Notice of Appeal of Final Waterfront LID Assessment Recommendation
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 a west facing condominium property located at 1521 2nd Avenue, Apt 2304, Seattle WA, 98101 (Parcel No. 2538830850), objected to the proposed Final Assessment for our property on February 3, 2020. The Hearing Examiner's Findings and Recommendations issued September 8, 2020 ("Examiner's Recommendation") recommended that our objection be denied. We filed a timely appeal to that recommendation on September 21, 2020.

Subsequently, the hearing examiner issued a revised Findings and Recommendations of the Hearing Examiner dated February 1, 2021, which also recommends that our objection be denied. We file this amended appeal pursuant to RCW 35.44.070, Seattle Municipal Code 20.04.090, City of Seattle Resolution 31915, the notice of the Seattle Office of the City Clerk dated December 30, 2019.

Our original appeal dated September 21, 2021 requested that the Council secure and provide appellants a complete unified record, so that the appeals could be supplemented with that information. We noted that failing to do so limited the ability of an appellant to receive efficient and fair consideration by the Council or its delegate. Since this request was not granted we hereby request that before rendering a decision on this appeal each Council member be polled individually to attest that they have reviewed the video of my March 10, 2020 presentation at hearing and the associated exhibits 1, 3 and 4 to that presentation. The video is available on the Hearing Examiners website (https://seattlechannel.org/hearingexaminer?videoid=x112101). The exhibits to the presentation are attached as Exhibits A, B and C of this Appeal. All of the Exhibits to this Appeal are contained in the record for LID No, 6751, however without a unified record to easily identify them by reference, they are attached.

We appeal the following Findings and Recommendations in the Hearing Examiner's September 8, 2020 and February 1, 2021 Findings and Recommendations.

1. Specific Case Finding CWF-0375
2. Sections II.6, II.7, II.12, II.14, II.18, II.19, II.20, II.21, II.22, II.23, II.24, II.25, II.26, II.27, II.28, II.29, II.30, II.31, II.32, II.33, IV.A, IV.B.1, IV.B.2, IV.B.3, IV.B.4, IV.B.5, IV.B.6, IV.B.7, IV.B.8, IV.B.9, IV.B.11(a), IV.B.11(a)(i), IV.B.11(a)(ii), IV.B.11(a)(iii), IV.B.11(a)(iv), IV.B.11(c), IV.C.2, IV.C.3, IV.C.4, IV.C.5, IV.C.8, IV.C.11, IV.C.12, IV.C.14, IV.C.15, IV.C.18

We also appeal the Hearing Examiner's failure to make findings of fact or recommendations on material issues raised during our appeal that were supported by law, expert testimony, and fact. The Final Study fails in many ways to satisfy the basic requirements of a LID assessment study,

and the Examiner's Recommendation ignores those deficiencies in the Final Study. In fact, the only instances in which the Examiner recommended anything other than denial of objectors' appeals were where the City's appraiser confessed error. The appraiser's proposed assessments, and the Examiner's Recommendations, impose arbitrary and capricious Waterfront LID special assessments based on "fundamentally wrong methods."

Since the Waterfront LID Hearing is based on a consolidated record, we hereby include the objections and argument contained in the appeal of taxpayer RRRR Investments LLC with regard to CWF-0430 and CWF-0431, dated September 22, 2020. It is attached as Exhibit D. Both of the properties in this appeal are also west facing residences in the condominium building located at 1521 2nd Avenue and any objection or argument on their behalf is similarly applicable to the appeal of the assessment on our residence. We supplement the appeal noted above with our own arguments, which are listed below, on selected portions of the Finding and Recommendations of the Hearing Officer:

1. Specific Case Finding CWF-0375
   (a) Hearing Examiner notes that "The objection raises issues not within the jurisdiction of the Hearing Examiner to address in the context of a special assessment hearing."

   Inexplicably the Hearing Examiner fails to even acknowledge the specifics of this objection; the calculation of the proposed final assessments determined by ABS Valuation in its Final Report fail to comply with RCW 35.43.050 (attached as Exhibit E)

   The city does not dispute that the City Council 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 seems to assert, without basis, that this claim cannot be considered or addressed in the context of this Hearing. 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 statute. This hearing process is precisely the time and manner to make this challenge.

   Further, the nature of the violation of this statute is inextricably tied up in the ability for property owners to challenge their assessments. Many properties are only included in the LID because of proximity to Pike/Pine streetscape improvements or Pioneer Square Streetscape improvements despite their substantial distance from the Promenade, Pier 58 and the Overlook Walk. Separating the analysis of these elements could (and likely would) show that the assessments for properties near these streetscape projects far exceed both the special benefit cost of those projects and therefore are illegally being forced to subsidize projects that bring them no special benefit.

   ABS is obligated to prepare its report in compliance with applicable law and it negligently failed to do so. The Hearing Examiner ignores this obvious and admitted

violation of state law in the calculation of the final assessment roll. Failure to comply with RCW 35.43.050 renders this Final Report invalid.

(b) The Hearing Examiner states that "The City appraiser used a sales comparison approach to valuation to arrive at its value conclusions." Robert Macaulay makes that claim, but the empirical evidence from his Final Report screams otherwise. A rational evaluation of the Report and supporting material provided by ABS Valuation will conclude that a percentage increase to hypothetical "without LID" was used to determine special benefits (see the following item 5). Such a conclusion should allow for contradiction by a similar calculation, the accuracy of which has been attested to by a qualified appraiser (see the following item 2).

2. Finding II.12.
The Hearing Examiner states "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. Mr. Shorett also prepared a Supplement to his Appraisal Review. 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."

The Hearing Examiner ignores that the Appraisal Review and Supplement prepared for CWF-0375 did contain a review attesting to the accuracy of my calculations of the Special Benefit to our property which corrected for Robert Macaulay's misstatement of John Crompton/s work and did calculate and quantify a maximum value of the Special Benefit that could accrue to our property. The provided 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, the special benefit was $8,201 and the resulting assessment was $3,012. It is contained in the Client Provided Information in the Report of Peter Shorett March 12, 2020 (attached as Exhibit C, page 53).

I note that Robert Macaulay also did not calculate a current market value for any of the properties in the LID for which he then asserted a special benefit to a hypothetical without LID value. This failure has been noted by several objectors. The Hearing Examiner holds Mr. Shorett to a higher standard than he applies to the City's Appraiser.

3. Finding II.B.31
The Hearing Examiner states "The record demonstrates that ABS is highly experienced and competent at completing mass appraisals…" Mr. Macaulay's experience is obvious. His competence is not demonstrated anywhere in the record. His selective citations of

Robert Crompton's 2001 Study (Exhibit A, pages 13-20) and the HR&A Study (Exhibit A, page 12), along with his misrepresentation of Dr. Crompton's work are either intentionally misleading or grossly negligent. In either case they are violations of the USPAP Ethics Rule. These failures and Mr. Macaulay's contradictory answers under cross examination contradict a finding of competence.

Mr. Macaulay, by his own admission, has done more mass appraisals than anyone in the state. The Hearing Examiner's simply weighed resumes instead reaching an independent judgement on the credibility of evidence and testimony. As a result 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 been given at least the same weight as Mr. Macaulay's testimony concerning the lack of special benefit.

Robert Macaulay did not perform any appraisal of properties outside the LID boundary in order to conclude they had no special benefit (Dep of R. Macaulay 2/27/2020 P 39-40). The Hearing Examiner's acceptance of Robert Macaulay's determination of the LID boundaries asserts 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 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.

4. Finding II.B.32
   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."

   Macaulay classifies the improvements as a mix of park and streetscape amenities and admits that "it is reasonable to rely on elements of Crompton when analyzing potential value lift associated with the park amenities."

   Our residence at Fifteen Twenty-One is a residential property, so that the LID also contains commercial properties is irrelevant.

   Macaulay cites only one study in his Report supporting the value of "streetscape amenities", NYCDOT (Exhibit A. page 26). This study is based on retail sales and limited to establishments abutting the street revisions. It provides no basis for imputing increases to any residential property, nor to any non-abutting property.

   The Report of John Crompton (attached as Exhibit F) states that:

(a) The appropriate designation of the green space in the LID is not a park, but a parkway or greenway (page 4)
(b) The premium from parks on property values are likely to be much higher and extend to a greater distance, than those from parkways or greenways (page 4).
(c) The most generous valuation of any of the improvements, both in terms of level of valuation and range of impact, arises if you consider the improvements a park (page 4).
(d) 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 (page 10).

An assessment using the assumption of a park therefore provides a reasonable cap on the potential special benefit. My analysis (See item 2 above) showed that there was no special benefit assuming the waterfront was a small park. <u>If you considered it a large park, a qualification that the Waterfront improvements failed to meet</u>, 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 and the accuracy attested by Peter Shorett, MAIA. My analysis stands as far more credible analysis of the potential range of special benefit to my condominium than Mr. Macaulay's

5. IV.B.8.
"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 (Hearing Transcript 6/23/2020 P 171-172) that he did not consider changes in traffic flow that would constrict access to the parking garages in Fifteen Twenty-One that are accessed via News Alley between Pike and Pine streets.

6. IV.b.11(a)iii
The Hearing Examiner states "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."

It is a practical impossibility that, if Robert Macaulay had actually done a separate dollar based evaluation of each property, for each of the 49 condominiums buildings in the LID, every residential property in that building would have exactly that same percentage result. The only reasonable conclusion is the Special Benefit was calculated by applying a percentage by condominium based on its location.

Nothing changed based on information from ABS during the deposition or the hearing process. Robert Macaulay, after asserting that the percentage increases in value noted in his Report were the result of a calculation based on the value lift for each property in dollar terms, when queried in cross examination (Hearing Transcript 6/23//2020 P 132-135) why the same percentage was also shown in his Addendum Volume in the header line for each condominium building with no "without LID" or "with LID" values on which to make the percentage calculation he preposterously claims that those percentages are just "typos". Robert Macaulay simply lied under oath.

7. IV.C.4 "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 (Hearing Transcript 4/16/2020 P 99-100). However, it does provide a new access route between the Market and the waterfront. I carefully calculated walking distances from 1521 2nd Avenue to the waterfront with and without the Overlook walk. These measurements showed that use of Overlook walk significantly increased those walking distances and therefore provided no actual benefit over the existing (and improved) access routes. (See Exhibit C, page 56).

The proposed special assessment for our property should be invalidated/vacated.

Respectfully Submitted

Victor C. Moses

February 16, 2021