Notice of Appeal of Final Waterfront LID Assessment Recommendation.
Final Waterfront LID No. 6751
Hearing Examiner Case No. CWF-0375
Parcel Owners: Victor C. and Mary K. Moses
King County Parcel No. 2538830850
Address: 1521 Second Avenue, Apt. 2304, Seattle, WA 98101

We, Victor C. and Mary K. Moses, owners of the condominium property located at 1521 2nd Avenue, Apt 2304, Seattle WA, 98101 (Parcel No. 2538830850), objected to the Final Assessment for our parcel and, pursuant to SMC 20.04.090.C, now submit this appeal of the Recommendations of the Hearing Examiner regarding Waterfront LID No. 6751 Case No. CWF-0375.

Because the City has not provided "metered index numbers", they can't be referenced in this appeal. Page numbers from the City's case file, which is referred to in this appeal as Exhibit B, are generally used instead. However, many of the items submitted in the course of my objection are not in the City's case file. These include (but are not limited to) a transcript of my oral presentation on March 12, all of the exhibits submitted as part of that presentation and a transcript of Peter Shorett's report and associated testimony. We request the Council secure and provide appellants a complete unified record, so that the appeals can be supplemented with that information. Failing to do so limits the ability of an appellant to receive efficient and fair consideration by the Council or its delegate. In addition, because this is a consolidated record, some items are in other objector's case files. Where I have not been able to readily identify a reference I have attached the appropriate file. Some references may just not be included.

I have not attached Exhibit A, the recommendations of the Hearing Officer, or Exhibit B, the City's case file for CWF-0375. These are readily available on the Hearing Examiner's web site.

We request and demand a hearing on this appeal.

We appeal from the following portions of the recommendations of the Hearing Officer:

1. Decision, Exhibit A, Page 94 "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 was inaccurate.
   Recommendation: denial"

   This finding is in error.

   The Hearing Examiner cites the April 1, 2020, declaration of Robert Macaulay; "A direct application of Dr. Crompton's research would also have been inappropriate in this context because the LID Improvements contain a mix of park and streetscape amenities and the LID includes both commercial and residential properties. In my professional opinion, it is reasonable to rely on elements of Dr. Crompton's research

when analyzing the potential value lift associated with the park amenities included in the LID Improvements." Exhibit A, pages 13-14.

Our residence at FifteenTwentyOne is a residential property, so that the LID also contains commercial properties is irrelevant. Macaulay then admits that Crompton is applicable to the park elements.

However, the most generous valuation of any of the improvements, both in terms of level of valuation and range of impact, arises if you to consider the improvements a park (Report of John Crompton, page 4, attached). An assessment using the assumption of a park therefore provides a reasonable cap on the potential special benefit. My analysis showed that there was no special benefit assuming the waterfront was a small park. If you considered it a large park, a qualification that the Waterfront improvements failed to meet, (based on the same work by John Crompton that was cited by Robert Macaulay in his Report) the special benefit was $8,201 and the resulting assessment was $3,012. My analysis accurately applied the distances that were misstated by Macaulay. The analysis was reviewed by Peter Shorett, MAIA.

I did not consider the Pike/Pine streetscape "improvement" in my analysis. Examiner further finds at Exhibit A,11.c. 5, pages 116-117, that "The City successfully rebutted Objector's argument that the streetscape improvements in Pioneer Square and the Pike/Pine corridor are not part of the LID project and that they do not result in special benefits. The City's expert witnesses indicated that these street improvements are part of the LID project and that their analysis of special benefits included these improvements." For FifteenTwentyOne this is negated by the Declaration of Mary Hamel who performed the analysis on behalf of Macaulay and the City. It states that the Pike/Pine streetscape improvements were only a consideration for abutting properties. FifteenTwentyOne abuts neither Pike nor Pine. Even if the streetscape improvements were to be considered, the City of New York study to which she refers only imputes value for commercial properties and provides no basis for any value increases for residential properties. See Exhibit B, pages13-14.

My analysis stands as far more credible analysis of the potential range of special benefit to my condominium than Mr. Macaulay's.

The City failed to address or rebut the HR&A report, cited by in Mr. Macaulay's report that shows local residents will not use the waterfront any more frequently after the LID improvements are completed than they do today. To assume that the improvements will improve residential valuations n the light of that finding is incredulous and unsupportable. See Exhibit B, page 2.

At Exhibit A, II.12, page 8, finds that: "Mr. Shorett's Appraisal Review and Supplement 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 but identified concerns Mr. Shorett had with the Final Special Benefit Study and the credibility of the special benefit calculations therein." I note that, Robert Macaulay did not calculate a current market value for any of the properties in the LID for which he then asserted a special benefit from the difference between the required improvement and the LID improvements. This issue was raised by many objectors. In addition he did not perform any appraisal of properties outside the LID boundary in order to conclude they had no special benefit. It is clear from the Hearing Examiner's acceptance of Robert Macaulay's determination of the LID boundaries that an appraiser can reach a reasonable conclusion that a property has no special benefit without performing an appraisal. The Hearing Examiner then arbitrarily holds appraisers representing objectors to a higher standard of judgement than he holds the City's appraiser.

The Hearing Examiner failed to recognize and the City failed to address or rebut the testimony, arguments and evidence from several experts (whose testimony should have given the same weight Mr. Macaulay's) concerning the lack of special benefit. The testimony of a qualified expert that in his professional opinion there is no special benefit for a property should transfer the burden of proof back to the City.

2. 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 in error. In particular, Macaulay admitted in cross examination that he did not consider changes in traffic flow that would constrict access to the parking garages in FifteenTwentyOne. See Exhibit B, page 4.

3. 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 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. 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 substantial 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.

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. The city's failure to abide by RCW 35.43.050 renders its final benefit study invalid as a matter of law. See Exhibit B, page 4.

4. Decision, Finding 9, 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 finding is in error. Robert Macaulay made no claims of limitation on his reliance on Crompton in his Report. He attempts to minimize it in testimony only after his misuse of the work is exposed and perjures himself by claiming that (a) the percentages he predetermined by location were really just "typos" and (b) the result for each condominium unit was a calculation of the pre and post valuations. It is a practical impossibility that across every condominium in the LID, every residential property in each of those condominiums would have identical percentages. The Special Benefit was calculated by applying the percentage, not vice versa. Robert Macaulay simply lied under oath. See Exhibit B, Pages 21-22.

5. 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 finding is in error. Dr. Crompton provided expert testimony that the Overlook walk was not a park. However, it does provided a new access route between the Market and the waterfront. I carefully calculated walking distances from FifteenTwentyOne to the waterfront with and without the Overlook walk. These

measurements showed that use of Overlook walk significantly increased walking distances from FifteenTwentyOne to the waterfront and therefore provided no benefit over the existing access routes. See Client Provided Information in the Report of Peter Shorett March 12, 2020, pages 14-20, attached.

As a result of these errors the proposed special assessment for our property should be invalidated/vacated.

Respectfully Submitted

Victor C. Moses

Victor C. Moses

September 21, 2020