No. 85147-1

COURT OF APPEALS, DIVISION ONE
OF THE STATE OF WASHINGTON

THE CITY OF SEATTLE,

Appellant,

v.

SHG GARAGE SPE, et al.,

Respondents.

PETITION FOR REVIEW

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Introduction

This case involves the Local Improvement District (LID) that the City of Seattle created to tax downtown property owners for the "special benefits" they were deemed to receive in 2019 from an array of waterfront-related improvements that have yet to be completed, almost five years after the assessment. This LID is of a size and shape and mythical time-period worthy of a fantasy sea beast like a Kraken. It is vastly unprecedented in numerous ways: the delay between assessment and estimated completion (now going on six years); the price and size ($175M and 6,238 individual tax parcels); the dispersion and diversity of "improvements" at issue (trees here, bike lanes there, enhanced walking structures elsewhere, and so forth); and finally, the difference between the types of improvements here (varieties of "park-like" improvements) and the run-of-the-mill things in the LID case law (sewers, water mains, expanded roads, and so forth).

In a typical LID case involving a dispute over the value of "special benefits," a property owner challenges how much, if at all, a wider road or new sewer line

benefits the property and whether that benefit is "special," meaning whether it delivers an actual, measurable benefit specific to that property owner. A "*special* benefit" cannot be something generalized that applies to everyone; that kind of project should be funded out of regular, old property taxes and not special taxes like a LID.

In the normal case, the project is likely complete, appraisers do their thing, the city gets a thumb on the judicial review scale because some amount of benefit is presumed, and only a significant error in analysis (a "fundamental flaw" or "arbitrary and capricious" action) will undo the assessment.

This LID defied everything normal, including that the assessments were finalized in the fall of 2019, just before the world—and especially downtown Seattle, which has yet to fully recover—was hit by COVID. But the City forged ahead as if nothing had changed and as if $175M in measurable "special benefits" radiated outward from planned trees and concrete near the waterfront in some predictable, scientific way such that it could be concluded that many uphill blocks away, a property owner would see a "special benefit" of 0.4% of property value. In aid of that purported scientific

precision, the City's appraiser said he relied upon the academic work of Dr. John Crompton, an expert in analyzing the benefits of parks and renewal projects.

The City—and its appraiser—were making it up. To the extent there was any playbook for how to calculate "special benefits" from this array of improvements stretched blocks away and years into the future, it was not in any case law. None exists for something like this. The closest would be some type of "mass appraisal" using a mathematical model under the Uniform Standards of Professional Appraisal Practice, but the City did not even follow those, to the extent they could even be adapted to discern "actual, measurable" benefits from sprawling improvements years later.

The City attempted a Rube Goldberg model on the back of Dr. Crompton's expertise, but Dr. Crompton himself testified that the City's appraiser was misreading, distorting, and torturing his academic work. At both a high and granular level, the City's study was riddled with errors in service of maximizing the tax base and percentage of the LID.

The trial court understood. Its ruling is a methodical deconstruction of all the ways the City and

its appraiser broke the rules and engaged in impermissible speculation. It is required reading, as is the analysis by Dr. Crompton, the world's leading expert on this topic. What the City did and why it is fundamentally flawed and unacceptable cannot be understood without reading both documents, at a minimum.

The Opinion below is a whitewash. It does not attempt to explain how the City's "special benefits" estimates survive Dr. Crompton's takedown, much less address the numerous other ways the appraiser disregarded settled standards and invented "measurable" benefits that were obviously speculative. As an analytical fig leaf for not confronting the evidence, the Opinion faulted the Owners for not proving various negatives, as if what the City did were somehow defensible so long as no one can conclusively *disprove* the appearance of a 0.4% "special benefit" years into the future. As the Owners pointed out, that type of reasoning would make multi-million-dollar enhancements to the Space Needle to protect Seattle from alien invaders unchallengeable because no one could *disprove* their possible benefit.

Further, the Court of Appeals reversed the trial court across-the-board, without even discussing property-specific rulings that the City did not appeal. For example, some hotels got assessed for TVs and beds; some did not. The assessment and the disparity in treatment were indefensible, obvious mistakes. When confronted with that oversight, the Court of Appeals said nothing and denied reconsideration.

The Opinion cannot be proper judicial review on a LID challenge like this. It perverts the purpose of evidentiary presumptions by making the most speculative assessments the most difficult to challenge, it requires impossible proof of too many negatives, and it flat ignores the trial court's rulings on property-specific issues (errors under well-established LID case law) that the City did not even appeal.

This Court should grant the petition and address the fundamental errors in the Opinion. In so doing, it should establish limits on presuming the validity of a city's appraisal, the limits of requiring challengers to prove negatives, and the necessity of addressing property-specific issues in an assessment.

A. Identity of Petitioners.

Petitioners are United Way of King County; 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 Victor and Mary Moses, all owners of real property in the LID.[1]

B. Court of Appeals Decision.

Owners seek review of the substitute Opinion of the Division One of the Court of Appeals, No. 851471-1-I, SHG Garage SPE, et. al. Respondents v. City of Seattle, Appellant, King County Superior Court No. 21-2-10100-0, Aug. 5, 2024.

C. Issues Presented for Review.

1. Did the Opinion go too far in presuming validity and deferring to the City regarding hypothesized "special benefits" in 2019 that were

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[1] Former party RRRR Investments has sold its properties.

posited to arise from improvements that would not be finished for years, located far away from many of Owners' properties?

2. In a case based on hypothesized (not actual or measured) "special benefits" many years in the future, among other unprecedented circumstances, did the Opinion go too far in imposing an impossible burden on Owners to prove a negative, namely that their properties will not receive any special benefit?

3. Did the Court of Appeals err in reversing the trial court across-the-board without addressing property-specific errors the City made, the trial court identified and that the City did not even appeal?

D. Statement of the Case.

Local improvement districts allow cities to assess (tax) property owners who realize unique increases in their property values—special benefits—that are directly attributable to a public improvement and not shared by the general public.

This LID was established to help fund the City's vast plan to redevelop the waterfront after the Washington State Department of Transportation (WSDOT) demolished the SR 99 Viaduct. The LID

encompasses almost all of downtown Seattle from T-Mobile Park to Denny Way and from Elliott Bay to I-5, including:

a. The Promenade,
b. Overlook Walk,
c. Pioneer Square Street Improvements,
d. Union Street Pedestrian Connection,
e. Pike/Pine Streetscape Improvements, and
f. Pier 58.

The overlapping nature of the WSDOT work (itself, massive in scope) and the City's planned improvements was part of what made it all but impossible for the City to properly assess the Owners' properties without engaging in speculation. The problem was that the City cannot tax the Owners for the "special benefit" of WSDOT's removal of the Viaduct and reconstruction of Alaskan Way and the seawall. By law, the City can *only* assess for the *additional* special benefits produced by whatever the City planned to build along the waterfront, separate from and above benefits provided by WSDOT.

Owners filed administrative appeals to the Seattle Hearing Examiner in February 2020. The Hearing Examiner's process ended a year later. The

City Council dismissed Owners' appeals and finalized the assessments in June 2021. Owners then appealed to Superior Court.

On March 8, 2023, Judge Matthew Williams issued detailed Findings of Fact, Conclusions of Law and Judgment annulling Owners' assessments. The City appealed the annulments. The Court of Appeals reversed Judge Williams' decision and reinstated the assessments, then granted a motion to publish and denied reconsideration without further discussion.

In the Appendix are the following:

A. Judge Williams' March 8, 2023, decision annulling Owners' assessments (CP 931-1048);
B. Respondents' Motion for Reconsideration of the Court of Appeals' decision, and Exhibit A thereto (**the Crompton report**); and
C. The Court of Appeals' substituted Opinion filed August 5, 2024 ("Op.").
D. The Court of Appeals' Order filed August 5, 2024.

E. Reasons This Court Should Review.

The Opinion approaches this case like a typical valuation dispute over roads or sewers assessed at the time of project completion and, on that basis, concludes there is nothing to see here. That is not credible, and it cannot be that review standards make the most speculative LIDs the most difficult to challenge. That is exactly backwards.

At some point, a difference in degree is a difference in kind. See *Randall v. Sorrell*, 548 U.S. 230, 260 (2006). "'Drawing the line' is a recurrent difficulty in those fields of the law where differences in degree produce ultimate differences in kind." *Harrison v. Schaffner*, 312 U.S. 579, 583 (1941) (quoting *Irwin v. Gavit*, 268 U.S. 161, 168 (1925) (Holmes, J.)). But failure to attend to significant differences in degree, much less differences in kind, quickly results in a "maze of contradictions." *Palsgraf v. Long Island R.R.*, 162 N.E. 99, 100 (1928) (Cardozo, J.).

Nothing in the road-and-sewer LID case law instructs that what the City did here deserves normal presumptions of validity, nor that in all circumstances—no matter how novel—a challenger must *disprove* any special benefit to win any relief.

This Court should grant review to explain how presumptions of validity and burdens for challengers must change with a case's proximity to the most run-of-the-mill situations. It's one thing if the project is routine and well understood (like roads and sewers), and the city calculates the assessment close to project completion. It's quite another, and "normal" expectations should change, if the project is novel and the assessment is years before project completion, using a series of nonstandard hypotheticals.

Within reasonable expectations for evidence in a case like this, the Owners had more than enough—indeed, Dr. Crompton's dismantling of the City's appraiser was easily sufficient—to demonstrate fundamental flaws and shift the burden to the City to defend what it did. The City cannot satisfy that burden and did not even attempt to on appeal. It begged for the whitewash using presumptions of validity and impossible standards for challengers. That was it.

This Court also should review because the Court of Appeals cannot simply ignore the property-specific issues (mistakes of fact and common sense) that the trial court identified and the City did not appeal.

Legal standards

A *special benefit* must be "actual, physical and material[,] … not merely speculative or conjectural [and] 'substantially more intense than [the benefit to the rest of the municipality]." *Hasit, LLC v. City of Edgewood*, 179 Wn. App. 917, 933 (2014) quoting *Heavens v. King Cnty. Rural Libr. Distr.*, 66 Wn.2d 558, 563, 404 P.2d 453 (1965).

LID *assessments* must be material, proportionate, and non-speculative, and may not exceed actual special benefit accruing to each property as a result of the LID improvements. See *Heavens*, 66 Wn.2d at 563.

A city's assessments are presumed correct, as set forth in *Abbenhaus v. Yakima*, 89 Wn.2d 855, 860-61, 576 P.2d 888 (1978). But presumptions merely set the initial burden of proof, and give way when challengers present sufficient contrary evidence. *In re Indian Trail Trunk Sewer v. City of Spokane*, 35 Wn. App. 840, 843, 670 P.2d 675 (1983).

Argument

I. The Opinion went too far in presuming validity.

In the normal LID case, it makes sense to apply presumptions that a "special benefit" was conferred and that the assessment was valid. Here is what normal looks like: Property values are appraised against historical measures for common improvements, and then-current property values reflect the improvements because the project is complete or nearly so. In that situation, if a homeowner says that there is no special benefit from the new sewer attached to her house, or a business owner says that the expanded access to a heavily used freeway is of no special benefit, those arguments are appropriately met with weighty judicial skepticism without solid appraisal evidence to back them up.

Here, two red flags should have warned against dusting off the road-and-sewer canon and applying it. First, as noted, the LID was vastly unprecedented. Second, the City's appraiser did not follow any standard playbook for determining values. To woodenly presume validity in the face of the extreme novelty and contorted analysis here is not acceptable.

A. The Waterfront LID is not normal.

To begin with, the City sought to collect taxes *immediately* on "special benefits" five years hence. That is not normal. Special benefit estimates typically are calculated when the project is completed, or nearly so; that way, value increases attributable to LID improvements can be clearly identified. Under Seattle's municipal code (SMC), "[u]nless otherwise determined by ordinance or by City Council resolution, the proposed final assessment roll shall be filed within ninety (90) days following the completion and acceptance of the improvement." SMC 20.04.070B.1. See also RCW 8.25.220 (authorizing owners to postpone determination of special benefits in a condemnation case until after construction of improvements); *State v. Green*, 90 Wn.2d 52, 55-56, 578 P.2d 855 (1978) (provision insures against "speculative special benefit offsets" for future improvements).

Compounding that abnormality were the unprecedented size of the LID, the diversity of the improvements, their dispersion throughout the LID, the novelty of the improvements compared to normal LID cases, and, as already noted, the difficulty of valuing benefits supposedly derived from the City's

project separately from the benefits already produced by the WSDOT work.

Then there was COVID. The City's study was done in the fall of 2019 but not approved until 2021. Because of COVID's unique impact on market conditions, the Appraisal Institute by then had warned appraisers to analyze the impact of COVID-19 on values, stating that "it is not appropriate to include a disclaimer or extraordinary assumption that suggests the appraiser is not taking responsibility for analysis of market conditions." See Ex. 31, LID_016793-LID_016795. As one of Owners' experts testified, "the question is not the relevance of the COVID-19 event to the Appraisal; but rather the reverse—the relevance of the Appraisal today, in light of COVID-19" (Gibbons Decl., ¶11 (Ex. 14, LID_006879).

Thus, this assessment was abnormal and even extreme. A court might start with a presumption that the City dealt with those abnormalities correctly, but that presumption unravels quickly upon review.

B. The City's assessment was guesswork based on hypothetical values and in defiance of appraisal standards for "special benefits."

LID assessments are derived from the difference between a property's "before" value (before construction of the improvement) and its "after" value (after construction of the improvement). That was a hugely difficult task here because to tax Owners immediately for its planned improvements, the City calculated assessments *five years* before those improvements would be completed. And to make it even more difficult, as noted, the "before" value the City used for each property had to include an increment for the benefit of the WSDOT improvements (then still under construction) that the City was theoretically improving even more.

Nevertheless, the City disclaimed any obligation to assess *actual* 2019 values or to report how much its 2019 Study inflated actual 2019 values to account for WSDOT's removal of the Viaduct and alternative Alaskan Way plans. Instead, the City used a "judgment based" analysis.[2] That analysis proved to be

[2] The City's appraiser testified that "measurable benefit" is "our judgment call of the measurable market

substantively indecipherable, a black box. That no one knows the substance of it is reflected in the Opinion, which describes various actions the appraiser did—looked at this or that—but makes no attempt at explaining *what* the actual analysis was.

There is also no basis to presume (much less conclude) that the City complied with appraisal standards. Instead, it used a series of techniques that defied those standards. A dramatic example is COVID. As quoted above, the Appraisal Institute instructed that COVID must be dealt with. Here, the City had a pre-COVID appraisal and approved it anyhow.

That is neither analytically defensible nor in compliance with appraisal standards. Yet the Opinion saw no issue with ignoring COVID. Citing *Bellevue Plaza, Inc. v. City of Bellevue*, 121 Wn.2d 397, 404, 851 P.2d 662 (1993) (Op. at 14-15), it continued to presume the assessments were correct because "settled case law provides that fair market value "'means neither a *panic price*, auction price, speculative value, *nor a value fixed by depressed* or inflated prices'" (emphasis added by the

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value difference before and after the elements of the LID." See 2/27/2020 Macaulay Dep. at 43:14-44:13 (Ex. 14, LID_006553- LID_006553)

Court, quoting *In re: Local Improvement* No. 6097, 52 Wn.2d 330, 333, 324 P.2d 1078 (1958)).

But even indulging in the generous assumption that a 1993 opinion mentioning a "panic" had in mind a global pandemic, COVID's effect was no mere "panic." The Appraisal Institute does not treat it that way. And whether there are significant lingering effects on downtown real estate values is very much a testable proposition. Blithely assuming there are none is not credible.

There were other fundamental ways that the City's appraisals failed to conform to professional standards. The Uniform Standards of Professional Appraisal Practice (USPAP) govern real estate appraisals in Washington. (Op. at 15, n.2; WAC 308-125-200(1)). USPAP Standards 5 and 6 apply to "mass appraisals," which the City and the Opinion found the 2019 Study to be. (Ex. 22, LID_010778 -LID_010787, Op. at 15-18).

Randall Scott, a former MAI appraiser who helped develop Standards 5 and 6, testified that a valid mass appraisal requires creation of a model, calibration, and disclosure of model inputs so that others can test and replicate its results. See USPAP

Standard 5-4(b) ("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") (Ex. 17, LID_010781).

As Scott testified, the City had no such model. See 3/3/2020 (R. Scott) Hrg. Tr. at 195: 12-196: 16 (Ex. 17, LID_ 008044-LID_008045); 197:7-15 (Ex. 17, LID_008046); 203:21-205:13 (Ex. 17, LID_008049-LID_008051), Resp'ts' Answering Br. ("AB") at 12, 23-24. Neither the 237-page "Summary of Final Special Benefit/ Proportionate Assessment Study" nor its 214-page "Addenda" contains a single mention of any "model."

Asked whether his 2019 Study complied with the "model" requirement of Standard 6, the City's appraiser could cite only his report as a whole, which he said "did a parcel-by-parcel analysis," and which he claimed summarized his conclusions, "the data used," and "the process used." See 6/19/2020 (R. Macaulay) Hrg. Tr. at 54:25-55:2 (Ex. 7, LID_003004-LID_003007). Of course, a "parcel analysis" is not a mathematical model. And again, a *model* provides

testable, replicable results. Yet, the Opinion simply glossed over that fundamental flaw, inexplicably finding compliance with USPAP 5 & 6.

With a LID this unique and a desire to tax for purported "special benefits" five years hence, the analysis was always going to be difficult. But it's a perversion of any presumption of correctness to let the difficulty of the analytical project expand what can pass as "correct." If a valuation is basically impossible, that cannot mean "anything goes." Proper alignment of presumptions would be this: the closer the LID is to typical and normal, the stronger the presumption of correctness; the farther afield from typical and normal, the weaker the presumption. The Opinion below unreasonably did the reverse.

II. The Court of Appeals went too far in requiring challengers to *disprove* the presumed "special benefits."

At the same time as it was over-presuming validity, the Court of Appeals also placed an impossible burden on challengers. It is settled that a "special benefit" cannot be a "speculative value" or based on "pure speculation." See *Bellevue Plaza,* 121 Wn.2d at 411. The standard for showing "speculation" should not

be more complicated than showing that something is more likely than not speculative, which is simply the flip-side of saying that there *is* actual evidence to support a proposition. Here, for example, the City purported to find that its waterfront improvements would raise values by 0.4% far from the waterfront. If the City uses dubious assumptions and has no evidence, that ought to be improper speculation. And if the challengers can show that, they carry their burden.

What the Opinion below concluded, however, was that challengers must show with evidence that they would receive *no* special benefit from the project. Op. at 9. Again, if construction were complete and the market already incorporating their value, that might be legitimate. Here, it is an impossible burden that this Court should reject.

A. The Opinion applied an erroneous and impossible burden on challengers for a LID like this.

The Opinion ruled that Owners could not rebut the presumption that the assessments were correct unless they could prove, using "expert testimony" (to "prove a negative") "that their properties would *not* be benefited by the improvement." Op. at 9 (emphasis

added), quoting *Bellevue Plaza*, 121 Wn2d at 403. That is the rule when an owner protests a charge for the usual LID component (second fire hydrant, oversized pipe, over-height seawall). But that cannot be the rule when owners raise a more generalized challenge that the special assessments are too speculative to pass muster this far in advance.

Owners presented the Court of Appeals with a hypothetical illustrating the problem created by application of the presumptions in speculative situations. Seattle could assess billions for "improving" the Space Needle in ways that the City says will protect against space alien invasion. The City, of course, would have no evidence of what an alien invasion would look like or how the "improvements" would counter it. But with a presumption of correctness and a burden on challengers to prove no special benefit, the challengers necessarily would lose. That can't possibly be the law. Again, it is a perversion of the standards to make the most speculative LID appraisals the most difficult to challenge.

As shown below, Owners offered substantial evidence to rebut presumptions that the "assessment is no greater than the benefit" and that "the assessment

is fair," *Abbenhaus*, 89 Wn.2d at 861, all in support of showing that the City's analysis was improperly speculative.

B. Owners offered robust appraisal and academic evidence rebutting any presumption that the City's assessments were correct.

Owners' appraisal evidence included the following:

> (a) appraisals (not hypothetically inflated) of nine properties showing that they were overvalued by the City's Study (and thus over-assessed),
>
> (b) expert testimony showing that COVID almost immediately devalued Owners' properties 10-15%,
>
> (c) expert testimony that the City's estimated special benefits were too small, remote, and speculative to be measured,
>
> (d) expert testimony that, even assuming the special benefits the City hypothesized, they were illegal overassessments when properly discounted to present value, and
>
> (e) expert testimony that the City's study did not include the modeling required for a USPAP-compliant "mass appraisal". AB at 11-12, 25-27, 44-45, (Ex. 32, LID_016796-LID_016813).

An especially powerful example of expert testimony that dismantled the City's analysis involves discounting future benefits to present value. Petitioner's expert (Mr. Gibbons) testified that discounting the City's presumed future benefits to their 2019 present value would have reduced them to just 34% of the total reported in the City's Study. AB at 11-13, Gibbons Decl., ¶¶ 13, 16 (Ex. 12, LID_005601-LID_005602). And as Mr. Gibbon's emphasized, "[a]ppraisers routinely consider the impact of future conditions [through] discounted cash flow analysis." Gibbons Decl., Ex. A (Ex. 12, LID_005607); see also *id.*, 3/11/2020 (A. Gibbons) Hrg. Tr. at 197:21-198:3 (Ex. 4, LID_001801-LID_001802).

For Owners alone, that one indisputable example of over-assessment exceeds $2,000,000, which under the case law is "substantially" more than the anticipated special benefits, and thereby illegal. See *Hasit*, 179 Wn. App. at 933. The City's appraiser even acknowledged that appraisers can use discounting to value a future condition, and if they were performing a discounting analysis, Mr. Gibbons' approach was not unreasonable. See 6/23/2020 Hrg. Tr. at 74:1-75:1 (Ex. 7, LID_003195- LID_003196); 77:2-19 (Ex. 7,

LID_003198); see also 2/27/2020 Macaulay Dep. at 106:11-108:17 (Ex. 14, LID_006616-LID_006618).

Using appraisal and other evidence, Owners also showed that the City improperly assessed their properties for the WSDOT Viaduct removal and related improvements. Owners' expert witnesses John Gordon and Brian O'Connor (both MAI appraisers) presented the only evidence of actual current market values in January 2020, pre-COVID, without hypothetical assumptions. AB at 10-11, 19-20). For his part, the City's appraiser instead "calculated" inflated hypothetical "before" values and disclaimed any obligation to complete a "third appraisal" (to assess actual 2019 property values and the increase resulting from the WSDOT work). See 6/23/2020 Hrg. Tr. at 44:18-45:9 (Ex. 7, LID_003165- LID_003166), AB at 19.

But assessing a special benefit percentage against an artificially inflated market value improperly inflates the special benefit assessment, too. 3/3/2020 Hrg. Tr. 93:23-95:25 (Ex. 3, LID_001157-LID_001159). A 3.2% assessment against a hypothetically inflated $200 WSDOT value is twice the tax of a 3.2% assessment against an actual $100 market value.

Finally, there was the City's misuse of academic work related to similar improvement projects in other cities: the misuse, in particular, of Dr. John Crompton's work, which he called the City out on when he testified before the Hearing Examiner.

The Opinion pointed to the City's reliance on studies of major improvement projects in other cities and other "qualitative" analysis. Op. at 18. But it averted its eyes from the actual evidence and accepted the City's justification of the appraisal based on Dr. Crompton's work without addressing his testimony, where he made clear that the City had misused, misunderstood, or mischaracterized that work.

As Dr. Crompton explained: "[T]he Appraiser has misinterpreted and/or misapplied eight dimensions of my work," and the incremental benefit of the "park improvements" over and above the dramatic improvement in waterfront view [from removal of the Viaduct] is "very small" (which not a special benefit as a matter of law) or "perhaps non-existent." (Ex. 31, LID_016808), Op. at 10-13, AB 12, 25.

Addressing the "view" premium created by WSDOT, for which the City could not assess property owners, Dr. Crompton explained that the "view" is

where the real value lies, and that attempting to suss out the incremental benefit of "park like improvements" on top of the massive view benefit is nearly impossible. As he put it: "Turning on a weak light has a large impact in a dark room. The same increment of light may be undetectable in a brightly illuminated room." (Ex. 31, LID_016808), AB at 12, 44-45. (A copy of Dr. Crompton's report is APP-146-164 in the Appendix.)

The City's appraiser attempted to dodge this asteroid by claiming that he had not relied *solely* on Dr. Crompton's studies, but others, pointing particularly to the Rose Kennedy Parkway. 2/27/2020 Macaulay Dep. at 18:1-7; 231:19-214:20 (Ex. 14, LID_006528, LID_006741- LID_006742), 6/25/2020 Hrg. Tran. (Macaulay) at 183:19-184:15, 188:6-21, 194:22-25 (Ex. 7, LID_003588-LID_003589, LID_003593, LID_003599) But Mr. Gibbons, testifying for the Owners, pointed out that the Rose Kennedy Parkway studies didn't help the City either, because that project's property value enhancements did not show up until 10 years after the parkway was complete. Gibbons Decl., Ex. C at 24, 30-31 (Ex. 12,

LID 005611, LID_005613-LID_005614), AB at 11-12, 50.

In this unique, speculative situation, Owners' evidence should have been more than enough to rebut any presumption that the 2024 improvements hypothesized to be complete in 2019 created an actual, measurable special benefit or were fair. See *City of Seattle v. Rogers Clothing for Men, Inc.*, 114 Wn.2d 213, 229 (1990) (fn27) (citing cases).

III. The Opinion reversed the trial court across-the-board without pausing to address glaring, property-specific assessment errors that the City did not even appeal.

The Opinion also incorrectly reversed the property-specific portions of the superior court's judgment that the City did not appeal. The City forfeited any challenge to these findings and conclusions, which cited straightforward errors by the City. One example was including "personal property" (like beds and TVs) in valuing and specially assessing two hotels, but not four others. See *Cammack v. City of Port Angeles*, 15 Wn. App. 188, 196, 548 P.2d 571(1976) (a property should not be assessed proportionately more than its fair share). As another example, the City

miscounted the number and types of apartments in the Helios property (56 studios counted as apartments with bedrooms), and the mistakes led to overvaluing Helios' actual January 2020 value by nearly $38 million. See 3/11/2020 Hrg Tr. at 22:21-24:6 (Ex. 4, LID_001626-LID_001628. The property-specific errors the trial court identified resulted in over-assessments that were arbitrary and capricious. (CP 975-CP 1008).

When an appellant does not challenge these types of property-specific issues, the Court normally treats them as forfeited. The decision being appealed from was that of the trial court. If the City was unhappy with the trial court's property-specific findings and conclusions, it was the City's duty to challenge them on appeal.

Conclusion

This Court should grant review.

RESPECTFULLY SUBMITTED this 4th day of September 2024.

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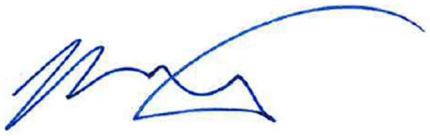

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CERTIFICATE OF SERVICE

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.

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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 Bellevue, Washington, on September 4, 2024.

s/ Karen Campbell_
Karen Campbell, LPA

PERKINS COIE LLP

September 04, 2024 - 4:35 PM

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Appellate Court Case Number:	85147-1
Appellate Court Case Title:	SHG Garage SPE, et al., Respondents v. City of Seattle, Appellant

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No. 85147-1

COURT OF APPEALS, DIVISION ONE
OF THE STATE OF WASHINGTON

THE CITY OF SEATTLE,

Appellant,

v.

SHG GARAGE SPE, et al.,

Respondents.

APPENDIX TO

PETITION FOR REVIEW

No. 85147-1
COURT OF APPEALS, DIVISION ONE OF THE STATE OF WASHINGTON
THE CITY OF SEATTLE, Appellant, v. SHG GARAGE SPE, et al., Respondents.

INDEX TO APPENDIX TO PETITION FOR REVIEW

Appendix page numbers	Document Date	Document Description
APP-001 - APP-118	March 8, 2023	Findings of Fact and Conclusions of Law, and Order Granting Relief (King County Superior Court Case #21-2-10100-0-SEA) [Record Number: CP 931 - CP 1048]
APP-119 - APP-165	May 13, 2024	Respondents' Motion for Reconsideration and Exhibit A thereto [2019-11-18 Waterfront Seattle LID Special Benefits Report by John Crompton (LID_016796-LID_016813)]
APP-166 - APP-189	August 5, 2024	Published Opinion (Washington Court of Appeals, Division One, No. 85147-1-I)
APP-190 - APP-191	August 5, 2024	Order Denying Motion for Reconsideration (Washington Court of Appeals, Division One, No. 85147-1-I)

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

SHG Garage SPE, et al. Appellants, v. City of Seattle, Appellee.	No. 21-2-10100-0 SEA FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND ORDER GRANTING RELIEF

This matter came before the Court for oral argument on October 28, 2022. The parties submitted proposed findings on December 9, 2022.

Having heard and considered the oral argument, the briefs filed by the parties prior to the hearing, and the materials in the record from the proceedings below, the Court finds that the City's method of assessment was fundamentally flawed and that the process followed by the City was arbitrary and capricious. Therefore, the assessments related to these litigants is annulled.

This ruling is based on the following Findings of Fact and Conclusions of Law.

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I. FINDINGS OF FACT

A. The Parties

1. Appellants are owners of certain real property in the City of Seattle subject to the Local Improvement District assessments as described below. Appellants Victor and Mary Moses are represented by Ojala Law, Inc., PS. All other Appellants are represented by Perkins Coie LLP.

2. Appellee City of Seattle is a municipal corporation (the "City"). The City is represented by K&L Gates LLP and the Seattle City Attorney's Office.

3. The specific properties at issue owned by Appellants are located within the Waterfront Local Improvement District No. 6751 (the "Waterfront LID"). The following is a table listing the name of each Appellant, the relevant tax parcel number, a short description of the property, and the amount of the City's proposed final LID assessment.

	Property Owner	Parcel No.	Property	LID Assessment
	Equity Residential			
1	EQR-Harbor Steps, LLC	19762●●●7●	Harbor Steps NW	$839,675
2	EQR-Harbor Steps, LLC	19762●●●75	Harbor Steps NE	$1,376,●79
3	EQR-Harbor Steps, LLC	76662●2465	Harbor Steps SW	$1,289,878
4	EQR-Harbor Steps, LLC	19762●●●76	Harbor Steps SE	$1,767,5●9
5	EQR-Second & Pine, LLC	76838●●1●	Helios Apartments	$2,244,356
	Hedreen Hotels			
6	Hedreen Hotel LLC	67921●●1● & 6195●●●●3●	Grand Hyatt Seattle	$1,3●6,335
7	Hedreen LLC	22851●●1●	Hyatt at Olive 8	$683,338
8	Elliott NE LLC	66●●●●7●8	Hyatt Regency	$1,2●5,636

9	Madison Hotel LLC	942●●●43●	Renaissance Hotel	$42●,425
1●	7th & Pine LLC	679212●●2●	Grand Hyatt Parking and Retail	$549,334
11	Lot B LLC	66●●●●74●	Surface parking lot next to Hyatt Regency	$73,663
	Waterfront Marriott			
12	Ashford Seattle Waterfront LP	76662●2345	Seattle Waterfront Marriott	$2,1●6,827
	Seattle Hotel Group			
13	SHG Hotel SPE, LLC	6●9467●●3●	Four Seasons Hotel	$1,676,215
14	SHG Garage SPE	6●9467●●1●	Garage in Four Seasons building	$132,436
15	SHG Retail SPE	6●9467●●2●	Retail in Four Seasons building	$31,346
	Residential Condos			
16	RRRR Investments, LLC	253883146●	Unit 38●● at 1521 2nd Ave.	$41,245
17	RRRR Investments, LLC	253883148●	Unit 38●2 at 1521 2nd Ave.	$44,●84
18	Sound Vista Properties, LLC	6●9468●●5●	Condo in Four Seasons building	$122,412
	Nonprofit			
19	United Way of King County	939●●●24●	United Way Building	$81,928
	Moses Appellants			
2●	Victor and Mary Moses	253883●85●	Unit 23●4 at 1521 2nd Ave.	$25,519

B. Procedural History

1. Notice of Assessment

4. On January 28, 2019, the Seattle City Council ("City Council") passed Ordinance 125760 forming the Waterfront LID to finance a portion of the Seattle Central Waterfront Improvement Program, discussed in more detail below.

5. On December 30, 2019, notices of assessment were mailed to property owners within the boundaries of the Waterfront LID, whose names appeared on the proposed final assessment roll. Appellants all received notices which provided their proposed assessment amount and stated that any objections thereto must be filed by February 4, 2020.

6. The notices explained that "the Council, a committee thereof, the Hearing Examiner or other designated officer, will sit as a board of equalization for the purpose of considering objections duly filed, together with all information and evidence in support of those objections, and for the purpose of considering the Waterfront LID assessment roll . . . Property owners who made timely objections to their assessments in the manner required by law will have the opportunity to appeal the Hearing Examiner's recommendations."

7. On January 7, 2020, the City made available the 237-page Summary of Final Special Benefit/Proportionate Assessment Study for Waterfront Seattle Project Local Improvement District along with a 214-page Addenda, dated October 1, 2019 ("2019 Study"). (LID_000180 - 000416 and LID_000417 - 000630). The 2019 Study was the basis for the City's proposed LID assessments.

2. Initial Hearing Examiner Proceedings

8. Approximately 430 property owners including the Appellants submitted timely objections. City Council designated the City of Seattle Office of Hearing Examiner ("Examiner") to conduct the hearings and provide a recommendation to City Council.

9. The Hearing Examiner noted "[w]here, as here, the City Council has appointed a hearing examiner to oversee the hearing, the hearing examiner 'sits as a board of equalization' to consider the objections." See, Final Findings and Recommendation of the Hearing Examiner for the City of Seattle ("Examiner's Final Recommendation") at 1 (citing SMC 20.04.070(A); RCW 35.55.070, .080) (LID_000847).

10. The City sent notices of assessment on December 30, 2019.

11. However, on January, 20, 2020, the first confirmed U.S. COVID-19 case was identified in Snohomish County, WA. This turned out to be the start of the Global COVID-19 Pandemic that would ultimately result in dramatic changes to every aspect of human life on the planet.

12. The Examiner commenced the appeal hearing on February 4, 2020 in person and began by allocating time for hearing the objections. At this hearing, Perkins Appellants moved for a continuance for additional time to review the 2019 Study.

13. The Examiner denied the motion. Appellants also moved for discovery, including depositions. The Examiner allowed one deposition of Mr. Robert Macaulay, who was the City's lead appraiser in preparing the 2019 Study.

14. Appellants deposed Mr. Macaulay on February 27, 2020.

15. Perkins Appellants presented their cases-in-chief before the Examiner over seven days on March 3 (LID_001064 - LID_001299), March 5 (LID_001300 - LID_001547), March 11 (LID_001604 - LID_001846), March 12 (LID_001847 -

LID_002076), April 13 (LID_002125 - LID_002357), April 14 (LID_002358 - LID_002497), and April 16, 2020 (LID_002498 - LID_002698), with the opportunity for one trailing declaration on April 21, 2020.

16. The first U.S. COVID death, in Snohomish County, Washington was identified in February 2020. The Puget Sound Region, including King County was an early epicenter of the Global Pandemic. Local and state-wide travel and public access restrictions were imposed beginning in March 2020.

17. As a result, the hearings held in this matter were either "hybrid" or virtual. The City was afforded an opportunity to cross-examine all of Appellants' live witnesses either in person or through remote simultaneous transmission.

18. The hearings also included a declaration process. This process allowed Appellants to submit testimony via declaration. The City had the opportunity to file counter-declarations in lieu of cross-examination.

19. Appellants Victor and Mary Moses ("Moses") presented their case-in-chief before the Hearing Examiner on March 10, 2020 and March 12, 2020.

20. In April 2020, the Examiner held a scheduling conference to determine how many objectors would seek to cross-examine City witnesses. Twenty-nine objectors, including Appellants, were permitted to coordinate their cross examination of City witnesses over three days.

21. On June 18 and 19, 2020, the City presented its case-in-chief.

22. On June 23, 25 and 26, 2020, objectors cross-examined City witnesses.

23. The City also submitted declarations in lieu of live testimony. Because those declarations were not subject to cross-examination, objectors who qualified for cross-

examination were permitted to file closing briefs and responsive declarations related only to matters raised in the City's case.

24. The City was then given one final opportunity to file reply briefs and declarations. *See generally,* LID_009072-LID_011009.

25. On September 8, 2020, the Examiner issued his initial Findings and Recommendations ("Initial Recommendation"). *See* LID_000724 - LID_000846. The Initial Recommendation recommended limited remands, including of five of Perkins Appellants' properties, for further analysis—the Grand Hyatt, Hyatt at Olive 8, Hyatt Regency, Renaissance Hotel and United Way. The Initial Recommendation otherwise recommended rejecting the remaining fifteen of Appellants' appeals.

26. RCW 35.44.070 and SMC 20.04.090 provide for any appeals appeals from any recommendation of the Hearing Examiner on the proposed final assessment roll for local improvement districts to be heard by the City Council. Appellants each timely filed an appeal of the Initial Recommendation to the City Council on September 22, 2020. *See generally* LID_013983 - LID_015239.

3. Remanded Proceedings Before the Examiner for Five of Appellants' Properties

27. On November 9, 2020, City Council passed Resolution 31979 remanding Appellants' cases (among others) to the Examiner.

28. Appellants and the City filed supplemental declarations and briefing on issues identified for remand. The record closed on January 15, 2021.

29. The Examiner issued his Final Recommendations on January 29, 2021, accepting all of Mr. Macaulay's remand conclusions. (LID_000847 - 000972).

30. City Council's Resolution 31979 authorized all Appellants to file amended appeals to City Council, which each Appellant did on February 16, 2021. *See generally* LID_013983 - LID_015239.

4. Proceedings Before City Council

31. City Council Rules for Quasi-Judicial Proceedings ("Rules")[1] subsection IV.A allows the City Council to delegate a committee to "review the merits of the action and to make a recommendation to the full Council." The Rules require the Committee to set a time and place for hearing "appeals of an individual's final assessment for a Local Improvement District" within 15 days of the filing of the appeal with the City Clerk. Rule VI.A.

32. City Council delegated the task of hearing appeals from the Examiner's Final Recommendation to the Public Assets and Native Communities Committee (the "Committee"). On March 2 and April 6, 2021, the Committee held a 15- and 30- minute meeting, respectively.[2]

33. During these meetings, the Committee did not mention any individual appeal.

34. At the April 6 meeting, Councilmember Herbold expressed concern about the process, asking: "What makes this a hearing, if we're not hearing anything?" 4/6/21 Hrg. Tr. at 93:1-2 (LID_013348).

35. Staff Member Eric McConaghy asserted that the Council had "made the choice to hire a Hearing Examiner instead of [having the] Committee and City Council to listen to all

[1] See, https://www.seattle.gov/documents/Departments/Council/Reports/quasi-judicial-rules.pdf.

[2] The hearings were held on March 2, 2021, and April 6, 2021. .

these appeals" and this proceeding before the Committee was simply to recognize those appeals in a public way. *Id.* at 93:6-13, 94:19-25 (LID_013349, LID_013348).

36. Before voting, Councilmember Herbold noted that she was not aware that the clerk file contained "materials associated with appeals" and was not aware that the Committee would be acting on anything at the April 6 meeting. *Id.* at 95:1-20 (LID_013350); 99:7-15 (LID_013354).

37. There were no further questions by the Councilmembers. The Committee voted to recommend that the full City Council deny all the appeals.

38. Only after this vote were the Committee members emailed a proposed draft for the City Council to consider as its final findings, conclusions and decisions. *Id.* at 102:8-106:5 (LID_013357 - LID_013361). The Committee members did not have the opportunity to review these proposed findings, conclusions and decisions prior to their meeting or their vote. It was explained to the Committee members that, if adopted by the City Council, these proposed findings would be the final decision of City Council on all the LID appeals.

39. The Committee voted to approve the proposed final findings. *Id.* at 109:2-110:2 (LID_013364 - LID_013365).

40. On June 14, 2021, the full City Council passed Ordinance 126374, confirming the final LID assessment roll and adopting the Examiner's Final Recommendations, which rejected all of Appellants' appeals. *See* LID_000041 - LID_000179.

5. Proceedings Before This Court

41. Appellants timely appealed City Council's decision to this Court by filing twenty separate appeals, which were assigned to different King County Superior Court judges.

42. On January 21, 2022, the King County Superior Court consolidated the appeals into the above-captioned case. (Sub 13)

43. On April 7, 2022, the Court held a status conference. Following that conference, the Court issued an order that set the date of oral argument, deadlines for filing the certified transcript(s), briefing, and oral argument. (Sub 16) The order allowed Appellants to file a single consolidated brief for common issues raised in their appeals, and shorter property-specific briefs for each of the properties. The City's responses were also divided among common issues and property-specific issues, as were Appellants' reply briefs. The Court issued a revised briefing schedule on June 17, 2022 to allow Appellants time to supplement the certified transcript after omissions and errors were identified.

44. Appellant Victor C. Moses and Mary K. Moses, who were not represented by Perkins Coie, LLP, were provided additional word limits for their property-specific briefs.

45. Appellants filed opening briefs on July 1, 2022. (Sub 18, 20, 22, 24, 26, 28, 30, 32, 34, 36, 38, 40, 42 & 43).

46. The City filed response briefs on August 30, 2022. (Sub 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, & 59).

47. Appellants filed reply briefs on September 29, 2022. (Sub 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, & 75).

48. This Court held oral argument on October 28, 2022, providing Appellants and the City each 45 minutes for common issues and 5 minutes of oral argument for each property. (See Sub 61). At the start of the hearing, the Court granted Appellant Moses' uncontested request for 15 minutes for his property-specific oral argument. The hearing lasted for approximately 5 hours and 45 minutes, with recesses.

49. Following the hearing, the Court allowed the parties additional time to submit proposed findings of fact and conclusions of law. After discussion with the parties, the Court set the final submission date of December 9, 2022.

C. The Waterfront Local Improvement District

50. At issue in these consolidated cases is the City's method and process of assessing Appellants for a share of costs associated with redeveloping the Seattle waterfront.

51. The Alaskan Way Viaduct ("Viaduct") was an elevated section of State Route 99 that functionally separated most of downtown Seattle from the waterfront. After wear and tear from daily use and damage from earthquakes, the Washington Department of Transportation ("WSDOT") decided to tear down the Viaduct for safety reasons and restore the roadway beneath—Alaskan Way—to baseline road standards.

52. In 2012, the Seattle City Council approved a Waterfront Strategic Plan (the "Plan") to improve 26 blocks along the waterfront. The Plan replaced WSDOT's proposal to restore Alaskan Way after demolishing the Viaduct, and the City decided to use a LID to fund some of the costs associated with the Plan's enhancements.

53. LIDs allow cities to assess property owners who realize unique property value increases—*i.e.*, special benefits—that are directly attributable to a public improvement and not shared by the general public. For example, LIDs fund infrastructure intended to urbanize a specific area, such as road, water and sewer extensions, that make properties in the area more valuable.

54. The "LID-funded improvements" at issue are individually referred to as:

a. The Promenade;

b. Overlook Walk;

c. Pioneer Square Street Improvements;

d. Union Street Pedestrian Connection;

e. Pike/Pine Streetscape Improvements; and,

f. Pier 58

55. These LID Improvements are part of the City's plan to redevelop Seattle's waterfront following WSDOT's demolition of the SR 99 Viaduct. The LID Improvements are projects that go beyond WSDOT's baseline road standards to enhance the Seattle waterfront and connectivity between downtown and the waterfront.

56. The City anticipated the LID Improvements would be complete in 2024.

57. To construct the City's LID boundary and special assessment decisions, the City hired Mr. Robert Macaulay at ABS Valuation. Mr. Macaulay began by preparing a preliminary LID feasibility study in August 2017 ("Feasibility Study").

58. The Feasibility Study estimated that the range of special benefit due to the LID improvements would be between $300 million and $420 million. *See* LID_010022.

59. In May 2018, Mr. Macaulay prepared a preliminary special benefit assessment study ("Preliminary Study") to assist the City in deciding whether to form the LID and proposing LID boundaries. The Preliminary Study estimated the total special benefit within the then-proposed LID boundary to be approximately $414 million. LID_010097.

60. In June 2018, based on these studies, the Seattle City Council passed a Resolution of Intent to form the Waterfront LID, the boundaries of which encompass almost all of downtown Seattle from T-Mobile Park to Denny Way and from Elliott Bay to I-5. See Figure 1.

FIGURE 1

61. The Waterfront LID has unique features.

62. First, it encompasses 6,238 individual tax parcels, made up of many property types: residential/commercial condominium units, office buildings, hotels, retail spaces, historic structures, and special purpose properties (including sports stadiums, an art museum, a performance hall, a convention center, and a ferry terminal).

63. Second, the proposed LID Improvements are not contiguous. Mr. Macaulay testified that Pier 58, the Promenade and Overlook Walk were the "park-like components … considered" for purposes of drawing the LID boundary. 2/27/2020 Depo. at 179:18-180:2 (LID_00171705-171706). The map below (Figure 2) shows those three components in darker pink along the waterfront. And in lighter pink are the Union Street, Pioneer Square and Pike/Pine Improvements. *See* Kersten Decl., Ex. G (LID_00008389).

FIGURE 2

64. Third, the LID is being used to finance improvements significantly before their scheduled completion (now 2025).

65. Finally, the City's June 2021 final assessments were based on property value estimates from October 2019.

66. Following the City Council's vote to form the LID, Mr. Macaulay prepared the Waterfront Seattle LID Final Special Benefit/Proportionate Assessment Study, with a date of valuation of October 1, 2019 ("2019 Study").

67. The 2019 Study was prepared to "assist the City in estimating special benefit (increase in market value) to affected property resulting from the LID-funded improvements within the Waterfront Seattle Project." *See* 2019 Study at 1 (LID_000181).

68. The 2019 Study concluded that the total special benefit to all properties in the LID was $447,908,000.

69. This 2019 Study did not analyze the individual value contributions of each proposed LID Improvement.

70. The costs and expense of each LID component was not ascertained separately for purposes of assessing property owners.

71. The assessment amounts were not computed based on the cost and expense of each component.

72. Mr. Macaulay testified that he was asked to look at all of the LID Improvements as a whole. 6/23/2020 Hrg. Tr. at 30:3-8) (LID_003151).

73. Mr. Macaulay acknowledged that the six LID Improvements were not actually a continuous project. He stated that he viewed them together because the City staff asked him to do so. See 6/25/2020 Hrg. Tr. at 27:18-28:5 (LID_003432 - LID_003433).

74. The record does not contain a finding from the City Council the properties within the global LID would benefit from the totality of the LID Improvements as a whole. Nor does the record contain a factual record from which such a conclusion could be supported.

75. Mr. Macaulay applied an assessment capitalization ratio to each assessment.

76. The City Council had previously capped the amount to be assessed at $160 million, plus $15 million in administrative costs, for a total of $175 million assessment.

77. In determining the final proposed LID assessments for the individual properties, Mr. Macaulay did not conduct an individualized analysis. Rather, he divided the $175,000,000 assessment cap by the estimated total special benefit of $447,908,000 (based on the 2019 Study) to reach an assessment capitalization ratio of 39.2%.

78. Mr. Macaulay then multiplied his estimated special benefit for each property by 39.2% to arrive at final proposed LID assessments. *See* 2019 Study at 9 (LID_000189).

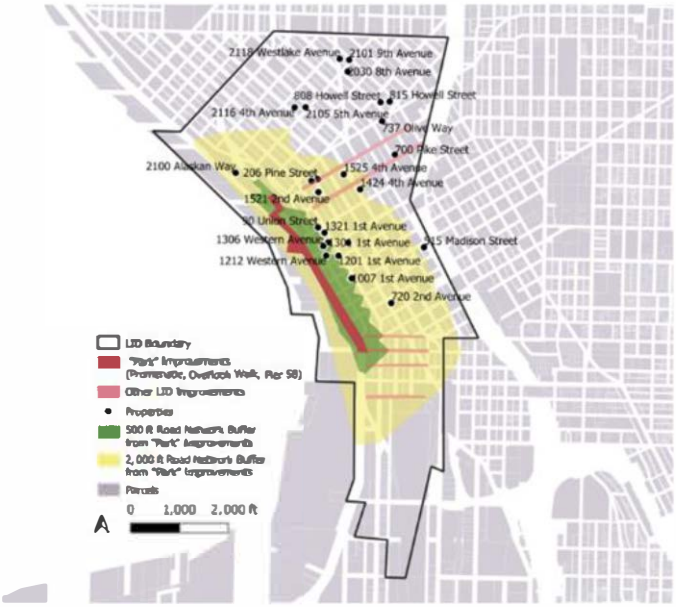
D. Appellants' Properties

79. Appellants' properties are all within the Waterfront LID boundary, and all were assessed a portion of the cost of the LID Improvements based on the valuations in the 2019 Study.

80. Appellants' properties include 6 hotels, 5 apartment complexes, an owner-occupied charity office complex, 1 parking/retail unit, 4 individual condos, and 1 parking lot.

81. Appellants' properties are generally not appurtenant to the proposed "park-like" improvements. See, Figure 3. Most are more than 500 feet away and seven are more than 2,000 feet away. Perkins' Appellants' GIS expert, Dr. Ellen Kersten, provided the map below showing the location of the properties and LID Improvements. *See* Kersten Decl., Ex. E (LID_008385).[3]

FIGURE 3



E. The City's Method of Assessment

82. The City Council based Appellants' LID assessments on property value estimates in the 2019 Study and Mr. Macaulay's amended valuations in the remand proceeding in December 2020-January 2021.

[3] Map was edited by the parties to remove properties who did not pursue an appeal to this Court.

83. Appellants' challenged the methodology used in the 2019 Study on four basis:

a. First, Appellants contend that the property values were estimated significantly in advance of the anticipated completion and did not take into account the economic impact of the Covid Pandemic. The 2019 Study estimated property values over five years in advance of anticipated completion of the LID Improvements and one year and eight months prior to the City's final assessments (with an intervening pandemic). The LID assessments were not discounted to account for economic, permitting, construction and other risks associated with potential delayed delivery of those Improvements. Rather, the assessments relied on the hypothesis that the planned Improvements were in place and had increased the value of Appellants' properties as of October 2019. Obviously, they were not, and had not.

b. Second, Appellants assert that the 2019 Study did not estimate actual market values for any of the LID properties. Instead, the Study's "Before" values assumed that WSDOT Improvements were complete (including removal of the Viaduct and restoration of Alaskan Way). However, the 2019 Study did not document or estimate increases in property values due to the WSDOT Improvements.

c. Third, Appellants argue that the 2019 Study did not demonstrate reasonable compliance with appraisal standards. Appellants contend that the conclusions of the 2019 Study cannot be independently tested or evaluated.

d. Fourth, Appellants assert that the special benefit estimates for Appellants' properties are too small to be reasonably estimated, are not substantial in a market sense, are incapable of being measured, particularly so far in the future, and are not supported by property-specific data.

1. The 2019 Study estimated property values 5+ years before completion of improvements and 1 year and 8 months prior to the final assessment and did not discount for risks.

84. Special benefit estimates are typically estimated after, or much closer to, the improvement completion date, when property value increases attributable to the improvement are more clearly identifiable. For example, the LOCAL AND ROAD IMPROVEMENT DISTRICTS MANUAL FOR WASHINGTON STATE, 6th Ed. (Oct. 2009) provides that market value is typically estimated "as of the date of the final assessment roll hearing." (LID_017363). As another reference point, under Seattle's municipal code, "[u]nless otherwise determined by ordinance or by City Council resolution, the proposed final assessment roll shall be filed within ninety (90) days following the completion and acceptance of the improvement." SMC 20.04.070B.1.

85. Although these practices do not represent bright line rules, they are indicative of the fact that an attempt to calculate a special benefit too far in the future is inappropriate. Even the City acknowledged that there is a point at which it is too speculative from a practical standpoint to estimate potential special benefits from future improvements. *See* 10/28/2020 Hrg. Tr. at 158:18-160:15.

86. Of the over one hundred LIDs Mr. Macaulay has worked on prior to this project, he could not recall any other LID where the proposed assessment roll was finalized

five years in advance of the anticipated project completion. *See* 6/18/2020 Hrg. Tr. at 108:14-16 (LID_002807); 6/23/2020 Hrg. Tr. at 16:1-22 (LID_003137).

87. Other than in this case, Mr. Macaulay could not recall ever recommending final special assessments based on designs less than 30 percent,. *Id.* at 17:22-18:2 (LID_003138 - 003139).

88. Here, the 2019 Study purported to predict hypothetical Before and After property values 622 days (almost two years) before the City finalized the assessments and 1,825 days (5 years) before the then-estimated completion of improvements.

89. Adopting a date of valuation so far in advance of the final assessments and completion of the improvements, understandably, complicated Mr. Macaulay's analysis. It required the use of hypothetical conditions and extraordinary assumptions. In an appraisal, an extraordinary assumption is "that which, if found to be false, could alter the opinion of market value." *See* 2019 Study at 28 (LID_000313) A hypothetical condition is "that which is contrary to what exists but is supposed for purposes of analysis." *Id.*

90. The 2019 Study assumed that downtown real estate values would continue to increase from 2019 to 2024. Thus, value conclusions for Appellants' properties reflected an assumption that "the new waterfront amenities and improved waterfront access would enhance trends already in evidence in the various downtown Seattle real estate markets." *See* 2019 Study at 7 (LID_000187).

91. Of course, it is undisputed that COVID intervened between the 2019 Study and City Council's imposition of final assessments in June 2021 and created a disruption in the real estate market trends in Seattle.

92. Appellants introduced uncontradicted evidence that COVID significantly negatively impacted their respective businesses and property values during the assessment

period. As one example, John Gordon testified regarding strong evidence that the value of hotels as of March 2020 was approximately 10-15% lower when compared with January 2020 or October 2019 values. *See* April 21, 2020 John Gordon Decl. at ¶ 9 (LID_019055).

93. The City did not rebut this evidence.

94. Mr. Macaulay acknowledged COVID's impact on the market as one example of why valuing the future delivery of improvements is inherently uncertain. Macaulay testified: "Well, all I'm saying is that I can't read the future. I mean, when I was doing my analysis in October 2019, who would have thought that this COVID issue would happen?" 6/23/2020 Hrg. Tr. at 79:18-80:8 (LID_003201).

95. By the time City Council finalized the LID assessments in June 2021, Appellants had presented ample, uncontested evidence of the drastic impacts to businesses (and property values) downtown due to COVID.

96. The City acknowledged that extreme events that impact property values—for example an intervening earthquake—would have required the Examiner to require reevaluation of the City's proposed assessments. *See* 10/28/2022 Hrg. Tr. at 71:12-16.

97. Nevertheless, despite the potentially speculative nature the ABS valuation created by the very early determination of the special benefit, the City and its Examiner failed to recognize that a global economic event such as COVID would require an update to the anticipated and projected property value estimates.

98. In fact, the Examiner determined that COVID was irrelevant because the 2019 Study's date of valuation predated the pandemic.

> "The COVID-19 pandemic does not have any relevancy with concern to the issues addressed in the special assessment hearing, which is to determine if the City committed an error in the calculation of special assessments or valuation. The

pandemic has no impact on the ABS appraisals in the Special Benefit Study because the date of valuation, October 1, 2019, predated the virus and appraisers are not required to predict unforeseeable events as part of their value analyses." Examiner's Findings and Recommendation at 124 (LID_000970).

99. The Examiner's further stated that "[t]he question of providing any relief to property owners on the basis of impacts from COVID-19 is a political question, not a legal issue on which the Hearing Examiner should provide a recommendation." *Id.* at 124 (LID_000970).

100. By contrast, because of COVID's unique impact on market conditions, the Appraisal Institute issued updated guidelines requiring appraisers to analyze the impact of COVID-19 on values, stating that "it is not appropriate to include a disclaimer or extraordinary assumption that suggests the appraiser is not taking responsibility for analysis of market conditions." *See* LID_016793 - LID_016795.

101. Another unique aspect of the 2019 Study was the hypothetical condition that all projects in the Before and After scenarios were complete as of October 1, 2019, even though WSDOT's improvements (other than Viaduct removal) would never be built, and the LID Improvements were then 5 years from completion. By assuming all were complete, Mr. Macaulay also made a number of extraordinary assumptions relating specifically to the Before and After conditions that have proven false: e.g., that all necessary project permits would be issued without any required changes, mitigation, or delay; that none of the project designs would materially change; that budget issues would not affect the timeline or delivery of the LID Improvements; and that there were not going to be any major disruptions in the micro- or macro-economy. *See* 6/23/2020 Hrg. Tr. at 64:13-65:12 (LID_003185 - LID_003186); 67:10-16 (LID_003188); 68:11-18 (LID_003189).

102. It is undisputed that any changes to extraordinary assumptions in the 2019 Study could alter Mr. Macaulay's opinion of value. When asked whether a fundamental assumption is that "there aren't going to be any major economic disruptions that might affect the funding or schedule for the improvements," he responded: "That would be correct. We would assume that the project is done both – in the after situation, the project would be done." 6/23/2020 Hrg. Tr. at 68:11-18 (LID_003189). In a follow up question, he was asked "if any of these assumptions prove incorrect, would your opinion of market value need to be revised[?]" *Id.* He responded: "Yes." *Id.*

103. None of WSDOT's Before improvements were complete as of October, 2019, and apart from Viaduct demolition, most were no longer planned. None of the LID Improvements were near complete as of October 2019 either. Aside from the Promenade, designs and specifications for the LID Improvements were incomplete when Mr. Macaulay finished the 2019 Study—most at 30% design or less. *See* 2019 Study at 2 (*See* LID_000182). Discretionary permitting and environmental review also were not complete for any of the LID Improvements and, for the Pier 58, Pike/Pine, and the Pioneer Square components, they had not even started.

104. Some events having the potential to impact timeline, design, and budget in fact occurred.

105. In September 2021, Pier 58 (future site of the Waterfront Park) collapsed, and the City was required to use emergency contracting protocols to remove the pier immediately. Concrete strikes between December 2021 through April 2022 delayed delivery of the LID Improvements from 2024 to 2025.[4]

106. Appellants contended that it was also likely, if not then known, that supply chain issues, inflation and other continuing economic disruptions not present in 2019 would drive up costs associated with constructing the LID Improvements and create further delay and other risks to the City's delivery of special benefits, for which it has assessed Appellants.

107. Mr. Macaulay acknowledged that there is no way to accurately predict the impact of improvements on property values this many years into the future. He testified: "I just don't know what the market value would be as of the date the project would be finally constructed. There could be a lot of elements in the market that did occur between now and then that impact value." 6/25/2020 Hrg. Tr. at 212:9-13 (LID_003617).

108. The Examiner nevertheless rejected the argument that COVID and other market forces could undermine assumptions in the 2019 Study, reasoning that "Objectors offered no evidence that any potential changes would, in fact, alter that amount of special benefit provided by the Improvements" and "the assessments are valid so long as the LID's fundamental purpose is accomplished." Examiner's Final Recommendations at 115 (LID_000961).

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[4] *See* Waterfront Seattle Construction Schedule, *available at* https://waterfrontseattle.org/construction/construction-overview ("construction was delayed into 2025 due to COVID-19 impacts and a lack of concrete delivery availability between December 2021 and April 2022").

109. It is undisputed that one way to account for development risks and the time value of money would have been to discount the estimated special benefit attributable to the forthcoming LID Improvements to account for those factors. Appellants' provided evidence from an MAI appraiser, Mr. Anthony Gibbons, using standard discounting techniques and the PricewaterhouseCoopers Korpacz report for 4th Quarter 2019 (the date of Mr. Macaulay's analysis).

110. Under this analysis, the City's anticipated $447,908.000 special benefit estimate (using pre-COVID numbers and assuming a 2024 completion date) would have been just 34% of the total in the 2019 Study. Gibbons Decl., ¶ 13, 16 (LID_005601 - LID_005602) ("Appraisers routinely consider the impact of future conditions [through] discounted cash flow analysis."); Gibbons Decl., Ex. A (LID_005607); *see also id.*, 3/11/2020 (A. Gibbons) Hrg. Tr.- at 197:21-198:3 (LID_001801 - LID_001802). The total amount after discounting to 34% would have been less than the City's total $175,000,000 assessment.

111. Appellants' proffered evidence with respect to proper discounting techniques and resulting impact on the assessment was unrebutted.[5]

[5] Appellants also presented additional MAI appraiser testimony and other evidence that a discount period of 5 years, assuming a 2024 completion date, is conservative. An HR&A study focused on the Rose Kennedy Greenway in Boston (included in Mr. Macaulay's backup files as one of his examples of how public projects can enhance adjacent property values) indicates that during the construction period, the Greenway district "significantly" lagged in value compared to neighboring properties. Gibbons Decl., Ex. C at 24 (LID_0005611). That study recognized that the "reorientation of development to capture value takes time"—specifically, 12-13 years. *Id.* at 30-31 (LID_0005613 - 005614) (discussing New York City High Line and San Francisco Embarcadero improvements). Applying standard discounting techniques and the PricewaterhouseCoopers Korpacz report, anticipated special benefits after 10 years (using pre-COVID numbers), would have been just 9% of the total value estimated in the 2019 Study, which is less than a quarter of the City's total $175,000,000 assessment. Gibbons Decl., Ex. A (LID_005607).

112. Mr. Macaulay and Mr. Lukens acknowledged that appraisers can use discounting to value a future condition, and if they were performing a discounting analysis, the approach proposed by Mr. Gibbons was not unreasonable. *See* 6/23/2020 Hrg. Tr. at 74:1-75:1 (LID_003195 - LID_003196); 77:2-19 (LID_003198); *see also* 2/27/2020 Macaulay Depo. at 106:11-108:17 (LID_008613 - LID_008615); 6/26/2020 Hrg. Tr. at 184:5-185:22 (LID_003843 - 003844), 187:18-189:23(LID_003846 - 003848).

113. Mr. Macaulay's approach for vacant land available for development in the 2019 Study applied a similar approach. He testified that the difference between vacant sites and developed sites was that the labor, capital, and risks associated with development had not yet been borne for those vacant sites. Therefore, the vacant land was not valued as highly and received a smaller assessment. 6/19/2020 Hrg. Tr. at 28:1-13 (LID_002978); *see also* 6/18/2020 Hrg. Tr. at 205:9-12 (LID_002904).

114. The Examiner did not make any finding addressing Appellants' MAI and other evidence or argument on discounting.

2. The 2019 Study did not properly document or segregate what increase in property value would be due to the WSDOT Improvements.

115. In a typical LID, the "Before" value is the estimated market value of the property as-is. And the "After" value is the estimated market value of the property with the proposed improvements.

116. The City is not allowed to assess LID properties for benefits associated with removal of the Viaduct and restoration of Alaskan Way, which WSDOT had already agreed to fund. "A primary assumption of [the 2019 Study] is that in the before (without LID) scenario, the Alaskan Way viaduct had been removed and Alaskan Way had been rebuilt to WSDOT standards, at street level." 2019 Study at 3 (LID_000183).

117. In particular, the City's Before values were supposed to reflect any property value increase that would have accrued to Appellants' properties as a result of other projects in the area, and specifically those WSDOT had already agreed to construct: Viaduct demolition, the new Alaskan/Elliott Way surface street, the new/improved Seawall, the State Route 99 Tunnel, the Pier 62 rebuild, Bell Street improvements, landscaping, and parking spaces WSDOT planned fronting piers between Pike and Madison (together, the "WSDOT Improvements").

118. At the time of the valuation, on October 1, 2019, no construction had begun on the WSDOT Improvements, aside from commencement of the Viaduct demolition, which was ultimately completed in November 2019. The remaining WSDOT improvements were being substituted with the LID Improvements and other City improvements. The completion of WSDOT Improvements and related property value enhancement were, therefore, an extraordinary assumption and hypothetical condition in the 2019 Study.

119. Mr. Macaulay acknowledged that Viaduct removal and the WSDOT Improvements would have resulted in significant increases to property value. *See* 6/23/2020 Hrg. Tr. at 44:7-17 (LID_003165); *see also id.* at 188:25-189:5 (LID_003309 - LID_003310) (he did not see 10-15% increases in value from the LID Improvements because his team assumed removal of the viaduct in the Before condition).

120. Appellants' evidence supports Mr. Macaulay's testimony that removal of the Viaduct resulted in significant changes that impacted property values. Mr. Gibbons provided the following comparison photos,[6] where "Current Condition" is October 2019 actual conditions, "No-LID" is WSDOT's planned improvements, and "With LID Alternative" is the City's.

[6] A full set of these comparisons is at LID_015960 - LID_015991.

South Main Street looking Northwest:

Current Condition

No LID Alternative

With LID Alternative

Marion Street Pedestrian Bridge, looking Northwest:

Current Condition

No-LID Alternative

With LID Alternative

121. Although it is undisputed that WSDOT Improvements would have significantly changed Before property values, the 2019 Study did not estimate the actual market value of Appellants' properties as of October 1, 2019, and there was no documentation or analysis of what hypothetical increase in value was attributable to the WSDOT Improvements for Appellants' properties.

122. During cross-examination, Mr. Macaulay was asked if there was "anywhere in the report where [a reader] can see where you went from current values to the before values accounting for this increase in value due to the viaduct removal and the Wash DOT improvements?" *See* 6/23/2020 Hrg. Tr. at 44:18-45:9 (LID_003165-LID_003166). He answered: "No. As previously stated, that wasn't the scope of our services. We didn't do two independent values in the before. We just did what we were hired to do, which was to just value the property assuming the viaduct is gone and Alaskan Way was rebuilt." *Id.*

123. Mark Lukens, the expert the City hired to review the City's Before valuations for hotels, did not understand that Before values were supposed to include a value increase due to Before Improvements. He was asked: "so is it then your understanding that the assumed before value of the properties wasn't necessarily their actual condition as of

October 2019, but it was their value assuming that these WashDOT improvements had been completed[?]" 6/26/2020 Hrg. Tr. at 165:6-25 (LID_003824). He responded, "Well, I think as of that date, the viaduct had been removed. I'm not sure about the latter part of that sentence because I'm not sure what the WashDOT standards are."

124. The 2019 Study states that "records of the King County Department of Assessments form the basis of the final assessment roll spreadsheets." 2019 Study at 3 (LID_000183). However, nearly all of the "Before" valuations for Appellants' properties substantially exceed the Assessors' valuations, some by nearly double. For example, the Hyatt Regency (Parcel No. 0660000708) is valued at 197% of the Assessor's value. And, in any case, in response to such arguments, the City stated that "King County Assessor values are not reliable estimates of current market value." City's Br. ISO Final Assessment Roll at 38 (LID_009113). Assessor values do not explain the Before valuations.

3. This Court finds that the 2019 Study does not demonstrate reasonable compliance with appraisal standards.

125. The Uniform Standards of Professional Appraisal Practice ("USPAP") are the generally recognized ethical and performance standards for the appraisal profession in the United States. Compliance with these standards "ensur[es] that appraisals are independent, consistent, and objective."[7]

126. USPAP Standards 1 and 2 govern direct property appraisals. Mr. Macaulay initially testified that "these appraisals are governed by Standards 1 and 2 which govern direct appraisals." *See* 6/23/2020 Hrg. Tr. at 203:3-18 (LID_003324). However, before this

[7] *See* The Appraisal Foundation, *available at* https://www.appraisalfoundation.org/imis/.

Court, the City has stated that "[c]ompliance with USPAP Standards 1 and 2 was not required." City's Response Br. at 24.

127. There are no separate appraisal reports for Appellants' properties. Further, Mr. Macaulay testified that the 2019 Study's spreadsheets—the only property-specific analysis he provided—do not show how he appraised Appellants' properties. *See* 6/18/2020 Hrg. Tr. at 189:2-190:2 (LID_002888 - LID_002889).

128. When asked whether "a parcel-by-parcel direct appraisal [was] feasible here," Mr. Macaulay answered: "Well, it would be possible, but it just wouldn't be economically feasible. It would take an incredible amount of time." *See* 6/18/2020 Hrg. Tr. at 125:15-10 (LID_002824). Mary Hamel, a trainee with ABS Valuation who assisted with the residential condominium valuations, affirmed in her declaration that "performing an individual appraisal of each parcel would have been time and cost prohibitive." Hamel Decl., ¶ 9 (LID_009817).

129. USPAP Standards 5 and 6 govern mass appraisals. The 2019 Study states that it complies with these standards. *See* 2019 Study at 2 (LID_000182).

130. A mass appraisal is different from a parcel-by-parcel direct appraisal. A "mass appraisal" is "the process of valuing a universe of properties as of a given date using standard methodology, employing common data, and allowing for statistical testing." Appraisal Foundation, Uniform Standards of Professional Appraisal Practice Advisory Opinion (AO-32) at 150 (2020-2021) (LID_017682).

131. Standard 5 requires mass appraisals to develop a model structure that conceptualizes the relationship between characteristics that affect value, and to calibrate that model to specify how individual characteristics affect value. *See* USPAP Standard 5: Mass Appraisal, Development (2020-21) (LID_010778 - 010783). The City's witness Mr. Paul

Bird testified: "The mass appraisal technique is an appraisal method used to evaluate a group of properties that are subject to similar market forces as of a certain date through the use of market data, statistical analysis and testing. As a result, the mass appraisal technique does not require or involve analysis of each individual property's specific data." Bird Decl. ¶ 20 (LID_009241).

132. Appellants' expert, Mr. Randall Scott, is a former appraiser who helped develop Standards 5 and 6. He explained that a model structure that complies with Standard 5 may presume that land + building = value, and calibration of that model might calculate value per square foot of land or building. *See* 3/3/2020 (R. Scott) Hrg. Tr. at 195:12-196:16 (LID_008044 - 008045). The purpose of the model is to rationally determine what characteristics will create value, and by how much. This allows the mass appraiser to not only generate outputs, but also to test the reliability of the model (and allow others to do so) by comparing the results of the model with actual sales. *Id.* at 197:7-15 (LID_008046); 203:21-205:13 (LID_008049 - 008051) (explaining that it is typical to test output against actual sales).

133. Standard 6 contains reporting requirements for mass appraisals and requires the mass appraisal report to "summarize and support the model specification," "summarize calibration methods considered and chosen, including the mathematical form of the final model(s)," and "summarize the reconciliation performed." *See* Ex. C-25 at 2 (LID_010785).

134. Advisory Opinion 32, which interprets USPAP Standards 5 and 6, states that when properties within a mass appraisal must be appraised individually (such as special use properties), these appraisals should comply with USPAP Standards 1 and 2. LID_017684. Further, individual property report cards are "not the mass appraisal report; [they] are only a portion of the information and analysis supporting the mass appraisal." *Id.*

135. Although the City argues that they Mr. Macauley went above and beyond what is required by providing some property-specific information in the 2019 Study, Mr. Macaulay did not provide a statistical model, as required by USPAP Standards 5 and 6.

136. There are no direct appraisal reports for Appellants' properties as required by USPAP Standards 1 and 2;

137. Mr. Macauley testified that his spreadsheets, the only property-specific analysis he provided, do not show how he appraised Appellants' properties. *See* 6/18/2020 Hrg. Tr. at 189:2-190:2 (LID_002888 - LID_002889).

138. The Examiner did not issue any specific findings with respect to USPAP compliance. The Examiner did not address the lack of a statistical or other model structure in the 2019 Study. The Examiner did not address Mr. Macaulay's specific disclaimer of having complied with USPAP Standards 1 and 2, nor the absence of property-specific appraisals.

139. However, the Examiner simply concluded that "Mr. Macaulay's testimony and the Final Special Benefit Study with supporting data demonstrate that the Study complied with the requirements of USPAP including Standards 1, 2, 5, and 6." Examiner's Final Recommendation at 14 (LID_000860).

4. This Court finds the special benefit estimates for Appellants' properties were not supported by property-specific data and misapplied the Crompton study.

140. A special benefit must be a measurable increase in the amount a market participant would pay for property after taking into account the improvement. Mr. Macaulay explained that "specially benefitted is what's measurable in the marketplace where you discern a market value difference in the before and after values that the market would pay for a property." *See* 2/27/20 Macaulay Depo. at 22:10-13 (LID_016948).

141. The 2019 Study predicted that market participants would pay 0.4%-3.2% more in 2024, when the LID Improvements were complete, as compared to what they would pay in 2024, if the WSDOT "Before" improvements had been completed instead.

142. This hypothesized future increase in market value was influenced by smaller adjustments to revenue and capitalization rate for all of the commercial properties.

143. It is undisputed that the income method is an appropriate method of valuing Appellants' commercial properties. Using the income method, appraisers using processes that are followed in the general appraisal community divide net income by a capitalization rate to estimate the value of commercial properties..

144. As one example of the adjustments to revenue, for the Hyatt Regency, Mr. Macaulay's spreadsheet estimated that revenue would increase by 0.20%-0.45% between the hypothetical WSDOT Improvements and anticipated LID Improvements. This translated to an increase from $365 average daily room rate to $365.73-$366.64. In other words, he estimated that a market participant would pay between 73 cents and $1.64 more for a room due to the LID Improvements in 2024.

145. Mr. Macaulay started with a 7.25% capitalization rate and adjusted that by 0.05% and 0.02%. He testified that these small adjustments to the capitalization rate were not driven by any particular academic study or verifiable methodology. Rather, these adjustments were simply based on his team's judgment. 2/27/2020 Depo. at 156:5-7 (LID_017082).

146. According to Mr. Macaulay, Mr. Mark Lukens was hired to review the Before and After valuations for the hotels, and specifically to review the numbers in the spreadsheets. *See* 6/19/2020 Hrg. Tr. at 105:4-109:24 (LID_003055 - 003059). However,

Mr. Lukens could not explain the percentage changes to revenue in Mr. Macaulay's spreadsheets.

147. Mr. Lukens further testified that he did not review any work or data to determine whether the percentage adjustments in the spreadsheets were reasonable, nor did he ever find them to be unreasonable or suggest any changes. *See* 6/26/2020 Hrg. Tr. at 172:3-20 (LID_003831). Instead, he testified that the adjustments "appear to be a kind of sensitivity analysis" and "appear to be a very minor change." *Id.* at 170:18-172:13 (LID_003829 - LID_003831). Likewise, he did not know what factors went into determining the small changes in capitalization rates in the spreadsheets. *Id.* at 173:23-174:1 (LID_003832 - LID_003834). Finally, he did not know how Mr. Macaulay reconciled the four scenarios in each spreadsheet to come to final estimated special benefit. *Id.* at 174:22-175:4 (LID_003834- LID_003835).

148. Formulas in the spreadsheets multiply "Before" revenue by these percentage changes to arrive at "After" values. Mr. Macaulay acknowledged that changing "Before" revenue values (e.g., for hotels, by lowering them) would change the ultimate special benefit conclusion, because of the formulas in the spreadsheets. 6/25/2020 Hrg. Tr. at 42:21-43:15 (LID_003447 - LID_003448) (explaining that changing the room rate will result in a different assessment and the same is true for every hotel).

149. Appellants argued that these formulas and Mr. Macaulay's testimony show that Mr. Macaulay arbitrarily assigned (rather than measured) special benefit increases. The City disagreed, and the Hearing Examiner accepted the City's argument, reasoning that Mr. Macaulay explained that the spreadsheets summarized his work and demonstrated his calculated increase as a percentage, but that formulas were not relied upon. Examiner's Final Recommendation at 12 (LID_000858); City's Response Br. at 27-28.

150. The City argues that 25 "background studies" informed Mr. Macaulay's adjustments in the spreadsheets and his ultimate special benefit conclusions. City's Response Br. at 28. However, Appellants point out that there is no specific explanation in the record showing how any of the academic studies or literature, data or sources were related to any particular property within the LID, including Appellants' properties. *See* Gibbons letters (LID_003889 – 003893; LID_003899 – 003905) and Shorett report (LID_003907 – 003954).

151. A crucial study cited in the 2019 Study and raised in both the City's and Appellants' briefing is by Dr. John Crompton. Dr. Crompton's research concluded that 75% of the benefit from a park is captured within 500 feet, or three blocks. And the remaining 25% of the benefit is likely dissipated over a 500- to 2,000 foot range, or 4 to 12 city blocks. 2019 Study at 46 (LID_000331).

152. The 2019 Study concluded that "[b]ased on the research conducted and discussed, there is a positive impact on all property types within a three-block radius of an improved park with a lower yet still measurable impact on properties up to twelve blocks away. Many studies show that approximately 75% of the benefit from an improved park is captured within the first three blocks and the remaining 25% dissipated for up to twelve blocks." *Id.* at 56 (LID_000341).

153. Dr. Crompton testified that Mr. Macaulay misinterpreted his work in critical ways. Among other critiques, Dr. Crompton testified that the biggest aesthetic factor impacting property value is views (e.g., viaduct removal, which the City could not assess for), and that other improvements would provide diminishing returns. *See* Crompton's Report (LID_016796-LID_016814). As an analogy, turning on a weak light has a large impact in a dark room, but that same increment of light might be undetectable in a brightly

lit room. Id. (LID_016808). Likewise here, the incremental effect of "park" improvements on the value of properties that already have views of the water is likely to be very small or non-existent. *Id.*

154. Dr. Crompton further testified that updated research shows park-related value increases are in fact smaller and that estimated increases are "best guesses" that do not actually predict how property values will respond in a particular city. *See* Crompton's updated 2020 study (LID_016815 - LID_016835).

155. Dr. Crompton also testified that 500 feet (or 1.5 blocks in Seattle) is the furthest distance one might expect property value impacts from excellent community parks (LID_016803 - LID_016804). From reading the 2019 Study, Dr. Crompton inferred that Mr. Macaulay seized on the reference to "blocks" to conclude that 75% of a benefit from a park is captured within "3 blocks" and the remaining 25% will dissipate over "4-12 blocks". *See id.* at 6 (LID_016801) (quoting 2019 Study at 46 and 83) (LID_000331, LID_000368).

156. However, Dr. Crompton testified that his reference to "blocks" was to give the lay reader a sense how far a benefit might extend. Because Seattle's "blocks" are much longer (~ 300 feet) than normal residential ones, Mr. Macaulay "inappropriately extend[ed] the LID impact significantly beyond that which the park study indicated (even if it was legitimate to use the park review's findings)." *Id.* at 8 (LID_016802).

157. Mr. Macaulay also failed to recognize that the underlying studies used road network analysis (as opposed to "as the crow flies" distance), which had the effect of further inflating the assumed impact zone.

158. Finally, Dr. Crompton testified that bad parks (e.g., drugs, crime, graffiti) can, in fact, be disamenities (LID_016806).

159. In sum, the special benefit estimates for Appellants' properties ranged from 0.4%-3.2% and these specific percentages—which were the basis for the assessments—were not supported by any property-specific data or studies.

F. Appellants' Expert and Lay Testimony

160. Appellants presented reports and testimony from ten experts, including four appraisers (Anthony Gibbons, Peter Shorett, John Gordon and Brian O'Conner), two non-appraiser property valuation experts (Randall Scott and Ben Scott, tax appeal representatives who cannot be MAI appraisers because they work in most cases on contingency), a world renowned park valuation expert (Dr. John Crompton), a land use expert (Reid Shockey), a construction scheduling expert (Richard Shiroyama), a GIS land mapping expert (Dr. Ellen Kersten), and thirteen property owner representatives with extensive real estate knowledge, training and experience.

161. John Gordon was qualified as an expert on hotel valuations. He testified regarding ABS Valuations' method for appraising the hotels and provided actual 2019 Before values for four of Appellants' hotel properties.[8] The Hearing Examiner found: "Mr. Gordon is a specialist expert in appraising hotels and his expert opinion, in addition to the specific information he relied on for that opinion, is superior to the opinion and supporting data of the City in its valuation." Final Recommendation at 11 (LID_000857). Mr. Gordon testified initially and on remand that the City's Before valuations were too high.

162. Brian O'Connor specializes in multi-family appraisals. He concluded in his review appraisal that the City had overvalued the five multi-family towers.[9] His appraisal reports are based on actual January 2020 values.

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[8] These include the Grand Hyatt, Renaissance Hotel, Hyatt Regency and Hyatt at Olive 8.
[9] These are the four Harbor Steps towers and Helios Apartments.

163. Anthony Gibbons and Peter Shorett are both qualified appraisers, each with over 40 years of experience. They studied Mr. Macaulay's methods and opined that there was no way to accurately estimate what special benefits—if any—might ultimately flow from the future LID improvements anticipated in 2024.

164. All of Appellants appraisers presented testimony and evidence that Mr. Macaulay's methods and conclusions in the 2019 Study were speculative, unreliable, and (most importantly) do not meet generally accepted appraisal standards or practices. Appellants' appraisers, as well as Ben and Randall Scott, also testified that it was not possible based on the available data to determine in an actual, measurable, or substantial way, any potential special benefit that might inure to Appellants' properties in or around 2024 as a result of the LID Improvements.

165. Finally, Randall Scott, a former MAI appraiser responsible for developing the standards for mass appraisals, testified that the 2019 Study does not meet mass appraisal standards nor allow for independent review of Mr. Macauley's conclusions.

166. Appellants' other expert witnesses also presented evidence that Mr. Macaulay's assumptions, methods, and conclusions were flawed. The testimony was uncontroverted that Dr. Crompton is the world's preeminent authority on a park's influence on property values. He testified that Mr. Macaulay misinterpreted his research to expand the LID boundary, mischaracterized the improvements, and overstated potential benefits.

167. Dr. Ellen Kersten is a GIS mapping expert and provided maps showing the location of Appellants' properties in relation to LID Improvements.

168. Land use and construction experts, Reid Shockey, Camie Anderson, and Richard Shiroyama, testified regarding risks the underlying assumptions that the City will deliver the LID Improvements on time and as promised.[10]

169. Although Appellants' witnesses testified that it would be speculative to estimate the impact of the LID Improvements five years into the future based on incomplete designs, Appellants attempted to provide evidence concerning processes that could have been used to mitigate speculation and estimate potential reduced After values—e.g., by using Appellants' Before values and discounting for COVID and to account for risks associated with the delayed delivery of improvements. This testimony was discarded by the Hearing Examiner.

G. The City's Expert and Lay Testimony

170. The City presented testimony from Robert Macaulay, MAI, Marshall Foster, the City's Waterfront Improvement Project Manager, and Mark Lukens, MAI. These and the remainder of witnesses also submitted declarations.

171. Mr. Macaulay works for ABS Valuation, Inc. The City hired ABS Valuation to prepare a Feasibility Study, a Formation Study from which the City established the LID boundary, and the 2019 Study which purported to estimate the special benefit for each LID parcel due to the LID Improvements as compared to the WSDOT Improvements. Mr. Macaulay is the lead author of these studies, and he testified regarding his process and conclusions in the studies, including the 2019 Study.

172. The Examiner relied on the 2019 Study and Mr. Macaulay's conclusions on remand in the Final Recommendations.

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[10] Their testimony is not specifically addressed at all in the Examiner's Final Recommendation. *See* Examiner's Final Recommendation at 114 (LID_000960).

173. Marshall Foster is director of the Office of the Waterfront and Civic Projects, responsible for managing development of the Waterfront Park improvements. He testified regarding anticipated timing and delivery of the LID Improvements.

174. Mark Lukens is an appraiser, hired by ABS Valuation to assist with hotel valuations.

175. At the closing of cross-examination, the City submitted six declarations from Mr. Macaulay, Alena Johnson, Heidi Hughes, Joshua Curtis, Mary K. Hamel, and Paul C. Bird.

176. Alena Johnson is a Fiscal Policy Analyst for the City and testified regarding Mr. Macaulay's contract with the City and his scope of services.

177. Heidi Hughes is the Executive Director for Friends of the Waterfront and testified regarding her belief that the Seattle Waterfront Park would offer a vibrant, welcoming public mixing ground.

178. Joshua Curtis is the Partnership Manager for the City's Office of the Waterfront and Civic Projects and testified regarding the City's outreach leading to formation of the Waterfront LID.

179. Mary K. Hamel was an appraisal trainee and former employee with ABS Valuation. She testified regarding her role doing market research for the 2019 Study and developing values for the residential properties in the LID.

180. Paul C. Bird is a Senior Associate Appraiser at ABS Valuation. He testified regarding his role in helping prepare the 2019 Study and valuation of the hotel properties.

181. In reply to "cross examination" declarations submitted by objectors, the City submitted "reply" declarations from Angela Brady, Dorinda Costa, Jill Macik.

182. Angela Brady is the Deputy Director for the City's Office of Waterfront and Civic Projects. She responded to and critiqued Mr. Shiroyama's testimony regarding the City's construction timelines and estimated completion dates.

183. Dorinda Costa is a Finance Manager for the City's Office of Waterfront and Civic Projects. She responded to and critiqued Mr. Shiroyama's testimony regarding cash flow for the LID Improvements.

184. Jill Macik is a Senior Environmental Analyst and State Environmental Policy Act Official for the City's Department of Transportation. She responded to and critiqued Mr. Shockey and Ms. Anderson's testimony regarding the City's environmental review and permitting status for each of the LID Improvements.

H. Property-Specific Findings

185. Mr. Macaulay and his team provided spreadsheets for each of Appellants' commercial properties. There were no individual reports or spreadsheets for the residential condos.

186. For the commercial properties, except for United Way and Lot B (the vacant lot next to the Hyatt Regency), the spreadsheets used an income-based valuation to estimate Before and After values. Income-based property valuations estimate revenue and expenses to arrive at net operating income. The net operating income is then divided by a capitalization rate to arrive at a valuation. It is undisputed that the income approach is the appropriate way to value commercial properties.

187. Each spreadsheet generally had three columns. In the first column is the Before analysis. The Before analysis estimated revenue and expenses to calculate a net operating income, then divided that by a capitalization rate to estimate a valuation under Before conditions (i.e., assuming completion of WSDOT Improvements).

188. In the second column, Mr. Macaulay made high/low adjustments to revenue sources. For example, for the Hyatt at Olive 8, he adjusted room revenue, food and beverage revenue, and parking and other income by 0.45% in the low scenario and 0.85% in the high scenario. This resulted in a higher net operating income, and therefore a higher valuation.

189. When asked whether there was "anywhere in the report where we can see this work or how you came up with the two percentages in the low and high scenarios," Mr. Macaulay answered, "No. Again, we didn't write up a separate report …" 6/23/2020 Hrg. Tr. at 114:24-115:3 (LID_03233-3234). He further testified that there was no model or equation he was relying on to make these adjustments. *Id.*

190. In the third column, Mr. Macaulay kept revenue sources stable but made high/low adjustments to capitalization rates. So, again, for the Hyatt at Olive 8, he adjusted the capitalization rate from 7.50% to 7.40% (low) and 7.45% (high). This also resulted in a higher valuation after net operating income was divided by the lower capitalization rates.

191. Finally, in a "Special Benefit Summary" at the bottom of each spreadsheet, there was a summary of the Before valuation and the four alternative After valuations (high/low revenue adjustment, and high/low capitalization rate). These resulted in a final conclusion, but it is not clear from the spreadsheets, the 2019 Study, or the record whether the four scenarios are averaged or how the final special benefit conclusion was reached.

192. For the United Way and Lot B, the spreadsheets provided a per square footage land value estimate Before and After to calculate special benefits.

193. For the residential condos, there were no property-specific reports. As explained below, all condos in a particular complex received the exact same special benefit percentage increase.

Harbor Steps

194. The Harbor Steps is the owner of four residential apartment buildings (collectively referred to as the Harbor Steps) with ground floor retail located at the following addresses:

Harbor Steps NW	1306 Western Ave., Seattle, Washington
Harbor Steps NE	1301 1st Ave., Seattle, Washington
Harbor Steps SW	1212 Western Ave., Seattle, Washington
Harbor Steps SE	1201 1st Ave., Seattle, Washington

195. Harbor Steps timely appealed the City's imposition of the following Waterfront LID Assessments on each of the four Harbor Steps buildings:[11]

Harbor Steps NW	King County Parcel No. 1976200070	$839,675 Waterfront LID Assessment
Harbor Steps NE	King County Parcel No. 1976200075	$1,376,079 Waterfront LID Assessment
Harbor Steps SW	King County Parcel No. 7666202465	$1,289,878 Waterfront LID Assessment
Harbor Steps SE	King County Parcel No. 1976200076	$1,767,509 Waterfront LID Assessment

[11] Dollar amounts in these findings and conclusions are rounded to the nearest dollar.

196. The following table reflects the 2019 Study's estimated assessments on the Harbor Steps properties, which was adopted by the Hearing Examiner and affirmed by City Council.

Harbor Steps Property	City's Final Assessment Amount	City's Valuation without LID Improvements	Special Benefit Percentage
Harbor Steps NW	$839,675.00	$77,938,000	2.75%
Harbor Steps NE	$1,376,078.86	$127,557,000	2.75%
Harbor Steps SW	$1,289,878.02	$119,788,000	2.75%
Harbor Steps SE	$1,767,509.04	$180,511,000	2.50%

197. Harbor Steps presented expert testimony and evidence from Mr. Brian O'Connor, a licensed appraiser, Mr. Anthony Gibbons, a licensed appraiser, and Mr. Benjamin Scott, a tax consultant. (LID_004350-58; LID_004331-37; LID_004360-65).

198. Mr. O'Connor provided an appraisal review and analyzed the Before Value of all four Harbor Steps properties using an income approach. (LID_004355). His analysis concluded that the City's appraisal overstated the collective Harbor Steps properties' Before value by $88 million. (LID_004355).

199. Mr. Gibbons' appraisal review concluded that the After value of the four Harbor Steps buildings were speculative in nature. (LID_004337).

200. Mr. Scott provided a tax analysis and concluded that the proposed LID Improvements were not necessary to the function of the four Harbor Steps buildings. (LID_004360-62).

201. Harbor Steps also presented witness testimony from property representative Ed Leigh. (LID_001410-16). Mr. Leigh testified to the character of the Harbor Steps buildings, the tenant market, and the impacts from COVID-19. (LID_001411; LID_001415-16; LID_012514-15).

202. The Harbor Steps also presented testimony that the LID Improvements—in particular, Overlook Walk—would draw foot traffic away from the Harbor Steps which currently provide pedestrian access from downtown to the waterfront.

203. The Overlook Walk comprises approximately 30% of the total project costs funded by the Waterfront LID. *See* LID_000018.

204. The findings by Harbor Steps' experts and property representative, if the assessments are not annulled, are summarized in the following table:

Harbor Steps Property	MAI Expert Appraised Actual 2019 Value	Discount for Covid Impact (10%)	Multiplying Previous Column by City's Special Benefit Percentage and 39.18%	5 Year Discount for Time Value of Money Off (34%)	Overlook Walk Discount (30%)
Harbor Steps NW	$55,938,000	$48,945,750	$527,366	$179,304	$125,513
Harbor Steps NE	$105,557,000	$92,362,375	$995,158	$338,354	$236,848
Harbor Steps SW	$97,788,000	$85,564,500	$921,915	$313,451	$219,416
Harbor Steps SE	$158,511,000	$138,697,125	$1,358,538	$461,903	$323,332

205. The City's witnesses testified as to the method of the 2019 Study and the special benefits assigned to the Harbor Steps. (LID_003170-71).

Helios Apartments

206. Helios Apartments (hereafter "Helios") is the owner of a multifamily residential apartment building with 398 units located at 206 Pine St., Seattle, Washington. LID_001518-19. In addition, Helios maintains underground and aboveground parking and one retail unit at ground level. (LID_001519).

207. Helios timely appealed the City's imposition of $2,244,356 Waterfront LID Assessment on King County Parcel No. 7683890010.

208. The following reflects the 2019 Study's estimated assessment on this parcel, which was adopted by the Hearing Examiner and affirmed by City Council.

City's Final Assessment Amount	City's Valuation Without LID Improvements	City's Special Benefit Percentage
$2,244,356	$298,884,000	1.92%

209. Helios presented the following expert testimony: (1) an appraisal review by Mr. Anthony Gibbons, a licensed appraiser; (2) a tax analysis by Mr. Benjamin Scott, a tax consultant; and (3) appraisal review by Mr. Brian O'Connor, a licensed appraiser. (LID_005499-05; LID_005528-33; LID_005518-26).

210. Mr. Gibbons' appraisal review discussed the After Value of the City's assessment. (LID_005499-05).

211. Mr. Scott testified that the City's appraiser used an incorrect unit mix to calculate Helios' valuation. (LID_001626-27; LID_005528-33).

212. Mr. O'Connor analyzed the actual Before value of Helios correcting the unit mix mistake, and demonstrated that the City's appraisal overstated the Before value by $59 million. (LID_005523).

213. Helios presented witness testimony from property representative Mr. Ed Leigh. Mr. Leigh provided testimony regarding Helios's rental market, the neighborhood surroundings, and the impact of COVID-19. (LID001520-23; LID_014320-22; LID_012514-15).

214. Helios also presented testimony and evidence that the City's assessment should have accounted for risks associated with the delivery of the LID Improvements including permitting risk, construction risk, general economic risk, and any special damages associated with interim construction. (LID_001183-89; LID_001123-24).

215. Additionally, Helios presented evidence that the City's appraiser failed to discount the anticipated 2024 benefit to account for the time value of money. (LID_001118-19). The findings by Helios' expert and property representative, if the assessment is not annulled, are summarized in the following table:

MAI Expert Appraised Actual 2019 Value	Discount for Covid Impact (10%)	Multiplying Previous Column by City's Special Benefit Percentage and 39.18%	5 Year Discount for Time Value of Money Off (34%)
$239,800,000	$209,825,000	$1,578,421	$536,663

216. The City's witnesses testified to the method of the 2019 Study and the special benefits assigned to Helios. (LID_003170-71).

The Hedreen Hotels

217. Elliott NE LLC owns Parcel No. 066000708, which is the Hyatt Regency, located at 808 Howell Street, Seattle, Washington.

218. Madison Hotel LLC owns Parcel No. 0942000430, which is the Renaissance Seattle Hotel, located at 515 Madison Street, Seattle, Washington.

219. Hedreen LLC owns Parcel No. 2285130010, which is the Hyatt at Olive 8, located at 1635 8th Avenue, Seattle, Washington.

220. Hedreen Hotel LLC owns Parcel No. 6195000030 and 6792120100, which is the Grand Hyatt Seattle, located at 700 Pike Street, Seattle, Washington. (LID_008440).

221. All of these property owners are wholly-owned subsidiaries of R.C. Hedreen Company, and together the four hotels are referred to herein as "The Hedreen Hotels". *Id.*

222. Each of these properties are multi-story hotels containing guest rooms and meeting space in downtown Seattle. (LID_008442-51).

223. The Hedreen Hotels timely appealed the City's imposition of the following Waterfront LID Assessment on each parcel.

224. The following table reflects the 2019 Study's estimated assessment on each hotel. The City's witnesses testified as to the methods of the 2019 Study and the special benefits assigned to The Hedreen Hotels, including the use of advertised Average Daily Room rates ("ADR") in lieu of operating data, and the use of a sales comparison approach. LID_010975; LID_009830–009831.

225. The Hedreen Hotel presented expert testimony and evidence from Mr. John Gordon, and Mr. Peter Shorett, both licensed appraisers with the MAI designation. (LID_007501; 007567). Mr. Gordon and Mr. Shorett supported their hotel analyses with appraisal reviews, reports and testimony.[13]

The Hedreen Hotel Properties	City's Valuation without LID Improvements	City's Final LID Assessment	Special Benefit Percentage
Grand Hyatt Seattle[12]	$222,002,000	$1,306,335	1.5%
Hyatt at Olive 8	$174,622,000	$683,338	1.00%
Hyatt Regency Seattle	$634,335,000	$1,205,636	.49%
Renaissance Seattle Hotel	$215,497,000	$420,425	.50%

226. Mr. Gordon focused on the properties' actual "Before Values" as of January 2020, and concluded that the City significantly overstated the property value for each of The Hedreen Hotel properties as of October 2019 because the City did not take into account actual property-specific operating data, including actual ADR information (contained in

[12] The City combined the Grand Hyatt parcels for purposes of a single appraisal. The properties are valued as a unit. (LID_002216-17).

[13] LID_007824 (Hyatt at Olive 8); LID_007716 (Hyatt Regency); LID_007758 (Renaissance); LID_007857 (Grand Hyatt).

STR Reports) and occupancy and trends in order to establish a net operating income. (LID_00200 7-9.)

227. It is undisputed that hotel value is primarily driven by room rate and occupancy and that it is critical to obtain accurate room rate information to value a hotel. *See* 6/23/2020 Hr. Tr. at 108:14-21 (LID_003229).

228. It is also undisputed that using a lower room rate would result in lower valuations and lower LID assessments for the hotels.

229. When asked how it would impact the analysis if actual room rates were much lower, Mr. Macaulay testified: "Well, assuming that what Mr. Gordon is saying – he has a basis for it, it would affect both our before and after values if we were to use a lower rate. And it would reduce both the before and after values…" 6/23/2020 Hrg. Tr. at 109:17-25 (LID_003230).

230. It is undisputed that Mr. Gordon had access to actual room rate information from the hotels. This data showed that ADRs for The Hedreen Hotels were much lower than what Mr. Macaulay estimated. Mr. Gordon testified that the actual ADRs were significantly lower than the City estimated, sometimes by hundreds of dollars. He further testified that a not using this data would have the effect of reducing the reliability of the pre-LID valuations . (LID_002009; LID_002222-23).

231. Yet, after being ordered by the Council to reevaluate his hypothetical Before values using Mr. Gordon's STR data, the evidence provided showed that Mr. Macaulay's revised analysis on remand slightly reduced the ADRs for The Hedreen Hotels (by $1 to $10). However, Mr. Macaulay did not use the actual operating reports as a starting point. (LID_011028).

232. Mr. Gordon provided evidence that this failure resulted in overstated actual 2019 values, in some cases by 40-50%. (LID_011027-28). The following table summarizes Mr. Gordon's findings.

	Gordon Appraisal, Derived From Actual ADR Records	City's Initial 2019 Estimated ADR	City's Revised Estimated ADR on Remand
Grand Hyatt	$240	$355	$345
Renaissance Hotel	$209	$300	$295
Hyatt Regency	$222	$365	$335
Hyatt at Olive 8	$235	$335	$325

233. Using higher ADRs resulted in higher valuation estimates. Mr. Gordon testified that each hotel was overvalued by the following amounts:

a. Grant Hyatt Seattle - $53,602,000

b. Hyatt at Olive 8 - $56,422,000

c. Hyatt Regency - $145,410,000

d. Renaissance Hotel - $284,000,000

234. Mr. Gordon also provided testimony as to the severity of COVID-19's impact on the value of hotels in Oregon and Washington, with strong evidence showing that the values quickly dropped by 10-15% as a result of the outbreak when compared with values as of October 2019 and January 2020. (LID_019051-59; LID_015261). The City did not rebut this evidence.

235. Mr. Shorett provided appraisal reviews and testimony that the City's study did not provide the necessary evidence to provide credible opinions of property value

increases after the LID improvements are in place, and that the estimated special benefit increases were too small and remote to estimate. *See e.g.*_LID_003913.

236. The Hedreen Hotels also presented witness testimony from Mr. Zahoor Ahmed, Chief Financial Officer and Vice President of R.C. Hedreen Company.

237. Mr. Ahmed testified to the character and business of each hotel, seasonality of average daily room rate, revenue and occupancy rates, the distance of the hotels from the LID improvements, and the impacts of COVID-19 on the hotels. (LID_008442-50). Mr. Ahmed testified that due to COVID, visitor numbers and average daily room rates were driven to near zero, with some hotels closing all together. (LID_015388-93).

238. The Hedreen Hotels presented testimony and evidence that the City's assessment should have accounted for risks associated with the delivery of the LID Improvements including permitting risk, construction risk and economic risk, as well as the impacts of COVID-19. (LID_001186-89).

239. The findings by The Hedreen Hotel's experts and witnesses, if the assessment is not annulled, are summarized in the following table:

Hotel	MAI Expert Appraised Actual 2019 Value	Discount for Covid Impact (12.5%)	5 Year Discount for Time Value of Money (34%)
Grand Hyatt	$168,400,000	$147,350,000	$294,432
Hyatt at Olive 8	$118,200,000	$103,425,000	$137,775
Hyatt Regency	$484,700,000	$424,112,500	$276,835
Renaissance Hotel	$200,700,000	$175,612,500	$116,968

240. The City's witnesses testified as to the methods of the 2019 Study and the special benefits assigned to The Hedreen Hotels, including the use of advertised daily room rates in lieu of actual operating data, and the use of a sales comparison chart because use of

actual data rendered Before valuations that were "too low." (LID_010975; LID_009830–009831).

Grand Hyatt Parking and Retail (7th & Pine LLC)

241. 7th & Pine LLC (hereafter "7th & Pine") is the owner of Grand Hyatt Parking and Retail. 7th & Pine LLC is a wholly-owned subsidiary of R.C. Hedreen Company. (LID_008451).

242. This property contains the retail and parking units in the building at 700 Pike Street that is also occupied by the Grand Hyatt Seattle. (LID_008451). It includes a parking garage with 950 stalls, and a retail space with two full-service restaurants, a Starbucks and other small retailers. (LID_002243). 7th & Pine owns the units and leases the retail spaces and parking space to third parties, including Grand Hyatt Seattle. *Id.*

243. 7th & Pine timely appealed the City's imposition of a $549,334 Waterfront LID Assessment on King County Parcel No. 6792120020.

244. The following summary reflects the 2010 Study's estimated assessment on this parcel, which was adopted by the Hearing Examiner and affirmed by City Council.

City's Final Assessment Amount	City's 2019 Valuation without LID Improvements	Special Benefit Percentage
$549,334	$93,822,000	1.49%

245. The City's witnesses testified to the method of the 2019 Study, its revenue and capitalization rate analysis, and the special benefits assigned to 7th & Pine. LID_009900-009901; LID_003078–003079.

246. 7th & Pine presented expert testimony and evidence from John Gordon, a licensed appraiser with MAI designation. Mr. Gordon analyzed both the special benefit assessment and underlying spreadsheets. (LID_002242-49). Mr. Gordon concluded the

City's method in calculating the special benefit for Grand Hyatt Parking and Retail was fundamentally flawed. *Id.* Specifically, for the parking lot, Mr. Gordon testified that the City incorrectly assumed that all of the parking stalls leased to the Grand Hyatt hotel would be 100% occupied by hotel guests. (LID_002245). Mr. Gordon testified that based on an appraisal review of garages in Downtown Seattle, only 20% to 30% of guests who come to hotels downtown arrive with a car. (LID_002244-46).

247. Mr. Gordon testified that based on a review of the City's valuation spreadsheets, the City assigned different special benefit and capitalization rate increases to this parking and retail parcel than similarly situated parcels. (LID_002249-50). By comparison, a different parking lot near the Grand Hyatt (Parcel 0659000355) received a 0.65% special benefit, while 7th & Pine was assigned a special benefit percentage change of 1.49%. (LID_000206).

248. 7th & Pine presented testimony from Mr. Zahoor Ahmed, Chief Financial Officer and Vice President of R.C. Hedreen Company. Mr. Ahmed testified to Grand Hyatt Parking and Retail's business, the location and character of the property, and the impacts of COVID-19 on the business. (LID_008450).

249. Mr. Ahmed testified that COVID-19 reduced the need for parking downtown and caused restaurants in this space to close. (LID_008452). Mr. Ahmed concluded that the LID improvements are not necessary to the functionality or use of the property as a retail space or parking garage, and may in fact decrease its property value. (LID_008451).

250. 7th & Pine presented testimony and evidence that the City's assessment should have accounted for risks associated with the delivery of the LID Improvements including permitting risk, construction risk and economic risk, as well as the impacts of COVID-19. (LID_001186-89).

251. A summary of 7th & Pine's expert evidence and testimony regarding the assessment, if the assessment is not annulled, is as follows:

2019 Appraised Value	Discount for Covid Impact (12.5%)	5 Year Discount for Time Value of Money (34%)
$93,822,000	$82,094,250	$162,945

Lot B

252. Lot B LLC ("Lot B") is the owner of the property located at 815 Howell Street, in Seattle Washington. Lot B is a wholly-owned subsidiary of R.C. Hedreen Company. (LID_008441).

253. The property is an undeveloped lot east of the Hyatt Regency Seattle, and is leased to a third party who operates a surface parking lot on the property and pays rent to Lot B. (LID_008452).

254. Lot B timely appealed the City's imposition of a $73,663 Waterfront LID Assessment on King County Parcel No. 0660000740.

255. The following summary reflects the 2019 Study's estimated assessment on this parcel, which was adopted by the Hearing Examiner and affirmed by City Council. The City's witnesses testified to the method of the mass appraisal, its revenue and capitalization rate analysis, and the special benefits assigned to Lot B. LID_009249–009251; LID_016854–016855.

City's Final Assessment Amount	City's 2019 Valuation without LID Improvements	Special Benefit Percentage
$73,663	$46,935,000	0.40%

256. Lot B presented expert testimony and evidence from John Gordon, a licensed appraiser with MAI designations. Mr. Gordon analyzed the City's underlying spreadsheets that support the special benefit assessment. (LID_002255). Mr. Gordon concluded the City's calculated special benefit for Lot B lacked support. (LID_0022557). Mr. Gordon testified that the 0.40% special assessment amount assigned to Lot B assumed an increase of about $7 per square foot due to the LID Improvements, but the City provided no basis for the special benefit increase and it appears to be a rounding error. (LID_002258).

257. Lot B presented witness testimony from Mr. Zahoor Ahmed, Chief Financial Officer and Vice President of R.C. Hedreen Company. Mr. Ahmed testified to Lot B's parking business, the character of the undeveloped property, its location in relation to the LID improvements, and the impacts of COVID-19 on the businesses. (LID_008453).

258. Mr. Ahmed testified that the property is located a 3/4 mile walk uphill from the proposed LID improvements, and because of that Lot B cannot recover the cost of the LID assessment from its tenant under the lease or through future rent increases. *Id.*

259. Mr. Ahmed testified that COVID also reduced the need for parking downtown and greatly impacted Lot B's business. LID_008453. Mr. Ahmed concluded that the LID improvements are not necessary to the functionality or use of the property as a parking lot or to the future redevelopment of the property, and that the property is more valuable without the LID improvements. (LID_08453-54).

260. Lot B also presented testimony and evidence that the City's assessment should have accounted for risks associated with the delivery of the LID Improvements including permitting risk, construction risk and economic risk, as well as the impacts of COVID-19. (LID_014178; LID_001186-89).

261. The findings by Lot B's expert and property representatives, if the assessment is not annulled, are summarized in the following table:

October 2019 Appraised Value	Discount for Covid Impact (12.5%)	5 Year Discount for Time Value of Money (34%)
$46,935,000	$41,068,125	$21,883

262. The City's witnesses testified to the method of the 2019 Study, its revenue and capitalization rate analysis, and the special benefits assigned to Lot B. (LID_009249–009251; LID_016854–016855).

Seattle Waterfront Marriott

263. The Seattle Waterfront Marriott (Ashford) property is a high-end hotel located at 2100 Alaskan WY, Seattle, Washington. The hotel is located on the waterfront, over 500 feet from any of the LID Park Improvements.

264. Seattle Waterfront Marriott timely appealed the City's imposition of an initial $ 2,106,827 Waterfront LID Assessment on King County Parcel No. 7666202345.The following table reflects the 2019 Study's assessment, which was adopted by the Hearing Examiner and affirmed by City Council. The City's witnesses testified to the method of the mass appraisal and the special benefits assigned to Seattle Waterfront Marriott. LID_003170-71.

City's Assessment Amount	City's Valuation without LID Improvements	Special Benefit Percentage
$2,106,827	$167,975,000	3.2%

265. Initially, hotels received an assessment on personal property, but no other property type did. LID_005636. Of the total assessment on this hotel, $67,738 is attributable to the value of Seattle Waterfront Marriott's personal property. LID_015097.

266. On remand, the City's appraiser recommended the personal property assessment be removed from remanded hotels. However, because this hotel was not remanded, Seattle Waterfront Marriott's assessment on personal property was still included in its final assessment. LID_015257-8. Seattle Waterfront Marriott did not receive notice the LID assessment extended to personal property, even though its personal property has a separate tax parcel number. LID_005304-07.

267. Seattle Waterfront Marriott presented expert testimony on three main points: (1) Mr. Peter Shorett, a licensed MAI designated appraiser, provided appraisal reviews and testified that the City's study did not provide the necessary evidence to provide credible opinions of property value increases after the LID improvements are in place and that the anticipated special benefits were to small, remote and speculative to be quantified; (2) Mr. Anthony Gibbons, a licensed MAI designated appraiser, prepared an appraisal review and testified that the comparisons in Mr. Macaulay's report were hypothetical, and too small, remote and speculative to be measured, and also provided an analysis discounting Mr. Macaulay's anticipated future special benefit to present value; and (3) Clayton Rash, the vice president of property tax for Ashford Hospitality for the hotel with 20 years of real estate assessment and valuation experience and 15 years of experience in the hospitality industry, testified that the LID Improvements would not increase the value of the hotel. LID_007435-7; LID_013837-43; LID_008398-8404. Seattle Waterfront Marriott also relied on the testimony of Dr. John Crompton and GIS analysis of Dr. Ellen Kersten to show that

the Seattle Waterfront Marriott's is more than 500 feet from the LID's primary park improvements. LID_002616-8; LID_008364-89.

268. Seattle Waterfront Marriott's primary witness with respect to the disproportionality was Clayton Rash. Mr. Rash testified regarding Seattle Waterfront Marriott, the neighborhood surroundings, the hotel's primary competitors, and the competitive disadvantage imposed upon this hotel by the City's disproportionate assessment (3.2%) given that competitor hotels were assessed an average of 0.92%. He also testified regarding the impossibility of meeting the City's revenue projections for the hotel, and the impact of COVID-19 on the Seattle Waterfront Marriott. LID_008398-8404.

269. Mr. Gibbons, Mr. Reid Shockey and Mr. Richard Shiroyama presented testimony and evidence that the City's assessment should have accounted for risks associated with the delivery of the LID. LID_001183-89; LID_001123-24.

270. Mr. Gordon, another licensed appraiser, also provided testimony as to the severity of COVID-19 on the value of hotels, with strong evidence showing that the values dropped by 10-15% as a result of the outbreak when compared with values as of October 2019 and January 2020. LID_019051- LID_019059; LID_015261. The summary of Seattle Waterfront Marriott's expert evidence and testimony regarding Seattle Waterfront Marriott's assessment, if the assessment is not annulled, is as follows:

City's Assessment	Remove Value of Personal Property (-$67,738)	Discount for Covid Impact (12.5%)	5 Year Discount for Time Value of Money	Proportionality Adjustment To Align With Competitor Hotels (0.92%) and Personal Property
$2,106,827	$2,039,089	$1,784,203	$606,629	$586,238 Or $512,958 (w/ COVID)

SHG Hotel

271. The SHG Hotel property is the Four Seasons, a high-end hotel located at 1321 1st Ave, Seattle, Washington. The parcel is specific to the hotel and the building has a garage, small retail space, and high-end condos which all have their own parcel numbers.

272. SHG Hotel timely appealed the City's imposition of an initial $1,676,215 Waterfront LID Assessment on King County Parcel No. 6094670030. The City's witnesses testified to the method of the 2019 Study and the special benefits assigned to SHG Hotel. LID_003170-71. A summary of the City's findings are provided in the following chart:

City's Assessment Amount	City's 2019 Valuation without LID Improvements	Special Benefit Percentage
$1,676,215	$142,639,000	3.00%

273. Initially, hotels received an assessment on personal property, but no other property type did. LID_005636. The City's imposed assessment for this hotel also included $75,029 for personal property. No other property type received an assessment on personal property. LID_014821.

274. On remand, the City's appraiser recommended the personal property assessment be removed from remanded hotels. However, because this hotel was not remanded, SHG Hotel's assessment on personal property was still included in its final assessment. LID_015257-8. SHG Hotel did not receive notice the LID assessment extended to personal property, even though personal property has a separate tax parcel number. LID_004889-92.

275. SHG Hotel presented expert testimony on two main points: (1) Mr. Peter Shorett, a licensed MAI designated appraiser, provided appraisal reviews and testified that the City's study did not provide the necessary evidence to provide credible opinions of

property value increases before and after the LID improvements are in place and that the anticipated special benefits were to small, remote and speculative to be quantified; and (2) Mr. Anthony Gibbons, a licensed MAI designated appraiser, prepared an appraisal review and testified that the comparisons in Mr. Macaulay's report were hypothetical, and too small, remote and speculative to be measured, and also provided an analysis discounting Mr. Macaulay's anticipated future special benefit to present value (LID_00743 5-7; LID_013837-43). SHG Hotel also relied on the testimony of Dr. John Crompton and GIS analysis of Dr. Ellen Kersten to show that the hotel is more than 500 feet from the LID's primary park improvements. LID_007633-38; LID_008364-89.

276. SHG Hotel presented witness testimony from property representative Angelica Palladino. Ms. Palladino testified regarding SHG Hotel, the neighborhood surroundings, the impossibility of meeting the City's revenue projections in Mr. Macaulay's spreadsheet, and the impact of COVID-19. LID_008390-95.

277. Mr. Gibbons, Mr. Reid Shockey and Mr. Richard Shiroyama presented testimony and evidence that the City's assessment should have accounted for risks associated with the delivery of the LID. LID_001183-89; LID_001123-24.

278. Mr. Gordon, another licensed appraiser, also provided testimony as to the severity of COVID-19's impact on the value of hotels, with strong evidence showing that the values quickly dropped by 10-15% as a result of the outbreak when compared with values as of October 2019 and January 2020. LID_019051- LID_019059; LID_015261. SHG Hotel also presented testimony certain LID improvements, like the Overlook Walk, are unnecessary because the building already has waterfront access via the Union Street stairs. LID_001970-72. The summary of SHG Hotel's expert evidence and testimony regarding SHG Hotel's assessment, if the assessment is not annulled, is as follows:

City's Assessment	Remove Value of Personal Property (-$75,029)	Discount for Covid Impact (12.5%)	5 Year Discount of Assessment for Time Value of Money	Overlook Walk Discount
$1,676,215	$1,601,186	$1,401,038	$476,353	$333,447

SHG Garage

279. The SHG Garage property is a garage located at 1321 1st Ave, Seattle, Washington. The parcel is the garage in the Four Seasons development, which provides parking for the high-end hotel and co-located high-end condos.

280. SHG Garage timely appealed the City's imposition of an initial $132,436.00 Waterfront LID Assessment on King County Parcel No. 6094670010. The City's witnesses testified as to the method of the 2019 Study and the special benefits assigned to SHG Garage. LID_003170-71. A summary of the City's findings are provided in the following chart:

City's Assessment Amount	City's 2019 Valuation without LID Improvements	Special Benefit Percentage
$132,436	$11,280,000	3.00%

281. SHG Garage presented the following expert testimony: (1) a restricted appraisal and appraisal review by Mr. Peter Shorett, an MAI licensed appraiser ; and (2) an appraisal analysis by Mr. Anthony Gibbons, an MAI licensed appraiser. LID_007633-38; LID_013837-43.

282. SHG Garage also presented witness testimony from property representative Angelica Palladino. Ms. Palladino provided testimony regarding SHG Garage, the

neighborhood surroundings, the inability for the garage to monetize an increase in tourists, and the impact of COVID-19. LID_00839●-95.

283. SHG Garage also presented testimony and evidence that the City's assessment should have accounted for risks associated with the delivery of the LID Improvements including permitting risk, construction risk, general economic risk, and any special damages associated with interim construction. LID_00●1183-89; LID_00●1123-24. In fact, SHG Garage anticipates additional garage management costs if tourism actually increases. Additionally, SHG Garage presented evidence that the City's appraiser failed to discount the anticipated 2024 benefit to account for the time value of money. LID_00●118-19. SHG Garage also presented testimony certain LID improvements, like the Overlook Walk, are unnecessary because the building already has waterfront access via the Union Street stairs. LID_00●197●-72. The summary of SHG Garage's expert evidence and testimony regarding SHG Garage's assessment, if the assessment is not annulled, is as follows:

City's Market Value without LID Improvements	Discount for Covid Impact (10%)	COVID Special Benefit Adjustment	5 Year Discount for Time Value of Money	Overlook Walk Discount
$11,28●,●●●	$7,896,●●●	$92,81●	$31,555	$22,●89

SHG Retail

284. The SHG Retail property is a small retail space located at 1321 1st Ave, Seattle, Washington associated with the Four Seasons Hotel. The parcel is confined to a retail space, even though the building also includes high-end condos, a high-end hotel, and a garage.

285. SHG Retail timely appealed the City's imposition of an initial $31,346 Waterfront LID Assessment on King County Parcel No. 6●9467●●2●. The City's witnesses testified to the method of the 2●19 Study and the special benefits assigned to SHG Retail. LID_●●317●-71. A summary of the City's findings are provided in the following chart:

City's Assessment Amount	City's 2●19 Valuation without LID Improvements	Special Benefit Percentage
$31,346	$2,676,●●●	2.99%

286. SHG Retail presented the following expert testimony: (1) a restricted appraisal and appraisal review by Mr. Peter Shorett, an MAI licensed appraiser ; and (2) an appraisal analysis by Mr. Anthony Gibbons, an MAI licensed appraiser. LID_●●7633-38; LID_●13837-43.

287. SHG Retail also presented witness testimony from property representative Angelica Palladino. Ms. Palladino provided testimony regarding SHG Retail, the neighborhood surroundings, the inability for the retails space to monetize an increase in tourists, and the impact of COVID-19. LID_●●839●-95.

288. SHG Retail also presented testimony and evidence that the City's assessment should have accounted for risks associated with the delivery of the LID Improvements including permitting risk, construction risk, general economic risk, and any special damages associated with interim construction. LID_●●1183-89; LID_●●1123-24. Additionally, SHG Retail presented evidence that the City's appraiser failed to discount the anticipated 2●24 benefit to account for the time value of money. LID_●●118-19. SHG Retail also presented testimony certain LID improvements, like the Overlook Walk, are unnecessary because the building already has waterfront access via the Union Street stairs. LID_●●197●-72. The

summary of SHG Retail's expert evidence and testimony regarding SHG Retail's assessment, if the assessment is not annulled, is as follows:

City's Market Value without LID Improvements	Discount for Covid Impact (10%)	COVID Special Benefit Adjustment	5 Year Discount for Time Value of Money	Overlook Walk Discount
$2,676,000	$1,873,200	$21,944	$7,461	$5,223

RRRR Investments

289. The RRRR Investments properties are high end condominiums located at 1521 2nd Ave, Units 3800 and 3802, Seattle, Washington. The parcels have extensive views of the Olympic mountains and Elliot Bay, a large private deck, Unit 3802 has a view of Mount Rainer, and the westerly views are protected. The parcels are more than 500 feet away from the waterfront.

290. RRRR Investments timely appealed the City's imposition of an initial $41,245 Waterfront LID Assessment on King County Parcel No. 2538831460 (Unit 3800) and $44,084 Waterfront LID Assessment on King County Parcel No. 2538831480 (Unit 3802). A summary of the City's findings are provided in the following chart:

Unit	City's Assessment Amount	City's 2019 Valuation without LID Improvements	Special Benefit Percentage
3800	$41,245	$3,508,830	2.70%
3802	$44,084	$3,750,300	2.70%

291. There is no property-specific report or spreadsheet for these condos, both of which received the exact same special benefit percentage as every other condo in the building. The City's imposed special benefit percentage of 2.70% was applied to all units in the building. LID_005595-97.

292. RRRR Investments presented the following expert testimony: (1) a restricted appraisal and appraisal review by Mr. Peter Shorett, an MAI licensed appraiser ; and (2) an appraisal review by Mr. Anthony Gibbons, an MAI licensed appraiser. LID_ LID_016176-218; LID_013837-43.

293. RRRR Investments presented witness testimony from property representative Bryon Madsen. Mr. Madsen provided testimony regarding RRRR Investments' properties, the neighborhood surroundings, the relevance of the LID Improvements in the unique market segment for high-end properties, and the impact of COVID-19. LID_001949-001960.

294. RRRR Investments also presented testimony and evidence that the City's assessment should have accounted for risks associated with the delivery of the LID Improvements including permitting risk, construction risk, general economic risk, and any special damages associated with interim construction. LID_001183-89; LID_001123-24. Additionally, RRRR Investments presented evidence that the City's appraiser failed to discount the anticipated 2024 benefit to account for the time value of money. LID_003198. The summary of RRRR Investments' expert evidence and testimony regarding RRRR Investments' assessment, if the assessment is not annulled, is as follows:

Unit	City's Market Value without LID Improvements	Discount for Covid Impact (10%)	COVID Special Benefit Adjustment	5 Year Discount for Time Value of Money
3800	$3,898,700	$3,508,830	$37,119	$12,620
3802	$4,167,000	$3,750,300	$39,673	$13,489

Sound Vista Properties

295. The Sound Vista property is a high-end condominium located at 99 Union Street, Suite 1602, Seattle, Washington. The parcel is located in the Four Seasons Hotel with water views and easy access to the waterfront with stairs adjacent to the building. The parcel is more than 500 feet away from the waterfront.

296. Sound Vista timely appealed the City's imposition of an initial $122,412 Waterfront LID Assessment on King County Parcel No. 6094680050. A summary of the City's findings are provided in the following chart:

City's Assessment Amount	City's 2019 Valuation without LID Improvements	Special Benefit Percentage
$122,412	$10,413,900	3.00%

297. There is no property-specific report or spreadsheet for these condos, which received the exact same special benefit percentage as every other condo in the building. The City's imposed special benefit percentage of 3% was applied to all units in the building. LID_005595-97.

298. Sound Vista presented the following expert testimony: (1) a restricted appraisal and appraisal review by Mr. Peter Shorett, an MAI licensed appraiser ; and (2) an appraisal review by Mr. Anthony Gibbons, an MAI licensed appraiser. LID_016220-62; LID_013837-43.

299. Sound Vista presented witness testimony from property representative Greg Vik. Mr. Vik provided testimony regarding Sound Vista, the neighborhood surroundings, and the impact of COVID-19. LID1965-76.

300. Sound Vista also presented testimony and evidence that the City's assessment should have accounted for risks associated with the delivery of the LID Improvements

including permitting risk, construction risk, general economic risk, and any special damages associated with interim construction. LID_001183-89; LID_001123-24. Additionally, Sound Vista presented evidence that the City's appraiser failed to discount the anticipated 2024 benefit to account for the time value of money. LID_003198. Sound Vista also presented testimony certain LID improvements, like the Overlook Walk, are unnecessary because it already had waterfront access via the Union Street stairs. LID_001970. The summary of Sound Vista's expert evidence and testimony regarding Sound Vista's assessment, if the assessment is not annulled, is as follows:

City's Market Value without LID Improvements	Discount for Covid Impact (10%)	COVID Special Benefit Adjustment	5 Year Discount for Time Value of Money	Removal of Overlook Walk
$10,413,900	$9,372,510	$110,164	$37,456	$26,219

United Way

301. The United Way property is an office building of historic significance located at 720 2nd Ave., Seattle, Washington. The property is occupied solely by United Way for non-profit human services.

302. United Way timely appealed the City's imposition of an initial $139,097 Waterfront LID Assessment on King County Parcel No. 0939000240.

303. Following the close of the record before the Hearing Examiner, the City submitted several amendments to the special benefit estimates for several properties. LID_000827. For United Way, the City concluded that the property sold its air rights, which was not considered in the initial assessment analysis. The Hearing Examiner recommended a remand to allow the City to make changes to the assessment. LID_000827.

304. ABS provided a revised assessment for United Way of $81,928. LID_010933. A summary of the City's findings are provided in the following chart:

City's Initial Assessment Amount	City's Revised Assessment Amount	City's Valuation without LID Improvements	Special Benefit Percentage
$139,097	$81,928	$13,920,000	1.50%

305. Throughout its appeal, United Way presented the following expert testimony: (1) a restricted appraisal and appraisal review by Mr. Peter Shorett, a licensed appraiser ; and (2) an appraisal review by Mr. Anthony Gibbons, a licensed appraiser. (LID_013837-43; LID_013845-82; LID_013887-901).

306. United Way presented witness testimony from property representative Mr. Dave Brown. Mr. Brown provided testimony regarding the United Way building, the neighborhood surroundings, and the impact of COVID-19. (LID_001982-88).

307. United Way also presented testimony and evidence that the City's assessment should have accounted for risks associated with the delivery of the LID Improvements including permitting risk, construction risk, general economic risk, and any special damages associated with interim construction. (LID_001183-89; LID_001123-24). Additionally, United Way presented evidence that the City's appraiser failed to discount the anticipated 2024 benefit to account for the time value of money. (LID_001118-19). The summary of United Way's expert evidence and testimony regarding United Way's assessment, if the assessment is not annulled, is as follows:

City's Market Value without LID Improvements	Discount for Covid Impact (10%)	Multiplying the Previous Column by Special Benefit Percentage and 39.18%	5 Year Discount for Time Value of Money Off
$13,920,000	$12,528,000	$73,627	$25,033

308. United Way also asserted that, as a long term holding of a human services non-profit, it will, in fact, receive no special property value benefit from the LID Improvements, and its assessment should be reduced to zero as an equitable consideration.

309. The City's witnesses testified to the method of the mass appraisal and the special benefits assigned to United Way. (LID_00317071).

Victor and Mary Moses

310. Appellants Victor and Mary Moses ("Moses") own real property at: 1521 Second Ave. Apt. 2304, Seattle, WA 98101, King County Tax Parcel No. 2538830850 (the "Moses Property"). *See* Final Assessment Roll (LID_000715). Moses acquired their property in 2011.

311. The Moses Property is a condominium residence on the 23rd floor of a 38-story high rise building. The Moses Property has a view of the downtown stadiums, Mt. Rainer, the Puget Sound, and the Olympic Mountains, as well as a full-time concierge, maintenance staff, rooftop decks, exercise and meeting facilities, along with parking garages that hold 297 places for the building's 143 residences. *See* portion of Peter Shorett Appraisal Review dated 10/01/2019 (LID_10/01/2019). The Moses Property is more than 500' away from the waterfront.

312. Moses timely appealed the City's imposition of the $25,519.00 LID assessment on their property.

313. The following table reflects the 2019 Study's estimated assessments on the Moses Property, which was adopted by the Hearing Examiner and affirmed by the City Council:

City's Final Assessment Amount	City's Valuation Without LID Improvements	City's Special Benefit Percentage
$25,519.00	$2,412,200	2.7%

314. No individual spreadsheets or property-specific reports were prepared for residential condominium buildings (let alone for individual condominiums). The City applied the same special benefit percentage (2.7%) to every residential condominium within the Moses building (LID_005595-97).

315. The City argued this uniform application was done to account for "fractional ownership" and to ensure proportionality. (*See* City Resp. Moses Specific Brf. at pg. 3 lines 1-4 citing Third Declaration of Robert Macaulay ¶¶ 3–8). However, the Court finds that this argument does not logically follow, as fractional ownership of the condominiums in the Moses building is determined by building's declaration of condominium and is based on square footage.[14]

316. The uniform application of a constant percentage presumes that every component of the "Before" value of a residence (such as proximately to amenities, view premiums, etc.) is increased by that percentage, as well as any value added by the hypothetical WSDOT Improvements.

317. In support of their appeal, Moses relied upon the following expert testimony: (1) an appraisal review by Mr. Peter Shorett, licensed appraiser, together with his subsequent testimony; and (2) the materials and testimony provided by Dr. John Crompton,

[14] Declarations to the effect were readily available to view in the KCA files provided to City Clerk (http://clerk.seattle.gov/search/clerk-files/321593)

world renowned park valuation expert. LID_12025-012094; LID_002069-002074; LID_008636-008638; LID_002646-002647.

318. In his appraisal review, Mr. Shorett concluded the 2019 Study was misleading and did not provide necessary evidence to provide credible opinions of property value increases before and after the LID values in place, and that the 2019 Study failed to provide the proper support to conclude that the LID Improvements provide special benefits to properties in the LID boundary area, in contrast to the more common general benefits that park improvements typically create for the benefit of the larger community and region. LID_012031.

319. Mr. Shorett's appraisal review for Moses also provided an alternative analysis and calculation of the potential benefits the Moses Property could receive from the LID Improvements, accepting the City's "Before" valuation of the Moses Property for the purpose of the appraisal review. LID 012042 – 012043.

320. This alternative analysis and calculation was not considered by the Hearing Examiner. *See* LID_000855 (finding that Mr. Shorett's appraisal review "did not provide evidence about the current value of specific properties and did not calculate or quantify the special benefits that would accrue to the concerned properties…").

321. Dr. Crompton concluded that Mr. Macaulay misinterpreted Dr. Crompton's work in critical ways and testified that the incremental effect of "park" improvements on the value of properties that already have high view premiums – such as the Moses Property – is likely to be very small or non-existent. LID_016808.

322. Victor Moses also presented and relied upon his own evaluation and analysis of the range of potential special benefits for his Property where he concluded the 2019 Study was flawed in several respects. LID_012069 -012088.

323. Victor Moses' evaluation was reviewed by appraiser Peter Shorett who concurred with Moses' analysis. LID_012042.

324. Further, Mr. Moses's evaluation analyzed a contrast between their current circumstances and the conditions of the proposed Overlook Walk, pointing out the misrepresentations in the City's Overlook Walk rendering, and demonstrating how the Overlook Walk would not provide a special benefit to the Moses Property due to already existing access to the waterfront. LID_012079.

325. This evidence does not appear to have been considered by the Hearing Examiner who found "objectors provided no evidence analyzing a contrast between their current circumstances and the proposed improvements [referring to the Overlook Walk]"). LID_000839

326. On appeal to the City Council of the Examiner's Final Recommendations, the Moses explicitly requested in briefing that the Committee confirm and/or attest that they had reviewed his appeal materials. LID 011958.

327. The Committee did not enter such findings or attestation. Nor does it appear from the record that the Committee were aware of the request, considered or discussion the issue of whether they should either review or attest to reviewing Moses' materials.

328. The Court is aware of no law which would have required the Committee to explicitly make such a finding.

II. CONCLUSIONS OF LAW

A. Standard of Review

329. The decision of the City Council "shall be final and conclusive, subject however to review by the superior court upon appeal." RCW 35.44.200.

330. Upon review by the Superior Court, "[t]he judgment of the court shall confirm, unless the court shall find from the evidence that such assessment is founded upon a fundamentally wrong basis and/or the decision of the council or other legislative body thereon was arbitrary or capricious; in which event the judgment of the court shall correct, change, modify, or annul the assessment insofar as it affects the property of the appellant." RCW 35.44.250.

331. The Court's duty is not to simply confirm the assessment, but rather to conduct a careful review of the record to ensure that there is a legal and factual basis for the assessment, and that the assessment is not the product of arbitrary or capricious action. Id.

332. RCW 35.44.250 sets forth both the basic procedure to appeal LID assessments to superior court and the appropriate standards of review. The statute provides two standards. The court shall "correct, change, modify, or annul the assessment" if (i) the "assessment is founded upon a fundamentally wrong basis and/or" (ii) "the decision of the council . . . was arbitrary or capricious." RCW 35.44.250; *Hasit LLC v. City of Edgewood*, 179 Wn. App. 917, 934-935, 310 P.3d 163, 172 (Div 2, 2014).

333. The "fundamentally wrong basis" standard refers to "'some error in the method of assessment or in the procedures used by the municipality[.]'" *Bellevue Assocs. v. City of Bellevue*, 108 Wn.2d 671, 675, 741 P.2d 993 (1987) (quoting *Abbenhaus v. City of Yakima*, 89 Wn.2d 855, 859, 576 P.2d 888 (1978)).

334. The "arbitrary or capricious" standard applies to the City Council's processes, including its decision to delegate appeals to the Hearing Examiner, the Examiner's processes, and the Council's decision to rely on the Examiner's recommendation. *See* RCW 35.44.250.

335. Although "an action taken after due consideration is not arbitrary or capricious even though a reviewing court may believe it to be erroneous", a City Council's decision regarding a LID assessment is "arbitrary or capricious" if the decision constitutes "willful and unreasoning action, taken without regard to or consideration of the facts and circumstances surrounding the action." *Abbenhaus*, 89 Wn.2d at 858-59.

336. Failure to decide all issues requiring resolution or to make any finding whatsoever is arbitrary and capricious. *Cf.* RCW 34.05.570(3)(f). [15]

337. In applying these two standards, "courts may consider only the record proceedings before the City Council." *Hasit*, 179 Wn.2d at 935 .

338. In ruling on these issues, "[f]undamental errors should be ascertained as a matter of law by reference to the transcript which plaintiff is required to certify." RCW 35.44.230. That record should demonstrate, without reference to extrinsic evidence, whether the statutes and ordinances or charters have been followed by the municipality." *Cammack v. City of Port Angeles*, 15 Wn. App. 188, 196-97, 548 P.2d 571 (Div 2, 1976).

339. If a petitioner establishes a fundamental error "the court is limited to nullification or modification only of those parcel assessments before it." *Abbenhaus*, 89 Wn.2d at 859.

340. The law allows cities to impose LID assessments only when a particular property benefits from an increase in property value that is "actual, physical and material and not merely speculative[.]" *Heavens v. King Cty. Rural Library Dist.*, 66 Wn.2d 558,

[15] There is a minor difference in phrasing between "arbitrary or capricious" in RCW 35.44.250 and "arbitrary and capricious" in *Abbenhaus* and other relevant case law. This distinction "is without significance." *Hasit*, 179 Wn.2d at 935 n.6.

563, 404 P.2d 453 (1965). The LID improvement must "bring a benefit [to that property that is] substantially more intense than is yielded to the rest of the municipality." *Id.*

341. Unless rebutted, there is a presumption that there is a special benefit, and that that the assessment is proportionate and fair. *See Abbenhaus v. Yakima,* 89 Wn.2d 855, 860–61, 576 P.2d 888 (1978).

342. However, "[a] presumption is not evidence and its efficacy is lost when the other party adduces credible evidence to the contrary." *In re Indian Trail Trunk Sewer Sys.,* 35 Wn. App. 840, 843, 670 P.2d 675 (Div. 3, 1983); *Hamilton Corner I, LLC v. City of Napavine*, 200 Wn. App. 258, 268, 402 P.3d 368 (Div 2, 2017), *as amended* (Sept. 12, 2017). See also, *Bates v. Bowles White & Co.,* 56 Wash.2d 374, 378, 353 P.2d 663 (1960); *Bradley v. S.L. Savidge, Inc.,* 13 Wash.2d 28, 123 P.2d 780 (1942); *Key v. Cascade Packing, Inc.,* 19 Wash.App. 579, 583, 576 P.2d 929 (1978); *Tire Towne, Inc. v. G & L Service Co.,* 10 Wash.App. 184, 188, 518 P.2d 240 (Div 2, 1973); *State v. Fitzpatrick,* 5 Wash.App. 661, 667, 491 P.2d 262 (Div 2, 1971); *see also Amend v. Bell,* 89 Wash.2d 124, 127, 570 P.2d 138 (1977).

343. As aptly re-stated by Judge Green of Division 3 of the Washington State Court of Appeals:

> Presumptions are the " 'bats of the law, flitting in the twilight but disappearing in the sunshine of actual facts.' " *Mockowik v. Kansas City, St. J. & C.B.R. Co.,* 196 Mo. 550, 94 S.W. 256, 262 (1906). The sole purpose of a presumption is to establish which party has the burden of going forward with evidence on an issue. *Bank of Wash. v. Hilltop Shakemill, Inc.,* 26 Wash.App. 943, 948, 614 P.2d 1319 (1980). **The ultimate burden of showing that land within an LID is specially benefited remains with the City.**

In re Indian Trail Trunk Sewer Sys., 35 Wn. App. At 843. (emphasis supplied).

344. The City's reliance on the presumption to reject evidence to the contrary of its desired conclusions is inappropriate use of the presumption and makes the action of the Hearing Examiner and the City Council fundamentally wrong as well as arbitrary and capricious.

B. The City's Method of Assessment Was Fundamentally Flawed.

1. It was fundamentally flawed and speculative to predict minor property value increases five years into the future, where both current and future valuations were complicated by the Global COVID Pandemic. Rejecting evidence of the impact of the Global Pandemic and refusing to consider its effect on valuations was arbitrary and capricious.

345. While appraisal standards allow reliance on hypothetical conditions and extraordinary assumptions, a LID appraisal must nevertheless comply with legal principles governing LID assessments. *See Bellevue Plaza, Inc. v. City of Bellevue*, 121 Wn. 2d 397, 411, 851 P.2d 662, 669 (1993) (expert's opinion on market value must be based upon legal principles governing LIDs).

346. One such legal principle is that when calculating a special benefit, "[f]air market value cannot include a speculative value." *Id.* "When an appraiser uses a factor 'beyond the knowledge of reasonable certainty', it becomes pure speculation." *Id.* (quoting *In re Local Imp. 6097*, 52 Wn.2d 330, 335–36, 324 P.2d 1078 (1958)).

347. The Washington Supreme Court and State Legislature have expressly acknowledged in the eminent domain context that the value of a special benefit is inherently speculative prior to completion of the anticipated construction project. Accordingly, the legislature has authorized condemnees to postpone the determination of special benefits in a condemnation case until *after* construction of improvements. *See* RCW 8.25.220; *State v. Green*, 90 Wn.2d 52, 55-56, 578 P.2d 855 (1978). "The separate valuation proceeding helps

insure against speculative special benefit offsets" for future improvements. *Green*, 90 Wn.2d at 56.[16]

348. Further, while not a bright line rule, state LID guidance and the City's code provide a reference point and contemplate that market value will be determined within 90-days of completion of the improvements or as of the date of the final assessment hearing. SMC 20.04.070B.1; *see also* Local and Road Improvements Manual, 6th Ed., at 55 (LID_017363) (market value is typically estimated "as of the date of the final assessment roll hearing"). One reason valuation should follow completion (or near completion) of the improvements is so that the impact on property values can be ascertained with reasonable certainty.

349. What is speculative is fact specific; under these circumstances and facts, the proposed assessments are speculative. The 622 days lag between the 2019 Study and the Council's final assessment, and the roughly 6 years until completion of improvements (~ 25 times longer than City code anticipates), is a significant deviation from reference points provided in the LID Manual and City code. Under the circumstances, this time lag undermined fundamental assumptions in the 2019 Study that formed the basis for the special benefit estimates.

350. Extraordinary assumptions in the 2019 Study were already proven false at the time the Examiner prepared his report and well before the Council's vote approving the final

[16] In some contexts, Mr. Macaulay relied on eminent domain law to illustrate why interim disruptions are "not compensable, so it's not something we consider." *See* 2/27/2020 (Macaulay Depo.) at 186:2-12 (LID_017112). However, he has otherwise argued that eminent domain law is inapplicable. The Examiner found that eminent domain law is inapposite for purposes of determining whether general benefits should have been considered. *See* Examiner's Final Recommendation at 118 (LID_000964).

assessment roll. The intervening Global COVID pandemic rendered October 2019 hypothesized valuations stale and an improper basis for assessing Appellants' properties.

351. Concrete strikes in December 2021 and Global supply chain issues also pushed back the completion date (and any anticipated special benefits) by at least a year.

352. The Examiner's failure to consider how COVID and other market forces might, and did, impact the validity and speculative nature of the 2019 Study, and specifically his understanding of Appellants' request for relief from impacts from COVID as solely a "political" question, was arbitrary and capricious. These include the following erroneous findings:

- "Objectors offered no evidence that any potential changes would, in fact, alter that amount of special benefit provided by the Improvements. Conjecture of potential changes is not adequate to meet Objectors' burden. Absent credible evidence that potential changes would impact the special benefit analysis, the assessments are valid so long as the LID's fundamental purpose is accomplished." Examiner's Final Recommendations at 115 (LID_000961).
- "The COVID-19 pandemic does not have any relevancy with concern to the issues addressed in the special assessment hearing, which is to determine if the City committed an error in the calculation of special assessments or valuation. The pandemic has no impact on the ABS appraisals in the Special Benefit Study because the date of valuation, October 1, 2019, predated the virus and appraisers are not required to predict unforeseeable events as part of their value analyses. The question of providing any relief to property owners on the basis of impacts from COVID-19 is a political question, not a legal issue on which the Hearing Examiner should provide a recommendation." *Id.* at 124 (LID_000970)

353. Regarding whether granting relief from impacts from COVID was a "political question", this Court understands in some contexts this may accurate—e.g., in providing eviction relief.

354. However, consideration of the Global COVID Pandemic is highly relevant to the legal and factual questions presented to the City sitting as a Board of Equalization in these appeals—i.e., whether the 2019 Study reflected actual Before values as of June 2021 and actual, non-speculative increases in property values anticipated from future improvements. The failure of the Hearing Examiner to understand this essential reality and to rebuff the issue as a "political question" puts into question the entirety of the analysis and process that the Hearing Examiner purported to follow in approving the 2019 valuation study.

355. In light of these circumstances, and the legal standards governing LID assessments, the Council finalized the assessments on a fundamentally wrong basis in June 2021 by relying on pre-COVID valuations in the 2019 Study, and Macaulay's remand testimony and refusing to consider and ignoring all evidence of market disruption and value impact. The City Council, "sitting as a Board of Equalization", does not have political discretion to disregard its equalization obligations.

356. Additionally, it is undisputed that Mr. Macaulay did not employ any recognized discounting methods to account for the time value of money and the risks associated with development.[17] Appellants' unrebutted evidence is that, after discounted using standard techniques, the hypothesized benefits are significantly lower than the assessments, and hence improper.

357. The Court finds that the Council finalized the assessments on a fundamentally wrong basis in June 2021 by relying on speculative valuations in the 2019

[17] Doing so might have begun to address the legal requirement that LID assessments be non-speculative. The Court notes that discounting analysis may have provided a possible way to account for such risks while collecting assessments in earlier stages of construction. However, it did not occur here.

Study and Macaulay's remand testimony and by disregarding MAI testimony and other evidence that anticipated 2024 benefits should have been discounted to present value to reduce speculation and avoid overstatement. Failure to discount further renders the final Waterfront LID assessments illegal.

358. This Court concludes that Appellants' LID assessments are speculative as a matter of law and fail to comply with RCW 35.44.010 and RCW 35.44.047.

2. The findings of the Hearing Examiner were fundamentally flawed to omit analysis of how WSDOT Improvements impacted property values.

359. The estimated property value increase to a particular property in a LID must be actual, measurable, and special (as opposed to general). *Heavens*, 66 Wn.2d at 563. Certain costs required to meet road design standards "may be general benefits" and should, therefore, be excluded. *See* LOCAL AND ROAD IMPROVEMENT DISTRICTS MANUAL FOR WASHINGTON STATE, 6th Ed. (Oct. 2009) at 58 (LID_008656) (co-authored by Mr. Macaulay).

360. Many Washington cases disallow LID assessments for improvements that go beyond baseline requirements. For example, in *Appeals of Jones*, 52 Wn.2d 143, 324 P.2d 259 (1958), the Court held that property already adequately supplied with water and fire protection was not specially benefited by installation of a new water main and fire hydrant and could not be assessed. In *In re Shilshole Ave.*, 85 Wash. 522, 537, 148 P. 781, 786 (1915), an assessment levied to raise the grade of a road by 16 to 18 feet was held invalid because the evidence showed that the properties would have benefitted equally from an increase of only 9 feet. And in *Hasit*, 179 Wn. App. at 940, the court annulled the LID assessments because the city built the pipes larger than was needed. Thus, "only that portion

of the cost of the local improvement which is of special benefit to the property can be levied against the property." *In re Schmitz,* 44 Wn.2d 429, 433, 268 P.2d 436 (1954).

361. It is undisputed that that the Waterfront LID assessments should exclude any value increase the WSDOT Improvements would have provided.

362. It is also undisputed that Mr. Macaulay did not estimate the actual market value of Appellants' properties in October 2019, and he did not separately analyze any value lift attributable to the WSDOT Improvements.

363. Failure to document the market value impact of the WSDOT Improvements was an additional fundamental flaw.

364. It is undisputed that much of the anticipated increase in property values in downtown Seattle related to the waterfront work derived from removal of the Viaduct. For any attempt to calculate a special benefit of the LID improvements to be non-speculative and attempt to achieve any logical relationship to reality, it was essential to understand and assess the impact of the WSDOT Improvements in order to remove the value of those improvements from consideration. The LID does not get to assess special benefits for improvements that the LID isn't paying for.

365. However, the record contains no documentation, allowing the Hearing Examiner, the City Council, or this Court to assess Mr. Macaulay's methods. That lack of documentation makes it impossible to determine whether the remaining property value increases were, indeed, actual, measurable, substantial, and special.

366. If an appraiser uses current data to infer values, then the appraiser must explain how he/she analyzed that data and other information to come up with the hypothetical value. *See, e.g.,* 3/3/2020 (A. Gibbons) Hrg. Tr.) at 128:1-130:4 (LID_001192 -

LID_001194). The Examiner did not make a finding on this specific argument, even though it was raised by Appellants. *See* Closing Brief at 17 (LID_017195).

367. Further, failure to provide any analysis on what general benefits may flow from the LID Improvements was error, given the breadth and public nature of the LID Improvements and the fact that benefits from WSDOT Improvements (which are considered to be general) were required to be excluded.

368. Failure to analyze the impact of the WSDOT Improvements on the Before values was a fundamental flaw, and the Examiner's failure to make a finding on this was arbitrary and capricious.

3. The assessments were fundamentally flawed to rely upon an appraisal that does not comply with professional standards.

369. An expert's calculations and formulae must be generally accepted by other professionals in the field, capable of producing reliable results, and comply with basic legal requirements—"educated guesses" without more do not suffice. *Cf. Lake Chelan Shores Homeowners Ass'n v. St. Paul Fire & Marine Ins. Co.*, 176 Wn. App. 168, 177-79 (Div 1, 2013) (expert testimony is inadmissible if formulas are untested and based on "educated guesses").

370. Although appraisers may extrapolate and make inferences, they must do so from reliable, objective data. *Cf. Mississippi Transp. Com'n v. McLemore*, 863 So.2d 31, 40-43 (Miss. 2003) (excluding appraisal testimony for lack of measurable data in methodology). An appraiser's use of unusual methods that have not been taught in courses, have a high rate of error, and are not subject to peer review are all indicia of unreliability. *Id.* Further, an appraiser's terms of employment cannot dictate appraisal methods that are otherwise meant to derive fair market value. *Cf. Chatterton v. Business. Valuation Rsch.,*

Inc., 90 Wn. App. 150, 157, 951 P.2d 353 (Div 3, 1998) (agreement to be bound by appraisal will be set aside if appraisal was conducted on fundamentally wrong basis).

371. Based on the undisputed evidence contained in the record before the Court, the 2019 Study did not comply with USPAP Standards 1 and 2 governing direct property appraisals. There is no property-specific report and very little property-specific detail supporting the assessments in the 2019 Study or in Mr. Macaulay's files. Mr. Macaulay's spreadsheets for each commercial property do not demonstrate compliance because *inter alia* he testified that he did *not* use the spreadsheets to actually calculate special benefit.

372. This Court further concludes that the 2019 Study did not comply with USPAP standards 5 and 6 governing mass appraisals because Mr. Macaulay did not develop a model structure that reflects characteristics affecting value, did not calibrate the model structure to determine the contribution of the individual characteristics affecting value, and did not review the mass appraisal results against actual sales/data to determine whether his conclusions were reasonably justified.

373. The Court notes that the record does not contain published (or other) authority authorizing blending the USPAP standards in a hybrid "parcel-by-parcel" mass appraisal that does satisfies either standard. There is no support in the record for finding that an appraiser may choose which minimum standards to apply from the various USPAP rules; these standards are established to ensure accurate, reliable and testable valuations. Further, the Examiner's failure to address this particular claim was arbitrary and capricious, given that the entire 2019 Study purported to have employed this "parcel-by-parcel" mass appraisal approach.

374. The Examiner's summary conclusion that the 2019 Study "complied with the requirements of USPAP including Standards 1, 2, 5, and 6" (Examiner's Final Recommendation at 14 (LID_000860)) was also arbitrary and capricious.

375. The fact that the Examiner concluded compliance with Standards 1 and 2, suggests that the Examiner (understandably) lost track of the City's witnesses shifting claims—for example, the City's own concession that "a parcel-by-parcel direct appraisal" would not have been "economically feasible." *See* 6/18/2020 Hrg. Tr. at 125:15-10 (LID_002824); Hamel Decl., ¶ 9 (LID_009817).

4. The assessments were fundamentally flawed to apply a 0.4%-3.2% percentage increase to each of Appellants' properties without tying this increase to any property-specific data.

376. A LID assessment must be based on an actual, measurable special benefit to a particular property that must "bring a benefit [to that property that is] substantially more intense than is yielded to the rest of the municipality." *Heavens*, 66 Wn.2d at 563.

377. In *Bellevue Plaza, Inc.*, 121 Wn.2d at 406, the Court found "several serious flaws" in the appraisal, including that the appraiser "attache[d] a list of a number of land sales within the [area], but ma[de] no attempt to characterize any one, or all of them, as comparable to any particular property within the LID." (Emphasis added.) That Court concluded that the appraisal's opinions "were clearly grounded on a fundamentally wrong basis and must be disregarded." *Id.* at 413.

378. It is undisputed that Mr. Macaulay's spreadsheets have formulas that multiply hypothesized "Before" values by very small percentage changes (*e.g.*, 0.2%-0.45% for the Hyatt Regency) to calculate a high/low range of hypothetical "After" values. However, the record does not contain documentation on how he came up with those percentage increases.

Then, the high/low "After" values were reconciled through some undisclosed process of averaging, but there is no documentation or record explaining how this apparent averaging was calculated or applied.

379. The parties dispute whether Mr. Macaulay relied on formulas in the spreadsheets. The Examiner accepted the City's testimony that formulas were not relied upon. However, based on Mr. Macaulay's testimony that changes in hotel room rates result in changes to "After" values, and a careful review of the record (including the spreadsheets) this Court finds that the formulas were used to calculate "After" values.

380. The Court concludes that the City improperly assigned (rather than measured) special benefits.

381. The City claims general reliance on academic studies mentioned in the 2019 Study, but did not provide any specific measurements, industry standard, academic study or literature, or other source to explain the very precise micro percentage increases/decreases in the spreadsheets for Appellants' commercial properties or the uniform special benefit percentage increases for the condos.

382. Instead, Dr. Crompton, whose study was cited in the 2019 Study as a principal empirical source for discerning property value increases due to park improvements, provided testimony that contradicted conclusions in the 2019 Study.

383. Because the City "ma[de] no attempt to characterize any one, or all of [the studies or data], as comparable to any particular property within the LID," the 2019 Study's appraisal opinions were founded on a fundamentally flawed basis. *Bellevue Plaza, Inc.*, 121 Wn.2d at 406.

384. The City's final assessments also failed to exclude costs for certain of the LID Improvements that were either too far from or potentially detrimental to Appellants' properties.

C. The City's Process For Assessing Appellants' Properties Was Arbitrary and Capricious.

1. The City instructed its appraiser to hypothesize values far in advance of completion of the LID Improvements and to treat all improvements as continuous.

385. It was arbitrary and capricious for Mr. Macaulay to base his hypothetical valuations on designs less than 30 percent complete—something he has never done before—because the City "wanted to get moving ahead with the project" and gave him assurances that designs would not change. *See* 6/23/2020 Hrg. Tr. at 16:1-22, 17:22-18:2, 66:17-25 (LID_003137, LID_003138 - LID_003139, LID_003187).

386. The record established that Mr. Macaulay accepted the City's representations and performed no independent investigation to determine the reliability of the City's estimates for completion, and that proposed designs or cost estimates were not going to materially change. *Id.* at 78:14-79:13 (LID_003199 - LID_003200).

387. Mr. Macaulay also did not consider what impact improvements in the south (e.g., Pioneer Square) would have on properties along Denny Way to the north, and vice versa, if any. When asked, he answered that this was "not the scope of the assignment" because he was asked to look at all of the projects as a whole. *See* 6/23/2020 Hrg. Tr. at 30:3-8 (LID_003151). Yet, he admitted that the six components were not actually a continuous project, and that he was viewing them together because the City staff asked him to do so. *See* 6/25/2020 Hrg. Tr. at 27:18-28:5 (LID_003432 - 3433).

388. Instructing the appraiser to hypothesize values this far in advance of completion of the LID Improvements and to treat completely separate improvements as one continuous improvement was arbitrary and capricious action by the City. These instructions ultimately resulted in fundamentally flawed methods that made the final valuations speculative.

389. The City Staff's instructions to Mr. Macaulay violated RCW 35.43.050. The legislative body must either (1) **find** that the properties within the LID will benefit from the improvements as a whole; or (2) the costs and expense of each component must be "ascertained separately, as near as may be, and the assessment rates shall be computed on the basis of the cost and expense of each unit." (RCW 35.43.050). The City Staff abrogated this function of the legislative body. Neither required process was followed here.

2. The Hearing Examiner misapplied the presumption in favor of LID assessments to disregard credible testimony from Appellants' witnesses.

390. The Hearing Examiner erred in applying the presumptions in favor of LID assessments by (i) applying the presumption to endorse Mr. Macaulay's methods; (ii) disregarding Appellants' expert appraiser testimony regarding Mr. Macaulay's methodology on grounds that Appellants' experts failed to provide an alternative special benefit calculation; and (iii) concluding that Appellants had not advanced sufficient testimony and evidence to rebut the presumption. These errors result in a finding that the action of the Hearing Examiner was arbitrary and capricious.

391. The Presumption of correctness does not apply to specific methodological decisions made by the appraiser. RCW 35.44.250 states that a superior court reviewing the

legality of a LID assessment court shall "correct, change, modify, or annul the assessment" if the "assessment is founded upon a fundamentally wrong basis. RCW 35.44.250.

392. The Washington Supreme Court has explained: "'An expert's opinion on the market value of real estate must be based upon those legal principles which define the factors which the expert can or cannot consider in reaching his expert opinion.'" *Bellevue Plaza, Inc*, 121 Wn. 2d at 411 (quoting *Doolittle v. Everett,* 114 Wn.2d 88, 104, 786 P.2d 253 (1990)). In other words, the appraiser must estimate property value increases that are actual, physical, material, non-speculative, and "substantially more intense" than what is yielded to the general public. *See Heavens*, 66 Wn.2d at 563. And failure to do so deprives the owner of property without due process in contravention of the Constitution. *Id.* at 564.

393. This Court concludes that the presumption in favor of LID assessments does not insulate the City's appraisal methodology from judicial scrutiny, which is both statutorily and constitutionally required.

394. Here, the Examiner's application of the presumption in considering Mr. Macaulay's methodological decisions was legal error, and both fundamentally wrong and arbitrary and capricious. *See, e.g.*, Examiner's Final Recommendations at 124 (LID_000970) (noting the "presumption in favor of the City's expert appraiser").

395. Experts do not need to provide an alternative special benefit calculation in every case. The Examiner further erred in requiring Appellants to provide special benefit expert testimony and an alternative special benefit proposal to rebut the presumption of correctness. *See, e.g.*, Examiner's Final Recommendations at 13 (LID_000857) (Appellants' witnesses, "regardless of their expertise in the industry which they hail, did not present any analysis concerning, or show any expertise in, analysis of special benefits"); *see also* City's

Response Br. at 29 ("Appellants' experts, however, did not calculate the special benefit that would accrue to any particular property.").

396. The Examiner's recitation of the law governing the presumption states the conclusion that expert testimony was required to dispute the existence of the purported special benefit. However, his reasoning seems to also state that disputing the City's basis for valuing a particular property does not require expert testimony. Examiner's Final Recommendation at 113 (LID_000959).

397. While not entirely clear, in application, it appears the Examiner seemed to consider at least some of Appellants' valuation testimony and evidence establishing current market values for their properties, when it was provided.

398. However, in every instance he simply disregarded Appellants' expert and lay testimony contesting the City's method of estimating special benefit either because Appellants' witnesses (a) were not licensed appraisers, (b) did not provide an independent, alternative special benefit analysis, (c) did not have expertise in preparing special benefit studies. This misapplies the law and was fundamentally wrong and arbitrary and capricious.

399. Expert evidence does not need to come from appraisers and, specifically, there is no requirement "that appraisal evidence be presented, including before and after values." *Hasit, LLC v. City of Edgewood*, 179 Wn. App. 917, 947, 320 P.3d 163 (Div 2, 2014). As a matter of law, a qualified expert may simply point out that the assessment was founded upon fundamentally wrong grounds "due to an error employed by the City appraiser." *Id.* (citing *Doolittle v. City of Everett*, 114 Wn. 2d 88, 106, 786 P.2d 253 (1990)). The *Hasit* Court establishes: "A property owner, then, need not necessarily present her own independent appraisal, or before and after values, to successfully challenge an LID assessment." *Id.*; *see also Kusky v. City of Goldendale*, 85 Wn. App. 493, 499, 933 P.2d 430

(Div 3, 1997) (although appraiser did not submit appraisal, he provided expert opinion showing that improvements actually diminished property's value).

400. It is correct that "evidence of appraisal values and benefits is necessary to rebut these presumptions." *City of Seattle v. Rogers Clothing for Men, Inc.*, 114 Wn. 2d 213, 229–32, 787 P.2d 39, (1990). However, *Rogers* does not explicitly require an expert to calculate an alternative special benefit estimate.

401. The facts of *Rogers* are distinguishable because "petitioning store owners offered no evidence regarding values of their properties before and after the improvements." *Id.* (emphasis added). Here, expert appraisers (e.g, Anthony Gibbons and Peter Shorett) testified that it was too speculative to try to calculate any special benefit at this point, even if it might ultimately accrue. *City of Seattle v. Rogers Clothing for Men, Inc.*, 114 Wn. 2d at 229, (fn27) cites to "[a] series of cases spell out the presumptions when property owners challenge the amount they have been assessed under a special assessment scheme." These cases include: *Abbenhaus v. Yakima*, 89 Wash.2d 855, 860–61, 576 P.2d 888 (1978); *Hansen v. Local Imp.Dist.335* 54 Wash.App. 257, 773 P.2d 436 (Div 1, 1989); *In re Ron Inv. Co.*, 43 Wash.App. 860, 863, 719 P.2d 1353 (Div 1, 1986); *Time Oil Co. v. Port Angeles*, 42 Wash.App. 473, 479, 712 P.2d 311 (Div 2, 1985).

402. Although the *Hansen* court stated, "[t]he 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." *Hansen v. Loc. Imp. Dist. No. 335*, 54 Wn. App. 257, 262, 773 P.2d 436, 440 (Div 1, 1989), *Hansen* does not explicitly require an expert to provide an alternative special benefit calculation.

403. Here, the challenging parties did present expert appraisal evidence showing it was not possible to conclude in 2019 that their properties would be benefited by the anticipated 2024 LID Improvements.

404. The facts of *Hansen* are also distinguishable because there the property owner only offered "bare assertions" that his property would not specially benefit, without any expert or appraisal testimony. In the present case, Appellants have provided testimony from a number of experienced, highly regarded MAI appraisers that the properties would not specially benefit in any actual, measurable, substantial, special way, and that the City's assertion of special benefit from the anticipated 2024 LID Improvements was speculation.

405. The City agreed that there is a hypothetical point at which it would have been impossible to accurately estimate special benefits. 10/28/2020 Hrg. Tr. at 158:18-160:15. In such a case, it would be an impossible task for objectors' experts to provide an alternative special benefit calculation.

406. Appellants here presented ample expert testimony opining that it was impossible to reliably discern actual, substantial value increases in 2019 from LID Improvements that were not going to be complete until 2024 at the earliest.

407. The Court finds that the Examiner's recommended assessments were arbitrary and capricious and made on a fundamentally wrong basis because of his misapplication of the law and his legally incorrect findings regarding the sufficiency of Appellants' experts to rebut the presumption. These include the following:

- "[E]vidence provided by Brian O'Connor is not sufficient expert appraisal evidence to rebut the presumption" because Mr. O'Connor did not conduct "an independent special benefit analysis for the properties." Examiner's Final Recommendation at 10, 120 (LID_000856, LID_000966).
- Randall Scott "is not a licensed appraiser" and did not provide testimony "regarding the current market value of the Objectors' properties, or whether those properties would be specially benefitted." *Id.* at 10. Mr. Scott's appraisal review "is insufficient to rebut the presumption[.]" *Id.* at 121 (LID_000967).
- Benjamin Scott of Northwest Property Tax Consultants is "not a licensed appraiser" and he "did not calculate a special benefit for any of the properties

under his review." *Id.* at 10. His "reports and testimony are insufficient appraisal evidence to rebut the presumption[.]" *Id.* at 121 (LID_000967).

- Anthony Gibbons "does not provide a special benefit analysis for the property and is not a property-specific appraisal for valuation." *Id.* at 16 (LID_000862). His reviews "do not address valuations for individual parcels or their special benefits" and were therefore not adequate "to provide support for arguments that a property is not specially benefitted or is improperly valued." *Id.* at 117 (LID_000963).
- Peter Shorett's testimony "did not provide sufficient evidence to rebut the presumption" because he did not "provide an analysis of the current market value of the properties" or "the effect of the LID Improvements on any specific property." *Id.* at 119 (LID_000965).

408. The Presumption was rebutted. "[W]here a protesting owner alleges her assessment exceeds the special benefit and presents sufficient evidence to overcome the presumptions, but the city confirms the assessment roll regardless, a court will reduce or annul the assessment as arbitrary and capricious unless the city presented sufficient competent evidence to the contrary." *Hasit*, 179 Wn. App. at 936.

409. Appellants initially bore the burden of coming forward with credible evidence. They did, presenting reports and testimony from thirteen sophisticated property owner representatives and nine experts that the City's proposed assessments were arbitrary, capricious and founded on a number of fundamentally wrong bases. Because Appellants presented ample credible evidence to rebut the presumption, the burden shifted to the City to demonstrate that the assessments were proper. "The ultimate burden of showing that land within an LID is specially benefited remains with the City." *In re Indian Trail Trunk Sewer Sys.,* 35 Wn. App. At 843.

410. It was arbitrary and capricious for the Examiner and City Council to continue to rely on the presumption after it had been rebutted; the City's assessments were finalized on a fundamentally wrong basis. The Examiner's Final Recommendation the presumption of correctness in favor of the City THIRTY-ONE (31) times, but at no point acknowledge

that the burden had shifted. This misapplication of the presumption invalidates the underlying process applied by the Hearing Examiner.

3. City Council, sitting as a Board of Equalization, failed to independently review the Examiner's recommendations.

411. City Council has a duty to independently review the appeals, sitting as a Board of Equalization. *See, e.g.*, Findings and Conclusions of City Council (LID_000050) ("in reviewing appeals, the Council applies the standard of review applied by the Hearing Examiner").

412. Having independent appellate review is an important part of equitable tax review. *See generally* Laura VanderVeer King, *Practice and Procedure Before the Washington State Board of Tax Appeals*, 33 GONZ. L. REV. 141, 168 (1998).

413. Nothing in the record actually shows that the Committee or Council gave thoughtful and meaningful consideration of Appellants' appeals. Transcripts of the two Committee meetings and one Council meeting do not reveal any thoughtful consideration of the issues raised.

414. The blanket recitation within the City Council's Findings and Conclusions' that all laws and procedures were followed is too generic to demonstrate meaningful review.

415. City Councils' failure to independently review Appellants' appeals was arbitrary and capricious.

416. The Court finds that the LID assessment process as conducted by the City was fundamentally flawed. The process was infected from its inception by a rush to judgment by City staff who were apparently anxious to begin collecting revenue based on assessments of a LID improvements far in advance of the completion dates.

a. City staff instructed Mr. Macauley to unreasonably combine the special benefit calculations of unrelated improvements and to take other appraisal short cuts that made his valuations speculative at best.

b. The Hearing Examiner improperly applied the presumptions applicable to the case and refused to properly consider evidence contrary to the desired conclusion.

c. The Hearing Examiner failed to consider the impact of the Global Pandemic and subsequent Global economic downturn on the valuations before him and erroneously concluding that these issues were "political" issues.

d. The City Council was deprived of the ability to conduct any meaningful review of the assessments or to appropriately consider any of the issues that were properly before it.

e. Its affirmation of the LID assessments did not constitute the exercise of any form of reasoned judgment and was by definition arbitrary and capricious.

D. Property-Specific Conclusions

The Harbor Steps

417. The record does not support the City's assessments on the Harbor Steps properties.

418. Imposing the assessments on the Harbor Steps years in advance of any actual benefit to the properties was speculative and a fundamental flaw.

419. Harbor Steps presented expert and property representative evidence to rebut the assessment's presumption of correctness. The Hearing Examiner's failure to adequately

consider this evidence and failure to shift the burden of proof back onto the City was arbitrary and capricious.

420. The Hearing Examiner did not consider Harbor Steps' expert evidence, including Mr. O'Connor's MAI expert appraisal evidence concluding that the City's assessment overstated the Before Value of the four Harbor Steps buildings by $88 million.

421. The Hearing Examiner did not adequately consider Harbor Steps' property representative testimony. Mr. Leigh testified that the four Harbor Steps buildings already have a high-quality connectivity to the waterfront, and on that basis, the Overlook Walk not only is not a special benefit, but in fact diminishes the unique benefit the Harbor Steps pedestrian way provides to the Harbor Steps properties.

422. Assuming a special benefit, failure to discount special benefits for risk, present value and the impact of COVID-19 was a fundamental flaw.

423. As a result of these errors, the City's assessment for the Harbor Steps properties fail to satisfy the law's requirements.

424. The City's assessments for the Harbor Steps properties should reflect standard appraisal techniques, including discounting for the time value of money and impacts from COVID-19.

Helios Apartments

425. The record does not support the City's assessment of $2,244,356 on the Helios property.

426. Imposing the assessments on the Helios Apartments years in advance of any actual benefit to the property was speculative and a fundamental flaw.

427. The City's assessment is based upon factual mistakes and is, therefore, fundamentally flawed. The City's reliance on an incorrect unit mix and other errors resulted

in an overstated Before Value by $59,084,000. (LID001627; LID_005616; LID_005619-21).

428. Helios presented expert and property representative evidence and testimony to rebut the assessment's presumption of correctness. The Hearing Examiner's failure to adequately consider this evidence and failure to shift the burden of proof back onto the City was arbitrary and capricious.

429. Assuming a special benefit, failure to discount special benefits for risk, present value and the impact of COVID-19 was a fundamental flaw.

430. As a result of these errors, the City's assessment for Helios fails to satisfy the law's requirements.

431. The City's assessment for Helios final should reflect standard appraisal techniques, including discounting for the time value of money and impacts from COVID-19.

The Hedreen Hotels

432. The record does not support the City's combined assessment of $3,615,734 on The Hedreen Hotels.

433. Imposing the assessments on the The Hedreen Hotels years in advance of any actual benefit to the properties was speculative and a fundamental flaw.

434. The Hedreen Hotels presented sufficient evidence to rebut the assessment's presumption of correctness. The Hearing Examiner's failure to adequately consider this evidence—specifically the hotel's actual operating information— and failure to shift the burden of proof back onto the City was arbitrary and capricious and led to flawed results.

435. The City's failure to incorporate the actual operating and income data from the hotels was fundamentally flawed and resulted in overstated 2019 Before values for each hotel. The values and assessments should be reduced accordingly.

436. It was arbitrary and capricious for the Hearing Examiner to disregard Mr. Shorett's MAI After value opinion evidence because Mr. Shorett did not "counter-speculate" as to an alternative hypothetical After value. Mr. Shorett's appraisal review and testimony rebutted Mr. Macaulay's special benefit estimates. Mr. Gibbons' report and testimony buttress Mr. Shorett's conclusions that the City's hypothetical After values are too small and remote to support an assessment.

437. Assuming a special benefit, failure to discount special benefits for risk, present value and the impact of COVID-19 was a fundamental flaw.

438. As a result of these errors, the City's assessment for The Hedreen Hotels fails to satisfy the requirements of law.

439. The City's assessments for The Hedreen Hotel properties should reflect standard appraisal techniques, including discounting for the time value of money and impacts from COVID-19.

Grand Hyatt Parking and Retail

440. The record does not support the City's assessment of $549,334 on Grand Hyatt Parking and Retail.

441. Imposing the assessments on the Grand Hyatt Parking and Retail years in advance of any actual benefit to the property was speculative and a fundamental flaw.

442. Grand Hyatt Parking and Retail presented sufficient evidence to rebut the assessment's presumption of correctness. The Hearing Examiner's failure to adequately consider this evidence and failure to shift the burden of proof back onto the City was arbitrary and capricious.

443. The Hearing Examiner did not consider 7th & Pine's expert evidence regarding the parking stalls leased to the Grand Hyatt hotel, and specifically that they would

be only 20-30% occupied by hotel guests. The assessment should be recalculated in light of this evidence.

444. The final assessment is disproportionate to similarly situated properties within the LID and should be re-assessed in conformance with the other hotel parking lots.

445. Assuming a special benefit, failure to discount special benefits for risk, present value and the impact of COVID-19 was a fundamental flaw.

446. As a result of these errors, the City's assessment for 7th & Pine fails to satisfy the law's requirements.

Lot B

447. The record does not support the City's assessment of $73,663 on Lot B.

448. Imposing the assessments on Lot B years in advance of any actual benefit to the property was speculative and a fundamental flaw.

449. Lot B presented sufficient evidence to rebut the assessment's presumption of correctness. The Hearing Examiner's failure to adequately consider this evidence and failure to shift the burden of proof back onto the City was arbitrary and capricious.

450. The Hearing Examiner did not consider Lot B's expert evidence regarding the 0.40% special assessment amount assigned to Lot B. It was error for the Examiner to disregard Mr. Gordon's MAI testimony that the special benefit was calculated on a fundamentally wrong basis and too small to estimate because Mr. Gordon did not provide an alternative special benefit amount.

451. Assuming a special benefit, failure to discount special benefits for risk, present value and the impact of COVID-19 was a fundamental flaw.

452. As a result of these errors, the City's assessment for Lot B fails to satisfy the law's requirements.

Seattle Waterfront Marriott

453. The record does not support the City's assessment of $2,106,827 on Seattle Waterfront Marriot.

454. Imposing the assessments on the Seattle Waterfront Marriott years in advance of any actual benefit to the property was speculative and a fundamental flaw.

455. Seattle Waterfront Marriot presented expert and property representative evidence and testimony to rebut the City's presumption of correctness. The Hearing Examiner's failure to adequately consider this evidence and failure to shift the burden of proof back onto the City was arbitrary and capricious.

456. The $67,738 assessment against the Seattle Waterfront Marriott's personal property was error because personalty should not be assessed, and disproportionate because other hotels' and other properties' personalty (other than SHG Hotel) were not assessed. The assessment was therefore imposed on a fundamentally wrong basis and without proper notice.

457. It was arbitrary and capricious for the Hearing Examiner to disregard Seattle Waterfront Marriott's MAI appraisal evidence that it would not receive a special benefit from the improvements because Mr. Shorett did not provide a counter-estimate of special benefits.

458. It was arbitrary and capricious for the Hearing Examiner to disregard evidence that the City's imposition of a higher percentage assessment on the Seattle Waterfront Marriott compared to its competitors was disproportionate and fundamentally flawed because ignores specific market segment evidence and places Seattle Waterfront

Marriott at a competitive disadvantage, and thus reduces any special benefit otherwise accruing to the Seattle Waterfront Marriott from the LID Improvements.

459. Assuming a special benefit, failure to discount special benefits for risk, present value and the impact of COVID-19 was a fundamental flaw.

460. The estimated special benefits should have been discounted to present value to account for the time value of money and reduce the speculative nature of their calculation. Estimated special benefits should have been discounted to a value accounting for delivery in 2024, at a minimum. Failing to do so was fundamentally wrong. Mr. Gibbons' calculations of hypothetical 2024 special benefits using the City's initial estimate is reasonable, and should be incorporated into discounts of the City's assessments.

461. The City failed to discount the special benefits for the risks and uncertainties associated with the LID improvements and the impact of COVID-19 on Seattle Waterfront Marriott.

462. As a result of these errors, the City's assessment for Seattle Waterfront Marriott is fundamentally wrong and arbitrary and capricious.

463. The City's assessment for Seattle Waterfront Marriott should reflect standard appraisal techniques, including discounting for the time value of money and impacts from COVID-19.

SHG Hotel

464. The record does not support the City's assessment of $1,676,215 on SHG Hotel.

465. Imposing the assessments on SHG Hotel years in advance of any actual benefit to the property was speculative and a fundamental flaw.

466. SHG Hotel presented expert and property representative evidence and testimony to rebut the City's presumption of correctness. The Hearing Examiner's failure to adequately consider this evidence and his failure to shift the burden of proof back onto the City was arbitrary and capricious.

467. The $75,029 assessment against the SHG Hotel's personal property was error because personalty should not have been assessed and disproportionate because other hotels and other properties' personalty were not assessed (other than Seattle Waterfront Marriott). The assessment was therefore imposed on a fundamentally wrong basis and without proper notice.

468. It was arbitrary and capricious for the Hearing Examiner to disregard SHG Hotel's MAI appraisal evidence that SHG Hotel would not receive a special benefit from the improvements because Mr. Shorett did not provide a counter-estimate of special benefits.

469. The Hearing Examiner did not adequately consider property specific testimony that the building already has a high-quality connectivity to the waterfront, and on that basis, the Overlook Walk is not a special benefit.

470. Assuming a special benefit, failure to discount special benefits for risk, present value and the impact of COVID-19 was a fundamental flaw.

471. The estimated special benefits should have been discounted to present value to account for the time value of money and reduce the speculative nature of their calculation. Estimated special benefits should have been discounted to a value accounting for delivery in 2024, at a minimum. Failing to do so was fundamentally wrong. Mr. Gibbons' calculations of hypothetical 2024 special benefits using the City's initial estimate is reasonable, and should be incorporated into discounts of the City's assessments.

472. The City failed to discount the special benefits for the risks and uncertainties associated with the LID improvements and the impact of COVID-19 on SHG Hotel.

473. As a result of these errors, the City's assessment for Seattle Waterfront Marriott is fundamentally wrong and arbitrary and capricious.

474. The City's assessment for SHG Hotel should reflect standard appraisal techniques, including discounting for the time value of money and impacts from COVID-19.

SHG Garage

475. The record does not support the City's revised assessment of $132,436 on SHG Garage.

476. Imposing the assessments on SHG Garage years in advance of any actual benefit to the property was speculative and a fundamental flaw.

477. SHG Garage presented expert and property representative evidence and testimony to rebut the assessment's presumption of correctness. The Hearing Examiner's failure to adequately consider this evidence and failure to shift the burden of proof back onto the City was arbitrary and capricious.

478. It was arbitrary and capricious for the Hearing Examiner to disregard SHG Garage's MAI appraisal evidence that SHG Garage would not receive a special benefit from the improvements because Mr. Shorett did not provide a counter-estimate of special benefits.

479. The Hearing Examiner did not adequately consider property specific testimony that the building already has a high-quality connectivity to the waterfront, and on that basis, the Overlook Walk is not a special benefit.

480. Assuming a special benefit, failure to discount special benefits for risk, present value and the impact of COVID-19 was a fundamental flaw.

481. As a result of these errors, the City's assessment for SHG Garage fails to satisfy the law's requirements.

482. The City's assessment for SHG Garage should reflect standard appraisal techniques, including discounting for the time value of money and impacts from COVID-19.

SHG Retail

483. The record does not support the City's revised assessment of $31,346 on SHG Retail.

484. Imposing the assessments on SHG Retail years in advance of any actual benefit to the property was speculative and a fundamental flaw.

485. SHG Retail presented expert and property representative evidence and testimony to rebut the assessment's presumption of correctness. The Hearing Examiner's failure to adequately consider this evidence and failure to shift the burden of proof back onto the City was arbitrary and capricious.

486. It was arbitrary and capricious for the Hearing Examiner to disregard SHG Retail's MAI appraisal evidence that SHG Retail would not receive a special benefit from the improvements because Mr. Shorett did not provide a counter-estimate of special benefits.

487. The Hearing Examiner did not adequately consider property specific testimony that the building already has a high-quality connectivity to the waterfront, and on that basis, the Overlook Walk is not a special benefit.

488. Assuming a special benefit, failure to discount special benefits for risk, present value and the impact of COVID-19 was a fundamental flaw.

489. As a result of these errors, the City's assessment for SHG Retail fails to satisfy the law's requirements.

490. The City's assessment for SHG Retail should reflect standard appraisal techniques, including discounting for the time value of money and impacts from COVID-19.

RRRR Investments

491. The record does not support the City's revised assessments of $41,245 for Unit 3800 and $44,084 for Unit 3802 on the RRRR Investments properties.

492. Imposing the assessments on RRRR Investments years in advance of any actual benefit to the properties was speculative and a fundamental flaw.

493. RRRR Investments presented expert and property representative evidence and testimony to rebut the assessment's presumption of correctness. The Hearing Examiner's failure to adequately consider this evidence and failure to shift the burden of proof back onto the City was arbitrary and capricious.

494. It was arbitrary and capricious for the Hearing Examiner to disregard RRRR Investments' MAI appraisal evidence that RRRR Investments would not receive a special benefit from the improvements because Mr. Shorett did not provide a counter-estimate of special benefits.

495. The City's assessment methodology was arbitrary and fundamentally flawed for RRRR Investments' condominiums because the City did not assess to what extent the benefits inured to the individual properties and applied a single percentage benefit to each unit in a building.

496. Assuming a special benefit, failure to discount special benefits for risk, present value and the impact of COVID-19 was a fundamental flaw.

497. As a result of these errors, the City's assessment for RRRR Investments fails to satisfy the law's requirements.

498. The City's assessment for RRRR Investments should reflect standard appraisal techniques, including discounting for the time value of money and impacts from COVID-19.

Sound Vista Properties

499. The record does not support the City's revised assessment of $122,412 for Sound Vista's property.

500. Imposing the assessments on Sound Vista Properties years in advance of any actual benefit to the property was speculative and a fundamental flaw.

501. Sound Vista presented expert and property representative evidence and testimony to rebut the assessment's presumption of correctness. The Hearing Examiner's failure to adequately consider this evidence and failure to shift the burden of proof back onto the City was arbitrary and capricious.

502. It was arbitrary and capricious for the Hearing Examiner to disregard Sound Vista's MAI appraisal evidence that Sound Vista's property would not receive a special benefit from the improvements because Mr. Shorett did not provide a counter-estimate of special benefits.

503. The City's assessment methodology was arbitrary and fundamentally flawed for Sound Vista's condominium because the City did not assess to what extent the benefits inured to the individual property and applied a single percentage benefit to each unit in a building.

504. The Hearing Examiner did not adequately consider property specific testimony that the building already has a high-quality connectivity to the waterfront, and on that basis, the Overlook Walk is not a special benefit.

505. Assuming a special benefit, failure to discount special benefits for risk, present value and the impact of COVID-19 was a fundamental flaw.

506. As a result of these errors, the City's assessment for Sound Vista fails to satisfy the law's requirements.

507. The City's assessment for Sound Vista should reflect standard appraisal techniques, including discounting for the time value of money and impacts from COVID-19.

United Way

508. The record does not support the City's revised assessment of $81,928 on the United Way Property.

509. Imposing the assessments on the United Way years in advance of any actual benefit to the property was speculative and a fundamental flaw.

510. United Way presented expert and property representative evidence and testimony to rebut the assessment's presumption of correctness. The Hearing Examiner's failure to adequately consider this evidence and failure to shift the burden of proof back onto the City was arbitrary and capricious.

511. Assuming a special benefit, failure to discount special benefits for risk, present value and the impact of COVID-19 was a fundamental flaw.

512. It was arbitrary and capricious for the Examiner to disregard United Way's MAI appraisal evidence that United Way's property would not receive a special benefit from the improvements because Mr. Shorett did not provide a counter-estimate of special benefits.

513. As a result of these errors, the City's assessment for United Way fails to satisfy the law's requirements.

514. The City's assessment for United Way final should reflect standard appraisal techniques, including discounting for the time value of money and impacts from COVID-19.

Victor and Mary Moses

515. The record does not support the City's assessment of $25,519 on the Moses Property.

516. Moses presented and relied on competent lay and expert evidence to rebut the assessment's presumption of correctness. The Hearing Examiner's failure to adequately consider this evidence and failure to shift the burden f proof back onto the City was arbitrary and capricious.

517. The City and Hearing Examiner failed to discount special benefits for risk, present value, and the impact of COVID-19, and failed to consider the potential detriment the improvements may have on the value of the Moses Property.

518. The City's assessment methodology was arbitrary for the Moses Property because the City did not assess to what extent the benefits inured to the individual properties and applied a uniform special benefit percentage to every residential unit within the building.

519. As a result of these errors, the City's assessment for Moses fails to satisfy the law's requirements.

520. The City's assessment for Moses should reflect standard and accepted appraisal techniques.

III. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED the following:

The Harbor Steps

1. Based on the foregoing findings of fact and conclusions of law, the City's Waterfront LID assessments for the Harbor Steps properties are annulled, and the City is ordered to refund any assessments paid by Appellants under protest.

Helios Apartments

2. Based on the foregoing findings of fact and conclusions of law, the City's Waterfront LID assessment for Helios is annulled, and the City is ordered to refund any assessment paid by Appellant under protest.

The Hedreen Hotels

3. Based on the foregoing findings of fact and conclusions of law, the City's Waterfront LID assessments for The Hedreen Hotels are annulled, and the City is ordered to refund any assessments paid by Appellants under protest.

Grand Hyatt Parking and Retail

4. Based on the foregoing findings of fact and conclusions of law, the City's assessment for 7th & Pine is annulled, and the City is ordered to refund any assessment paid by Appellant under protest.

Lot B

5. Based on the foregoing findings of fact and conclusions of law, the City's Waterfront LID assessment for Lot B is annulled, and the City is ordered to refund any assessment paid by Appellant under protest.

Seattle Waterfront Marriott

6. Based on the foregoing findings of fact and conclusions of law, the City's Waterfront LID assessment for Seattle Waterfront Marriott is annulled, and the City is ordered to refund any assessment paid by Appellant under protest.

SHG Hotel

7. Based on the foregoing findings of fact and conclusions of law, the City's Waterfront LID assessment for SHG Hotel is annulled, and the City is ordered to refund any assessments paid by Appellant under protest.

SHG Garage

8. Based on the foregoing findings of fact and conclusions of law, the City's Waterfront LID assessment for SHG Garage is annulled, and the City is ordered to refund any assessment paid by Appellant under protest.

SHG Retail

9. Based on the foregoing findings of fact and conclusions of law, the City's Waterfront LID assessment for SHG Retail is annulled, and the City is ordered to refund any assessment paid by Appellant under protest.

RRRR Investments

10. Based on the foregoing findings of fact and conclusions of law, the City's Waterfront LID assessments for RRRR Investments are annulled, and the City is ordered to refund any assessments paid by Appellant under protest.

Sound Vista Properties

11. Based on the foregoing findings of fact and conclusions of law, the City's Waterfront LID assessment for Sound Vista is annulled, and the City is ordered to refund any assessment paid by Appellant under protest.

United Way

12. Based on the foregoing findings of fact and conclusions of law, the City's Waterfront LID assessment for United Way is annulled, and the City is ordered to refund any assessment paid by Appellant under protest.

Victor and Mary Moses

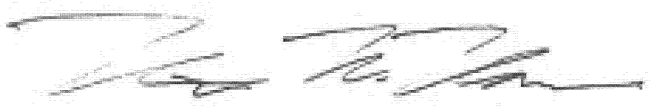
13. Based on the foregoing findings of fact and conclusions of law, the City's Waterfront LID assessment for Moses is annulled, and the City is ordered to refund any assessment paid by Moses under protest.

SO ORDERED _____, 2023.

_____
JUDGE MATTHEW WILLIAMS

King County Superior Court
Judicial Electronic Signature Page

Case Number:	21-2-10100-0
Case Title:	SHG GARAGE SPE VS SEATTLE CITY OF
Document Title:	ORDER RE FINDINGS AND ORDER
Signed By:	Matt Williams
Date:	March 08, 2023



Judge: Matt Williams

This document is signed in accordance with the provisions in GR 30.

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Case Number:	21-2-10100-0
Date:	March 09, 2023
Serial ID:	23-036547-2011838Y8T
Certified By:	Barbara Miner King County Clerk, Washington

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No. 85147-1

COURT OF APPEALS, DIVISION ONE OF THE STATE OF WASHINGTON

THE CITY OF SEATTLE,

Appellant,

v.

SHG GARAGE SPE, et al.,

Respondents.

MOTION FOR RECONSIDERATION

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INTRODUCTION

Owners[1] move for reconsideration of this Court's Opinion of April 22, 2024 on the grounds that it overlooks and misapprehends critical points of law and fact. *See* RAP 12.4(c).

First, Owners seek clarification that the Court's decision does not upset the property-specific portions of the superior court's judgment that the City did not contest on appeal. The City forfeited any challenge to those rulings, which corrected straightforward errors by its appraiser, such as including "personalty" (like beds and TVs) in valuing two hotels and miscounting or misunderstanding what apartment types are in one of the buildings.

Second, Owners seek reconsideration of their argument that the assessments were fundamentally wrong because the City's appraiser purported to perform a mass appraisal without complying with Uniform Standards of Professional Appraisal Practice (USPAP) 5 and 6. The Court's Opinion against

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[1] 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.

Owners on this point is based on a portion of the LID Manual that the City did not cite and which does not apply to USPAP 6 mass-appraisal requirements.

Finally, Owners seek reconsideration because the Opinion fails to acknowledge the material differences between this case and any prior LID case and fails to properly account for the Owners' evidence and arguments. On one critical point, the Opinion contradicts itself on pages 11 and 19. Beyond showing that the City failed to comply with USPAP mass-appraisal standards, Owners also called Dr. John Crompton—and several other experts —who testified that the assessments were fundamentally flawed for other reasons. Crompton's testimony by itself should have been *way more than enough* to shift the burden. Yet the Court never analyzes that question, treats Owners as if they never raised it, and treats Judge Williams's decision as if it reviewed *nothing* relevant to burden-shifting.

The Court should grant reconsideration, and if it does not affirm the judgment below in its entirety, it should at least clarify that it is not reversing the property-specific parts of the judgment that the City did not appeal.

I. The Court should grant reconsideration to clarify that it is not reversing property-specific parts of the judgment that the City did not appeal.

The Court holds 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." (Op. at 2) Owners ask the Court to clarify what it has reversed.

The Opinion addresses arguments by the City that apply across-the-board to all the assessed properties, but the Opinion does not address several property-specific findings the superior court made that the City did *not* appeal. For two reasons, the Court should clarify that the property-specific portions of the superior court's judgment still stand. (CP 975-1005 ¶¶ 185:20 309:19 (excluding findings pertaining to the Moses' separate appeal)).

First, the City did not contest those portions of the judgment on appeal. Second, the broad-based analysis underlying the Court's holding quoted above does not apply to the property-specific rulings, which primarily corrected straightforward errors by the City's appraiser or resolved unique situations applicable to those properties alone.

For example, the City's appraiser assessed some hotels not just on their real property but also on "personalty," such as TVs

and beds. Waterfront improvements do not make TVs or beds more valuable, especially five years in the future. The City's appraiser corrected the mistake for four of Owners' hotels, but not for two other hotels (the Waterfront Marriott and Four Seasons) (e.g., CP 993 ¶¶ 265-66; CP 995 ¶¶ 272-74). The superior court then corrected the mistake for the Marriott and the Four Seasons (CP 1035 ¶ 456; CP 1037 ¶ 467). The City did not challenge those findings before this Court.

The City's appraiser also made basic mistakes of fact, identified by the superior court, that the City did not appeal. For example, the appraiser miscounted the number and types of apartments in the Helios property (56 studios counted as apartments with bedrooms). Those errors alone led to overvaluing Helios' actual January 2020 value by nearly $38 million. *See* 3/11/2020 Hrg Tr. at 22:21-24:6 (Ex. 4, LID_001626-28). The superior court fixed that error, too (CP 981 ¶ 215; CP 1031-1032 ¶ 427), and the City did not appeal.

As a third example, EQR's Harbor Steps apartment properties had issues specific to them, most notably that they already had their own access to the waterfront, so the LID hardly was a special benefit; it even might diminish their value. The superior court corrected the City's assessment, (CP 979 ¶¶ 202-04; CP 1021 ¶ 421), and the City did not contest it on appeal.

* * * *

When an appellant does not challenge these types of property-specific issues, the Court normally treats them as forfeited. The City may not argue now that the Court's holding should change the outcome of any of those issues.

In any event, these corrections fall squarely within the principle that, as the Court notes, "a property should not be assessed 'proportionately more than its share' of the total assessment relative to other properties in the LID. *Cammack v. Port Angeles*, 15 Wn. App. 188, 196, 548 P.2d 571 (1976)." (Op. at 7-8).[2]

For that reason, the Opinion's holding, which addresses broad issues affecting the assessed properties across-the-board, does not undermine the superior court's property-specific corrections to the City's assessments. The Court should clarify

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[2] The Court elsewhere describes the burden on challengers as having to show a "fundamental" error that would "necessitate a nullification of the entire LID" (Op. at 8). That standard does not apply to property-specific errors. The owners prevailed in *In re Jones*, 52 Wn. 2d 143, 324 P.2d 259 (1958), because there was already an existing fire hydrant, and in *Doolittle v. City of Everett*, 114 Wn. 2d 88, 786 P.2d 253 (1990), because four separate lots could not be treated as a single parcel. Those types of challenges are property-specific, and they do not fail merely because a proper assessment of someone else prevents nullification of the LID as a whole.

that it did not intend to vacate or reverse those rulings, which were not even contested on appeal.

II. The Court misunderstood the authority on which it rejected Owners' showing that the City's mass appraisal did not comply with USPAP.

The USPAP standards govern real estate appraisals in Washington. (Op. at 16, n.3; WAC 308-125-200(1)). USPAP Standards 5 and 6 apply to "mass appraisals." (Ex. 22, LID_010778 – 010787). The Owners presented compelling evidence that the City's assessments were fundamentally wrong because, while they purported to be derived from a "mass appraisal," the City's appraisal study did not comply with USPAP Standard 5 or 6.

The Owners called expert Randall Scott, who developed Standards 5 and 6 for USPAP. Scott testified that although a mass appraisal like what the City claimed it performed requires creation of a model, calibration, and disclosure of model inputs so that others can replicate the results of the model, *the City's appraiser did not create such a model*. *See* 3/3/2020 (R. Scott) Hrg. Tr. at 195: 12-196: 16 (Ex. 17, LID_ 008044-45); 197:7-15 (Ex. 17, LID_008046); 203:21-205:13 (Ex. 17, LID_008049-51). Under USPAP Standard 5-4(b), "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." (Ex. 17, LID_010781).

Faced with that expert testimony about what a mass appraisal requires, the City provided no particulars about any model its appraiser might have created, the inputs of any such model, or its replicability. Neither the 237-page "Summary of Final Special Benefit/Proportionate Assessment Study" nor its 214-page "Addenda" contains a single mention of any "model." Asked whether his study complied with the "model" requirement of Standard 6, the City's appraiser, Mr. Macaulay, could cite only his report as a whole, which he noted "did a parcel – a parcel analysis," and which he claimed summarized his conclusions, "the data used," and "the process used." *See* 6/19/2020 (R. Macaulay) Hrg. Tr. at 54:25-55:2 (Ex. 7, LID_003004--003007).

Nevertheless, this Court concluded that the City *had* complied with USPAP 6's "model" requirement. The authority the Court cited for that conclusion was a provision from the Washington Local and Road Improvements Manual, which the City had neither cited nor argued on appeal or below. (Op. at 16-17). This Court cited that Manual for the proposition that "a valuation model does not need to be a mathematical model."

(Op. at 16-17, n.3), citing Local and Road Improvement Districts Manual for Washington State, 6th Ed. (Oct. 2009) (Ex. 32, LID_017366).

What the Court cited has nothing to do with mass appraisal standards under USPAP 6. As explained in the cited provision, the Manual generally endorses use of mathematical models to assess benefits where appropriate (such as benefits that can be fairly apportioned by street frontage or square footage). The cited comment cautions that such a "mathematical" approach might not be appropriate if properties do not uniformly benefit in proportion to their frontage, square footage, or other objective characteristics. In those circumstances, says the comment, "a qualified, experienced appraiser should be employed to conduct a special benefit analysis."

But nothing in that comment suggests that an appraiser can comply with *USPAP 6* without creating a mathematical model that meets the standards of USPAP 6. Macaulay ultimately testified, and this Court accepted, that he performed a ***mass appraisal*** rather than appraising each parcel separately. That being the case, it is no defense to Macaulay's failure to use a mathematical model as required by USPAP 6 to say that he could have instead appraised each parcel separately if he were

doing some type of appraisal *other* than what is covered by USPAP 6.[3] What the Court cited simply does not apply.

By failing to create and use a replicable mathematical model, the City's appraiser did not comply with USPAP 5 and 6. That failure meant that the City's assessments were founded on a fundamentally wrong basis that "necessitate[s] a nullification of the entire LID." *Abbenhaus v. City of Yakima*, 89 Wn.2d 855, 859, 576 P.2d 888 (1978) (quoting *Cammack*, 15 Wn. App. at 196). This Court misapprehended the LID Manual in reasoning otherwise.

III. The Opinion takes no account of material differences between the prior LID cases and this one, and it fails to acknowledge the evidence and arguments that Owners presented.

A. The Waterfront LID posed truly unique issues.

The Court's decision is truly unprecedented, as is the Waterfront LID itself. In no prior case has an appellate court had to grapple with the difficult issues this LID presented. The

[3] The Opinion also says that ABS "produced spreadsheets for each of the Owners' properties that showed detailed before and after valuations." (Op. at 18) The word "detailed" is problematic. The spreadsheets did not spell out, explain, or support whatever analysis the City's appraiser performed; they merely showed the bottom-line conclusions of that analysis.

Court's decision to treat this LID as essentially no different than one, say, to extend a sewer, creates a disturbing, entirely new precedent.

A unique LID. The Waterfront LID is the largest ever, encompassing 6,238 individual tax parcels, some of which lie 5,600 feet from the core improvements. And it imposed approximately $175,000,000 in assessments effective as of October 2019, fully five years before the project was scheduled to be completed, a period during which COVID 19 caused property values to plummet, but with payments due years before completion.

In this uniquely large district, the "improvements" are widely dispersed and also are not simple, familiar things for which there is a vast body of appraisal knowledge or case law. LIDs typically finance water lines, sewers, larger or extended streets, and the like. This LID was different – it included things like replacing trees with those with slightly larger trunks, eliminating vehicle traffic lanes in favor of bike and pedestrian lanes, and installing new stairs from Pike Place Market to the new Aquarium.

A unique "before" valuation issue. Estimating "before" values also presented unique and complicated issues.

Fundamental to the Waterfront LID was the premise that owners would not be assessed for the millions WSDOT had

spent and planned to spend to remove the Alaskan Way Viaduct, rebuild Alaskan Way, and make other waterfront improvements. Accordingly, the City's appraiser had to calculate "before" values that included the value of the WSDOT-funded improvements, even though they were not (and, in some instances, never would be) completed. The City, however, never explained how it calculated those hypothetical "before" values. *See* 6/23/2020 Hrg. Tr. at 44:18-45:9 (Ex. 7, LID_003165- 003166).

The uniquely distant "after" valuation. No prior LID cases addressed the issues created here by the unprecedented delay between imposition of the assessments and completion of the improvements those assessments were to fund – a period further complicated by COVID-19 causing the values of many Owners' properties to plummet. In each of the cases the Court relied upon, the projects were complete at the time of assessment (or the opinions make no mention of any delay).

B. The Opinion stretches what cases like *Bellevue Plaza* say about presumptions and burdens far beyond their reasonable context.

When a project is complete at the time of assessment, and the challenger is claiming without evidence that there is no benefit, it makes some sense to say that the challenger must

show that its property "would *not* be benefited by the improvement.'" (Op. at 11 (quoting *Bellevue Plaza*, 121 Wn.2d at 403). In that scenario, the market should already be taking into account the "after" value because the market itself is literally already *in* the "after." In such a case, an owner cannot insist there is no benefit without offering evidence of *present* reality.

But *Bellevue Plaza* and the other cited cases say nothing about what to do when the "after" is projected five years forward, at a time when plans for what will be done are incomplete, and when a pandemic (which will have devastating effects on property values) hovers on the horizon.

One reasonable judicial response could be: a party still must have expert evidence of some kind that the City's analysis is fundamentally flawed, just maybe not the type of evidence a court would expect if the project were complete, *i.e.*, not the kind of "after" appraisal of a completed project one would reasonably expect in cases like *Bellevue Plaza* or *Indian Trail*.

In the face of these unique facts and complex issues, the Opinion quotes *Bellevue Plaza*, 121 Wn.2d at 403, for the proposition that an LID will be upheld unless a challenger demonstrates with "expert appraisal evidence" that its property "would not be benefited by the improvement." Op. at 11.

The issue in *Bellevue Plaza* and like cases, however, was whether special benefits were established for each particular property using proper methods. No case holds that owners challenging a project of this size and scope must offer expert evidence that they incurred no benefit whatsoever from the project. A huge project like the Waterfront LID can bring infinitesimal benefits to property for many miles around; the issue here was whether the City proved a "special benefit" as that term is defined in the case law.

That being the case, the Court inexplicably writes that "Owners do not contend that their properties would not be specially benefitted, nor did they provide evidence demonstrating as much." (Op. at 11). [4] To the contrary, over the several years of this litigation, Owners have relentlessly argued that there is no reliable evidence showing a "special benefit" as that term is defined in the case law.

The Court perhaps inadvertently conflates *any* benefit with "special benefit." In other words, the Court may mistakenly think that a concession (or common-sense belief) that there is

[4] The Court's statement at p. 11 that Owners did not argue "no special benefit" is even more inexplicable given that eight pages later the Court writes that Owners "maintained at oral argument that there was no special benefit to any of their properties." (Op. at 19).

some benefit of some kind—say, the benefit we all get from a pleasant waterfront and that is reflected in ordinary property taxes—is a concession of a "special benefit." It's not. A special benefit must be special, by the legal definition, and "substantially more intense." By contrast, general benefits are financed with regular property taxes.

Perhaps the Court is treating arguments that no "special benefit" (properly understood) *has been shown* as somehow distinct from arguments and evidence that there is *no* special benefit. If that is the line the Court is drawing, then the Court is impossibly forcing Owners to prove a negative. Again, no case holds the burden is that extreme *in a case like this*.

Requiring challengers to prove a no-benefit negative makes challenges impossible in cases like this, and would give the City unwarranted and easily abused authority to pick-and-choose its taxpayers in a gerrymandered fashion to fund practically anything because no one will be able to successfully challenge the project. The City could commission a multi-million-dollar special antenna for the Space Needle to broadcast messages to the stars designed to confuse aliens who might otherwise harm Seattle, thereby providing all a "special benefit" of protecting future generations from destruction. *Cf.* Liu Cixin, THE DARK FOREST (Head of Zeus Feb. 1, 2018). How would those assessed for that "special benefit" show they've received

no benefit from that? If a challenger must, as the Court seems to insist, *prove there's no benefit*, the challenger is defeated in any case where benefits are so far away and speculative.

In these circumstances, taxpayers should be able to carry the burden if they produce reports by leading experts explaining why there is no showing of a "special benefit." If a taxpayer does that in a case like this, the burden should shift. Tellingly, the City devoted its briefing to avoiding a burden-shift.

Here, despite the Opinion's statement to the contrary (on p. 11, *but see* p. 19), Owners provided expert evidence addressing the unique circumstances of this case that was more than enough to rebut any relevant presumptions in favor of the City's evidence of any "special benefit."

C. By any reasonable understanding of the term, the expert evidence showed *fundamental* flaws.

1. The "before" values. Unable to show what it did to ensure that its "before" values took into account the WSDOT improvements, the City argued on appeal that real-estate market participants knew as of the "before" date that the Viaduct was coming down, so that real estate prices at the time necessarily took that into account.

That "market knowledge" proposition, however, was disproved by the Owners' experts, Brian O'Connor and John

Gordon, who offered actual appraisal evidence on behalf of the EQR and Hedreen properties, respectively.

If the City's "market knowledge" view were correct, then the "before" appraisals by Gordon and O'Connor would have reflected the value of WSDOT's removal of the Viaduct. To the contrary, those experts showed that the City's hypothetically inflated assessments were wrong.

2. The "after" values and Crompton. What the City's appraiser did—at a high level—was take the research of the nation's leading expert on the benefits of parks, Dr. John Crompton, and stretch it beyond recognition. The theory Macaulay put forward is that benefits radiate out from park improvements in a predictable way, and he purported to rely on Dr. Crompton's research for how far and how much.

Owners, however, called Crompton himself as a witness, and he made clear that the City had misused, misunderstood, or mischaracterized his work. As Crompton declared in his report: "[T]he Appraiser has misinterpreted and/or misapplied eight dimensions of my work," and the incremental benefit of the "park improvements" over and above the dramatic improvement in waterfront view is "very small" (which not a *special* benefit as a matter of law) or "perhaps non-existent." (Ex. 31, LID_016808).

Dr. Crompton wrote a very thoughtful report for this matter. It is attached to this motion as Exhibit A for ease of reference. At argument, the Court indicated that it was familiar with it. In that report, Dr. Crompton faulted the City's appraiser for a "plug-and-chug estimation process"; inaccurately treating the LID components as "park improvements" like neighborhood parks when the more accurate comparison would be "parkways" along roads; and improperly using "blocks" as a measure when Crompton's research addressed small residential neighborhood blocks as opposed to Seattle's large municipal ones. But that was just the beginning of the criticism of the City's analysis:

- It inappropriately applied findings from our review of parks to a parkway.
- The parks review was based on residential dwellings, predominantly single-family homes, and the Appraiser inappropriately extended the findings to include commercial buildings.
- At my request, a GIS map was produced using the network metric showing the LID boundaries and proximate distances to the "park improvements" and it is attached to this report as appendix 2. It shows that 500 feet distance from the "park improvements" is either one or two blocks. Hence, using the block measure, rather than the feet measure that was reported in the JLR review, has the effect of inappropriately extending the LID impact significantly beyond that which the park study indicated (even if it was legitimate to use the park review's findings).
- The Appraiser's extension of the impact distance to 12 blocks was an incorrect interpretation of our work for two reasons.

And on and on it goes. That portion of the report concludes:

These inaccurate interpretations of our work resulted in the Appraiser inappropriately concluding (referencing a streetscape study as well as our JLR review): "Both studies indicate a geographical radius of benefit within 12 blocks, but most significantly within the first three blocks" (p.56).

The next section discusses the "Park Quality Scale" and again finds "a misapplication and misinterpretation of my work." Then Dr. Crompton moves to the issue of the "view" premium, which is from removal of the viaduct and cannot be part of the "after" valuation. The "view" is where the real value lies, and he explains that attempting to suss out the incremental benefit of "park like improvements" from the benefits of the view is nearly impossible. As he put it: "Turning on a weak light has a large impact in a dark room. The same increment of light may be undetectable in a brightly illuminated room."

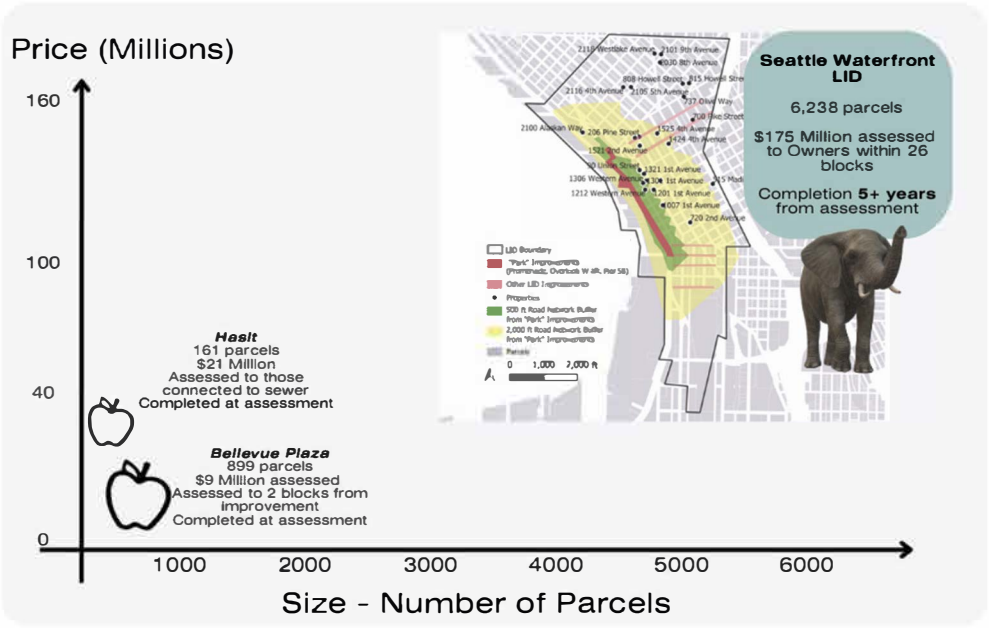
The question the Court needed to answer was: why isn't Dr. Crompton's report enough to shift the burden? The Court erroneously says that question was not even raised, and along the way, the Court creates impossible standards for a case like this.

D. This case requires recognition of the vast differences between this LID and what appears in the case law.

At some point, a difference in degree is a difference in kind. *See Randall v. Sorrell*, 548 U.S. 230, 260 (2006). "'Drawing the line' is a recurrent difficulty in those fields of the law where differences in degree produce ultimate differences in kind."

Harrison v. Schaffner, 312 U.S. 579, 583 (1941) (quoting *Irwin v. Gavit*, 268 U.S. 161, 168 (1925) (Holmes, J.)). But failure to attend to significant differences in degree, much less differences in kind, quickly results in a "maze of contradictions." *Palsgraf v. Long Island R.R. Co.*, 248 N.Y. 339, 342, 162 N.E. 99 (1928) (Cardozo, J.). In *Palsgraf*, of course, it had to be recognized that prior case law did not account for someone bringing fireworks to the train station.

Here, this case presents massive differences in degree that must be accounted for. They are so massive that the Court should have treated them as a difference in kind. Or at the very least, lines must be drawn to account for those differences. Cases where the assessments were made after project completion and that involve run-of-the-mill improvements like sewers, water mains, and modest road upgrades are inapt here. *Bellevue Plaza* can speak of a "panic" price, but no one in *Bellevue Plaza* was thinking of COVID (and "panics" don't last for years). There are enormous differences between this case and every single case the Court has cited. The comparison is apples to elephants.



A Court certainly could (and this Court initially has done so) treat *Bellevue Plaza* and *Indian Trail* as if they say everything one needs to know for any situation involving any LID at all, even the one with the Space Needle and the aliens. There are far more extreme versions of treating a few texts as applying no matter what, such as regimes where those in charge conclude that one or two books of political philosophy tell them everything they need to know about physics, including quantum mechanics. *Cf.* Liu Cixin, THE THREE-BODY PROBLEM (Tor Books 2006). But it is fundamental to sound development of case law to attend to significant differences in degree,

differences in kind, and where to draw lines. The Court's Opinion fails to do so. And the City, correctly viewing the decision as a massive inflation of taxing power and the ability to manipulate who pays, wants it published.

This Court should reconsider. It should take account of the material differences between this case and the cases cited by the Court, and properly credit Owners with the arguments they made and the evidence they offered. This case is an especially good example of "special benefits" being too speculative or conjectural (and that would likely then cover the alien broadcast scenario). It is also an especially good example of one where it is a fundamental flaw not to at least discount distant benefits to their present value. Owners argued that unless the City's special-benefit calculations were discounted to present value, the delay rendered the assessments impermissibly unfair because they overlooked a host of development risks. The result (without discounting) was that Owners were compelled to pay *for years* for benefits of uncertain value that they had not yet received.

Even modest sensitivity to context here changes the result. The report of Dr. Crompton—to say nothing of all the other evidence Owners provided—should have shifted the burden to the City. At that point, the City must lose because it does not

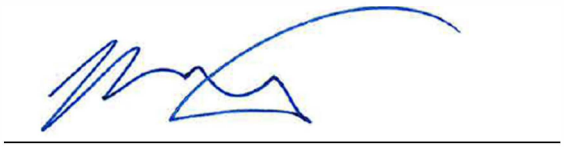
seriously defend itself if the burden shifts. Because it can't. Then, the judgment should be affirmed.

CONCLUSION

As to each of the foregoing points, Respondents request that this Request for Reconsideration be granted, the Opinion revised accordingly, and that the assessments be annulled or remanded to Judge Williams for further proceedings consistent with applicable law and the facts in the record.

RESPECTFULLY SUBMITTED this 13th day of May, 2024.

This document contains 4,915 words, excluding the parts of the document exempted from the word count by RAP 18. l7 (b), and complies with the applicable word-count limits set forth in RAP 18.17 (c).



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CERTIFICATE OF SERVICE

On May 13, 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.

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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 Bellevue, Washington, on May 13, 2024.

Karen Campbell, LPA

PERKINS COIE LLP

May 13, 2024 - 4:34 PM

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Comments:

Respondents' Motion for Reconsideration and Exhibit A to Respondents' Motion to Reconsider

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COURT OF APPEALS, DIVISION ONE OF THE STATE OF WASHINGTON

THE CITY OF SEATTLE,

Appellant,

v.

SHG GARAGE SPE, et al.,

Respondents.

EXHIBIT A TO RESPONDENTS MOTION FOR RECONSIDERATION

John Crompton
1515 Foxfire Dr
College Station, TX 77845

RE: Waterfront Seattle LID Special Benefits Report – File Ref: 19-0101 – November 18, 2019
Authored by ABS Valuation.

Dear Mr. Lutz,

You requested me to "assess whether Mr. Macaulay and team have properly applied your and related studies in the City's study, whether the benefit areas and assigned special benefits are supportable or speculative, and how, in the absence of a site-specific study of these proposals, you would apply the information to be included in your new book." My comments are arranged under eight headings.

Updated material

The Appraiser (Mr. Robert Macaulay) based his use of my work on an article published in the *Journal of Leisure Research* (JLR) in 2001[1]. Since its appearance, this article has been cited in 335 other articles published in the scientific literature. The high citation rate suggests it has been viewed as a foundation paper upon which other economists and social scientists have built. The appraiser also referenced that it was "updated in 2014." He does not cite a reference for the 2014 update, and I am unaware of such an update. I did publish a book in 2004 addressing the same issue.[2] I assume that is the update to which he is referring. That book incorporated the material from the JLR publication and did not update it. It was written in non-scientific language, because it was targeted at a professional rather than a scientific audience.

The Appraiser (p.45) correctly cites the 2001 article as concluding, "A positive impact of 20% on property values abutting or fronting a passive park area is a reasonable starting point guideline" (p.29). However, the Appraiser did not note that this conclusion was preceded by an important qualification: "A definitive generalizable answer to [the magnitude of the proximate effect] is not feasible given the substantial variation in the size, usage and design of park lands in the studies and the disparity in the residential areas around them which were investigated… If it is a heavily used park…then the proximate value increment may be minimal on abutting properties but may reach 10% on properties two or three blocks away" (p.29).

In 2020, together with a co-author, I updated the 2001 JLR article (51(2), 127-146). Since the new findings were published only a few months ago,[3] obviously, the Appraiser did not have access to these updated findings. However, if he had contacted me, I would have made the paper available to him. It was first submitted to JLR for review in November 2018 and after changes made in response to suggestions offered by expert reviewers, it was published online on August 12, 2019.

The 33 studies located in the scientific literature that addressed this issue which we reviewed were much more accurate than those reviewed in the earlier article, reflecting five methodological developments that emerged around the start of the new millennium: Hedonic

models became more robust; statistical tools associated with hedonic analyses were more sophisticated; Geographic Information Systems enabled distance to be measured along road networks rather than straight lines; electronic databases from Multiple Listing Services enabled larger samples to be used; and market sales rather than appraised values were used. As a result of these improvements our updated review concluded:

> When the highest premiums reported in each study were tabulated, an approximately equal number were assigned to each of three categories: less than 4%, 5%-9%, and 10% or more. This suggests the recommendation from the 2001 review that 20% on property values abutting or fronting a passive park area as a reasonable starting point guideline was overly generous. A more appropriate starting point guideline on this kind of property would appear to be 8%-10% (p.15).

Differences in Types of Properties.

The studies reviewed in both the 2001 and 2020 JLR publications predominantly used single-family homes in their samples. This is different from the mix of residential units in the LID which are comprised almost exclusively of apartments and condominiums.

Our 2020 JLR review concluded:

> The percentage premium associated with multifamily properties or small lots was higher than that associated with single-family or large lot properties. This finding was consistent in all nine studies that addressed this issue. It is explained by privately owned yard space associated with single family homes serving as a partial substitute for public parks (p.147).

Backyards in single family homes frequently contain such items as playground equipment, exercise equipment, decks with tables and chairs, barbeque facilities, basketball hoops, and grass spaces for Frisbee, soccer, tag or whatever. These amenities facilitate socialization and entertainment for family and friends. For many, they become the center of home and neighborhood life. In essence, in some homes the backyard substitutes for, and replaces, some of the facilities typically incorporated into neighborhood parks.

Hence, a case can be made that the premiums for apartments and condominiums in the LID are likely to be larger because they have no backyards, and the availability of a proximate park compensates for this lack of private space.[3] However, the LID "park improvements" are best characterized as a parkway not a park. The "park opportunities" do not appear to incorporate these types of facilities or to be designed to perform this function. Rather, it appears designed as an attractive corridor to facilitate exercise, and exposure to the ambiance of water views.

The Appraiser provides a separate spreadsheet for "All other LID Commercial Properties." It is unclear to me if the JLR review was used in ascertaining premiums for these 1,051 properties but, clearly, it is not appropriate to extrapolate its findings for deriving values for high rise office buildings, retail uses, hotels et al.

The exemplar demonstrating the impact of rejuvenated or new park land on commercial values was Bryant Park in New York City. Attached as an appendix to this report is a description of its rejuvenation that I included in my most recent book which the publishers tell me will be released next month.[4]

The success of the rejuvenation of that 8-acre park in the early 1990s which generated substantial increases in commercial office rents for the surrounding properties, led many other cities to emulate it. However, almost all the premiums associated with those parks are captured by properties directly fronting on to the parks, and they do not extend much beyond that immediate area. This is reflected in the narrow geographic area of the Business Improvement Districts that typically are established to fund and subsequently maintain such parks. It appears the Appraiser has extended the range for commercial property assessments far beyond those immediately abutting the LID "park improvements."

Are the "Park Improvements" Best Characterized as a Park, Greenway or Parkway?

The Appraiser's suggestion that the green space in the LID is a "park" is a misrepresentation. Although the area incorporating the "park improvements" appears to be approximately 36 acres, two-thirds of that 36 acres appears to be hardscape. This suggests the appropriate designation is "parkway" rather than "park." This distinction is critical, because the JLR review to which the Appraiser frequently refers pertained exclusively to "parks and open space." It did not refer to parkways or greenways. The importance of the distinction stems from the empirical literature that shows the premiums from parks on property values are likely to be much higher and to extend for a greater distance, than those from parkways or greenways.

In the narrative relating to his valuation of residential condominiums, the Appraiser makes it clear he is referring to premiums associated with parks rather than parkways or greenways. For example, "The research presents clear indications that well-designed park and street improvement projects have a positive effect on surrounding neighborhoods and property values" (p.82).

The Appraiser appears to implicitly acknowledge the distinction between parks, parkways and greenways, because three of the six projects he examined to "compare various project components" were parkways or greenways, rather than parks. (Tom McCall Parkway, Rose Kennedy Greenway, and Embarcadero Parkway).

In his exposition of the tools used in his valuation analysis, the Appraiser states:

> As mentioned throughout, increases in market value of individual parcels result primarily from enhanced location (improved pedestrian connections, open space, streetscapes) which, in turn, enhances the aesthetic appeal of the waterfront and a large segment of the downtown CBD (p.59).

Later, in his valuation summary describing the impact of the LID he states:

> With the LID in place, there is a new waterfront promenade, consisting of continuous open space on the west side of the waterfront corridor from Pine Street to South

> Washington Street, with enhanced landscaping and streetscapes. Pedestrian accessibility to the waterfront and view opportunities are greatly improved (p. 80).

Parks are conspicuously absent from these descriptions. Rather, they describe beautification of a highway with an accompanying well-landscaped promenade.

The genesis of American parkways lies in the tree-lined boulevards of Paris that were established in the 18th and 19th centuries. They were designed for "promenading." The belief was that pedestrian walkable areas would add value to proximate residences.[5] They were transposed to the U.S. by Olmsted and Vaux, the highly influential landscape architects who were responsible for many of the pioneering large urban parks in the U. S. For the most part, they preferred the term "parkways" to "boulevards" but they used them as synonyms.

Their parkways were intended to serve either as a means of approach to a large park or as a connection between large parks. Parkway was defined as "a road that is of picturesque character bordered by trees and shrubs,"[6] and they were regarded as "narrow informal elongations." Commercial vehicles were barred, and the intent was to make driving through them a recreational experience.[7] This meant that most of the benefit was conferred on those driving along the artery, and on those fronting on it who enjoyed views and exposure to the intensive landscaping.

Parkways were designed for through traffic and all intersections were either bridged or tunneled under the parkways. The central drives were flanked with generous 30-35-foot pedestrian medians. Parallel 25-foot side roads for local and commercial traffic were constructed along with sidewalks. All elements of a parkway were separated by two rows of trees. Although it does not possess all these elements, these descriptions appear to be reasonable representations of the LID "park improvements."

Importantly, in the context of the LID, it was believed that added real estate value from parkways was confined to properties directly fronting onto them. Kansas City was renowned for its system of parkways. In a report to his Board of Park Commissioners in 1910, George E. Kessler, the superintendent of parks, who was a highly regarded national figure in the parks field, stated: "Conservative real estate men [in Kansas City] estimated the present value of the grounds fronting on the Kansas City boulevards, less building improvements. They compared this valuation with that of ground fronting adjacent streets which were not on boulevards. They found that the difference in favor of the boulevards real estate was $2500,000 more than the entire cost to taxpayers of all the parks and boulevards embraced in the system."[8]

The distinction between a highway and a recreational parkway disappeared from the U.S. urban infrastructure vocabulary after the Second World War. Today, when the term "parkway" is adopted, the intent is generally to upgrade perceptions of an artery's status from an ordinary city street by providing more comprehensive landscaping and, consequently, conferring on it the image properties associated with the word "parkway."

In the last two decades of the 20th century, the term "greenways" entered the urban infrastructure lexicon. Greenways are not wide swaths of land like parks, rather they are relatively narrow

corridors that have two major functions: (i) to link and facilitate hike and bike access between residential areas and places of employment and/or parks; and (ii) to provide opportunities for linear forms of outdoor recreation (e.g., hiking, jogging, bicycling, inline skating, and ordinary walking).

Their popularization stemmed from the 1987 report of the President's Commission on Americans Outdoors. The Commission recommended communities establish "greenways," which they defined as "corridors" that "provide access to open spaces close to where they live." The Commission conceptualized these greenways as "fingers of green that reach out from around and through communities all across America" (p. 142).[9] The first extended work exploring the potential of greenways followed soon after and defined greenways as "linear open spaces…converted to recreational use" (p. 1).[10]

Most of the enhanced value of parks derives from people's willingness to pay a premium to be proximate to the tranquility, peace and psychological relaxation many parks provide. In contrast, enhanced property values associated with greenways are likely to come from access to a trail, rather than from views of nature or open space. It is their functionality or activity potential that is likely to confer most added value, rather than the panorama and ambiance associated with parks.

In my 2004 *Proximate Principle* book[2], the "plug and chug" estimation process from which the Appraiser garnered the blocks measure that is described in the following section, I asserted:

> Results from the limited number of empirical studies available at this point indicate that while trails are unlikely to exert a negative impact on proximate values, there is insufficient evidence to suggest they have a positive impact. The dominant sentiment is that trails have no impact on property values, so no proximate premium is recommended for them here (p.11).

While the Appraiser elected to use the blocks measure from the "plug and chug" "best guess" estimation procedure, he chose not to use the trails findings. These are not as accurate a descriptor for the LID as "parkway" but are a closer depiction of the "park improvements" than parks.

Again, in a recent article, a co-author and I updated those greenway trail 2004 results. We reviewed 20 studies which had been published since 1999 that measured the impact of greenways and trails on proximate property values using hedonic analysis. None of these greenways resembled the LID in having a major highway running through them. Many of them were "rails to trails" projects which transformed disused railroad tracks into hike and bike trails. Our review of greenway trails concluded: "The results indicate that a small positive premium of between 3% and 5% was the most widespread outcome for single-family homes located proximate to a trail" (p. 97).[11]

Distance for which the "Park Improvements" Impact Property Values.

The 2001 JLR study concluded:

> The diversity of the study contexts makes it non-feasible to offer a generalizable definitive answer to the question concerning the distance over which the proximate impact of park land and open space extends. However, there appeared to be wide agreement that it had substantial impact up to 500 feet and that in the case of community sized parks it extended out to 2,000 feet (p. 29).[1]

The 2020 JLR updated review similarly concluded: "This synthesis endorsed a conclusion from the 2001 review that high premiums generally were limited to properties within 500 feet, but for large parks they extended out to 2,000 feet" (p. 142).[3]

Both the JLR 2001 and 2020 scientific papers reported the range of impacts in feet. They made no reference to number of blocks. However, the Appraiser discarded the use of feet and replaced it with "blocks." He did that throughout his report, which allows the reader to incorrectly infer it was a synonym for the feet measure.

His blocks measure stems from my 2004 *Proximate Principle* book, which was written for a non-science, professional audience.[2] In that volume, I included an approximation "plug and chug" simplified procedure, based on the empirical findings, that non-scientists could adopt for use in their communities. I explained it was a template: "it is emphasized that this approach only offers a rather crude 'best guess.'" The template suggested, "The area of proximate impact of a park should be limited to 500 feet or three blocks" (p. 9). My intent in using the three-block term was to reify the 500 feet range metric. The magnitude of 500 feet is relatively difficult to grasp, whereas three blocks is easily recognizable. It reflected the approximate distance in most of the contexts in which the studies in our review were undertaken. It was anticipated the block synonym would be more understandable and easier for non-scientists to grasp. The intent was to offer a synonym for 500 feet, not an alternative to it. Clearly, if the block measure is applied to the 300-foot blocks that are more typical in the LID than the intended 150-feet distance, it extends the impacted area far beyond the 500-feet distance reported in the JLR studies.

In his interpretation of that statement ("The area of proximate impact of a park should be limited to 500 feet or three blocks"), the Appraiser states:

> "In terms of direct residential impact, John Crompton's ongoing studies into the impact of parks on property values have been used by municipalities across the country. Crompton's "proximate principle" represents a "capitalization" of park land into increased property values and a widening of the tax base. One major finding based on his results deals with the location and proximity of property to the park improvements—both in urban and suburban environments:
>
> - 75% of the benefit from a park is captured within 500 feet, or three blocks.
> - The remaining 25% of the benefit is likely dissipated over a 500 to 2,000-foot range, or 4 to 12 city blocks" (p. 83 & p. 46).

In his first bullet, the Appraiser inserts a comma between the two measures, "…within 500 feet, or three blocks." This comma was added by the Appraiser. It was not in the original Crompton manuscript. This insert reinforces an inference that the two measures are alternatives, whereas

without the comma they are more likely to be accurately recognized as synonyms which was the intent.

The Appraiser throughout his report, disregarded the 500 and 2,000-feet measures and used only the blocks measures for the LID assessments. In addition to the comma insert, the above statement misrepresents my work in six ways:

- It inappropriately applied findings from our review of parks to a parkway.
- The parks review was based on residential dwellings, predominantly single-family homes, and the Appraiser inappropriately extended the findings to include commercial buildings.
- At my request, a GIS map was produced using the network metric showing the LID boundaries and proximate distances to the "park improvements" and it is attached to this report as appendix 2. It shows that 500 feet distance from the "park improvements" is either one or two blocks. Hence, using the block measure, rather than the feet measure that was reported in the JLR review, has the effect of inappropriately extending the LID impact significantly beyond that which the park study indicated (even if it was legitimate to use the park review's findings).
- The Appraiser's extension of the impact distance to 12 blocks was an incorrect interpretation of our work for two reasons.
    - First, our conclusion that often a small increment of impact extended out to 2,000 feet applied to "community parks." The definition of community parks in the Seattle Parks Department Master Plan is: "Community parks satisfy the recreation needs of multiple neighborhoods. They generally accommodate group activities and recreational facilities not available at neighborhood parks. They may have athletic fields, large open spaces, paths, benches, natural areas, and restrooms. Community parks are accessible by arterial or collector streets, and usually include off-street parking" (p. 97)[12]. The enhanced array of amenities included in community parks accounts for them often adding a small increment of value to properties within 2,000 feet. Clearly, the proposed "park improvements" in the LID do not incorporate a comparable array of amenities and so, use of the 2000-feet metric is inappropriate.
    - A second incorrect interpretation was the failure to recognize that all the studies reviewed in our most recent JLR paper used network analysis to measure impact distance. This means the 2,000 feet refers to distance along road networks, not "as the crow flies." When the distance from the "park improvements" is measured along roadways, the range of impact is much smaller than is shown by the current LID parameters.
- The GIS map shows the LID includes corridors extending east across Alaskan Way up to Western Ave and the Pike Place Market vicinity. Clearly, these are not "park improvements." They bear no relationship to the park sites that constituted the samples studied in the JLR reviews.

These inaccurate interpretations of our work resulted in the Appraiser inappropriately concluding (referencing a streetscape study as well as our JLR review): "Both studies indicate a geographical radius of benefit within 12 blocks, but most significantly within the first three blocks" (p.56).

Use of the Park Quality Scale.

The Appraiser states: "Based on Crompton's park rating scale and considering the existing waterfront amenity, the Waterfront Seattle project would increase the quality rating from above average to excellent, which indicates an average increase in value of 5% for condominiums within a three-block radius" (p.56). This is a misapplication and misinterpretation of my work. The reality of the Appraiser's conclusion is that it is based on his judgement, experience and expertise; it does not derive from any of my publications or from scientific empirical findings.

In the 2004 *Proximate Principle* book a "Park Quality Scale for Determining Proximate Principle Premiums" was included, as part of my "plug and chug" approximation procedure. The Appraiser reproduces it in his report (p.46) as shown below.

Park Quality Scale for Determining Proximate Premiums

Unusual Excellence	A signature park; exceptionally attractive; natural resource based; distinctive landscape and/or topography; often mentioned in sales advertisements for nearby properties; well maintained; genuine ambiance; engenders a high level of community pride and "passionate attachment."
Above Average	Natural resource based; has charm and dignity; regarded with affection by the local community; pleasant; well maintained.
Average	Rather nondescript; not really "noticed" by the local community; adequately maintained; no distinguishing features
Below Average	Sterile; absence of landscaping or trees; athletic fields with noise, lights, congestion; intensive use
Dispirited, Blighted	Dilapidated, decrepit facilities; broken equipment; unkempt, dirty; unofficial depository for trash; noisy; undesirable groups congregate there; rejected and avoided by the community

Immediately following the Park Quality Table in the Appraiser's report, his narrative continues as follows (p.47):

- Condominiums within a three-block radius typically experience increases in property value of:

Quality of Park	**Distance**	**Green Premium**
Excellent-Average	1 block	16-20%
Excellent	1-3 blocks (500ft)	15%
Above Average	1-3 blocks (500ft)	10%

Average	1-3 blocks (500ft)	5%
Poor	1-3 blocks (500ft)	-5%

In the case of the Waterfront Seattle project, it is important to consider that there is an existing waterfront amenity; the current waterfront area can be rated as average to above average since it provides a unique public amenity. However, when considering the waterfront area as extending east across Alaskan Way up to Western Avenue and the Pike Place Market vicinity, the rating declines to merely average due largely to the poor connectivity with city streets. The existing alleys, stairwells, and dim lighting areas contribute to an undesirable atmosphere, especially at night, despite the active foot traffic and tourist-oriented venues along the waterfront. The reader is referred to the City-provided documents in the addenda volume for further discussion and descriptions of existing or "without LID" conditions.

With the project elements completed, the area will be upgraded to excellent, which indicates an average 5% increase in condominium values situated within three blocks of the improvements/new amenities. Note that this is an average based on empirical data and is utilized for background information when analyzing the subject project elements.

The above article sets up a good basis for the argument that a larger, linear, well-maintained public park that attracts active users – such as the Seattle waterfront park – will likely have a positive impact on residential property values and that the most benefit is evident within a two- to three- block radius.

There are three concerns relating to the Appraiser's table:

1). The columns in the "increased property value" table are different from those used in the Park Quality Scale which the Appraiser purports to represent:

- Under the "Quality of Park" heading, the Appraiser uses different ratings than are used in the Scale. The source, rationale, criteria and definitions of the descriptors that comprise the new rating scale are not explained. The new scale is not derived from the Quality of Park Scale. Indeed, there appears to be no connection between them.
- Under the "Distance" heading he introduces a new category "1 block." No rationale is provided for it. The subsequent categories refer to the 1-3 block measure which he parenthetically infers equate to 500ft, but in fact in the LID context a three-block measure significantly exceeds that range.
- The "Green Premium" heading in the third column is a new term that the Appraiser has introduced. The source of the percentage premiums used in this column is not explained. They seem to be entirely arbitrary. They do not come from the original table in the 2004 *Proximate Principle* publication which stated:

  "Based on the results reported in the monograph, the suggested premiums applied to all single-family home properties within the 500-foot proximate area for each of the three highest categories shown the Table are;

Unusual excellence: 15%
Above average: 10%
Average: 5%"

Clearly, the premiums suggested by the Appraiser are much higher than those emanating from the 2004 publication from which he inappropriately infers they are derived.

2). The definition descriptors in Crompton's Park Quality Scale were developed specifically for parks. They do not fit the context of the LID parkway. To use them in this way is like comparing the tastes of artichokes and apples. If the Appraiser required a similar scale for the parkway to guide his judgements, then he needed to develop a scale that fits the LID context. Clearly, on its face the scale lacks validity.

3). With a co-author, I recently finished an update of the 2004 *Proximate Principle* book that addresses the impacts of physical amenities on property values. Again, it is targeted at a non-scientific audience. It will be released by Sagamore/Venture Press in the next few weeks.[4] It updates the "plug and chug" numbers. In this revision, the suggested premiums on single-family homes within the 500-foot proximate area for each of the three highest categories shown in the Park Quality Scale table are:

Unusual Excellence: 10%
Above Average: 5%
Average: 3%.
These much smaller percentages reflect the more accurate lower premiums reported in the post-millennium studies.

In addition to concerns with the table, there are three concerns with the narrative cited above that follows it:

a) The narrative states "the current waterfront area can be rated as average to above average since it provides a unique public amenity." Subsequently it states that in another part of the LID "the rating declines to merely average." No valid greenway or parkway scale has been developed that describes or defines "average" and "above average." Without a benchmark scale to serve as a point of reference there are no guiding criteria, so the Appraiser's judgement is arbitrary.
b) The arbitrariness problem continues in the following paragraph: "…which indicates an average 5% increase in condominium values situated within three blocks of the improvements/new amenities. Note that this is an average based on empirical data." It is not based on empirical data. It has no scientific or empirical basis. It is simply the Appraiser's arbitrary judgement and compounds the concerns relating to range of impacts noted in the previous section of this evaluation.
c) The final paragraph cited above states: "The above article sets up a good basis for the argument that a large, linear, well-maintained public park that attracts active users – such as the Seattle waterfront park…" It does not "set up a good basis" since it is based on faulty premises. Further, this is not a "large linear public park"; it is a parkway.

The Negative Impacts of Disamenities on Premiums

Premiums on proximate properties associated with park-like spaces are sometimes at least partially offset by a variety of social and/or environmental disamenities. These may include – congestion, increased traffic flow, lack of parking or unwanted on-street parking, litter, vandalism, intrusive lighting, and groups engaging in morally offensive activities. This led to a number of the studies reviewed in the JLR articles reporting that properties immediately adjacent to a park did not show the highest premium. Rather, it was properties located one or two blocks distant from the park (that were also distant from the source of nuisances) which had the highest premiums.

In the context of the LID, demolishing the viaduct removes a major disamenity for those properties whose view of an ugly and noisy roadway is replaced by an attractive view of the water and new greenway. Clearly, this is likely to have a major positive impact on the value of those properties, but the Appraiser appropriately recognized this as a "before" condition, rather than a benefit from the LID.

The Appraiser identified two potential negative impacts. He indicated loss of parking spaces was incorporated in his assessments: "some parking losses along Alaskan Way in the waterfront area will occur due to the project and this is considered in the analysis" (p.7), but there is no overt description of how it was "considered in the analysis."

He noted the LID was likely to result in an increase of "1.5 million net new visitors to the immediate area, generating $191 million in new annual visitor spending" (p.45). This estimate was juxtaposed in a following paragraph with a quote from the 2001 JLR article which implies he recognized the potential negative nuisance impact on property values of these new visitors: "Parks that serve primarily active recreation users were likely to show much smaller proximate value increase than those accommodating only passive use" (p.28)[1]. His report went on to paraphrase a conclusion from the JLR article: "Neighborhood parks that are primarily used by the surrounding residents result in a higher increase in property values than larger parks that attract active users from outside the neighborhood due to the adverse effects of noise, nuisance and congestion" (p. 46). Again, there is no overt description of the extent to which the Appraiser considered this disamenity impact in his assessments.

The Diminishing Marginal Valuation of Premiums.

The premiums on properties that are proximate to parks and water amenities are derived from two sources: distance from the amenity and views of the amenity. The Appraiser recognized "the view amenity will not change due to the LID project" (p. 48). He offers no estimate of the magnitude of the existing water view premium, since it is outside the scope of his brief. Nevertheless, the magnitude of the water premium is important, because it impacts the perceived value of potential increments of benefit that may emanate from the new greenway.

Surprisingly few empirical studies measuring water views, especially ocean views, have been reported in the scientific literature, but one of them was undertaken in Washington State in the city of Bellingham.[13,14] The study was limited to single-family homes. The authors used hedonic

analysis, which is widely accepted in the scientific community as the most accurate empirical approach to measuring the contribution of each of the multiple factors that impact property values.

The average value premium for an ocean view in the Bellingham study was 25.6%. However, it varied according to the quality of the view. The authors concluded:

> When views are classified into seven categories, the percentage increase in property value attributable to a view ranges from 8.2% for poor partial ocean view, to 18.1% for a lake view, 29.4% for a good partial ocean view, 30.8% for a superior partial ocean view, and 58.9% for an unobstructed ocean view (p. 69).[13]

Like all of us who do this type of analysis, the authors acknowledged that their results were context specific: "All estimated view amenity values are, of course, specific to the Bellingham market."

Two other studies with which I am familiar that perhaps have water views comparable to some properties in the LID were undertaken by a research team in the Cleveland area of Cuyahoga County in Ohio. They pertained to views of Lake Erie. The two analyses reported that properties in the County with a view of Lake Erie had a premium of 90%[15] and 56%.[16]

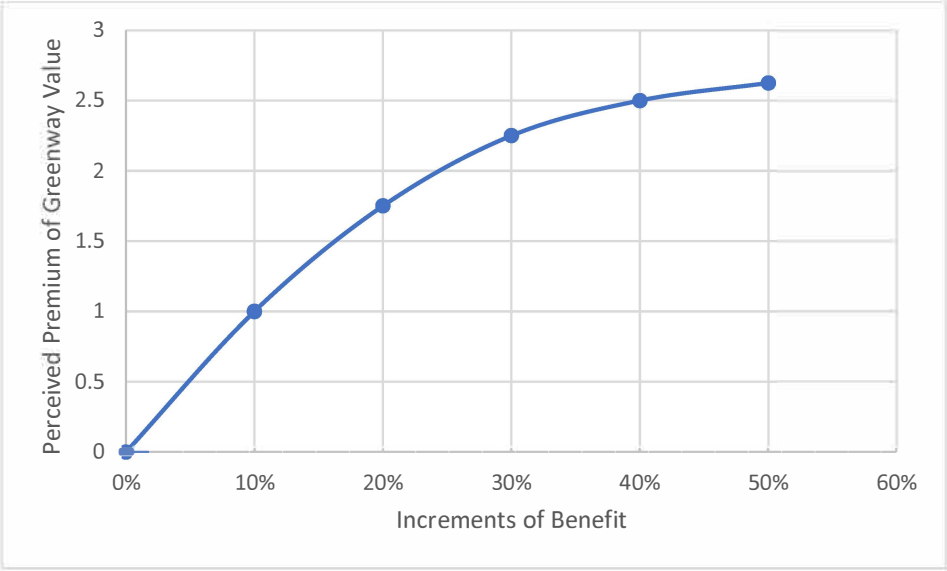
It appears reasonable to conject that similar large premiums to those reported at Bellingham and Cuyahoga County apply to properties with a water view in the LID. Further, given the fixed supply of water view properties it seems likely that premiums will rise even higher in the future.

A consequence of water premiums of this magnitude is likely to be a diminished marginal valuation of the additional units of benefit premium that may be anticipated from the new greenway.

The exposition of this principle is enshrined in Prospect Theory which was first articulated in 1979[17]. Its influence has been extensive and profound. It has been empirically validated in numerous contexts, and the theory is now widely accepted as being unusually robust in its ability to predict outcomes in human decision-making.

Since the article describing Prospect Theory was published, it has been one of the three most cited papers in the Economics literature; it was a foundation for the evolution of behavioral economics, which has transformed the economics discipline; and its authors (who were psychologists) received the Nobel Prize for economics in 2002.

One of Prospect Theory's principles is that each additional increment of benefit has a smaller impact on perceived value (premium) than the equal increment preceding it. The concave value function expressing this phenomenon is shown below:



The curve shows that the perceived value of each 10% increase in benefit is lower than the perceived value of the previous increment of benefit. For example, the increase in benefit from (say) 40% to 50% is perceived to be much less valuable than the increase from 0% to 10%. One of the authors of Prospect Theory used the following analogies to illustrate the point:

> Turning on a weak light has a large impact in a dark room. The same increment of light may be undetectable in a brightly illuminated room. Similarly, the subjective difference between $900 and $1,000 is much smaller that the difference between $100 and $200 (p. 282).[18]

In the context of the LID, Prospect Theory predicts that the incremental effect of the new "park improvements" on the value of properties which already have a large premium stemming from their view of the water is likely to be very small or perhaps non-existent.

Concluding Comments.

My brief was to evaluate whether the Appraiser properly applied my work in his study and whether the benefit areas and assigned special benefits are supportable or speculative. My evaluation has relied on secondary sources, primarily the Appraiser's report. I have not had the opportunity to visit the LID site.

The Appraiser appears to rely on my work to justify the assignment of increment increases of 0.5% to 4%. Presumably, the credibility of his judgements is enhanced by the suggestion that they have a scientific basis, rather than relying on his expertise, experience, judgement and intuition. However, the Appraiser has misinterpreted and/or misapplied eight dimensions of my work:

- The Appraiser did not have access to the recent updated findings of my original work, because their publication in the scientific literature occurred only recently after he had completed his study.

- Both the 2001 and 2020 JLR reviews pertained to residential dwellings, predominantly to single-family homes. They did not relate to commercial properties such as high-rise office buildings, retail uses, hotels et al. The Appraiser inappropriately extended the reviews' findings to all properties in the LID.
- The LID "park improvements" manifest the characteristics of a parkway, not a park. My JLR review cited by the Appraiser related to the impact of *parks* on property values. It is inappropriate to apply the findings to parkways, since they are a qualitatively different amenity.
- My review indicated most of a park's impact occurs within a 500-foot range. The Appraiser's measure of distance to which impact of the LID "park improvements" extended was three blocks, which a network analysis showed was significantly further than 500 feet.
- The conclusion from the JLR reviews that often a small increment of impact extended out to 2,000 feet was derived from "community parks." The enhanced array of amenities included in community parks accounts for them often adding a small increment of value to properties within 2,000 feet. The proposed "park improvements" in the LID do not incorporate such an array of amenities, so the 2,000-feet distance has no merit in the context of the LID.
- Even if the 2,000-foot metric had merit, where it is applied to measure distances from the "park improvements" using network analysis which is the measure used in the scientific literature, the geographic area of the LID is substantially smaller than the Appraiser shows.
- The Appraiser inappropriately adapted the Park Quality Scale that was developed for parks. He used different ratings and failed to relate them to the descriptive characteristics of parkways; used blocks rather than network feet as a distance measure; inappropriately extended the impacted distance to 12 blocks; and created "green premium" percentages that lacked any scientific foundation.
- The Appraiser's treatment of "nuisances" does not appear to consider the disamenity value of either loss of parking or additional congestion accruing from the net increase in visitors that he projects will occur.
- The perceived benefits emanating from proximity to the "park improvements" are likely to be relatively small on properties that already enjoy large premiums attributable to high-quality water views. The Appraiser does not appear to consider the diminishing marginal value of additional amenity benefits he assumes will accrue on those properties.

The Appraiser's reliance on judgment rather than on empirical evidence is evident throughout the narrative, since his critical decisions relating to premiums are frequently preceded by the word "reasonable." Consensus as to what constitutes "reasonable" is much more difficult to obtain within any given population than when there is empirical verification.

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Appendix 1

Extracted from *The Impact on Property Values of Parks, Trails, Golf Courses and Water Amenities*

Government agencies usually provide the additional level of service which is paid for by special assessment districts, but in some large cities it has been initiated by business leaders and such areas are termed business improvement districts (BIDs). There are more than 1,000 BIDs in the United States and Canada. These districts frequently elect their own boards, which take responsibility for the annual budget, hire staff, let contracts, and generally oversee operations. Much of their effort goes into cleaning up, landscaping, maintaining trees and flowers, and enhancing security. Bryant Park, one of the country's great urban park success stories, is the result of a BID. Exhibit 8-2 briefly describes how the BID worked.[13-15]

Exhibit 8-2

Using a Business Improvement District to Resuscitate Bryant Park[13-15]

In less than 15 years, Bryant Park went from a textbook example of an urban park gone bad to an urban treasure that plays a strong role in the revitalization of Midtown New York City and especially 42nd Street. Bryant Park, beside the New York Public Library, was a neglected, vandalized facility that by the late 1970s had become a haven for drug dealers in the city of New York and was widely referred to as "Needle Park." A business improvement district was formed to maintain the eight-acre park and make ongoing park improvements. The park has been restored with tall shade trees, lush green grass, flower beds, pagodas, and a thriving restaurant, and is now considered a model park. At its summer peak, there are 55 employees working in Bryant Park in security, sanitation, gardening, and special events, all of them work for the Bryant Park Restoration Corporation, which is a nonprofit private management company supported by the Rockefeller Brothers Fund and a cooperative business improvement district of neighboring property owners. On some days, the park attracts more than 4,000 office workers and tourists, and more than 10,000 people attend some special events.

The city paid one-third of the $18 million restoration costs, and foundations, philanthropists, and surrounding businesses financed the rest through the business improvement district. The businesses assess themselves approximately 33% of Bryant Park's $2 million annual maintenance bill, while the remainder of the bill is raised in rental and concession fees from restaurants (33%) and special events (33%) held in the park. Businesses recognized that property values and, hence, lease rentals, were closely tied to conditions in the park.

Rents in nearby buildings increased dramatically after the park was redesigned and secured. Results of a 2003 analysis of the impact of the renovations on office buildings bordering Bryant Park are shown in the following table. The rents increased by between 114% and 225%. A second table shown below confirms that other submarkets within a half-mile of Bryant Park also experienced rental increases over this period, but they were substantially less than those shown around the park. Owners of the properties around Bryant Park also reported that the quality of tenants improved, that there was reduced downtime between leases, and the buildings' credit profiles and market values increased.

To a primary organizer of the Bryant Park effort, the lesson was clear: "If building owners and the agents help protect urban open space, they will be more than paid back for their efforts, both in increased occupancy rates and in increased rent–all because their building has this attractive new front yard."

Exhibit 8-2 continued
Changes in Per Square Foot Rentals in Four Buildings Facing Bryant Park 1990-2002

	1990	2002	Percentage Increase
Grace Building	$29.50	$49	114%
Beaux Arts Building	$18	$60	225%
London Fog Building	$20	$45	125%
1065 Avenue of the Americas	$20	$50	150%

Rental Changes in Comparable Buildings in Surrounding Submarkets of New York City

Grand Central	55%
Times Square	67%
Penn Plaza/Garment District	73%

Following the success of Bryant Park, the Central Park Conservancy in New York City suggested a similar model for assisting with the funding needed to maintain Central Park. The Conservancy had accepted responsibility for most of the park's maintenance. Its annual budget for this task was over $20 million, and it was concerned that the park's needs were "increasing beyond the capability of private philanthropy." Accordingly, the chairman of the Conservancy's Board stated:

Our concept for the future is to empower, by statute, all neighborhoods in the city, if they choose to do so, to support their local open space with a further revenue stream. We propose park enhancement districts similar to the business improvement districts that are improving the Grand Central area, Bryant Park and many other neighborhoods.

Each neighborhood would be enabled voluntarily to organize itself, decide whether to impose a small surcharge on its local real estate to supplement city support and private philanthropy, set the amount of the surcharge and then use it for its own park, playground or other open space. (p 14)[16]

A study of the impact of Hudson River Park on proximate property values concluded: "Up to 20% of the value of properties within three blocks of the Park is attributable to the Park." This led to a recommendation:

To establish a Business Improvement District for the Hudson River Park, through which adjacent property owners would be assessed a fee and the funds dedicated specifically to the maintenance and programming of the Park...The principle of assessing neighboring property owners seems

sound, as these landowners benefit most from the added value of the Park and stand to lose most if the Park were to fall into disrepair.[17]

Other downtown parks that have revitalized surrounding property values include:

- The $50 million renovation of the 2.5-acre Campus Martius Park in the heart of downtown Detroit undertaken by a nonprofit coalition of business and civic leaders to celebrate the 300th anniversary of the city of Detroit. Its renovation stimulated over $500 million of new property investment in the adjacent neighborhood.[18]
- Discovery Green in downtown Houston was a 12-acre park built at a cost of around $70 million by a nonprofit that also operates it. Its impact on the assessed values of surrounding property is shown in Exhibit 8-3. In the four-year period from before the Park was announced in 2005 to when it was completed in 2008, the assessed values of property abutting it increased by 51%.
- Three park sites totaling 18.5 acres, anchor redevelopment of the 36-acre Hemisfair site in downtown San Antonio: 4-acre Yanaguana Garden, costing $10 million which opened in 2015; 9-acre Civic Park, estimated at $60 million; and 5.5-acre Tower Park, estimated at $12.5 million. The Hemisfair Plaza Area Redevelopment Corporation (HPARC) is a 501(c)(iii) charged by the city of San Antonio Council with oversight of the redevelopment. It negotiates ground leases with the commercial, office, retail and hotel elements that surround the parks on the remaining 18.5 acres of the site. These revenues are funneled back into HPARC which also collects the sales taxes accruing from within the site. These funds are used to support future operations on the site. The master plan projects the site will attract $540 million in private investment and generate $13 million in tax revenue annually to local entities.[19]
- **Exhibit 8-3**
  Changes in Assessed Valuations in Response to Discovery Green Park

Year	Average per square foot ($'s)
2005	87.87
2006	102.68
2007	116.77
2008	133.08

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Respondents' Motion for Reconsideration and Exhibit A to Respondents' Motion to Reconsider

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Court of Appeals
Division I
State of Washington

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 Practice[2] (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.tvw.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

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[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.J.

WE CONCUR:

Chung, J.

Hazelrigg, ACJ

FILED
8/5/2024
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

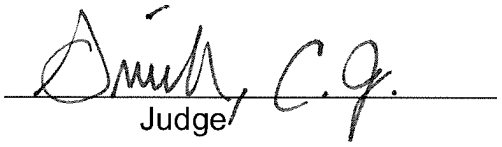
SHG GARAGE SPE; SHG RETAIL SPE; SHG HOTEL SPE, LLC; SOUND VISTA PROPERTIES, LLC; ELLIOTT NE LLC; LOT B, LLC; MADISON HOTEL LLC; HEDREEN, LLC; HEDREEN HOTEL LLC; 7TH & PINE LLC; ASHFORD SEATTLE WATERFRONT LP; EQR-HARBOR STEPS, LLC (SE); EQR-HARBOR STEPS, LLC (NE); EQR-HARBOR STEPS, LLC (NW); EQR-SECOND & 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 ORDER DENYING MOTION FOR RECONSIDERATION

Respondents have moved for reconsideration of the opinion filed on April 22, 2024. Appellant City of Seattle has filed an answer. The panel has considered the motion pursuant to RAP 12.4 and has determined that the motion should be denied.

Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

FOR THE COURT:



Judge

PERKINS COIE LLP

September 04, 2024 - 4:35 PM

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Appellate Court Case Title:	SHG Garage SPE, et al., Respondents v. City of Seattle, Appellant

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