

Deposition of Hearing
Seattle LID Public Comment Hearing
February 4, 2020



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SEATTLE WATERFRONT LID OBJECTIONS HEARING

BEFORE

HEARING EXAMINER RYAN VANCIL

Taken at 600 Fourth Avenue
Seattle, Washington

DATE TAKEN: February 4, 2020

REPORTED BY: Nancy M. Kottenstette, RPR, CCR 3377

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1 SEATTLE, WASHINGTON; February 4, 2020

2 9:02 a.m.

3
4 HEARING EXAMINER VANCIL: Good morning.

5 I'll call to order this February 4, 2020, Seattle

6 Waterfront LID Assessment Hearing. My name is Ryan

7 Vancil. I'm the hearing examiner for the City of

8 Seattle, and I'll be presiding on today's proceeding.

9 The City Council formed a Local Improvement

10 District for the Seattle Central Waterfront

11 Improvement Program and to assess a part of the

12 cost/expense to certain of those improvements against

13 properties identified as specially benefiting from

14 improvements.

15 The purpose of this hearing is different from

16 the formation hearing held in the spring 2018. This

17 hearing is a quasi judicial proceeding at which the

18 hearing examiner takes evidence from objectors and the

19 City concerning the special assessment for special

20 properties.

21 This hearing is not to simply provide members

22 of the public with an opportunity to appear and

23 provide their views on the formation of the LID or to

24 ask questions. Instead, objectors are appearing

25 through legal representatives or appearing on their

1 own behalf essentially as their own attorney to
2 present evidence and testimony to support their
3 objection.

4 Objections should be directed at the amount of
5 benefit that the property will receive or not from the
6 proposed improvement. Testimony should not be
7 directed at matters concerning the formation of the
8 LID which has already been completed. Before
9 testifying, each witness or testifier will -- must
10 take an oath of affirmation or affirmation to tell the
11 truth and will be subject to questioning by opposing
12 parties.

13 Any evidence you want me to consider must be
14 relevant to the issues raised in the objection and
15 come from a reliable source and have some value in
16 proving the point to which the evidence is offered.
17 Again, this is not just an opportunity for public
18 comment.

19 The proceeding that we're going to go through
20 today, in part, is dictated by who showed up today.
21 One of the things that I'm used to with many of the
22 hearings that I do is I have an opportunity to do a
23 prehearing conference, to schedule, and bring
24 everybody into a timeline. The uniqueness of this
25 hearing, however, is that under the statute objectors

1 are able to file up their objections up until this
2 moment.

3 And so what the proceeding today will
4 essentially be start as a prehearing conference for me
5 to calender and to bring some order to those
6 individuals who have filed objections and plan on
7 presenting in addition to filing an objection. We
8 have about 400 objections filed. I don't see
9 400 people here, but many of you may be representing
10 multiple objectors. Some of you did contact our
11 office in advance and have prescheduled hearing dates.
12 Some of you will need to work that out today.

13 You are here also in sort of separate
14 categories. We've had indications from many of you
15 that you'd like to speak for five to ten minutes. We
16 will be accommodating those speakers starting today,
17 and we will continue through those speakers until
18 we're finished, possibly through tomorrow and possibly
19 through next Tuesday depending how many of you there
20 are.

21 And those will be determined by case number
22 you've each been given a case number, and those will
23 be called chronologically starting with Case Number 1
24 through Case Number 400 and that will dictate when you
25 get your chance to speak.

1 Some parties submitted prehearing motions.
2 I'll come back to that. I know you're all anxious to
3 hear about how the hearing will be proceeding. So,
4 again, those objectors who are participating five to
5 ten minutes to present your objections, we will start
6 today.

7 We will be calling five case numbers at a
8 time. They will be posted on the whiteboard over here
9 to my left. There are five seats reserved for you up
10 front here that when your case number is called, if
11 you're one of those five, please come forward and sit
12 in one of the reserved seats. If we don't see anybody
13 in those seats, we assume Case Numbers 1 through 5
14 don't have anybody here, and we'll move on to 10
15 through 15 or what have you. Because we don't know,
16 again, who was going to show up here today to present
17 oral testimony in addition to the objection they've
18 already filed, and we'll be working through those
19 cases today in chief.

20 For those who are going to need, say,
21 20 minutes to half an hour or even an hour or longer,
22 those will be calendered for specific times for you to
23 come in. We have dates that are essentially spread
24 out through this entire month to hold this hearing and
25 many -- again, many of you have already got some of

1 those dates scheduled. And we'll be working those out
2 with you shortly.

3 I'll come back to the steps for getting our
4 individual objectors who are here for just five to
5 ten minutes. We are going to try to get you started
6 here today so we can get through this and you don't
7 have to sit through the entire process. But I do need
8 to work out some of the -- some ruling on some motions
9 that were submitted in advance first and also see how
10 much -- how far we can get in calendaring with these
11 other parties.

12 Can I have a show of hands of how many
13 individuals are here today and are planning on
14 presenting their objection for five to ten minutes?

15 All right. We're going to work through you
16 pretty quickly then. Again, today, coming in here, I
17 didn't know if I would have 100 of those people or
18 less than 10 as it appears. And so that does gain us
19 some time on the calendar also that we set aside for
20 those individuals for those who need more time to
21 present to get a specific time set.

22 Individuals who are planning on presenting for
23 an hour or less, please raise your hand.

24 Okay. And individuals who are representing
25 more parties than that and plan on needing more time

1 and that's undefined at this time.

2 Okay. Several of those. I may try to work
3 out some time with you folks before we get too deep
4 into the hearing, but I do want to issue a ruling on
5 some of the prehearing motions before I do that.

6 For prehearing motions, the Hearing Examiner
7 did receive some motions to continue the hearing. And
8 at least on one of those grounds, the Hearing Examiner
9 has already issued an order. Motions for continuance
10 on the basis of lack of availability of the final
11 special benefits study and the addenda volume, this
12 motion has been denied.

13 These requests for continuance have been
14 denied and/or if they're standing and have not been
15 addressed by the standing order that's been posted,
16 the documents have been available for a month, one
17 month. The information has not radically changed from
18 that which was earlier. And the parties in the
19 motions received to date did not specify specific
20 prejudice in their request, and that's the reason for
21 the denial.

22 I also received at least one request to
23 continue due to an issue raising State Environmental
24 Policy Act challenge indicating that there has not
25 been compliance with procedure under the State

1 Environment Policy Act or SEPA. No continuance will
2 be granted for that item as this is an assessment.
3 This hearing is to hear objections on assessments.
4 Whether you've been properly assessed or improperly
5 assessed is the subject of this hearing. There's been
6 no reference to a SEPA appeal that's been filed. I
7 don't have one in my office. There isn't any case
8 number referenced for a superior court SEPA challenge.
9 This is simply not the forum to challenge SEPA.

10 Similarly, if the assessor got a ticket on the
11 way to assessing your property, I wouldn't hear that
12 issue. The traffic court would. SEPA is a separate
13 issue that doesn't come up in a special assessment
14 hearing. It doesn't mean you can't challenge that
15 somewhere. It just means, just like the traffic
16 court, I'm here for a specific reason. You need to
17 address that specific forum in another -- in another
18 venue. And I certainly wouldn't be providing a
19 continuance to provide briefing for or challenges on
20 that issue.

21 In addition, there were requests for discovery
22 to be performed. Those -- the requests for discovery,
23 at least one of them, was received last Friday.
24 Parties who are -- particularly those who are
25 represented by attorneys should have been engaged in

1 discovery some time ago. And requesting it two days
2 before the hearing is essentially viewed as an
3 opportunity to try and delay the hearing.

4 Your opportunity for discovery, setting up
5 depositions or interrogatories, started as soon as you
6 wanted to start filing those, and at least a month has
7 passed or more has passed since the notice went out.

8 The Hearing Examiner is not normally involved
9 in discovery. I do not set discovery calendars. I
10 only get involved if there's a dispute on discovery,
11 and so I assume those of you who need discovery, if
12 you're going to be deposing witnesses or sending out
13 interrogatories, that you're doing that on your own
14 time and that you've already taken the initiative to
15 start that. So barring any failure to respond by a
16 party or something like that that's addressed in a
17 motion to me, there will be no delay for discovery.

18 There was a question about the Hearing
19 Examiner rules that are applicable to this proceeding.
20 The Hearing Examiner rules were identified by the
21 Hearing Examiner, and those rules that are applicable
22 are from the Hearing Examiner rules of policies and
23 practices are posted on the Waterfront LID site. If
24 you need that website, if you've not already had
25 access to it, please ask the individuals downstairs

1 for that address. And you can look up the specific
2 rules that I identified from the -- set of Hearing
3 Examiner rules that control in this case.

4 If you went to the Hearing Examiner rules that
5 are generally applicable that we have on our regular
6 website, many of those are simply not applicable here,
7 and I went through all of those to determine which
8 were applicable in this case. Some -- this case is
9 one in which I will be making a recommendation to the
10 Council. I'm not making a final determination, so
11 there's some appeal rules that simply are not
12 applicable.

13 And in some cases there's so many of you that
14 trying to manage a hearing with some of those rules,
15 they're also nonapplicable. If you want to know which
16 ones I've already determined are applicable, you go to
17 that website, and you can function under those rules.

18 All right. I think that addresses some of the
19 prehearing -- at least some of the prehearing issues.
20 We can come back to some of those later.

21 Let's try and do some calendaring if we can
22 get some of you on the calendar. Those of you who
23 have a need for -- there was a group of hour or less.
24 I'd like to get you on the calendar first because
25 you're the easiest, essentially. I've got a group of

1 individuals -- where's my legal assistant? So I've
2 got a group of individuals that are doing five to
3 ten minutes. We're going to get through those today,
4 it appears. We have on our calender dates and times
5 available now that we reserved for five- to ten-minute
6 objectors. Now the 5th and the 11th are open, and so
7 I would like to populate the 5th and the 11th. And
8 this is just done by order. As you can see with the
9 number of people, we cannot accommodate schedules.

10 So you've stepped into a quasi judicial
11 hearing, just like a court doesn't check with
12 everybody about when your vacation is and your
13 availability. I try to do that with many of the
14 hearings I hold, but in this case with the number of
15 people, we simply can't accommodate the niceties of
16 everyone's schedule.

17 So I will give you a time -- we're going to
18 give you a time to meet with Mr. Galen Edlund-Cho.
19 He's my legal assistant. Those who need an hour or
20 less, please meet him in the lobby now, and he will
21 set you up with times and dates.

22 AUDIENCE MEMBER: That's not the five-
23 to ten-minute group; correct?

24 HEARING EXAMINER VANCIL: Five- to
25 ten-minute, you're already covered. You're going to

1 go as soon as we get through this initial process. So
2 I saw about ten people raise their hand and say that
3 they need an hour or less but more than five to
4 ten minutes.

5 I'm not going to do anything that you're
6 missing. We just want to get you on the calendar.
7 Mr. Edlund-Cho, we're going to take these individuals
8 by case number and put them in order on the dates of
9 the 5th and 11th. If we carry over, just pocket them
10 in where you can on the dates where we have available.
11 These are either hour or less. Once that's done,
12 please return.

13 All right. Turning to those -- we can get
14 some work done while they're working that out.
15 Individuals who are here and need more time than that,
16 I can try working that out with some of you. So
17 there's no particular order to it. We're going to
18 come -- please come up to the mic here. I saw three
19 or four of you, and I just need to know your estimated
20 time.

21 MR. LUTZ: Mr. Examiner, I have two
22 preliminary questions. We have 29 different clients.
23 They're each going to require about half day, and the
24 one thing is that apparently -- the first thing is,
25 apparently, when we filed this request for a

1 prehearing conference with all the different parcel
2 numbers, they were assigned one case number, and they
3 should each have an individual case number. We filed
4 individual notices of appeal, objections yesterday.
5 So I'm just wondering how you would like to handle
6 that. I don't think we need one case for 29 different
7 parcels.

8 HEARING EXAMINER VANCIL: I'm sorry.
9 You just said you don't think you need one case for 29
10 or you want more?

11 MR. LUTZ: We would prefer an
12 individual case number for each of the appeals as
13 opposed to one case number for all 29 appeals.

14 HEARING EXAMINER VANCIL: So case
15 numbers were assigned by representative, not by parcel
16 number.

17 MR. LUTZ: Oh, okay.

18 HEARING EXAMINER VANCIL: The case
19 numbers -- essentially, this is a consolidated hearing
20 for 400 parcel numbers that are being heard separately
21 with a variety of representation styles, maybe one
22 individual representing 29 or one individual who owns
23 two or three parcels, so there's really no fine way to
24 identify this.

25 MR. LUTZ: Okay. And that's fine.

1 HEARING EXAMINER VANCIL: This is our
2 internal method of coming up with some organization to
3 the group.

4 MR. LUTZ: All right.

5 HEARING EXAMINER VANCIL: There
6 certainly isn't any prejudice to your case by having a
7 single case number for your clients.

8 MR. LUTZ: Thank you. My other
9 question was on your comments about the SEPA
10 challenge. At least as we're phrasing it in this
11 proceeding, what we're seeking to raise is an
12 assessment challenge, which is that it is improper to
13 finalize the assessment roll for elements of the
14 Waterfront project that have not undergone SEPA
15 review.

16 Because once the roll is final, then the
17 council is committed to build it even if they haven't
18 done SEPA review, and it's our understanding there
19 hasn't been any done on Pier 58 yet. So either you
20 need to wait for that or you need to pull that
21 component of the assessment out and do some sort of
22 phase review and have a smaller assessment now and any
23 future assessment for the park if and when it gets
24 approved. And, actually, there's a similar challenge
25 for the Pike/Pine improvements not down by the market

1 but up to the freeway.

2 HEARING EXAMINER VANCIL: And any
3 argument you intend to raise as part of your objection
4 will be better raised during the period you've been
5 assigned for addressing your objection.

6 MR. LUTZ: Okay. That was my question,
7 how you wanted to handle those.

8 HEARING EXAMINER VANCIL: And I'm not
9 going to rule on those in advance, though. That was
10 the request that there be a continuance of this
11 hearing in order to do prehearing briefing on that
12 issue. This hearing has started, and so we're not
13 going to continue it just to do briefing on that
14 issue. There's no reason that issue can't be lumped
15 in with your primary objection.

16 MR. LUTZ: And that's fine. And we
17 were trying to phrase it not as a continuance but as a
18 scheduling issue, but I understand your ruling. Thank
19 you.

20 HEARING EXAMINER VANCIL: And you --
21 you're at 29, and you believe you need half a day for
22 each one? There's no efficiency you can gain -- I've
23 got other representatives who are two hours each.

24 MR. LUTZ: There are several ways that
25 this could potentially be scheduled to be more

1 efficient, because some of the appraisal testimony is
2 directed at the Macaulay study in general. Others are
3 property specific.

4 And so depending on how -- for example, if
5 everybody wants to question Bob Macaulay, is that
6 going to be he appears and 400 people ask him
7 questions, or is it going to be he's our witness in
8 our half day and we ask him questions? And so I leave
9 that part, you know, to your discretion to kind of
10 think about how you would like to manage that, but we
11 have those questions.

12 HEARING EXAMINER VANCIL: So your time
13 included cross-examination or direct of the City
14 witness? Is that --

15 MR. LUTZ: We have probably five
16 witnesses, and if we're efficient, it's probably half
17 day. And then also there are several properties, for
18 example, Harborsteps is four different tax parcels, so
19 that one is probably not two days. It's probably
20 something maybe more than half day but not --
21 certainly not two days. That's 4 of our 29.

22 HEARING EXAMINER VANCIL: All right.
23 But to answer my question, did in of your time
24 estimate, did you include time for interviewing a City
25 witness?

1 MR. LUTZ: Actually, I was, A, hoping
2 for a deposition and, B, assuming that you wanted to
3 do one City rebuttal at the end, so my half day
4 estimate was for our case-in-chief.

5 HEARING EXAMINER VANCIL: At this time
6 we are planning on having the City come after all of
7 the objections and so that there would be a single
8 time that the City assessor is available. We can't
9 have him showing up 30 to 40 to 50 or maybe 100 times.

10 MR. LUTZ: Understood.

11 HEARING EXAMINER VANCIL: That would
12 not be efficient for my digesting of the record and
13 hear the arguments that you have or an efficient use
14 of time. You will have an opportunity to
15 cross-examine him, though, and once we have a calendar
16 set here for the objections, which is what I want to
17 hear first, then we can set a calendar for when the
18 City's assessor will be crossed.

19 MR. LUTZ: And I have one other kind of
20 supplement to that is of our clients, three of -- our
21 clients have three different groups of appraisers,
22 each of whom has critiqued the Macaulay study in more
23 of a general way, and so I don't know whether -- but
24 it might be more efficient to have those scheduled to
25 be at the same time so we only have one of those

1 general objection sessions that pairs with the
2 Macaulay, but we can also proceed to do it in each of
3 the 29 cases.

4 HEARING EXAMINER VANCIL: Okay.
5 Obviously, there's some unique aspects that need to be
6 addressed with your representation and the
7 29 objectors that you represent and how that will be
8 managed. I think we've gotten about as far down that
9 road as we can right now. I don't want to take
10 everybody else's time scheduling just your case.

11 So we will do that, but what I would like to
12 do is get a feel for what else I'm looking at from
13 these other objectors and see how we're doing out
14 there.

15 MR. LUTZ: Thank you.

16 HEARING EXAMINER VANCIL: Please state
17 your name for the record.

18 MR. LUTZ: Jerry Lutz, Perkins Coie.

19 HEARING EXAMINER VANCIL: Thank you.

20 Others in this category? While they're
21 approaching, the discussion on appraisers reminded me
22 that I did want to disclose -- I've seen in a number
23 of these objections that have been filed a statement
24 from appraiser Anthony Gibbons. I'm just disclosing
25 for the record I do know Mr. Gibbons personally. I

1 have retained him when I was in private practice.
2 I've also appeared in cases against Mr. Gibbons. I'm
3 disclosing that for the record. I don't see that it
4 would impinge on my ability to make a decision, but
5 just so it's clear for everyone that I understand
6 his -- him -- I know him from the community.

7 MS. TERWILLIGER: Good morning. Molly
8 Terwilliger. I represent five different tax IDs, and
9 we seem to have five different numbers, if you would
10 like me to state them for the record. They're case
11 numbers 336, 337, 339, 340, 342. And we are currently
12 anticipating needing about three days to present our
13 objections.

14 And I will note that we are -- we intend to
15 use Mr. Gibbons as our expert appraiser, and I believe
16 that Mr. Lutz will be presenting him as well. So it
17 may make sense to coordinate our hearings in terms of
18 timing just to save everyone the time of having to put
19 Mr. Gibbons on twice.

20 HEARING EXAMINER VANCIL: Okay. All
21 right. That's helpful. I'll take it down for now.

22 MS. TERWILLIGER: Great. Thank you.

23 HEARING EXAMINER VANCIL: Other
24 representatives that were in the category of needing
25 more than the one hour? I saw more than two hands go

1 up. So is that it?

2 MR. MOSES: My name is Victor Moses.

3 I'm a --

4 HEARING EXAMINER VANCIL: I'm sorry.

5 Can you state that again and spell it.

6 MR. MOSES: Victor Moses. I'm a
7 property owner within the LID district. I'm acting
8 pro se. My case number is CWF0375. And I was one of
9 the people who submitted a motion for continuance
10 based on discovery of the information in the
11 appraiser's files. I assumed that information would
12 be available through the public records request.

13 It is starting to come out now. I think
14 several thousand pages or so were delivered last
15 night. But from your comments, am I then required to
16 depose or to question the appraiser separately to
17 gather this information, or can I assume it will come
18 through public records requests?

19 HEARING EXAMINER VANCIL: I can't
20 answer any assumptions that you would -- about
21 assumptions. And I apologize, but I can't guide you
22 in how you'll do your case. What I can tell you is
23 that the City representatives will be available for
24 questioning after these -- after the objectors present
25 their cases.

1 So there's going to be a succinct time. We
2 don't know what date that is yet because we need to
3 get through the objections for when the City appraiser
4 would be available for questioning. There are parties
5 that are requesting to do depositions with the City
6 appraiser before he appears at the hearing. I do not
7 control that process, and so you really would need to
8 work that out on your own.

9 MR. MOSES: And my question is simply
10 can I subpoena the appraiser, and can I depose the
11 appraiser?

12 HEARING EXAMINER VANCIL: At this time
13 there's no need to subpoena the appraiser. Subpoena
14 would secure and ensure that the appraiser would
15 appear at this hearing when he or she is required to.
16 They're going to be here.

17 MR. MOSES: May I depose the appraiser?

18 HEARING EXAMINER VANCIL: The Hearing
19 Examiner will allow for discovery. I do not
20 participate in that. Deposition is part of discovery,
21 and so the parties are on their own to conduct that.

22 MR. MOSES: Thank you.

23 HEARING EXAMINER VANCIL: If there is a
24 complication, if the City balks and says, no, you may
25 not depose or you don't provide document -- or they

1 don't provide documents or something along those
2 lines, or if they think that you're asking questions
3 that are not permitted, either way if there's a
4 dispute between yourself or any party on discovery,
5 then that's dealt with by motion to the Hearing
6 Examiner. Otherwise, the parties are on their own to
7 conduct discovery and schedule it.

8 MR. MOSES: Thank you.

9 HEARING EXAMINER VANCIL: Thank you.

10 I think we've gotten as far as we can with
11 scheduling. I will come back to our larger parties
12 later.

13 Alena, can you ask me -- can you ask Galen
14 where they're at before I let the City go?

15 ALENA: We have five scheduled and five
16 more to schedule.

17 HEARING EXAMINER VANCIL: Okay. That's
18 going to take a bit of time. I -- we are -- the hope
19 was that we would start out from hearing from the
20 City, and the intent there was to hear about the
21 Waterfront LID assessment. I wasn't -- and I just
22 want to make sure. I saw an e-mail come through last
23 night about more of an opening statement anticipating
24 argument.

25 And it was -- that was a last-minute request I

1 cannot entertain. The original proposal was that
2 there would be somebody from the City just explaining
3 the process and the project so it would be clear in
4 the record what we're all here for. Argument, it's my
5 understanding from the City, is they were going to
6 save that for a response to what's come up. So we're
7 not going to do argument today.

8 So does the City plan on having still that
9 presentation level to the record?

10 MR. FILIPINI: Yes.

11 HEARING EXAMINER VANCIL: We're going
12 to wait for that so the individuals in the hallway can
13 hear it. There's no reason, though, that we can't get
14 them scheduled and I cannot go ahead and hear from
15 objectors that are here today and are planning on
16 getting in, in five to ten minutes. So we can start
17 hearing from you on your case.

18 We're going to start with that. Finish up
19 with them. We're going to hear from the City. So
20 we'll get some progress in our schedule, and then
21 later we'll have to pause again and see where we're
22 at. And I'll need to come back to our longer term
23 objectors in the back. I would like to get the record
24 developed now.

25 So those of you that are here for five to ten

1 minutes -- there's only ten of you. I've got 400 case
2 numbers to go through, so listing the five numbers is
3 not going to work well. I've got to find you in the
4 record. Who is here for five to ten minutes?

5 Okay. I'm going to ask the first five of you
6 to come up to the reserved seating here. If you're
7 faster than the others, that includes you. Make sure
8 you have your case number with you. This process of
9 listing the case numbers where we're at is not going
10 to do us any good.

11 And I believe I've got -- how many more are
12 there in addition to these individuals who have come
13 up here?

14 We'll wait and we'll get to you today in
15 order. Let me start with the first gentleman on my
16 far right. Your far left. If you'll approach the
17 mic, please state your case number. That's the number
18 that's CWF.

19 MR. STAR: CWF0141.

20 HEARING EXAMINER VANCIL: All right.

21 Please state your name for the record.

22 MR. STAR: David Star. I reside at
23 Continental Place on First and Blanchard.

24 HEARING EXAMINER VANCIL: Please
25 present your objection.

1 MR. STAR: Okay. I guess I have a
2 question.

3 HEARING EXAMINER VANCIL: I'm sorry.
4 If you have questions about the general process or how
5 the --

6 MR. STAR: Where is the City Council?

7 HEARING EXAMINER VANCIL: The City
8 Council will be here next. This process is one where
9 I make a recommendation to the City Council, as I
10 stated in my opening.

11 MR. STAR: So this is the same thing we
12 went through in 2018.

13 HEARING EXAMINER VANCIL: Except I have
14 to actually make a recommendation based on law.

15 MR. STAR: What?

16 HEARING EXAMINER VANCIL: So sorry,
17 folks. This is not going to be a question-and-answer
18 session. You have the opportunity to --

19 MR. STAR: So there's no audience? I
20 got it.

21 HEARING EXAMINER VANCIL: Thank you.

22 MR. STAR: Well, having first heard
23 about the LID proposal in the public meetings this
24 spring and summer of 2018, I was quite shocked by the
25 arbitrary assessment, and the absence of City Council

1 members at those hearings.

2 Those who wished to object to the LID were
3 allotted three minutes to speak to an empty chamber.
4 The message was clear to all present the City didn't
5 give a damn. By definition, an LID represents a
6 solicitation by property owners to the City to issue
7 taxfree bonds for investors to purchase they -- that
8 historically are used to complete small projects in
9 city neighborhoods.

10 Now, the bonds are paid off by property owners
11 who are the beneficiaries of the improvements. Trust
12 me, I've been in the brokerage business for 42 years,
13 and I did underwriting for LID. So I know how they
14 work. So, obviously, you're using some kind of a
15 hybrid that is not known to me.

16 Not in my wildest dreams would I expect
17 nonconstitutional taking of property without a vote of
18 all the citizens of Seattle. The LID is not a local
19 or intended to provide special benefits. The
20 Waterfront is a regional, national, and international
21 destination. No special benefits will accrue to those
22 who have been targeted to participate.

23 Construction estimates are not based upon
24 substantially complete construction documents.
25 They're out of date and uncertain. Final assessments

1 will bind future City Councils and future budgets to
2 spend hundreds of millions of dollars on projects
3 still early in the design process. Without more
4 design details and a date certain for completion --
5 completing construction, it is pure speculation what
6 benefits, if any, the LID improvement will yield. If
7 the City proponents want to claim special benefits for
8 property within the LID boundaries, then they must
9 also embrace the chaos on the streets outside of our
10 condominiums and businesses so included.

11 It goes without saying the City has a
12 homelessness problem. Just days after I wrote this
13 letter and e-mailed it, we had a shooting, a massive
14 shooting, down where I live. The City was
15 ill-equipped to handle it, so they brought in state
16 patrol and sheriffs from outlying counties. And
17 Carmen Best has been disparaged by the Council and by
18 the mayor against doing her job, which is to protect
19 the taxpayers of the city.

20 The beggars on the street, vagrants, if you
21 wish, consume alcohol, take illegal drugs with
22 impunity, with the City's blessing. As I said,
23 policing is nonexistent in my neighborhood, speeding,
24 traffic accidents. The only police evidence I see are
25 people getting parking tickets.

1 So it's unfortunate the members of the City
2 Council aren't here, and I'm sure they're all
3 well-educated people. But from my perspective and
4 many of my neighbors' perspectives, you haven't got
5 the sense to pound sand down a rat hole. That's all I
6 have to say. I yield my time.

7 HEARING EXAMINER VANCIL: Thank you,
8 Mr. Star.

9 Before we go to the next speaker, we still
10 have some more in the hall that are coming. I do want
11 to touch on a couple things while you're all still
12 here. Continuance dates that, obviously, we're going
13 to go beyond today to hear some of these arguments.
14 Those hearings for the continuance dates will be in
15 the Office of Hearing Examiner across the street.
16 That is 700 Fifth Avenue, Suite 4000.

17 Those dates will be posted both on our website
18 and a link we provided at the Waterfront LID site so
19 you can keep track of the hearing. And the hearing is
20 intended to be streamed the entire time. If you want
21 to see other objectors as they present, you can tune
22 in during those times. You should be able to find the
23 dates for those times on our calendar and/or on the
24 Waterfront LID site to get to that calendar.

25 Similarly, if you don't want to come down and

1 see the City argument, if you're not necessarily
2 participating but want to see it, that will be an
3 opportunity to do that. And that date will be posted
4 as well on the calendar.

5 All right. We'll hear from the next objector.

6 HEARING EXAMINER VANCIL: Please state
7 your case number and your name.

8 MS. FERGUSON: Good morning. My name
9 is Lisa Ferguson. My number is CWF0354.

10 My objection today is mainly about the
11 appraisal of the property. I object to this
12 assessment, firstly, for many reasons that you've
13 already heard. This public space, which is open to
14 the world per Marshall Foster, does not provide me
15 with special benefit.

16 Furthermore, the constant state of renovation
17 and construction on the Waterfront over the past six
18 years and with four more years at a minimum has been
19 disruptive to the neighborhood. For example, road
20 closures, sidewalk closures, increased noise, access
21 to sidewalks and roads, to name a few, have been
22 nothing but a negative, and we have received no credit
23 that has been received for this constant disruption.

24 Today I'm objecting to the method of the
25 assessment by the appraiser. The appraiser has

1 clearly not seen the property. The appraiser values
2 premium units at \$600 per square foot and values those
3 units that are not valued at a premium by the
4 marketplace at 650 per foot. I happen to live in a
5 relatively small interior courtyard view, no
6 air-conditioning, no fireplace, and it is appraised at
7 the highest value.

8 Furthermore, units in my stack are
9 inconsistently valued. You would think that the
10 higher the unit it would be appraised at a higher
11 value, and it is simply not. I happen to be appraised
12 at the highest. I'm on the fourth floor. I'm
13 appraised at the fifth floor level. These appraisals
14 seem to be inconsistent and unfair.

15 The appraiser does not consider this -- my
16 stack as having less value in the marketplace
17 vis-a-vis the premium apartments, those with extensive
18 panorama views, additional parking, fireplaces,
19 additional storage, etc. And back to the appraisal
20 value of 650 a square foot, there was a unit directly
21 below me that just sold, and the -- it went for -- on
22 the marketplace for 565 square feet.

23 I think this is -- our appraiser is
24 inconsistent and unrealistic. And that's all I have
25 to say today, and thank you very much.

1 HEARING EXAMINER VANCIL: Ms. Ferguson,
2 do you have documents you would like to introduce?

3 MS. FERGUSON: Sure.

4 HEARING EXAMINER VANCIL: Those will be
5 marked as Exhibit 1 for Case Number 354. I'll hear
6 from the next objector.

7 (Exhibit 1 for CWF0354 was marked.)

8 MS. MORENO: My case number is CWF0398,
9 and my name is Mary Moreno. And I filed an objection
10 as an individual --

11 HEARING EXAMINER VANCIL: I'm sorry. I
12 didn't catch your last name. Could you repeat that.

13 MS. MORENO: Moreno, M-O-R-E-N-O.

14 So I filed an objection as an individual owner
15 of a condominium within the LID boundary, but as an
16 HOA board member, I'm also filing an objection on
17 behalf of my entire building, which is Waterfront
18 Landings, the same building that Lisa Ferguson is in.

19 Waterfront Landing has a very unique location
20 on the waterfront and within the LID boundary. On
21 Alaskan Way we were the only condominium west of the
22 viaduct before it was removed. For 20 years we had
23 unobstructed waterfront views, great access to the
24 Pike Place Market and to the Waterfront.

25 One of the major projects funded by the LID,

1 the Overlook Walk, actually gives our building
2 significant detriments and loss of value rather than
3 any special benefit. The Overlook Walk, which will
4 become the roof of the new aquarium pavilion, will
5 block our views to the south. It will decrease our
6 accessibility to both the Pike Place Market and to the
7 waterfront in general, and it will increase noise and
8 nuisance factors.

9 Additionally, the Pine and Elliott Street
10 connector road that is fully a part of the Waterfront
11 project and is being built by SDOT, not Wash DOT, will
12 have significant negative impact on our building.

13 This new elevated roadway is being built directly in
14 front of and alongside the south portion of our
15 building. This elevated roadway will block views and
16 block access. This will have a negative effect on
17 Waterfront Landings.

18 And it was not factored in by the assessor in
19 determining the special benefit assigned to our
20 condominium building. As part of the Waterfront
21 project, the City has informed me they are going to
22 plant nine tupelo trees directly in front of our
23 building. These will block views and decrease value.
24 It will not add any special benefit deemed to increase
25 value.

1 We reached out to the City after the
2 preliminary special benefit study was published to
3 request a meeting to discuss the unique location of
4 our building and the detriments that several aspects
5 of the project have on us alone, but we received no
6 response. I have letters attached.

7 We also pointed out the error the appraiser
8 made in describing our neighborhood. He referenced a
9 Waterfront trolley that he described as very popular
10 in the summer. That trolley stopped running 13 years
11 ago. This error was not corrected when the final
12 study came out, and neither were the errors in our
13 assessments.

14 It appears that the City is willing to accept
15 a certain degree of error in their study and their
16 assessments, but as an individual paying that, I am
17 not. So I ask the Hearing Examiner to please correct
18 the errors in the special benefit assessment that is
19 levied on my building, Waterfront Landings
20 Condominiums, to look at the circumstances of our
21 unique location, and to adjust our assessments to
22 reflect the significant detriments that many aspects
23 of this project have on us alone.

24 HEARING EXAMINER VANCIL: Thank you.

25 Do you have documents to introduce?

1 MS. MORENO: I do.

2 HEARING EXAMINER VANCIL: Those will be
3 marked as Exhibit 1 for Case Number 398.

4 (Exhibit 1 for CWF0398 was marked.)

5 HEARING EXAMINER VANCIL: I'll do one
6 more objector before I check in with everybody again.

7 Please state your name and your case number.
8 And for your case numbers, sorry, you don't have to do
9 the CWF, just the last digits at the end as your case
10 number.

11 MR. JACOBS: My case number is 385. My
12 name is David Jacobs.

13 HEARING EXAMINER VANCIL: Please
14 proceed.

15 MR. JACOBS: The City has formed a
16 fundamentally flawed Waterfront LID in an arbitrary
17 and capricious manner that unfairly abuses the
18 residential property owners within the LID's
19 boundaries.

20 The City's appraisers created documentation
21 supporting the City's formation of a fundamentally
22 flawed LID in an arbitrary and capricious manner that
23 also unfairly abuses residential property owners
24 within the LID's boundaries.

25 There is a preponderance of evidence

1 supporting my assertions, though I will only address
2 one key point. An essential part of the LID's legal
3 foundation is that the LID's improvements create
4 special benefits or increases in property values.
5 Another critical part of the LID's legal foundation is
6 the requirement that it creates an excellent park.
7 This is a matter that doesn't seem to get much play in
8 conversation, but I'll attempt to fix that.

9 My comments will address whether the LID will,
10 in fact, create an excellent park and why the creation
11 of an excellent park is critical to the LID's legal
12 foundation.

13 First, let's scan the LID's list of
14 improvements. According to City Ordinance 31812,
15 Intention to Form Waterfront LID, Exhibit C, a
16 description of Waterfront LID's improvements cover six
17 projects -- the Promenade, the Overlook Walk, Pioneer
18 Square Street improvements, Union Street Pedestrian
19 Connection, Pike and Pine Streetscape, improvements
20 and additions to Waterfront Park.

21 The problem with this list of improvements
22 that we're being asked to pay for is it doesn't create
23 a park. The top ten words from the 215 words in
24 Exhibit C were counted by a word counting program that
25 I used. The top ten words are: Street, pedestrian,

1 avenue, Pike, Waterfront, improvements, way, Pine,
2 Alaskan, elevated.

3 Those words total 55 counts out of 215 words
4 or 26 percent of the LID's descriptions. Street and
5 sidewalk related words totaled 42 for 20 percent of
6 the 215-word total. While the LID is a highly legal
7 creation, we do not need to suspend common sense,
8 which makes it clear that the Alaskan Way corridor
9 cannot be transformed into an excellent park. An
10 excellent park simply cannot be created within a
11 roughly 200-foot-wide city right-of-way bounded by
12 significant urban development on the east and huge
13 warehouses creating mostly peek-a-boo views of the
14 water on the west bisected by a six- to eight-lane
15 divided major truck street as Alaskan Way is formally
16 designated.

17 A walk from the ferry terminal to just north
18 of the aquarium stopping at Pier 62/63 covers the
19 heart of the LID's expenditures for street and
20 sidewalk improvements. No reasonable person would
21 expect an excellent park to emerge from within the
22 physical constraints of this roadway corridor.

23 Conveniently, by walking a short distance
24 north of the central waterfront, Myrtle Edwards Park,
25 excluding its close proximity to active railroad

1 traffic, provides a vivid contrast between it and
2 whatever the Alaskan Way is or could be making it
3 crystal clear what a park is and what a park is not.

4 For better or worse, the LID's fundamental
5 nature will remain the same. At its core, it's a
6 major land and water transportation hub and as such is
7 a noisy, congested, and touristy part of town not
8 frequented by people who actually live there. From a
9 common sense standpoint, it's pretty obvious LID
10 improvements cannot create an excellent park.

11 Let's consider the assertions. Let's follow
12 up the previous by considering the assertions by both
13 the mayor and the City's appraisers that the LID's
14 improvements will create an excellent park. Mayor
15 Durkan asserts the new Waterfront will attract locals
16 and tourists from around the world rivalling
17 Vancouver's Stanley Park, Seattle Times, January 3,
18 2019.

19 Comparing the Waterfront strip of city
20 right-of-way covering 36 acres and averaging about
21 200 feet in width to the truly spectacular Stanley
22 Park at nearly 1,000 acres in size, almost twice the
23 size of Seattle's large Discovery Park, strongly
24 suggests the mayor has never walked through Stanley
25 Park, a park so massive you could spend a week

1 exploring it and never come across its 1,200-yard
2 par 54 pitch-and-putt golf course.

3 Valbridge Partners, the appraisal firm used by
4 the City to create the Waterfront special
5 benefit/proportionate assessment study for the LID,
6 asserts: With the project elements completed, a/k/a
7 the LID's six improvement projects, the area will be
8 upgraded to an excellent park, which indicates average
9 5 percent increases in condominium values situated
10 within three blocks of the improvements/new amenities.

11 The City's summary of final special
12 benefits/proportionate assessment study was created in
13 a fundamentally wrong, blatantly misleading, arbitrary
14 and capricious manner. For example, it falsely
15 asserts that the Central Waterfront would be
16 considered a park. According to the park grading
17 scale in John L. Crompton's landmark research, on the
18 economics of parklands, which appraisers heavily
19 manipulated to manufacture special benefits for LID
20 properties, the appraisers falsely asserted that the
21 Central Waterfront would be an average park on
22 Crompton's grading scale.

23 It falsely asserts the LID's list of six
24 improvements would elevate the Central Waterfront to
25 an excellent park on Crompton's grading scale. It

1 used these falsehoods to manufacture special benefits
2 by ignoring the fact that Crompton's work and his
3 grading scale was based upon real parks such as -- of
4 the quality of Seattle's Washington Park Arboretum,
5 Seward Park, and Green Lake as good examples.

6 Ironically, Crompton's landmark research
7 documented in his paper entitled "Proximate Principle"
8 was written to document the value of park development
9 to property tax bases of local governments in a manner
10 completely opposite to the way the City and its
11 appraisers have used it.

12 In essence, Crompton documented that both the
13 land acquisition and the cost of improvements for new
14 parks could be entirely financed through increases in
15 the City's bonding capacity created by the increased
16 property tax receipts generated by the increases in
17 property appreciation, a/k/a special benefits,
18 experienced by properties located in close proximity
19 to the parks. No LID required.

20 After appraisers labeled the LID-improved
21 Waterfront as an excellent park, they corruptly
22 manipulated Crompton's system to manufacture increase
23 property valuations based upon proximity to the newly
24 labeled excellent park creating from thin air the
25 LID's special benefits, the foundation necessary for

1 it to be legal. Pretty darn slick.

2 This magical process plays out on pages 44
3 through 47 of the assessment study. While marketing
4 puffery is something we're all aware of, in the case
5 of the Waterfront LID, it is something of very
6 important consequence since the appraisers have
7 misused park status to create this assessment study's
8 special benefits. When used properly, LIDs are a very
9 useful tool for financing infrastructure desired by
10 property owners for which a city has little interest
11 or capacity to fund.

12 In closing, let me be clear, for better or
13 worse, Waterfront -- the Waterfront's fundamental
14 nature, past, present, and future, will remain the
15 same. At its core, it's a major land and water
16 transportation hub, and as such it is noisy,
17 congested, touristy, and a place most nearby residents
18 don't frequent. Thank you for the opportunity.

19 HEARING EXAMINER VANCIL: Thank you,
20 Mr. Jacobs. Did you have documents you wanted to
21 introduce?

22 MR. JACOBS: I e-mailed my objection,
23 and it has all of this and lots more.

24 HEARING EXAMINER VANCIL: Excellent.
25 Thank you.

1 We'll take a pause from hearing from
2 objectors. I saw maybe seven to six more that we will
3 get through today. We also have -- I want to come
4 back to Mr. Lutz and Ms. Terwilliger. Before that,
5 though, while I have you all here, I want to take
6 advantage of the fact that you're here and give you an
7 opportunity to hear the overview from the City. We're
8 going to do that.

9 And then we'll return to the individual short
10 objectors that we've started with this morning, and
11 then I'll come back to Mr. Lutz and Ms. Terwilliger
12 after we've heard from those objectors and try to get
13 you a calendar. In part, I'm waiting because,
14 depending on how many objectors we get through today,
15 we free up time on our calendar that we've already
16 got.

17 City? Before the City starts, I will note if
18 you have a date and time, you don't have to stay at
19 this point. You're welcome to stay to observe the
20 hearing. You can observe it by streaming. That's at
21 your election. Once you've presented your objection,
22 there's no requirement to stay in the hearing room.

23 City, please.

24 MR. FILIPINI: Thank you, Mr. Vancil.

25 My name is Mark Filipini. I'm from K&L Gates. I'm

1 counsel for the City in this case, also here with my
2 colleague Gabrielle Thompson and Engel Lee from the
3 assistant -- from the City Attorney's Office.

4 I'd like to talk briefly about the Waterfront
5 LID, which I'll also refer to as the Waterfront LID,
6 how we got to where we're at today, what folks, at
7 least from the City's viewpoint, can expect from this
8 process. And then I'll reserve, as you said,
9 Mr. Hearing Examiner, any comments on legal standard
10 issues until later, and we'll close with your leave on
11 some scheduling and process issues or also I could
12 come back to those later as well.

13 So on January 28, 2019, the City passed
14 Ordinance 125760 and formed the Waterfront Local
15 Improvement District No. 6751. And as I said, I'll
16 refer to that today as the LID or the LID depending on
17 how I get going.

18 Today we're here to begin the next big step in
19 the Waterfront LID finalization of the proposed
20 assessment roll under Chapter 35.44 of the Revised
21 Code of Washington. The Waterfront LID is part of the
22 City's \$724 million multiyear investment to transform
23 and rebuild Seattle's Central Waterfront after the
24 removal of the Alaskan Way Viaduct.

25 Known as the Waterfront Seattle program, this

1 ambitious effort began in 2009 and is projected to be
2 complete in 2024. The project includes new Waterfront
3 features partially funded by the Waterfront LID.
4 These include a park promenade along the water, a new
5 surface street along Alaskan Way, a rebuild of Pier 58
6 which is known today as Waterfront Park, Overlook
7 Walk -- it's going to be an elevated connection from
8 Pike Place Market down to the Waterfront -- and
9 improved east-west connections between downtown and
10 Elliott Bay.

11 Local improvement districts or LIDs are the
12 funding tools authorized by the Washington
13 Constitution and state law by which property owners
14 pay to help fund the cost of public improvements that
15 specially benefit their property.

16 Because certain properties will be specially
17 benefited by the improvements I mentioned, the City
18 included a Waterfront LID concept in its Waterfront
19 Seattle strategic plan which the City Council
20 unanimously endorsed in 2012. Efforts to develop the
21 Waterfront LID before us today began in earnest in
22 August 2016, and the LID has been carefully vetted and
23 analyzed since then.

24 I am prepared to talk about how we got to and
25 through formation, but in expedience if you would like

1 me to go through that, I can come right to today's
2 hearing.

3 HEARING EXAMINER VANCIL: My guess is
4 that most of those in attendance are familiar with the
5 formation, so we can move forward with that.

6 MR. FILIPINI: Okay. As I mentioned,
7 the LID was formed via an 8-0 City Council vote on
8 January 28, 2018. After the LID has been formed, the
9 final assessment roll process begins also under
10 RCW 35.44. The municipality must prepare a proposed
11 final assessment roll, and once the roll is filed with
12 the City Clerk, the City must set a date for a hearing
13 for property owners to object to their proposed final
14 assessments.

15 Notice letters must be mailed to all affected
16 property owners at least 15 days in advance of the
17 hearing. And if property owners do not file
18 objections prior to or at the hearing, they have
19 waived their right to object.

20 So in this case on November 8, 2019, the
21 Seattle Department of Transportation filed a proposed
22 final assessment roll with the City Clerk. On
23 November 18, 2019, the City Council passed
24 Resolution 31915, which set today, February 4, 2020,
25 as the date for the final assessment roll hearing to

1 commence and directed the City Clerk to mail notice
2 letters to all affected property owners. The City
3 Clerk timely did so.

4 At this hearing property owners may object to
5 their proposed assessments before the Hearing
6 Examiner. The Hearing Examiner may recommend that the
7 proposed assessment roll be corrected, revised,
8 raised, lowered, changed, or modified. Further, the
9 Hearing Examiner may recommend that the council set
10 aside the roll in order for the assessment to be made
11 de novo.

12 After this hearing, the Hearing Examiner will
13 file written findings, recommendations, and decisions
14 with the City Clerk for review by the City Council.
15 Any property owner who timely objected before the
16 Hearing Examiner is entitled to appeal the Hearing
17 Examiner's recommendation to the City Council. After
18 hearing and deciding all such appeals, the City
19 Council will confirm final assessment roll by
20 ordinance.

21 Next, I'd like to briefly describe what the
22 Waterfront LID entails in terms of the improvements
23 that I mentioned in the funding for same. The
24 Waterfront LID will partially fund the construction of
25 the following six Waterfront improvements that I

1 mentioned earlier, each of which are statutory
2 authorized local improvements under RCW 35.43.040 as
3 parks and/or street improvements. Those improvements
4 are the Promenade, Overlook Walk, Pioneer Square
5 Street improvements, Union Street Pedestrian
6 Connection, Pike/Pine Streetscape improvements, and
7 the Waterfront Park or Pier 58.

8 The Waterfront LID area includes portions of
9 Belltown, downtown, and Pioneer Square including
10 T-Mobile Park and CenturyLink Field. The boundaries
11 of the Waterfront LID were recommended by the City's
12 independent assessor, Bob Macaulay of ABS Valuation.

13 The total estimated special benefit to the
14 6,238 assessable properties within the Waterfront LID
15 is \$447,908,000. The total cost of the Waterfront
16 LID -- and this includes the improvements and the
17 estimated cost of creating and administering the LID
18 as well as financing costs. The total cost is
19 approximately \$346.57 million.

20 As a result of a protest waiver agreement
21 approved by the City Council, also in early 2019 via
22 Ordinance Number 125762, the actual cost assessed
23 against the properties with the Waterfront LID will
24 not exceed \$160 million plus the financing costs. And
25 with the financing costs added, the total amount to be

1 collected via the Waterfront LID is approximately
2 \$175 million.

3 So you can see the monies collected via the
4 LID are funding only a portion of the cost of the
5 improvements at issue, 364.57 million in approximate
6 costs versus a maximum of 175 million collected.
7 City, state, and philanthropic funds will cover the
8 remaining costs of the Waterfront LID improvements.

9 Since the City passed Resolution 125760
10 forming the LID, it has been hard at work in
11 preparation of finalizing the Waterfront LID
12 assessment roll. As I mentioned, on November 8, 2019,
13 SDOT filed a proposed final assessment roll with the
14 City Clerk. On November 18, 2019, City Council passed
15 Resolution 31915, which set today, February 4, as the
16 date for their final assessment roll hearing to
17 commence and directed the City Clerk to mail the
18 notice letters to all affected property owners.

19 On December 3, 2019, the City sent an e-mail
20 to roughly 1,500 participants on the Waterfront LID
21 Listserv regarding February 4 today's hearing and
22 including links to the final special benefit study and
23 the proposed final assessment roll.

24 On December 30, 2019, the City e-mailed
25 letters to all affected property owners notifying them

1 on the proposed final assessment and informing them of
2 the right to object and participate in the hearing
3 today. And, finally, on January 7, 2020, the City
4 Clerk provided a link on its website to the proposed
5 final special benefits study authored by the City's
6 appraiser as well as his addenda.

7 As I said, I'll reserve for later my comments
8 on the legal standards to be applied to the hearing.
9 I do have just a few scheduling and process issues to
10 address. If you would like, I can go through them
11 now, or I can come back to them later.

12 HEARING EXAMINER VANCIL: I think it
13 would be helpful to address those now.

14 MR. FILIPINI: Okay. Thank you. I
15 understood from your earlier remarks, Mr. Hearing
16 Examiner, that the City will go after the objectors
17 have had a chance to present their cases. In the
18 interest of expediency, we anticipate calling one or
19 more witnesses from ABS Valuation to explain their
20 assigned methodology and conclusions. In order words,
21 taken through direct testimony, I think it could
22 expedite the process for everyone.

23 Following this direct examination of these and
24 any other witnesses the City calls, the City
25 witnesses, of course, would be available for

1 questioning by those objectors wishing to
2 cross-examine them. For scheduling purposes, the
3 City's primary witness -- that's Robert Macaulay or
4 Bob Macaulay of ABS Valuation -- he will be out of the
5 country the week of February 17 through the 21st.
6 From what I've heard today, it sounds like we will
7 likely be still going through the objectors' cases at
8 that point.

9 The City also understands that several
10 objectors -- Mr. Moses raised this issue -- have
11 requested access to additional data files maintained
12 by the City's independent appraiser. That's ABS
13 Valuation. Those files break down into two
14 categories -- supporting information for final
15 condominium assessments and supporting information for
16 final commercial assessments.

17 We do not agree that access to these files is
18 necessary for an objector to obtain an independent
19 appraisal. Nevertheless, we're producing them out of
20 an abundance of caution and transparency. The condo
21 files will be made available to objectors on the City
22 Clerk's website as of tomorrow. There will be a link
23 available on the City Clerk's website that will be
24 live.

25 With respect to the commercial property files,

1 some of those will also be posted to the City Clerk's
2 website tomorrow. But other files contain proprietary
3 information of ABS Valuation as well as at least one
4 third party whose information was obtained via a
5 confidentiality agreement. The City believes that at
6 least some of these files are subject to a proprietary
7 materials exemption from disclosure under the
8 Washington Public Records Act.

9 But, again, nevertheless, the City is not
10 opposed to providing commercial property files to
11 objectors who demonstrate to the Hearing Examiner on a
12 case-by-case basis a need for review by their own
13 appraiser or similar expert witness who they intend to
14 call. We would like to work out some arrangement
15 whereby the party receiving the materials agrees to
16 use them only for this proceeding, to maintain the
17 confidentiality of those materials, and to destroy
18 them upon the final resolution of their objection here
19 or afterwards.

20 Assuming that some subset of objectors will
21 request and obtain some portion of these additional
22 data files, we're not opposed to allowing those
23 objectors to be scheduled at a later date to ensure
24 adequate time to make their objections. I assume we
25 will come back to that later day. Thank you.

1 HEARING EXAMINER VANCIL: Yes. There
2 were at least one objector, I think it was Case
3 Number 97, who indicated they had requested specific
4 documents from the City and had been given a date of
5 February 7 there would be a response.

6 For objectors who -- other than the primary
7 document that I identified in the motion for
8 continuance that was already dismissed, for those that
9 are looking for specific documents, they have been
10 named, they've made a request and they've been given a
11 date that's, obviously, either beginning of or into
12 the hearing, those items -- generally, what I would
13 expect is that those objectors would be provided
14 either an opportunity to proceed and present their
15 objection but to keep the record open for them to
16 submit additional argument to match the receipt of
17 documents they've requested from the City.

18 MR. FILIPINI: Okay.

19 HEARING EXAMINER VANCIL: If they -- if
20 they're not getting documents from the City, that's --
21 they need an opportunity to use those documents. That
22 isn't a general invitation for everyone to reopen
23 their objection. There are specific objectors who
24 identified that, and for those who have identified it,
25 we will work to make sure that their specific request

1 is addressed.

2 Some of this may also be dealt with by either
3 motion or stipulated motion with regard to discovery.
4 You mentioned that the -- there may be a question
5 about whether documents may need to be destroyed or
6 something along those lines. Just remind the City and
7 anybody else that we've got a lot of private
8 information coming in. This is a public record.

9 There's no -- there's nothing private once you
10 submit it to me, and so you need to make sure that
11 anything you have that comes into the record is
12 redacted with private information, social security
13 numbers, etc., income level. Those are things you can
14 black out or maybe if you want to make testimony to
15 them but they'll still be in the transcript. So just
16 be careful when you're considering what comes into
17 this record.

18 I have had parties request to have items
19 destroyed once a hearing is over, but that's not
20 something we can comply with because of the Public
21 Records Act. Essentially, once it comes in, it's part
22 of the record. So what we ask are parties to identify
23 those things and work that out before it comes --
24 crosses the dais. Because once it's over here, it
25 becomes part of the public record and subject to

1 Public Records Act.

2 So if counsel have a different proposal or
3 something along those lines, they may do that through
4 motion, but I just wanted to let you know our general
5 practice.

6 MR. FILIPINI: Our intent would be to
7 try to work out it privately with the objectors that
8 request the documents. If not, we can bring it to you
9 or pursue a court order under the Public Records Act
10 exemption. Thank you.

11 HEARING EXAMINER VANCIL: Thank you,
12 Counsel.

13 All right. We still have, then, six or seven
14 objectors who indicated they had shorter objections.
15 I want to turn to those next, and then following that,
16 we'll probably take a short break just so I can work
17 out some calendar items and have an educated
18 discussion with Mr. Lutz and Ms. Terwilliger.

19 But because individuals are here, they have a
20 shorter presentation, and want to see how far we can
21 get done with those. Those who are here for shorter
22 objections, please raise your hands again. If I could
23 take from this side those three, this gentleman here,
24 and this woman in the back, please come forward and
25 take a seat. We'll get through the rest of you.

1 Everybody is going to get heard.

2 I'd reasonably like to leave here before noon
3 or get out of here before noon for this category of
4 objectors really depending on the timing of the
5 presentations. As you can see, this is a different
6 hearing than the formation hearing. I'm not
7 truncating time. I'm also viewing this with a
8 different standard.

9 In that case I was reporting on what you told
10 me to the council to simply tell them what happened.
11 In this case I'm reviewing it under an evidentiary
12 standard and making a recommendation, so it's a very
13 different hearing if you think that you're here for
14 the same thing.

15 The first individual, please.

16 MS. DUDE: Thank you.

17 HEARING EXAMINER VANCIL: Please state
18 your case number.

19 MS. DUDE: My case number is 17.

20 HEARING EXAMINER: And your name?

21 MS. DUDE: Cornelia Dude.

22 HEARING EXAMINER VANCIL: And can you
23 spell your last name for me.

24 MS. DUDE: D-U-D-E. I have additional
25 materials to hand up, a three-page text summary of my

1 presentation today, seven pages of attachments that
2 illustrate my evidence.

3 HEARING EXAMINER VANCIL: Thank you.
4 That will be marked as Exhibit 1 for Case 17.

5 (Exhibit 1 for CWF0017 was marked.)

6 MS. DUDE: I am Condominium Unit 345 in
7 Waterfront Landings. You've heard from others of us
8 this morning. This is Parcel No. 9195871870 which is
9 subject to the special assessment. I appear on my own
10 behalf not as a delegate of any other homeowner.

11 That being said, however, if relief that I
12 seek were to be granted to me, fairness would dictate
13 that it be accorded all other homeowners in the
14 parcel.

15 HEARING EXAMINER VANCIL: And,
16 Ms. Dude, just please make sure you speak into the
17 microphone. I want to make sure you're being picked
18 up both for the record and for those in the audience
19 who are listening. It might be your scarf that's
20 coming between the microphone and your mouth.

21 MS. DUDE: Okay. But I'm looking down
22 here, so that's why I had positioned it down here.

23 My objection to Waterfront LID No. 6751 was
24 filed with the Seattle City Clerk on January 8, 2020,
25 and it is incorporated by reference. By its

1 Resolution 31915, the City of Seattle delegated to the
2 Hearing Examiner the City Council's own undertaking to
3 sit as a board of equalization in considering the LID
4 assessment roll endowed with the power as the City has
5 observed to correct, revise, raise, lower, change, or
6 modify the roll and order the assessment to be made in
7 de novo.

8 HEARING EXAMINER VANCIL: I'm sorry,
9 Ms. Dude. But the microphone is just not picking you
10 up. You'll need to -- have it about as far away from
11 your face as the microphone is to me. There we go.
12 That might work.

13 MS. DUDE: The county board's
14 equalization manual for Washington State states that
15 the legal standard of proof that taxpayers must show
16 in order to overcome the assessor's presumption of
17 correctness is proof that is clear, cogent, and
18 convincing. Equalization will be served by excepting
19 the subject parcel from the residential property
20 assessment roll based on the following evidence, some
21 of which you've already heard about today, but I think
22 my list is even more complete.

23 The roll is based on the presumed homogeneity
24 of all residential parcels identified to the LID, but
25 Waterfront Landings is uniquely different from other

1 residential parcels in that for the past six years the
2 four sides of the parcel have been unrelievably
3 surrounded by demolition and construction that's
4 illustrated by Attachments 1 to 4, photographs that
5 I've taken of the four sides of our building.

6 I could have taken an additional photograph
7 this morning to update our situation to show you the
8 mountain of gravel that has been dumped on the south
9 side of our building to facilitate the construction of
10 the roads.

11 In effect, we've had a perfect storm of
12 demolition and construction, and it began in 2013. To
13 the west and south, we have endured demolition and
14 construction of the new Elliott Bay seawall, the
15 salmon migration corridor, the western walkway to
16 provide light to the migration corridor, Pier 62, the
17 raising of improvements, soil detoxification,
18 relocation and replacement of water mains and utility
19 conduits, and viaduct demolition.

20 To the east and north, we had more viaduct
21 demolition. We have preparation for the construction
22 of the new extended Elliott Way, preparation for
23 construction of the new connector roadway diverting
24 traffic from Alaskan Way up to the new Elliott Way,
25 and repeated interruptions of ADA access to Belltown

1 due to viaduct demolition. And I'm sure everyone in
2 this room has visited the Seattle Waterfront. The
3 Waterfront is here. Belltown is here. ADA access is
4 quite important.

5 Moreover, for years into the foreseeable
6 future, our parcel will endure construction of the
7 newly extended Elliott Way road, the new connector
8 road linking Alaskan Way to Elliott Way, and as has
9 been observed by others from Waterfront Landings, by
10 virtue of this road, a number of units will then be
11 below grade and suffer other detriments to their quiet
12 enjoyment.

13 The aquarium's ocean -- continuing of the
14 construction and demolition -- or the construction and
15 demolition that continue into the foreseeable future.
16 The aquarium's ocean pavilion adjacent to the south
17 side of the connector roadway -- this was published in
18 The Seattle Times on 12/9/2019. The Pike Place Market
19 Overlook Walk and the Pike Place Market Promenade to
20 the Waterfront, again, the detriments includes the
21 environmental pollution common to demolition and
22 construction such as dust, noise, and air pollution
23 together with air pollution associated with traffic
24 congestion and idling vehicles, abatement of ADA
25 access accommodation.

1 My attachment 5 illustrates this. It is an
2 e-mail from Waterfront Seattle projecting two- to
3 three-year closure for Lenora Street elevator and the
4 sky bridge to Belltown. Interference with the right
5 to rent or dispose of property, see my Attachment 6,
6 which is a photograph of Zillow's price history from
7 my unit showing that it has decreased substantially in
8 recent years and that, generally speaking, it lags
9 behind the rest of residential properties in Seattle.

10 Even beyond 2023 when funding becomes
11 available, demolition and rebuilding of Pier 63 will
12 be undertaken west of our parcel. Revisiting the
13 Pier 62 detriments, including detours, the noise of
14 pile driving, concrete sawing, this is illustrated by
15 my Attachment 7, which is an e-mail from Waterfront
16 Seattle explaining the Pier 63 situation.

17 Surely, no other residential property on the
18 road -- parcel on the roll has been subject to
19 Waterfront Landings' number, degree, and duration of
20 detriments. Effectively, we've been subjected to
21 multiple simultaneous municipal projects or multiple
22 governmental or community entities. In bearing this
23 burden, we have made our contribution to Waterfront
24 renewal.

25 Whether to dominate an inverse condemnation or

1 any other legal term of art, a criterion that can tip
2 the balance in such cases is the length of time a
3 complainant has suffered the detriments. Surely, a
4 continuous exposure to our detriments for what
5 reasonably can be foreseen to span a decade places our
6 parcel outside the cache of residential properties
7 presumed to be homogenous.

8 Any special benefit that might be derived in
9 the long-term is offset by our present special inverse
10 condemnation detriments. I was 65 years old when
11 demolition began in 2013. When the ocean pavilion is
12 completed in 2023, I will be 75 with work on Pier 63
13 still presumably to come.

14 Quiet enjoyment of my home is a great value to
15 me in these years. I ask that the City recognize that
16 value and accordingly grant remission of its special
17 benefit assessment against my uniquely situated
18 residential parcel in order that the burdens on my
19 quiet enjoyment not be compounded by this financial
20 imposition.

21 Thank you.

22 HEARING EXAMINER VANCIL: Thank you,
23 Ms. Dude. Please wait just a moment. I need to do
24 something procedurally I didn't do earlier.

25 Everyone who is -- who has testified and/or

1 will testify in this five- to ten-minute period,
2 please raise your right hand. Do you swear --
3 Mr. Star, you too. Do you swear or affirm the
4 testimony you have provided or will provide will be
5 the truth or has been the truth?

6 MS. DUDE: I so swear.

7 HEARING EXAMINER VANCIL: Speaking for
8 all of you, thank you.

9 Thank you, Ms. Dude.

10 Next.

11 MS. ROY: Okay. Can you hear me
12 through this one?

13 HEARING EXAMINER VANCIL: Yes. Please
14 state your case number.

15 MS. ROY: Case number is 346. My name
16 is Andrea Roy. I am representing the owners of West
17 Edge Tower. We are not here to dispute the benefit of
18 the LID or the methodology behind it but rather the
19 specific assessment to our subject property.

20 The LID valuation goes to great lengths to
21 establish that the assessments are both reasonable and
22 proportionately established across the LID benefit.
23 This means that for all buildings with the similar
24 highest and best use those valuations should move
25 proportionately. The LID valuation is assessed as the

1 benefit received by these units based on the base
2 valuation of the representative properties.

3 In the case of West Edge, we have been valued
4 far in excess of any other property in our cohort, in
5 our market, or in our zoning code. In fact, the
6 building itself has been valued at 17 percent above
7 the highest valuation in that cohort and 33 percent
8 above other properties.

9 We're asking for this valuation to be
10 reexamined and brought in line pursuant to the methods
11 established by the ABS valuation. Additionally, we
12 would like to have the ABS Valuation assessment roll
13 amended to fix the errors within it, specifically,
14 establishing West Edge highest and best use as
15 commercial, not multifamily.

16 Should the valuation be commercial, we would
17 like to point out that the valuation has been
18 established at a price of approximately \$2,400 a
19 square feet. The highest office sale in the city was
20 recently established in November of this year -- that
21 was after the benefit study was published -- at about
22 \$1,000 per foot, so more than twice what we've been
23 assessed at.

24 We're not looking to argue the process or
25 procedure. We're merely asking for a reasonable and

1 proportionate benefit be assigned to this property.
2 We provided additional benefit documentation that was
3 put through last night. We're happy to reenter that
4 today as well.

5 HEARING EXAMINER VANCIL: Thank you,
6 Ms. Roy. Let's enter that as Exhibit 1 for case
7 Number 346.

8 (Exhibit 1 for CWF0346 was marked.)

9 HEARING EXAMINER VANCIL: Ms. Roy, I
10 wasn't clear on your testimony whether you were
11 indicating that you believe that the valuation should
12 be based on commercial or multifamily?

13 MS. ROY: We believe that it should be
14 on multifamily. However, given the outsized impact
15 that a multifamily valuation, should you choose to
16 value us as commercial, we'll gladly accept that.

17 HEARING EXAMINER VANCIL: Thank you.

18 Next. Please state your case number and your
19 name.

20 MS. EVANSON: Good morning. My case
21 number is 392, and my name is Kimberly Evanson on
22 behalf of the Pike Place Market Preservation and
23 Development Authority or the PDA.

24 We're here with respect to two parcels today,
25 Parcel 800855000 -- that's the Storehouse

1 Condominium -- and Parcel 1977200385, which is known
2 in the assessment roll as the North Arcade.

3 Our objections today are only in the nature of
4 corrections of factual errors in the assessments of
5 these two properties. The Market does not otherwise
6 object to the LID. With respect to the Storehouse
7 Condominium, it's located in the Pike Place Market
8 Historic District, which is subject to multiple unique
9 regulatory overlays that do not affect similarly
10 situated private property.

11 The Storehouse has three units. Two of them,
12 consistent with the Market's mission, provide
13 low-income housing, one via Section 8 units through a
14 HUD program, the other through single-room occupancy
15 units. These are units with shared bathrooms down the
16 hall.

17 The benefit is overstated with respect to
18 Storehouse in particular due to two principal errors.
19 The first is that Storehouse, unlike other condominium
20 properties in the area, has been separately assessed
21 for the value of its land. And that land is taken and
22 valued apart from the three condo units themselves.

23 Now, as we explained in our written objection,
24 which I won't go through in detail, but this matters
25 because that has the effect of overstating the benefit

1 by not applying the land value to two of the units
2 which should have been credited for low-income
3 housing. That's the second error which is compounded
4 by the separate assessment on the land.

5 Now, low-income housing is subject to -- which
6 is subject to money restrictions and its rent schedule
7 does not specially benefit like other private
8 commercial properties may. So to correct these
9 errors, a series of calculations would be necessary
10 which is to reallocate the value of the land that was
11 separately assessed to the three condo units within
12 Storehouse and then to apply the credit to Unit 2 and
13 3 which both provide low-income housing, as I stated
14 via Section 8 in Unit 2 and via the single-room
15 occupancy units in Unit 3.

16 Now, the SRO units, they're in the same
17 building as the Section 8. There's no separation.
18 They have separate parcel numbers basically due to the
19 fact that they had different tax credit schemes
20 applicable to them through the historic district over
21 time. So those units, even though they're not
22 formally income restricted, are functionally income
23 restricted both due to the restrictions on the Market
24 and the amenities that are provided through those
25 units which are intended to and do serve low-wage

1 workers.

2 So allocating the value for Storehouse and
3 crediting out the low-income housing will result in
4 reducing the special benefit assessed to Storehouse
5 and correcting the errors to result in a more
6 proportionate assessment.

7 The second property is the North Arcade that
8 also has two errors. The first is the building size
9 listed is incorrect by about 10,000 feet. The price
10 per square foot of the pre-LID value is also several
11 orders of magnitude higher than comparable Market
12 properties, including market rate properties.

13 As we stated in our materials, the size of the
14 building that occupies the North Arcade, which is part
15 of the covered stalls at the Market, it takes up the
16 size of the parcel itself. So the building size
17 actually should be expanded to approximately
18 13,000 feet, and then a comparable price per square
19 foot should be applied. We suggested based on
20 contiguous Market property, including the Main Arcade
21 of the Market, that that price per square foot should
22 be roughly \$550 per square foot and then a
23 corresponding benefit value of 2 percent would also
24 bring the North Arcade more into step with contiguous
25 Market properties. Currently, the 2.9 percent benefit

1 value is much higher than other contiguous Market
2 properties, including the Main Arcade of the Market.

3 So, again, the Market would respectfully
4 request that these two factual errors with respect to
5 each of these two properties be corrected and the
6 assessment reflected.

7 HEARING EXAMINER VANCIL: Ms. Evanson,
8 you made reference to your objection. Did you in the
9 objection lay out your -- essentially, did you do the
10 math? Did you do the valuation in that?

11 MS. EVANSON: We did do the math.

12 HEARING EXAMINER VANCIL: Okay. All
13 right.

14 MS. EVANSON: Thank you.

15 HEARING EXAMINER VANCIL: That's
16 important, people. Don't just ask me to do it for
17 you. Your argument is your argument. If it's in that
18 objection, then I understand that you've presented
19 evidence to support the oral testimony you've provided
20 today.

21 Do you have anything to introduce today?

22 MS. EVANSON: This is just another copy
23 of our objection. I don't know if it needs to be
24 resubmitted.

25 HEARING EXAMINER VANCIL: We've got

1 that covered.

2 MS. EVANSON: Thank you very much.

3 HEARING EXAMINER VANCIL: Next.

4 MR. JENKINS: So my case number is 355.

5 My name is John Jenkins, and property address is
6 2033 Second Avenue, Apartment 1112.

7 In my objection that -- I had seven points in
8 the objection that I filed ranging from the
9 constitutionality of the LID to the fact that we don't
10 feel we have any special benefit coming out of all
11 this. But what I would like to just go over is the
12 first objection that I had was market value without
13 the LID, the values that are within the Waterfront of
14 Seattle final special benefit study.

15 I went and looked up similar units in terms of
16 square footage and one bedroom, number baths and all
17 that that had sold over the last six to eight months,
18 compared them to the values that are in the LID, and
19 found them wide ranging from there were a couple that
20 were actually under the selling price by up to
21 \$100,000. The vast majority, about 80 percent of the
22 ones I looked up -- I just did a spot check. I didn't
23 do all of them -- ranged from \$20,000 overvalued to
24 over a half million dollars overvalued from what the
25 actual selling price was within the last six months.

1 So -- and I also did -- with those same units,
2 I did what Zestimate, just from Zillow, got the
3 Zestimate of it, and they were actually much more in
4 line with what the selling price was, although they
5 still were over from 10 to 25,000 dollars. So I went
6 and did comparables to our unit, square footage,
7 number of bedrooms, baths, and found that our unit
8 should be roughly about \$700,000. It's valued in the
9 LID estimate at being about \$745,000.

10 And so I think our value is -- or the value
11 that the LID is based upon is overvalued in the LID
12 market value of that LID. And so I would like an
13 adjustment at the very least for that, and I have the
14 spreadsheet on the ones that sold versus the LID
15 values and the Zestimates and comparables. It's all
16 in what I submitted yesterday.

17 HEARING EXAMINER VANCIL: Those are
18 attachments to your objection?

19 MR. JENKINS: Yes. So you don't need
20 that, I guess?

21 HEARING EXAMINER VANCIL: No. Thank
22 you.

23 MR. JENKINS: Thanks.

24 HEARING EXAMINER VANCIL: Next.

25 MS. BERESFORD: Good morning. This is

1 Case Number 137. My name is Shirley Beresford, and
2 I'm speaking today on behalf of my husband and I who
3 own one of the condos within the LID assessment. We
4 sent our objection in writing and via e-mail, and
5 today I just want to underscore one or two individual
6 points which we wanted to make for the benefit of
7 everybody here.

8 So we're contending that it's pure speculation
9 what benefit, either general or specific, if any, that
10 the LID improvements will create. And that point has
11 been made by several speakers already this morning,
12 but to just point out that the special benefit
13 associated with amenities, such as a publicly owned
14 park, is not obviously beneficial, so it's harder to
15 prove, as in the same fashion as a utility extension,
16 which was the original rationale behind the LID
17 improvements.

18 Our property is not receiving any special
19 benefits, and in that case it's unlawful to include
20 any property that will not receive special benefits
21 and is an unconstitutional taking of private property.
22 It's our contention that the supposed benefits are
23 speculative at best. Our property does not have a
24 view of the area of the new park. There will be no
25 view benefit as a result of the Waterfront LID

1 improvements.

2 Nearby conditions are currently mixed with
3 heavy foot traffic around the area made up of
4 residents walking or catching buses, tourists taking
5 advantage of nearby attractions, for example, the Pike
6 Place Market itself, and individuals without a home
7 struggling to find a place to rest and stay warm or
8 obtain additional funds to support them.

9 The density of this mixed foot traffic and its
10 mixed character is only likely to increase, especially
11 with respect to the third category of pedestrian.

12 Therefore, there will be no benefit in walking
13 pleasure to or from our property as a result of the
14 Waterfront LID improvements.

15 Our property has gone down in value since the
16 announcement of the Waterfront LID improvements. It's
17 not worth now what the City said it was in 2020. The
18 King County assessor valuation is higher than the
19 valuation listed on sites like Redfin, for example.

20 The argument that our property value will increase as
21 a result of the LID improvements is patently false.

22 Thank you.

23 HEARING EXAMINER VANCIL: Thank you.

24 Did you have any additional documents there that were
25 not already a part of your objection?

1 MS. BERESFORD: No, I do not.

2 HEARING EXAMINER VANCIL: Thank you.

3 In this category of objectors for today, how
4 many do I have left? Just, again, a show of hands.
5 I've got three of you. We're going to press on and
6 get those concluded so we can take a break after that.
7 If those objectors will come up to the reserved
8 seating.

9 The -- we're going to get through these
10 objections. We'll take a short break. I will review
11 the calendar and see where we're at with that for the
12 individuals that were signed up in the hallway and
13 then have some conversation with some of our larger
14 cases.

15 If you were here and you signed up for the
16 hour or less slot for another day or time, your reward
17 for staying later at this point could be that you come
18 on after the lunch hour. We can give you an earlier
19 time if you want that. So I will offer that to anyone
20 that's still here. If you're taking the day to do
21 this, then we may have some time later in the day, and
22 I will make that available to you. But let's check
23 that when we get there. I'd like to finish with this
24 segment of the objections first.

25 Case number and name, please.

1 MR. KATZ: My name is Frank Katz,
2 K-A-T-Z. And, actually, I have two case numbers, one
3 of which you had on the board a minute ago probably
4 because I was scheduled for two in 15 minutes.
5 Listening to how busy you are and knowing how busy I
6 am, I'm going to try and get both of them done in ten
7 minutes or pretty close thereto. And the case numbers
8 are 142 and 143.

9 THE REPORTER: Can you please state
10 your name again.

11 MR. KATZ: Frank Katz, K-A-T-Z.

12 HEARING EXAMINER VANCIL: Thank you.

13 MR. KATZ: So just the background, I
14 live within the LID district, and my daughter has a
15 separate condominium that lives in the LID district.
16 The reason I'm here is because today is my 67th
17 birthday, and I have the privilege of having lived in
18 ten different states and operating factories in ten
19 other states.

20 And I've been through a lot of real estate
21 issues, and, honestly, I've never protested an
22 assessment of any type before. But this one just
23 really feels wrong to me, and I just want to take a
24 minute and tell you why it feels wrong to me. I
25 happened to be watching David Letterman last night,

1 reruns, so you're going to get my top ten list, not a
2 lot of detail here. If you would like anything more,
3 I'm happy to come back to you.

4 Number 10 -- and I won't stay on this one long
5 because you already said it's not relevant -- I think
6 the process has been really abysmal. It's been
7 incomplete. Even today when you say we're going to
8 get to talk to the people who did the audit or the
9 valuation after we've already made our objections,
10 it's kind of backwards. We really ought to know what
11 people are thinking, and that's been consistent with
12 the way this was done since the very beginning.
13 Things have not been complete. We weren't furnished
14 complete lists on a timely basis. That's my first
15 objection.

16 Second objection, which I know you've also
17 heard before, is that this LID, in my opinion, was not
18 really properly created. We have a thing in the
19 United States and in this state, which is no taxation
20 without representation, as you're well aware. There's
21 only six people -- I heard them say earlier the vote
22 was 8-0 in City Council. That's because the one who
23 represents the people in the LID wasn't allowed by
24 council rules to vote. Of the remaining eight people,
25 only two of them have any interest in the citizens who

1 live in this particular district.

2 So it's six of the nine possible votes were
3 kind of by people who have no interest in this and
4 that's not fair. People need to be able to not just
5 speak -- and I appreciate the fact that you're
6 listening, but people have to have an opportunity to
7 vote as well.

8 The third, I know you've heard this before.
9 Actually, this is number 8 on my top ten list. It's
10 not really a special benefit. Special benefit, from
11 everything I've been able to see, you use that for
12 somebody builds a road or somebody builds a utility
13 that goes to a certain area. You say this many people
14 are going to get power. This many people are going to
15 get access.

16 Everything that's in here is just very vague.
17 There's no way of quantifying what this special
18 benefit or perceived special benefit is. And more
19 importantly, I keep reading all the information. This
20 is a park for all the people. In fact, it's a park
21 for people that don't even live in Seattle. It's a
22 park for the tourists that are coming and visiting.
23 So I can't understand why people think there's a
24 special benefit conferred on the people that are in
25 the property. I really don't believe there is a

1 special benefit.

2 The value of the LID, I don't know how you
3 measure this. I really don't. I haven't the faintest
4 idea how you measure this. This is number 7. LIDs
5 were created to fund local improvements and so on and
6 so forth. I just have no understanding of how you're
7 going to measure it.

8 And that goes to the next one, which is that
9 the benefit on this is not really calculated. It's
10 more a question of allocated. They needed to raise
11 some money, so they went out and they said, okay,
12 we've got to raise this much money. Let's go find the
13 people that live nearest, and then they said, you
14 know, we're going to get to this \$170,000, whatever it
15 is. They come up with a greater formula, and then
16 they allocate it to us.

17 AUDIENCE MEMBER: 170 million.

18 MR. KATZ: Thank you. 170 million.

19 I think now I get to my opinion, the more
20 important ones. So I'm up to the top five now. The
21 assessment represents a faulty assumption of what
22 provides value to property. One of my condominiums is
23 on the 30th floor of a building, and I have this
24 beautiful view. That's where the value of my
25 condominium comes from. The value is not related to

1 how many people come to the Waterfront.

2 I have plenty of access to the Waterfront. I
3 think I'm jumping ahead. That was number 2. We'll
4 stay with where we were. The value of what I do or
5 what I own is not related in any way, shape, or form
6 other than the fact that when you start to build this
7 you're going to have more and more people there.

8 The restaurants that I go to are going to
9 continue to be overcrowded in the summer, and I'm not
10 going to be able to get to them. And, of course,
11 there's going to be an increase in crime related to
12 this. So I just don't understand the value
13 assumption. Why is it that I'm getting any better?
14 Why is it that my property will be worth five cents
15 more because they're building a Waterfront LID? I
16 don't get it. I don't really think there's a value
17 assumption that's underneath this.

18 Number 4, the assessment does not consider
19 what it's going to do to property values as a function
20 of crowds and crime. I mean, we all know that this is
21 a problem area, Third and Pike, which is very close to
22 us. Now we're nationally known as the place where
23 people get shot on their way to work and where stores
24 are vacating it.

25 And this is just sort of more people -- the

1 reason that exists is because you have this confluence
2 of transportation and money and tourists, which leads
3 to the drug trade. They're just going to create more,
4 and, if anything, it's going to drive the value down.
5 So, again, I just don't understand how there would be
6 a creation of any value, which is the basis on which
7 the assessment is being made.

8 Number 3, I am not going to get any benefit
9 from this LID. I already have plenty of access to the
10 Waterfront. I know where the stairs are. I can get
11 down there. I'm certainly not going to be in this
12 park very often. There's no benefit that's given to
13 me in terms of access to the Waterfront.

14 Number 2, I have grave concerns about what's
15 going to happen with this park on the Waterfront. If
16 you look around the city of Seattle, by and large, the
17 parks that we've built and attempt to make the city
18 more beautiful have been more of a problem. There's
19 crime. They're an area where the homeless accumulate,
20 and it's unsafe to go through at night.

21 There's -- if you live in the area, you know
22 that we walk through the alleys and off to the sides
23 of the parks, people are urinating. This park I have
24 grave fears about it, and that leads me to what is
25 really my number 1 objection.

1 This is not -- I don't know if this is in your
2 purview, but I got to say it anyhow. This is not
3 where the City needs to be investing money today.
4 Leave aside the money that they're raising from me --
5 and I know you probably don't look at the bigger
6 picture, but the City, it's got problems. We don't
7 have enough money for our police force. We don't have
8 care for the mentally ill. We don't have housing,
9 affordable housing, for enough people.

10 So as upset as I am about the
11 \$170 million that's coming through the assessment, I'm
12 almost more upset about the fact that the City is
13 taking -- I probably heard the number, but I didn't
14 hear it. Probably as much or more, if I had to guess,
15 of their money and their time and your time investing
16 in a project which is not where the City, at least not
17 where the downtown area, needs to be spending its
18 money.

19 So that's all. I hope if any of those things
20 are interesting, you would like more information, I'd
21 be happy to make sure to get it to you. I'm sure
22 27 people have protested for you. As someone who has
23 lived a lot of places, this is really -- anyhow,
24 here's my top ten list. Next time, I'll come with a
25 presentation where I show one at a time.

1 HEARING EXAMINER VANCIL: Thank you,
2 Mr. Katz. We're going to mark that as Exhibit 1 for
3 Case Number 142.

4 (Exhibit 1 for CWF0142 was marked.)

5 HEARING EXAMINER VANCIL: Just as a
6 quick matter of efficiency, for those of you speaking,
7 there's no need to apologize if someone has said
8 something before. That's normal in public speaking
9 opportunities, but here you're putting on your case.
10 So it's the first time that's heard for that case, so
11 please put on your case.

12 MR. BOND: Our case number is 0216,
13 Doncaster Investments, Third and Pike, Melbourne
14 Tower.

15 Doncaster hereby objects to the proposed final
16 assessment for the Waterfront LID 6751 of \$324,428.62,
17 which represents a 39.2 percent of the final
18 assessment benefit of the LID improvements to the
19 Melbourne Tower of \$828,000 as determined by the ABS
20 Valuation of October 1, 2019, the date of the
21 valuation.

22 For certain data used by the ABS Valuation is
23 grossly inaccurate. And we will refute their basis
24 below based on accurate data and information. It
25 should be noted that earlier in 2019 when the values

1 first were posted that when we were contacted by the
2 City that the value that they were showing for the
3 Melbourne Tower to be \$38 million was absolutely
4 incorrect and asked at that time for the value to be
5 corrected. We were told then that our dispute -- to
6 be able to dispute these numbers we would be at the
7 time of implementation, which was going to be around
8 October, which is, I guess, now.

9 This shows the gross building area of 138,893
10 square feet with a net building area of 98,070 --
11 98,770 square feet. We've been working with a King
12 County Assessor's Office to correct some of this false
13 data. We show our BOMA gross footage to be
14 approximately 113,845 and our BOMA net square footage
15 to be approximately 102,886 square feet. Of that
16 102,000 square feet, just over 14,000 square feet or
17 9,300 net is our basement and areaway used primarily
18 for storage.

19 Number 2, ABS Valuation study states that
20 Melbourne Tower market value before the LID
21 improvements 38,346,000, and they've determined a
22 2.16 percent positive special benefit. This erroneous
23 value of \$38 million must have come out of someone's
24 hat. We can't figure it in any way how that has come
25 about. Even King County has determined our value in

1 2019 to be 23,423,000, which rose in successive years
2 from 22,026,000 in 2018 from 19,331,000 in 2017 and
3 16,706,000 in 2016, which is the year that our
4 retailer doubled its space taking over the second
5 floor converting the second floor from office to
6 retail.

7 We have contested a couple of these values
8 with the King County Assessor. In fact, we're going
9 before the Board of Tax Appeals here in March, so we
10 don't even agree on the \$23 million value. Yes,
11 rental rates have been climbing, so have operating
12 expenses, including utilities, taxes, insurance, labor
13 costs at all levels.

14 Our neighbor, the West Edge Garage, has a
15 similar content of land of 12,582 square feet. It has
16 a similar net square footage of 100,000 square feet,
17 and the ABS report values them at 22,648,000. So
18 they're very close in that value to what King County
19 is showing us for ours right next door.

20 There's talk about -- the ABS talks, you know,
21 in extense about what's going to be right for
22 development in the valuation study, etc. This may be
23 the case for our neighbor, the West Edge Garage,
24 because they do enjoy the zoning of 240/290-440
25 classification, which would be an ideal redevelopment,

1 just like the new West Edge Condominium Tower directly
2 across the street on Pike Street.

3 Yet our zoning at Third and Pike does not
4 share any enhanced redevelopment opportunity. It
5 remains under the old DRC 85-170 classification
6 restricting any kind of redevelopment or potential
7 increase in land value. So even if the county
8 prevails at the State Board of Tax Appeal and their
9 value remains at this \$23 million range, similar to
10 what the garage behind us at 22.6 million, then,
11 Hearing Examiner, we would ask you that you would
12 relocate -- reallocate that our cost and our range
13 that the LID improvement range would be 489,000 to
14 505,000, that our assessed rate then would be
15 approximately 191 to 198,000 dollars.

16 In addition, some of the proposed changes that
17 they're talking about for Pike and Pine -- I'm going
18 to specify on Pike -- by limiting traffic down to one
19 lane has caused significant challenges for our street
20 and our building specifically. We used to have three
21 lanes. They've already done some of these
22 improvements by adding the bike lane. They've changed
23 it down to one lane on Pike Street.

24 There's incredible traffic snarl from First to
25 all the way to Fourth on Pike Street. We have no

1 access to our building because Third Avenue is the
2 transit center, and we have no ability to drop people
3 off or on, on Third Avenue and now not on Pike Street
4 as well with only being down to one block -- one lane.

5 Our alley can be blocked from a half an hour
6 to up to two hours a day with delivery trucks stacked
7 in the alley, especially in the morning hours.
8 Somehow the ABS report says that we're going to see a
9 special positive benefit from all of these
10 improvements, and they've decided that we should get a
11 2.16 percent special improvement. And we think that
12 is absolutely inaccurate and false.

13 We did notice that in other parts of the study
14 residential assessments got a .25 percent for special
15 benefit. We're going to say that because of these
16 improvements they're actually detracting from our
17 value, and we think that the special benefit, if there
18 is going to be a special benefit, should also be .25
19 and not 2.16 percent.

20 I think like it's been said earlier, it should
21 also be duly noted that our location has suffered and
22 has suffered for years from negative behavior that
23 exists, specifically at Third and specifically on Pike
24 Street, with the air drug use -- the open air drug,
25 the dealing, the aggressive forms of panhandling, the

1 theft, the robbery, the assaults that occur. They
2 keep our rental rates lower. Many buildings around
3 town have seen and experienced great strong rental
4 rates, but at Third and Pike it's a challenge.

5 Real estate brokers often cite that
6 prospective tenants that they might have brought just
7 didn't really care for the area. Safety is always one
8 of those chief concerns and factors. Since the start
9 of the viaduct's demolition, we have seen more
10 homelessness and more mental illness and more of that
11 negative behavior move up into the city where before
12 it had stayed down below by the Waterfront and where
13 the viaduct existed.

14 I attended many, many of the public hearings
15 as it related to this LID formation and the values
16 that were going to be tried to be added, and one of
17 the things that they addressed was that as a park they
18 were going to be able to police that better. And one
19 of my concerns, being at Third and Pike, was, well,
20 what's going to happen with all that -- all of the
21 negative behavior being moved up into the city? Is
22 that going to be treated as a park as well, and are we
23 going to get the same benefit of the policing and not
24 allowing for the negative behavior of homelessness and
25 mental illness and open air drugs being perpetuated on

1 our sidewalks and our alleys, the defecation, the
2 urination, and some of the other things that have
3 already been mentioned?

4 Until the City really addresses and takes firm
5 corrective stance against all that kind of negative
6 behavior, we're not going to see rent increases and
7 values increase significantly like the rest of the
8 city might have experienced. This is totally
9 independent whether LID improvements are made or not.
10 The LID is not going to add one dollar of value to our
11 property, and so we don't believe that the assessment
12 at all is a benefit to us.

13 We ask the LID examiner here that we would ask
14 that you would consider a value of 19,300,000 before
15 the LID assessment. We'd also request that you would
16 accept less than the 2.16 percent positive special
17 assessment to be taken into account based on our
18 neighborhood and the limitation that we have for any
19 kind of land value increase, etc.

20 We would ask that you consider a 1.08 percent
21 based on the value of 19,300,000, which at 39 percent
22 would take us to a special assessment of 208,000 which
23 would take our assessment down to \$81,780.48. I did
24 provide this in writing already, but I wanted to be
25 able to share that orally as well.

1 HEARING EXAMINER VANCIL: Thank you. I
2 just want to make sure we're clear on the record. I
3 got your Case Number 216. And you indicated you were
4 speaking for Doncaster Investments, but I didn't get
5 your name.

6 MR. BOND: Lou Bond, L-O-U, B-O-N-D.

7 HEARING EXAMINER VANCIL: Thanks.

8 Next. Case number and name, please.

9 MR. PITLICK: Good morning. Case
10 number 0352. My name is Bill Pitlick. I live at
11 Marketplace North at First and Virginia.

12 HEARING EXAMINER VANCIL: Could I ask
13 you to spell your last name, please.

14 MR. PITLICK: Pitlick, P-I-T-L-I-C-K.

15 HEARING EXAMINER VANCIL: Thank you.

16 MR. PITLICK: I'm here to -- contrary
17 to what you've asked, I'm here to say that I think the
18 LID is totally inappropriate, arbitrary, and
19 capricious. It's improvements that will be
20 appreciated on a national scale, international scale.
21 We have tourists. Most of the people within the LID
22 will not be using it, so it's not a special benefit.
23 I'll talk more about that later.

24 But the calculation of my LID assessment is
25 totally arbitrary, and it's -- I don't know how they

1 calculated it, because there's no time frame
2 associated with it. Is this -- is this the increase
3 in assessment over -- increase in value over five
4 years? ten years? three years? one week? I don't know
5 what that assessment is, but that -- that will have a
6 huge effect on the actual valuation -- increase in
7 valuation to my property. If you're talking about ten
8 years from now when the -- when my payment will be
9 done with the LID, if I pay it, you know, that's an
10 increase in -- that's an insignificant amount. If
11 it's this week, that increase in valuation is quite
12 significant.

13 But I will say this, that the valuation that
14 they've proposed, regardless of when it is, is within
15 the margin of error. It's noted in the Gibbons
16 letter, which I have attached to my objection. It
17 can't be discerned. It's the difference between a
18 head of lettuce costing a dollar and a dollar and two
19 cents, and you're going to tell me that that two cents
20 is because it rained last week in the Central Valley
21 in California? There's so many factors that go into
22 that increase in valuation that you can't -- you can't
23 set it on one specific variable such as the LID
24 improvements.

25 I'd like to talk about the LID itself.

1 There's six different projects in the LID. First of
2 all, there's the Promenade Park, there's Pike and Pine
3 Street improvements, there's Pioneer Square
4 improvements, Pier 58, and the Overlook Park --
5 Overlook Walk. Sorry. First of all, the Promenade
6 Park is -- as Mr. Jacobs said earlier this morning and
7 others have said, this is not really a park. This is
8 a commercial roadway. We're going to plant some trees
9 alongside it and call it a park.

10 I have significant problems with the fact, as
11 a previous speaker noted, that the City does not
12 currently -- is unable to police the parks that we
13 have. How are they going to police this brand-new
14 park? They're going to take resources away from the
15 central core and put them down in the Promenade Park?

16 And I particularly point to Victor Steinbrueck
17 Park, which we are -- which my condo is within
18 100 feet of, it borders on Victor Steinbrueck Park.
19 That park is well recognized as a home for derelicts.
20 There's public urination, defecation, drug dealing,
21 open air drug dealing, and the City cannot -- the City
22 can't or won't control it despite police presence
23 there and, you know, 9-1-1 calls on a daily basis. It
24 goes on.

25 There's no guarantee that this -- and Victor

1 Steinbrueck Park adds zero benefit to my property
2 value. In fact, it's a beautiful park right there.
3 You can't use it if you're an owner of our property.
4 And I think the same thing will apply to the Promenade
5 Walk. The City won't be able to police that
6 adequately, and it will turn into an area for homeless
7 people and have the same problems the other parks
8 around the city.

9 Now, one other project within the LID
10 assessment is street improvements around Pioneer
11 Square. Pioneer Square has no relationship to where
12 we live in the Pike Place Market. We never go to
13 Pioneer Square. I'm sorry. But most of the people in
14 my -- in our condo probably don't go to Pioneer
15 Square. Maybe once a year or something, so it's of no
16 special benefit to us to have improvements in Pioneer
17 Square.

18 The other street improvements that they talk
19 about are the improvements on the Pike/Pine corridor
20 between Second and Ninth Avenue. Now, Ninth Avenue is
21 not even within the LID, so why aren't the people in
22 Capitol Hill part of the LID? They're the ones who
23 are going to benefit from street improvements on Pike
24 and Pine.

25 And as a previous speaker noted, the street

1 improvements they're going to do -- they're going to
2 make it a pedestrian boulevard and blah, blah, blah.
3 It's just going to increase traffic congestion more
4 and more downtown, make it more and more difficult.
5 That's not going to increase property value, and
6 that's certainly not going to increase my benefit.

7 The special assessment report, the ABS report,
8 Valbridge report talks about how this -- how these
9 improvements are all going to improve access between
10 the central core and the Waterfront. There are
11 currently at least five stairways and three elevators
12 that go from Western Avenue or the Market down to the
13 Waterfront. I have plenty of access. As people
14 before me have noted, there's plenty of access to the
15 Market. We don't need more access.

16 And that brings me to the last point and that
17 is this Overlook Park. The original design for the
18 Western Market front was to have a gradual walkway
19 that went back and forth, switchbacks, down to the
20 Waterfront. That changed because the aquarium now
21 wants to build an addition across the street from
22 where they currently are.

23 That will be this huge concrete monolith
24 28 feet high above the roadway, so there would be a
25 walkway but then with steep stairs down to the

1 Waterfront, which is going to be inaccessible to ADA
2 folks. So that is not a special benefit to me. In
3 fact, that's going to be to me a real eyesore because
4 it will take away from the view.

5 You'll stand up on the beautiful new Western
6 part of the Market, look out at the water, and what
7 will you see? You will see the big concrete block out
8 in front you. I don't think that's an improvement at
9 all, and that's not going to add to my special
10 benefit.

11 So I think the whole LID process in general is
12 specious. I think the City realizes it's a chance
13 to -- you know to soak the condo owners and businesses
14 downtown and put all these projects that they want to
15 fund that they haven't been able to fund previously
16 into a package and tax us for it. I think it's
17 arbitrary and capricious, and I object to it. Thank
18 you.

19 HEARING EXAMINER VANCIL: Thank you,
20 Mr. Pitlick.

21 All right. We have completed the five- to
22 ten-minute objectors. We're going to take just -- we
23 will take a break in just a moment. Before we get to
24 the break, are there any objectors here today that are
25 within the five- to ten-minute range that have not

1 spoken yet?

2 I've got one individual. You'll get a chance,
3 sir. We're not going to -- you just walked in. We're
4 not all going to stop and wait for that. You'll get a
5 chance right after break. I have one objector who
6 will come after the break.

7 Are there any objectors here who got allocated
8 a time for greater than five to ten minutes but less
9 than an hour remaining here that would like to go
10 later this afternoon?

11 All right. Please wait for after the break,
12 and it looks like we will have time to do that so we
13 can get you done today as well. And it looks like
14 there's a couple or at least one or two. And at that
15 time we'll also work out our calendar to the degree we
16 can with our larger cases.

17 We will take a break until 11:15 and return at
18 that time. Thank you.

19 (A break was taken from 11:04 a.m. to
20 11:18 a.m.)

21 HEARING EXAMINER VANCIL: We return to
22 the record. I have one request for an objection to be
23 presented today, and that is Case Number 254. I'm not
24 seeing the individual still here. If Case Number 254
25 comes back, I'll give him a chance to do his oral

1 presentation.

2 Moving on from that then, let's look to
3 calendaring for the items that we had left, and that
4 was Mr. Lutz and Ms. Terwilliger.

5 Ms. Terwilliger, you've requested three days.
6 That's exceeding what other attorneys are doing for
7 the same number of clients; however, it's likely that
8 you'll fall somewhere maybe two days or what have you
9 and we can look for efficiencies when we get started.
10 So right now I'm going to calendar you for three days
11 but expect at the beginning of the hearing we can look
12 for ways to overlap and make sure that you're not
13 doubling up on presentation, etc. Again, I've got
14 other attorneys that are looking at about a couple
15 hours each client. If you've got five, that's quite a
16 bit of time.

17 MS. TERWILLIGER: Yes.

18 HEARING EXAMINER VANCIL: But for now
19 I'll leave you with three days, and that's going to
20 put you on February 24, 25, and 26.

21 MS. TERWILLIGER: February?

22 HEARING EXAMINER VANCIL: Yes.

23 MS. TERWILLIGER: I'm unavailable the
24 25th. We could do --

25 HEARING EXAMINER VANCIL: I'm sorry. I

1 can't accommodate schedules for this. I understand --
2 typically, we always try to do that the way we can,
3 but this is exceptional for trying to calendar. And
4 we can't change the calendar. So you have your dates?

5 MS. TERWILLIGER: 24, 25, 26?

6 HEARING EXAMINER VANCIL: Yes.

7 MS. TERWILLIGER: Okay.

8 HEARING EXAMINER VANCIL: And then the
9 other request was from Mr. Lutz. For now I can assign
10 you -- well, just general information for all counsel
11 and anybody who cares at this point, as you can see,
12 we're entering the end of February for the number of
13 objections just to address this hearing.

14 I'm going to give Mr. Lutz four dates that I
15 have available in the very beginning of March. The
16 extra challenge that we have are, for those that are
17 familiar with our process, is eight MUP appeals, which
18 I don't think I've seen filed all at one time, have
19 been filed. And we need to get them in the hearing
20 process as well. They will take up a number of dates
21 in March.

22 Therefore, my expectation is that we are going
23 to be getting City presentation as late as April on
24 this and so -- as late as April. Can you hear me?
25 You're welcome to approach the bench, too -- or the

1 mic, if you like, for scheduling purposes now. We're
2 essentially down to scheduling Mr. Lutz and the City.

3 MR. LUTZ: Actually, before you start
4 with me, I'm introducing Mr. Shorett who is also the
5 appraiser for another lawyer who is in Spokane who I
6 think already has a date.

7 HEARING EXAMINER VANCIL: Yes.

8 MR. LUTZ: But scheduling a specific
9 issue he's been asked to address.

10 MR. SHORETT: Yes. Hi, Peter Shorett,
11 and Todd Reuter --

12 HEARING EXAMINER VANCIL: Yes.

13 MR. SHORETT: -- is the attorney with
14 Foster Garvey.

15 HEARING EXAMINER VANCIL: I can tell
16 you those dates, 18, 19, and 20. He has ten clients.

17 MR. SHORETT: He also has another one
18 that he filed yesterday. It's the Hilton Hotel
19 property, and he is requesting a time period for that
20 to hear that as well.

21 HEARING EXAMINER VANCIL: Okay. For
22 now I'm going to ask him to put his cases on the 18th,
23 19th, and 20th.

24 MR. SHORETT: I'm not a lawyer, so I
25 can't respond to that.

1 HEARING EXAMINER VANCIL: I understand.

2 MR. SHORETT: But I will let him know
3 that.

4 HEARING EXAMINER VANCIL: He'll
5 understand that. He's not getting all the time he's
6 asking for basically, but he's getting three days for
7 his clients. Continuations will be addressed at the
8 time of those hearings.

9 MS. TERWILLIGER: I just wanted to
10 clarify. My colleague reminded me that the appraiser
11 for the City has some unavailability between now and
12 the 24th, 25th, and 26th. And we want -- we need to
13 take that deposition before the 24th. So if he can be
14 available this week and next week for deposition, that
15 would work, but I was reminded that he has some
16 unavailability between now and then.

17 HEARING EXAMINER VANCIL: Anything from
18 the City on availability of your witness for a
19 deposition?

20 MR. FILIPINI: Yeah. And this is
21 actually one of the issues that we wanted to discuss
22 in terms of scheduling. So discovery was news to us
23 to some extent, to the extent there will be
24 depositions allowed.

25 Obviously, our -- the objectors have had

1 several months with Mr. Macaulay's report. To the
2 extent that they are intending to present expert
3 testimony or appraisers, we would want, likely, the
4 opportunity to depose them as well. It doesn't
5 directly address your question, but it's one of the
6 things I wanted to put into the mix as we talk about
7 scheduling.

8 HEARING EXAMINER VANCIL: Certainly.

9 MR. FILIPINI: And then in terms of
10 Mr. Macaulay's schedule, certainly, we can check in
11 the next couple weeks. But we had not anticipated
12 having him -- again, because we are weren't
13 anticipating depositions, having him go before the end
14 of the objectors' testimony. So I'm not prepared to
15 answer that specific question.

16 HEARING EXAMINER VANCIL: Understood.
17 All I can ask then is the City make an effort to have
18 him -- his schedule so he's available for deposition
19 prior to the scheduled hearing dates. We're trying to
20 accommodate his vacation schedule as well. So if he
21 can make the effort to get these done so that we can
22 stick with the schedule for Ms. Terwilliger's case
23 schedule, that would be appreciated. If it's wholly
24 unaccommodatable, we'll need to get you new dates
25 because you would have the ability to depose before.

1 And then any other issues as far as
2 depositions, interrogatories, etc., I don't expect to
3 be a part of that process unless I hear from either
4 the City or any party that there's an issue between us
5 that we need you to settle it. Otherwise, I would
6 expect you to go ahead and schedule depositions
7 between yourselves. I'm not setting any type of
8 discovery schedule unless asked to at this point.

9 MS. TERWILLIGER: Thank you.

10 MR. LUTZ: And, Mr. Examiner, I just
11 wanted to clarify your initial proposal for our
12 29 clients was four days?

13 HEARING EXAMINER VANCIL: Right now I
14 can identify four clear days on the calendar for you.

15 MR. LUTZ: Okay.

16 HEARING EXAMINER VANCIL: Yes. And at
17 that time --

18 MR. LUTZ: And then if we need more
19 time than that, we'll ask for additional time?

20 HEARING EXAMINER VANCIL: We may even
21 work that out before then. Right now it is
22 February -- very beginning of February. We're talking
23 about a hearing that's now starting in March, and I
24 did not -- I wasn't -- coming into this, I didn't know
25 if we would need March dates for the hearing. So at

1 the beginning of the hearing on the fly, we have found
2 you four dates. And if there are more in March, we'll
3 be able to identify those soon and/or if we need to go
4 into April --

5 MR. LUTZ: Okay. Thanks.

6 HEARING EXAMINER VANCIL: -- which I
7 expect is a reasonable possibility. At this point I
8 don't see how we could -- if you need more time and
9 the City is going to need time -- does the City have
10 an estimate on how much time it may need for its case?

11 MR. FILIPINI: I would imagine that we
12 would need two days at least.

13 HEARING EXAMINER VANCIL: And that's
14 not even counting the cross-examination that I assume
15 is going to take up a day or two given that. So we
16 need four days for the City, possibly more days for
17 Mr. Lutz. We're not going to come up with that many
18 days in March at this point, so -- because we need to
19 stop and get some of our MUP hearings addressed.

20 MR. LUTZ: And my only comment was my
21 initial rough estimate is seven and a half days, so
22 half a day per.

23 HEARING EXAMINER VANCIL: Okay. That's
24 better than a full day each which was implied in your
25 motion.

1 MR. LUTZ: Half day.

2 HEARING EXAMINER VANCIL: That's
3 helpful and we'll see what we can do with the four
4 days, but we may go ahead and try to find -- what I'll
5 try to do is find three and a half days more for your
6 caseload. You're 29, is that right, cases?

7 MR. LUTZ: Yes.

8 HEARING EXAMINER VANCIL: And then the
9 City so we can have some prediction for the parties as
10 to when the City will be putting on its case, and
11 they'll be able to cross-examine. And I'm expecting
12 at this point that those are going to be April dates.
13 I want to make sure I'm -- I know you've got
14 questions, but I want to make sure I'm hearing from
15 the City. Does this work for your case schedule?

16 MR. FILIPINI: It should. So if I'm
17 tracking correctly, we would have approximately two
18 days to put on our direct testimony. And then I
19 couldn't hear the number of cross-examination days
20 that you had?

21 HEARING EXAMINER VANCIL: I'm going to
22 set aside two more days for that just based on what
23 I'm hearing from the need and the number of objectors.
24 Whether we'll actually use that or not, as you can
25 tell, part of the problem with me is making sure we

1 have a time set aside -- set aside a time for you to
2 make sure we have it. We don't wind up in June. So
3 even if we don't use all of that time. It's not an
4 invitation to take two days. It's just making sure we
5 have two days to address.

6 MR. FILIPINI: And similar on that
7 point, just circling back to the deposition issue, you
8 may hear from us in writing, if you prefer. Our
9 proposal, sketching this out during the break, would
10 be along the lines of having Mr. Macaulay available
11 for deposition for everybody who wanted to ask him
12 questions.

13 Our concern is that between now and when we
14 put on our case-in-chief, we could easily be in serial
15 depositions with Mr. Macaulay. And, of course, we
16 would want to likely depose any experts or appraisers
17 that parties may be calling. So I think we're going
18 to need some help to work through that scheduling
19 process to make sure it's fair.

20 HEARING EXAMINER VANCIL: Okay. If you
21 do, that's fine. Please contact me for that. One
22 thing, if you could remain at the mic for a second,
23 I'd like is if you can accommodate -- since
24 Ms. Terwilliger has a case date as already identified,
25 we have a specific request on the table, essentially,

1 for that deposition. If that can be accommodated
2 prior to the appraiser's schedule for holiday, that
3 would be welcomed so that we can keep the case
4 schedule we have now.

5 And if I can finish, if you get other
6 deposition requests and you need to consolidate those
7 into a single time or maybe after the vacation time or
8 something along those lines, then that's going to be
9 acceptable. I'm trying to give you some guidance now
10 with regard to that scheduling.

11 MR. FILIPINI: Okay. Well, I
12 appreciate that. And one of the questions is if we
13 are going to put Mr. Macaulay on before his
14 vacation -- actually, I'm not sure if it's a work trip
15 or vacation, but he is leaving the country.

16 HEARING EXAMINER VANCIL: We're making
17 assumptions. Before his absence.

18 MR. FILIPINI: We would -- and we will
19 work with Ms. Terwilliger on this, but we would
20 want -- if they're going to have an expert report, we
21 would want to have that prior to a deposition.

22 HEARING EXAMINER VANCIL: Okay.

23 MR. LUTZ: Just one more clarifying
24 point and I guess two questions for the examiner.
25 Part of our -- trying to schedule our hearing time, I

1 am anticipating that we could proceed with appraisers
2 giving reports rather than -- you know, with limited
3 questioning so that it could be more efficient rather
4 than having question-answer, but we will defer,
5 obviously, to your preferences.

6 HEARING EXAMINER VANCIL: You're asking
7 for efficiency's sake if during your presentations if
8 an appraiser or an expert witness can essentially make
9 a statement rather than question and answer, yes.

10 MR. LUTZ: Correct.

11 HEARING EXAMINER VANCIL: And I'll look
12 to that to any party. If you can find efficiencies in
13 how you're presenting, please proceed with that. This
14 is an unusual hearing. I'm most interested in getting
15 the evidence in that you want to present and not
16 looking to a specific format for that to come in.

17 MR. LUTZ: And the follow-on to that
18 was back to this original idea we have about the
19 question of the environmental review of Pier 58.
20 That's really one question that is raised in each of
21 the appeals and relevant to each of the appeals, but I
22 think in terms of you hearing it, it can be one
23 presentation with one set of witnesses if that seems
24 efficient. If you prefer that we do it in each case,
25 that's fine.

1 HEARING EXAMINER VANCIL: No. I think
2 any -- any of you that have multiple cases, if you
3 have either subject matter issues that you want to
4 address or specific legal issues you want to argue for
5 those cases, you can do those at a single time rather
6 than having to do it repeatedly for however many cases
7 you've got.

8 MR. LUTZ: Thank you very much.

9 HEARING EXAMINER VANCIL: That's not
10 going to be efficient for anybody.

11 MR. FILIPINI: Just one last point on
12 the deposition front. Again, our position -- and I
13 didn't go through my legal standards piece this
14 morning. I'll reserve that for later. But given the
15 standard here -- the standard of review that should be
16 applied, objectors are required to come forward with
17 expert testimony or at least rely on some in the
18 record in order to overcome their presumptions.

19 That ties into our concern about the
20 depositions. If folks are seeking to depose
21 Mr. Macaulay or others simply to ask some
22 cross-examination questions without the intent to call
23 an expert, we view that the correct forum for that
24 would be here in open hearing.

25 To the extent that they do want to depose him

1 beforehand, again, we would want to know that they
2 were retaining an expert and have a chance to review
3 that report beforehand and not the day of deposition,
4 I suppose. I understand you want me to work these out
5 with counsel. That's fine. We'll do that. I just
6 wanted to get it on the record what our position was.

7 HEARING EXAMINER VANCIL: I think it's
8 fair to use this forum to do that. We're trying to
9 organize this as much as possible. So I understand
10 the City is explaining its position with regard to
11 depositions. It's certainly a position I would
12 support if I have a motion coming in front of me that
13 you're not just having an opportunity to depose the
14 City for the sake of deposing if you're not putting on
15 a case.

16 I don't necessarily need you to try to put it
17 on through the City. I expect you to be putting on
18 your own case, and I know some of you are. And if
19 you're going to do that, then the regular avenues of
20 opportunity for deposition will be provided. I'll
21 look to anything further on that, just reserve it for
22 motion practice, if necessary.

23 Mr. Lutz, your four dates are March 3, 5, 11,
24 and 12th. And I assume somebody else is writing these
25 down for you?

1 MR. LUTZ: Yes. Thank you.

2 HEARING EXAMINER VANCIL: I will seek
3 to identify dates in April to finish out your request
4 for another three and a half dates, and I will also
5 look for four days in April that will identify the
6 schedule for the City.

7 Did I have the speaker for Case 254 return?

8 All right. Hearing none, we'll move on beyond
9 that. Are there any other cases for anyone that has
10 not yet had their case scheduled that I need to
11 address as part of our hearing today?

12 With that, I think we can adjourn for the day.

13 MS. BRINDLE: I thought you were going
14 to hear some of the less-than-an-hour speeches?

15 HEARING EXAMINER VANCIL: So we've done
16 all that. Oh, I'm sorry. You're right. Thank you
17 for reminding me. I apologize. Yes, we had a third
18 category, and that is individuals who were scheduled.
19 And I think we had one or two. Was it just you?
20 You're just the one?

21 MS. BRINDLE: I'm still here.

22 HEARING EXAMINER VANCIL: Why don't you
23 come up to the mic. And this is going to be the last
24 thing that I do today. So if anybody doesn't want to
25 stay around, you're welcome to leave or stay either

1 for this presentation.

2 May I ask your case number?

3 MS. BRINDLE: 0054. And my name --

4 HEARING EXAMINER VANCIL: And what is
5 your name?

6 MS. BRINDLE: -- is Madalyn Brindle.

7 HEARING EXAMINER VANCIL: And how long
8 was your estimated time when you indicated?

9 MS. BRINDLE: I can probably read this
10 in about 25 or 30 minutes.

11 HEARING EXAMINER VANCIL: Okay. Thank
12 you.

13 MS. BRINDLE: And I will read it for
14 the sake of efficiency and for not forgetting
15 anything.

16 HEARING EXAMINER VANCIL: I understand.

17 MS. BRINDLE: And I have two documents
18 here. I did submit them when I mailed in my -- I
19 don't know if you want another copy.

20 HEARING EXAMINER VANCIL: If it came in
21 with your objection, we don't need another copy. I
22 have your objection. If you have any new document --

23 MS. BRINDLE: No. They were sent in
24 with my written objection.

25 HEARING EXAMINER VANCIL: Please

1 proceed.

2 MS. BRINDLE: I object to my assessment
3 for the Waterfront LID because I question the very
4 legitimacy of a Local Improvement District as a
5 vehicle for financing the Waterfront Park. First
6 point, the nature of a Local Improvement District.
7 The Waterfront Local Improvement District at best
8 represents a questionable interpretation of the intent
9 of the statute governing the use of an LID, and it is
10 an inappropriate application of the LID process.

11 A Local Improvement District typically funds
12 some specific improvement or infrastructure usually
13 related to safety or public health added to specific
14 properties. Examples would be the addition of curbs
15 and sidewalks, paved roads, street lighting, or city
16 water or sewer lines.

17 The improvements might be deemed too specific
18 or too local to warrant funding with public monies.
19 Hence, the owners of the specific properties that
20 would enjoy measurable special benefit from the
21 improvement would be asked to pay for them, and a
22 Local Improvement District would be formed to fund the
23 project.

24 A typical LID may encompass a few hundred
25 parcels. There are 6,211 parcels listed on the

1 proposed final assessment roll for the Waterfront LID.
2 An LID would typically originate with a group of
3 property owners wishing to add infrastructure
4 improvements such as those mentioned previously to
5 their properties.

6 One of the first steps would be a survey sent
7 by mail to the property owners who would be assessed
8 to determine the rate of approval of the desired
9 improvements among those who would be paying for them.
10 There has never been such a survey connected with the
11 Waterfront LID.

12 Instead, in early 2018, only after plans were
13 well underway for the park and the project had already
14 been splashed across the pages of The Seattle Times,
15 were we informed that, by the way, we would be funding
16 approximately 25 percent of the project with LID
17 assessments. There were public comment sessions held
18 at City Hall on three separate occasions where we
19 could express our views.

20 I might add here that no more than two members
21 of the City Council ever bothered to attend these
22 forums until the meeting at which they voted to form
23 the LID. Of the dozens of speakers at these open
24 sessions, only one person, other than members of the
25 Waterfront Park Committee, spoke in favor of the LID.

1 She was the woman representing SAM, the art museum, an
2 obvious beneficiary of tourism and likely exempt from
3 assessment as a nonprofit.

4 Any reasonable person listening to these
5 sessions would assume that the idea to form a LID to
6 fund a Waterfront Park was not being well received by
7 property owners within the LID area.

8 Subsequently, in July of 2018 after the motion
9 was passed to form the LID, a series of public
10 hearings were held before a City Hearing Examiner. We
11 understand that over 300 comments were presented, but
12 we have not been privy to the results of those
13 hearings as the City Council is claiming immunity due
14 to the quasi judicial nature of this issue.

15 Nevertheless, it is difficult to imagine a
16 sudden about-face of the respondents suddenly favoring
17 the LID. It is patently obvious that this and former
18 city councils have been lobbied long and hard by the
19 Waterfront Park Committee for years, and the
20 Waterfront Park was a done deal, signed, sealed, and
21 delivered behind closed doors before it was ever
22 presented to the Seattle citizens in general and
23 specifically to those in the designated Local
24 Improvement District who would be expected to pay a
25 large portion of the bill.

1 As previously stated, downtown property owners
2 were informed in early 2018 that we would be funding
3 approximately 25 percent of the Waterfront Park
4 project with the formation of a Local Improvement
5 District. Barely more than 11 years earlier in the
6 fall of 2006, Seattle voters defeated for the second
7 time in as many elections the proposed Seattle Commons
8 project. On at least two occasions during
9 aforementioned public comment sessions at City Hall
10 prior to the formation of the LID, a member of the
11 Waterfront Park Commission made the point that they
12 had been working on the project for more than a
13 decade.

14 I find this timing more than a coincidence.
15 The Waterfront LID was selected as a vehicle for
16 partial funding of the Waterfront Park after it became
17 obvious that Seattle voters were not going to support
18 such a project.

19 The Waterfront LID is a vaguely defined group
20 of enhancements to be added to an already existing
21 major Waterfront Improvement Project, including the
22 removal of the viaduct, the rebuilding of the seawall,
23 and the construction of the roadway and the Promenade,
24 which enhancements are intended to create a major
25 attraction for visitors and tourists to the Waterfront

1 and to provide easy access for those tourists to the
2 Pike Place Market and central downtown business
3 district, coincidentally including the newly expanded
4 convention center.

5 This is a park located in a regional economic
6 center and intended to benefit the region and beyond,
7 and many of the properties allegedly deriving a
8 special benefit from its presence are located several
9 blocks away and on an entirely different elevation
10 than the Waterfront Park.

11 My second point deals with the Valbridge
12 appraisal method for assessing the special benefit.
13 The assignment of Waterfront LID properties and the
14 presumed special benefits thereto as presented in the
15 Valbridge study has been completely arbitrary. For
16 one thing, the LID boundaries have been amended at
17 least once demonstrating, once again, the arbitrary
18 nature of the assignment of special benefits.

19 At this point I will refer you to the letter
20 from Anthony Gibbons of Gibbons and Riley, which I
21 have previously submitted. They're real estate
22 appraisers who also provide counseling and mediation
23 on the subject.

24 They were asked to conduct a high-level review
25 of the Valbridge mass appraisal study prepared for

1 documenting special assessments attributable to the
2 Waterfront Seattle project. Mr. Gibbons states
3 therein, quote, a successful LID is based on the
4 correction -- a correct identification of a special
5 benefit created. The most succinct definition of a
6 special benefit is provided as a WPI instruction -- I
7 must confess I could not determine what WPI stood for.
8 I assume it's some professional designation for an
9 appraiser.

10 The quote: Special benefits are those that
11 add value to the remaining property as distinguished
12 from those arising incidentally and enjoyed by the
13 public generally. Further, quote, the value lift
14 associated with provision of the infrastructure, say,
15 water, power, or sewer, is typically easily measured,
16 and special benefits are not hard to prove and
17 calculate, end quote.

18 A further quote, the special benefit
19 associated with an amenity such as a publically owned
20 park is not obviously beneficial in the same fashion
21 as a utility extension representing more of an
22 esthetic and widely dependent upon factors unrelated
23 related to the mere presence of the project, such as
24 operations, public use, etc. And I will comment on
25 that at a later point here.

1 Mr. Gibbons goes on to state the importance of
2 identifying special benefits as opposed to general
3 benefits, those that are enjoyed by the public
4 generally. And if a project creates both special and
5 general benefits, only the special benefit that
6 accrues to certain properties can be included in the
7 assessment. And special benefits cannot be, quote,
8 remote, speculative, or imaginary, end quote. This,
9 once again, from the WPI, that elusive organization.

10 The Valbridge study makes no distinction
11 between general and special benefits. So it is
12 apparent that the special benefits study includes both
13 types of benefits. To this Mr. Gibbons writes, quote,
14 beyond the lack of recognition of general benefits, it
15 is noted that the very nature of the public
16 improvement original park and the wide LID boundaries
17 described in the report suggest that entire project
18 could be described as offering almost entirely general
19 benefit. Almost by definition, if \$48.1 billion of
20 real estate is impacted by the project, the benefits
21 provided would seem very general and widespread in
22 nature.

23 Furthermore, the methods used of applying
24 arbitrary percentages to an arbitrarily determined
25 before value to determine a special benefit represents

1 an improper method for a special benefit study. It is
2 considered a shortcut typically used for small
3 projects such as creating a small easement. The
4 special benefit should be calculated based on the
5 value of the property without the benefit and the
6 value with the benefit.

7 The Valbridge study selects a collection of
8 arbitrary percentages of special benefit and applies
9 them to some seemingly also arbitrary before values.
10 Additionally, the Valbridge special benefit assignment
11 is based on a proximity benefit. Proximity is a
12 characteristic of the land, and benefits from
13 proximity do not accrue to improvement value as the
14 physical location has not changed.

15 Thus vacant land that will imminently be
16 developed but has a special benefit assigned based on
17 the value of the vacant land in 2018 will create an
18 inequity when applying the same percentage to
19 side-by-side properties already improved in 2018.

20 The special benefit needs to be calculated by
21 measuring the actual before and after differences. I
22 would like to include here Mr. Gibbon's concluding
23 paragraph in his review of the Valbridge mass
24 appraisal study for the Waterfront LID.

25 And I quote, the more general issue is the

1 difficulty of trying to forecast a benefit that is
2 special to a park that has regional appeal. The more
3 common application of an LID is for extension of
4 infrastructure. And here special benefits can be
5 practically and incrementally assessed to unserved
6 property brought to a development condition through
7 the provision of infrastructure.

8 However, the application of the special
9 benefit methodology to a downtown area for a park
10 amenity represents a challenge and potential
11 impossible assignment if it is to be free of
12 speculation and imagination.

13 And additional comments on the assigning of
14 special benefits and assessments to property: Many
15 factors could cause the properties within the LID area
16 to fluctuate 1/2 to 4 percent, which is the percentage
17 they use, at any given time. It would be necessary to
18 demonstrate that any increases were essentially
19 isolated within the LID area to prove any relationship
20 to a special benefit.

21 And it is entirely possible that the
22 Waterfront Park could have a detrimental effect on our
23 property values. First, there is the "as yet to be
24 determined" construction period which will have a
25 definite impact with noise, dust, and general

1 inconvenience related to street closures, sidewalk
2 closures, etc. And the closer the property is to the
3 project, the greater will be the aggravation and
4 disruption during construction.

5 But, additionally, the very nature of the
6 Waterfront Park itself could have a negative effect.
7 In his paper entitled "The Impact of Parks and Open
8 Spaces on Property Values," John L. Crompton of the
9 Department of Recreation, Park, and Tourism Sciences
10 at Texas AM University writes, quote, large, flat,
11 open spaces which are used primarily for athletic
12 activities and large social gatherings -- and here I
13 might editorialize about the open concerts that take
14 place and are proposed to be in many more numbers down
15 on the Waterfront -- such a park are much less
16 preferred than natural areas containing woods, hills,
17 ponds, or marsh. Further, it must be recognized that
18 there are context in which parks exert a negative
19 image on property values.

20 He continues, adverse impacts may result from
21 nuisances, such as congestion, parking, litter, and
22 vandalism, which may accompany an influx of people
23 coming in a neighborhood to use the park. Noise and
24 ball field lights or stage lights from the concert, I
25 might add, which will intrude into adjacent residences

1 and poorly maintained are blighted derelict facilities
2 or undesirable groups congregate in a park engaging in
3 morally offensive activities, end quote.

4 While the Waterfront Committee has committed
5 to ongoing dedicated funds to ensure proper
6 maintenance and adequate security in the park, the
7 source of those funds is to be philanthropy.
8 Philanthropy is not a reliable source of funds. It
9 comes and it goes, and it requires constant nurturing,
10 more at some times than at others, to maintain a
11 needed flow of funds.

12 But the needs for maintenance and security in
13 a large park will be constant and persistent. Victor
14 Steinbrueck Park consists of barely a square city
15 block, and yet the City has been unable or possibly
16 unwilling to stop the tents from sprouting there this
17 winter. And it is regularly the site of some crisis
18 or another requiring the visit of emergency vehicles,
19 police or medical aid or both, often three or four
20 vehicles at a time.

21 The challenges of the many acres of the
22 Waterfront Park will be tantamount to Victor
23 Steinbrueck Park on steroids. In short, there is a
24 distinct possibility that the Waterfront Park will
25 have a real adverse impact on our quiet enjoyment of

1 our homes, which is, in fact, a statutory right.

2 Point Number 3, recouping the money paid by
3 property owners for the LID assessment. If, as the
4 Waterfront Park Committee and the City Council
5 project, the Waterfront Park brings an influx of
6 tourists into the Waterfront and downtown areas. Many
7 commercial properties will have a means to recoup the
8 cost of their assessments. Restaurants, hotels, and
9 many retail establishments will benefit from more foot
10 traffic. And, of course, there is the obvious
11 solution of raising prices.

12 Apartments and owners of other residential
13 rental properties and commercial property owners can
14 raise rents on their tenants. Residential owners who
15 occupy their property will have no means to recoup the
16 cost of their assessments, save the sale of their
17 property. And then, only if the arbitrarily assigned
18 special benefit does, in fact, materialize, will they
19 recoup anything.

20 Of course, as is always the case, should the
21 property value increase, for whatever reason, those
22 owners who remain in their homes will be faced with
23 the added burden of increased property taxes, but that
24 is good news for the City. As even if those increases
25 bear no relation whatever to the presence or absence

1 of a park on the Waterfront, the benefit of those
2 increased taxes will accrue to the City for many more
3 years than the 18 years set out for the collection of
4 Local Improvement District assessments.

5 Item Number 4, requirements for assessing
6 properties and forming a Local Improvement District.
7 First of all, no specific plan exists for what
8 enhancements are to be paid for specifically by the
9 LID. The Waterfront Seattle website only indicates
10 \$8 million for LID administration.

11 By law once the City has produced a final
12 assessment roll and commenced collecting assessments,
13 they are obligated to complete the LID improvements
14 exactly as laid out in the plan presented at that time
15 regardless of the cost.

16 Theoretically, when an LID is formed,
17 specified private property owners pay an assessment
18 for specific improvements that will provide measurable
19 special benefit to their designated properties. And
20 they are entitled to receive exactly what has been
21 promised at the price they have paid for it within a
22 reasonable period of time.

23 In a letter from the City dated June 8, 2018,
24 the subject of which letter is "Notice of Adoption of
25 Resolution of Intention to Form and Notice of Public

1 Hearing on Formation of LID," it is stated under
2 Section 1, Declaration of Intent, that, quote, the
3 improvements shall be in accordance with the plans and
4 specifications prepared by the Seattle Office of the
5 Waterfront and Civic Projects, OWCP, as a division of
6 the Seattle Department of Transportation and may be
7 modified by the City as long as modification does not
8 affect the purpose of the LID improvements after the
9 formation of the LID, end quote.

10 I beg to differ. Any such modifications would
11 be illegal and surely be the subject of litigation.

12 And then it is important to note that the Office of
13 the Waterfront is a division of the Seattle Department
14 of Transportation, and the Waterfront Improvement
15 Project is under the supervision of the Department of
16 Transportation.

17 Added to their already existing track record
18 for planning, budget, and timeline debacles is the
19 recent news that the department is under possible
20 criminal investigation by the U.S. Department of
21 Transportation for questionable use of federal grant
22 money. Among the six major projects for which records
23 were subpoenaed are final design of the Elliott Bay
24 seawall and design services for the Central
25 Waterfront.

1 Returning to the subject of completion of the
2 LID improvements exactly as specified in the plans on
3 file when collection of assessments has begun
4 regardless of the cost. Even if current costs and
5 budgets which are likely years out of date are brought
6 current, cost overruns are more than a possibility.

7 And given that the Seattle Department of
8 Transportation is supervising the project, I would say
9 they are inevitable.

10 That scenario could eventually bankrupt the
11 City, either with a necessity of future City Councils
12 to produce a set of Waterfront improvements that this
13 City Council obliged the City to complete with 2020 or
14 '21's LID formation or alternately with endless
15 litigation to try to extricate itself from the
16 obligation.

17 And it goes without saying that this city has
18 far greater needs than a major tourist attraction on
19 the waterfront. How impressed will visitors be after
20 they have traveled miles of trash and homeless
21 encampments in gridlock traffic or maybe even been
22 shot at getting off the bus going to visit our
23 gleaming Waterfront?

24 Even Sally Bagshaw, in her comments quote in
25 Crosscut on July 6, 2018, having proceeded to sing of

1 the glories of the proposed Waterfront Park, said,
2 quote, if we were just sitting down today and trying
3 to decide are we going to do something like this
4 today, I think you and I would say no. But we've been
5 working on this for 15 years. If we don't do it now,
6 it will be another generation before we come back to
7 it, and that would be a shame, end quote.

8 An even bigger shame would be saddling future
9 city councils with the prospect of bankrupting an
10 already belabored city for the sake of completing such
11 a project.

12 But in the event the City Council insists on
13 going forward with the project, first and foremost, a
14 specific plan must be presented detailing exactly what
15 improvements are to be funded by the Local Improvement
16 District, what specific amenities or infrastructure
17 that give measurable specific special benefits to our
18 specific properties, more often than not several
19 blocks away from the site of the park, are to be paid
20 for with our assessments. It is also essential that
21 we be presented with start dates and completion dates
22 before anyone attempt to assign any special benefit to
23 our properties.

24 And, last, the taking of property without
25 recourse. Finally, I wish to address the question of

1 the taking of property leaving no recourse, otherwise
2 known as taxation without representation, which is, in
3 fact, unconstitutional.

4 Our present City Council is comprised of seven
5 members who each represent specific districts and two
6 members at large. That means of the nine members,
7 those of us residing in the LID area, are only
8 represented by three. Andrew Lewis our District 7
9 representative and the two members at large, Teresa
10 Mosqueda and Lorena Gonzalez, making them the only
11 three members of the City Council that we have any
12 control over voting into or out of office.

13 The other six, in fact, a supermajority, in no
14 way represent us and are in no way beholden to us for
15 whether or not they get in or stay in office. Yet the
16 Council was able to vote and they did so unanimously,
17 with the exception of our then District 7
18 representative who was asked to recuse himself, to
19 form a LID thereby assessing a LID tax on the
20 properties belonging to a group of citizens whom six
21 of them did not represent and there being no
22 consequences for the constituents represented by those
23 six as all LID properties were located within
24 District 7.

25 There is, therefore, no recourse for those of

1 us taxed by the LID as a supermajority of the City
2 Council is beyond our reach politically. It would be
3 as if the legislature in Olympia wanted to build a new
4 highway across the state, and being in need of
5 additional funding, they voted unanimously to assess
6 the citizens of Ellensburg with a tax to make up the
7 shortfall having made an arbitrary decision that
8 Ellensburg was a city closest to the highway and would
9 therefore enjoy a special benefit.

10 Of the 98 representatives in the Washington
11 State Legislature, only a handful represent the
12 residents of Ellensburg and are dependent on the
13 voters of Ellensburg for their jobs in the
14 legislature. The people of Ellensburg would have no
15 recourse, because the vast majority of state
16 legislatures are beyond their political reach. And
17 the constituents of those legislators are unaffected
18 by, perhaps even unaware of, the tax.

19 You may argue that it often happens that a
20 governing body passes a law affecting all of its
21 constituents that some argue is less favorable or even
22 unfair to them. But in those cases the law that was
23 passed by the whole body applies to everyone in every
24 constituency, unlike a tax assessed by the entire
25 legislative body on just a small percentage of

1 property owners and just one of the constituency,
2 which property owners are not represented by most of
3 the legislators in the body and do not vote for them.
4 And the rest of the constituencies are unaffected and
5 possibly even unaware of this tax.

6 Then you may say that we did have recourse.
7 That all we had to do was secure an objection to the
8 LID from property owners representing 60 percent of
9 the value of the LID properties. In fact, only about
10 12 percent of the value of the properties in the LID
11 was in the residential properties with the remaining
12 87 plus percent being in commercial properties, many
13 of whom would stand to gain from additional tourist
14 trade and others who had remedies in the form of
15 raised rents to recover the cost of their assessments.

16 In addition, the fact that there were nearly
17 6,200 parcels represented, merely determining
18 ownership, much less contacting them in the limited
19 time allowed, presented a major challenge.

20 In summary, one, the Seattle Waterfront LID is
21 a disingenuous usurping of the LID process by the
22 Seattle City Council to fund a project sold to them
23 behind closed doors by the Waterfront Park Committee
24 and should not be allowed to stand.

25 The assignment -- Number 2, the assignment of

1 LID properties and special benefits thereto is totally
2 arbitrary. The Seattle Waterfront Park provides no
3 special benefit to my residential property and, in
4 fact, is likely to have an adverse impact on my quiet
5 enjoyment of my home to which I am entitled by law
6 thereby negatively affecting my property value.

7 Number 3, a residential property owner has no
8 remedy for recouping the money paid for a LID
9 assessment short of selling his property and then only
10 if the property has actually gained the special
11 benefit arbitrarily assigned to it by the Valbridge
12 study.

13 Number 4, before initiating collection of LID
14 assessments, the City must produce a specific plan for
15 the LID improvements detailing exactly what features
16 of the Waterfront Park are to be funded by the LID,
17 and it needs to produce a realistic timeline for
18 beginning and completion of the project.

19 In addition, the City Council needs to
20 understand that by moving forward with the LID it will
21 stand to bankrupt the City down the road as future
22 City Councils attempt to comply with the legal
23 obligation to complete the LID improvements exactly as
24 specified.

25 Number 5, the LID assessment is an

1 unconstitutional taking of property equating to
2 taxation without representation leaving me and other
3 property owners within the LID area without recourse.
4 That's it.

5 HEARING EXAMINER VANCIL: Thank you,
6 Ms. Brindle.

7 I believe that concludes our objectors who
8 were intending to speak today; is that correct?

9 All right. With that, then, I thank all of
10 the objectors who have presented today and also
11 counsel who have cooperated in working through
12 scheduling and other matters. All exhibits presented
13 today are admitted.

14 We will adjourn and continue the hearing to
15 reconvene on Wednesday, February 5 at 9:30 a.m. at the
16 Office of Hearing Examiner, 700 Fifth Avenue,
17 Suite 4000.

18 (The proceedings concluded at
19 12:02 p.m.)

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C E R T I F I C A T E

STATE OF WASHINGTON

COUNTY OF KING

I, Nancy M. Kottenstette, a Certified
Shorthand Reporter in and for the State of Washington,
do hereby certify that the foregoing transcript of the
proceedings is true and accurate to the best of my
knowledge, skill, and ability.

I do further certify that I am a disinterested
person in this cause of action; that I am not a
relative of the attorneys for any of the parties.

IN WITNESS WHEREOF, I have hereunto set my
hand and seal this 20th day of February, 2020.

Nancy M. Kottenstette, RPR, CCR 3377