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17 **BEFORE THE CITY COUNCIL FOR THE CITY OF SEATTLE**  
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19  
20 In re Proposed Final Assessment Roll for  
21 Local Improvement District No. 6751  
22 (“Waterfront LID”)  
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Hearing Examiner File No. CWF-0433

NOTICE OF AMENDED APPEAL OF  
HEARING EXAMINER’S FINDINGS AND  
RECOMMENDATION ON SHG RETAIL  
SPE’S OBJECTION TO WATERFRONT  
LID NO. 6751 PROPOSED FINAL  
ASSESSMENT FOR PARCEL NO.  
6094670010

33  
34 SHG RETAIL SPE files this amended appeal pursuant to RCW 35.44.070, Seattle  
35 Municipal Code 20.04.090, City of Seattle Resolution 31915, City of Seattle Resolution  
36 31979, the notice of the Seattle Office of the City Clerk dated December 30, 2019, the notice  
37 of the Seattle Office of the City Clerk dated February 1, 2021, the Hearing Examiner’s  
38 Findings and Recommendation issued September 8, 2020 (“Examiner’s Recommendation”)  
39 and the Hearing Examiner’s Findings and Recommendation issued February 1, 2021.  
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1 **I. Taxpayer / Appellant**

2 The Taxpayer filing this amended appeal is:

3  
4  
5 SHG RETAIL SPE  
6 PO Box 334  
7 Bellevue, WA 98009-0334  
8

9 **II. Taxpayer's Representatives**

10 SHG GARAGE SPE's representatives in this matter are:

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12  
13 R. Gerard Lutz, WSBA No. 17692  
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17 Bellevue, Washington 98004  
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22 **III. Statement of Taxpayer's Interest and Incorporation of Prior Arguments**

23  
24 SHG RETAIL SPE ("Taxpayer") owns the property that is subject to the proposed  
25  
26 final assessment described in Section IV.

27  
28 Taxpayer is amending its appeal as authorized in City of Seattle Resolution 31979 to  
29  
30 include additional arguments relevant to the revised Final Recommendations of the Hearing  
31  
32 Examiner issued on February 1, 2021. On February 4, 2020, Taxpayer timely filed an  
33  
34 objection to the assessment, which was based on the Final Study. Taxpayer further timely  
35  
36 filed an appeal of the Hearing Examiner's 2020 recommendations to the City Council.  
37  
38 Taxpayer maintains and incorporates all objections and arguments raised in its appeal filed  
39  
40 with the City Clerk on September 22, 2020. This amendment is a supplement is to be read  
41  
42 together with Taxpayer's appeal filed on September 22, 2020. Taxpayer incorporates by  
43  
44 reference all filings, evidence, and pleadings filed by any party before the Hearing Examiner  
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1 as authorized by the Hearing Examiner, including without limitation all records pertaining to  
2  
3 the November 2020 through February 2021 remand hearing ordered by Council.  
4

5 **IV. Amended Arguments on Appeal**

6 SHG RETAIL SPE supplements its appeal of the Hearing Examiner's  
7  
8 recommendation to deny Taxpayer's objection to the City of Seattle's Waterfront Local  
9  
10 Improvement District No. 6751 proposed final assessment dated December 30, 2019 against  
11  
12 the following property:  
13  
14

15 King County Parcel No. 6094670020  
16 Site Address: 1321 1st Ave, Seattle, Washington  
17 Proposed Final LID Assessment for Parcel: \$31,345.76  
18

19 To avoid repetition, Taxpayer incorporates the evidence and arguments raised before  
20  
21 the Hearing Examiner and before the City in its September 22, 2020 appeal, into this  
22  
23 amended appeal.  
24

25 **A. The Anticipated Special Benefits to Taxpayer's Property should be**  
26 **Discounted to Present Value and Assessments Adjusted as Appropriate**  
27

28 On remand, the City's appraiser acknowledged that special benefits to parcels can be  
29  
30 reduced, even to zero, if those benefits accrue in the future. *See* Declaration of Robert  
31  
32 Macaulay at 20 (Dec. 4, 2020). For that reason, the City's appraiser recommended the  
33  
34 assessment on CWF-442 (the Act Theatre) be reduced to zero because a restriction prohibits  
35  
36 redevelopment of the theatre's condominium until 2035, and therefore, any special benefit to  
37  
38 the theatre parcel is too remoted to support a current assessment. *Id.* The Examiner  
39  
40 accepted that recommendation. The City's appraiser further acknowledged that benefit  
41  
42 reductions due to delays in delivery of benefits, e.g., to 2030 or 2025, could be determined  
43  
44 by discounting to present value. *Id.*; Macaulay Dep. at 51:16-17, 52:9-13 (Dec. 22, 2020)  
45  
46 (benefits to theatre "would be a long enough time out to where it wouldn't measurably affect  
47

1 value.”). Nevertheless, the appraiser refused to more generally discount his benefit  
2  
3 calculations to present value because the general benefits are not anticipated from the LID  
4  
5 improvements until they are completed in 2024, 5 years after his 2019 assessment, and  
6  
7 perhaps not until 2029. The appraiser’s and Examiner’s recommendation to reduce the  
8  
9 theatre’s assessment to zero is reasonable. His refusal to make other discounts to his special  
10  
11 benefit calculation, and related assessments, to account for the delay between the assessment  
12  
13 and realization of any special benefits to Taxpayer’s property is unreasonable, contrary to  
14  
15 standard appraisal practice, and renders the other proposed Waterfront LID special  
16  
17 assessments, and the Examiner’s Recommendations, arbitrary and capricious and based on  
18  
19 “fundamentally wrong methods.”

20  
21 All special benefit taxes assessed by a municipality must be based on “actual,  
22  
23 physical and material [special benefits that are] not merely speculative or conjectural.”  
24  
25 *Heavens v. King Cty. Rural Library Dist.*, 66 Wn. 2d 558, 563, 404 P.2d 453 (1965).  
26  
27 Additionally, the assessments may not materially exceed the actual special benefit conferred  
28  
29 by the LID Improvements. *Id.* Further, LID assessments must be proportionate. *Id.* Failure  
30  
31 to meet any of these legal requirements is fatal to the assessment. Taxpayer’s September 22,  
32  
33 2020 appeal challenged the City appraiser’s valuation because, among other flaws, it did not  
34  
35 discount benefits the City estimated would accrue to the properties from improvements to be  
36  
37 delivered sometime between 2024 and 2029 to present, 2019 value. Now, add to that the  
38  
39 appraiser’s inconsistent approach, selectively applying discounting to one (that we know of)  
40  
41 property while treating all or most others (including Taxpayer’s) differently, and  
42  
43 withholding any discount. This inconsistent treatment is both arbitrary and capricious and  
44  
45 disproportionate, where the appraiser has arbitrarily decided that no assessment is warranted  
46  
47 for some properties because the benefit are too distant, while assessing other properties as

1 though distant benefits have already been secured. As Taxpayer identified in its September  
2  
3 22, 2020 appeal, the City appraiser's own materials show that benefits for a project like this  
4  
5 may not accrue for at least five years after they are completed, in 2029. *See* Gibbons Decl.  
6  
7 ISO Closing Stmt., Ex. C at 24, 30-31 (dated 7/7/2020). The City Council should either  
8  
9 reject the improper calculation of the benefit or remand and require the appraiser to discount  
10  
11 the benefits to net present value.

12  
13 **B. In Light of Covid's Continuing Impact on Taxpayer and other**  
14 **Downtown Property Owners and other Material Changes Since October**  
15 **2019, the LID Should be Cancelled, or at Least Assessments**  
16 **Recalculated, to take Into Account Property Value Reductions**

17  
18 In Taxpayer's September 22, 2020 appeal, Taxpayer requested the Council "[t]ak[e]  
19  
20 into account the effects of the COVID-19 pandemic on the value of Taxpayer's property and  
21  
22 other relevant developments since October 2019." When Washington's first COVID  
23  
24 restrictions were imposed in March and April 2020, there was an assumption that they  
25  
26 would be short-lived. A year later, the Puget Sound area is finally again moving to "Phase  
27  
28 II." Many downtown hotels are closed, and our hotels are not anticipated to fully recover  
29  
30 for another 5 years. Retail stores are boarded up. Homelessness and related challenges have  
31  
32 gotten much worse. The City has already imposed higher minimum wages and taxes on  
33  
34 businesses to try to fund recovery. The West Seattle Bridge and other bridges are in  
35  
36 immediate need of repairs and maintenance. Pier 58, instead of the vibrant waterfront park  
37  
38 hypothesized in the City's appraisal to exist as of October 2019, collapsed, and is several  
39  
40 years from completion, as a best case. In current circumstances, a downtown tax to fund  
41  
42 new, non-essential park improvements against financially strapped taxpayers, and likely  
43  
44 passed through to financially strapped tenants and customers would be unfair to taxpayers  
45  
46 and a misallocation of city resources. COVID threw everyone for a loop. But as the City  
47

1 rethinks its budget priorities for the next few years, and its potentially funding sources,  
2  
3 Taxpayer respectfully requests that the City dissolve the assessment, at least until it (and  
4  
5 property owners) have a chance to recover, and that any assessment take into account the  
6  
7 changed circumstances since this appeal process started on February 4, 2020 to avoid  
8  
9 unnecessarily and perhaps permanently killing downtown properties and businesses in the  
10  
11 name of bettering them.

12  
13 **V. Relief Requested**

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15 Particularly in light of the Committee's decision not to take further comment from  
16  
17 appellants, Taxpayer respectfully request that each Committee member carefully review the  
18  
19 full record transmitted to Council before voting on Taxpayer's appeal.

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21 SHG RETAIL SPE respectfully reiterates its request from the September 22, 2020  
22  
23 appeal that the City Council:

- 24  
25 1. Reject the Hearing Examiner's recommended denial of Taxpayer's objection;  
26  
27 and  
28  
29 a. Cancel the Waterfront Local Improvement District No. 6751 proposed final  
30  
31 assessment dated December 30, 2019; or  
32  
33 b. Revise Taxpayer's Waterfront Local Improvement District No. 6751  
34  
35 proposed final assessment to \$0 (zero), or such amount as Taxpayer  
36  
37 establishes at the hearing in this matter; or  
38  
39 c. Remand the matter to the Hearing Examiner or City appraiser to recalculate  
40  
41 and reduce Taxpayer's assessment using recognized appraisal techniques  
42  
43 consistent with USPAP and:  
44  
45 i. Excluding any property value increase attributable to viaduct removal  
46  
47 and other planned WSDOT Improvements;

- 1                   ii. Taking into account the effects of the COVID-19 pandemic on the  
2                   value of Taxpayer's property and other relevant developments since  
3                   October 2019;  
4  
5  
6                   iii. Accounting for and excluding (1) any special benefits from existing  
7                   or planned improvements that already provide similar benefits to  
8                   Taxpayer's property, and (2) any special detriments from construction  
9                   and other anticipated LID-related disamenities;  
10  
11                  iv. Accounting for and including only those actual benefits anticipated to  
12                  accrue to Taxpayer's property based on its location relative to Pier 58,  
13                  Overlook Walk, and the Promenade, and specific elements of the LID  
14                  Improvements;  
15  
16                  v. Discounting anticipated special benefits to present value, based on  
17                  reliable estimates regarding when special benefits will start accruing  
18                  following completion of the LID Improvements; and  
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20                  vi. Accounting for such other issues specific to Taxpayer's property  
21                  relevant to calculation of such assessment; and  
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23                  2. Grant such further relief as the City Council deems just and proper.  
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2 DATED: February 16, 2021  
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**PERKINS COIE LLP**

5 By:

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