

RESPONSE

TO THE MICA SEPA CHECKLIST ATTACHMENT Q

AS FILED WITH THE CITY OF MERCER ISLAND

ON JANUARY 18, 2017

Responses to Attachment Q – MICA Response to Public Comments Received

SECTION A – BACKGROUND

A.3 Concerns regarding City Process

A.4 Non-profit – Government cooperation

The MICA response attempts to wrap itself in the veil of a “public institution”, but disregards the many safeguards that the public enjoys with a true, fully-vetted government-sponsored entity including public disclosure laws, etc. Indeed, the proposed zoning text amendment would allow a privately-held facility like MICA to enjoy full control over the proposed leased property in Mercerdale Park over an 80-year lease period.

In order to fully accept the SEPA application as complete, the City needs to ask MICA to more fully explain their business plan as it relates to usage. As just one example, does “gathering and meeting spaces” imply that for-profit corporate events, concerts, etc. would be able to enjoy the many benefits the City is conveying to the MICA-owned facility? Or perhaps, put in the negative, what does MICA not intend its facility for?

While this may not directly be a SEPA issue for the MICA application, the City needs to fully assess and understand the impact on its own, existing Community Center and the services (and revenues) provided therein.

A.5 Relationship to Town Center

The MICA response suggests that it is ready to play “fast and loose” with the intent of City regulations. Rather than indicate that it does intend to live within the spirit of the Town Center regulations, it states it is not required to comply. A good citizen that is directly across the street would (or should) have stated that they intend to comply on a voluntary basis.

In order to fully accept the SEPA application as complete, the City needs to ask MICA to more fully explain what Town Center regulations it does or does not intend to comply with. A further non-response should be considered prima facie evidence that MICA will not work with the City unless compelled by law or regulation.

A.7 The Comprehensive Plan: arts and culture and community vision

The MICA response entails a biased view that attempts to minimize the takeover of the City’s only usable Town Center park and open space. It does not acknowledge that other fully acceptable

locations have been identified and that the proposed location has many viewed obstacles and objections to completion. Furthermore, there is no data provided to support the notion that there is a current or expected lack of space for art and cultural activities. For example, one of the five identified user groups, the Visual Arts League, plans to use one room in the proposed 34,000 square foot building for their monthly meetings. Moreover, the current Mercer Island High School performing arts center appears to be grossly underutilized.

In order to fully accept the SEPA application as complete, the City needs to ask MICA to fully demonstrate and document the NEED for art and cultural activities to ensure that the size and the scale of the facility meet the need.

A.8 Site Selection Process

The MICA response reviews the history of events that led to the selection of the Mercerdale Park site as the best location. However, MICA dismisses the acquisition of private land as infeasible due to cost. However, numerous other arts organizations have been able to overcome that issue, and more importantly, there has never been a serious discussion about the acquisition of private land with the community. Indeed, already one community member has publically expressed a willingness to provide a seven-figure financial pledge towards such an acquisition.

In order to fully accept the SEPA application as complete, the City needs to ask MICA to fully demonstrate why moving to a privately-owned site, and possibly designing a smaller, less costly structure, would not meet the Island's performing arts needs.

SECTION B: ENVIRONMENTAL CONCERNS

B.0 Environmental Stewardship

The MICA response fails to fully inform that the facility's size and scale will not dramatically alter the atmosphere, environmental integrity, and usage of the only remaining park in downtown Mercer Island.

B.1 Geologic Conditions

MICA's response refers to various studies and analysis done by their consultants with the conclusion that "a landslide hazard does not exist on the MICA site."

In order to fully accept the SEPA application as complete, and to minimize the City's liability of that conclusion, the City needs to ask MICA to obtain a preliminary binder or letter of coverage from a fully licensed and bonded Washington state insurance company that covers the landslide hazard. (Even if the City as the property owner desires to self-insure, our City Councilmembers need to understand the implicit (and possibly explicit) cost of placing a structure of that size and capacity in that location.)

B.1.2 Erosion

B.1.3 Seismic Design

MICA states that the proposed facility will meet the current building code requirements which are reasonably set forth to minimize the loss of life and damage to the structure.

In order to fully accept the SEPA application as complete, and to minimize the City's liability, the City needs to ask MICA to obtain a preliminary binder or letter of coverage from a fully licensed and bonded Washington state insurance company that covers the earthquake hazard. (Even if the City approves that its tenant, MICA, does not need to obtain earthquake insurance (not recommended), the City should require sufficient reserves or that a letter of credit be obtained to ensure the implicit (and possibly explicit) cost of placing a structure of that size and capacity in that location.)

B.2 Air

B.3 Water

B.3.1 Wetlands

B.3.2 Stormwater

MICA readily acknowledges the challenges of building on a hillside and the need to introduce swales, catch basin and an underground, overflow retention vault.

In order to fully accept the SEPA application as complete, and to minimize the City's liability, the City needs to ask MICA about what safety measures will be taken in order to absolutely prevent individuals, especially children, from entering the open water retention areas.

B.3.2 Impervious Surface

MICA states it desires to lease a portion of the Mercedale Field (parcel 1224049068) which is 12.26 acres, not the full Park of 30.9 acres (which includes a separate parcel that is primarily the large hillside area west of the Field). However, there is a much greater area of impervious surface that MICA plans to introduce outside the lease boundary area (e.g., newly proposed paved fire lane, among others). In addition, all building run-off will be directed to non-lease areas which means that the lease's impervious area is effectively at 100%.

In order to fully accept the SEPA application as complete, the City needs to ask MICA to compute the exact and full nature of impervious surface necessary for the MICA facility to be completed – both within and outside the lease boundary.

B.4 Plants

B.5 Animals

B.6 Energy and Natural Resources

B.7 Environmental Health

B.8 Land Use

B.8.1 Lease Boundary

The proposed lease boundary (as shown in Attachment A – Survey/Proposed Lease Boundary) and proposed building footprint (as shown in Attachment B – Aerial/Proposed Building Footprint) infringes upon the right-of-way of S.E. 32nd Street west of 77th Avenue S.E. That right-of-way may in fact prove to be needed for future extension of S.E. 32nd Street west to 76th Avenue S,E, to mitigate the traffic problems being created by the I-90 mobility issues, especially the loss of SOV access to I-90 via Island Crest Way. The City has wisely retained this right-of-way to allow for the possibility that it will be needed for future road construction. Vacating this right-of-way would deny the City the use of this land in perpetuity.

In order to fully accept the SEPA application as complete, the City needs to ask MICA to address the issue of street vacation (see MICC.19.09.070) and ask the City Council, as the property owner, to so petition for same so that the proper procedure is followed and due process is allowed to take place to insure that the public interest is best served by the vacation.

B.8.2 Zoning

The proposed text amendment has several exemptions (minimum setbacks, height limit and parking standards) stated in order for the proposed “public” facility to operate in a park. Let’s be clear that MICA is a non-public, non-governmental organization that purports to have a public purpose. However, unlike City government or City schools which are ultimately controlled by citizens through the public voting process, that is not the case with MICA. In some respects, it’s no different than if the French-American School wanted to relocate to public property.

In addition, MICA cites a recent School District amendment as an example of not receiving special privilege. The difference is that the School District is a public sector, governmental body while MICA is not a public entity, but rather a private non-public group that seeks a very specific, yet quite expansive, zoning exception. It is unclear why a private group should be granted such a zoning exception when it is extremely doubtful that a similar exception would be granted to other private groups.

Furthermore, in this section, MICA states this is a “transitional zone” located next to the Town Center that would allow such a use. However, in other sections of this response document, MICA fervently denies that MICA is in the Town Center. We would also note that many, many citizens including some City Councilmembers, are getting upset about the City’s almost automatic granting of code requests, and this text amendment is just another example of this behavior that is currently being widely criticized.

In order to fully accept the SEPA application as complete, the City needs to ask MICA to change the title to either “private” or “non-public” facilities and eliminate the setback exception/variance waiver, and also to provide more specificity with regard to the parking plan and not “kick the can” down the road by stating we’ll do a study.

B.8.3 Growth Management Act Compliance

The MICA proposal states that it does not change the Urban Growth boundary. With regard to concurrency, the MICA project is in an area already served by utilities and other city services.

However, concurrency requirements apply on each and every new development and certainly apply to the MICA project. The analysis is whether the new development will cause a decline in the level of service. Indeed, the Growth Management Act at RCW 36.70A.070 provides that the City of Mercer Island must:

*prohibit **development** approval if the **development** causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the **development**.*

In view of clear and unequivocal mandates of RCW 36.70A.070, it is deceptive for MICA to represent that “With regard to concurrency, the MICA project is in an area already served by utilities and other city services.” The “MICA project” is new development that is subject to RCW 36.70A.070.

In order to fully accept the SEPA application as complete, the City needs to ask MICA to comply fully with RCW 36.70A.070, and provide evidence that it does.

B.8.4 Platting

MICC.19.16.010 clearly states the conditions necessary to create a “lot” that is synonymous with the proposed lease area when the subject area is larger than four (4) acres.

In order to fully accept the SEPA application as complete, the City needs to ask MICA to submit a long plat application as set forth in MICC.19.16.010. Indeed, back in September, we understand that City staff came to that conclusion so there should be no uncertainty on this issue.

B9 Housing

B.10 Aesthetics

B.10.1 Design

B.10.2 Views

B.10.3 Building Height

MICA has presented conflicting evidence as to the height of the building. In earlier reviews, the roof of tallest portion of the building is 35 feet above grade at the entry, which is basically where the dirt of the ground is now, just south of the asphalt. This is the scale that most citizens will relate to.

In order to fully accept the SEPA application as complete, the City needs to ask MICA to fully clarify the building height from both the front and the back.

B.11 Lighting and Glare

B.12 Recreation

B.12.1 Recreational Uses

MICA insists that once its facility is complete that all current park uses will be continued. In a very narrow sense that it may true, but for many, the outline of a massive structure whose façade has a comparable length and height to the new Northwoods Elementary School façade facing S.E. 40th Street will irrevocably change the charm and intimacy of the park. Anybody, for example, playing catch in the park will have to be concerned about hitting the building. Or concurrently, all walkers will now be walking on a virtual building sidewalk in front of the building, rather than walking adjacent to greenery, wildflowers, and wooded landscape.

In order to fully accept the SEPA application as complete, the City needs to ask MICA to build temporary façades facing east towards the park and north towards the pathway to the hillside stairs that outline the length, and height, and depth of the building so citizens, City staff and Councilmembers may get a true appreciation of the mass of the building in the Park. (This type of requirement is common in California coastal areas.)

Furthermore, MICA states that “public restrooms” will support community gatherings, but it does not state a more comprehensive term of park users.

In order to fully accept the SEPA application as complete, the City needs to ask MICA to provide greater detail as to how the facility will be made available to park users to include public bathrooms and any other amenities.

B.12.2 Pedestrian Paths

MICA does not clearly state that the west side of the perimeter path will actually be a 20’ wide paved fire lane. Also, it states that the First Hill trail will be restored, but fails to note that the trail will now be sandwiched between large buildings – clearly a diminution in one’s experience.

B.12.3 Bicentennial Park

The MICA project carelessly and disrespectfully disregards the planning, fundraising, and physical construction of thousands of Islanders who worked to design, fund, and build a community gathering place in our City to celebrate our nation’s 200th birthday.

The City should require that MICA provide financing to move Bicentennial Park to another suitable location, and not just the flagpole.

B.13 Historical

B.14 Transportation

B.14.1 Parking

MICA states that dedicated on-site parking within Mercedale Park is not desirable or feasible to build underground. Yet, practically all recently built and new large-scale developments like MICA build underground parking because that is the only practical way to meet City code requirements. Why is MICA different and why does MICA require a text amendment exception (see section B.8.2)?

Furthermore, MICA sets forth a number of possibilities that may include vacant on-street parking spaces, the potential re-design of 77th Ave. S.E. to create more on-street parking, and the MI Youth and Family Thrift Shop lot, when use of that lot may crowd out both customers of the Thrift Shop and other park users. MICA also encourages other modes of travel citing, for example bus service to Mercer Island. However, a review of the bus schedules and most likely facility usage (late afternoon and evening) reveals a very narrow correlation of connectivity suggesting it's highly unlikely there will be many users of the facility commuting by bus. Similarly, the percentage of users walking is expected to be quite low. Indeed, certain comments by MICA suggest they are depending to some extent on off-Island usage which would again suggest SOV/HOV transportation.

In order to fully accept the SEPA application as complete, the City needs to ask MICA to update its parking plan with more specificity and not a number of “what ifs”. The current state of the “plan” is more wishful thinking that could become more problematic for the City and its citizens later on. For example, what happens if 77th Ave. S.E. is not redesigned as projected due to unknown and unintended consequences of I-90 mobility and changing traffic patterns.

B.14.2 Transportation Impact Analysis

The Transpo Study (field work done in April, 2016) submitted by MICA continues to underestimate traffic congestion. Indeed, back in April, 2016 one large retail location (the old Albertson's grocery store was temporarily vacant) on 77th Ave. S.E. and the Pagliacci Pizza location on S.E. 32nd St. was also not operating. Both locations are now up and running, and appear to be doing quite well and generating significant amounts of more traffic primarily during the times. Also, the analysis uses a non-Town Center traffic growth rate when in fact the arterial streets that are proposed for use by MICA patrons are in the Town Center

In order to fully accept the SEPA application as complete, the City needs to ask MICA to revise their impact on the volume of traffic taking into consideration the City's own traffic study that seeks to analyze and incorporate the I-90 mobility issues, the pending level of service, the added congestion already in existence from 2016 building developments and growth, and an appropriate future traffic growth rate.

B.14.3 Parking Management Plan

As noted by MICA, the principal field work was completed in April, 2016 when one of the largest retail stores, the former Albertson's grocery store site, was vacant, pending the re-opening of the site as a New Seasons grocery store in the fall, 2016. Thus, the MICA study materially overestimated the number of vacant on-street parking spots. Indeed, recent field work in January, 2017 confirms that assertion!

In addition, the MICA parking study does not consider the impact on the residential Mercerdale neighborhood directly to the south of the Park and the proposed MICA facility. Indeed, it's not unreasonable to assume that the neighborhood will be affected by traffic and congestion because it is a shorter distance from the park to the facility than many other prospective parking locations that were noted. (The Mercer Island Thrift Shop parking lot was noted as one source of off-street parking, yet that lot is already heavily used not only by Thrift Shop patrons, but also by park users.)

In order to fully accept the SEPA application as complete, the City needs to ask MICA to redo and update its parking study to take into account the opening of New Seasons Market, I-90 mobility issues, the impact on the Mercerdale neighborhood, and other issues noted here.

B.14.4 Parking Arrangements

MICA expects the majority of its parking to come from off-street parking spots, and it alleges that it will be able to obtain leasing agreements with some of these property owners. CCMIP has independently contacted many of these potential locations, and their owners have either flat out rejected the notion of leasing space or are not aware of the issue.

In order to fully accept the SEPA application as complete, the City needs to ask MICA to obtain concrete expressions of interest from property owners that are willing to dedicate parking to MICA. Without such assurances in hand, the MICA SEPA application fails on the merits of leaving too large an issue unresolved and uncertain as to its outcome.

B.14.5 Pick-up and Drop Off

MICA expects safe drop-off and pick-up areas to be designed. With the recent pedestrian accidents in the vicinity, the expected increase in traffic from I-90 mobility issues and the additional MICA traffic, it is not clear that this objective has been fully vetted.

In order to fully accept the SEPA application as complete, the City needs to ask MICA to illustrate specifically how the safe drop-off and pick-up areas will be designed, how many cars the safe drop-off and pick-up area can accommodate at one time, how and when the pick-up and drop off areas will be monitored by MICA staff to assure the safety of students being dropped off or picked up, and how traffic flowing on 77th Avenue SE and SE 32nd Street will move without being impacted by MICA users picking up or dropping off students.

B.14.6 Service Access

In order to fully accept the SEPA application as complete, the City needs to ask MICA to comment on what mitigations are necessary to promote children and pedestrian safety as the loading dock access is right in the middle of the where most patrons will enter the property.

B.15 Public Services

The City's public safety units including police and fire need to opine on the necessity and safety of the how the building and site are being laid out and designed. For example, one immediate reaction is why the fire lane is coming in off of S.E. 34th Street as opposed to the much closer S.E. 32nd Street. Any logical review would suggest that one would want the fire department access as close as possible. Moreover, designing the fire lane to intersect with S.E. 34th Street requires much more impervious surface to be located in the park (which goes against the basic aesthetics of a park).

Similarly, the police should opine on the safety aspects of the drop-off and pick-up areas.

In order to fully accept the SEPA application as complete, the City needs to ask MICA for their specific rationale for locating the fire lane as depicted, and for the ways they intend to address safety and other related issues. Then the City needs to ask MICA to ask the police and fire chiefs if they accept the MICA emergency access plan as the very safest and best way to reach the facility in case of medical or fire emergencies, and if so, then MICA needs to ask that the Police and Fire chiefs confirm in writing their acceptance of the MICA emergency plans as the very best and safest plans to prevent children's injuries and loss of life in the event of unexpected emergencies.

In addition, MICA is silent on the question of its financial viability and the public services it would require to remain open if it ran into financial difficulty (commonly referred to as contingency planning or disaster planning). For example, a very simplistic budget that MICA has shared suggests that it would cost \$800,000/year to operate. Revenue of approximately \$500,000 would be derived from rental and service activities and about \$300,000 from donations. With no operating reserves proposed, it is not unreasonable to assume that the City, as landlord, would need to step in and allocate funds from the City budget to ensure the facility doesn't go dark.

In order to fully accept the SEPA application as complete, the City needs to ask MICA for prudent contingency plans of how it would operate if there are revenue shortfalls.

B.16 Utilities

Other