nice, Welker, and Wong)

### AB 5663: Community Facility Code Amendment: Planning Commission Recommendation, Ordinance 20-04; 1st Reading & Adoption

Community Planning and Development Director Evan Maxim reviewed the history of the Community Facility zoning designation and the City Council's August 2019 direction to the Planning Commission to:

1. Review the "problem statement" and determine if an alternative approach is warranted;
2. Explore alternative decision-making processes; and
3. Report back to the City Council for further direction.

Director Maxim then explained that the Planning Commission evaluated four different alternative approaches which included:

Alternative 1: No change to the current regulations;

Alternative 2: A change to the criteria for approval of a Conditional Use Permit ("CUP");

Alternative 3: A change to the CUP approval criteria and development of a tool (Master Plan); and

Alternative 4: Continuing the work that was "paused" in June of 2019.

Following discussion of these approaches, the Planning Commission developed a three-part recommendation to the City Council that included:

Part A – Discontinue Community Facility zone process

Part B – Review/update CUP process and pursue code amendments

Part C – Resume Community Facility zone process at a future date

Director further explained that staff concurred with the Planning Commission recommendation on Part A.

It was moved and duly seconded to:

**Suspend the City Council Rule of Procedure 6.3, requiring a second reading for an ordinance.**

Passed 7-0

FOR: 7 (Anderl, Jacobson, Reynolds, Rosenbaum, Nice, Welker, and Wong)

It was moved and duly seconded to:

**Adopt Ordinance No. 20-04, to repeal portions of the 2018 Comprehensive Plan amendments related to the Community Facility zone.**

Passed 7-0

FOR: 7 (Anderl, Jacobson, Reynolds, Rosenbaum, Nice, Welker, and Wong)

### AB 5665: City Council Rules of Procedure Amendments

City Clerk Deb Estrada reported that at the February 4 meeting City Council directed staff to further review and modify the Board and Commission appointment process in the Rules of Procedure. Specific requests were to ensure applicants received a minimum of four votes and to provide more clarity as to the steps in the voting process. Staff reviewed the appointment process used by other cities, particularly those governed under the Council-City Manager form of government and made revisions accordingly.

It was moved and duly seconded to:

**Approve Resolution No. 1579 amending the City Council Rules of Procedure as set forth in Exhibit A.**

Passed 7-0

FOR: 7 (Anderl, Jacobson, Reynolds, Rosenbaum, Nice, Weiker, and Wong)

**AB 5666: Boards & Commissions Code Amendments (2nd Reading, Ordinance No. 20C-02)**

City Clerk Deb Estrada reported that at the February 4 meeting City Council directed staff to make additional changes. She explained that Ordinance No. 20C-02 amends the membership appointment process for the Design Commission, the Planning Commission, the Utility Board, the Parks and Recreation Commission, and the Mercer Island Arts Council. Estrada further noted that Ordinance No. 20C-02 does not apply to the Open Space Conservancy Trust because prior to any proposed amendment to the Trust's Articles, the Council is required to request recommendations and comments from the Trustees regarding the proposed amendment and hold a public hearing for the purpose of considering the community and Trustees' recommendations and comments.

It was moved and duly seconded to:

**Adopt Ordinance No. 20C-02 amending membership appointment process in Chapters 3.34 Design Commission, 3.46 Planning Commission, 3.52 Utility Board, 3.53 Parks & Recreation Commission, and 3.55 Mercer Island Arts Council.**

FOR: 7 (Anderl, Jacobson, Reynolds, Rosenbaum, Nice, Weiker, and Wong)

**AB 5667: City Council Letter of Support - East Channel Required Navigation Procedures Arrivals & Departures**

Councilmember Salim Nice explained that the City of Renton owns and operates the Renton Municipal Airport. In his advisory capacity, he has long since advocated for safer and less impactful flight operations out of Renton Airport. In pursuit of this endeavor, he has worked with Retired Captain Thomas Imrich, a retired Boeing Experimental Test Pilot and retired FAA administration official, as well as an island resident. He recommended that Council authorize the Mayor to sign the letter of support.

It was moved and duly seconded to:

**Authorize the Mayor to sign a letter recommending FAA take the necessary steps to propose upgrading the priority for Required Navigation Performance procedures for Renton Airport as "Priority 1."**

FOR: 7 (Anderl, Jacobson, Reynolds, Rosenbaum, Nice, Weiker, and Wong)

**OTHER BUSINESS**

**Planning Schedule**

Interim City Manager Bon reviewed the planning schedule and reminded Council that the March 3 meeting was canceled. In its place, a special meeting for March 10 was scheduled. She also noted that she would not be present at the March 10 meeting due to a prescheduled vacation.

**Councilmember Reports**

Councilmember Reynolds - complimented the YFS Breakfast

Councilmember Rosenbaum - wished the Mercer Island High School basketball team luck

Councilmember Anderl - summarized her visit to the Recology facility and the Do's and Don'ts of recycling

Deputy Mayor Weiker - reported on the opportunity to recognize one of our students for the AWC scholarship

Councilmember Jacobson - reported on his experience on the Recology Facility tour and the PROS questionnaire, which can be accessed online, and the Eastside Transportation Partnership meeting.

Mayor Wong - reported on the March 2 SCA Meeting on Regional Homelessness Authority, the April 23 Invite with the Mercer Island School District Board of Directors and discussion topics, 20<sup>th</sup> Anniversary celebration of the Sister City Association.



Renton Airport Advisory Voting Proxy

It was moved by Weiker and seconded by Jacobson to:

**Authorize the Mayor to sign a letter of support addressed to the Renton Airport Advisory Committee acknowledging that Captain Thomas Imrich will serve as the City of Mercer Island's designated proxy in Councilmember Nice's absence.**

FOR: 7 (Anderl, Jacobson, Reynolds, Rosenbaum, Nice, Weiker, and Wong)

**Councilmember Absences**

Deputy Mayor Weiker reported that she would not be present for the March 17 Regular Meeting.

**EXECUTIVE SESSION**

At 8:40 pm, Mayor Wong convened an Executive Session for approximately two hours and 60 minutes to discuss pending or potential litigation with legal counsel pursuant to RCW 42.30.110(1)(i).

No action was taken.

At 9:41 pm, Mayor Wong adjourned the Executive Session; no action was taken.

**ADJOURNMENT**

There being no additional business to come before City Council, the Regular Meeting adjourned at 9:42 pm.

  
\_\_\_\_\_  
Benson Wong, Mayor

Attest:

  
\_\_\_\_\_  
Deborah A. Estrada, City Clerk



**CITY OF MERCER ISLAND  
ORDINANCE NO. 20-04**

**AN ORDINANCE OF THE CITY OF MERCER ISLAND AMENDING THE LAND USE ELEMENT OF THE MERCER ISLAND COMPREHENSIVE PLAN TO REPEAL 2018 COMPREHENSIVE PLAN AMENDMENTS RELATED TO THE COMMUNITY FACILITY ZONE, PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, the Mercer Island City Code (MICC) establishes development regulations that are intended to result in the implementation of the Mercer Island Comprehensive Plan pursuant to the Revised Code of Washington (RCW) 36.70A.040; and

**WHEREAS**, the Mercer Island City Council adopted Ordinance No. 18-13 on November 20, 2018 amending the Mercer Island Comprehensive Plan land use map and establishing goals and policies related to the establishment of a Community Facility zoning designation and related development regulations in the Land Use Element; and

**WHEREAS**, on August 5, 2019, the Growth Management Hearings Board, as result of appeals of Ordinance No. 18-13, issued a Final Decision and Order (Case No. 19-3-0003c) directing the City to correct certain inconsistencies between the Comprehensive Plan and the City's development regulations related to the Community Facility zone created by the Ordinance No. 18-13; and

**WHEREAS**, on January 29, 2020, following review and deliberation, the Mercer Island Planning Commission recommended that the City Council forgo implementation of a Community Facility zoning designation and adoption of related development regulations; and

**WHEREAS**, the City Council intends to comply with the Growth Management Hearings Board's Final Decision and Order (Case No. 19-3-0003c) to ensure that the City's development regulations implement, and are consistent with, the Comprehensive Plan by repealing those Comprehensive Plan amendments in Ordinance No. 18-13 that created the inconsistencies cited in Final Decision and Order (Case No. 19-3-0003c); and

**WHEREAS**, RCW 36.70A.130(2) authorizes the City Council to adopt Comprehensive Plan revisions and amendments "out of cycle" to resolve an appeal of a comprehensive plan filed with the Growth Management Hearings Board as herein described;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON, DO ORDAIN AS FOLLOWS:

**Section 1:** Repeal of Amendments Related to Community Facility in Attachment A of Ordinance No. 18-13. Amendments related to Community Facility in Attachment A of Ordinance No. 18-13 are repealed as set forth in Attachment A to this ordinance.

**Section 2:** Repeal of Amendments Related to Community Facility in Amendment 1 in Attachment B of Ordinance No. 18-13. Amendments related to Community Facility in Amendment 1 of Attachment B of Ordinance No. 18-13 are repealed as set forth in Attachment B to this ordinance.

Section 3: **Repeal of Amendment 8 in Attachment B of Ordinance No. 18-13.** The amendments adopted in Amendment 8 of Attachment B of Ordinance No. 18-13 are repealed.

Section 4: **Publish Comprehensive Plan as Amended.** The City Council authorizes the Community Planning and Development Director and the City Clerk to correct scrivener's errors in Attachments A and B, effectuate the amendments in Sections 1, 2 and 3 of this ordinance into the Mercer Island Comprehensive Plan, and publish the amended document.

Section 5: **Severability.** If any section, sentence, clause or phrase of this ordinance or any municipal code section amended hereby should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause or phrase of this ordinance or the amended code section.

Section 6: **Publication and Effective Date.** A summary of this Ordinance consisting of its title shall be published in the official newspaper of the City. This Ordinance shall take effect and be in full force five days after the date of publication.

**PASSED by the City Council of the City of Mercer Island, Washington at its regular meeting on February 18, 2020 and signed in authentication of its passage.**

CITY OF MERCER ISLAND

\_\_\_\_\_  
Benson Wong, Mayor

Approved as to Form:

ATTEST:

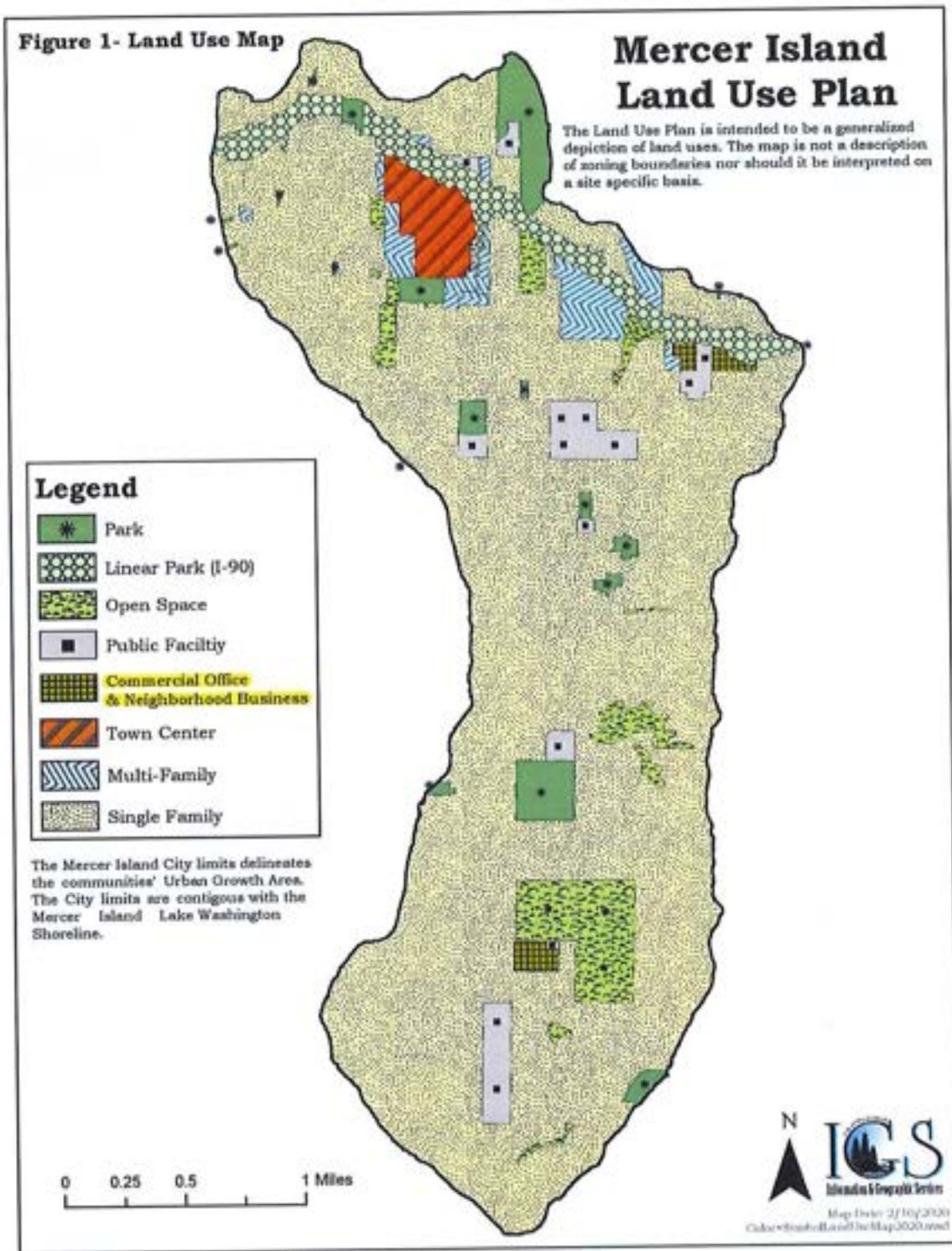
\_\_\_\_\_  
Bio Park, Interim City Attorney

\_\_\_\_\_  
Deborah A. Estrada, City Clerk

Date of Publication: \_\_\_\_\_



# Attachment A





# Attachment B

## 2018 Comprehensive Plan Amendment 1 – Land Use Designations

Amend the Land Use Designation table in Section VII to read as follows:

Land Use Designation	Implementing Zoning Designations	Description
Park	PI R-8.4 R-9.6 R-12 R-15	The park land use designation represents land within the City that is intended for public use consistent with the adopted Parks and Recreation Plan.
Linear Park (I-90)	PI	The linear park (I-90) land use designation primarily contains the Interstate 90 right-of-way. The land use designation is also improved with parks and recreational facilities (e.g. Aubrey Davis park, I-90 Outdoor Sculpture Gallery, etc) adjacent to and on the lid above the Interstate 90 freeway.
Open Space	PI R-8.4 R-9.6 R-12 R-15	The open space use designation represents land within the City that should remain as predominantly unimproved open space consistent with the adopted Parks and Recreation Plan.
Commercial Office	CO B	The commercial office land use designation represents commercial areas within Mercer Island, located outside of the Town Center, where the land use will be predominantly commercial office. Complementary land uses (e.g. healthcare uses, schools, places of worship, etc.) are also generally supported within this land use designation.
Neighborhood Business	PBZ	The neighborhood business land use designation represents commercial areas within Mercer Island, located outside of the Town Center, where the land uses will be predominantly a mix of small scale, neighborhood oriented business, office, service, public and residential uses.
Single Family Residential (R)	R-8.4 R-9.6 R-12 R-15	The single family residential land use designation (R) represents areas within Mercer Island where development will be predominantly single family residential neighborhoods. Complementary land uses (e.g. private recreation areas, schools, home businesses, public parks, etc) are generally supported within this land use designation.
Multifamily Residential (MF)	MF-2 MF-2L MF-3	The multifamily residential land use (MF) represents areas within Mercer Island where the land use will be predominantly multifamily residential development. Complementary land uses (e.g. private recreation areas, schools, home businesses, public parks, etc) are generally supported within this land use designation.

Town Center (TC)	TC	The Town Center land use designation represents the area where land uses consistent with the small town character and the heart of Mercer Island will be located. This land use designation supports a mix of uses including outdoor pedestrian spaces, residential, retail, commercial, mixed-use and office-oriented businesses.
Public Facility	C-O PI R-8.4 R-9.6 R-15 TC	The public facility land use designation represents land within the City that is intended for public uses, including but not limited to schools, community centers, City Hall, and municipal services.
Community Facilities	CF	<del>The community facilities use designation represents land within the City that is intended for community use including but not limited to private schools and other educational uses, religious facilities, and non-profit community centers and recreation facilities.</del>

# Community Facility Code Amendment Discussion

**City Council**

February 18, 2020



**EXHIBIT 12**

1 BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD  
2 CENTRAL PUGET SOUND REGION  
3 STATE OF WASHINGTON  
4

5 ROBERT A. MEDVED,

6 Petitioner,

Case No. 19-3-0014

7  
8 v.

ORDER FINDING NONCOMPLIANCE  
PURSUANT TO STIPULATION

9 CITY OF MERCER ISLAND,

10 Respondent.  
11  
12

13  
14 **SYNOPSIS**

15 *Petitioner challenged the City of Mercer Island (City) for failure to act to adopt a*  
16 *docketing procedure as required by the RCW 36.70A.470. After settlement discussions, the*  
17 *City agreed to stipulate that it had not complied with the Growth Management Act (GMA)*  
18 *requirement to include a docketing procedure for development regulations, as called for in*  
19 *the Act. A finding of noncompliance was entered, and the parties agree to a compliance*  
20 *schedule.*  
21

22  
23 **STIPULATION**

24 This matter comes before the Board on the Stipulation filed on August 13, 2019. The  
25 parties report that they have reached agreement as to a compliance schedule that will settle  
26 the matter. Robert Medved, Petitioner, appearing *pro se*, and the City of Mercer Island,  
27 through its interim city attorney, Bio F. Park, stipulate as follows:

- 28 1. October 3, 1994, the city of Mercer Island adopted its comprehensive plan in  
29 Ordinance No. A-122.  
30 2. RCW 36.70A.470, enacted in 1995, provides in part as follows:  
31 (2) Each county and city planning under RCW 36.70A.040 shall include in its  
32

1 development regulations a procedure for any interested person, including  
2 applicants, citizens, hearing examiners, and staff of other agencies, to suggest  
3 plan or development regulation amendments. The suggested amendments  
4 shall be docketed and considered on at least an annual basis, consistent with  
5 the provisions of RCW 36.70A.130.

6 (4) For purposes of this section, docketing refers to compiling and maintaining  
7 a list of suggested changes to the comprehensive plan or development  
8 regulations in a manner that will ensure such suggested changes will be  
9 considered by the county or city and will be available for review by the public.

10 3. The City of Mercer Island has failed to act by not including a development  
11 regulation docketing procedure, hereinafter referred to as a "development  
12 regulation docket," in its development regulations, as required by RCW  
13 36.70A.470.

14 4. The parties request that the Board enter a Final Decision and Order requiring the  
15 City to include a development regulation docket in its development regulations  
16 and that the board set a schedule with a compliance due date no later than  
17 February 15, 2020.  
18

### 19 ORDER

20 Based on the foregoing, the Board orders:

21 The City of Mercer Island has failed to comply with the goals and requirements of the  
22 GMA, and the matter is remanded for the City to take action to comply with RCW  
23 36.70A.470. The compliance schedule shall be as follows, unless amended by later order.  
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28 Item	29 Date Due
30 Compliance Due	31 February 18, 2020
32 Compliance Report/Statement of Actions Taken to Comply and Index to Compliance Record	March 3, 2020
Objections to a Finding of Compliance	March 17, 2020



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Response to Objections	March 27, 2020
<b>Telephonic Compliance Hearing</b> 1 (800) 704-9804 and use pin code 7864979#	<b>April 6, 2020</b> <b>10:00 a.m.</b>

Compliance Report/Statement of Actions Taken to Comply shall be limited to 15 pages, 20 pages for Objections to Finding of Compliance, and 5 pages for the Response to Objections.

DATED this 15<sup>th</sup> day of August 2019.

  
\_\_\_\_\_  
Deb Eddy, Board Member

  
\_\_\_\_\_  
Cheryl Pflug, Board Member

  
\_\_\_\_\_  
Bill Hinkle, Board Member

**EXHIBIT 13**

Monday, December 9, 2019 at 17:41:49 Pacific Standard Time

**Subject:** Request to postpone code amendment docketing ordinance  
**Date:** Monday, December 9, 2019 at 5:28:31 PM Pacific Standard Time  
**From:** Amy Lavin  
**To:** Debbie Bertlin, Salim Nice, Lisa Anderl, Bruce Bassett, Wendy Weiker, David Wisenteiner, Benson Wong  
**CC:** Jessi Bon, Evan Maxim, Michael Levy (mike.rebar1@gmail.com), zane, erict@fasps.org, oren.nissim, Steve Dispensa, Nadine Strauss

Dear Council Members,

It recently came to our attention that Council is considering a new proposal to only accept code amendment applications one time a year, during the fall, to be placed on the docket for the upcoming year. We understand this was proposed with a goal of standardizing a process that is deemed burdensome and inefficient. While we agree with those stated goals, the effect of this ordinance would be to impose an additional 18+ months delay on our ability to propose and work with the city on land use revisions to our properties. Therefore, we urge you to delay a vote on final passage or amend to address the adverse impacts this action would have on our ability to move forward with our projects.

As you know, the SJCC, FASPS and HNT approached the City in 2017. At that time, we were fully prepared to work within the challenging but available CUP city process. At the City's request and recommendation, we agreed instead to work with the City on a new Community Facility Zoning concept. We have been going down that road now for over 18 months, in good faith with the City as our partner, but it is apparent that the City's CFZ process is likely no longer viable and a recommendation by the Planning Commission to go in a different direction is expected shortly.

As we stated publicly at the joint council and planning commission meeting earlier this Fall, we will work with the City in whichever way the City prefers (CFZ or CUP), and our priority is simply in getting clarity as quickly as possible given we are already 18 months in. As we said back in 2017 and as we reiterated to Council, the Planning Commission and staff in September, we have always been willing to work with the City on using the CUP process – we just want the green light to move forward in whatever process is preferred.

With this new Council recommendation currently before you, it appears the City is seeking to have us delay for another 18 months. If the earliest we can get docketed is sometime in 2021, then that will represent a full four years of delay - through City action alone - upon even consideration of our project.

It is our sincere hope that the City did not intend to impact us in this way. We are and remain committed to working with our neighbors and with the City to bring forward evolved concepts for our properties that enhance the City and neighborhood. To that end, we ask you take one of three actions:

- Delay your vote tomorrow until a regulatory path forward for SJCC, FASPS and HNT can be identified and supported by City staff; or
- Amend the ordinance to grandfather in our projects, allowing us to submit applications this calendar year; or
- Amend the ordinance delaying implementation until 2021, which will in effect allow us to submit applications for our projects during the coming calendar year.

Thank you for your consideration and attention to this challenge. We want nothing more than to be able to evolve our facilities to better serve Mercer Island, our community, and the goals of the City – we just need the City to tell us how you prefer to work with us, preferably without another two-year delay. Please don't



hesitate to contact any of us if we can provide additional information.

French American School of Puget Sound, Herzl-Ner Tamid, and the Stroum Jewish Community Center

Amy Lavin

Chief Executive Officer | Stroum Jewish Community Center | Direct: 206-232-7116 | M: 425-443-6047

**EXHIBIT 14**



## CITY COUNCIL MINUTES SPECIAL MEETING DECEMBER 10, 2019

### CALL TO ORDER & ROLL CALL

Mayor Debbie Bertlin called the Special Meeting to order at 7:00 pm at City Hall, 9611 SE 36<sup>th</sup> Street, Mercer Island, Washington.

Mayor Debbie Bertlin, Deputy Mayor Salim Nice, and Councilmembers Lisa Anderl, Bruce Bassett, Wendy Weiker, David Wisenteiner and Benson Wong were present.

### AGENDA APPROVAL

Councilmember Wong requested to remove AB 5638: 2019 Minor Code Amendments (Ordinance No. 19C-21, 2nd Reading & Adoption) from the Consent Calendar. Mayor Bertlin added it as the first item of Regular Business.

It was moved by Nice; seconded by Wisenteiner to:  
**Approve the agenda as amended.**

Passed: 7-0

FOR: 7 (Anderl, Bassett, Bertlin, Nice, Weiker, Wisenteiner, and Wong)

### CITY MANAGER REPORT

Interim City Manager Jessi Bon reported on the following:

- YFS Emergency Family Assistance Holiday Gift Program
- Two Projects on I-90 Trail:
  - King County Wastewater Treatment Division
  - Sound Transit
- ST Park & Ride Permit Parking Program
- Project Updates: Mercer Island Fire Department:
  - Organizational Assessment
  - MIFD Back at Full Staffing Soon
- Project Updates: Community Planning & Development:
  - Small Cell Ordinance
  - Organizational Assessment
  - Critical Areas Regulations / Shoreline Master Program
  - Community Facility Zone
- Parks & Recreation:
  - 2020 Parks, Recreation, and Open Space (PROS) Plan
- YFS Health Youth Initiative
- Holiday Closures
- Upcoming Events

### APPEARANCES

The following Mercer Island residents thanked the outgoing Council for their service and recognized those individuals that will serve on the Council going forward:

- Craig Reynolds
- Carolyn Boatsman
- Lucia Pirzio-Biroli
- Todd Fiala
- Jake Jacobson



## CONSENT CALENDAR

**Accounts Payable Report for the period ending December 5, 2019 in the amount of \$367,647.31:**

**Recommendation:** Certify that the materials or services hereinbefore specified have been received and that all warrant numbers listed are approved for payment.

**Certification of Payroll dated December 6, 2019 in the amount of \$838,586.01**

**Recommendation:** Certify that the materials or services specified have been received and that all fund warrants are approved for payment.

**Approve the minutes of the November 19, 2019 Regular Meeting.**

**AB 5646: 2020 – 2021 AFSCME Collective Bargaining Agreement**

**Recommended Action:** Authorize the Interim City Manager to sign the AFSCME Collective Bargaining Agreement for the period of January 1, 2020 through December 31, 2021, in substantially the form attached hereto as Exhibit 1

It was moved by Nice; seconded by Bassett to:

**Approve the Consent Calendar and the recommendations contained therein as presented.**

Passed: 7-0

FOR: 7 (Anderl, Bassett, Bertlin, Nice, Weiker, Wisenteiner and Wong)

## REGULAR BUSINESS

**AB 5638: 2019 Minor Code Amendments (Ordinance No. 19C-21, 2nd Reading & Adoption)**

Community Planning and Development Director Evan Maxim reported that following City Council's first reading of Ordinance No. 19C-21 on December 3, Council provided additional direction regarding the proposed amendments which staff observed to include the following:

- No code amendment docketing period in 2019,
- A desire to manage legislative work plan items,
- Allow for a transition period that is consistent with past practice, and
- **Comply with the Hearings Board order by February 18, 2020.**

It was moved by Wong; seconded by Nice to:

**Adopt Ordinance No. 19C-21 amending Title 19 of the Mercer Island City Code to clarify development and administrative standards and to create a procedure to docket and consider suggested amendments to development regulations with an effective date for the amendments no earlier than February 18, 2020.**

Passed: 6-1

FOR: 6 (Anderl, Bassett, Nice, Weiker, Wisenteiner and Wong)

AGAINST: 1 (Bertlin)

**AB 5644: Acquisition of ARCO/Tully's Property**

Interim City Attorney Bio Park explained that staff is seeking explicit authorization from the City Council for the City Manager to sign all necessary closing documents on behalf of the City in the acquisition of ARCO/Tully's Property, explaining that the closing entails the following:

- Closing must be completed by December 31, 2019
- Purchase price remains \$2,000,000
- Funds from REET 1 were previously appropriated and earnest money of \$150,000 was deposited into escrow, and
- Closing date is currently scheduled for December 27, 2019.

It was moved by Nice; seconded by Wong to:

**Authorize the Interim City Manager, or the Interim City Manager's designee if she is unavailable, to**

execute the closing documents to complete the City's acquisition of the real property at 7810 SE 27th Street, Mercer Island, WA.

Passed: 7-0

FOR: 7 (Anderl, Bassett, Berlin, Nice, Weiker, Wisenteiner and Wong)

#### **AB 5645: 2020 Comprehensive Plan Amendment Docket**

Community Planning and Development Director Evan Maxim provided an overview of the process to date and the Planning Commission's preliminary docket, which included the following recommendations:

- Establish economic development policies and goals that establish a policy direction around the development of an economic development plan and related priorities, values, and strategies.
- Establish goals and policies supporting the planting of trees in the public right-of-way for the purposes of carbon sequestration, shade to reduce urban heat-island effect, and wildlife habitat.

Director Maxim further explained that the City Council options included:

- Adopt the Planning Commission's recommended docket; or
- Adopt the Planning Commission's recommended docket with changes; or
- Decline to adopt a final docket of Comprehensive Plan amendments

After discussing the issue, Council chose not to act on either recommendation made by the Planning Commission.

It was moved by Bassett; seconded by Berlin to:

**Not docket any items for the 2020 Comprehensive Plan**

Passed: 7-0

FOR: 7 (Anderl, Bassett, Berlin, Nice, Weiker, Wisenteiner and Wong)

#### **AB 5643: Code of Ethics Revisions (Third Reading and Adoption)**

Chief of Administration Ali Spietz outlined the changes made to the Code of Ethics since its second reading on December 3 and requested Council direction on the maximum amount the City would reimburse an official for the defense of an ethics complaint that results in a dismissal of the complaint by the city council without penalties subsequent to a hearing by the hearing examiner. Council also requested that complaints be submitted within two years rather than three.

It was moved by Bassett; seconded by Nice to:

**Adopt Ordinance No. 19C-20 to amend chapter 2.60 of the Mercer Island City Code revising the Code of Ethics and pass Resolution No. 1572 revising the Code of Ethics Statement.**

Passed: 7-0

FOR: 7 (Anderl, Bassett, Berlin, Nice, Weiker, Wisenteiner and Wong)

#### **OTHER BUSINESS**

**Public Issues Committee** – There was Council Consensus that Benson Wong serve as the PIC voting delegate. Councilmember Wong noted that Councilmember Weiker had expressed a desire to serve on the SCA Board and he intended to nominate her.

#### **COUNCIL REPORTS**

Councilmember Wong reminded Councilmembers to purchase their Christmas Tree.

#### **SPECIAL BUSINESS**

Deputy Mayor Nice read Resolution No. 1575 acknowledging Councilmember Dave Wisenteiner's four years in office and his contributions to the Mercer Island Community.

Washington State Representative Tana Senn read a Resolution No. 1574 acknowledging Mayor Debbie Bertlin's eight years in office and her contributions to the Mercer Island Community.

Chief of Administration Ali Spietz read a Resolution No. 1573 acknowledging Councilmember Bruce Bassett's twelve years in office and his contributions to the Mercer Island Community.

On behalf of its citizens, the City Council commended Councilmember Wisenteiner, Mayor Bertlin, and Councilmember Bassett for their distinguished public service and extended its sincerest thanks and appreciation for their time and many significant contributions to Mercer Island over the past several years. A reception honoring the Mayor and Councilmembers was held directly following the meeting.

#### ADJOURNMENT

There being no additional business to come before City Council, the Regular Meeting adjourned at 9:26 pm.

Attest:

\_\_\_\_\_  
Debbie Bertlin, Mayor

\_\_\_\_\_  
Deborah Estrada, City Clerk



**EXHIBIT 15**

#4

# CITY OF MERCER ISLAND

COMMUNITY PLANNING & DEVELOPMENT  
9611 SE 36TH STREET | MERCER ISLAND, WA 98040  
PHONE: 206.275.7605 | [www.mercergov.org](http://www.mercergov.org)



### CITY USE ONLY

PROJECT#	RECEIPT #	FEE

Date Received:

### DEVELOPMENT APPLICATION

Received By:

STREET ADDRESS/LOCATION		ZONE	
Not Applicable		Not Applicable	
COUNTY ASSESSOR PARCEL #'S		PARCEL SIZE (SQ. FT.)	
Not Applicable		Not Applicable	
PROPERTY OWNER (required)	ADDRESS (required)	CELL/OFFICE (required) (206) 812-3388 E-MAIL (required) rich@mhseattle.com	
Not Applicable	Not Applicable		
PROJECT CONTACT NAME	ADDRESS	CELL/OFFICE (206) 812-3388 E-MAIL rich@mhseattle.com	
G. Richard Hill	701 Fifth Avenue, Ste. 6600, Seattle, WA 98104		
TENANT NAME	ADDRESS	CELL PHONE	
		E-MAIL	

**DECLARATION:** I HEREBY STATE THAT I AM THE OWNER OF THE SUBJECT PROPERTY OR I HAVE BEEN AUTHORIZED BY THE OWNER(S) OF THE SUBJECT PROPERTY TO REPRESENT THIS APPLICATION, AND THAT THE INFORMATION FURNISHED BY ME IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

SIGNATURE

DATE

PROPOSED APPLICATION(S) AND CLEAR DESCRIPTION OF PROPOSAL (PLEASE USE ADDITIONAL PAPER IF NEEDED):

**See accompanying Application for Code Amendment.**

ATTACH RESPONSE TO DECISION CRITERIA IF APPLICABLE

CHECK TYPE OF LAND USE APPROVAL REQUESTED:

APPEALS	DEVIATIONS	SUBDIVISION SHORT PLAT
<input type="checkbox"/> Building	<input type="checkbox"/> Changes to Antenna requirements	<input type="checkbox"/> Short Plat- Two Lots
<input type="checkbox"/> Code Interpretation	<input type="checkbox"/> Changes to Open Space	<input type="checkbox"/> Short Plat- Three Lots
<input type="checkbox"/> Land use	<input type="checkbox"/> Shoreline	<input type="checkbox"/> Short Plat- Four Lots
<input type="checkbox"/> Right-of-Way Use	<input type="checkbox"/> Seasonal Development Limitation Waiver	<input type="checkbox"/> Short Plat- Deviation of Acreage Limitation
<b>CRITICAL AREAS</b>	<b>ENVIRONMENTAL REVIEW (SEPA)</b>	<input type="checkbox"/> Short Plat- Amendment
<input type="checkbox"/> Critical Area Review 1 (Hourly Rate 2hr Min)	<input type="checkbox"/> SEPA Review (checklist)- Minor	<input type="checkbox"/> Short Plat- Final Plat
<input type="checkbox"/> Critical Area Review 2 (Determination)	<input type="checkbox"/> SEPA review (checklist)- Major	<b>OTHER LAND USE</b>
<input type="checkbox"/> Reasonable Use Exception	<input type="checkbox"/> Environmental Impact Statement	<input type="checkbox"/> Accessory Dwelling Unit
<b>DESIGN REVIEW</b>	<b>SHORELINE MANAGEMENT</b>	<input type="checkbox"/> Code Interpretation Request
<input type="checkbox"/> Pre Design Meeting	<input type="checkbox"/> Exemption	<input type="checkbox"/> Comprehensive Plan Amendment (CPA)
<input type="checkbox"/> Design Review (Code Official)	<input type="checkbox"/> Permit Revision	<input type="checkbox"/> Conditional Use (CUP)
<input type="checkbox"/> Design Commission Study Session	<input type="checkbox"/> Shoreline Variance	<input type="checkbox"/> Lot Line Revision
<input type="checkbox"/> Design Review- Design Commission- Exterior Alteration	<input type="checkbox"/> Shoreline Conditional Use Permit	<input type="checkbox"/> Noise Exception
<input type="checkbox"/> Design Review- Design Commission- New Building	<input type="checkbox"/> Substantial Development Permit	<input type="checkbox"/> Reclassification of Property (Rezoning)
<b>WIRELESS COMMUNICATION FACILITIES</b>	<b>SUBDIVISION LONG PLAT</b>	<input type="checkbox"/> Transportation Concurrence (see supplemental application form)
<input type="checkbox"/> Wireless Communications Facilities- 6409 Exemption	<input type="checkbox"/> Long Plat- Preliminary	<input type="checkbox"/> Planning Services (not associated with a permit or review)
<input type="checkbox"/> New Wireless Communication Facility	<input type="checkbox"/> Long Plat- Alteration	<input checked="" type="checkbox"/> <b>Zoning Code Text Amendment</b>
	<input type="checkbox"/> Long Plat- Final Plat	<input type="checkbox"/> Request for letter
	<b>VARIANCES (Plus Hearing Examiner Fee)</b>	
	<input type="checkbox"/> Variance	

#1

CITY USE ONLY		
PROJECT#	RECEIPT #	FEE
Date Received:		
Received By:		

**APPLICATION FOR ZONING CODE TEXT AMENDMENT**

**Applicant: G. Richard Hill**  
701 5<sup>th</sup> Avenue  
Suite 6600  
Seattle, WA 98104  
(206) 812-3388

**1. Completed Pre-Application:**

The applicant has conferred with the Director of Community Planning and Development ("Director") and has reviewed the Application with him. The Director has accordingly advised the applicant that this conference suffices to fulfill the Pre-Application processing requirement.

**2. Development Application Sheet:**

The completed Development Application Sheet accompanies this Application for Code Amendment.

**3. Project Narrative:**

This Application for a Mercer Island Zoning Code ("Code") Text Amendment ("Code Amendment") is a non-project, legislative proposal that addresses the unintended consequences of the recent Residential Code Update, as to Regulated Improvements. The Code Amendment would address Gross Floor Area, Height, and Lot Coverage issues to render them compatible with existing Regulated Improvements, and to allow reasonable redevelopment of them. A description of the Approach taken with respect to the drafting of the Code Amendment is set forth on Exhibit A to this Application, as is a Matrix



comparing the Gross Floor Area, Height, and Lot Coverage regulations under the Pre-Residential Code, the Residential Code Update (the current Code), and the Proposed Amendments, which would apply to Regulated Improvements only. The proposed Code Amendment itself is attached as Exhibit B and constitutes a red-line of the current Code provisions indicating where changes are proposed. The Code Amendment is consistent with the Growth Management Act, RCW 36.70A, because it will facilitate development of Regulated Improvements (as defined in the Code), including community centers, recreational facilities, schools and educational uses that serve Mercer Island urban residents within the urban area. Approval of the Code Amendment will facilitate the efficient use of land. The Code Amendment is consistent with the county-wide planning policies for the same reasons. The Code Amendment will further encourage and implement the City's Comprehensive Plan, in particular Land Use Goal 17.4, which recognizes that "social and recreation clubs, schools and religious institutions are predominantly located in single family residential areas of the Island," and that "development regulations should reflect the desire to retain valuable and healthy social, recreational, educational, and religious organizations as community assets which are essential for the mental, physical and spiritual health of Mercer Island."

**4. Title Report:**

The Director has advised that because this is a non-project legislative rezone, no Title Report will be required in connection with this application.

**5. SEPA Checklist:**

A completed non-project SEPA Checklist accompanies this Application.

**6. Fees:**

A fee of \$23,559.22 (SEPA @ \$2,657.00 + Code Amendment @ \$20,902.22)

accompanies this Application.

**7. Vicinity Map:**

Because the Code Amendment is a non-project action, the requirement for a Vicinity Map is not applicable.

Dated this 11<sup>th</sup> day of February 2020.

  
\_\_\_\_\_  
G. Richard Hill, Applicant

## Exhibit A

### Approach

1. Update "Regulated Improvements" to bring existing private schools, religious buildings, and community centers into code conformance while allowing property owners the ability to reasonably renovate and develop their properties.
2. Limit the applicability of most amendments to lots that abut commercial zones.

### Proposed Amendments

	Pre-Residential Code Update	Residential Code Update (Current Code)	Proposed Amendments (Regulated Improvements Only)
<b>Gross Floor Area</b> (19.02.020.D)	45% of lot area for SF structures only. Regulated Improvements not specifically restricted; governed by height, setbacks, and lot coverage.	40% of lot area for all structures, or: <ul style="list-style-type: none"> <li>• R-8.4: 5,000 sf, whichever is less.</li> <li>• R-9.6: 8,000 sf, whichever is less.</li> <li>• Etc.</li> </ul>	40% of lot area <ul style="list-style-type: none"> <li>• Allow exceptions for substantially below grade parking structures (less than 4'-0" above grade).</li> <li>• Allow increase for lots less than 3-acres that abut a commercial zone.<sup>1</sup> (See 19.02.060.B.)</li> </ul>
<b>Height</b> (19.02.020.E)	30', or 35' measured on the downhill side.	30', measured from average building elevation. Downhill façades measured from existing or finished grade, whichever is lower.	36' <ul style="list-style-type: none"> <li>• Allow increase to 45' farther than 150' from a public ROW or within 300' of a commercial zone. (See 19.02.060.E.)</li> <li>• Provide method of measurement to allow buildings to respond better to sloping sites. (See 19.02.060.F.)</li> </ul>
<b>Lot Coverage</b> (19.02.060)	40%	40%	40% <sup>2</sup> Allow 25% increase for lots that abut a commercial zone (See 19.02.060.C.). Allow exceptions for usable open spaces, such as: <ul style="list-style-type: none"> <li>• Athletic and similar play fields</li> <li>• Occupiable green roofs or other structured landscaped area.</li> <li>• Grass block access drives solely for the use of emergency vehicles</li> </ul> (See 19.02.060.D.)

<sup>1</sup> GFA in the C-O zone: max. building footprint = 35% of lot area; max. height = 36', which allows 3 floors; max. effective GFA as multiple of lot area is  $0.35 \times 3 = 1.05$  times lot area.

<sup>2</sup> Change 19.02.060 from impervious surface to lot coverage. Impervious surfaces are regulated by the MICC Title 15 and construction codes.



## Exhibit B

### 19.02.005 Purpose and applicability.

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A. *Purpose.* The purpose of the residential chapter is to identify land uses and to establish development standards that are appropriate within the residential zoning designations. The development standards provide a framework for a site to be developed consistent with the policy direction of the adopted Mercer Island Comprehensive Plan.

### B. *Applicability.*

1. The provisions of this chapter shall apply to all development proposals in the R-8.4, R-9.6, R-12, and R-15 zoning designations.
2. Unless otherwise indicated in this chapter, the applicant shall be responsible for the initiation, preparation, and submission of all required plans or other documents prepared in support of or necessary to obtain a permit and to determine compliance with this chapter. (Ord. 17C-15 § 1 (Att. A)).

### 19.02.010 Single-family.

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A use not permitted by this section is prohibited. Please refer to MICC 19.06.010 for other prohibited uses.

### A. *Uses Permitted in Zones R-8.4, R-9.6, R-12, and R-15.*

1. Single-family dwelling.
2. Accessory buildings incidental to the main building.
3. Private recreational areas.
4. Public schools accredited or approved by the state for compulsory school attendance, subject to design commission review and all of the following conditions:
  - a. All structures shall be located at least 35 feet from any abutting property and at least 45 feet from any public right-of-way.
  - b. Off-street parking shall be established and maintained at a minimum ratio of one parking space per classroom with high schools providing an additional one parking space per 10 students.
  - c. A one-fourth acre or larger playfield shall be provided in one usable unit abutting or adjacent to the site.

5. Home business as an accessory use to the residential use, subject to all of the following conditions:

a. The home business may make those improvements to the home business normally allowed for single-family residences. For a day care, play equipment and play areas are not allowed in front yards.

b. Only those persons who reside on the premises and one other person shall be permitted to engage in the business on the premises at any one time; provided, that a day care or preschool may have up to three nonresident employees on the premises at any one time. This limitation applies to all owners, managers, staff or volunteers who operate the business.

c. There shall be no exterior storage or display of materials except as otherwise allowed for single-family residences, and no sign advertising the home business located on the premises except as specifically allowed by MICC 19.12.080(B).

d. No offensive noise, vibration, smoke, dust, odor, heat or glare or excessive traffic to and from the premises shall be produced or generated by the home business.

e. The home business shall not involve the use of more than 30 percent of the gross floor area of the residence, not including the allowed basement exclusion area consistent with subsection 1 of this section and MICC 19.16.010. However, a day care or preschool may use up to 75 percent of said gross floor area.

f. No home business shall be permitted that generates parking demand that cannot be accommodated on the lots consistent with the applicable maximum impervious surface coverage limits of MICC 19.02.060. Parking shall be provided to handle the expected parking demand. In the case of a day care or preschool, parking for residents and employees shall occur on site; resident and employee parking shall not occur on an adjacent street.

g. The business shall not provide healthcare services, personal services, automobile repairs; serve as a restaurant, commercial stable, kennel, or place of instruction licensed as a school under state law and which will operate with more than three students at a time; or serve as a bed and breakfast without a conditional use permit as set out in subsection (C)(7) of this section. Nothing contained in this subsection (A)(5)(g) shall be interpreted to prohibit a day care.

h. A day care shall be limited to 18 children maximum (not including dependents) at a time.

6. Public park subject to the following conditions:

a. Access to local and/or arterial thoroughfares shall be reasonably provided.

b. Outdoor lighting shall be located to minimize glare upon abutting property and streets.

c. Major structures, ballfields and sport courts shall be located at least 20 feet from any abutting property.



d. If a permit is required for a proposed improvement, a plot, landscape and building plan showing compliance with these conditions shall be filed with the city community planning and development department (CPD) for its approval.

7. Semi-private waterfront recreation areas for use by 10 or fewer families, subject to the conditions set out in MICC 19.07.110.

8. One accessory dwelling unit (ADU) per single-family dwelling subject to conditions set out in MICC 19.02.030.

9. Special needs group housing as provided in MICC 19.06.080.

10. Social service transitional housing, as provided in MICC 19.06.080.

11. A state-licensed day care or preschool as an accessory use, when situated at and subordinate to a legally established place of worship, public school, private school, or public facility, meeting the following requirements:

a. The number of children in attendance at any given time shall be no more than 20 percent of the legal occupancy capacity of the buildings on the site, in the aggregate.

b. Signage shall be consistent with the provisions of MICC 19.12.080(B)(3).

c. Off-street parking provided by the primary use shall be deemed sufficient for the accessory day care or preschool if at least one space per employee is provided, and either:

i. One additional parking space is provided for every five children in attendance, or

ii. Adequate pick-up and drop-off space is provided as determined by the code official.

12. Places of worship may have a stage theater program as an accessory use. Stage theater programs are defined as productions of live presentations involving the performances of actors or actresses, singers, dancers, musical groups, or artists. Stage theater programs also include related classes and instructional workshops. Adequate parking must be provided, as determined by the code official.

13. Open space.

B. *Additional Use Permitted in Zones R-9.6, R-12, and R-15.* One accessory building for the housing of domestic animals and fowl, having a floor area not to exceed 36 square feet for each lot and located not less than 65 feet from any place of habitation other than the owners'; provided, the roaming area shall be fenced and located not less than 35 feet from any adjacent place of human habitation.

C. *Conditional Uses.* The following uses are permitted when authorized by the issuance of a conditional use permit when the applicable conditions set forth in this section and in MICC 19.15.040 have been met:



1. Government services, public facilities, utilities, and museums and art exhibitions, subject to the following conditions:

- a. All structures shall be located at least 20 feet from any abutting property;
- b. Off-street parking shall be established and maintained at a minimum ratio of one parking space for each 200 square feet of gross floor area; and
- c. Utilities shall be shielded from abutting properties and streets by a sight obscuring protective strip of trees or shrubs.

2. Private schools accredited or approved by the state for compulsory school attendance, subject to conditions set out in subsection (A)(4) of this section.

3. Places of worship subject to the following conditions:

- a. All structures shall be located at least 35 feet from any abutting property.
- b. Off-street parking shall be established and maintained at a ratio of one parking space for each five seats in the chapel, nave, sanctuary, or similar worship area.

4. Noncommercial recreational areas, subject to the conditions contained in subsection (A)(6) of this section.

5. Semi-private waterfront recreation areas for use by more than 10 families, subject to conditions set out in MICC 19.07.110.

6. Retirement homes located on property used primarily for a place of worship subject to the following conditions:

- a. Retirement home structures shall not occupy more than 20 percent of the lot; provided, the total lot coverage for the retirement home, the place of worship, and all other structures shall not exceed the lot coverage specified in MICC 19.02.060.

- b. A plot, landscape and building plan shall be filed with the design commission for its approval, and the construction and maintenance of buildings and structures and the establishment and continuation of uses shall comply with the approved plot, landscape and building plan. Alterations to the project are permitted only upon approval by the design commission of a new or amended plan.

- c. The number of dwelling units shall be determined by the planning commission upon examination of the following factors:

- i. Demonstrated need;
- ii. Location, size, shape and extent of existing development on the subject property;
- iii. Nature of the surrounding neighborhood; and

iv. Legal assurances that the entire property remains contiguous, and that the retirement home is owned and controlled by the applicant religious organization.

d. The retirement home shall be located at least 35 feet from all abutting property.

e. Off-street parking shall be established and maintained at a ratio of one-half parking space for each dwelling unit.

7. The use of a single-family dwelling as a bed and breakfast subject to the following conditions:

a. The bed and breakfast facility shall meet all applicable health, fire, and building codes.

b. Not more than four rooms shall be offered to the public for lodging.

c. There shall be no external modification of any structure that alters the residential nature of the premises.

d. The bed and breakfast shall be the primary residence of the operator.

e. In addition to the parking required set out in MICC 19.02.020(G), one off-street parking space, not located in the lot setbacks, shall be provided for each rental room.

f. Meals shall be made available only to guests, and not to the general public.

8. Nonschool uses of school buildings, subject to the following conditions:

a. No use or proposed use shall be more intensive than the school activity it replaced. Consideration shall be given to quantifiable data, such as, but not limited to, traffic generation, parking demand, noise, hours of operation;

b. All activities, with the exception of outdoor recreation shall be confined to the interior of the building(s);

c. Exterior modification of the building(s) shall not be permitted if such a modification would result in an increase in the usable area of the building(s);

d. Minor changes in the building exterior, landscaping, signs, and parking may be permitted subject to the review and approval of the design commission; and

e. Off-street parking for all activities at the site shall be provided in existing school parking lots.

f. Termination. Conditional use permits for nonschool uses shall terminate and the use of the site shall conform to the requirements of the zone in which the school building is located on the day of the termination under the following conditions:

i. The school building is demolished or sold by the Mercer Island school district.



ii. The [city] council revokes the permit on the recommendation of the planning commission. Revocation shall be based on a finding that the authorized use constitutes a nuisance or is harmful to the public welfare, or the [applicant] has failed to meet the conditions imposed by the [city].

g. *Revision.* Any modification to a nonschool conditional use permit shall be approved by the planning commission; however, the [code official] may approve minor modifications that are consistent with the above stated conditions.

9. A state-licensed [day care] or preschool not meeting the requirements of subsection (A)(11) of this section, subject to the following conditions:

a. Off-street [parking] and passenger loading shall be sufficient to meet the needs of the proposed [day care] or preschool without causing overflow impacts onto adjacent [streets].

b. Signage shall be consistent with the provisions of MICC 19.12.080(B)(3). (Ord. 19C-04 § 1 (Exh. A); Ord. 17C-15 § 1 (Att. A); Ord. 15C-03 § 1; Ord. 09C-04 §§ 1, 2; Ord. 08C-01 § 1; Ord. 05C-16 § 1; Ord. 04C-08 § 9; Ord. 03C-08 § 3; Ord. 01C-06 § 1; Ord. 99C-13 § 1).

19.02.020 Development standards.

#### A. *Minimum Net Lot Area.*

R- 8.4: The [net lot area] shall be at least 8,400 square feet. [Lot width] shall be at least 60 feet and [lot depth] shall be at least 80 feet.

R- 9.6: The [net lot area] shall be at least 9,600 square feet. [Lot width] shall be at least 75 feet and [lot depth] shall be at least 80 feet.

R- 12: The [net lot area] shall be at least 12,000 square feet. [Lot width] shall be at least 75 feet and [lot depth] shall be at least 80 feet.

R- 15: The [net lot area] shall be at least 15,000 square feet. [Lot width] shall be at least 90 feet and [lot depth] shall be at least 80 feet.

1. Minimum [net lot area] requirements do not apply to any lot that came into existence before September 28, 1960. In order to be used as a building site, lots that do not meet minimum [net lot area] requirements shall comply with MICC 19.01.050(G)(3).

2. In determining whether a [lot] complies with the minimum [net lot area] requirements, the following shall be excluded: the area between [lateral lines] of any such [lot] and any part of such [lot] which is part of a [street].



B. *Street Frontage.* No building will be permitted on a lot that does not front onto a street acceptable to the city as substantially complying with the standards established for streets.

C. *Yard Requirements.*

1. *Minimum.* Except as otherwise provided in this section, each lot shall have front, rear, and side yards not less than the depths or widths following:

a. Front yard depth: 20 feet or more.

b. Rear yard depth: 25 feet or more.

c. Side yards shall be provided as follows:

i. *Total Depth.*

(a) For lots with a lot width of 90 feet or less, the sum of the side yards' depth shall be at least 15 feet.

(b) For lots with a lot width of more than 90 feet, the sum of the side yards' depth shall be a width that is equal to at least 17 percent of the lot width.

ii. *Minimum Side Yard Depth.*

(a) The minimum side yard depth abutting an interior lot line is five feet or 33 percent of the aggregate side yard total depth, whichever is greater.

(b) The minimum side yard depth abutting a street is five feet.

iii. *Variable Side Yard Depth Requirement.* For lots with an area of 6,000 square feet or more, the minimum side yard depth abutting an interior lot line shall be the greater of the minimum side yard depth required under subsection (C)(1)(c)(ii) of this section, or as follows:

(a) Single-family dwellings shall provide a minimum side yard depth of seven and one-half feet if the building:

(1) For nongabled roof end buildings, the height is more than 15 feet measured from existing or finished grade, whichever is lower, to the top of the exterior wall facade adjoining the side yard; or

(2) For gabled roof end buildings, the height is more than 18 feet measured from existing or finished grade, whichever is lower, to the top of the gabled roof end adjoining the side yard.

(b) Single-family dwellings with a height of more than 25 feet measured from the existing or finished grade, whichever is lower, to the top of the exterior wall facade adjoining the side yard shall provide a minimum side yard depth of 10 feet.

## 2. Yard Determination.

### a. Front Yard.

i. *Front Yard – General.* For lots that are not corner lots or waterfront lots, the front yard shall extend the full width of the lot and is determined using the following sequential approach, in descending order of preference, until a front yard is established:

- (a) The yard abutting an improved street from which the lot gains primary access.
- (b) The yard abutting the primary entrance to a building.
- (c) The orientation of buildings on the surrounding lots and the means of access to the lot.

ii. *Front Yard – Corner Lots.* On corner lots the front yard shall be measured from the narrowest dimension of the lot abutting a street. The yard adjacent to the widest dimension of the lot abutting a street shall be a side yard, provided:

- (a) If a setback equivalent to or greater than required for a front yard is provided along the property lines abutting both streets, then only one of the remaining setbacks must be a rear yard.

iii. *Front Yard – Waterfront Lots.* On a waterfront lot, regardless of the location of access to the lot, the front yard may be measured from the property line opposite and generally parallel to the ordinary high water line.

iv. This section shall apply except as provided for in MICC 19.08.030(F)(1).

b. *Rear Yard.* Except as allowed in subsections (C)(2)(a)(ii) and (iii) of this section, the rear yard is the yard opposite the front yard. The rear yard shall extend across the full width of the rear of the lot, and shall be measured between the rear line of the lot and the nearest point of the main building including an enclosed or covered porch. If this definition does not establish a rear yard setback for irregularly shaped lots, the code official shall establish the rear yard based on the following method: The rear yard shall be measured from a line or lines drawn from side lot line(s) to side lot line(s), at least 10 feet in length, parallel to and at a maximum distance from the front lot line.

c. *Side Yard.* Any yards not designated as a front or rear yard shall be defined as a side yard.

## 3. Intrusions into Required Yards.

### a. Minor Building Elements.

i. Except as provided in subsection (C)(3)(a)(ii) of this section, porches, chimney(s) and fireplace extensions, window wells, and unroofed, unenclosed outside stairways and decks shall not project more than three feet into any required yard. Eaves shall not protrude more than 18 inches into any required yard.



ii. No penetration shall be allowed into the minimum side yard setback abutting an interior lot line except where an existing flat-roofed house has been built to the interior side yard setback line and the roof is changed to a pitched roof with a minimum pitch of 4:12, the eaves may penetrate up to 18 inches into the side yard setback.

b. *Hardscape and Driveways.* Hardscape and driveways not more than 30 inches above existing grade or finished grade, whichever is lower, may be located in any required yard.

c. *Fences, Retaining Walls and Rockeries.* Fences, retaining walls and rockeries are allowed in required yards as provided in MICC 19.02.050.

d. *Garages and Other Accessory Buildings.* Garages and other accessory buildings are not allowed in required yards, except as provided in MICC 19.02.040.

e. *Heat Pumps, Air Compressors, Air Conditioning Units, and Other Similar Mechanical Equipment.* Heat pumps, air compressors, air conditioning units, and other similar mechanical equipment may be located within any required yard provided they will not exceed the maximum permissible noise levels set forth in WAC 173-60-040, which is hereby incorporated as though fully set forth herein. Any such equipment shall not be located within three feet of any lot line.

f. *Architectural Features.* Detached, freestanding architectural features such as columns or pedestals that designate an entrance to a walkway or driveway and do not exceed 42 inches in height are allowed in required yards.

g. *Other Structures.* Except as otherwise allowed in this subsection (C)(3), structures over 30 inches in height from existing grade or finished grade, whichever is lower, may not be constructed in or otherwise intrude into a required yard.

4. *Setback Deviation.* The code official may approve a deviation to front, side, and rear setbacks pursuant to MICC 19.15.040.

#### D. *Gross Floor Area – Single Family Dwellings.*

1. Except as provided in subsection (D)(3) of this section, the gross floor area of a single-family dwelling shall not exceed:

a. R-8.4: 5,000 square feet or 40 percent of the lot area, whichever is less.

b. R-9.6: 8,000 square feet or 40 percent of the lot area, whichever is less.

c. R-12: 10,000 square feet or 40 percent of the lot area, whichever is less.

d. R-15: 12,000 square feet or 40 percent of the lot area, whichever is less.

This section does not apply to regulated improvements.



2. *Gross Floor Area Calculation.* The gross floor area is the sum of the floor area(s) bounded by the exterior faces of each building on a residential lot, provided:

a. The gross floor area shall be 150 percent of the floor area of that portion of a room(s) with a ceiling height of 12 feet to 16 feet, measured from the floor surface to the ceiling.

b. The gross floor area shall be 200 percent of the floor area of that portion of a room(s) with a ceiling height of more than 16 feet, measured from the floor surface to the ceiling.

c. Staircases shall be counted as a single floor for the first two stories accessed by the staircase. For each additional story above two stories, the staircase shall count as a single floor area. For example, a staircase with a 10-foot by 10-foot dimension that accesses three stories shall be accounted as 200 square feet (100 square feet for the first two stories, and 100 square feet for the third story).

d. For the purposes of calculating allowable gross floor area, lots created in a subdivision through MICC 19.08.030(G), Optional Standards for Development, may apply the square footage from the open space tract to the lot area not to exceed the minimum square footage of the zone in which the lot is located.

### 3. *Allowances.*

a. The gross floor area for lots with an area of 7,500 square feet or less may be the lesser of 3,000 square feet or 45 percent of the lot area; or

b. If an accessory dwelling unit is proposed, the 40 percent allowed gross floor area may be increased by the lesser of five percentage points or the actual floor area of the proposed accessory dwelling unit, provided:

i. The allowed gross floor area of accessory buildings that are not partially or entirely used for an accessory dwelling unit shall not be increased through the use of this provision;

ii. The lot will contain an accessory dwelling unit associated with the application for a new or remodeled single-family home; and

iii. The total gross floor area shall not exceed 4,500 square feet or 45 percent of the lot area, whichever is less.

### E. *Building Height Limit – Single Family Dwellings.*

1. *Maximum Building Height.* No Single Family Dwelling building shall exceed 30 feet in height above the average building elevation to the highest point of the roof.

2. *Maximum Building Height on Downhill Building Facade.* The maximum building facade height on the downhill side of a sloping lot shall not exceed 30 feet in height. The building facade height shall be measured from the existing grade or finished grade.

whichever is lower, at the furthest downhill extent of the proposed building, to the top of the exterior wall facade supporting the roof framing, rafters, trusses, etc.

3. Antennas, lightning rods, plumbing stacks, flagpoles, electrical service leads, chimneys and fireplaces, solar panels, and other similar appurtenances may extend to a maximum of five feet above the height allowed for the main structure in subsections (E)(1) and (2) of this section; provided:

a. Solar panels shall be designed to minimize their extension above the maximum allowed height, while still providing the optimum tilt angle for solar exposure.

b. Rooftop railings may not extend above the maximum allowed height for the main structure.

4. The formula for calculating average building elevation is as follows:

Formula: 
$$\frac{\text{Average Building Elevation} = (\text{Weighted Sum of the Mid-point Elevations}) \div (\text{Total Length of Wall Segments})$$

Where: 
$$\text{Weighted Sum of the Mid-point Elevations} = \text{The sum of: } ((\text{Mid-point Elevation of Each Individual Wall Segment}) \times (\text{Length of Each Individual Wall Segment}))$$

For example for a house with 10 wall segments:

$$(Axa) + (Bxb) + (Cxc) + (Dxd) + (Exe) + (Fxf) + (Gxg) + (Hxh) + (Ixi) + (Jxj)$$
$$a + b + c + d + e + f + g + h + i + j$$

Where:

A, B, C, D... = The existing or finished ground elevation, whichever is lower, at midpoint of wall segment.

And:

a, b, c, d... = The length of wall segment measured on outside of wall.

#### F. Lot Coverage – Single-Family Dwellings.

1. Applicability. This section shall apply to the development of single-family dwellings including, but not limited to, the remodeling of existing single-family dwellings and construction of new single-family dwellings. This section does not apply to regulated improvements.

2. Landscaping Objective.

- a. To ensure that landscape design reinforces the natural and wooded character of Mercer Island, complements the site, the architecture of site structures and paved areas, while maintaining the visual appearance of the neighborhood.
- b. To ensure that landscape design is based on a strong, unified, coherent, and aesthetically pleasing landscape concept.
- c. To ensure that landscape plantings, earth forms, and outdoor spaces are designed to provide a transition between each other and between the built and natural environment.
- d. To ensure suitable natural vegetation and landforms, particularly mature trees and topography, are preserved where feasible and integrated into the overall landscape design. Large trees and tree stands should be maintained in lieu of using new plantings.
- e. To ensure planting designs include a suitable combination of trees, shrubs, groundcovers, vines, and herbaceous material; include a combination of deciduous and evergreen plant material; emphasize native plant material; provide drought-tolerant species; and exclude invasive species.

3. *Lot Coverage – Landscaping Required.*

a. *Minimum Area Required.* Development proposals for single-family dwellings shall comply with the following standards based on the net lot area:

<u>Lot Slope</u>	<u>Maximum Lot Coverage (house, driving surfaces, and accessory buildings)</u>	<u>Required Landscaping Area</u>
Less than 15%	40%	60%
15% to less than 30%	35%	65%
30% to 50%	30%	70%
Greater than 50% <u>slope</u>	20%	80%

b. *Hardscape.*

i. A maximum of nine percent of the net lot area may consist of hardscape improvements including, but not limited to, walkways, decks, etc., and provided:



(a) The hardscape for lots with a net lot area of 8,400 square feet or less may be the lesser of 755 square feet or 12 percent of the net lot area.

ii. Hardscape improvements are also permitted in the maximum lot coverage area established in subsection (F)(3)(a) of this section.

c. *Softscape and Driveways.*

i. The required landscaping area in subsection (F)(3)(a) of this section shall consist of softscape improvements, except where used for hardscape improvements pursuant to section (F)(3)(b) of this section.

ii. Driveways and other driving surfaces are prohibited within the landscaping area.

For example, a flat lot with a net area of 10,000 square feet shall provide a minimum 6,000 square feet of landscaped area. Up to 900 square feet of the landscaped area may be used for a walkway, patio, or deck or other hardscape area. The remainder of the area shall be used for softscape improvements, such as landscaping, tree retention, etc.

d. Development proposals for a new single-family home shall remove Japanese knotweed (*Polygonum cuspidatum*) and Regulated Class A, Regulated Class B, and Regulated Class C weeds identified on the King County Noxious Weed list, as amended, from required landscaping areas established pursuant to subsection (F)(3)(a) of this section. New landscaping associated with new single-family home shall not incorporate any weeds identified on the King County Noxious Weed list, as amended. Provided, that removal shall not be required if the removal will result in increased slope instability or risk of landslide or erosion.

e. *Allowed Adjustments.* A one-time reduction in required landscaping area and an increase in the maximum lot coverage are allowed, provided:

i. The total reduction in the required landscaping area shall not exceed five percentage points, and the total increase in the maximum lot coverage shall not exceed five percentage points; and

ii. The reduction in required landscaping area and increase in maximum lot coverage are associated with:

(a) A development proposal that will result in a single-story single-family dwelling with a wheelchair accessible entry path, and may also include a single-story accessory building; or

(b) A development proposal on a flag lot that, after optimizing driveway routing and minimizing driveway width, requires a driveway that occupies more than 25 percent of the otherwise allowed lot coverage area. The allowed reduction in the required landscaping area and increase in maximum lot coverage shall not exceed five percent, or the area of the driveway in excess of 25 percent of the lot coverage, whichever is less.

For example, a development proposal with a driveway that occupies 27 percent of the otherwise allowed lot coverage may increase the total lot coverage by two percent; and

iii. A recorded notice on title, covenant, easement, or other documentation in a form approved by the city shall be required. The notice on title or other documentation shall describe the basis for the reduced landscaping area and increased lot coverage.

#### G. *Parking.*

1. *Applicability.* Subsection (G)(2) of this section shall apply to all new construction and remodels where more than 40 percent of the length of the structure's external walls have been intentionally structurally altered.

#### 2. *Parking Required.*

a. Each single-family dwelling with a gross floor area of 3,000 square feet or more shall have at least three parking spaces sufficient in size to park a passenger automobile; provided, at least two of the stalls shall be covered stalls.

b. Each single-family dwelling with a gross floor area of less than 3,000 square feet shall have at least two parking spaces sufficient in size to park a passenger automobile; provided, at least one of the stalls shall be a covered stall.

3. No construction or remodel shall reduce the number of parking spaces on the lot below the number existing prior to the project unless the reduced parking still satisfies the requirements set out above.

4. Except as otherwise provided in this chapter, each lot shall provide parking deemed sufficient by the code official for the use occurring on the lot; provided, any lot that contains 10 or more parking spaces shall also meet the parking lot requirements set out in Appendix A of this development code.

#### H. *Easements.* Easements shall remain unobstructed.

1. *Vehicular Access Easements.* No structures shall be constructed on or over any vehicular access easement. A minimum five-foot yard setback from the edge of any easement that affords or could afford vehicular access to a property is required for all structures; provided, that improvements such as gates, fences, rockeries, retaining walls and landscaping may be installed within the five-foot yard setback so long as such improvements do not interfere with emergency vehicle access or sight distance for vehicles and pedestrians.

2. *Utility and Other Easements.* No structure shall be constructed on or over any easement for water, sewer, storm drainage, utilities, trail or other public purposes unless it is permitted within the language of the easement or is mutually agreed in writing between the grantee and grantor of the easement.

I. *Large Lots.* The intent of this section is to ensure that the construction of a single-family dwelling on a large lot does not preclude compliance with applicable standards related to subdivision or short subdivision of the large lot. Prior to approval of a new single-family



dwelling and associated site improvements, accessory buildings, and accessory structures on large lots, the applicant shall complete one of the following:

1. *Design for Future Subdivision.* The proposed site design that shall accommodate potential future subdivision of the lot as follows:

a. The proposed site design shall comply with the applicable design requirements of Chapters 19.08, Subdivision, 19.09, Development, and 19.10, Trees, MICC.

b. The proposed site design shall not result in a circumstance that would require the removal of trees identified for retention, as part of a future subdivision.

c. The proposed site design shall not result in a circumstance that would require modifications to wetlands, watercourses, and associated buffers as part of a future subdivision.

d. Approval of a site design that could accommodate a potential future subdivision does not guarantee approval of such future subdivision, nor does it confer or vest any rights to a future subdivision.

2. *Subdivide.* Prior to application for a new single-family dwelling, the property is subdivided or short platted to create all potential lots and building pads permitted by zoning. The proposed single-family dwelling shall be located on a lot and within a building pad resulting from a recorded final plat.

3. *Limit Subdivision.* Record a notice on title, or execute a covenant, easement, or other documentation approved by the city, prohibiting further subdivision of the large lot for a period of five years from the date of final inspection or certificate of occupancy.

J. *Building Pad.* New buildings shall be located within a building pad established pursuant to Chapter 19.09 MICC. Intrusions into yard setbacks authorized pursuant to MICC 19.02.020(C)(3) may be located outside of the boundaries of the building pad. (Ord. 19C-04 § 1 (Exh. A); Ord. 18C-05 § 1 (Att. A); Ord. 17C-15 § 1 (Att. A); Ord. 17C-02 § 1; Ord. 10C-07 § 1; Ord. 09C-17 § 1; Ord. 08C-01 § 1; Ord. 06C-05 § 1; Ord. 05C-12 § 7; Ord. 03C-01 § 3; Ord. 02C-09 § 4; Ord. 01C-06 § 1; Ord. 99C-13 § 1).

19.02.030 Accessory dwelling units.

A. *Purpose.* It is the purpose of this legislation to implement the policy provisions of the housing element of the city's comprehensive plan by eliminating barriers to accessory dwelling units in single-family residential neighborhoods and provide for affordable housing. Also, to provide homeowners with a means of obtaining rental income, companionship, security and services through tenants in either the accessory dwelling unit or principal unit of the single-family dwelling.



B. *Requirements for Accessory Dwelling Units.* One accessory dwelling unit is permitted as subordinate to an existing single-family dwelling; provided, the following requirements are met:

1. *Owner Occupancy.* Either the principal dwelling unit or the accessory dwelling unit must be occupied by an owner of the property or an immediate family member of the property owner. Owner occupancy is defined as a property owner, as reflected in title records, who makes his or her legal residence at the site, as evidenced by voter registration, vehicle registration, or similar means, and actually resides at the site more than six months out of any given year.

2. *Number of Occupants.* The total number of occupants in both the principal dwelling unit and accessory dwelling unit combined shall not exceed the maximum number established for a family as defined in MICC 19.16.010 plus any live-in household employees of such family.

3. *Subdivision.* Accessory dwelling units shall not be subdivided or otherwise segregated in ownership from the principal dwelling unit.

4. *Size and Scale.* The square footage of the accessory dwelling unit shall be a minimum of 220 square feet and a maximum of 900 square feet, excluding any garage area; provided, the square footage of the accessory dwelling unit shall not exceed 80 percent of the total square footage of the primary dwelling unit, excluding the garage area, as it exists or as it may be modified.

5. *Location.* The accessory dwelling unit may be added to or included within the principal unit, or located in a detached structure.

6. *Entrances.* The single-family dwelling containing the accessory dwelling unit shall have only one entrance on each front or street side of the residence except where more than one entrance existed on or before January 17, 1995.

7. *Additions.* Additions to an existing structure or newly constructed detached structures created for the purpose of developing an accessory dwelling unit shall be designed consistent with the existing roof pitch, siding, and windows of the principal dwelling unit.

8. *Detached Structures.* Accessory dwelling units shall be permitted in a detached structure.

9. *Parking.* All single-family dwellings with an accessory dwelling unit shall meet the parking requirements pursuant to MICC 19.02.020(G) applicable to the dwelling if it did not have such an accessory dwelling unit.

C. *Exceptions – Ceiling Height.* All existing accessory dwelling units that are located within a single-family dwelling, which was legally constructed but does not now comply with current ceiling height requirements of the construction codes set forth in MICC Title 17, shall be allowed to continue in their present form.

D. *Notice on Title.* Approval of the accessory dwelling unit shall be subject to the applicant recording a document with the King County department of records and elections which runs with the land and identifies the address of the property, states that the owner(s) resides in either the principal dwelling unit or the accessory dwelling unit, includes a statement

that the owner(s) will notify any prospective purchasers of the limitations of this section, and provides for the removal of the accessory dwelling unit if any of the requirements of this chapter are violated.

E. *Elimination/Expiration.* Elimination of an accessory dwelling unit may be accomplished by the owner recording a certificate with the King County department of records and elections and development services stating that the accessory dwelling unit no longer exists on the property. (Ord. 18C-08 § 1 (Att A.); Ord. 08C-01 § 1; Ord. 04C-12 § 10; Ord. 99C-13 § 1).

19.02.040 Garages, other accessory buildings and accessory structures.

A. Accessory buildings, including garages, are not allowed in required yards except as herein provided.

B. *Attached Accessory Building.* An attached accessory building shall comply with the requirements of this code applicable to the main building.

C. *Detached Accessory Buildings and Accessory Structures.*

1. *Gross Floor Area.*

a. The combined total gross floor area for one or more accessory building(s) shall not exceed 25 percent of the total gross floor area allowed on a lot within applicable zoning designations pursuant to MICC 19.02.020. For example, on a lot where the total allowed gross floor area is 4,000 square feet, the combined total gross floor area for all accessory buildings is 1,000 square feet.

b. The gross floor area for a detached accessory building that is entirely or partially used for an accessory dwelling unit may be increased by the additional floor area authorized pursuant to MICC 19.02.020(D)(3)(b).

2. *Height.*

a. Detached accessory buildings, except for buildings that contain an accessory dwelling unit, are limited to a single story and shall not exceed 17 feet in height above the average building elevation computed from existing grade or finished grade, whichever is lower, to the highest point of the roof. Average building elevation is calculated using the methodology established in MICC 19.02.020(E)(4).

b. Detached accessory buildings that are entirely or partially used for an accessory dwelling unit shall meet the height limits established for the primary building.

3. Detached accessory buildings are not allowed in required yard setbacks; provided, one detached accessory building with a gross floor area of 200 square feet or less and a height of 12 feet or less may be erected in the rear yard setback. If such an accessory building is to be



located less than five feet from any property line, a joint agreement with the adjoining property owner(s) must be executed and recorded with the King County department of records and thereafter filed with the city.

4. *Accessory Structures.* The maximum height of an accessory structure that is not also an accessory building shall not exceed 17 feet. The height of an accessory structure is measured from the top of the structure to the existing grade or finished grade, whichever is lower, directly below the section of the structure being measured.

D. *Garages and Carports.* Garages and carports may be built to within 10 feet of the property line in the front yard; provided:

1. There is greater than four vertical feet measured between the elevation at the bottom of the wall of the building and the ground elevation at the front yard property line where such property line is closest to the building. The elevations of both the intersection of the building and the ground, and the point of the property line closest to the wall of the building, shall be measured using the lower of the existing and finished grade; and

2. The height of such garage or carport shall not exceed 12 feet from existing or finished grade, whichever is lower, for that portion built within the front yard.

E. *Pedestrian Walkways.* Enclosed or covered pedestrian walkways may be used to connect the main building to a garage or carport. Enclosed pedestrian walkways shall not exceed six feet in width and 12 feet in height calculated from finished grade or 30 feet above average building elevation, whichever is less. (Ord. 19C-04 § 1 (Exh. A); Ord. 17C-15 § 1 (Att. A); Ord. 08C-01 § 1; Ord. 01C-06 § 1; Ord. 99C-13 § 1).

19.02.050 Fences, retaining walls and rockeries.

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A. *Location in Required Yard.* Fences, retaining walls and rockeries may be located within any required yard as specified below.

B. *Location in Street.*

1. *Fences.* No fence shall be located in any improved street. Fences may be allowed in unimproved public streets subject to approval of the city engineer and the granting of an encroachment agreement as required by MICC 19.06.060.

2. *Retaining Walls and Rockeries.* Retaining walls and rockeries may be allowed in any street subject to the approval of the city engineer and the granting of an encroachment agreement covering any public street as required by MICC 19.06.060.

C. *Height Measurement.*



1. *Fences/Gates.* The height of a fence or gate is measured from the top of the fence or gate, including posts, to the existing grade or finished grade, whichever is lower, directly below the section of the fence or gate being measured.

2. *Retaining Walls and Rockeries.* The height of a retaining wall or rockery is measured from the top of the retaining wall or rockery to the existing grade or finished grade, whichever is lower, directly below the retaining wall or rockery.

3. *Multiple Retaining Walls.* Retaining walls outside of required yard setbacks shall be stepped to meet a 1:1 ratio of separation with 45 degrees of grade to be considered separate. For example, two six-foot-tall retaining walls would need to be separated by at least six feet of horizontal distance measured from the toe of the upper wall to the top of the bottom wall, to be considered separate and not combined for maximum height calculations.

#### D. *Retaining Walls and Rockeries – Requirements.*

1. *Building Permit.* A building permit is required for retaining walls or rockeries not exempted from permit by Section 105.2 of the Construction Administrative Code, Chapter 17.14 MICC.

2. *Engineer.* Any rockery requiring a building permit shall be designed and inspected by a licensed geotechnical engineer.

3. *Drainage Control.* Drainage control of the area behind the rockery shall be provided for all rockeries.

#### 4. *Maximum Height in Required Yard – Cut Slopes.*

a. No retaining walls or rockeries, or any combination of retaining walls or rockeries, to the extent used to protect a cut or cuts into existing grade within any required yard, shall exceed a total of 144 inches in height.

b. All retaining walls and/or rockeries within a required yard shall be included in calculating the maximum height of 144 inches.

c. Retaining walls or rockeries may be topped by a fence as provided in subsection E of this section.

#### 5. *Maximum Height in Required Yard – Fill Slopes.*

a. No retaining walls or rockeries, or any combination of retaining walls or rockeries, to the extent used to raise grade and protect a fill slope, shall result in an increase in the finished grade by more than 72 inches at any point.

b. All retaining walls and/or rockeries within a required yard shall be included in calculating the maximum height of 72 inches.

c. Retaining walls or rockeries may be topped by a fence as provided in subsection E of this section.

E. Fences and Gates.

1. Fences or Gates in Required Yard.

a. Height Limits.

i. Side and Rear Yards. Fences and gates are allowed to a maximum height of 72 inches within required side or rear yards, provided the combined height of a fence and retaining wall or rockery for a fill slope authorized pursuant to subsection (D)(5) of this section shall not exceed a total height of 72 inches.

ii. Front Yards. Fences, gates, or any combination of retaining walls, rockeries and fences are allowed to a maximum height of 42 inches within required front yards.

b. Exceptions to Height Limits.

i. Fences within front yards may be designed to incorporate an open latticework or similar architectural feature at the entrance of a walkway, provided the total height of the entryway feature shall not exceed 90 inches. The open latticework or architectural feature shall be designed such that at least 50 percent of its total surface area consists of evenly distributed open spaces.

ii. Fences or gates located within the front yard may have a maximum height of 72 inches, provided:

(a) The proposed fence or gate is located along a property line contiguous to either: Island Crest Way north of SE 53rd Place, or SE 40th Street between 92nd Avenue SE and 78th Avenue SE; and

(b) The proposed fence or gate is located a minimum of five feet from the street property line and will be screened by landscaping designed to soften the presence of the fence; and

(c) The proposed fence or gate will not create a traffic, pedestrian, or public safety hazard.

2. Fill/Berms. No person shall place fill upon which to build a fence unless the total height of the fill plus the fence does not exceed the maximum height allowable for the fence without the fill.

3. Shorelines. Fences, rockeries and retaining walls located within any shoreland shall also comply with Chapter 19.07 MICC.

F. Electric and Barbed Wire Fences. Electric fences, barbed wire fences, or similar fences that could pose a safety risk are not allowed.

G. *Exceptions.* These provisions do not apply to fences required by state law to enclose public utilities, or to chain link fences enclosing school grounds or public playgrounds, or to screens used for safety measures in public recreation areas such as ballfields. (Ord. 19C-04 § 1 (Exh. A); Ord. 18C-05 § 1 (Att. A); Ord. 17C-15 § 1 (Att. A); Ord. 04C-12 § 11; Ord. 02C-09 § 2).

19.02.0601 *Lot coverage— Regulated improvements.*

A. *Applicability.* This section shall only apply to regulated improvements (for example, schools, noncommercial recreational areas, or religious buildings) in the residential zoning designations of R-8.4, R-9.6, R-12, and R-15.

B. *Gross Floor Area.* The total gross floor area of all structures on a lot shall not exceed:

1. 40% of the gross lot area, except:

a. For lots less than 3 acres that abut a commercial zone, the total gross floor area shall not exceed 75% of the gross lot area.

b. Parking structures or portions of parking structures accessory to conditional uses allowed under section 19.02.010.C and less than 4 feet above finished grade shall not be included in the gross floor area calculation.

C. *Maximum Impervious Surface Limits for Lots/Lot Coverage.* The total percentage of a lot that can be covered by impervious surfaces (including buildings) lot coverage is limited by the slope of the lot for all single-family zones as follows, based on the net lot area:

Lot Slope	Lot Coverage (limit for impervious surfaces)
Less than 15%	40% <sup>(*)</sup>
15% to less than 30%	35%
30% to 50%	30%



Lot Slope	Lot Coverage (limit for impervious surfaces)
Greater than 50% <u>slope</u>	20%

\*Public and private schools, religious institutions, private clubs and public facilities (excluding public parks or designated open space) in single-family zones with slopes of less than 15 percent may be covered by the percentage of legally existing impervious surface that existed on May 1, 2006, or may multiply the limits set forth subsection C by 1.25, provided the lot abuts a commercial zone, as determined by the code official.

**CD. Exemptions.** The following improvements will be exempt from the calculation of the maximum impervious surface lot coverage limits set forth in subsection B-C of this section:

1. **Decks/Platforms.** Decks and platforms constructed with gaps measuring one-eighth inch or greater between the boards which provide free drainage between the boards as determined by the code official shall be exempt from the calculation of maximum lot coverage impervious surface limits so long as the surface below the deck or platform is not impervious.
2. **Pavers.** Pavers installed with a slope of five percent or less and covering no more than 10 percent of the total lot area will be calculated as only 75 percent impervious. Provided, however, that all pavers placed in driveways, private streets, access easements, parking areas and critical areas shall be considered 100 percent impervious.
3. **Pedestrian-Oriented Walkways.** Uncovered pedestrian walkways constructed with gravel or pavers not to exceed 60 inches in width shall be exempt from the maximum lot coverage impervious surface limits.
4. **Public Improvements.** Open storm water retention/detention facilities, public rights-of-way and public pedestrian trails shall be exempt from the maximum lot coverage impervious surface limits.
5. **Rockeries/Retaining Walls.** Rockeries and retaining walls shall be exempt from the maximum lot coverage impervious surface limits.
6. **Residences for Religious Leaders Located on Properties Used by Places of Worship.**

a. A structure primarily used as a residence for a religious leader provided by its congregation and located on the same lot or lots as the improvements for a church, synagogue, mosque, or other place of worship shall be exempt from the maximum lot coverage impervious surface limits, subject to the limitations under subsection (C)(6)(b) of this section.

All impervious surface areas directly and commonly associated with the residence such as, but not limited to, the footprint of the residence, an attached or detached garage, a patio and/or deck not otherwise exempted by subsections (C)(1) and (3) of this section, and a driveway not otherwise used for general access to the place of worship, shall be exempt.

b. A residence and its associated impervious improvements, as described above, may only be exempted if 4,999 square feet or less or up to 20 percent of lot area, whichever is less. For these purposes, lot area means the lot or lots on which the place of worship is located.

c. Impervious surface Lot coverage exceeding 60 percent shall not be allowed whether by variance to this section or by this exemption.

7. Unenclosed recreational areas, athletic fields, and similar areas with underdrainage systems, provided the rate of stormwater discharge is limited to that under natural conditions prior to development.

8. The area of green roofs on structures on the lot, provided that the rate of stormwater discharge is limited to that under natural conditions prior to development.

9. Access drives solely for the use of emergency vehicles, provided the driveway surface is constructed of grass block, or similar porous paving material.

DE. Height. Structure height shall not exceed 36 feet, except that structure height shall not exceed 45 feet farther than 150 feet from a public right of way or within than 300 feet of a commercial zone.

F. Height measurement. The calculation of structure height in subsection 19.02.020.E. may be modified, at the discretion of the applicant, as follows to permit the structure to respond to the topography of the lot:

1. Draw the smallest rectangle that encloses the principal structure.

2. Divide one side of the rectangle, chosen by the applicant, into sections at least 15 feet in length using lines that are perpendicular to the chosen side of the rectangle.

3. The sections delineated in this subsection E.2 are considered to extend vertically from the ground to the sky.

4. The maximum height for each section of the structure is measured from the average building elevation for that section of the structure, which is calculated as the average elevation of finished lot grades at the midpoints of the two opposing exterior sides of the rectangle for each section of the structure.

G. *Variance*. Regulated improvements in the R-8.4, R-9.6, R-12, and R-15 zoning designations may request a variance to increase lot coverage impervious-surface pursuant to MICC 19.15.230(F), (Ord. 17C-15 § 1 (Att. A)).

19.02.070 Swimming pools

- A. A swimming pool is not allowed in any front yard.
- B. A swimming pool is not allowed closer than five feet from any adjacent property measured from the edge of the water to the property line.
- C. A swimming pool located in a public park or noncommercial recreation area shall conform to the setback regulations governing such areas.
- D. All fences surrounding outdoor swimming pools shall conform to the requirements of MICC Title 17, (Ord. 04C-12 § 12; Ord. 99C-13 § 1. Formerly 19.02.060).
- ICode reviser's note: Ord. 17C-15 added a new Section 19.02.060 (Lot coverage - Regulated improvements). This section has been editorially renumbered to 19.02.070 in order to accommodate the addition of the new section.



**EXHIBIT 16**



**BUSINESS OF THE CITY COUNCIL  
CITY OF MERCER ISLAND**

**AB 5663  
February 18, 2020  
Regular Business**

**AGENDA BILL INFORMATION**

<b>TITLE:</b>	AB 5663: Community Facility Code Amendment: Planning Commission Recommendation, Ordinance 20-04; 1 <sup>st</sup> Reading & Adoption	<input type="checkbox"/> Discussion Only <input checked="" type="checkbox"/> Action Needed:
<b>RECOMMENDED ACTION:</b>	Adopt Ordinance 20-04	<input checked="" type="checkbox"/> Motion <input checked="" type="checkbox"/> Ordinance <input type="checkbox"/> Resolution

<b>DEPARTMENT:</b>	Community Planning and Development
<b>STAFF:</b>	Evan Maxim, Director
<b>COUNCIL LIAISON:</b>	n/a
<b>EXHIBITS:</b>	1. Planning Commission: Problem Statement 2. Ordinance 20-04 with Attachment A and B
<b>CITY COUNCIL PRIORITY:</b>	n/a

<b>AMOUNT OF EXPENDITURE</b>	\$ n/a
<b>AMOUNT BUDGETED</b>	\$ n/a
<b>APPROPRIATION REQUIRED</b>	\$ n/a

**SUMMARY**

In November of 2018, the City Council approved the 2018 Comprehensive Plan amendments, which included policy language related to the establishment of a Community Facility zoning designation and related development regulations. In 2019, staff began working with the Planning Commission on draft regulations. This work was "paused" in June of 2019.

After adoption of the 2018 Comprehensive Plan amendments, an appeal was filed to the Growth Management Hearings Board ("GMHB") identifying 35 appeal issues. The City prevailed on 33 out of the 35 issues. One of the issues the City did not prevail on is related to the Community Facility zone amendment process. The GMHB established a compliance date in January 2020. Compliance with the GMHB decision requires that the City to either: A) adopt development regulations related to the Community Facility zone; or B) repeal the 2018 Comprehensive Plan amendments related to the Community Facility zoning designation.

On August 20, 2019, the City Council and Planning Commission held a joint study session ([AB 5594](#)) to discuss the proposed Community Facility regulations and zoning designation. Following the joint study session, the City Council asked the Planning Commission to:

1. Review the “problem statement” and determine if an alternative approach is warranted;
2. Explore alternative decision-making processes; and
3. Report back to the City Council for further direction.

The Planning Commission completed this work on January 29, 2020.

#### PLANNING COMMISSION RECOMMENDATION

The Planning Commission developed a problem statement related to the technical challenges associated with the current approach to regulating community organizations through the residential zoning designation. The Planning Commission then evaluated four different alternative approaches to formulate a recommended approach (Exhibit 1). In summary, the four alternative approaches evaluated include:

- Alternative 1: No change to the current regulations;
- Alternative 2: A change to the criteria for approval of a Conditional Use Permit (“CUP”);
- Alternative 3: A change to the CUP approval criteria and development of a tool (Master Plan); and
- Alternative 4: Continuing the work that was “paused” in June of 2019.

Following discussion, the Planning Commission developed a three-part recommendation to the City Council:

- **Part A – Discontinue Community Facility zone process:** Discontinue the work on the Community Facility zone. As a reminder, this planning process was “paused” in June of 2019.
- **Part B – Review/update CUP process and pursue code amendments:** Direct the Planning Commission to prepare a code amendment related to the following, as soon as possible:
  - Revise the CUP approval criteria for clarity and to address community concerns.
  - Review the “cap” on Gross Floor Area (GFA) for institutional uses.
  - Review the height limit for institutional uses.
- **Part C – Resume Community Facility zone process at a future date:** Consider re-initiating the code amendment associated with the Community Facility zone at a future date to be determined by the City Council.

The Planning Commission recommended the above three-part approach because in their opinion it represents a relatively narrow set of code amendments that would benefit the City widely. Specifically, the Commission opined that an update to the CUP criteria (as described in Part B) will modernize and clarify the criteria, which will benefit all CUP reviews. Similarly, a targeted amendment now to the GFA “cap” and the height limits, will address the potentially unintended consequences of the 2017 Residential Development Standards amendment, in particular the establishment of a GFA “cap” for non-residential uses in the residential zoning designations. The last component of the recommendation (Part C - to re-initiate the review at a later date), was intended to support a holistic review of the code related to community facilities at a time when there is community support to do so.

#### RECOMMENDATION

The Planning Commission recommends that the City Council abandon the original Community Facility rezoning and development regulations as described previously (Part A). The staff concurs with the Planning Commission recommendation on Part A and further recommends that the City Council suspend the City Council Rule of Procedure 6.3 and approve Ordinance No. 20-04 (Exhibit 2). This ordinance will repeal those portions of the



2018 Comprehensive Plan amendments related to the Community Facilities zone and development regulations and will achieve compliance with the Growth Management Hearings Board (GMHB) decision.

If the City Council desires to review Part B and/or Part C of the Planning Commission recommendations, the staff suggestion is to defer these discussions to a future City Council meeting.

#### **NEXT STEPS**

##### **French American School and Stroum Jewish Community Center Code Amendment**

In December 2019, the French American School ("FAS") and Stroum Jewish Community Center ("SJCC") notified the City that they were considering applying for a code amendment to be submitted by February 18, 2020. The City received a preliminary draft of this code amendment on February 7, 2020. The complete application for the code amendment was received on February 11, 2020, a day prior to the deadline for completing this packet material.

Based on a preliminary review of the code amendment, the FAS and SJCC application proposes a change to the development standards for the single-family residential zoning designations, specific to gross floor area limits, height limits, and lot coverage regulations. Additional staff time is needed to review the application prior to initiating further discussion with the City Council.

City Council review of the code amendment application will be scheduled for a future meeting and is tentatively planned for March 10, 2020. If the City Council desires to review and discuss Part B and/or Part C of the Planning Commission recommendation, a follow-up discussion may be planned for these items on the same night.

#### **RECOMMENDATION**

1. Suspend the City Council Rule of Procedure 6.3, requiring a second reading for an ordinance.
2. Adopt Ordinance No. 20-04, to repeal portions of the 2018 Comprehensive Plan amendments related to the Community Facility zone.

**EXHIBIT 17**

**AGENDA**

Mtg Date: February 7, 2020  
Project: SJCC / FASPS / HNT Joint Campus Master Plan  
Subject: Proposed Code Amendment

**Approach**

1. Update "Regulated Improvements" to bring existing private schools, religious buildings, and community centers into code conformance while allowing property owners the ability to reasonably renovate and develop their properties.
2. Limit the applicability of most amendments to lots that abut commercial zones.

**Proposed Amendments**

	Pre-Residential Code Update	Residential Code Update (Current Code)	Proposed Amendments (Regulated Improvements Only)
<b>Gross Floor Area</b> (19.02.020.D)	45% of lot area for SF structures only. Regulated Improvements not specifically restricted; governed by height, setbacks, and lot coverage.	40% of lot area for all structures, or: <ul style="list-style-type: none"> <li>• R-8.4: 5,000 sf, whichever is less.</li> <li>• R-9.6: 8,000 sf, whichever is less.</li> <li>• Etc.</li> </ul>	40% of lot area <ul style="list-style-type: none"> <li>• Allow exceptions for substantially below grade parking structures (less than 4'-0" above grade).</li> <li>• Allow increase for lots less than 3-acres that abut a commercial zone.<sup>1</sup> (See 19.02.060.B.)</li> </ul>
<b>Height</b> (19.02.020.E)	30', or 35' measured on the downhill side.	30', measured from average building elevation. Downhill façades measured from existing or finished grade, whichever is lower.	36' <ul style="list-style-type: none"> <li>• Allow increase to 45' farther than 150' from a public ROW or within 300' of a commercial zone. (See 19.02.060.E.)</li> <li>• Provide method of measurement to allow buildings to respond better to sloping sites. (See 19.02.060.F.)</li> </ul>
<b>Lot Coverage</b> (19.02.060)	40%	40%	40% <sup>2</sup> Allow 25% increase for lots that abut a commercial zone (See 19.02.060.C.). Allow exceptions for usable open spaces, such as: <ul style="list-style-type: none"> <li>• Athletic and similar play fields</li> <li>• Occupiable green roofs or other structured landscaped area.</li> <li>• Grass block access drives solely for the use of emergency vehicles (See 19.02.060.D.)</li> </ul>

<sup>1</sup> GFA in the C-O zone: max. building footprint = 35% of lot area; max. height = 36', which allows 3 floors; max. effective GFA as multiple of lot area is 0.35 x 3 = 1.05 times lot area.

<sup>2</sup> Change 19.02.060 from Impervious surface to lot coverage. Impervious surfaces are regulated by the MICC Title 15 and construction codes.



**EXHIBIT 18**

## REQUEST FOR LEGAL OPINIONS

FROM: Robert A. Medved

TO: Mayor Wong, Deputy Mayor Weiker, Councilmember Anderl, Councilmember Jacobson, Councilmember Nice, Councilmember Reynolds, Councilmember Rosenbaum and City Manager Bon

CC: Interim City Attorney Parks and Community Planning & Development Director Maxim

DATE: March 2, 2020

RE: *Request For Legal Opinions*

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## I. REQUEST FOR AND SCOPE OF LEGAL OPINIONS

This Request For Legal Opinions requests the City to render or obtain written legal opinions on the matters set forth below (“Legal Opinions”) and requests that the City Manager, as part of her duties,<sup>1</sup> oversees the rendering of those Legal Opinions. To the extent any of the Legal Opinions are qualified, those qualifications and the legal authority for those qualifications should be set out fully in and become part of the qualified Legal Opinion. For purposes of rendering and overseeing the Legal Opinions, the City and the City Manager should assume that the facts set forth in this Request For Legal Opinions are accurate.

The Legal Opinions should be rendered and delivered to me and to all Councilmember not later than the close of business two days prior to the day the City Council takes final action on how the City will move forward on the Hill Proposal (as defined below) and the Planning Commission Recommendation (as defined below).

## II. DEFINED TERMS

As used in this Request For Legal Opinions, the following terms shall have the following meanings:

1. “City” means the City of Mercer Island, Washington.
2. “Code” means Chapter 19.15 of the Mercer Island City Code.
3. “Comprehensive Plan Map” means the maps that the Growth Management Act requires as an included component of a Comprehensive Plan. *See, e.g.*, RCW 36.70A.070.
4. “Comprehensive Plan Text” means the text that the Growth Management Act requires as an included component of a Comprehensive Plan. *See, e.g.*, RCW 36.70A.07.
5. “Director” means the Director of Mercer Island’s Community Planning & Development Department.
6. “FASP” means the French American School Of Puget Sound, a private school.
7. “FASP Site” means the real property which is owned by the JCC and upon which the FASP School is located. The FASP Site is zoned commercial. No part of the FASP Site is zoned single-family residential. The commercially zoned FASP Site abuts the single-family residentially zoned JCC Site. The commercially zoned FASP Site does not include any part of the single-family residentially zoned JCC Site.

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<sup>1</sup> The City Manager’s duties include, without limitation, seeing “that all laws and ordinances are faithfully executed....” *See* RCW 35A.13.080(3) *and see* Mercer Island City Code (“MICC”) 3.02.010.



8. "Former Director" means a former Director of Mercer Island's Community Planning & Development Department.
9. "GMA" means the Growth Management Act, Chapter 36.70A RCW.
10. "Hill Proposal" means the application presented by the Director to the City Council on February 18, 2020. The Hill Proposal is only applicable to sites that abut a commercial zone. See Video at: 1:33 through 1:37. A copy of the Hill Proposal is attached as **Exhibit 7**.
11. "JCC" means the Samuel and Althea Stroum Jewish Community Center of Greater Seattle.
12. "JCC Site" means the real property upon which the JCC is located. For purposes of this Request For Legal Opinions, a small single-family residential site which is owned by the FASP is included in the definition of the JCC Site. The JCC Site is zoned single-family residential. No part of the JCC Site is zoned commercial. The single-family residentially zoned JCC Site does not include any part of the commercially zoned FASP Site. The single-family residentially zoned JCC Site abuts the commercially zoned FASP Site. There is only one commercial zone on Mercer Island. See **Exhibits 1-2**. The single-family residentially zoned JCC Site is the only the single-family residentially zoned site that abuts a commercially zoned site on Mercer Island. See **Exhibits 1-4**. Two JCC Site maps are attached as **Exhibits 2-4**.
13. "JCC's Architect" means Ed Weinstein.
14. "JCC's Attorney" means Richard Hill.
15. "LUPA" means the Land Use Petition Act, Chapter 36.70C RCW.
16. "MICA" means the Mercer Island Center For The Arts.
17. "Planning Commission Recommendation" means the Planning Commission Recommendation presented by the Director to the City Council on February 18, 2020. The Director's Planning Commission Recommendation Staff Report is attached as **Exhibit 5**.
18. "Video" means the video of the February 18, 2020 City Council meeting.

### III. LEGAL OPINIONS

#### A. The Hill Proposal Requires Comprehensive Plan Text Amendments And Comprehensive Plan Map Amendments

##### *Partial Statement Of The Law:*

A Comprehensive Plan is comprised two required documents. The first required Comprehensive Plan document is the Comprehensive Plan Text. The second required Comprehensive Plan document is the Comprehensive Plan Map. The Comprehensive Plan Text must be consistent with the Comprehensive Plan Map. The Comprehensive Plan Text shall consist of descriptive text covering objectives, principles, and standards used to develop the Comprehensive Plan. *See, e.g.,* RCW 36.70A.070.

Some rezones that are already authorized by the Comprehensive Plan Text of an existing Comprehensive Plan only need to amend the Comprehensive Plan Map. Other rezones that have not been authorized by the Comprehensive Plan Text of an existing Comprehensive Plan need to amend both the Comprehensive Plan Text and Comprehensive Plan Map. *See, e.g.,* **Subsection I, *infra***, and **Subsection J, *infra***.

##### *Partial Statement Of The Facts:*

The Director has determined that the Hill Proposal creates a Non-Project Executive Rezone. *See Exhibit 7*, at p. 2. A Non-Project Rezone requires Comprehensive Plan amendments. *See Subsection I, *infra**. The Hill Proposal creates an Overlay Zone. *See Subsection J, *infra**. A Former Director has determined that: "A ... rezone would ... require a comprehensive plan amendment." *See Exhibit 8*. MICA, just like the Hill Proposal, applied for a Zoning Code Text Amendment. *See Exhibits 10-11. Compare Exhibit 7 with Exhibit 11*. MICA's application for a Zoning Code Text Amendment required a Comprehensive Plan Amendment. *See Exhibit 12*. The Hill Proposal creates a site-specific rezone. *See Subsection I, *infra**, and **Subsection J, *infra***. The Hill Proposal is only applicable to sites that abut a commercial zone. *See Video* at: 1:33 through 1:37. The JCC Site is less than ten acres in area. The JCC Site is zoned single-family residential. No part of the JCC Site is zoned commercial. The single-family residentially zoned JCC Site does not include any part of the commercially zoned FASP Site. The single-family residentially zoned JCC Site abuts the commercially zoned FASP Site. The Hill Proposal is only applicable to sites that abut a commercial zone. There is only one commercial zone on Mercer Island. *See Exhibits 1-2*. The single-family residentially zoned JCC Site is the only the single-family residentially zoned site that abuts a commercially zoned site on Mercer Island. *See Exhibits 1-4*.

##### *Request For Legal Opinions:*

Please provide a written legal opinion that the Hill Proposal requires Comprehensive Plan Text amendments.

Please provide a written legal opinion that the Hill Proposal requires Comprehensive Plan Map amendments.

Please provide a written legal opinion regarding the City's legal exposure and legal risks if the City does not require Comprehensive Plan Text amendments for the Hill Proposal.

Please provide a written legal opinion regarding the City's legal exposure and legal risks if the City does not require Comprehensive Plan Map amendments for the Hill Proposal.

**B. The Comprehensive Plan Text Amendments And The Comprehensive Plan Map Amendments For The Hill Proposal Must Be Docketed**

*Partial Statement Of The Law:*

MICC 19.15.230(D)(1)(b) provides:

1. *Preliminary Docket Review.* By September 1, the city will issue notice of the annual comprehensive plan and code amendment cycle for the following calendar year. The amendment request deadline is October 1. Proposed amendment requests received after October 1 will not be considered for the following year's comprehensive plan and code amendment process but will be held for the next eligible comprehensive plan and code amendment process.

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b. The code official shall review all complete and timely filed applications and suggestions proposing amendments to the comprehensive plan or code and place these applications and suggestions on the preliminary docket along with other city-initiated amendments to the comprehensive plan or code.

*Partial Statement Of The Facts:*

The Hill Proposal requires Comprehensive Plan Text amendments and Comprehensive Plan Map amendments. See **Subsection A**, *supra*.

*Request For Legal Opinions:*

Please provide a written legal opinion that the Comprehensive Plan Text amendments for the Hill Proposal must be placed on the Preliminary Docket.

Please provide a written legal opinion that the Comprehensive Plan Map amendments for the Hill Proposal must be placed on the Preliminary Docket.



Please provide a written legal opinion regarding the City's legal exposure and legal risks if City does not require the Comprehensive Plan Text amendments for the Hill Proposal to be placed on the Preliminary Docket.

Please provide a written legal opinion regarding the City's legal exposure and legal risks if the City does not require the Comprehensive Plan Map amendments for the Hill Proposal to be placed on the Preliminary Docket.

**C. The Hill Proposal Requires Code Amendments**

*Partial Statement Of The Facts:*

The Director has determined that the Hill Proposal requires Code amendments. See Video at: 1:56 through 2:15.

*Request For Legal Opinions:*

Please provide a written legal opinion that the Hill Proposal requires Code amendments.

Please provide a written legal opinion regarding the City's legal exposure and legal risks if the City does not require Code amendments for the Hill Proposal.

**D. The Hill Proposal Code Amendments Must Be Docketed**

*Partial Statement Of The Law:*

Code amendments, Comprehensive Plan Text amendments and Comprehensive Plan Map amendments must be placed on the Preliminary Docket.

MICC 19.15.230(D)(1)(b) provides:

1. *Preliminary Docket Review.* By September 1, the city will issue notice of the annual comprehensive plan and code amendment cycle for the following calendar year. The amendment request deadline is October 1. Proposed amendment requests received after October 1 will not be considered for the following year's comprehensive plan and code amendment process but will be held for the next eligible comprehensive plan and code amendment process.

\*\*\*

b. The code official shall review all complete and timely filed applications and suggestions proposing amendments to the comprehensive plan or code and place these applications and suggestions on the preliminary docket along with other city-initiated amendments to the comprehensive plan or code.

Code Amendments, Comprehensive Plan Text amendments and Comprehensive Plan Map amendments must be considered together and therefore must be placed on the Preliminary Docket together.

MICC 19.15.230(G) provides:

*G. Combined Comprehensive Plan Amendment and Rezone.* In cases where both a comprehensive plan amendment and a rezone are required, both shall be considered together, and all public notice must reflect the dual nature of the request.

MICC 19.15.240(C)(7) provides:

7. If a comprehensive plan amendment is required in order to satisfy subsection (C)(1) of this section, approval of the comprehensive plan amendment is required prior to or concurrent with the granting of an approval of the rezone.

The Final Decision And Order in *Owners And Neighbors v. City of Mercer Island* ("Coen III") provides:

This Board does not presume to advise the City on what it should have done; we limit our holding here to the conclusion that the adoption of these ordinances created inconsistencies between the comprehensive plan, the land use map and the development regulations, in violation of RCW 36.70A.040.

\*\*\*

The Petitioners have met their burden in Issue 25 showing that adoption of the challenged ordinances created an inconsistency between the comprehensive plan and the development regulations concerning JCC property, in violation of RCW 36.70A.040.

***Partial Statement Of The Facts:***

The Director has determined that the Hill Proposal requires amendments to the Code. See Video at: 1:56 through 2:15.<sup>2</sup> The Hill Proposal requires Comprehensive Plan Text amendments. The Hill Proposal requires Comprehensive Plan Map amendments. See **Subsection A**, *supra*.

---

<sup>2</sup> The Hill Proposal was filed before February 18, 2020 and if standing alone arguable would not be required to be placed on the Preliminary Docket. The Hill Proposal does not stand alone. The Hill Proposal requires Comprehensive Plan Text amendments and Comprehensive Plan Map amendments. See, e.g., **Subsection A**, *supra*, and **Subsection B**, *supra*.

***Request For Legal Opinions:***

Please provide a written legal opinion that the Code amendments for the Hill Proposal must be considered together with the Comprehensive Plan Text amendments for the Hill Proposal.

Please provide a written legal opinion that the Code amendments for the Hill Proposal must be considered together with the Comprehensive Plan Map amendments for the Hill Proposal.

Please provide a written legal opinion that the Code amendments for the Hill Proposal must be placed on the Preliminary Docket together with the Comprehensive Plan Text amendments for the Hill Proposal.

Please provide a written legal opinion that the Code amendments for the Hill Proposal must be placed on the Preliminary Docket together with the Comprehensive Plan Map amendments for the Hill Proposal.

Please provide a written legal opinion regarding the City's legal exposure and legal risks if City does not require the Code amendments for the Hill Proposal to be placed on the Preliminary Docket together with the Comprehensive Plan Text amendments for the Hill Proposal.

Please provide a written legal opinion regarding the City's legal exposure and legal risks if City does not require the Code amendments for the Hill Proposal to be placed on the Preliminary Docket together with the Comprehensive Plan Map amendments for the Hill Proposal.

**E. The Planning Commission Recommendation Requires Comprehensive Plan Text Amendments And Comprehensive Plan Map Amendments**

***Partial Statement Of The Law:***

A Comprehensive Plan is comprised two required documents. The first required Comprehensive Plan document is the Comprehensive Plan Text. The second required Comprehensive Plan document is the Comprehensive Plan Map. The Comprehensive Plan Text must be consistent with the Comprehensive Plan Map. The Comprehensive Plan Text shall consist of descriptive text covering objectives, principles, and standards used to develop the Comprehensive Plan. *See, e.g., RCW 36.70A.070.*

***Partial Statement Of The Facts:***

The Planning Commission Recommendation is intended to benefit Mercer Island widely. The Planning Commission Recommendation intends to update Conditional Use Permit criteria to will benefit all Conditional Use Permit Reviews. The Planning Commission Recommendation intends to amend the gross floor area limits and the height limits in residential zones. The



Planning Commission Recommendation intends to undertake a holistic review of the Code. See Exhibit 5.

*Request For Legal Opinions:*

Please provide a written legal opinion that the Planning Commission Recommendation requires Comprehensive Plan Text amendments.

Please provide a written legal opinion that the Planning Commission Recommendation requires Comprehensive Plan Map amendments.

Please provide a written legal opinion regarding the City's legal exposure and legal risks if the City does not require Comprehensive Plan Text amendments for the Planning Commission Recommendation.

Please provide a written legal opinion regarding the City's legal exposure and legal risks if the City does not require Comprehensive Plan Map amendments for the Planning Commission Recommendation.

**F. The Comprehensive Plan Text Amendments And The Comprehensive Plan Map Amendments For The Planning Commission Recommendation Must Be Docketed**

*Partial Statement Of The Law:*

MICC 19.15.230(D)(1)(b) provides:

1. *Preliminary Docket Review.* By September 1, the city will issue notice of the annual comprehensive plan and code amendment cycle for the following calendar year. The amendment request deadline is October 1. Proposed amendment requests received after October 1 will not be considered for the following year's comprehensive plan and code amendment process but will be held for the next eligible comprehensive plan and code amendment process.

\*\*\*

b. The code official shall review all complete and timely filed applications and suggestions proposing amendments to the comprehensive plan or code and place these applications and suggestions on the preliminary docket along with other city-initiated amendments to the comprehensive plan or code.

*Partial Statement Of The Facts:*

The Planning Commission Recommendation requires Comprehensive Plan Text amendments. The Planning Commission Recommendation requires Comprehensive Plan Map amendments. See, e.g., **Subsection E**, *supra*.

***Request For Legal Opinions:***

Please provide a written legal opinion that the Comprehensive Plan Text amendments for the Planning Commission Recommendation must be placed on the Preliminary Docket.

Please provide a written legal opinion that the Comprehensive Plan Map amendments for the Planning Commission Recommendation must be placed on the Preliminary Docket.

Please provide a written legal opinion regarding the City's legal exposure and legal risks if City does not require the Comprehensive Plan Text amendments for the Planning Commission Recommendation to be placed on the Preliminary Docket.

Please provide a written legal opinion regarding the City's legal exposure and legal risks if the City does not require the Comprehensive Plan Map amendments for the Planning Commission Recommendation to be placed on the Preliminary Docket.

**G. The Planning Commission Recommendation Requires Code Amendments**

***Partial Statement Of The Facts:***

The Director has determined that the Planning Commission Recommendation requires Code amendments. *See Video at: 1:56 through 2:15.*

***Request For Legal Opinions:***

Please provide a written legal opinion that the Planning Commission Recommendation requires Code amendments.

Please provide a written legal opinion regarding the City's legal exposure and legal risks if the City does not require Code amendments for the Planning Commission Recommendation.

**H. The Planning Commission Recommendation Code Amendments Must Be Docketed**

***Partial Statement Of The Law:***

MICC 19.15.230(D)(1)(b) provides:

1. *Preliminary Docket Review.* By September 1, the city will issue notice of the annual comprehensive plan and code amendment cycle for the following calendar year. The amendment request deadline is October 1. Proposed amendment requests received after October 1 will not be considered for the following year's comprehensive plan and code amendment process but will be held for the next eligible comprehensive plan and code amendment process.

\*\*\*

b. The code official shall review all complete and timely filed applications and suggestions proposing amendments to the comprehensive plan or code and place these applications and suggestions on the preliminary docket along with other city-initiated amendments to the comprehensive plan or code.

***Partial Statement Of The Facts:***

The Director has determined that the Planning Commission Recommendation requires amendments to the Code. See Video at: 1:56 through 2:15.

***Request For Legal Opinions:***

Please provide a written legal opinion that the Code amendments for the Planning Commission Recommendation must be placed on the Preliminary Docket.

Please provide a written legal opinion regarding the City's legal exposure and legal risks if City does not require the Code amendments for the Planning Commission Recommendation to be placed on the Preliminary Docket.

**I. The Hill Proposal Creates A Non-Project Rezone**

***Partial Statement Of The Law:***

A site-specific rezone that is authorized by an existing comprehensive plan is a project rezone project permit approval. A site-specific rezone that is not authorized by an existing comprehensive plan is a non-project rezone under the GMA and under LUPA. See, e.g., *Schnitzer v. City Of Puyallup*, 416 P.3d 1172 (2018), *Spokane County v. Eastern Washington Growth Management Hearings Board*, 176 Wn.App. 555 (2013).

***Partial Statement Of The Facts:***

The Director has determined that the Hill Proposal creates "a non-project legislative rezone." See **Exhibit 7**, at p. 2. The Hill Proposal non-project legislative rezone is site-specific. See **Subsection K, infra**. See also **Exhibits 1-4**. The Hill Proposal rezone does not create a project rezone because the Hill Proposal rezone is not authorized by the City's existing Comprehensive Plan. The Hill Proposal does create "a non-project legislative rezone" because the Hill Proposal rezone is not authorized by the City's existing Comprehensive Plan.

***Request For Legal Opinions:***

Please provide a written legal opinion that the Hill Proposal creates a non-project legislative rezone.

Please provide a written legal opinion regarding the City's legal exposure and legal risks associated with the creation of a non-project legislative rezone.



## **J. The Hill Proposal Creates An Overlay Zone**

### ***Partial Statement Of The Law:***

*Schnitzer v. City Of Puyallup*, 416 P.3d 1172, 1174 (2018) defines an overlay zone by example:

In 2009, the city of Puyallup (City) created the "Shaw-East Pioneer Overlay Zone" (SPO zone) as part of an amendment to the City's comprehensive plan. An overlay zone, such as the SPO zone, establishes development criteria and standards to supplement the base zoning standards that already exist. (quotation marks in the original).

*Allingham v. City Of Seattle*, 109 Wn.2d 947, 949 (1988) also defines an overlay zone by example:

The Greenbelt Ordinance creates an "overlay zone", superimposing upon the existing or underline zoning regulations. The underlying zones affected include single-family residential zones, three levels of multi-family residential zones, and manufacturing and industrial zones. (quotation marks in the original).

### **Partial Statement Of The Facts:**

The existing base or underlying zoning of the JCC Site is single-family residential. The existing base or underlying zoning of the JCC Site has existing development criteria, development standards and zoning regulations. The Hill Proposal seeks to overlay new development criteria, development standards and zoning regulations on the JCC Site only. See Subsection K, *infra*. See also Exhibits 1-4.

### ***Request For Legal Opinions:***

Please provide a written legal opinion that the Hill Proposal creates an overlay zone on the JCC Site.

Please provide a written legal opinion regarding the City's legal exposure and legal risks associated with the creation of an overlay zone on the JCC Site.

## **K. The Hill Proposal Creates A Spot Zone**

### ***Partial Statement Of The Law:***

*Chrobuck v. Snohomish County*, 78 Wn.2d 858, 872 (1971) defines spot zoning as follows:

Spot zoning is a zoning for private gain designed to favor or benefit a particular individual or group and not the welfare of the community as a whole.

*Smith v. Skagit County*, 75. Wn.2d 715, 743-45 (1969) provides:

The vice of a spot zone is its inevitable effect of granting a discriminatory benefit to one or a group of owners and to the detriment of their neighbors....

\*\*\*

We would accept as good sense the proposition ... that the matter of size in zoning a spot is relative and should be considered in relation to all other circumstances and conditions.

\*\*\*

This court has said that spot zoning is and should be universally condemned.... (internal citations omitted).

MICC 19.15.240(C)(4) provides:

4. The proposed reclassification does not constitute an illegal site-specific rezone.

***Partial Statement Of The Facts:***

The Hill Proposal creates a site-specific rezone. See, e.g., **Subsection I**, *supra*, and **Subsection J**, *supra*. The Hill Proposal is only applicable to sites that abut a commercial zone. See Video at: 1:33 through 1:37. The JCC Site is less than ten acres. The JCC Site is zoned single-family residential. No part of the JCC Site is zoned commercial. The single-family residentially zoned JCC Site does not include any part of the commercially zoned FASP Site. The single-family residentially zoned JCC Site abuts the commercially zoned FASP Site. The Hill Proposal is only applicable to sites that abut a commercial zone. There is only one commercial zone on Mercer Island. See **Exhibits 1-2**. The single-family residentially zoned JCC Site is the only the single-family residentially zoned site that abuts a commercially zoned site on Mercer Island. See **Exhibits 1-4**. The Hill Proposal site-specific rezone only benefits the JCC. The Hill Proposal site-specific rezone is detrimental to JCC's neighbors. The Hill Proposal site-specific rezone does not benefit the community as a whole.

***Request For Legal Opinions:***

Please provide a written legal opinion that the Hill Proposal creates a spot zone.

Please provide a written legal opinion regarding the City's legal exposure and legal risks if the City allows the creation of a spot zone.

**L. The JCC Site Is Not A "Noncommercial Recreational Area"**

***Partial Statement Of The Law:***

MICC 19.16 defines a noncommercial recreational area as follows:

*Noncommercial Recreational Area:* A recreational area maintained and operated by a nonprofit club or organization with specified limitations upon the number of members or limited to residents of a block, subdivision, neighborhood, community or other specific area of residence for the exclusive use of members and their guests.

***Partial Statement Of The Facts:***

JCC's Architect advised in writing that the "Proposed Code Amendment [should] Update 'Regulated Improvements' to bring existing private schools, religious buildings, and community centers into code conformance..." See **Exhibit 6**. The Hill Proposal attempted to accomplish this by adding "noncommercial recreational areas" into MICC 19.15.060(A.) which deals with "regulated improvements." See **Exhibit 7**. More than 25% of the JCC's members do not live on Mercer Island. The JCC is open to the public. The JCC does not have "specific limitations upon the number of [its] members." The JCC does not limit its members "to residents of a block, subdivision, neighborhood, community or other specific area of residence." The JCC is not limited to "the exclusive use of members and their guests."

***Request For Legal Opinions:***

Please provide a written legal opinion that the JCC Site is not a noncommercial recreational area.

Please provide a written legal opinion regarding the City's legal exposure and legal risks if the City continues to allow the JCC to assert that the JCC Site is a noncommercial recreational area.

**M. The JCC's Undefined Uses Of The JCC Site**

***Partial Statement Of The Law:***

Any use in a single-family residential zone that is not expressly permitted by MICC 19.02 is prohibited. See MICC 19.02.010.

***Partial Statement Of The Facts:***

An August 23, 2016 e-mail from JCC's Architect to Scott Greenberg and Nicole Gaudette provides: "Scott then discussed our need to establish the definition of the existing use for the facility as it would be important for our ongoing entitlement purposes. A quick review of the copies of the existing Conditional Use Permit did not clarify this issue." See **Exhibit 9**. The JCC never established a definition for the existing use of the JCC Site until the Hill Proposal was filed with the City. The Hill Proposal attempted to define the existing use of the JCC Site as a "noncommercial recreational area." The existing use of the JCC Site is not "noncommercial recreational area." See **Subsection L, supra**. The existing use of the JCC Site is still undefined.



***Request For Legal Opinion:***

Please provide a written legal opinion regarding the City's legal exposure and legal risks if the City continues to allow the JCC to not define its use of the JCC Site.

**IV. LIST OF EXHIBITS**

1	City Of Mercer Island Map
2	Mercer Island Zoning Map
3	JCC Site Map (large scale)
4	JCC Site Map (small scale)
5	Planning Commission Recommendation
6	February 7, 2020, Meeting Agenda
7	Hill Proposal
8	August 12, 2016, E-Mail
9	August 23, 2016, E-Mail
10	June 16, 2016, MICA Application For A Zoning Code Text Amendment
11	MICA Zoning Code Text Amendment
12	September 30, 2016, MICA Application For A Comprehensive Plan Amendment

**EXHIBIT 19**



**Legend**

**Zoning**

- B
- C-O
- PB2
- R-12
- R-15
- MF-2
- MF-2L
- MF-3
- R-3.4
- R-9.6
- TC
- P

- Freeway
- Major Street
- Street
- Parks
- Lake Washington

1:47,281



1.1 0 0.57 1.1 Miles



**Disclaimer:** These maps were developed by the City of Mercer Island and are intended to be a general purpose digital reference tool. These maps are not an accepted legal instrument for describing, establishing, recording or maintaining descriptions for property concerns or boundaries. The City makes no representation or warranty with respect to the accuracy or currency of these data sets, especially in regard to labeling of surveyed dimensions, or agreement with official sources such as records of survey, or mapped locations of features.

**Notes**



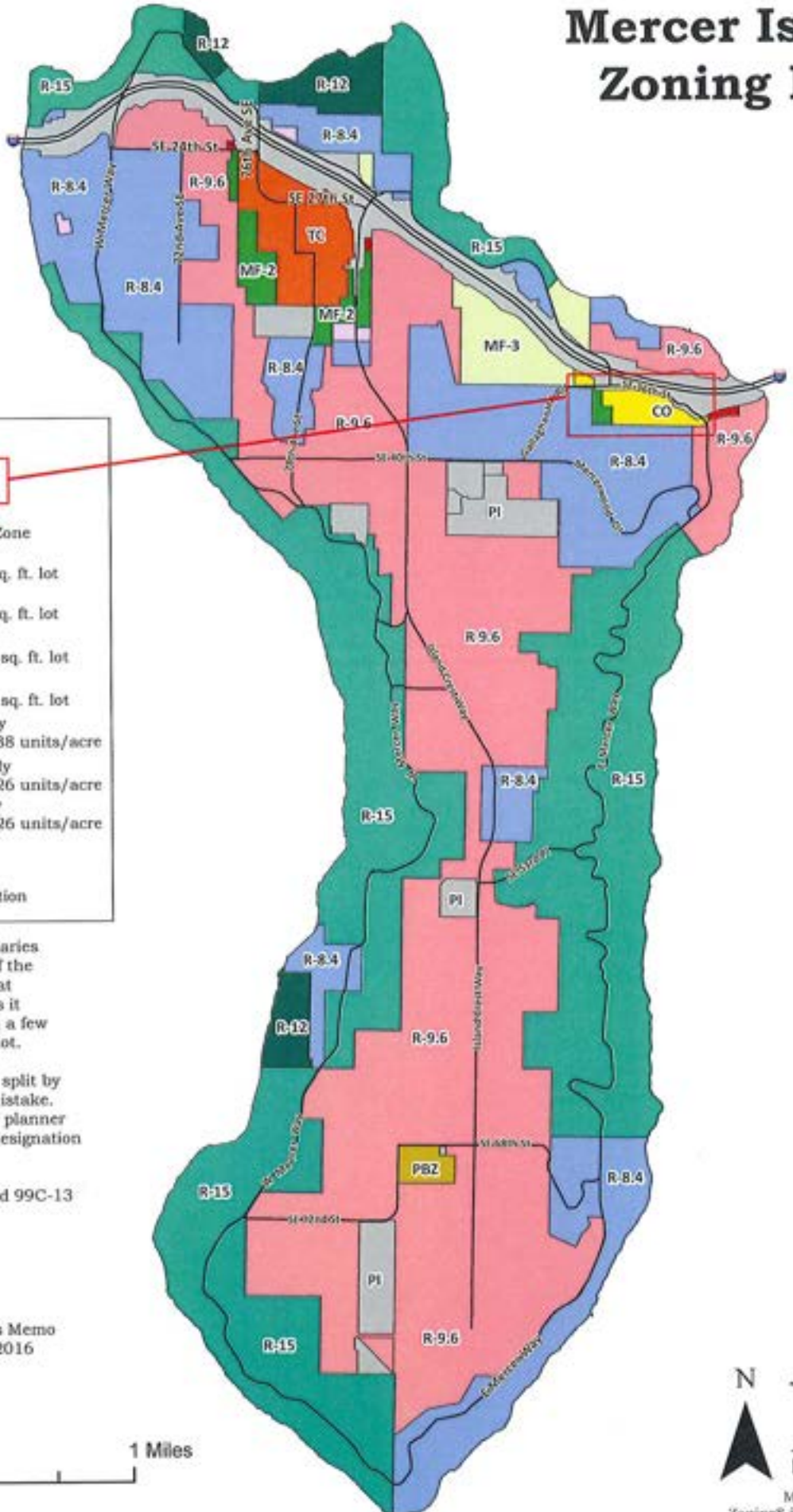
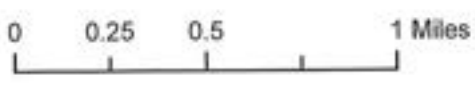
# Mercer Island Zoning Map

- B: Business
- C-O Commercial Offices
- PBZ Planned Business Zone
- R-8.4 Residential 8,400 sq. ft. lot
- R-9.6 Residential 9,600 sq. ft. lot
- R-12 Residential 12,000 sq. ft. lot
- R-15 Residential 15,000 sq. ft. lot
- MF-2 Multi-Family  
Maximum density 38 units/acre
- MF-2L Multi-Family  
Maximum density 26 units/acre
- MF-3 Multi-Family  
Maximum density 26 units/acre
- TC Town Center
- PI Public Institution

In general the zone boundaries coincide with the center of the public right of way and plat boundaries. In other areas it coincides with lot lines. In a few cases it splits a parcel or lot.

In some areas parcels are split by two zones. This is not a mistake. Please consult with a City planner to determine the correct designation for your property.

Original map Adopted: Ord 99C-13  
 Amended: Ord 00C-06  
 Amended: Ord 05C-13  
 Amended: Ord 13C-02  
 Amended: Ord 14C-07  
 Amended: Ord 14C-10  
 Amended: DR16-01  
 DSG Director's Memo dated 06/10/2016  
 Amended: Ord 17C-24  
 Amended: Ord 18C-14

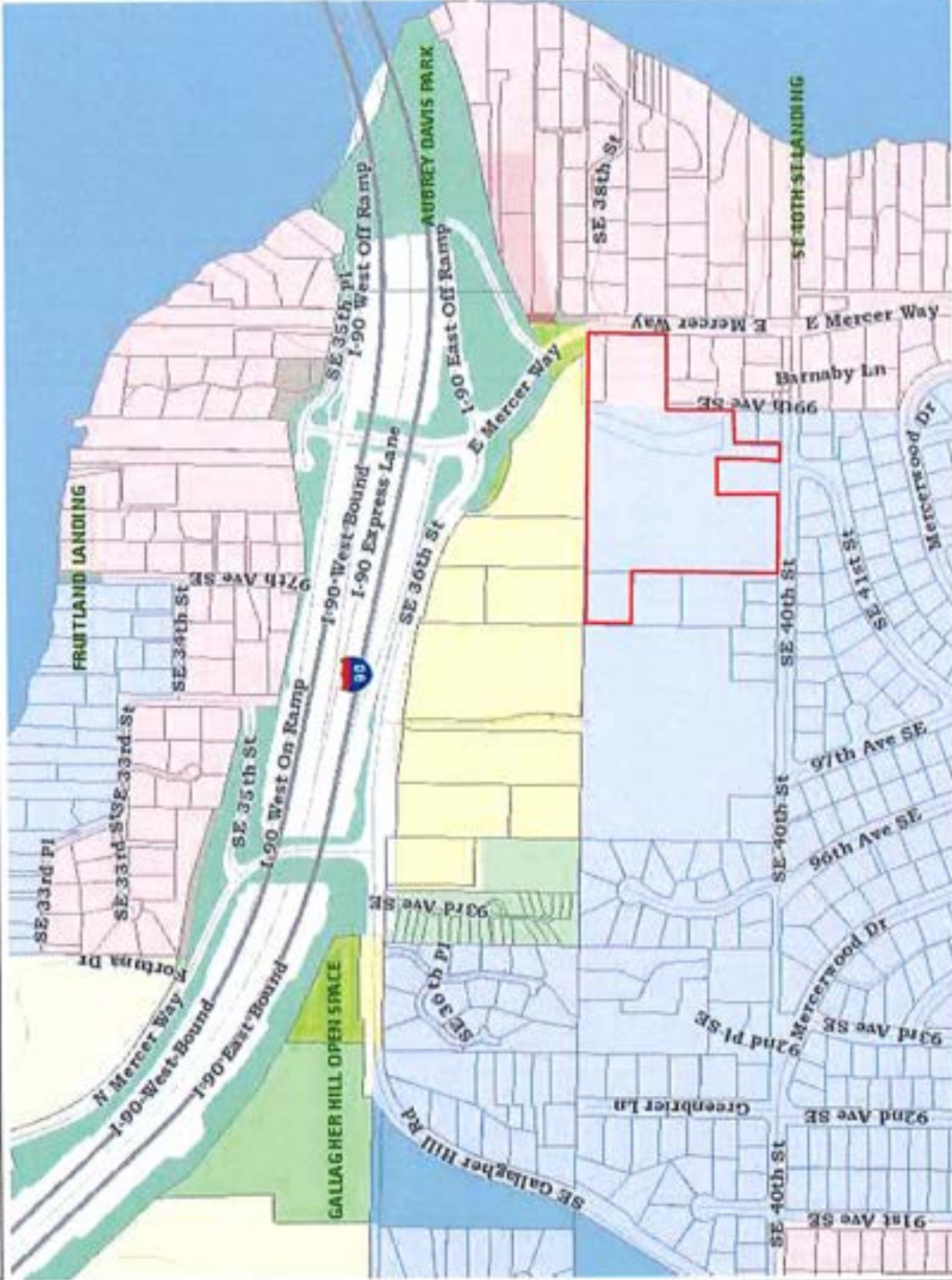




# City of Mercer Island



- Legend**
- Property Line
  - Zoning**
    - S
    - C-O
    - PDZ
    - R-12
    - R-15
    - MF-2
    - MF-3L
    - MF-3
    - MF-4
    - RA-8
    - TC
    - P
  - Freeway
  - Street
  - Parks
  - Lake Washington



0 400 800 985 Feet

1 inch = 985.0115905 feet

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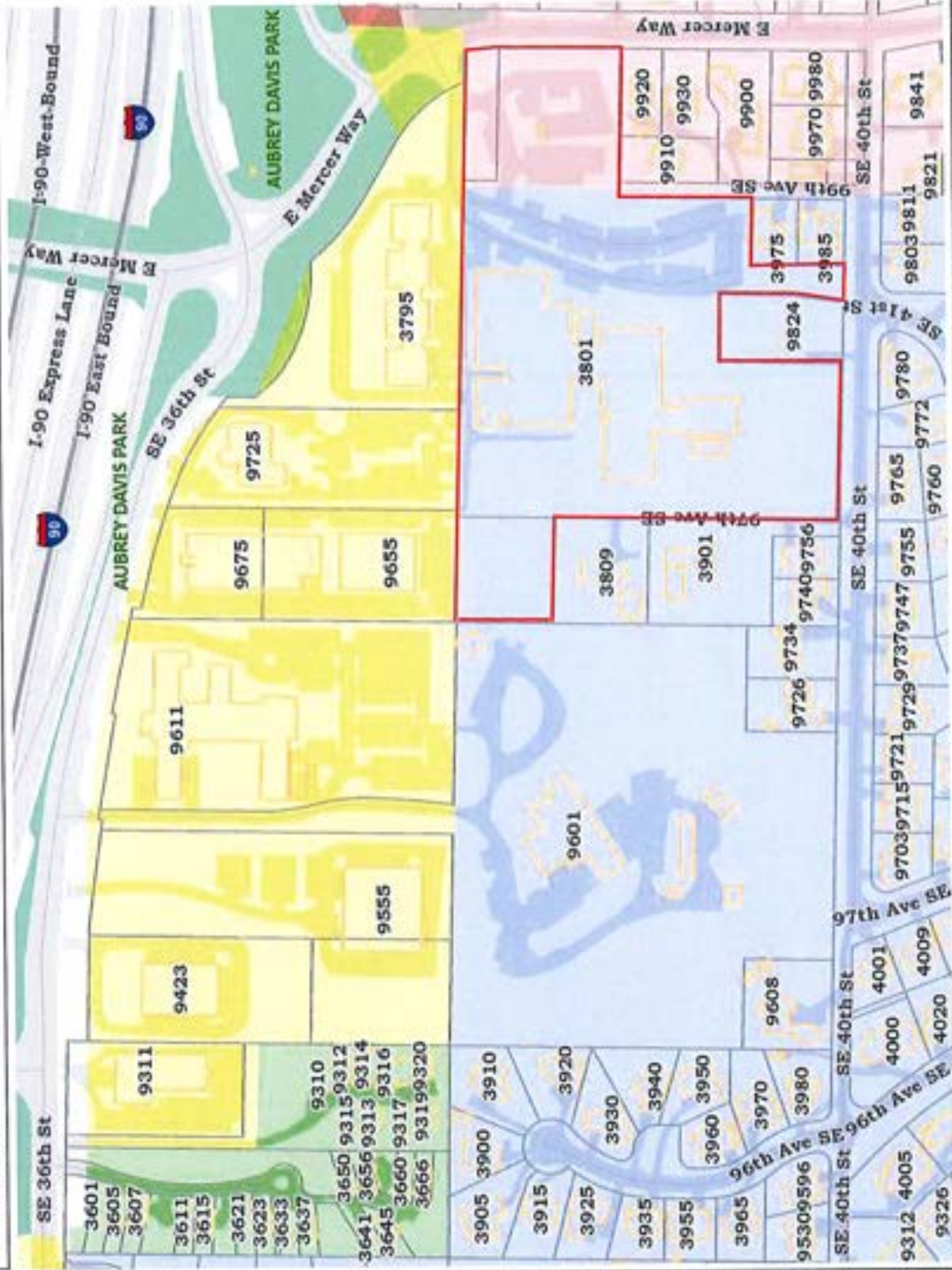
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Notes





# City of Mercer Island



## Legend

- Address
- Building
- Property Line
- Docks
- Zoning
  - B
  - C-O
  - PRZ
  - R-12
  - R-15
  - MF-2
  - MF-2L
  - MF-3
  - R-3.4
  - R-2.6
  - TC
  - P
- Freeway
- Street
- Paved Road
- Paved Driveway
- Paved Parking Area
- Park
- Lake Washington

## Notes

Disclaimer: These maps were developed by the City of Mercer Island and are intended to be a general purpose digital reference tool. These maps are not an accepted legal instrument for describing, establishing, recording or maintaining descriptions for property concerns or boundaries. The City makes no representation or warranty with respect to the accuracy or currency of these data sets, especially in regard to labeling of surveyed dimensions, or agreement with official sources such as records of survey, or mapped locations of features.



1 inch =  
492.505785333333 feet



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**EXHIBIT 20**



BRICKLIN & NEWMAN LLP  
lawyers working for the environment

Reply to: Seattle Office

March 6, 2020

*Via Email Only to:  
council@mercergov.org  
evan.maxim@mercergov.org*

**Mercer Island City Council**  
9611 SE 36th St.  
Mercer Island, WA 98040

Re: Jewish Community Center, Herzl-Ner Tamid, and French American School proposal to amend the residential code

Dear City Council:

On behalf of our client, the Concerned Neighbors for the Preservation of Our Community, we submit this **comment in opposition to the proposal by the Jewish Community Center, Herzl-Ner Tamid, and French American School (hereafter, collectively, "JCC") to amend the residential code.**

The JCC failed to explain what plans it has for its property that would require the residential code to be amended. The amendments it proposes would, if adopted, violate the Growth Management Act. As explained below, the amendments are inconsistent with and fail to implement the Comprehensive Plan. The JCC's proposed amendments to the residential code represent another attempt by the JCC to short-circuit the requirements of the Growth Management Act. The proposed amendments should be rejected, not forwarded to the Planning Commission.

In its letter to the Council dated February 25, the JCC describes a "Shared Goal" of "improving [the JCC's] facilities to meet the evolving needs of the Mercer Island community." No further description of this so-called Shared Goal is given. The JCC claims this Shared Goal represents the "general community consensus," but no evidence for that is given, either.

Although no one other than the JCC actually knows what the JCC's so-called Shared Goal is for its property, the JCC nonetheless proposes a major overhaul of the Mercer Island residential code. The JCC's proposal should be rejected.

If the JCC wishes to expand its property, the Growth Management Act provides a clear process for doing so: The City must amend the Comprehensive Plan for residential neighborhoods to allow expansion of major facilities; adopt development regulations in the residential neighborhoods to implement the new vision; and then re-designate and rezone the JCC property.

Last year, the Growth Management Hearings Board rejected an attempt by the City to short-circuit this process with the "Community Facility Zone" re-designation of the JCC property. This latest proposal by the JCC will fare no better, because it makes the same mistake: It fails to follow the planning sequence required by the Growth Management Act.

The City Council should decline to forward the JCC's proposed zoning regulations to the Planning Commission. Instead, the Council should invite the JCC, and the rest of the community, to collaborate on amendments to the Comprehensive Plan—the first step in the process the Growth Management Act requires. Following this process will allow the actual "general community census" to be heard, not a false consensus that only serves one constituent.

#### **I. JCC's proposal**

The JCC attempts to downplay the significance of its proposal. The JCC claims it proposes "minor modifications" to the existing provisions relating to gross floor area, height, and lot coverage. The JCC claims that the proposed changes are "narrowly tailored to only to those properties that abut existing commercial zones. As a result, it will not be perceived as a threat to single-family zones in other parts of the city." "That is all," says the JCC's letter. "It is that simple."

That is not all, and it is not that simple. In reality, the JCC's proposal is not a minor modification but a complete overhaul of the rules that currently govern the JCC property. In addition, the impact of the proposal goes beyond the JCC property and extends city-wide.

##### **1. Gross floor area**

First, the JCC proposal vastly expands the gross floor area limits in the residential zone as those limits are applied to "regulated improvements." See JCC Application, at 13 ("This section [meaning the gross floor area limits] does not apply to regulated improvements").

Currently, the gross floor area of uses in the residential zones are capped at:

- a. R-8.4: 5,000 square feet or 40 percent of the lot area, whichever is less.
- b. R-9.6: 8,000 square feet or 40 percent of the lot area, whichever is less.
- c. R-12: 10,000 square feet or 40 percent of the lot area, whichever is less.
- d. R-15: 12,000 square feet or 40 percent of the lot area, whichever is less.



These restrictions preserve open space and view, because, no matter how large a landowner's lot is, the total floor area cannot exceed these limits. The JCC's proposal vastly expands these limits for regulated improvements. Single-family houses would still be subject to the limits.

Regulated improvements include any use allowed in the residential zones except single-family houses (and appurtenant structures), so things like private recreational areas (e.g., outdoor and indoor climbing walls; horseback riding facilities; tennis courts, swimming pools); public schools; home businesses as an accessory use to the residential use; ADUs; special needs group housing; work-release facilities and other transitional housing; day cares as an accessory use; and religious centers. All of these would receive expanded gross floor limits under the JCC proposal.

Under the JCC's proposal, regulated improvements citywide (not just those near commercial zones) would have a 40% lot coverage cap, except lots less than three acres in size abutting a commercial zone would have a 75% lot coverage cap. See JCC Application at 25.

This means that large lots could exceed the square footage limits that currently apply, and small lots are granted a much higher cap than currently apply

Contrary to the JCC's claim (JCC letter at 3), the new 40% lot coverage cap applies citywide, not just in lots adjacent to commercial.

A couple of illustrations demonstrates the significant impact of the proposal:

- Currently, a two-acre lot in the R-9.6 zone, and abutting a commercial zone, would be limited to 8,000 square feet of development.

Under the JCC proposal, that same two-acre lot would have a floor area limit of 65,340 square feet of development, more than eight times as much.<sup>1</sup>

- Currently, a four-acre lot in the R-12 zone would be limited to 10,000 square feet.

Under the JCC proposal, that same four-acre lot would have a floor area limit of 69,696 square feet, nearly seven times as much. And, this new limit applies anywhere in the city, not just near commercial zones.<sup>2</sup>

## 2. **Height**

Currently, all uses in the residential zones, single-family houses and regulated improvements alike, are subject to a 30-foot height limit. The JCC proposal would increase those limits for regulated improvements in the following fashion:

All regulated improvements, citywide, would have a 36-foot height limit.

---

<sup>1</sup> Calculation: Two acres is 87,120 square feet. 75% of two acres is 63,340 square feet.

<sup>2</sup> Calculation: Four acres is 174,240 square feet. 40% of four acres is 69,696 square feet.

Regulated improvements further than 150 feet from a public right of way would gain a 45-foot height limit.

Regulated improvements 300 feet or closer to a commercial zone would have a 45-foot height limit.

Again, contrary to the JCC's letter, this is a citywide amendment. It does not apply only to the JCC property. Any property more than 150 feet from a public right-of-way, which would likely include properties within subdivisions that have private streets rather than public streets, could take advantage of the new 45-foot height limit for regulated improvements. A 45-foot-tall private, standalone, indoor swimming pool, for example, would be an allowed use under these regulations. (And, if the squash court were on a lot abutting a commercial zone, the squash courts could occupy a floor area consisting of 75% of a three-acre lot. For reference, this is more than double the area of the QFC in Town Center.)

### **3. Lot Coverage**

Currently, all uses in the residential zones, single-family houses and regulated improvements alike, are subject to a 40% lot coverage limit.

The JCC proposal would increase this limit to 50% for schools, religious institutions, private clubs, and public facilities. *See JCC Application*, at 26.

However, the JCC proposal adds that certain uses do not count against the lot coverage limit, including: unenclosed recreational areas, athletic fields, and similar areas with underdrainage systems; green roofs on structures; and access drives for emergency vehicles.

Under these rules, the hypothetical giant, private swimming pool described above would be subject to no lot coverage limits at all, so long as it had a green roof.

## **II. Violation of the Growth Management Act**

The Growth Management Act requires all development regulations to be consistent with, and implement, the Comprehensive Plan. RCW 36.70A.040(3).

"Consistency" means that no feature of a plan or regulation is incompatible with any other feature of a plan or regulation. WAC 365-196-210(8). "Consistency" means that one plan provision or regulation does not preclude achievement of any other plan provision. *Central Wash. Growers Ass'n v. Chelan Cty.*, EWGMHB No. 16-1-0002, FDO (May 19, 2017), at 5.

"Implement" has a more affirmative meaning than merely "consistent." "Implement" connotes not only a lack of conflict but also a sufficient scope to fully carry out the goals, policies, standards and directions contained in the comprehensive plan. WAC 365-196-800(1).

Mercer Island's Comprehensive Plan contains strong protections for the city's residential neighborhood. These protections include:



**Goal 15:** Mercer Island should remain **principally** a low density, single family residential community.

**Goal 15.1:** Existing land use policies, **which strongly support the preservation of existing conditions in the single-family residential zones**, will continue to apply. Changes to the zoning code or development standards will be accomplished through code amendments

**Goal 17:** With the exception of allowing residential development, commercial designations and permitted uses under current zoning will not change.

The JCC's plan not only fails to implement these policies, it is inconsistent with them. The JCC's plan increases density at the cost of the single-family residential community. The allowance of new buildings, 50% taller and seven or eight times larger in bulk, does not "preserve existing conditions in the single-family residential zones." On the contrary, the allowance for expanded facilities allows large, commercialized structures in the residential zones. As more of these expanded facilities get built over time, the residential zones will cease to be "principally" low-density, single-family communities and will become, instead, commercialized zones characterized by expanded facilities whose height and bulk dominate the surrounding houses. The presence of these expanded structures precludes the neighborhood protection goals cited above from being carried out, which is the definition of inconsistency under the GMA.

In support of its proposal, JCC cites only one goal, 17.4, which says:

Social and recreation clubs, schools, and religious institutions are predominantly located in single family residential areas of the Island. Development regulation should reflect the desire to retain viable and healthy social, recreational, educational, and religious organizations as community assets which are essential for the mental, physical and spiritual health of Mercer Island.

However, the JCC's proposed regulations do not implement this goal. The JCC's proposed regulations allow not just social clubs, schools, and religious institutions but *all* regulated improvements to take advantage of the increased size limits. Nothing in Goal 17.4 authorizes an increase in these other uses.

Moreover, even Goal 17.4 must still be consistent with the neighbor protection policies cited above. Currently, the code achieves consistency because it provides for the same size limits in the residential zones regardless of use type. Thus, a school in a residential zone is allowed under current regulations, but only if it is limited in size such that it fits in with the neighborhood. This assures that the residential uses do not get overrun by the non-residential uses – in the words of the Plan, that the district remains "principally" single family. The JCC's proposal does away with this careful balance and instead imposes enormous, commercial sized structures in the residential zones, with no attempt made to fit in with the principal, single-family use.

As the examples above show, the JCC's proposal allows for far more than some modest increase, consistent with the long-standing regulations that have governed the single-family neighborhoods for decades. The proposal is, in reality, a total overhaul of the size, scale and bulk of uses allowed



Mercer Island City Council  
March 6, 2020  
Page 6

in the neighborhoods. Such a drastic increase is not contemplated in the existing Comprehensive Plan. Implementing such an increase would be inconsistent with, and would fail to implement, the existing Comprehensive Plan, in violation of the GMA.

### **III. Conclusion**

If the JCC is interested in expanding its existing use, it must first obtain a Comprehensive Plan amendment to allow such expanded use, and only then propose development regulations to implement the new vision for Mercer Island's neighborhoods.

There are no short-cuts to this process. It is slow by design. The process is intended to allow for a careful, citywide political dialogue to determine if, in fact, this community really does want to see 45-foot-tall, 60,000-square-foot structures in its single-family residential zones.

The JCC invites the City to ignore all that in the name of a false "general community consensus" that does not actually exist. The City should decline the JCC's invitation to violate the GMA. The Council should not refer the proposed amendment to the Planning Commission.

Very truly yours,

BRICKLIN & NEWMAN, LLP



Alex Sidles  
*Attorney for the Concerned Neighbors  
for the Preservation of Our Community*

Cc: Client

**EXHIBIT 21**

#7

From: Rich Hill  
To: Jessi Bon  
Subject: Zoning Code Text Amendment Application  
Date: Wednesday, September 9, 2020 2:16:37 PM

---

Ms. Bon –

As you know, I am the applicant for a zoning code text amendment application for a non-project, legislative proposal that addresses the unintended consequences of the recent Residential Code Update. I submitted the request on February 11, 2020.

I understand that the upcoming City Council meeting is scheduled to include on its agenda a discussion of the request. However, given the many pressing issues before the City at this time, I would ask the City Council to postpone consideration of the request at this time, and to place it once again on the City work plan such that it can be addressed by March 15, 2021.

With that said, I also ask the City to maintain the request as an active application in the meantime. The request remains very important, to allow appropriate development of improvements in the City including community centers, recreational facilities, schools, and educational uses that serve Mercer Island residents.

Please let me know if you have any questions.

G. Richard Hill

G. Richard Hill  
Attorney at Law  
McCULLOUGH HILL LEARY, PS  
701 Fifth Avenue, Suite 6600  
Seattle, Washington 98104  
Tel: 206.812.3388  
Fax: 206.812.3389  
Cell: 206.930.7828  
[rich@mhseattle.com](mailto:rich@mhseattle.com)  
[www.mhseattle.com](http://www.mhseattle.com)

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**EXHIBIT 22**



# City Council Regular Video Meeting

09/15/2020 05:00 PM

9611 SE 36th Street, Mercer Island, WA 98040

*In compliance with the Americans with Disabilities Act, those requiring accommodation for Council meetings should notify the City Clerk's Office at least 24 hours prior to the meeting at 206.275.7793.*

## EXECUTIVE SESSION, 5:00 PM

To discuss with legal counsel pending or potential litigation pursuant to RCW 42.30.110(1)(i) for approximately 30 minutes. All Councilmembers, City Attorney, and staff will be participating remotely using teleconferencing technology provided by Microsoft Teams.

## CALL TO ORDER & ROLL CALL, 5:30 PM

## PLEDGE OF ALLEGIANCE

## AGENDA APPROVAL

## CITY MANAGER REPORT

## APPEARANCES

## CONSENT CALENDAR

1. Approve **Accounts Payable** Reports for the periods ending:
  - A) August 28, 2020 in the amount of \$588,921.53
  - B) September 4, 2020 in the amount of \$1,016,186.85

2. Certification of **Payroll** dated September 11, 2020.

3. **Minutes** of the September 1, 2020 Regular Video Meeting.

4. AB 5751: WRIA 8 Interlocal Agreement Amendment

**Recommended Action:** Authorize the City Manager to sign the First Amendment to the Interlocal Agreement for the Watershed Basins within Water Resource Inventory Area 8.

## REGULAR BUSINESS

5. AB 5752: Public Hearing on Emergency Ordinance No. 20C-17 to Temporarily Allow Private Parking and Right-of-way Use by Businesses to Meet Safe Start Guidelines

**Recommended Actions:**

1. Conduct Public Hearing for Emergency Ordinance No. 20C-17 to Temporarily Allow Private Parking and Right-of-way Use by Businesses to Meet Safe Start Guidelines.
2. Receive staff update on businesses that have utilized the ordinance allowances and additional plans for assisting existing eating and drinking establishments.

6. AB 5748: Permit Expiration Extension (Ordinance No. 20C-21 First Reading and Adoption)

**Recommended Actions:**

1. Suspend Council Rules of Procedure 6.3 and 10.1 requiring second reading of an ordinance.
2. Adopt Ordinance No. 20C-21, allowing the building official to extend permits for an additional 6 months.

7. AB 5750: G. Richard Hill Code Amendment Initial Review and Direction

**Recommended Action: Three alternative motions for consideration:**

1. Decline further review of the G. Rich Hill Code Amendment Application and refund the application fees.
2. Remand the G. Rich Hill Code Amendment Application to the Planning Commission for review.
3. Postpone initial action on the G. Rich Hill Code Amendment Application and set a new City Council review date and possible initial action in 2021.

8. AB 5749: Temporary Increase in Utility Tax Rates (Ordinance No. 20C-20 Second Reading and Adoption) and Interfund Loans Authorization (Resolution No. 1586) for Potential Litigation Costs to Enforce the Terms of the City's 2017 Settlement Agreement with Sound Transit.

**Recommended Actions:**

1. Adopt Ordinance No. 20C-20 temporarily increasing utility tax rates to raise additional revenue for potential litigation to enforce the terms of the City's 2017 Settlement Agreement with Sound Transit.
2. Pass Resolution No. 1586 authorizing interfund loans in the amount of \$750 thousand each, for a combined total of \$1.5 million, from the City's water and utility funds to the General Fund.
3. Appropriate \$1.5 million in loan proceeds authorized in Resolution No. 1586 for litigation costs.

9. AB 5754: City Council direction on proposed PIC recommendations to the SCA Board of Directors

**Recommended Action:** Discuss PIC potential action and provide direction to Mayor Wong and Councilmember Rosenbaum.

**OTHER BUSINESS**

10. Planning Schedule



## 11. Councilmember Absences & Reports

### **EXECUTIVE SESSION**

To discuss with legal counsel pending or potential litigation pursuant to RCW 42.30.110(1)(i) for approximately 60 minutes. All Councilmembers, City Attorney, and staff will be participating remotely using teleconferencing technology provided by Microsoft Teams.

### **ADJOURNMENT**

**EXHIBIT 23**



**CITY COUNCIL MINUTES**  
**REGULAR VIDEO MEETING**  
**SEPTEMBER 15, 2020**

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**EXECUTIVE SESSION**

At 5:01 pm, Mayor Wong convened an Executive Session for approximately 30 minutes to discuss with legal counsel litigation or potential litigation pursuant to RCW 42.30.110(1)(i).

Mayor Benson Wong, Deputy Mayor Wendy Weiker and Councilmembers Lisa Anderl, Jake Jacobson, Salim Nice, Craig Reynolds, and David Rosenbaum participated remotely using a teleconferencing platform provided by Microsoft Teams.

City Manager Jessi Bon participated from City Hall and City Attorney Bio Park participated in the executive session from a remote location.

At 5:26 pm, Mayor Wong adjourned the Executive Session.

After a brief break, Council went into open session at 5:31 pm.

**CALL TO ORDER & ROLL CALL**

Mayor Benson Wong called the meeting to order at 5:00 pm from a remote location.

Mayor Benson Wong, Deputy Mayor Wendy Weiker and Councilmembers Lisa Anderl, Jake Jacobson, Salim Nice, Craig Reynolds, and David Rosenbaum participated remotely using a video teleconferencing platform by Zoom.

City Manager Bon and City Clerk Deborah Estrada participated remotely from separate rooms at City Hall, 9611 SE 36th Street, Mercer Island, Washington. The Mercer Island City Leadership Team participated from remote locations.

**PLEDGE OF ALLEGIANCE**

Councilmember Lisa Anderl led the Council in the Pledge of Allegiance.

**AGENDA APPROVAL**

It was moved by Jacobson; seconded by Anderl to:

**Approve the agenda as presented.**

A roll call vote was conducted, and the results were as follows:

Passed 7-0

FOR: 7 (Anderl, Jacobson, Nice, Reynolds, Rosenbaum, Weiker and Wong)

**CITY MANAGER REPORT**

City Manager Bon reported on the following:

- COVID-19 Update
- City Service Update
  - Luther Burbank Docks Open House & Waterfront Plaza Repairs
  - Thrift Shop Open Sundays and Thank you to volunteers
  - Fall Recycling Event



- Fire Department
  - Remember 9/11
  - Small local fire and Mutual Aid Assistance
  - Search & Rescue Team deployed to Oregon
  - Local burn ban & fire safety
- National Preparedness Month
- Paving Project at MI Park & Ride
- Pop-up StoryWalk
- Friends of the Mercer Island Library – Pop-Up Sale in Town Center
- City Council Special Meeting

## APPEARANCES

Mark Madden, Mercer Island – Expressed concern that information shared at Sound Transit's Open House was incorrect and misleading.

The following individuals encouraged City Council to reject the G. Richard Hill Code Amendment:

- Ryan Rahlfs, Mercer Island
- John Hall, Mercer Island
- Matt Goldbach, Mercer Island

## CONSENT CALENDAR

Approve **Accounts Payable** Reports:

- A) August 28, 2020 in the amount of \$588,921.53
- B) September 4, 2020 in the amount of \$1,016,186.85

**Recommendation:** Certify that the materials or services herein before specified have been received and that all warrant numbers listed are approved for payment.

Approve **Certification of Payroll** dated September 11, 2020 in the amount of \$720,104.18

**Recommendation:** Certify that the materials or services specified have been received and that all fund warrants are approved for payment.

Approve **Minutes** of the September 1, 2020 Regular Video Meeting.

AB 5751: WRIA 8 Interlocal Agreement Amendment.

**Recommended Action:** Authorize the City Manager to sign the First Amendment to the Interlocal Agreement for the Watershed Basins within Water Resource Inventory Area 8.

It was moved by Anderl; seconded by Reynolds to:

**Approve the Consent Calendar as presented.**

A roll call vote was conducted, and the results were as follows:

Passed 7-0

FOR: 7 (Anderl, Jacobson, Reynolds, Rosenbaum, Nice, Weiker, and Wong)

## REGULAR BUSINESS

**AB 5752: Public Hearing on Emergency Ordinance No. 20C-17 to Temporarily Allow Private Parking and Right-of-way Use by Businesses to Meet Safe Start Guidelines**

Mayor Wong opened the public hearing at 6:15 pm.

There being no comments by the public, Mayor Wong closed the public hearing at 6:16 pm.

EOC Small Business Liaison Sarah Bluvás explained that on August 4, 2020, the City Council unanimously passed Emergency Ordinance No. 20C-17 which enabled local eating and drinking establishments to use Right-of-Way and private parking to expand outdoor seating. The ordinance assisted businesses impacted by the

COVID-19 Pandemic emergency in operating under the Safe Start Washington phased guidelines for reopening.

Bluvas further explained that staff continue to actively reach out to eating and drinking establishments about outdoor seating opportunities and have scheduled additional trash pick-ups in Town Center to off-set the increase in takeout and other garbage. Additional support activities include free consulting service for small business, a new marketing campaign called Mnext, and distributing information about the King County Small Business Emergency Grant Program.

#### **AB 5748: Permit Expiration Extension (Ordinance No. 20C-21 First Reading and Adoption)**

Deputy CPD Director Alison Van Gorp reported that the COVID-19 pandemic has adversely impacted construction sites. Van Gorp went on to explain that given the impacts of the Pandemic, staff recommend a code amendment allowing the Building Official to authorize a permit extension of up to 6-months during or after a declared emergency, when the emergency has resulted in work stoppage or significant delays to the construction project. The 6-month extension would be granted upon request by the permit applicant at no additional fee. The permit extension may be requested at the end of the two-year period, or at the end of the three-year period, if the applicant had already applied for an extension. Van Gorp further noted that the maximum period for a permit to be active will be 3.5 years under the proposed code amendment.

It was moved by Nice; seconded by Jacobson to:

**Suspend Council Rules of Procedure 6.3 and 10.1 requiring second reading of an ordinance.**

A roll call vote was conducted, and the results were as follows:

Passed 7-0

FOR: 7 (Anderl, Jacobson, Reynolds, Rosenbaum, Nice, Weiker, and Wong)

It was moved by Nice; seconded by Jacobson to:

**Adopt Ordinance No. 20C-21, allowing the building official to extend permits for an additional 6 months.**

A roll call vote was conducted, and the results were as follows:

Passed 7-0

FOR: 7 (Anderl, Jacobson, Reynolds, Rosenbaum, Nice, Weiker, and Wong)

#### **AB 5750: G. Richard Hill Code Amendment Initial Review and Direction**

Deputy CPD Director Alison Van Gorp explained that the G. Richard Hill Code Amendment Application was submitted on February 11, 2020 on behalf of the French American School and the Stroum Jewish Community Center. The amendment would allow exceptions to the lot coverage, height, and gross floor area requirements for regulated improvements, to include schools, noncommercial recreational areas, and religious buildings. Van Gorp further explained that the Application was previously scheduled for review at the March 2020 City Council meeting which was canceled due to the Pandemic. Review of the Application was then further delayed due to Pandemic-related restrictions on public meetings last spring, limiting the City Council meeting agenda to items that were "necessary and routine" or specifically related to COVID-19.

Council debated the following three options presented by staff at length:

1. Decline further review of the G. Rich Hill Code Amendment Application and refund the application fees.
2. Remand the G. Rich Hill Code Amendment Application to the Planning Commission for review.
3. Postpone initial action on the G. Rich Hill Code Amendment Application and set a new City Council review date and possible initial action in 2021.

Staff also reported that the applicant sent an email supporting postponing review of the application (Option 3).

It was moved by Jacobson; seconded by Anderl to:

**Decline further review of the G. Rich Hill Code Amendment Application and refund the application fees.**

A roll call vote was conducted, and the results were as follows:

Failed 4-3

AGAINST: 4 (Reynolds, Rosenbaum, Weiker, and Wong)

FOR: 3 (Anderl, Jacobson, and Nice)

It was moved by Reynolds; seconded by Rosenbaum to:



**Postpone initial action on the G. Rich Hill Code Amendment Application and set a new City Council review date and possible initial action no later than March 2021.**

Passed: 4-3

FOR: 4 (Reynolds, Rosenbaum, Weiker, and Wong)

AGAINST: 3 (Anderl, Jacobson, and Nice)

**AB 5749: Temporary Increase in Utility Tax Rates (Ordinance No. 20C-20 Second Reading and Adoption) and Interfund Loans Authorization (Resolution No. 1586) for Potential Litigation Costs to Enforce the Terms of the City's 2017 Settlement Agreement with Sound Transit.**

City Manager Jessi Bon reported that on September 1, 2020, the City Council set Ordinance No. 20C-20 for a second reading and adoption on September 15, 2020. She continued, explaining that Ordinance No. 20C-20 temporarily increases the utility tax rate on water, sewer, and stormwater utilities within Mercer Island from 5.3 percent to 8.0 percent for a 36-month period from November 1, 2020 through October 31, 2023. The new tax revenue would be used to pay back the interfund loans authorized by Resolution No. 1586. Resolution No. 1586 would authorize the City's water and sewer utility funds to lend \$750 thousand each, for a combined total of \$1.5 million, to the General Fund to finance the cost of potential litigation to enforce the terms of the City's 2017 Settlement Agreement with Sound Transit. Bon also explained that there would be no penalty for early repayment of the loan and that if the City is able to resolve its dispute with Sound Transit without expending the full amount borrowed, the interfund loan may be paid back early.

It was moved by Reynolds; seconded by Jacobson to:

**Adopt Ordinance No. 20C-20 temporarily increasing utility tax rates to raise additional revenue for potential litigation to enforce the terms of the City's 2017 Settlement Agreement with Sound Transit.**

A roll call vote was conducted, and the results were as follows:

Passed 7-0

FOR: 7 (Anderl, Jacobson, Reynolds, Rosenbaum, Nice, Weiker, and Wong)

It was moved by Rosenbaum; seconded by Jacobson to:

**Pass Resolution No. 1586 authorizing interfund loans in the amount of \$750 thousand each, for a combined total of \$1.5 million, from the City's water and utility funds to the General Fund..**

A roll call vote was conducted, and the results were as follows:

Passed 7-0

FOR: 7 (Anderl, Jacobson, Reynolds, Rosenbaum, Nice, Weiker, and Wong)

It was moved by Jacobson; seconded by Weiker to:

**Appropriate \$1.5 million in loan proceeds authorized in Resolution No. 1586 for litigation costs.**

A roll call vote was conducted, and the results were as follows:

Passed 7-0

FOR: 7 (Anderl, Jacobson, Reynolds, Rosenbaum, Nice, Weiker, and Wong)

**AB 5754: City Council direction on proposed PIC recommendations to the SCA Board of Directors**

Mayor Wong reported that the Public Issues Committee (PIC) met on September 9 and addressed the following items that might require future action by PIC representatives on behalf of member cities:

1. SCA 2021 Legislative Agenda - This information may help the City Council formulate the Mercer Island 2021 Legislative Agenda. The committee discussion emphasized the importance of keeping the agenda "tight" and "focused" due to the budgetary constraints facing the State of Washington.

Staff will prepare Legislative Priorities for discussion at a future Council meeting.

2. Affordable Housing Committee - PIC members were asked to solicit comments and feedback regarding HB 1590. Most cities at the PIC meeting had not discussed HB 1590 and, those that had, did not indicate a desire to proceed with a city-imposed sales tax increase due to the economic recession.

There were general comments that the King County Council needed to collaborate with cities on the use of the additional sales tax revenue. Some Councilmembers hoped that there would be some ability for cities to exercise local control over the amount of additional sales tax raised within that city while others asked



whether some portion of the new sales tax revenue raised from sales on Mercer Island could be provided to ARCH to further its mission.

3. Vision 2050 - SCA is looking for direction from SCA-member cities about Snohomish County's proposed amendment. Whether to approve or reject the amendment as part of Vision 2050 would be presented to the PSRC Executive Board on September 24, 2020. PIC has asked that PIC representatives ascertain the position of their respective city councils relative to this amendment and to convey those positions to PIC as soon as possible.

City Council did not agree on a corporate position relative to this amendment that can be shared with the SCA representatives and the PSRC Executive Board.

## **OTHER BUSINESS**

### **Planning Schedule**

City Manager Bon reminder Council that a Special Meeting was scheduled for Tuesday, September 22 and would include a preview of the biennial budget and a Thrift Shop Project update.

There will be three Council meetings in a row – October 6, October 13, and October 20.

### **Councilmember Absences**

There were no absences to report.

### **Councilmember Reports**

Councilmember Anderl:

- OSCT meeting in October
- Utility Board meeting on September 23

Councilmember Rosenbaum:

- MISD PTA is finalizing its meeting schedule.
- Expressed concern for the antisemitic comments and images on the Mercer Island School District's platform and made himself available to students that wanted to talk about it.

Councilmember Jacobson

- Commented on the late meetings notices sent out by the Eastside Transportation Partnership.
- Recognized several volunteers that have worked to eliminate ivy and blackberry bushes in Homestead Park.

Councilmember Nice – Reported that Rite Aid is interested in participating in drive-thru flu shots.

Mayor Wong:

- Attended King County Regional Water Quality Committee meeting on September 2
- SCA will be sending an email encouraging Councilmembers to sign up for regional committees
- Attended K4C Outreach Committee meeting on September 11
- K4C Meeting on October 8 open to elected officials
- Email string regarding King County Parks Levy Amendment, that was sent to Councilmembers earlier in the day, was withdrawn.

There being no additional business, the Regular Video Meeting adjourned at 8:16 pm.

## **EXECUTIVE SESSION**

At 8:20 PM, Mayor Wong convened the Executive Session to discuss with legal counsel pending or potential litigation pursuant to RCW 42.30.110(1)(i) for approximately 60 minutes. All Councilmembers, City Attorney, and

staff participated remotely using teleconferencing technology provided by Microsoft Teams.

No action was taken, and Mayor Wong adjourned the Executive Session at 9:22 PM

**ADJOURNMENT**

There being no additional business, the Regular Video Meeting adjourned at 9:23 pm.

Attest:

  
\_\_\_\_\_  
Deborah A. Estrada, City Clerk

  
\_\_\_\_\_  
Benson Wong, Mayor

**EXHIBIT 24**



**From:** Rich Hill <rich@mhseattle.com>  
**Sent:** Monday, February 1, 2021 3:30 PM  
**To:** Holly Mercier <holly.mercier@mercergov.org>  
**Cc:** Jeff Thomas <jeff.thomas@mercerisland.gov>; Alison Van Gorp <alison.vangorp@mercergov.org>  
**Subject:** Re: Withdrawal of Development Application for Code Amendment

Holly --

On second thought, could you send the check directly to the JCC?

Amy Lavin  
Stroum JCC  
3801 E Mercer Way  
Mercer Island, WA 98040

Thanks!

Rich

G. Richard Hill  
Attorney at Law  
McCullough Hill Leary, ps  
701 Fifth Avenue, Suite 6600  
Seattle, Washington 98104  
Tel: 206.812.3388  
Fax: 206.812.3389  
rich@mhseattle.com

[www.mhseattle.com](http://www.mhseattle.com)

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**From:** Holly Mercier <holly.mercier@mercergov.org>  
**Sent:** Monday, February 1, 2021 12:33 PM  
**To:** Rich Hill <rich@mhseattle.com>  
**Cc:** Jeff Thomas <jeff.thomas@mercerisland.gov>; Alison Van Gorp <alison.vangorp@mercergov.org>  
**Subject:** RE: Withdrawal of Development Application for Code Amendment

Sounds good, we'll send the check to your attention. You should expect to see it within two weeks.

Thanks,  
Holly

**From:** Rich Hill <[rich@mhseattle.com](mailto:rich@mhseattle.com)>  
**Sent:** Monday, February 01, 2021 12:30 PM  
**To:** Holly Mercier <[holly.mercier@mercergov.org](mailto:holly.mercier@mercergov.org)>  
**Cc:** Jeff Thomas <[jeff.thomas@mercerisland.gov](mailto:jeff.thomas@mercerisland.gov)>; Alison Van Gorp <[alison.vangorp@mercergov.org](mailto:alison.vangorp@mercergov.org)>  
**Subject:** Re: Withdrawal of Development Application for Code Amendment

Yes please, thanks Holly. I very much appreciate your prompt response.

G. Richard Hill  
Attorney at Law  
McCullough Hill Leary, ps  
[701 Fifth Avenue, Suite 6600](#)  
[Seattle, Washington 98104](#)  
Tel: [206.812.3388](tel:206.812.3388)  
Fax: [206.812.3389](tel:206.812.3389)  
[rich@mhseattle.com](mailto:rich@mhseattle.com)  
[www.mhseattle.com](http://www.mhseattle.com)

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On Feb 1, 2021, at 12:17 PM, Holly Mercier <[holly.mercier@mercergov.org](mailto:holly.mercier@mercergov.org)> wrote:

Hello Mr. Hill,

I am working on processing the refund for the filing fee discussed in the email below.

The refund check will be made out to the Stroum Jewish Community Center. Should the check be mailed to your attention at 701 Fifth Avenue, Ste. 6600, Seattle, WA 98104?

Thank you,

Holly

**Holly Mercier**  
Permit Services Manager

City of Mercer Island - Community Planning & Development  
206.275.7707 | [mercerisland.gov/cpd](http://mercerisland.gov/cpd)  
<image001.png>

<image002.jpg>

*Due to the COVID-19 outbreak, Community Planning and Development has modified our operations. City Hall and the Permit Center are closed to the public. There is no "walk in" permit service; staff are working remotely and services are being continued via remote operations. More information is available on the City's website: [www.mercerisland.gov/cpd](http://www.mercerisland.gov/cpd). Please contact us by phone for general customer support at 206-275-7626.*

*Notice: Emails and attachments may be subject to disclosure pursuant to the Public Records Act (chapter 42.56 RCW)*

**From:** Jeff Thomas  
**Sent:** Monday, February 1, 2021 9:38 AM  
**To:** Rich Hill <[rich@mhseattle.com](mailto:rich@mhseattle.com)>  
**Cc:** Bio Park <[bio.park@mercergov.org](mailto:bio.park@mercergov.org)>; Jessi Bon <[jessi.bon@mercergov.org](mailto:jessi.bon@mercergov.org)>  
**Subject:** RE: Withdrawal of Development Application for Code Amendment

Mr. Hill,

Thank-you for the messages - the City is in receipt of both.

Your withdrawal request will be processed as will a full refund for the application fee.

Please allow two to three weeks for refund processing.

Best regards, Jeff Thomas

**From:** Rich Hill <[rich@mhseattle.com](mailto:rich@mhseattle.com)>  
**Sent:** Monday, February 1, 2021 9:10 AM  
**To:** Jeff Thomas <[jeff.thomas@mercerisland.gov](mailto:jeff.thomas@mercerisland.gov)>  
**Cc:** Bio Park <[Bio.Park@mercergov.org](mailto:Bio.Park@mercergov.org)>; Jessi Bon <[jessi.bon@mercergov.org](mailto:jessi.bon@mercergov.org)>  
**Subject:** Withdrawal of Development Application for Code Amendment

Jeff --

This confirms the voice mail message I left with you this morning.

As you know, I have submitted a Development Application for Code Amendment ("Application"). It was stamped received by the Mercer Island Department of Community



Planning and Development ("Planning") on February 11, 2020. It was accompanied by an application filing fee of \$23,559.22 ("Filing Fee").

At that time, Evan Maxim, the then Director of Planning, confirmed to the Applicant that the Application was accepted by the City, was complete, and that the Filing Fee that accompanied the Application was for the fee required by the City to accept and process the Application (SEPA @ \$2657.00 + Code Amendment @ \$20,902.22). Mr. Maxim also confirmed to the Applicant that the filing fee would be returned in the event the Application was withdrawn prior to the City's commencement of processing the Application.

The Application was for a Mercer Island Zoning Code Text Amendment, a non-project legislative proposal to address the unintended consequences of the recent Residential Code Update, as to Regulated Improvements.

To date, the City Council, due to other legislative priorities, has yet to authorize Planning to commence processing the Application.

The Applicant has determined, due to the exigencies of COVID, and in recognition of the priorities of the City Council, that it is appropriate at this time to withdraw the Application. The Applicant reserves the right to re-submit the Application at some future date, either in its current or in some modified form.

Accordingly, and in this light, the Applicant hereby withdraws the Application.

Since, as of this date, the City has not commenced processing the Application, the Applicant also respectfully requests the Filing Fee be returned to the Applicant. The Applicant understands, of course, that if the Application, in its current or in some modified form, is re-submitted, that it will be accompanied by the filing fee required by such a Development Application in effect at the time of re-submission.

Please confirm receipt of this withdrawal of Development Application and that the City accepts its withdrawal.

Your courtesy is appreciated.

Sincerely,

G. Richard Hill, Applicant

G. Richard Hill  
Attorney at Law  
McCullough Hill Leary, ps

701 Fifth Avenue, Suite 6600  
Seattle, Washington 98104  
Tel: [206.812.3388](tel:206.812.3388)  
Fax: [206.812.3389](tel:206.812.3389)  
[rich@mhseattle.com](mailto:rich@mhseattle.com)

[www.mhseattle.com](http://www.mhseattle.com)

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**EXHIBIT 25**



<b>Project</b>	<b>Meeting Notes</b>	<b>Project No.</b>	SDCI Land Use #: TBD
	SJCC Replacement/Renovation		WAU: 16007
<b>Subject Present</b>	<b>Pre-Application Meeting</b>	<b>Meeting Date</b>	TBD
<b>Copies to</b>	Attendees, file		
<b>Report by</b>	Kirsten Wild, Weinstein A+U	<b>Issued On</b>	1/25/22
<b>Attached</b>	Project Narrative (2 pages). Concept Design & Diagrams uploaded separately (21 pages)		

PROJECT NAME AND ADDRESS  
Stroum Jewish Community Center  
3801 E. Mercer Way  
Mercer Island, WA 98040

PRE-APPLICATION MEETING

Zoning: R-8.4, R-9.6

Please see attached Project Narrative. See also Concept Design package (includes pages referenced below).

LAND USE CODE QUESTIONS

Item No.	Item	Discussion
19.02.010(C)	Conditional Use.	<b>Confirm: New CUP will be required, and the process for CUP and any required variances will be a single process.</b>
19.02.020(C)	Dev. Standards – Yard requirements. <u>See page 5.</u> Setbacks are proposed per 19.02.010(C)(2): at least 35' from any abutting property, and at least 45' from any public right-of-way.	<b>Confirm methodology for</b>

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<b>determining side yard setbacks.</b>	
19.02.020(D)	<p>Dev. Standards – Gross floor area. R-8.4: 5,000 sf or 40% of lot area, whichever is less (5,000 sf); R-9.6: 8,000 sf or 40% lot area, whichever is less (8,000 sf). See page 18. Existing GFA calculated per MICC 19.02.020(D)(2) is 112,672 sf; Proposed GFA is 130,399 sf + Parking Garage GFA of 81,509 sf.</p> <p><b>For a regulated improvement, clarify how GFA relates to lot coverage. Is a variance for GFA required in addition to a variance for lot coverage? Reference 19.06.110(B)(1).</b></p>
19.02.020(E)	<p>Dev. Standards – Building height limit. See pages 6 &amp; 7. Height limit is 30' above the Average Building level (ABE).</p> <p><b>Confirm: proposed project, with ABE of 120.7' for the Community Center (max. height of 150.7') meets the allowable height limits.</b></p> <p><b>Confirm: Auditorium is an existing nonconforming condition.</b></p> <p><b>For garage, see item 19.02.040(C)(2) below</b></p>
19.02.020(F)	<p>Dev. Standards – Lot coverage – Single-family dwellings.</p> <p>Not applicable, see 19.02.060(B), below.</p>
19.02.020(G)(4)	<p>Dev. Standards – Parking. "...each lot shall provide parking deemed sufficient by the code official for the use occurring on the lot..." See pages 11 &amp; 12. Existing lot has 159 surface stalls; proposed project has 70 surface stalls and 282 structured parking stalls for a total of 352 stalls.</p> <p><b>Confirm: final parking count to be</b></p>

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	<b><i>established in coordination with a Traffic Study and the code official.</i></b>
19.02.040(C)(1)	<p>Dev. Standards – Garages, other accessory buildings &amp; accessory structures.</p> <p><b><i>Clarification: is the proposed structured garage considered a detached accessory structure or part of the building for height and GFA calculations?</i></b></p>
19.02.040(C)(1)	<p>Dev. Standards – Garages, other accessory buildings &amp; accessory structures. Gross floor area. Combined total GFA shall not exceed 25% of the total GFA allowed on the lot</p> <ul style="list-style-type: none"><li>• R-8.4 lot, 5,000 sf GFA max.</li><li>• R-9.6 lot, 8,000 sf GFA max.</li></ul> <p>Total allowable GFA = 13,000 sf x 25% = 3,250 sf</p> <ul style="list-style-type: none"><li>• Proposed garage GFA is 81,509 sf.</li></ul> <p><b><i>Clarify approach:</i></b></p> <p><b><i>a) Pursue a variance for the structured parking garage as a detached accessory structure.</i></b></p> <p><b><i>b) include the total GFA with the proposed building GFA and pursue a variance for total GFA.</i></b></p>
19.02.040(C)(2)	<p>Dev. Standards – Garages, other accessory buildings &amp; accessory structures. <i>Height.</i> Limited to a single story and shall not exceed 17' in height above the ABE computed from existing or finished grade, whichever is lower.</p> <p><u>See pages 7 &amp; 16.</u></p> <ul style="list-style-type: none"><li>• Garage ABE is 115.5'</li><li>• Max. accessory structure height is 132.5'</li><li>• Max building height is 145.5'</li><li>• Proposed garage height is approx. 135'</li></ul>

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	<p><b>Clarify approach:</b></p> <p><b>a) Pursue a variance for the structured parking garage as a detached accessory structure.</b></p> <p><b>b) Include the garage as a part of the building; no variance required.</b></p>
19.02.060(B)	<p>Lot coverage, Regulated Improvements – <i>Max. impervious surface</i>. Lot slope is &lt; 15%, 40% Lot Coverage, but the existing project was built prior to May 1, 2006, and may be covered by the percentage of legally existing impervious surface that existed on that date.</p> <p><u>See pages 8 &amp; 9.</u> Existing lot coverage (Option 3) is 181,937 sf (47.32%); proposed lot coverage is 195,455 sf (50.63%).</p> <p><b>1) Review Options per Diagrams and confirm baseline.</b></p> <p><b>2) Confirm: Proposed lot coverage may be reduced by applying Exemptions allowed per MICC 19.02.060(C).</b></p> <p><b>3) Confirm: If it is not possible to meet the existing 47.32% coverage, a variance will be required.</b></p>
19.02.060(D)	<p>Lot coverage – <i>Variance</i>. Regulated improvements... may request a variance to increase impervious surface pursuant to MICC 19.15.230(F) (Comp plan amendments &amp; docketing procedures).</p> <p><b>Confirm: is this the correct citation? Should it cite 19.06.110(B)(2)(i)? (Section is cited below)</b></p>
19.06.110(B)(1)	<p>The language of 19.06.110(B)(1) allows for the option to pursue a variance for lot coverage, and 19.02.060(B) "grandfathers" lot coverage for projects that existed on May 1, 2006, at the discretion of the code official. This indicates an intention to address how to allow an</p>

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institution to expand on its existing property. There is no similar language related to GFA.

***Confirm: Lot coverage of 174,588 sf illustrated in Option 1, page 8 represents our existing lot coverage (pending confirmation against city records)***

***Code Interpretation: Are projects that exceed allowable lot coverage based on pre-existing coverage, and/or projects that receive a variance for lot coverage per 19.06.110(B)(1) understood to also have associated pre-existing GFA overages?***

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19.06.110(B)(2)(i)  
(cited for  
reference re.  
19.02.060(D))

Criteria for approval – CUPs, variances and setback deviations – Variances. Allows “Public and private schools, religious institutions, private clubs and public facilities in single-family zones with slopes of less than 15 percent (to) request a variance to increase the impervious surface to a maximum 60 percent impervious surface and such variance application will be granted if the hearing examiner determines that the applicant has demonstrated that the ... criteria are satisfied.”

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**EXHIBIT 26**



PROJECT NAME AND ADDRESS:  
Stroom Jewish Community Center  
3801 E. Mercer Way  
Mercer Island, WA 98040

City of Mercer Island Project #: PRE22-002  
Zoning: R-8.4, R-9.6

## **PRE-APPLICATION MEETING REQUEST – Design Review**

### **Project Narrative**

Stroom Jewish Community Center (SJCC) has occupied its site at 3801 East Mercer Way since 1969/70, with the completion of a building housing offices, various meeting and club rooms, nursery school rooms, and recreational facilities including a gymnasium and indoor swimming pool. In 1979, the recreational facilities were expanded and an educational wing and auditorium were added. There have been renovations since that time, most notably a renovation of the auditorium, completed in 2014, to allow it to function as a contemporary theatre and multi-purpose space.

In general, the SJCC facilities are suffering from being in continuous use for over fifty years, and are in critical need of upgrades to allow the facility to remain safe and accessible for ongoing use and to maintain its ability to continue serving the community's contemporary and future needs.

Over the last few years, the leadership at SJCC has reached out to the neighboring community and held several open houses to better understand the neighborhood's concerns. Given neighborhood conversations in prior years, SJCC has worked hard in the current project design to address the neighbors' primary concerns: traffic, parking, operating hours (especially as related to on-site noise), exterior lighting, general visual appeal and cleanliness, and safety/security. In a recent meeting, neighbors have commented that they see their feedback reflected in the current design. The SJCC will continue seeking even further synergy with the community through ongoing public dialogue.

The proposed project includes replacement of the existing recreational facilities, addition of a new educational wing, general renovations to remaining existing spaces, and a new structured parking garage to consolidate the surface parking that currently covers a large portion of the site. The proposed project increases the lot coverage by approximately 3%. It increases the Gross Floor Area (GFA) by about 16%, excluding the parking garage – right-sizing the facilities for the current uses, and adding significantly more parking to facilitate on site flow and safety. With further design and application of stormwater best management practices, a goal will be to reduce the proposed impervious surface areas to be equal to or less than the current areas. We plan to pursue a variance for GFA and, if required, a variance for Lot Coverage. The project will be compliant with residential height and setback requirements.

- The site and buildings are currently not fully ADA-compliant. Proposed changes will remedy this.
- The existing recreational facilities (pool, gymnasium, locker rooms, and racquetball courts) have surpassed their useful lifespan. The proposed gymnasium, swimming pool, fitness studios and locker rooms will allow the SJCC to build a more sustainable building, reducing operational and maintenance costs and providing a more accessible facility for all.
- A new educational wing provides long-term flexibility for SJCC to meet a variety of educational needs within the community, especially in the face of the expanded areas required for education during the COVID-19 pandemic.

- General renovations will update and improve the building's heating, ventilation, air conditioning, plumbing, electrical, technological and communications systems to provide a safe and sustainable facility for the next fifty years.
- The proposed two story structured parking garage provides consolidated parking to support the facility, and rationalizes the site parking and circulation. Surface parking is limited to provide easy access for facility staff and for the existing Early Childhood Center and to radically reduce the volume of traffic across the south end of the parking lot. The parking garage provides parking for all other users, with a pedestrian bridge providing a safe means of access to the building, eliminating the need for most pedestrians to navigate drive lanes. The parking structure is located separate from the building due to security concerns associated with parking under a Jewish facility. The proposed location at the northeast corner of the site pulls it toward the busier side of the site along East Mercer Way and further from the residences to the south. The garage will be set into the sloping site, screened by existing and new trees, and clad with a vine screen.

## Questions

We had a general preliminary Pre-Application Meeting on 2/22/22, and have a Pre-Application Meeting focused on Variances scheduled for 8/23/22. We are requesting this additional Pre-Application meeting to focus on the Design Review process, and how it interplays with the CUP and Variance review process.

We understand that this project will need to submit a Type IV application for "Design Review – Major", and as part of that application we are required to submit several types of plans per the "Land Use Application – Plan Set Guide", including:

- Title Sheet
- Survey
- Site Plan
- Tree Plan
- Critical Areas Plans & Study (*possibly*)
- Landscaping
- Design Review
- Conceptual Grading & Utility / Street Profile

In notes issued following the preliminary Pre-Application Meeting on 2/22/22, the Design Review process was outlined as follows:

### 8. *Design Review* MICC 19.15.220 & 19.12:

#### b. *Review process.*

- Study session. In addition to the preapplication meeting, an applicant for a project that will require design review and approval by the design commission shall meet with the design commission in a study session to discuss project concepts before the plans are fully developed. At this session, which will be open to the public, the applicant should provide information regarding its site, the intended mix of uses, and how it will fit into the focus area objectives. The design commission may provide feedback to be considered in the design of the project.*
- Plan submittal. All materials shall be submitted a minimum of 30 days prior to any meeting dates including study sessions, public meetings, and public hearings. The final plans shall be in substantial conformity with approved preliminary plans.*

#### c. *Project shall comply with the design standards for zones outside Town Center under MICC*

19.12. There are requirements for building design, landscape design, vehicular and pedestrian circulation, screening, lighting, and signs.

The provided Notes also summarized Land Use Application procedural steps as follows:

13. Land Use Application Process and Estimated Timeline:

c. Summary of procedural steps

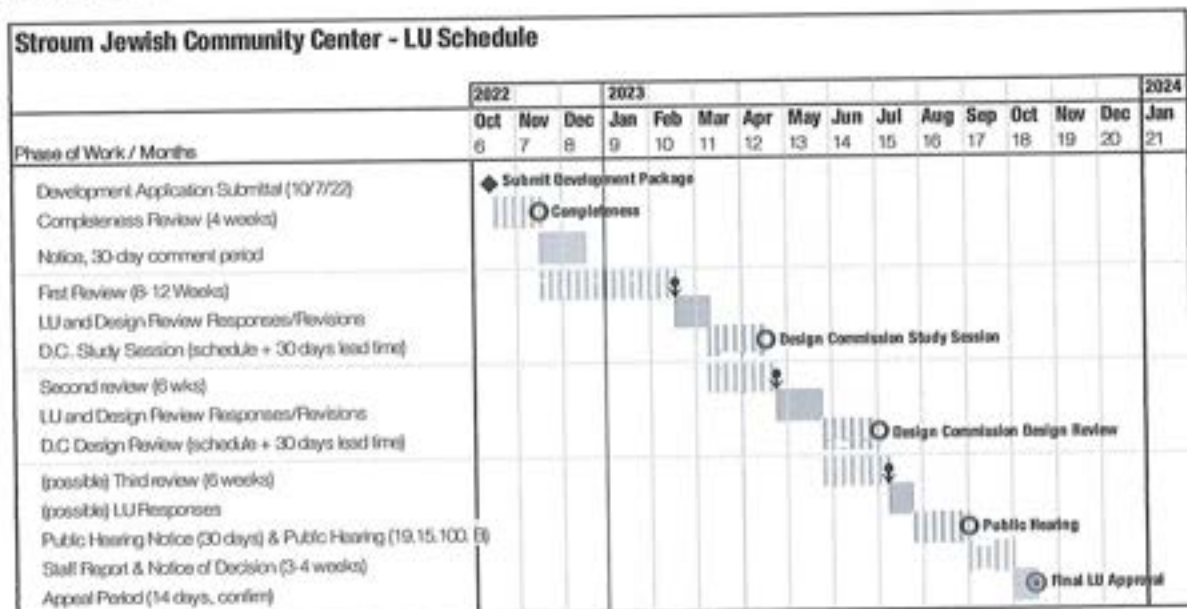
1. Pre-Application meeting
2. Submit application electronically
3. Application Completeness Check
4. Notice of Application (incl. public notice via sign on site, mailing, notice in bulletin) beginning 30-day comment period; review begins
5. Review comments may be sent out if needed
6. Design Commission study session
7. Public hearing
8. Notice of Decision
9. Appeal period

The City of Mercer Island outlines target times for Land Use Decisions, shown here:

**Land Use Decisions**

Type of Review	Target
Completeness Review	4 weeks
First review	8-12 weeks
Second and subsequent reviews	6 weeks
Staff Report / Decision (following completion of review)	3-4 weeks

We still have several questions, however, about the Design Review process relative to the Land Use Review process. Sample dates are used to delineate a possible timeline for discussion purposes, illustrated below.





#### Process/Schedule

1. When can/should a Study Session be scheduled?
  - a. Can the Study Session be scheduled before the First review is complete?
  - b. Do all Study Session presentation materials need to be submitted prior to scheduling the Study Session? (Understood that materials need to be submitted min. 30 days prior the meeting)
2. Is a second public Design Commission meeting common, or is the Public Hearing considered the second (and final) Design Commission meeting?
  - a. If a second public Design Commission meeting is needed, when can it be scheduled? Is it tied to completion of a second (LU review)?
3. Is the proposed parallel Land Use review and Design Review scheduling feasible (ie. Land Use review occurs while we wait the 30+ days for Study Session or Design Review meetings?)
4. When does SEPA threshold determination typically occur?
5. How does the Variance and CUP review process interplay with Design Review?

#### Submittal Requirements

6. For the dimensioned elevation drawings required as part of the Design Review drawings submitted for land use application, is a scale of 1/16": 1'-0" acceptable?

**EXHIBIT 27**

SJCC

3801 East Mercer, Way Mercer Island, WA 98040

# DESIGN CONCEPT



# CONSIDERATIONS

S JCC

- Aging and falling systems and structures from our 50+ year-old SICC facility (heat taxing, accessibility issues)
- Be a good neighbor:
  - Facilitate better traffic flow and provide enough safe parking so there is less impact on our neighbors
  - Design use of our space to ensure less noise and light impact
  - As a prominent Jewish institution in the community, ensure safety to our users and to our community
  - Supplement foliage and trees to enhance the buffer between our facilities and our neighbors
  - Ensure building design (complementary to demand – the J) intends to serve to current community safety and is not remodeling and renovating for substantive growth.
- Member island zoning does not address the needs of community institutions that are located in single-family residential zones, like the SICC
- After trying other approaches, the SICC would like to work with current zoning and use existing tools to make some changes that are both critical to keeping the J operating safely, and that support the concerns of our neighbors. We plan to submit this design concept to the Hearing Examiner to get feedback on how to best apply city code to our property to achieve the goals that are so important to the J and to our neighbors.
- In prior conversations with the City, we included other properties and partners in our proposal. We are now focused on the J to set the course forward for necessary updates. This design concept is truly that – conceptual. Our prior four years of engagement allowed us to receive detailed and important feedback from our neighbors and the wider community and we wanted first to incorporate those shared goals in this design.

1/19/2022

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**SITE PLAN - EXISTING**



SUCC Replacements Renovation  
3801 East Mercer Way Mercer Island, WA 98040

Concept Design  
01.Jul.2022



# SITE PLAN - EXISTING



## KEY

- 1. Existing Auditorium
- 2. Existing Education
- 3. Existing Early Childhood School
- 4. Lobby
- 5. Health Club
- 6. Health & Fitness
- 7. Swimming Pool
- 8. Administration
- 9. Parking
- 10. Service
- 11. Early Childhood School Playground
- 12. Education Playground
- 13. Existing Soccer Grass
- 14. Entry Plaza
- 15. Staff Parking
- 16. Early Childhood School Education Parking
- 17. Existing Prince's American School of Higher Sound
- 18. Existing Residence

- Existing Building
- Existing Trees
- Proposed



# SITE PLAN - PROPOSED



## KEY

- |                              |                             |
|------------------------------|-----------------------------|
| 1. Existing Auditorium       | 11. ECS Playground          |
| 2. Existing Education        | 12. Education Playground    |
| 3. Existing ECS              | 13. Existing Teacher Garden |
| 4. Lobby                     | 14. Empty Plaza             |
| 5. Conference                | 15. Early Childhood School  |
| 6. Health & Fitness          | 16. Education Lot           |
| 7. Swimming Pools            | 17. ECS Education Parking   |
| 8. Administration            | 18. Parking Garage          |
| 9. Education                 | 19. Single-Circuit Walk     |
| 10. Winter Garden            | 20. Existing (ADPS)         |
| 11. Outdoor Recreation Field | 21. Existing Residence      |
| 12. Lawn/Court               |                             |

- Existing Building
- Proposed Building
- Existing Trees
- Proposed Trees
- Program



Concept Design  
01.xx.2022

SUCC Replacement/Renovation  
3801 East Mercet Way Mercer Island, WA 98040

**VIEW - ISOMETRIC LOOKING NW**

**EXISTING**



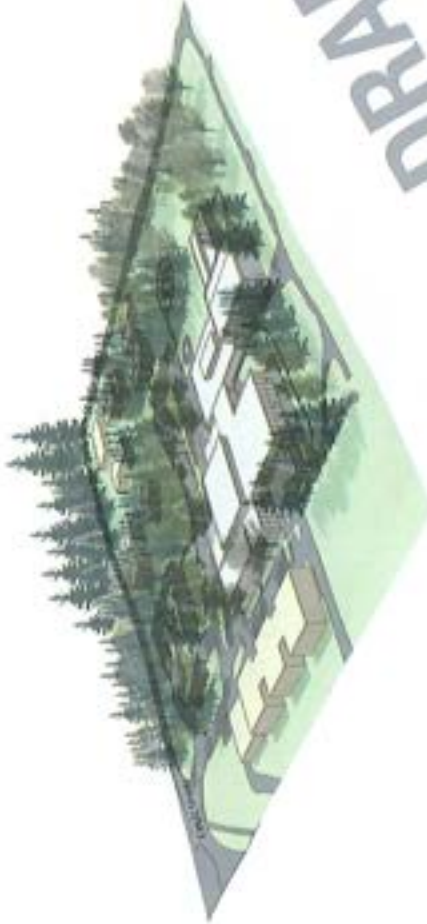
**PROPOSED**

**DRAFT**

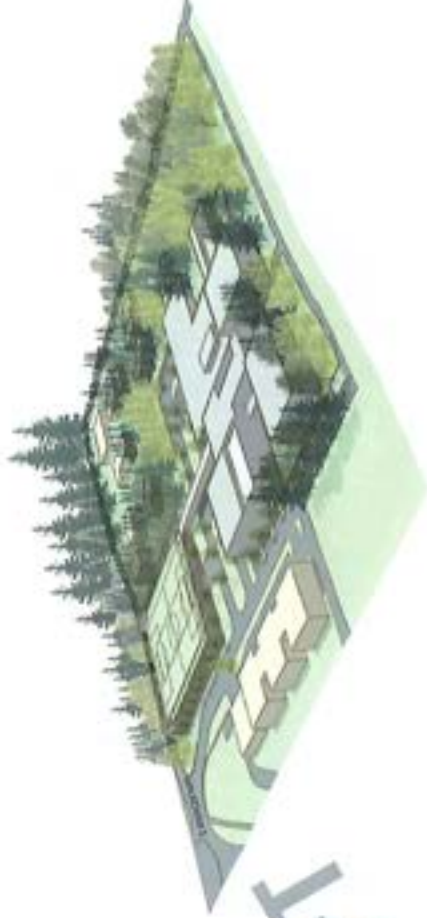


**VIEW- ISOMETRIC LOOKING SE**

**EXISTING**



**PROPOSED**



**DRAFT**

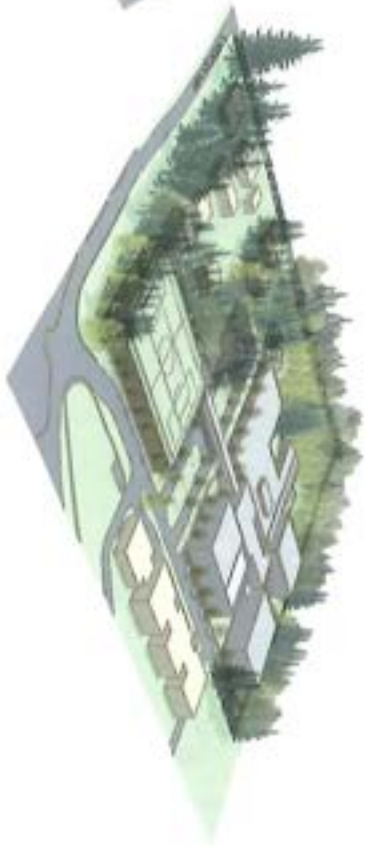


**VIEW - ISOMETRIC LOOKING SW**

**EXISTING**



**PROPOSED**



**DRAFT**

**EXHIBIT 28**

**From:** Patricia Angell <patriciaangellcpa@gmail.com>

**Date:** December 1, 2022 at 12:02:29 PM PST

**To:** John Hall <velooce@comcast.net>

**Subject: Re: Code interpretation info & next steps**

Thanks for the quick call. Here's the information related to the [code interpretation](#) and the appeal. The appeal is being drafted now and will be shared when ready. Please read through the information below and let me know if you have any questions. Please also let me know—ideally by midday Friday-- if Emmanuel is interested in signing on as a co-appellant. We must file by 5 pm Monday and want to plan accordingly.

Thank you,

Amy

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Why we are reaching out to you:

As another organization situated in a residential code on Mercer Island, we wanted to share this information with you for your own awareness, and then to determine if your organization might be interested in joining with us as a co-appellant in this filing by Monday, December 5 at 5 pm.

Summary of Situation

Over the past couple of years, several of the institutions/religious organizations on the island located in single family zones have been corresponding with the City trying to understand the City's code related to expansions and remodels of their respective buildings. Due to the fact that the single family zones do not neatly provide for development standards for institutions, the City directed organizations to work within the existing code framework, which in practice requires using the variance process. The SJCC is



one of those institutions and recently held a preapplication conference with the City to further understand the process for rebuilding the SJCC. As the SJCC asked questions during a preapplication conference, the City recognized the need for greater clarity, given the current code, specifically with regard to this provision in one of the threshold variance criteria:

1. MICC 19.06.110.B.2. The strict enforcement of the provisions of this title will create an unnecessary hardship to the property owner. For the purposes of this criterion, in the R-8.4, R-9.6, R-12, and R-15 zoning designations, an "unnecessary hardship" is limited to those circumstances where the adopted standards of this title prevent the construction of a single-family dwelling on a legally created, residentially zoned lot;

This language states that in order for a variance to be granted, this hardship criterion must be met. However, the way "hardship" is defined in the code clearly doesn't fit an institution or religious facility's situation, because it is not seeking to construct a single family dwelling.

Following the preapplication conference, the City informed the SJCC that it was preparing a formal interpretation on this issue—whether institutions could meet the "hardship" variance criterion despite constructing something other than a single family dwelling.

On November 21, the [City issued an interpretation](#) stating that the intent of the code was to limit institutional variances to impervious surface variances only, due to the fact that there is a specific provision allowing for variances for impervious surfaces for institutions. However, the City stated that essentially for all other variances (such as expanding an institution, or rebuilding an institution), the hardship criterion could not be met, because the institution is not proposing a single family dwelling. This interpretation means that none of the Island's institutions located in single family zones will be able to do any sort of meaningful remodel or redevelopment outside of their existing structures.

An appeal must be filed of this decision within 14 days of the decision, in this case -no later than Monday, December 5 at 5pm. The Hearing Examiner will hear the appeal, and it will be heard within approximately 2 months.

What does it mean to join the appeal?

Simply put, it's signing your organization's name on to the appeal, indicating that your organization may or will be impacted by this ruling, because it essentially renders all institutions in single family zones unable to expand beyond their current walls.

If the appeal is successful, institutions may be able to preserve their right to seek variances from the code and expand or remodel beyond existing footprints. If the appeal is not successful, or if no appeal is filed, the interpretation stands, making an impervious surface variance the only possible variance available to non-residential structures in residential zones. The only way our organizations could evolve our facilities would be through legislative action at Council via a code amendment. We could also appeal a negative appeal ruling to Superior Court.

Supporting the appeal:

In addition to signing on to the appeal, it would be helpful to include written and oral statements at the hearing (not yet scheduled) about how your organization would be negatively impacted by the City's ruling. If your organization has had specific experiences with the City at which you've been directed to use the variance process for expansion, those details would be helpful to provide. As the timing of the hearing is made available, we can work closely with you and your board on how to best engage.

Amy Lavin

Chief Executive Officer | Stroum Jewish Community Center | Direct: 206-232-7116 | M: 425-443-6047