

**From:** [Dan Thompson](#)  
**To:** [Deb Estrada](#)  
**Subject:** Re: Public Comment/Notice of Public Hearing – File No. SUB19-002/ (SEP19-005) January 24, 2024/  
**Date:** Tuesday, January 23, 2024 3:42:08 PM

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Dear Deb, please find below my written comments for the open hearing on January 24, 2024. Could you please confirm receipt, and the comments will be made part of the record and forwarded to HE Galt. Thank you.

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Dear Hearing Examiner Galt,

Please consider these my public comments and testimony requesting that the hearing examiner **reject** the city planning department's recommendation for approval for a 14-plat subdivision.

### 1. Identity of Citizen and Standing.

I am a lawyer and have been a resident of Mercer Island since 1970. I was actively involved in this application from the beginning. I own property at 7265 and 7230 N. Mercer Way, which is less than one mile from the subject property, and regularly visit or drive by the neighborhood, and when younger my kids regularly played on the property. A 14-plat subdivision without adequate onsite open space or surrounding park space, absence of an internal access road accessing all plats, and the removal of 36/37 trees at the preliminary approval stage, will injure me and my property by crowding existing publicly owned open and park space, creating traffic on residential streets, and reducing tree canopy.

### 2. Link to City Recommendation.

[Weekly Permit Bulletin - Special Edition - 12-13-2023 | MuniDocs | Mercer Island, WA | Municode Library](#)

[MIEPLAN.MERCERGOV.ORG - Contents of the /public/SUB19-002/ folder](#)

### 3. Link to Plat Map.

[12. pin2174502425-supp-platmap.pdf \(mercergov.org\)](#)

### 4. Link To My Public Comments Dated May 8, 2019 and March 16, 2023.

[thompson - public comments from dan thompson and mark coen on sub19-002\\_boys and girls property subdivision.pdf \(mercergov.org\)](#)

[Microsoft Outlook - Memo Style \(mercergov.org\)](#)

### 5. Summary of Objections To Approval Of Recommendation For Preliminary Long Plat Approval.

- A. Lack of Adequate Open Space, Park space, And Recreation space Pursuant To R.C.W 58.17.110(2) and MICC 19.08.020.
- B. The Internal Access Road Must Serve All lots.
- C. Any Tree Removal Should Be Reserved Until Actual Building Permit Applications Are Submitted.

### 6. Summary Of Argument.

The central issue in this project has been the same from the beginning: the applicant wants 14 plats, but to create the necessary onsite open and recreation space and an internal access road only 13 plats are possible.

Former City Planning Dir. Evan Maxim required 13 plats to create adequate open space and internal access road. However, at the first public meeting the applicant surprised Mr. Maxim and unveiled a 14-plat subdivision that omitted any internal access road and had all 14 plats directly accessing the surrounding narrow residential street, but with some open space. The citizens were very unhappy at Mr. Maxim for being misled, so Mr. Maxim decided the applicant would have to file a SEPA application to demolish the old clubhouse. Mr. Maxim later left his job at the city.

My public comments in 2019 and 2023, and at the public meeting, addressed these deficiencies. As the City's recommendation notes, based on my objections an internal access road **accessing half the plats** was included in the current design, **except to maintain 14 plats any onsite open space was eliminated from the design.**

*"The Applicant, in response to the public comments received during the SEPA appeal period (Exhibit 12), which ended April 5, 2023, with no appeals filed of the determination of nonsignificance, revised the proposed development (Exhibit 5) by adding an internal shared driveway to serve lots 3, 4, 11, 12, 13, and 14, added a shared driveway for lots 1 and 2, and provided a passive open space easement along West Mercer Way, SE 28th Street, and SE 30th Street that will be planted with native vegetation".*

## **7. History of Property.**

This project has a sad history. The property was originally granted to the Boys and Girls Club by the Mercer Island School District in 1984 to create open space and recreation in this old part of Mercer Island that has very little of either.

During the great recession the Boys and Girls Club had to sell the property. The new owner of the property -- an island resident named O'Brien-- promised to build ballfields on the site for at least 10 years. Based on this promise, the city built PEAK, [The PEAK Boys & Girls Club of Mercer Island — Weinstein A+U](#) which the Boys and Girls Club contributed around \$4 million towards, the city \$1 million, the school district the property, and citizens \$1 million, which further congested this neighborhood, when the city could have bought the Boys and Girls Club property for the same amount. Unfortunately, our prior council never got anything in writing to enforce O'Brien's promises and the owner reneged on his promise and never built any ballfields.

To understand the citizen opposition to this subdivision it is important to understand the betrayal the citizens feel by the property owner who promised when he purchased the property in 2008 to use it for ballfields for kids.

Here is a *Mercer Island Reporter* article from 2008 quoting the owner and applicant O'Brien. [East Seattle School is sold | Mercer Island Reporter \(mi-reporter.com\)](#)

*"King County property records show the East Seattle property and current facility have an appraised value of \$2.6 million. O'Brien said he plans to keep the existing gym, which was built in 1990, and spend about an additional \$2 million for developing fields for Little League and T-ball.*

*"The grass may be replaced with artificial turf or maintained. O'Brien said that this decision has not yet been made.*

*"When we are done, it will be a great facility for kids and families," the Islander said.*

*"Once finished, the new fields promised by O'Brien will also include a children's play park. O'Brien said he wanted the property so his son and other Islander youth athletes would have more places to play.*

*"I was looking for property for a basketball court on the Island some years ago," he said. "I happened to have some conversations about raising funds for PEAK when I heard the Boys & Girls Club was considering selling the land to developers.*

*"When I heard the facility was going to be sold, I thought, 'Oh, great. That's just one less field on the Island.' If we lost that facility, then there's nothing left on this side of the Island. Kids are always playing out there."*

*"O'Brien also said that Mercer Island needs more play fields for youth sports."*

*"My son is on a traveling baseball team and a traveling football team, and we go to all these other communities that have a lot of great parks.*

*"There's not enough facilities here and the amount of parks on Mercer Island for kids are just not proportionate to the values of the homes," he said.*

*"O'Brien is a former professional football player who played defensive back for the University of California at Berkeley while in college.*

*"His plans for the property include demolishing the old school building, which opened its doors to Islander students in 1914 and closed in the 1980s. In 1984, the Mercer Island School District donated the land to the Boys and Girls Club".*

## **8. Legal Analysis.**

The city's two key findings are:

*"Staff Finding: The proposed development makes a provision for open spaces in the form of a private easement for passive open space (Exhibit 5). The MICC does not provide a numerical standard with respect to the level of appropriateness as to the provision of open space".*

*"Staff Finding: By providing walking access along the West Mercer Way frontage to the Secret Park, the Applicant provides access to existing open space and recreation facilities sufficient to serve the proposed subdivision".*

(Pages 9-10).

The applicant's "open space" is based on a tiny existing city park and a tiny triangle of property in the top corner of the property which sits in the setback anyway. Because the planner claims that, *"The MICC does not provide a numerical standard with respect to the level of appropriateness as to the provision of open space"* the planner interprets this to mean the planner has discretion to require essentially zero onsite open space. To call a path to an existing city park "open space" is inconsistent with the requirements of R.C.W 58.17.110 and MICC 19.08.020 and sets a terrible precedent that renders this statute and ordinance meaningless.

While it is true MICC 19.08 et seq. does not "provide a numerical standard", and case law on the amount of open/park/recreational space that is required to support approval does not set forth numerical percentages, both R.C.W 58.17.110 and MICC 19.08.020 specifically condition approval upon adequate provisions for open space, park space, and recreation, which Mr. O'Brien admitted in 2008 were in short supply in this part of Mercer Island when purchasing the property.

MICC 19.08.020 states:

"D. Preliminary application procedure.

"1. Findings of fact. All preliminary approvals or denials of long subdivisions or short subdivisions shall be accompanied by written findings of fact demonstrating that:

"a. The project does or does not make appropriate provisions for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school;

"b. The public use and interest will or will not be served by approval of the project; and

"c. The project does or does not conform to applicable zoning and land use".

R.C.W. 58.17.110 is essentially identical:

"(2) A proposed subdivision and dedication shall not be approved unless the city, town, or county legislative body makes written findings that: (a) Appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and (b) the public use and interest will be served by the platting of such subdivision and dedication. If it finds that the proposed subdivision and dedication make such appropriate provisions and that the public use and interest will be served, then the legislative body shall approve the proposed subdivision and dedication".

The key to determining the appropriate amount of open/park/recreational space is therefore city council precedent.

## **9. City Council Precedent: The Coval Long Plat.**

This exact same issue was addressed by the council in 2014 over the Coval long subdivision, in which the developer wanted to create 18 lots but the council reduced that to 16 to provide for open space and better surrounding paths for kids walking to school. Here is an article dated Feb. 25, 2014 from the Reporter. [Council rejects Coval development, with conditions | Mercer Island Reporter \(mi-reporter.com\)](http://www.mercerisland.com/news/council-rejects-coval-development-with-conditions). Mayor Bruce Bassett is quoted as saying during the council hearing on Coval:

"What occurs to me as I think about this piece of property...[nobody has said] don't develop it. Let's just be clever or smart about how to do it," said Mayor Bruce Bassett, giving as an example a development built around the existing indoor pool."

The 18 plat subdivision was rejected and remanded to the planning commission to revise the long plat to create meaningful open space and walking paths along the perimeter of the property. Here is a link to the council agenda packet from July 21, 2014 when the issue returned to the council, now with 16 lots as opposed to 18. [https://www.mercerisland.gov/sites/default/files/fileattachments/city\\_council/meeting/packets/8071/cc20140721\\_packet\\_regular.pdf](https://www.mercerisland.gov/sites/default/files/fileattachments/city_council/meeting/packets/8071/cc20140721_packet_regular.pdf) (agenda packet and staff report); You can find the planning commission's revised findings in ex. 1 at page 15 noting that reducing the number of lots from 18 to 16 created the necessary open space.

In the BGC subdivision the planning dept. never even mentions the Coval hearing, which was groundbreaking. As noted in the article in the Reporter:

"I haven't seen so much turmoil over a project in 40 years," said Robert Thorpe long-time Mercer Island resident after the council's decision. Thorpe worked on the 1968-69 comprehensive plan. "Thank you for your wisdom and service."

"The project so hit a nerve among Islanders that before opening the closed public hearing, councilmembers recounted the many times they'd been approached by neighbors in the grocery store and at community events, decrying it as out of sync with the rest of the city. The Coval house has been featured on HGTV's "Million Dollar Homes" and has its own website. Some regard it as an iconic piece of Island history."

According to the planner in this hearing, "The MICC does not provide a numerical standard with respect to the level of appropriateness as to the provision of open space", and so therefore according to the planner he has discretion to require no open space. But this is directly contrary to the Coval precedent. Just because the MI code does not provide a specific numerical standard for open space -- and no local or state law does (and we are talking about 7% of total lot area if one of the 14 lots is turned into open space) doesn't mean a planner has discretion to require NO open space, or ignore the direct precedent in Coval that required **adequate** open space set asides as part of a long plat, BECAUSE THAT IS IN THE STATUTE ITSELF. Claiming a tiny triangle of property within the setback to a tiny public park in an area without adequate open space or parks is not providing adequate open space, park space, or recreation.

#### **10. The Internal Access Road Must Serve All Lots.**

As noted above, the applicant's original design was disapproved because it had no internal access road so all 14 lots accessed the surrounding narrow residential streets directly, creating a hazard for pedestrians since there are no sidewalks, and traffic on these residential streets.

The current design includes half an access road, but no open space, simply to maintain 14 lots.

The internal access road should serve all lots. If adequate provision is required for open space there will be space for 13 lots, and an internal access road that serves all lots which will be safer for the neighborhood pedestrians, bicyclists, children, and other traffic. It made no sense to have a 14 lot long plat without any internal access road, and it makes no sense to have a 14 lot long plat with an internal access road that serves only half the lots so the applicant can maintain his goal of 14 lots.

#### **11. Any Tree Removal Should Be Reserved Until The Actual Building Permit Applications Are Submitted. Approving Removal Of 36/37 Trees At The Preliminary Approval Stage Is Contrary To The Mercer Island Tree Ordinance Regulating Tree Removal During Development.**

The city's recommendation is in error in accepting the claim 16/17 regulated trees that have existed on the site for decades are suddenly diseased. A regulated tree is a tree with a diameter of 10" or greater. The original reason the applicant's arborist gave in 2019 for removing 36/37 trees in the prior application was they were leaning against the building WHICH THE OWNER HAS TORN DOWN, or would be disturbed by removing the foundation. Now the applicant claims 16/17 regulated trees are suddenly diseased and must be removed, along with 21 other trees with diameters over 20", even though the applicant's arborist never stated this in 2019.

*"Staff Finding: According to the tree replacement table in Exhibit 5, the subject property contains 17 regulated trees, with one tree being viable and 16 non-viable. Tree 2 is regulated and viable and will remain. 100 percent of regulated viable trees will be retained and*

*protected. The Applicant proposes to retain the one viable tree and remove the non-viable trees. Pursuant to the tree replacement table in Exhibit 5, 26 trees are required to be replanted. A total of 37 trees are proposed to be planted.*

(Page 16).

Some of us spent years fighting for a tree ordinance that was adopted in 2017 along with the major rewrite of the Residential Development Standards, that contained one key provision: a developer when building a house could not remove every tree on the lot because it was easier or cheaper, and each tree would be "regulated", which meant subject to permitting and inspection before removal during development.

Now, even BEFORE any building permit applications have been filed for each plat the city is giving the developer a green light to remove 36/37 trees from the entire site without any city review, exactly what we fought to prevent, and what the code prohibits.

## **12. Conclusion.**

The mistake the city's recommendation makes – and former Planning Dir. Evan Maxim specifically rejected – was to begin with the assumption the applicant should obtain 14 plats and *then* interpret R.C.W 58.17.110 and MICC 19.08.020 to allow that, despite the specific precedent in the Coval Long Plat. The city's recommendation creates a precedent that renders this statute and ordinance meaningless

The application for preliminary approval should be **rejected** and this project remanded to the city with directions to:

- A. Provide adequate open/park/recreational space onsite consistent with the findings in Coval.
- B. Extend the internal access road to serve all lots.
- C. Reserve until actual building permit applications are filed for each plat the decision whether to allow removal of any tree under the MICC and tree ordinance.

Thank you.