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BEFORE THE CITY COUNCIL FOR THE CITY OF SEATTLE

In re Proposed Final Assessment Roll for
Local Improvement District No. 6751
("Waterfront LID")

Hearing Examiner File No. CWF-0413

NOTICE OF AMENDED APPEAL OF
HEARING EXAMINER'S FINDINGS AND
RECOMMENDATION ON ELLIOT NE
LLC'S OBJECTION TO WATERFRONT
LID NO. 6751 PROPOSED FINAL
ASSESSMENT FOR PARCEL NO.
0660000708

ELLIOT NE LLC ("Taxpayer"), known as the Hyatt Regency Hotel, files this amended appeal pursuant to RCW 35.44.070, Seattle Municipal Code 20.04.090, City of Seattle Resolution 31915, City of Seattle Resolution 31979, the notice of the Seattle Office of the City Clerk dated December 30, 2019, the notice of the Seattle Office of the City Clerk dated February 1, 2021, the Hearing Examiner's Findings and Recommendation issued September 8, 2020 ("Examiner's Recommendation") and the Hearing Examiner's Findings and Recommendation issued February 1, 2021.

1 **I. Elliot NE LLC / Appellant**

2 The taxpayer filing this amended appeal is:

3
4
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7 Seattle, WA 98101
8 Zahoor Ahmed
9 206-624-8909
10 ahmed@rchco.com
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12 **II. Elliot NE LLC's Representatives**

13 ELLIOT NE LLC'S representatives in this matter are:

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31 **III. Statement of Elliot NE LLC's Interest and Incorporation of Prior Arguments**

32 ELLIOT NE LLC is the taxpayer for the property that is subject to the proposed
33 final assessment described in Section IV.

34 Elliot NE LLC is amending its appeal as authorized in City of Seattle Resolution
35 31979 to include additional arguments relevant to the revised Final Recommendations of the
36 Hearing Examiner issued on February 1, 2021. On February 4, 2020, Elliot NE LLC timely
37 filed an objection to the assessment, which was based on the Final Study. Elliot NE LLC
38 further timely filed an appeal of the Hearing Examiner's 2020 recommendations to the City
39 Council. Elliot NE LLC maintains and incorporates all objections and arguments raised in
40 its appeal filed with the City Clerk on September 22, 2020. This amendment is a
41 supplement is to be read together with Elliot NE LLC's appeal filed on September 22, 2020.
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1 Elliot NE LLC incorporates by reference all filings, evidence, and pleadings filed by any
2 party before the Hearing Examiner as authorized by the Hearing Examiner, including
3 without limitation all records pertaining to the November 2020 through February 2021
4 remand hearing ordered by Council.
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9 **IV. Amended Arguments on Appeal**

10 ELLIOT NE LLC supplements its appeal of the Hearing Examiner's
11 recommendation to deny in part and revise on remand in part Elliot NE LLC's objection to
12 the City of Seattle's Waterfront Local Improvement District No. 6751 proposed final
13 assessment dated December 30, 2019 against the following property:
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18 King County Parcel No. 0660000708
19 Site Address: 808 Howell St., Seattle, Washington
20 Proposed Final LID Assessment for Parcel: \$1,205,636
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23 To avoid repetition, Elliot NE LLC incorporates the evidence and arguments raised
24 before the Hearing Examiner and before the City in its September 22, 2020 appeal, into this
25 amended appeal.
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29 **A. The Anticipated Special Benefits to Elliot NE LLC's Property should be**
30 **Discounted to Present Value and Assessments Adjusted as Appropriate**
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32 On remand, the City's appraiser acknowledged that special benefits to parcels can be
33 reduced, even to zero, if those benefits accrue in the future. *See* Declaration of Robert
34 Macaulay at 20 (Dec. 4, 2020). For that reason, the City's appraiser recommended the
35 assessment on CWF-442 (the Act Theatre) be reduced to zero because a restriction prohibits
36 redevelopment of the theatre's condominium until 2035, and therefore, any special benefit to
37 the theatre parcel is too remoted to support a current assessment. *Id.* The Examiner
38 accepted that recommendation. The City's appraiser further acknowledged that benefit
39 reductions due to delays in delivery of benefits, e.g., to 2030 or 2025, could be determined
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1 by discounting to present value. *Id.*; Macaulay Dep. at 51:16-17, 52:9-13 (Dec. 22, 2020)
2 (benefits to theatre “would be a long enough time out to where it wouldn’t measurably affect
3 value.”). Nevertheless, the appraiser refused to more generally discount his benefit
4 calculations to present value because the general benefits are not anticipated from the LID
5 improvements until after they are completed in 2024, 5 years after his 2019 assessment, and
6 perhaps not until 2029. The appraiser’s and Examiner’s recommendation to reduce the
7 theatre’s assessment to zero is reasonable. His refusal to make other discounts to his special
8 benefit calculation, and related assessments, to account for the delay between the assessment
9 and realization of any special benefits to Taxpayer’s property is unreasonable, contrary to
10 standard appraisal practice, and renders the other proposed Waterfront LID special
11 assessments, and the Examiner’s Recommendations, arbitrary and capricious and based on
12 “fundamentally wrong methods.”
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25 All special benefit taxes assessed by a municipality must be based on “actual,
26 physical and material [special benefits that are] not merely speculative or conjectural.”
27 *Heavens v. King Cty. Rural Library Dist.*, 66 Wn. 2d 558, 563, 404 P.2d 453 (1965).
28 Additionally, the assessments may not materially exceed the actual special benefit conferred
29 by the LID Improvements. *Id.* Further, LID assessments must be proportionate. *Id.* Failure
30 to meet any of these legal requirements is fatal to the assessment. Taxpayer’s September 22,
31 2020 appeal challenged the City appraiser’s valuation because, among other flaws, it did not
32 discount benefits the City estimated would accrue to the properties from improvements to be
33 delivered sometime between 2024 and 2029 to present, 2019 value. Now, add to that the
34 appraiser’s inconsistent approach, selectively applying discounting to one (that we know of)
35 property while treating all or most others (including Taxpayer’s) differently, and
36 withholding any discount. This inconsistent treatment is both arbitrary and capricious and
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1 disproportionate, where the appraiser has arbitrarily decided that no assessment is warranted
2 for some properties because the benefits are too distant, while assessing other properties as
3 though distant benefits have already been secured. As Taxpayer identified in its September
4 22, 2020 appeal, the City appraiser’s own materials show that benefits for a project like this
5 may not accrue for at least five years after they are completed, in 2029. *See* Gibbons Decl.
6 ISO Closing Stmt., Ex. C at 24, 30-31 (dated 7/7/2020). The City Council should either
7 reject the improper calculation of the benefit or remand and require the appraiser to discount
8 the benefits to net present value.
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17 **B. The City’s Appraiser’s Disregard of Hotel STR Report Performance**
18 **Data is Another Example of How His Analysis is Unreliable, Not**
19 **Admissible under Frye or ER 702, and His Proposed Special**
20 **Assessments are not based on Actual, Measurable and Special Value**
21 **Increases from the anticipated LID Improvements.**
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23 The City’s appraiser was provided actual performance data for the remanded hotels,
24 including their average daily room rates, from which he had been instructed to “recalculate”
25 hotel “before” values on remand. *See* Hearing Examiner Initial Recommendation at p. 117
26 (Sept. 8, 2020). The appraiser refused, explaining that, had he done so, his before values
27 would be “too low.” Instead, he divined an alternative value from “comparable sales”, and
28 then worked backwards to calculate small adjustments to his average daily room rate
29 assumptions, substituting them in his “income spreadsheets,” and thereby correlating his
30 income analysis to his preconceived value estimate. His remand analysis demonstrates that
31 his whole “income approach to valuation”, used for both hotels and other commercial
32 properties, is contrived speculation on speculation. The City’s appraiser disregarded these
33 hotels’ actual net income in a supposed “income analysis.” *See e.g.*, Deposition of Robert J.
34 Macaulay, 7:10-13 (December 22, 2020) (Attached as Exhibit A to Objector’s Statement on
35 Remand for Case Nos. CWF-0318, 0413, 0415, 0417, 0418, 0423, 0429, 0436). Taxpayer’s
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1 appraiser submitted an appraisal with room rates much closer to the actual performance of
2 the hotel and should be incorporated. *See* Declaration of John D. Gordon in City Council's
3 LID Remand, (Jan. 8, 2021).
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6 For example, compare the room rate and valuation for the appraisals in the table
7 below, where the actual average daily room rate for 2019 was \$205. Elliot NE LLC testified
8 that the City Appraiser's assumed room rate was too high - it not only had not been
9 achieved, but even pre-Covid, was not reasonably achievable.
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Hyatt Regency Hotel CWF-0413	City's Revised Appraisal	Elliot NE LLC's Appraisal
Hotel Value	\$646,935,000	\$507,4000,000
Less Personal Property	\$12,600,000	\$22,700,000
Real Estate Value	\$634,335,000	\$484,700,000
Benefit Ratio	0.49%	0.49%
Special Benefit	\$3,077,000	\$2,351,000
Levy Ratio	39.18%	39.18%
LID Levy	\$1,205,636	\$921,173
Average Room Rate	\$335	\$222
Daily RevPAR	\$268	\$169

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33 To correct the "before value" alone, the City Council should instead adopt Elliot NE
34 LLC's valuation, which was developed using actual data, and otherwise applying the City
35 appraiser's assessment formula:
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Hyatt Regency Hotel CWF-0413	Appraisal Amount
Hotel Value	\$323,614,000
Less Personal Property	\$22,700,000
Real Estate Value	\$300,914,000
Benefit Ratio	0.49%
Special Benefit	\$1,460,000
Levy Ratio	39.18%
LID Levy	\$572,060

The City’s appraiser only slightly reduced his original values in ways that are still entirely inconsistent with historical performance data. The City’s appraisal and analysis is speculative and should be rejected. The City Council should at least adopt Elliot NE LLC’s “before values” and resultant LID assessments.

C. In Light of Covid’s Continuing Impact on Elliot NE LLC and other Downtown Property Owners and other Material Changes Since October 2019, the LID Should be Cancelled, or at Least Assessments Recalculated, to take Into Account Property Value Reductions

In Taxpayer’s September 22, 2020 appeal, Taxpayer requested the Council “[t]ak[e] into account the effects of the COVID-19 pandemic on the value of Taxpayer’s property and other relevant developments since October 2019.” When Washington’s first COVID restrictions were imposed in March and April 2020, there was an assumption that they would be short-lived. A year later, the Puget Sound area is finally again moving to “Phase II.” Many downtown hotels are closed, and our hotels are not anticipated to fully recover for another 5 years. Retail stores are boarded up. Homelessness and related challenges have gotten much worse. The City has already imposed higher minimum wages and taxes on businesses to try to fund recovery. The West Seattle Bridge and other bridges are in immediate need of repairs and maintenance. Pier 58, instead of the vibrant waterfront park hypothesized in the City’s appraisal to exist as of October 2019, collapsed, and is several

1 years from completion, as a best case. In current circumstances, a downtown tax to fund
2 new, non-essential park improvements against financially strapped taxpayers, and likely
3 passed through to financially strapped tenants and customers would be unfair to taxpayers
4 and a misallocation of city resources. COVID threw everyone for a loop. But as the City
5 rethinks its budget priorities for the next few years, and its potentially funding sources,
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10 Taxpayer respectfully requests that the City dissolve the assessment, at least until it (and
11 property owners) have a chance to recover, and that any assessment take into account the
12 changed circumstances since this appeal process started on February 4, 2020 to avoid
13 unnecessarily and perhaps permanently killing downtown properties and businesses in the
14 name of bettering them.
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21 **V. Relief Requested**

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23 Particularily in light of the Committee's decision not to take further comment, Elliot
24 NE LLC respectfully request that each Committee member carefully review the record
25 transmitted to Council before voting on our appeal.
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29 ELLIOT NE LLC respectfully reiterates its request from the September 22, 2020
30 appeal that the City Council:
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33 1. Cancel the Waterfront Local Improvement District No. 6751 proposed final
34 assessment dated December 30, 2019; or
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36 2. Revise Taxpayer's Waterfront Local Improvement District No. 6751
37 proposed final assessment to \$0 (zero), or such amount as Taxpayer
38 establishes at the hearing in this matter; or
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40 3. Grant the Examiner's recommended remand but with instructions to
41 recalculate and reduce Taxpayer's assessment using recognized appraisal
42 techniques consistent with USPAP and
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- a. Excluding any property value increase attributable to viaduct removal and other planned WSDOT Improvements;
 - b. Taking into account the effects of the COVID-19 pandemic on the value of Taxpayer’s property and other relevant developments since October 2019;
 - c. Accounting for and excluding (1) any special benefits from existing or planned improvements that already provide similar benefits to Taxpayer’s property, and (2) any special detriments from construction and other anticipated LID-related disamenities;
 - d. Accounting for and including only those actual benefits anticipated to accrue to Taxpayer’s property based on its location relative to Pier 58, Overlook Walk, and the Promenade, and specific elements of the LID Improvements;
 - e. Discounting anticipated special benefits to present value, based on reliable estimates regarding when special benefits will start accruing following completion of the LID Improvements; and
 - f. Accounting for such other issues specific to Taxpayer’s property relevant to calculation of such assessment; and
4. Grant such further relief as the City Council deems just and proper.

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DATED: February 16, 2021

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