

Scott Greenberg

From: Traci Granbois <traci.granbois@gmail.com>
Sent: Monday, August 22, 2016 3:52 PM
To: Scott Greenberg
Subject: MICA SEPA comments
Attachments: 8.22.16 Granbois comments on MICA's SEPA application.docx

Hi Scott,

I hope you are having a great summer!

Attached please find my comments on MICA's SEPA checklist and its proposed zoning text amendment.

Please include me as a party of record for the purposes of receiving notice on any determinations related to MICA and rights of appeal.

It would be great if you could respond letting me know that you received this e-mail and attached comments.

Thank you,
Traci Granbois

MEMORANDUM

To: Scott Greenberg,
Director, City of Mercer Island Development Services Group

Copy to: Kari Sand, Mercer Island City Attorney

From: Traci Granbois, 8440 SE 82nd Street, Mercer Island, WA 98040

Date: August 22, 2016

Re: *Comments on SEP16-015*
Comments on ZTR16-002
Location of the Property: Southwest corner of 77th Avenue SE and SE 32nd Street,
Mercer Island, WA 98040

Warning: I note that all of the below questions on MICA's SEPA Checklist were cut off in the digital public records request (MICA SEPA & ZTR 08.17.2016). If the city only had access to this same digital copy, there is essential information missing:

1. section A, question 11
2. section B, question 3 (Water) subsection c (Water runoff) part 1
3. section B, question 8 (Land and shoreline use) subsection a
4. section B, question 11 (Light and glare) subsection a
5. section B, question 12 (Recreation) subsections a, b, & c
6. section B, question 14 (Transportation) subsection c

I incorporate by reference the February 16, 2016 Mercer Island Critical Area Ordinance Overview and the March 7, 2016 MICA Pre-Application Meeting Overview (both previously submitted to the City).

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I. EXECUTIVE SUMMARY

On February 2, 2016, the Mercer Island Center for the Arts (“MICA”) submitted a Draft SEPA Environmental Checklist at a pre-application meeting. Subsequently, this Draft SEPA Environmental Checklist was withdrawn. MICA again submitted a SEPA Environmental Checklist on August 8, 2016 which was amended on August 17, 2016.

A review of the MICA SEPA Environmental Checklist reveals numerous problematic issues, including:

- (i) the inaccuracy of the SEPA Environmental Checklist
- (ii) the incompleteness of the SEPA Environmental Checklist
- (iii) MICA’s failure to comply fully with SEPA
- (iv) MICA’s failure to comply fully with the Mercer Island City Code
- (v) Mercer Island’s failure to timely review and revise its critical area & wetland ordinances

II. REVIEW OF THE PROPOSED MICA CENTER FOR THE ARTS

A. Required Town Center Development And Design Standards Review

The planning and permitting processes for the proposed MICA Center for the Arts (“MICA Center”) require MICA to comply with, among other things, Chapter 19.11 MICC, Town Center Development and Design Standards. *See* Mercer Island City Code (“MICC”) 19.05.010(C).

B. Environmental Review And Project Review Must Be Combined

Local project review under the Growth Management Act requires Mercer Island to “[c]ombine the environmental review process, both procedural and substantive, with the procedure for review of project permits.” (emphasis added). *See* RCW 36.70.B.050(1).

SEPA requires Mercer Island to “[i]ntegrate the requirements of SEPA with existing agency planning and licensing procedures and practices, so that such **procedures run concurrently rather than consecutively.**” (emphasis added). *See* WAC 197-11-030(2)(d).

It appears that MICA failed to comply with the requirements of RCW 36.70.B.050(1) and WAC 197-11-030(2)(d) by not addressing the Town Center Development and Design Standards.

C. SEPA Environmental Checklist

1. Proposed timing or schedule
 - a. The July 18, 2016 letter from Mercer Island Development Services Group Director, Scott Greenberg, to Lesley Bain specifically requests that MICA “modify the submitted SEPA Checklist to include a short subdivision (short plat) as part of the project.
 - b. The SEPA Checklist § A, Q. 6 does not explicitly contemplate a short plat but rather states “a possible Short Plat if required by the City”.

2. Earth
 - a. The SEPA Checklist § B, Q. 1 subsection a is non responsive. The “steep slopes” box is not checked even though “excavation into the hillside” will be required. *See* SEPA Attachment D.
 - b. The SEPA Checklist § B, Q. 1 subsection f is non responsive. The question whether erosion could occur “as a result of clearing, construction or use” has not been answered.
 - c. The SEPA Checklist § B, Q. 1 subsection g is non responsive. The specific percentage of impervious surface coverage was not noted.

3. Air
 - a. The SEPA Checklist § B, Q. 2 subsection a is non responsive. There are no details regarding specific emissions to the air typical to the construction process or “when the project is completed”.

4. Water Runoff
 - a. The SEPA Checklist § B, Q. 3 subsection c(1) contemplates a bioretention area, an underground stormwater detention vault and related drains *outside* of the lease boundaries. *See* SEPA Checklist Attachment M. There is no authority for MICA to build necessary building elements on city land without a lease for that specific area.
 - b. The SEPA Checklist § B, Q. 3 subsection d contemplates a “proposed swale that will be strategically graded into the hillside” *outside* of the lease boundaries. *See* SEPA Checklist Attachment B. There is no authority for MICA to build necessary building elements on city land without a lease for that specific area.

5. Energy & natural resources
 - a. The SEPA Checklist § B, Q. 6 subsection c states the project will meet “LEED Silver” standards. The current Mercer Island Development Code requires “LEED

Gold” standards. Mercer Island City Code (MICC) 19.11.050. MICA’s proposal is not compliant with current Mercer Island Code.

6. Aesthetics

- a. The SEPA Checklist § B, Q. 10 subsection b states “building itself will not alter or obstruct any views”. In fact, the MICA building will obstruct views of the wetlands and natural hillside.

7. Light & glare

- a. The SEPA Checklist § B, Q. 11 subsection d is non responsive. No specific details regarding lighting were provided.

8. Historic and cultural preservation

- a. The SEPA Checklist § B, Q. 13 subsection b fails to recognize the historical and cultural importance of the Bicentennial Park to many historians and veterans, who have served and currently serve our country. *See <http://mercerislandhistory.org/historic.html>.*

9. Transportation

- a. The correct answer to “how many parking spaces would the completed project have” is ZERO. The submitted response to SEPA Checklist § B, Q. 14 subsection c is purposefully evasive.
- b. The SEPA Checklist § B, Q. 14 subsection d is non responsive. There are three Attachment Gs – which document and sections within the document specifically address roads.
- c. The SEPA Checklist § B, Q. 14 subsection f is non responsive. There are three Attachment Gs – which document and sections within the document specifically address trip generation.
- d. The SEPA Checklist § B, Q. 14 subsection g is non responsive. Where specifically will the “queued vehicles” be other than in the street? There is no drop off area – how will the “staff outside” assist with cars lined up in the street?

10. Public services

- a. The SEPA Checklist § B, Q. 15 subsection a is non responsive. There is no answer to whether “the project resulted in an increased number of public services”. In fact, neither the Chief of Police nor the Fire Chief have been consulted about whether this project will increase the demand for public services.

D. Unlawful Parking Proposal

Attachment G (#2) to the SEPA Environmental Checklist proposes parking that fails to acknowledge let alone comply with MICC 19.05.010(D) and MICC 19.05.020(B)(4). In fact, MICA is requesting special treatment, unlike any other business subject to MICC 19.05.010(D) and MICC 19.05.020(B)(4). Please see spot zoning argument below.

The Zoning Text Amendment (MICA SEPA Attachment H) purports to require shared parking “that can only be terminated upon not less than ninety (90) days notice to the code official, provided that one of the affected property owners has agreed to enter into a replacement parking contract or make alternative parking arrangements...” Proposed changes MICC 19.05.020(C)(3)(c). However the draft “Parking Spaces License Agreement” in MICA SEPA Attachment G (#2) states in section 5 “This Agreement may be terminated, without cause, by either party, on 30 days’ written notice to the other”. This draft agreement fails to meet the requirements proposed by MICA’s own zoning text amendment.

E. Spot Zoning

The July 18, 2016 letter from Mercer Island Development Services Group Director, Scott Greenberg, to Lesley Bain, appears to ask the applicant to request that the city engage in spot zoning. *See* 7.18.16 letter section 8. Section 8 reads, “Attachment H (Zoning Code Text Amendment) would allow all public facilities (as defined in MICC 19.16) plus the primary uses listed in the proposal in all public parks. As submitted, we would need more information regarding the probable environmental impacts of the proposal. However, based on prior discussions, we do not believe that is your intent. *Narrowing the scope of the proposed code amendment could eliminate the need for this additional information.*” (emphasis added).

In accordance with this request, MICA has requested spot zoning in Attachment H. In essence, MICA is requesting that the city treat Mercerdale Park unlike any other plat of land located in a P zone.

In addition, MICA is requesting that a private building owned by a private organization be placed in a zone for Public Institutions. All of the other uses delineated in MICC 19.05.010 are publically owned¹. This code text amendment would set a precedent for allowing private uses in a public zone.

F. Critical Area Study

Any alteration of a critical area or buffer requires a critical area determination. MICC 19.07.020. To date, there has been no critical area determination and MICA has not listed this required element in its SEPA application. Nor was there any mention of waiver or modification

¹ Wireless communications facilities (MICC 19.05.010(A)(6)) may be leased to a private company but the amount of space required for these leases is not comparable to the land MICA is seeking.

as may be allowed in MICC 19.07.050(E). MICA is surrounded by critical areas. *See* Exhibit 1, February 2016 Critical Area Overview.

Additionally, Mercer Island's critical area ordinance is out of date and needs updated as noted by City Attorney Kari Sand.

G. Reduction in Buffer Area

Per MICC 19.07.080(c)(2), a critical area study is necessary to reduce the size of a buffer zone. In addition, the code official must determine that:

1. A smaller area is adequate to protect the wetland functions;
2. The impacts will be mitigated consistent with MICC 19.07.070(B)(2); AND
3. The proposal will result in no net loss of wetland and buffer functions. MICC 19.07.080(c)(2).

To date, there is no critical area study and the above three separate elements have not been satisfied. More specifically, there is no showing of zero net loss of buffer function. It strains scientific credulity to believe that building on top of the current buffer will not result in reduction of buffer function.

H. Supplemental SEPA sheet is nonresponsive

The stock answer "The proposal is not likely to cause impacts beyond the project covered in the SEPA checklist because the language of the Text Amendment is very narrow and highly unlikely to result in other project actions." is not responsive to questions 1, 2, 3, 4, 5, and 6. This answer further supports the spot zoning argument above.

I. GMA

MICA fails to address the Growth Management Act ("GMA") requirement that the proposed text amendment is consistent with and implements Mercer Island's comprehensive plan. *See, e.g.*, RCW 36.70A.040.

MICA fails to address GMA concurrency requirements. *See, e.g.*, 36.70A.020 and RCW 36.70A.070.