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COURT OF APPEALS
DIVISION II

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No. 42842-3 STATE OF WASHINGTON

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

HASIT, LLC, et. al,

RESPONDENTS

v.

CITY OF EDGEWOOD,

APPELLANT.

RESPONDENTS STOKES AND REMPEL'S REPLY BRIEF

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Family LLC and Ray and Eldean Rempel as
Trustees for the Revocable Trust Agreement
of Ray E. Rempel and Eldean B. Rempel
dated December 26, 2006

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I. INTRODUCTION

The City of Edgewood spends little time responding to the evidence-based arguments presented by petitioners/respondents 1999 Stokes Family LLC (“Stokes”) and Ray and Eldean Rempel as Trustees for the Revocable Trust Agreement of Ray E. Rempel and Eldean B. Rempel dated December 26, 2006 (“Rempel”) that demonstrate their respective assessments are grossly disproportionate to the assessments levied against similarly situated LID properties, and that the City’s perfunctory confirmation of the disproportionate assessments was arbitrary and capricious. Rather than directly answer the evidence of disproportionate treatment – which evidence is derived from the “expert” report, analysis and data provided from the City’s appraiser – the City clings to presumptions, ignoring that, like all presumptions, they vanish once rebutted. The few “direct” answers the City provides only serve to corroborate the disparate treatment of the Stokes and Rempel properties.

The Stokes and Rempel objections are not, and have never been “kitchen sink” attacks of the LID assessments. Both Stokes and Rempel have always tailored their objections to comply with the clear instruction the City provided. Unfortunately, the City’s written instructions and

promises to Rempel and Stokes were vastly different than the City's undisclosed instruction to the Examiner and the objection process actually provided – which process was, in reality, a mere formality rather than a meaningful evaluation of thoughtfully presented objections.

While the City's "formal notice" may have included the minimum information statutorily mandated, and may have been mailed within the statutorily allowed minimum time, mere compliance with such minimum requirements did not negate the prejudicial effect of the City's other actions. The City's representations misled the property owners and created a process in which their objections, despite competent support, were not considered. The City never fulfilled the mandated role of a board of equalization. Instead, it summarily accepted a fundamentally flawed and inadequately explained appraisal in the face of compelling evidence that at least two of the properties were disproportionately assessed based.

Judge Hickman looked at the City's actions in their entirety and in the context of the evidentiary record created by the objecting property owners and properly concluded that property owners were not accorded a fair hearing. (CP 2843.) Judge Hickman did not substitute his judgment for that of the City in its mandated role of a board of equalization, nor did he fail to give the City the deference as due under the statutory framework in the context of this record. Deference does not and should not

automatically translate to approval of the City's decision; it may only be accorded as due. Judge Hickman appropriately looked at the City and the Examiner's actions and reported analyses in the context of the applicable law and appropriately found they did not comply. Judge Hickman correctly found that the Examiner erroneously treated rebuttable presumptions as conclusive; erroneously refused to consider non-expert, but competent evidence of inconsistent application of the City appraiser's stated protocol, and ultimately failed to act as a neutral fact-finder when presented with the property owner objections. (CP 2843-44.)

This Court should likewise conclude that the City's confirmation of the assessment roll was arbitrary and capricious and that the assessments were based on a fundamentally flawed analysis. Pursuant to RCW 35.44.250, this Court should revise the disproportionate and erroneously based assessments levied against Rempel and Stokes to no more than \$683,021 and \$377,570, respectively. At the minimum, it should sustain the decision to remand the matter for a fair de novo hearing.

**II. THE CITY'S HEARING PROCESS WAS TAINTED,
CONTRARY TO LAW, AND IN CONTRAVENTION OF STOKES'
AND REMPEL'S DUE PROCESS RIGHTS**

The City wishes to exclusively focus on minimum statutory notice requirements in a vacuum, without consideration of the context in which those notices were provided. Whether the City actually afforded due

process and a fair hearing on the LID assessment objections may only be determined, however, through review of the City's collective actions.

When Stokes and Rempel were notified of the actual assessments to be charged against their properties, \$472,120¹ and \$877,005, respectively, they also received notice from the City assuring them that they would have an opportunity to present objections to the City's selected Examiner in a hearing where he would "sit as a board of equalization." (CP 650.) Stokes and Rempel, along with the other owners, were assured that "the purpose of the assessment roll hearing is to hear from individual property regarding their individual assessments." (CP 648.) Property owners were told they would be "allowed to speak," but "must limit their testimony to (1) whether their property's benefit from the improvements is at least as high as the assessment on their property and (2) whether their assessment is proportional to the assessments on other property in the LID." (*Id.*) There was no indication that, in the short 15-day preparation time provided, professionally prepared "with sewer" and "without sewer" appraisals were required for their objections to even be considered. To the contrary, LID owners were instructed that "the hearing examiner will consider all written and oral testimony." (*Id.*) Owners were assured that,

¹ The Stokes assessment that Macaulay originally recommended was \$529,151. (CP 1482-83.) Macaulay reduced the assessment to \$472,120 to address an acknowledged mistake in his original calculation. (CP 1084.)

sitting as a board of equalization, the Examiner would consider “all information and evidence in support of those objections, and for the purpose of considering such assessment roll.” (CP 650.) Finally, owners were notified that the Examiner, after considering “all information and evidence in support of [their] objections,” was empowered to “correct, revise, raise, lower, change or modify the roll or any part thereof.” (*Id.*)

That property owners relied upon the City’s written instructions is evidenced by Ray Rempel’s testimony. Demonstrating he understood the City’s instructions to impose a single evidentiary limitation, he testified:

First of all, the protest that I’m submitting has to do with the letters submitted from the City which states the means by which a person can protest an assessment, and that reads whether their assessment is proportional to the assessment on other property in the LID, and that’s the basis on which we’re submitting this protest. (CP 2150.)

The City provided different, undisclosed instructions to the Examiner. The City instructed that Macaulay’s unevaluated assessments should be presumed valid and “[t]his presumption may be overcome only if the party challenging the 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 the property is in fact benefited.” (CP 122.)

The Examiner's wholesale acceptance of the City's instruction is undeniably expressed in his decision. (CP 52-68.) He repeatedly rejected property owners' challenges because their objections were not supported by live expert appraisal testimony. (*See* CP 59-67.) The Examiner did not consider all the evidence and did not perform the important role as a board of equalization. The City compounded the error by sending notices that not only failed to adequately describe the City imposed minimum evidentiary requirements, but misled property owners on the evidence necessary for their objections to be considered.

Perhaps if the City had not instructed the Examiner to apply the wrong review standards and burden of proof, or perhaps if the City's notice contained only the minimum statutorily required content, and did not instruct property owners differently than the Examiner, the City could take safe harbor in the short notice authorized by Chapter 35.44 RCW. However, the City imposed additional onerous requirements that could not be satisfied in 15 days and misled property owners to believe that thoughtful objections supported by non-expert evidence, to include property owner testimony, would be considered.

The Constitution prohibits disproportionate assessments and due process requires that assessed property owners be afforded a meaningful opportunity to present objections to assessments they deem

disproportionate. *See Carlise v. Columbia Irrigation Dist.*, 168 Wn.2d 555, 569-70, 229 P.2d 761 (2010). Stokes and Rempel were denied due process because their valid objections, supported by evidence demonstrating their assessments are disproportionate, were never considered because of misapplied presumptions. The City's confirmation of those disproportionate assessments, without earnest consideration of the evidence presented, was an arbitrary and capricious act.

II. THE CITY MISAPPLIES AND OVERSTAES THE INITIAL PRESUMPTION OF VALIDITY AND IMPROPERLY EXTENDS THE EXPERT TESTIMONY REQUIREMENT

RCW 35.44.250 provides, following a judicial appeal of an assessment roll, “the superior court shall hear and determine that appeal. . . The judgment of the court shall confirm, unless the court shall find from the evidence that such assessment is founded upon a fundamentally wrong basis and/or the decision of the council . . . was arbitrary and capricious.” (Emphasis added). The intent behind this deferential standard of review is to “limit[] court involvement in the assessment proceeding.” *Abbenhaus v. City of Yakima*, 89 Wn.2d 855, 859, 576 P.2d 888 (1979).

Nowhere in chapter 35.44 will the Court find any indication that either the Examiner or Council, acting in the role of board of equalization, is directed to apply these same heightened standards for judicial review. There certainly is no provision in chapter 35.44 RCW providing that an

unconfirmed assessment roll prepared by an appraiser, but not yet evaluated or reviewed by a board of equalization, must be accepted over an objection in the absence of expert testimony that the appraiser acted arbitrarily and capriciously. To the contrary, the RCW 35.44.060 expressly provides that the assessment submitted to the council “shall be in the nature of a preliminary determination” and “shall not be binding and conclusive in any way on the board, officer or authority in the preparation of the assessment roll for the improvement or upon the council in any hearing affecting the assessment roll.”

Yet that was the City’s approach to the assessment objection hearings. Rather than truly sit as a board of equalization, and “examine and compare the returns of the assessments of the property . . . and proceed to equalize the same,”² the Examiner and the Council rested on presumptions as if they were conclusive, rather than rebuttable. However, the presumptions are to be applied to assessment rolls for no greater purpose than to establish a threshold burden of going forward with the objection. *Indian Trail Trunk Sewer v. City of Spokane*, 35 Wn. App. 840, 842-43, 670 P.2d 675 (1984). Once credible evidence is proffered to rebut the presumptions, the presumptions evaporate and the matter should proceed with burden of proof placed squarely on the City. *Id.*

² RCW 84.48.010 (defining duties of a board of equalization.)

Confirmation of an assessment following improper reliance upon or application of the presumption of validity is deemed an arbitrary and capricious act. *Id.*; *Kusky v. City of Goldendale*, 85 Wn. App. 493, 501, 933 P.2d 430 (1997); *Bellevue Plaza, Inc. v. City of Bellevue*, 121 Wn.2d 397, 403, 851 P.2d 662 (1993).

While Stokes and Rempel argue that Macaulay's appraisal is fundamentally flawed, the central focus of their challenge is that their properties were unlawfully assessed disproportionately. *Bellevue Associates v. City of Bellevue*, 108 Wn.2d 671, 677, 741 P.2d 993 (1987); *Cammack v. City of Port Angeles*, 15 Wn. App 188, 196, 548 P.2d 571 (1976; *Sterling Realty Co. v. City of Bellevue*, 68 Wn. 2d 760, 765, 415 P.2d (1966). The challenged assessments are afforded a rebuttable presumption that they are ratable to other property similarly situated. *Abbenhaus*, 89 Wn.2d at 861. We are aware of no law, however, stating that this particular presumption may only be rebutted through expert testimony. The City cites cases that expert valuation testimony is required to rebut the presumption that properties within an LID are specially benefited, none of the cases impose an absolute requirement for expert testimony on the issue of whether assessments are disproportionate.³

³ In *Cammack*, the court stated: "Expert evidence is clearly required to establish whether or not property is specially benefited by an improvement and the extent of the benefit. Expert testimony also may be required to establish a disproportionate assessment." 15

Both Rempel and Stokes presented evidence of disproportionate assessments found in Macaulay's own "expert" study and data. They also elicited expert testimony from Macaulay on cross-examination. Thus, to the extent that "expert" evidence is required, it was provided. We are aware of no rule that any requisite "expert" evidence may only come from an appraiser retained by the protesting party. The Examiner and Council went too far in their demand for expert testimony. Their improper reliance on presumptions under this improper standard rendered the decision to confirm arbitrary and capricious.

IV. STOKES AND REMPEL'S PROPERTIES ARE DISPROPORTIONATELY ASSESSED

A. The Rempel Assessment Is Disproportionate And Based Upon A Fundamentally Flawed Analysis. Approval Of the Assessment Was Arbitrary And Capricious.

Like the Stokes Property, the \$877,005 assessment applied to the Rempel Property 68 is grossly disproportionate; and the Examiner and City's summary approval of the assessment was arbitrary and capricious.

Recall that Macaulay values the Rempel land without sewer at \$1,100,000, or \$3.50 per square foot. The value was well below the without sewer value range for TC property set forth in Macaulay's own Report (\$4-8/sf, CP 1550), and is likewise well below the without sewer

Wn. App. at 197. None of the other cases cited address whether expert evidence is a prerequisite to rebutting the fair and equitable presumption.

value that Macaulay applied to the TC properties (Parcel Nos. 70 [with frontage] and 79 and 81 [no frontage]) immediately adjacent to the Rempel Property (\$6 and \$4/sf, respectively, CP 1484-85). With sewer, Macaulay treats the property differently, and values the Rempel land within his established range, at \$2,515,000, or \$8.00/sf. Using these inconsistently calculated values (one below the established range and one within the range), Macaulay determined the special benefit to be \$1,190,000, or \$3.79/sf⁴, recommending a assessment disproportionate to other TC properties of \$877.005, or \$2.79/sf. (CP 1482-83.)

The Examiner did not even consider, much less weigh the Rempel's detailed evidence and analysis as required in his capacity of a board of equalization or as inferred in the City's brief. This fact is well-established by the Examiner in his decision: "Mr. Rempel submitted no expert testimony or exhibits prepared by an expert at the hearing and thus his protest should be rejected." (CP 63, Finding 22.) The Examiner's refusal to even consider compelling and credible evidence and summarily approve the assessment in reliance on improper evidentiary requirements and improperly applied presumptions was arbitrary and capricious.

⁴ Though the difference between the without and with sewer values is \$4.50 per square foot, the special benefit value is lower (\$3.79) because Macaulay excluded the value of the storage facility (\$225,000) in the after analysis. He assumed the property would be wholly redeveloped and the structure would be destroyed. (CP 1482-83.) This masks rather than alleviates the disparate treatment of the Rempel land values.

Like the Examiner, the City fails to address the detailed evidence (based on the City appraiser's so-called expert Report and data) that Rempel's assessment is disproportionate, and offers only superficial and generalized responses. Once again, the City argues that the objection must fall to the presumption of validity because the evidence of disparate treatment, though found in Macaulay's own "expert" study and data, is not based upon a before and after appraisal prepared by another appraiser. The City effectively asks the Court to condone the Examiner's decisions to ignore the well-established law that a property owner may offer opinion as to the value of his own property. *Weber*, 188 Wash. at 516; *Cunningham*, 60 Wn.2d at 436 (1962). The City also invites the Court to make the same error as the Examiner – ignore the also well-established law that a fact finder (the Examiner) should assess credibility of expert testimony and the foundation for the expert testimony and may reject that testimony even in the absence of contrary testimony from another expert. *See Talley*, 3 Wn. App. at 817-1); *Gerberg v. Crosby*, 52 Wn.2d at 798.

All expert testimony (to include Macaulay's) must be based upon fact, not speculation or conjecture, or be rejected. *Time Oil Co*, 42 Wn.2d at 480; *Local Improvement Dist. 6097*, 52 Wn.2d at 336. The presumption of validity upon which the City and the Examiner relies so heavily does not inoculate the Macaulay appraisal from challenges based on

inconsistencies found in his own analysis and credibly supported by evidence in forms other than expert testimony. The presumption is rebuttable. *Indian Trail Trunk Sewer*, 35 Wn. App. at 842-43. Judge Hickman did not improperly substitute the court's judgment for that of the Examiner's. Judge Hickman correctly concluded that the Examiner, as a board of equalization, "did not act as a neutral fact finder" because he did not "consider evidence of inconsistent application of the Macaulay's protocol even if that evidence is without the support of an expert opinion" and "improperly treated presumptions in favor of the City conclusively, when in fact they were subject to being rebutted." (CP 2843-44.)

Of course one compelling piece of evidence presented to establish that Rempel's property was treated inconsistently with the neighboring TC-zoned properties is the fact that Macaulay based his analysis on inaccurate information. Macaulay erroneously assumed the Rempel property was split-zone, with only the front portion of the property benefitted by zoning authorizing commercial development. (CP 1086.) Of course, the entire Rempel Property is zoned TC. (CP 1354-55, 2152.)

The City necessarily now admits that Macaulay based his analysis on the wrong zoning and likewise admits that the proper way to value the Rempel Property is to value the frontage separately from the back portions of the property. Notably, the City attorney did not make this necessary

admission in the written submittal to the City Council. On the eve of the July 19, 2011 Council Hearing, the City attorney advised the Council “[t]here is no error with regard to zoning” on the Rempel Property. (CP 1297.) The City now claims the admitted error is without impact because Macaulay nonetheless testified that a “greater value was placed on the Meridian frontage portion of the property, as if the property zoning was different.” (City’s Brief at pp. 77-78.) Remarkably, and further demonstrating the constant inconsistency of his analysis, Macaulay argued the opposite with regard to the Stokes Property, stating that even split zoned property must “be valued as a whole rather than on a piecemeal basis.” (City’s Brief at p. 78.) Regardless, the response on the Rempel Property does not change the fact Macaulay’s without sewer value undervalues the back portion of the property because he erroneously assumed it could not be commercially developed. Macaulay testified:

Well, we did essentially look at what Mr. Rempel says. You know, again, in our file, because we don’t have a detailed breakdown, but we did look at higher value for the **commercial area**, and then lower value. Again, we’re looking at the property overall, so the figure you see on the spreadsheet were all calculations that we did, but we did look at the **higher value for the commercial portion** and a lower value for the back portion. (CP 2250,)

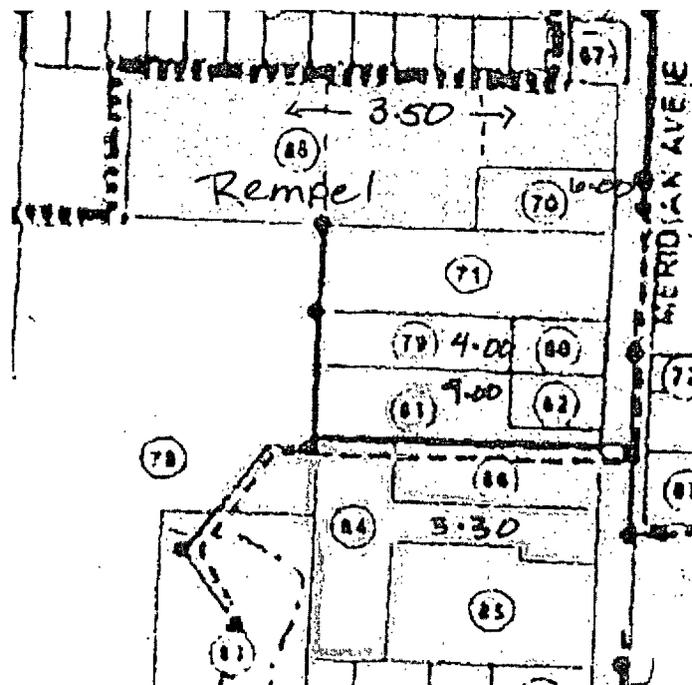
Accepting the above testimony as true and assuming that Macaulay actually applied an appropriately higher value to the 60,000 square feet of

frontage consistent with neighboring properties (e.g. \$6.00/sf as applied to TC-zoned LID Parcel 70), then basic math reveals the back portions of the Property could not have been valued greater than \$2.95/sf.⁵ If zoned residential, such a low value might have been appropriate. But the entire property is zoned TC for commercial development. Macaulay's before sewer valuation is undeniably understated – it is well below his own without sewer value ranges (\$4-8/sf) and well below the similarly situated neighboring TC-zoned properties. (CP 1482-85, 1550.) Again, the result of the understated without sewer value is an overstated special benefit value and an unlawful, disproportionate assessment.

The City next attempts to defend Macaulay's inconsistent treatment of Rempel's TC property by asserting that it should not be compared to the immediately neighboring properties, but to the extremely irregularly shaped LID Parcel 84 (which was assigned a similar without sewer value of \$3.30/sf). (City's Brief at p. 78.) A quick glance at the map below reveals that extremely long and narrow pipe-stem or T-shape of Parcel No. 84 is not remotely similar to the Rempel Parcel 68 and is not an appropriate comparable. Even if the Court were to accept that LID

⁵ If Macaulay applied a \$6.00/sf value to the front portion (comparable to LID Parcel No. 70), and applied \$4.00/sf to the middle section of the Rempel Property (comparable to LID Parcels 79 and 81 that are equally set back from Meridian), then, to achieve Macaulay's \$3.50/sf for the whole parcel, the without sewer value applied to the rear section of the Rempel Property would calculate to only \$1.81/sf.

Parcel 84 is comparable, then the end result would still require a substantial downward adjustment of the Rempel assessment. While Macaulay supposedly treated the Rempel Property 68 like LID Parcel 84 in the without sewer, he did not apply consistent treatment to the properties in the with sewer valuation.



Despite that Macaulay placed a much lower without sewer value on the Rempel Property (\$3.50/sf) than on the immediately neighboring TC-zoned LID properties, Macaulay nonetheless applied to the Rempel Property a with sewer value (\$8.00/sf) in alignment with those same neighboring properties. Again, this is what results in the disproportionate assessment. Macaulay's treatment of the supposedly comparable LID

Parcel 84 is dramatically differently. Like the Rempel Property, the without sewer value was lower (\$3.30). However, he also valued Parcel 84 with sewer much lower – at only \$6.30/sf. As a result the special benefit value for Parcel 84 was much lower (\$2.53/sf compared to \$3.70 for Rempel) and, in turn, the assessment applied to Parcel No. 84 was much lower (\$1.86/sf compared to \$2.79/sf). (CP 1482-85.) The extremely disparate treatment of these two parcels the City claims to be comparable further proves that the City's confirmation of the disproportionate assessment was arbitrary and capricious. No other TC property in the LID was treated as the Rempel Property was treated.

Rempel requests the Court to align the without sewer value of his property with the neighboring properties (Parcel Nos. 70, 79 and 80), applying \$6.00/sf to the front 60,000 square feet and \$4.00/sf to the back portions (254,360 square feet) for a combined without sewer value of \$4.30/sf. This will appropriately result in a decreased special benefit value and a downward adjustment of the assessment from \$877,005 to \$683,021. It would reduce the Rempel assessment to \$2.17 per square foot. Again, the supposedly comparable Parcel 84 was assessed only \$1.86/sf, based on without and with sewer land values of \$3.30 and \$6.30/sf, respectively. If the City stands by its position that LID Parcel 84 is, indeed, comparable and the Rempel Parcel 68 should be treated

consistent with Parcel 84, then Rempel is certainly prepared to accept an assessment calculated on the same basis. If the Rempel Property is truly treated as comparable to Parcel 84, in both the with and without sewer analysis (\$3.30 and \$6.30/sf, respectively), then the without sewer value for the Rempel Property would remain the same at \$3.50/sf. For necessary consistency, the with sewer value must be reduced from \$8.00/sf to \$6.50/sf to similarly correspond to Parcel 84. Adjustment of the with sewer value to reconcile it with the City's selected comparable Parcel 84 would result in a revised calculated assessment of \$531,379, or \$1.69/sf.

Under either Rempel's analysis or the City's analysis, the assessment confirmed by the Examiner and the City is grossly disproportionate. Recall that Councilmember Crowley recognized the assessment was disproportionate. (CP 2308-09.) Unfortunately, an incorrect understanding by the Examiner of the applicable presumptions and burden of proof and an unwavering desire by the Council to quickly recoup its expenditures led to the arbitrary and capricious act of confirming this disproportionate assessment. The assessment against Rempel should be invalidated, or at the very least, reduced to a proportionate amount.

- B. The Stokes Assessment Is Disproportionate And Based Upon A Fundamentally Flawed Analysis. Approval Of the Assessment Was Arbitrary And Capricious.**

Recall that the assessment charged against both its Commercial (“C”) / Mixed Residential Moderate Density (“MR2”) split-zoned property is grossly disproportionate to the assessments charged to other similarly situated LID properties. The disproportionate treatment of the MR2 portion of the property is particularly astounding. The value that Macaulay attributed to the Stokes MR2 property was \$3.69/sf. Macaulay’s established range of special benefit values for MR2-zoned properties, however, is only \$0.85 to \$1.70. (CP 1480.) As notable, the special benefit value calculated for a similar MR2 parcel immediately south of the Stokes Property (LID Parcel 34) was only \$1.77/sf. (CP 931.) The special benefit value Macaulay assigned to the MR2-zoned portion of the Stokes Property is 208.5% higher than the special benefit value assigned to the adjacent MR2-zoned LID Parcel 34 and is 217% higher than the high end of the Macaulay range.

The City next diminishes the relevance of its expert’s special benefit value ranges, though they are the sole basis of the assessments:

The City provided testimony regarding the use of the charts referenced in the Respondent’s brief and how the indicated value ranges applied to parcels that were entirely zoned as such.⁶ The Stokes property is split-zoned and the relevant hearing testimony explained that

⁶ The testimony was from an “appraiser trainee.” (CP 2250-51.) Though the table was in the Report he certified (CP 1468, 1556-57, 1560) and purports to set forth his ultimate conclusions, Macaulay himself testified: “I’m not familiar with that chart.” (CP 2250.)

valuations of split zoned property are not simply an aggregation of the separate values for the different zones. The property is instead valued as a whole, not on a piecemeal basis. (City's Brief at p. 78.)

Thus, the City asserts, despite that the densities that may be achieved on the different portions of the property are drastically different (48 units/acre on the C-zoned property and only 8 units/acre on the MR2 property), that differing values cannot be assigned to these portions of the property. (Recall, the City takes the opposite position to defend the Rempel assessment, further evidencing inconsistent analysis.)

Nowhere in the Macaulay Report does it say that LID property owners of split-zoned property cannot rely on the established special benefit value ranges because some different methodology is used for their properties. (*See* CP 1480, 1556-57.) More significantly, no alternate analysis or methodology is set forth anywhere in the Report disclosing how the value of spit-zoned properties is determined. To the contrary, the special benefit value ranges set forth in the tables are the only special benefit value conclusions stated in the entire Report and, according to the City, property owners like Stokes cannot rely on those conclusions or the associated analysis to evaluate their own hefty assessments. Owners of split-zoned properties are left to guess how their properties were valued.

The worksheet in the files Macaulay made available for inspection

by the LID property owners (ostensibly to provide owners with further explanation for Macaulay’s work and conclusions) contradicts the City’s response. The worksheet for the Stokes Property 27 shows that Macaulay did, in fact, value the C-zoned and MR2-zoned property separately and then simply added the values together. (CP 941.) The worksheet, set forth below, also further supports the disparate treatment of the Stokes Property.

MAP NUMBER 27				MR2	77,277	C	106700
Without							
C	SF	106,700		\$5	\$533,500		
MR2	units	3		\$25,000	\$75,000		
					<u>\$609,000</u>	\$3.31	
With							
C	SF	106,700		\$9	\$960,300		
MR2	units	12		\$30,000	\$360,000		
					<u>\$1,320,300</u>	\$7.18	
Special Benefit					<u>\$711,000</u>	\$3.85	

The top right portion of the worksheet states the useable square footage of the C-zoned property (106,700 sf) and the useable square footage of the MR2 property (77,277 sf). When the respective Macaulay values are divided by the associated square footage, the following is revealed (*see* CP 931 for calculations): For the C-zoned property, Macaulay assigned a without sewer value of \$5.00/sf, a with sewer value of \$9.00/sf and determined a special benefit value of \$4.00/sf – the highest end of the established range for C-zoned property. For the MR2 property, Macaulay assigned a without sewer value of \$0.97/sf, a with sewer value

of \$4.66/sf and determined a special benefit value of \$3.60/sf – 217.5% of the highest end of the special benefit value range that Macaulay established for MR2 properties. (*Compare* CP 1480.)

Just as it diminishes Macaulay’s summary table, the City also discounts the relevance of their expert’s worksheet, saying the worksheets “often aren’t the total story.” (City’s Brief at p. 79.) But, explanation of Macaulay’s conclusions was provided to Stokes in only two places: (1) The Mass Appraisal Report which purports to explain the established special benefits value ranges Macaulay in the summary table (CP 1480, 1556-57) – a Report upon which the City states Stokes cannot rely because his property is split-zoned – and (2) the worksheet (CP 941) – which the City also directs us to ignore. When Macaulay was pressed on cross-examination as to the location of relevant info to learn and evaluate the valuation methodology for the Stokes Property, he responded: “Well, like I said, a lot of times we’re working internally off a spreadsheet and running numbers.” (CP 2215.) This “internal” work process, however, is not provided to the LID property owners and never described in the Appraisal Report. (*See* CP 2212.)

The USPAP Standard 6-8(a) provides:

A written report of mass appraisal must clearly communicate the elements, results, opinions, and value conclusions of the appraisal.

Each written report of a mass appraisal must:

(a) clearly and accurately set forth the appraisal in a manner that will not be misleading;

(b) contain sufficient information to enable the intended users of the appraisal to understand the report properly;

* * *

(s) describe how value conclusions were reviewed; and, if necessary, describe the availability of individual valuation conclusions... (CP 1071-75.)

The Macaulay Report falls far short with regard to these requirements. Stokes presented credible and compelling evidence that the Stokes Property was assessed disproportionately to other similarly situated LID parcels. The Macaulay Report fails to present any explanation for the disparate treatment and Macaulay was unable to articulate an explanation when he testified to the Examiner.

Remarkably, the City seems to embrace that fact that its appraiser failed to present any meaningful description of the methodology used to assign values to the Stokes Property. It argues at page 79:

Ultimately, every property is somewhat unique and it is pure speculation as to whether the alleged differences in value are the result of some flawed appraisal process or any arbitrary conclusion.

The only reason there is a need to speculate about the cause of the obvious disparate treatment is because Macaulay failed to show or explain his work as required by the USPAP standards, or at least explain why certain

properties fall so far outside Macaulay's own established value ranges. The City should not benefit from Macaulay's failure.

Of course, in the face of credible rebutting evidence that the Stokes Property was assessed disproportionately, it was the City's burden to prove to the Examiner (acting as a Board of Equalization) that the assessment was, in fact, fair and proportionate. *Indian Trail Trunk Sewer*, 35 Wn. App. at 842-43; *Kusky*, 85 Wn. App at 501. The City did not do that, but instead consistently hid behind presumptions of validity that were inappropriately applied in the objection hearing. The City presented no evidence to explain the inconsistent treatment or prove that the different treatment nonetheless resulted in a proportionate assessment.

Finally, in two sentences, the City attempts to explain away the vastly different valuations of the Stokes' MR2 Property No. 27 and the immediately adjacent MR2 Property 34 by claiming dissimilarities between the properties without substantiation. The City claims that LID Parcel 34⁷ is "landlocked and located much further from Meridian Avenue. (City's Brief at p. 79.) The City makes no citation to the record to support the assertions. The statements are false. The map shows the properties' respective proximity to Meridian. (See Opening Brief at p. 21.) Property 34 is also not landlocked. Like the Stokes Property, is

⁷ The City also notes LID Property 75, but Stokes made no comparison to that parcel.

already improved with a single family home, which necessarily requires access. (CP 963-65.) Macaulay's own file contains the deed for Property 34 which shows that the property has an access easement. (CP 969-72.)

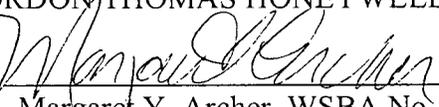
Macaulay's worksheet for Property 34 (CR 894) reveals that the difference is not the result of any lack of access or greater distance from Meridian. Rather, it shows that (without explanation) Macaulay applied different per unit pricing in the before and after analysis. (Interestingly, unlike the Stokes Property, Macaulay's without sewer land value for Property 34 is substantially greater than the assessed value (\$235,700). (See CP 961, *compare* CP 944, 941.) The differences are random, arbitrary and without explanation. The properties are simply treated differently – most obviously with the extremely low without sewer (before) value applied to the Stokes Property.

The arbitrary assessment charged against the Stokes Property should be deemed invalid. The assessment should be reduced from \$472,120 to \$377,570.

Dated this 13th day of July, 2012.

Respectfully submitted,

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By 

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DIVISION II

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No. 42842-3-11

STATE OF WASHINGTON
BY 
COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON DEPUTY

HASIT, LLC, et al.,

Respondents,

v.

CITY OF EDGEWOOD,

Appellant.

CERTIFICATE OF SERVICE

GORDON THOMAS HONEYWELL LLP

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Family LLC and Ray and Eldean Rempel as
Trustees for the Revocable Trust
Agreement of Ray E. Rempel and Eldean
B. Rempel dated December 26, 2006

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THIS IS TO CERTIFY that on this 13th day of July, 2012, I did serve via U.S. Postal Service (or other method indicated below), true and correct copies of the foregoing Respondents Stokes and Rempel's Reply Brief by addressing for delivery to the following:

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