

November 3, 2021

To: Mercer Island City Council Members

From: Planning Commissioner Carolyn Boatsman

Topic: Minority opinion on Town Center Commercial Requirements

I am submitting for your consideration my views regarding ZTR21-004 Town Center Commercial Requirements. The Planning Commission deliberated this work item on November 3, 2021 and has sent findings and recommendations to the Council. My views constitute a minority report.

Following a brief background, I offer my recommendation, including an explanation of what is helpful about the draft ordinance, how it could be improved, if desired, and what I believe are flaws in the Commission's findings and recommendations.

Background:

When the Commission was presented with this work item, we were offered four options for the Commission's recommendation: approval, approval with amendments, rejection of the proposal, and no action, with remand to staff for further work. The Commission decided upon the last option.

It is my understanding that the Council would like to amend the code prior to the expiration of the Town Center Moratorium on December 2, 2021, in order to achieve the goals of the moratorium. The reasons for adopting the moratorium were specific and limited. They can be summarized by a phrase in the adopting ordinance: "protecting and expanding Mercer Island's retail sector..."

My recommendation:

The draft ordinance is reasonably effective at protecting and expanding the retail sector and some version of it should be adopted in preparation for ending the Town Center Moratorium that expires on December 2, 2021. The draft ordinance, with or without possible amendments, which I will offer, would make measurable and significant progress towards the goal of the moratorium.

The draft ordinance fulfills the goal of the moratorium because, upon redevelopment, it *preserves* actual commercial space where that space is up to 0.2623 percent of the parcel size *and* preserves lesser amounts for more recently redeveloped parcels (no net loss). It requires *additional* commercial space by increasing what is required for those parcels currently incorporating less than 0.2623 percent of the parcel size, upon redevelopment. The requirement for commercial space is also expanded to additional areas of the Town Center, based upon demand analysis. The uses would be clustered together, according to the "pink lines map", which inspires interest and patronage by residents.

The draft ordinance, in my view, could be improved by strategic removal of the pink line in selected locations, adopting the same amount of required space for recently developed properties, and adding a few definitions. I explain this in Attachment A. Also included in Attachment A. are several recommendations for future work.

Concerns with the Commission's recommendation to the Council:

It is my observation that the Commission majority desired to expand the scope of the task at hand beyond what is needed now. Among other concerns, the Commission concluded that the draft ordinance was insufficient because it did not address other matters at the same time, would cause unintended consequences, and didn't incorporate sufficient data.

The Commissioners are very concerned that the ordinance would be adopted without considering and possibly amending parking requirements in the Town Center. Staff shared with the Commissioners the Scope for the extensive parking study that is now underway. Yet, the Commissioners were not familiar with the parking study during deliberations. When reminded of its scope, they chose not to consult it to reassess their concerns. They were firm in their belief that commercial space should not be increased unless parking requirements are reevaluated and possibly amended in tandem. There was no discussion of current parking requirements in coming to this conclusion.

My view is that possible amendments to parking requirements do not constitute an emergency sufficient to fail to solve the goals of the moratorium.

The Commission majority, throughout three lengthy meetings, were concerned about what they believed was a major unintended consequence of the proposal. They were of the view that a modest increase in required commercial square footage creates an incentive to redevelop - and to redevelop sooner than otherwise. This concern was in concert with the idea that the expected early redevelopment of properties on which there are very large retail establishments would result in developments with less commercial space than is now present. The Commissioners were not convinced that market forces would (or should) predominate. The concern was both that the *total* amount of commercial space available in the Town Center at any one time could plummet, and that large commercial spaces on *certain parcels* could be lost. Both of these outcomes were considered unacceptable. There was some concern expressed that we could lose grocery stores if the ordinance were adopted.

It was pointed out that property owners can redevelop with less commercial space now, with or without the ordinance, and that they can sell what they choose. The majority, however, were of the view that 1) the total amount of commercial retail space at any given parcel should remain static or increase, but should not decrease, even temporarily; and 2) the total amount of commercial space available in the Town Center at any moment in time is critical, rather than how much space is available over a longer period of time.

In summary, the majority's conclusion was that the "no net loss" provision of the draft ordinance should be directed not at recently developed properties but at all parcels.

My view is that market forces will drive what is offered in the way of businesses in the Town Center, within reasonable limits placed by regulations. The limits should not stifle the options, i.e. prevent a lively mix of interesting and useful businesses for residents. While I understand the underlying concerns of the Commission, I think that the free market will provide Islanders with the best options in their Town

Center, rather than determinations by the City as to where large commercial establishments will be required in perpetuity based upon historical use. This is the risk and reward foundation of our economic system. I doubt that the City could legally encumber parcels in the manner envisioned by the Commission's majority.

During the last few minutes of deliberations, during the third long meeting on this topic, the majority conceded that they were unable to explain how the increase in square footage of commercial space would provide incentive for near-term redevelopment. The findings were then amended to indicate that the real problem with the proposal is that it does not *so/ve* the concern that existing large commercial developments have the option to redevelop with smaller commercial space. The main argument for unintended consequences seemed to have been abandoned in favor of a complaint about what the proposal does not accomplish.

The Commission majority had some concerns regarding the sufficiency of data upon which the draft ordinance is based. I won't try to summarize those concerns. I think the data is sufficient for our purposes at this time, given that the City is limited in its ability to assess the status quo and predict outcomes. Variables include what is wanted by residents, what the market will bring, how much space will be demanded, the effects of lease costs, how fast redevelopment will occur, economic cycles, online shopping, the desire of residents to shop on Mercer Island, regardless of what is offered, and more.

Rather than concerning ourselves with possible data refinements for a proposal of limited scope, it would be more useful to revisit this type of analysis periodically and make adjustments as warranted.

I've proposed amendments and offer several recommendations in Attachment A.

Thank you for considering my views on this work item.

Attachment A

Suggested Amendments:

Amend Figure 2 as follows:

Delete the pink line on properties currently used for gas stations, including the Chevron station at 7655 Sunset Highway and the Shell station at the corner of SE 29th ST and 78th AVE SE. The other Shell station at the corner of SE 27th and 80th AVE SE is already outside of the pink line. (Rationale: We need gas stations. It is not helpful to place the property owner in the position of having to offer special commercial uses when extensive remodel is desired. That might well eliminate the gas station.)

Delete the pink line extending south of SE 29th ST on the east side of 77th AVE SE. (Rationale: 1) We should be consistent in our effort to cluster certain types of businesses. This extension of the pink line is solo, one side of the street, i.e. the same sorts of businesses are not required across the street. 2) It gains only one small property. All other properties on this extension front on other streets where the special commercial space is already required at 0.2623 percent of lot size. In other words, all the commercial space is already required without the extension. 3) Forty town homes are proposed for the front of the Farmer's property. Residents there, if it or something like it is approved, would probably be better served by a quieter street with less traffic and parking activity. 4) There is probably no benefit from this extension, but there are downsides.)

Amend B.2:

State that the multiplier of 0.2623 applies to all parcels along pink lines, not just those that have not redeveloped since 2005.

Delete Figure 3.

Delete 3.

Delete Figure 4.

(Rationale for previous four items: Owners of parcels that have redeveloped since 2005 should be subject to the same percentage of required commercial space if they redevelop, which, given relatively new construction, would likely not be soon. The "same amount" requires more retail space than "no net loss", so this approach would adhere more effectively to the goal of the moratorium. Requiring the same from all properties is fair to the owners. It would not set us up to have to revisit the multiplier solely for the more recently developed properties. It is possible that requiring the same of all properties would necessitate revising the multiplier. This might need to be done anyway if amendments to the pink line map are made.

The result of all of this is that only one map would be needed: the pink line map.

One final consideration in favor of requiring the same commercial space for all properties fronting the pink line is the sheer complexity and confusion of the Mercer Island code. While this might seem trivial,

it seems that our code is often so difficult to understand. I hear so many people complain about it. I complain about it. If there are to be two different retail space requirements for Town Center properties going forward, the possible resulting confusion should be determined to be very much worth it.)

New terms:

1. A new term is needed to refer to the types of businesses allowed along the pink lines. The term should be defined in MICC 19.16. (Rationale: Listing “restaurants, retail, and personal services” every time we refer to this commercial requirement both in the code and in our everyday discussion is too cumbersome. If such a term is determined, it should be substituted into the draft code at appropriate places. A suggestion: “special commercial uses”. A separate definition lends itself to periodic amendment, and I do think amendment of the list of business types is needed soon, though not immediately for this effort.)
2. “Assessed value” should be defined in MICC 19.16. (Rationale: The way this idea is currently expressed in the draft code is cumbersome. The concept is probably used in other areas of the City Code and should be defined.)
3. “Gross lot area” should be defined in MICC 19.16. (Rationale: The term used in the draft, “gross lot area as provided by King County”, is a little vague. King County what? What is “gross lot area”? Maybe this concept is used in other areas of the City Code and should be defined.)

Recommendations to the Council:

1. Direct the staff to study and recommend a more effective definition of the types of uses desired. (Rationale: It is too limited to allow only restaurants, retail, and personal services. Each of these three uses is defined in MICC 19.16. “Restaurant” and “retail” definitions are probably adequate, but “personal services” is not sufficient to the task. The definition is “A business that provides services relating to personal grooming and health. Uses include barber shops, hair stylists, spas, fitness centers and nail salons.” I think that these limits will ensure a fairly boring Town Center.

The existing categories do not allow for any number of creative and interesting options that the future could bring for our residents. Who knows what these options would be? Probably not us! What about art galleries, entertainment, amusements, pet groomers, etc.? Subbing in the existing code definition for the more general term “services” will not work either unless we would like a mortuary and a continuation of the plethora of financial and health services that we now see in the Town Center.

There should probably be some flexibility, as we are not going to be able to define perfectly what types of businesses should be allowed. Perhaps a code deviation could be included with criteria for acceptance. Perhaps the Design Commission could review such applications.

This is a complicated question, should involve evaluating what other cities are successfully doing, and is something best addressed by staff and consultants, as needed. This should be done as soon as possible.

(Please note: There is a definition for service (gas) stations that is separate from the definition of retail. Our limits on types of commercial use, so far, would not allow a gas station along a pink line. Redevelopment would *require removal* of the gas station. This adds importance to the suggestion to remove the pink lines from the gas station properties, if we hope to keep them.)

2. Direct staff to conduct the same sort of data analysis completed for this project, every five years or at other suitable interval. (Rationale: Uncertainty calls for more frequent assessment, as desires and economic conditions change. Updated information can inspire changes to plans and regulations to keep the Town Center vital and satisfying to residents.)

3. Assess the access and accommodation needs in the Town Center for walkers, bikers, etc., i.e. multi modes of transit. It might have been best to accomplish this in concert with the parking study, so as to generate solutions that fit multiple needs. I mention this here only because of the Commission's concern and considerable discussion about parking and because the parking study will soon be under way.

(Rationale: The Town Center Parking Study provides in its opening background that the Town Center Vision calls for "a pedestrian friendly downtown featuring a variety of outdoor spaces, building types, business uses, and housing options and acting as the heart of Mercer Island". The Parking Study focuses only on accommodating the need to park vehicles. Is there an effort planned in the near future to address other modes of transit and thereby fulfill the Comprehensive Plan goals and policies in this regard?

It might be that studying the accommodation of one type of locomotion separate from the others could tend to create a study in a silo and that this might not produce the synergy and coordination of a study of accommodations for cars, bikes, and pedestrians, all at once. Still, I think it is great that the parking study is being undertaken and its scope otherwise seems very good. There should be, however, an accompanying effort to figure out how to meet the vision of the Town Center as a pedestrian and biker-friendly space and to meet Comprehensive Plan goals for multi-modal transportation in the Town Center.)