Filed September 22, 2020

Notice of Appeal

Waterfront LID No. 6751

Hearing Examiner Case No. CWF-0252

Property Owners Vasanth and Karin Philomin

Parcel Number 2538830860

Address: 1521 Second Avenue, Apt. 2400, Seattle, WA 98101

We, Vasanth and Karin Philomin, owners of the condominium property located at 1521 2nd Avenue, APT 2400, Seattle WA, 98101 (PIN 2538830860), pursuant to SMC 20.04.090.C respectfully submit the appeal of the recommendations of the hearing officer in this matter, Waterfront LID No. 6751 Case No. CWF-0252. Because the City has not provided "metered index numbers", 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 a hearing on this appeal.

We appeal from the following portions of the recommendations of the Hearing Officer (attached as exhibit A):

1. Decision, Exhibit A, Page 19-20 "Without additional supporting evidence, the comparative market analyses information and Redfin and Zillow estimates are not adequate to demonstrate an error in the special assessment for this property. These sources failed to identify how or why that valuation is more accurate than the City's. Instead, they are simply presented as alternative valuations that are more favorable to the Objector. This valuation information is not more reliable than the City appraiser's expert opinions and findings, and supporting data identified in the record. The City's conclusion reasonably falls within the range demonstrated by direct market sales evidence. The City appraiser based special benefit conclusions on its professional judgment of the impact of the LID Improvements on Objector's parcel, given its use, condition, and location. As with all residential properties, ABS used a sales comparison approach to valuation to arrive at its value conclusions. In this case, the City appraiser found that unit numbers 1502 and 2602 are identical in size, bedroom count, and listed view amenity per King County Assessor's records (each is 1,729 square feet in size, with two bedrooms and 1.75 baths). The market value of both units in the before condition was estimated in the City study at $1,100 per square foot, or $1,901,900. This conclusion falls within the range demonstrated by direct market sales

evidence. The King County Assessor listed both units as having equal view amenities, and market data research gathered and utilized in the analysis did not indicate a definitive, quantifiable value difference between the units based solely on floor placement. Objector argued that the City appraisal was in error because it concluded that several parcels within 1521 2nd Avenue have the same before value, even though Objector identifies differentiation between the properties (e.g. properties located on different floors). The City conducted a mass appraisal relying on King County Assessor information to determine individual unit data, and according to that data, found no quantifiable difference between the units. Objector did not provide adequate evidence to rebut the City's determination with regard to this issue. Objector failed to support its contention that the property will receive no special benefit with adequate expert evidence to overcome the presumption in favor of the City's determination."

This is clearly erroneous (and does not meet the Hearing Examiner's own decision at page 109). Direct evidence of three comparable sales was submitted from King County records, and completely ignored and left unaddressed by the City and the Hearing Examiner. See Exhibit B, Pages 16-23, and 53, and arguments at pages 2-4, and 82-83, admitted into the record. To the extent there is any assessment, it should be no more than $15,388.97.

2. Decision, Exhibit A, Page 20 "Objector failed to support its contention that the property will receive no special benefit with adequate expert evidence to overcome the presumption in favor of the City's determination. The Objector failed to meet the burden of proof required to demonstrate that the property will not receive a special benefit.
Recommendation: denial"

This is clearly erroneous. Numerous experts testified and the Hearing Examiner failed to consider, and the city failed to address or rebut, their testimony and the arguments and evidence concerning the lack of special benefit set forth at Exhibit B, Pages 6, 31-50, 84-94.

3. Decision, Exhibit A, Page 110 "The purpose of this hearing is not to enforce Ordinance 125760. This issue is not relevant to whether any specific property will receive a special benefit or whether the City appraisal process was flawed and is therefore not within the Hearing Examiner's jurisdiction to consider in the context of an assessment hearing."

This is clearly erroneous. The lack of Plans and Specifications on file renders the final assessments invalid, and accurate plans and specifications are a prerequisite to any final benefit study. See arguments Exhibit B, Pages 25-28, 30, 36, 80-82, 94.

4. Decision, Exhibit A, Page 110 "Objectors argued that the Final Special Benefit Study ignores the impacts for development not expected to be completed until 2023/2024 and ignores the uncertainty of completing a five-year project on time and on budget. The LID statutes do not require the consideration of these impacts even though the assessment of special benefits may be done prior to completion of the improvements. In addition, Mr. Macaulay testified that appraisals are predictive and represent his expert conclusion about the value of a property and, in the case of a special benefit study, what the value will be if the

improvements are in place. Objectors failed to contradict that position by reference to either the LID statutes or case law."
This is clearly erroneous. The speculative nature of the current plans and specifications and funding and completion schedule makes the final benefit study premature and exercise in rank speculation and therefore invalid. See arguments Exhibit B, Pages 5, 28, 30, 36, 80-82, 94.

5. Decision, Exhibit A, Page 111 "Several appraisers testifying on behalf of various Objectors raised this issue. However, as described by these appraisers, the 4% margin of error is viewed as a rule of thumb and is not a hard legal standard. As such, Objectors failed to show that the City appraisal was completed in error in the context of this issue."

   This is clearly erroneous. See argument and evidence at Exhibit B, Pages 94, 182-186.

6. Decision, Exhibit A, Page 111 "**Final assessments will bind future City Councils and budgets to complete the LID Improvements regardless of cost. It is unlawful to bind future City Councils and budgets.**
   This issue is not within the jurisdiction of the Hearing Examiner to consider in the context of a special assessment hearing. The purpose of this hearing is not to consider and rule on every possible potential future outcome of the LID. Further, no Objector cited any authority for the Hearing Examiner to consider such an issue."

   This is clearly erroneous. This issue renders the final assessments invalid as a matter of law. See argument and evidence at Exhibit B, Pages 95, 187-191.

7. Decision, Exhibit A, Page 111-112 "Some Objectors have argued that the special assessments are speculative because the designs for the Improvements are not yet complete, are subject to change, and that environmental permitting processes may require the City to alter the designs for the LID Improvements. Objectors offered no evidence that any potential changes would, in fact, alter the 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."

   This is clearly erroneous. See argument and exhibits at Exhibit B, pages 5, 28, 30, 36, 80-82, 94.

8. Decision, Exhibit A, Page 113 "Objectors presented no credible evidence that the City's appraiser failed to consider detriments that would result from the LID Improvements, or that the risk of these alleged detriments would have a net negative impact on their property values. Finally, in the hearing, the City offered specific evidence that the "negative impact" Objectors perceived with regard to pedestrian traffic and noise does not measurably affect property value in urban areas like Seattle."

   This is clearly erroneous. See argument and exhibits at Exhibit B, pages 6, 84-94.

9. The Hearing Examiner failed to address or make any recommendation on the argument that the city failed to comply with RCW 35.43.050 The city doesn't even attempt to dispute the facts on this claim. The city does not dispute that the legislative body failed to make any finding as to the benefit

of the improvements as a whole to all of the property within the LID. Nor does the city dispute that it failed to ascertain the cost and expense of each continuous unit and impose the assessment rates on the basis of the cost and expense of each unit as required by law. Instead the city asserts, without any legal basis or citation, that this claim cannot be considered or addressed in the context of this hearing. The city's position is unsupported in law and makes no sense. The violation of RCW 35.43.050 did not exist until the city attempted to impose a final assessment that did not comport with that law. That event occurred in November 2019 when the city passed resolution 31915, published the final assessment roll, and, in December of 2019, informed property owners in the LID. This is when the city decided to ignore the requirements of RCW 35.43.050. This hearing process is precisely the time and manner to make this challenge under the law. Further, the nature of the violation of this statute is inextricably tied up in the ability for property owners to challenge the final assessments. For example, many properties are included in the LID at all because of proximity to Pike/Pine streetscape improvements or Pioneer Square Streetscape improvements and despite their great distance from the Promenade and Overlook Walk. Separating the analysis of these elements could (and likely would) show that the assessments for properties near these streetscape projects exceed the cost of these projects, and that they are illegally being forced to subsidize projects that bring them no special benefit. The purpose of this law is fully implicated in the challenge to the special benefits assessments. To declare that there is no avenue available to objectors to raise this violation of state law makes no sense.5 The city's argument should be rejected, and the final assessment roll should be tossed out. The city asks the Hearing Officer to ignore an obvious violation of state law in the final assessment roll that goes to the very heart of the assessments themselves. It would be ludicrous to ignore it and a massive waste of judicial, city and citizen resources.

The city's failure to abide by RCW 35.43.050 renders its final benefit study invalid as a matter of law.

10. Decision, Exhibit A, Page 115 "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 clearly erroneous. It would be statistically impossible that hundreds of separately evaluated properties in a single building would miraculously have identical percentages. The Special Benefit was calculated by applying the percentage, not vice versa. See Exhibit B, Pages 21-22.

11. Decision, Exhibit A, Page 116 "Regardless, the burden was not on the City to prove its case in this regard. Instead, Objectors had the burden of proof to demonstrate through evidence that properties will not be benefitted by the LID Improvements. In this case, Objectors

simply adopted an accusatory tone and asserted that they are already benefited by access; they provided no evidence analyzing a contrast between their current circumstances and the proposed improvements. Therefore, Objectors failed to meet their burden with regard to this issue."

This is patently false. Far from "no evidence." Extensive evidence and testimony was presented by numerous objectors. See for example Exhibit B, pages 41-46.l That the hearing officer chose to completely ignore this admitted evidence is a clear error.

12. Decision, Exhibit A, Page 120 "Some Objectors challenged the accuracy of the City valuation for their condominium properties because of a lack of differentiation between valuation of condominium units within the same building. Except where otherwise determined by the Hearing Examiner, the record does not reflect an adequate analysis demonstrating that the City appraisal was inadequate or performed in error in this respect. Therefore, Objectors failed to meet the burden of proof required to demonstrate that the City appraisal process was flawed in this regard."

    This is clearly in error. By the city appraiser's own words, they were supposed to, but failed, to account for "value adjustments ... based upon an individual unit's floor placement" and yet failed to do so. In addition, the only evidence of value on residential properties submitted by the city was inadmissible as coming from an unsupervised trainee, and therefore prohibited by Washington state saw. See Exhibit B at pages 3-4, 20-22 and 83.

    Due to the homeless crisis, this park will be a health hazard and homeless invasion all around it will bring our property value down. Just compare the history around other parks like Denny, Williams Place at E. John Street and numerous other places in Seattle that are out of control.

    As a result of these clear errors and failure to make any recommendation at all, the proposed special assessment for our property should be invalidated.

Respectfully Submitted

/s/

Karin and Vasanth Philomin

September 22, 2020