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Division I
State of Washington
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No. 85147-1

Case #: 1034377

COURT OF APPEALS, DIVISION ONE
OF THE STATE OF WASHINGTON

THE CITY OF SEATTLE,

Appellant,

v.

SHG GARAGE SPE, et al.,

Respondents.

CO-PETITION FOR REVIEW

Tanner J. Hoidal
WSBA #56660
Peter C. Ojala
WSBA# 42163
OJALA LAW INC., P.S.
PO Box 211
Snohomish, WA 98291
T: 425-367-1691
Attorneys for Petitioner Moses

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Introduction

Victor and Mary Moses (“Moses”) hereby co-petition the Washington State Supreme Court to review the published decision of the Washington Court of Appeals in *City of Seattle v. SHG Garage SPE et al.*, No. 85147-1, which reversed the King County Superior Court’s annulment of the LID assessment imposed by the City of Seattle. Moses joins, as Co-Petitioners, the Petition for Review filed by Eric B. Wolff and R. Gerard Lutz of Perkins Coie LLP on behalf of the other property owners involved in this case¹ and fully adopts and incorporates by reference the Issues Presented for Review, Statement of the Case, Reasons for Review, and Argument set forth therein.

In addition, Moses submits this brief co-petition to emphasize certain issues pertaining to their residential property, which were not adequately

¹ Namely: SHG Garage SPE; SHG Retail SPE; SHG Hotel SPE, LLC; Sound Vista Properties, LLC; Elliot NE LLC; Lot B, LLC; Madison Hotel LLC; Hedreen, LLC; Hedreen Hotel LLC; 7TH & Pine LLC; Ashford Seattle Waterfront LP; EQR-Harbor Steps, LLC (SE); EQR-Harbor Steps, LLC (NE); EQR-Harbor Steps, LLC (NW); EQR-Harbor Steps, LLC (SW); EQR-Second & Pine, LLC; and United Way of King County.

addressed by the City or properly considered by the Court of Appeals.

Moses respectfully requests this Court grant review.

A. Identity of Petitioners

Victor and Mary Moses.

B. Court of Appeals Decision.

The substitute decision of the Division One of the Court of Appeals, Case # 851471-1-I, SHG Garage SPE, et. al. Respondents v. City of Seattle, Appellant, King County Superior Court No. 21-2-10100-0, filed August 5, 2024 (“Op.” or “Opinion”). A true and correct copy of the Opinion is provided herewith as Appendix A.

C. Issues Presented for Review.

1. Whether the City of Seattle's LID assessment for Moses’s residential property violates Washington law by failing to account for the unique characteristics of residential properties.
2. Whether the City’s use of speculative and unsupported projections for future property benefits justifies the annulment of the LID assessment for residential properties.

3. Whether the Court of Appeals erred by reversing the trial court on all accounts without addressing the property specific errors the trial court found, but the City did not challenge.

D. Statement of the Case.

In January 2019, the City of Seattle established Local Improvement District (LID) No. 6751 to finance a series of aesthetic waterfront improvements by assessing property owners who, according to a 2019 study, were deemed to be set to receive a special benefit from these improvements. The proposed improvements — which remain incomplete — include the construction of parks, pedestrian connections, and streetscape enhancements.

The LID assessment was challenged by multiple property owners, including Moses, who owns a residential condominium on the 23rd floor of a 38-story high-rise building in downtown Seattle². After the City's Hearing Examiner upheld the assessments, several property owners appealed to the King County Superior Court.

² See Ex. 25 LID_012192-96 (portion of Peter Shorett Appraisal Review of Moses Property dated 10/01/2019)

On March 8, 2023, King County Superior Court Judge Matthew Williams annulled the LID assessment for all property owners, finding not only a lack of measurable special benefits to Moses's property but also a fundamentally flawed assessment process. In a thorough decision, Judge Williams found that the City's method was arbitrary and capricious, relying on speculative data and failing to account for the distinct characteristics of individual properties. The court also criticized the City's disregard for professional appraisal standards and reliance on inflated benefit projections far ahead of the improvements' completion.

The City appealed, and the Washington Court of Appeals reversed the Superior Court's decision, issuing an opinion that wholly rejected the trial court's findings and reinstated the LID assessment.

The Opinion essentially insulates LID assessments from any meaningful challenge, particularly in cases like this one, where the assessment is imposed long before the project's completion. By upholding the City's assessment and the study it was based on — despite the lack of actual, measurable benefits, or a hedonic analysis that complies with accepted appraisal standards— the

Court of Appeals’ decision leaves property owners with the nearly impossible task of disproving speculative, “judgment based”³ projections of future value, which cannot be measured without resorting to conjecture. This creates a significant imbalance and undermines the fairness of the LID assessment process, effectively shielding municipalities from any accountability when assessments are based on such unsupported projections.

This Court should grant review to correct this imbalance and, at a minimum, ensure that property owners have a fair opportunity to challenge LID assessments, especially in cases like this one, where the LID is unprecedented in both its massive scale and broad scope, spanning various property types and imposing substantial assessments long before the improvements are even close to completion. Without such judicial scrutiny, property owners may be unfairly burdened with assessments based on flawed methodologies that do not reflect the actual, measurable benefits required under Washington law.

³ See, 2/27/2020 Macaulay Depo. at 43:14-44:13 (Ex. 14, LID_006553- LID_006553)

Legal standards

Under Washington law, a local improvement district (LID) assessment must provide a measurable special benefit to the properties being assessed, meaning that the improvements must directly enhance the property's value. A "special benefit" is defined as the "increase in fair market value attributable to the local improvements" *Doolittle v. City of Everett*, 114 Wn.2d 88, 103, 786 P.2d 253 (1990). Fair market value, in turn, cannot be based on speculative or inflated values *Bellevue Plaza, Inc. v. City of Bellevue*, 121 Wn.2d 397, 403, 851 P.2d 662 (1993).

RCW 35.44.010 requires that such assessments be based on actual, physical, and material benefits rather than speculative or conjectural ones, and they must be proportionate to the benefit received. The benefit must be “*substantially* more intense than the benefit to the rest of the municipality” *Heavens v. King County Rural Library Dist.*, 66 Wn.2d 558, 563, 404 P.2d 453 (1965)(emphasis added).

Under Washington law, there is a presumption in favor of the validity of LID assessments, but a presumption is not evidence, and it “disapp[ears]” in the sunshine of actual facts. *In re Indian Trail Trunk*

Sewer Sys., 35 Wn. App. 840, 843, 670 P.2d 675 (1983). The ultimate burden of showing that land within a LID is specially benefited remains with the City. *Id.*

Reasons for Review & Argument

Moses fully adopts and incorporates the Reasons for Review and Argument set forth in the Petition for Review filed by Eric B. Wolff and R. Gerard Lutz of Perkins Coie LLP on behalf of the other property owners. In addition to those reasons, Moses submits the following property-specific grounds for review and argument to address the distinct residential issues that were overlooked or improperly considered by the City of Seattle, the Hearing Examiner, and the Court of Appeals.

I. The LID Assessment Fails to Account for Unique Residential Factors and Relies on Speculative and Arbitrary Projections, Which the Court of Appeals Failed to Address

The City's assessment, as reinstated by the Court of Appeals, overlooked significant factors that impact residential properties like Moses's, particularly the established amenities and views that are central to the

property's existing value. These factors are unlikely to be enhanced by the waterfront improvements.

Moses's appraiser, Mr. Peter Shorett, provided testimony explaining that the value of properties like Moses's is largely driven by their intrinsic features—such as luxury amenities, protected views, and exclusive location—rather than external improvements like streetscape enhancements or pedestrian connections. The prospective buyers of these residential units prioritize the existing quality and uniqueness of the property itself, which the LID improvements will not impact. As a result, the waterfront improvements are unlikely to provide measurable, special benefits that would increase the value of these properties. (Ex. 4, 001861-63; LID_001967). Mr. Shorett further opined that

Furthermore, Moses's condominium enjoys sweeping western views of the Olympic Mountains and the water, views that are already protected by the building's ownership of the surrounding airspace. The City's 2019 study ignored the fact that these protected views would not be enhanced by the proposed waterfront improvements. Streetscape and park developments along the waterfront, located over 500

feet from Moses's property, do little to add value to a residential unit already optimized for its market. The failure to account for this reality in the assessment process underscores the speculative nature of the City's projections (Ex. 4, LID-_001952).

In addition to Shorett's findings, Dr. John Crompton's input and testimony further demonstrated that the City's methodology failed to capture the specific conditions affecting residential properties like Moses's, and demonstrated Moses' property was outside the range of impact of the park-like improvements contemplated by the LID (Ex. 18, LID_008636-008638; Ex. 6, LID_002646-002647).

II. The Arbitrary Application of a Uniform 2.7% Special Benefit to Residential Properties Was Not Addressed by the Court of Appeals:

The City's Study computed the proposed final assessment for condos by multiplying the market value of the property without the LID improvements by a certain percentage (e.g., 2.7%), which the City contends represents the estimated special benefit of the LID improvements applicable to all condo owners in one condominium building. (Ex. 4, LID_001949-001960).

The simple fact that every single condo within a building received the exact same special benefit percentage increase is evidence enough that Mr. Macaulay did not make an individual parcel-by-parcel special benefit analysis. (See Ex. 12, LID_005595-97)

There is no analysis whatsoever as to how the City was able to arrive at this purported benefit percentage, and the City's appraisal team was unable to provide any explanation. (See Ex. 8, LID_003551-52; Ex. 7, 003282-83)

The uniform assignment of a benefit percentage to every condo inside Moses' building fails to consider the specific characteristics of each condo inside the building.(Ex. 12, LID_005595-97).

This is a glaring error for the residential properties on appeal and the Court of Appeals' failure to address this issue is a critical oversight.

III. Moses Property Specific Findings Were Not Challenged by the City

The City forfeited its right to challenge key property-specific findings related to Moses's property, as these findings were not directly contested in its appeal. The trial court made significant and well-

supported determinations about the Moses property, which the City chose not to address.

For example, the trial Court found – and the City did not challenge – that the City’s assessment methodology as to the Moses Property was arbitrary because it did not assess to what extent the purported benefits inured to the individual residential condominiums and instead just applied a uniform special benefit percentage to every residential unit within the building. (CP 884-888; 923).

The Court of Appeals, in its decision, ignored these property-specific findings, which were never contested by the City. At a minimum, these unchallenged findings and conclusions should remain intact and should not have been disregarded. The trial court’s property-specific determinations regarding Moses’s property should stand.

Conclusion

For all the reasons set forth in this Co-Petition, as well as in the Petition for Review filed by the other property owners, Moses respectfully requests that this Court grant review

RESPECTFULLY SUBMITTED this 4th day of
September 2024.

This document contains 1738 words, excluding
the parts of the document exempted from the word
count by RAP 18.17(b), and complies with the
applicable word-count limits set forth in RAP 18.17(c).

/s/ Tanner J. Hoidal

Tanner J. Hoidal
WSBA #56660
tanner@ojalalaw.com
Ojala Law Inc., P.S.
PO Box 211
Snohomish, WA 98291
T: 425-367-1691
Attorney for Moses

CERTIFICATE OF SERVICE

On September 4, 2024, I caused to be served upon
the below named counsel of record at the address
stated below, via the method of service indicated, a
true and correct copy of the foregoing document.

<p>Mark Filipini, WSBA # 32501 mark.filipini@klgates.com Ben Moore, WSBA#55526 Ben.moore@klgates.com K&L Gates LLP 925 Fourth Avenue Suite 2900 Seattle, WA 98104-1158 <i>Attorneys for City of Seattle</i></p>	<p><input type="checkbox"/> Via Messenger <input type="checkbox"/> Via U.S. Mail, 1st class, postage prepaid <input type="checkbox"/> Via Fax <input checked="" type="checkbox"/> Via Email or via E-Service</p>
<p>Andrew Eberle Seattle City Attorney's Office 701 5th Ave Suite 2050 Seattle, WA 98104-7095 andrew.eberle@seattle.gov <i>Attorneys for City of Seattle</i></p>	<p><input type="checkbox"/> Via Messenger <input type="checkbox"/> Via U.S. Mail, 1st class, postage prepaid <input type="checkbox"/> Via Fax <input checked="" type="checkbox"/> Via Email or via E-Service</p>
<p>R. Gerard Lutz, WSBA#17692 JLutz@perkinscoie.com Eric B. Wolff, WSBA #43047 EWolff@perkinscoie.com Robert Mahon, WSBA #26523 rmahon@perkinscoie.com Perkins Coie LLP 1201 Third Avenue Suite 4900 Seattle, WA 98101-3099 T: 206-359-8000 F: 206-359-9000 <i>Attorneys for Respondents</i></p>	<p><input type="checkbox"/> Via Messenger <input type="checkbox"/> Via U.S. Mail, 1st class, postage prepaid <input type="checkbox"/> Via Fax <input checked="" type="checkbox"/> Via Email or via E-Service</p>

<p> Van Ness Feldman LLP 1191 Second Avenue, Suite 1800 Seattle, WA 98101 T: 206-623-9372 Clark Park, WSBA # 52255 cpark@vnf.com Sophia Amberson, WSBA #52528 samberson@vnf.com Amanda Kleiss ack@vnf.com Isha Willis iwillis@vnf.com imw@vnf.com </p> <p> <i>Amicus Curiae Committee for the Washington State Association of Municipal Attorneys</i> </p>	<p> <input type="checkbox"/> Via Messenger <input type="checkbox"/> Via U.S. Mail, 1st class, postage prepaid <input type="checkbox"/> Via Fax <input checked="" type="checkbox"/> Via Email or via E-Service </p>
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**I certify under penalty of
perjury under the laws of the
State of Washington that the
foregoing is true and correct.**

EXECUTED at Monroe, Washington, on
September 4, 2024.

/s/ Tanner J. Hoidal
Tanner J. Hoidal

APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

SHG GARAGE SPE; SHG RETAIL
SPE; SHG HOTEL SPE, LLC; SOUND
VISTA PROPERTIES, LLC; ELLIOTT
NE LLC; LOT B, LLC; MADISON
HOTEL LLC; HEDREEN, LLC;
HEDREEN HOTEL LLC; 7TH & PINE
LLC; ASHFORD SEATTLE
WATERFRONT LP; EQR-HARBOR
STEPS, LLC (SE); EQR-HARBOR
STEPS, LLC (NE); EQR-HARBOR
STEPS, LLC (NW); EQR-SECOND &
PINE, LLC; RRRR INVESTMENTS
(UNIT 3802); UNITED WAY OF KING
COUNTY; and VICTOR and MARY
MOSES,

Respondents,

EQR-HARBOR STEPS, LLC (SW); and
RRRR INVESTMENTS (UNIT 3800),

Plaintiffs,

v.

CITY OF SEATTLE,

Appellant.

No. 85147-1-I

DIVISION ONE

PUBLISHED OPINION

SMITH, C.J. — Washington statutes give municipalities the authority to make local improvements and fund those local improvements, in part, through assessments to property owners who obtain a special benefit from such improvements. The City of Seattle initiated a major, multiyear project to rebuild and transform its central waterfront. The City now appeals a superior court

decision which annulled the Seattle City Council's confirmation of a local improvement district assessment levied against property owners to help fund that project. We hold that the superior court erred in determining that the assessments were founded on a fundamentally wrong basis and that they were arbitrary and capricious. Accordingly, we reverse.

FACTS

In January 2019, the Seattle City Council created Local Improvement District (LID) No. 6751 to partially fund six major improvements to the downtown waterfront by assessing some costs of the improvements on the owners of 6,238 parcels in the downtown area. The six LID improvements are:

1. The Promenade: A continuous public open space extending along the west side of Alaskan Way from King Street to Pine Street;
2. The Overlook Walk: An elevated pedestrian bridge at the end of the Pike Street and Pine Street corridor that would connect Pike Place Market and the waterfront;
3. Pioneer Square Street Improvements: Includes streetscape, roadway, and sidewalk improvements to portions of South Main Street, South Washington Street, Yesler Way, and South King Street. These improvements would create pedestrian-friendly links between Pioneer Square and the waterfront.
4. Union Street Pedestrian Connection: An accessible pedestrian link between the new waterfront and Western Avenue.

5. Pike/Pine Streetscape Improvements: Pedestrian improvements along Pike Street and Pine Street between First Avenue and Ninth Avenue.

These improvements will also provide enhanced pedestrian access to and from Pike Place Market and the waterfront.

6. Pier 58 (formerly known as the Waterfront Park): A rebuilt pier park located at the base of Union Street for social gatherings and performances.

The City Council limited the total amount of assessment to affected property owners to no more than \$160 million plus the amount necessary to pay the costs of financing.

Calculation of Assessments Based on Special Benefit Study

In January 2019, the City commissioned ABS Valuation, Inc., (ABS) to estimate the increase in value accruing to each parcel due to the waterfront improvement projects, referred to as each parcel's "special benefit." ABS then allocated the cost of the projects among the LID parcel owners in proportion with those special benefits.

In November 2019, ABS submitted its final special benefit study to the City Council. Using mass appraisal techniques, market sales data, and lease data, ABS provided with- and without-LID values for each of the parcels based on "highest and best use" and market value of the affected properties. Although the study provided a general overview of ABS's reasonings and analyses, it did not include the specific calculations used to arrive at the estimated values.

Using a valuation date of October 1, 2019, ABS determined that the total special benefit estimate for all the LID parcels was \$447,908,000. Then, to calculate the recommended assessments, ABS divided the total assessment limit by the estimated total special benefit to reach a cost/benefit ratio of 39.2 percent. ABS then multiplied the special benefit assessable to each parcel by the cost/benefit ratio to determine the recommended final assessment for each parcel.

Hearings Before the Hearing Examiner

In December 2019, the City Council published and mailed notices of a public hearing for the final LID assessment roll to all property owners within the LID. The notices identified each property owner's final assessment and provided information on how to object to the assessment. Of the 6,238 properties assessed, 430 property owners submitted timely objections. The City Council designated the City of Seattle Office of Hearing Examiner to conduct the hearings and provide a recommendation to the City Council.

The appeal hearings began in February 2020, soon after the onset of the COVID-19 pandemic. The objecting property owners presented their cases-in-chief before the Hearing Examiner over the course of several days in March and April 2020. In June 2020, the City presented its case-in-chief and the objecting property owners were permitted to cross-examine the City's witnesses. In lieu of additional live testimony, the City also submitted declarations; qualifying objectors were then permitted to submit closing briefs and responsive declarations.

In September 2020, the Hearing Examiner issued its initial findings and recommendations to the City Council. Of the 430 objecting property owners, the Hearing Examiner recommended remanding 17 properties for further analysis by ABS. On remand, the objecting property owners and the City submitted supplemental declarations and briefing for the remanded properties. After ABS revised its analysis, it reduced the assessments for 15 of the 17 remanded properties.

In February 2021, the Hearing Examiner submitted its final findings and recommendations with the city clerk, recommending that the City Council accept the revised assessments for the 15 remanded properties and deny all the property owners' objections.

Confirmation of the Assessment Roll

After the Hearing Examiner issued its final report, several property owners appealed the initial and final reports with the city clerk. The City Council delegated review of the appeals to its Public Assets and Native Communities Committee and set dates for hearing the appeals.

After considering the property owners' written submissions on appeal, the Committee voted to recommend that the full City Council deny all the appeals. The Committee did not discuss any of the individual appeals, nor any of the common issues affecting the property owners.

On June 14, 2021, the full City Council confirmed the final LID assessment roll and adopted the Hearing Examiner's final findings and recommendations, which rejected all of the property owners' appeals.

Appeal to the Superior Court

Twenty-one property owners (Owners) appealed their assessments to King County Superior Court. After a hearing on the appeals, the superior court nullified the LID assessments for each of the Owners' properties and ordered the City to refund all assessments the appealing owners had paid to date. The court concluded that the City's method of assessment was founded on a fundamentally wrong basis because it failed to consider the impacts of COVID-19, failed to demonstrate how removal of the viaduct impacted property values, failed to comply with professional appraisal standards, and failed to connect any value increase to any property-specific data. The court also concluded that the City's process for assessing the Owners' property was arbitrary and capricious because the City instructed its appraiser to hypothesize values too far in advance of completion of the projects, because the City instructed the appraiser to treat all the improvements as continuous, because the Hearing Examiner mistakenly disregarded credible testimony from the Owners' witnesses, and because the City Council failed to independently review the Hearing Examiner's recommendations.

The City appeals.

ANALYSIS

Because this case involves a complex and specialized area of law, we begin with a brief overview of the principles governing LID assessments before turning to the parties' arguments on appeal.

LID Assessments in Washington

Local governments may impose special assessments on property owners within a local improvement district to pay for improvements that specially benefit those properties. Hamilton Corner I, LLC v. City of Napavine, 200 Wn. App. 258, 266, 402 P.3d 368 (2017). A “special benefit[.]” is “the increase in fair market value attributable to the local improvements.” Doolittle v. City of Everett, 114 Wn.2d 88, 103, 786 P.2d 253 (1990). “Fair market value ‘means neither a panic price, auction value, speculative value, nor a value fixed by depressed or inflated prices.’ ” Bellevue Plaza, Inc. v. City of Bellevue, 121 Wn.2d 397, 403, 851 P.2d 662 (1993) (emphasis omitted) (quoting In re Loc. Improvement No. 6097, 52 Wn.2d 330, 333, 324 P.2d 1078 (1958)). “To be subject to an LID assessment, a property must realize a benefit that is ‘actual, physical and material[,] . . . not merely speculative or conjectural,’ . . . that is ‘substantially more intense than [the benefit] to the rest of the municipality.’ ” Hasit LLC v. City of Edgewood, 179 Wn. App. 917, 933, 320 P.3d 163 (2014) (alterations in original) (quoting Heavens v. King County Rural Library Dist., 66 Wn.2d 558, 563, 404 P.2d 453 (1965)). And “a special assessment may not substantially exceed a property’s special benefit.” Hasit, 179 Wn. App. at 933. Moreover, a property should not be assessed “proportionately more than its share” of the total assessment relative to other properties in the LID. Cammack v. City of Port Angeles, 15 Wn. App. 188, 196, 548 P.2d 571 (1976).

Affected owners have the right to a hearing addressing whether the improvement resulted in a special benefit to their property. Carlisle v. Columbia

Irrig. Dist., 168 Wn.2d 555, 569, 229 P.3d 761 (2010). A city council may designate an officer to conduct hearings on the proposed assessments. RCW 35.44.070. The designated officer considers the evidence and the submitted objections and makes a recommendation to the city council. RCW 35.44.070. The city council, sitting as a board of equalization, may then adopt or reject the officer's recommendation. RCW 35.44.070, RCW 35.44.080(2). The city council may also revise or modify the assessment recommendation or order the assessment to be made de novo. RCW 35.44.080(3).

A city council's decision may be appealed to the superior court. RCW 35.44.200. The superior court shall confirm the city council's decision unless it finds "from the evidence that such assessment is founded upon a fundamentally wrong basis and/or the decision of the council or other legislative body thereon was arbitrary or capricious."¹ RCW 35.44.250. An assessment is founded on a fundamentally wrong basis if there exists " 'some error in the method of assessment or in the procedures used by the municipality, the nature of which is so fundamental as to necessitate a nullification of the entire LID, as opposed to a modification of the assessments as to particular property.' "

Abbenhaus v. City of Yakima, 89 Wn.2d 855, 859, 576 P.2d 888 (1978) (quoting Cammack, 15 Wn. App. at 196). A city council's decision regarding a LID assessment is arbitrary and capricious if it constitutes "willful and unreasoning action, taken without regard to or consideration of the facts and circumstances

¹ If the superior court determines that the assessment is invalid, the city may reassess the assessments. RCW 35.44.280.

surrounding the action.” Abbenhaus, 89 Wn.2d at 858. And “[w]here there is room for two opinions, an action taken after due consideration is not arbitrary and capricious even though a reviewing court may believe it to be erroneous.”

Abbenhaus, 89 Wn.2d at 858-59.

Standard of Review

On appeal, our review is limited to the record of proceedings before the city council. Abbenhaus, 89 Wn.2d at 859. We examine the propriety of the process and do not undertake an independent evaluation of the merits. Doolittle, 114 Wn.2d at 93. In reviewing the council’s decision, we apply the same “fundamentally wrong basis” and “arbitrary and capricious” standards of review. Hamilton Corner I, 200 Wn. App. at 267.

We presume that the city council’s assessment was proper, and the challenging party bears the burden of proving otherwise. Bellevue Assocs. v. City of Bellevue, 108 Wn.2d 671, 674, 741 P.2d 993 (1987). We also presume (1) that an improvement is a benefit, (2) that an assessment is no greater than the benefit conferred, (3) that an assessment is equal or ratable to an assessment on other similarly situated property, and (4) that the assessment is fair. Abbenhaus, 89 Wn.2d at 861. However, these presumptions merely “ ‘establish which party has the burden of going forward with evidence.’ ” Hasit, 179 Wn. App. at 935 (quoting Bellevue Plaza, 121 Wn.2d at 403). If “ ‘the other party adduces credible evidence to the contrary,’ the burden shifts to the city” to support its assessments. Hasit, 179 Wn. App. at 935-36 (quoting Bellevue Plaza, 121 Wn.2d at 403). “[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.

As an initial matter, 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. Second, quoting Bellevue Associates, the Owners state that the fundamentally wrong basis standard refers to “ ‘some error in the method of assessment or in the procedures used by the municipality[.]’ ” But this selective citation omits the second half of that sentence, which elaborates: “ ‘the nature of which is so fundamental as to necessitate a nullification of the entire LID, as opposed to a modification of the assessment as to a particular property.’ ” Bellevue Assocs., 108 Wn.2d at 675 (emphasis omitted) (quoting Abbenhaus, 89 Wn.2d at 859).

Expert Appraisal Evidence

The parties dispute whether the Owners’ expert testimony before the Hearing Examiner qualifies as expert appraisal evidence sufficient to overcome the presumption that the City’s assessment was valid. Although testimony from expert appraisers does qualify as expert appraisal evidence, 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.

To overcome the presumption that a LID improvement is a benefit, a challenging party must present “expert appraisal evidence showing that the property would *not* be benefited by the improvement.” Bellevue Plaza, 121 Wn.2d at 403. For example, in In re Indian Trail Trunk Sewer System, expert testimony from the property owners’ appraisers “regarding fair market value of their assessed property” showing that the land was not affected by the improvements and that the improvements “had an adverse effect upon the value of the land” was sufficient to rebut the presumption in favor of validity. 35 Wn. App. 840, 842-43, 670 P.2d 675 (1983). Likewise, in In re Consolidated Appeals of Jones, expert testimony “that the improvements did not enhance the market value of [the owners’] properties” was adequate to rebut the presumption of validity. 52 Wn.2d 143, 145, 324 P.2d 259 (1958).

Here, the Owners do not contend that their properties would not be specially benefitted, nor did they provide evidence demonstrating as much. Instead, 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.” Because the Owners have not provided expert evidence demonstrating that their properties would not be specially benefitted, the Owners have not overcome the presumption of validity.

Fundamentally Wrong Basis

The Owners contend that the City's appraisal was founded on a fundamentally wrong basis for four reasons: (1) ABS's study did not analyze how removal of the viaduct affected property values; (2) the study's assumptions were rendered inaccurate by COVID-19; (3) the study did not comply with professional appraisal standards; and (4) the study did not conduct any property-specific analysis. We disagree.

Because "fundamentally wrong basis" is less well-defined by case law, a few examples of instances in which LID assessments were determined to be founded on fundamentally wrong bases are provided before we address the Owners' arguments.

In In re Shilshole Avenue, our Supreme Court invalidated an assessment levied for the purpose of raising the grade of the road by 16 to 18 feet because the evidence demonstrated that the properties would have equally benefited from an increase of only nine feet. 85 Wash. 522, 525, 148 P. 781 (1915). The court noted that assessments for the portion of the project that raised the street more than nine feet were "made against the property of these appellants to pay damages for a thing which did not benefit that property, [were] founded upon a fundamentally wrong basis and [were] wholly indefensible." Shilshole Ave., 85 Wash. at 536.

Similarly, in Doolittle, the court determined that an assessment was founded on a fundamentally wrong basis where the city appraised and assessed four adjacent properties as a single tract of land, concluding that the highest and

best use of the properties would be a single large commercial building covering all four lots. 144 Wn.2d at 91-92. At the time of the appraisal, a single commercial property occupied three of the lots and the fourth had been developed for a separate commercial use. Doolittle, 144 Wn.2d at 90. On appeal, our Supreme Court reasoned that because the fourth lot was never used in combination with the other lots, it was an error for the appraiser to disregard the owner's actual use and consider the lots as a single unified parcel. Doolittle, 144 Wn.2d at 103.

More recently, in Hasit, this court determined that an assessment was founded on a fundamentally wrong basis because it included costs for "oversizing" the sewer pipes, which would only benefit future users not assessed under the LID. 179 Wn. App. at 938. In that case, the record showed that the city deliberately built the pipes larger than necessary to serve the LID because it wanted to be able to serve future users outside of the LID. Hasit, 179 Wn. App. at 940. The city also rejected other financing options to fund the expansion in favor of having the LID owners pay for the larger pipes. Hasit, 179 Wn. App. at 940-41. On appeal, this court explained that the city could not assess owners for improvements that did not provide a special benefit. Hasit, 179 Wn. App. at 941.

1. Viaduct Removal

The Owners claim that the LID assessments were founded on a fundamentally wrong basis because ABS's study did not analyze how the viaduct removal impacted property values by the waterfront. Because the Owners provided no evidence refuting ABS's "before" valuation, we disagree.

A primary assumption of the ABS study was “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.” Therefore, “any view amenity enhancement created by removal of the viaduct [was] not considered in [ABS’s] analysis.” But the study and the record contain adequate information for the Owners to evaluate how ABS valued the “before” scenario. Robert Macaulay, ABS’s lead appraiser, testified that to appraise the “before” scenario, ABS relied on renderings of the rebuilt Alaskan Way and considered factors such as proximity to the improvements, relevant market information on rents and vacancy, market conditions, and capitalization rates. In response, the Owners claim that the ABS’s analysis is unreliable but do not proffer any evidence regarding the value of their properties before and after the improvements. Because the Owners fail to provide any relevant evidence to rebut the presumption that the City’s assessment was proper, the assessments were not founded on a fundamentally wrong basis.

2. Impact of COVID-19

The Owners argue that all assumptions in the ABS study were rendered false by COVID-19 and therefore, the assessments were founded on a fundamentally wrong basis. Because the assessments predate the onset of the pandemic, we disagree.

Though the Owners assert that it is contrary to law to ignore the impacts of COVID-19, they present no authority to support their contention that the pandemic invalidated any and all assumptions in ABS’s study. On the contrary,

settled case law provides that fair market value “ ‘means neither a *panic price*, auction value, speculative value, *nor a value fixed by depressed* or inflated prices.’ ” Bellevue Plaza, 121 Wn.2d at 404 (emphasis added) (quoting Loc. Improvement No. 6097, 52 Wn.2d at 333). Here, the Owners have not shown that COVID-19 impacted the values of their properties or that these hypothetical reductions are not merely a “panic price.” The Owners merely allege that ignoring the effect of COVID-19 is “unfair.”

Moreover, 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. The Owners fail to demonstrate that the ABS study needed to account for value changes due to COVID-19; this is not a basis on which to conclude that the assessments were founded on a fundamentally wrong basis.

3. Professional Appraisal Standards

The Owners also contend that the assessments were founded on a fundamentally wrong basis because the ABS study did not comply with professional appraisal standards. We disagree.

The Owners first argue that the study did not comply with Uniform Standards of Professional Appraisal Practice² (USPAP) Standards 1 and 2, which govern direct property appraisals. Because the appraisal at issue was a

² APPRAISAL FOUND., UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE & ADVISORY OPINIONS (USPAP). Washington has adopted the USPAP as the standard of practice governing real estate appraisal activities. WAC 308-125-200(1).

mass appraisal, which is governed by separate standards, and not a direct appraisal, it is unclear why compliance with Standards 1 and 2 is necessary.

Next, the Owners assert that the study did not comply with USPAP Standards 5 and 6, which govern mass appraisals. Specifically, Standard 5 covers development of a mass appraisal while Standard 6 addresses the content and level of information required in a mass appraisal report. Standard 5 requires that an appraiser “employ recognized techniques for specifying property valuation models” and “employ recognized techniques for calibrating mass appraisal models.” The comment to Standards Rule 5-4(b) explains that

[t]he formal development of a model in a statement or equation is called model specification. Mass appraisers must develop mathematical models that, with reasonable accuracy, represent the relationship between property value and supply and demand factors, as represented by quantitative and qualitative property characteristics. The models may be specified using the cost, sales comparison, or income approaches to value. The specification format may be tabular, mathematical, linear, nonlinear, or any other structure suitable for representing the observable property characteristics.

Standard 6 requires that mass appraisal reports “summarize and support the model specification(s) considered, data requirements, and the model(s) chosen; provide sufficient information to enable the client and intended users to have confidence that the process and procedures used conform to accepted methods and result in credible value conclusions; and include a summary of the rationale for each model, the calibration techniques to be used, and the performance measures to be used.” Standard 6 also requires a mass appraisal report to “summarize calibration methods considered and chosen, including the

mathematical form of the final model(s).” Because ABS’s study is a report on a mass appraisal to determine special benefits, Standard 6 provides the relevant guidelines.

Here, the ABS study and Macaulay’s testimony before the Hearing Examiner demonstrate that the study complied with Standard 6. The study’s methodology section states that the appraiser considered recent sales of comparable commercial and multifamily residential land, local commercial and apartment lease rates, and supply and demand information for commercial and residential markets, such as vacancy rates and absorption costs for estimating before and after values. The appraiser also interviewed developers of proposed and underway projects in the LID vicinity to obtain perspective on the LID improvements and its influence on property values. The study then explains how it calculated a cost/benefit ratio by dividing the total assessment cap by the total estimated special benefit assessable to the properties.

The study 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. To assess before and after values, the study considered supply and demand factors, vacancy and occupancy rates, capitalization rates, and market conditions. The study categorizes properties by use (commercial, residential, and special purpose) and applies different valuation methods (income based, sales comparison, or cost) based on the type of property. The study notes that many increases in property values are because of the “enhanced location, pedestrian connectivity and

appeal created by the waterfront improvement amenities,” which are reflected in increased rents, lower vacancy levels and capitalization rates, and lower perceived investment risk. The study uses data from commercial market data research services, public records, individual buyers and sellers, local realtors, and developers and area property managers. The study’s addenda contain many pages of graphs summarizing this data.

Before the Hearing Examiner, Macaulay testified that ABS calculated before and after values by “looking at other studies [ABS] had done, looking at other cities and how . . . the market reflected change due to the implementation of projects similar to [the Waterfront LID].” Macaulay also testified that ABS analyzed over 25 studies throughout different market areas relative to streetscapes, bike lanes, open spaces, and parks. Macaulay noted that contrary to the Owners’ assertion, ABS “didn’t look at the whole LID area as one giant park.” Macaulay also explained that the study does not specify how much each factor contributed to value increases because “[t]he market just doesn’t function that way” and ABS was “trying to reflect the market as it functions.” During the proceedings, ABS also produced spreadsheets for each of the Owners’ properties that showed detailed before and after valuations.

Because ABS complied with applicable USPAP standards and because the Owners fail to present additional evidence showing that the valuations were inaccurate, the assessments were not founded on a fundamentally wrong basis.

4. Property-Specific Analysis

The Owners contend that ABS's "hypothesized micro-benefits are neither reasonably measurable nor a legal basis to assess property owners." In doing so, they repeat much of their previous arguments and are not persuasive. As noted, ABS adequately documented and explained its before and after valuations. And because ABS conducted a mass appraisal, as opposed to a direct appraisal, it was not required to produce the type of detailed, property-specific analysis that the Owners seek. Again, 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. The study's lack of unnecessary property-specific analysis does not render the assessments invalid.

Finally, we briefly note that while the Owners asserted in briefing that ABS miscalculated the special benefit, they maintained at oral argument that there was no special benefit to any of their properties.³ No evidence exists in the record to support this argument, and the Owners do not provide any explanation for it in their briefing.

Arbitrary and Capricious

The Owners contend that the City's process was arbitrary and capricious for four reasons: (1) the City instructed ABS to hypothesize values too far in

³ Wash. Ct. of Appeals oral argument, SHG Garage SPE v. City of Seattle, No. 85147-1-I (Feb. 27, 2024), at 11 min., 33 sec. through 11 min., 50 sec., audio recording by TVW, Washington State's Public Affairs Network, <http://www.twv.org> (Council for Respondent Owners: "The Respondents are absolutely challenging whether there is a special benefit.").

advance; (2) the City instructed ABS to treat all improvements as continuous when they were not; (3) the Hearing Examiner misapplied the presumption of correctness to disregard testimony from the Owners' witnesses; and (4) the City Council failed to independently review the Hearing Examiner's recommendations. We disagree.

1. Timing of Appraisal

The Owners first contend that the 2019 appraisal was completed too far in advance of the LID improvements. In support of this assertion, the Owners rely exclusively on a section of the Washington Local and Road Improvement Districts Manual (LID Manual),⁴ which states that market value is estimated “typically as of the date of the final assessment roll hearing,” and Seattle Municipal Code (SMC) § 20.04.070(B)(1), which requires the proposed final assessment roll to be filed within 90 days following completion of the improvements.

But neither the LID Manual nor the SMC provide clear requirements for when an appraisal date must be set. The LID Manual only describes what “typically” happens in a final special benefit study—it does not set hard and fast rules for how special benefits must be measured. And the Owners provide no authority to suggest that the LID Manual is binding upon the City or its appraiser. The Owners' reliance on SMC § 20.04.070(B)(1) is similarly unpersuasive as it

⁴ MUN. RSCH. & SERVS. CTR., LOCAL AND ROAD IMPROVEMENT DISTRICTS (LID) MANUAL FOR WASHINGTON STATE ch. 5, at 55 (6th ed. 2009) <https://mrsc.org/getmedia/4233f39b-f38b-4766-8c22-a0f0d9340d91/Local-And-Road-Improvement-Districts-Manual.pdf.aspx?ext=.pdf> [<https://perma.cc/XE7L-6X8W>].

only addresses when the proposed final assessment roll must be *filed*, not when the appraisal date must be set.

Citing Bellevue Associates, the Owners asserted at oral argument that a property valuation must be conducted immediately before and after the special benefits attach.⁵ But this is a mischaracterization of Bellevue Associates. In that case, our Supreme Court stated that “[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.’ ” Bellevue Assocs., 108 Wn.2d at 675 (emphasis added) (quoting Heavens, 66 Wn.2d at 564). The immediacy requirement that the Owners mention applies only to the valuation of the property *after* the special benefits have attached, not before. The Owners offer no other argument suggesting that the time between the appraisal and the completion of the LID improvements rendered the valuations inaccurate.

2. Continuous Improvements

The Owners next argue that the City acted arbitrarily and capriciously by instructing ABS to treat the separate LID improvements as one continuous improvement. Because the City complied with the applicable statutes governing continuous and contiguous improvements, we disagree.

RCW 35.42.050 requires a city council to assess discontinuous improvements separately unless it makes a finding that all properties within the

⁵ Wash. Ct. of Appeals oral argument, supra, at 10 min., 40 sec. through 10 min., 50 sec.

LID will benefit from the improvements as a whole. Here, the City Council made such a finding in Ordinance 125760:⁶ “It is hereby found that the [LID] boundaries embrace as nearly as practicable all the property specially benefited by the LID Improvements.” Because the City complied with RCW 35.42.050, its actions were not arbitrary and capricious.

3. Presumption of Correctness

The Owners also claim that the Hearing Examiner misapplied the presumption of correctness to disregard testimony from Owners’ expert witnesses. But as previously noted, “[w]here there is room for two opinions, an action taken after due consideration is not arbitrary and capricious even though a reviewing court may believe it to be erroneous.” Abbenhaus, 89 Wn.2d at 858-59. Similarly, here, the Hearing Examiner’s weighing of evidence is not arbitrary and capricious merely because the Owners disagree with how the Examiner weighed the evidence. Absent any authority or evidence to the contrary, the record reflects that the Hearing Examiner considered the evidence before it and determined that the City’s evidence was more persuasive than the Owners’ evidence.

4. City Council Review of Hearing Examiner’s Recommendations

Finally, the Owners maintain that the City Council has a duty to independently review the appeals and that it failed to do so. But the record

⁶ Seattle Ordinance 125760, at 5 (Jan. 28, 2019), <https://clerk.seattle.gov/~archives/Ordinances/Ord125760.pdf> [<https://perma.cc/38HR-C4ER>].

reflects that the City Council appropriately delegated review of the appeals to a committee as authorized by law.

The City Council may direct any appeals from any finding, recommendation, or decision of the hearing examiner to a committee of the City Council. SMC § 20.04.090(C). If the City Council chooses to delegate hearing the appeals to a committee, it does not need to independently review the appeals. SMC § 20.04.090(E) (city council or committee conducts review on appeal).

Here, the City Council chose to delegate hearing of the appeals to the Public Assets and Native Communities Committee. After considering the appeals, the Committee voted to recommend denying the appeals to the full City Council. The Owners' assertion that the City Council, sitting as a board of equalization, has a duty to independently review the appeals is unpersuasive. In support of this contention, the Owners cite SMC § 20.04.070(A), which provides that "[a]t the time fixed for the hearing [on the final assessment roll], the City Council, a committee thereof, the Hearing Examiner, or designated officer shall sit as a Board of Equalization for the purpose of considering the assessment roll." Because SMC § 20.04.070(A) addresses hearings on the final assessment roll and not appeals, it is unpersuasive. Moreover, it still permits a committee of City Council to sit as a board of equalization. Here, the City Council did not need to independently review the appeals and delegation to the Committee was appropriate.

The Owners also contend that certain comments by council members suggest that the Committee and City Council did not properly review the appeals. This is also unpersuasive because “comments and alleged motives of council members do not transmute the City’s actions into arbitrary and capricious conduct.” Hasit, 179 Wn. App. at 951. We hold that the City’s LID assessments were not calculated on a fundamentally wrong basis and that the City Council did not act arbitrarily or capriciously in adopting the LID assessments.

We reverse.

Smith, C.G.

WE CONCUR:

Chung, J. Hyatt, A.J.

September 04, 2024 - 4:50 PM

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