September 22,2020

Notice of Appeal of Final Waterfront LID Assessment Findings and Recommendation of the Hearing Examiner for the City of Seattle.

Final Waterfront LID No. 6751

Hearing Examiner Case No. CWF-0097

Parcel Owners: William and Sandra Justen

King County Parcel No. 2538831120

Address: 1521 Second Avenue, Apt. 2901, Seattle, WA 98101

William and Sandra Justen, owners of the condominium property located at 1521 2nd Avenue, Apt 2901, Seattle WA, 98101 (Parcel No. 2538831120), objected to the Final Benefit Study showing Market Value Without LID of $2,385,600 and Market Value with LID of $2,450,011 with the special benefit percent change of 2.7% and a Special Assessment of $25,238 for our parcel. We now submit this appeal of the Recommendations of the Hearing Examiner for denial of our objections regarding Waterfront LID No. 6751 Case No. CWF-0097. pursuant to:

SMC 20.04.090.C

Any finding, recommendation, or decision of the Hearing Examiner, or officer designated by the City Council to conduct a hearing pursuant to RCW 35.44.070 and RCW 35.44.080, shall be subject to appeal to the City Council, which may direct that the appeal shall be heard by a committee thereof.

However, we are not able to follow the instructions pursuant to:

SMC 20.04.110 - Appeal to City Council.

In the event of an appeal to the City Council or a committee thereof the notice of appeal shall cite by page and line and quote verbatim that portion or portions of the findings, recommendations and decisions of the Hearing Examiner or officer from which the appeal is taken. The notice of appeal shall also include a concise statement of the basis therefor and in the event that appellant deems the references on the findings, recommendations and decisions inadequate, a reference by metered index numbers to the places in the electronically prepared record of the hearing where the pertinent material may be found. The notice of appeal shall also designate by name or title and by subnumber the items or exhibits in the record to which reference will be made in argument or comment before the City Council or committee. Preparation of a written verbatim transcript of all or any designated part of the hearing shall be at the appellant's initiative and expense, but shall not be required unless within five (5) working days after the filing of a notice of appeal the City Council or designated committee thereof so notifies the appellant, who in no event shall be required to pay the cost of any portion of a verbatim transcript not pertinent to appellant's own appeal.

Because the City has not provided "metered index numbers", therefore our appeal cannot reference them. However, as part of the prehearing conference, we recommend that the Public Works committee secure and provide appellants with such a record, so that the appeals can then be supplemented with that additional information, so as to make the Committee's consideration of each individual appeal more efficient and fair. Instead page numbers of attached exhibits are referenced.

We request and demand an appeal hearing allowing us one hour with the City Council.

We appeal from the following portions of the Final Waterfront LID Assessment Findings and Recommendation of the Hearing Examiner and in this appeal, we include our original Objection report filed with the city dated January 31, 2020 and presented at a Hearing Examiner hearing on February 13, 2020 and:

1. Page 2/123, Section I.A.
   2. Hearing Conducted
   "Approximately 430 property owners (of the 6,238 properties subject to LID assessments) submitted timely objections."

   Our Appeal/Objection:
   This statement by the Hearing Examiner is an erroneous comparison and misleading showing the Hearing Examiner's bias to support the LID for the following reasons, corrections, and accurate findings:

   - The Hearing Examiner's statement that 430 property owners objected out of 6,238 properties is not a apples to apples comparison. He should state 6,238 are parcels not properties in order to fairly compare the 498 parcels (from City Files) owned by the 430 property owners. Although these 498 parcels represent only 8% of all 6,238 parcels that objected to the LID, the 430 parcel owners that filed objections represent $40.36 million of special assessment which is 26.7% of the total $175.5 million assessments. Therefore, these objections to the LID are much more significant than implied by the Hearing Examiner.
   - Parcel owners, especially the 5,141 condominium parcels which is 81.9% of all parcels in the LID found it was difficult, time consuming and costly to learn the LID Objection/Appeal process, study the 237 page Summary of Final Special Benefit/Proportionate Assessment Study and the 214 page Addenda Volume and then to develop or hire the expertise to determine whether their parcel values and special benefits were correct as determined by the City's appraiser.
   - With the average special assessment for these 5,141 condominium parcels being $4,156, there was clearly little incentive to go through the exercise of filing objections and appeals to the LID
   - Reviewing the City's complete parcel list in the Waterfront Seattle Final Special Benefit Study, it shows that 2,432 parcels were assigned special assessments less than $1000 and 3,758 parcels, which is more than 60% of all the parcels, were assigned special assessments less than $6,000. The cost hiring experts for filing objections and appeals clearly exceeds the amounts of those special assessments.
   - Studying the list of the 430 owners of 498 parcels that filed objections shows that these parcel owners were being assessed an amount making it worth the time and effort to file Objections. The average assessment for the 430 Objectors is $93,860 or $81,050 per parcel. These Objectors consist of:
     - 393 condominium owners, total assessment, $7,395,000 and average assessment per condominium unit of $18,817
     - 28 Hotel parcels, average assessment of $494,018
     - 18 Moderate sized office buildings, average assessment of $345,413
     - 23 apartment parcels, average assessment $378,432
     - 8 retail buildings, average assessment $206,147
     - 6 City of Seattle Aquarium parcels, total assessment $187,683
     - 6 Pike Place Market parcels, total assessment $197,870
     - 1 parcel owned by United Way, total assessment $139,097
     - 8 parcels owned by YWCA, total assessment $61,124
     - 2 parcels owned by Children's Hospital, total assessment, $65,826

- 2 private historic clubs, total assessment $159,863

- Parcel Owners that would not be expected to file objections consist of:
  - 2432 condominium parcels with LID assessments of less than $1000 making the time and expense to file objections not worth it
  - Over 100 privately owned large commercial office building owners that signed the Waterfront LID Agreement (Copy attached as CWF-0097 Appeal Exhibit 1, that was drafted and negotiated by attorney Jack McCullough) with the City of Seattle agreed not to protest the LID in exchange for some terms. These institutional property owners represented slightly more than 40% of the total $160 million LID funding (plus LID financing costs), which prevented the LID protests from reaching the required 60% of the LID funding amount to stop the LID. By the way even without the office building owners filing LID protests did reach approximately 50% of the $160M. The large commercial office buildings were willing to prevent the protest from succeeding because their office leases allow the building owners to pass the LID assessments onto their tenants and the office tenants have no legal rights to file objections to the LID assessments.

❖ Regarding the Hearing Examiner's statement that 430 property owners filed objections, it is clear that those 430 owners of 498 parcels that did object to the LID assessments represent a substantial number given the facts just listed above. It is also clear that the owners of more than 50% of the parcels had no financial incentive to object to the LID. Given the complexity, time and cost to file objections and appeals to the LID.

2. Reviewing the other Case Findings, there is a very troubling approach taken by the Hearing Examiner in his comments about testimony from appraisers, property tax experts and property owner's when he repeatedly stated that these persons
   i. "did not calculate or quantify the special benefits that would accrue to the concern properties"
   ii. Or that they had "not conducted an independent special benefit analysis for the properties or calculated what benefit, if any, would accrue to the properties as a result of the LID Improvements."
   iii. Or that they "did not present any analysis concerning or show any expertise in, analysis of special benefits in the context of a special assessment, valuation"

   iv. The Hearing Examiner errored by stating that there were calculations in the Special Benefit Study to determine the special benefits allocated to each parcel. Robert Macaulay, the appraiser representing ABS Valuations, repeated in his deposition and his cross-examination that he exercised his professional judgment as his analysis to determine special benefits allocated to each parcel. He also stated numerous times that the special benefits were proportional and determined on a parcel by parcel basis.

v. From the Hearing Examiner's Findings, he states: Page 8/123 10. A discussion of ABS Valuation's methodology and results are detailed in the Final Special Benefit Study.

a. Appeal response: The term "methodology" is not used a single time in the ABS Valuation Final Special Benefit Study
b. Appeal response: the term "analysis" was used 87 times In the ABS Valuation Final Special benefit study, but NO analysis of how Special Benefits were assigned to each parcel
c. Appeal response: the term "calculations" is only used one time in the ABS Valuation final special benefit study as follows on page 19 (125/237)
   i. "The "Light Penetrating Surface" panels which constitute the westernmost 15± feet along most of the future promenade and were built by the Elliott Bay Seawall project are considered part of the "Before" condition and so are not factored into the LID special benefit calculations for the Promenade."

vi. From the Hearing Examiner's findings. he states: Page 12/123 27. The City's expert appraiser testified that there is no industry standard margin of error for a mass appraisal and that the special benefits in the Final Special Benefit Study are measurable, despite the fact that the percentage increases appear small.

a. However, Mr. McAuley testified that the percent number is just the happenstance of the before and after differences rather than the variable that determined the before and after differences. For a parcel by parcel analysis claimed to be the process for determining Special Benefits, it seems extremely hard to believe that every condominium unit in each condominium buildings resulted with exactly the same percentage assigned for each building. Each of the 48 condominium buildings had a Special Benefit % change for all condominium units in that building that was consistent throughout each building. This cannot be possible using the City's appraiser's stated methodology

3. Page 32-33/123

III. Specific Case Findings

(The Findings formatted in a single paragraph by the Hearing Examiner are separated below and lettered (a-h) for an issue by issue rebuttal/appeal)

<u>We filed a 14 page written Objection Report dated February 3,2020 attached as CWF-0097 Exhibit 2) with seven exhibits of 84 pages, dated February 3, 2020 and filed with the Office of the City Clerk for the Hearings. We also filed an 11 page Closing Argument document on July 7,2020 We will make</u>

reference to material in that Report, its exhibits and our Closing Argument document which is part of our public record in rebutting Our Specific Case Findings by the Hearing Examiner as follows:

a. CWF-0097 (2538831120) – The objection raises the following common objection issues addressed below in the Legal Analysis section B: 3, 8, and 10.

B-3 SEPA issue:

No Further Comment

B-8 The LID improvements will have negative impacts on the value that were not considered by the City's valuation:

We provided in our Objection Report an explanation and images in our Report taken from the City's Addenda Report page 154 showing the proposed changes to Pine St between 2nd Ave and 1st Ave and the image of the current condition from page 153. We explained how the proposed changes that our LID assessment would be paying for would impede our only access to our 300 stall garage that has the mid-block south bound alley between 2nd Avenue and 1st Avenue as our only garage assess. We stated how this proposed change impeding our vehicle access by adding improvements narrowing the existing vehicle lanes and encouraging pedestrians in the vehicle lanes is obviously a negative impact on our property values.

B-10 regarding the King County Superior Court appeal

No Further comment

b. In addition to these issues, the Objector alleges that the subject property will receive no special benefit and that the value of the property by the City appraiser is inaccurate. The objection identifies aspects of the subject property that the Objector believes are unique and limit the special benefit it will receive.

i. We provided in our Objection Report section C. Pages 5, 6, 7 and 8, quoting from the ABS Valuation Special Benefits Study, Addenda Volume, pages A-1 through A-8 the description of the Major Changes of the waterfront improvements Before (No LID Funding). It would be irresponsible if the City Councilmembers did not read the description of those Major Changes which clearly provide "general benefits" as these changes will create an attractive Waterfront for the general public as a "general benefit" without the need for any LID or additional City General Fund funded enhancements. Please see CWF-0097 Image 1 attached

ii.

GREAT WATERFRONT WITHOUT LID ENHANCEMENTS

iii. In our Objection Report section D. Pages 8, 9, 10, 11, and 12, we quoted the description of each of the six projects proposed using LID funding to enhance the Major Improvements described in the city documents and we provided comments and objections to the LID funding by our property of each of the six projects as we described why each of those projects do not provide a special benefit to our property.

iv. **The Promenade**: similar to San Francisco's Embarcadero, which Marshall Foster stated is not a park in his response to my cross-examination. However, **without** the LID funding the Promenade will have 377 New St. trees, a new stormwater infrastructure in areas of the planting strip, new groundcover meeting Seattle's standard level of care, new sidewalks on both sides of the six lane roadway along Alaskan Way and Elliott way with Seattle's downtown standard 2'x2' scored concrete, two-way bicycle lane along the west side of Alaskan Way, plantings immediately west of the two wave bike facility. The proposed cost to enhance beyond these improvements. According to the city is $73.65 million with a proximally half of that from LID funding and half of that from the city's general fund.

    1. Our Objection Report included Exhibit D-2 image for the Promenade with LID enhancements taken from ABS Valuation page A-33 and D-1 image for the Promenade without LID enhancements taken from ABS Valuation page A-31. We pointed out that both with LID and without LID images show the 6-8 Lane Waterfront Blvd. with Major Changes (Improvements) that would be sufficient for a public Promenade.

2. We also included our Exhibit D-3 taken from ABS Valuation page B-16 and D-4 taken from ABS Valuation page B-8 raising our concerns for public safety as the images show the LID would add another row of trees running north-south that would block visibility of the promenade walkway from all of the buildings on the east side of Alaskan Way and therefore restricting a common public safety goal in rights-of-way by having "eyes on the street". We also included our Exhibit D-5 showing the San Francisco Embarcadero along its waterfront after his viaduct was removed, which also has a 6-8 lane roadway and pedestrian sidewalks, retail peers, waterfront views, but with fewer street trees to allow "eyes on the street" from all of the buildings bordering the Embarcadero.
3. Neither the City nor the Hearing Examiner address this concern for public safety in the right-of-way.

v. **The Overlook Walk**: in our Objection Report we said this proposed project is totally unnecessary, redundant and wasteful with the city's estimated total cost of $117 million, it offers no new special benefit to our building because of the three very nearby existing pedestrian connections between the waterfront in the Pike Place market neighborhood. We graphically show this with our Exhibit D-6 (the rendering with the West end of Pike St., Hill climb connection between the Market and the waterfront. We included our Exhibit D-7 showing the existing three pedestrian connections between the Market and the waterfront. We included our Exhibit D-8 showing the existing connection on Pike Street to the waterfront from our property is more convenient and direct than using the Overlook Walk. Our Exhibit D-9 show the circuitous route from our building to the waterfront, If using the Overlook Walk, and our Exhibit D-10 graphically showed how the east entrance to the Overlook Walk is beyond a 500 foot radius from our building.
   1. Neither the city nor the Hearing Examiner's findings addressed our analysis.

vi. **Pioneer Square street improvements**: in our objection. We stated that these proposed improvements are estimated by the city to cost $23.4 million and are located 10-14 blocks south of my building and are too remote to provide any Special Benefit to my property

vii. **Union Street pedestrian connection (also known as Lower Union),** is in the right-of-way on the south side of Union Street between Alaskan Way and Western Avenue. Access from my building to the proposed LID funded Lower Union pedestrian connection estimated by the City to cost $16.32 million is a three block walk down First Avenue from my building and has no value to my building because we have the existing much more convenient Pike Street Stairs and Pike St., Hill climb one block from our building that provides the same waterfront access

viii. **Pike/Pine streetscape improvements:** the city's estimated cost of $23.4 million would absolutely reduce the value of our property for changes on Pine Street and Pike Street between Second Avenue and First Avenue. It would significantly restrict the existing vehicular access to and from our 300 stall parking garage which is only accessed to and from the alley between Pine Street and Pike Street. In our Objection Report our exhibits D-11, D-12, D-13 and D-14 copied from the ABS Valuation page F-3, F-4, F-6 and F-7, show the improvements are narrowing the traffic lanes and encouraging pedestrians in the traffic lanes. These proposed improvements in the right-of-way would clearly be Disamenities and reduce our property values. Please see our previous Exhibits.

ix. **Pier 58 (formally known as Waterfront Park),** the city's estimate for rebuilding this park is $76.4 million and this should not be funded using any LID assessments as it clearly reflects deferred maintenance of the city Park and a lack of appropriate improvements over its many years of use. This is clearly not a neighborhood park and the proposed improvements should not be funded by the downtown neighborhood LID as it has no special benefits to our property.

c. The objection also raises general concerns with regard to the City special assessment and valuation analysis.
    i. The Hearing Examiner ruled that personal valuations taken from Redfin and Zillow estimates are not adequate to demonstrate an error in the special assessment for this property. Yet the Hearing Examiner has acknowledged that the City's appraiser used the King County assessor's values as a guide for exercising their "professional judgment" in determining values, since the City's appraiser acknowledged in their mass appraisal approach that they did not appraise any individual condominium units but instead only did a walk by each condominium building.

d. In addition, the objection incorporates issues identified by Anthony Gibbons, which are addressed below in the Legal Analysis section.

    i. No further comment

e. It also lists issues Objector believed showed the City analysis was in error concerning the before conditions.
    i. The Hearing Examiner misunderstood our statement and his conclusion is an error. We were not claiming the City errored concerning the before conditions, rather we described the major improvements in the "before" (without LID) as providing very desirable general benefits to the general public.

f. Objector raised many issues but did not demonstrate that Objector had any expertise in special assessments or appraisals.
    i. This Finding that the Objector did not demonstrate any expertise in special assessments or appraisals may be true, but expertise in special assessments or appraisals is unnecessary in determining property values and any possible value lift from off-site amenities using LID funding, which is the basis of the Objector's challenge to the LID special benefits and assessments. Again, this shows the bias by the Hearing Examiner who attempted to limit or ignore our analysis of property values. Our objections primarily consist of analysis and conclusions regarding property values and the lack of special benefits. William's credentials were clearly explained in our Objection Report and Closing Argument document.
    ii. It is clear from the Hearing Examiner's statement that he chooses not to recognize the expertise in determining property values by real estate developers but feels that only an appraiser is qualified to determine property values.
        1. An appraiser is hired by a client, usually by or for financial institution, and paid a fee to estimate property values. The appraiser only has its reputation at stake but does not take a financial risk. On non-income-producing properties such as residential condominiums, the appraiser uses comparable sales to determine value.
        2. A developer such as the Objector, William Justen, determines property values based on what the developer projects as potential cost and income by preparing a financial pro forma. The developer may also look at comparable sales, which are available on a Costar subscription. In making an offer to buy or sell a property. The developer is taking personal financial risk.
        3. In William Justen's experience as a developer. He has bought 42 commercial properties and sold 51 commercial properties and 168 residential condominiums all in downtown Seattle. In none of the purchases and sales, did William Justen hire an appraiser to determine the property values, however, appraisers were frequently hired by financial institutions to confirm the potential property values as part of the due diligence in making loans to acquire and/or develop properties. In fact, on occasion, appraisers contact William Justen asking how he determine the value of an acquisition.
        4. In our Objection Report and again in our Closing Argument we stated the Objector's Real Estate Expert Credentials for William Justen, especially as they apply to the downtown area of the Local Improvement District:

a. William has lived in the Pike Place Market neighborhood since 1977
b. During those 43 years, William was the developer and resident of the:
    i. Pike and Virginia condominiums at 87 Virginia St.
    ii. Market Place Tower (13 story office at 2025 1st Ave. and seven condominiums above at 2033 1st Ave.
    iii. 38 story condominium tower at 1521 2nd Ave.
    iv. William was the Managing Director Real Estate for 15 years for the Samis Land Company portfolio of 31 properties in downtown Seattle where he managed the redevelopment, acquisition and sales of those properties.
c. William is also the former Director of the City of Seattle Department of Construction and Land Use, a founding board member and faculty of the Ronstadt real estate center at the UW
d. William is also a Washington state real-estate licensed, Designated Broker of his own brokerage firm.

g. The objection lacks adequate evidence demonstrating that the subject property will not receive a special benefit, or that the valuation by the City is inaccurate.
    i. This Objector's Report detailed with narrative and graphic illustrations, providing more than adequate evidence that the subject property will not receive a special benefit. These are summarized in the response b. above to **Specific Case Findings.**
    ii. There is simply no basis for the Hearing Examiner to assert that there was inadequate evidence demonstrating my claims. The Hearing Examiner either dismisses our evidence for the lack of any special benefit, because the volume of the objections and complexity of the issues overwhelmed the Hearing Examiner or because he presupposed that the City's appraiser could do no wrong.

h. The objector failed to meet the burden of proof required to demonstrate that the property will not receive a special benefit or that the city appraisal valuation process was flawed.

    i. This Objector's Report detailed with narrative and graphic illustrations, providing more than adequate evidence that the subject property will not receive a special benefit. These are summarized in the response b. above to **Specific Case Findings.**
    ii. There is simply no basis for the Hearing Examiner to assert that there was inadequate evidence demonstrating my claims. The Hearing Examiner either dismisses our evidence for the lack of any special benefit, because the volume of the objections and complexity of the issues overwhelmed the Hearing Examiner or because he presupposed that the City's appraiser could do no wrong.

Recommendation: denial

Objector's additional analysis provided in Objector's Closing Argument (attached here as CWF-0097 Exhibit 3 including the spread sheet "Properties with LID Assessments over $1M) filed with the Hearing Examiner and dated July 7,2020 was completely ignored by the Hearing Examiner. This additional analysis was prompted by testimony and cross-examination of the City's appraiser and should have been considered in the Hearing Examiner's Findings. By ignoring this additional analysis. The hearing examiner errored in a recommendation of denial.

In Our Closing Argument Document. We focused primarily on the 1521 2nd Ave. condominium building, not just our condominium unit parcel, because William Justen was the developer of the entire building and managed the sale of the 146 condominium units. Therefore, I compared this entire building to other comparable newer high-rise buildings:

On page 3 of this Closing Argument. I focused on five real estate categories:

I. Building Types or Uses and Off-Site Amenity Utilization
II. Building Size
III. Proximity to Central Waterfront LID project amenities
IV. Proportionality between Properties
V. Appraisal Method Weakness by the City's Appraiser

I made reference to Mr. Macaulay's, cross-examination on June 26 when asked a hypothetical: "consider an identical building in the same location, e.g. three blocks from the waterfront, how would you differentiate types of uses for example, hotel, office, condominium or apartment make a difference in the value increase they would get from proximity to the waterfront?

Mr. Macaulay rambled on about how depends if it had retail needs building, which is not part of my hypothetical as the buildings were said to be exactly the same except for principal use, and ultimately, Mr. Macaulay could or would not answer the question on how different uses are weighed in determining value left. A copy of that portion of the transcript was included in my Closing Argument. I did find an include in my Closing Argument a small table from the Summary of Waterfront Seattle Project Formation, which shows high and low ranges based on use, but there was no discussion in the Special Benefit Studies that showed any analysis of how these ranges were used, nor did it show how building size, proximity and proportionality was used in the analysis. One can only conclude that there was no analysis other than the City's appraiser relied primarily on his "professional judgment".

My Closing Argument continued on to compare numerous buildings in my spreadsheet of the 38 properties with LID assessments over $1 million.

I noted that it's interesting that our condominium tower at 1521 2nd Ave. is the highest assessed building of all buildings in the LID boundary by a margin of 17% over the next highest assessed building, yet 1521 2nd Ave. is older than many of the newer towers, both residential and office, also located on Second Avenue with the same proximity to the LID projects

From my review of the spreadsheet of the 38 properties. It is clear that the City's appraiser followed no logical pattern in allocating Special Benefit % Change. We suspect this is for a few reasons:

1. The 48 condominium buildings in the LID area were assigned to individuals in the ABS Valuations office while the comparable size, age and quality of the apartment towers were assigned to someone else. It was clearly a disconnect in the reviews of the two residential product types.
2. There is clearly a lack of analysis and calculations of how the Special Benefit % Changes were allocated to the different 6,238 parcels. At least none of this is available in public records and we do not believe it exists. based on the results.

Submitted to the City Council by:

William J. Justen

Date: 9.22.20

Sandra L Justen

Date: 9/22/2020