McCULLOUGH HILL PLLC

MEMORANDUM

TO: Mercer Island Hearing Examiner

FROM: Jessie Clawson, on behalf of Applicant Stroum Jewish Community Center

DATE: October 2, 2026

RE: Additional applicant materials per Hearing Examiner Rule 216

Thank you for the opportunity to provide additional written materials in support of the rezone application. While we believe this submittal may not meet the specific definition of "submittal" as defined by Rule 216, out of an abundance of caution, we are submitting these materials more than 15 days prior to the hearing so that they may be properly reviewed by the Examiner. This memorandum contains the following information and attachments:

- Additional information regarding the rezone approval criteria
- A rezone "maximum development capacity" trip generation memorandum, prepared by the Transpo Group on October 2, 2026. This memorandum discloses the absolute worst case scenario in terms of trip generation and is for information purposes and in response to public comments and comments made at the planning commission. The development scenario that the proposed rezone seeks to achieve is an approximately 100,000 s.f. JCC community center, which was analyzed by the SEPA analysis and supported by a separate trip generation memorandum from the Transpo Group. The October 2 memorandum should not be construed by anyone to show that the JCC wants or is able to build a 400,000 s.f. development; rather this memorandum is being provided out of an abundance of caution and for informational purposes only
- The voluminous number of public comments that were submitted as part of the comprehensive plan amendment process in favor of the rezone

We are happy to answer any of the Examiner's questions regarding any of these items at the upcoming public hearing proceeding.

Applicant additional information regarding approval criteria

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

1. The proposed reclassification is consistent with the policies and provisions of the Mercer Island comprehensive plan;

Response: The application contains extensive discussion of the consistency of the overall comprehensive plan, and individual policies. The proposal is consistent with the comprehensive plan, as found by the City Council when they scheduled the future land use map change for approval on December 1, 2026.

2. The proposed reclassification is consistent with the purpose of the Mercer Island development code as set forth in MICC 19.01.010;

Response: The specific purpose of the development code is stated in MICC 19.01.010:

> The general purpose of this Code is to protect and promote health, safety, and the general welfare through the regulation of development within the city of Mercer Island. To that end, this Code classifies the land within the city into various zones and establishes the use of land and nature of buildings within those zones; controls the form of plats and subdivisions; regulates the construction of commercial and residential structures; and protects critical and sensitive areas within the city.
>
> The provisions of this Code are designed to consider light, air and access; to conserve and protect natural beauty and other natural resources; to provide coordinated development; to avoid traffic congestion; to prevent overcrowding of land; to facilitate adequate provisions for transportation, water, sewage, schools, parks and other public requirements; and to encourage the use of solar energy practices.
>
> This Code is to be interpreted as a whole, in view of the purpose set out in this section. If the general purpose of this development code conflicts with the specific purpose of any chapter of this development code, the specific purpose shall control.

Response: The redesignation to CO continues to ensure compliance with the land use code—the design review requirements, tree code requirements, critical areas requirements, setback requirements, SEPA requirements, and transportation and concurrency requirements of the code ensure conservation of light and air, limits to traffic congestion, and allowing for adequate provisions of services and utilities.

3. The proposed reclassification is an extension of an existing zone, or a logical transition between zones;

Response: The proposal is both. It is an extension of an existing CO zone, and creates a logical transition between zones (CO and SF) that already exists in the neighborhood. Maps depicting this relationship are included in the application and will be discussed at the hearing.

4. The proposed reclassification does not constitute an illegal site-specific rezone;

Response: The proposal is clearly not an illegal site-specific rezone, otherwise known as a "spot zone." From the Real Property Deskbook, 4th, Edition:

> Spot zoning occurs when a smaller area is singled out of a larger area or district and specially zoned for a use classification totally different from, and inconsistent with, the classification of surrounding land and not in accordance with the comprehensive plan. *Smith v. Skagit Cnty.,* 75 wn.2d 715, 743, 453 P.2d 832 (1969). A zoning decision may be overturned as an illegal spot zone only when it grants a discriminatory benefit to one or a group of owners to the detriment of their neighbors or the community at large without adequate public advantage or justification. *Save Our Rural Env't v. Snohomish Cnty.,* 99 Wn.2d 363, 368, 662

P,2d 816 (1983). Such discriminatory actions are considered arbitrary and capricious and accordingly implicate both equal protection and substantive due process considerations. *Buckles v. King Cnty.,* 191 F.3d 1127, 1137-38 (9th Cir., 1999).

In addition to the Real Property Deskbook, the Attorney General's Office published a (dated) opinion regarding spot zoning, which can be found here: https://www.atg.wa.gov/ago-opinions/counties-cities-and-towns-spot-zoning. In general, the four factors weighed to determine whether something is an illegal spot zone include:

1. A smaller area is singled out of a larger area and given some special treatment.

2. The classification or use allowed in the smaller area is totally different from and inconsistent with the classification of surrounding land so as to disturb the tenor of the neighborhood and create an inconsistency or conflict of use with the uses allowed in the surrounding area.

3. The action necessary to create the smaller area is taken for the private gain of one person or group of persons rather than for the general welfare of the community as a whole.

4. The action taken is not in accordance with the comprehensive plan.

See Attorney General Opinion.

The JCC proposal clearly is not an illegal spot zone when the foregoing case law and factors are considered. First, the JCC parcels to be rezoned are fairly large and while they are a smaller part of a larger residential zone, they are distinct in nature mainly due to the fact that the bulk of the property has not been in single family use for many years. It constitutes good zoning practice to zone properties consistent with their historic uses. Second, the uses allowed in the proposed CO zone are not substantially different from those already allowed in the vicinity—obviously, the northern parcel (the French American School parcel) that is owned by the JCC is already zoned CO, and there is CO zoned property close in the vicinity, so the nature of the uses allowed by the CO does not create an inherent conflict that does not already exist in the neighborhood. Third, the record of public comment and both the planning commission and city council's comments in the comprehensive plan amendment portion of the proceedings make clear—the JCC is a public good and the JCC contributes to the general welfare of the community as a whole. As will be demonstrated, the JCC needs this rezone to be able to move ahead with a renovation, due to the City's single family zone code amendments that occurred almost 10 years ago. Finally, the action taken would be in accordance with the comprehensive plan. The planning commission recommended in favor of amending the comprehensive plan land use map to change to CO, and the city council also voted in favor of the map change. The proposed change is also consistent with the goals and policies of the comprehensive plan, as stated in the comprehensive plan amendment application and the rezone application.

5. The proposed reclassification is compatible with surrounding zones and land uses;
6.

Response: The reclassification itself is compatible with surrounding zones and land uses—the CO/residential transition on lot boundaries already exists in the neighborhood. In addition, the Mercer Island Code includes many measures that further protect single family zones and uses from development within the CO zone—the required setbacks in the CO zone are more than those necessary under the current single family zoning. Building coverage is limited to 35% of the lot. Impervious surface coverage is limited to 60% of the lot. The height limit is 36 feet, which is only 6 feet taller than the existing single family zone. The CO zone standards can be found here: https://library.municode.com/wa/mercer_island/codes/city_code?nodeId=CICOOR_TIT19UNLADECO_CH19.04CO_19.04.010PLBUZOBZ

In addition, several other code layers will be protective of surrounding uses when something is constructed on the JCC property—the tree code in Mercer Island is one of the most protective, the critical areas code does not permit building in sloped areas, the stormwater code requires upgrading stormwater facilities, and the design review standards are highly protective of neighboring properties and uses. The design standards that would be applicable to the property can be found here, they are extensive and effectively protect neighboring properties from development: https://library.municode.com/wa/mercer_island/codes/city_code?nodeId=CICOOR_TIT19UNLADECO_CH19.12DESTZOOUTOCE

6. The proposed reclassification does not adversely affect public health, safety and welfare; and

Response: The comprehensive plan amendment and rezone were separately analyzed under SEPA and no significant adverse impacts were found. Neither of the SEPA determinations were appealed and they are now final decisions. As the record as part of the comp plan amendment and rezone application shows, the JCC and its uses are significantly benefiting the public health, safety, and welfare by providing child care, services, amenities, recreation, and meaningful connection opportunities that are unsurpassed on Mercer Island. In addition, in response to comments made at the planning commission regarding what "could" be built on the property, the JCC has commissioned a "maximum development capacity" trip generation study. This memorandum is attached. To be clear, none of the development scenarios in the memorandum are probable or likely. The development scenarios do not fit what the JCC wants to do with the property. The development scenarios would not be able to be economically built (it would be way too expensive to build a 400,000 s.f. JCC and the JCC could not sustain this building with its members). The development scenarios are not consistent with market conditions (no one is building 400,000 s.f. of office anywhere in the Puget Sound region). The development scenarios also would likely not be able to meet the development code requirements regarding design standards, and the impact mitigation that would be required for the number of trips and transportation improvements required would also render the scenarios economically infeasible. To put a finer point on it, the only reason the memorandum is being furnished is to disclose the "worst case" development scenario, which is one that will never occur. Any future project would need to comply with the land use code, building codes, other applicable codes, as well as SEPA, which would likely significantly diminish any of these scenarios in both size and impact. As stated in the comprehensive plan public hearing, and as will be stated at the rezone hearing, the JCC has no intention of building anything other than a JCC on the property. The future JCC will be approximately the same size as today's JCC, but built for today's standards rather than the needs of membership in the 1960s/70s. The JCC cannot sustain much larger of a building either from a membership or operations standpoint. Finally, and even though we could not make it more clear that the JCC intends to build a reasonably-sized JCC on this property, if the property were to be built as an office by someone other than the JCC, the public

health, safety, and welfare would not be harmed due to the fact that all codes and SEPA would need to be complied with, and there are already office buildings in the vicinity that have not harmed the public. We are happy to answer as many questions as the Examiner wishes to answer regarding this point. The request does not harm public health, safety and welfare and it is our opinion that the rezone will improve public health, safety and welfare.

7. If a comprehensive plan amendment is required in order to satisfy subsection (C)(1) of this section, approval of the comprehensive plan amendment is required prior to or concurrent with the granting of an approval of the rezone.

Response: The comprehensive plan amendment was recommended for approval by the Planning Commission, and was approved on the first reading by the City Council. The ordinance formally adopting the Future Land Use Map change is scheduled for December 1, 2026, which is the same day the first reading of the rezone ordinance is scheduled. So, the comprehensive plan amendment would be passed just prior to or concurrent with the granting of the rezone.