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8:19 am, Tue, February 02, 2021

OFFICE OF THE CITY CLERK

From: Anthony Gibbons
To: City Clerk Filing
Subject: Waterfront LID Appeal, CWF-0067 (919720-0810)
Date: Monday, February 01, 2021 9:24:37 PM

CAUTION: External Email

I wish to file an appeal of the Hearing Examiner's ("HE") final recommendations with specific regard to my property. The final recommendation did not address either in detail, or at all, many of the issues raised in my letter. The HE noted:

"The objection lists issues that are addressed below in the Legal Analysis section. The issues raised by the objection are general in nature and concern the City's appraisal. The objection does not provide any analysis specific to the subject property with regard to special benefits or valuation. The Objector failed to state a case or meet the burden of proof required to demonstrate that the subject property will not receive a special benefit. The Objector also did not meet the burden of proof required to demonstrate that the City appraisal process was flawed."

The legal analysis issues are discussed below. The remaining issues were not all general in nature however. For example one specific issues addressed for our unit in the Watermark, was the view blockage that would result from projects to be built in front of it, that would be in place by the time the Waterfront project is built; this was not addressed in the appraisal or even considered in the ABS report, and was not referenced by the HE. Also the inequitability of the assessment with regard to development parcels immediately adjacent was also not apparently considered or addressed by the HE; actual examples were provided with reference to a property in the adjacent block, that will have a lower assessment, is next to the waterfront, and yet blocks the Watermark's views; the irony of this issue was noted in my letter, and not addressed by the HE. That issue raised the point that the methodology used by ABS had a serious flaw, which again was not addressed in the decision. The level of deference given to the city appraiser has put the burden of proof required at an impossible level for a typical property owner, creating an impossible appeal situation.

I have further noted subsequently that the LID analysis failed to consider the long term lease that the Watermark Tower has on the Watermark Garage. The latter was incorrectly assessed as a development site (rather than valued at a lower figure due to a significant long-term encumbrance), despite the Watermark Tower's lease preventing this development from occurring. The Watermark Tower pays 30% of all assessments on the garage, and so now is paying for an LID lift on that property, that they cannot enjoy, and moreover represents double taxation, as the value of the ground lease is embedded in sales of condos in the tower, which already have a full assessment. These are all errors upon errors in the LID analysis.

In the denial of the appeal, the HE decision further references certain more general "legal" issues associated with my appeal. These include:

ii. The City appraisal does not adequately identify or describe the before condition.

Here the critique of the appraisal appears to be a difference of professional opinion rather than a demonstration by Objectors that the City failed to meet a required legal standard for the LID appraisal. The City appraiser Mr. Macaulay explained that ABS addressed the rebuild of Alaskan Way (and removal of the viaduct) and other changes in the Final Special

Benefit Study. For example, in the Final Special Benefit Study the before condition did not assign any special benefit due to the view amenity provided by the removal of the viaduct; any benefit from the removal of the viaduct was included in the before values. While this was dismissed by Mr. Gibbons as inadequate, no legal standard supports finding that the special assessment was improperly performed because the before condition description did not meet the standard argued by Mr. Gibbons.

This is a perplexing comment by the HE, as the ABS appraisal has no appraisal analysis (which is required for the appropriate application of special benefit) to get from the current condition of the Waterfront to the condition as it would be with new streets etc (but no LID), which is the proper Before Condition. Evidence of this was provided to the HE, by indicating that firstly values were based on current values, and not values in consideration of future city street work, and secondly that conceptual drawings of these improvements were not even provided to Mr. Macaulay when he did his preliminary analysis, this essentially unchanged in the presentation of the final analysis. Mere lip service to the issue from Mr. Macauly was accepted by the HE as a higher standard of proof, as compared to the fact that the analysis is simply absent from his report. If the city appraiser can simply opine that something was considered without showing how or where, then what proof can possibly be used to overcome the assertion? Again I feel that the HE placed the bar simply too high on the presumption of correctness.

iii. The City appraiser did not measure the special benefit accruing to each property but instead applied a special benefit formulaic percentage to properties.

Testimony from Mr. Macaulay and the Final Special Benefit Study demonstrated that ABS did not apply a percentage to arrive at the "with LID" or "after LID" values. Instead, ABS calculated the value lift for each property in dollar terms. A percentage did result from this process, and this was shown in the spreadsheets in the Final Special Benefit Study to demonstrate the calculated increase in value as a percentage, not as a pre-applied formulaic percentage. Mr. Gibbons's (and other Objector representatives') belief that ABS applied a special benefit percentage formula seems to have been based on an understanding of the ABS process prior to receiving additional information from ABS on its processes that were revealed during the deposition and hearing process.

This is the most perplexing of all the HE decisions given the presentation of the SB report, and the examination of numerous entries. Condos with ranges of values spanning 100s of thousands of dollars, all have 3.00% increases, and yet the HE concluded that the benefit was not applied but calculated for each. The evidence of an application of 3.00% and other rounded percentages to calculate assessments to the nearest dollar is obviously an application, not a measurement, and it is frustrating to have to “prove” that when it is simply there for the viewing. When the HE indicated that Mr. Macaulay “demonstrated” that this was not done, it is not clear what was demonstrated, nor why it would contradict the more obvious conclusion to be drawn from the report. Occam’s razor principal should be followed here: when two explanations account for all of the facts, the simpler one is more likely to be correct. It is far more likely the benefit was applied rather than measured, despite Mr. Macaulay’s protestations to the contrary.

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