

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17 **BEFORE THE CITY COUNCIL FOR THE CITY OF SEATTLE**  
18

19  
20 In re Proposed Final Assessment Roll for  
21 Local Improvement District No. 6751  
22 (“Waterfront LID”)  
23  
24  
25  
26  
27  
28  
29  
30  
31

Hearing Examiner File No. CWF-0440

NOTICE OF AMENDED APPEAL OF  
HEARING EXAMINER’S FINDINGS AND  
RECOMMENDATION ON EQR-HARBOR  
STEPS LLC’S OBJECTION TO  
WATERFRONT LID NO. 6751 PROPOSED  
FINAL ASSESSMENT FOR PARCEL NO.  
7666202465

32  
33 EQR-HARBOR STEPS LLC (“Taxpayer”) files this amended appeal pursuant to  
34 RCW 35.44.070, Seattle Municipal Code 20.04.090, City of Seattle Resolution 31915, City  
35 of Seattle Resolution 31979, the notice of the Seattle Office of the City Clerk dated  
36 December 30, 2019, the notice of the Seattle Office of the City Clerk dated February 1,  
37 2021, the Hearing Examiner’s Findings and Recommendation issued September 8, 2020  
38 (“Examiner’s Recommendation”) and the Hearing Examiner’s Findings and  
39 Recommendation issued February 1, 2021.  
40  
41  
42  
43  
44  
45  
46  
47

1 **I. Eqr-Harbor Steps LLC / Appellant**

2 The taxpayer filing this amended appeal is:

3  
4  
5 EQR-HARBOR STEPS LLC  
6 Eqr-RE Tax Dept.  
7 PO Box 87407 (27193)  
8 Chicago, IL 60680-0407  
9

10 **II. Eqr-Harbor Steps LLC's Representatives**

11 EQR-HARBOR STEPS LLC'S representatives in this matter are:

12  
13  
14  
15 R. Gerard Lutz, WSBA No. 17692  
16 JLutz@perkinscoie.com  
17 Perkins Coie LLP  
18 10885 N.E. Fourth Street, Ste 700  
19 Bellevue, Washington 98004  
20 Telephone: 425.635.1400  
21 Facsimile: 425.635.2400  
22

Robert L. Mahon, WSBA No.  
26523  
RMahon@perkinscoie.com  
1201 Third Avenue, Suite 4900  
Seattle, Washington 98101  
Telephone: 206.359.8000  
Facsimile: 206.359.9000

23 **III. Statement of Eqr-Harbor Steps LLC's Interest and Incorporation of Prior**  
24 **Arguments**

25 EQR-HARBOR STEPS LLC owns the property that is subject to the proposed final  
26  
27 assessment described in Section IV.  
28  
29

30 Eqr-Harbor Steps LLC is amending its appeal as authorized in City of Seattle  
31  
32 Resolution 31979 to include additional arguments relevant to the revised Final  
33  
34 Recommendations of the Hearing Examiner issued on February 1, 2021. On February 4,  
35  
36 2020, Eqr-Harbor Steps LLC timely filed an objection to the assessment, which was based  
37  
38 on the Final Study. Eqr-Harbor Steps LLC further timely filed an appeal of the Hearing  
39  
40 Examiner's 2020 recommendations to the City Council. Eqr-Harbor Steps LLC maintains  
41  
42 and incorporates all objections and arguments raised in its appeal filed with the City Clerk  
43  
44 on September 22, 2020. This amendment is a supplement is to be read together with Eqr-  
45  
46 Harbor Steps LLC's appeal filed on September 22, 2020. Eqr-Harbor Steps LLC  
47

1 incorporates by reference all filings, evidence, and pleadings filed by any party before the  
2 Hearing Examiner as authorized by the Hearing Examiner, including without limitation all  
3 records pertaining to the November 2020 through February 2021 remand hearing ordered by  
4 Council.  
5  
6  
7  
8

9 **IV. Amended Arguments on Appeal**

10 EQR-HARBOR STEPS LLC supplements its appeal of the Hearing Examiner's  
11 recommendation to deny Eqr-Harbor Steps LLC's objection to the City of Seattle's  
12 Waterfront Local Improvement District No. 6751 proposed final assessment dated  
13 December 30, 2019 against the following property:  
14  
15  
16  
17

18 King County Parcel No. 7666202465  
19 Site Address: 1212 Western Ave., Seattle, Washington  
20 Proposed Final LID Assessment for Parcel: \$1,289,878.02  
21  
22

23 To avoid repetition, Eqr-Harbor Steps LLC incorporates the evidence and arguments  
24 raised before the Hearing Examiner and before the City in its September 22, 2020 appeal,  
25 into this amended appeal.  
26  
27  
28

29 **A. The Anticipated Special Benefits to Eqr-Harbor Steps LLC's Property**  
30 **should be Discounted to Present Value and Assessments Adjusted as**  
31 **Appropriate**  
32

33 On remand, the City's appraiser acknowledged that special benefits to parcels can be  
34 reduced, even to zero, if those benefits accrue in the future. *See* Declaration of Robert  
35 Macaulay at 20 (Dec. 4, 2020). For that reason, the City's appraiser recommended the  
36 assessment on CWF-442 (the Act Theatre) be reduced to zero because a restriction prohibits  
37 redevelopment of the theatre's condominium until 2035, and therefore, any special benefit to  
38 the theatre parcel is too remoted to support a current assessment. *Id.* The Examiner  
39 accepted that recommendation. The City's appraiser further acknowledged that benefit  
40 reductions due to delays in delivery of benefits, e.g., to 2030 or 2025, could be determined  
41  
42  
43  
44  
45  
46  
47

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  
5 calculations to present value because the general benefits are not anticipated from the LID  
6  
7 improvements until after they are completed in 2024, 5 years after his 2019 assessment, and  
8  
9 perhaps not until 2029. The appraiser’s and Examiner’s recommendation to reduce the  
10  
11 theatre’s assessment to zero is reasonable. His refusal to make other discounts to his special  
12  
13 benefit calculation, and related assessments, to account for the delay between the assessment  
14  
15 and realization of any special benefits to Taxpayer’s property is unreasonable, contrary to  
16  
17 standard appraisal practice, and renders the other proposed Waterfront LID special  
18  
19 assessments, and the Examiner’s Recommendations, arbitrary and capricious and based on  
20  
21 “fundamentally wrong methods.”  
22

23  
24 All special benefit taxes assessed by a municipality must be based on “actual,  
25  
26 physical and material [special benefits that are] not merely speculative or conjectural.”  
27  
28 *Heavens v. King Cty. Rural Library Dist.*, 66 Wn. 2d 558, 563, 404 P.2d 453 (1965).  
29  
30 Additionally, the assessments may not materially exceed the actual special benefit conferred  
31  
32 by the LID Improvements. *Id.* Further, LID assessments must be proportionate. *Id.* Failure  
33  
34 to meet any of these legal requirements is fatal to the assessment. Taxpayer’s September 22,  
35  
36 2020 appeal challenged the City appraiser’s valuation because, among other flaws, it did not  
37  
38 discount benefits the City estimated would accrue to the properties from improvements to be  
39  
40 delivered sometime between 2024 and 2029 to present, 2019 value. Now, add to that the  
41  
42 appraiser’s inconsistent approach, selectively applying discounting to one (that we know of)  
43  
44 property while treating all or most others (including Taxpayer’s) differently, and  
45  
46 withholding any discount. This inconsistent treatment is both arbitrary and capricious and  
47

1 disproportionate, where the appraiser has arbitrarily decided that no assessment is warranted  
2 for some properties because the benefit 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.  
9

10  
11 **B. The City's Appraiser's Disregard of Data on Remand is Another**  
12 **Example of How His Analysis is Unreliable, Not Admissible under Frye**  
13 **or ER 702, and His Proposed Special Assessments are not based on**  
14 **Actual, Measurable and Special Value Increases from the anticipated**  
15 **LID Improvements.**  
16

17 The City's appraiser was provided actual performance data for the remanded hotels,  
18 including their average daily room rates, from which he had been instructed to "recalculate"  
19 hotel "before" values on remand. *See* Hearing Examiner Initial Recommendation at p. 117  
20 (Sept. 8, 2020). The appraiser refused, explaining that, had he done so, his before values  
21 would be "too low." His remand analysis demonstrates that his whole "income approach to  
22 valuation", used for both hotels and other commercial properties, like Taxpayer's, is  
23 contrived speculation on speculation. The City's appraiser disregarded these hotels' actual  
24 net income in a supposed "income analysis." *See e.g.*, Deposition of Robert J. Macaulay,  
25 7:10-13 (December 22, 2020) (Attached as Exhibit A to Objector's Statement on Remand  
26 for Case Nos. CWF-0318, 0413, 0415, 0417, 0418, 0423, 0429, 0436).  
27

28 Taxpayer's appraiser submitted an appraisal which was similarly realistic and  
29 specific to the property but was disregarded. Taxpayer's appraiser demonstrated the actual  
30 value of the property is \$97,788,000, and the LID assessment should be reduced to reflect  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

1 this before-value. *See* CWF-0440 Statement of Objections, Exh. 6, Appraisal of Brian  
2  
3 O'Connor (Jan. 31, 2020).

4  
5 **C. In Light of Covid's Continuing Impact on Eqr-Harbor Steps LLC and**  
6 **other Downtown Property Owners and other Material Changes Since**  
7 **October 2019, the LID Should be Cancelled, or at Least Assessments**  
8 **Recalculated, to take Into Account Property Value Reductions**  
9

10 In Taxpayer's September 22, 2020 appeal, Taxpayer requested the Council "[t]ak[e]  
11 into account the effects of the COVID-19 pandemic on the value of Taxpayer's property and  
12 other relevant developments since October 2019." When Washington's first COVID  
13 restrictions were imposed in March and April 2020, there was an assumption that they  
14 would be short-lived. A year later, the Puget Sound area is finally again moving to "Phase  
15 II." Many downtown hotels are closed, and our hotels are not anticipated to fully recover  
16 for another 5 years. Retail stores are boarded up. Homelessness and related challenges have  
17 gotten much worse. The City has already imposed higher minimum wages and taxes on  
18 businesses to try to fund recovery. The West Seattle Bridge and other bridges are in  
19 immediate need of repairs and maintenance. Pier 58, instead of the vibrant waterfront park  
20 hypothesized in the City's appraisal to exist as of October 2019, collapsed, and is several  
21 years from completion, as a best case. In current circumstances, a downtown tax to fund  
22 new, non-essential park improvements against financially strapped taxpayers, and likely  
23 passed through to financially strapped tenants and customers would be unfair to taxpayers  
24 and a misallocation of city resources. COVID threw everyone for a loop. But as the City  
25 rethinks its budget priorities for the next few years, and its potentially funding sources,  
26 Taxpayer respectfully requests that the City dissolve the assessment, at least until it (and  
27 property owners) have a chance to recover, and that any assessment take into account the  
28 changed circumstances since this appeal process started on February 4, 2020 to avoid  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

1 unnecessarily and perhaps permanently killing downtown properties and businesses in the  
2 name of bettering them.  
3

4  
5 **V. Relief Requested**

6 Particularly in light of the Committee's decision not to take further comment, Eqr-  
7 Harbor Steps LLC respectfully request that each Committee member carefully review the  
8 record transmitted to Council before voting on our appeal.  
9

10 EQR-HARBOR STEPS LLC respectfully reiterates its request from the September  
11 22, 2020 appeal that the City Council:  
12

- 13 1. Cancel the Waterfront Local Improvement District No. 6751 proposed final  
14 assessment dated December 30, 2019; or  
15
- 16 2. Revise Taxpayer's Waterfront Local Improvement District No. 6751  
17 proposed final assessment to \$0 (zero), or such amount as Taxpayer  
18 establishes at the hearing in this matter; or  
19
- 20 3. Grant the Examiner's recommended remand but with instructions to  
21 recalculate and reduce Taxpayer's assessment using recognized appraisal  
22 techniques consistent with USPAP and  
23
  - 24 a. Excluding any property value increase attributable to viaduct removal  
25 and other planned WSDOT Improvements;  
26
  - 27 b. Taking into account the effects of the COVID-19 pandemic on the  
28 value of Taxpayer's property and other relevant developments since  
29 October 2019;  
30
  - 31 c. Accounting for and excluding (1) any special benefits from existing  
32 or planned improvements that already provide similar benefits to  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

1 Taxpayer's property, and (2) any special detriments from construction  
2 and other anticipated LID-related disamenities;  
3

4  
5 d. Accounting for and including only those actual benefits anticipated to  
6 accrue to Taxpayer's property based on its location relative to Pier 58,  
7 Overlook Walk, and the Promenade, and specific elements of the LID  
8 Improvements;  
9

10  
11  
12 e. Discounting anticipated special benefits to present value, based on  
13 reliable estimates regarding when special benefits will start accruing  
14 following completion of the LID Improvements; and  
15

16  
17 f. Accounting for such other issues specific to Taxpayer's property  
18 relevant to calculation of such assessment; and  
19

20  
21  
22 4. Grant such further relief as the City Council deems just and proper.  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47



1  
2 DATED: February 16, 2021  
3  
4

**PERKINS COIE LLP**

5 By:

6 R. Gerard Lutz, WSBA No. 17692  
7 [RLutz@perkinscoie.com](mailto:RLutz@perkinscoie.com)  
8 Perkins Coie LLP  
9 10885 N.E. Fourth Street, Suite 700  
10 Bellevue, Washington 98004  
11 Telephone: 425.635.1400  
12 Facsimile: 425.635.2400  
13

14 Robert L. Mahon, WSBA No. 26523  
15 RMahon@perkinscoie.com  
16 1201 Third Avenue, Suite 4900  
17 Seattle, Washington 98101  
18 Telephone: 206.359.8000  
19 Facsimile: 206.359.9000  
20  
21

22 Attorneys for EQR-HARBOR STEPS LLC  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47