No. 48028-0-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

ENID DUNCAN, ET AL.,

APPELLANTS,

v.

CITY OF EDGEWOOD,

RESPONDENTS.

APPELLANTS STOKES AND REMPEL'S REPLY BRIEF

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[4847-1035-0126]

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I. INTRODUCTION

Petitioners 1999 Stokes Family LLC ("Stokes"), Eldean Rempel as Trustee for the Revocable Trust Agreement of Ray E. Rempel and Eldean B. Rempel dated December 26, 2006 and Tina Rempel (Collectively "Rempel") confirm their request for this Court to find that the Edgewood City Council acted arbitrarily and capriciously when it confirmed the assessments against Stokes' Parcel 27 and Rempel's Parcel 68, without explanation, despite unrebutted, compelling evidence that these assessments are grossly disproportionate to assessments against similarly situated properties and grossly in excess of the special benefits. Pursuant to the authority granted to this Court under RCW 35.44.250, and to remedy the disproportionate and excessive assessments, Rempel requests the Court to reduce the assessment against Parcel 68 from $790,535 to $381,925. Stokes requests the court to reduce the assessment against Parcel 27 from $379,315 to $19,235.

II. REPLY ARGUMENT

A. The City Distorts This Court's Decision In *Hasit* To Misapply The Law Of The Case Doctrine.

Stokes and Rempel presented their objections to the City Council and now to this Court in the following legal framework confirmed by this Court in *Hasit v. Edgewood,* 179 Wn. App. 671, 320 P.3d 162 (2014).

A special assessment may not substantially exceed a property's

benefit and a property should not bear proportionately more than its share of the total assessment relative to other parcels in the LID. *Hasit,* 179 Wn. App. at 933. *See also Cammack v. Port Angeles,* 15 Wn. App. 188, 196, 548 P.2d 571 (1976); *Sterling Realty Co. v. Bellevue,* 86 Wn.2d 760, 415 P.2d 627 (1966).

> Because LID assessments involve a deprivation of property, affected owners have a right to a hearing as to whether the improvements resulted in special benefits to their properties and whether their assessments are proportionate... (Emphasis added.)

Hasit, 179 Wn. App. at 933.

Hasit confirmed, and Stokes and Rempel acknowledge that, as the owners challenging the LID assessments under chapter 35.44 RCW, Stokes and Rempel bear the burden of production in this appeal. They understand that this Court will presume that

- the action of the city council was legal and proper;
- the sewer improvement is a benefit;
- the assessments are no greater than the benefit;
- the assessments are equal or ratable to assessments on other property similarly situated; and
- the assessments are fair.

Id. at 935. But these presumptions merely establish who has the burden of going forward with evidence. *Id.* Once Stokes and Rempel adduce credible evidence to the contrary of any of these presumptions, the burden shifts to

the City. *Id.* at 935-36. Upon receipt of such evidence, the Council cannot confirm the assessment roll unless the City is able answer the challenge with sufficient evidence.

> Thus, where a protesting owner alleges her assessment exceeds the special benefit and presents sufficient evidence to overcome the presumptions, but the city confirms the assessment roll regardless, a court will reduce or annul the assessment as arbitrary and capricious unless the city presented sufficient competent evidence to the contrary.

Id. at 936. *See also, Bellevue Plaza, Inc. v. City of Bellevue,* 121 Wn.2d 397, 403-04, 851 P.2d 662 (1993).

At the assessment objection hearing, the City Council was required under RCW 35.44.080 to sit as a board of equalization. As noted by this Court, the legislative directive for a council to "consider[] an assessment as a board of equalization" discloses a "legislative intent that it make de novo determinations while presuming the assessments to be correct, constrained perhaps by the clear, cogent and convincing standard."[1] *Hasit,* 179 Wn. App. at 949.

Within that legal framework, this Court held that the City's action to confirm the first assessment roll was arbitrary and capricious. The arbitrary and capricious holding was in addition to this Court's separate

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[1] This Court concluded that the underlying appeal did not require deciding whether the clear, cogent and convincing standard for boards of equalization applies to municipal decisions on assessment rolls. *Hasit,* 179 Wn. App at 949, n. 7.

rulings that the prior assessments, as determined by appraiser Macaulay, were calculated on a fundamentally wrong basis because they included the cost of excess sewer capacity that conferred no special benefit to the LID property owners. The arbitrary and capricious holding was founded upon the City's failure, as a board of equalization, to properly review Macaulay's individual assessments to determine, in light of the evidence presented, if the specifically challenged assessments substantially exceed the special benefit or are disproportionate.

> Further, we hold that approval of the final assessment roll was arbitrary and capricious for three reasons: (1) some protests were denied for failing to present evidence which the notice prohibited, (2) the requirement that each protestor present expert appraisal evidence was erroneous, and (3) the requirement that protestors prove that the assessments rested on a fundamentally wrong basis or were arbitrary and capricious was erroneous.

Id. at 960.

This Court ruled that the objecting owners were not afforded a fair hearing through which their challenges and evidence were duly considered by a board of equalization. The challenged Macaulay assessments were never reviewed de novo, in light of the above presumptions and the objectors' evidence, to determine if the challenged individual assessments substantially exceed the special benefits or are disproportionate. There was no proper adjudication of the property owners' challenges.

It is thus remarkable that the City asserts:

> This Court of Appeals upheld the City of Edgewood's special assessment methodology and dismissed similar claims the Appellants bring in this assessment proceeding. The City followed this Court's precise roadmap regarding oversizing costs, notice, the admissibility of evidence in the assessment process, and applicable evidentiary standards.

(City's Brief at p. 1. Underlining added.) The City claims

> In *Hasit,* this Court affirmed the City's special assessment methodology and the Macaulay appraisal. Because the City relies on the upheld assessment methodology and Macaulay appraisal in this reassessment proceeding, the law of *this* case holds that the City has met the "fundamentally wrong basis" and "arbitrary and capricious" standard.

(*Id.* at p. 36. Italics in original, underlining added.)

Based upon the City's briefing (and the Council's single conclusory finding to support its assessment roll confirmation), it appears that the City viewed this second hearing as little more than a formality to be endured before it was free to officially adopt the re-assessments as recommended by their appraiser, again without adjustment. Its briefing evidences that the City's take-away from the *Hasit* decision was that the City was required to provide the objectors a fair opportunity to develop and speak their objections, but the City was without obligation to consider the evidence in earnest, much less make a de novo determination whether the challenged assessments exceeded the substantial benefit or were

disproportionate. Under the City's view, so long as it relied on the Macaulay appraisal, as a board of equalization it need not actually address the specific objections because this Court "already affirmed the Macaulay appraisal's special benefit methodology, which is the law of the case." (*Id.* at p. 42.)

But if this Court's decision in *Hasit* preordained the Macaulay assessments as immune from challenge following removal of the excess capacity charges, obvious questions beg answers: Why did the Court also find that the Council's actions at the objection hearing and decision were arbitrary and capricious? If it otherwise affirmed Macaulay's assessments, why did this Court conclude that the Council erred in requiring protestors to submit expert evidence to support a challenge that individual assessments were disproportionate? If the Macaulay assessments were beyond further challenge, why even address the City's improper application of evidentiary burdens and review standards? If the Macaulay appraisal and recommended assessments are beyond challenge, why did this Court hold that Stokes and Rempel, along with the other petitioners, were denied due process and a deprived of a meaningful opportunity to challenge the Macaulay appraisal and assessments?

This Court did hold that Macaulay's use of the mass-appraisal methodology, in lieu of a zone-and termini methodology, was a valid

methodology. *Hasit,* 179 Wn. App at 043-33. But the acceptance of this methodology did not make Macaulay appraisal beyond reproach. This Court did not hold in *Hasit* that, upon removing excess capacity costs, the Macaulay's recommended assessments for the Stokes and Rempel properties do not exceed the special benefit derived from the sewer improvements. Nor did this Court determine that the assessments levied against these properties are proportionate.

To the contrary, this Court held that the petitioners' were deprived an opportunity to develop and present objections specific to their own assessments and that the Council acted arbitrarily and capriciously when it simply deferred to the Macaulay recommendations without duly considering and addressing the assessment-specific objections presented. *Hasit,* 179 Wn, App. at 945-47. Assessment-specific objections remained to be considered and decided in a new hearing to the board of equalization following reassessment. Unfortunately, even after the second hearing, Stokes and Rempel still await earnest consideration of their objections.

B. Rempel And Stokes Presented Compelling, Unrebutted Evidence That Their Assessments Are Both Disproportionate and Grossly in Excess Of The Special Benefits To Their Properties. But The City Once Again Failed To Fulfill Its Statutorily Mandated Role As A Board Of Equalization.

Stokes and Rempel presented to the Edgewood Council compelling evidence that the assessments levied against their respective properties

were grossly disproportionate and far in excess of any special benefit derived from the sewer improvements. There can be no dispute that Stokes and Rempel presented more than sufficient evidence to overcome the presumptions their assessments are no greater than the benefit conferred and are ratable to assessments on other property similarly situated. The burden of proof on these issues thus shifted to the City. *Hasit,* 179 Wn. App at 935-36. But the Council's Findings of Fact and Conclusions of Law reveal that the Council did not shift the burden:

> The Board concludes that the reassessments based on the Macaulay Study were determined in accordance with the Court of Appeals' standards as set forth in Hasit. The Reassessments reflect properly the Special Benefits resulting from LID #1 improvements. Differing opinions were expressed regarding the Special Benefits to the Appellant Properties; however, the Board concludes that the evidence presented by the owners of the Appellant Properties did not overcome the City Staff/LID recommendations. Given that, the objections of the owners of the Appellant Properties are overruled.

(AR 14-15, Conclusion No. 3.) The City Staff/LID recommendations were exclusively based on the content of the Macaulay appraisal. (AR 30.) Such action was arbitrary and capricious:

> [W]here a protesting owner alleges her assessment exceeds the special benefit and presents sufficient evidence to overcome the presumptions, but the city confirms the assessment roll regardless, a court will reduce or annul the assessment as arbitrary and

> capricious unless the city presented sufficient competent evidence to the contrary.

Hasit, 179 Wn. App at 936. *See also, Bellevue Plaza, supra,* 121 Wn.2d at 403-04.

The City correctly notes in its brief that determining whether a decision is arbitrary and capricious involves "consideration and evaluation of the decision-making process." (City's Brief at p. 12-13, *quoting Abbenhaus v. City of Yakima*, 89 Wn.2d, 855, 859-60, 576 P.2d 888 (1978). But the City cloaked its decision-making process. It conducted all of its deliberations in secret (AR 545, 546, 547, 606, 773), and offered no explanation for its decision when it voted to adopt Macaulay's assessments as recommended and without adjustment.[2] The only reason for the Council decision revealed to the public and this Court is the above-quoted Conclusions of Law.

As with the City's response brief, the Council did not even deign to discuss, much less address the compelling evidence that went unrebutted at the hearing. The Council did not articulate what specific "standards" it applied to Macaulay's appraisal or how the appraisal met

[2] In fact, the Council took less than a minute of open, public meeting time to make and announce its decision. The meeting minutes reflect that, on September 24, 2014, after completing its secret deliberations, the Council came out of executive session and called the public meeting to order at 8:38 p.m. A motion was made and passed to adopt the recommended assessments, staff was directed to prepare and ordinance (though the Council did not publicly share with the Staff its reason for decision) and the meeting was adjourned at 8:39 p.m. (AR 547.)

those standards. It did not articulate what standards it applied to the objectors' evidence and analysis (other than to state that the evidence did not "overcome the City Staff/LID recommendations," again, indicating that it deemed the evidence insufficient to overcome the initial presumptions favoring the City and that the City continued to impose the burden of proof on the property owners). The City did not identify the issues presented by the objections or explain its resolution of those issues other than to simplistically label all of the objectors' evidence as contrary "opinions."

The City asserts that, in the absence of an explicit statutory mandate within chapter 35.44 RCW to prepare findings, the Council had no obligation to do so. The City cites no authority to support its assertion. More importantly, the City's position cavalierly disregards that the Council, when serving as the board of equalization pursuant to RCW 35.44.070 and .080, was acting as a quasi-judicial body. The Mayor acknowledged this role in his remarks at the start of the hearing:

> This is a quasi-judicial proceeding. On one side the LID and on the other side the protesting parties. The City sits as a Board of Equalization.

(AR 615.) *See Barrie v. Kitsap County,* 84 Wn.2d 579, 586, 527 P.2d 1377 (1974) (council acts in quasi-judicial capacity when adjudicating rights as between parties).

The Council utilized its role as a quasi-judicial body to shield itself from the otherwise applicable Open Public Meetings Act, Chapter 42.30 RCW, and conduct its deliberations in secret. (AR 545, 546, 547, 606, 773). But the role of a quasi-judicial body is also accompanied with certain responsibilities. In an adjudicatory action, "written findings and conclusions are necessary in order to establish the basis upon which the decision was made, and to provide a procedural safeguard against arbitrary and capricious action." *Pentagram Corp. v. City of Seattle*, 28 Wn. App. 219, 229, 622 P.2d 892 (1981). *See also Parkridge v. City of Seattle*, 89 Wn.2d 454, 463-64, 573 P.2d 359, 365 (1978) ("we also require, founded upon and supported by the record, that findings of fact be made and conclusions or reasons based thereon be given for the action taken by the deciding entity (in this case, the city council)"). In the absence of written findings and conclusions, the action of a city council exercising adjudicatory administrative discretion will be deemed arbitrary and capricious, as a court cannot presume reasons for the a council's decision that it failed to articulate. *Pentagram Corp,* 28 Wn. App. at 229-30. This is especially true here, where the Council conducted all of its deliberations in executive session.

In this case, the absence of analysis in the Findings of Fact and Conclusions of law and the single superficial conclusion is especially

remarkable in light of the substantial unanswered evidence that Rempel and Stokes presented to the Council. Rempel and Stokes did not simply present the Council with competing appraisals or competing opinions. In addition to evidence that their assessments substantially exceed any special benefits conferred to their properties, Stoke and Rempel presented unanswered evidence that their properties were assessed in a manner that was inconsistent with and grossly disproportionate to other similarly situated properties.

The Council's complete failure to address, or even discuss, the evidence that the Macaulay assessments are disproportionate further demonstrates that its decision was arbitrary and capricious – its decision was "a willful and unreasoning action, taken without regard to the facts and circumstances surrounding the action." *Abbenhaus, supra,* 89 Wn. App at 858-59.

1. Rempel's objection to the assessment against Parcel 68.

Rempel presented an opposing expert special benefit valuation opinion prepared by MIA appraiser David Hunnicutt. Mr. Hunnicutt's special benefits value substantially differed, by $576,319, from the special benefit value presented by Macaulay. But Rempel did much more than present a "contrary opinion" and ask the Council to choose between the differing opinions. Rempel also presented evidence that demonstrated why

Macaulay's analysis yielded a grossly disproportionate assessment against the Rempel property, specifically noting that Macaulay's "before LID," or "without sewer" valuation was significantly understated. Rempel's evidence included the following:

- MAI appraiser Donald Heishmann separately evaluated Macaulay's valuation of the Rempel property as compared to other similarly situated LID properties and determined that the Rempel valuation and assessment is, statistically, "a clear outlier." (AR 1036.) Compared to the 40% median increase in value that Macaulay attributed to the LID properties, Macaulay applied a 128% increase in value to the Rempel property. (*Id.*) Appraiser Heishmann concluded that this significant disparate treatment "is not within reason." (Id.)

- Macaulay's valuation of Rempel's property "before LID" is well outside Macaulay's own range of "before LID" values for Town Center zoned property. Macaulay stated in his initial Report that the range of "before LID" values for Town Center zoned properties is $4.00/sf to $8.00/sf. (AR 439.) But Macaulay valued the Rempel property "before LID" at only $3.50 in both his original and his updated appraisal reports (AR 3337), which is well below his own range. Notably, while Macaulay deviated from his "before LID" value range for Town Center property, he did not correspondingly deviate from his "after LID" value range, thus inflating the special benefit value for the Rempel property and yielding a disproportionate and excessive assessment.

- Macaulay's $3.50/sf "before LID" value for the Rempel Property is 25% below the property's $4.65/sf assessed value before the LID improvement. (AR 1008.) Hunnicutt performed a comparative analysis between assessed values and actual sales prices in the area and found no property sales at values less than the assessed value, confirming further that Macaulay's low, $3.50/sf value is an anomaly. (*Id.*) Rempel does not present the assessed value as the sole evidence of property value as the City infers in its brief. Rather, the assessed value is presented as one more piece of corroborating evidence that Macaulay's "before LID" value is

unreasonably low and results in a disproportionate and excessive assessment.

- MAI appraiser David Hunnicutt independently valued the Rempel property "before LID" at $5.09/sf. (AR 1022.) The Hunnicutt "before LID" valuation, unlike Macaulay's, is within Macaulay's own $4.00 to $8.00/sf "before LID" valuation range, and is appropriately above the $4.65/sf assessed value.

Rempel's attorney took care to explain to the Council the significance of the above evidence:

> With the Rempel property, Parcel No. 68, this is one where you now have two independent appraisers that have evaluated this in the context of the Macaulay analysis and found that this is an outlier, that it's not being treated consistently with the other town center properties.
>
> And that's what this [process] is all about, this [sic] equalizing and treating them proportionately. It's not even in Macaulay's own range. It's not anywhere near the other properties, and an adjustment needs to be made especially in that before.
>
> Mr. Hunnicutt did an analysis of this property that I think is a fair special benefit analysis. It looks at an accurate before and accurate after, and what you get in this case is that you should have a reduction consistent with his analysis... And I think it's unusual when you get two professionals that reach the same conclusion with regard to that outlier.

(AR 765.)

Hunnicutt's appraisal of the Rempel property both before and after the LID improvements resulted in a special benefit's value for the Rempel property of $538,681 (AR 1000, 1026), as compared to the $1,115,000

special benefit value calculated by Macaulay using the inappropriately low "before LID" valuation (AR 3223, 3342). Applying 70.9% (the same percentage of special benefit value being applied to all the subject properties) to the Hunnicutt special benefit value, the assessment to the Rempel Property should be $381,925. Unlike the Macaulay proposed assessment of $790,535, this assessment does not exceed the actual special benefit and is proportionate to assessments levied against other similarly situated properties within the LID.

Regardless of whether Macaulay's mass appraisal methodology is generally acceptable and appropriate for determining LID assessments, the Council was presented with specific and substantial evidence that the Macaulay analysis, with regard to the Rempel property, was significantly flawed and yielded a disproportionate assessment far in excess of the special benefit to the Rempel property. A special assessment may not substantially exceed the property's special benefit. *Hasit*, 179 Wn. App. at 933. Likewise, no property should bear an assessment that is proportionately more than its share of the total assessment relative to other parcels in the LID. *Id.*

It was the Council's statutorily imposed responsibility, sitting as a board of equalization, to conduct a de novo review of the proposed assessments, consider all evidence presented by the objecting property

owners and make adjustments to the Rempel assessment as necessary to ensure that the assessment was proportionate and no more than the actual special benefit. RCW 35.44.070, .080; *Hasit*, 179 Wn. App. at 949.

Despite this mandate, nowhere in the Council's Findings of Fact and Conclusions of Law can this Court discern that the Council was even presented with these corroborated challenges, much less that the Council addressed and resolved the issues presented. Instead, the record leads to the conclusion that the Council's adoption of the disproportionate assessment in the face of the substantial evidence presented by Rempel was an arbitrary and capricious act.

> [W]here a protesting owner alleges her assessment exceeds the special benefit and presents sufficient evidence to overcome the presumptions, but the city confirms the assessment roll regardless, a court will reduce or annul the assessment as arbitrary and capricious unless the city presented competent evidence to the contrary.

Hasit, 179 Wn. App. at 936. Given the evidence presented, the City's exclusive reliance upon the Macaulay appraisal to set the Rempel assessment was arbitrary and capricious.

This case is not unlike *Bellevue Plaza, Inc. v. City of Bellevue*, where, presented with expert evidence by the objecting property owners that the City's expert appraisal was flawed, the court concluded that adoption of assessments based on that City appraisal was an arbitrary and

capricious act. 121 Wn.2d at 418, 851 P.2d 662 (1993). This Court should conclude the same with regard to the Rempel assessment.

The Council's decision was arbitrary and capricious. Pursuant to RCW 35.44.250, this Court should reduce the Rempel assessment from $790,535 to $381,925 so that the assessment no longer exceeds the special benefit and is proportionate to the assessments levied against other properties within the LID.

2. Stokes' objection to the assessment against Parcel 27.

Like Rempel, Stokes presented an opposing expert special benefit valuation opinion prepared by MIA appraiser David Hunnicutt. Hunnicutt's special benefits value substantially differed from that presented by Macaulay. Macaulay valued the special benefit to the Stokes property at $535,000 (AR 3136), while Hunnicutt determined that the special benefit value was only $167,196 (AR 971, 995).

But also like Rempel, Stokes did not simply present a "contrary opinion." Stokes also presented evidence that demonstrated why Macaulay's analysis, as applied to the Stokes property, was flawed and incomplete and yielded a grossly disproportionate assessment against the Stokes property. Stokes particularly noted significantly more favorable treatment that was given to another LID property owned by the former Edgewood Mayor, even though that property was presented with similar,

though lesser development challenges related to stormwater management.

Stokes' evidence included the following:

- Engineer James Schweickert testified that development of the Stokes property will require extraordinary and costly measures to manage stormwater, including a $260,000 underground detention vault and a 35,000 square foot above ground detention pond. Additionally, to develop, Stokes will need to acquire easements over three different privately owned properties for disbursal of retained stormwater. It is unknown if the requisite easements can be obtained and, if so, at what costs. The additional cost of installing a conveyance system over the privately owned properties is also unknown at this time. Thus, there is significant and extraordinary risk and costs associated with development of the Stokes property that are unique to the Stokes property. (AR 877-913.)

- Planning consultant and expert William Palmer testified and presented evidence that the stormwater management and critical areas issues presented for the Stokes property are very similar to those presented for LID Parcel Nos. 20 and 21 (owned by CAH Investments, Inc., an entity owned by Edgewood's former Mayor). In particular, like the CAH parcels, Stokes must dedicate significant property to an above-ground stormwater detention pond. For CAH, the City subtracted from the usable land area subject to assessment that area occupied by the storm pond that was requisite to development. This resulted in a $0 assessment against the parcel containing the CAH storm pond. But Macaulay and the City failed to consider and make similar appropriate adjustment for the Stokes property to address the above ground storm pond that will be requisite to any commercial development by Stokes. (AR 917-32.)

  Moreover, Macaulay failed to account and adjust for the additional extraordinary stormwater management measures required to develop the Stokes Property, but was not required to develop the CAH property.

  If the Stokes Property is treated in a manner consistent with Parcel Nos. 20 and 21 and also received an adjustment for the 35,000 square feet developable land lost to the requisite above-ground

detention pond, the special benefit value must be reduced to $27,120 and the assessment should be reduced to $19,235.

- Macaulay also applied a "before LID" value to the Stokes Property that is grossly disproportionate to other similarly situated LID properties, which value served to disproportionately inflate Macaulay's special benefit value and recommended assessment. (AR 3154, 3149, 977-78.)

Stokes presented at pages 37 to 47 of the opening brief a very detailed description of the testimony and documentary evidence presented to the Council (and in the record at AR 868-969, 970-98, and 666-701). But the City offers no answer in its response brief. The above is intended only as an abbreviated summary of that previously provided description.

What is clear from the record is that Macaulay failed to consider in his valuation the unique and extraordinary development costs associated with development of the Stokes property; he likewise failed to consider the heightened risks and still unknown costs associated with drainage easements necessary to develop the Stokes property from neighboring private property owners. Thus, regardless of the legitimacy of his general use and application of the mass appraisal methodology to the LID properties, his analysis with regard to the Stokes' assessment is flawed, incomplete and inconsistent.

Macaulay's flawed analysis yields an assessment that exceeds the special benefits value to the Stokes property and is disproportionate to

other LID assessments. Hunnicutt, on the other hand, did take these factors into account and made appropriate discounts to address the development challenges unique to the Stokes property. (See AR 944.) As a result, Hunnicutt's special benefit valuation ($167,196) is, appropriately, significantly lower than Macaulay's ($535,000). Applying 70.9% to this special benefit value, the assessment to the Stokes Property should, at the very least, be reduced to $118,542.

However, an additional adjustment and reduction must be made to the Stokes assessment if Stokes is to be treated consistently and in the same manner as CAH. If the land area lost to the requisite above-ground storm pond is eliminated from the useable land subject to assessment, as was done for the CAH property, Stokes' assessment must be further reduced to $19,235.

But the Council failed to even discuss, much less address any of the above evidence. Instead, it summarily and without explanation adopted the assessment against the Stokes' property as recommended by Macaulay and without adjustment. The City's action under such circumstances was arbitrary and capricious. *See, Bellevue Plaza, Inc., supra*, 121 Wn.2d at 418; *Hasit*, supra, 179 Wn. App. at 936. Pursuant to RCW 35.44.250, this Court should reduce the Stokes assessment from to $379,315 to $19,235.

III. CONCLUSION

This Court should hold that the Edgewood City Council decision to confirm the assessments against the Stokes and Rempel properties was arbitrary and capricious. Pursuant RCW 35.44.250, this Court should revise the assessments to remedy the disproportionate and excessive assessments. Rempel requests the Court to reduce the assessment against Parcel 68 from $790,535 to $381,925. Stokes requests the court to reduce the assessment against Parcel 27 from $379,315 to $19,235.

Dated this 1st day of April, 2016.

Respectfully submitted,

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COURT OF APPEALS, DIVISION II

OF STATE OF WASHINGTON

1999 STOKES FAMILY LLC and ELDEAN REMPEL, as Trustee for REVOCABLE TRUST AGREEMENT OF RAY E. REMPEL and ELDEAN B. REMPEL DATED DECEMBER 12, 2006, a Trust, and TINA REMPEL, Appellants, vs. CITY OF EDGEWOOD, Respondent.	NO. 48028-0 CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 1st day of April, 2016, I did serve, by regular U.S. Mail, postage prepaid, true and correct copies of the APPELLANTS STOKES AND REMPEL'S REPLY BRIEF addressed to the following:

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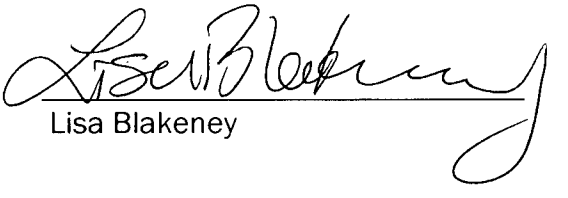

Lisa Blakeney

ORIGINAL