

42842-3-II.

COURT OF APPEALS DIVISION II
OF THE STATE OF WASHINGTON

CITY OF EDGEWOOD, Appellant

vs.

HAIST, LLC, et. Al, Respondents

REVISED
OPENING BRIEF OF RESPONDENTS ERIC DOCKEN, DOCKEN
PROPERTIES, LP, ENID AND EDWARD DUNCAN, JAMES AND
PATRICIA SCHMIDT, DARLENE MASTERS, AKA THE
BRICKHOUSE, LLC, GEORGE AND ARLYN SKARICH, SUELO
MARINA, LLC,

CAROLYN A. LAKE
WSBA #13980
Attorney for Respondents Docken
501 South G Street
Tacoma, Washington 98405
(253) 779-4000

STATE OF WASHINGTON
DEPARTMENT OF
12 MAY -6 PM 3:20

COURT OF APPEALS
DIVISION II

ORIGINAL

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....ix

RESPONDENTS DOCKEN’S STATEMENT OF ISSUES &
ASSIGNMENTS OF ERROR.....x

I. INTRODUCTION / SUMMARY.....1

II. RESPONDENTS DOCKEN’S STATEMENT OF FACTS.....3

III. AUTHORITY & ARGUMENT.....12

 A. OUTLINE OF THE LID ASSESSMENT & OBJECTION PROCESS.....12

 B. CITY OF EDGEWOOD LID PROCESS IS CONSTITUTIONALLY FLAWED.....13

 1. Standard of Review: Jurisdictional /Constitutional defects.....13

 2. Superior Court Correctly Found Due Process Jurisdictional &
 Constitutional Defects But Erred in Limiting Relief.....14

 a. Statutory vs. Jurisdictional Judicial Authority.

 b. Superior Court Made Correct Findings of Fact But Erred in Failing
 to Extend the Relief that Flowed from those Findings

 c. Remedy for Jurisdictional Defect is To Void the
 Assessment Roll

 3. Edgewood LID Process Violated Property Owners Due Process Right:
 Notices To Property Owners Was Impermissible Anorexic & Not
 Timely.....22

 4. Edgewood LID Process Violated Property Owners Due Process Right:
 Other Edgewood LID Information Not Timely Provided.....25

 5. Flawed Publication Renders Critical City Ordinances.....26

 C. CITY OF EDGEWOOD LID PROCESS STATUTORILY FLAWED.....29

1. Edgewood Improper Delegation To Hearing Examiner Fails To Meet LID Strict Compliance Standard.....	29
2. City Hearing Notice Mislead Property Owners.....	31
3. The City Erred In Applying the Appellate Court Standard of Review Prematurely.....	33
D. CITY OF EDGEWOOD LID PROCESS PROCEDURALLY FLAWED.....	35
1. City Erred By Allowing City Testimony in Record After The Hearing Record Was Closed.....	35
2. Even The City Council’s Own Appeal Hearing Of 19 July, 2011 Failed To Conform To City’s Adopted LID Process Set Forth In Ordinance 11-0361.....	37
3. Flawed City Council Action.....	39
A. Facts Specific To Council Issue.	
B. Council’s Vote On Lid Assessment Ordinance Was Not Validly Enacted & Is Void.	
1. Standard of Review.	
2. Ordinance No. AB 11-0366 is invalid because the vote taken on July 19, 2011 was procedurally and substantively defective.	
3. Court Must Declare the Flawed Ordinance’s Assessment Roll Null & Void	
E. CITY OF EDGEWOOD LID PROCESS SUBSTANTIVELY FLAWED: EDGEWOOD SPECIAL BENEFIT ASSESSMENT REPORT DOES NOT SUPPORT CLAIMED VALUATIONS NOR SURVIVE LEGAL CHALLENGES.....	45
1. Flawed City Report In General.....	46
2. Amount of City “Special Benefits” Assessment Impermissibly Includes General Benefits.....	46
3. Burden to Justify Valuations Shifted To City & Burden Was Not Met.....	53

4. Information Necessary to Support City Valuations is NOT in the LID Record, Without Which Assessments Cannot Withstand Challenge.....	55
5. City Valuation Fails: Not Parcel Specific.....	58
6. The City Erred in Failing to Value the LID properties immediately before and after construction of the improvements.....	60
7. City Report Fails to Describe Accepted Assessment Methodology As Required.....	63
8. City Report and Assessments Improperly Based on Speculation.....	64
9. City Study Does not Comply with Professional Appraisal Industry Standards As To Highest & Best Use.....	67
10. City Study Flawed as Special Assessment Not Proportionately Distributed.....	70
11. Zoning Changes Are Not a Valid Basis for Valuation & Zoning Ordinances upon which Special Assessments are Based Are Flawed & Not In Effect.....	71
12. City’s MacAulay Valuation Assumptions Contradicted by the City’s Own Buildable Lands Report.....	75
13. Edgewood Valuation Report Further Flawed As Assumes Without Basis Maximum Build Out.....	79
14. City Impermissibly Allowed Zacharia Testimony – Noncompliance with USPAP and Ethics Code.....	82
F. PARCEL SPECIFIC CITY ERRORS.....	84
1. SUELO MARINA LLC – PARCEL 31.....	84
a. Hearing Examiner Ignored Expert Testimony Explicitly Incorporated into LID Parcel 31’s Protest Letter and Wrongly Summarily Dismissed the LID Parcel 31 Protest on the Basis of No Competent Testimony.	

b. City Assessment to LID Parcel 31 Is Disproportionate & Thus Flawed	
c. Parcel 31 Specific Relief.	
2. SCHMIDT – PARCEL 71 & MASTERS PARCEL 79.....	86
a. City Report Impermissibly Fails to Deduct From Alleged Special Benefit Property Owner’s Heavy Investment Needed to Enjoy Proposed Sewer Improvements, As Required Under Washington Law	
b. Parcel 71 & 70 Specific Relief.	
3. RONALD O. ACOSTA, D.C., LID PARCEL NO. 128, EXHIBIT 21, CP 245-252.....	89
a. Parcel 128 Valuation Flawed Due to City Error in Highest & Best Use	
b. The City Consultant’s Definition of Highest and Best Use is Legally Insufficient	
c. Parcel 128 Parcel Specific Relief - The City Should and Must Correctly Apply Highest and Best Use	
4. ENID AND EDWARD DUNCAN, LID PARCEL NO. 2, EXHIBIT 12, CP 167-176.....	91
a. The Duncan Property Valuation Was Prejudiced by City’s LID Short Notice, As Shared By All LID Property Owners	
b. City Failed to Overcome Dissenting Appraiser	
c. City Erred by Not Curing Prejudice Caused by City’s Inaccurate Appraisal	
d. Parcel 2 Specific Relief: The Court Should Remand to Allow City to Reduce the Assessment on LID Parcel Number 2 in Addition to Other Relief Requested	

5. GEORGE AND ARLYN SKARICH, LID PARCEL NO. 115, EXHIBIT
25.....97

 a. City Failed to Overcome LID Parcel 115 Owner’s Reliance on
 City’s Own Prior 2008 Appraisal.

 b. Parcel 115 Parcel Specific Relief.

IV. CONCLUSION.....100

TABLE OF AUTHORITIES

CASES

Abbenhaus v. City of Yakima, 89 Wn.2d 885, 860-861, 576 P.2d 888 (1978).....34, 87

Assessments in Washington, 40 Wash. L. Rev. 100, 110 (1965), at 123.....25

Assessments in Washington? 40 Wash. L. Rev. 100, 120.....47

Bellevue Assocs. v. Bellevue, 108 Wn.2d 671, 675, 741 P.2d 993 (1987).....55, 56, 58, 60

Bellevue Plaza, Inc. v. City of Bellevue, 121 Wn.2d 397, 418, 851 P.2d 662 (1993)passim

Bothell v. Gutschmidt, 78 Wn. App. 654; 898 P.2d 864 (1995)42

Cammack v. City of Port Angeles, 15 Wash. App. 188, 196, 548 P.2d 571 (Div. 2, 1976) 14, 22

Carlisle v. Columbia Irrigation Dist., 168 Wn.2d 555, 569, 229 P.3d 761 (2010).....25, 61

Carlson v. Town of Beaux Arts Village, 41 Wn. App. 402, 704 P.2d 663 (1985).....45

Chemical Bank v. WPPSS, 99 Wn.2d 772, 792, 666 P.2d 329 30

Donaldson v. Greenwood, 40 Wn.2d 238, 252, 242 P.2d 1038 (1952).....64

Douglass v. Spokane County, 115 Wn.App. 900, 64 P.3d 71 (Div. 3, 2003).....87

Henry v. Oakville, 30 Wn. App. 240, 247, 633 P.2d 892 (1981), review denied, 96 Wash.2d 1027 (1982) cited by *Bothell*, supra, at 66042

Hillis Homes, Inc. v. Snohomish Cy., 97 Wash.2d 804, 808, 650 P.2d 193 (1982).....30

In re Indian Trail Trunk Sewer Sys., 35 Wn. App. 840, 843, 670 P.2d 675 (1983).....passim

In re Jones, 52 Wn.2d 143, 324 P.2d 259 (1958).....51, 90

<i>In re Local Imp. 6097</i> , 52 Wn.2d 330, 335-36, 324 P.2d 1078 (1958).....	passim
<i>In re Mark Anthony Fowler Special Needs Trust</i> , 160 Wn.App. 1001 (Div. 2 2011).....	97
<i>In re Schmitz</i> , 44 Wn.2d 429, 433-34, 268 P.2d 436 (1954)...	47, 53, 64
<i>In re Seattle</i> , 96 Wash.2d 616, 629, 638 P.2d 549 (1981).....	30
<i>In re Shilshole Ave.</i> , 85 Wn. 522, 537, 148 P. 781 (1915).....	51
<i>In re West Marginal Way</i> , 112 Wash. 418, 422, 192 P. 961 (1920).....	90
<i>In re Westlake Ave.</i> , 40 Wash. 144, 82 P. 279 (1905).....	82
<i>Kusky v. City of Goldendale</i> , 85 Wn.App. 493, 499, 933 P.2d 430 (Div. 3, 1997).....	61, 87, 98
<i>Mackowik v. Kansas City, St. J & C.B. R.R. Co.</i> , 94 S.W. 256, 262 (Mo. 1906).....	52
<i>Moss v. City of Bellingham</i> , 109 Wn.App. 6, 31 P.3d 703 (Div. 1 2001).....	92
<i>Norwood v. Baker</i> , 172 U.S. 269, 278-279; 19 S.Ct. 187, 190; 43 L. Ed. 443, 447 (1898).....	46
<i>Patchell v. City of Puyallup</i> , 37 Wash. App. 434, 444, 682 P.2d 913 (Div. 2, 1984).....	14
<i>Peoples Nat. Bank of Washington v. City of Anacortes</i> , 44 Wash. App. 262, 264, 721 P.2d 1003, 1004 (Div. 1 1986) ..	23
<i>Schmitt v. Cape George Sewer Dist. 1</i> , 61 Wn. App. 1, 5, 809 P.2d 217 (1991).....	28
<i>Seattle v. Rogers Clothing</i> , 114 Wash.2d 23, 229-231, 787 P.2d 39, 48 (Wash. 1990).....	53
<i>Sterling Realty Co. v. Bellevue</i> , 68 Wn.2d 760, 765, 415 P.2d 627 (1966).....	47, 64, 70
<i>Sterling Realty Co. v. City of Bellevue</i> , 68 Wash. 2d 760, 769, 415 P.2d 627 (1966)	14, 22
<i>Tiffany Family Trust Corp. v. City of Kent</i> , 155 Wn.2d 225, 119 P.3d 325 (2005).....	13, 14, 15, 35
<i>Trautman, Assessments in Washington</i> , 40 Wash. L. Rev. 100, 122 (1965).....	70

<i>Washington Fed'n of State Employees v. State Personnel Bd.</i> , 54 Wn. App. 305, 308-09, 773 P.2d 421 (1989)	28
---	----

STATUTES

RCW 35.43.040	46
RCW 35.43.042	46
RCW 35.44.010	12
RCW 35.44.050	12
RCW 35.44.090	13, 24
RCW 35.44.110	13
RCW 35.44.250	75, 89
RCW 35.51.030(2).....	64
RCW 35A.12.160	27
RCW 35A.13.200	28
RCW 35A.21.010 (4).....	45

**RESPONDENTS DOCKEN'S STATEMENT OF ISSUES &
ASIGNMENTS OF ERROR**

1. Was CITY OF EDGEWOOD LID PROCESS CONSTITUTIONALLY FLAWED WHERE CITY DELIBERATELY COMPRESSED TIMEFRAMES AND NOTICE OF HEARINGS , FAILED TO TIMELY PROVIDE PROPERTY SPECIFIC INFORMATION & HEARING STANDARDS AND FAILED TO PROPERLY PUBLISH RELATED ORDINANCES? YES.

- a. Superior Court Correctly Found Due Process Jurisdictional & Constitutional Defects But Erred in Limiting Relief (Issue No.1)
- b. Superior Court Erred in Not Applying Proper Remedy for Jurisdictional Defect: To Void the Assessment Roll (Issue .1)
- c. Edgewood LID Process Violated Property Owners Due Process Right: Notices To Property Owners Were Impermissible Anorexic & Not Timely. (Issue No.1)
- d. Edgewood LID Process Violated Property Owners Due Process Right: Other Edgewood LID Information Not Timely Provided. (Issue No.1)
- e. Flawed Publication Renders Critical City Ordinances Void. (Issue No.1)

2. Was CITY OF EDGEWOOD LID PROCESS STATUTORILY FLAWED WHERE CITY COUNCIL DELEGATION TO HEARING EXAMINER WAS TRUNCATED, EXAMINER PROCESS FLAWED, AND WRONG STANDARD OF REVIEW USED IN ADMINISTRATIVE PROCEEDING? YES.

- a. Edgewood Improper Delegation To Hearing Examiner Fails To Meet Lid Strict Compliance Standard. (Issue No. 2)
- b. Flawed City Examiner Process Renders Assessment Roll Void. (Issue No. 2)
- c. The City Erred In Applying The Appellate Court Standard Of Review Prematurely. (Issue No. 2)

3. WAS CITY OF EDGEWOOD LID PROCESS PROCEDURALLY FLAWED

WHERE HE ALLOWED ONLY CITY EVIDENCE AFTER RECORD CLOSED, CITY COUNCIL FAILED TO FOLLOW ITS OWN LID ORDINANCE PROCESS, AND COUNCIL'S VOTE ON LID ASSESSMENT ORDINANCE WAS NOT VALIDLY ENACTED? YES.

a. City Erred By Allowing City Testimony In Record After The Hearing Record Was Closed. (Issue No. 3)

b. Even The City Council's Own Appeal Hearing Of 19 July, 2011 Failed To Conform To City's Adopted LID Process Set Forth In Ordinance 11-0361. (Issue No.3)

c. Flawed City Council Action Renders Assessment Role Void. (Issue No.3)

4. WAS CITY OF EDGEWOOD LID PROCESS SUSTANTIVELY FLAWED WHERE EDGEWOOD SPECIAL BENEFIT ASSESSMENT REPORT DOES NOT SUPPORT CLAIMED VALUATIONS NOR SURVIVE LEGAL CHALLENGES? YES.

a. Flawed City Report In General (Issue No.4)

b. Amount of City "Special Benefits" Assessment Impermissibly Includes General Benefits (Issue No.4)

c. Burden to Justify Valuations Shifted To City & Burden Was Not Met (Issue No.4)

d. Information Necessary to Support City Valuations is NOT in the LID Record, Without Which Assessments Cannot Withstand Challenge. (Issue No.4)

3. The City Erred in Failing to Value the LID properties immediately before and after construction of the improvements. (Issue No.4)

f. City Report Fails to Describe Accepted Assessment Methodology As Required (Issue No.4)

g. Petitioners' Assessed Valuation Impermissibly Included General Benefits (Issue No.4)

h. City Valuation Fails: Not Parcel Specific. (Issue No.4)

i. City Report and Assessments Improperly Based on Speculation. (Issue No.4)

j. City Study Does not Comply with Professional Appraisal Industry Standards As To Highest & Best Use (Issue No.4)

k City Study Flawed as Special Assessment Not Proportionately Distributed (Issue No.4)

l.. Zoning Changes Are Not a Valid Basis for Valuation & Zoning Ordinances upon which Special Assessments are Based Are Flawed & Not In Effect. (Issue No.4)

m. City's MacAulay Valuation Assumptions Contradicted by the City's Own Buildable Lands Report (Issue No.4)

n. Edgewood Valuation Report Further Flawed As Assumes Without Basis Maximum Build Out (Issue No.4)

o. City Impermissibly Allowed Zacharia Testimony – Noncompliance with USPAP and Ethics Code (Issue No.4)

**5. DID CITY VALUATION REPORT CONTAIN PARCEL SPECIFIC CITY ERRORS?
YES.**

1. SUELO MARINA LLC – PARCEL 31 (Issue No.5)

a. Hearing Examiner Ignored Expert Testimony Explicitly Incorporated into LID Parcel 31's Protest Letter and Wrongly Summarily Dismissed the LID Parcel 31 Protest on the Basis of No Competent Testimony. (Issue No.5)

b. City Assessment to LID Parcel 31 Is Disproportionate & Thus Flawed (Issue No.5)

2. SCHMIDT – PARCEL 71 & MASTERS PARCEL 79

a. City Report Impermissibly Fails to Deduct From Alleged Special Benefit Property Owner's Heavy Investment Needed to Enjoy Proposed Sewer Improvements, As Required Under Washington Law (Issue No.5)

3. RONALD O. ACOSTA, D.C., LID PARCEL NO. 128, EXHIBIT 21, CP 245-252

- a. Parcel 128 Valuation Flawed Due to City Error in Highest & Best Use (Issue No.5)
- b. The City Consultant's Definition of Highest and Best Use is Legally Insufficient (Issue No.5)

4. ENID AND EDWARD DUNCAN, LID PARCEL NO. 2, EXHIBIT 12, CP 167-176

- a. The Duncan Property Valuation Was Prejudiced by City's LID Short Notice, As Shared By All LID Property Owners (Issue No.5)
- b. City Failed to Overcome Dissenting Appraiser Issue No.5)
- c. City Erred by Not Curing Prejudice Caused by City's Inaccurate Appraisal (Issue No.5)

5. GEORGE AND ARLYN SKARICH, LID PARCEL NO. 115, EXHIBIT 25

- a. City Failed to Overcome LID Parcel 115 Owner's Reliance on City's Own Prior 2008 Appraisal. (Issue No.5)

I. INTRODUCTION / SUMMARY

Property owners/Respondent Docken¹ appeal the Sewer Assessments for City of Edgewood Local Improvement District No 1. The sewer LID, Edgewood's first since its incorporation a decade ago, is fatally flawed as to due process, statutory procedures, and valuation methodology. Respondents have been assigned by Edgewood to collectively shoulder a burden to pay \$1,445,117 for a sewer system that confers *city-wide* benefits.

Although Edgewood had been working on crafting its internal valuation scheme for over six months behind closed doors, the City foisted this huge assessment onto this small group of property owners upon less than two weeks working days' notice. The City's notices within this abbreviated timeframe, purporting to announce the special assessments and public hearing processes, were incomplete, confusing and lacked statutorily required information. Throughout the hearing process, the City cut corners, abbreviated appeal timelines and crippled the City Council's consideration of property owner information through the rushed process. In addition to statutory and constitutional flaws, the records shows several substantial deviations from even the City's own adopted processes, each of which supports nullifying the assessment Ordinance.

¹ ERIC DOCKEN, DOCKEN PROPERTIES, LP, ENID AND EDWARD DUNCAN, JAMES AND PATRICIA SCHMIDT, DARLENE MASTERS, AKA THE BRICKHOUSE, LLC, GEORGE AND ARLYN SKARICH, SUELO MARINA, LLC

When challenged, the City staff first stonewalled access to its assessment Valuation Report then attempted to support its crushing assessments with less than a paragraph's worth of information as to each parcel, which varied widely, assumed a non-statutorily approved methodology, conflicted with critical assessments as to valuations, density, buildable land areas, and growth rates upon which Edgewood simultaneously relied on to artificially bulk up its zoning designations, with conclusions that ultimately are simply not supported by the record before the City Council or this Court.

Respondents' appeal encompasses both the Hearing Examiner's recommendation and the City Council's confirmation of the final assessment roll. On a global basis, the City's process to date is fatally flawed by the numerous City procedural and timing missteps which robbed Respondents property owners of meaningful input. The City's Special Valuation Study methodology was flawed. The Respondents/property owners presented testimony and evidence on the lack of Special Benefits which transferred the burden of proof back onto Edgewood to establish the validity of the special benefits assessments, which Edgewood did not do. The combined effect of the errors noted mean that Edgewood's valuation study must be disregarded. The proposed adoption of the confirmation ordinance is without factual or legal foundation and therefore is arbitrary and capricious. Respondents also

adopt by reference all issues and analysis raised by all other Respondents in this consolidated LID appeal. Pursuant to RCW 35.44.200, this Court should grant this Appeal of Assessment Roll for City of Edgewood LID No 1 purported to be adopted pursuant to Edgewood Ordinance AB 11-0366.

II. RESPONDENTS DOCKEN'S STATEMENT OF FACTS

The following Respondents own property within the LID assessment area.

- Respondents Eric Docken and Docken Properties L.P.'s property is identified as Pierce County Assessor's Parcel 0420094080 and LID 131; Pierce County Assessor's Parcel 0420094023 and LID 133; and Pierce County Assessor's Parcel 0420094079 and LID 140. HE TR 65:11-17 and HE TR 24:3-25:5.²
- Respondents Duncan's property is identified as Pierce County Assessor's Parcel 0420032021 and LID 2. HE TR 29 and HE TR 24:3-25:5.
- Respondents Schmidt and Masters' Property is identified as Pierce County Assessor's Parcel 0420091012 and LID 71; and Pierce County Assessor's Parcel 0420091051 and LID 79. HE TR 49:9-15 and HE TR 24:3-25:5.
- Respondents AKA The Brickhouse, LLC property is identified as Pierce County Assessor's Parcel 0362000373 and LID 128. HE TR 24:3-25:5.
- Respondents Skarich's property is identified as Pierce County Assessor's Parcel 0420103139 and LID 115. HE TR 24:3-25:5.

² References to **Transcript** are designated by: HE TR for June 1, 2011 LID Hearing Examiner Hearing Transcript and CC for the July 19, 2011 LID City Council Hearing Transcript.

- Respondents Suelo Marina, LLC property is identified as Pierce County Assessor's Parcel 0420033140 and LID 31. HE TR 24:3-25:5. In or around 2007, City of Edgewood property owners petitioned for and formed LID No. 1 in order to build a sewer system. HE TR 11:1-20. The estimated cost of the sewer system at the time of formation was between \$0.75 and \$1 per square foot of land. HE TR 63:20-22, see also Resolution 08-242 Section 2 at CP 1358, Ordinance 08-0306 at section 4, CP 1380.

In 2008, the City contracted Allen Brackett Shedd to complete a special benefit study to determine the special benefit to be conferred upon each parcel by completion of the sewer, which had at that time been oversized to serve future hypothetical developments outside LID No. 1. HE TR 62:1-7 and Exhibit 28 CP 623-625. Between 2007 and 2011, the City of Edgewood constructed the sewer. HE TR 11:15-19.

On May 1, 2011, City of Edgewood Ordinance 11-360 was purported to take effect. CP 1444-1448. Ordinance 11-0360 was summarily published. Id.

By Ordinance 11-360, the Edgewood City Council purported to delegate its statutory authority to conduct a LID assessment hearing for LID No. 1 to a hearing examiner. Id. However, in its Ordinance 11-360, the City delegated only a fraction of the statutorily authorized powers; the powers delegated to the hearing examiner were only to lower assessments, or approve the assessment role as prepared by the Special Benefit Study Appraisers,

Macaulay and Associates. Id.

In December 2010, the City ordered a new Special Benefit Study for LID No.1. HE TR 11:20-21. In April 2011, The Edgewood City Council purportedly adopted Ordinances AB 11-0358, 0359, 0360, with an intended effective date of May 10, 2011. See Docken Appendix 8, minutes of the Edgewood council April 26, 2011, discussing Ordinances AB11-0358, and 0359, and 0360. Cp 1235-1239. By these ordinances, the City intended to amend the City's zoning and Comprehensive Plan, by significantly intensifying the potentially density of the properties within LID No. 1. See Docken Appendix 8, minutes of the Edgewood council April 26, 2011, discussing Ordinances AB11-0358, and 0359, and 0360. CP 1235-1239. The City's purported basis for the new zone designations was the Pierce County and Edgewood Buildable Lands Study. R000680-684 R001309-1760, and R01906-01925.

The City's Consultant for the LID No 1 Special Valuation study Macaulay and Associates then used the freshly minted zoning designations and densities as the basis for the "special benefits" purportedly conferred on the properties within the LID assessment area. CP 1245-1256. And see CP 1464-1626. The City's LID No 1 Special Valuation Study by Macaulay and Associates issued May 10, 2011 with an effective date of May 11, 2011, so as to be effective after the date of the City's purported adoption of the new

zoning. HE TR 11:24-25. HE TR 76:7-10. Ordinances AB 11-0358, 0359, and 0360 were summarily published. Id.

By letter dated May 12, 2011, the City notified LID No. 1 property owners that there would be a final assessment role hearing on June 1, 2011. HE TR 12:1-3. R01138-1143. The May 12, 2011 notice to property owners did not accurately describe the powers delegated by the City Council to the LID Hearing Examiner. The Notice described the powers set forth in state law (to “correct, revise, raise, lower, change or modify the roll or any part thereof or set aside and order a new assessment”), but not the smaller subset of powers actually delegated by the City Council. Id. The City’s notice included only the amount the City proposed to assess to each parcel, and lacked any information on valuation methodology or support. HE TR 65:18-22. Prompted by the City’s May 12, 2011 letter, between May 12 and June 1, many dismayed property owners undertook to investigate the result of the study. CP 109-112. During the same period, the property owners requested additional valuation information from the City, which the City treated as public records requests pursuant to RCW 42.56. CP 656. See attached. The public records process allows the City five working days to respond to information requests. HE TR 65:18-22.

After its initial notice of the LID hearing, the City was required to send out two subsequent notices, to attempt to correct material errors in the

proposed assessment repayment schedule and the misidentification of the LID subject properties. These City correction letters were dated May 16 and May 17, 2011, respectively. CP 690-704. The City's Staff Report for the June 1, 2011 Final Assessment Role Hearing was not made available to the affected property owners until May 25, 2011 and then only by request. HE TR 65:18-66:12. CP 1341-1626. Not until June 1, 2011, the same day as the LID final assessment role hearing, did the City allow Petitioner Eric Docken access to the records for his parcel-specific information upon which the individual property assessments were based. In that records request, the City supplied basic print outs from the Pierce County Assessor website, and which did not contain any appraisal information which supports the basis for Edgewood's special assessments. Id and TR65:18-66:12.

Prior to the June 1 hearing, various affected property owners protested the City's flawed notice and process, and requested the assessment hearing be continued. CP 109-112. The city refused. CP 114-116. On June 1, 2011, the purported final assessment role hearing was held despite the property owners' written objections to the flawed notice procedure and delegation of authority, and lack of final assessment numbers. HE TR 127:1-11. R00115-00920. Over twenty affected property owners, including Respondents herein filed protests of the LID final assessment role. Id, and HE TR 23-25. CC TR 5:16-15. Property owners, including Respondents, introduced competent testimony

from an appraiser as to the legally flawed assessment methods, facial defects in the 2011 special benefit study, disproportionate assessment, lack of hearing examiner jurisdiction, lack of notice, notice defects, flawed valuation methodology, and irreconcilable facts and circumstances surrounding the assessment. HE TR 23-118.

The City's consultant on cross examination admitted that information which purportedly supported his valuation methodology was **not** reflected in his Valuation Study dated May 10, 2011 or in the parcel specific information provided to affected property owners, but instead was contained in unnamed "files" at an undisclosed location. HE TR 105:10-22. The City's consultant also testified that general LID system wide costs were included in the "special benefits" assessed to LID property owners, including costs of "over-sizing for future use". HE TR 127:4-19, HE TR 127:20-25. The City's consultant also testified that his "special Valuation Report" did not go into detail on each property or go to individual analysis of each site. HE TR 134:25-135:5 and HE TR 138:21-139:2. At the conclusion of the LID assessment hearing, the Hearing Examiner closed the record, but allowed written closing argument to be filed. The Hearing Examiner specifically stated no additional exhibits or testimony would be allowed. HE TR 121:21-25 and HE TR 148:6-20. Over ten days **after** the hearing, and **after** the record was closed, the City filed additional "testimony" via a letter from consultant Macaulay to try to explain

away the numerous valuation and methodology concerns raised by property owners. CP 1077-1088. Respondents moved to strike the City's post-hearing submittals, citing to the Hearing Examiner's ruling that the records was closed at hearing. **Exhibit 38**. On June 30, the Hearing Examiner issued his recommendation to approve the LID assessment valuations. *Findings of fact and Conclusions of Law & Recommendation* at CP 69-178. The Hearing Examiner granted Respondents' Legal Counsel Motion to Strike, but only as to Petitioner Docken, contrary to express assurances that relief for one would be relief for all. Id.

The City's Ordinance 11-0361 which purportedly set forth the City's LID assessment hearing process, allowed for fourteen days between filing of appeals of the Hearing examiner "recommendation" and the City Council's hearing on the assessment role confirmation. CP 180-183 section 4 of Ordinance 11-0361 at CP 1445. However, on July 1, just prior to a three day weekend, the City instead announced by mail an appeal deadline date of July 15, with the City Council appeal hearing to occur four days later on July 19, 2011. CP 1100-1106.

On July 19, 2011, a mere four calendar days after the appeals were filed, the City Council held its LID appeal hearing. CP 1291 and CC TR 1-60. Affected property owners, including Respondents, were given three minutes to present their appeal. CC TR 6:6-10. Following the brief appeal

presentations, the City Council moved approval of the LID No. 1, but lacked the four votes necessary for passage, so the assessment failed. CCTR 50:1-12. After further discussion, the Council undertook a re-vote of the assessment role, resulting in a different vote tally, resulting in the *purported* passage of Ordinance AB 11-0366, the LID No 1 assessment roll, as recommended by the Hearing Examiner with modifications. CC TR 59:1-60:15. CP 2260-2325. Parties timely appealed to Superior Court. CP 3-40. Appeals of three sets of property owners were consolidated before Honorable Judge Hickman. CP 2328-2333. Respondents' challenges at the Superior Court appellate level included that the City's process was unfair and contrary to due process, the assessment methodology was fundamentally flawed and the assessments were disproportionately levied. CP 2481-2660, 2383-2480, 2339-2384. The Honorable John Hickman found that the City's process was inadequate such that it violated Respondents' right to a fair hearing. CP 2822-2836. More specifically, the Superior Court found the hearing notices inadequate in light of certain affirmative and misleading statements by the City. *Id.* The Superior Court also found that the City's Hearing Examiner failed to act as a neutral fact-finder and properly consider Respondents' credible evidence challenging the assessment methodology. *Id.*

To address the tainted process, the Superior Court ordered the City to conduct another hearing with appropriate notice and burdens of proof. The

Superior Court did not reach Respondents' other issues of error regarding the assessment methodology or proportionality. Instead, the Superior Court retained jurisdiction to subsequently determine if an adequate and fair hearing was provided and address specific assessments against particular parcels if those issues remained. *Id.*

After the Superior Court's initial Order Granting the Appeal, Respondents Docken et al {NO. 11-2-12513-6- *Docken Appeal*} ("Respondents Docken") moved the Court for Reconsideration³. CP2847-2866. While the Respondents embrace the general substance of the Court's initial ruling that the City's Notice of its initial LID hearing was defective and offended property owner's due process, the Respondents disagreed with the Court's limited scope of relief resulting from those notice defects. *Id.* A Motion for Intervention was also filed by North Meridian Associates. CP 2896-2921. After hearing and advisement, the Superior Court denied the both Motions. CP2968-2696. Respondents Docken timely appealed those rulings.

³ RULE CR 59 NEW TRIAL, RECONSIDERATION, AND AMENDMENT OF JUDGMENTS

(a) Grounds for New Trial or Reconsideration. On the motion of the party aggrieved, a verdict may be vacated and a new trial granted to all or any of the parties, and on all issues, or on some of the issues when such issues are clearly and fairly separable and distinct, or any other decision or order may be vacated and reconsideration granted. Such motion may be granted for any one of the following causes materially affecting the substantial rights of such parties:

(1) Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion, by which such party was prevented from having a fair trial...***

(6) Error in the assessment of the amount of recovery whether too large or too small, when the action is upon a contract, or for the injury or detention of property;

(7) That there is no evidence or reasonable inference from the evidence to justify the verdict or the decision, or that it is contrary to law;

(8) Error in law occurring at the trial and objected to at the time by the party making the application; or (9) That substantial justice has not been done.

CP 2869-2882.

III. AUTHORITY & ARGUMENT

A. OUTLINE OF THE LID ASSESSMENT & OBJECTION PROCESS

A Local Improvement Districts (LID) is statutorily created under RCW 35.43 and 35.44. RCW 35.43 governs the formation of the district. Once the district is formed, a City may assess LID property owners pursuant to RCW 35.44.

A city is required to assess all property within the LID so the cost and expense of the improvement can be allocated in accordance with the special benefits conferred thereon. RCW 35.44.010. The City shall calculate the LID assessments using the zone and termini method, unless the legislature of the public agency determines another valuation method “more fairly reflects” the special benefit. RCW 35.44.047. The City is required to enter the total assessments ascertained against each parcel upon an assessment role. RCW 35.44.050.

Prior to entering the assessments, the municipality’s legislative body, or some committee or officer designated by the legislative body shall hold a hearing to consider objections. RCW 35.44.070. As a result of the assessment hearing, state law provides that the hearing official or officials may correct, revise, lower, change, or modify the assessment roll or any part thereof, or set aside the roll and order the assessment to be made de novo, and at the

conclusion confirm the role by ordinance. RCW 35.44.100.

The City is required to provide property owners of record notice of the LID assessment hearing by mail sent at least fifteen days prior to the hearing, and published at least once a week for two weeks in the official newspaper of the city or town, the last publication to be at least fifteen days before the date fixed for hearing. RCW 35.44.090. The objection procedure shall be set by ordinance, and that ordinance shall be included in the mailed notice of hearing. RCW 35.44.070.

Following the assessment role hearing, the City council must fix a time for hearing objections to confirmation of the assessment role. RCW 35.44.100. Only those who partook in the hearing on the final assessment role may object to confirmation of the assessment role. RCW 35.44.110. Following confirmation of an assessment role by ordinance, protesters may perfect an appeal to the superior court of the county in which the town is situated. RCW 35.44.200.

Appeals of jurisdictional/constitutional issues are not required to follow the statutory appeals process. *See Tiffany Family Trust Corp. v. City of Kent*, 155 Wn.2d 225, 119 P.3d 325 (2005) Respondents here raised such issues.

B. CITY OF EDGEWOOD LID PROCESS IS CONSTITUTIONALLY/JURISDICTIONALLY FLAWED

1. Standard of Review: Jurisdictional /Constitutional defects

Wholly independent of the statutory basis for a court to review confirmation of an LID assessment role, is when issues are raised which invoke the superior court's inherent, or constitutional jurisdiction. *See Tiffany Family Trust Corp. v. City of Kent*, 155 Wn.2d 225, 119 P.3d 325 (2005). An assessment role review proceeding under the superior court's constitutional jurisdiction is called a jurisdictional challenge. *Id.* Jurisdictional challenges are not governed by RCW 35.44. *Id.* When considering an appeal from the Superior Court of a local improvement district assessment role matter, the Appellate-level court reviews the merits of the Superior Court's Judgment as to jurisdictional/constitutional issues. *Patchell v. City of Puyallup*, 37 Wash. App. 434, 444, 682 P.2d 913 (Div. 2, 1984).

The remedy for a jurisdictional flaw in confirmation of an assessment role is nullification of the entire role. *Cammack v. City of Port Angeles*, 15 Wash. App. 188, 196, 548 P.2d 571 (Div. 2, 1976); *citing Sterling Realty Co. v. City of Bellevue*, 68 Wash. 2d 760, 769, 415 P.2d 627 (1966).

2. Superior Court Correctly Found Due Process Jurisdictional & Constitutional Defects But Erred in Limiting Relief

While Respondents Docken embrace the general substance of the Superior Court's ruling below that the City's Notice of its initial LID hearing was defective and offended property owner's due process, the Respondents appeal the limited scope of relief applied by the Superior Court as a result of

those notice defects.⁴ On appeal, this Court should rule that it has the authority and jurisdiction to declare the entire LID roll void, and should so declare. The defects in Notice found by the Superior Court are **not** waived as to those LID property owners who did not appeal. The notice and process objections raised by Respondents Docken and found by the Superior Court to be of merit are jurisdictional. Jurisdictional objections “serve to invalidate the entire LID.” *Tiffany Family Trust Corp. v. City of Kent*, 155 Wash. 2d 225, 236, 119 P.3d 325, 331-32 (2005). The jurisdictional objections are expressly NOT subject to the appeal procedures of RCW 35.44.200 *et. seq.* This Court should find on appeal the LID No 1 assessment roll null and void as to all LID property owners, based on the cumulative due process and notice violations.

a. Statutory vs. Jurisdictional Judicial Authority.

Prior to 1982, *Goetter v. Colville*, 82 Wash. 305, 144 P. 30 (1914), and its progeny held that the court’s jurisdiction to hear appeals was conferred only by statute and strict compliance with the statutory mandate was required.

Subsequently however, the Supreme Court's decision in *Fisher Bros.*

overruled *Goetter*. See *Fisher Bros. Corp. v. Des Moines Sewer Dist.*, 97

⁴ Respondents Docken appeal specifically the following specific sections of the Hearing Examiner recommendation as apparently adopted by the City Council:

- a. Finding of Facts No(s): 1-12, 16, 24-26, and 30-32.
- b. Conclusions of law: 1, 2, and
- c. Recommendation

And the City Council Decision, and Paragraphs No. 1 and 2 of the “Order” portion of the Superior Court’s Findings of Fact and Conclusions of Law, page 8 of 10 and the Superior Court’s Order on Reconsideration.

Wash.2d 227, 643 P.2d 436 (1982). The *Fisher Bros.* opinion pointed out that *Goetter* and its ensuing line of cases had overlooked Const. art. 4, § 6, which states that the “superior court shall have original jurisdiction in all cases ... which involve ... the legality of any ... assessment,” and the opinion overruled those cases which held that the statute restricts the court's subject matter jurisdiction. Id at 230.

Prior to *Fisher Bros.*, the *Goetter* court held⁵ that “(j)urisdiction is conferred upon the superior court to hear appeals from decisions of the city council only by complying with the provisions of the statute.” 82 Wash. at 307, 144 P. 30.

Prior to *Fisher Bros.*, Courts relied upon *Goetter* in numerous assessment cases. *Lansinger v. LID* 6368, 80 Wash.2d 254, 493 P.2d 1008 (1972); *In re LID's 29 to 37*, 108 Wash. 211, 183 P. 107 (1919); *Peterson v. Cascade Sewer Dist.*, 20 Wash. App. 750, 582 P.2d 895 (1978); *Hulo v. Redmond*, 14 Wash. App. 568, 544 P.2d 34 (1975). *Accord, Corporation of Catholic Archbishop v. Seattle*, 69 Wash.2d 570, 418 P.2d 1008 (1966).

In *Fischer and Post-Fischer*, The Supreme Court, in *overruling* the above line of cases, rightly breathed constitutional life into LID challenges, as follows:

⁵ (As the City argues continued to argue before the Superior Court) See City's *Response to Motion for Reconsideration*, at page 6. CP 2939 .

These courts have continuously overlooked the significance and effect of article 4, section 6 (amendment 65) of the state constitution, governing jurisdiction of the superior court. Since 1889 the constitution has provided: “The superior court shall have original jurisdiction in all cases ... which involve ... the legality of any ... assessment”...

We cannot presume that the legislature in adopting RCW 56.20.080 intended to control the judiciary's jurisdiction contrary to article 4, section 6 of the state constitution. We conclude upon reexamining the statute **in light of the constitution** that RCW 56.20.080 prescribes procedures and **does not restrict the court's subject matter jurisdiction in those cases involving a challenge to the legality of an assessment.** Thus, **we overrule *Goetter*** and other cases to the extent that they are inconsistent with the foregoing proposition.

Fisher Bros at 230. See also: *Patchell v. City of Puyallup* (1984) 37 Wash.

App. 434, 682 P.2d 913, *review denied*, in which the Court ruled a jurisdictional defect permits a collateral attack on a LID assessment when a constitutional right, such as the due process right to notice, has been violated in the assessment proceedings:

We relied on *Goetter v. Colville*, 82 Wash. 305, 144 P. 30 (1914), and its progeny which held that the jurisdiction of the court to hear appeals was conferred only by statute and strict compliance with the statutory mandate is required. Subsequently, the Supreme Court's decision in *Fisher Bros.* overruled *Goetter*.

The *Fisher Bros.* opinion pointed out that *Goetter* and its ensuing line of cases had overlooked Const. art. 4, § 6, which states that the “superior court shall have original jurisdiction in all cases ... which involve ... the legality of any ... assessment,” and the opinion overruled

those cases which held that the statute restricts the court's subject matter jurisdiction⁶.

Patchell at 439.

It has long been held that when an LID assessment was not challenged by timely appeal, it nevertheless can be challenged collaterally if “jurisdictional defects” are apparent in the LID proceedings. *Longview v. Longview Co.*, 21 Wash.2d 248, 252, 150 P.2d 395 (1944). *See Pratt v. Water Dist. 79*, 58 Wash.2d 420, 363 P.2d 816 (1961); P. Trautman, *Assessments in Washington*, 40 Wash.L.Rev. 100, 126 (1965). A “jurisdictional defect” permitting a collateral attack may exist where a constitutional right has been violated in the assessment proceedings, such as the due process right to notice. *See Pratt v. Water Dist. 79, supra*⁷. The Supreme Court’s *Fisher Bros* ruling makes the law consistent as to (1) LIDs appealed on a statutory basis, where Respondents stumble on procedural flaws, with that line of cases that (2) allowed non-statutory LID appeals to go forward if based on jurisdictional

⁶ In *Patchell*, the Court declined to find a jurisdictional due process defect, but specifically limited its holding to the specific facts of that case: “Our holding is limited solely to the validity of the assessment and that under these circumstances there is no “jurisdictional defect” in the proceedings. The validity of a claim against the City based on a claim of a deprivation of property without due process, if one exists, must await another proceeding”. This is such a case.

⁷ Jurisdictional defects have also been found where the improvement was not for the public benefit, *Wiley v. Aberdeen*, 123 Wash. 539, 212 P. 1049 (1923); where the property improved was not public property, *Yakima v. Snively*, 140 Wash. 328, 248 P. 788 (1926); and where an assessment roll includes property not subject to assessment, *Seattle & Puget Sound Packing Co. v. Seattle*, 51 Wash. 49, 97 P. 1093 (1908). In such a case, a statute declaring the conclusiveness of the assessment, such as RCW 35.44.190, is inapplicable. *Patchell* at 441-2.

defects.

The common underpinning to both LID relief pathways is recognition of the Superior Court's inherent subject matter jurisdiction to correct flaws of constitutional magnitude, such as the due process right to notice. "One of the basic touchstones of due process in any proceeding is notice reasonably calculated under all the circumstances to apprise affected parties of the pending action and afford them an opportunity to present their objections".

Barrie v. Kitsap County, 84 Wn.2d 579, 527 P.2d 1377, (Wash. 1974).

b. Superior Court Made Correct Findings of Fact But Erred in Failing to Extend the Relief that Flowed from those Findings

Here the Superior Court correctly found precisely such due process flaws as a matter of fact and law in the Edgewood LID process:

20. The first issue this Court must consider before addressing the merits of Respondents' appeal of the special benefit amount assessed against their property is whether property owners were accorded a **fair hearing opportunity and notice** in regard to the City Hearing Examiner's initial meeting.

21. Property owners were not given advance notice that the Hearing Examiner would presume Macaulay's report to be valid and only certain evidence would be considered in disputing that appraiser's report.

22. Property owners were not given advance notice that evidence challenging their assessments would not be considered without a supporting expert present at the hearing to give live testimony.

1. The Court's first issue of law was whether the City's notice and advisement of the hearing set for June 1, 2011 was so inadequate

as to violate the Respondents' right to a fair hearing. The short answer is yes.

2. Property owners were not fairly informed that the Hearing Examiner would presume Macaulay's report to be valid and only certain evidence would be considered in disputing that appraiser's report, specifically that evidence challenging the assessments would not be considered without a supporting expert present at the hearing to give live testimony.

4. Fifteen days notice as by the City may be adequate notice under the statute, but it is insufficient notice for a taxpayer given that the City required property owners to hire an independent appraiser and complete a report evaluating a parcel's value with and without the sewer being added as a value-added item **for the June 1, 2011 Hearing. This violated Respondents' right to a fair hearing.**

Court's Finding of Fact 20, 21 and 22 & Conclusions of Law No. 1, 2 and 4,
dated 10 November 2011, CP . Emphasis added. See Copy attached.

By these findings and conclusions, the Superior Court agreed the City's June 1, 2011 notice was defective; and that the defect was embedded in the City's *initial* LID notice. The Superior Court also found that the City's defective notice violated the right to a fair hearing. However both at the time of its initial ruling and on Reconsideration, the Superior Court stumbled by not recognizing that it had the jurisdictional authority to extend that relief as to **all** harmed parties and to invalidate the entire LID. On appeal, this Court should recognize that authority, and so rule.

c. Remedy for Jurisdictional Defect is To Void the Assessment Roll

By its findings and conclusions, the Superior Court agreed the City's

notice was defective and found that defect was embedded in the City's initial LID notice. The Superior Court also found that the defective notice violated the right to a fair hearing. This defect therefore affected the entire LID pool of owners, who received that defective June 1 hearing notice. This renders the entire LID void. *Tiffany Family Trust Corp. v. City of Kent*, 155 Wn.2d 225, 233-38, 241, 119 P.3d 325 (2005) is in accord: To support invalidation of the underlying LID, the allegation would have to show that the entire LID was illegal or that proper notice was not provided. *Tiffany at Ftn 7*.

Likewise in *Pratt v. Water Dist. No. 79*, 58 Wash. 2d 420, 426, 363 P.2d 816, 820 (1961), the Washington Supreme Court confirmed that defects in notice are of constitutional magnitude, rendering the entire LID void.

* * * The right to a hearing is meaningless without notice. In *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865, we gave thorough consideration to the problem of adequate notice under the Due Process Clause. That case establishes the rule that if feasible, notice must be reasonably calculated to inform parties of proceedings which may directly and adversely affect their legally protected interests. We there called attention to the impossibility of setting up a rigid formula as to the kind of notice that must be given; notice required will vary with circumstances and conditions. We recognized that in some cases it might not be reasonably possible to give personal notice, for example where people are missing or unknown.

Platt at 819. The *Platt* Court concluded that "proper notice is a prerequisite" without which "**subsequent proceedings are invalid.**" *Platt*, citing to *Fallis v. City of Nashville*, 184 Ga 55. 190 S.E. 557. The same is true here. The Superior Court's Findings and Conclusion recognize the City's

flaws in notice/process, which were embedded within the initial City notices and timeframes. Further, had the notice proper notice been given and adequate time been allotted, it is quite likely that more persons would have expressed their views and opposed the LID at the early stage in the proceedings, and thus have preserved their rights for relief at these later stages. It is also possible that had these views not been suppressed at the initial stages, these “empty chairs” might have influenced the hearing officer and the City Council to arrive at a different decision on some of the key issues. These defects impact all property owners on a LID wide basis, rendering it void as to all LID property owners. The remedy for a jurisdictional flaw in confirmation of an assessment role is nullification of the entire role. *Cammack v. City of Port Angeles*, 15 Wash. App. 188, 196, 548 P.2d 571 (Div. 2, 1976); *citing Sterling Realty Co. v. City of Bellevue*, 68 Wash. 2d 760, 769, 415 P.2d 627 (1966).

Respondents Docken seek the full judicial relief that legally, logically and necessarily flows from the Superior Court’s findings of fact and conclusions of law. The Superior Court unequivocally determined that the City’s *initial* LID notice was flawed. This Court should conclude that relief extends to that full pool of LID property owners.

3. Edgewood LID Process Violated Property Owners Due Process Right: Notices To Property Owners Was Impermissible Anorexic & Not Timely.

A City’s notice of LID hearing must include the estimated assessment cost to

the effective property and the estimated benefit accruing as a result of the improvement. *Peoples Nat. Bank of Washington v. City of Anacortes*, 44 Wash. App. 262, 264, 721 P.2d 1003, 1004 (Div. 1 1986). Edgewood’s first (of three) May 12, 2011 notice of its “Meridian Avenue Sewer Project Local Improvement District Final Assessment Role Hearing” failed to include an estimated benefit and cost to each property, as required by RCW 35.43.130. CP 1452-1457 and 1169-1175. Docket Appendix 1 at CP 1231-1234. Instead, the City impermissibly merely refers the affected property owners to view the required information at City Hall and a proposed assessment.⁸

Notices Also Not Timely Under Statute. Edgewood’s second May 16, 2011 revised notice substantially changed the LID payment schedule imposed upon the affected property owners. CP 1213-1220. This second City notice also failed to include an estimated benefit and cost to each property, as required by RCW 35.43.130, so it did not cure the other defect of the (first) May 12, 2011 letter. Edgewood sent a third, revised notice to property owners dated May 17, 2011 which explained that the legal descriptions of the LID properties in the May 12 notice were incorrect. CP 1221-1226. The May 17 notice was not timely where under the statutorily mandated 15 days prior

⁸ “The assessment roll methodology: The City hired Macaulay & Associates to prepare a special benefit analysis. A copy of the special benefit report is available for viewing at City Hall. The firm examined all of the property in the LID and determined the special benefit from the improvements for each property.” As well, it came to light in the revision letter of May 17, 2011 that the proffered assessments did not correspond to the legal description of the properties referenced by the City.

notice of hearing, the last day for the City to properly notify property owners of the June 1, 2011 hearing was May 16, 2011. This third city notice also failed to cure City's defects.

Edgewood's May 10, 2011, "Special Benefit Study" also did not include any parcel specific assessment information. CP 1464-1626. Instead, Edgewood required that affected property owners take an extra and non-statutorily sanctioned step of traveling to Edgewood city office to request a copy of the assessment role. Once requested, Edgewood treated the information request as one made under Chapter 42.56 RCW (Public Records Act), and took no less than five days to respond. The City did not respond to some requests (including Petitioner Docken) until June 1, 2011 – **the day of** the final assessment role hearing. TR 65:18-66:12.

Edgewood's extended information request process to release statutorily mandated property owner information eroded the required 15 day notice period that is required to be afforded to affected property owners. RCW 35.44.090. The Petitioner/property owners were both prejudiced and deprived of any meaningful opportunity to object to LID assessments by the City's untimely and substantially meaningless information response. Due process under the State Constitution means that an owner must be given notice and a *meaningful* opportunity to be heard at some point before the government

levies a tax assessment upon the property. *Carlisle v. Columbia Irr. Dist.*, 168 Wn.2d 555, 571-572, 229 P.3d 761 (2010).

4. Edgewood LID Process Violated Property Owners Due Process Right: Other Edgewood LID Information Not Timely Provided.

As of the day prior to the hearing, the City had not yet supplied parcel specific information to property owners who had requested this. See for example, enclosed City email response dated May 18, 2011, Docken Appendix 2, CP 1179-1181. **Not until June 1, 2011**, the day of the Examiner's hearing did Mr Docken received the City response to his request for "parcel specific back up appraisal data" for his three properties. Even then, the information consisted only of Pierce County Assessor online information, or at most one additional page. TR 65:18-66:12. And see CP 656-658 and CP 659-689, Docken Appendix 3 at CP 1182-1212. The City gave no narrative was included within the parcel specific information, and no explanation of what methodology was used or how it was applied to support the City's Special Benefits calculation. Id.

The purpose of the June 1, 2011 LID hearing is to allow property owner to present *parcel specific* objections. "The hearing on the assessment roll is the proper time for raising the questions whether special benefits have been conferred and whether the amounts of individual assessments are correct." *Assessments in Washington*, 40 Wash. L. Rev. 100, 110 (1965), at 123. The

failure of the City to provide timely notice of and information related to parcel specific benefits prior to the LID hearing deprived property owners the opportunity to form meaningful objections. The City's process was incompatible with the statutory purpose of a Final Assessment Role hearing, RCW 35.44.070, and constitutionally defective.

5. Flawed Publication Renders Critical City Ordinances Void

Following its adoption of Edgewood Ordinance 11-0361 (LID hearing and appeal process) and AB 11-0358, 0359, and 0360 (Comprehensive and Zoning Amendments), Edgewood failed the required statutory process for ordinances publication. RCW 35A.13.190, a condition precedent to the effectiveness of an Ordinance. The policy underpinning of RCW 35A.13.190 is to ensure affected citizens have proper notice of the contemplated action. Proper publication is Edgewood's LID Ordinance No. 11-0361 purported to create the LID Hearing and appeals process was adopted on 26 April, 2011 and purportedly in effect five days after publication. Docken Appendix 7: R01131-01135; R01888-01891. The Ordinance states that it is to be "published in the official newspaper of the City, and shall take effect and be in full force five (5) days after publication." The City published a summary of the Ordinance but did not include the following notice:

Promptly after adoption, the text of each ordinance or a summary of the content of each ordinance shall be published at least once in the official newspaper of the city.... **When the city publishes a**

summary, the publication shall include a statement that the full text of the ordinance will be mailed upon request.

RCW 35.22.288⁹ (first class cities) and RCW 35A.13.190 (code cities).

“Shall” denotes mandatory compliance. The published notice of the City Ordinance did **not** contain the required statement offering to mail the full text. See Docken Appendix 7 – Copy of Ordinance 11-0361 notice at R01131-01135; R01888-01891. As a result, the Ordinance is flawed and nullified, and **the Hearing Examiner lacked authority to proceed to hearing.** As the City attempted to defend its flawed publication process (as to both Edgewood’s LID Ordinance No. 11-0361, which purports to create the LID Hearing and appeals process, and Ordinances AB11-0358, and 0359, and 0360, which purports to adopt new Comprehensive and Zoning Code designation for much of the area encompassing LID Assessment No. 1) by hiding behind the highlighted portion of the relevant state law:

An inadvertent mistake or omission in publishing the text or a summary of the content of an ordinance shall not render the ordinance invalid.

RCW 35A.12.160, *“Publication of ordinances or summary— Public notice of*

⁹ Promptly after adoption, the text of each ordinance or a summary of the content of each ordinance shall be published at least once in the official newspaper of the city. For purposes of this section, a summary shall mean a brief description which succinctly describes the main points of the ordinance. Publication of the title of an ordinance authorizing the issuance of bonds, notes, or other evidences of indebtedness shall constitute publication of a summary of that ordinance. **When the city publishes a summary, the publication shall include a statement that the full text of the ordinance will be mailed upon request.**

hearings and meeting agendas."¹⁰ However, the City did not present evidence that the missing required publication language was occasioned by *inadvertent mistake or omission*, so the exception does not apply. In addition, the City's failure to comply does not relate to a mistake in text or summary – but rather in the City's omitted offer to mail a full text of the ordinance upon request. **This flaw goes to notice.** Requiring cities to provide the full text is to ensure public access to the full content of an Ordinance. Significantly, the City's entire rushed LID notice process is replete with short cuts taken by the City which rob the property owners of meaningful opportunity to comment. One, two or three "mistakes" perhaps could be forgiven, but not the multitudes associated with this intentionally compressed LID process.

In taking any action, the governmental body's compliance with the applicable statutes is subject to independent judicial review. *Schmitt v. Cape George Sewer Dist. 1*, 61 Wn. App. 1, 5, 809 P.2d 217 (1991); *Washington Fed'n of State Employees v. State Personnel Bd.*, 54 Wn. App. 305, 308-09, 773 P.2d 421 (1989).

Edgewood's fatal flaws in the Ordinances' publication renders the ordinances void and without effect. As a result, both the zoning scheme, used by City to inflate "special benefits" and the City LID hearing, appeal process

¹⁰ Our original submittal referred to RCW 35.22.288¹⁰ (first class cities), but cited to RCW 35A.13.190 for code cities. The correct code city citation is RCW 35A.13.200.

and delegation to the Hearing Examiner pursuant to RCW 35.44 *et. seq.* are all invalid. The LID No. 1 assessment roll, which relied on these ineffective ordinances is also null and void.

C. CITY OF EDGEWOOD LID PROCESS STATUTORILY FLAWED
1. Edgewood Improper Delegation to Hearing Examiner Fails to Meet LID Strict Compliance Standard.

Edgewood City Council Ordinance 11-0361 delegated its LID assessment hearing authority to the Examiner, but restricted the Examiner's role to **only** "lower one or more assessments or to confirm the roll as prepared." The limited nature of the City's delegation as *to relief* also renders the LID hearing process flawed. RCW 35.44.070 allows the legislative body to "designate an officer to conduct such hearings." While that same statute also allows for the legislature to create an administrative appeal process, there is *no provision for curtailing* the delegated officer's authority to act at the LID appeal hearing to be less than the full range of statutorily required actions, which is to: "correct, revise, raise, lower, change, or modify the roll or any part thereof, or set aside the roll and order the assessment to be made de novo". RCW 35.44.100.¹¹ However, in contrast, the City Ordinance delegated to the Examiner the authority **only** to "lower one or more assessments or to confirm the roll as

¹¹ At the time fixed for hearing objections to the confirmation of the assessment roll, and at the times to which the hearing may be adjourned, the council may correct, revise, raise, lower, change, or modify the roll or any part thereof, or set aside the roll and order the assessment to be made de novo and at the conclusion thereof confirm the roll by ordinance.

prepared”. See Ordinance 11-0361. CP 1444-1448, see also 1231-1323. The City lacked authority to deviate from this statutory defined final assessment hearing process.

[A] municipal corporation’s powers are limited to those conferred in express terms or those necessarily implied. *In re Seattle*, 96 Wash.2d 616, 629, 638 P.2d 549 (1981). . . . The test for necessary powers is legal necessity rather than practical necessity. *Hillis Homes, Inc. v. Snohomish Cy.*, 97 Wash.2d 804, 808, 650 P.2d 193 (1982). As the Court stated in *Hillis*: “[i]f the Legislature has not authorized the action in question, it is invalid no matter how necessary it might be. [Emphasis added.] *Chemical Bank v. WPPSS*, 99 Wn.2d 772, 792, 666 P.2d 329.

Thus, the City Council and Examiner erred in at least two ways: first, by proceeding with the flawed LID process. Second, in his **Finding of Fact No. 7**, the HE and later the City Council ignored the discrepancy between the limited language of Ordinance 11-036 and the full range of what the Examiner should have been empowered to do by state statute. In the HE’s Finding of Fact 7, he incorrectly describes his grant of authority broadly by ignoring the City ordinance and looking only to the state statute:

Pursuant to RCW 35.44.100 the Examiner makes recommendations to the City Council as to whether it should: ... correct, revise, raise, lower, change, or modify the roll or any part thereof, or set aside the roll and order the assessment to be made de novo and at the conclusion thereof confirm the role by ordinance.

HE F/Fact No. 7, CP 56-57. The HE then also *contradicts* himself in later **Finding 8**, where he relies on the more *limited* grant of delegation to ignore the process issues (“Ordinance 11-0361 requires the Examiner to “consider

the objections to the final assessment roll and may lower one or more assessments or confirm the roll as prepared. Neither the RCW nor Ordinance 11-0361 grants the Examiner authority to rule on the legalities of the establishment of the LID, nor on the notice and other procedures prior to the public hearing.") CP 57. *The HE's conflicting descriptions of the delegation cannot both be correct.*

2. City hearing notice mislead property owners.

The City's Notice to Property Owner followed state law and not city ordinance when describing the HE's authority and thus did **not** provide fair notice of the Examiner's delegated powers. The mailed Hearing Notice states that the Examiner may "correct, revise, raise lower, change or modify the roll or any part thereof or set aside and order a new assessment". The defect is substantial. Property owners are lead to believe the Examiner has more authority that what was actually delegated by the City Council (assuming only for argument that the delegation Ordinance was not flawed). The City Notice is flawed, incomplete and inaccurate because it expands on the HE's limited authority. Neither the Examiner nor the City Council corrected this flaw. The Examiner ducked any ruling on the City's flawed notice, timeliness, publication and process issues, claiming that he lacked authority to do so:

Neither the RCW nor Ordinance 11-0361 grants the Examiner authority to rule on the legalities of the establishment of the LID, nor on the notice and other procedures prior to the public hearing. ..Thus,

the Examiner has no authority to continue the hearing.

HE Finding of Fact No 8. CP 57. The Examiner erred by not requiring City Staff to provide correct notice and to follow statutory processes. By failing to consider the flawed notice and publication objections, the HE dropped the problem squarely in the lap of the City Council. Yet, the City Council deferred its responsibility to consider and correct these numerous due process and notice issues:

As to Councilmember Olson:

25 There were 24 appeals. I think
1 *we listened to those appeals, or the hearing examiner*
2 *listened to those appeals.* There were three adjustments
3 made at that time. After that, there were ten more
4 appeals, and I think there's -- at this time there's been
5 one adjustment to that.
6 **So I think there's been multiple steps along the way**
7 **for people to kind of have their time to state their**
8 **case, and I think there's been some adjustments made. So**
9 **I'm fine with where we are right now.**

CC TR 46:25-47:9.

As to DEPUTY MAYOR KELLEY:

10 A couple other things to -- just to add in there,
11 that while this process may not have gone as well as we
12 would have liked it, or the assessments not ended up
13 where everybody would have liked or maybe anticipated
14 them being at, a couple of the other issues that, you
15 know, we're looking at is the financing of this.
16 This is costing 30,000 -- about \$30,000 a month
17 interest that's to the LID, to you people, that -- every
18 month this goes on. That's something else that we have
19 to keep in consideration, whether or not we can keep the
20 interim financing there as this keeps going on.
21 So as everything keeps extending out, it ultimately
22 ends up costing all of you folks more money. I would
23 like -- you know, I would like to see it lowered, but

24 unfortunately it's not, and **I think we did do the process**
25 **here, and good or bad, just kind of move forward.**

CC TR 49:10-25. The City erred by not addressing the due process notice issues, which the HE refused to correct.

3. *THE CITY ERRED IN APPLYING THE APPELLATE COURT STANDARD OF REVIEW PREMATURELY.*

The City's erred in its confusion as to the significance of the presumption of municipal correctness. Initially, in an LID administrative proceeding, the burden of proof is on the landowner to offer "sufficient" evidence to challenge the special benefit claimed by the City. *In re Indian Trail Trunk Sewer*, 35 Wn.App at 841. The presumption of municipal correctness loses its effect when the landowners, as here, introduce credible evidence challenging the special benefit.¹² *Id.* "The sole purpose of the presumption is to establish which party has the burden of going forward with evidence." *Id.* A presumption is not evidence. *Id.* Therefore, when a property owner rebuts the presumption of municipal correctness, the City must introduce evidence proving the special benefit because "the ultimate burden of showing that land within an LID is specially benefited remains with the City." *Id.* In this case, the Docken Respondents introduced evidence sufficient to shift the burden of proof to the City. *See Dec'l of Truman*, CP

¹² Here, in addition to the substantial evidence on the record that rebuts the presumption of municipal correctness, *the City* has amazingly put copious evidence on the record to rebut the presumption of correctness, such as the impermissible "intermingling" of land use regulations and local improvements that the City appraiser admits to impermissibly taking into account when calculating the purported special benefit, discussed *supra*.

802-803. Since the City failed to introduce rebuttal evidence at hearing, it also failed to meet its burden to prove the special benefits to the Docken Respondents' properties. Thus, the Council's confirmation of the assessment without proof of the special benefits was fundamentally wrong and arbitrary.

Before the Superior Court, the City attorney materially misstated the applicable parameters governing the assessment review process. While the City correctly stated that assessments are initially presumed to be correct, CP 120, however the City Attorney proceeded to misstate the burden of proof and the standard of review applicable to the Examiner's review of the property owner's protests:

The presumption [of municipal correctness] may be overcome only if the party challenging an assessment presents competent expert appraisal evidence that the subject property is not benefited by the improvement...If – and only if – such evidence is submitted, the burden shifts to the City to prove that the property is in fact benefited...Assuming the City has established that special benefits do attach, or the property owner has the burden to prove, by competent evidence, that the assessment was founded on a fundamentally wrong basis or was imposed arbitrarily or capriciously.

City Atty. Letter, CP 122. The City attorney advice does **not** correctly state the burden of proof framework and Court imposed review standards for LID proceedings at the municipal level. Rather, the City attorney described the standard applicable to the Superior Court, sitting in appellate capacity, (so as not to get mired in the merits of the facts peculiar to a local improvement district). *Abbenhaus v. City of Yakima*, 89 Wash. 2d 855, 860, 576 P.2d 888,

891 (1978). Prior to Court, the City Council's job was to effectuate due process by actually hearing factual disputes as to the assessment role, *Id.*, but was incorrectly advised by its attorney to ignore this role. CP 122. In so doing, the City Examiner and Council improperly applied a heightened, inappropriate standard of review to owner protests which disregarded the evidence that assessments were based on incorrect and incomplete information, flawed analysis and were fundamentally wrong. This material denial of due process is jurisdictional and fundamentally wrong. *Tiffany Family Trust Corp. v. City of Kent*, 155 Wash. 2d 225, 235, 119 P.3d 325, 331 (2005).

D. CITY OF EDGEWOOD LID PROCESS PROCEDURALLY FLAWED

1. City Erred by Allowing City Testimony in Record After the Hearing Record was Closed

The Examiner also erred in **Finding No 30** by considering City submission after the record closed and by limiting the Motion to strike to only some properties. CP 65. Both HE actions explicitly contradict the Examiner's clear commitments made at the end of the LID hearing that the record was closed, and that any relief applied to one owner would extend to all:

6 MR. CAUSSEAU: Okay. **What we will do**
7 **at this point then is close the public hearing portion of**
8 **the -- of the hearing, and I will leave the record open**
9 **for one week for any written responses or closing**
10 **argument to the City's presentation, and then we'll allow**
11 the City an additional week to respond to any concerns or

12 the arguments made in writing, and then following that --
13 Ms. Archer, do you have a question?

14 MS. ARCHER: I just want to -- you
15 **made it clear that if our written responses are not to**
16 **provide any additional exhibits. I assume that same rule**
17 **applies to the City's reply?**

18 MR. CAUSSEAU: **Yes, the record is**
19 **closed for submissions.**

20 **This is only for filing of the final argument.**

21 MR. TANAKA: Should that be -- should
22 people include any summary or closing argument that want
23 to in that as well, just so --

24 MR. CAUSSEAU: Yes, yes, that's what
25 the purpose of it is.

149

1 **Instead of having to do it orally now, we'll have**
2 **them write it in, so it will be in the nature of losing**
3 **arguments. There won't be any new evidence submitted or**
4 **made part of the record.**

HE TR 148:6- 149:4. The Hearing Examiner stated the records was closed as to new facts or testimony. But post hearing, the City submitted new "rebuttal" by its consultant. CP 1077-1088. Respondents counsel moved to strike. CP 1091-1092. The HE attempted to temper the City error by striking the post hearing information as to Respondent Docken only. But this contradicted the HE's hearing statements that any relief granted to the Respondents would apply globally, and was further error.

71

4 MR. CAUSSEAU: -- Mr. Docken. I'm
5 just going to -- you know, I'll receive the documents in
6 as far as his protest is concerned, but **I also indicated**
7 **at the start of the hearing that anyone who came through,**
8 **if someone came and gave testimony or raised issues that**
9 **would apply to everybody else, no one else needed to come**
10 **forward to say it, so I'm going to let you go ahead and**
11 **present that on behalf of Mr. Docken and whatever is**
12 **relevant in there to other protests, we will consider**

13 that also.

HE TR 71:4013. Therefore the Examiner and City Council erred in not applying his ruling on the Docken Motion to Strike for the benefit of other parcels.

2. Even the City Council's Own Appeal hearing of 19 July, 2011 Failed to Conform to City's adopted LID Process Set Forth in Ordinance 11-0361

The City Council failed to abide by its adopted process for City Council hearing by again short cutting timeframes. The adopted Ordinance process clearly set out a timeframe in which (1) appeals to city council are filed and (2) *following the appeals being filed*, and within 15 days, an appeal hearing is set and notice of the hearing is mailed to Respondents. CP 1445, 1232.

Instead and in keeping with the scurrying pace and shortcuts taken with the Hearing Examiner hearing, Edgewood further abbreviated appeals. Instead of a two week process, where council members could have thoughtfully considered the appeal issues, the Edgewood Council raced to hearing in less than 2 working days after the appeal were filed, resulting in the Council's obvious lack of familiarity with any of the appeal materials or statutory LID procedures. This further deprived the property owners of meaningful due process, as the council transcript bears out:

12 So at this point then, now, what -- what's -- so
13 what's the process now?
14 MR. TANAKA: Well, that motion failed
15 because, in order to pass an ordinance, you need four
16 affirmative votes. So you only had three affirmative

17 votes, and so that motion failed.
18 So the council can try a different motion and see if
19 that gets four votes. Can quit, go home. Nothing has
20 happened for -- at this point. So another motion is in
21 order if the council wishes.
22 COUNCILMEMBER OLSON: I wouldn't make
23 any motion other than the one I just made, so --
24 DEPUTY MAYOR KELLEY: Without that,
25 then I guess -- do we have to postpone this then? At

1 this point I wouldn't see it being able to move forward.
2 Well, I guess we --
3 COUNCILMEMBER OLSON: Do we need an
4 executive session?
5 COUNCILMEMBER CROWLEY: I don't know
6 if we can.
7 COUNCILMEMBER OLSON: Can we do that?
8 MS. NERAAS: It was not on the special
9 meeting notice.
10 UNIDENTIFIED SPEAKER: It would have
11 to be a regular --
12 UNIDENTIFIED SPEAKER: So at the
13 regular meeting. So we'd have to postpone this until our
14 next regular meeting?
15 MS. NERAAS: Or a special meeting
16 where you have an executive session.
17 DEPUTY MAYOR KELLEY: Yeah, or another
18 one and then --
19 UNIDENTIFIED SPEAKER: I think we
20 probably do.
21 DEPUTY MAYOR KELLEY: So do we move to
22 postpone until our next regular meeting?
23 UNIDENTIFIED SPEAKER: Sure.
24 DEPUTY MAYOR KELLEY: Do you second
25 that? Any discussion on that?

1 MS. NERAAS: Just a reminder, you're
2 still under the quasi-judicial, you know, hearing
3 process, so ex parte communication would be inappropriate
4 until the roll is confirmed.
5 DEPUTY MAYOR KELLEY: Any discussion
6 on postponing?
7 COUNCILMEMBER OLSON: I don't want to
8 postpone it.

9 COUNCILMEMBER CROWLEY: As a practical
10 matter, we probably have to.
11 DEPUTY MAYOR KELLEY: Unfortunately,
12 but yes.
13 UNIDENTIFIED SPEAKER: (Inaudible)
14 don't want to postpone.

CC TR 50: 12 – 52:14. And *see attached copy of CC TR pages 50-60.*

The City's attorney concedes that failure of the city to follow its own processes is "problematic."

13 MS. NERAAS: And I think one thing you
14 have to be aware of is, you know, **the council sets forth**
15 **this process, including the appeal process and the days.**
16 **And so you can't allow -- you know, you can't deviate**
17 **from that process** without letting others know because if
18 somebody -- if you said, okay, now they have a second
19 chance to present more information, others that didn't
20 appeal to you could say, if I had known I had more time,
21 I would have, as well. **So that is problematic.**
22 **So it really is the process that the council**
23 **established, and so now it would be appropriate for you**
24 **to consider the record and make a decision on the record.**
25 **And to open it up a little bit or to allow one property**
1 **owner some more time would not be fair and would be**
2 **problematic.**

CC TR 54:13-55:2. This Court should find that any one and certainly the

cumulative effect of the City's many serious missteps renders the LID process flawed. The Court should remand with direction that the City Council should adopt an assessment hearing process that includes proper notice processes and sufficient timeframes so that property owners may meaningfully review, understand and comment on the LID assessments

3. Flawed Council Vote Renders LID Void.

a. FACTS SPECIFIC TO COUNCIL VOTE ISSUE.

The City of Edgewood is a non-charter code city operating under the provisions of Chapter 35A.13 RCW. Pursuant to RCW 35A.13.170, the Edgewood City Council determined that it would conduct its business pursuant to its adopted Rules of Procedure.¹³ These rules incorporate Roberts Rules of Order, Newly Revised as part of its council Rules of Procedure. See, Edgewood City Council Rule 4.13.

On July 19, 2011, the Edgewood City Council held its Special Meeting on the LID appeals. R01945. One member of the seven-member city council was absent (Mayor Hogan) and two members (Councilmembers O’Ravez and Cope) had recused themselves because they owned property within the LID assessment area. CC TR 4:1-25. So, only 4 council members were present and able to vote on the ordinance at the July 19th meeting. Councilmember Olson moved for passage of Ordinance AB 11-0366. Councilmember Crowley seconded that motion. The vote on the motion was Councilmembers Olson, Crowley and Kelly voting for passage of AB 11-0366. Councilmember Eidinger, however, voted “no.” CC TR 50:1-25. This “no” vote by Eidniger resulted in Coucilmember Olson’s motion being **defeated** by operation of RCW 35A.13.170 and RCW 35A.12.120 as a “majority of the whole membership of the council” must vote in the affirmative to pass an ordinance.

¹³ See Rules as posted at:
<http://cityofedgewood.org/CityCouncil/CouncilDocuments/Council%20Rules%202-12-08.pdf> for which the Court may take judicial Notice.

Councilman Eidinge’s “no” vote placed him on the prevailing side of Councilmember Olson’s motion on Ordinance AB 11-0366.

After the motion to pass Ordinance AB 11-0366 failed, approximately 15 minutes of council discussion ensued during which Councilmember Eidinge was pressured to change his vote. At discussion’s end, Councilmember Olson moved again to pass Ordinance AB 11-0366 “as read.” CCTR 59:13- 60:15. In his motion, which Councilmember Crowley seconded, there was **no** mention of the word “reconsideration” and the Council’s minutes clearly reflect there was no motion to reconsider and no vote on such a motion. *Id.* The Edgewood City Council proceeded to vote on Olson’s second motion. On this vote, Eidinge voted yes, explaining that he did so because he believed that if Mayor Hogan were present that he would vote yes. *Id.*

b. COUNCIL’S VOTE ON LID ASSESSMENT ORDINANCE WAS NOT VALIDLY ENACTED & IS VOID.

An ordinance of a non-charter code city is **not** validly enacted when, after failing to pass on an initial vote, a revote is taken on second motion that is made by a councilmember from the failing side and where no motion for reconsideration of the failing motion is made. Ordinance No. AB 11-0366 was not properly enacted as a matter of law and Edgewood City Council Rules of Procedure. Therefore, the ordinance is invalid.

1. Standard of Review.

Under Washington law, municipal ordinances are presumed to be validly enacted. *Bothell v. Gutschmidt*, 78 Wn. App. 654; 898 P.2d 864 (1995). To rebut this presumption of validity, the party challenging the legislative action based on procedural or substantive improprieties has the burden to show by clear, cogent and convincing evidence that the action was improper. *Henry v. Oakville*, 30 Wn. App. 240, 247, 633 P.2d 892 (1981), review denied, 96 Wash.2d 1027 (1982) cited by *Bothell*, supra, at 660.

2. Ordinance No. AB 11-0366 is invalid because the vote taken on July 19, 2011 was procedurally and substantively defective. Washington law governing proper passage of ordinance in a non-charter code city requires a minimum of four affirmative votes. RCW 35A.13.170 and RCW 35A.12.120. Thus, the initial motion made by Councilmember Olson failed by operation of law for lack of the minimum number of necessary affirmative votes. Defects thereafter arose when the Edgewood City Council failed to follow its own rules of procedure and permitted Councilmember Olson to make his second motion and voted thereon without first having a proper motion for reconsideration made by a councilmember eligible to make it.

For the initial failed motion to be properly reconsidered, only Councilmember Eiding could have so moved based on the clear and unambiguous language in the Council Rule 6.17 and Robert's Rules which only permit a member of the prevailing side to make such a motion.

Councilmember Eidinger was the only council member voting on the prevailing side because the initial motion failed by operation of law.¹⁴ The July 19, 2011 council record clearly shows that Eidinger did not move for reconsideration. Because Councilmember Olson was ineligible to make the second motion,¹⁵ the motion he made was improper and no vote should have or could have properly have been taken under the Council's own rules. Thus, the vote taken was procedurally and substantively in error.

Procedural irregularities are further underscored by the fact that even if a motion for reconsideration had been properly made, the body must first vote on it before any vote can be taken on the main motion. Only if the reconsideration motion is passed may a second vote then be taken on the main motion; in other words, there must be two distinct and separate voting actions to re-visit a failed motion. It is undisputed that the City Council took only one vote when it re-visited the failed LID motion at the July 19 meeting. The result is that Ordinance No. AB 11-0366 is invalid; it died on failure of the initial motion, was not properly reconsidered, and, therefore has no lawful

¹⁴ Nor is there any mention of the word "suspend" or phrase "suspension of the rules."

¹⁵ "If a motion has been adopted or defeated during a meeting and at least one member who voted on the winning side wants to have the vote reconsidered, such a member may make a motion to *Reconsider*. This motion can *only* be made by a member who voted on the winning side. That is to say, if the motion was adopted, the motion to *Reconsider* can be made only by a member who voted in favor of the motion, **or if the motion as defeated, then only by a member who voted against it. . . .**" Robert's Rules of Order Newly Revised *IN BRIEF*, Ch. 7, §B, pp. 58-59 (2004) (emphasis added)

force or effect. The City should not be permitted to act otherwise and this Court should so order.

RCW 35A.21.010 does not save Ordinance No. AB 11-0366 because the deficiency above-described go to substance, not mere form. Most significantly, the Ordinance fails because the fourth prong of RCW 35A.21.010's test is not met. That prong requires that the City be able to show that:

...(4) The legislative body of the code city followed the prescribed procedures, if any, for passage of such an ordinance or resolution, as provided in the law or charter provision delegating to the legislative body the authority to so legislate; or, if prescribed procedures were not strictly complied with, no substantial detriment was incurred by any affected person, by reason of such irregularity.

As argued above, the City clearly failed to strictly follow prescribed procedure. Given this, the burden shifts to the City to demonstrate that no detriment as incurred by any of the property owners affected by Ordinance No. AG 11-0366. The City cannot demonstrate that no detriment is incurred by Docken/Databar and all other Respondents named herein and all property owners upon whom the LID assessment is a lien because its ordinance intends to impose an assessment -- a lien -- on these owner's property. Moreover, Respondents also contend that the amount of the assessment is erroneous and excessive.

Edgewood is further unable to overcome its burden under RCW 35A.21.010 (4) because of the arbitrary and speculative reason Councilmember Eiding gave as the basis for his changed vote on the improper second motion: That he voted as he presumed Mayor Hogan would vote if he were present. It was an abuse legislative discretion, and therefore arbitrary and capricious, for Eiding to cast his vote based on his presumption of how Hogan would vote rather than a **rational basis in the record**. Voting on such an arbitrary and capricious basis is improper. See, e.g. *Carlson v. Town of Beaux Arts Village*, 41 Wn. App. 402, 704 P.2d 663 (1985) (where court overruled a Council denial of a short plat application where reason given for vote was not based on statutory requirement related to application at issue).

3. Court Must Declare the Flawed Ordinance's Assessment Roll Null

What actually transpired on July 19, 2011 was an illegal revote by the Edgewood City Council. The City did not legally enact ordinance AB 11-0366, and any assessment based thereon is invalid. To prevent further harm to Respondents and all LID property owners, this court must grant this appeal and declare the ordinance invalid and the assessment roll void.

E. CITY OF LID PROCESS SUBSTANTIVELY FLAWED: EDGEWOOD SPECIAL BENEFIT ASSESSMENT REPORT DOES NOT SUPPORT CLAIMED VALUATIONS NOR SURVIVE LEGAL CHALLENGES

In addition to the above and on a wholly independent basis for granting this appeal, the Court should find the assessment process flawed and the assessment roll and parcel specific assessments void for at least the following substantive reasons discussed below. The City erred substantively as follows:

1. Flawed City Report In General

Property in Washington may be assessed for the special benefits conferred by the installation of certain public improvements. Washington cities and towns may form local improvement districts (LIDs) or utility local improvement districts (ULIDs) as authorized by RCW 35.43.040 and RCW 35.43.042.

The principle underlying special assessments to meet the cost of public improvements is that **the property upon which they are imposed is peculiarly benefited**, and therefore the owners do not, in fact, pay anything in excess of what they receive by reason of such improvement . . .

Norwood v. Baker, 172 U.S. 269, 278-279; 19 S.Ct. 187, 190; 43 L. Ed. 443, 447 (1898).

2. Amount of City's "Special Benefits" Assessment Impermissibly Includes General Benefits

The amount of the special assessment may not exceed the special benefit which is enjoyed by a specific parcel. "Under the local improvement district statutes, only that portion of the cost of the local improvement which is of special benefit to the property can be levied against the property. . .

Property not benefited by local improvement may not be assessed, and special

assessments for special benefits cannot substantially exceed the amount of the special benefits... The amount of the special benefits attaching to the property, by reason of the local improvements, is the difference between the fair market value of the property immediately after the special benefits have attached, and the fair market value of the property before the benefits have attached.” (Emphasis in original.) *In re Schmitz*, 44 Wn.2d 429, 433-34, 268 P.2d 436 (1954).

The amount of the Assessment must be proportionate to other assessments “The method utilized is to assess each parcel of land within the district as nearly as reasonably practicable in accordance with the special benefits gained by that parcel from the entire improvement, and to assess each parcel its proportionate share in relation to other parcels throughout the improvement district.” *Id.* As phrased by Professor Trautman in his article ‘*Assessments in Washington*’ 40 Wash. L. Rev. 100, 120, ‘The questions are: to what extent is the *particular tract* benefited by the entire improvement, and is the *particular tract* assessed proportionally with the other property included within the improvement district.’” (Emphasis in original.) *Sterling Realty Co. v. Bellevue*, 68 Wn.2d 760, 765, 415 P.2d 627 (1966).

Shifting the costs of general benefits onto individual parcels under the guise of special benefits renders the special benefit valuation void. Special benefit is defined in Washington State as the difference between the fair

market value of the property immediately after the special benefits have accrued and the fair market value of the property before the special benefits have accrued. *Doolittle v. City of Everett*, 114 Wn.2d 88, 93, 786 P.2d 253, 256 (1990).

Here, Edgewood's consultant testified that the costs included in the LID sewer "special benefits" assessed to LID property owners, including Respondents herein included costs of "over-sizing for future use". HE TR 127:4-19, HE TR 127:20-25. By this statement, the City admits that costs **in excess** of the special benefits to each LID property owner were improperly included in the LID amount. A property must be specifically benefited by improvements, **as distinguished from improvements to the entire district**. *Bellevue Plaza, Inc. v. City of Bellevue*, 121 Wn.2d 397, 404, 851 P.2d 662 (1993).

The Examiner then erred in **Finding No. 9 by** erroneously allows general benefits to be considered in the special benefits valuation, "Completion of the LID will enhance **the entire vicinity's** reputation, aesthetic appeal, and character, and will create a more desirable location for commercial property." CP 58. The City Council erred in not correcting these errors. Instead, the correct rule limits assessments as follows: "Determining the amount of the special benefit which may be assessed by reason of LID improvements

requires proof of the increase in the fair market value of a particular property caused by the improvements.” *In re Local Imp. 6097*, supra at 333.

The Hearing Examiner repeated this error in **Finding No 11** by his statement that “the City is providing a **general benefit** to other parcels in the area by assessing their parcels”. CP 59. This finding should have supported a conclusion that the City’s cost of over sizing the sewer impermissibly conferred *general benefits*, which should not have been co-mingled in the special benefits born on the backs of the LID property owners. The Examiner went to find: “The Council's decision to not adopt a latecomer's agreement ordinance does not affect the validity of the LID and is **beyond the scope of the hearing.**” Id. Again the Council erred by not correcting these errors.

Under *Bellevue*, the City faces the burden to justify its special assessments. Instead the City’s own witnesses **admitted** this improper cost shifting occurred.

4 MR. TANAKA: All right. So
5 **over-sizing.**

6 MR. BOURNE: Yes, that was a topic
7 that we discussed at the formation hearing at great
8 length, **and it was explained that this project because**
9 **it's the first utility built in the city that's going to**
10 **have to pay for some over-sizing for future use.**

HE TR 127:4-9.

3 MR. BOURNE: There are methods that
4 have been used. **If the -- if the City was -- was a**
5 **robustly financed city and was old like the City of**
6 **Seattle or Bellevue, then they could, perhaps, have a**
7 **latecomers fee on future connections and we could upfront**
8 **some of the money today, but the City does not have any**

9 money, and because the sewers are built in core one
10 (phonetic) and there's not expected to be a lot of
11 expansion in the near future, that real wouldn't earn
12 much revenue anyway.

The City attempted to minimize the cost of this improper inclusion, but offered no real numbers; in any event **any amount of general benefit** assessed to the specific property owners **renders the valuations improper.**

0 MR. TANAKA: Did the City try to
21 explore ways to recover latecomer fees and pay them to
22 the property owners within the LID?
23 MR. BOURNE: Yes, we've discussed that
24 at length and have not been able to identify any method
25 to do that at this point in time.

1 MR. TANAKA: Okay. **The over-sizing,**
2 **you don't know the exact amount, but how would you**
3 **describe it in terms of a percentage?**

4 MR. BOURNE: Well, we have to realize
5 that all the LID costs and all the planning and all the
6 planning documents, the plans, the specifications and the
7 engineering basically would be the same. What's
8 over-sizing is building an 18-inch pipe instead of 15- or
9 a 12-inch pipe instead of 10.

10 MR. TANAKA: So you have to dig the ditch a little deeper.

12 MR. BOURNE: Well, maybe in most cases
13 the ditches may not be deeper, but maybe we move more
14 dirt and buy bigger pipe, so it's just -- it's only a
15 small -- relatively small increment of cost, maybe
16 probably even single-percentage digits.

HE TR 127:20 – 128:16.

It is the basic principle and the very life of the doctrine of special assessments that there can be no special assessment to pay for a thing which has conferred general (i.e., no special benefit) upon the property assessed. To assess property for a thing which did not benefit it would be *pro tanto* the taking of private property for a public use without compensation,

hence unconstitutional. *In re Jones*, 52 Wn.2d 143, 324 P.2d 259 (1958), quoting *In re Shilshole Ave.*, 85 Wn. 522, 537, 148 P. 781 (1915). In this case, the City has demonstrated intent to pass along 100 percent of the *construction* costs of the sewer to the subset of LID property owners. These costs include infrastructure that is overbuilt and designed with the express intent to benefit later developers who, under the City's scheme, will be entitled to free ride the assessment of current real estate owners of parcels within LID No. 1, and may be hooking up to the sewer from outside LID No. 1.

The record plainly shows that Edgewood improperly chose to assess *general* benefits to real estate owners of LID No. 1, requiring that sub set of the City to pay the costs of sewer capacity above and beyond the special benefit actually accruing to each individual parcel. The City consultant's sloppy and or abject lack of valuation methodology documentation as applied to each individual parcel allowed this cost shifting to occur. And, because the City's testimony does not include the dollar amount of the improperly included general benefits, this Court cannot cure this improper inclusion, and instead must remand to the city for the needed adjustments to the assessment rolls.

The issue of special benefits is a judicial question, subject to review by the courts This question is ordinarily one of fact, dependent upon the physical condition, locality and environment of the property

involved, and the character of the improvement. It is presumed that an improvement is a benefit; that an assessment is equal or ratable to an assessment upon other property similarly situated; and that the assessment is fair.

Trautman, Supra, at 118. But, as the courts have said: “A presumption is not evidence and its efficacy is lost when the other party adduces credible evidence to the contrary Presumptions are the bats of the law, flitting in the twilight but disappearing in the sunshine of actual facts.” *In re Indian Trail Trunk Sewer Sys.*, 35 Wn. App. 840, 843, 670 P.2d 675 (1983).

If testimony on the issue of special benefits is produced by the property owner, the presumptions in favor of a municipality disappear.

“Presumptions are the `bats of the law, flitting in the twilight but disappearing in the sunshine of actual facts.’” *In re Indian Trail Trunk Sewer Sys.*, 35 Wn. App. 840, 843, 670 P.2d 675 (1983), *review denied*, 100 Wn.2d 1037 (1984); quoting *Mackowik v. Kansas City, St. J & C.B. R.R. Co.*, 94 S.W. 256, 262 (Mo. 1906). Once a property owner produces competent testimony sufficient to rebut the presumptions in favor of the municipality, the burden shifts back to the municipality to introduce competent evidence of benefit. *Id.* If it fails to do so, its assessment will and should be nullified. *Bellevue Plaza, Inc. v. City of Bellevue*, 121 Wn.2d 397, 418, 851 P.2d 662 (1993).

Appellate review of such cases does not permit an independent evaluation of the merits . . . It is presumed that a local improvement benefits property

unless the challenging party produces competent evidence to the contrary.

The burden of proof shifts to the City after the challenging party presents expert appraisal evidence showing that the property would not be benefited by the improvement as described by the City. [Emphasis added.] *Seattle v.*

Rogers Clothing, 114 Wash.2d 23, 229-231, 787 P.2d 39, 48 (Wash. 1990).

The amount of the special benefits attaching to the property, by reason of the local improvement, is the difference between the fair market value of the property immediately *after* the special benefits have attached and the fair market value of the property *before* the benefits have attached. [*In re Schmitz*, 44 Wn.2d at 434.]

3. Burden to Justify Valuations Shifted To City & Burden Was Not Met

The property owners' appraiser pointed out the blatant deficiencies and information gaps within the City's Consultant Report, without which no special benefit can be established:

7. Total estimated market value without the LID is estimated at \$75,905,000, total estimated value with the LID is estimated at \$104,723,000, and the estimated total value of Special Benefits is estimated at \$28,818,000.
8. What the report does not show is the calculations illustrating how these estimates were prepared utilizing sales in a before and after analysis.
9. Additional information provided utilizes Pierce County Assessors assessment records, which may or may not have a relationship to market value in the before and after analysis.
10. What is needed is an actual determination, based on a before and after analysis, to establish what the property was worth prior to the LID project to measure the actual special benefit and how it compares to the LID

assessment.

11. **What is missing in the Report is any consideration of the physical condition, locality and environment of the property involved, and the character of any improvements.**
12. **Thus there is no way to reasonably conclude the sewer an improvement is a benefit; and or the amount of the accrual special benefit, or that any assessment is equal or ratable to an assessment upon other property similarly situated; and that the assessment is fair.**
13. The May 10, 2011 Report does **not** include appraisal evidence showing how and the amount to which the properties would be benefited by the improvement as described by the City.

See *Declaration of John Trueman* Appraiser, HE Exhibit 31, CP 801-805 *emphasis added*. The Trueman testimony is sufficient to shift the burden back to the City to establish the appropriateness of the challenged valuation. The rule is well stated in *In re Indian Trail Trunk Sewer Sys.*, 35 Wn. App. 840, 843, 670 P.2d 675 (1983), *review denied*, 100 Wn.2d 1037 (1984):

A presumption is not evidence and *its efficacy is lost when the other party adduces credible evidence to the contrary*. . . . The sole purpose of a presumption is to establish which party has the burden of going forward with evidence on an issue. . . .

(Citations omitted.) The Court of Appeals in *Indian Trail* then held that the owners' expert testimony there shifted the burden to the City and the City there failed to meet that burden.

To hold otherwise would make the presumptions in favor of the City conclusive and render the hearing and statutory appeal process on an assessment roll useless. Consequently, the trial court

correctly determined the council's decision was arbitrary and capricious and Should be annulled.

Bellevue Assocs. v. Bellevue, 108 Wn.2d 671, 675, 741 P.2d 993 (1987), citing to *In re Indian Trail Trunk Sewer Sys.*, supra at 843.

Here, the Examiner erred in his Finding No 16 by finding that “none of the above listed property owners submitted expert appraisal testimony or expert evidence to substantiate their protests,... the City Council should uphold the assessments for said parcels and reject the protests.” CP 60-61. In fact, numerous property owners adopted by reference the June 1 argument of GLG Law Firm, which incorporated by reference the Trueman appraisal testimony under oath. (Enid and Edward Duncan, LID Parcel No. 2, HE Exhibit 12 CP 167-176 and Dexter Meacham, LID Parcel No. 31, HE Exhibit 28, CP 623-625). Further, the Trueman testimony is sufficient to shift the burden back to the City to establish the appropriateness of the challenged valuation. The City Council erred by not correcting this.

4. Information Necessary to Support City Valuations is NOT in the LID Record, Without Which Assessments Cannot Withstand Challenge.

At the June 1 hearing in response and to attempt to rehabilitate the City's Report, the City attorney then presented rebuttal testimony from Mr McCaulay the Report's author. Two significant errors are clear through that testimony: First, the City's Report and the record before this Court, does **not** contain the information which purportedly supports the valuations; instead

this information is contained in undisclosed “files” and “spreadsheets” which are **not** part of the LID hearing record and **cannot** be considered by the City Council (or any reviewing Court). Second, when the burden shifts to the City to prove that the properties were specially benefited, “That proof must rest upon **competent evidence**. It must prove the difference between the fair market value of the property immediately before and after the improvement.” *Bellevue Assocs. v. Bellevue*, 108 Wn.2d 671, 675, 741 P.2d 993 (1987). Here, the City cannot prove the challenged valuations, because the City’s consultant testified that the supporting “evidence” was not in the Report but rather in the Appraisers’ “files” and “spreadsheets”.

1 so what I'm trying to understand is what's the income
2 approach really carried out in this case, or was there
3 just simply a consideration of what rentals were in the
4 area?
5 MR. MACAULAY: Well, typically when we
6 **To these, we don't do individual appraisal**
7 **reports, and**
8 **oftentimes, we have things in our file, but we don't put**
9 **every analysis sheet in every file, so we work through**
10 **these properties, but we won't run the numbers on an**
11 **income analysis. We'll look at what residual land value**
12 **or -- residual building value is. We look at what we**
13 **think is the contributory value on this to see the**
14 **changes before or after, but a lot of times, we're just**
15 **going off of -- we're working and turning off of our**
16 **spreadsheet at the office, and we just don't -- we're**
17 **often changing figures to try to make sure everything is**
18 **proportionate, so we don't do oftentimes individual**
19 **income analysis in the file. We just, more or less, work**
20 **off of our spreadsheet, so a lot of times, there isn't a**
21 **lot of information in the file, and if we're asked to**
22 **prepare a report for the property, we'll substantively do**
that.

HE TR 103:1-22

23 MS. ARCHER: If you applied that to

24 Property 27, how would I know?

25 MR. MACAULAY: **Well, we would have to**

1 do a report on it to really show you. More or less,

2 we're working and determining at the office and running

3 numbers, and so we don't have, you know, direct -- a lot

4 of times. We don't have the direct income analysis or

5 residual analysis in each individual property's lot.

MS. ARCHER: And where would I find

11 that: In the tub of data or this report?

12 MR. MACAULAY: **Well, like I said, a**

13 lot of times we're working internally off a spreadsheet

14 and running numbers.

15 **We're going to have specific information like that**

16 we put in the file. It's in our spreadsheet, and it

17 would be fairly easy for us to go back and figure out

18 what we did and what the land values were in that area

19 and what the ACU was in the written report.

20 MS. ARCHER: **How is my client supposed**

21 to evaluate the evaluation of his property if the

22 information is not been provided?

HE TR 105:23- 106:22

19 MR. MACAULAY: Well, again, we're just

20 looking at different variations.

21 **You know, oftentimes, like I said, these worksheets**

22 aren't the total story behind the different ways we

23 looked at a property and ultimately what we came up with,

24 so it's just a summation of how we did things.

8 MR. MACAULAY: Well, again, we have

9 **within the context of our files, we have analysis**

10 spreadsheets or we have the ranges of what we came up

11 with for our per unit values. For instance, they didn't

12 get put in every single file, so --

13 MS. ARCHER: **So that was not in the**

14 report. It wasn't in the tub, and it wasn't in the per

15 property detail?

16 MR. MACAULAY: Well, we have

17 **adjustment spreadsheets in our files.**

HE TR 108:19-109:17. Then on Rebuttal, Mr McCauley again candidly

admitted that (1) his Report does **not** contain supporting information for each

parcel, (2) he refers to the need to create **additional** reports to support his valuations, and (3) admits that what support does exist is in undisclosed files and spreadsheets, **not** in the Report.

25 MR. TANAKA: All right. Mr. Macaulay,
1 there's been some testimony from the property owners that
2 they had an issue or they were not able to determine from
3 your report all of your thinking and methodology.
4 Would you like to comment on that, please.
5 MR. MACAULAY: Yes, as I mentioned in
6 opening comments, special benefit studies and mass
7 appraisal and with that set of work, **we don't go into**
8 **individual detail on each property. We don't go into**
9 **individual analysis typically in this process.** If there
10 are questions, we're then asked to prepare a report on a
11 specific property based on information that's been
12 presented within the hearing to consider any relevant new
13 facts that may arise, and that's typically the way the
14 process works. **It's not within the scope of ourwork to**
15 **have that level of detail.**

HE TR 135:1-15.

5. City Valuations Fail: Not Parcel Specific.

The *Bellevue Assocs. v. Bellevue*, 108 Wn.2d 671, 675, 741 P.2d 993 (1987) case sets for the relevant LID baseline standard. The *Bellevue* Court **rejected** the City appraisals that case **based on a failure to appraise individual parcels.** “Several serious flaws in Allen's appraisals are apparent, bearing in mind that the standard is the before and after market value of each parcel. First, quoting Allen, **"No attempt was made to appraise an individual parcel, per se."** (Italics ours.) Transcript vol. 3 (Sept. 25, 1989), at 51”. Here, the City’s consultant repeated that mistake:

5 MR. MACAULAY: Yes, as I mentioned in
6 opening comments, special benefit studies and mass
7 appraisal and with that set of work, **we don't go into**
8 **individual detail on each property. We don't go into**
9 **individual analysis typically in this process. If there**
10 **are questions, we're then asked to prepare a report on a**
11 **specific property based on information that's been**
12 **presented within the hearing to consider any relevant** new
13 **facts that may arise, and that's typically the way the**
14 **process works. It's not within the scope of our work to**
15 **have that level of detail.**

HE TR 135:5-15.

137

8 MR. TANAKA: Okay. Now, much has been
9 made of an affidavit from an appraiser. I don't know
10 what the exhibit is. Yes, the Trueman affidavit.
11 Have you had a chance to review that?
12 MR. MACAULAY: I just briefly had a
13 chance to look at it.
14 MR. TANAKA: All right. Do you have
15 any comments at this time about what Mr. Trueman said in
16 that affidavit?
17 MR. MACAULAY: **No, other than if we**
18 **prepared, you know, more details in the initial reports,**
19 **then we would more specifically, parcel by parcel answer**
20 **those questions.**

HE TR 137:8-20.

138

4 MR. TANAKA: Well, so do you agree or
5 disagree that your report does not show calculations
6 illustrating how these estimates were prepared?
7 MR. MACAULAY: **Well, you know, our**
8 **spreadsheets show calculations on how it was prepared.**
9 **We just don't have within the context of those**
10 **calculation the detailed information we would have in a**
11 **report.**

HE TR 138:2-11.

138

24 MR. MACAULAY: **The report itself**
25 **doesn't go into that level of detail on each property.**
1 **There is information within the file which is part of**
2 **the -- part of what would comply with the -- with that.**
3 MR. TANAKA: Okay. And so while you
4 didn't do that for each individual parcel, there is
5 consideration -- you did consider physical condition,

6 locality and environment of the properties in arriving at
7 your conclusions?
8 MR. MACAULAY: Yes, within the context
9 of the file, we complied with everything he's saying in
10 here.
HE TR 138:24-139:10.

The Examiner erred by accepting less than a parcel specific approach to special benefits valuation, and accepting the flawed valuation methodology. The City Council again erred in not correcting this. “The appraisers did not prepare individual parcel appraisal reports, but did prepare market value conclusions for each parcel both without and with the LID.” HE **Finding No. 9**. CP 58. The *Bellevue* Court rejected the City appraisal that case based precisely on the failure to appraise individual parcels. “Several serious flaws in Allen's appraisals are apparent, bearing in mind that the standard is the before and after market value of each parcel. First, quoting Allen, "No attempt was made to appraise an individual parcel, per se." (Italics ours.) Transcript vol. 3 (Sept. 25, 1989), at 51”.

The court may disregard the opinion of an expert if he has proceeded on a fundamentally wrong basis in arriving at that opinion. *Doolittle v. Everett*, supra at 106; *In re Local Imp. 6097*, supra at 336. All as quoted in *Bellevue Assocs. v. Bellevue*, 108 Wn.2d 671, 675, 741 P.2d 993 (1987). Here, the Court is **denied** the proof of the valuation as it is **not** in the record which this Court may consider.

6. THE CITY ERRED IN FAILING TO VALUE THE LID PROPERTIES

IMMEDIATELY BEFORE AND AFTER CONSTRUCTION OF THE IMPROVEMENTS.

A special assessment is a charge imposed on property owners within a limited area to help pay for the cost of a local improvement. *Carlisle v. Columbia Irrigation Dist.*, 168 Wn.2d 555, 569, 229 P.3d 761 (2010). The special assessment recoups costs involved in constructing a public improvement from which the surrounding properties derive a greater “special” benefit from the public at large. *Id.* The Special Benefit to a property resulting from a local improvement means the “difference between the fair market value of the property immediately before and after improvement.” *In re Indian Trail Trunk Sewer*, 35 Wn.App. 840, 841, 670 P.2d 675 (1983). The Special Benefit study must evaluate properties within a local improvement district immediately before and immediately after the improvement. *Kusky v. City of Goldendale*, 85 Wn.App. 493, 498, 933 P.2d 430 (Div. 3, 1997). Emphasis provided. In *Kusky*, the City hired Macaulay and Associates to conduct a special benefit study to determine what special benefits were conferred to the Edgewood LID properties by the sewer. The City completed the Sewer in March of 2011, but only on May 10, 2011, two months after the sewer completion, did Macaulay undertake to calculate the special benefits. Two months is not “immediately.” See *In re Indian Trail Trunk Sewer*, 35 Wn.App. at 841. The court should find the delay until May 10, 2011 illegal because on May 9, 2011, Edgewood imposed an *entirely new* land use zoning

scheme, which has the effect of raised development densities considerably.

Ord. No. 11-0359, CP 125-127. The appraisers in turn impermissibly used the *increased density* instead of just taking into account the completion of the sewer when calculating the special benefit applicable to the Respondents here and throughout the City of Edgewood's local improvement district. A zoning regulation is not a "public improvement" within the scope of either common sense of controlling case law. *Carlisle*, 168 Wn.2d at 569. Further, when the Supreme Court of Washington was confronted with the exact same "intermingling" of special benefit and land use regulation as in the instant case, the Supreme Court reached the same result the Docket Respondents seek:

If separate parcels are combined in disregard of present use, the increase in fair market value is not attributable solely to the local improvements. Instead the increase in value will be derived from local improvements AND combination of lots....This has not been a measure of special benefits approved by this court, and it is inconsistent with [the] principle that assessments be based on special benefit resulting from local improvements.

Dolittle v. City of Everett, 114 Wn.2d 88, 102-104, 786, .2d 253 (1990).

Here, Macaulay *admits* on the record before the Court that the Special benefits on the assessment role reflect the sewer improvement and the new land use regulations. CP 1532. Therefore, the appraisal, which took into account the zoning regulation because the City placed the appraisal on hold

until the *day after* the zoning ordinance took effect, must be nullified under *Dolittle*. The above testimony amply demonstrates the City's consultant fails the required test: "Determining the amount of the special benefit which may be assessed by reason of LID improvements **requires proof of the increase in the fair market value of a particular property caused by the improvements**. Fair market value cannot include a speculative value" *In re Local Imp.* 6097, *supra* at 333.

7. City Report Fails to Describe Accepted Assessment Methodology As Required

The historical method of LID assessment has been zone and termini authorized by RCW 35.44.030-.040. However, RCW 35.44.047 does authorize "any other method or combination of methods to compute assessments which may be deemed to more fairly reflect the special benefits to the properties being assessed." RCW 35.44.047 however requires that an alternative method must more fairly reflect the special benefits; it is therefore incumbent upon the City to make such a finding.

The City presented **no evidence** to show the Macaulay Report methodology "more fairly reflects the special benefits". This is a requirement for use of an alternative method of assessment, at least when challenged. If statutory formula does not fairly reflect the proportionate special benefits, then *the authorizing ordinance may specify that the statutory formula will not be followed and an appropriate special benefit*

*formula will be used*¹⁶. See *Sterling Realty Co. v. Bellevue*, 68 Wn.2d 760, 766, 415 P.2d 627 (1966). No such required finding is included within the MacAulay Report or was authorized by City Council ordinance.

8. City Report and Assessments Improperly Based on Speculation.

Fair market value "means neither a panic price, auction value, speculative value, nor a value fixed by depressed or inflated prices." (Italics ours.) In re Local Imp. 6097, 52 Wn.2d 330, 333, 324 P.2d 1078 (1958) (citing In re Schmitz, 44 Wn.2d 429, 434, 268 P.2d 436 (1954) (quoting *Donaldson v. Greenwood*, 40 Wn.2d 238, 252, 242 P.2d 1038 (1952))). Even if the City can establish that some special benefit results to the properties, the next questions are (1) is the special benefit amount correctly determined and (2) did the City's expert appraiser used proper appraisal methods in reaching his opinions that the affected properties were specially benefited? The burden shifted to the City to establish special benefits. The fundamental starting point for evaluation of the testimony of the City's expert, and its only expert, is clear. "An expert's opinion on the market value of real estate must be based upon those legal principles which define the factors which the expert can or cannot consider in reaching his expert opinion." *Doolittle v. Everett*, 114 Wn.2d 88, 104, 786 P.2d 253 (1990).

Next, when an appraiser uses a factor "beyond the knowledge of

¹⁶ RCW 35.51.030(2) permits the classification of properties according to specified uses and elements, "but in no case may a special assessment exceed the special benefit to a particular property."

reasonable certainty", it becomes pure speculation. *In re Local Imp. 6097*, 52 Wn.2d 330, 335-36, 324 P.2d 1078 (1958). The court may disregard the opinion of an expert if he has proceeded on a fundamentally wrong basis in arriving at that opinion. *Doolittle v. Everett, supra* at 106; *In re Local Imp. 6097, supra* at 336. Determining the amount of the special benefit which may be assessed by reason of LID improvements requires proof of the increase in the fair market value of a particular property caused by the improvements. Fair market value **cannot** include a speculative value. *In re Local Imp. 6097, supra* at 333.

Here, the Edgewood Special Benefits Report optimistically projects rosy market conditions but lacks time frames or specific to support.

The multi-family market is showing positive signs, with low vacancy rates and strong demand. The commercial market is also starting to improve, as evidenced by the proposed Les Schwab tire store to be located on Meridian Avenue. Financing is becoming more readily available for multi-family and commercial projects, which will spur further growth and development.
City Report at 68. CP 1542.

Because of the currently stagnated development in the City of Edgewood, the availability of sewers would provide the positive attribute of improved marketing potential.
Report at 71. CP 1545.

Additionally, property listed for sale with the availability of sanitary sewer service generally experiences shorter marketing times. The availability of sewers would provide the positive attribute of improved marketing potential.
Report at 74. CP 1548.

The large number of unimproved and under-improved sites as well as the availability of sewers would provide the positive attribute of improved marketing potential and make property within the subject area more competitive with surrounding markets.

Report at 76. CP 1550. All of this is impermissible speculation. The Report makes no reconciliation of its lofty market predications in light of the fact that in the last three calendar years (2009-2011) only **one** of one hundred sixty-eight LID No. 1 properties were actually sold. When the value opinion to be developed is market value, an appraiser must, if such information is available to the appraiser in the normal course of business...analyze *all sales of the subject property that occurred three years prior to the effective date of the appraisal*. USPAP 1-5(b)¹⁷; USPAP 6-4(a). If the three years prior to the effective date of the May 2011 Special Benefits Report are counted, a grand total of only four sales occurred in the LID area. An appraiser must avoid making an unsupported assumption or premise about market area trends. USPAP 1-3(a) cmt.; USPAP 6-2(f).

In fact, impermissible non-reconciled optimism abounds throughout the Special Benefits Report. The Report unbelievably compares the present real estate market with conditions in the late 1990s. Again, Standard & Poors/Shiller-Case historical data plainly contradict this assessment. The

¹⁷ The appraisal identifies information sources of MLS, public records, and industry participants. The appraisal lists sales within the LID looking back longer than three years from the effective date of the appraisal. CP 1464-1626.

City's Special Benefits Report relies on the inclusion of extensive macroeconomic data (including the stale assertion that Russell Investments employs hundreds of people in Pierce County) and appraiser speculation based upon the macroeconomic data that real estate is sure to "rebound" to bubble-levels. CP 1464-1626. Regardless of the accuracy or merit of these data and speculation, they plainly contradict the definitions of fair market value (not speculative) and the special benefit legal fiction: What is the value of the properties within the LID as of **May 10, 2011** with the proposed improvement?

Further, in developing a real property appraisal, an appraiser must reconcile the *quantity* and quality of data available and analyzed within the approaches used. USPA 1-6(a); USPAP 6-7(a); USPAP 6-8(p). Instead, here the City's Special Benefits Report unbelievably states that the City of Edgewood is "similar" to Tacoma, Federal Way and other non-comparable entities, and then proceeds to make the comparison in arriving at ultimately speculative and inflated property values. CP 1464-1626.

9. City Study Does not Comply with Professional Appraisal Industry Standards As To Highest & Best Use

United Standards of Professional Appraisal Practice (“USPAP”) 2011 Standards Rule¹⁸ 6-8(n) states “The mass appraisal report **must** reference case law, statute, or public policy that describes highest and best use requirements.” *Cmt* [emphasis provided]. “Must” denotes a mandatory citation. The City’s Report lacks citation to case law, statute or public policy, and in fact misstates the definition of highest and best use by materially omitting the important timeframe component.¹⁹ The Washington State definition of highest and best use of land takes into account a *reasonable timeframe*, in consideration of “reasonably probable” use of the land. *Doolittle v. City of Everett*, 114 Wash. 2d 88, 105, 786 P.2d 253, 262 (1990) (“An owner...is assessed for LID improvements based upon potential highest and best use....when the governmental unit assesses its LID charges on a theoretical, compared to existing use, it is forcing the owner to pay on the basis of what an expert says it should do with his property. These facts **must** be considered in an assessment proceeding in application of the principle that suture use to which property is reasonably adapted within a reasonably foreseeable time may be considered”). The

¹⁸ “This is a mass appraisal report prepared in accordance with requirements set forth under “Standard 6: Mass Appraisal, Development and Reporting” of the Uniform Standards of Professional Appraisal Practice of the Appraisal Institute...”

¹⁹ The Appraisal, at page CP 1527, inappropriately cites a dictionary for the highest and best use definition.

Study fails to comply with industry standards *and* the omission in this case relates directly to a defective result.

USPAP 1-2(e)(iv) states that “In developing a real property appraisal, an appraiser must identify the characteristics of the property that are *relevant to the type and definition of value and intended use of the appraisal, including...any known easements, restrictions, encumbrances, leases, reservations, covenants, declarations, **special assessments**, ordinances, or other items of a similar nature.*

Mass appraisals have a corollary rule in Standard Rules 6, with which this appraisal is purported to comply. USPAP 6-2(f). The appraisal explicitly states that it assumes property to be unencumbered and owned fee simple for its special benefit analysis. The appraisal also proposes special assessments for each parcel, making the special assessments known. The special benefit methodology, as described in the City 2011 Special Benefits Report , involves envisioning a given parcel with improvements and without on the same day assuming the highest and best use of the land. Similarly, envisioning a given parcel encumbered for twenty years by the proposed \$ “xx” foreclosable LID assessment as compared to the same parcel unencumbered will lead to a pricing variance for the next twenty years (reasonable timeframe), which the appraisal neglects to take into account. USPAP Standards Rule 1-2(g) states: “In developing a real property

appraisal, an appraiser must identify any hypothetical conditions necessary in the assignment.” Cmt. to USPAP 1-2(g); Standards Rule 6-2(i) states: A hypothetical condition may be used in assignment only if use of the condition is *clearly required for...purposes of reasonable analysis, or purposes of a comparison; use of the hypothetical condition results in a credible analysis; and the appraiser complies with* [disclosure requirements]. The Special Benefits Report omits a material hypothetical condition: Substantial lien and tax disadvantage for the next twenty years that effectively adds hundreds of thousands of dollars to LID property owner’s carrying charges.

10. City Study Flawed as Special Assessment Not Proportionately Distributed

Any formula must ultimately relate to benefits, not merely the distribution of costs. "The critical consideration always is whether the method of distributing cost properly represents benefits to the property assessed." *Trautman, Assessments in Washington*, 40 Wash. L. Rev. 100, 122 (1965). See *Sterling Realty Co. v. Bellevue*, 68 Wn.2d 760, 765, 415 P.2d 627 (1966).

The Edgewood Council discussion below reveals the abject lack of understanding as to **any of the required assessment/valuation standards**, as the City Council refers to the assessment process as simply “divvying up” the sewer costs.

[COUNCILMEMBER OLSON]

14 We both knew that there would be a lot of -- a lot
15 of steps and a lot of hurdles that would have to be
16 passed to pull this off, but I think we worked together
17 pretty well and it happened, and the sewer was built.
18 And -- and now it's -- it costs \$21 million, and **now**
19 **we have to divide up among the property owners**, which
20 they knew that. And now, when the assessments went out,
21 everybody has a chance to give their opinion on what they
22 think of their share of the bill.
23 But I believe it was a fair process. **I have no --**
24 **no reason to believe that Macaulay didn't act fairly in**
25 **divvying up that amount.**

CC TR 46:14-25.

COUNCILMEMBER OLSON: I just -- I

14 appreciate what you're saying, but the bill -- it was --
15 the \$21 million has already been spent. I mean, the cost
16 of the sewer was \$21 million, so the delaying it is just
17 going to increase the \$21 million.
18 **I think just divvying up the \$21 million**, and I
19 think we've gone through -- there's been multiple steps
20 that it's gone through, and I think I'm comfortable with
21 it. I don't think anything's going to change it in the
22 next week. **I don't think we're going to -- and all we**
23 **can do is redistribute the \$21 million. It comes off of**
24 **someone, it goes to somebody else.**

CC TR 58:13- 25. A mathematical model that distributes only costs
without regards to specific benefits conferred upon the particular parcels
property will **not** stand up to court scrutiny. *Bellevue Plaza* 121 Wn.2d 397,
415, 851 P.2d 662 (1993). The Court should find error and remand.

11. Zoning Changes Are Not A Valid Basis for Valuation & Zoning Ordinances upon which Special Assessments are Based Are Flawed & Not In Effect.

The City of Edgewood commissioned Macaulay & Associates, Ltd. to
complete a study of the benefits to be realized upon completion of a proposed

sewer line. This study was completed and made effective May, 10, 2011. At the identical time, the City of Edgewood purported to adopt new Comprehensive and Zoning Code designation for much of the area encompassing LID Assessment No. 1. See Docken Appendix 8, minutes of the Edgewood council April 26, 2011, discussing Ordinances AB11-0358, and 0359, and 0360. CP 1235-1239. Coincidentally, the City intended the new zoning and comp Plan Ordinance to be effective May 9, 2011, one day prior to purported valuation. See Docken Appendix 8, Id. The Macaulay Report relies heavily on the **new** land use designations:

A key element of this special benefit study stems from the fact that important changes in land use regulations allowing more intensive development have recently occurred, as part of the city's development code update. While the names of several zoning categories governing the subject area are unchanged, **revisions to both the development code and the city's comprehensive plan were approved by the Edgewood City Council as of April 26, 2011 and became effective on May 9, 2011. These recent revisions have a significant effect on the subject area.** Not only is more intensive development now allowed (with sewer service), it is important to note that a number of uses permitted prior to the revisions could not be achieved without sewers. **With these changes,** special benefit is attributable to the project due to the significant increases in potential development density which will occur as a result of the infrastructure project.

See Copy of Macaulay & Associates, Ltd letter to City Attorney Zach Lell dated May 10, 2011, identified as Job No. 09-348, Docken Appendix 10, CP 1245-1248 and a part of the Macaulay Special Benefits study and see Study at

page 105 of the Report²⁰. By doing so, the City's special benefit calculation improperly takes into account benefits resulting not just from the sewer improvement, but also general benefits resulting from the simultaneously enacted zoning changes. The rule is well established that a property can only be assessed for special benefits that are solely caused by the improvements, as distinguished from a general benefit to the entire district. *Bellevue Plaza Inc.*, 12 1 Wn.2d 397 at 404. In court in *Dolittle v. City of Everett*, 1 14 Wn.2d 88, 102-04, 786 P.2d 253 (1990), addresses this exact point. In that case, the city's appraiser calculated the special benefits to the landowner's property after

²⁰ See City Staff on April 26, 2011 presented City Council a Staff Report and associated Buildable Land Analysis. See Docken Appendix 11, CP 1249-1269. Among other things, the new Comp Plan and Zoning Code revisions would have:

- Allow increased building heights, with maximum base height of 35 to 45 feet and increased height allowed in the TC (to 55 feet) and C (to 45 feet) zones if specific incentives are met.
- Use floor area ratio (FAR) as a new measure to define, development bulk, and intensity. Allow increased FAR if specific development benefits are provided, with the largest bonuses in the TC and C zones. FAR increase incentives include dedication and improvement of right of way for the parallel road network, a significant or other public plaza or public green space; a through block connection or alley enhancement; mixed use development; structured parking (above or below grade); affordable housing, ground floor pedestrian oriented commercial use, LEED certification; multi-modal pathway; public meeting room; water feature or exterior art element.
- Provide new minimum and maximum density thresholds for the TC, C and MUR zones. In the TC zone, density for mixed use development would be controlled by building height and FAR. In the C and MUR zones, maximum residential densities for mixed use development would be 48 units/acre. Minimum residential density for the TC zone would be 24 units/acre and for the C and MUR zones it would be 12 units/acre.

CP 1267.

combining individual lots. The court in that case found that,

[I]f separate parcels are combined in disregard of present use, the increase in fair market value is not attributable solely to the local improvements. Instead the increase in value will be derived from local improvements AND combination of lots. ... This has not been a measure of special benefits approved by this court, and it is inconsistent with [the] principal that assessments be based on special benefit resulting from local improvements.

Id (emphasis added). Similarly here, the City's valuation Report admits the increase in value is a result of the sewer improvement **and** the new land use regulations (a general benefit to the entire City). Because the City's valuation opinion is inconsistent with the legal principal that assessments must be based solely on the special benefit resulting from the sewer improvement, the City's special benefits and assessments were determined on a fundamentally wrong basis. In addition the City's Comp Plan and Zoning Ordinances share the same flawed publication issue as did the LID Ordinance and for the same reason are not legally effective. *See supra*. The effect of the flawed Comprehensive Plan and Zoning Code Amendment Ordinance Notice renders the entire basis for the City's May 10th Special Assessment Report invalid. This is because the Appraiser based his Special Assessment calculations on the value of the property – assuming the efficacy of brand new zoning provisions. As a result, the LID assessments were founded on a fundamentally wrong basis. This is a statutory ground for judicial denial of confirmation of

the assessment roll. RCW 35.44.250.

The court may disregard the opinion of an expert if he has proceeded on a fundamentally wrong basis in arriving at that opinion. *Doolittle v. Everett*, 114 Wn.2d 88, 104, at 106, 786 P.2d 253 (1990), *In re Local Imp. 6097*, 52 Wn.2d 330, 336, 324 P.2d 1078. This Court should so disregard the Edgewood report, based on these clear flaws.

12. City's MacAulay Valuation Assumptions Contradicted by the City's Own Buildable Lands Report

In support of its purported adoption of Ordinances AB11-0358, and 0359, and 0360 which purported to revise the City's Comprehensive Plan and Zoning Codes, the City Staff on April 26, 2011 presented City Council a Staff Report and associated Buildable Land Analysis. See Docket **Appendix 11, CP 1249-1269**. The Buildable Lands Report (CP 1260-1264) generates Residential and Employment capacity for Edgewood, and significantly includes "deductions in the gross land area are taken to account for land constraints and market factors". These same deductions are **not** included within the MacAulay Valuation Report.

The Pierce County Buildable Lands Report (and by extension the Edgewood buildable lands information) in 2007 determined that over sixteen percent of land would be **unavailable** for highest and best use due to economic conditions and owner complacency. The 2007 Pierce County Buildable Lands Report in 2007 also estimated that a total of **only fifty-nine**

percent of land would be available for development due to physical features and other impediments, such as roads. The MacAulay Special Assessment Report points generically to additional planned road expansion in the area of the LID. Yet, the MacAulay appraisal then states that at the present time and foreseeable future, **over ninety percent** of the land in the LID is available for highest and best use. This represents an outcome **1.5 times higher** than the 2007 Pierce County and City of Edgewood Buildable Lands Report, which itself was based upon favorable 2007 and now inapplicable data.

At best, the two City-embraced Reports are inconsistent and incompatible. Further the LID property owners and their representatives offer that significantly more of the land today will be unavailable for development. In 2007 Pierce County analyzed then-prevailing market conditions and concluded that owners of sixteen percent of the available land would not pursue highest and best use. An additional 36 percent is off the density market due to deductions for infrastructure and critical areas. The presently prevailing conditions, as the Report acknowledges, are even *less* conducive to real estate transactions and development. Therefore, it is reasonable to infer that even less than the **remaining** fifty-eight percent of the land in the LID will be available for development. Supporting this inference is that under the current conditions no real estate sale transactions have occurred in the last two years in anticipation of the completed project.

Residential Capacity

The methodology used in the Pierce County Buildable Lands Report has been assumed in this land capacity review. **Using this approach, the estimated residential capacity is generated through an estimate of gross developable residential acres. Deductions in in the gross land area are taken to account for land constraints and market factors.** An average residential density is applied to the net available acres to arrive at an estimated housing capacity. ...

Employment Capacity

The methodology used in the Pierce County Buildable Lands Report has been assumed in this land capacity review. **Using this approach, the estimated employment capacity is generated through an estimate of gross developable commercial and industrial acres. Deductions in land area are taken to account for future public facilities and market factors.** An average employee per gross acre is applied to arrive at an estimated employment capacity. ...

CP 1261.

Key assumption included in the 2007 Buildable Lands Report but

missing from the Special Assessment Methodology are as follows:

[Deductions for:] **Constrained lands include a deduction for roads (9.8%), critical areas (based on parcel specific data), and parks/open space (11%).** (Buildable Lands Report, Table 4 – City of Edgewood)

CP 1263.

3. This is a reduction in recognition that property owners may not want to sell or further develop the land in the next twenty years. There are various reasons for this to occur, including personal use, economic investment, and sentimental relationship with their surrounding environment. **To account for this, a proportion of the available land, ranging from 25 to 75% was subtracted from the net available acres.** A higher percentage was assumed for properties categorized as either underdeveloped or redevelopable. This correlates with a higher uncertainty for the redevelopment of existing developed properties. This deduction also includes a 5% reduction for nonresidential uses in residential zones. (Buildable Lands Report, Table 4 – City of Edgewood)

4. Total dwelling units were estimated by multiplying the assumed

density for each zone by the adjusted net acres. **For mixed use zones, 40% of the total land available in the Commercial(C) zone is assumed as residential, 60% of total land available in the Mixed Use Residential (MUR) zone is assumed as residential and 70% of total land available in the Town Center (TC) zone is assumed as residential.** The gross acres shown in Table 2 represent these proportions. (Buildable Lands Report, Table 4 – City of Edgewood).

5. Assumed densities for these zones are

SF 2 2 units/acre
MUR 24 units/acre
SF 3 3 units/acre
C 48 units/acre
SF 5 5 units/acre
TC 48 units/acre
MR 1 4 units/acre
MR 2 8 units/acre

6. In addition to total housing units based on density, this estimates adds in additional housing units to represent vacant parcels that will not be further subdivided, but may be developed with a single family dwelling unit.

(Buildable Lands Report, Table 8 – City of Edgewood).

See Docken **Appendix 11**. CP 1260-1265.

The McCauley Report is not consistent with the 2007 Buildable Lands Report density assumptions above. The McCauley Report assumes 48 units/acre for MUR, **doubling** the 2007 Pierce County Buildable Land Report upon which the City's new Zoning and Comp Plan changes are based. The McCauley Report fails to quantify or supports its substantially increased density assumption. In fact, the 2011 Special Benefits Report would actually support a value based on even *lower* realized density levels. The 2007 Pierce County Buildable Lands Report features a number of estimates tied to the

economic climate of 2007; most notably employment density and land owners not wanting to develop or sell lands for economic reasons. The 2011 Special Benefits Report acknowledges an affirmative decrease from the real estate market in late 2007.²¹ Due to a wholly different employment and economic climate at the present time, the 2007 Piece County Buildable Lands Report offers an overly *optimistic* density based on today's acknowledged depressed market conditions. And yet the McCauley Special Benefits Report doubles that optimistic density projection. The Special benefits Report fails to note or support this extraordinary assumption and is not compliant with USPAP Standards Rule 6-2(i) on that basis. The inflated density assumptions are additional speculation which renders the Special Benefits Report defective.

Determining the amount of the special benefit which may be assessed by reason of LID improvements requires proof of the increase in the fair market value of a particular property caused by the improvements. Fair market value **cannot** include a speculative value. *In re Local Imp. 6097*, supra at 333.

13. Edgewood Valuation Report Further Flawed As Assumes Without Basis Maximum Build Out

There is another major flaw in the method used. The City Report assumes that only unusable land will be spared from development. *City Special Benefits Report*. Furthermore, the Report assumes that all lands will be built

²¹ "The pace of development in the subject area in recent years has been slow, **even before the onset of the recession in late 2007**, there was abundant vacant land and many underdeveloped lots in the city..." McCauley Report at CP 1519.

out to maximum density and height, which has been increased by ordinance of May 9, 2011. Report at 8. And see:

- “With the LID project completed, **maximum development potential can be achieved** and development is no longer dependent on individual parcel’s soil conditions.” Report at 78. CP 1552.
- “Value ranges were further refined into market value estimates for each individual parcel within the LIF boundary, highest and best use...defined as...(1) physically possible, (2) legally permissible, (3) financially feasible, (4) maximally productive.” Report at 81. CP 1555.
- “With the LID project completed, improvements on the parcels zoned for public use can be renovated or expanded. Additionally, the sites can be redeveloped to their highest and best use with sewer service.” Report at 81. 1555.
- “With the LID project completed, development density is no longer dependent on individual parcels’ soil conditions. Lots with sufficient excess land can be subdivided more intensively for future development, existing structures can be remodeled/expanded, septic system maintenance and repair costs are eliminated, and flexibility in the design and siting of new buildings is greatly enhanced since drainfields and reserve areas are no longer needed.” Report at 80. CP 1554.

The Report assumes as a significant factor highest and best use in light of zoning, but does not assume reasonable limiting factors. *Id.* at 58, CP 1532. This omission cannot be squared with either the Pierce County Buildable Lands Report of 2007 upon which the City’s recent zoning revisions have been based, or the Supreme Court ruling in *Doolittle v. City of Everett*, 114 Wn.2d 88, 106, 786 P.2d 253 (1990) (Highest and best use must take into account limitations expressed).

The Report further assumes that the new zoning changes of May 9, 2011 to be the land use regulations. Report at 58. CP 1532. The 2007 Pierce County Buildable Lands Study upon which the zoning changes of May 9, 2011 were based offer that over forty percent of the lands will be **unavailable** for highest and best use, Washington Courts have not sustained assessments in the nature of the Macaulay product, even absent the density limitations so thoroughly documented in the 2007 Buildable Land Study.

[F]uture use to which property is reasonably adaptable within a reasonably foreseeable time is considered in determining the amount of special assessments. . . . However, possible future use to which the property is reasonably adapted within a reasonably foreseeable time is to be considered . . . with respect to each of the assessable parcels **Further, we express a note of caution to experts who apply the concept of future highest and best use in establishing special benefits in an assessment proceeding. . . .**
. . . [A]n owner who is assessed for LID improvements based upon potential highest and best use is forced to pay an assessment on a valuation which may or may not become a reality.

Doolittle v. Everett, 114 Wn.2d 88, 104-05, 786 P.2d 253 (1990).

In fact, the property owner's appraiser expert was present at the LID hearing²² and submitted a sworn declaration that attest that the *City's consultant lacked any foundation* for the special benefits claimed.

11. What is missing in the Report is any consideration of the physical condition, locality and environment of the property involved, and the character of any improvements.

²² Mr Trueman, the property owner's Appraiser was present at hearing rendering the HE findings of fact and **Conclusion of law No 2** that "none of the appraisers attended the hearing" patently false.

12. Thus there is no way to reasonably conclude the sewer an improvement is a benefit; and or the amount of the accrual special benefit, or that any assessment is equal or ratable to an assessment upon other property similarly situated; and that the assessment is fair.
13. The May 10, 2011 Report does not include appraisal evidence showing how and the amount to which the properties would be benefited by the improvement as described by the City.

14.

See HE Exhibit 31, Declaration of Appraiser Trueman, CP 801-805. An expert's prediction of future highest and best use must be reasonable. It cannot be based on speculation. *In re Westlake Ave.*, 40 Wash. 144, 82 P. 279 (1905); *Doolittle v. Everett, supra*.

The City consultant's assumed future use is **not** reasonable. It is without foundation. It is sheer speculation and should have been rejected by the City Council, and should be corrected by the Court on appeal.

14. City Impermissibly Allowed Zacharia Testimony – Noncompliance with USPAP and Ethics Code

Yet another flaw revealed by the City rebuttal testimony is that Mr McCauley and the City inappropriately relied on the testimony of Ashley Zacharia, an "*appraiser trainee*", because Mr McCauley testified he was "unfamiliar" with sections of the Report, upon which valuations were based:

MR. MACAULAY: **I'm going to ask you**
9 to -- I'm not familiar with that chart, so she can
10 address that.
11
12 ASHLEY ZACHARIA, having been first duly sworn by the
13 Hearing Examiner, testified as follows:
14
15 MS. ZACHARIA: We should point out
16 that in our report, it says that this table generally

17 summarizes --
18 MR. CAUSSEAU: You need to identify
19 yourself.
20 MS. ZACHARIA: Oh, I'm Ashley
21 Zacharia, and I work for Macaulay & Associates. I'm an
22 **appraiser trainee.**

HE TR at 141:8- 22. It is error to rely on the trainee's testimony. Under USPAP, those with a hand in completing the appraisal are to be disclosed:

When a signing appraiser(s) has relied on work done by appraisers and others who do not sign the certification, the signing appraiser(s) is responsible for the decision to rely on their work... The names of individuals providing significant appraisal, appraisal review, or appraisal consulting assistance who do not sign the certification must be stated in the certification. It is not required that the description of their assistance be contained in the certification, **but disclosure of their assistance is required** in accordance with [USPAP Standards for Mass Appraisals Rule 6-8(j)].

USPAP 6-9 Cmt. The Certification of the City's Study was signed by Robert Macaulay and Kelly Hao. *Study* at 86. CP 1560. The Certification states: "No one provided significant assistance to the persons signing this certification." *Id.* Any mention of Ashley Zacharia, an "**appraiser trainee**", is notably absent, rendering the Report non-compliant with professional standards of conduct. To the extent that the City Appraiser "did not understand" his own chart that he certified, among other things, "to be true and correct" "to [his] best belief," and failed to disclose someone providing significant assistance, this appraisal is non-compliant with the USPAP

professional code of conduct. *Report* at 85. CP 1559.

F. PARCEL SPECIFIC CITY ERRORS

1. SUELO MARINA LLC – PARCEL 31

a. Hearing Examiner Ignored Expert Testimony Explicitly Incorporated into LID Parcel 31’s Protest Letter and Wrongly Summarily Dismissed the LID Parcel 31 Protest on the Basis of No Competent Testimony.

The LID Parcel 31 property owner’s protest letter, on record before the Council, states: “We Incorporate by Reference: June 1 Letter by Trueman Appraisal. *HE Ex.28 CP 623-625*. The June 1, 2011 letter (actually sworn Declaration – Hearing Examiner Exhibit 31 CP 801-805) by Trueman appraisal adopted by reference by Parcel 31 property owner put forth competent, expert testimony calling into question the methodology and foundation contained in the City’s Special Benefits Report. The improvement is presumed to be a benefit, and “[t]he burden of proof shifts to the City only after the challenging party presents expert appraisal evidence showing that the property would *not* be benefited by the improvement.” *Bellevue Plaza, Inc. v. City of Bellevue*, 121 Wash. 2d 397, 403, 851 P.2d 662, 665 (1993). But here, the City did not seriously attempt to contest the Truman appraisal testimony, and its opportunity to do so has passed. Thus, the City did not meet its burden to prove the validity of its Study as a matter of fact and law. Against this legal backdrop, the Hearing Examiner incorrectly found:

this property owner didn't submit "expert appraisal, other expert testimony, or expert evidence substantiating their protest." Since none of the above listed property owners submitted expert appraisal testimony or expert evidence to substantiate their protests...the City Council should uphold the assessments for said parcels and reject the protests.

HE Report & Recommendation at 9-10 F/F No. 16. CP 61. The City Council erred in not correcting this recommendation.

b. City Assessment to LID Parcel 31 Is Disproportionate & Thus Flawed

As the Suelo LLC Protest letter correctly notes, the Pierce County Assessor has valued LID parcel 31 at \$900,000. Yet, the City Study inexplicably devalues the property to \$680,000 then subjects the property to a 66 percent so-called special benefit in order to arrive at a special benefits assessment of \$335,852. The devaluation is NOT supported by any rationale contained in the Report or in the record before the City Council, a defect admitted by the City's Consultant and one that applies to all affected properties.²³ LID parcel 31 is zoned C. The 66 percent increase in value is on

²³ MR. MACAULAY: Well, typically when we
6 do these, we don't do individual appraisal reports, and
7 oftentimes, we have things in our file, but we don't put
8 every analysis sheet in every file, so we work through
9 these properties, but we won't run the numbers on an
10 income analysis. We'll look at what residual land value
11 or -- residual building value is. We look at what we
12 think is the contributory value on this to see the
13 changes before or after, but a lot of times, we're just
14 going off of -- we're working and turning off of our
15 spreadsheet at the office, and we just don't -- we're

the high end of the spectrum imposed by the City's Consultant for C-zoned properties. This disproportionate assessment is apparently brought about by the City Report's unexplained and unfounded decision to reduce the "before" value of LID parcel 31 to **\$220,000** below its assessed value.

c. Parcel 31 Specific Relief:

The Court should correct the unexplained and disproportionate treatment of LID parcel 31. Because the City has already taken such a strong liberty with lowering the pre-improvement value of the property, the percentage increase in the value should be commensurate with the dramatically lowered pre-improvement value. C-zoned LID parcel 32's 18.2 percent increase should be extended to LID Parcel 31. The Special assessment on LID Parcel 31 should be lowered from \$335,852 to \$91,582. This change should be in addition to further relief requested.

2. Schmidt – Parcel 71 & Masters Parcel 79

a. City Report Impermissibly Fails to Deduct From Alleged Special Benefit Property Owner's Heavy Investment Needed to Enjoy Proposed Sewer Improvements, As Required Under Washington Law.

The Washington Supreme Court has established that an LID assessment will fail for being arbitrary and capricious if it simply distributes cost, and

16 often changing figures to try to make sure everything is
17 proportionate, so we don't do oftentimes individual
18 income analysis in the file. We just, more or less, work
19 off of our spreadsheet, so a lot of times, there isn't a
20 lot of information in the file, and if we're asked to
21 prepare a report for the property, we'll substantively do
22 that. TR 103: 6-22. See also: TR 105:23-106:22, TR 108:19-24, 109:8-17, 135: 5-
15, 137:8-20, 138:4-25, 139:1-10.

does not take into account the actual benefit conferred upon each property. *Bellevue Plaza*, 85 Wn.2d at 415, *Abbenhaus v. City of Yakima*, 89 Wn.2d 885, 860-861, 576 P.2d 888 (1978).

This binding law has been applied to invalidate an LID assessments on multiple occasions. *Douglass v. Spokane County*, 115 Wn.App. 900, 64 P.3d 71 (Div. 3, 2003), *Kusky v. City of Goldendale*, 85 Wn.App. 493, 499, 933 P.2d 430 (Div. 3, 1997). The Supreme Court of Washington makes clear that a City acts arbitrarily and capriciously when its council approves an assessment without requiring proof that the assessed property is specially benefited “**by a specific amount.**” *Bellevue Plaza, Inc. v. City of Bellevue*, 121 Wn.2d 397, 404, 851 P.2d 662 (1993). In the case of Parcel 71, the City Council had the opportunity and was strongly urged to reject the cost distribution of the assessment role, particularly as it applies to parcel 71 and 79. They erred when they failed to act.

The City Report from which the assessments are derived clearly distributes costs and **not** special benefits to specific property. LID Parcel number 71 and 79 requires over six hundred feet of extension from the proposed sewer hook in order to enjoy the benefit of the sewer. *Protest Letter* at 2, HE Ex. 19, CP 236-241 *see also HE TR* 48:24. This cost was ignored. The Supreme Court clearly states that modifications to particular parcels necessary to enjoy improvements are to be **deducted** as a set off from the

special assessment value. *Kusky*, 85 Wn.2d at 500. Based upon the City's own linear foot cost for sewer line, Parcel 71 needs a \$77,650 investment to benefit from the proposed improvement. Ignoring, but not waiving the issue that Parcel 71 has inappropriately been valued considerably *higher* than properties similar in shape and location,²⁴ TC-zoned Parcel 71 purportedly receives an 88.8% hypothetical increase in value due to the improvement. Yet, TC-zoned Parcel 84, which is located a short distance from parcel 71, is somehow valued at a completely different starting value of \$3.30/sqft, yet reportedly receives a virtually identical 90 percent increase in value following the proposed improvement. The so-called special benefit study has yielded essentially identical percentage increases in value for two properties, despite material differences in lot shape, lot proximity to sewer hook up, *and investment needed to enjoy the proposed improvement*. Clearly the City's Consultant applied a purely mathematical model to impermissibly arrive at the special benefit of Parcel 71. The City has never disputed this error, and the time to do so has passed. The Court should reject the valuation. *Bellevue Plaza*, 121 Wn.2d 415 (Assessment nullified where City's appraiser fails to deny appraisal is mere mathematical method for distributing costs). The flawed assessment is clearly prohibited by Washington law.

²⁴ Parcel 71 and 70 is not only presently "valued" higher than both of its immediate neighbors, parcels 81 and 68, but also somehow receives great special benefit; the study purports that parcel 71 receives a full \$4/sqft. benefit as compared to a \$4.50/sq ft. existing value.

b. Parcel 71 & 70 Specific Relief.

In addition to other relief sought, as to Parcel 71 the City should reduce its \$341,221 assessment by at least \$77,650. Correspondingly, LID parcel 79, which is owned by the same property owner, is entitled to the same relief as LID parcel 71. Its assessment should be reduced from \$104,631 to \$29,681 in addition to other relief sought.

3. Ronald O. Acosta, D.C., LID Parcel No. 128, Exhibit 21, CP 245-252

a. Parcel 128 Valuation Flawed Due to Error in Highest & Best Use

LID parcel 128's owner, has put onto the record a detailed explanation of the current use of the property. This property owner's protest underscores one of many recurring issues in the City's Consultant's Report Appraisal: blunders regarding highest and best use. Such errors are grounds for every court in Washington, based upon binding Supreme Court authority, to find an assessment fundamentally wrong, and annul the assessment:

We hold that the assessment is founded upon a fundamentally wrong basis, which is a statutory ground for annulling an assessment. RCW 35.44.250. The basis of our holding is that the City erred in applying "highest and best use....

Doolittle v. City of Everett, 114 Wn.2d 88, 91, 786 P.2d 253 (1990).

b. The City Consultant's Definition of Highest and Best Use is Legally Insufficient

City consultant Macaulay purported to complete the Special Benefits Valuation Report in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Institute for mass appraisals.

Report at 7, CP 1478. The Method used for computing special benefit was highest and best use. *Id.* The USPAP for mass appraisals clearly states: “The mass appraisal report **must** reference case law, statute or public policy that describes highest and best use requirements.” USPAP Std. 6-8(n). “Must” denotes a mandatory outcome. Yet, the Study cites a generic *dictionary* definition of “highest and best use”²⁵ that omits these required key components of “highest and best use,” under Washington law:

- Timeframe (reasonably foreseeable developments can be included in highest and best use) *Dolittle*, 114 Wn.2d at 100.
- Current use (Present use should be considered, as well as future use to which the property is reasonably well adapted. *Dolittle*, 114 Wn.2d at 93, *citing In re Jones*, at 146, 324 P.2d 259; *In re West Marginal Way*, 112 Wash. 418, 422, 192 P. 961 (1920).

The City’s Report values Parcel 128 by ignoring current use and addressing no timeframe within which the “highest and best use” would be realized. On a proposition that someone today will invest in a .54 acre parcel of land, rip down the existing commercial facility on the land, and build approximately twenty four houses in its place in accordance with the MUR zoning. This notion is **not** plausible, and underscores the City’s Appraiser’s

²⁵ Report at 53: CP 1527.

“Highest and best use is the most fundamental premise upon which estimations of market value are based. According to “The Appraisal of Real Estate” (Thirteenth Edition, 2008), highest and best use is defined as: “...The reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the best use.””

(a) non-compliance with professional standards, and (b) misapprehension of Washington State law.

Doolittle v. Everett, supra at 106; *In re Local Imp. 6097*, supra at 336.

In the case of LID Parcel 128, upon the competent showing of expert testimony in opposition to the Study (Exhibit 31 CP 801-805), the Appraiser was burdened to show how his opinion was formed, taking into account the factors of highest and best use. USPAP 6-8(n). This showing was **not** made, and the City did not meet its burden to justify its appraisal.

c. Parcel 128 Parcel Specific Relief - The City Should and Must Correctly Apply Highest and Best Use

Competent testimony from Appraiser John Trueman **Exhibit 31** CP 801-805) has burdened the City to defend its Report. Because the City Report is (a) not in compliance with professional standards, (b) misstates the applicable law, (c) misapprehends the applicable law, and (d) the appraiser failed to state the truth – that the USPAP had not been followed by the City study. In addition to other relief requested, LID parcel 128 should have its assessment reduced by at least \$5,500 to \$41,500.

4. Enid and Edward Duncan, LID Parcel No. 2, Exhibit 12, CP 167-176

a. The Duncan Property Valuation Was Prejudiced by City's LID Short Notice, As Shared By All LID Property Owners

Due process under the State Constitution means that an owner must be given notice and a *meaningful* opportunity to be heard at some point before

the government levies a tax assessment upon the property. *Carlisle v. Columbia Irr. Dist.*, 168 Wn.2d 555, 571-572, 229 P.3d 761 (2010). A common theme in Washington case law involving private challenges to governmental actions which affect private land is that a showing of prejudice for lack of notice nullifies the underlying municipal action. *Moss v. City of Bellingham*, 109 Wn.App. 6, 31 P.3d 703 (Div. 1 2001) (Prejudicial lack of notice grounds for overturning land use decisions – under LUPA); *Yakima County v. Evans*, 135 Wn.App. 212, 223, 143 P.3d 891 (Div. 3, 2006) (Prejudicial lack of notice grounds for overturning land condemnation proceedings). The City’s deliberately compressed timeframes for the LID process, bundled together with a massive zoning and Comprehensive Plan changes and shoved into three day weekend holiday timeframes, exemplifies prejudicial lack of notice including as applied to Parcel 2. The zoning changes upon which the valuations were based were not effective until **May 10, 2011**; the City’s Valuation Report did not issue until **May 10, 2011**. The City started its Valuation efforts in **January, 2011**.²⁶ Yet, affected property owners were tasked to hire and complete competing appraisals to be final by **June 1, 2011** – in *less than twenty days, and only actually only 13 working*

²⁶ Testimony of City Staff: 11
20 January 2011 work commenced on the final special
21 benefit assessment prepared by Macaulay & Associates.
22 The final LID costs were calculated by staff and
23 provided to Macaulay & Associates on May 9th, 2011.
24 The final report was presented to the City, dated
25 May 10th, 2011.

days later given the weekends and holidays. The City also denied property owners request to continue the LID hearing. See continuance request HE Exhibit 6 CP 109-112 and City's denial HE Exhibit 7, CP 113-116.

The City's inadequate notice flatly precluded LID parcel No. 2 and the majority of property owners within LID No. 1 from retaining an appraiser to speak of the following simple truths regarding their land, which are all preserved on record for further appeal if necessary:

- LID parcel 2 totals eight acres according to the Pierce County assessor, yet the City's study lists the property as nine acres in size. This is incorporated into both written and sworn testimony on record before the HE and council.
- LID parcel 2 is subject to several easements, one of which is held by the City of Edgewood. In addition to overstating the size of the property, no concession was provided for easements, which hamper development potential. It was incumbent upon the City's appraiser to identify these easements per the Uniform Professional Appraisal Practice Rules for Mass Appraisals, with which the City's Study was purportedly conducted in accordance. *See* USPAP 6.2(g)(iv).
- The City of Edgewood utility and fire hydrant infrastructure is among the impediments to developing an adequate entrance to the property to take advantage of the Meridian Avenue frontage.
- Substantial investment in the form of engineering and grading are necessary in order to develop to highest and best use standards, which the so-called special benefit presupposes. LID parcel 2 includes both very steep terrain and critical areas. These costs and deductions were not factored by the City.
- Meridian Avenue frontage is banked up to eight feet above the LID parcel 2's grade level. To secure meaningful frontage on Meridian Avenue, substantial reengineering will be required as well as impact fees. This represents further investment required for LID parcel 2 to enjoy the proposed improvement, which the City ignored.
- Historic and reasonably foreseeable use is a factor in the highest and best use determination. In this case, substantial reengineering costs likely preclude a repurposing of the land on a foreseeable timescale.

Potential highest and best use considerations must take into account the limitations expressed. *Doolittle v. City of Everett*, 114 Wn.2d 88, 106, 786 P.2d 253 (1990).

b. City Failed to Overcome Dissenting Appraiser

The owner of LID parcel 2 also joined in the testimony of Certified Appraiser John Truman HE Exhibit 31 CP 801-805 in opposition to the City's appraisal. See HE Exhibit 12 CP 167-176. The City, through its consultant testimony, did not seriously contest the expert testimony of Mr. Truman, and thus the City did not meet its burden to prove its appraisal methods. *Bellevue Plaza* 121 Wn.2d 397, 415, 851 P.2d 662 (1993).

c. City Erred by Not Curing Prejudice Caused by City's Inaccurate Appraisal

In addition to other relief sought, the Council erred by not reducing the assessment on LID parcel 2 by eleven percent to reflect the extra acre that has been improperly appended to the parcel by the City's inaccurate valuation. The Hearing Examiner erred in **Finding No 12** CP 59 by finding the parcel acreage determination used by the City was correct for LID parcel No 2. The supporting testimony falls far from supporting that finding.

- 16 MR. TANAKA: Mr. Bourne, it's been
- 17 raised -- an issue has been raised about square footage
- 18 in particular with the Duncan protest.
- 19 Are you aware of that issue, that eight acres versus
- 20 nine acres.
- 21 MR. BOURNE: Yes, sir, I am.
- 22 MR. TANAKA: What did you do in
- 23 response to that information?
- 24 MR. BOURNE: Actually, even before

25 that, as the -- as we were doing some of our work, we
1 investigated the Pierce County files and found that the
2 Assessor's and Auditor's office does not always agree,
3 and they don't agree with the Auditor's office GIS. The
4 Auditor's and Assessor's office in Pierce County is one
5 office, and they share what's called metadata which is
6 metadata, which is a GIS informational file, and so we
7 contacted the County, and particularly when we heard this
8 information that there were differences between the
9 Auditor, Assessor and the GIS files and found and were
10 told by the County that the most -- the most accurate
11 files are the metadata files and the GIS files, and
12 that's what we use, and that's what was used by Mr.
13 Macaulay on the assessment spreadsheet. They are using
14 GIS data files, which shows 9.1 acres for the Duncan
15 property and not 8.1, which is on record at the
16 Assessor's office.

HE TR 122:16-123:16. Accordingly the Council should reduce the assessment from \$293,470 to \$260,862, based on deducting the extra acre. Alternatively, the Council should have reduced the assessment from \$441,000 to \$392,000, to reflect a change in this landlocked Parcel 2 to the lower special benefit category for BP-zoned properties.

d. Parcel 2 Specific Relief: The Court Should Remand to Allow City to Reduce the Assessment on LID Parcel Number 2 in Addition to Other Relief Requested

Despite all of the above issues with LID parcel 2, the City Report indicated that as a BP-zoned parcel LID parcel 2 will benefit \$1.50/sqft from a starting City valuation of \$3/sqft. The City gives a total of seven of the twelve BP-zoned properties the same valuation as LID parcel 2, and inexplicably assesses a smaller portion of the starting valuation to other BP-zoned properties. When prodded to disclose evaluation methods for specific

properties, the City Consultant responded: “We don’t do individual appraisal reports, and oftentimes, we have things in our file, but we don’t put every analysis sheet in every file.” *HE TR* 103:6-9. *See also:* TR 105:23-106:22, TR 108:19-24, 109:8-17, 135: 5-15, 137:8-20, 138:4-25, 139:1-10.

In other words, the City does not have proof in the record sufficient to support neither the initial City valuation for Parcel 2 nor the purported Special benefits valuation. The Hearing Examiner erred in accepting less than a parcel specific valuation. “Determining the amount of the special benefit which may be assessed by reason of LID improvements **requires proof of the increase in the fair market value of a particular property caused by the improvements.**” *In re Local Imp.* 6097, *supra* at 333. Due to these irregularities and failures to meet its burden, the Court should, in addition to other relief requested, remand to allow the city to reduce the assessment on LID parcel 2 to reflect the lowest percentage of special benefit available for BP zoned properties: a thirty three (33) percent assessment instead of the existing fifty percent assessment. Seventy four percent of a 33 percent special benefit means a \$145,530 reduction from the \$441,000 recommended assessment. The City Consultant concedes that landlocked parcels, which describes LID parcel 2, “fall within lower special benefits.” Yet, the Consultant incorrectly placed LID parcel 2 into the *higher* special benefit category for BP-zoned properties. For these reasons the Council erred and

should have heeded the advice of its own consultant and lowered appraisal on LID parcel to from \$441,000 to \$293,470 in addition to other relief requested.

5. George and Arlyn Skarich, LID Parcel No. 115, Ex 25²⁷

a. City Failed to Overcome LID Parcel 115 Owner's Reliance on City's Own Prior 2008 Appraisal.

The 2011 City Report suggests a special assessment to LID parcel 115 of \$43,641, based a reported special benefit of \$66,000. In 2008, during better economic times, the City commissioned a similar study. In contrast, the 2008 City Report suggested that the special benefit for LID parcel 115 would be \$35,300—*almost less than half*. The City 2008 Report was based largely upon **market values from 2007, which were much higher than today**.

Included in the record in front of the Council is an excerpt from the 2008 City Report as it pertains in relevant part to LID parcel 115:

LID Parcel No.	Special Benefit	Estimated Assessment
115	35,300	\$16,515

It is well known, common knowledge that the real estate market has lost in excess of thirty percent since 2007. This needs no citation²⁸. Washington Courts have had sufficient time to recognize the downward pressure on asset values resulting from the market downturn. *See In re Mark Anthony Fowler Special Needs Trust*, 160 Wn.App. 1001 (Div. 2 2011). Unpublished, persuasive Washington Authority describes a “drastic” reduction in asset

²⁷ R00548-005577.

²⁸ Even the Hearing Examiner acknowledges: “The appraisal is dated July 22, 2008, during different market conditions” F/F 24. CP 68.

values due to the recession.

Against this backdrop, anyone would expect that LID parcel 115 would have a reduced starting assessment value, a reduced ending assessment estimate, and lower special benefit as compared to the City Commissioned 2008, USPAP-certified Report. Yet, the 2011 City Macaulay Report **triples** the estimated assessment of LID parcel 115 based upon an estimated so-called special benefit of over \$66,000, which is nearly double the 2008 estimated special benefit:

LID Parcel No.	Special Benefit	Estimated Assessment
115	66,000	\$48,461

These numbers are wrong as a matter of fact, circumstance and law. This contention is supported by credible expert testimony *commissioned by the City of Edgewood* (the 2008 Report). A Washington Court will overturn an LID assessment if it is arbitrary and capricious. *Kusky*, 85 Wn.App. at 500. Arbitrary and Capricious means a legislative decision made willing fully and unreasonably, **without regard or consideration of facts or circumstances.** *Id.*

Here, the City has relied upon a 2011 Macaulay Report which facially lacks compliance with both professional standard rules (USPAP) and appraiser ethics rules for the proposition that a property will enjoy double the value enhancement as compared to a USPAP-compliant 2008 value Study.

The error of this Report is explicitly brought to the attention of the Court in light of the facts and circumstances of the current market conditions as outlined in the City's own 2011 Report on record before the Council: *Report* at 16 (Growth has slowed in Pierce County); *Report* at 21, CP 1495 (Significant declines are evident throughout the region in 2009); *Report* at 31 CP 1505 (real estate prices are lower and sales volume is low); *Report* at 33 CP 1507 (Regional vacancy rates are high, new construction is not being undertaken unless "built-to-suit" or "owner-user oriented," rental rates have declined); *Report* at 35 CP 1509 ("continuing declines in the Pierce County Single Family residential market are evident in the following statistics"); *Id.* ("2010 median price...is **21% lower than in the second quarter of 2008**"); *Report* at 37 CP 1511 ("economists are predicting that home prices in our area will **continue to see moderate declines** before they begin trending up").

b. Parcel 115 Parcel Specific Relief: As to LID parcel 115, the City should **not** have doubled an economically obsolete value from a time when real estate was substantially higher in value, and then nearly double that value for use as the basis of a tax assessment. The facts and circumstances in the record before the Council allowed the Council to avoid this legally arbitrary and capricious outcome. The Council erred by not adopting the 2008 special benefit estimate expert testimony presented on record. Based upon an assumed 74% special benefit assessment (applied in the 2011 report), on remand the Council should

lower the special assessment on LID parcel 115 from \$48,461 to \$26,122 in addition to other relief requested.

IV. CONCLUSION

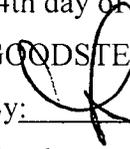
Respondents adopt by reference all issues and analysis raised by all other Respondents in this consolidated LID appeal.

Pursuant to RCW 35.44.200, this Court should grant this Appeal of Assessment Roll for City of Edgewood LID No 1 purported to be adopted pursuant to Edgewood Ordinance AB 11-0366. The Court should apply the parcel specific relief and or remand for a reassessment proceeding which complies with applicable statutes, to include an assessment hearing process that includes proper notice processes and sufficient timeframes so that property owners may meaningfully review, understand and comment on the LID assessments.

Respondents Docken on appeal seek the full judicial relief that legally, logically and necessarily flows from the Superior Court's findings of fact and conclusions as to the due process defects in the City's LID process. The Superior Court unequivocally determined that the City's *initial* LID notice was flawed. That initial notice was the first step in the LID process and the starting point of all due process for the entire complement of affected property owners. On appeal, this Court should conclude that relief extends to that full pool of LID property owners.

RESPECTFULLY SUBMITTED this 4th day of May 2012.

GOODSTEIN LAW GROUP PLLC

By:  _____

Carolyn A. Lake, WSBA #13980
Attorneys for Respondents Docken.

SELECTED TRANSCRIPT
EXCERPTS

1 So I guess now we'll -- well, should we roll call
2 or -- all those in favor, signify by saying aye.

3 MULTIPLE SPEAKERS: Aye.

4 DEPUTY MAYOR KELLEY: Those opposed.

5 COUNCILMEMBER EIDINGER: Aye. I'm
6 opposed.

7 THE COURT: You're opposed, so you're
8 a nay.

9 COUNCILMEMBER EIDINGER: Nay.

10 THE COURT: So motion carried? No.
11 So the motion fails.

12 So at this point then, now, what -- what's -- so
13 what's the process now?

14 MR. TANAKA: Well, that motion failed
15 because, in order to pass an ordinance, you need four
16 affirmative votes. So you only had three affirmative
17 votes, and so that motion failed.

18 So the council can try a different motion and see if
19 that gets four votes. Can quit, go home. Nothing has
20 happened for -- at this point. So another motion is in
21 order if the council wishes.

22 COUNCILMEMBER OLSON: I wouldn't make
23 any motion other than the one I just made, so --

24 DEPUTY MAYOR KELLEY: Without that,
25 then I guess -- do we have to postpone this then? At

1 this point I wouldn't see it being able to move forward.

2 Well, I guess we --

3 COUNCILMEMBER OLSON: Do we need an
4 executive session?

5 COUNCILMEMBER CROWLEY: I don't know
6 if we can.

7 COUNCILMEMBER OLSON: Can we do that?

8 MS. NERAAS: It was not on the special
9 meeting notice.

10 UNIDENTIFIED SPEAKER: It would have
11 to be a regular --

12 UNIDENTIFIED SPEAKER: So at the
13 regular meeting. So we'd have to postpone this until our
14 next regular meeting?

15 MS. NERAAS: Or a special meeting
16 where you have an executive session.

17 DEPUTY MAYOR KELLEY: Yeah, or another
18 one and then --

19 UNIDENTIFIED SPEAKER: I think we
20 probably do.

21 DEPUTY MAYOR KELLEY: So do we move to
22 postpone until our next regular meeting?

23 UNIDENTIFIED SPEAKER: Sure.

24 DEPUTY MAYOR KELLEY: Do you second
25 that? Any discussion on that?

1 MS. NERAAS: Just a reminder, you're
2 still under the quasi-judicial, you know, hearing
3 process, so ex parte communication would be inappropriate
4 until the roll is confirmed.

5 DEPUTY MAYOR KELLEY: Any discussion
6 on postponing?

7 COUNCILMEMBER OLSON: I don't want to
8 postpone it.

9 COUNCILMEMBER CROWLEY: As a practical
10 matter, we probably have to.

11 DEPUTY MAYOR KELLEY: Unfortunately,
12 but yes.

13 UNIDENTIFIED SPEAKER: (Inaudible)
14 don't want to postpone.

15 COUNCILMEMBER EIDINGER: So -- so as
16 we discuss this, since we're discussing the process, what
17 options are available, can you explain to me what their
18 options are if we approve this? Can you explain that
19 again (inaudible) 30 days.

20 MS. NERAAS: The property owners have
21 the right to appeal to superior court their assessment.
22 That would be their right. Now, again, for council,
23 we -- you have interim financing that comes due on
24 September 30th, and you have this USDA financing that is,
25 you know, approved.

1 So there certainly could be implications. US Bank
2 has just given us until September 30th to pay off that
3 loan, and so we will have to go back to them and explain
4 that, if action isn't taken soon, that that will not
5 happen.

6 COUNCILMEMBER EIDINGER: I think I can
7 try to -- I need some more dialogue on this then. Can we
8 approve this assessment with the exception of the ten
9 appeals that are on the table so that we can then deal
10 with them one by one and treat them as Councilman Crowley
11 had talked about or any of the others? Can we approve
12 this and then come back and make some kind of a separate
13 time where we just dialogue what we've been presented, or
14 is that -- is that a no?

15 MS. NERAAS: No. It would be
16 appropriate, before you confirm the roll, to consider the
17 appeals.

18 DEPUTY MAYOR KELLEY: That would be
19 now.

20 MS. NERAAS: Right.

21 DEPUTY MAYOR KELLEY: (Inaudible)
22 wanted to go through each one individually and look at
23 them, we certainly could do that.

24 COUNCILMEMBER EIDINGER: I don't know
25 whether that fixes my heartburn, so I -- you know.

1 UNIDENTIFIED SPEAKER: Want a fourth
2 appeal process --

3 COUNCILMEMBER EIDINGER: I'm not
4 looking for a fourth appeal process. They do have
5 another option here. I'm just trying to get something
6 that feels fairer to everybody else because I think
7 fairness, even though legality has been the issue -- now,
8 if I can't look at fairness, then I have to approve it.
9 Is that what you're saying to me? Is that, you know, the
10 appearance of fairness or -- we're just dialoguing now.
11 You guys hang on here. We'll just talk up front for a
12 minute.

13 MS. NERAAS: And I think one thing you
14 have to be aware of is, you know, the council sets forth
15 this process, including the appeal process and the days.
16 And so you can't allow -- you know, you can't deviate
17 from that process without letting others know because if
18 somebody -- if you said, okay, now they have a second
19 chance to present more information, others that didn't
20 appeal to you could say, if I had known I had more time,
21 I would have, as well. So that is problematic.

22 So it really is the process that the council
23 established, and so now it would be appropriate for you
24 to consider the record and make a decision on the record.
25 And to open it up a little bit or to allow one property

1 owner some more time would not be fair and would be
2 problematic.

3 COUNCILMEMBER EIDINGER: So they still
4 all have options.

5 MS. NERAAS: They have the option to
6 file a lawsuit in superior court.

7 COUNCILMEMBER EIDINGER: Which we
8 could expect that would tie up the final roll of the
9 finances and the loan process and all those things that
10 go with that.

11 MS. NERAAS: What would happen is, we
12 can issue the long-term financing for the amount that
13 hasn't been appealed. And then the amount that is
14 appealed, we cannot do long-term financing.

15 So we have to scramble to figure out that piece.
16 And then if the -- you know, you will incur costs in --
17 interim financing costs and additional long-term costs
18 and legal fees. And if that can't be covered in the LID,
19 then a consideration for you is to do a supplemental
20 assessment and spread those costs over everybody if you
21 choose.

22 COUNCILMEMBER EIDINGER: So in your
23 opinion -- just asking for an opinion -- if we delay this
24 any longer, the cost will go up tremendously to the
25 people involved here.

1 MS. NERAAS: That is a risk, yes.
2 Yes. Again, US Bank is committed through September 30th.
3 And we got an extension, and that was as long as they
4 were willing to give us, as to September 30th on the
5 interim financing.

6 So we have to go back to them and they can increase
7 the rate, and meanwhile the interest rate, you know,
8 keeps accruing on the interim financing, and we have been
9 priced into the roll as of September 30th paying the
10 interim financing. So you will still have the long-term
11 financing; meanwhile, you will have the short-term
12 financing. So it would -- you know, yes.

13 COUNCILMEMBER EIDINGER: So there's no
14 way out of sitting in this chair, is there?

15 DEPUTY MAYOR KELLEY: No, there's not.

16 UNIDENTIFIED SPEAKER: There's an
17 alternative.

18 DEPUTY MAYOR KELLEY: We can't take
19 any comment now.

20 UNIDENTIFIED SPEAKER: You're taking
21 comment now.

22 DEPUTY MAYOR KELLEY: That is for our
23 council, and our option here. No --

24 MS. DUNCAN: (Inaudible) bother to
25 (inaudible) anyway. I've told you.

1 DEPUTY MAYOR KELLEY: Please, Enid,
2 no. Again, Enid, please. Be quiet, Enid.

3 MS. DUNCAN: Mr. Crowley --

4 DEPUTY MAYOR KELLEY: Enid, if you do
5 not be quiet, you will be asked to leave.

6 MS. DUNCAN: (Inaudible) about
7 economy, so --

8 DEPUTY MAYOR KELLEY: Yes.
9 Unfortunately, the four of us here have to come up with
10 something that's amenable to move this forward because
11 the other three members cannot -- could not sit here.

12 MR. TANAKA: Actually, clarification.
13 Jeff can. He's just out of town.

14 DEPUTY MAYOR KELLEY: Okay.

15 MR. TANAKA: He's not an LID property
16 owner.

17 DEPUTY MAYOR KELLEY: Okay.

18 MR. TANAKA: That's on the record,
19 that he's acknowledged he is not an LID property owner.
20 I'm correct? Am I -- Janet? Mark? Jeff did not
21 recur -- Jeff did not recuse himself because he's an LID
22 property owner. He just was not here tonight.

23 DEPUTY MAYOR KELLEY: Mayor Hogan, not
24 being here tonight, did not have the opportunity to
25 recuse himself. He is away from the city on vacation, I

1 guess, best way to put it.

2 COUNCILMEMBER EIDINGER: So you're
3 saying -- I see the wheels here turning. It's just a
4 tough spot, and, you know, the people represented here
5 have done a fabulous job. And it's just somehow or
6 another, you know, it's got to settle when -- I don't
7 want to cost you guys a bunch of money.

8 I know there's a lot of money out there, so I -- but
9 I still would rather wait until next week. Jeff can sit
10 in the chair, and then you can have your four votes
11 without me if that's the case. I know you don't want to
12 do that, but --

13 COUNCILMEMBER OLSON: I just -- I
14 appreciate what you're saying, but the bill -- it was --
15 the \$21 million has already been spent. I mean, the cost
16 of the sewer was \$21 million, so the delaying it is just
17 going to increase the \$21 million.

18 I think just divvying up the \$21 million, and I
19 think we've gone through -- there's been multiple steps
20 that it's gone through, and I think I'm comfortable with
21 it. I don't think anything's going to change it in the
22 next week. I don't think we're going to -- and all we
23 can do is redistribute the \$21 million. It comes off of
24 someone, it goes to somebody else.

25 Sir, do you want to be ejected tonight?

1 Do we have the option to just make the motion again,
2 a second time, the same exact motion?

3 MS. NERAAS: You can, yes.

4 DEPUTY MAYOR KELLEY: Are you going to
5 make the motion again?

6 COUNCILMEMBER CROWLEY: I guess,
7 Daryl, I -- and I certainly respect your decision to vote
8 however you feel comfortable, but what I would say is, if
9 your concern is about the process and the procedure, it's
10 late in the game for us to change that.

11 DEPUTY MAYOR KELLEY: Okay. Vote
12 again.

13 COUNCILMEMBER OLSON: Well, I'll move
14 to adopt AB 11-0366 as read.

15 COUNCILMEMBER CROWLEY: I will second
16 it.

17 COUNCILMEMBER OLSON: I have nothing
18 further to add to what I said earlier.

19 DEPUTY MAYOR KELLEY: Anything, Daryl?

20 COUNCILMEMBER EIDINGER: I want people
21 to understand, as long as you still have options, this is
22 going to go -- I can see the handwriting on the wall.
23 The next week it will go exactly the way you're not
24 wanting to go that it's going to go this week, so at
25 least you're then forewarned that you can -- you can file

1 in superior court and tie this thing up as long as you
2 want.

3 But I -- I do empathize with where you're at, I
4 truly do, but I can see where we're going to end up by
5 next week anyway, so I guess there's no purpose to delay
6 that any longer.

7 DEPUTY MAYOR KELLEY: Well, then I
8 guess we'll call for a vote again. All those in favor
9 signify by saying aye.

10 MULTIPLE SPEAKERS: Aye.

11 DEPUTY MAYOR KELLEY: Opposed?

12 (No response.)

13 DEPUTY MAYOR KELLEY: So the motion
14 passes. So there being no further business, the
15 meeting's adjourned at 8:24.

16

17

18

19

20

21

22

23

24

25

HE statement

71

4 MR. CAUSSEAU: -- Mr. Docken. I'm
5 just going to -- you know, I'll receive the documents in
6 as far as his protest is concerned, but I also indicated
7 at the start of the hearing that anyone who came through,
8 if someone came and gave testimony or raised issues that
9 would apply to everybody else, no one else needed to come
10 forward to say it, so I'm going to let you go ahead and
11 present that on behalf of Mr. Docken and whatever is
12 relevant in there to other protests, we will consider
13 that also.

General benefits

127

4 MR. TANAKA: All right. So
5 over-sizing.
6 MR. BOURNE: Yes, that was a topic
7 that we discussed at the formation hearing at great
8 length, and it was explained that this project because
9 it's the first utility built in the city that's going to
10 have to pay for some over-sizing for future use. It may
11 amount -- it depends on how you calculate it, and I would
12 hate to say exactly what it is, but --
13 MR. TANAKA: Well, don't guess.
14 MR. BOURNE: Pardon?
15 MR. TANAKA: Don't guess if you don't
16 know.
17 MR. BOURNE: I'm not going to guess,
18 but it's a known cost, and it was discussed at the
19 formation hearing.

128

24 You said -- when you talked about the latecomers
25 agreement, you said you couldn't identify any method to

129

1 do that.
2 What did you mean by that?
3 MR. BOURNE: There are methods that
4 have been used. If the -- if the City was -- was a
5 robustly financed city and was old like the City of
6 Seattle or Bellevue, then they could, perhaps, have a
7 latecomers fee on future connections and we could upfront

8 some of the money today, but the City does not have any
9 money, and because the sewers are built in core one
10 (phonetic) and there's not expected to be a lot of
11 expansion in the near future, that real wouldn't earn
12 much revenue anyway.

13 MR. CAUSSEAU: Okay. So if I'm
14 hearing you correctly, there will not be a latecomers
15 agreement as part of the LID?

16 MR. BOURNE: We haven't played that
17 out yet.

18 MR. TANAKA: I think there's -- Mr.
19 Examiner, if I may indicate, there is a latecomers
20 agreement statute, which you may be aware, but the
21 problem is to get the money as the people wanted or
22 suggested into the hands of the current owners of the
23 property along the LID, the latecomers agreement can be
24 used, but that money is a buy-in from latecomers to pay
25 their portion or share of the cost. It goes to the City;

130

1 it doesn't go to the property owners directly, so I think
2 that's the issue. Latecomers are a dime a dozen, trying
3 to get a latecomers agreement and pay it to people
4 over -- I mean, you know, people hooking up to this thing
5 5, 10, 15 years from now and what are we going to do
6 then? So anyway, be that as it may, that's sort of the
7 way it is.

8 Okay, that's all for Mr. Bourne.

Lack of Individual analysis

134

25 MR. TANAKA: All right. Mr. Macaulay,

135

1 there's been some testimony from the property owners that
2 they had an issue or they were not able to determine from
3 your report all of your thinking and methodology.

4 Would you like to comment on that, please.

5 MR. MACAULAY: Yes, as I mentioned in
6 opening comments, special benefit studies and mass
7 appraisal and with that set of work, we don't go into
8 individual detail on each property. We don't go into
9 individual analysis typically in this process. If there
10 are questions, we're then asked to prepare a report on a
11 specific property based on information that's been

12 presented within the hearing to consider any relevant new
13 facts that may arise, and that's typically the way the
14 process works. It's not within the scope of our work to
15 have that level of detail.

And response to Trueman Appraisal

137

14 MR. TANAKA: All right. Do you have
15 any comments at this time about what Mr. Trueman said in
16 that affidavit?

17 MR. MACAULAY: No, other than if we
18 prepared, you know, more details in the initial reports,
19 then we would more specifically, parcel by parcel answer
20 those questions.

21 MR. TANAKA: Does the -- do the
22 standards of the MAI for this mass appraisal require you
23 to show the calculations that he's talking about in
24 Paragraph 8?

25 MR. MACAULAY: You have to have enough

138

1 data in the file to not be misleading so that I can
2 explain, you know, within the context of the report how
3 we got to where we got to.

4 MR. TANAKA: Well, so do you agree or
5 disagree that your report does not show calculations
6 illustrating how these estimates were prepared?

7 MR. MACAULAY: Well, you know, our
8 spreadsheets show calculations on how it was prepared.
9 We just don't have within the context of those
10 calculation the detailed information we would have in a
11 report.

138

21 MR. TANAKA: Did your report contain
22 information about the physical condition, locality and
23 environment of the properties involved?

24 MR. MACAULAY: The report itself
25 doesn't go into that level of detail on each property.

139

1 There is information within the file which is part of
2 the -- part of what would comply with the -- with that.

Close the record

6 MR. CAUSSEAU: Okay. What we will do
7 at this point then is close the public hearing portion of
8 the -- of the hearing, and I will leave the record open
9 for one week for any written responses or closing
10 argument to the City's presentation, and then we'll allow
11 the City an additional week to respond to any concerns or
12 the arguments made in writing, and then following that --
13 Ms. Archer, do you have a question?

14 MS. ARCHER: I just want to -- you
15 made it clear that if our written responses are not to
16 provide any additional exhibits. I assume that same rule
17 applies to the City's reply?

18 MR. CAUSSEAU: Yes, the record is
19 closed for submissions.
20 This is only for filing of the final argument.

SELECTED RECORD
EXCERPTS

Eric Docken

From: Enid Duncan [enid.duncan@gmail.com]
: Thursday, May 26, 2011 10:39 AM
To: Eric Docken
Cc: diegohutch@comcast.net
Subject: Fwd: EXPENDITURES ON SEWER PROJECT

Eric and Doug,

Here are the expenditures I received from the City. The first attachment is a summary and the second attachments are the detail.

Enid

----- Forwarded message -----

From: Janet Caviezel <janet@cityofedgewood.org>
Date: Wed, May 18, 2011 at 3:18 PM
Subject: RE: EXPENDITURES ON SEWER PROJECT
To: Enid Duncan <enid.duncan@gmail.com>

Enid,

I have attached two separate documents to fill your request. The first is a spreadsheet with line item detail for expenditures through April 30, 2011. This does not give all the vendor information however many of the line items include information as to which vendor the expenditure is for. (i.e. Lakehaven Costs were paid to Lakehaven Utility District and Benefit Assessment was paid to Allen Bruckett Shedd for preliminary and Macaulay for final.)

I also included a much longer report from our general ledger that includes which vendor was paid per line item. The salary related expenses that note "Computer Batch" are pulled from the Payroll system. I know this is a lot of information to sort through but it was the only way I could print off line item expenses by vendor.

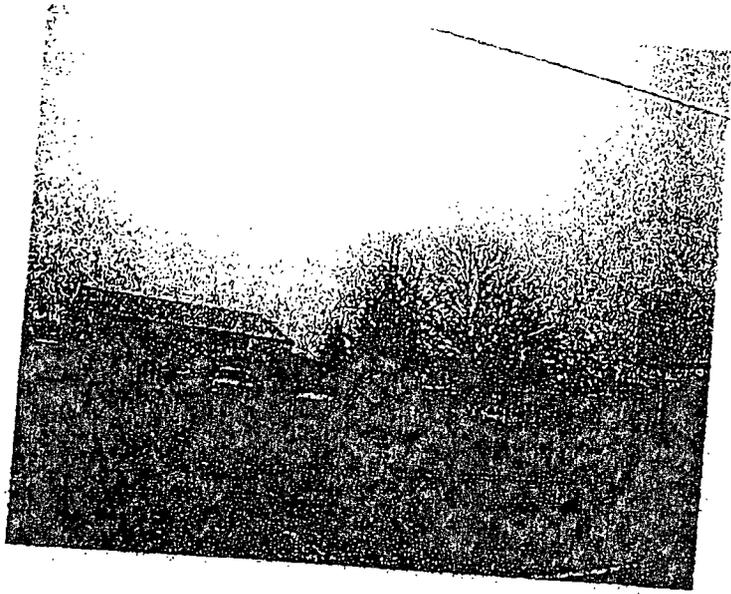
Also, please note that the earlier spreadsheet I sent will have "to-date" costs that are higher than what has been expended. This is because approved contracts that have not been fully invoiced were considered "to-date".

I have filled out a public records request based on the items requested in your e-mail. This request is now considered closed.

Also, Mark Bauer forwarded me your request for the appraisal files for your property. I wanted to let you know that we are working on an estimated date to receive the files from Macaulay and Associates and will follow-up with a letter soon.

Thank you,

5/26/2011



108

Pierce County Assessor-Treasurer ePIP

Parcel Summary for 0420094079

01/02/2011 04:14 PM

Property Details		Taxpayer Details	
Parcel Number:	0420094079	Taxpayer Name:	DOCKEN PROPERTIES LP
Site Address:	3008 MERIDIAN E	Mailing Address:	2908 MERIDIAN AVE E STE 201 EDGEWOOD WA 98371-2192
Account Type:	Real Property		
Category:	Land and Improvements		
Use Code:	6900-MISC SERVICES		
Appraisal Details		Tax/Assessment	
Value Area:	P11	Current Tax Year:	2011
Appr Acct Type:	Commercial	Taxable Value:	82,800
Business Name:		Assessed Value:	82,800
Last Inspection:	08/04/2008 - Physical Inspection		
Related Parcels			
Group Account Number:	56223		
Mobile/MFG Home and Personal Property	n/a		
parcel(s) located on this parcel:			
Real parcel on which this parcel is located:	n/a		
Tax Description			
Section 09 Township 20 Range 04 Quarter 44 : N 90 FT OF E 150 FT OF FOLL E 1/2 OF N 1/2 OF S 1/2 OF SE OF SE EXC RD SEG G :1700			

I acknowledge and agree to the prohibitions listed in RCW 42.56.070(9) against releasing and/or using lists of individuals for commercial purposes. Neither Pierce County nor the Assessor-Treasurer warrants the accuracy, reliability or timeliness of any information in this system, and shall not be held liable for losses caused by using this information. Portions of this information may not be current or accurate. Any person or entity who relies on any information obtained from this system does so at their own risk. All critical information should be independently verified.

"Our office works for you, the taxpayer"

Pierce County Assessor-Treasurer
Dale Washam
2401 South 35th St Room 142
Tacoma, Washington 98409
(253)798-6111 or Fax (253)798-3142
www.piercecountywa.org/atr

Copyright © 2011 Pierce County Washington. All rights reserved

Pierce County Assessor-Treasurer ePIP

Taxes / Values for 0420094079

01/02/2011 04:14 PM

Property Details

Parcel Number: 0420094079
 Site Address: 3008 MERIDIAN E
 Account Type: Real Property
 Category: Land and Improvements
 Use Code: 6900-MISC SERVICES

Taxpayer Details

Taxpayer Name: DOCKEN PROPERTIES LP
 Mailing Address: 2908 MERIDIAN AVE E STE 201
 EDGEWOOD WA 98371-2192

Assessed Values

Tax Year	Taxable Value	Assessed Total	Assessed Land	Assessed Improvements	Current Use Land	Personal Property	Notice of Value Mailing Date
2011	82,600	82,800	82,800	0	0	0	06/21/2010
2010	91,400	91,400	91,400	0	0	0	07/17/2009
2009	96,200	96,200	96,200	0	0	0	09/19/2008
2008	96,300	96,300	96,300	0	0	0	06/22/2007
2007	87,600	87,600	87,600	0	0	0	06/12/2006
2006	50,000	50,000	50,000	0	0	0	0
2005	50,000	50,000	50,000	0	0	0	11/02/2004

Current Charges

Balance Due: 0.00 Minimum Due: 0.00 as of 01/02/2011

Exemptions

No exemptions

Paid Charges

For questions regarding any electronic payments you may have made, please contact Official Payments Corporation at 1-800-487-4567

Tax Year	Charge Type	Amount Paid
2010	Property Tax Principal	1,013.44
	Weed Control Principal	1.39
	Surface Water Management Principal	40.00
	Total 2010	1,054.83
2009	Property Tax Principal	995.07
	Property Tax Interest	9.95
	Weed Control Principal	1.39
	Weed Control Interest	0.01
	Surface Water Management Principal	10.00
	Surface Water Management Interest	0.10
	Total 2009	1,016.52
2008	Property Tax Principal	1,017.92
	Weed Control Principal	1.39
	Surface Water Management Principal	10.00
	Total 2008	1,029.31
2007	Property Tax Principal	982.06
	Weed Control Principal	1.39
	Surface Water Management Principal	10.00
	Total 2007	993.45
2006	Property Tax Principal	644.23
	Weed Control Principal	1.39
	Surface Water Management Principal	10.00
	Total 2006	655.62
2005	Property Tax Principal	720.58
	Weed Control Principal	1.39
	Surface Water Management Principal	10.00
	Total 2005	731.97

Tax Code Areas

Tax Year	TCA	Rate
2011	770	0.000000
2010	770	11.088010
2009	770	10.343730
2008	770	10.570328
2007	770	11.210749
2006	770	12.884727
2005	770	14.411490

Receipts

Date	Number	Amount Applied
11/05/2010	5665501	527.42
04/29/2010	5335556	527.41
10/30/2009	5038570	503.23
06/11/2009	4824900	513.29
11/07/2008	4499520	514.66
03/27/2008	3952692	514.65
10/26/2007	3819606	496.73
05/07/2007	3622176	495.72
11/02/2006	3292411	327.81
04/13/2006	2836262	327.81
11/01/2005	2710275	365.99
04/22/2005	2386873	365.98
08/05/2004	1958621	2,419.65

ULID Information

Click here for ULID information

I acknowledge and agree to the prohibitions listed in RCW 42.56.070(9) against releasing and/or using lists of individuals for commercial purposes. Neither Pierce County nor the Assessor-Treasurer warrants the accuracy, reliability or timeliness of any information in this system, and shall not be held liable for losses caused by using this information. Portions of this information may not be current or accurate. Any person or entity who relies on any information obtained from this system does so at their own risk. All critical information should be independently verified.

"Our office works for you, the taxpayer"

Pierce County Assessor-Treasurer
Dale Washam
2401 South 35th St Room 142
Tacoma, Washington 98409
(253)798-6111 or Fax (253)798-3142
www.piersecountywa.org/at

Copyright © 2011 Pierce County Washington. All rights reserved.

Pierce County Assessor-Treasurer ePIP

Land Characteristics for 0420094079

01/02/2011 04:14 PM

Property Details		Taxpayer Details	
Parcel Number:	0420094079	Taxpayer Name:	DOCKEN PROPERTIES LP
Site Address:	3008 MERIDIAN E	Mailing Address:	2908 MERIDIAN AVE E STE 201 EDGEWOOD WA 98371-2192
Account Type:	Real Property		
Category:	Land and Improvements		
Use Code:	6900-MISC SERVICES		
Location:		Size	
LEA:	201	SF:	13,500
RTSQQ:	04-20-09-44	Acres:	0.31
		Front Ft:	87
Amenities		Utilities	
WF Type:	n/a	Electric:	Power Installed
View Quality:	n/a	Sewer:	Sewer/Septic Installed
Street Type:	Paved	Water:	Water Installed

Warning: Appraisal data provided is for informational purposes only and is incomplete for determination of value.

I acknowledge and agree to the prohibitions listed in RCW 42.56.070(9) against releasing and/or using lists of individuals for commercial purposes. Neither Pierce County nor the Assessor-Treasurer warrants the accuracy, reliability or timeliness of any information in this system, and shall not be held liable for losses caused by using this information. Portions of this information may not be current or accurate. Any person or entity who relies on any information obtained from this system does so at their own risk. All critical information should be independently verified.

"Our office works for you, the taxpayer"

Pierce County Assessor-Treasurer
Dale Washam
2401 South 35th St Room 142
Taroma, Washington 98405
(253)798-6111 or Fax (253)798-3142
www.piercecounitywa.org/atr

Copyright © 2011 Pierce County Washington. All rights reserved

Pierce County Assessor-Treasurer ePIP

Building Characteristics for 0420094079

01/02/2011 04:14 PM

No buildings found on this parcel

I acknowledge and agree to the prohibitions listed in RCW 42.56.070(9) against releasing and/or using lists of individuals for commercial purposes. Neither Pierce County nor the Assessor-Treasurer warrants the accuracy, reliability or timeliness of any information in this system, and shall not be held liable for losses caused by using this information. Portions of this information may not be current or accurate. Any person or entity who relies on any information obtained from this system does so at their own risk. All critical information should be independently verified.

"Our office works for you, the taxpayer"

Pierce County Assessor-Treasurer
Dale Washam
2401 South 35th St Room 142
Tacoma, Washington 98409
(253)798-5111 or Fax (253)798-3142
www.piercecountywa.org/atr

Copyright © 2011 Pierce County Washington. All rights reserved.

Pierce County Assessor-Treasurer ePIP

Recent Sales Activity for 0420094079

01/02/2011 04:14 PM

Property Details

Parcel Number: 0420094079
Site Address: 3008 MERIDIAN E
Account Type: Real Property
Category: Land and Improvements
Use Code: 6900-MISC SERVICES

Taxpayer Details

Taxpayer Name: DOCKEN PROPERTIES LP
Mailing Address: 2908 MERIDIAN AVE E STE 201
EDGEWOOD WA 98371-2192

Sales

Sales from 1997 to date are displayed here. However, the sales listed on this site are not complete and do not include all property transfer types. Recorded documents, accessed by name and date, are available on the Pierce County Auditor's web site

Table with 9 columns: ETN, Parcel Count, Grantor, Grantee, Sale Price, Sale Date, Deed Type, Sale Notes, Confirmation. It lists two sales: one from 07/30/2004 and another from 12/01/2000.

Sales history records current through 5/16/2003 are available on CD. These records were maintained as general information regarding property transfer for tax purposes only and are not an official record of sales transactions.

For additional information on this issue, contact the Pierce County Assessor-Treasurer's Office Records Manager at 253-798-3134.

Sales Search

Search for sales with characteristics similar to this property.

I acknowledge and agree to the prohibitions listed in RCW 42.56.070(9) against releasing and/or using lists of individuals for commercial purposes. Neither Pierce County nor the Assessor-Treasurer warrants the accuracy, reliability or timeliness of any information in this system, and shall not be held liable for losses caused by using this information.

"Our office works for you, the taxpayer"

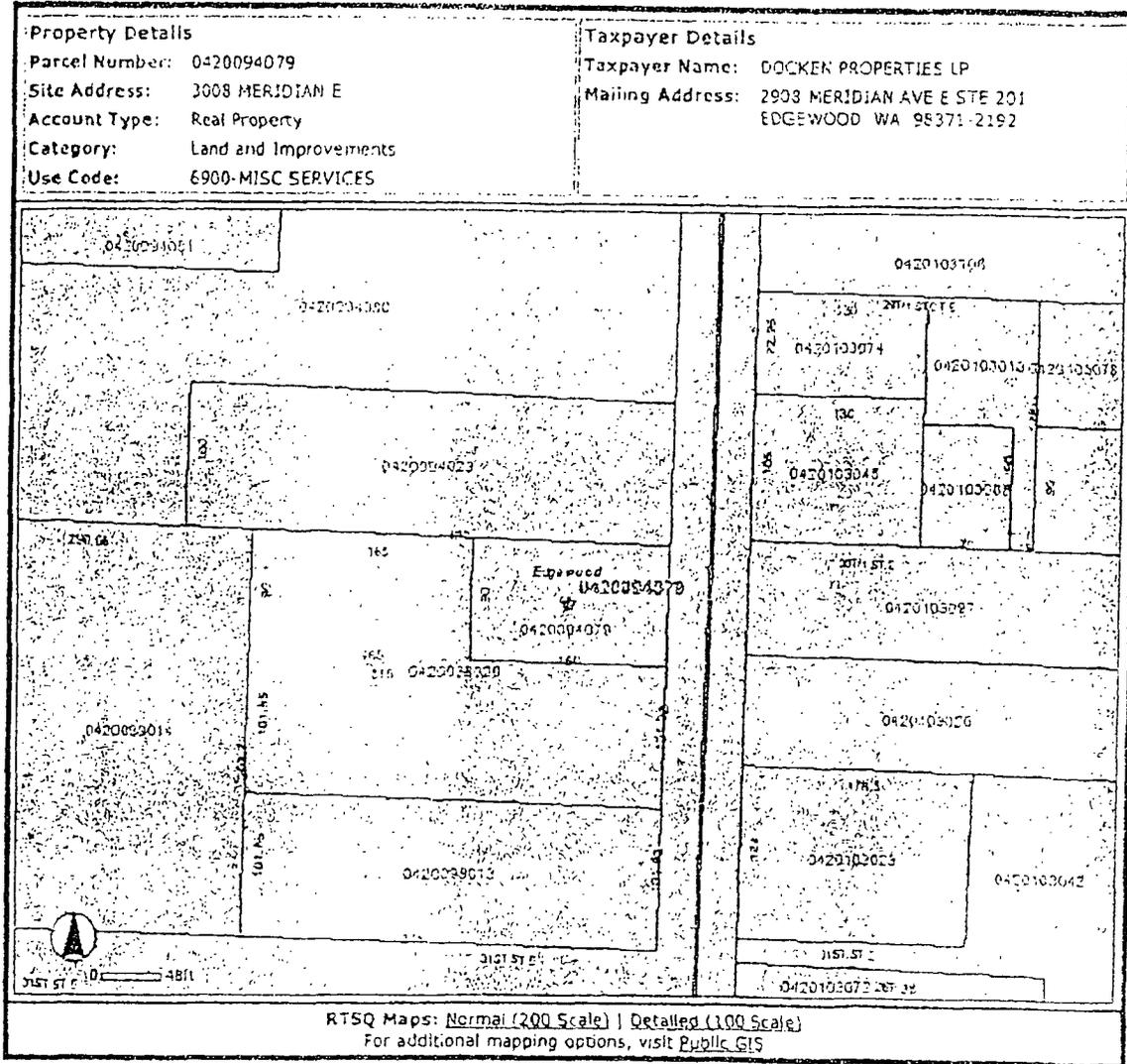
Pierce County Assessor-Treasurer
Dale Washam
2401 South 35th St Room 142
Tacoma, Washington 98409
(253)798-6111 or Fax (253)798-3142
www.piercecountywa.org/atr

Copyright © 2011 Pierce County, Washington. All rights reserved.

Pierce County Assessor-Treasurer ePIP

Parcel Map for 0420094079

01/02/2011 04:14 PM

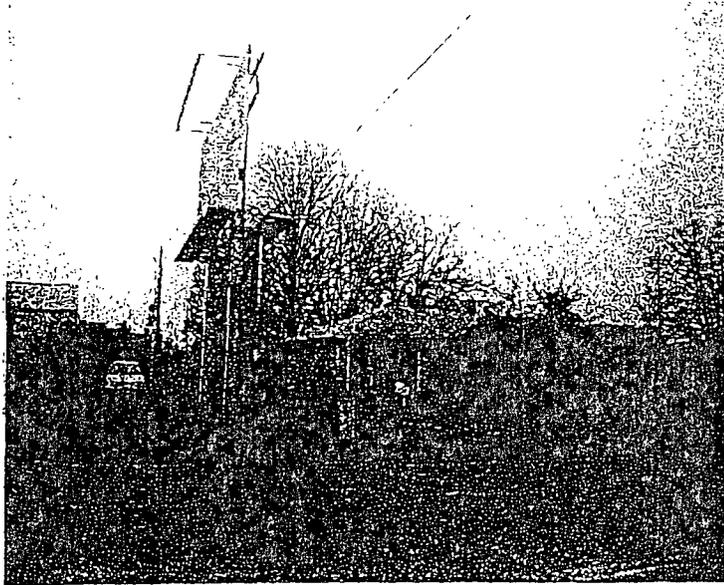


I acknowledge and agree to the prohibitions listed in RCW 42.56.070(9) against releasing and/or using lists of individuals for commercial purposes. Neither Pierce County nor the Assessor-Treasurer warrants the accuracy, reliability or timeliness of any information in this system, and shall not be held liable for losses caused by using this information. Portions of this information may not be current or accurate. Any person or entity who relies on any information obtained from this system does so at their own risk. All critical information should be independently verified.

"Our office works for you, the taxpayer"

Pierce County Assessor-Treasurer
Dale Washam
2401 South 35th St Room 1-2
Tacoma, Washington 98409
(253)798-6111 or Fax (253)798-3142
www.piercecountywa.gov

Copyright © 2011 Pierce County Washington. All rights reserved.



109

SF 3 6,778 SF
Not enough SF
MAR only

Pierce County Assessor-Treasurer ePIP

Parcel Summary for 0420094023

01/02/2011 04:10 PM

Property Details		Taxpayer Details	
Parcel Number:	0420094023	Taxpayer Name:	DOCKEN PROPERTIES LP
Site Address:	2920 MERIDIAN E	Mailing Address:	2908 MERIDIAN AVE E STE 201 EDGEWOOD WA 98371-2192
Account Type:	Real Property		
Category:	Land and Improvements		
Use Code:	6900-MISC SERVICES		
Appraisal Details		Tax/Assessment	
Value Area:	PI1	Current Tax Year:	2011
Appr Acct Type:	Commercial	Taxable Value:	280,500
Business Name:		Assessed Value:	280,500
Last Inspection:	11/16/2009 - Review		
Related Parcels			
Group Account Number:	56923		
Mobile/MFG Home and Personal Property	2003523133		
parcel(s) located on this parcel:			
Real parcel on which this parcel is located:	n/a		
Tax Description			
Section 09 Township 20 Range 04 Quarter 44 : BEG SE COR OF N 1/2 OF SE OF SE OF SEC TH N ALG E LI SD SEC 100 FT TH W 400 FT TH S 100 FT TH E 400 FT TO BEG EXC RDS			

I acknowledge and agree to the prohibitions listed in RCW 42.56.070(9) against releasing and/or using lists of individuals for commercial purposes. Neither Pierce County nor the Assessor-Treasurer warrants the accuracy, reliability or timeliness of any information in this system, and shall not be held liable for losses caused by using this information. Portions of this information may not be current or accurate. Any person or entity who relies on any information obtained from this system does so at their own risk. *All critical information should be independently verified.*

"Our office works for you, the taxpayer"

Pierce County Assessor-Treasurer
Dale Washam
2401 South 35th St Room 142
Tacoma, Washington 98409
(253)798-6111 or Fax (253)798-3142
www.piercecountywa.org/atr

Copyright: © 2011 Pierce County Washington. All rights reserved

Pierce County Assessor-Treasurer ePIP

Taxes / Values for 0420094023

01/02/2011 04:10 PM

Property Details		Taxpayer Details	
Parcel Number:	0420094023	Taxpayer Name:	DOCKEN PROPERTIES LP
Site Address:	2920 MERIDIAN E	Mailing Address:	2908 MERIDIAN AVE E STE 201 EDGEWOOD WA 98371-2192
Account Type:	Real Property		
Category:	Land and Improvements		
Use Code:	6900-MISC SERVICES		

Assessed Values							
Tax Year	Taxable Value	Assessed Total	Assessed Land	Assessed Improvements	Current Use Land	Personal Property	Notice of Value Mailing Date
2011	280,500	280,500	225,800	54,700		0	0 06/21/2010
2010	306,700	306,700	249,400	57,300		0	0 07/17/2009
2009	317,100	317,100	262,500	54,600		0	0 09/19/2008
2008	323,400	323,400	197,800	125,600		0	0 06/22/2007
2007	272,300	272,300	151,600	120,700		0	0 06/12/2006
2006	226,000	226,000	112,600	113,400		0	0 06/06/2005
2005	183,200	183,200	95,400	87,800		0	0 06/01/2004

Current Charges			Exemptions
Balance Due:	0.00	Minimum Due:	0.00
		as of	01/02/2011
			No exemptions

Paid Charges			Tax Code Areas		
For questions regarding any electronic payments you may have made, please contact Official Payments Corporation at 1-800-487-4567					
Tax Year	Charge Type	Amount Paid	Tax Year	TCA	Rate
2010	Property Tax Principal	3,400.70	2011	770	0.000000
	Weed Control Principal	1.39	2010	770	11.088010
	Surface Water Management Principal	159.00	2009	770	10.343739
	Total 2010	3,561.09	2008	770	10.570328
2009	Property Tax Principal	3,280.00	2007	770	11.210749
	Property Tax Interest	32.80	2006	770	12.884737
	Weed Control Principal	1.39	2005	770	14.411490
	Weed Control Interest	0.01	Receipts		
	Surface Water Management Principal	40.00	Date	Number	Amount Applied
	Surface Water Management Interest	0.40	11/05/2010	5665502	1,780.55
	Total 2009	3,354.60	04/29/2010	5335557	1,780.54
2008	Property Tax Principal	3,418.45	10/30/2009	5038369	1,660.70
	Weed Control Principal	1.39	06/11/2009	4824900	1,693.90
	Surface Water Management Principal	40.00	11/07/2008	4499919	1,729.92
	Total 2008	3,459.84	03/27/2008	3959696	1,729.92
2007	Property Tax Principal	3,052.69	10/26/2007	3619805	1,547.04
	Weed Control Principal	1.39	05/07/2007	3613430	1,547.04
	Surface Water Management Principal	40.00	11/02/2006	3292410	1,476.67
	Total 2007	3,094.08	04/13/2006	2836363	1,476.67
2006	Property Tax Principal	2,911.95	11/01/2005	2710276	1,340.79
	Weed Control Principal	1.39	04/22/2005	2386824	1,340.79
	Surface Water Management Principal	40.00	08/05/2004	1958622	13,440.49
	Total 2006	2,953.34	ULID Information		
2005	Property Tax Principal	2,640.19	Click here for ULID information		
	Weed Control Principal	1.39			
	Surface Water Management Principal	40.00			
	Total 2005	2,681.58			

I acknowledge and agree to the prohibitions listed in RCW 42.56.070(9) against releasing and/or using lists of individuals for commercial purposes. Neither Pierce County nor the Assessor-Treasurer warrants the accuracy, reliability or timeliness of any information in this system, and shall not be held liable for losses caused by using this information. Portions of this information may not be current or accurate. Any person or entity who relies on any information obtained from this system does so at their own risk. *All critical information should be independently verified.*

"Our office works for you, the taxpayer"

Pierce County Assessor-Treasurer
Dale Washam
2401 South 35th St Room 142
Tacoma, Washington 98409
(253)798-6111 or Fax (253)798-3142
www.piercecountywa.org/atr

Copyright © 2011 Pierce County Washington. All rights reserved.

Pierce County Assessor-Treasurer ePIP

Land Characteristics for 0420094023

01/02/2011 04:10 PM

Property Details		Taxpayer Details	
Parcel Number:	0420094023	Taxpayer Name:	DOCKEN PROPERTIES LP
Site Address:	2920 MERIDIAN E	Mailing Address:	2908 MERIDIAN AVE E STE 201 EDGEWOOD WA 98371-2192
Account Type:	Real Property		
Category:	Land and Improvements		
Use Code:	6900-MISC SERVICES		
Location:		Size	
LEA:	201	SF:	38,000
RTSQQ:	04-20-09-44	Acres:	0.87
		Front Ft:	100
Amenities		Utilities	
WF Type:	n/a	Electric:	Power Installed
View Quality:	n/a	Sewer:	Sewer/Septic Installed
Street Type:	Paved	Water:	Water Installed

Warning: Appraisal data provided is for informational purposes only and is incomplete for determination of value.

I acknowledge and agree to the prohibitions listed in RCW 42.56.070(9) against releasing and/or using lists of individuals for commercial purposes. Neither Pierce County nor the Assessor-Treasurer warrants the accuracy, reliability or timeliness of any information in this system, and shall not be held liable for losses caused by using this information. Portions of this information may not be current or accurate. Any person or entity who relies on any information obtained from this system does so at their own risk. *All critical information should be independently verified.*

"Our office works for you, the taxpayer"

Pierce County Assessor-Treasurer
Dale Washam
2401 South 35th St Room 142
Tacoma, Washington 98409
(253)798-6111 or Fax (253)798-3142
www.piercecountywa.org/atr

Copyright © 2011 Pierce County Washington. All rights reserved.

Pierce County Assessor-Treasurer ePIP

Building Characteristics for 0420094023

01/02/2011 04:10 PM

Property Details		Taxpayer Details	
Parcel Number:	0420094023	Taxpayer Name:	DOCKEN PROPERTIES LP
Site Address:	2920 MERIDIAN E	Mailing Address:	2908 MERIDIAN AVE E STE 201 EDGEWOOD WA 98371-2192
Account Type:	Real Property		
Category:	Land and Improvements		
Use Code:	6900-MISC SERVICES		

Building ID: 1 building(s) on this parcel
1

General Characteristics					
Property Type:	Commercial	SF:	1	Fin. Attic SF:	0
Condition:	Average	Net SF:	1	Total Bsmnt. SF:	0
Quality:	Fair	Atch. Garage SF:	0	Fin. Bsmnt. SF:	0
Neighborhood:	501 / 740	Det. Garage SF:	0	Bsmnt. Gar. Door:	0
Occupancy:	Addon Only Comm	Carport SF:	0	Fireplaces:	0

Built-As												
Description	Year Built	Adj. Year Built	SF	Stories	Bed-rooms	Bath-rooms	Exterior	Class	Roof	HVAC	Sprinkler Units	SF
Addon Only Comm	1959	0	1	1	n/a	n/a	n/a	n/a	n/a	Forced Air	1	0

Improvement Details		
Detail Type	Detail Description	Units
Add On	Res Bldg Rate Fair Q	1,652

Warning: Appraisal data provided is for informational purposes only and is incomplete for determination of value.

I acknowledge and agree to the prohibitions listed in RCW 42.56.070(9) against releasing and/or using lists of individuals for commercial purposes. Neither Pierce County nor the Assessor-Treasurer warrants the accuracy, reliability or timeliness of any information in this system, and shall not be held liable for losses caused by using this information. Portions of this information may not be current or accurate. Any person or entity who relies on any information obtained from this system does so at their own risk. *All critical information should be independently verified.*

"Our office works for you, the taxpayer"

Pierce County Assessor-Treasurer
Dale Washam
2401 South 35th St Room 142
Tacoma, Washington 98409
(253)798-6111 or Fax (253)798-3142
www.piercecountywa.org/atr

Copyright © 2011 Pierce County Washington. All rights reserved

Pierce County Assessor-Treasurer ePIP

Recent Sales Activity for 0420094023

01/02/2011 04:10 PM

Property Details		Taxpayer Details	
Parcel Number:	0420094023	Taxpayer Name:	DOCKEN PROPERTIES LP
Site Address:	2920 MERIDIAN E	Mailing Address:	2908 MERIDIAN AVE E STE 201 EDGEWOOD WA 98371-2192
Account Type:	Real Property		
Category:	Land and Improvements		
Use Code:	6900-MISC SERVICES		

Sales

Sales from 1997 to date are displayed here. However, the sales listed on this site are not complete and do not include all property transfer types. Recorded documents, accessed by name and date, are available on the [Pierce County Auditor's](#) web site.

ETN	Parcel Count	Grantor	Grantee	Sale Price	Sale Date	Deed Type	Sale Notes	Confirmation
4051438	2	COOKE MONTY R ESTATE OF	DOCKEN PROPERTIES LP	230,000	07/30/2004	Personal Representative Deed	Estate sale	Unconfirmed

Sales history records current through 5/16/2003 are available on CD. These records were maintained as general information regarding property transfer for tax purposes only and are not an official record of sales transactions. A public records request form and the cost to copy of \$66.10 are required to obtain the records on CD. You may return the signed form and payment by mail or in person to the Assessor-Treasurer's Office at the address listed below.

For additional information on this issue, contact the Pierce County Assessor-Treasurer's Office Records Manager at 253-798-3134.

Sales Search

Search for sales with characteristics similar to this property.

I acknowledge and agree to the prohibitions listed in RCW 42.56.070(9) against releasing and/or using lists of individuals for commercial purposes. Neither Pierce County nor the Assessor-Treasurer warrants the accuracy, reliability or timeliness of any information in this system, and shall not be held liable for losses caused by using this information. Portions of this information may not be current or accurate. Any person or entity who relies on any information obtained from this system does so at their own risk. *All critical information should be independently verified.*

"Our office works for you, the taxpayer"

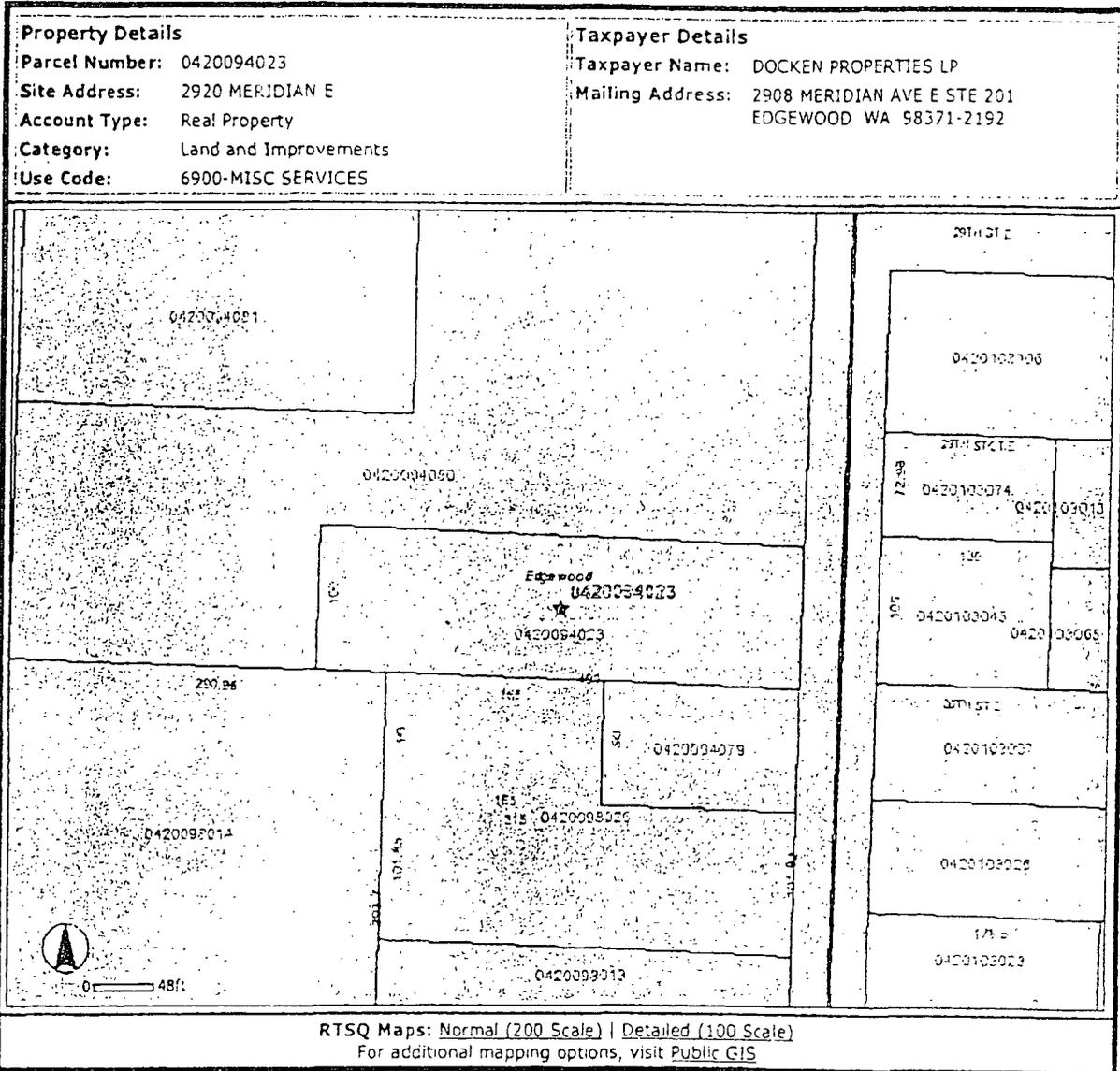
Pierce County Assessor-Treasurer
Dale Washam
2401 South 35th St Room 142
Tacoma, Washington 98409
(253)798-6111 or Fax (253)798-3142
www.piercecountywa.org/atr

Copyright © 2011 Pierce County Washington. All rights reserved.

Pierce County Assessor-Treasurer ePIP

Parcel Map for 0420094023

01/02/2011 04:10 PM



I acknowledge and agree to the prohibitions listed in RCW 42.56.070(9) against releasing and/or using lists of individuals for commercial purposes. Neither Pierce County nor the Assessor-Treasurer warrants the accuracy, reliability or timeliness of any information in this system, and shall not be held liable for losses caused by using this information. Portions of this information may not be current or accurate. Any person or entity who relies on any information obtained from this system does so at their own risk. All critical information should be independently verified.

"Our office works for you, the taxpayer"

Pierce County Assessor-Treasurer
Dale Washam
2401 South 35th St Room 142
Tacoma, Washington 98409
(253)798-6111 or Fax (253)798-3142
www.piercecountywa.org/atr

Copyright © 2011 Pierce County Washington All rights reserved



**RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:**

Cassie N. Crawford
Morse & Brajt
P.O. Box 61566
Vancouver, WA 98666

PERSONAL REPRESENTATIVE'S DEED

Grantor: The Estate of Monty R. Cooke through the personal representatives
Patricia A. Chapman & Evelyn Daniewicz
Grantee: ~~Docken Properties Limited Partnership~~
Abbreviated Legal:
Assessor's Tax Parcel #
Other Reference Nos:

For reference only, not for re-sale.

- 1. GRANTOR.** The undersigned Patricia A. Chapman and Evelyn Daniewicz are the duly appointed, qualified and acting Co-Personal Representatives of the Estate of Monty R. Cooke, Deceased.
- 2. ESTATE.** Monty R. Cooke died on March 10, 2004, and Patricia A. Chapman & Evelyn Daniewicz were appointed Co-Personal Representatives on March 29, 2004, in the State of Washington Superior Court for Clark County in Cause No. 04 4 00187 1 (the "probate proceedings").
- 3. NONINTERVENTION POWERS.** By Order of Appointment entered on March 29, 2004, in the probate proceedings, Grantors were authorized to settle the Estate without further Court intervention or supervision.
- 4. DEED - CONVEYANCE.** Grantors hereby convey to ~~DOCKEN PROPERTIES LIMITED PARTNERSHIP, A Washington Limited Partnership~~, Grantee, the following-described property located in Clark County, Washington:

See Exhibit "A", a true and correct copy of which is attached hereto.

4

PERSONAL REPRESENTATIVE'S DEED -1



22.00

5. NO WARRANTIES. This transfer is made by Grantors pursuant to the terms and provisions of the Will, in Grantors' capacity as Personal Representatives without warranty.

Dated July 30, 2004

Patricia A. Chapman

Patricia A. Chapman, as Co-Personal Representative of the Estate of Monty R. Cooke, Deceased, and not in her individual capacity

Evelyn Daniewicz

Evelyn Daniewicz, as Co-Personal Representative of the Estate of Monty R. Cooke, Deceased, and not in his individual capacity

STATE OF WASHINGTON)

ss.

County of Clark)

On this day personally appeared before me _____ known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he/she signed the same as his/her free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this _____ day of _____, 20____.

NOTARY PUBLIC FOR WASHINGTON

My Commission Expires: _____

For reference only. not for re-sale.

Escrow No.: 17748.000

Exhibit "A"

LEGAL DESCRIPTION

PARCEL A:

The North 90 feet of the East 150 feet of the following property:

The East half of the North half of the South half of the Southeast quarter of the Southeast quarter of Section 9, Township 20 North, Range 4 East, W.M., in Pierce county, Washington.

EXCEPT Meridian Street North.

PARCEL B:

Beginning at the Southeast corner of the North half of the Southeast quarter of the Southeast quarter of Section 9, Township 20 North, Range 4 East of the Willamette Meridian;
Thence North along the East boundary line of said Section, 100 feet;
Thence West 400 feet;
thence South 100 feet;
Thence East 400 feet to the point of beginning, in Pierce County, Washington;

EXCEPT THE East 30 feet for County road.

Situate in the City of Edgewood, County of Pierce, State of Washington.

For reference only, not for re-sale.

██████████ 133

SF 37,595

Without

MUR SF 37,595 \$5 187,975

With

MUR SF 37,595 \$7 \$263,165

Special Benefit

\$75,190 \$2.00

██████████

Without

MUR units 1 \$50,000 \$50,000 \$1.33

With

MUR units 16 \$20,000 \$320,000
\$320,000 \$8.51

Special Benefit

\$270,000 \$7.18

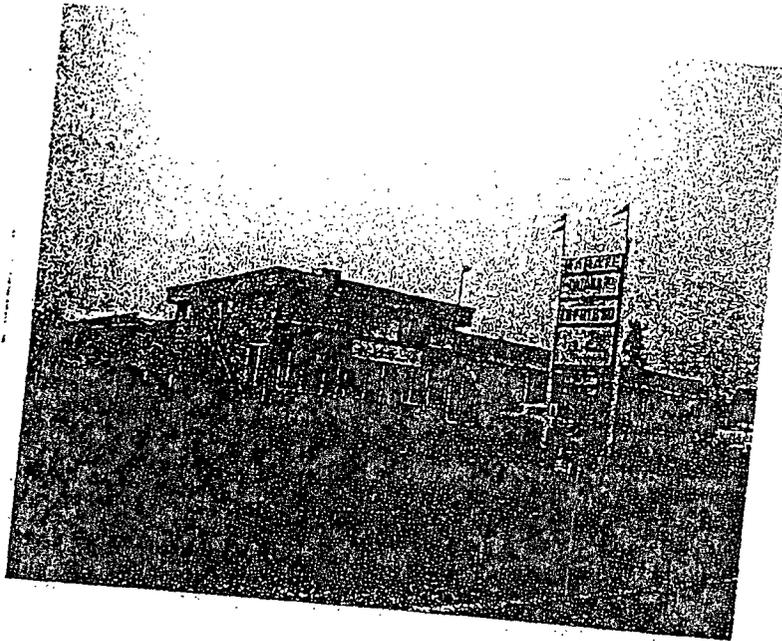
Without \$5 \$187,975

With \$8.51 \$319,933

SB \$3.51 \$131,958

*Without looking at con

*With looking at mixed



110

Pierce County Assessor-Treasurer ePIP

Parcel Summary for 0420094080

01/02/2011 04:08 PM

Property Details Parcel Number: 0420094080 Site Address: 2828 MERIDIAN E Account Type: Real Property Category: Land and Improvements Use Code: 6900-MISC SERVICES		Taxpayer Details Taxpayer Name: DOCKEN PROPERTIES LP Mailing Address: 2908 MERIDIAN AVE E STE 201 EDGEWOOD WA 98371-2192	
Appraisal Details Value Area: P11 Appr Acct Type: Commercial Business Name: UNITY CHURCH AND OTHER RETAIL AND INDUST Last Inspection: 08/04/2008 - Physical inspection		Tax/Assessment Current Tax Year: 2011 Taxable Value: 1,188,600 Assessed Value: 1,188,600	
Related Parcels Group Account Number: <u>56923</u> Mobile/MFG Home and Personal Property <u>2098010020</u> parcel(s) located on this parcel: Real parcel on which this parcel is located: n/a			
Tax Description Section 09 Township 20 Range 04 Quarter 44 : BEG 20 FT W & 375 FT N OF SE COR OF N 1/2 OF SE OF SE TH W 310 FT TH S 190 FT TH W TO E LI 3RD ST NW TH S TO S LI N 1/2 OF SE OF SE TH E TO A PT 400 FT W OF SE COR TH N 100 FT TH E 380 FT TO A PT ON W LI MERIDIAN ST N TH N TO POB EASE OF RECORD DC0644SG09-15-89HW			

I acknowledge and agree to the prohibitions listed in RCW 42.56.070(9) against releasing and/or using lists of individuals for commercial purposes. Neither Pierce County nor the Assessor-Treasurer warrants the accuracy, reliability or timeliness of any information in this system, and shall not be held liable for losses caused by using this information. Portions of this information may not be current or accurate. Any person or entity who relies on any information obtained from this system does so at their own risk. *All critical information should be independently verified.*

"Our office works for you, the taxpayer"

Pierce County Assessor-Treasurer
 Dale Washam
 2401 South 35th St Room 142
 Tacoma, Washington 98409
 (253)798-6111 or Fax (253)798-3142
www.piercecountywa.org/atr

Copyright © 2011 Pierce County Washington. All rights reserved.

Pierce County Assessor-Treasurer ePIP

Taxes / Values for 0420094080

01/02/2011 04:08 PM

Property Details		Taxpayer Details	
Parcel Number:	0420094080	Taxpayer Name:	DOCKEN PROPERTIES LP
Site Address:	2828 MERIDIAN E	Mailing Address:	2908 MERIDIAN AVE E STE 201 EDGEWOOD WA 98371-2192
Account Type:	Real Property		
Category:	Land and Improvements		
Use Code:	6900-MISC SERVICES		

Assessed Values							
Tax Year	Taxable Value	Assessed Total	Assessed Land	Assessed Improvements	Current Use Land	Personal Property	Notice of Value Mailing Date
2011	1,188,600	1,188,600	763,000	425,600		0	0 06/21/2010
2010	1,277,900	1,277,900	842,800	435,100		0	0 07/17/2009
2009	1,325,500	1,325,500	887,200	438,300		0	0 09/19/2008
2008	904,900	904,900	477,300	427,600		0	0 06/22/2007
2007	910,900	910,900	432,700	478,200		0	0 06/12/2006
2006	1,287,500	1,287,500	267,100	1,020,400		0	0 10/07/2005
2005	985,700	985,700	267,100	718,600		0	0 11/02/2004

Current Charges			Exemptions
Balance Due:	0.00	Minimum Due:	0.00
		as of	01/02/2011
			No exemptions

Paid Charges			Tax Code Areas		
For questions regarding any electronic payments you may have made, please contact Official Payments Corporation at 1-800-487-4567					
Tax Year	Charge Type	Amount Paid	Tax Year	TCA	Rate
2010	Property Tax Principal	14,169.38	2011	770	0.000000
	Weed Control Principal	1.64	2010	770	11.088010
	Surface Water Management Principal	3,571.04	2009	770	10.343739
Total 2010		17,742.06	2008	770	10.570328
2009	Property Tax Principal	13,710.63	2007	770	11.210749
	Property Tax Interest	137.10	2006	770	12.884737
	Weed Control Principal	1.64	2005	770	14.411490
	Weed Control Interest	0.02			
	Surface Water Management Principal	898.39	Receipts		
	Surface Water Management Interest	8.98	Date	Number	Amount Applied
Total 2009		14,756.76	11/05/2010	5665503	8,871.03
2008	Property Tax Principal	9,565.09	04/29/2010	5335558	8,871.03
	Weed Control Principal	1.64	10/30/2009	5038371	7,305.33
	Surface Water Management Principal	898.39	06/11/2009	4824900	7,451.43
Total 2008		10,465.12	11/07/2008	4499921	5,232.56
2007	Property Tax Principal	10,211.87	04/11/2008	3981699	5,232.56
	Weed Control Principal	1.64	10/26/2007	3819807	5,555.95
	Surface Water Management Principal	898.39	05/02/2007	3594288	5,555.95
Total 2007		11,111.90	11/02/2006	3292409	8,744.57
2006	Property Tax Principal	16,589.10	04/28/2006	2992911	8,744.56
	Weed Control Principal	1.64	11/01/2005	2210274	7,552.72
	Surface Water Management Principal	898.39	04/22/2005	2386822	7,552.72
Total 2006		17,489.13	11/05/2004	2183090	6,525.20
2005	Property Tax Principal	14,205.41	05/01/2004	1874285	6,525.19
	Weed Control Principal	1.64			
	Surface Water Management Principal	898.39	ULID Information		
Total 2005		15,105.44	Click here for ULID information		

I acknowledge and agree to the prohibitions listed in RCW 42.56.070(9) against releasing and/or using lists of individuals for commercial purposes. Neither Pierce County nor the Assessor-Treasurer warrants the accuracy, reliability or timeliness of any information in this system, and shall not be held liable for losses caused by using this information. Portions of this information may not be current or accurate. Any person or entity who relies on any information obtained from this system does so at their own risk. All critical information should be independently verified.

"Our office works for you, the taxpayer"

Pierce County Assessor-Treasurer
Dale Washam
2401 South 35th St Room 142
Tacoma, Washington 98409
(253)798-6111 or Fax (253)798-3142
www.piercecountywa.org/atr

Copyright © 2011 Pierce County Washington. All rights reserved.

Pierce County Assessor-Treasurer ePIP

Land Characteristics for 0420094080

01/02/2011 04:08 PM

Property Details		Taxpayer Details	
Parcel Number:	0420094080	Taxpayer Name:	DOCKEN PROPERTIES LP
Site Address:	2828 MERIDIAN E	Mailing Address:	2908 MERIDIAN AVE E STE 201 EDGEWOOD WA 98371-2192
Account Type:	Real Property		
Category:	Land and Improvements		
Use Code:	6900-MISC SERVICES		
Location:		Size	
LEA:	201	SF:	134,850
RTSQQ:	04-20-09-44	Acres:	3.10
		Front Ft:	275
Amenities		Utilities	
WF Type:	n/a	Electric:	Power Installed
View Quality:	n/a	Sewer:	Sewer/Septic Installed
Street Type:	Paved	Water:	Water Installed

Warning: Appraisal data provided is for informational purposes only and is incomplete for determination of value.

I acknowledge and agree to the prohibitions listed in RCW 42.56.070(9) against releasing and/or using lists of individuals for commercial purposes. Neither Pierce County nor the Assessor-Treasurer warrants the accuracy, reliability or timeliness of any information in this system, and shall not be held liable for losses caused by using this information. Portions of this information may not be current or accurate. Any person or entity who relies on any information obtained from this system does so at their own risk. *All critical information should be independently verified.*

"Our office works for you, the taxpayer"

Pierce County Assessor-Treasurer
Dale Washam
2401 South 35th St Room 142
Tacoma, Washington 98409
(253)798-6111 or Fax (253)798-3142
www.piercetywa.org/atr

Copyright © 2011 Pierce County Washington. All rights reserved.

Pierce County Assessor-Treasurer ePIP

Building Characteristics for 0420094080

01/02/2011 04:08 PM

Property Details		Taxpayer Details	
Parcel Number:	0420094080	Taxpayer Name:	DOCKEN PROPERTIES LP
Site Address:	2828 MERIDIAN E	Mailing Address:	2908 MERIDIAN AVE E STE 201 EDGEWOOD WA 98371-2192
Account Type:	Real Property		
Category:	Land and Improvements		
Use Code:	6900-MISC SERVICES		

Building ID:	2 building(s) on this parcel
1 2	

General Characteristics			
Property Type:	Commercial	SF:	29,150
Condition:	Average	Net SF:	32,375
Quality:	Fair	Atch. Garage SF:	0
Neighborhood:	501 / 740	Det. Garage SF:	0
Occupancy:	Gen Warehouse 20,000 to 199,999 SF	Carport SF:	0
		Fin. Attic SF:	0
		Total Bsmnt. SF:	0
		Fin. Bsmnt. SF:	0
		Bsmnt. Gar. Door:	0
		Fireplaces:	0

Built-As												
Description	Year Built	Adj. Year Built	SF	Stories	Bed-rooms	Bath-rooms	Exterior	Class	Roof	HVAC	Units	Sprinkler SF
Storage Warehouse	1962	1968	23,886	1	n/a	n/a	n/a	Wood Frame	n/a	None	3	0
Office Building	1962	1970	5,264	2	n/a	n/a	n/a	Wood Frame	n/a	Forced Air	0	0

Improvement Details		
Detail Type	Detail Description	Units
Add On	Asphalt (AV)	18,500

Warning: Appraisal data provided is for informational purposes only and is incomplete for determination of value.

I acknowledge and agree to the prohibitions listed in RCW 42.56.070(9) against releasing and/or using lists of individuals for commercial purposes. Neither Pierce County nor the Assessor-Treasurer warrants the accuracy, reliability or timeliness of any information in this system, and shall not be held liable for losses caused by using this information. Portions of this information may not be current or accurate. Any person or entity who relies on any information obtained from this system does so at their own risk. All critical information should be independently verified.

"Our office works for you, the taxpayer"

Pierce County Assessor-Treasurer
 Dale Washam
 2401 South 35th St Room 142
 Tacoma, Washington 98409
 (253)798-6111 or Fax (253)798-3142
www.piercecountywa.org/atr

Copyright © 2011 Pierce County Washington. All rights reserved

Pierce County Assessor-Treasurer ePIP

Building Characteristics for 0420094080

01/02/2011 04:09 PM

Property Details		Taxpayer Details	
Parcel Number:	0420094080	Taxpayer Name:	DOCKEN PROPERTIES LP
Site Address:	2828 MERIDIAN E	Mailing Address:	2908 MERIDIAN AVE E STE 201 EDGEWOOD WA 98371-2192
Account Type:	Real Property		
Category:	Land and Improvements		
Use Code:	6900-MISC SERVICES		

Building ID: 2 building(s) on this parcel

1 2

General Characteristics

Property Type:	Commercial	SF:	3,225	Fin. Attic SF:	0
Condition:	Average	Net SF:	3,225	Total Bsmnt. SF:	0
Quality:	Average	Atch. Garage SF:	0	Fin. Bsmnt. SF:	0
Neighborhood:	501 / 740	Det. Garage SF:	0	Bsmnt. Gar. Door:	0
Occupancy:	Gen Warehouse up to 19,999 SF	Carpport SF:	0	Fireplaces:	0

Built-As

Description	Year Built	Adj. Year Built	SF	Stories	Bed-rooms	Bath-rooms	Exterior Class	Roof	HVAC	Units	Sprinkler SF	
Storage Warehouse	2001	2001	3,225	1	n/a	n/a	n/a	Wood Frame	n/a	Space Heater	0	0

Improvement Details

No additional improvement details.

Warning: Appraisal data provided is for informational purposes only and is incomplete for determination of value.

I acknowledge and agree to the prohibitions listed in RCW 42.56.070(9) against releasing and/or using lists of individuals for commercial purposes. Neither Pierce County nor the Assessor-Treasurer warrants the accuracy, reliability or timeliness of any information in this system, and shall not be held liable for losses caused by using this information. Portions of this information may not be current or accurate. Any person or entity who relies on any information obtained from this system does so at their own risk. All critical information should be independently verified.

"Our office works for you, the taxpayer"

Pierce County Assessor-Treasurer
Dale Washam
2401 South 35th St Room 142
Tacoma, Washington 98409
(253)798-6111 or Fax (253)798-3142
www.piercecountywa.org/atr

Copyright © 2011 Pierce County Washington. All rights reserved

Pierce County Assessor-Treasurer ePIP

Recent Sales Activity for C420094080

01/02/2011 04:09 PM

Property Details		Taxpayer Details	
Parcel Number:	0420094080	Taxpayer Name:	DOCKEN PROPERTIES LP
Site Address:	2828 MERIDIAN E	Mailing Address:	2908 MERIDIAN AVE E STE 201 EDGEWOOD WA 98371-2192
Account Type:	Real Property		
Category:	Land and Improvements		
Use Code:	6900-MISC SERVICES		

Sales

Sales from 1997 to date are displayed here. However, the sales listed on this site are not complete and do not include all property transfer types. Recorded documents, accessed by name and date, are available on the [Pierce County Auditor's](#) web site.

ETN	Parcel Count	Grantor	Grantee	Sale Price	Sale Date	Deed Type	Sale Notes	Confirmation
0945871	1	EDGEWOOD PROPERTIES I	DOCKEN M ERIC & D SUE	1,050,000	08/01/1997	Statutory Warranty Deed		Unconfirmed

Sales history records current through 5/16/2003 are available on CD. These records were maintained as general information regarding property transfer for tax purposes only and are not an official record of sales transactions. A public records request form and the cost to copy of \$66.10 are required to obtain the records on CD. You may return the signed form and payment by mail or in person to the Assessor-Treasurer's Office at the address listed below.

For additional information on this issue, contact the Pierce County Assessor-Treasurer's Office Records Manager at 253-798-3134.

Sales Search

Search for sales with characteristics similar to this property.

I acknowledge and agree to the prohibitions listed in RCW 42.56.070(9) against releasing and/or using lists of individuals for commercial purposes. Neither Pierce County nor the Assessor-Treasurer warrants the accuracy, reliability or timeliness of any information in this system, and shall not be held liable for losses caused by using this information. Portions of this information may not be current or accurate. Any person or entity who relies on any information obtained from this system does so at their own risk. *All critical information should be independently verified.*

"Our office works for you, the taxpayer"

Pierce County Assessor-Treasurer
 Dale Washam
 2401 South 35th St Room 142
 Tacoma, Washington 98409
 (253)798-6111 or Fax (253)798-3142
www.piercecountywa.org/atc

Copyright © 2011 Pierce County Washington. All rights reserved

MAP NUMBER 131

SF-3 48,510

Without

SF-3	units	2	\$50,000	\$100,000	
MUR	SF	82826	\$5	<u>\$414,130</u>	
				<u>\$514,000</u>	\$3.91

With

SF-3	units	3	\$50,000	\$150,000	
MUR	SF	82826	\$7	<u>\$579,782</u>	
				<u>\$729,782</u>	\$5.56

Special Benefit

\$216,000 \$1.64

COURT OF APPEALS
DIVISION II
12 MAY -4 PM 3:20
STATE OF WASHINGTON
BY [Signature]
DEPUTY

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

<p>CITY OF EDGEWOOD</p> <p>Petitioner,</p> <p>vs.</p> <p>HAIST, LLC, et. al</p> <p>Respondents.</p>	<p>NO. 42842-3-II</p> <p>DECLARATION OF SERVICE</p>
---	---

The undersigned declares that I am over the age of 18 years, not a party to this action, and competent to be a witness herein. I caused this Declaration and the following documents:

1. RESPONDENTS DOCKEN'S MOTION FOR EXTENSION OF TIME TO FILE **REVISED** OPENING BRIEF
2. REVISED OPENING BRIEF OF RESPONDENTS ERIC DOCKEN, DOCKEN PROPERTIES, LP, ENID AND EDWARD DUNCAN, JAMES AND PATRICIA SCHMIDT, DARLENE MASTERS, AKA THE BRICKHOUSE, LLC, GEORGE AND ARLYN SKARICH, SUELO MARINA, LLC

to be served on May 4 2012 on the following parties and in the manner indicated below

Joseph Zachary Lell
Wayne D. Tanaka
Ogden Murphy Wallace
1601 Fifth Avenue, Suite 2100
Seattle, WA 98101-1686

by United States First Class Mail
 by Personal Delivery

ORIGINAL

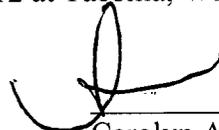
by Facsimile
 by Electronic Mail

Margaret Archer
Gordon Thomas Honeywell, LLP
PO Box 1157
Tacoma, WA 98401-1157
United States

by United States First Class Mail
 by Personal Delivery
 by Facsimile
 by Electronic Mail

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 4 day of May 2012 at Tacoma, Washington.



Carolyn A. Lake