

Deb Estrada

From: Andrea Larson
Sent: Tuesday, November 14, 2023 8:49 AM
To: Alison Van Gorp; Deb Estrada
Subject: FW: Stroum JCC Rezone Request

Follow Up Flag: Follow up
Flag Status: Flagged

Comment received to Planning Commission mailbox

[Andrea Larson](#)

City Clerk
City of Mercer Island
206.275.7793 | mercerisland.gov

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From: Noreen King <noreen.king9@gmail.com>
Sent: Monday, November 13, 2023 2:22 PM
To: Planning Commission <Planning.Commission@mercergov.org>
Subject: Stroum JCC Rezone Request

Dear Mercer Island Planning Commission,

Please recommend that the Mercer Island City Council places the Stroum Jewish Community Center's request to rezone their large residential land parcels to Commercial Office on the docket, with action taken in 2024.

For over 54 years, the SJCC has served Mercer Island residents with programs for all ages and all are welcome. However, this building is old, is not ADA compliant, needs a working HVAC system and it features a swimming pool that is long past its usefulness.

It's time for a substantive, accessible, and sustainable redevelopment, yet the current residential zoning makes this nearly impossible. A rezone to Commercial Office property would significantly facilitate this remodel while honoring the neighborhood integrity and specific interests of the proximate neighbors.

For over 54 years, the SJCC has operated as a vital community asset. It would be a loss for the broad Mercer Island community to not support the modernization of this facility. Further, this request affects the SJCC ONLY, and will not have any impact on any other facility or institution on the Island.

The time to support the future of the Stroum Jewish Community Center on Mercer Island is now.

Thank you for your support.

Noreen King

Deb Estrada

From: Andrea Larson
Sent: Tuesday, November 14, 2023 8:50 AM
To: Alison Van Gorp; Deb Estrada
Subject: FW: Stroum JCC Rezone Request

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From: Laura Selby <lauraselby@comcast.net>
Sent: Monday, November 13, 2023 4:22 PM
To: Planning Commission <Planning.Commission@mercergov.org>
Subject: Stroum JCC Rezone Request

Dear Mercer Island Planning Commission,

I was an early childhood educator at the Stroum JCC for 22 years and know the importance of this institution to our community. The school has touched literally thousands of lives since it began in 1967. But the building is beyond its years and needs to be upgraded in many ways.

I am asking you to allow the J to be rezoned from residential to commercial status. The time is now!

Thank you for your support.

Laura Selby

16 Evergreen Lane, Mercer Island

Deb Estrada

From: Andrea Larson
Sent: Tuesday, November 14, 2023 8:51 AM
To: Alison Van Gorp; Deb Estrada
Subject: FW: Stroum JCC Rezone Request

Follow Up Flag: Follow up
Flag Status: Flagged

Comment received to Planning Commission mailbox

Andrea Larson
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-----Original Message-----

From: Heather Kramm <hkramm@yahoo.com>
Sent: Monday, November 13, 2023 8:20 PM
To: Planning Commission <Planning.Commission@mercergov.org>
Subject: Stroum JCC Rezone Request

Dear Mercer Island Planning Commission,

Please recommend that the Mercer Island City Council places the Stroum Jewish Community Center's request to rezone their large residential land parcels to Commercial Office on the docket, with action taken in 2024.

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The time to support the future of the Stroum Jewish Community Center on Mercer Island is now.

Thank you for your support.

Heather kramm

Sent from my iPhone

Deb Estrada

From: Andrea Larson
Sent: Tuesday, November 14, 2023 8:51 AM
To: Alison Van Gorp; Deb Estrada
Subject: FW: Stroum JCC Rezone Request

Follow Up Flag: Follow up
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From: Kerry Donner <kerrysdonner@gmail.com>
Sent: Tuesday, November 14, 2023 1:24 AM
To: Planning Commission <Planning.Commission@mercergov.org>
Subject: Stroum JCC Rezone Request

Dear Mercer Island Planning Commission,

Please recommend that the Mercer Island City Council places the Stroum Jewish Community Center's request to rezone their large residential land parcels to Commercial Office on the docket, with action taken in 2024.

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The time to support the future of the Stroum Jewish Community Center on Mercer Island is now.

Thank you for your support.

Deb Estrada

From: Andrea Larson
Sent: Tuesday, November 14, 2023 11:14 AM
To: Alison Van Gorp; Deb Estrada
Subject: FW: Rezone the "J"

Follow Up Flag: Follow up
Flag Status: Flagged

Comment received to Planning Commission mailbox

[Andrea Larson](#)

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From: E Jimenez <sra.ejimenez@gmail.com>
Sent: Tuesday, November 14, 2023 8:56 AM
To: Planning Commission <Planning.Commission@mercergov.org>
Subject: Rezone the "J"

Dear Mercer Island Planning Commission,

Please recommend that the Mercer Island City Council places the Stroum Jewish Community Center's request to rezone their large residential land parcels to Commercial Office on the docket, with action taken in 2024.

For over 54 years, the SJCC has served Mercer Island residents with programs for all ages and all are welcome. However, this building is old, is not ADA compliant, needs a working HVAC system and it features a swimming pool that is long past its usefulness.

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The time to support the future of the Stroum Jewish Community Center on Mercer Island is now.

Thank you for your support.

Evelyn Jimenez

9208 SE 33 rd Street

Mercer Island, WA 98040

(Mercer Island Resident for 30 years)

Sent from my iPhone

From: [Dan Thompson](#)
To: [Alison Van Gorp](#); [Deb Estrada](#)
Subject: Fw: Nov. 15 Planning Commission Quasi-Judicial Hearing/Planning Commission Jurisdiction/Appearance of Fairness Doctrine/Extension of Public Comments/Missing Evidence In Agenda packet
Date: Tuesday, November 14, 2023 10:30:10 AM

Dear Alison, since the record on amendment 18 will close on Nov. 15 would you please add my email below to the public comments so it can be reviewed by the council on Dec. 5.

Also could you send me the questions you plan to ask the commission to determine bias so I don't duplicate those.

Thank you.

Daniel Thompson

Thompson & Delay

Attorneys at Law

80th Avenue Professional Building

2955 80th Ave SE, Suite 202

Mercer Island, WA 98040

Phone: (206) 622-0670

Fax: (206) 622-3965

From: Dan Thompson
Sent: Monday, November 13, 2023 5:02 PM
To: Bio Park <Bio.Park@mercergov.org>
Cc: jessi.bon@mercergov.org <jessi.bon@mercergov.org>; Robert A. Medved <robertamedved@msn.com>
Subject: Nov. 15 Planning Commission Quasi-Judicial Hearing/Planning Commission Jurisdiction/Appearance of Fairness Doctrine/Extension of Public Comments/Missing Evidence In Agenda packet

Dear Bio, this email is to address the following issues:

1 THE PLANNING COMMISSION DOES NOT HAVE QUASI-JUDICIAL JURISDICTION AFTER THE RDS WAS ADOPTED EFFECTIVE OCT. 31, 2017.

The current RDS was adopted and became effective Oct. 31, 2017. It specifically eliminated the planning commission's quasi-judicial jurisdiction over permit appeals due a lack of fairness and lack of qualifications, and moved those to the hearing examiner.

MICC 19.15.010(C)(2) still refers to quasi-judicial proceedings before the planning commission, but I think that is an omission from before Oct. 31, 2017. The more specific code provision is

MICC 3.46.010 specifically referred to and linked to in 19.15.010, and it is silent on quasi-judicial jurisdiction for the planning commission.

The planning commission bylaws were just rewritten in 2022 and they are silent on quasi-judicial jurisdiction.

Quasi-judicial proceedings are governed by R.C.W. 42.36 et seq. The proceeding on Nov. 15 is not an adjudication between parties. The planning commission will not be issuing a decision but will be issuing a *recommendation*, which is not a quasi-judicial proceeding.

Therefore, I think this process that was sprung on the citizens on Thursday evening right before Veteran's Day is legally incorrect.

2 THE APPEARANCE OF FAIRNESS DOCTRINE HAS BEEN VIOLATED.

"The appearance of fairness doctrine is a rule of law requiring government decision-makers to conduct non-court hearings and proceedings in a way that is fair and unbiased in both appearance and fact. It was developed as a method of assuring that due process protections, which normally apply in courtroom settings, extend to certain types of administrative decision-making hearings, such as rezones of specific property. The doctrine attempts to bolster public confidence in fair and unbiased decision-making by making certain, in both appearance and fact, that parties to an argument receive equal treatment".

[05-11-21-GAC-Training-Packet \(piercecountywa.gov\)](#) (MRSC)

In this proceeding there are 165 form emails in support of amendment 18 and none except my own opposed (although really my comment goes to the legality of the suggested rezone). Public comments will end on Nov. 15. The city has made no effort to publicize this proceeding, and indeed the quasi-judicial nature was only announced on Thursday evening. The disparity in public comments alone raises an appearance of unfairness. Many citizens have told me they were told not to comment because comments would not go to the planning commission, **and in fact Let's Talk prohibited a citizen from posting a comment. Then the CPD published written comments on Monday.**

Although I do not think this should be a quasi-judicial proceeding it still should be fair. The period for public comments must be extended through the council's Dec. 5 meeting, or the better alternative I have suggested is the planning commission should postpone its "decision" until its next scheduled meeting on Amendment 18 to allow citizen comment, and to allow the planning commission to review and consider all the evidence. No "judge" makes a decision on the day of a bench trial, and you know that. They take it under advisement while reviewing the evidence and law.

The council can reschedule its Dec. 31, 2023 meeting it has cancelled. I am sure they don't want to do that, but the citizens should not suffer because this process was not fair.

3 THE AGENDA PACKET IS SILENT ON THE DIFFERENCE BETWEEN A LEGAL AND ILLEGAL SITE SPECIFIC REZONE.

This issue is addressed in my email dated 11-10-2023 found at comment 160 in the agenda packet. MICC 19.15.240(C)(4) specifically requires the planning commission -- especially if sitting in a quasi-judicial capacity -- and the council to find and determine that amendment 18 is not an illegal site specific rezone before considering a rezone.

The planning commission members -- and council -- do not have the education, expertise or knowledge to make that legal determination, and yet the agenda packet is devoid of not just any legal analysis, but of this issue at all.

My understanding is Bob Medved will be submitting a legal memo before Wednesday's meeting addressing this issue. His opinion is this is an illegal site specific rezone, and his opinion as a land use lawyer and expert who has prevailed in many appeals against the city will be the only legal opinion in the record, and according to the rules of the quasi-judicial process binding on the planning commission, and council which is limited to the record.

4 ADMINISTRATIVE INTERPRETATION 22-004.

I am shocked the agenda packet does not mention the history of this property and attempts to upzone the property since the council can reject putting amendment 18 on the docket for any reason, and AI 22-004 issued last year by Jeff Thomas regarding the ability of this exact CUP to obtain variances in the SFH zone from the regulatory limits based on numerous provisions of the comprehensive plan. The agenda packet is legally deficient for a quasi-judicial proceeding, especially one binding on the citizens when the regular public has been frozen out.

Freezing out the public from these decisions has never worked well in the past. The planning commission's real role is to determine public opinion since the council can decide whether to rezone or not for any reason, or for no reason at.

I think this process and amendment 18 are setting the city and council up for another community facilities rezone debacle. The public can be denied legal standing by denying them the timely right to comment through legal tricks, but they will have an opinion, and they will comment, beginning on Nextdoor which ironically councilmembers and staff cannot comment on but has 12,000 daily citizens participating.

Thank you for considering these thoughts. I strongly suggest the city manager find a way to

make this process fairer for the citizens, and some semblance of an appearance of fairness that right now looks like the fix is in.

Daniel Thompson

Thompson & Delay

Attorneys at Law

80th Avenue Professional Building

2955 80th Ave SE, Suite 202

Mercer Island, WA 98040

Phone: (206) 622-0670

Fax: (206) 622-3965

Deb Estrada

From: Andrea Larson
Sent: Tuesday, November 14, 2023 1:22 PM
To: Alison Van Gorp; Deb Estrada
Subject: FW: Support for Stroum Jewish Community Center Rezoning

Categories: PLANNING & DESIGN COMMISSION

Comment received to Planning Commission mailbox

Andrea Larson

City Clerk
City of Mercer Island
206.275.7793 | mercerisland.gov

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From: Michael Sandler <mike@sandlaw.com>
Sent: Monday, November 13, 2023 6:35 PM
To: Planning Commission <Planning.Commission@mercergov.org>
Subject: Support for Stroum Jewish Community Center Rezoning

Dear Planning Commission,

I am a Mercer Island resident for more than 35 years. I am also a member of the Stroum Jewish Community Center (SJCC) where my grandchildren attend preschool. The SJCC facilities needs substantial repair and remodeling. Its current zoning impairs this. Yet it is an essential institution on Mercer Island serving anyone, regardless of religion, who wishes to enroll in its school or become a member to use its facilities. Please, the only sensible decision here is to grant the requested rezoning.

Thank you for your consideration.

Michael Sandler
8430 SE 72nd Place
Mercer Island, WA 98040
(206) 650-3473
mike@sandlaw.com
www.sandlerpoetry.com

Deb Estrada

From: Andrea Larson
Sent: Tuesday, November 14, 2023 1:22 PM
To: Alison Van Gorp; Deb Estrada
Subject: FW: Stroum JCC Rezone Request

Categories: PLANNING & DESIGN COMMISSION

Comment received to Planning Commission mailbox

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-----Original Message-----

From: Lisi Mezistrano Wolf <lisi@lisiwolf.com>
Sent: Tuesday, November 14, 2023 12:40 PM
To: Planning Commission <Planning.Commission@mercergov.org>
Subject: Stroum JCC Rezone Request

Dear Mercer Island Planning Commission,

Please recommend that the Mercer Island City Council places the Stroum Jewish Community Center's request to rezone their large residential land parcels to Commercial Office on the docket, with action taken in 2024.

For over 54 years, the SJCC has served Mercer Island residents with programs for all ages and all are welcome. However, this building is old, is not ADA compliant, needs a working HVAC system and it features a swimming pool that is long past its usefulness.

It's time for a substantive, accessible, and sustainable redevelopment, yet the current residential zoning makes this nearly impossible. A rezone to Commercial Office property would significantly facilitate this remodel while honoring the neighborhood integrity and specific interests of the proximate neighbors.

For over 54 years, the SJCC has operated as a vital community asset. It would be a loss for the broad Mercer Island community to not support the modernization of this facility. Further, this request affects the SJCC ONLY, and will not have any impact on any other facility or institution on the Island.

The time to support the future of the Stroum Jewish Community Center on Mercer Island is now.

Thank you for your support.

Lisi Wolf

Sent from my iPhone

Deb Estrada

From: Andrea Larson
Sent: Tuesday, November 14, 2023 3:43 PM
To: Alison Van Gorp; Deb Estrada
Subject: FW: SJCC property

Comment received to Planning Commission mailbox

Andrea Larson

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From: TRACY SIGMON <tracy.sigmon@comcast.net>
Sent: Tuesday, November 14, 2023 3:25 PM
To: Planning Commission <Planning.Commission@mercergov.org>; Council <council@mercergov.org>
Subject: SJCC property

Hello:

Please support the redevelopment of this vital Mercer Island treasure by allowing a rezone from residential to Commercial Office.

I'm 53, attended preschool at the J, my children attended preschool at the J, I have been continuing to utilize the J for all these years. Its an old funky building that badly needs redevelopment. This is good for all of Mercer Island.

Thank you,
Tracy Sigmon
425.351.1332

Deb Estrada

From: Andrea Larson
Sent: Tuesday, November 14, 2023 4:10 PM
To: Alison Van Gorp; Deb Estrada
Subject: FW: SJCC

Comment received to Planning Commission mailbox

Andrea Larson

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From: Logan Alexander <mkahn81@gmail.com>
Sent: Tuesday, November 14, 2023 3:57 PM
To: Planning Commission <Planning.Commission@mercergov.org>
Subject: SJCC

Dear Mercer Island Planning Commission,

Please recommend that the Mercer Island City Council places the Stroum Jewish Community Center's request to rezone their large residential land parcels to Commercial Office on the docket, with action taken in 2024.

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The time to support the future of the Stroum Jewish Community Center on Mercer Island is now.

Thank you for your support.

Kind regards,

Michael Kahn

4205 85th Ave SE

Sent from my iPhone

Deb Estrada

From: Andrea Larson
Sent: Tuesday, November 14, 2023 4:37 PM
To: Alison Van Gorp; Deb Estrada
Subject: FW: THE JCC'S PROPOSED AMENDMENT 18
Attachments: R.A.Medved Comments.pdf

Comment received to Planning Commission mailbox

Andrea Larson

City Clerk
City of Mercer Island
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From: Robert A. Medved <RobertAMedved@msn.com>
Sent: Tuesday, November 14, 2023 4:29 PM
To: Alison Van Gorp <alison.vangorp@mercergov.org>; Deb Estrada <Deborah.Estrada@mercerisland.gov>; Planning Commission <Planning.Commission@mercergov.org>
Cc: Lisa Anderl <lisa.anderl@mercergov.org>; Jake Jacobson <jake.jacobson@mercergov.org>; Salim Nice <salim.nice@mercerisland.gov>; Craig Reynolds <craig.reynolds@mercergov.org>; David Rosenbaum <david.rosenbaum@mercergov.org>; Wendy Weiker <Wendy.Weiker@mercergov.org>; Ted Weinberg <ted.weinberg@mercergov.org>; Jessi Bon <jessi.bon@mercergov.org>; Bio Park <Bio.Park@mercergov.org>; Jeff Thomas <jeff.thomas@mercerisland.gov>
Subject: THE JCC'S PROPOSED AMENDMENT 18

Recipients:

The Comments Of Robert A. Medved In Opposition To The JCC's Proposed Amendment 18 are attached. Please confirm your receipt and your filing of this attachment with the Planning Commission.

Thank you.

Robert A. Medved

Telephone: 206-550-3300

E-mail: robertamedved@msn.com

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hereby notified than any use, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this e-mail in error, please immediately notify me by replying to this e-mail and please delete the original. Thank you.

BEFORE THE PLANNING COMMISSION OF THE CITY OF MERCER ISLAND

In Re: 2024 Annual Docket Review Of The
JCC’s Proposed Amendment 18

COMMENTS OF ROBERT A.
MEDVED IN OPPOSITION TO THE
JCC’S PROPOSED AMENDMENT 18

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I. INTRODUCTION

The Planning Commission must, as a matter of law, recommend to the City Council that the JCC’s Proposed Amendment 18 (“Site-Specific Rezone Amendment”) not be placed on the final docket for, without limitation, the following reasons:

- 1) The Site-Specific Rezone Amendment is a “site-specific rezone” and is statutorily illegal.
- 2) The Site-Specific Site Rezone Amendment disingenuously convolutes the legislative created statutory term “specific-site rezone” with the judicially created term “spot zone.”

II. STATUTORILY ILLEGAL SITE-SPECIFIC REZONE

A. *Site-Specific Rezones Are Illegal And Are Absolutely Prohibited By MICC 19.15.240(C)(4)*

MICC 19.15.240(C)(4) provides in pertinent part as follows:

C. *Criteria.* The city council may approve a rezone **only if all** of the following criteria are met:

4. The proposed reclassification does not constitute an illegal **site-specific** rezone; (bold added).

The plain meaning of MICC 19.15.240(C)(4) is unambiguous. When the plain meaning of a statute like MICC 19.15.240(C)(4) is unambiguous, that statute is not subject to construction as a matter of law. *See, e.g., In re E.M.*, 197 Wn.2d 492 (2021) and *In re Zandi*, 187 Wn.2d 921 (2017). *In re E.M.*, 197 Wn.2d 492, 499-500 (2021) provides as follows:

In resolving an issue of statutory construction, we first look to the plain meaning of the statute.... Meaning must be ascertained from the plain language of the statute.... **Thus, if the plain meaning of the statute is unambiguous, we end our inquiry.** (bold added).

In re Zandi, 187 Wn.2d 921, 927 (2017) provides as follows:

If the plain meaning of a statute is unambiguous, our inquiry ends. (bold added).

The Site-Specific Rezone Amendment seeks to establish an illegal site-specific rezone. The JCC fails to recognize that the plain meaning of MICC 19.15.240(C)(4) is unambiguous, not subject to statutory construction or interpretation, and absolutely prohibits the Site-Specific Rezone Amendment. Instead, the JCC resorts to disingenuous

arguments to avoid the fact that MICC 19.15.240(C)(4) absolutely prohibits the Site-Specific Rezone Amendment.

B. The Site-Specific Amendment Is Unquestionably A Site-Specific Rezone

The City has admitted as it must that the Site-Specific Rezone Amendment “pertains to rezoning a specific property.” *See, e.g.*, Packet at p. 5.

The JCC has admitted as it must that the Site-Specific Rezone Amendment is “related to a specific property.” *See, e.g.*, Packet at p. 9.

The Washington Supreme Court delineated three factors of site-specific rezone. *See, e.g., Schnitzer West v. City Of Puyallup*, 190 Wn2d. 568, 576 (2018) (“A site-specific rezone requires three factors: (1) a specific tract of land, (2) a request for a classification change, and (3) a specific party making the request”). The Site-Specific Rezone Amendment encompasses those three factors. The Site-Specific Rezone Amendment involves one specific tract of land. The Site-Specific Rezone Amendment requests a classification change for that one specific tract of land. The Site-Specific Rezone Amendment request for a classification change is made by one specific Party, the JCC.

C. The Site-Specific Rezone Amendment As A Matter Of Law Cannot Be Placed On The Final Docket

It is beyond question that MICC 19.15.240(C)(4) absolutely prohibits site-specific rezones. It is also beyond question that the Site-Specific Rezone Amendment is a site-specific rezone.

As such, the Planning Commission must, as a matter of law, recommend to the City Council that the JCC's Site-Specific Rezone Amendment not be placed on the final docket.

III. ILLEGAL CONFLATION OF SPECIFIC-SITE REZONES AND SPOT REZONES

Regarding MICC 19.15.240(C)(4), the Docket Request Form requires the JCC to confirm that "The proposed reclassification **does not** constitute an illegal site-specific rezone." (bold added). *See, e.g.*, Packet at p. 32.

Because the JCC Site-Specific Rezone Amendment **does constitute**, as a matter of law, a "site-specific rezone," the JCC is unable to confirm that "The proposed reclassification does not constitute an illegal site-specific rezone." Instead, the JCC illegally attempts to amend and rewrite MICC 19.15.240(C)(4). The JCC's illegal attempt disingenuously replaces and substitutes the MICC 19.15.240(C)(4) term "site-specific rezone" with the term "spot rezone" as follows:

The proposed reclassification does not constitute an illegal site-specific rezone, often known as an "illegal spot zone." (bold and quotation marks in the original.)(coloring added).

See, e.g., Packet at p. 32.

In effect, the JCC's illegal attempt disingenuously must delete the MICC 19.15.240(C)(4) term "site-specific rezone" and then disingenuously must add the term

“spot rezone.” As a matter of law, however, words cannot be added and cannot be deleted from MICC 19.15.240(C)(4).

State v. J.P., 149 Wn.2d 444 (2003) provides as follows:

Just as **we cannot add words or clauses** to an unambiguous statute when the legislature has chosen not to include that language, **we may not delete language** from an unambiguous statute.... (bold added).

State Washington v. Delgado, 148 Wn.2d 723 (2003) provides as follows:

When statutory language is unambiguous, we look only to that language to determine the legislative intent without considering outside sources. "Plain language does not require construction." When we interpret a ... statute, we give it a literal and strict interpretation. **We cannot add words or clauses** to an unambiguous statute when the legislature has chosen not to include that language. **We assume the legislature "means exactly what it says."** Our inquiry, thus, ends with the plain language before us. (bold added).

“Site-Specific Rezones” and “Spot Rezones” are jurisprudentially different and cannot be used interchangeably. *Compare Schnitzer West v. City Of Puyallup*, 190 Wn2d. 568, (2018)(regarding Site-Specific Rezones) *with Smith v. Skagit County*, 75 Wn.2d 715 (1969)(regarding Spot Zones).

IV. THE JCC APPEARS TO ROUTINELY UTILIZE DISINGENUOUSLY

The JCC's disingenuous attempt to amend and rewrite MICC 19.15.240(C)(4) is not unique to the JCC's Site-Specific Rezone Amendment. *See Exhibit A*, at pp. 10-12.

V. CONCLUSION

For all of the above reasons, among others, the Planning Commission must, as a matter of law, recommend to the City Council that the Specific Site Rezone Amendment not be placed on the final docket.

DATED this 14th day of November, 2023

Robert A. Medved

EXHIBIT A

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BEFORE THE HEARING EXAMINER OF THE CITY OF MERCER ISLAND

In Re The Appeal Of:	APL No. 22-004
Development Code Interpretation No. 22-004	MEMORANDUM OF ROBERT A. MEDVED IN SUPPORT OF THE CITY OF MERCER ISLAND

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I. INTRODUCTION

The plain meaning of MICC 19.06.110(B)(2)(a) is unambiguous. Accordingly, MICC 19.06.110(B)(2)(a) is not subject to construction as a matter of law.

The City’s Development Code Interpretation 22-044 correctly recognizes that the plain meaning of MICC 19.06.110(B)(2)(a) is unambiguous.

The Appellants fail to recognize that the plain meaning of MICC 19.06.110(B)(2)(a) is unambiguous. Instead, the Appellants resort to disingenuous arguments to avoid the fact that MICC 19.06.110(B)(2)(a) is unambiguous.

Because the plain meaning of MICC 19.06.110(B)(2)(a) is unambiguous and MICC 19.06.110(B)(2)(a) is not subject to construction as a matter of law, it is respectfully requested that this appeal be denied at the outset of the January 25, 2023 hearing.

II. THE PLAIN MEANING OF MICC 19.06.110(B)(2)(a) IS UNAMBIGUOUS

The plain meaning of MICC 19.06.110(B)(2)(a) (“Hardship Ordinance”)¹ is unambiguous. The Hardship Ordinance provides in its entirety as follows:

2. Criteria.

- a. 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

¹ This Memorandum intentionally does not address the criteria for increased lot coverage and increased impervious surface variances that are addressed by MICC 19.06.110 (B)(1) and MICC 19.06.110(B)(2)(i).

1 construction of a single-family dwelling on a legally created,
2 residentially zoned lot.... (quotation marks in the original) (bold
added).

3 When the plain meaning of a statute like the Hardship Ordinance is
4 unambiguous, that statute is not subject to construction as a matter of law. *See, e.g., In*
5 *re E.M.*, 197 Wn.2d 492 (2021) and *In re Zandi*, 187 Wn.2d 921 (2017). *In re E.M.*,
6 197 Wn.2d 492, 499-500 (2021) provides as follows:

7 **In resolving an issue of statutory construction, we first look to**
8 **the plain meaning of the statute.... Meaning must be**
9 **ascertained from the plain language of the statute.... Thus, if**
the plain meaning of the statute is unambiguous, we end our
inquiry.

10 The statute is not ambiguous as to whether private counsel must be
11 appointed—there is no such requirement. Accordingly, we decline
12 to apply canons of construction or look to the legislative intent of
the statute. (citations omitted) (bold added).

13 *In re Zandi*, 187 Wn.2d 921, 927 (2017) provides as follows:

14 **If the plain meaning of a statute is unambiguous, our inquiry**
ends.

15 The Court of Appeals majority correctly recognized that
16 "uninsured medical expenses" under RCW 26.18.170
17 unambiguously include costs "not covered by insurance."
(quotation marks in the original) (citations omitted) (bold added).

18 Highlighted copies of *In re E.M.* and *In re Zandi* are attached to the Declaration
19 Of Robert A. Medved In Support Of The City Of Mercer Island ("Medved Decl.") as
20 **Exhibit 1** and **Exhibit 2**.

21 Because the plain meaning of the Hardship Ordinance is unambiguous, the
Hardship Ordinance should not be construed in this appeal.

1 **III. 2016 – 2021 ADOPTED AND PROPOSED CODE AMENDMENTS**

2 Between 2016 and 2021 there were three adopted and two proposed amendments
3 to MICC Title 19 – Unified Land Development Code that involved the Stroum Jewish
4 Community Center of Greater Seattle (“JCC”), namely: (i) the Variance Hardship
5 Ordinance No. 17C-15, (ii) the Transportation Concurrency Ordinance No. 18C-12, (iii)
6 the Community Facility Zone Designation Ordinance No. 20-04, (iv) the Docketing
7 Ordinance No. 19C-21 and (v) the Hill Application To Amend The Zoning Code. *See*
8 Medved Decl., at paragraphs 8-39 and **Exhibits 3-35**.

9 At times the City’s consideration of these five adopted and proposed
10 amendments overlapped. *See* Medved Decl., at paragraph 7 and **Exhibit 3**. These five
11 adopted and proposed amendments are treated in more detail below.

12 **A. The Variance Hardship Ordinance No. 17C-15**

13 (i.) **The Hardship Ordinance Adoption Process**

14 The Hardship Ordinance was a part of the City’s review and amendment of its
15 Residential Development Standards Code. *See* Medved Decl., at paragraphs 8-11 and
16 **Exhibits 4-7**.

17 The City’s review and amendment process started around July 20, 2016 and
18 ended around September 19 2017 with the adoption of the Hardship Ordinance—*i.e.*,
19 approximately fourteen months. *See* Medved Decl., at paragraphs 7, 8 and 11 and
20 **Exhibits 3, 4 and 7**. *See also* the Declaration Of Matthew Goldbach, Neighbor Of The
21

1 Jewish Community Center In Support Of Mercer Island’s Code Interpretation
2 (“Goldbach Decl.”), at paragraphs 2.1 and 2.2.

3 The public participated throughout this fourteen month adoption process, *See*
4 Medved Decl., at paragraphs 8-11 and **Exhibit 4**, at pp. 1-2; **Exhibit 5**, at p. 1; **Exhibit**
5 **6**, at pp. 2-3 and **Exhibit 7**, at pp. 2-3.

6 (ii.) **The JCC Failed To Participate In The**
7 **Hardship Ordinance Adoption Process**

8 The JCC did not participate in the Hardship Ordinance fourteen month adoption
9 process. Despite the fact that the JCC did not participate in the Hardship Ordinance
10 fourteen month adoption process, the JCC now, more than five years after the adoption
11 of the Hardship Ordinance, claims that the Hardship Ordinance will have a “devasting
12 (sic) effect”² on the JCC.

13 ***B. The Transportation Concurrency Ordinance No. 18C-12.***

14 (i.) **The Transportation Concurrency Ordinance**
15 **Adoption Process**

16 The adoption process for the Transportation Concurrency Ordinance started
17 around February 15, 2017 and ended around December 20, 2018—*i.e.*, approximately
18 twenty-one months.

19 ² The JCC appeal at page 13 claims that the City:

20 “ignores the devastating (sic) effect of [the Hardship
21 Ordinance on the JCC] and ultimately the essence of (sic)
Mercer Island community which will dissolve without
healthy support for the organizations that bind Mercer
Island residents as an extremely close-knit community.”

1 The public participated in the Transportation Concurrency Ordinance twenty-one
2 month adoption process. *See* Medved Decl., at paragraphs 13, 14 and 17 and **Exhibit 9**,
3 at p. 2; **Exhibit 10** and **Exhibit 13**.

4 (ii.) **The JCC Failed To Participate In The Transportation**
5 **Concurrency Ordinance Adoption Process**

6 The Transportation Concurrency Ordinance prohibits new development if traffic
7 studies reveal adverse traffic consequences that are caused by new development.³ The
8 JCC is required to submit traffic studies to the City but has not done so. At the hearing,
9 the City can provide more information regarding JCC’s obligations to submit traffic
10 studies should the Hearing Examiner wish to inquire further.

11 Despite the possibility that any proposed JCC development may not be approved
12 as a result of the adoption of Transportation Concurrency Ordinance and as a result of
13 the JCC not providing traffic studies to the City, the JCC did not participate in the
14 Transportation Concurrency Ordinance twenty-one month adoption process.

15 ***C. The Community Facility Zone Designation Ordinance No. 20-04.***

16 On September 29, 2017, the JCC applied for a comprehensive plan amendment
17 that would create a Community Facility Zone for the JCC. *See* Medved Decl., at
18 paragraph 18 and **Exhibit 14**.

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³ One purpose of the Traffic Concurrency Ordinance is “prohibiting approval of
development proposals if the development causes the level of service on” traffic to
decline below certain standards. MICC 19.20.010.

1 On February 18, 2020, the City Council adopted Ordinance No. 20-04 which
2 repealed all ordinances related to the Community Facility Zone. *See* Medved Decl., at
3 paragraphs 25 and 26 and **Exhibits 21** and **22**.

4 *See* also Medved Decl., at paragraphs 18-26 and **Exhibits 14-22**, and *see*
5 Goldbach Decl., at paragraphs 3.4-3.9, and *see* the Declaration Of John Hall, Neighbor
6 Of The Jewish Community Center In Support Of Mercer Island’s Code Interpretation
7 (“Hall Decl.”), at paragraphs 2.1-2.5.

8 ***D. The Docketing Ordinance No. 19C-21.***

9 (i.) **The Docketing Ordinance Adoption Process**

10 The Docketing Ordinance is mandated required by the GMA and requires all
11 proposed comprehensive plan amendments and all code amendments be placed on a
12 docket to allow the City to manage these proposed amendments. The adoption process
13 for the Docketing Ordinance started around July 16, 2019 and ended around May 1,
14 2020—*i.e.*, approximately nine months. *See* Medved Decl., at paragraphs 27 and 33 and
15 **Exhibits 23** and **29**.

16 The public participated in the nine month adoption process. *See* Medved Decl.,
17 at paragraphs 27 and 29 and **Exhibits 23** and **25**.

18 (ii.) **The JCC Failed To Participate In The Docketing**
19 **Ordinance Adoption Process**

20 The JCC did not participate in the Docketing Ordinance nine month adoption
21 process. Instead, on December 9, 2019, the JCC sent a request to the City to postpone
the final adoption of the Docketing Ordinance “to address the adverse impacts [the

1 Docketing Ordinance] would have on [the JCC’s ability] to move forward with [the
2 JCC’s] projects.” See Medved Decl., at paragraph 31 and **Exhibit 27**.

3 See also Medved Decl., at paragraphs 27-33 and **Exhibits 23-29**, and see
4 Goldbach Decl., at paragraphs 4.1-4.4 and see Hall Decl., at paragraph 2.6.

5 ***E. The Hill Application To Amend The Zoning Code.***

6 On February 11, 2020, the JCC through attorney Richard Hill filed an
7 Application For Zoning Text Amendment which would have allowed new JCC
8 development projects to be sited in single-family neighborhoods.⁴ See Medved Decl., at
9 paragraphs 34 and 35 and **Exhibits 30** and **31**.

10 On February 18, 2020, the JJC through attorney Richard Hill attended the
11 Mercer Island City Council Meeting and:

12 ... asked the Council to direct staff and the Planning Commission
13 to review the proposed [Application For Zoning Text Amendment]
14 this year, explaining that the proposed [Application For Zoning
15 Text Amendment] is a narrowly tailored amendment to the code.
16 Mr. Hill then outlined three changes, including one to GFA, one to
17 height, and one to lot coverage.

18 See Medved Decl., at paragraph 36 and **Exhibit 32**.

19 ⁴ Although the JCC Application For Zoning Text Amendment proposed
20 sweeping amendments to Mercer Island Land Use Code, the JCC Application For
21 Zoning Text Amendment did not propose any amendments to the Hardship Ordinance.
See Medved Decl., at paragraphs 34 and 35 and **Exhibits 30** and **31**.

1 On March 2, 2020, a comprehensive Request For Legal Opinions regarding the
2 Application For Zoning Text Amendment was sent to the City. *See* Medved Decl., at
3 paragraph 37 and **Exhibit 33**.

4 On March 6, 2020, the Concerned Neighbors for the Preservation of Our
5 Community through attorney Alex Sidles sent a letter critical of the Application For
6 Zoning Text Amendment to the City. *See* Medved Decl., at paragraph 38 and **Exhibit**
7 **34**.

8 The JCC did not actively pursue its Application For Zoning Text Amendment.
9 Instead, on February 1, 2021, the JCC withdrew its Application For Zoning Text
10 Amendment and was refunded all fees associated with the JCC Application For Zoning
11 Text Amendment. *See* Medved Decl., at paragraph 39 and **Exhibit 35**.

12 *See also* Medved Decl., at paragraphs 34-39 and **Exhibits 30-35**, and *see*
13 Goldbach Decl., at paragraphs 4.5 through 4.14, and *see* Hall Decl., at paragraphs 2.6
14 and 2.7.

15 **IV. ARGUMENT IN SUPPORT OF THE CITY OF MERCER ISLAND**

16 Development Code Interpretation 22-004, at paragraphs 5(a) and 7(1)(i) on
17 pages 2-3, correctly recognized that the plain meaning of the Hardship Ordinance is
18 unambiguous. In addition to correctly dealing with the Hardship Ordinance criteria,
19 Development Interpretation 22-004, at paragraphs 5(a)-5(c), 7(1)(i) and 7(1)(ii) on
20 pages 2-3, also correctly dealt with the criteria for increased lot coverage and increased
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1 impervious surface area variances addressed by MICC 19.06.110 (B)(1) and MICC
2 19.06.110(B)(2)(i).⁵

3 **V. ARGUMENT IN OPPOSITION TO THE JCC APPEAL**

4 ***A. The JCC Appeal Fails To Address The Fact That The Plain Meaning Of
5 The Hardship Ordinance Is Unambiguous.***

6 The JCC appeal fails to address the fact that the plain meaning of the Hardship
7 Ordinance is unambiguous and should not be construed in this JCC appeal.

8 Instead, the JCC appeal creates four disingenuous statements not supported by
9 any statutory language and not supported by the law.

10 **(i.) The JCC’s First Created Disingenuous Statement**

11 First, the JCC appeal at page 15 disingenuously states: “We believe [the
12 Hardship Ordinance] was intended to apply to only the structures it was intended by the
13 City Council to apply—single family mega homes.” There nothing in the Hardship
14 Ordinance or the law that supports that statement. Indeed, that statement is contrary to
15 the Hardship Ordinance’s unambiguous language and is contrary to the law.

16 **(ii.) The JCC’s Second Created Disingenuous Statement**

17 Second, the JCC appeal at page 16 disingenuously states: “... nonresidential
18 structures in single family zones can meet the hardship criterion for all development
19 standards due to the fact that the hardship provision was intended only to apply to single
20 family structures.” Again, there is nothing in the Hardship Ordinance or the law that

21 _____
⁵ See footnote 1, *supra*, at page 2.

1 supports that statement. Indeed, that statement is contrary to the Hardship Ordinance’s
2 unambiguous language and is contrary to the law.

3 (iii.) **The JCC’s Third Created Disingenuous Statement**

4 Third, the JCC appeal at page 9 first disingenuously states that MICC
5 19.06.110(B)(1) somehow changes the plain meaning of the Hardship Ordinance
6 language. This third disingenuous statement is not only without merit, it omits the
7 MICC 19.06.110(B)(1) language that cites to and requires compliance with the Hardship
8 Ordinance. That MICC 19.06.110(B)(1) language provides:

9 “A variance shall be granted by the city **only if the applicant can**
10 **meet all criteria in subsections (B)(2)(a)** [the Hardship
Ordinance] through (B)(2)(h) of this section.” (bold added).

11 Moreover, the JCC Appeal fails to recognize that the specific language of the
12 Hardship Ordinance supersedes the general language of MICC 19.06.110(B)(1). *See,*
13 *e.g., Kustura v Department Of Labor & Industries*, 169 Wn.2d 81 (2010), *Futurewise v.*
14 *Spokane County*, 517 P.3d 519 (2022) and *Lakeside Industries v. Washington. State*
15 *Department Of Revenue*, 495 P.3d 257 (2021).

16 *Kustura v Department Of Labor & Industries*, 169 Wn.2d 81, 88 (2010) provides
17 as follows:

18 **A specific statute will supersede a general one** when both apply.
19 (citations and quotation marks omitted) (bold added).

20 *Futurewise v. Spokane County*, 517 P.3d 519, 525 (2022) provides as follows:

21 A well-accepted rule of statutory construction is that **a specific**
statute will supersede a general one when both apply. (citation
omitted) (bold added).

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Lakeside Industries v. Washington State Department Of Revenue, 495 P.3d 257, 262 (2021) provides as follows:

Where general and specific statutes address the same matter, **the specific statute prevails.** (citation omitted) (bold added).

Highlighted copies of: (i) *Kustura v Department Of Labor & Industries*, (ii) *Futurewise v. Spokane*, and (iii) *Lakeside Industries v. Washington State Department Of Revenue* are attached to the Medved Decl. as **Exhibit 36, Exhibit 37** and **Exhibit 38**.

(iv.) **The JCC’s Forth Created Disingenuous Statement**

Fourth, the JCC appeal at page 15 and citing *State v. Taylor*, 97 Wn.2d 724, 730 (1982), disingenuously states that some unidentified language omitted from the Hardship Ordinance “rendered the [Hardship Ordinance] absurd and undermined [the Hardship Ordinance’s] sole purpose.” However, the unambiguous Hardship Ordinance language itself conclusively demonstrates that: (i) no language has been omitted from the plain meaning of the Hardship Ordinance, (ii) the plain meaning of the Hardship Ordinance is not absurd, and (iii) the plain meaning of the Hardship Ordinance does not undermine its purpose. At the hearing, the City can corroborate the fact that no language was omitted from the Hardship Ordinance should the Hearing Examiner wish to inquire further. *See also* Medved Decl. at paragraphs 8-11 and **Exhibits 4-7**.

1 ***B. The JCC Appeal Fails To Recognize That The Hardship Ordinance***
2 ***Prevails Over The Comprehensive Plan.***

3 The JCC appeal continuously fails to address the fact that the plain meaning of
4 the Hardship Ordinance is unambiguous and should not be construed in this JCC appeal.

5 Instead, the JCC permeates the JCC appeal with select portions of the
6 comprehensive plan. In doing so, the JCC ignores that as a matter of law the Hardship
7 Ordinance prevails over the comprehensive plan. *See, e.g., Citizens For Mount Vernon*
8 *v. City Of Mount Vernon*, 133 Wn.2d 861 (1997), *Weyerhaeuser v. Pierce County*, 124
9 Wn.2d 26 (1994) and *Cougar Mountain Associates v. King County*, 111 Wn.2d 742
10 (1988).

11 *Citizens For Mount Vernon v. City Of Mount Vernon*, 133 Wn.2d 861, 873-74
12 (1997) provides as follows:

13 **A specific zoning ordinance will prevail over an inconsistent**
14 **comprehensive plan.**

15 ***

16 If a comprehensive plan prohibits a particular use but the zoning
17 code permits, the use would be permitted. (citations omitted) (bold
18 added).

19 *Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 43 (1994) provides as follows:

20 **Generally, a specific zoning ordinance will prevail, even over an**
21 **inconsistent comprehensive plan....** Thus, to the extent the
 comprehensive plan prohibits the landfill use, while the zoning
 code permits it, the use would be a permitted use under this general
 rule. (citations omitted) (bold added).

Cougar Mountain Associates v. King County, 111 Wn.2d 742, 757 (1988)
provides as follows:

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A comprehensive plan is no more than a general policy guide to the later adoption of official controls which subordinate to specific zoning regulations. (citations and quotation marks omitted) (bold added).

Highlighted copies of: (i) *Citizens For Mount Vernon v. City Of Mount Vernon*, (ii) *Weyerhaeuser v. Pierce County*, and (iii) *Cougar Mountain Associates v. King County* are attached to the Medved Decl. as **Exhibit 39, Exhibit 40 and Exhibit 41.**

VI. CONCLUSION

Because the plain meaning of MICC 19.06.110(B)(2)(a) is unambiguous and MICC 19.06.110(B)(2)(a) is not subject to construction as a matter of law, the JCC appeal should be denied at the outset of the January 25, 2023 hearing.

DATED this 8th day of January, 2023


Robert A. Medved

Deb Estrada

From: Andrea Larson
Sent: Tuesday, November 14, 2023 4:53 PM
To: Alison Van Gorp; Deb Estrada
Subject: FW: SJCC rezone request

Comment received to Planning Commission mailbox

Andrea Larson

City Clerk
City of Mercer Island
206.275.7793 | mercerisland.gov

Notice: Emails and attachments may be subject to disclosure pursuant to the Public Records Act (chapter 42.56 RCW)

The City of Mercer Island utilizes a hybrid working environment. Please see the City's [Facility and Program Information](#) page for City Hall and City service hours of operation.

From: Stuart Sulman <ssulman@kellersupply.com>
Sent: Tuesday, November 14, 2023 4:52 PM
To: Planning Commission <Planning.Commission@mercergov.org>
Subject: SJCC rezone request

Dear Mercer Island Planning Commission,

Please recommend that the Mercer Island City Council places the Stroum Jewish Community Center's request to rezone their large residential land parcels to Commercial Office on the docket, with action taken in 2024.

For over 54 years, the SJCC has served Mercer Island residents with programs for all ages and all are welcome. However, this building is old, is not ADA compliant, needs a working HVAC system and it features a swimming pool that is long past its usefulness.

It's time for a substantive, accessible, and sustainable redevelopment, yet the current residential zoning makes this nearly impossible. A rezone to Commercial Office property would significantly facilitate this remodel while honoring the neighborhood integrity and specific interests of the proximate neighbors.

For over 54 years, the SJCC has operated as a vital community asset. It would be a loss for the broad Mercer Island community to not support the modernization of this facility. Further, this request affects the SJCC ONLY, and will not have any impact on any other facility or institution on the Island.

The time to support the future of the Stroum Jewish Community Center on Mercer Island is now.

Thank you for your support.

Stuart Sulman

Mercer Island Resident for 47 years

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