No. 1034377
SUPREME COURT,
OF THE STATE OF WASHINGTON

(Court of Appeals No. 851471-I)

SHG GARAGE SPE, et al.,

Petitioners,

v.

The City of Seattle,

Respondent.

CITY OF SEATTLE'S ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

The City is spending $724 million to transform its central waterfront. One funding source for this program is a Waterfront Local Improvement District ("Waterfront LID") that allows the City to assess property owners whose properties increase in value due to the improvements. Under chapters RCW 35.43 and 35.44, cities are vested with the authority to make local improvements and to require properties specially benefited by those improvements to help cover the costs through LID assessments.

Petitioners in this case ("the Owners") own 21 of the 6,238 properties included in the Waterfront LID. The Owners in this case argue that the improvements funded by the Waterfront LID, constructed at a cost of $346 million, provide no increase in value to their properties. The Court of Appeals rejected the Owners' attempt to avoid paying their fair share because "the City's LID assessments were not calculated on a fundamentally

wrong basis and . . . the City Council did not act arbitrarily or capriciously in adopting the LID assessments." Op. at 24.

The Owners disagree with the Court of Appeals' decision in this case, but their petition 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.

In its decision, the Court of Appeals conducted a straightforward application of the standard of review that has been in place for LID assessments for the last sixty-six years. 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 applying the presumption of correctness for LID assessment appeals?

2. Should discretionary review be denied where the Court of Appeals' decision is consistent with Supreme Court and Court of Appeals' decisions that hold that property owners must present expert appraisal evidence to rebut the City's presumption of correctness?

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

4. 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 with Division I's statement of facts.

Pursuant to RAP 13.4(c)(6), the statement of the case should contain "appropriate references to the record." The Owners' statement of the case provides no citations to the record. Instead, Owners claim without support that WSDOT's removal of the SR 99 Viaduct makes it impossible to assess their properties. Pet. at 8. This statement is incorrect.

The Court of Appeals' decision explained that the Owners provided no evidence to support this assertion and concluded that this could not be a "fundamentally wrong basis." Op. at 13-14. The City's appraiser (ABS) correctly analyzed the impact of the removal of the Viaduct because a primary assumption of the Final Benefit Study "is that in the before (without LID)

scenario, the Alaskan Way viaduct has been removed and Alaskan Way is rebuilt, to WSDOT standards, at street level." Exhibit 1, LID_000183; Exhibit 1, LID_000299-300[1]. The record contains evidence and testimony demonstrating that ABS's "without" LID estimates already included any value increase associated with the removal of the Viaduct and the accompanying rebuild of Alaskan Way to WSDOT standards. *See e.g.*, Exhibit 20, LID_009820; Exhibit 1, LID_000183; Exhibit 6, LID_002965.

The City notes that RAP 13.4(c)(9) provides a list of the documents that should be contained in an appendix to a petition for review. RAP 13.4(c)(9) does not include the trial court decision or a party's motion for reconsideration. The Owners include both documents, while failing to provide the City's answer to their motion for reconsideration.

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

V. ARGUMENT WHY REVIEW SHOULD BE DENIED

The Owners 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 Owners do not argue that the Court of Appeals' decision conflicts with prior LID decisions of the Supreme Court or Court of Appeals. Instead, the Owners are asking this Court to grant review to rewrite the presumptions of correctness for LID assessment appeals to excuse their failure to present the required expert appraisal evidence. Pet. at 11. The Owners argue, without any supporting facts or case law, that case law governing LID assessment appeals should only be applied to smaller, "run-of-the-mill" projects. Pet. at 1-2. The legislature, in Chapters RCW 35.43 and 35.44, made no such limitation.

In support of their request for this Court to rewrite the legislature's LID statute, the Owners assign "required reading" of the superior court's order and an opinion of Dr. Crompton.

Pet. at 3-4. Neither of these two documents provide any support that the Court of Appeals' decision conflicts with any Court of Appeals or Supreme Court case. Nor do either document contain expert appraisal evidence that could be sufficient to overcome the presumption that the City's assessment was correct.

Before the superior court, the Owners submitted a 116-page proposed order that applied the wrong standard of review and improperly undertook an independent evaluation of the merits of the parties' evidence. CP 687-803. The superior court entered the Owners' proposed order nearly verbatim, resulting in a radical rewriting of the LID statutes and well-established LID case law. CP 810-926. 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.

Assessing Dr. Crompton's testimony, the Court of Appeals correctly noted that the Owners' experts' including Dr.

Crompton, failed to provide expert evidence demonstrating that their properties would not be specially benefitted. Op. at 11. As the City's Hearing Examiner noted: "Dr. Crompton did not complete any site-specific analysis of the area in relation to the Waterfront LID Improvements, subject properties, or special benefits." Exhibit 1, LID_000068.

The Owners' proposed new rules for LIDs are nonsensical (including their argument that the established case law can only be applied the "typical and normal" LIDs), but even if they were supported by sound public policy, this Court has held that it "should resist the temptation to rewrite an unambiguous statute to suit our notions of what is good public policy, recognizing the principle that 'the drafting of a statute is a legislative, not a judicial, function.'" *Associated Press v. Washington State Legislature*, 194 Wn.2d 915, 930, 454 P.3d 93 (2019) (citing *State v. Jackson*, 137 Wn.2d 712, 725, 976 P.2d 1229 (1999). The Court should reject Petitioners' invitation to redraft the LID statute.

In 1957, the legislature amended the controlling statute for LIDs to limit judicial review of LID assessments. 1957 Wash. Sess. Laws 514 (amending RCW 35.44.250). Specifically, the legislature restricted judicial authority to "correct, change, modify, or annul" assessments solely to instances where the assessment is "founded upon a fundamentally wrong basis and/or the decision of the council or other legislative body thereon was arbitrary or capricious." *Id.* This Court embraced the limited standard of review based on the amendment of the statute, noting that this standard "most effectively carries out the legislative intent in limiting court involvement in assessment proceedings." *Abbenhaus v. City of Yakima*, 89 Wn.2d 855, 859, 576 P.2d 888 (1978).

Legal Standard

The Court of Appeals' opinion correctly sets forth both the law governing LID assessments in Washington and the limited standard of review for appeals of LID assessments. Op. at 7-10.

The Owners continue to misquote one of the important legal principles in this case despite the Court of Appeals' decision noting that they misquoted the law. The Owners cite *Heavens* for the proposition that "LID assessments . . . may not exceed actual special benefit accruing to each property as a result of the LID improvements." Petition 12. The Court of Appeals highlighted that this misquotes *Heavens*. Op. at 10 ("we note that the Owners misquote two legal principles. First, citing *Heavens*, the Owners state that 'LID assessments must . . . not exceed the actual special benefit accruing to each property as a result of the LID improvements.' This is incorrect. Instead, the LID assessment must not *substantially* exceed the special benefit accruing to a property. *Hasit*, 179 Wn. App. at 933; *Heavens*, 66 Wn.2d at 563."). This is not a difference in opinion as to what the case holds, but rather a refusal to accurately cite the case law to fundamentally alter the standard of review in LID assessment appeals.

A. Review should be denied because the Court of Appeals' decision correctly applied the presumption of correctness.

The Owners argue that the Court of Appeals should not have applied the presumption of correctness to the City's Waterfront LID. Pet. at 13-20. The Owners do not cite to any cases or statutory provision that would support ignoring the standard of review in LID assessment appeals. *Id.* Nor do the Owners point out how the Court of Appeals' decision conflicts with any case.

The Owners argue that the Waterfront LID is not normal, but do not point to any statutory provision or case that prohibits the use of a local improvement district to fund a variety of improvements that benefit many properties. There is nothing abnormal about the City's Waterfront LID assessment. The Court of Appeals correctly noted the level of detail, data, and analysis that went into the City's assessment. Op. at 15-18.

The Court of Appeals' decision correctly outlined and applied the standard of review. Op. at 9 (citing *Abbenhaus*, 89

Wn.2d at 861). Nevertheless, the Owners argue that the Court of Appeals should have abandoned the well-established presumption of correctness because: 1) the improvements had not yet been constructed; 2) COVID-19; and 3) the City's appraiser allegedly failed to comply Uniform Standards of Professional Appraisal Practice ("USPAP") standards. Pet. at 13-20. The Court of Appeals' rejection of these arguments was correct and does not conflict with any appellate cases.

1. Case law establishes that LID improvements do not need to be constructed in advance of the assessment.

The Owners first argue that improvements being completed in the future means LID standards do not apply. Pet. at 14. The Court of Appeals correctly held that the Owners argument on this topic relied on "a mischaracterization of *Bellevue Associates*" and that the Owners offered "no other argument suggesting that the time between the appraisal and the completion of the LID improvements rendered the valuations inaccurate." Op. at 21.

Further, this argument was rejected in *Hamilton Corner I, LLC v. City of Napavine,* 200 Wn. App. 258, 273, 402 P.3d 368 (2017). The property owners in that case also argued that the appraisal "was completed too far in advance of the LID improvements." *Id.* In rejecting this argument, the court explained that the owner "offers no authority to support its contention that an appraisal must be done closer to the completion of the LID improvements." *Id.; see also Little Deli Marts, Inc. v. City of Kent*, 108 Wn. App. 1, 7, 32 P.3d 286 (2001) ("[A] city may levy assessments prior to completion of an improvement.").

2. The COVID-19 pandemic cannot change the presumption of correctness when it took place after the appraisal's valuation date.

Next, the Owners argue that the standard of review cannot be applied because of COVID-19. Pet. at 15. The Court of Appeals correctly rejected this argument, noting that "the assessments predate the onset of the pandemic" and that "before

the Hearing Examiner, the Owners' own expert acknowledged that the Appraisal Institute's guidance on conducting appraisals during the pandemic did not apply to appraisals done before the onset of the pandemic." Op. at 14-15. The Court of Appeals also correctly applied this Court's precedent that fair market value "'means neither a *panic price*, auction value, speculative value, *nor a value fixed by depressed* or inflated prices.'" Op. at 15 (citing *Bellevue Plaza*, 121 Wn.2d at 404).

The goal of the special benefit analysis is to isolate the increase in fair market value caused by the improvement, rather than changes in value due to external factors. Unforeseeable events—whether good or bad—occurring after the date of valuation are irrelevant. *See* Exhibit 20, LID_00009847-009848 (explaining that it is not reasonable practice to consider events occurring after the valuation date, noting that "if a significant event occurred after October 1, 2019 that would dramatically increase hotel occupancy rates (such as the relocation of a major corporate headquarters to downtown Seattle in 2020), we could

not credibly seek to increase the appraised values in the Final Benefit Study.").

The COVID-19 pandemic is exactly the sort of "panic price" event that governing LID law states should not be considered when determining the fair market values underpinning LID assessments. *See* Exhibit 6, LID_002981-002982 (describing the impact of market fluctuations and recessions on the appraisal of fair market value).

3. The Court of Appeals correctly determined that the City's appraisal complied with USPAP.

The Owners argue that the Court of Appeals' erred in finding that the City's appraisal complied with USPAP standards. Pet. at 16-20. The Court of Appeals' decision explained at length why the City's appraisal complied with applicable USPAP standards. Op. at 15-18. Additionally, as the Court of Appeals noted, the Owners failed to present any evidence demonstrating that the alleged violations of USPAP standards led to inaccurate valuations. Op. at 19.

The Owners' arguments rely on the testimony of Randall Scott. Mr. Scott is "not a licensed appraiser, a Member of the Appraisal Institute (MAI) or a Certified Assessment Evaluator (CAE)." Exhibit 1, LID_000063. Further, as the Hearing Examiner noted: "Mr. Scott testified that he . . . is not qualified to prepare a mass appraisal, and has never been retained to prepare a special benefit study. He also testified that his reports are not compliant with USPAP standards, as they are not appraisal reviews. Mr. Scott testified that he did not calculate a special benefit for any of the properties under his review or quantify the impact of any conclusions in his reports on the property values." *Id.* Mr. Scott, who is not a licensed appraiser, cannot present "expert appraisal evidence."

The Owners' USPAP argument is an attempt to penalize the City for doing a far more in-depth analysis than a simple mass appraisal would require. Nothing in the cases reviewing LID assessment appeals indicates that this would be a fundamental flaw, which is likely why no LID decision has ever mentioned

USPAP standards, let alone annulled a LID assessment on that basis. Accordingly, even when considered on its merits, the Owner's interpretation of USPAP standards is wrong.

Regardless of whether ABS complied with applicable USPAP standards (it did), its value conclusions were amply documented and supported as evidenced by ABS's summary report on its Final Benefit Study (Exhibit 1, LID_000180-380), the addenda accompanying that report (Exhibits 1-2, LID_000381-630), and ABS's testimony during the Final Assessment Hearing. *See, e.g.*, Exhibit 20, LID_009894-98906; Exhibit 20, LID_009834-9863; Exhibit 7, LID_003219-003226. At best for the Owners, this is a dispute between experts, which was resolved in the City's favor by the Hearing Examiner. Exhibit 1, LID_000067. The standard of review restricts this Court from evaluating which expert has a better view of USPAP compliance to nullify the LID Assessment. *Time Oil Co. v. City of Port Angeles*, 42 Wn. App. 473, 479, 712 P.2d 311 (1985).

B. Review should be denied because the Court of Appeals' decision correctly applied the case law concerning the evidence necessary to rebut the City's presumption of correctness.

The Owners suggest that the Court of Appeals' decision places an impossible burden on property owners. Petition 20-21. This argument has no merit. The certified record shows that the City reduced the assessments for 15 properties, including five of the Owners' properties, when they submitted expert appraisal evidence. Exhibit 21, LID_010915–60; Exhibit 1, LID_000069. The Owners' argument is that they did not need to submit any appraisal evidence, and could simply rely on vague statements from appraisers that there is "no way to accurately estimate what special benefits—if any—might ultimately flow from the future LID Improvements anticipated in 2024." The Court of Appeals correctly held that such statements were not sufficient to rebut the City's presumption. Op. at 11.

1. The Court of Appeals did not require the Owners to show that they would receive no special benefit from the LID improvements.

The Owners incorrectly claim that the Court of Appeals decision required them to "show that they would receive *no* special benefit from the project." Pet. at 21. It was the Owners, not the Court of Appeals, that decided to argue that there was no special benefit. Op. at 19 (citing the Owners' counsel at oral argument).

The Court of Appeals found that "the Owners' evidence did not demonstrate that the properties did not benefit from the improvements and was thus insufficient to overcome the presumption of validity." Op. at 10. Additionally, the Court of Appeals held that "without evidence from the Owners showing that the percentage increases are inaccurate, the Owners cannot overcome the presumption that the City's assessment was accurate." Op. at 19. The Court of Appeals correctly held that the Owners needed to provide expert appraisal evidence that showed either that their properties received no benefit or that the City's

LID assessment substantially exceeded their properties' special benefits.

"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 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 Wn. 2d 397, 403, 851 P.2d 662 (1993) (emphasis added) (quoting *City of Seattle v. Rogers Clothing for Men, Inc.*, 114 Wn.2d 213, 231, 787 P.2d 39 (1990)); *see also Douglass v. Spokane County*, 115 Wn. App. 900, 907, 64 P.3d 71 (2003).

"[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*, 89 Wn.2d at 861 (emphasis added); *accord Kusky*, 85 Wn. App. at 498 ("If the challenging party presents expert appraisal evidence showing

that the property is not benefited by the improvement, the burden shifts to the city to prove that the property is benefited."); *Pederson v. Pub. Util. Dist. No. 1 of Skagit Cnty.*, 149 Wn. App. 1023 (2009) (unpublished and nonbinding) ("The required proof is expert appraisal evidence showing that the fair market value of the parcel would not increase with the improvement."); *Cent. Terminals*, 2023 WL 3196427, at *5 (unpublished and nonbinding) ("Claims of unfairness that lack supporting evidence of appraisal values and benefits are inadequate to overcome the presumptions.").

The Owners presented no expert appraisal evidence showing that their properties were not specially benefited by the LID Improvements. Nor did the Owners present expert appraisal evidence that their properties' assessments were greater than the benefits they received. None of the Owners' arguments in their petition for review excuses their failures to do so.

It is not that the Owners lacked expert appraisers—they hired nine experts, including four appraisers. CP 279. It is that

none of those experts presented any evidence of appraisal values and benefits. Thus, although the Owners presented testimony of several expert appraisers, that evidence does not qualify as "expert appraisal evidence" because the appraisers made no attempt to provide evidence of appraisal values and benefits. *Rogers*, 114 Wn.2d at 229-30; *Abbenhaus*, 89 Wn.2d at 861. Without such evidence, the Court of Appeals correctly concluded that they could not overcome the presumption that their LID Assessments were proper. *Id.*

2. The Court of Appeals correctly held that the Owners had not demonstrated that the City's appraisal was speculative.

The Owners argue that the Court of Appeals should have allowed them to prevail on generalized complaints that the City's appraisal was speculative instead of requiring them to provide evidence that their properties were unfairly assessed. Pet. at 20-21. This is the exact argument that this Court rejected in *Abbenhaus*, holding that: "[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." 89 Wn.2d at 861.

The Owners suggest that the City's appraisal was speculative because some increases in value were calculated to be a .4% increase. Pet. at 21. Before the Court of Appeals, the Owners had argued that increases of .4% to 3.2% were too small to accurately measure. The Owners do not explain that given the substantial value of the Owner's multi-million dollar properties, those percentages reflected an increase in value due to the special benefits of between $65,129 and $4,511,000. CP 459, 532. The argument that a property's $4,511,000 increase in value is so small that it is impermissibly speculative is not persuasive.

The Owners also claim that the City "has no evidence" supporting its assessments. Pet. at 21. As the Court of Appeals found, the City's Final Benefits Study (the comprehensive study used to determine the special benefit that each property within the LID would receive from the LID Improvements) "details in over 140 pages how special benefits were calculated for

commercial, residential, and special purposes properties by analyzing comparable projects and relevant market data." Op. at 17. The Owners' suggestion that this is "no evidence" is not credible.

3. The Court of Appeals correctly held that none of the evidence submitted by the Owners demonstrated that the City's appraisal was founded on a fundamentally wrong basis.

The Owners' petition suggests that several arguments are "appraisal evidence." Pet. at 23. The vast majority of this evidence is not "appraisal evidence." The Court of Appeals' decision correctly noted the contradiction at the heart of the Owners' argument: "the Owners allege that testimony before the Hearing Examiner provided "sufficient information to calculate an alternative special benefit amount." At the same time, however, the Owners also contend that "the LID study and the potential benefit estimates are simply too speculative to allow for a reliable counter-appraisal." Op. at 11.

The Owners' petition for review fails to provide any support for how this evidence could prove that the City's appraisal was founded on a "fundamentally wrong basis" as required by the standard of review. Instead, the Owners are asking this Court to review their evidence and undertake an independent evaluation of the merits. This Court expressly prohibits an independent evaluation of the merits in LID assessment appeals. *Doolittle v. City of Everett*, 114 Wn.2d 88, 93, 786 P.2d 253 (1990).

The Owners suggest that Mr. Gibbons' argument concerning discounted cash flow analysis is an "indisputable example of over-assessment [that] exceeds $2,000,000." Pet. at 24. This example is very much in dispute. Before the Court of Appeals, the Owners provided no legal authority requiring the City to use a discounted cash flow analysis when estimating special benefits. Absent such authority, Owners' arguments fail as they amount to no more than attacks on the accuracy of the City's "after" valuations unsupported by competing valuation

evidence. Such arguments cannot demonstrate a fundamental flaw in the City's assessment methodology.

No such case law exists because, as the Court of Appeals noted, "[t]he measure of special benefits is 'the difference between the fair market value of the property *immediately after* the special benefits have attached and its fair market value before they have attached.'" Op. at 21 (citing *Bellevue Assocs.*, 108 Wn.2d at 675). LID assessments do not consider discount cash flow analysis because they are a valuation of one point in time. Accordingly, the Court of Appeals correctly held that Mr. Gibbons' evidence was insufficient to rebut the City's presumption of correctness.

The Owners' arguments concerning Dr. Crompton fail for the same reasons. Dr. Crompton's testimony failed to point to any fundamentally wrong basis with the City's appraisal methodology, and Dr. Crompton did no site-specific analysis of the area in relation to the Waterfront LID improvements. The City's appraiser explained how Dr. Crompton's work was used

as part of their study of the special benefits in this case. Exhibit 7, LID_003087–003089 (Mr. Macaulay's testimony regarding use of Dr. Crompton's work in the study). The City's appraiser did not merely adopt Dr. Crompton's work wholesale and apply it without adjustment, as Dr. Crompton assumed; it was simply one of many pieces of information they used to inform their opinions. Exhibit 20, LID_009823–009824 (explaining that "the value conclusions in the Special Benefit Study do not represent a direct application of Dr. Crompton's work."); Exhibit 7, LID_003088 (Mr. Macaulay testified that ABS "didn't use [Dr. Crompton's work] to assign value increases," but rather used it as background data). Nothing in Dr. Crompton's report provides a basis for review.

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

The Owners argue that the Court of Appeals "incorrectly reversed portions of the superior court's judgment that the City did not appeal." Pet. at 28. Owners assert that: "The decision

being appealed from was that of the trial court." Pet. at 29. This argument ignores how administrative appeals work generally and how LID assessment appeals work in particular. It is the Owners, not the City, who failed to raise and preserve their arguments before the Court of Appeals.

In LID assessment appeals, an appellate court's role is to "review 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, but rather "[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, the appellate court "may affirm the council's assessment decision on any grounds supported by the record." *Hamilton Corner I, LLC,* 200 Wn. App. at 267.

The Court of Appeals correctly noted that their review was "limited to the record of proceedings" and the standards of review are applied to the "council's decision," not the trial court's decision. Op. at 9. 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.

This is the usual method of review when cases involve an administrative record. 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 Wn. 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."); *See Franz v. Emp. Sec. Dep't*, 43 Wn. App. 753, 756, 719 P.2d 597 (1986) ("We review a trial court's decision concerning a final administrative ruling by applying the proper standard of review directly to the record at the administrative proceedings. . . . The Commissioner's decision is presumed correct and the burden of proof is on the party attacking it.").

Had the Owners thought these arguments had merit and raised them with the Court of Appeals at any time prior to their motion for reconsideration, the City would have pointed out why they were incorrect as it did in its answer to their motion for reconsideration.

D. 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 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 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 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).

I certify that this document is in 14-point Times New Roman and contains 4,997 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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CERTIFICATE OF SERVICE

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

s/ Andrew C. Eberle
Andrew C. Eberle, Assistant City Attorney

SEATTLE CITY ATTORNEY'S OFFICE - CONTRACTS AND UTILITIES

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