No. 1034377
SUPREME COURT,
OF THE STATE OF WASHINGTON

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(Court of Appeals No. 851471-I)

SHG GARAGE SPE, et al.,

*Petitioners,*

v.

The City of Seattle,

*Respondent.*

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# CITY OF SEATTLE'S ANSWER TO CO-PETITION FOR REVIEW

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## I. INTRODUCTION

Petitioners Victor and May Moses ("Moses") own real property within Respondent City of Seattle's (the "City") Waterfront Local Improvement District ("LID"). The Moses disagree with the Court of Appeals' decision in this case, but their co-petition also fails to cite – let alone meet – any of the RAP 13.4 criteria that might justify review by this Court. This failure on its own is sufficient to deny review.

The Court of Appeals' decision is sound, well-reasoned, and creates no conflict with any decision by the Supreme Court or the Court of Appeals. The decision does not involve an issue of substantial public interest that should be determined by the Supreme Court. The City respectfully requests that the Court deny the petition.

## II. IDENTITY OF RESPONDENT

The City of Seattle is the Respondent in this case.

## III. COUNTERSTATEMENT OF THE ISSUES

1. Should discretionary review be denied where the Court of Appeals' decision is consistent with Supreme Court and Court of Appeals' decisions that hold that courts must review the record of proceedings before the city council?

2. Should discretionary review be denied where the Court of Appeals' decision is consistent with Supreme Court and Court of Appeals' decisions applying the presumption of correctness for LID assessment appeals, including how that presumption is applied to residential properties?

3. Should discretionary review be denied where the Court of Appeals' decision does not raise an issue of substantial public interest that should be determined by the Supreme Court, but instead applies existing precedents that have already been decided by the Supreme Court?

## IV. COUNTERSTATMENT OF THE CASE

The Court of Appeals' opinion does an excellent job of setting forth the facts and procedural history of this case. Op. at 2-6. The City concurs in Division I's statement of facts.

For the Moses' property, the City's appraiser (ABS) developed a "before" or "without" LID valuation of $2,412,200 based on its extensive review of local market data as well as its analysis of property-specific data, such as location of the parcel and the use and condition of the building on it, taking into account changes that would occur anyway if the LID had not been formed. Exhibit 20, LID_009818–009820 (Declaration of Mary Hamel, ("Hamel Decl."), ¶¶ 11-22)[1]; Exhibit 1, LID_000277. ABS concluded an "after" LID value of $2,477,329. Exhibit 1, LID_000277. Accordingly, ABS concluded that the Moses' property would receive a special benefit of $65,129 from the LID Improvements. *Id*. As the City

[1] The record before the City Council was transmitted to the Court of Appeals in 42 "exhibits" or "volumes."

determined that property owners would only be assessed for 39.2% of the special benefit they receive from the LID Improvements, the Moses' final assessment amount is $25,519. *Id.*

## V. ARGUMENT WHY REVIEW SHOULD BE DENIED

The Moses provide no analysis for how they have met the grounds for review and do not cite any of the RAP 13.4(b) considerations. The Moses do not argue that the Court of Appeals' decision conflicts with prior LID decisions of the Supreme Court or Court of Appeals. Instead, the Moses repeat arguments that they raised in briefing before the trial court, but not before the Court of Appeals. If the Moses had raised these arguments, the City would have explained why the arguments are insufficient to annul the LID assessments as to the Moses' property.

### A. Review should be denied because the Court of Appeals' decision correctly reviewed the certified record.

The Moses argue that the City forfeited its right to challenge property specific findings made by the trial court. Co-Pet. at 10-11. Additionally, the Moses suggest that "[t]he Court of Appeals, in its decision, ignored these property-specific findings. . . ." *Id.* These arguments ignore the fact that appellate courts do not review the trial court's decision in LID assessment appeals.

In LID assessment appeals, appellate court's "review[s] the superior court's appellate decision by applying the same 'fundamentally wrong basis' and 'arbitrary and capricious' standards of review **directly to the council's decision**." *Hamilton Corner I, LLC v. City of Napavine*, 200 Wn. App. 258, 267, 402 P.3d 368 (2017) (emphasis added). Review is not of the superior court's order, "[r]eview is limited to the record of proceedings before the City Council." *Bellevue Assocs. v. City of Bellevue*, 108 Wn.2d 671, 674, 741 P.2d 993 (1987).

Finally, appellate courts "may affirm the council's assessment decision on any grounds supported by the record." *Hamilton Corner I, LLC,* 200 Wn. App. at 267. Accordingly, the Moses could not simply rely on factual findings or legal conclusions of the trial court to annul their LID assessment.

This is the usual method of review when cases involve an administrative record. Appellate courts take the same approach in cases brought under the Washington Administrative Procedures Act or the Land Use Petition Act ("LUPA"). *See Serres v. Washington Dep't of Ret. Sys.*, 163 Wn. App. 569, 580–81, 261 P.3d 173 (2011) ("In reviewing an agency's order, we sit in the same position as the superior court . . . We limit our review to the record of the administrative tribunal, not that of the trial court."); *Applewood Ests. Homeowners Ass'n v. City of Richland*, 166 Wash. App. 161, 167, 269 P.3d 388 (2012) ("We sit in the same position as the superior court when conducting judicial review under LUPA and give no deference to its findings.").

In reviewing a LID assessment appeal, the Court of Appeals presumes "the city council's assessment was proper, and the challenging party bears the burden of proving otherwise." Opinion at 9 (quoting *Bellevue Assocs. v. City of Bellevue*, 108 Wn.2d 671, 674, 741 P.2d 993 (1987). Accordingly, it is the Owners who bore the burden of arguing that any property-specific issues met the high standard for annulling or modifying the LID assessments on the basis of the record of proceedings. The Court of Appeals, whose review is limited to record before the City Council in LID assessment appeals, did not need to review the superior court's order or correct the errors contained in it.

It was the Moses' responsibility to make their arguments for why the record of proceedings showed that the City's LID assessment was fundamentally flawed or arbitrary and capricious. The Moses failed to do so. Instead, the Moses chose to rely on the briefing submitted by the other property owners. On September 5, 2023, the Moses filed a "NOTICE" joining

the other property owners' brief and directing the Court of Appeals to its trial briefing.

The arguments raised by the Moses were not made in the briefs submitted to the Court of Appeals. Regardless, the arguments are meritless and unsupported by case law.

### B. Review should be denied because the Court of Appeals' decision correctly applied the presumption of correctness as to the Moses' LID assessment.

#### 1. The Moses could not overcome the presumption of correctness because they provided no evidence that their property would not increase in value due to the City's improvements.

The Moses suggest that their properties' value is driven by "luxury amenities, protected views, and exclusive location." Co-Pet. at 8. They argue, without support, that the City construction of $346 million of streetscape and park improvements "over 500 feet" from their property will "do little to add value." *Id.* The Moses do not cite a single case in support of this argument, nor do they provide any evidence that the

prospective buyers of high-end condos do not consider park and street improvements located near their building. To the extent the Court of Appeals considered arguments raised in the Moses' Notice, it rightly determined that this argument was insufficient to rebut the City's presumption of correctness.

"[C]laims of unfairness made before the city council, without supporting evidence of **appraisal values and benefits**, are inadequate to overcome these presumptions of fairness and appearance of correctness." *Abbenhaus v. City of Yakima*, 89 Wn.2d 855, 861, 576 P.2d 888 (1978) (emphasis added). The Moses' argument that high-end condos do not benefit from parks and street improvements is merely a "claim of unfairness" if they do not provide any actual appraisal data to support their position.

Before the City's Hearing Examiner, the Moses offered no expert testimony or evidence establishing any actual impact on value from these alleged "preferences." The City's Hearing Examiner noted that Mr. Shorett's reports and testimony were

not sufficient to rebut the presumption in favor of the assessments because Mr. Shorett "did not provide an analysis of the current market value of the properties he was addressing or the effect of the LID Improvements on any specific property." Exhibit 1, LID_000172; see also Exhibit 5, LID_002432 (Shorett "hired to review the [Final Benefit Study] and comment on it but not to come up with an alternate number."). Without providing any of that date, the Moses' arguments are claims of unfairness without supporting evidence.

### 2. The Moses could not overcome the presumption of correctness because they provided no evidence that proportionally applying special benefits to a condominium building lead to an error in their assessment.

The Court of Appeals' decision explained that "'a special assessment may not substantially exceed a property's special benefit.' *Hasit*, 179 Wn. App. at 933," and that "a property should not be assessed 'proportionately more than its share' of the total assessment relative to other properties in the LID." Op.

at 7 (citing *Cammack v. City of Port Angeles*, 15 Wn. App. 188, 196, 548 P.2d 571 (1976)). The Moses' co-petition argues that the City erred by following the law's proportionality requirement.

The Moses argue, again without citation to expert appraisal evidence or case law, that applying a percentage to divide the value increase of a condominium building among the individual condominium owners shows that there was no parcel-by-parcel special benefit analysis. Co-Pet. at 10.

The City's lead appraiser, Robert Macaulay of ABS, did explain his well-founded methodology on this point. Explaining that the appraisal: 1) evaluated each condominium on a parcel-by-parcel basis; 2) adjusted its estimated "after" values to ensure that all condominiums at 1521 2nd Avenue received the same valuation when expressed as a percentage of the unit's "before" value to ensure proportionality. Exhibit 20, LID_009892–009893 (Third Declaration of Robert J. Macaulay, ¶¶ 3–8).

The City's appraiser took this approach because their research showed that special benefits attributable to residential property from newly developed park space accrue equally to all units in a given building, regardless of other market-based factors (i.e., room count, condition, quality of amenities, etc.). *Id.* Further, their research did not indicate any market basis for varying levels of special benefit accruing to residential units within the same existing building. *Id.* After the City's appraiser measured the increase in value to each condominium that was due to the LID Improvements (i.e., the special benefit), they adjusted the percentage of special benefit each condominium would receive in order for the assessments to be proportionate for condominiums in the same building. *Id.*

### C. Review should be denied because the Court of Appeals' decision does not raise an issue of substantial public interest that should be determined by the Supreme Court.

Applying the correct standard of review in LID assessment appeals is an issue of substantial public interest.

However, it is not an issue that needs to be determined again by the Supreme Court. The Supreme Court has provided clear guidance as to the standard of review numerous times over the last sixty-six years that the standard has been in place for LID assessments. The Court of Appeals' decision sets forth a thorough review of the principles governing LID assessments, as well as the law governing the complex standard of review in LID assessment appeals. There is no substantial public interest in the Supreme Court reviewing the Court of Appeals' decision.

## VI. CONCLUSION

The decision of the Court of Appeals is entirely consistent with decisions of this Court and of the Court of Appeals; it raises no significant question of law under the constitution; and it raises no issue of substantial public interest that should be determined by this Court. Therefore, review is not justified under RAP 13.4(b). The City respectfully requests the Court deny the co-petition for review.

*I certify that this document is in 14-point Times New Roman and contains 2,008 words, in compliance with the Rules of Appellate Procedure. RAP 18.17(b).*

RESPECTFULLY SUBMITTED this 4th day of October, 2024.


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I certify under penalty of perjury under the laws of the State of Washington that I filed this document via the Clerk's electronic portal filing system, which should cause it to be served by the Clerk on all parties, and I emailed a courtesy copy of this document to:

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DATED this 4th day of October, 2024, at Seattle, Washington.

s/ Andrew C. Eberle
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## October 04, 2024 - 1:30 PM

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