

# Seattle Waterfront LID Assessment Hearing

## Seattle LID Public Comment Hearing

February 24, 2020



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SEATTLE WATERFRONT LID ASSESSMENT HEARING  
BEFORE  
HEARING EXAMINER RYAN VANCIL

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Taken at 700 Fifth Avenue  
Seattle, Washington

DATE TAKEN: February 24, 2020

REPORTED BY: Anita W. Self, RPR, CCR 3032

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1 SEATTLE, WASHINGTON; FEBRUARY 24, 2020

2 9:00 A.M.

3  
4 HEARING EXAMINER VANCIL: Good morning.

5 I'll call to order this February 24, 2020, continuance  
6 of the Seattle Waterfront LID Assessment hearing.

7 Today, objections will be heard from Hearing Examiner  
8 Case Nos. 336, 337, 339, 340 and 342. Those may be  
9 continued through Wednesday.

10 We'll take a break at approximately  
11 10:00 a.m., lunch will be approximately noon, and then  
12 a final break at about 3:00.

13 Who do I have with me today?

14 MS. DUCOMB: Darby DuComb, your Honor, on  
15 behalf of the property owners.

16 HEARING EXAMINER VANCIL: Okay.

17 MS. TERWILLIGER: Molly Terwilliger on  
18 behalf of the property owners.

19 HEARING EXAMINER VANCIL: Thank you.

20 MS. THOMPSON: Gabrielle Thompson on  
21 behalf of the City.

22 MS. KHALEGHI: Kristina Khaleghi for the  
23 City.

24 HEARING EXAMINER VANCIL: Thank you.

25 We'll proceed with --

1 MS. DUCOMB: Thank you, your Honor. I  
2 just had a couple little preliminary matters.

3 One, I had a question about whether the  
4 notices of the assessment were already a portion of  
5 your file or whether we should bring those in as  
6 exhibits.

7 HEARING EXAMINER VANCIL: I don't believe  
8 anybody's introduced that as an exhibit yet.

9 MS. DUCOMB: Okay.

10 HEARING EXAMINER VANCIL: Yeah.

11 MS. DUCOMB: Like in general for this  
12 matter or --

13 HEARING EXAMINER VANCIL: In the hearing  
14 at all. Right now, some parties may choose to adopt  
15 by reference other parties' records or such. So right  
16 now, it's a consolidated hearing.

17 MS. DUCOMB: Okay.

18 HEARING EXAMINER VANCIL: We're really  
19 hearing each case based on what they present unless  
20 they incorporate others.

21 MS. DUCOMB: Okay.

22 HEARING EXAMINER VANCIL: You could do  
23 that, but just to let you know where we've been,  
24 essentially, mostly we've had individual or pro se  
25 litigants, and so there hasn't been an established

1 record of -- I mean, we don't even have an Exhibit No.

2 Yet for the various assessment documents yet --

3 MS. DUCOMB: Okay. Okay.

4 HEARING EXAMINER VANCIL: -- so there's

5 really no established record that you can refer to --

6 MS. DUCOMB: Okay.

7 HEARING EXAMINER VANCIL: -- for the most

8 part. Unless you've gone back to an objector's file

9 and say, we want to refer to that, or you're just

10 generally referring to everything.

11 MS. DUCOMB: All right. We'll make sure

12 we get copies of those into the exhibits then.

13 And then it does sound like we'll be able

14 to keep the record open, and there'll be some

15 procedure to examine the City's witnesses, adopt other

16 witnesses that the other property owners are still

17 working on.

18 I know, for ourselves, there's still a lot

19 of work to be done with cost estimators, architects,

20 engineers, planners and other folks to potentially

21 complete the record for ourselves for our appeal.

22 And we're coordinating to keep that as

23 efficient as possible with the other owners, but just

24 wanted to make sure just as a preliminary matter that

25 we'll be able to keep the record open at the end of

1 today or Wednesday whenever we conclude today as the  
2 rest of the proceedings unfold.

3 HEARING EXAMINER VANCIL: And the way I'm  
4 approaching that is that parties have been  
5 dedicated -- I really have to approach everyone as  
6 equal, so objectors were given the opportunity to  
7 present on February 4th, to approach if they needed  
8 more time, they were given the time that they  
9 requested with the restriction of our calendar. And  
10 so within that time, it's the expectation that parties  
11 would put their case on.

12 If parties have specific requests for  
13 keeping the record open, I will entertain those as  
14 they come up, but there's no general opportunity to  
15 leave records open for objectors, recognizing that we  
16 have 400 objectors and that leaving the record open  
17 for everyone would simply be unwieldy.

18 There have been specific requests for  
19 items --

20 MS. DUCOMB: Yeah.

21 HEARING EXAMINER VANCIL: -- and those  
22 have been entertained; in some cases granted, some  
23 cases denied.

24 MS. DUCOMB: Okay.

25 Maybe we can take that up at the end of

1 the presentation today or tomorrow or --

2 HEARING EXAMINER VANCIL: Unless you have  
3 something specific to do now, I would suggest doing it  
4 once we're at the end there and you can tell me,  
5 because I'll -- I have to consider specifically what  
6 it is --

7 MS. DUCOMB: Okay.

8 HEARING EXAMINER VANCIL: -- so I -- but  
9 I -- it's also your case, so you --

10 MS. DUCOMB: Okay. Okay.

11 HEARING EXAMINER VANCIL: -- you know, we  
12 haven't even started yet, so talking about what we're  
13 going to leave the record open for seems a little  
14 unwieldy at this point, but I leave that to you.

15 MS. DUCOMB: Okay.

16 And then we had a final assessment hearing  
17 brief that we've handed up to you, which I believe is  
18 inside that first notebook on your desk, and I  
19 guess -- we've got a final assessment hearing brief  
20 that we've submitted, and so just to make your Honor  
21 aware of that, in there is a request for continuance,  
22 an ongoing request for continuance to keep the record  
23 open, and we will -- I guess, to let you know just  
24 this morning, I'm planning sort of a summary  
25 presentation. There are a number of exhibits that go

1 with -- with that, and then we can admit those either  
2 as we go or we can admit them later.

3 I know you like to keep things in order  
4 sometimes, and Anthony Gibbons, who will be going  
5 first, a number of his exhibits appear first and  
6 aren't necessarily referenced in the summary materials  
7 I'm going to go through to get us started and to lay  
8 the background. So I just wanted to defer to you as  
9 to how you wanted to handle that.

10 HEARING EXAMINER VANCIL: Sure.

11 If we can adopt some -- get some  
12 efficiency by adopting what you've presented, we can  
13 do that. But I don't know if the City -- does the  
14 City have a copy of what you've --

15 MS. DUCOMB: Yep, yep, they've got a box  
16 of the exhibits and everything, yeah.

17 HEARING EXAMINER VANCIL: Okay.

18 And so you're proposing -- what I've got  
19 is a notebook in front of me now that has tabs 1  
20 through 12.

21 MS. DUCOMB: Um-hmm. And you should have  
22 five notebooks total up to about No. 57.

23 HEARING EXAMINER VANCIL: Okay.

24 So we'll -- we're -- we have got a cart --

25 MS. DUCOMB: Okay.

1 HEARING EXAMINER VANCIL: -- so I'll get  
2 it set up here by me.

3 MS. DUCOMB: Okay.

4 HEARING EXAMINER VANCIL: Are you  
5 proposing to try to introduce all notebooks at the  
6 same time, or what's your preferred --

7 MS. DUCOMB: I -- I -- I could --

8 HEARING EXAMINER VANCIL: I can respond to  
9 your proposal, but --

10 MS. DUCOMB: I could do that right now and  
11 just say we'd like to introduce all of our notebooks  
12 right now.

13 HEARING EXAMINER VANCIL: Is that your  
14 intent?

15 MS. DUCOMB: Yeah, we're hoping to get --  
16 we want all of this in the record, yeah.

17 HEARING EXAMINER VANCIL: Okay.  
18 City?

19 MS. THOMPSON: Well, we haven't -- we just  
20 received this when we came in today, so I would like  
21 to reserve the opportunity to object to any exhibits  
22 at this point. It will take us some time to get  
23 through them.

24 HEARING EXAMINER VANCIL: It does seem  
25 unwieldy to simply admit half a dozen notebooks --

1 MS. DUCOMB: Um-hmm. Yeah, yeah, yeah.

2 HEARING EXAMINER VANCIL: -- so I'll have  
3 to deny that request.

4 MS. DUCOMB: Okay.

5 HEARING EXAMINER VANCIL: Did you have  
6 another proposal of how you were going to proceed  
7 then?

8 MS. DUCOMB: Well, we can just do as we to  
9 through them, if you'd like.

10 HEARING EXAMINER VANCIL: Okay. Then  
11 we'll do that.

12 Just to address up front, if you've  
13 requested just a general continuance just to keep it  
14 open for the sake of whatever happens to be coming,  
15 but it's not specifically identified, I have already  
16 denied those requests for continuance, so --

17 MS. DUCOMB: Yeah.

18 HEARING EXAMINER VANCIL: -- if that's  
19 what you were alluding to --

20 MS. DUCOMB: Ours are -- ours are most  
21 specifically to consulting experts because we know the  
22 City is very concerned that there has to be experts  
23 presented on various topics. And we've got an  
24 architect consulting, we've got -- we're working with  
25 other property owners on other experts that will offer



1 discrete testimony on particular issues around the  
2 plans and specifications, the cost estimates, the  
3 green spaces, things like that, so that we can really  
4 understand what's being proposed, what the baseline  
5 condition is, what the actual LID is constructing, and  
6 those sorts of things. And so --

7 HEARING EXAMINER VANCIL: So are you  
8 talking about what you're going to be presenting at  
9 testimony or what you're talking about?

10 I was trying to address your request to  
11 keep the record open that you indicated you have in  
12 here at this time.

13 MS. DUCOMB: Right, right. So -- so --

14 HEARING EXAMINER VANCIL: So you've got a  
15 bunch of studies you're doing that you want to leave  
16 the record open for?

17 MS. DUCOMB: We have -- yes, we have  
18 experts we're trying to consult with right now who  
19 aren't -- haven't completed their work and may bring  
20 their testimony in with the other property owners, in  
21 which case it'll be part of the consolidated hearing  
22 and we would just adopt them by reference.

23 But I just want to make it clear that  
24 that's -- we're feeling really jammed. We've only  
25 had, you know, 30 days. The -- the City had a

1 two-page description of the before and after  
2 conditions before they released the final benefit  
3 study in the 1st of January, which had hundreds of  
4 pages of text about what they were proposing in  
5 renderings. And we've been going through it as  
6 mightily as we can, but we're -- we're not all the way  
7 there yet, and so that's our concern.

8 HEARING EXAMINER VANCIL: Okay.

9 I guess since I don't have a specific  
10 request, it's hard for me to tell you what's going to  
11 happen, but you could end up at the end of your  
12 hearing and not got any continuances on those items,  
13 so --

14 MS. DUCOMB: Okay.

15 HEARING EXAMINER VANCIL: Because I don't  
16 have a specific request on those, I can't tell you how  
17 you're going to --

18 MS. DUCOMB: Well, I can tell you, it's an  
19 architect who is looking at the open spaces and green  
20 space question about what -- what is the landscaping.

21 HEARING EXAMINER VANCIL: So that's not  
22 going to be presented within the next two days?

23 MS. DUCOMB: Correct.

24 I mean, I'm trying to get that presented,  
25 but I don't -- I don't know that he's going to get

1 done in time.

2 HEARING EXAMINER VANCIL: Okay.

3 So it sounds like you're not sure what

4 will be presented in the next two days.

5 MS. DUCOMB: Maybe we can reserve it for

6 the end.

7 HEARING EXAMINER VANCIL: You can raise it

8 at the end.

9 MS. DUCOMB: Okay.

10 HEARING EXAMINER VANCIL: I'm not going to

11 reserve any --

12 MS. DUCOMB: Okay.

13 HEARING EXAMINER VANCIL: You know, if

14 you -- I would just raise it at the end.

15 MS. DUCOMB: Okay.

16 HEARING EXAMINER VANCIL: If you -- if

17 you're planning on bringing something up in the next

18 two days, there's obviously no need for a continuance.

19 MS. DUCOMB: Okay.

20 HEARING EXAMINER VANCIL: If you don't

21 bring up something, if you know that you can't bring

22 it up now, you know that this is something you're

23 going to reserve, you could raise that at this time.

24 It doesn't sound like that's what you're asking, and

25 so you can raise it at the end.

1 I am just cautioning you right now at the  
2 outset, you have two days.

3 MS. DUCOMB: Yeah.

4 HEARING EXAMINER VANCIL: You had three.

5 MS. DUCOMB: Yeah.

6 HEARING EXAMINER VANCIL: I recognize you  
7 had a scheduling conflict --

8 MS. DUCOMB: Yeah.

9 HEARING EXAMINER VANCIL: -- so you didn't  
10 take advantage of the third one --

11 MS. DUCOMB: No, yeah.

12 HEARING EXAMINER VANCIL: -- but you have  
13 the time you've got to present your case. And so  
14 parties have generally not been allowed to simply  
15 leave the record open for items that they weren't  
16 prepared for at the time of their hearing. So --

17 MS. DUCOMB: I would say that things we  
18 know we will not be able to present by Wednesday will  
19 be cost estimation testimony, engineering testimony,  
20 and planning -- planner testimony, though I do -- I --  
21 I may be able to get the architect in, so we know that  
22 that won't happen, and we're working with other  
23 property owners to get that evidence into the what I  
24 understand to be the consolidated proceeding  
25 consolidated hearing.

1 HEARING EXAMINER VANCIL: It is a  
2 consolidated hearing and you can by reference adopt  
3 what other individuals --

4 MS. DUCOMB: Okay.

5 HEARING EXAMINER VANCIL: -- you're doing.

6 MS. DUCOMB: Yeah, so that may take care  
7 of a lot of our issues.

8 HEARING EXAMINER VANCIL: Okay.

9 MS. DUCOMB: Okay.

10 HEARING EXAMINER VANCIL: Just recognizing  
11 that those individuals all sort of have their own set  
12 times as well.

13 MS. DUCOMB: Yep, yep.

14 HEARING EXAMINER VANCIL: So if you're  
15 working with somebody who's got 45 minutes and they  
16 haven't put their own case on --

17 MS. DUCOMB: Yeah.

18 HEARING EXAMINER VANCIL: -- and maybe  
19 you're slipping in an architect report into that --

20 MS. DUCOMB: Yeah.

21 HEARING EXAMINER VANCIL: -- that probably  
22 won't work.

23 MS. DUCOMB: Yeah, yeah.

24 HEARING EXAMINER VANCIL: So I don't know  
25 what you mean when you -- who you're slipping it in

1 with, but --

2 MS. DUCOMB: Right.

3 HEARING EXAMINER VANCIL: All right.

4 It sounds like we'll take that up at the

5 end.

6 MS. DUCOMB: Okay.

7 HEARING EXAMINER VANCIL: Okay?

8 MS. DUCOMB: Thank you.

9 And so on your -- in your -- there should  
10 be -- there should be a stack that looks like this  
11 that you have up there, your Honor. These are the --  
12 sort of the opening statement, summary presentation  
13 background information we're going to start with.

14 HEARING EXAMINER VANCIL: And are these --  
15 these seem separate from your notebook that was  
16 labeled.

17 MS. DUCOMB: Correct.

18 HEARING EXAMINER VANCIL: All right.

19 So we've already got our labeling off, it  
20 sounds like, because we have to mark these as an  
21 exhibit?

22 MS. DUCOMB: I believe they have exhibit  
23 numbers at the end of our notebook. Nos. 58, 59 and  
24 60.

25 HEARING EXAMINER VANCIL: All right.

1 These will be marked as Exhibits 1 through 3.

2 (Exhibits No. 1, 2 and 3 were marked.)

3 MS. DUCOMB: Do you have the one that  
4 starts with the City's appraisal is fundamentally  
5 flawed on the second page?

6 HEARING EXAMINER VANCIL: Yes, that's been  
7 marked Exhibit 3.

8 MS. DUCOMB: Okay. We'll start with  
9 number three then.

10 So as an overview, we've got four sort of  
11 topics, big section items to go over with you during  
12 this -- these hearings. First one is the appraisal is  
13 fundamentally flawed, and Anthony Gibbons will be  
14 testifying about that this morning. He's our first  
15 witness.

16 The second big category or topic is the  
17 plans and specifications are vital and they're  
18 missing.

19 And then the third is that the with and  
20 without scenarios really reveal there's no special  
21 benefits.

22 And then the four is a variety of defects  
23 in the procedures, authority, jurisdiction of the City  
24 Council to do what it did, and those are largely dealt  
25 with in the briefs.

1           And so turning to the first section about  
2 the City's appraisal being fundamentally flawed, on  
3 page 3 is Anthony Gibbons's resumé. He'll be talking  
4 more about his background in a minute.

5           On page 4, the highlights for the Macaulay  
6 appraisal is fatally flawed. We'll be hitting on  
7 the -- the appraisal does not measure general  
8 benefits. The City's appraisal does not measure the  
9 before and after values. The City's appraisal assigns  
10 benefits; it doesn't measure and calculate them. The  
11 cost of achieving the before condition was not  
12 calculated and taken into account. The methodology,  
13 the City picked the LID boundary. Treatment of vacant  
14 land is inconsistent and inequitable and -- versus  
15 improved property types.

16           The City's appraisal is within the margin  
17 of error for an appraisal. It anticipates a value  
18 lifts of 3 percent, when the usual margin of error for  
19 an appraisal is 5 percent, and so it's speculative.  
20 And it also makes a number of incorrect assumptions  
21 about the status of the plans and specifications, the  
22 waterfront conditions and the LID improvements  
23 themselves.

24           To highlight the critical analysis around  
25 what is a general benefit versus what is a special



1 benefit, the distinction between general and special  
2 benefit is critical because, if we don't do that, then  
3 properties are assessed for general benefits when they  
4 can't be.

5 Total benefit minus general benefit equals  
6 special benefit. That's the formula we're looking  
7 for.

8 Here, the before assumes the viaduct is  
9 down and the streets are restored, but the City's  
10 appraisal doesn't really take that cost or take that  
11 into consideration as well as it should.

12 On page 5, special benefits, they're  
13 different from and must be distinguished from the  
14 general benefits. It is unconstitutional to tax a  
15 subgroup of local property owners unless there are  
16 special benefits, and the purpose of the Waterfront  
17 LID improvements is to provide general benefits.

18 Special benefits are different from and  
19 must be distinguished from the general benefits. It  
20 is necessary to allocate the beneficial effects of the  
21 project enhancements between special and general  
22 benefits and to consider only the special benefits in  
23 estimating the value of the property in the after  
24 condition. This is the law that's governing these  
25 proceedings.

1           On page 5, special benefits are described  
2 as that which is substantially more intense to the  
3 property which is assessed than the rest of the  
4 municipality. And in Heavens, the court said, All  
5 such assessments have one common element. They are  
6 for the construction of local improvements that are  
7 appurtenant to specific land and bring a benefit  
8 substantially more intense that is -- than is what is  
9 yielded to the rest of the municipality. Appurtenancy  
10 [sic] is rooted in due process and takings law. It is  
11 rooted in appraisal science, and while the RCW has  
12 over the years in some of the case law said that  
13 direct appurtenancy is not always necessary, it should  
14 be remembered that that is the exception and not the  
15 rule. That the rule is generally that the  
16 improvements must be appurtenant to the land.

17           According to the 2016 FEIS, the purpose of  
18 the Waterfront LID improvements is to provide general  
19 benefits. It's a series of interest -- infrastructure  
20 improvement projects planned along the Seattle  
21 Waterfront in response to opportunities,  
22 transportation needs and related public objectives  
23 created by the removal of the Alaskan Way viaduct.  
24 It's a new transportation corridor, it's a new  
25 pedestrian connection, it's public open space.

1           The Pike/Pine improvements and Pier 58  
2 were not dealt with in the FEIS, and special benefits  
3 to private property owners are not included in the  
4 project purpose.

5           HEARING EXAMINER VANCIL: And, Counsel, I  
6 just want to note that the copy I have received has --

7           MS. DUCOMB: Oh, sorry.

8           HEARING EXAMINER VANCIL: The pagination  
9 is off.

10          MS. DUCOMB: Yeah, sorry about that.

11          HEARING EXAMINER VANCIL: I've got  
12 double-numbering here on a couple pages, a couple  
13 pages six, couple pages seven, two pages eight, so  
14 it's -- it's just off in this copy I've got.

15          MS. DUCOMB: I'll get a copy that looks  
16 like yours going next to me.

17          HEARING EXAMINER VANCIL: Maybe what I can  
18 ask you to do is if we can get a substitute copy for  
19 Exhibit 3 for the final --

20          MS. DUCOMB: Yep, yep.

21          MS. TERWILLIGER: Sure.

22          HEARING EXAMINER VANCIL: -- with the  
23 correct numbers.

24          MS. DUCOMB: And so nowhere in the FEIS  
25 are special benefits to private property owners

1 included in the project purposes.

2 On page 7 --

3 HEARING EXAMINER VANCIL: Skip the  
4 numbering.

5 MS. DUCOMB: Okay. Next page.

6 HEARING EXAMINER VANCIL: It's not going  
7 to make any sense.

8 MS. DUCOMB: Oh, and so we introduce the  
9 exhibits while we go. Let me see. That was the first  
10 one.

11 Exhibit 4 is just the Local Improvement  
12 Road District Manual [sic] for Washington State in our  
13 notebook.

14 HEARING EXAMINER VANCIL: So you're  
15 introducing exhibits now?

16 MS. DUCOMB: We'd offer that -- yep.

17 HEARING EXAMINER VANCIL: Not through a  
18 witness?

19 MS. DUCOMB: Well, we had just talked  
20 about introducing them during the summary presentation  
21 or --

22 HEARING EXAMINER VANCIL: I wasn't sure  
23 what you were doing, so --

24 MS. DUCOMB: Yeah, yeah.

25 HEARING EXAMINER VANCIL: In your -- so

1 these are not in order. These are just -- you're  
2 going to go through these and introduce them as we go,  
3 it seems like? Because we've already had --

4 MS. DUCOMB: Yeah, yeah.

5 HEARING EXAMINER VANCIL: These are  
6 different. Okay.

7 MS. DUCOMB: Yeah. Ours were at the back  
8 and you put them up front, yeah.

9 HEARING EXAMINER VANCIL: Okay.

10 MS. DUCOMB: Yeah. We're moving on to  
11 introduce Exhibit 4, the Local and Road Improvement  
12 District's Manual.

13 HEARING EXAMINER VANCIL: That's marked as  
14 Exhibit 4.

15 (Exhibit No. 4 was marked.)

16 MS. DUCOMB: Okay.

17 MS. THOMPSON: Mr. Hearing Examiner?

18 HEARING EXAMINER VANCIL: Yes.

19 MS. THOMPSON: I just want to get  
20 clarification on the record that this is opening  
21 statement and not being considered as factual  
22 testimony as part this proceeding?

23 HEARING EXAMINER VANCIL: You're asking me  
24 or counsel?

25 MS. THOMPSON: I'm asking you. I assume

1 that counsel --

2 HEARING EXAMINER VANCIL: I'm not entirely  
3 clear in some of the statements, so I can't answer it  
4 for them.

5 MS. THOMPSON: Yeah, okay.

6 So are you providing fact testimony or a  
7 summation of your argument?

8 MS. DUCOMB: Mostly a summation, but we  
9 consider these summary proceedings, so we don't have,  
10 like, a witness for every single exhibit of just City  
11 documents and things like that. So we're offering  
12 those as part of the summary proceedings. We -- I  
13 mean, the court could take judicial notice of it or --

14 HEARING EXAMINER VANCIL: Well, I won't --  
15 I'm not going to take judicial notice. That's -- I'm  
16 not going to mark a bunch of exhibits --

17 MS. DUCOMB: Yeah.

18 HEARING EXAMINER VANCIL: -- through  
19 judicial notice, but if the issue is simply exhibits,  
20 sometimes we have allowed those through counsel for  
21 judicial efficiency. If that's what you're asking --

22 MS. DUCOMB: Sure.

23 HEARING EXAMINER VANCIL: -- we can  
24 entertain that, but you need to ask --

25 MS. DUCOMB: Okay.

1 HEARING EXAMINER VANCIL: -- and let us  
2 know that's what you're doing.

3 MS. DUCOMB: Okay.

4 HEARING EXAMINER VANCIL: As far as the  
5 rest of your testimony, your statement, though, is not  
6 factual testimony; is that correct?

7 MS. DUCOMB: Correct, no.

8 HEARING EXAMINER VANCIL: Okay. But you  
9 are through counsel seeking to introduce some  
10 exhibits?

11 MS. DUCOMB: Correct.

12 HEARING EXAMINER VANCIL: Okay.

13 Is that clarified?

14 MS. THOMPSON: Yes, thank you.

15 MS. DUCOMB: Um-hmm.

16 Seattle's Waterfront for All, so according  
17 to the mayor and the Seattle Department of  
18 Transportation, the purpose of the Waterfront LID is  
19 to benefit all.

20 Seattle's new Waterfront for All that will  
21 include 20 acres of public spaces. Everyone stands to  
22 gain from this shared investment in a great public  
23 space.

24 We would introduce Exhibit 6 and  
25 Exhibit 7. Exhibit 6 is Mayor Durkan's announcement

1 of the Waterfront LID legislation, and Exhibit 7 is a  
2 copy of the Friends of the Waterfront website where  
3 they proclaim they are building 20 acres for the  
4 public by the public.

5 HEARING EXAMINER VANCIL: These are marked  
6 as 5 and 6, and what I'm going to ask is, since I  
7 don't know how many of these there's going to be, is  
8 that we address admissibility at the same time as  
9 we're marking them.

10 So counsel for the City, be on notice that  
11 if you're objecting -- you have an objection to any of  
12 these coming in, please raise it. I defer to you to  
13 do that.

14 MS. THOMPSON: Okay. Thank you.

15 HEARING EXAMINER VANCIL: Otherwise, I'm  
16 assuming they're -- I'm admitting and marking at the  
17 same time. Typically, when it comes in, I just mark  
18 and then -- and either by my own volition initiate  
19 somebody admitting them or somebody does that on their  
20 own, but in this case, since it's just coming in, I  
21 think we could do it faster by assuming it's marked  
22 and admitted unless there's an objection.

23 MS. THOMPSON: Thank you.

24 (Exhibit Nos. 5 and 6 were marked.)

25 MS. DUCOMB: Oh, Exhibit 5, yes, and then



1 at that point, let's offer and admit Exhibit 5, which  
2 is the final environmental impact statement.

3 COURT REPORTER: The final what?

4 MS. DUCOMB: Final environmental impact  
5 statement.

6 HEARING EXAMINER VANCIL: Do you want to  
7 move up here at the break?

8 MS. DUCOMB: You can keep kicking me to  
9 talk louder.

10 HEARING EXAMINER VANCIL: That's marked as  
11 Exhibit 7.

12 (Exhibit No. 7 was marked.)

13 MS. THOMPSON: So the City would like to  
14 place just standing objection related to any SEPA  
15 issues, or SEPA documents that are presented or  
16 admitted in this proceeding. This proceeding concerns  
17 the assessments for the LID and, you know, compliance  
18 with SEPA is not relevant to this proceeding. We  
19 understand that parties may wish to admit certain  
20 exhibits or make argument about SEPA, but we would  
21 just like on the record that the City considers that  
22 to be irrelevant to this proceeding.

23 HEARING EXAMINER VANCIL: Any response?

24 MS. THOMPSON: Well, we do think SEPA's  
25 relevant to the proceedings, your Honor. The City

1 Council has a duty to perform SEPA before adopting the  
2 final assessment roll, and that is one of the  
3 recommendations we'll be seeking from you to find that  
4 they need to do that and recommend that the City  
5 Council completes SEPA before adopting the final  
6 assessment roll. It's also really critical in  
7 understanding the challenges the City's having with  
8 the plans and specifications SEPA's required in order  
9 to develop the plans and specifications, and to date,  
10 that work has not been completed.

11 HEARING EXAMINER VANCIL: All right.

12 I don't know the nature of the SEPA  
13 arguments that are going to be presented by various  
14 parties. They're ranging. I've -- some are  
15 procedural saying they must comply with SEPA, and so  
16 procedurally, there's an issue with the waterfront  
17 assessment LID. I don't know if that's a valid issue  
18 yet. I haven't heard argument on it, essentially.

19 I've heard people may be trying to raise  
20 arguments about compliance with SEPA and starting to  
21 talk about significant impacts. I can tell you now,  
22 that's not part of this hearing --

23 MS. DUCOMB: Um-hmm. Um-hmm.

24 HEARING EXAMINER VANCIL: -- but people  
25 may try to do that, but I'm not going to rule on it

1 simply because it's a wide-ranging issue --

2 MS. DUCOMB: Um-hmm.

3 HEARING EXAMINER VANCIL: -- and I don't  
4 know what future arguments are going to be.

5 The City's objection is noted. I simply  
6 can't rule on it at this time because it's too broad.  
7 It's not on a specific document; it's on an argument  
8 that parties may present. And so I'm going to defer  
9 any decision I make on that to my final determination.

10 MS. THOMPSON: Okay. Thank you.

11 MS. DUCOMB: And I -- and I do think the  
12 20 acres of public space, green space is important to  
13 note. You know, this isn't a situation where there's  
14 large grassy areas like Myrtle Edwards Park.  
15 There's -- it's a promenade made for moving crowds up  
16 and down the sidewalk, and people won't be able to  
17 hang out in the median in the streets, so to speak, to  
18 enjoy the trees.

19 The Waterfront LID, the Central Waterfront  
20 was compared to Golden Gate Park. It was compared to  
21 Vancouver's Stanley Park.

22 We would offer Exhibit 8 and Exhibit 9.  
23 Those are statements made by Marshall Foster, Director  
24 of the Office of the Waterfront, and by Mayor Durkan.

25 HEARING EXAMINER VANCIL: These are

1 Exhibits 8 and 9?

2 MS. DUCOMB: In our notebook, yeah.

3 HEARING EXAMINER VANCIL: No, in our  
4 record.

5 MS. DUCOMB: Okay. Yours too.

6 HEARING EXAMINER VANCIL: They happen to  
7 have matched up at the time.

8 (Exhibits Nos. 8 and 9 were marked.)

9 MS. DUCOMB: Councilmember Johnson, at the  
10 vote on the formation ordinance, called the new space  
11 for pedestrians as opposed to a place for cars, and  
12 Councilmember Bagshaw said it would be green and not  
13 gray. And we offer Exhibit 10 regarding the  
14 transcript for the January 28th formation hearing.

15 HEARING EXAMINER VANCIL: That will be  
16 Exhibit 10.

17 (Exhibit No. 10 was marked.)

18 MS. DUCOMB: In reality, Alaska Way [sic]  
19 is a major truck route and a transportation corridor.  
20 It is a -- what's been described as well renowned  
21 planners as a poor environment for pedestrians.

22 In 2009 Gehl Architects was hired by the  
23 State of Washington, King County and the City of  
24 Seattle. When analyzing the deep-bored tunnel option,  
25 and they found the surface streets created on the

1 waterfront would create a poor environment for  
2 pedestrians, and we would offer Exhibit 11, the letter  
3 from -- regarding Gehl Architects and then their  
4 report and then some speaking points that SDOT crafted  
5 in response to their study.

6 HEARING EXAMINER VANCIL: 11. Marked as  
7 11.

8 (Exhibit No. 11 was marked.)

9 MS. DUCOMB: And then we would also offer  
10 our Exhibit 28, which is a letter from the Seattle  
11 Commission for People with Disabilities regarding the  
12 same challenges, navigating the roadway.

13 HEARING EXAMINER VANCIL: That will be  
14 marked as 12.

15 (Exhibit No. 12 was marked.)

16 MS. DUCOMB: We would adopt by reference  
17 the number of the amounts of testimony that you've  
18 heard regarding property owners' and residents'  
19 personal experience with visiting the waterfront and  
20 not visiting the waterfront. For the most part, local  
21 residents don't enjoy the resident [sic] and don't  
22 plan to use it any more in the future than they do  
23 now.

24 And after deciding to do the Local  
25 Improvement District in 2013, the City hired HR&A

1 Advisors to conduct a downtown visitation study, and  
2 they found or assumed that downtown residents would  
3 not use the waterfront any more than they would today  
4 in the future.

5 And that's our Exhibit 12, and we would  
6 offer Exhibit 12.

7 HEARING EXAMINER VANCIL: 13. Marked as  
8 13.

9 (Exhibit No. 13 was marked.)

10 MS. DUCOMB: And so on to what might be  
11 page 9 now in the presentation as a photograph of  
12 Stanley Park next to the waterfront. This is not  
13 Stanley Park.

14 The next page has a similar contrast  
15 between Golden Gate Park and the Central Waterfront.  
16 This is not Golden Gate Park.

17 In reality, according to the FEIS  
18 preferred alternative, I think this is on your  
19 page 11, your Honor, Pine Street to Union Street is a  
20 six-lane roadway, and we would, in addition to  
21 Exhibit 5, offer Exhibit 13, which is the excerpts  
22 from Volumes 1 and 8 of eight drawings for the Alaskan  
23 Way, Elliott Way, South King Street to Bell Street  
24 main corridor drawings.

25 We're still working with K&L Gates to

1 confirm that these are the main corridor drawings, and  
2 when we have Bates-stamped numbered, if they're any  
3 different, we'll -- we'll deal with that with  
4 your Honor at this time.

5 HEARING EXAMINER VANCIL: So which are you  
6 seeking to enter? Which --

7 MS. DUCOMB: Exhibit -- our Exhibit 13.

8 HEARING EXAMINER VANCIL: So we're going  
9 through all of these different notebooks now; is that  
10 right?

11 Seems like it.

12 MS. DUCOMB: I don't know if we'll get  
13 through all of them. The presentations don't touch on  
14 every document, so --

15 HEARING EXAMINER VANCIL: Okay.

16 I just wondered --

17 MS. DUCOMB: Yeah.

18 HEARING EXAMINER VANCIL: -- if we can  
19 maybe consolidate this and be more effective than me  
20 opening a bunch of notebooks.

21 All right. That's 14?

22 MS. DUCOMB: Um-hmm.

23 (Exhibit No. 14 was marked.)

24 MS. DUCOMB: 14 was No. 13, our 13, the  
25 excerpts of volumes one and eight.

1           And so I think, yeah, turning to your  
2 page 12, Union Street to Spring Street is a six-lane  
3 roadway. Madison Street to Yesler is a seven-lane  
4 roadway. Alaskan Way north of South Washington Street  
5 is going to be a nine-lane roadway. That's from  
6 Exhibit 5 in Exhibit 13.

7           Alaskan Way north of South Washington  
8 Street at the crosswalk is an eight-lane roadway with  
9 a pedestrian refuge center, and Yesler Way to South  
10 King Street is an eight-lane roadway. I think it  
11 should be your page 18, your Honor.

12           We have a map of the American Life  
13 properties at issue here this morning. This map was  
14 taken from the formation ordinance, and so we would  
15 offer Exhibit 14, the formation ordinance. Exhibit B,  
16 in particular, the picture. Exhibit B to the  
17 formation ordinance is the picture in this diagram.

18           HEARING EXAMINER VANCIL: Exhibit 15.

19           MS. DUCOMB: Thank you.

20           (Exhibit No. 15 was marked.)

21           MS. DUCOMB: This will be highlighted by  
22 Mr. Gibbons' testimony, but one thing to point out on  
23 this image is that it appears to us that it  
24 misrepresents the length of the improvements on South  
25 King Street. The improvements are proposed to end at



1 First Avenue, not Second Avenue, and so we just wanted  
2 to point that out.

3 The next few slides are just some photos  
4 of the various properties at issue here this morning.  
5 255 South King Street, we have a couple different  
6 images there showing the landscaping around the  
7 building and the improvements made when it was built  
8 to -- or 618 Second Avenue, which is the Courtyard  
9 Marriott at Second and Cherry on page 21 there, has  
10 mature landscaping and sidewalks in front of.

11 It and then on your page 22, 1116 First  
12 Avenue South, these are adjacent to the stadium,  
13 contiguous to each other but quite a distance from the  
14 improvements.

15 There's a couple more photos for you on  
16 page 23 and page 24 just to give you some reference to  
17 the properties here at issue today.

18 And then that's the end of that one,  
19 which, I believe, is your Exhibit 3.

20 HEARING EXAMINER VANCIL: Yes.

21 MS. DUCOMB: The next one I'd like to  
22 highlight is the one that starts with plans and  
23 specifications are vital and missing.

24 HEARING EXAMINER VANCIL: Exhibit 1 and 2?

25 MS. DUCOMB: This one's 2?

1 MS. TERWILLIGER: Um-hmm.

2 MS. DUCOMB: I just want to make sure I've  
3 got the same pages as you, your Honor.

4 So a big part of what we're going to be  
5 talking about over the next day or two, and  
6 Mr. Gibbons will be highlighting this a little bit  
7 himself, the plans and specifications really are vital  
8 and they're missing, quite frankly. The compliance  
9 with the plans and specifications are required by  
10 ordinance, specifically.

11 The City will say that plans and  
12 specifications means 100 percent design documents.  
13 And we know from LID law that the foundation and  
14 purpose of the LID must be achieved, and so it's  
15 really important that we have really good plans and  
16 specifications so we're all on the same page about  
17 what we know is being built.

18 What we've found to date in -- since the  
19 City released its study in January is that there's  
20 still -- several inconsistencies exist regarding the  
21 without LID baseline and the with LID improvements.  
22 Most of the LID improvements do not add anything  
23 particularly different or special from the before LID  
24 conditions or without LID improvements.

25 The Overlook Walk design in particular has

1 been materially and substantially compromised. Many  
2 of the apparent improvements appear to create  
3 substandard conditions. The improvements depend upon  
4 a high level of operations and maintenance that is  
5 uncertain at best. The improvements are not  
6 appurtenant or contiguous to the five Pioneer Square  
7 properties at issue today and on Wednesday, and  
8 they're not so with most others either, and we are  
9 recommending zero assessment for the properties'  
10 owners here today.

11 LID formation ordinance 125760 says that  
12 the purpose of the -- wait, wait, wait. I'm reading  
13 the wrong thing. Sorry.

14 The formation ordinance requires  
15 compliance with the plans and specifications, and they  
16 may be modified by the City Council as long as such  
17 modifications do not affect the purpose of the LID  
18 improvements or constitute materially different  
19 improvements.

20 Accessibility here is a major issue.  
21 Accessibility is one of the foundations of the Central  
22 Waterfront program, and you'll be hearing more about  
23 how accessibility still remains a challenge for the  
24 City on this project.

25 We'd -- I think -- have we offered

1 Exhibit -- our Exhibit 14, the formation ordinance?

2 That's in right now as 15, right?

3 MS. TERWILLIGER: Yeah.

4 MS. DUCOMB: Okay.

5 The City in Exhibit 29 agrees that the --  
6 and will say that the conformed set of plans and  
7 specifications of each Waterfront LID improvement as  
8 prepared by an outside engineering firm hired by the  
9 City after the Waterfront LID improvement has reached  
10 a hundred percent design, and so we would offer  
11 Exhibit 29.

12 HEARING EXAMINER VANCIL: It's Exhibit 16.

13 MS. DUCOMB: Thank you.

14 (Exhibit No. 16 was marked.)

15 MS. DUCOMB: And according to the City of  
16 Seattle, the plans and specifications and construction  
17 will not be complete for, quote, several years and  
18 are, quote, subject to change, end quote. We would  
19 offer Exhibit 30.

20 MS. THOMPSON: Could you -- you're  
21 referencing responses to discovery?

22 MS. DUCOMB: Yep, yep.

23 MS. THOMPSON: Could you just state --

24 MS. DUCOMB: Yep.

25 MS. THOMPSON: -- for the record which

1 response you're referencing?

2 MS. DUCOMB: The second set. Exhibit 30  
3 is the City's objections and responses to plaintiff's  
4 second set of interrogatories.

5 MS. THOMPSON: And what numbered response  
6 are you referring to?

7 MS. DUCOMB: 32.

8 I believe this is your page 4, your Honor,  
9 the percent of designs --

10 HEARING EXAMINER VANCIL: Let's wait.

11 MS. DUCOMB: Okay.

12 Are you still looking?

13 MS. THOMPSON: Sorry. I'm sorry, I'm  
14 reading.

15 MS. DUCOMB: Okay. Yeah, sure.

16 MS. THOMPSON: So you said this was --

17 MS. DUCOMB: And it might be actually --

18 MS. THOMPSON: Is this interrogatory  
19 number 32 to your -- it's marked in this binder as  
20 Exhibit 30?

21 MS. TERWILLIGER: Yeah.

22 MS. DUCOMB: Let me get that, because I  
23 know the third and fourth have it too. I might have  
24 a -- we might have a typo in there.

25 HEARING EXAMINER VANCIL: Do you have an

1 objection, Counsel, or did you -- or do you need a  
2 minute or --

3 MS. DUCOMB: Do you need a minute?

4 MS. THOMPSON: Sorry. I was just  
5 reviewing. No objection.

6 HEARING EXAMINER VANCIL: Okay.

7 Then we've got Exhibit 17.

8 (Exhibit No. 17 was marked.)

9 MS. DUCOMB: Okay.

10 The percent of design in terms of the  
11 plans and specifications is something that's certified  
12 by the appraiser on page 4 now of your handout,  
13 hopefully. The preliminary City appraisal relies upon  
14 the improvement designs and cost to calculate  
15 increased values. The final City appraisal relies  
16 upon the improvement designs percent to design and  
17 cost to calculate the increased values, and the City's  
18 appraiser certifies the appraisal as accurate.

19 The preliminary City appraisal relies upon  
20 the improvement designs and costs. This is  
21 Exhibit 36, which is the Valbridge preliminary study,  
22 which we would offer at this time.

23 HEARING EXAMINER VANCIL: Which exhibit of  
24 your --

25 MS. DUCOMB: My 36.

1 HEARING EXAMINER VANCIL: And what is  
2 this?

3 MS. DUCOMB: This is the preliminary  
4 study, the Valbridge preliminary study.

5 HEARING EXAMINER VANCIL: Exhibit 18.  
6 (Exhibit No. 18 was marked.)

7 MS. DUCOMB: Next, we would offer our  
8 Exhibit 18, which is the final benefit study.

9 HEARING EXAMINER VANCIL: And this will be  
10 19.

11 (Exhibit No. 19 was marked.)

12 MS. DUCOMB: The percent of design and  
13 cost estimates really go hand in hand throughout the  
14 RCW, and the appraisals, the cost of the improvements  
15 is a key factor in determining their value and the  
16 impact they have on property around them. At the same  
17 time, cost estimates are driven by the percent of  
18 design and where we're at, and here, we'll be -- we'll  
19 be seeing that the percent of design remains unknown,  
20 that the cost estimates are not complete, and so this  
21 is a fundamental, you know, issue with the overall  
22 appraisal.

23 The City's with and without scenarios in  
24 the final appraisal are extraordinary assumptions made  
25 by the City appraisal. That's on page 28 of

1 your Honor's Exhibit 19. And use of preliminary  
2 plans, which is what happened here, requires a new  
3 appraisal once the plans are done, and that's, again,  
4 Exhibit 19, page 91.

5 I think we're onto your page 5, just some  
6 background information we have on the percent of  
7 design that -- science, for lack of a better term,  
8 that the City uses. This is from our Exhibit 32,  
9 which we would offer now. The Waterfront -- Seattle  
10 Waterfront Park improvements, 30 percent schematic  
11 design update for Pier 58, which is one of the LID  
12 improvements, appendix E, which I think is 20 now.

13 HEARING EXAMINER VANCIL: Exhibit 20.

14 (Exhibit No. 20 was marked.)

15 MS. DUCOMB: Something I'd like to note  
16 here, your Honor, is that concept level designs come  
17 before project definition, and we'll see how this  
18 becomes an issue in particular with the Overlook Walk.  
19 30 percent schematic designs can mean just 5 to 7  
20 percent designs, and this project definition is  
21 important because, for example, with the Overlook  
22 Walk, we're losing elements now. Elevators are being  
23 eliminated, staircases are being eliminated, and so we  
24 know we're not quite to project definition because the  
25 project keeps changing.



1           The next page in Exhibit E, which is on  
2 your page 6, shows the risks associated with the  
3 different levels of cost estimating, and how it is  
4 that this -- and this will become relevant both in  
5 terms of making budget decisions that are binding  
6 future councils and future budgets because we don't  
7 have solid designs and so we don't have good cost  
8 estimates. But it's also an underlying aggravating  
9 factor of why the appraisal remains fundamentally  
10 flawed because it's based on an incorrect assumption  
11 about where the plans are and what's -- what we  
12 actually know.

13           I have a timeline, a short timeline here  
14 on page 7. As you may recall, Bertha stalled from  
15 about December 2013 to December 2015 while the City  
16 kept making plans for the Central Waterfront. The  
17 Office of the Waterfront, though it may have  
18 misrepresented the percent of design status both in  
19 2015 and 2018, and then we just recently in the last  
20 week have uncovered that the City appraisal  
21 incorrectly relies on what -- on SDOT's claimed  
22 percent of design without verifying the accuracy of  
23 those statements.

24           In Exhibit 33, which we would offer right  
25 now, the 2015 work plan of the Office of the

1 Waterfront, the Office of the Waterfront claimed for  
2 its 2014 accomplishments that 30 to 60 percent design  
3 milestones were achieved for the main corridor, the  
4 Overlook Walk, public piers and Union Street.

5 HEARING EXAMINER VANCIL: That will be  
6 Exhibit 19.

7 MS. DUCOMB: 19?

8 HEARING EXAMINER VANCIL: Sorry, 21.

9 (Exhibit No. 21 was marked.)

10 MS. DUCOMB: 21. Thanks.

11 In the third quarter of 2015, the Office  
12 of the Waterfront set out its predevelopment plans for  
13 2015, and at that time, it predicted the Overlook Walk  
14 would be at 90 percent in 2018, Union Street at  
15 90 percent in 2017, Pike/Pine Streets at 90 percent in  
16 2017, and Pioneer Square at 90 percent in 2018.

17 That's Exhibit 34, which we would admit right now.

18 HEARING EXAMINER VANCIL: That will be  
19 Exhibit 22.

20 (Exhibit No. 22 was marked.)

21 MS. DUCOMB: On your page 8, we have a  
22 comparison of the Overlook Walk and ocean pavilion  
23 presentation that the Office of the Waterfront made to  
24 the Seattle Design Commission claiming it was at  
25 30 percent design in April 2018. In the minutes from

1 the Seattle Design Commission, that was not the case.  
2 In the approved minutes, the Overlook Walk is at  
3 concept design, which is 2 percent only.

4 The Seattle Design Commission identified  
5 Waterfront Landings access issues, that vegetation  
6 will block views, that they should increase the  
7 elevator capacity to be reliable and meet the expected  
8 demand, that adjacent stairs need to be more appealing  
9 to their users, and they identified equity issues  
10 involving accessibility restrooms and the tribes. We  
11 would offer Exhibit 35, the Seattle Design Commission  
12 minutes and -- or Exhibit 27, which is the minutes and  
13 then Exhibit 35, which is the presentation.

14 HEARING EXAMINER VANCIL: 27 and 35? Your  
15 27 and 35?

16 MS. DUCOMB: Yeah, my 27 and 35. Yes,  
17 your Honor.

18 HEARING EXAMINER VANCIL: Your Exhibit 35  
19 is marked 23.

20 (Exhibit No. 23 was marked.)

21 HEARING EXAMINER VANCIL: And the next  
22 item is marked 24.

23 (Exhibit No. 24 was marked.)

24 MS. DUCOMB: In May 2018, the City Council  
25 votes to adopt the resolution of intent to form the

1 Waterfront LID while the truth hides in plain sight.  
2 The Seattle Design Commission minutes reflect, for  
3 example, that the Overlook Walk is only at concept  
4 design, which is about 2 percent by the City's own  
5 documents, and yet the summary from Macaulay's  
6 preliminary study shows that the Overlook Walk is  
7 approximately 30 percent completed, the promenade is  
8 90 percent complete, Union Street is approximately  
9 30 percent completed, Pioneer Square less than 10  
10 percent and Pike/Pine Streets are at 10 percent  
11 completed. And those are -- that's coming from the  
12 Valbridge preliminary study, which you already  
13 admitted, pages 2 and 3.

14           On page 10, we have the latest update.  
15 The City is still not -- still not being forthright  
16 with where the plans and specifications are. The  
17 Macaulay final benefit study found that the promenade  
18 is a hundred percent complete. The City's answer to  
19 discovery agree that the promenade is a hundred  
20 percent complete.

21           The Macaulay final benefit study says that  
22 the Overlook Walk is 30 percent complete, but the City  
23 has said that actually the Overlook Walk is unknown.  
24 It's anything less than a hundred percent.

25           Union Street is at 90 percent, and the

1 City says Union Street's actually a hundred percent  
2 now and we're waiting on those plans. Pike/Pine  
3 Streets are less than 30 percent versus Pike/Pike  
4 Streets are unknown. Pioneer Square is less than  
5 30 percent versus the City saying Pioneer Square  
6 streets are known. Pier 58 is 30 percent complete,  
7 but Pier 58's status is unknown and something just  
8 less than a hundred percent.

9 Macaulay says that the designs will not  
10 change substantively once this 30 percent milestone  
11 has been reached, whereas the City is telling us that  
12 all designs, plans, agency reviews, specifications and  
13 construction documents are still in progress and  
14 subject to change.

15 And we would offer Exhibit 29, the City's  
16 objections to the third interrogatories. Oh, see,  
17 that was a typo then. That's probably why you got  
18 lost on the other document because it was a typo, but  
19 there's a better reference for you right there,  
20 Exhibit 29, page 12 and 13.

21 That's 16 now?

22 Okay.

23 And we would offer Exhibit 15. I think  
24 it's important to note that one of the consequences of  
25 not really having a handle on the Overlook Walk design

1 is that the budget at the time the City formed the LID  
2 was a hundred million dollars, but in the latest  
3 adopted capital improvement program, the Overlook Walk  
4 is now estimated at \$174 million.

5 HEARING EXAMINER VANCIL: Marked as 25.

6 (Exhibit No. 25 was marked.)

7 MS. DUCOMB: Thank you.

8 And then lastly is just an update. This  
9 comes from a document authored by Marshall Foster in  
10 the Office of the Waterfront, our Exhibit 21,  
11 estimating the different number of permits and  
12 approvals and requirements needed. We would offer our  
13 Exhibit 21.

14 HEARING EXAMINER VANCIL: Exhibit 26.

15 (Exhibit No. 26 was marked.)

16 MS. DUCOMB: And then our Exhibit 37, I  
17 don't think we've done yet. We'd offer 37 too, as  
18 well, your Honor.

19 HEARING EXAMINER VANCIL: That will be  
20 Exhibit 27.

21 (Exhibit No. 27 was marked.)

22 MS. DUCOMB: And that concludes the second  
23 packet.

24 Now, we're on to the third packet, the  
25 with and without, before and after scenarios. This

1 one's one?

2 MS. TERWILLIGER: (Nods head.)

3 MS. DUCOMB: Probably at the heart of the  
4 appraisal and the heart of the issue is understanding  
5 really clearly what is the before condition and what  
6 is the after condition. And so the purpose of these  
7 next few slides is to provide background and  
8 information on what really is being proposed by the  
9 City as part of the Waterfront LID.

10 We have, of course, a number of other  
11 defects that we're concerned with that you'll -- we'll  
12 be dealing with in the briefs, but we also want to  
13 spend a little time showing you the before and after  
14 scenarios so that you can have a good handle on the  
15 projects at hand.

16 The first going -- starting off on page 3,  
17 the promenade, one of the things that's really  
18 important to note about the City's final benefit study  
19 is that the renderings are not to scale and they don't  
20 always comport with the plans or the FEIS or other  
21 things. So while they're very beautiful, nice  
22 pictures, I just would ask your Honor to exercise some  
23 caution because they're not always to scale.

24 The baseline is significant without the  
25 LID improvements, and this will be part of

1 Mr. Gibbons's testimony as well. One thing that we  
2 have to take into consideration is the volume of  
3 activity that's happening on our waterfront and all  
4 the new improvements and infrastructure that's going  
5 in outside the LID that is -- that's the baseline  
6 condition.

7           And so, you know, the seawall is replaced,  
8 the viaduct is removed, Pier 62 is replaced, there's a  
9 new two-way bicycle facility, there's a new Marion  
10 Street Bridge, there's a new Lenora Street Bridge,  
11 University, Spring, Madison, Marion, Columbia, Yesler  
12 Way, Washington, Main, Jackson and King Streets all  
13 have roadway and sidewalk access to Alaskan Way and  
14 the original Pike Street Hill climb, Union Street  
15 stairs and Seneca stairs continue to provide  
16 pedestrian access well.

17           We have rebuilt the Washington boat  
18 landing. There'll be a habitat beach completed near  
19 the Colman Dock. The main corridor is restored, which  
20 in and of itself was a \$370 million project. The  
21 Belltown sidewalk and landscape enhancements, there's  
22 a new Elliott Way roadway, there's an elevated Pine  
23 intersects with Elliott Way, the sidewalks, new  
24 sidewalks on both sides of the street and two-by-two  
25 scored concrete crosswalks with six-inch curbs. The



1 Railroad Way has been rebuilt with new landscaping.

2 They're proposing 377 -- according to the  
3 final study, they're saying that there's 377 new  
4 street trees at one-and-a-half to two-inch caliber on  
5 both sides of the street and in the median, and  
6 that -- but then we also have to compare the landscape  
7 planting schedule from the main corridor design.

8 There, they're actually showing 320 -- or 823 trees,  
9 660 large trees and 163 small trees, and so this is,  
10 again, one of those issues where it's not really clear  
11 what the baseline is still and we're trying to figure  
12 that out. And then hardy ground cover everywhere else  
13 you go.

14 And so at this time, we would offer -- I  
15 think Exhibit 15 was just admitted. Exhibit 16 -- our  
16 Exhibit 16, Exhibit 17, and Exhibit 20.

17 HEARING EXAMINER VANCIL: All right. That  
18 will be 28, 29 and 30.

19 (Exhibits Nos. 28, 29 and 30 were  
20 marked.)

21 MS. DUCOMB: Thank you.

22 With regard to the sidewalks, in  
23 particular, the sidewalks as the baseline are proposed  
24 to be two-by-two scored concrete, but then the  
25 proposal is to remove these sidewalks and replace them

1 with two-by-two exposed aggregate and actually reduce  
2 the width of the sidewalks on the west side for  
3 additional landscaping.

4 We would offer Exhibit 19, the addendum to  
5 the ABS final special benefit study.

6 Well, we have the study itself, but I'm  
7 seeing the addendum here as marked separately in our  
8 book, so --

9 HEARING EXAMINER VANCIL: That will be 31.

10 (Exhibit No. 31 was marked.)

11 HEARING EXAMINER VANCIL: Where are we at,  
12 Counsel?

13 MS. DUCOMB: I believe on your page 4. I  
14 have -- I don't know. Do you want a break or do you  
15 want to go for 15 more minutes or --

16 HEARING EXAMINER VANCIL: How much more  
17 intro do we have?

18 MS. DUCOMB: I don't think a lot more. I  
19 think this will go pretty fast.

20 HEARING EXAMINER VANCIL: Let's try to get  
21 through that at least then.

22 MS. DUCOMB: Okay.

23 And so on your page 4, hopefully, the  
24 landscaping is substandard. They're proposing to limb  
25 up the evergreens, and it looks like from the photos,

1 maybe even top them to maintain their small structure.  
2 This was confirmed by the landscaping schedule in  
3 Volume 8 of 8 of the main corridor designs. It also  
4 appears from the renderings that the trees will not be  
5 spaced well for adequate growth and that sort of  
6 thing.

7 The parking on your page 5, maybe now,  
8 remains really confused. It -- the baseline was  
9 supposed to have all the parking on the east side of  
10 the -- where the viaduct used to be, and now, they're  
11 proposing that it be on the west side. I don't want  
12 to belabor the -- belabor the point other than to  
13 point out that it still remains pretty confusing about  
14 what's going on with the parking.

15 It's also important to note on page 6 that  
16 the -- you know, the renderings are not to scale and  
17 do not accurately reflect the number of trees. The  
18 width scenario for the trees is just to add 16 trees.  
19 The Waterfront LID is only proposing to add 16 trees  
20 to the baseline, but the renderings seem to show lots  
21 more than just 16 trees.

22 This is -- this is -- this is an area,  
23 your Honor, where I know we're going to be requesting,  
24 you know, an opportunity to file a closing brief at  
25 the end of the proceedings or at the end of the --

1 when you close the record sort of -- sort of thing,  
2 and this was one of the issues that we're still  
3 grappling with, but this is just sort of a few things  
4 that we've identified to date in terms of some code  
5 compliance issues with what the City's proposing.

6 A 6-inch curb is the standard, not 3  
7 inches. Non-native species are generally prohibited  
8 in the shoreline environment and discouraged generally  
9 around town.

10 Evergreens are not suitable for sidewalks  
11 and medians. They need about 35-by-35 feet to thrive  
12 and grow. And exposed aggregate is not necessarily,  
13 even though pretty and decorative, a better concrete  
14 solution, especially for a major truck corridor.

15 And so we would offer Exhibit 22,  
16 Exhibit -- our Exhibit 22, 23, Exhibit 24 and  
17 Exhibit 25.

18 HEARING EXAMINER VANCIL: 31 -- what  
19 number are you on, 31?

20 So this will be 32, 33.

21 And which was the last one you did for  
22 your numbers?

23 MS. DUCOMB: My 25.

24 HEARING EXAMINER VANCIL: Okay. Got 34  
25 and 35.

1 (Exhibits Nos. 32, 33, 34 and 35  
2 were marked.)

3 MS. DUCOMB: And then we just highlight  
4 the six pages -- six projects really quickly here for  
5 your Honor so you can see for yourself the before and  
6 after's right next to each other. The first is Union  
7 Street on page 9, the before is --

8 HEARING EXAMINER VANCIL: And just note  
9 the pagination's off on this one as well.

10 MS. DUCOMB: Oh, okay. Sorry.

11 Union Street has a without LID and with  
12 LID photo there for you to look at the comparison.

13 And then the next project we have is the  
14 Overlook Walk. The Overlook Walk has been on a diet,  
15 I refer to it as. This particular before and after of  
16 the Overlook Walk shows you without the LID and with  
17 the LID per the 2016 FEIS, the original concept with  
18 the large lawn area in the middle.

19 And then when we get further into it,  
20 however, we start to notice that the Overlook Walk  
21 starts to go on a diet after the resolution of intent  
22 is voted on after the preliminary benefit study and  
23 after the LID public hearings even. The Overlook Walk  
24 diet continued even after the formation ordinance, and  
25 we have renderings or images for you that show what it

1 might look like now per the final special benefit  
2 study.

3 Things to note, I think, are that the LID  
4 deck span has shrunk from a large rectangle shape to  
5 an hourglass shape. There used to be multiple  
6 staircases to access the promenade in 2016, two  
7 elevators, public restrooms under the staircases, and  
8 the LID elevation for the -- for the deck was about 40  
9 feet above the promenade.

10 By the time we get to 2018, the LID deck  
11 has been reduced to an hourglass shape. It has two  
12 horseshoe configured staircases running from it. No  
13 new elevators. The elevators have been eliminated.

14 There are still public restrooms under the  
15 staircases, and the LID elevation is now approximately  
16 50 feet above the promenade, and we would offer  
17 Exhibit 26, which is the new Overlook Walk EIS  
18 revaluation that SDOT did for the Overlook Walk in  
19 September 2018.

20 HEARING EXAMINER VANCIL: That will be 36.

21 (Exhibit No. 36 was marked.)

22 MS. DUCOMB: When we get to the final  
23 benefit study released just this January, there --  
24 there is only one set of horseshoe staircases on the  
25 north, it appears, that will be built. There are no

1 new elevators. The restrooms have been eliminated,  
2 and the LID elevation is approximately 46 feet above  
3 the promenade.

4 If you turn to page 13, there's an  
5 Overlook Walk 2.0. Maybe it's -- yeah, it's your 13,  
6 hopefully. It looks like this. This is not -- I'd  
7 like us to pull out Exhibit 19, the final benefit  
8 study addendum. I think you just did that one, and it  
9 was --

10 MR. EDLUND-CHO: 31.

11 MS. DUCOMB: -- 31, yeah. Yeah. I'd like  
12 your Honor just to look at this page.

13 HEARING EXAMINER VANCIL: I'd just go  
14 ahead. I'm -- since you're not giving testimony.

15 MS. DUCOMB: Okay. Okay.

16 HEARING EXAMINER VANCIL: Me going through  
17 the documents right now --

18 MS. DUCOMB: Okay.

19 HEARING EXAMINER VANCIL: -- doesn't  
20 really --

21 MS. DUCOMB: All right. That's fine.

22 HEARING EXAMINER VANCIL: -- really make  
23 much sense.

24 MS. DUCOMB: Co-compliance issues with the  
25 Overlook Walk are Seattle Design Commission approval

1 and elevator and ADA access and other things like  
2 that.

3 And we would offer Exhibit 28. I think  
4 that's been admitted.

5 MS. TERWILLIGER: Yes, Exhibit 12.

6 MS. DUCOMB: Okay. That's No. 12. Okay.

7 That's already in.

8 Pier 58 is the next LID improvement. Pier  
9 58 is an existing park pier that's been around for  
10 quite some time, and the new park is -- pier is  
11 proposed there. You can see it on the water.

12 There is some concern with the overwater  
13 coverage and use of this area, both in the FEIS. The  
14 tribes commented that they would like the City to keep  
15 open the option of restoring the natural shoreline and  
16 the restored habitat as an option. And again, this is  
17 why SEPA is important to do before you decide on your  
18 project. And just wanted to flag that for you that  
19 that's out there.

20 And we have an exhibit for that that's not  
21 here. Exhibit 51, our Exhibit 51, we would offer now,  
22 which was the tribal comments, Suquamish Tribe  
23 comments to the FEIS.

24 HEARING EXAMINER VANCIL: 37.

25 (Exhibit No. 37 was marked.)



1 MS. DUCOMB: And we'd -- excuse me -- also  
2 offer our Exhibit 50, which is an excerpt from the  
3 Central Waterfront Master Parks Plan which similarly  
4 called for demolition of the pier and restoration of  
5 the shoreline.

6 HEARING EXAMINER VANCIL: 38.

7 (Exhibit No. 38 was marked.)

8 MS. DUCOMB: Pioneer Square, I think we  
9 have some before and after renderings to help  
10 familiarize yourself with what the before and after  
11 is, and it's -- Anthony Gibbons will touch on this as  
12 well, but it's -- it's just not a lot being proposed  
13 here. It's hard to tell the difference between the  
14 before and after, quite frankly, and in the case of  
15 King Street, which is the only street in Pioneer  
16 Square that comes close to one of the properties at  
17 issue today, the only proposal is to plant two trees  
18 two blocks away from the building. And I think we're  
19 pretty good at this point.

20 The City did propose striping and some  
21 improvement on Second Avenue which was not part of the  
22 formation ordinance, and so we are going to be asking  
23 that that be removed from the LID.

24 The Pike/Pine streets, similar to Pioneer  
25 Square, still -- still early in the development, and

1 not -- not sizeable in terms of a lot of what they're  
2 adding to the streetscape, some trees and taking  
3 existing planters and putting them in the ground  
4 appears to be the majority of the proposal for those.

5 I guess in closing just for one minute,  
6 your Honor, it's -- it sometimes feels to me somewhat  
7 like a -- like a rule of law issue with SDOT. You  
8 know, the SDOT and the City Council need to do SEPA  
9 review and they need to develop their plans and  
10 specifications in accordance with standard procedures  
11 for developing plans and specifications.

12 Our environment, our wasting equity,  
13 social goals really demand that. They need to lean  
14 into the Seattle Design Commission's recommendations,  
15 and not away from them, and they need cost estimates  
16 that are concrete and will not bind future city  
17 councils unlawfully, and they had a duty because it's  
18 a park to comply with a different LID structure, you  
19 know, approval process for approving a park LID.

20 I sometimes -- I sometimes liken it to,  
21 you know, going to the bank for a loan when you're  
22 trying to develop a property. You go in for your  
23 predevelopment loan and you get a small percentage of  
24 the overall project, and the goal is to hire your  
25 architect and get some drawings and get a permit, and

1 then when you get your permits, you can go get your  
2 construction financing. But here, and then maybe  
3 after you construct your building, your project should  
4 close out your financing and refinancing, but here, we  
5 haven't finished Step 1 and we're already into Step 2,  
6 and the designs are being compromised while costs keep  
7 going up, and now, there's even, you know, a lot of  
8 just gray about what actually is going to be built,  
9 and yet, this is the foundation of any Local  
10 Improvement District. We have to get this  
11 straightened out. We have to daylight this, and we  
12 have to know what's actually going to be built.

13           It's not just these property owners before  
14 you this morning or even the 6300 property owners out  
15 there in full, but I'd say it's everybody. It's the  
16 City Council, it's the tribes, it's our community that  
17 we use these proceedings to really get to the truth.  
18 That's it.

19           HEARING EXAMINER VANCIL: Thank you. We  
20 will take a break and return at 10:30.

21                       (A break was taken from 10:15 to  
22                       10:31 a.m.)

23           HEARING EXAMINER VANCIL: We'll return to  
24 the record with objectors' case in chief.

25           MS. TERWILLIGER: The objectors call

1 Anthony Gibbons, please.

2 HEARING EXAMINER VANCIL: Good morning,  
3 Mr. Gibbons. Please state your name and spell it for  
4 the record.

5 THE WITNESS: Anthony Gibbons, G -- it's  
6 Anthony with an and G-I-B-B-O-N-S.

7 HEARING EXAMINER VANCIL: And you just  
8 need to speak up. She needs to get it and then the  
9 mic -- you don't have to --

10 THE WITNESS: Okay.

11 HEARING EXAMINER VANCIL: The microphone,  
12 this is for everybody, make sure that you have a  
13 microphone within about a foot of your mouth. This is  
14 purely for recording purposes. It doesn't assist  
15 anybody hearing.

16 THE WITNESS: Okay.

17 HEARING EXAMINER VANCIL: So if you want  
18 others to hear, like the court reporter, that's where  
19 you need to project your voice, so --

20 THE WITNESS: Okay.

21 HEARING EXAMINER VANCIL: And thank you  
22 for stating your name.

23

24 ANTHONY GIBBONS, witness herein, having been  
25 first duly sworn on oath,

1                   was examined and testified  
2                   as follows:

3                   DIRECT EXAMINATION

4 BY MS. TERWILLIGER:

5       **Q. Good morning, Mr. Gibbons.**

6       A. Good morning.

7       **Q. I know that our hearing examiner has worked**  
8 **with you before, but let's go through your background**  
9 **just a little bit.**

10           **Can you tell me a little bit about your**  
11 **professional background?**

12       A. Sure. I've been a real estate appraiser since  
13 1983. I'm a member of the Appraisal Institute. I'm a  
14 former member of the Counselors of Real Estate. I've  
15 been president of our local Seattle chapter of the  
16 Appraisal Institute and also at the Counselors.

17           I'm -- I've published the -- in the Washington  
18 State Bar Association Handbook on appraisals. I wrote  
19 that chapter.

20           And I'm also on the Runstad Center, advisory  
21 board for Runstad Center of Real Estate at the  
22 University of Washington, and I also teach in their  
23 class. They have a commercial real estate  
24 certificate, and I've taught that class for over  
25 15 years, and -- and I was the lead instructor in the

1 class in Tacoma, UW Tacoma during the years that they  
2 held the course there.

3 **Q. Okay.**

4 A. Yeah.

5 **Q. There should be a box of binders down there**  
6 **to your right.**

7 A. Okay.

8 **Q. If you could pull out the binder that**  
9 **contains Exhibit 1.**

10 A. Yep.

11 **Q. Is that a copy of your -- a current copy of**  
12 **your CV?**

13 A. Yes, it is.

14 MS. TERWILLIGER: We'd like to offer  
15 Exhibit 1.

16 HEARING EXAMINER VANCIL: I need to see  
17 the sheet. Marked as Exhibit 39.

18 (Exhibit No. 39 was marked.)

19 BY MS. TERWILLIGER:

20 **Q. Mr. Gibbons, have you ever done any work on**  
21 **behalf of the City of Seattle?**

22 A. Yes. I was asked by the City Council to look  
23 at an economic analysis of downtown zoning when the  
24 City was interested in rezoning downtown to  
25 accommodate higher height limits, and as part of that,

1 they wanted to institute a program where there was  
2 affordable house -- housing payment, basically, for  
3 higher density zoning. And so I worked on that  
4 economic impact study with Heartland, testified in  
5 front of the City Council on the project, and we also  
6 met with numerous developers undertaking various  
7 feasibility studies to test the model that we were  
8 working with.

9 **Q. Okay.**

10 A. I've also been an expert witness for them in  
11 several cases, landslide cases and damages cases.

12 **Q. Okay.**

13 **And were those the cases pending in King**  
14 **County?**

15 A. Yes, they were, yeah.

16 **Q. Have you done work previously related to**  
17 **special benefits?**

18 A. Yes, I wouldn't say it's routine, but it feels  
19 almost routine. We do a lot of condemnation work, and  
20 as part of that, we're required to look at the  
21 potential for special benefit.

22 This has become an issue particularly with the  
23 light rail construction, and so we've had a couple of  
24 cases where either the agency has alleged special  
25 benefit for a particular partial take of a property,

1 or we -- we've done studies of looking at the  
2 potential for special benefit for those. I also -- so  
3 as part of that work, I -- I've spoken -- spoken at  
4 least a couple of times in a seminar with the  
5 Washington State Bar Association on special benefits  
6 and general benefits, and we're giving a talk,  
7 actually, this coming May on that subject matter for  
8 that.

9 **Q. Have you done any other special benefits work**  
10 **relating to parking or other improvements?**

11 A. Yeah, I did a -- for the City of Bainbridge  
12 Island, I did a preliminary look into the potential  
13 feasibility of a LID for the construction of a parking  
14 garage downtown, you know, basically defining the  
15 boundaries of what the LID would be and what the  
16 potential benefit would be.

17 **Q. And just -- just to follow up, so in -- in**  
18 **that project, you were the person who determined the**  
19 **boundaries of the LID?**

20 A. Yes, yeah.

21 **Q. And how did you go about doing that?**

22 A. I looked at -- I'm -- unfortunately, we're not  
23 very good at walking in this country. Okay?

24 So the distances that people walk from their  
25 car to a retail store are -- they're -- there are



1 several studies on those and how far people will park,  
2 and, obviously, I knew that community very well, so I  
3 could see what people would tend to park to walk to  
4 store buildings, so we looked at various distances  
5 that would be created if the parking garage or central  
6 parking, how people would go park and then walk to  
7 retail businesses and how -- how much those would  
8 benefit.

9 **Q. Okay.**

10 **And what was the conclusion of your study?**

11 A. Basically, there wasn't enough benefit there  
12 that I regarded as special to make that LID feasible.

13 **Q. And did the -- the City agree with your**  
14 **assessment?**

15 A. They took my recommendation, yes.

16 **Q. Okay.**

17 **We're here today to talk about the special**  
18 **benefit study prepared by Bob Macaulay, right?**

19 A. Yeah.

20 **Q. Are you familiar with Mr. Macaulay and his**  
21 **work --**

22 A. Yeah.

23 **Q. -- from prior cases?**

24 A. Macaulay. Macaulay. Yeah.

25 **Q. Macaulay?**

1 A. Yeah.

2 **Q. Really struggle with that name.**

3 A. That's all right. You got -- you can't look  
4 at it.

5 Yes, I am. I'm familiar with Bob Macaulay.  
6 I've known him for a long time.

7 **Q. And have you worked with him before?**

8 A. We've been on opposite sides of an arbitration  
9 before, so yeah.

10 **Q. Okay.**

11 **And are you familiar with the studies that he**  
12 **performed here?**

13 A. I am, yes.

14 **Q. And how are you familiar with them?**

15 A. I've -- well, I've actually been familiar with  
16 the study for some time. I own a condominium  
17 downtown, and so really way back as early as 2012 --  
18 Bob Macaulay wasn't involved back then, it was a  
19 different appraisal firm, but I've been watching this  
20 project progress, and, of course, when the preliminary  
21 assessment came out, I reviewed that report.

22 I was hired by BOMA, the Building Offices and  
23 Managers Association, so that's B-O-M-A, to look at  
24 the study and provide my thoughts to that group of --  
25 of managers of -- which basically representing most of

1 the downtown high rises. And then I attended most of  
2 the Waterfront Seattle meetings where the -- where  
3 basically questions were presented to the Waterfront  
4 Seattle team headed up by Marshall Foster at that  
5 time, and the people could ask questions and delve  
6 into some of the details of the study.

7 **Q. And did you ask questions at those meetings?**

8 A. I did, yeah. I -- I think just one. I was  
9 perplexed as to the lack of detail regarding both the  
10 before and the after condition, and the differences.

11 The -- the subject LID is unusual. In my  
12 experience from LID, typically, an LID is reserved for  
13 a tangible improvement like a sewer line or a -- a  
14 water -- a sidewalk or curb front improvements. The  
15 idea of it being used for an aesthetic like a park is  
16 unusual. And there are various reasons for that,  
17 which we can go into, but some of them are  
18 operational, how the park is operated, not necessarily  
19 what's in it or how it's constructed. And also how  
20 it -- how approximate it is to various properties.

21 So when I saw the initial study, I felt like  
22 it was, frankly, an overwhelming project. The number  
23 of properties, how -- how -- the variety of types of  
24 improvements in downtown Seattle, the value of those  
25 improvements, just high rise real estate, and the

1 linear nature of the park, and I just felt there were  
2 some overwhelming issues with trying to make a Local  
3 Improvement District out of that type of project.

4 My specific request to Waterfront Seattle in  
5 one of these meetings was that they -- up to that  
6 point, I think there were maybe three or four images  
7 of before and after images of the park. They had the  
8 viaduct in the before images, and then they had the  
9 park in the after images, and these were clearly  
10 inaccurate presentations of the before and after.

11 And so I -- I asked specifically that the City  
12 produce side-by-side drawings, which had not been  
13 produced at that time, even though the preliminary  
14 assessment had come out, and they had not produced  
15 these images, because I -- I felt they were important,  
16 and I was questioned as to why the City should go to  
17 that expense, and I explained that the City was trying  
18 to assess an aesthetic. I was actually surprised that  
19 it hadn't already been done or requested, because how  
20 can you assess an aesthetic if you can't see it, you  
21 know?

22 **Q. Right.**

23 **A. So --**

24 **Q. Right.**

25 **A. So that -- that -- and in the final study,**

1 they've finally done that --

2 **Q. Okay.**

3 **We're going to talk --**

4 A. -- to some extent, yeah.

5 **Q. We're going to about that in just a minute.**

6 **Can you turn to Exhibit 2 in your binder?**

7 A. Yep.

8 **Q. And is this the letter that -- actually,**

9 **let's turn to Exhibit 3, my apologies.**

10 **Is that the letter that you prepared for**

11 **the -- as part of your BOMA, work?**

12 A. Yes. After attending those meetings, Jack  
13 McCullough asked me to prepare, and Catherine Stanford  
14 asked me to prepare a summary of my -- basically my  
15 conclusions about what I'd seen so far in the  
16 preliminary assessment study --

17 **Q. Okay.**

18 A. -- related to that.

19 MS. TERWILLIGER: And we would offer this,  
20 I think, as Exhibit 40.

21 HEARING EXAMINER VANCIL: Yes, yes. This  
22 will be 40.

23 (Exhibit No. 40 was marked.)

24 BY MS. TERWILLIGER:

25 **Q. Did you receive any response to this letter**

1 **or did anything happen as a result of this letter?**

2 A. No.

3 **Q. Okay.**

4 **And then after you prepared your initial**  
5 **letter in 2018, you were retained by property owners**  
6 **to represent the objectors at issue here as well as**  
7 **others in the King County Superior Court litigation;**  
8 **is that right?**

9 A. That's correct, yes.

10 **Q. Okay.**

11 **And have you provided any testimony in that**  
12 **case yet?**

13 A. No, this is the first.

14 **Q. Okay.**

15 **And you're also working with some other**  
16 **objectors who are currently represented by Perkins**  
17 **Coie and you're going to be presenting testimony later**  
18 **in these proceedings as well, right?**

19 A. Yes, that's my understanding.

20 **Q. Okay.**

21 **What were you retained to do by these**  
22 **objectors?**

23 A. Well, the -- the -- actually, the first group  
24 that retained me was Waterfront Landings, and in that  
25 first case, they asked me if I would write a letter to

1 the City inviting the appraisers between the  
2 preliminary and final, write a letter to the City  
3 inviting the appraiser to meet me on the site and we  
4 could go through some of the issues that we had with  
5 the assessment because -- as pertained to Waterfront  
6 Landing, there was no -- basically, there was no rhyme  
7 or reason to the assessment.

8 It was very broad, it didn't take into account  
9 view blockages of the project or the location of the  
10 project. And so I did -- I wrote that letter to the  
11 City. We didn't -- we didn't get a response from  
12 either the appraiser or the City, and then laterally,  
13 I was retained by you and Darby DuComb to both testify  
14 as to the -- the overall design and construct of the  
15 study, which I think has some critical failures before  
16 we even get to individual assessments, and more than  
17 one, several failures, and then -- and then as part of  
18 that, I've also been asked to offer as examples  
19 specific assessments, which I'm prepared to do.

20 **Q. Okay.**

21 A. So --

22 **Q. Can you please turn back to Exhibit 2.**

23 **And what is this document?**

24 A. So this is -- Exhibit 2 is -- is a document  
25 that I -- I wrote -- wrote to you, and this really

1 basically is an update of my BOMA letter, essentially.  
2 There had been a few changes between the preliminary  
3 and the final assessment, although none that corrected  
4 some of the deficiencies I felt and I outlined in the  
5 BOMA letter, so -- but basically, this is -- this  
6 letter outlines what I think is a critical failure in  
7 several areas of the special benefit study such that I  
8 don't think it is -- authentically measures the  
9 special benefit associated with the project.

10 **Q. Okay.**

11 MS. TERWILLIGER: We would offer this as  
12 Exhibit 41.

13 HEARING EXAMINER VANCIL: So marked.  
14 (Exhibit No. 41 was marked.)

15 BY MS. TERWILLIGER:

16 **Q. So, Mr. Gibbons, did you reach an ultimate**  
17 **conclusion about the final assessment or the**  
18 **methodology used?**

19 A. Yeah. I -- I sort of have several layers, if  
20 I could go through them.

21 Basically, the first thing I think is --  
22 that's important to consider is -- is the LID  
23 boundaries itself. This -- you know, this is 6,000 --  
24 more than 6,000 properties and probably maybe even  
25 more -- \$56 billion of real estate. Just to get --



1 you know, that would be if the average King County  
2 home is like \$600,000, that would be like 93,000  
3 homes, so in -- in terms of sort of what how much real  
4 estate value this is.

5 I think that's, frankly, overwhelming, you  
6 know, to take a -- basically an aesthetic, which is a  
7 proximity -- really a proximity issue to an aesthetic,  
8 and then take that study and look at such a broad  
9 definition of property and such a massive amount of  
10 property value. It -- frankly, it's -- it's  
11 inconceivable that -- that you could reliably do it  
12 and it hasn't been done, you know, yet. So that's the  
13 first thing is just the actual LID boundary.

14 The -- the -- probably the second thing is  
15 the -- there are various references to the project,  
16 but it's actually a little bit unclear exactly what  
17 the project is. It calls itself a park. I think it's  
18 really more of a linear landscaped boulevard. It  
19 includes a lot of design features which are associated  
20 with streetscape already, and I think the definition  
21 of what it is is important, because then the word park  
22 sort of takes on a meaning of its own and -- and  
23 becomes substituted for other parks in other areas,  
24 which actually are very different.

25 So there is a -- there is a lack of definition

1 about what it actually is, where -- where is --  
2 incrementally, where is the money spent in the park?  
3 If this is a proximity issue, where is the precise  
4 investment of dollars on a block-by-block basis,  
5 and -- and how much of those dollars are being  
6 invested in design features that would be put in place  
7 anyway if it was -- if there was no -- no park, to put  
8 it in the vernacular, that's used --

9 **Q. And I'm going to stop you there.**

10 **What do you mean that would have been put in**  
11 **place anyway?**

12 A. Well, one of the -- probably the -- one of the  
13 most fundamental flaws of the study is the definition  
14 of before condition. Because the before condition is  
15 not in place. So the City's study measures the value  
16 of the property today without the before condition  
17 improvements.

18 And -- and you would be forgiven on several  
19 occasions, because it's happened to me, of looking at  
20 the LID after and looking at the LID before and  
21 getting them mixed up in terms of the way they look  
22 because they have some very, very similar elements  
23 of -- of the completion of Alaskan Way, street  
24 landscaping. So -- so if -- if the after waterfront  
25 park creates a lift in value, then surely the before

1 improvements, which are very similar in scope and  
2 identical in location, not as much greenery,  
3 obviously, as we'll go through in a little bit, but  
4 where is the lift of current values associated with  
5 the before condition, because they're not there, and  
6 so the study measures before values today, and then it  
7 measures after values after the special benefit.

8 It forgets that the City would have to do a  
9 tremendous amount of work in the before case to get to  
10 that condition. That value is not measured. It's not  
11 included in the study, and therefore, it is  
12 incorrectly included in the special benefit by  
13 definition.

14 So that definition of before value is --  
15 and -- and this actually goes right back to my request  
16 for these pictures, because at that time, the pictures  
17 presented were of the property with the viaduct in  
18 place, not the -- really the before condition. So I  
19 think that's a major error in the analysis.

20 Does that --

21 **Q. Yeah, that was great.**

22 **So are there -- are there other errors that**  
23 **you identified?**

24 A. Yeah. The other -- the other thing is -- and  
25 this is -- is absolutely key, is I think we hear

1 the -- at least in my -- my world, we hear the term  
2 special benefit a lot, and the -- the term is run  
3 together and I think it tends to lose a little bit of  
4 its meaning through overuse.

5 Special is different from general benefit.  
6 And the literature and the LID manual and even  
7 Mr. Macaulay's report emphasize the importance of not  
8 taking into account general benefits. And this is  
9 extremely problematic for this project, which almost  
10 by definition with 6,000 properties, is -- has an LID  
11 area that is very general in nature, so -- so the  
12 distinction between special and general benefits is  
13 very important.

14 If you did a search for the word special --  
15 excuse me, if you did a search for the word general  
16 benefit in Mr. Macaulay's report, you would not find  
17 that term. The only reference I could find of that  
18 term is -- is basically lip service to needing to make  
19 the distinction, which is on page 26 of his report.

20 **Q. Yeah.**

21 **And that is Exhibit 19.**

22 A. Yes.

23 **Q. Sorry to interrupt.**

24 A. Yeah.

25 **Q. Exhibit 19. Let's just turn to that right**

1 **now.**

2 **And again, you are on page 26?**

3 A. Yes.

4 **Q. Okay.**

5 A. Yeah.

6 **Q. Under the heading definition and discussion**  
7 **of special benefit?**

8 A. Yes.

9 **Q. Okay.**

10 A. Yeah.

11 **Q. And -- and so what language is in here do you**  
12 **think is sort of the -- what you called the lip**  
13 **service that Mr. Macaulay pays to general benefits?**

14 A. Well, absolutely, it -- here is where it's  
15 indicated is that the special benefit -- this is the  
16 second paragraph, a special benefit is defined as a  
17 specific measurable, and we'll -- we'll return to the  
18 word measurable in a -- in a minute, increase in value  
19 of certain real property in excess of enhancement to  
20 the general area. So -- so, obviously, the general  
21 area in this case would be downtown, you know.

22 So -- so if -- if an appraiser is required to  
23 measure special benefit, he's also required to measure  
24 the enhancement to the general area as a result of the  
25 project because you can't measure the benefit without

1 knowing how much of it is -- if you measure the  
2 benefit, you have to then decide how much is special,  
3 how much is general, and he has not done that in this  
4 report. There is -- there is no reference after this  
5 point to the word general benefit.

6 Let's see. The next thing that I would go to  
7 is the issue of measurable that is also in this study.  
8 So Mr. Macaulay purports to be able to measure for the  
9 entirety of downtown a benefit, again, total benefit,  
10 not broken out between special and general, but he  
11 purports to measure a benefit of up to 4 percent, and  
12 in most cases it's 2 or 3 percent of value.

13 With all due respect to his appraisal skills,  
14 you can't measure value to that increment for a  
15 property. If you took two MAI appraisers and had them  
16 appraise a downtown piece of real estate with  
17 identical information, the chances are they would have  
18 a judgment difference of at least 5 percent, maybe as  
19 much as 10 percent. And so already in the analysis  
20 you have a standard of error of valuation, a standard  
21 of error that exceeds what you're trying to measure.

22 So if -- if you were to put this sort of in an  
23 academic world, if you're trying to find a 2 or 3  
24 percent difference in something but your measurement  
25 technique cannot resolve an error just for the data,

1 how people behave as rational or nonrational beings,  
2 or simply the change, the ebb and flow of a market, if  
3 you can't resolve that error of less than 5 percent,  
4 you can't find a 4 percent difference. Can't be done.

5 Special benefits have to be measurable, you  
6 know. They can't just be an immeasurable assignment,  
7 you know.

8 And that -- that goes about for my next point.  
9 So how is this done in this study? How can we -- how  
10 can he have measured something that I don't think is  
11 measurable?

12 He didn't measure it. He assigned it.

13 If you look at the study and you look at the  
14 manner in which it is -- it is undertaken, what has  
15 happened here is the properties have been assigned a  
16 special benefit. This is not a before and after  
17 appraisal. It's -- it's presented as that  
18 subsequently, but basically, the after valuation is  
19 simply the addition of a benefit, the special benefit  
20 supposedly measured to the before value.

21 There's actually no instance in the appraisal  
22 where they say, well, here are the after values and  
23 let's see what the difference is with the before, and  
24 calculated the difference. So that -- that's a major  
25 problem, you know, and you can't simply assign a

1 benefit because it's a -- it becomes a self-fulfilling  
2 prophecy. It's not -- it's not measured.

3 **Q. Can you tell how Mr. -- Mr. Macaulay**  
4 **determined which properties would receive a special**  
5 **benefit from the LID?**

6 A. No, I think -- I mean, this really goes to the  
7 complexity of the issue. If you -- if you look at --  
8 let's take a high rise piece of real estate like this  
9 one that we're in now. The value of that property is  
10 generated by a series of lease -- of rolling leases,  
11 you know. What -- what do -- what do people pay and  
12 those leases kind of roll and the building has an  
13 occupancy. You can't reliably measure the value of  
14 that property without knowing those details not known  
15 by the appraiser.

16 So basically, he's taking projected market --  
17 very generalized market information and applying it to  
18 a property. There's no way of knowing how accurately  
19 it is applied unless you know the intimate knowledge  
20 of that building.

21 And then the second thing is, every building  
22 will have a different response. If you take a new  
23 building that has a 20-year Amazon lease where the  
24 lease rate has already been negotiated and set,  
25 there's no way for that owner to then benefit from a



1 new project in downtown because you can't charge the  
2 tenant more rent. It's -- it's set. And most -- most  
3 high rises have this problem. They have this rolling  
4 ten -- ten-year cycle of -- of leases.

5 So there are -- there are far more fundamental  
6 differences in the downtown area that -- you know,  
7 like the Russell Investment Center. This is just an  
8 idea of what type of real estate we're talking about.  
9 Russell Investment Center, 2003, \$280 million property  
10 constructed. Sold in 2008 for 115 million, and then  
11 sold again in 2012 for 480 million. Massive changes  
12 in value.

13 Downtown real estate generally tends to swing  
14 by a matter of 10 or 20 percent between times of  
15 recession and non-recession. Again, these are not  
16 properties that you could reliably go in and say,  
17 well, that property increased by 2 percent or 3  
18 percent. I don't think it can be done.

19 **Q. Who made the decision about which properties**  
20 **would receive a special benefit?**

21 A. Well, that -- that responsibility lies with  
22 Mr. Macaulay. I don't know who set the LID  
23 boundaries, the appraisers who set the LID boundaries,  
24 not the municipality. The municipality can set it,  
25 but then it's the appraiser's responsibility to say,

1 okay, I don't think these properties are benefitted or  
2 these properties.

3 I think targeting the whole of downtown is --  
4 quite frankly, creates a general impression of -- this  
5 is either a project for a general area that's so large  
6 it's a general benefit. But we have to go back to the  
7 word special, and there's been a lot of distinction  
8 about what that term means.

9 You know, the -- the one court case I probably  
10 like the best, it's on page 3 of my letter, it's the  
11 third paragraph, the most satisfactory distinction  
12 between general and special is special benefits are  
13 those arrived from the peculiar relation of the land  
14 in question.

15 So to assign special benefit, and -- and in  
16 the paragraph above, I've got standard definitions of  
17 special, better, greater, otherwise different from  
18 that which is usual, remarkable, noteworthy, singular,  
19 unusual, unique. You know, these are all terms that  
20 apply to the term special, and so if you were going to  
21 try and do a study like this, you would look and see  
22 which land parcels have a unique or special  
23 association with the project, like our improvement's  
24 going to be right on the sidewalk of the property, you  
25 know. That would be something that may be different

1 from other properties downtown.

2 Does the property have a unique view of the  
3 park somehow?

4 And that would tend to suggest that, you know,  
5 then you should be differentiating between condos that  
6 face it versus those that don't. You would start to  
7 have to really get into the detail. What is the issue  
8 with this particular property and how it relates to  
9 this improvement?

10 And -- and in my opinion, for an aesthetic,  
11 you know, once you get two, three blocks away from it,  
12 I think it's starting to challenge the notion of  
13 special relationship, and it just -- I just -- I think  
14 it defies explanation as to how you could be special  
15 once you get a few blocks away from it. And even if  
16 you are associated directly with it, you would have to  
17 have some unique relationship to the project that was  
18 different from other properties so you could draw a  
19 distinction from the general benefit created versus  
20 something that's special to your property.

21 **Q. Do you have any authority for this idea that**  
22 **you assess general benefits when you're trying to**  
23 **calculate a special benefit?**

24 A. Yeah. The -- probably the -- well, it's in  
25 the LID manual, and we can go into that --

1 **Q. Okay.**

2 A. -- in a little bit. Jim Eaton is probably one  
3 of the most frequently used appraiser's text is -- is  
4 called "Commercial Appraisal in Litigation" by Jim  
5 Eaton. He's a member of the Appraisal Institute. He  
6 wrote the Federal Standards For Land Acquisitions,  
7 which really gets into special benefit, and I've got  
8 his quote, it's the one, two, three, four -- the fifth  
9 quote down on page -- oh, no, wait a minute. It's  
10 actually at the bottom of page 2.

11 **Q. And you're looking at --**

12 **HEARING EXAMINER VANCIL: You're**  
13 **referencing Exhibit 41?**

14 A. Yes.

15 MS. TERWILLIGER: Yes, sorry.

16 A. It should be noted the project enhancement may  
17 be composed of general benefits, special benefits or a  
18 combination. Thus, it may be necessary to allocate  
19 the project enhancement between special and general  
20 and to consider owning the special benefits in  
21 estimating value of the property in the after  
22 situation.

23 There's also the LID manual --

24 BY MS. TERWILLIGER:

25 **Q. Yep.**

1 A. Yep.

2 **Q. And that is Exhibit 4 in that binder right**  
3 **next to you. It's already been admitted.**

4 **What is the LID manual? Can you just tell me**  
5 **what that is?**

6 A. Well, this -- this is sort of -- and actually,  
7 Mr. Macaulay has contributed to this.

8 **Q. Um-hmm.**

9 A. This is -- this is a manual that helps guide  
10 both appraisers and attorneys into the formation of  
11 LIDs and some of the things that should be considered.  
12 So throughout this manual asks the -- basically asks  
13 the appraiser to consider general benefits as well as  
14 special benefits.

15 **Q. And before we get into the --**

16 A. Yes, ma'am.

17 **Q. -- specifics, I see that Mr. Macaulay is**  
18 **identified on page -- about the fifth page as a**  
19 **contributor.**

20 **So he -- he contributed to this particular --**

21 A. Yes.

22 **Q. -- version of it?**

23 A. Yeah.

24 **Q. Okay.**

25 **And what pages are you talking about that**

1 **references general versus specific benefits?**

2 A. I would start with page 58.

3 **Q. Okay. Okay.**

4 A. Yeah. So -- so here is -- you know, this is  
5 number three, and it says, top of the page, Consider  
6 general benefits as well as special benefits.

7 And this is particularly noteworthy on the  
8 fourth line, Consideration may also be given to those  
9 construction costs related to meeting design standards  
10 which may be general benefits.

11 So this -- this is particularly germane to  
12 this project, because the before condition is required  
13 to meet design standards for streetscape and  
14 improvements and that should be part of the before  
15 condition. So that the extent to which the waterfront  
16 project is simply being undertaken to meet those  
17 design standards, that portion should have been Xed  
18 out both in terms of cost as well as by the appraiser,  
19 so how much cost is associated with meeting design  
20 standards versus how much cost is related to the  
21 actual portion of the project, which -- for which  
22 you're going to take and say, well, this is special  
23 and a special benefit.

24 HEARING EXAMINER VANCIL: And I'm sorry,  
25 Mr. Gibbons, you asked -- you said something about

1 numbers being Xed out. What did -- what do you mean  
2 by that?

3 THE WITNESS: What I mean is that if -- if  
4 there is portions of the LID of the -- if the cost of  
5 putting the improvement in place are simply associated  
6 with doing street improvements that would have to be  
7 done anyway, then that's part of our before condition  
8 because that would have to be done anyway. It's --  
9 it -- it's messy in this particular case because the  
10 City hasn't done the before project. So we don't have  
11 an incremental accounting of what is special for the  
12 Waterfront LID project on top of what would have to --  
13 what they would have to spend anyway in putting in  
14 Alaskan Way and doing necessary street improvements,  
15 so that portion of the project should be Xed -- Xed  
16 out, you know, basically taken out. It's not a part  
17 of what's special to the neighborhood.

18 BY MS. TERWILLIGER:

19 **Q. Any other references to special versus**  
20 **general benefits in the LID manual?**

21 A. Yes. On page 65 towards the bottom of the  
22 page, there's a -- there's a question, What are  
23 special benefits, question mark?

24 And again, special benefits refer to special  
25 as opposed to general benefits, and then it says, In

1 other words, improvements which are substantially more  
2 intense to the property which is assessed than to the  
3 rest of the municipality.

4 So it's substantially more intense. Again,  
5 the -- the appraiser should draw out the distinction  
6 of how the improvement is peculiar or different for  
7 this particular property versus other properties.

8 At the bottom of the page, it says, The  
9 distinction between public and improvements which are  
10 local in character as opposed to general is explained  
11 in another case.

12 And this is City of Seattle versus Rogers, and  
13 this -- again, this is very -- you know, on the third  
14 line of this -- well, starting from the beginning,  
15 Laws recognize a distinction between public  
16 improvements which benefit the entire community -- in  
17 this case, it would be downtown -- and those local in  
18 their nature which benefit particular real property of  
19 limited areas. A property benefit is usually required  
20 to pay the expense of the latter -- and just the  
21 latter, I would add.

22 It says, A local improvement is a public  
23 improvement, which although it may incidentally  
24 benefit the public at large, is made primarily for the  
25 accommodation and convenience of the inhabitants of a



1 particular locality, which is of such a nature as to  
2 confer a special benefit upon the real property and --  
3 here we go -- adjoining or near the improvement.

4 And this issue of proximity and access to the  
5 improvement is critical. And again, when you look at  
6 the LID boundaries and you consider Seattle's hills  
7 that rise up from the waterfront, you question whether  
8 those boundaries are accurate if every property in  
9 that boundary is going to be assessed a special  
10 benefit.

11 **Q. Are there other provisions in the LID manual**  
12 **that you'd like to call our attention to?**

13 A. I think that is it. Those are the --

14 **Q. Okay.**

15 A. -- three I pulled out.

16 **Q. So what would you normally assume an LID**  
17 **boundary to be much for ascertaining a special**  
18 **benefit?**

19 A. Well, I -- you would -- and again, this is --  
20 you know, we're trying to take a -- a sort of a  
21 statutory provision for helping a local government  
22 fund some infrastructure for typically something that  
23 is needed, and -- and I'm not -- well, I probably am  
24 saying a park doesn't necessary fall into that of an  
25 essential public service, but typically, an LID is

1 being used to fund roads, it's being used to fund  
2 sewer lines.

3 So typically, a -- let's take a sewer line.

4 That's probably one of the most common uses of an LID  
5 for a small munic- -- municipality. The LID boundary  
6 is -- becomes the service boundary for the thing.  
7 It's very well defined. It's very concrete.

8 The improvement itself is very -- is,  
9 obviously, measured in terms of, you know, the  
10 difference between having sewer and not sewer in terms  
11 of what you can do with a property.

12 Here, these -- these boundaries are -- they  
13 extend a huge distance, and -- and if you look at many  
14 of Mr. Macaulay's examples, and we should go through  
15 them, they extend well beyond where his own studies  
16 show that he can actually say there is a benefit. I  
17 think he's relying mostly on the Compton study for  
18 extending it as far as 12 blocks.

19 In all his examples, I can't find a  
20 circumstance where there was a park improvement which  
21 extended for the entirety of downtown. Not one of his  
22 studies measure the entirety of downtown as a special  
23 benefit area.

24 **Q. And let's -- maybe it makes sense to look at**  
25 **some of those examples --**

1 A. Yeah.

2 **Q. -- now.**

3 **So the final study is Exhibit 19?**

4 A. Yeah.

5 **Q. And do you want to give us a page --**

6 A. Yeah.

7 **Q. -- number for those studies?**

8 A. Yeah, page -- I started on -- I looked at some  
9 of his waterfront park examples.

10 **Q. Um-hmm.**

11 A. Page 49 is the first.

12 **Q. Okay.**

13 **And that's the discussion of the park in**  
14 **Portland, Oregon?**

15 A. Yeah, yeah. Now, I'd have to say at the  
16 outset, the discussion on these studies on these  
17 properties is -- is interesting, but in my opinion, it  
18 does not rise to the level of empirical appraisal data  
19 sufficient to opine on a special benefit for a  
20 particular property.

21 And if you read all these studies, it's --  
22 it's enormously secondhand, very, very general.  
23 There's actually no -- you know, and in some respects,  
24 the appraiser's treatment of downtown Seattle has --  
25 has been undertaken in a similar fashion. Very

1 little -- very little, none, no specific examples in  
2 my mind would raise to the level of a measurable  
3 increase for a specific benefit, and let's -- let's  
4 just look at them.

5 So on page 49, this is the Tom McCall  
6 Waterfront Park in Portland, Oregon. So the -- the  
7 evidence is on -- starts on the third paragraph.  
8 Interviews have been conducted, we don't know by who,  
9 with area brokers knowledgeable about the residential,  
10 commercial and office market in downtown Portland.  
11 The brokers were asked how, if at all, the waterfront  
12 park upgrades affected overall market rental rates and  
13 what general perceptions were held by the market.

14 Generally, in terms of retail and office  
15 rents, due to the heavily -- due to the presence of  
16 heavily trafficked Naito Parkway, the consensus has  
17 been that the highest level of positive implements is  
18 seen within the immediate one- to two-block radius of  
19 the three new upgraded public pavilions.

20 So that -- you know, that's -- that's the  
21 evidence, and -- and this is -- this is -- we don't  
22 know who these brokers were, we don't know what  
23 they're talking about, we don't know what time frame  
24 they're talking about, we don't know what other  
25 factors have been involved in the area, we don't know

1 how the economy relates to this, and --

2 **Q. Was this an LID project, do you know?**

3 A. I don't -- I don't believe any of these were  
4 LID projects.

5 **Q. Okay.**

6 A. It's -- it's not noted, and I think it would  
7 be. And -- you know, and -- so they're extremely  
8 general. There's no -- there's no detail.

9 I don't think you could really take out of  
10 that study and say, Seattle is going to get a 2 to 4  
11 percent bump for this park. You just cannot. And in  
12 this particular case, one to two blocks, you know,  
13 that would probably be the most germane aspect from  
14 here is that this park is a one- to two-block  
15 influence.

16 If we -- if we go -- the next one is the  
17 Embarcadero Park, which is arguably the most similar  
18 in the sense that it was something that was subsequent  
19 to the taking down of the Embarcadero elevated  
20 freeway, but, you know, here -- here's -- here's an  
21 omission -- sorry, here's a -- a confession, I'm not  
22 sure that's the right word, but at the bottom of the  
23 page it says, and this -- this would apply completely  
24 to Seattle, Due to the unique geographical and  
25 neighborhood characteristics of San Francisco as well

1 as the design of the interconnected parks, it is  
2 difficult to measure the direct impact on property  
3 values due to the project.

4 Now, if -- if that -- you know, looking at an  
5 example study and -- and applying that to Seattle, you  
6 know, that would mean it's -- if it's difficult to  
7 view for this kind of project, it's certainly  
8 difficult to view it for Seattle. And again, does  
9 this -- does this indicate a 2 to 4 percent increase?

10 Nowhere in here -- it says the CBD has many  
11 points of interests and features that attract. It  
12 also says that the park was put in after the freeway  
13 was demolished, very similar to ours, and -- and much  
14 of -- and much related to enhanced view amenity, same  
15 for Seattle. These things are all mixed together.

16 And then -- and then the largest sentence is,  
17 Greatest impact within two-block radius -- again, this  
18 proximity issue -- and -- and then -- and then a  
19 comment, Brokers indicated a 10 to 20 percent increase  
20 in values adjacent to the enhanced portions of the  
21 park compared to similar properties a few blocks away.

22 Again, there's no definition of what these  
23 properties are, there's no definition of what type of  
24 properties these are. There's -- again, it's -- it's  
25 brokers talking, it's not appraisers, it's not someone

1 actually measuring them according to an appraisal  
2 standard. Very, very generalized anecdotal -- again,  
3 that's what I say, anecdotal information, not  
4 appraisal evidence.

5 The last one I sort of pulled up was the false  
6 creek conceptual plan of Stanley Park, which was  
7 80 acres, and -- and 60 acres was set aside for  
8 public/private development. So in this case, this  
9 also resolved around it a public/private project to  
10 encourage new development, which would have been,  
11 obviously, a positive influence, and 20 acres of  
12 parkland.

13 And this time, it quotes an appraisal company,  
14 Collingwood Appraisal, Limited, provided data on 322  
15 sales of apartments -- and this is now six blocks --  
16 and paired analysis suggests a premium of 12 to  
17 16 percent within a six-block radius.

18 Again, we -- we don't have the study, we don't  
19 know precisely what they were measuring. If they were  
20 measuring view amenity, that has to be taken out, and  
21 that is noted in the second paragraph by Mr. Macaulay  
22 on page 56. The paired sales analysis is influenced  
23 by view amenities. I would say that's an  
24 understatement.

25 And -- and he merely says, oh, Seattle would

1 be less than that. Again, there's no definition,  
2 there's no way of ascertaining exactly how Seattle  
3 would behave or what part is general or what part is  
4 special.

5 And again, six-block radius would suggest at  
6 six blocks, zero, and at the front line, you know,  
7 the -- the 12 to 16 percent. So again, not -- not  
8 similar to downtown's 12 blocks and -- and in my  
9 opinion, not evidence sufficient to support the  
10 special benefit applied.

11 **Q. Did any of these other properties studied by**  
12 **Mr. Macaulay, are they similar in scope, is it -- are**  
13 **we talk about a landscape boulevard?**

14 A. Yeah. I felt they were all much more larger  
15 areas of greenery and landscape. Again, there's not a  
16 lot -- Mr. Macaulay doesn't -- doesn't provide any  
17 side-by-side comparison, how much park area are we  
18 actually -- what are we -- what are we calling a park?  
19 Is the boulevard a park?

20 Obviously, a sidewalk's not a park. So  
21 there's no side-by-side analysis, but just looking at  
22 some of the pictures, I would -- the impression is  
23 that they are more park-like than Waterfront Seattle  
24 is park like, which is, again, really an enhanced  
25 boulevard.



1       **Q. You were talking about proximity. Is there**  
2 **ever a case in which proximity to an improvement is --**  
3 **is not a special benefit?**

4       A. Yeah, this is -- and actually, there was a  
5 court case about this in another part of the country,  
6 but we were hired by the Department of Justice to look  
7 at the East Lake Sammamish Trail. It's a linear --  
8 basically, that's a conversion of a rail to a linear  
9 park, and what we found is that there was a general  
10 benefit to the area, because proximity to a --  
11 basically a transportation corridor for residents.  
12 But actual damages for those properties actually on  
13 the park because of interference with private property  
14 ownership issues.

15           So absolutely, you might have -- the only --  
16 the only place I've seen that in downtown here with  
17 this park is probably Overlook Walk in relation to the  
18 Waterfront Landings condominium where Overlook Walk  
19 basically shows its, you know, backside on -- like I  
20 say, that's a real estate term, backside to the  
21 Waterfront Landing, and then the Waterfront Seattle  
22 project actually includes bigger, taller trees on the  
23 streetscape in front of the condominiums, so that --  
24 they'll actually get view blockages, and they'll be  
25 behind Overlook Walk. There are probably damages for

1 that project, not special benefits in that particular  
2 case.

3 **Q. But -- but they are -- they have been**  
4 **determined to have special benefits, right?**

5 A. Yes.

6 **Q. Okay.**

7 A. Yeah, and -- and layered it the same way with  
8 this sort of broad-brush 3 percent --

9 **Q. Okay.**

10 A. -- brush.

11 **Q. Okay.**

12 **So we've talked about a number of flaws in**  
13 **the final assessment's methodology. Any others that**  
14 **you'd like to flag?**

15 A. Well, I -- I felt like the -- yeah, probably  
16 the -- the other issue is -- is how the assessment is  
17 created. So Mr. Macaulay has assessed -- you know,  
18 he's taken before values and applied 1, 2, 3, 4  
19 percent. You know, most -- most appeared to be in the  
20 range of 1 to 3 percent increases, and he's treated --  
21 he -- on page -- let's see if I can find it here.

22 Yeah, on page 60 of his report, he has  
23 really -- I want to say it's really lip service to  
24 proportionality because the -- a property -- he's  
25 really appraised, though -- generally speaking, he's

1 applied these percentages with very little variation  
2 to land and improvements together. The problem with  
3 that is -- is a proximity issue associated with a park  
4 or if it was actually a sewer or something like that,  
5 really relates to the land value. It's the land that  
6 becomes more valuable. The improvements don't change,  
7 you know.

8       And as an example, you could take Waterfront  
9 Place down on the waterfront that, next to the  
10 viaduct, they built the parking garage on those lower  
11 levels. Well, that improvement really can't benefit  
12 from those lower levels having a view with the viaduct  
13 down. So the improvement isn't changed, but the land  
14 value is potentially changed.

15       However, by not targeting land value for all  
16 properties, he created some huge proportionality  
17 problems. And I mentioned this in my letter, and  
18 we'll then go to a couple in Pioneer Square, but I've  
19 got examples on page 6 of my letter.

20       And the first example is actually at --  
21 probably the most interesting because this was an  
22 issue I noticed in the preliminary study, where -- and  
23 if you look at my BOMA letter, I pulled it out in the  
24 preliminary study, the 2+U site, which is a high rise  
25 office site opposite 1201 Third, it's actually in the

1 way of 1201 Third, in the preliminary study, this was  
2 treated as a parcel of land and received an assessment  
3 of 622.

4 Well, at that time, there was an office  
5 building under construction on it. So by the time the  
6 final assessment comes around, the office building is  
7 now at least topped out and more substantially there,  
8 suddenly the assessment climbs from 622 to over 4  
9 million.

10 Well, the improvement portion of it has not  
11 changed. The -- the cost of the improvements is the  
12 same in both cases. It's just a matter of timing, and  
13 yet, they ended up with -- because they happened to  
14 get the timing slightly wrong, they ended up with a  
15 \$4 million -- you know, an increase of 3.4 million  
16 between the preliminary and the special benefit.

17 If Mr. Macaulay had been properly assessing  
18 just land value, he wouldn't have had that issue. The  
19 problem remains in the second example with 1100  
20 Alaskan, that's a parking lot down on the waterfront,  
21 and 50 University, which is the Cyrene Apartment,  
22 where 1100 Alaskan is going to have a 257 unit  
23 apartment building on it complete by the same time  
24 that the waterfront project is complete.

25 However, the assessment on that will be just

1 5,000 a unit, whereas on Cyrene Apartments, it's  
2 18,000 a unit. Again, lack of proportionality,  
3 totally inequitable assessments because Mr. Macaulay  
4 has failed to address the fact that this -- this is --  
5 relates to land value increases, not total property  
6 value increases.

7 **Q. And this is a problem that he could have**  
8 **fixed?**

9 A. Yeah. The -- you would look at rising land  
10 values. You know, you don't look at the total package  
11 of the property. You certainly have to be aware of  
12 what's on the property to see the extent to which  
13 they're able to use that higher land value, but  
14 basically, it's the higher value of the land  
15 distributed through the improvement. The improvements  
16 themselves do not gain value.

17 **Q. And why is it important to distinguish**  
18 **between vacant land and improved property for those**  
19 **sorts of assessments?**

20 A. It's because the -- if you don't, you -- you  
21 get series of inequitable treatment. I mean, consider  
22 the irony of it. If -- if the project is and --  
23 and -- and this is -- this is not a theoretical  
24 academic issue. Down on the waterfront, ever since  
25 the viaduct got taken down, we've seen a lot of

1 proposals. There's the 1100 Alaskan parking lot,  
2 there's the Commuter Building, which has just got  
3 purchased and is going to be new office building.  
4 There's the citizenM Hotel site, which just got  
5 purchased, and then also the Western and Polson  
6 Buildings.

7 All these properties have much greater  
8 potential than their current use, and yet -- and --  
9 and they're on the front line so to speak, and yet  
10 they are gonna receive assessments at the lower end of  
11 the range because Mr. Macaulay has treated them as  
12 basically low-end buildings or apart- -- or land  
13 sites, versus high rise real estate.

14 And we should -- we can look at the Embassy  
15 Suites and show that in -- in detail of how -- of what  
16 an impact -- and again, the irony is, properties  
17 further away have received a higher assessment just  
18 because they happen to be complete now versus ones on  
19 the waterfront that are not.

20 **Q. How does the fact that there are lots of**  
21 **different kinds of properties in downtown impact or**  
22 **should it be taken to account in the analysis?**

23 A. Yeah, this goes back to really my first  
24 comment of how overwhelming this is.

25 You know, you have different hotels targeting

1 different audiences, you know. Hotels up by the  
2 Convention Center are targeting business convention  
3 traffic, traveling public, you know, very different  
4 from the Courtyard Marriott down on the waterfront.  
5 The one by the stadium catering to sports events. And  
6 exhibitions, you know. These -- all these properties  
7 have different market elements and same with the  
8 office buildings.

9       You know, the time -- time travel for lunch,  
10 how far away from -- they are from the waterfront  
11 area. There are so many individual complexities and  
12 differences between these properties, I don't think  
13 that -- a mass appraisal study, again, cannot create  
14 an authentic measurement of private or special benefit  
15 for these types of properties.

16       **Q. So before we move on to the specific**  
17 **properties at issue here, do you want to just**  
18 **summarize, like, your top five --**

19       A. Yep.

20       **Q. -- criticisms of the report?**

21       A. Yeah, the three words I really think that  
22 embody this study, remote, speculative and imaginary.  
23 Remote, speculative and imaginary.

24       And -- and if you go through this special  
25 benefits report, it -- it's imaginary in terms of its

1 extent of influence, the -- the amount you -- you  
2 can't measure 2 or 3 percent. You have to imagine it.  
3 You can't measure it. It's entirely speculative.

4 There -- there is -- there is no sound  
5 empirical evidence presented in the study which  
6 supports the incremental assessments made. And -- and  
7 it's also -- for most properties, it's remote in -- in  
8 time and space.

9 The actual won't be complete for several  
10 years, there's a construction period prior to it being  
11 complete, and most properties downtown are remote --  
12 remotely located from the improvements, and so -- and  
13 so basically, those -- those are the three words that  
14 I kind of would like to leave you with on the overall  
15 study.

16 And then no assessment of general benefits.  
17 Benefits are not measured, they're assigned. The  
18 improvements are not properly quantified in terms of  
19 the actual cost for incremental blocks in association  
20 with particular properties. There's no measurement of  
21 the before value changes that would happen anyway,  
22 what influence. And -- and the before project is so  
23 similar in many respects to the after project, not  
24 measuring its value increment and deducting it is a  
25 major omission of the study.



1           There's a huge inequity relationship by  
2 the manner of the assessment not looking at land and  
3 building inappropriate proportions. And then finally,  
4 the property type, the area does not lend itself to  
5 this kind of discrete measurement of a 2 to 4 percent  
6 or half to 4 percent measurement. It's -- the  
7 property type is too complex. You have to know too  
8 much about each property to really properly appraise  
9 it, and if you have a standard of error that exceeds  
10 what you're trying to find by definition, you cannot  
11 measure it.

12           **Q. Um-hmm.**

13           **Do you think that the study meets the**  
14 **standards necessary for appraisers?**

15           A. I -- I haven't really evaluated it in that  
16 fashion. I haven't looked at whether it's a USPAP  
17 standard. Certainly from the standpoint of just  
18 supporting the benefits assessed, which is a judgment  
19 related issue, not really a standards issue, it's  
20 judgment, it does not do that.

21           **Q. Okay.**

22           **Let's turn now to the specific properties at**  
23 **issue here today, and I think we're going to start**  
24 **with the addenda to the report, which I think we've**  
25 **marked as a separate -- it's actually -- it's going to**

1 **be behind Tab 19, which I think is in that binder.**

2 **Yeah.**

3 A. Okay.

4 This one?

5 HEARING EXAMINER VANCIL: Which exhibit  
6 are you looking for?

7 MS. TERWILLIGER: And this is Exhibit 31.

8 BY MS. TERWILLIGER:

9 **Q. And while we're getting to exhibits, let's**  
10 **turn to the last -- if you could also have that binder**  
11 **in front of you that is -- has Exhibit 57 in it.**

12 A. Yep.

13 **Q. These are the sort of blowups of this that --**

14 A. Okay. I'm looking -- do I have -- okay.

15 **Q. All right.**

16 **And are you familiar with Exhibit 31, which**  
17 **is the addenda?**

18 A. Yes, I am, yep.

19 **Q. Can you just tell us generally what sorts of**  
20 **information is included in the addenda?**

21 A. Yeah. This -- this was the first time I'd  
22 seen this because it wasn't in the preliminary study,  
23 the addenda, and so this actually goes through in  
24 fairly incremental fashion, although again, it's  
25 difficult to decide, you know, looking at the

1 different pictures, which are artist renderings, so  
2 you have no idea how much license is being taken in  
3 terms of exhibiting certain differences between the  
4 reports, but it's the first time we've actually seen,  
5 at least what the City believes, is going to be the  
6 difference, but these materials weren't available to  
7 Mr. Macaulay when he did the preliminary study, so --  
8 but presumably, they were available when he did the  
9 final one.

10 **Q. Okay.**

11 **So let's turn first to page 12 of the PDF,**  
12 **which is somehow an unnumbered page in this, but**  
13 **contains the -- so it's the 12th and 13th page in this**  
14 **document.**

15 A. Okay, yeah.

16 **Q. Which contains sort of the streetscape, and,**  
17 **again, it's the Seattle -- Waterfront Seattle Program**  
18 **is page 12, and then Waterfront Seattle Program, No**  
19 **LID, is page 13, so --**

20 A. Yeah.

21 **Q. -- that means the second page is the before,**  
22 **right?**

23 **Yes, before.**

24 A. Yes, that's correct, yeah.

25 **Q. Okay.**

1 **Before and after.**

2 **And how did you use these documents to**

3 **evaluate the --**

4 **HEARING EXAMINER VANCIL: So, Counsel, I'm**  
5 **not with you on what pages you just went through.**

6 MS. TERWILLIGER: Okay. I'm sorry.

7 HEARING EXAMINER VANCIL: I'm just getting  
8 this document for the first time, so you want to walk  
9 me through it.

10 MS. TERWILLIGER: That's fine.

11 HEARING EXAMINER VANCIL: If you want me  
12 to follow, you'll have to get me to it.

13 MS. DUCOMB: Is it the page after A8?

14 MS. TERWILLIGER: Is it the page after A8?

15 It is the page after A8.

16 Sorry.

17 BY MS. TERWILLIGER:

18 **Q. So -- and again -- so the first page is the**  
19 **after with the LID, and the second page is the before**  
20 **picture that reflects improvements that would be**  
21 **done -- would be made after the -- after the viaduct**  
22 **comes down?**

23 A. Yeah, yes, that's right.

24 **Q. Okay.**

25 A. They've -- they -- and -- and these were the

1 two -- these were the two exhibits that, you know, a  
2 couple of times I looked at and I thought, oh, that's  
3 the LID. No, no, wait a minute. That's before LID.  
4 Very difficult when it's not in place to evaluate what  
5 kind of lift that would have provided.

6 **Q. Okay.**

7 **And let's see. Do you want to go next --**

8 A. Yeah.

9 **Q. -- to the Exhibit 57, which is, I think, a**  
10 **document you created from those drawings?**

11 A. Yeah, so -- yeah, so the first one -- this  
12 was -- I think it was page 27.

13 **Q. So let's --**

14 A. Yeah. How do you want to do this?

15 **Q. Can we start with these?**

16 **This is Exhibit 57.**

17 A. Yes, yeah, yeah.

18 **Q. Okay.**

19 **So that should be in the other binder.**

20 A. Oh, okay.

21 **Q. Yep.**

22 A. Great.

23 HEARING EXAMINER VANCIL: Again, Hearing  
24 Examiner exhibit number?

25 MS. TERWILLIGER: 57. Oh, I'm sorry.

1 MS. DUCOMB: I think we -- yeah, it's been  
2 admitted.

3 MS. TERWILLIGER: It hasn't been admitted  
4 yet, but I will offer it now.

5 HEARING EXAMINER VANCIL: Okay.  
6 So we're putting out your Exhibit 57?

7 MS. TERWILLIGER: Yep.

8 HEARING EXAMINER VANCIL: That will be 42.

9 (Exhibit No. 42 was marked.)

10 BY MS. TERWILLIGER:

11 **Q. Mr. Gibbons, can you just tell us what these**  
12 **documents are?**

13 A. Yeah, I -- I -- I wanted to look at just a  
14 couple of projects sort of specifically, and just --  
15 just really that I think illustrate the complexity of  
16 it.

17 So the first one was 255 South King Street.

18 This is the Embassy Suites; it has 282 rooms.

19 **Q. And so when you -- you have the first two**  
20 **pages of Exhibit 57 that compare the without the LID**  
21 **and with the LID for that property, right?**

22 A. Exactly, yeah.

23 **Q. Okay.**

24 A. So --

25 HEARING EXAMINER VANCIL: Let me just make

1 sure we're referencing the -- once they've gotten an  
2 actual number --

3 MS. TERWILLIGER: Oh, I'm sorry.

4 HEARING EXAMINER VANCIL: -- not to get --  
5 it'll confuse the record --

6 MS. TERWILLIGER: Exhibit 42.

7 HEARING EXAMINER VANCIL: -- if we keep  
8 flipping between the two.

9 MS. TERWILLIGER: Sorry.

10 BY MS. TERWILLIGER:

11 **Q. Exhibit 42.**

12 A. Oh, Exhibit 42.

13 **Q. No, sorry. It --**

14 MS. DUCOMB: It's still your Tab 57.

15 BY MS. TERWILLIGER:

16 **Q. You're good. Stay with that, 57.**

17 A. Okay. Yeah, okay.

18 So --

19 HEARING EXAMINER VANCIL: Qualify it with  
20 our 57 or something like so he can differentiate.

21 MS. TERWILLIGER: Yeah, yeah. Sorry about  
22 that.

23 THE WITNESS: Oh, okay. I got it. So --

24 HEARING EXAMINER VANCIL: For the record,  
25 it's Exhibit 42.

1 MS. TERWILLIGER: Yeah.

2 THE WITNESS: Right.

3 So our -- our Exhibit 57, you'll see  
4 I've -- I've sort of highlighted two portions of that  
5 previous exhibit that we talked about, the with and  
6 without, and this -- 255 South King Street is actually  
7 in the lower left-hand corner of the property.  
8 It's -- it's next to King Street Station. So it's  
9 that block -- it's half of that block in the lower  
10 left-hand corner.

11 **Q. The one that's half cut off in this picture?**

12 A. Yes, the one --

13 **Q. Okay.**

14 A. -- that's half cut off, and if you turn the  
15 page and look at it with and without the LID, you'll  
16 notice that there's actually no waterfront  
17 improvements, no improvements in front of the building  
18 at all.

19 **Q. Because they stop at Second Avenue?**

20 A. They stop at Second Avenue. And in actual  
21 fact, I think they actually stop at First Avenue. I  
22 think this chart is inaccurate. When I read the  
23 description of what actually happens on King Street,  
24 there are two new street trees, there are some  
25 planting strips and diverse landscaping on the north



1 side of the street, but only east and west of First  
2 Avenue, and then some curb treatment mid-block, north  
3 side of King, and then again, a new curb bulb at First  
4 Avenue and South King Street.

5 So there's actually -- within a block of -- of  
6 255 King Street, there's actually no waterfront  
7 improvements at all. That -- that property has no  
8 peculiar or special association with any improvements  
9 that are going to be completed.

10 The property received an assessment of  
11 2,358,000. That's about 8,400 a room. And it doesn't  
12 appear there's even that much investment on King  
13 Street. And -- and so I completely question the  
14 judgment involved in saying that property's going get  
15 a lift from these improvements that is special related  
16 to this project.

17 **Q. And just --**

18 A. Yeah.

19 **Q. -- just to question about the narrative that**  
20 **you have under the with LID, the -- you said the**  
21 **narrative is different from the picture in the**  
22 **addenda.**

23 **Where would I find the narrative describing**  
24 **the actual improvements that are being made?**

25 A. That's on the bottom of -- it's --

1 Exhibit 57 is -- the second page of Exhibit 57.

2 **Q. But where did that --**

3 A. Oh.

4 **Q. -- where did that come from? Did it come**  
5 **from the addenda or from the final study?**

6 A. I think that -- I think I pulled that -- I  
7 think I pulled that from the addenda.

8 **Q. Okay.**

9 A. Yeah.

10 **Q. Okay. Great.**

11 A. And there's actually -- there's actually a  
12 picture of it of these two new street trees, but --  
13 but again, like this, the actual landscaped  
14 improvements, some of which are in front of Martin  
15 Daniel's property, which I think he actually put those  
16 improvements in there as part of his development, so  
17 I -- I think that's inaccurate, and in any event,  
18 there's no special association with that property with  
19 the waterfront.

20 The -- the second one, and I wanted to bring  
21 your attention to was the Courtyard Marriott. It's at  
22 612 Second Avenue. It's in the old Alaska Building.

23 And so this, this property is about -- I think  
24 there's 236 rooms. This property was assessed  
25 2,000,566.

1 In this particular case, the closest way to  
2 get to the waterfront would be to walk down Second and  
3 then take a left on Columbia, which four or five  
4 blocks, there are no improvements on Columbia.  
5 Columbia is already improved. There's going to be no  
6 waterfront improvements on Columbia. That property  
7 with a \$2.5 million assessment has no special features  
8 at all related to the waterfront project.

9 **Q. And, Mr. Gibbons, if I could turn you back to**  
10 **our Exhibit 57 --**

11 A. Yeah.

12 **Q. -- which has been marked as Exhibit 42, I**  
13 **think it's the second and third pages of this document**  
14 **that relate to the Courtyard Marriott. Can you**  
15 **describe for me where on the map the Courtyard**  
16 **Marriott is located?**

17 A. Yes. The -- well, actually, the Courtyard  
18 Marriott -- actually, you can't. It's off the map.

19 **Q. Okay.**

20 A. So I went as far south as the map shows.

21 **Q. Okay.**

22 A. The map shows -- actually cuts off Seattle at  
23 Second Street, this map.

24 **Q. Okay.**

25 A. They don't actually show the blocks.

1           So it's -- it would be -- the Courtyard  
2 Marriott is about where the CO of Columbia is --

3           **Q. Got it.**

4           A. -- in without LID. It's --

5           **Q. Okay.**

6           A. -- it's approximately there across the street  
7 on Second.

8           Now, in relation to the Courtyard Marriott's  
9 assessment, I'd like to draw your attention -- this is  
10 the same exhibit, Columbia without LID, there is a  
11 triangular parking lot on the corner of Yesler and  
12 Alaskan, so it's in the northwest -- I mean, sorry, in  
13 the -- in the upper right quadrant of that.

14           Do you see that parking lot right there?

15           It's on Western Avenue and Yesler.

16           **Q. Oh, yes.**

17           A. Yeah, so that -- that property -- this is an  
18 example of an inequitable treatment. The Courtyard  
19 Marriott has 236 rooms. This triangular property  
20 is -- has already received permits for construction of  
21 a citizenM Hotel, ten stories. It's going to be 216  
22 rooms. It's actually mentioned in Mr. Macaulay's  
23 report, although an earlier rendition when it was 232  
24 rooms.

25           Mr. Macaulay assessed this property of

1 \$135,000. So this property will have a citizenM Hotel  
2 on it with 260 rooms by the time the Waterfront LID is  
3 complete.

4 It's right at the corner of Yesler and  
5 Alaskan. \$135,000 assessment, whereas the Courtyard  
6 Marriott, which is already complete, \$2.6 million,  
7 which is 10,873 a room. CitizenM Hotel, \$625 a room.  
8 So massively disproportionate in terms of the  
9 assessment between those two properties, which have --  
10 basically will accommodate very, very similar  
11 improvements in the -- in the time frame that the  
12 Waterfront Seattle is complete.

13 The other property --

14 HEARING EXAMINER VANCIL: Before we get  
15 too much further into the properties --

16 THE WITNESS: Yeah.

17 HEARING EXAMINER VANCIL: -- if I could  
18 ask, maybe is there some type of -- when we did the  
19 intro, it was all about argument. There wasn't any  
20 presentation on where these properties are, which ones  
21 are at issue.

22 THE WITNESS: Yeah.

23 HEARING EXAMINER VANCIL: I'm wondering if  
24 we could do just a basic overview. Is there --

25 MS. TERWILLIGER: Yes.

1 HEARING EXAMINER VANCIL: -- is there a  
2 single map that does have them on it?

3 You've referenced one that's not on the  
4 map, so --

5 MS. TERWILLIGER: Yes.

6 HEARING EXAMINER VANCIL: -- it might be  
7 clearer for me to follow along with specific streets,  
8 specific parking lots --

9 THE WITNESS: Yeah.

10 MS. TERWILLIGER: Yep.

11 HEARING EXAMINER VANCIL: -- if I know  
12 exactly where the property is --

13 THE WITNESS: Yeah, yeah. All right.

14 HEARING EXAMINER VANCIL: -- where the  
15 trees are.

16 THE WITNESS: Right.

17 HEARING EXAMINER VANCIL: You've gotten to  
18 a level of detail before we got to the overview of  
19 where --

20 MS. TERWILLIGER: Yes.

21 THE WITNESS: Yeah.

22 HEARING EXAMINER VANCIL: -- where we're  
23 talking about.

24 THE WITNESS: Okay.

25 HEARING EXAMINER VANCIL: You're

1 establishing a good record for your case, but if you  
2 want me to follow along, it would be helpful if we  
3 took that step back.

4 MS. TERWILLIGER: So Exhibit 3 --

5 HEARING EXAMINER VANCIL: You got Exhibit  
6 3?

7 MS. TERWILLIGER: -- at page 18 has a very  
8 high-level overview of what properties we're talking  
9 about, but we will be putting on witnesses to discuss  
10 each of the properties.

11 HEARING EXAMINER VANCIL: Okay.

12 MS. TERWILLIGER: Yep.

13 HEARING EXAMINER VANCIL: Let me ask you,  
14 can -- can we go by case number?

15 If you can give me each address for the  
16 properties.

17 MS. TERWILLIGER: Yes. Let's -- yes.  
18 Okay.

19 255 South King Street is Case No. 336.

20 HEARING EXAMINER VANCIL: Okay.

21 That's 255 --

22 MS. TERWILLIGER: South King Street,  
23 sorry.

24 HEARING EXAMINER VANCIL: South King  
25 Street.

1 MS. TERWILLIGER: Um-hmm.

2 HEARING EXAMINER VANCIL: And are -- do  
3 you have any -- are you referencing that property with  
4 any common name, like --

5 MS. TERWILLIGER: It's the Embassy Suites.

6 HEARING EXAMINER VANCIL: Okay.

7 337?

8 MS. TERWILLIGER: 336. Oh, 337 is the  
9 Courtyard Marriott.

10 HEARING EXAMINER VANCIL: And the address?

11 MS. TERWILLIGER: 618 Second.

12 HEARING EXAMINER VANCIL: Okay.

13 And 339?

14 MS. TERWILLIGER: 1000 First Avenue South,  
15 and that is sort of what we call that property. But  
16 it is two parcels, and so it is 339 and 340.

17 HEARING EXAMINER VANCIL: Okay.

18 And no common name.

19 MS. DUCOMB: The Palmer Building and --

20 HEARING EXAMINER VANCIL: I'm sorry?

21 MS. DUCOMB: The Palmer Building.

22 HEARING EXAMINER VANCIL: Okay.

23 I just want to make sure I'm following  
24 your vocabulary when you reference it for your  
25 argument.



1 And then we have 342.

2 MS. TERWILLIGER: Which is 1016 First  
3 Avenue South. What are we calling that one?

4 MS. DUCOMB: What do you call the 1016 --

5 AUDIENCE MEMBER: Olympic Reprographic.  
6 Olympic Reprographic Building.

7 MS. DUCOMB: Olympic.

8 HEARING EXAMINER VANCIL: And I think the  
9 last -- no, that's just an address.

10 That's all of them, right?

11 MS. TERWILLIGER: Yes.

12 MS. DUCOMB: Yep.

13 HEARING EXAMINER VANCIL: Okay.

14 So those will be all the ones we're  
15 covering over the next couple of days and --

16 MS. DUCOMB: Yes.

17 HEARING EXAMINER VANCIL: Thank you. And  
18 then the --

19 MS. DUCOMB: 1016 is sometimes addressed  
20 as 1014, which might be --

21 HEARING EXAMINER VANCIL: That's  
22 confusing. Okay.

23 The -- and the only overview that has all  
24 of these on them is this page 18, Exhibit 3?

25 MS. DUCOMB: I think so.

1 MS. TERWILLIGER: I think that's right at  
2 this point.

3 HEARING EXAMINER VANCIL: Okay.

4 MS. TERWILLIGER: If it would be helpful,  
5 we can maybe come up with something else official.  
6 And we -- we do intend to introduce some photos of  
7 them to sort of orient -- I know for me, it's helpful  
8 to see what they look like on the outside to figure  
9 out what we're talking about.

10 HEARING EXAMINER VANCIL: Okay. And now,  
11 with that, at least I can keep up with you. In  
12 different cases, sometimes individuals are referring  
13 to properties by address, by name and by case number,  
14 and I've got all that, so you can --

15 MS. TERWILLIGER: Right, great.

16 HEARING EXAMINER VANCIL: -- just go with  
17 your own flow.

18 MS. TERWILLIGER: So just before we break,  
19 can we talk about the -- the properties located at  
20 First Avenue South, the 1116. I think they're shown  
21 on Exhibit 42, which is under Tab 57, the last two  
22 pages that say, Railroad without LID and Railroad with  
23 LID.

24 A. Yeah.

25 So the -- both -- and actually both these

1 properties, they --

2 **Q. They're off the map.**

3 A. Yeah, they're --

4 COURT REPORTER: I'm sorry, I didn't hear  
5 what you said. I'm sorry.

6 MS. TERWILLIGER: They're off the map.

7 A. Yeah, both these properties aren't on the  
8 City's map, you know, the -- the showing the  
9 Waterfront LID improvements with and without. The  
10 closest you get to it is Railroad. This would be how  
11 somebody in that property would access the waterfront.  
12 They go down Railroad Avenue.

13 So I looked at the improvements on Railroad to  
14 see if there's any sort of special association there.

15 If you look at --

16 HEARING EXAMINER VANCIL: And are you able  
17 to indicate which is Railroad Avenue because --

18 THE WITNESS: Yeah.

19 HEARING EXAMINER VANCIL: -- honestly,  
20 these -- the roads names don't show up.

21 THE WITNESS: Oh, it's the -- I've -- it's  
22 the last Exhibit 57.

23 MS. TERWILLIGER: Um-hmm. The page --

24 HEARING EXAMINER VANCIL: Yeah, I've got  
25 the map, but the road names are all blurry, so --

1 THE WITNESS: Oh, it's -- yeah, sorry.

2 It's really small there.

3 HEARING EXAMINER VANCIL: I don't know  
4 Railroad Road.

5 THE WITNESS: It's the one at the top  
6 right south of the -- what says the Seattle Tunnel  
7 Portal, so that's Railroad. You can just see it in  
8 red there, Railroad, and then it -- and Stadium Plaza,  
9 and it runs along the top there in red. And that's  
10 Railroad Avenue.

11 Does that --

12 BY MS. TERWILLIGER:

13 **Q. Basically been -- been squared off using**  
14 **the --**

15 A. Yeah, it's the only --

16 **Q. Yeah.**

17 A. It's the only portion -- Railroad Avenue is  
18 highlighted in red on the exhibit. And that's --  
19 that's the link between First Avenue South, this  
20 location, and the waterfront. And you'll notice that  
21 with and without the LID are identical.

22 And I just -- so there's no -- again, for  
23 these properties that purportedly have a special  
24 benefit assessment of .65 percent, .77 percent, I  
25 mean, really again, imaginary -- imaginary

1 assessments. They -- there's -- they're not proximate  
2 to the Waterfront Park, and the closest proximity is  
3 an improvement -- a street that will have the same  
4 improvement in the before as well as in the after.

5 MS. TERWILLIGER: Okay.

6 All right. I think those are all the  
7 questions that I have. I might have a -- that --  
8 that's where I am right now, so I don't know if you're  
9 interested in questioning him after lunch or whether  
10 you're going to wait. I know his deposition has been  
11 calendared.

12 HEARING EXAMINER VANCIL: So you don't  
13 have any further questions for Mr. Gibbons?

14 MS. TERWILLIGER: I don't.

15 MS. THOMPSON: Yeah, our intent would be  
16 to cross-examine Mr. Gibbons today. You know,  
17 notwithstanding the fact that a deposition has also  
18 been scheduled.

19 MS. TERWILLIGER: Okay.

20 HEARING EXAMINER VANCIL: Okay.

21 We're going to do that after lunch. I  
22 mean, we can go a minute early, and we'll come back at  
23 then 1:15. Thank you.

24 (Lunch recess was taken from  
25 11:59 a.m. to 1:15 p.m.)

1 HEARING EXAMINER VANCIL: We'll return to  
2 the record with Mr. Gibbons on cross.

3 CROSS-EXAMINATION

4 BY MS. THOMPSON:

5 **Q. Good afternoon, Mr. Gibbons.**

6 A. Good afternoon.

7 **Q. You own property in the Local Improvement  
8 District?**

9 A. I do, yes.

10 **Q. And you've submitted an objection to the LID  
11 Assessment?**

12 A. I have, yes.

13 **Q. Earlier today, we learned a little bit about  
14 your background. I was wondering, does your practice  
15 involve providing expert testimony?**

16 A. It does, yes.

17 **Q. And what portion of your practice is  
18 dedicated to providing expert testimony?**

19 A. A very small part. Most of our work is for  
20 government assignments, and then we have a -- you  
21 know, I probably testify maybe once in a -- in a year,  
22 perhaps.

23 **Q. Okay.**

24 **And are you working on an hourly basis for  
25 this matter?**

1 A. I am, yes.

2 **Q. Could you tell me what the hourly rate is?**

3 A. Yes, it's 360. 360.

4 **Q. And this morning, you mentioned performing a**  
5 **feasibility study for a potential parking garage in**  
6 **Bainbridge Island?**

7 A. Yes.

8 **Q. And you mentioned that that was a feasibility**  
9 **study for a local -- a potential Local Improvement**  
10 **District there?**

11 A. That's right, yes.

12 **Q. And did you issue a special benefit study in**  
13 **that case?**

14 A. I did issue a report that -- that provided my  
15 findings on whether it was worth setting up the LID  
16 and doing the final assessment, yes.

17 **Q. So the feasibility study was the only study**  
18 **you issued for that Bainbridge Island case?**

19 A. Yes.

20 **Q. Aside from the Bainbridge Island case, have**  
21 **you ever prepared a special benefit study for a Local**  
22 **Improvement District?**

23 A. No, I have not.

24 **Q. And you also mentioned this morning that you**  
25 **had experience evaluating special benefits in the**

1 **condemnation context. Is evaluating special benefits**  
2 **in a condemnation case different than evaluating**  
3 **special benefits in a Local Improvement District**  
4 **context?**

5 A. Well, it's -- it's different in the sense that  
6 typically a Local Improvement District is formed on  
7 behalf of property owners by a municipality, and  
8 therefore, it's typically a different process by which  
9 you get to the calculation of benefits and damages.

10 But when you get to the point of actually assigning  
11 either special benefit or damage to a property  
12 associated with a public improvement, the appraisal  
13 procedure related to that is essentially the same.

14 In other words, you follow the same directive  
15 in terms of excluding general benefits, only assessing  
16 special benefits, and, of course, there may also be  
17 damages, and that's something that an LID study should  
18 also consider.

19 **Q. So in the condemnation context, you're**  
20 **evaluating the -- what the land should be valued at**  
21 **after it has been taken by the government; is that**  
22 **correct?**

23 A. Actually, what it is is that you would have a  
24 partial take of a property, say, for a street widening  
25 case that a property might be -- a portion of a



1 property might be taken, and the remainder property is  
2 then judged to either be benefitted, neutral or  
3 damaged by that public improvement.

4 **Q. Okay.**

5 **And does your practice also include providing**  
6 **appraisals for properties?**

7 A. Yes.

8 **Q. Have you ever been retained to perform a mass**  
9 **appraisal?**

10 A. Yes.

11 **Q. How many times would you say you've performed**  
12 **mass appraisals?**

13 A. I'm the assessor for the Swinomish Tribe, so  
14 I -- I perform a mass appraisal for approximately a  
15 thousand properties once a year for -- tribes now have  
16 their own taxing districts after a more recent court  
17 decision, and so they now have become the assessors  
18 for property located on the reservation, and I do that  
19 for the Swinomish Tribe.

20 **Q. And the types of property involved in that**  
21 **assessment, is -- is that mostly residential or --**

22 A. Mostly residential. There is a couple of  
23 commercial properties. There's a -- a sort of a  
24 resort property involved. There's some industrial  
25 property. There's a commercial marina involved, so --

1 but mostly it's residential homes.

2 **Q. And do you know off the top of your head how**  
3 **many parcels are involved?**

4 A. It's over a thousand.

5 **Q. Less than 2,000, you'd say?**

6 A. It is less than 2,000, yes.

7 **Q. Less than 2,000, okay.**

8 **Is that the only experience you have in**  
9 **performing mass appraisals?**

10 A. I -- I'm thinking there's another perhaps, but  
11 I -- it doesn't come to mind.

12 **Q. Okay.**

13 **So I'd like to turn to the letter that you**  
14 **wrote in 2018, which is Exhibit 40 of the Court's**  
15 **exhibits.**

16 A. Okay.

17 **Q. Do you recall when you were retained to**  
18 **provide that review?**

19 A. Well, it -- it -- obviously, it was prior to  
20 May of 2018 when I wrote it. It was after having  
21 been -- attended several meetings, so I don't know how  
22 many months prior, but it was several months prior  
23 that I was retained by BOMA.

24 **Q. And do you recall about how much time you**  
25 **spent preparing this letter?**

1 A. I don't, no.

2 **Q. Could you think of an estimate? Was it more**  
3 **than ten hours?**

4 A. Oh, well more than ten hours. I mean, I -- I  
5 attended three or four meetings, I read the entire  
6 study, so somewhere, I -- I keep track of all my  
7 hours, so -- but yeah, it was more than ten hours.

8 **Q. Would it be less than 50 hours?**

9 A. You know, I'm guessing.

10 **Q. Okay.**

11 A. So I don't know.

12 **Q. Okay.**

13 **Thank you.**

14 A. Probably less than 50.

15 **Q. And when you were retained to produce this**  
16 **letter in 2018, what was the scope of your engagement?**

17 A. I think I was asked to provide a high-level  
18 document analyzing the conclusions of the special  
19 benefit study and providing my opinions on the degree  
20 to which it -- it supported the assessments made.

21 **Q. And in 2018, those assessments were still in**  
22 **the preliminary stage; is that right?**

23 A. It was -- this was related to the preliminary  
24 assessment study, yes.

25 **Q. In the first paragraph of your letter, second**

1 **sentence, it says, The letter is intended as a**  
2 **consultation and not as an appraisal review.**

3 **Appraisal reviews are governed by specific**  
4 **standards; is that right?**

5 A. Well, it's -- the term appraisal review is --  
6 is a term of -- of art for the appraisal profession,  
7 so if you were going to do an appraisal review, you  
8 would specifically look at elements of the appraisal,  
9 in my opinion, related to particular property  
10 assessments, and I wasn't doing that.

11 **Q. Was -- so the standards that we're talking**  
12 **about for appraisal reviews, those are set by the**  
13 **Uniform Standards of Professional Appraisal Practice;**  
14 **is that right?**

15 A. Well, actually, everything an appraiser does  
16 related to value is set by standards in that document.

17 **Q. And were there specific standards that you**  
18 **were following when you created this letter?**

19 A. Well, I'm -- USPAP requires you to be, you  
20 know, sort of a standard sort of litany of things of  
21 being diligent and people understanding -- your peer  
22 group understanding what you're doing, et cetera, and  
23 so this absolutely complies with USPAP for that. But  
24 to do an appraisal review would mean I would be  
25 reviewing 6,000 appraisals, individual appraisals that

1 Mr. Macaulay had done on each property, and I didn't  
2 do that.

3 **Q. So in writing the letter, what did you**  
4 **review?**

5 A. Well, I -- I reviewed the study. I -- I  
6 looked at -- I went to several meetings where the City  
7 elaborated on the kind of improvements that they would  
8 fund, the types of improvements, and there was a lot  
9 of discussion about operational issues as the City's  
10 had some issues with operating their parks and how  
11 that would be a part of this.

12 And -- and so it was a place -- a forum, and  
13 so I under -- heard those questions, got the answers  
14 back. I specifically was interested in the appraisal  
15 portion of it, how the assessment was arrived at, and  
16 that's when I got into the images of the park and how  
17 it's -- what's it gonna look like, so I'm -- now, I've  
18 forgotten what you asked.

19 **Q. I was asking what -- what information or data**  
20 **or materials you reviewed to prepare your 2018 letter.**

21 A. Well, I -- I -- all we really had was the --  
22 the preliminary assessment roll from the City, and  
23 then also at the end of each of those meetings, they  
24 would -- you know, there were sort of promises, well,  
25 we'll produce this. You know, there were various

1 PowerPoint presentations sometimes in those, those  
2 documents were occasionally provided in email to  
3 people that were present, and I would get those emails  
4 as well, and so I reviewed that material as well.

5 **Q. So let's turn now to your January 30th, 2020,**  
6 **letter, which is the hearing examiner's Exhibit 41.**

7 **When were you retained to prepare this**  
8 **letter?**

9 A. I'm not precisely sure. Sometime in 2019  
10 where I was contacted by Ms. DuComb and met her at her  
11 office, and then we went through basically my old  
12 letter and -- and this was prior to the receipt of  
13 this final benefit study. And so when I was  
14 originally retained, we still only had the preliminary  
15 study done, and then finally, the final study came  
16 through, and so I started reviewing that report  
17 immediately upon receipt. And that was actually  
18 pretty recently.

19 **Q. And you said earlier today that this 2020**  
20 **letter was an update of the BOMA letter that we just**  
21 **looked at; is that right?**

22 A. Well, yes, I -- I essentially was asked to --  
23 you know, basically the same general scope, but now,  
24 let's look at the new study and see what the kind of  
25 issues are in that study and if -- if some of the

1 problems we identified previously had been corrected,  
2 essentially.

3 **Q. And so what documents or information did you**  
4 **review in preparing the 2020 letter?**

5 A. I read the final study from Mr. Macaulay.  
6 There was also a large addendum attached to that, and  
7 I reviewed that.

8 In addition, my clients had been preparing  
9 various documents that we're trying to basically get  
10 down to a granular level as to what improvements were  
11 actually provided in the park that were different. I  
12 don't think anybody had done that. Certainly, the  
13 City hadn't done that, or Mr. Macaulay's study. It  
14 wasn't called out, so I reviewed those materials as  
15 well related to sort of some of the incremental  
16 improvements and differences, and that -- that work's  
17 been ongoing that it -- I don't really get into any of  
18 that in my letter, but it's just, I guess, further --  
19 provides a deeper understanding of the level of sort  
20 of general -- generalness associated with the final  
21 nonspecific analysis associated with the final study  
22 that none of that information was in the final study.

23 **Q. And so these documents that -- were they**  
24 **created by counsel or by the client, do you know?**

25 A. They were created by counsel, just going

1 through it, and I think they also have -- there's a  
2 couple of planners, I think, involved as well, but I  
3 haven't -- I haven't seen that documentation yet.

4 **Q. And these counsel created documents, is it**  
5 **fair to say that you relied on those in preparing your**  
6 **2020 letter?**

7 A. Actually, no. They were -- essentially, most  
8 of them were provided later. They sort of confirm, I  
9 guess -- they confirmed in my mind the generality of  
10 the study and the lack of specificity in the final  
11 special benefit study related to descriptions of these  
12 improvements, and somebody had gone through it more  
13 granularly and incrementally than I had, so I reviewed  
14 those documents, and -- and it -- it basically  
15 conformed with my understanding of having read the  
16 final LID study as to how -- how they were not  
17 addressed in that kind of granular fashion.

18 **Q. So before, you had listed these counsel**  
19 **created documents among the documents you reviewed to**  
20 **prepare your letter. Is it my understanding that you**  
21 **didn't review them before you prepared the letter**  
22 **or --**

23 A. Some were being, I think, produced  
24 contemporaneously, but certainly, others had been  
25 produced afterwards, but I haven't -- I don't



1 reference them in this document.

2 **Q. Were your opinions influenced by those**  
3 **documents?**

4 A. No, they generally -- everything I've seen so  
5 far has generally confirmed my understanding of -- of  
6 the nature of the special benefit study in terms of  
7 its lack of description and precision in defining  
8 exactly what is part of the LID, which has been  
9 something that I've had an issue with right from the  
10 beginning.

11 **Q. And your 2020 letter contains the exact same**  
12 **statement about it being intended as a consultation**  
13 **and not as an appraisal review, right?**

14 A. Exactly, yes.

15 **Q. So you have testified that you reviewed the**  
16 **ABS final benefit study, and that study was prepared**  
17 **in accordance with Standard 6 of the Uniform Standards**  
18 **of Appraisal Practice, correct?**

19 A. Should have been, yes.

20 **Q. And those standards relate to mass**  
21 **appraisals?**

22 A. I believe so.

23 **Q. Does your letter state an opinion regarding**  
24 **whether the ABS final benefit study complies with**  
25 **those standards?**

1 A. I didn't evaluate it for compliance with  
2 USPAP.

3 **Q. Earlier today, I think you I heard you**  
4 **describe your conclusions about the ABS final benefit**  
5 **study as a difference in judgment. Is that fair to**  
6 **say?**

7 A. I think it's -- I think it's the -- well,  
8 that's a pretty big umbrella. I think it's a -- it's  
9 the appraiser's judgment that finally relates to the  
10 application of special benefit, so yes.

11 **Q. Is it fair to say that the valuation of**  
12 **property involves judgment calls?**

13 A. It does. It involves a lot more than that.  
14 It involves evidence, but upon which you make judgment  
15 calls.

16 **Q. So I want to look a little closer at some of**  
17 **the portions of your 2020 letter. Turning to page 3,**  
18 **about halfway down the page, you have a discussion**  
19 **about the special benefit definition and distinction**  
20 **from general benefits.**

21 **You concluded here that ABS did not**  
22 **distinguish between general benefits and specific**  
23 **benefits in its valuation of the properties, correct?**

24 A. They didn't, no.

25 **Q. And that conclusion assumes that ABS's**

1 **calculation didn't actually take into account general**  
2 **benefits, correct?**

3 A. No, they did not distinguish between the two.  
4 They measured total benefit and attributed it all to  
5 special. They did not distinguish between what  
6 component of it was general and what component would  
7 be special.

8 **Q. So you didn't see somewhere in the report**  
9 **where they bracketed out general versus specific**  
10 **benefits?**

11 A. They measured the total benefit that they felt  
12 was attributable to the project and called it all  
13 special. They did not take the time and trouble to --  
14 to evaluate what portion of it was general.

15 **Q. And what are you basing that conclusion on?**

16 A. Because their study should have addressed the  
17 issue, and they didn't do it.

18 **Q. So next, I want to look at page 6 of your**  
19 **letter. Now here, you're providing a comparison of**  
20 **vacant land and improved land and how they've been**  
21 **assessed under the special benefit study; is that**  
22 **right?**

23 A. Yes.

24 **Q. Would you agree that measuring the special**  
25 **benefit requires an appraiser to look at the fair**

1 **market value of property?**

2 A. Yes.

3 **Q. In both the before and the after condition?**

4 A. Yes.

5 **Q. And when valuing the property in the before**  
6 **condition, the appraiser determines the fair market**  
7 **value at the time of the valuation, correct?**

8 A. Well, yes, I mean, it -- it often is of a  
9 specific date, but in this case, yeah, they picked a  
10 date of November, I think, 2019.

11 **Q. And so when you're -- as an appraiser, when**  
12 **you're determining the fair market value of a property**  
13 **and you have a specific valuation date that you set in**  
14 **your appraisal report --**

15 A. Yeah.

16 **Q. -- the value of that property is as of that**  
17 **date, not at some future date; is that right?**

18 A. That's correct, yes.

19 **Q. So you also conclude in your letter that ABS**  
20 **did not measure the difference in value; is that**  
21 **right?**

22 A. That's correct.

23 **Q. Has the difference in value approach that you**  
24 **talk about in your letter been used in other local**  
25 **improvement districts?**

1 A. That I've used here?

2 **Q. Um-hmm.**

3 A. That I've referenced here?

4 **Q. (Nods head.)**

5 A. Yeah, the -- a classic example would be a  
6 sewer LID where you actually look at the value of  
7 property with sewer as opposed to the value of  
8 property without sewer and you compare the two, and  
9 then, you can calculate how much rise in value is  
10 associated with the -- the -- the addition of sewer.

11 **Q. So earlier today, you mentioned the**  
12 **importance of the description of the before and after**  
13 **conditions when performing a study and you stated that**  
14 **the ABS study did not include the completion of the**  
15 **Alaskan Way improvements; is that right?**

16 A. They -- they can't have. The valuation date  
17 of November, they're not in place. So there's no --  
18 there's no place in the report -- like I said, there's  
19 lip service to it in terms of charts showing before  
20 and after, but there's no actual placement in the  
21 report where they address the value change that would  
22 result from a November 2019 value to a value with the  
23 before improvements in place. There is nowhere in  
24 that report that they address that change.

25 You know, they -- they don't even indicate

1 there -- that it has no change, which would be unusual  
2 because the -- the improvements are very similar to  
3 the to -- the Waterfront LID improvements, so they --  
4 they miss that step. They don't -- they do not  
5 address any value increment associated with the  
6 before, the -- the completion of the before condition.

7 We have -- we have sort of a unique problem  
8 here in that the before condition is not in place. So  
9 we do not have values that represent the before  
10 condition, and therefore, if the before condition is  
11 assumed to be different, it's the appraiser's task to  
12 then change those values to reflect what that before  
13 condition would be, and he has not done that.

14 **Q. I'd like you to -- I don't -- do you have a**  
15 **copy of the ABS report?**

16 A. Just certain pages that I --

17 **Q. Do you --**

18 A. -- pulled out.

19 **Q. Do you have the -- it's tab number --**

20 MS. DUCOMB: This is Tab 18.

21 MS. THOMPSON: Oh, thank you. This is --

22 MS. DUCOMB: Exhibit 19.

23 MS. TERWILLIGER: I think it would be 19.

24 MS. THOMPSON: -- Exhibit 19 of the

25 hearing examiner's record.

1 MS. TERWILLIGER: So it's under the 18  
2 tab.

3 A. Okay.

4 I have it.

5 BY MS. THOMPSON:

6 **Q. You have it, okay.**

7 **So I'd like you to turn to page 3. Oh, I**  
8 **believe you have the addendum there.**

9 A. Is there another 19?

10 **Q. I think there is a --**

11 MS. DUCOMB: Oh, it might be 18.

12 MS. THOMPSON: It might be right before --

13 MS. DUCOMB: Or our Tab 17.

14 MS. TERWILLIGER: 18. 18.

15 BY MS. THOMPSON:

16 **Q. There you go. That's great.**

17 A. Okay.

18 Page --

19 **Q. Okay.**

20 **So page 3, please.**

21 A. Yep.

22 **Q. So in the final paragraph, second sentence,**  
23 **the ABS study states, A primary assumption of this**  
24 **study is that in the before without LID scenario, the**  
25 **Alaskan Way viaduct has been removed and Alaskan Way**

1 **is built to WSDOT standards at street level; is that**  
2 **right?**

3 A. That's what it says, but that's not what it  
4 does.

5 **Q. So your conclusion is based on the assumption**  
6 **that ABS didn't actually assess the properties in this**  
7 **before condition?**

8 A. No, they didn't. They -- they used a  
9 November 2019 value, and they -- there's no -- there's  
10 no adjustment or description or analysis or anything  
11 of the changes of market data that would occur for  
12 assigning values on account of the completion of this  
13 project. There's no -- there's no analysis of the  
14 cost of completing that project and how it might  
15 change values. Nothing. It's words on a page, but it  
16 was not done.

17 **Q. And just to clarify for the record, could you**  
18 **turn to the front page of that study?**

19 **And do you see the date of valuation there?**

20 A. October 1st, 2019. Thank you.

21 **Q. Thank you.**

22 **So let's turn back to your 2020 letter,**  
23 **please. Exhibit 41, and page 4.**

24 **So about halfway down the page, you address**  
25 **parking.**



1 A. Yes.

2 **Q. And you say that to properly measure the**  
3 **impact of the waterfront project, parking losses need**  
4 **to be considered, correct?**

5 A. Yes.

6 **Q. And you acknowledge here that they were**  
7 **considered in the ABS study, right?**

8 A. They were -- there was -- there's words on a  
9 page, like I said, related to the parking, but there's  
10 no -- parking's probably one of the most tangible  
11 impacts on value of a retail property, and this -- all  
12 this parking is in front of the retail piers.

13 So the analysis starts out by saying in the --  
14 in the feasibility, the -- this loss will be  
15 documented as part of the more detailed special  
16 benefit proportion assessment study, and then in the  
17 final study, it's -- it's really not documented. It  
18 took some searching to find out how many stalls were  
19 actually lost.

20 Mr. Macaulay doesn't go in what the value of a  
21 stall might be to a retailer and how that could be a  
22 negative aspect of the project. These -- none of  
23 these issues are addressed.

24 All it said is, you know, there's -- there's a  
25 vague reference to this being taken into account, but

1 there's absolutely no place where it's taken into  
2 account. There's -- there's no description of how  
3 it's taken into account, there's no computation of  
4 damages associated with lost parking and then benefit  
5 associated with what is put in place. So like I said,  
6 putting words on the page doesn't suggest that it's  
7 been actually taken care of in the study.

8 **Q. So is your conclusion that ABS didn't provide**  
9 **enough discussion about the losses related to parking?**

10 A. Well, all I have is what their study is, and  
11 their study should be comprehensive in terms of its  
12 evidence related to the special benefit.

13 I assume if Mr. Macaulay has comprehensive  
14 evidence related to how he addressed loss of parking,  
15 it would be in the study, so that's my assumption. If  
16 he has it somewhere else, then -- then I would ask why  
17 it -- why isn't it in this study.

18 **Q. So on the next page, page 5, you also discuss**  
19 **timing, and you say that there is also no value**  
20 **discussion pertaining to timing.**

21 A. Yes.

22 **Q. The ABS studies after condition assumed that**  
23 **the LID improvements were constructed as of the date**  
24 **of the valuation, which was October 1, 2019 --**

25 A. Yes.

1 **Q. -- right?**

2 A. Yeah.

3 **Q. If the study is assessing the special**  
4 **benefits based on the assumption that the before and**  
5 **after condition occurs at the same time, why would**  
6 **timing be a variable that needs to be considered?**

7 A. Because typically, that assumption, which is  
8 usually considered reasonable in the case of a street  
9 project or a sewer assessment where you might be  
10 looking at a year of construction, that's typically a  
11 reasonable shortcut on the part of an appraiser. We  
12 don't want to have to deal with inflation, and  
13 therefore, we're going to look at it as a time  
14 specific with and without on a particular day. And  
15 that -- that's fairly routine. Condemnation is the  
16 same way.

17 However, if there's a situation where the  
18 special benefit is actually not delivered in a  
19 reasonably foreseeable time frame, number one, and  
20 number two, if there's a significant period of  
21 construction in between that date and the receipt of  
22 it, then there's no ignoring of the practical  
23 realities of it. If -- if you do it with and without  
24 today, your with today should consider -- and -- and  
25 this is -- I've got a quote related to this on -- in

1 the middle of page 3, the -- the benefit caused by the  
2 proposed improvement, you know, should reflect the  
3 time when it's actually realized.

4 So there should be recognition of the delay in  
5 receipt of the special benefit in -- in making the  
6 assessment. And -- and normally, that's not an issue,  
7 like I said, because we have an LID that may be  
8 complete in a year, but in the case of the -- the  
9 waterfront project where, you know, two, three, four  
10 years may go by, that, in my mind, is a -- is a  
11 significant factor, and it's not addressed in the  
12 study.

13 **Q. Earlier today, you also discussed the fact**  
14 **that, in your opinion, the ABS study doesn't include a**  
15 **discussion of the cost of the improvements; is that**  
16 **right?**

17 A. It doesn't, right. Both -- both before  
18 improvements and after improvements and the delta in  
19 the improvement cost and also the increments that  
20 would be associated with various blocks along the  
21 waterfront, so, you know, if a third of the LID cost  
22 is going to be in Overlook Walk, that's not addressed  
23 when looking at Pioneer Square assessments. You know,  
24 there should be a proportionality of understanding as  
25 to when the investment is actually going to be made,

1 and there's -- it's not discussed or presented in the  
2 report in detail with reference to the special  
3 benefits assigned.

4 **Q. Is it your opinion that the cost to construct**  
5 **the LID improvements should be part of the analysis in**  
6 **determining whether special benefits are accruing?**

7 A. Absolutely.

8 There's a -- you know, the -- the LID  
9 ordinance has a test about cost versus -- you know,  
10 you can't be assessed for a benefit that is larger  
11 than the cost. That -- that would be number one. But  
12 I think from a general, you know, understanding  
13 starting from a beginning sort of basis is the  
14 investment of public dollars specifically in benefit  
15 of your property, that would be the contention, I  
16 believe a property owner is entitled to know exactly  
17 where and when those improvements are.

18 Like the example we had this morning, with the  
19 King Street property, you know, exactly how much cost  
20 is going to be invested in Spring Street. I think  
21 that a person being assessed a portion of a special  
22 benefit would be entitled to know, okay, what is the  
23 cost associated with that benefit in direct proximity  
24 to my property. Otherwise, how can you -- how can an  
25 appraiser really address what value additive it is?

1           You know, how -- just this large sum of money  
2 doesn't cut it. Where is it? How is it? How is it  
3 distributed? What's it going to pay for?

4           Those are all very germane questions, and --  
5 and reading through the study, you -- you never get a  
6 clear picture of where -- of where the money is  
7 actually being spent where it would provide a tangible  
8 increase in property value.

9           **Q. So next, I want to talk about this idea of**  
10 **the standard of error or the margin of error.**

11           A. Yeah.

12           **Q. Is that a synonymous term in your mind?**

13           A. It -- it works for me at the moment.

14           **Q. Okay.**

15           **So there's -- and you discussed this earlier**  
16 **today, this idea that the ABS study has identified an**  
17 **increase in value or the special benefit as being --**  
18 **ranging from .5 -- .5 percent to 4 percent; is that**  
19 **right?**

20           A. Well, less than four, I think is --

21           **Q. Less than four?**

22           A. Yeah.

23           **Q. Sure.**

24           **And you say in your letter that those**  
25 **estimates are below the standard of error or the**

1 **margin of error, correct?**

2 A. Yeah.

3 **Q. So could you identify for us what that margin**  
4 **of error is?**

5 A. I felt I pretty much did. I mean, the --  
6 in -- in my mind, the -- the standard of error in an  
7 appraisal is -- I mean, if you look at a group of  
8 sales in a class where there's -- even the class may  
9 be identical, you will get differences in value really  
10 related to different motivations, and incremental  
11 things, you know, could get down to a very fine level.

12 There comes a point where you cannot  
13 distinguish a difference because of the noise in the  
14 data, you know, statistical term, noise, and so  
15 that -- that standard of error, that noise component,  
16 you know, if you're measuring -- you know, doing a  
17 matched pair sales analysis or a special benefit  
18 study, if you can't rise above the level of noise in  
19 the data, you -- you basically have a value or damage  
20 issue which is by definition not measurable. And --  
21 and a 1, 2, 3, 4 percent difference in the value of a  
22 230 room downtown hotel, when you don't even know  
23 the -- I mean, and get this, it's on top of the fact  
24 you don't even know the mechanics of that operation.  
25 You don't know what its occupancy's been, you don't

1 know what its room rates are, you haven't maybe even  
2 been inside the rooms, you cannot measure that  
3 difference. You know, you just can't do it. Can't be  
4 done. And certainly can't be done for 6,000  
5 properties in one study.

6 So I think, you know, if the conclusion is  
7 there's a 2, 3, 4 percent difference, that's not  
8 enough. It's -- it doesn't rise to the level of a  
9 measurable benefit. And -- and I think that's, you  
10 know, obvious from the study.

11 **Q. So my question was what is the margin of**  
12 **error?**

13 **I'm looking for a percentage in a mass**  
14 **appraisal.**

15 A. Well, I would begin at 5 percent -- oh, in a  
16 mass appraisal, it's even higher than 5 percent. I  
17 would -- I would think a mass appraisal could be -- I  
18 think there are certain properties where  
19 Mr. Macaulay's estimate is off 20, 30 percent from  
20 what it should be, and -- and so his standard of error  
21 is actually far higher than what he's measuring.

22 If you did an individual appraisal on each  
23 property with all the data in that property, maybe you  
24 could get that standard of error down to, like I said,  
25 in the 5 percent range, 5 to 10 percent. So two



1 appraisers with identical data would exchange reports  
2 and they might be within 5, 10 percent. But for a  
3 mass appraisal, you're not even close to that  
4 standard.

5 **Q. So have you actually determined what the**  
6 **margin of error would be in the study that ABS**  
7 **performed?**

8 A. Well, I've -- just in talking with various  
9 property owners, I know that there are some, and I  
10 think this is later testimony by other appraisers that  
11 actually focused in on appraisals. I think you're  
12 going to see what kind of margin of error there is in  
13 certain specific properties, and it's a large  
14 magnitude.

15 I haven't done it here because it's -- it's an  
16 impossible task. You would need to find out the  
17 actual value of each 6,000 properties and then compare  
18 it to the individual assignments of Mr. Macaulay,  
19 and -- but I would expect there to be vast differences  
20 between -- because he doesn't know -- he doesn't have  
21 the information he needs on each of those properties  
22 to conduct an appraisal that's within a standard  
23 degree of error for an appraisal. So his mass  
24 appraisal would be much -- the margin of error,  
25 standard of error will be much higher than that.

1       **Q. So let's just assume for the moment that the**  
2 **margin of error in this study was 5 percent. Just**  
3 **assume.**

4           **And so when you say that the application of**  
5 **a .5 to 4 percent value change on a general mass**  
6 **appraisal basis falls well below the standard of error**  
7 **already present in such an analysis, that means that**  
8 **you're assuming a worst-case scenario?**

9       A. No. If you had asked me to assume 5 percent,  
10 that would be absolutely best case, actually,  
11 unachievable standard of error in a mass appraisal.  
12 So the -- the -- he -- he's -- he's saying he can  
13 distinguish a difference in the value of a property at  
14 a tighter margin than his appraisal is off. It's not  
15 possible to do, you know. There's just a -- just  
16 scientifically, academically not possible to do.

17       **Q. But isn't it true the way -- so when you**  
18 **create a -- an estimate, like a political poll, right,**  
19 **you poll a subgroup of people and you gather data, and**  
20 **you weren't able to poll all of America, right, so**  
21 **you're working from a subset, and -- and**  
22 **statistically, you arrive at a margin of error,**  
23 **meaning that the predicted outcome can fall -- the**  
24 **actual outcome will fall within a range of the**  
25 **predicted outcome.**

1           **Are you following me?**

2           A. I -- I'm totally following you, and I think  
3 that's a great analogy for how it's not like this.  
4 The purpose of this study is not to develop an  
5 estimate for a gross level of benefit to be applied to  
6 an area. That is not the purpose of the study.

7           That might be the purpose of, say, a  
8 preliminary study or something, but the purpose of  
9 this study is to assign a particular benefit to a  
10 particular individual property. So in the analogy of  
11 your poll, it would be saying to someone, I can  
12 predict which way you can vote, and you absolutely  
13 can't do that from a poll.

14           You can predict a universe of responses, but  
15 you cannot predict what that property will -- how that  
16 property will be affected, and that's what the purpose  
17 of the study is, it's an individual assessment of  
18 benefit for each individual property.

19           **Q. Using a mass appraisal technique, correct?**

20           A. That -- that doesn't excuse --

21           **Q. Yes or no?**

22           A. It is using a mass appraisal technique, yes,  
23 but it doesn't excuse the error, the -- the standard  
24 of error.

25           **Q. Is it your conclusion that changes in market**

1 **value cannot be measured under a certain percentage?**

2 A. Yeah, under a certain percentage, you --  
3 you -- you simply can't reliably distinguish if there  
4 is a difference.

5 **Q. So earlier, you testified about some specific**  
6 **properties within the LID boundary, including**  
7 **the Embassy Suites --**

8 A. Yeah.

9 **Q. -- and another hotel --**

10 A. Courtyard Marriott.

11 **Q. Courtyard Marriott. Thank you.**

12 **Did you conduct individual appraisals of**  
13 **those properties?**

14 A. No, I haven't.

15 **Q. And earlier, you were stating opinions about**  
16 **whether in your judgment those properties would**  
17 **receive a special benefit from the Waterfront LID**  
18 **improvements, correct?**

19 A. That's -- I used some examples for that, yes.

20 **Q. Did you review whether the hotels advertised**  
21 **proximity to the waterfront in their marketing when**  
22 **rendering those opinions?**

23 A. I -- I don't know. It's highly possible.

24 **Q. You don't know if you considered that?**

25 A. No, I don't know if they do or not advertise.

1 **Q. So it's something you didn't consider --**

2 A. No.

3 **Q. -- in your analysis?**

4 A. It wouldn't be, no.

5 **Q. And in forming your opinion regarding those**  
6 **properties, did you assume that if a property wasn't**  
7 **immediately adjacent to the waterfront that it would**  
8 **not receive a special benefit?**

9 A. Here was -- here's my analysis of that: If  
10 the -- the term special requires some understanding of  
11 the relationship between that particular property and  
12 the improvement. The further that improvement is away  
13 from the property, the greater the burden on the  
14 appraiser in addressing the degree to which those  
15 improvements are special.

16 And I pulled these ones out because when you  
17 do that, it actually looks like they're profoundly not  
18 just average, but below-average access to those  
19 features of the park which are considered to have  
20 value, so again, the study has the burden of proof to  
21 prove that those properties are special benefitted.  
22 There is no way once you get into them of seeing where  
23 that comes from. That's why I pulled those ones out.

24 **Q. So turning back to your letter, page 6, you**  
25 **talk here about how it is inequitable to value**

1 **improved and unimproved land without just considering**  
2 **the increase in value to the land itself; is that**  
3 **correct?**

4 A. Right, yeah, you should -- you should be  
5 looking at the land.

6 **Q. Just the land, not the improvements?**

7 A. That's -- well, it's not just the land, but  
8 you -- you should be factoring that if there is a  
9 benefit, it will -- it will increase the land value,  
10 not the improvement value. You also need to consider  
11 what's on the site, but you really, the -- the --  
12 application of -- in measuring a higher value, you're  
13 really looking for a higher land value, if there is  
14 one.

15 **Q. So last week, we learned a lot about valuing**  
16 **hotels, and so I'm going propose a hypothetical to**  
17 **you. Let's say, because you have examples here of**  
18 **some buildings, an apartment building and a parking**  
19 **lot, right?**

20 A. Yeah.

21 **Q. So let's say that you had a hotel with a**  
22 **fully constructed building, it's been in operation,**  
23 **and then you had a vacant lot?**

24 A. Um-hmm.

25 **Q. Is it your opinion that the improved hotel**

1 **would not receive any special benefit associated with**  
2 **its improvements as opposed to a vacant lot?**

3 A. Well, the -- a vacant lot, if always vacant,  
4 but that's not the case. So you have to look at a  
5 vacant lot as -- and in your example, let's say the  
6 vacant lot would support a hotel identical to the one  
7 next-door.

8 If you -- if you evaluate the hotel property  
9 that's complete as different from the vacant lot with  
10 the proposed hotel on it, when the proposal is going  
11 to result in that being a hotel at the time the  
12 improvement -- special benefit improvement is  
13 delivered, then you've -- you've created an  
14 inequitable assessment between two properties like we  
15 had here, \$625 a room versus \$10,000 a room. That's a  
16 lack of proportionality.

17 When -- the citizenM Hotel, for example, is  
18 going to be built in 18 months. When you don't  
19 consider that when you evaluate that property, you  
20 result in a disproportionate assessment between a  
21 hotel that's right on the -- the boulevard versus one  
22 that's several blocks away from it.

23 How could that happen? How could 2+U on  
24 page 6 go from 600,000 to \$4 million of assessment  
25 within a year. It's because his methodology is wrong.

1 You should be looking at the value lift associated  
2 with the land component, and then it would have been  
3 the same lift. The property would have been evaluated  
4 as though with imminent construction of a high rise,  
5 and it would have been evaluated similar to an  
6 existing high rise. Not done.

7 So that's the error that he's done there, and  
8 it -- it's aptly proved by looking at the results of  
9 the analysis and -- and the disproportionate level of  
10 assessments between properties.

11 **Q. But assessing special benefits earlier, I**  
12 **believe you said, it does involve figuring out what**  
13 **the fair market value of the property is; is that**  
14 **right?**

15 A. Yeah, but it's not -- not related to fair  
16 market value as -- I mean, this actually goes to the  
17 core of the error. Because he has not measured  
18 differences, he's applied them, he's applied a  
19 percentage difference to before values and, sure,  
20 those are all fair market values, let's assume that,  
21 and he's applied this difference equally to these  
22 before market values.

23 But the problem is, unoccupied land versus an  
24 improvement, the unoccupied land is going to get a  
25 very low assessment if you do it that way, when in



1 reality, if it were true, the -- the land value would  
2 increase, and the tower that was built upon it would  
3 be more valuable as a consequence. He has not  
4 considered that.

5 It -- I -- I realize it's a complicated issue,  
6 and -- but if you go to the result of the analysis,  
7 and you take side-by-side properties, vacant land and  
8 improved properties, you see how it's  
9 disproportionate. No one could deny that citizenM at  
10 625 a room is disproportionate from, you know,  
11 Courtyard Marriott at over 10,000. Those are  
12 disproportionate. They're both hotels. And it's  
13 because his methodology is wrong.

14 **Q. One of those hotels isn't currently built,**  
15 **though, correct?**

16 A. But if it's going -- I mean, land isn't land  
17 forever. If land were land forever, then that would  
18 make a difference.

19 **Q. But the hotel -- one of the hotels you're**  
20 **discussing hasn't been constructed?**

21 A. Yeah, and -- and by -- so -- but he's meant to  
22 consider -- he's meant to evaluate the property under  
23 its highest and best use, which includes a hotel being  
24 built upon it. That's the proposal. He's meant to  
25 evaluate it under that use, and he hasn't done that.

1 MS. THOMPSON: No further questions.

2 Thank you.

3 HEARING EXAMINER VANCIL: Before we go to  
4 redirect, I have a few questions for Mr. Gibbons.

5 Mr. Gibbons, you've indicated -- I want to  
6 get a clear idea of the -- of your testimony  
7 concerning margin of error.

8 Is a mass appraisal always going to have a  
9 margin of -- so let me take a step back to a regular  
10 appraisal. It seems like the regular margin of error  
11 is around four or five; is that what I understand from  
12 your testimony?

13 THE WITNESS: I -- I would probably put it  
14 at 5 percent plus, yeah.

15 HEARING EXAMINER VANCIL: Okay.

16 So we'll say 5 percent --

17 THE WITNESS: Yeah.

18 HEARING EXAMINER VANCIL: -- for a --

19 THE WITNESS: Yeah.

20 HEARING EXAMINER VANCIL: -- just a --

21 THE WITNESS: Yeah.

22 HEARING EXAMINER VANCIL: -- standard  
23 property --

24 THE WITNESS: Yeah, yeah.

25 HEARING EXAMINER VANCIL: -- appraisal?

1           Is a mass appraisal always going to have a  
2 margin of error higher than that?

3           THE WITNESS: Yes, it is.

4           HEARING EXAMINER VANCIL: Okay.

5           And why is that?

6           THE WITNESS: It's because the -- the --  
7 the very nature of the mass appraisal means that you  
8 are not going to be -- you do not have the time,  
9 frankly, budget to -- to evaluate each individual  
10 property. If you were doing an LID for a sewer with  
11 26 properties, you could probably get very close, but  
12 with 6,000 properties, no way. No way are you gonna  
13 get to a -- avoid a huge amount of error in the  
14 analysis.

15           HEARING EXAMINER VANCIL: And so if a mass  
16 appraisal is used to determine a special benefit, is  
17 there any type of rule of thumb for amount of benefit  
18 that's identified where you can't go below that? So,  
19 for example, here, if you're saying they did a mass  
20 appraisal that it's -- a benefit is less than 5  
21 percent in all cases, they can't do that because it's  
22 within the margin of error, so you cannot -- is it --  
23 is it the case that you -- you would say you cannot do  
24 a special assessment for something less than that?

25           THE WITNESS: I -- I -- that's well said.

1 If -- if you started at the outset and said, we can  
2 only show, you know, all the work we've done, we're  
3 only looking at a 2, 3, 4 percent increase potentially  
4 that we are able to measure, and you lay out the map  
5 of downtown, the conclusion would have to be, I can't  
6 reliably measure the after value sufficient to support  
7 that estimate. And -- and, therefore, it can't be  
8 done.

9 Now, the -- the reason that it would work  
10 in other cases -- again, a sewer LID is so perfect, 20  
11 properties going from a septic to a sewer, might be  
12 50, 60 percent increase in the value of that property.  
13 Clearly, you're going to meet any -- anybody's  
14 expectation of a reasonable measure there of -- of --  
15 just in terms of magnitude of where the values of the  
16 property would be before and would be afterwards.

17 HEARING EXAMINER VANCIL: What if you had  
18 an extremely valuable property, let's say, Mercer  
19 Island waterfront or something like that, and you're  
20 going to add sewer, it's not going to do it by 50  
21 percent, but we all know it's going to add something,  
22 and the recent -- the appraisals in that 5 percent  
23 value, is it just not achievable or retrievable by  
24 that jurisdiction?

25 A. Well, it -- it -- if -- if you've got an issue

1 which -- like that, I would like at potential cost  
2 avoidance of that property. So in that particular  
3 case, if I found that high-end waterfront homes with  
4 septic systems, they either sell for less than ones on  
5 sewer, that would be the first test to go out and  
6 find, but -- but your -- but your point is well made.

7 If we -- if we went out and did a study on  
8 Mercer Island, we had sales of property with septic  
9 systems on the water and sales of property without  
10 septic systems -- I mean, with sewer systems on the  
11 water, and then we start, say, okay, well, do they  
12 have docks or no docks, what about the view, size of  
13 lot, amount of waterfront, and you start crossing off  
14 these things to create a matched pair, and if you get  
15 down a point where we're talking about \$5 million of  
16 real estate, and you -- you have properties with  
17 functional septic systems, you may not have a  
18 difference. But you get down to a point where you  
19 feel like you either go to cost avoidance, like septic  
20 system costs money to maintain, et cetera, et cetera,  
21 if you're looking for an incremental issue. But if  
22 you can't find it in the data, then it may be that  
23 there is no benefit to the sewer because they've got  
24 extremely elaborate septic systems.

25 HEARING EXAMINER VANCIL: So if I

1 understand what you're stating, it's that maybe  
2 there's no benefit, or to get there, you need to do a  
3 more granular study?

4 THE WITNESS: Exactly. You need to look  
5 at, you know, cost avoidance. If you had street  
6 improvements in front of a property, do those -- are  
7 those street improvements you'd have to put in if you  
8 were going to develop? And so you have a  
9 cost-avoidance issue. That would be a great, sort of  
10 granular example.

11 HEARING EXAMINER VANCIL: Okay.

12 You have in Exhibit 41, your letter from  
13 January 30th, 2020, a list of different concerns that  
14 you raise with the City's process. What I'd like to  
15 do, if we can very quickly, if you can just bullet  
16 point your points for me. I need a very quick outline  
17 of what the point is just so we can use that for an  
18 exercise I want to do that after that.

19 THE WITNESS: Okay. Okay.

20 HEARING EXAMINER VANCIL: You don't  
21 have -- I don't want full explanations of these  
22 items -- I just want --

23 THE WITNESS: Yeah.

24 HEARING EXAMINER VANCIL: -- in your own  
25 words a bullet point for the points so that I have an

1 accurate list of all the points you're raising.

2 THE WITNESS: Okay.

3 HEARING EXAMINER VANCIL: That's all I'm  
4 asking you to do.

5 THE WITNESS: All right.

6 I -- I think I've got it.

7 HEARING EXAMINER VANCIL: Okay.

8 THE WITNESS: No -- no establishment of  
9 general benefit is number one. Benefit is assigned,  
10 not measured.

11 HEARING EXAMINER VANCIL: Okay.

12 Let's slow down.

13 THE WITNESS: Sorry.

14 HEARING EXAMINER VANCIL: So benefit is  
15 not -- is assigned, not measured.

16 THE WITNESS: Yeah, benefit assigned, not  
17 measured.

18 HEARING EXAMINER VANCIL: Okay.

19 THE WITNESS: Before, the -- the value of  
20 before improvements is not taken into account. So  
21 there's no true before, is what I call that.

22 HEARING EXAMINER VANCIL: Okay.

23 THE WITNESS: The -- because of the nature  
24 of the manner in which the actual assessment is being  
25 applied, it creates inequities between property with

1 proposed improvements versus property existing, that  
2 last series of questions, so you could have a  
3 property --

4 HEARING EXAMINER VANCIL: So what's the  
5 one phrase line to describe that?

6 THE WITNESS: Well, inequitable assessment  
7 between properties with similar highest and best use.

8 HEARING EXAMINER VANCIL: Okay.  
9 Let me finish writing that.

10 THE WITNESS: Yeah.

11 HEARING EXAMINER VANCIL: Okay.

12 THE WITNESS: Okay.

13 I've only got two more.

14 Number five is the property type.

15 Downtown high rise residential real estate in my  
16 opinion does not reliably lend itself to a mass  
17 appraisal exercise of this type.

18 HEARING EXAMINER VANCIL: Okay.

19 THE WITNESS: And the final thing is the  
20 benefit identified falls below the standard or margin  
21 of error that's already implicit in the data and by  
22 definition cannot be measured.

23 HEARING EXAMINER VANCIL: All right.

24 Thank you.

25 That's helpful just to have a quick



1 outline --

2 THE WITNESS: Yeah.

3 HEARING EXAMINER VANCIL: -- of that.

4 THE WITNESS: Yeah.

5 HEARING EXAMINER VANCIL: That will, in

6 and of itself, be useful, but I also wanted to use it

7 to ask another question --

8 THE WITNESS: Yeah.

9 HEARING EXAMINER VANCIL: -- in that -- I

10 know you don't do this all the time, but you do it

11 enough to be familiar with sort of the challenge I

12 have is, if an expert is in front of me, there's a

13 range of concerns they may raise with another expert.

14 THE WITNESS: Um-hmm, yeah.

15 HEARING EXAMINER VANCIL: And I need to

16 evaluate and prioritize with what you're stating

17 against it and give it some type of evaluation on that

18 level.

19 And so one differentiation, for example,

20 is, some of these, or maybe all of them may be raised

21 as issues where you're concerned about a failure to

22 meet appraisal industry standards.

23 THE WITNESS: Um-hmm, right.

24 HEARING EXAMINER VANCIL: This is just not

25 a good appraisal.

1 THE WITNESS: Right.

2 HEARING EXAMINER VANCIL: Others may be,  
3 it could be a better appraisal. I think these are --  
4 if I was doing it, I would do this. But it's within  
5 industry standards.

6 THE WITNESS: Um-hmm.

7 HEARING EXAMINER VANCIL: Can you for each  
8 of those items tell me which of those you're aiming  
9 at, meaning is it -- and I can repeat that. For  
10 each --

11 THE WITNESS: No, I got it.

12 HEARING EXAMINER VANCIL: Okay.

13 THE WITNESS: I got it.

14 HEARING EXAMINER VANCIL: Okay.

15 So for each of those issues you've raised,  
16 and there are six issues, are they this appraisal  
17 simply does not meet industry standards, or I would do  
18 this differently within my best practices, which is a  
19 different item.

20 THE WITNESS: Yeah, I -- I got it.

21 In -- in my opinion -- one, two and three  
22 are -- in my opinion, that does -- that does not meet  
23 what I would consider the industry standard for this  
24 type of mass appraisal LID study that no  
25 identification of the general benefit, benefits are

1 not measured, they're assigned, and there's not a  
2 precise quantification of what the actual before  
3 condition. That's a little unique here because the  
4 before condition isn't built. So to me, the -- that  
5 puts a different burden on the appraiser. So those --  
6 those two, three -- three.

7 Four and five and six, standard-bearer  
8 issues, property type doesn't lend it to an  
9 equitability. I think those are more judgment issues  
10 that I -- if -- if you could get past one, two and  
11 three, then you would start just saying how can I --  
12 how can I deal with these issues in a different way?

13 So that -- does that help?

14 HEARING EXAMINER VANCIL: That's very  
15 helpful, yes.

16 THE WITNESS: Yeah, okay.

17 HEARING EXAMINER VANCIL: Counsel for the  
18 City, do the questions I've raised -- do you have any  
19 questions based on that before we go back to redirect?

20 MS. THOMPSON: I think, if I could, I'll  
21 return to our favorite margin of error topic.

22 BY MS. THOMPSON:

23 **Q. Just because I -- I think what I was trying**  
24 **to --**

25 **HEARING EXAMINER VANCIL: And what I'm**

1 **really asking you is did I --**

2 MS. THOMPSON: Did you --

3 HEARING EXAMINER VANCIL: -- create a  
4 new -- not so you can start a new line of questioning  
5 again.

6 MS. THOMPSON: Sure. Sure.

7 HEARING EXAMINER VANCIL: But I have asked  
8 questions that may have strayed into territory you did  
9 not have an opportunity to address, and/or raise new  
10 facts, and so I want to make sure that you have an  
11 opportunity to address those. If not, then I'll go to  
12 redirect.

13 MS. THOMPSON: Okay.

14 Just one second. Let me review my notes  
15 here.

16 HEARING EXAMINER VANCIL: Sure.

17 MS. THOMPSON: Okay.

18 I just have a short follow-up.

19 BY MS. THOMPSON:

20 **Q. You stated that on your list of issues with**  
21 **the ABS study, numbers one through three were -- you**  
22 **qualified those as issues that don't meet industry**  
23 **standards for a mass appraisal of a Local Improvement**  
24 **District special benefit study, correct?**

25 A. Yeah. Those are things I would expect to be

1 de rigueur for a study, have to be in them.

2 **Q. Earlier, you testified that you did not**  
3 **review the ABS study for compliance with standard six**  
4 **of USPAP, right?**

5 A. Yeah, I didn't.

6 **Q. And those are the standards that govern mass**  
7 **appraisals, correct?**

8 A. They govern mass appraisals, but they -- this  
9 is particular to an LID study.

10 MS. THOMPSON: No further questions.

11 HEARING EXAMINER VANCIL: Thank you.

12 Redirect?

13 MS. TERWILLIGER: And I have just a  
14 couple.

15 REDIRECT EXAMINATION

16 BY MS. TERWILLIGER:

17 **Q. And let's start off, Mr. Gibbons, with the**  
18 **topic we were just discussing, the -- the three errors**  
19 **that you would call more, you know, failure to meet**  
20 **industry standards and then the three that are more**  
21 **judgment issues.**

22 A. Right.

23 **Q. Is it possible to separate those errors, or**  
24 **do the -- the first three errors, what impact does**  
25 **that have on the evaluation as a whole?**

1 A. Well, I -- I think some of them I feel like  
2 would be critical failure errors anyway. Like not  
3 within the standard of error. To me, I -- I just  
4 don't see how that could be done. I'd -- I'd have to  
5 see how somebody could try and do that. I don't think  
6 that could be done. But, obviously, the inequitable  
7 between properties is very much a judgment issue in  
8 terms of -- I think it just shows how, I think, the  
9 study is wrong, but I feel that's more of a judgment  
10 issue.

11 **Q. And just to pause for that --**

12 A. Yeah.

13 **Q. -- I mean, you could remedy that inequity,**  
14 **right? I mean --**

15 A. Yeah.

16 **Q. I mean --**

17 A. Yeah.

18 **Q. I mean, that's --**

19 A. Yeah, that's --

20 **Q. -- that's easily remedied, right?**

21 A. Yeah, yeah.

22 **Q. Okay.**

23 A. I mean, we tried with one of the properties  
24 and we didn't get a response, you know, so I think  
25 those -- you know, yeah, those are explanation, look

1 at what's happening here, this kind of thing, so those  
2 could be remedied, yeah.

3 **Q. Okay.**

4 A. Yeah. But -- but yeah.

5 So what -- sorry, what was your question?

6 **Q. So what -- but -- so what impact does the**  
7 **fact that there are three of those errors that you**  
8 **have not identified as being judgment errors or not**  
9 **able --**

10 A. They.

11 **Q. -- to be remedied?**

12 A. They -- they add -- I mean, everything is  
13 additive. You know, like I said before, I felt like  
14 the -- the series of issues in and of themselves, I  
15 think they represent critical failures, you know, and  
16 whether they're critical failures of judgment or of --  
17 or missed standards of what I'd expect to see in an  
18 LID study, like measurement of general benefit --

19 **Q. Um-hmm.**

20 A. -- you know, that should be in a special --  
21 in -- in a special benefit study when there is general  
22 benefit, so -- so again, you know, an assigned, not  
23 measured, you know --

24 **Q. Um-hmm.**

25 A. -- those are -- those are huge issues, so --

1 **Q. Right, right.**

2 A. Yeah.

3 **Q. You talked on cross-examination about some --**

4 **I think they were called council created documents.**

5 **Were you referring to the handout on the slide that**

6 **Ms. DuComb started with today?**

7 A. Yes, yes.

8 **Q. And do you know where the information in**

9 **those slides came from?**

10 A. I think it was all pulled from the various  
11 materials. Some were, I think, EIS materials. Some  
12 were in the addenda. We pulled out the individual  
13 discussion on what's actually applied --

14 **Q. Okay.**

15 A. -- for individual properties, yeah.

16 **Q. And -- let's see.**

17 **On the issue of the ABS study's failure to**  
18 **identify the general benefit arising from these**  
19 **improvements, is that -- is that a calculation you**  
20 **would have expected to find in the actual study or in**  
21 **its addenda?**

22 A. Yeah. No, it should be up front.

23 **Q. Okay.**

24 A. You know, it -- it -- mainly due to the nature  
25 of the -- of the type of improvement, you know, this



1 is -- again, if it was a sewer LID, you know, you  
2 could probably skirt the general benefit section to  
3 this will generally improve, you know, commercial or  
4 residential property in the area, but because the --  
5 the special benefit for property is so incrementally  
6 easy to find, here, it's the opposite actually.

7 You know, this is a very broad improvement in  
8 the economic center of the Seattle area, you know. I  
9 would expect there to be a massive attention paid to  
10 how much of this is general and how much of this is  
11 special, particularly if there's going to be an  
12 identification of an LID boundary, which includes  
13 6,000 properties, you know.

14 **Q. Um-hmm.**

15 A. So --

16 **Q. And I have a -- the same -- the same question**  
17 **about the loss of parking. Again, is that something**  
18 **you would have expected to be actual calculations**  
19 **reflected in either of the study or the supporting**  
20 **addenda?**

21 A. Yeah, because we -- this actually came up in  
22 one of the meetings earlier, and as I came out of the  
23 meetings, I met -- you know, just happened to talk  
24 with some of the pier owners down there, and, yeah,  
25 the parking down there is a huge deal, you know, for

1 their piers, and I don't think people have really  
2 realized what was going to happen to that. The City  
3 was going to try and buy the Watson lot to provide  
4 more parking down there. That didn't work out,  
5 although they might be still working on a deal there.

6 So the -- the issue is, I think if you're --  
7 if you're going to write a study that granularly  
8 measures a 3 percent increase and you don't get into  
9 parking, which is, you know, renowned as an impact on  
10 retailers, you know, that's all they talk about is how  
11 much parking there is, then, to me, that's a huge  
12 omission, you know. It's just -- the issue's kind of  
13 skirted over.

14 And yet the same time it's skirted over, and  
15 yet, we -- we're granularly going to measure a 3  
16 percent difference.

17 **Q. And then finally, you talked about the issue**  
18 **of timing and about how in this context it's -- it's**  
19 **not appropriate to use the valuation date and the**  
20 **improvement date as the same valuation date because**  
21 **it's -- the benefits itself aren't going to be enjoyed**  
22 **for such a long period of time. How would you have**  
23 **tackled that for this?**

24 A. It is complicated because you -- you could  
25 either fast-forward to the date of when the

1 improvements are delivered, but, of course, the  
2 problem is there's this period of construction in  
3 between. The other problem is the before improvements  
4 aren't built either, you know.

5       So -- so it -- it's a challenging issue.  
6 Probably if I was going to do it, I would have valued  
7 it as of a particular date with and without, because I  
8 think that's sort of easier to present, and then I  
9 would have said, you know, the allocation of value  
10 should consider that these improvements actually won't  
11 be present for three and four years. So you could  
12 value it as an anticipation of receipt, but they're  
13 actually not going to be there for three or four  
14 years.

15       **Q. And do you also account for the fact that**  
16 **there might actually be damages during the time that**  
17 **the special benefits are being -- that the**  
18 **improvements are being made?**

19       A. Right. So then that would relate to  
20 construction impacts from, you know -- in sort of a  
21 similar manner to the viaduct coming down, great  
22 benefit, but at the same time, you've got the  
23 jackhammer in front of your property for several  
24 months, you know.

25       Clearly, you know, there's more to it than

1 just a with and without, you know, and -- if you were  
2 going look at the viaduct as a -- as a special benefit  
3 issue.

4 MS. TERWILLIGER: Those are all of my  
5 questions.

6 HEARING EXAMINER VANCIL: Thank you.

7 MS. TERWILLIGER: Thank you.

8 HEARING EXAMINER VANCIL: Thank you,  
9 Mr. Gibbons.

10 THE WITNESS: Thanks. Thanks.

11 HEARING EXAMINER VANCIL: Objectors have  
12 another witness?

13 MS. DUCOMB: Yes.

14 Don Ayres. Will you come forward, Don?

15 THE WITNESS: Yep.

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

18 THE WITNESS: Don Ayres. Don, D-O-N,  
19 A-Y-R-E-S.

20

21 DON AYRES, witness herein, having been  
22 first duly sworn on oath,  
23 was examined and testified  
24 as follows:  
25

1 MS. DUCOMB: We're going to just start out  
2 real quickly with the notice of assessment. I've  
3 handed up, your Honor, five exhibits, the notices of  
4 assessment for these objectors. Do you need a second  
5 set?

6 HEARING EXAMINER VANCIL: No.

7 MS. DUCOMB: Okay.

8 HEARING EXAMINER VANCIL: What have I got  
9 here? What have you --

10 MS. DUCOMB: These are the notices of  
11 assessment, which we've just --

12 HEARING EXAMINER VANCIL: For all of the  
13 cases we're hearing today?

14 MS. DUCOMB: Yeah, correct.

15 HEARING EXAMINER VANCIL: Okay.

16 MS. DUCOMB: And we'd just like to offer  
17 those.

18 HEARING EXAMINER VANCIL: All right.  
19 Let's just mark them as --

20 MS. DUCOMB: What -- you want to -- do you  
21 want to -- oh, they're all individual, sorry. Let  
22 me -- let me fix that.

23 We'll go one at a time.

24 MS. TERWILLIGER: Don, can you hand those  
25 back to me?

1 THE WITNESS: Oh, you want to see them?

2 MS. TERWILLIGER: Yeah. Sorry.

3 THE WITNESS: That's all right.

4 MS. DUCOMB: Hand me -- you can hand them  
5 back, yeah.

6 DIRECT EXAMINATION

7 BY MS. DUCOMB:

8 **Q. Okay.**

9 **I'm going to hand you one, Don. Tell -- read**  
10 **that to us and tell us what you see there.**

11 A. This is a notice of assessment from the city  
12 clerk for 1000 First Avenue South LP.

13 MS. DUCOMB: We would move to admit --  
14 what number are we on?

15 HEARING EXAMINER VANCIL: Exhibit 43.

16 (Exhibit No. 43 was marked.)

17 MS. DUCOMB: 43. The tax assessment for  
18 1000 First Avenue LP, parcel number 7666206678.

19 BY MS. DUCOMB:

20 **Q. I'll hand you the second one for 1,000.**

21 A. Yes. Again, another notice from the city  
22 clerk for 1000 First Avenue South LP.

23 You want me to read the number or you want --

24 **Q. Sure.**

25 **Why don't you read the parcel number.**

1 A. Okay.

2 So it's parcel 7666206676.

3 **Q. Thank you.**

4 **HEARING EXAMINER VANCIL: Marked as**

5 **Exhibit 344 -- sorry -- 44.**

6 MS. DUCOMB: 44?

7 (Exhibit No. 44 was marked.)

8 BY MS. DUCOMB:

9 **Q. Here's the next one, Don.**

10 A. All right.

11 Again, another notice from the city clerk for  
12 618 Second Avenue Limited Partnership, parcel number  
13 0939000080.

14 MS. DUCOMB: We'd offer that as an  
15 exhibit, your Honor.

16 **HEARING EXAMINER VANCIL: Case No. 337,**  
17 **Exhibit No. 45.**

18 (Exhibit No. 45 was marked.)

19 BY MS. DUCOMB:

20 **Q. And here's the last one.**

21 A. All right.

22 And finally, another notice from the city  
23 clerk. This is for 255 South King Street LP, parcel  
24 is 7666204878.

25 **Q. Okay.**

1           **One more.**

2           A. No, yeah, no.

3           **Q. 1016. We can't forget 1016.**

4           A. Yeah.

5                   HEARING EXAMINER VANCIL: That's Case No.  
6 336, marked 46, Exhibit 46.

7                           (Exhibit No. 46 was marked.)

8           A. Okay.

9                   And then final -- final notice was for 1016  
10 First Avenue South LP, parcel 7666206690.

11                   HEARING EXAMINER VANCIL: Case 342,  
12 Exhibit No. 47.

13                           (Exhibit No. 47 was marked.)

14 BY MS. DUCOMB:

15           **Q. Mr. Ayres, can you just briefly describe for**  
16 **us your background in working for these properties,**  
17 **owning these properties?**

18           A. Yes, sure.

19                   Yeah, well, I'm a principal of American Life  
20 and I am more specifically the property manager for  
21 our company. I've been doing this for about 16 years,  
22 both in terms of helping acquire the properties to  
23 help build them out, do the tenant improvements, lease  
24 them up, and then manage the properties subsequent to  
25 all that.



1 **Q. Can you talk to us just briefly about the**  
2 **Courtyard Marriott, its location and --**

3 A. Yes, well --

4 **Q. -- what's unique about it?**

5 A. Yeah, well, the Courtyard Marriott is 618  
6 Second Avenue, and for, I guess, identification  
7 purpose geographically, it's about two blocks south of  
8 the Met. Everybody understands where the Met is. It  
9 is close to City Hall and kind of the Pioneer Square  
10 area in general.

11 And I guess other than that, its geography is  
12 about maybe three or four blocks from -- from the  
13 waterfront, I guess. I suppose that's about the right  
14 distance.

15 **Q. And looking at the assessment for 618, I**  
16 **think if you turn to page 3, can you tell us how much**  
17 **the assessment was for 616?**

18 **HEARING EXAMINER VANCIL: What Exhibit No.**  
19 **Are you using so we can keep that in the record?**

20 MS. TERWILLIGER: Oh, yeah, sorry. It's  
21 45.

22 MS. DUCOMB: 45, Exhibit 45.

23 A. So I'm -- for -- you want the assessment  
24 for --

25 BY MS. DUCOMB:

1 **Q. 618 Second Avenue.**

2 A. 618, yes. Okay.

3 So the proposed final assessment for the LID  
4 is \$1,000,005 and \$415, or 1,005,415, so it's a  
5 little --

6 **Q. Thank you.**

7 **And in your experience trying to manage and**  
8 **let the property Courtyard Marriott, what have been**  
9 **the unique challenges there?**

10 A. Well, I think we've had several, you know, a  
11 number of which are -- have been created since we  
12 built it and -- and well, refurbished it.

13 So we have the traffic congestions with the  
14 bike lanes, which is a little bit of a problem. We  
15 don't really have a parking lot. We've leased a  
16 triangle parking lot down the street.

17 I think the homeless issue has been a very  
18 large problem for us down there, like most -- most of  
19 the Pioneer Square area tenants. And I think just  
20 general -- just general vagrancy, I think, is the --  
21 our biggest issues.

22 **Q. I'm going --**

23 MS. DUCOMB: I thought it would be helpful  
24 to bring up the map for your Honor. This is  
25 Exhibit 3. Exhibit 3.

1 HEARING EXAMINER VANCIL: Which page?

2 MS. DUCOMB: I believe 15.

3 Is that the map?

4 HEARING EXAMINER VANCIL: That's 18 in  
5 this one.

6 MS. DUCOMB: 18 on that one?

7 BY MS. DUCOMB:

8 **Q. And what can you tell us about the distance**  
9 **that the Courtyard Marriott is from the intended**  
10 **improvements?**

11 A. Well, as I -- I said, I -- I think it's about  
12 three or four blocks from the -- the intended  
13 improvements on the waterfront, so that's the  
14 proximity to look for. That's what -- what I think it  
15 is, so --

16 **Q. And does your -- does the Courtyard Marriott**  
17 **have mature trees, landscaping?**

18 A. No.

19 **Q. Does it have sidewalks?**

20 A. It does.

21 **Q. Okay.**

22 **And maybe we can turn to a photograph.**

23 **Page 21.**

24 A. Okay.

25 **Q. Got it?**

1 A. I do.

2 **Q. Okay.**

3 **Is that the Courtyard Marriott?**

4 A. It is.

5 **Q. And are those -- are those trees next to your**  
6 **property?**

7 A. They are. They're in front, I believe.

8 **Q. Okay.**

9 **Is there anything that you've learned about**  
10 **the intended improvements for the waterfront that are**  
11 **of unique value to the tenants or customers at the**  
12 **Courtyard Marriott?**

13 A. Not to my direct knowledge, no.

14 **Q. What would -- what would you say about**  
15 **streetscape and landscaping several blocks away;**  
16 **does -- does -- do customers come to the Courtyard**  
17 **Marriott for that?**

18 A. Well, a better person to tell -- ask that  
19 question would be the manager, but I don't believe so.  
20 In my interactions with them, I have not heard that,  
21 no.

22 **Q. Okay.**

23 **Great. Let's go on to 255 King Street.**

24 A. Okay.

25 MS. DUCOMB: What number is that?

1 MS. TERWILLIGER: 46.

2 BY MS. DUCOMB:

3 **Q. 46. Can you see the assessment there?**

4 A. I'm turning to it right now. Yes, I do.

5 **Q. And how much was the assessment for 255 South**  
6 **King Street?**

7 A. Okay. The final LID was \$923,916 and some  
8 change.

9 **Q. And what can you tell us about 255 South King**  
10 **Street?**

11 A. Well, it's a relatively new hotel. It's about  
12 two years old in terms of its opening, and it sits in  
13 the very north -- or excuse me, the -- yeah, the very  
14 north end of the Quest Field parking lot. It's  
15 uniquely centered kind of between Pioneer Square  
16 and -- and the stadium district, so -- and next to the  
17 train station, so I think those are the geographical  
18 kind of boundaries.

19 If you're looking for my opinion of where it  
20 is to the waterfront, it is several, many blocks away  
21 from the waterfront project. And I'm -- I'm not  
22 certain what else to tell you other than that.

23 **Q. Yeah.**

24 **And there's -- it's a twin-tower development,**  
25 **is it not?**

1 A. It is, yes, uh-huh.

2 **Q. And what's in the other tower?**

3 A. The -- it is a project that has a -- well,  
4 obviously, the Hilton Embassy Suites, and then an  
5 adjoining structure of about 23 stories of an office  
6 tower on the south side of that -- south side of the  
7 Hilton.

8 **Q. And what's unique about the -- this**  
9 **development in terms of its neighborhood, its**  
10 **surroundings? What drives the tenants to come and --**

11 A. Well -- well, I think a lot of it is,  
12 obviously, generated by the game days and by the  
13 sporting events around the area, and that's where our  
14 biggest impact is with -- in terms of being busy and  
15 being occupied. That's the hotel side of it.

16 The other side of it is it's a full office  
17 building that's completely been tenanted and has been  
18 tenanted almost since day one.

19 **Q. Um-hmm.**

20 A. And so we have a variety of tenants in there,  
21 but there -- there are no retail tenants in there  
22 other than a restaurant on the -- on the ground floor  
23 of the hotel.

24 **Q. And what -- what interests do the -- did the**  
25 **tenants have in the building? What was -- what was**

1 **special about it for them?**

2 A. Well, there were several things.

3 MS. THOMPSON: Objection.

4 A. You know --

5 HEARING EXAMINER VANCIL: Hold on.

6 There's an objection.

7 MS. THOMPSON: Objection. Calls for  
8 speculation.

9 THE WITNESS: Oh.

10 BY MS. DUCOMB:

11 **Q. Were you involved in leasing up the**  
12 **building --**

13 **HEARING EXAMINER VANCIL: Are you --**

14 BY MS. DUCOMB:

15 **Q. -- Don?**

16 **HEARING EXAMINER VANCIL: -- withdrawing**  
17 **the question, or do you have a response to the**  
18 **objection?**

19 MS. DUCOMB: No -- well, I believe that he  
20 just testified that he --

21 HEARING EXAMINER VANCIL: Are you  
22 withdrawing the question?

23 MS. DUCOMB: I am not withdrawing the  
24 question.

25 HEARING EXAMINER VANCIL: An objection was

1 made.

2 MS. DUCOMB: For speculation.

3 HEARING EXAMINER VANCIL: Yes.

4 MS. DUCOMB: And he testified that he  
5 leased up the building.

6 HEARING EXAMINER VANCIL: So you're going  
7 to take the -- the testimony over the objection?

8 MS. DUCOMB: Well, I was just going to lay  
9 another foundation if that was needed.

10 HEARING EXAMINER VANCIL: Okay. I'll  
11 allow it to be stricken if -- if you're not going to  
12 respond to the objection.

13 MS. DUCOMB: Okay.

14 Well, I just responded that it's not  
15 speculative if he has knowledge.

16 HEARING EXAMINER VANCIL: I didn't hear  
17 you. You're talking over me, so --

18 MS. DUCOMB: Oh, oh, sorry.

19 HEARING EXAMINER VANCIL: -- I've been  
20 asking for a response --

21 MS. DUCOMB: Sorry, sorry.

22 HEARING EXAMINER VANCIL: -- to the  
23 objection. This is the first time you've provided it.

24 MS. DUCOMB: Sorry.

25 HEARING EXAMINER VANCIL: What's your



1 response?

2 MS. DUCOMB: I don't believe it's  
3 speculation because he has personal knowledge about  
4 leasing up the building.

5 HEARING EXAMINER VANCIL: Okay.  
6 With the tenants?

7 MS. DUCOMB: Yes, he just testified to  
8 that a minute ago.

9 HEARING EXAMINER VANCIL: Okay.  
10 I didn't hear that part.

11 MS. DUCOMB: Okay.

12 HEARING EXAMINER VANCIL: Maybe that's --  
13 with that --

14 MS. THOMPSON: You were asking what the  
15 tenants thought. He's not a tenant.

16 MS. DUCOMB: Okay.

17 MS. THOMPSON: So --

18 HEARING EXAMINER VANCIL: I'll allow it.  
19 We do do hearsay in these hearings pretty commonly,  
20 so --

21 A. Well -- all right.

22 So could you repeat the question. I've  
23 forgotten it now.

24 HEARING EXAMINER VANCIL: Sir, please  
25 don't talk over anybody in this hearing room.

1 THE WITNESS: I'm sorry?

2 HEARING EXAMINER VANCIL: Please don't  
3 talk over anybody in the hearing room.

4 THE WITNESS: I'm sorry. Okay.

5 HEARING EXAMINER VANCIL: That's -- and  
6 I'm just shouting so you can hear me.

7 THE WITNESS: Got it.

8 HEARING EXAMINER VANCIL: All right. We  
9 just -- for recording purposes, we all need to --  
10 counsel and myself, we all need to have -- talk one at  
11 a time.

12 So please proceed with your question.

13 BY MS. DUCOMB:

14 **Q. And so in leasing up the Avalara Tower, Hawk**  
15 **Tower, what were the issues?**

16 A. There were three, and a lot of the people in  
17 the tower that were the occupant owners of the  
18 business came from Vashon Island, wanted to be close  
19 to the ferry.

20 The second was, is they wanted to have  
21 proximity to the nexus hub of transportation and  
22 ingress and egress from the building.

23 And the third is they wanted it to have a  
24 look-alike feel from their building and their business  
25 back in South Carolina, which is next to the stadiums.

1 **Q. All right. Thank you.**

2 **And so turning to -- oh, yeah, let's see.**

3 **And so do you have this packet in front of**

4 **with you with the photos, hearing examiner's**

5 **Exhibit 3, I believe it is?**

6 A. This?

7 MS. TERWILLIGER: No, it's in there at

8 that. That there.

9 BY MS. DUCOMB:

10 **Q. It should be two pages back from the**

11 **Courtyard Marriott photos. Page 20, possibly. 21,**

12 **19, 20.**

13 A. Yes, I have it.

14 HEARING EXAMINER VANCIL: And I'm not --

15 you just listed three different page numbers.

16 BY MS. DUCOMB:

17 **Q. Yeah, are you on Exhibit 3 page 19 on --**

18 A. I'm on page 20.

19 **Q. And which photos are you looking at there?**

20 A. Aerial viewpoints of the Hawk Tower.

21 **Q. Okay.**

22 **The before and after?**

23 A. Yes.

24 **Q. Okay.**

25 **And does that reflect the development site**

1 **before the building went in --**

2 A. It does.

3 **Q. -- and then after?**

4 A. Yes.

5 **Q. Okay. Thank you.**

6 I'm turning back one page. Are those also

7 **photographs of 255 South King Street?**

8 A. Yes.

9 **Q. And does 255 South King Street have**  
10 **sidewalks?**

11 A. Yes.

12 **Q. And has trees?**

13 A. Yes.

14 **Q. Was that something that you were required to**  
15 **do as part of the development?**

16 A. Yes.

17 **Q. Thank you. Okay.**

18 Turning to First Avenue South, do you have  
19 **Exhibits 43 and 44? You have both for 1000 First**  
20 **Avenue South there?**

21 One has the 76 number and one has the 78  
22 **parcel number.**

23 A. I have them.

24 **Q. Okay.**

25 **Can you let us know which one you're reading**

1 **from and then tell us the amount of the assessment?**

2 A. Okay. This is for parcel number 7666206678,  
3 the proposed final LID was \$13,713 and change.

4 **Q. Thanks.**

5 A. Okay.

6 **Q. And then for the other property?**

7 A. Yes. This is for the parcel ending in 6676.

8 The proposed final LID assessment is 44,667 and  
9 change.

10 **Q. Thanks.**

11 **And then in that document with the**  
12 **photographs that we just reviewed, 255 South King**  
13 **Street, if you turn two more pages --**

14 **HEARING EXAMINER VANCIL: The document's**  
15 **Exhibit No. For the record, please.**

16 MS. DUCOMB: Exhibit 3, your Honor.

17 A. Page 23?

18 BY MS. DUCOMB:

19 **Q. Um-hmm.**

20 A. Yeah.

21 **Q. It -- there should be a few pages with the**  
22 **First Avenue South. The first picture should be all**  
23 **three -- all three properties highlighted. Do you see**  
24 **that?**

25 A. I am looking at page 23.

1 **Q. Do you have 22?**

2 A. 22?

3 I do.

4 **Q. And are these the three properties that we've**  
5 **just received -- you just received notices of?**

6 A. Correct, yes.

7 **Q. And where are they -- oh, right.**

8 **And where are these located?**

9 A. Proximity-wise, the CenturyLink Convention  
10 Center, we're directly across the street west, and so  
11 Occidental would be the street, and then First Avenue  
12 would be the west side of the -- the buildings.

13 **Q. And what's the proximity or distance to the**  
14 **waterfront from here?**

15 A. Oh, probably five or six blocks.

16 **Q. And what were the issues in leasing up 1000**  
17 **First Avenue South, the Palmer Building?**

18 A. Well, primarily, there were several. Number  
19 one -- the biggest one was the construction outside of  
20 the building for four, five or six years and all of  
21 the dust and all of that. And then there was a large  
22 population of homeless that inhabited the area, both  
23 in and around the building, so those were our two  
24 greatest issues.

25 **Q. And who are the tenants there now?**

1 A. In the 1000 building, the Palmer Building, is  
2 a company called PayScale.

3 **Q. And do this -- does this building have**  
4 **sidewalks and landscaping and trees?**

5 A. It has trees on the west side and, yes, there  
6 are sidewalks.

7 **Q. And then if you turn the page, is that a**  
8 **picture of 1000 First Avenue --**

9 A. Yes.

10 **Q. -- south?**

11 **And then I'm going to ask you to look at the**  
12 **assessment for 1016, which you should have in front of**  
13 **you.**

14 A. Okay.

15 MS. DUCOMB: Exhibit 47, your Honor.

16 A. Okay. Yeah, yes, here it is.

17 BY MS. DUCOMB:

18 **Q. And can you turn to page 3 and let us know**  
19 **what the assessment was --**

20 A. I can.

21 **Q. -- for this property?**

22 A. Um-hmm. So the proposed final LID assessment  
23 is for \$20,374.

24 **Q. Thank you.**

25 **And if you turn to the last page in that**

1 **packet for Exhibit 3, I believe there's a photograph**  
2 **of 1016?**

3 A. Yes.

4 **Q. Is that 1016?**

5 A. That's correct.

6 **Q. And who's the tenants there now?**

7 A. There are several. We have a company called  
8 FORMA Construction is on the fourth floor, the top  
9 floor. The third floor is Office Depot Office Max  
10 corporate office. The third floor -- or the second  
11 floor is vacant, and on the first floor is a company  
12 called Hat World, which is a professional and college  
13 apparel company, sells apparel.

14 **Q. And what were the issues leasing up this**  
15 **building?**

16 A. It was largely the same, the construction and  
17 the noise and dust and -- and the homeless issue, and  
18 those were our -- and we also hit the stride in the  
19 2008 to 2012 recession, so --

20 **Q. And do these -- does this building have**  
21 **sidewalks and trees?**

22 A. They do. It does.

23 **Q. Thank you.**

24 **Just a minute here. Let me double-check.**

25 MS. DUCOMB: No further questions,



1 your Honor.

2 HEARING EXAMINER VANCIL: Thank you.

3 Cross?

4 MS. THOMPSON: No cross. Thank you.

5 HEARING EXAMINER VANCIL: All right.

6 Thank you, sir.

7 MS. DUCOMB: Thank you, Don.

8 THE WITNESS: Okay.

9 HEARING EXAMINER VANCIL: Are we  
10 proceeding with objectors?

11 MS. TERWILLIGER: We have an additional  
12 witness.

13 HEARING EXAMINER VANCIL: Okay.

14 MS. TERWILLIGER: We can either call her  
15 now or take a break and then call her.

16 HEARING EXAMINER VANCIL: Yeah, we'll take  
17 a break.

18 MS. TERWILLIGER: Okay.

19 HEARING EXAMINER VANCIL: But I'd like to  
20 know how much time you anticipate for when we come  
21 back.

22 MS. TERWILLIGER: So I think -- so we have  
23 two additional witnesses lined up. I think each will  
24 take about a half-hour.

25 HEARING EXAMINER VANCIL: Okay.

1 MS. TERWILLIGER: Just for our questioning  
2 and -- yeah.

3 HEARING EXAMINER VANCIL: Sure. All  
4 right.

5 We'll return at 3:15.

6 MS. TERWILLIGER: Thank you.

7 (A break was taken from  
8 2:55 to 3:15 p.m.)

9 HEARING EXAMINER VANCIL: Okay. We'll  
10 return to the record and continue with objectors'  
11 case.

12 MS. TERWILLIGER: The objectors call  
13 Christine Cole.

14 HEARING EXAMINER VANCIL: Please state  
15 your name and spell it.

16  
17 THE WITNESS: Christine Cole,  
18 C-H-R-I-S-T-I-N-E, C-O-L-E.

19 HEARING EXAMINER VANCIL: Thank you.

20  
21 CHRISTINE COLE, witness herein, having been  
22 first duly sworn on oath,  
23 was examined and testified  
24 as follows:  
25

1 HEARING EXAMINER VANCIL: Thank you.

2 DIRECT EXAMINATION

3 BY MS. TERWILLIGER:

4 **Q. Ms. Cole, where are you employed?**

5 A. SODO Builders.

6 **Q. And what do you do for SODO Builders?**

7 A. I am a project manager.

8 **Q. Okay.**

9 **And were you the project manager on the**  
10 **building -- the building constructed at 255 South King**  
11 **Street?**

12 A. Yes.

13 **Q. And what -- so what did you do as the project**  
14 **manager?**

15 A. Negotiated scopes of work, wrote contracts,  
16 change orders, managed the budget invoices, et cetera,  
17 answered questions.

18 **Q. And were you the project manager throughout**  
19 **the term of the project?**

20 A. I was one of them, yes.

21 **Q. Okay.**

22 **Did you interact with -- with subcontractors,**  
23 **third parties, or was it only mostly internal?**

24 A. No, I did interact with subcontractors, yes.

25 **Q. Okay.**

1           **In front of you you have Exhibit 3, which is**  
2 **a PowerPoint presentation, and if you switch -- or**  
3 **sorry, if you go to page 21 -- okay, let's actually**  
4 **make it page 20, can you tell me what those two**  
5 **pictures are?**

6           A. Those are aerial sky pics that we took at the  
7 beginning of the project and the end of the project.

8           **Q. Can you give me a ballpark time for -- or at**  
9 **least a year for the before picture?**

10          A. It's April 14, 2014.

11          **Q. I'm impressed you can read that.**

12               **And -- and what -- when was construction**  
13 **completed?**

14          A. This after photo was taken April 28th, 2018.

15          **Q. Okay.**

16          A. Construction was completed mid-March of that  
17 month.

18          **Q. Of '18?**

19          A. Yes.

20          **Q. Okay.**

21               **Can you turn to the prior page, page 19, and**  
22 **are those pictures of -- of what the 255 building**  
23 **looks like today?**

24          A. Yes.

25          **Q. Okay. All right.**

1           **In your binder, you will see Tab 53. If you**  
2           **could turn to that, that would be great.**

3           **Okay.**

4           **And if we could just walk through these**  
5           **photos. On the first page, can you tell me what this**  
6           **is a picture of and where it is in relation to the 255**  
7           **building?**

8           **HEARING EXAMINER VANCIL: Is this an**  
9           **exhibit, or are you going to give me a copy?**

10          MS. TERWILLIGER: I'm sorry. Yes.  
11          Exhibit 53.

12          MS. DUCOMB: Tab 53.

13          MS. TERWILLIGER: Tab 53, not Exhibit 53.  
14          Tab 53.

15          HEARING EXAMINER VANCIL: So what's the  
16          exhibit?

17          MS. TERWILLIGER: I'm going to offer it  
18          into evidence.

19          HEARING EXAMINER VANCIL: Okay. Okay. Go  
20          ahead.

21          A. It is the south side of the south tower.

22          BY MS. TERWILLIGER:

23          **Q. Okay.**

24          MS. TERWILLIGER: And is this Exhibit 48?

25          HEARING EXAMINER VANCIL: This will be 48,

1 yes.

2 (Exhibit No. 48 was marked.)

3 BY MS. TERWILLIGER:

4 **Q. Okay.**

5 **And this is the south side of the -- of the**  
6 **south tower?**

7 A. Correct.

8 **Q. Okay.**

9 **So this abuts the north parking lot of the**  
10 **field?**

11 A. Yes.

12 **Q. Okay.**

13 **And are these -- the sidewalk that's present**  
14 **here, is that something that SODO Builders put in?**

15 A. Yes.

16 **Q. Okay.**

17 **And what about the picture immediately below**  
18 **it still on that first page?**

19 A. That is a longer shot of the same photo  
20 above --

21 **Q. Okay.**

22 A. -- just to see the sidewalk piece from the  
23 other side.

24 **Q. Great.**

25 **Could you please turn to the second page?**

1 **What direction is that, the top picture facing?**

2 A. The top picture is the north side of the north  
3 tower facing east towards King Street Station.

4 **Q. Okay.**

5 **And what about that -- that lower picture?**

6 A. The lower photo is Second Avenue facing south  
7 towards CenturyLink field.

8 **Q. Okay.**

9 A. On the west side of the towers.

10 **Q. And are these current depictions of what the**  
11 **sidewalks and landscaping look next to 255 today?**

12 A. Yes.

13 **Q. Okay.**

14 A. These photos were taken maybe two weeks ago.

15 **Q. Okay.**

16 **And are these sidewalks that 255 -- that went**  
17 **in as part of the 255 construction project?**

18 A. Yes, they did.

19 **Q. Okay.**

20 **Can you turn to the third page of this**  
21 **exhibit, please? And can you tell me what the picture**  
22 **is on the top page or top of the page?**

23 A. The top of the page would be the northeast  
24 corner looking east towards King Street Station.

25 **Q. So --**

1 A. North side of the north tower looking east  
2 towards King Street Station.

3 **Q. Excellent.**

4 **And what about the bottom photo?**

5 A. It is the north side of the north tower  
6 looking west.

7 **Q. Okay.**

8 **And again, this is a current depiction of the**  
9 **sidewalks and improvements around 255?**

10 A. Yes.

11 **Q. Okay.**

12 **And finally, the final page, what direction**  
13 **is this picture facing?**

14 A. This is the east side of both towers facing  
15 south towards CenturyLink Field.

16 **Q. And again, this is a current depiction?**

17 A. Yes.

18 **Q. And are these improvements that were made as**  
19 **part of the construction for the 255 building?**

20 A. Yes.

21 **Q. Okay.**

22 **And are you familiar with the work that the**  
23 **SODO Builders and its subs did outside of constructing**  
24 **the actual tower, improvements made to the sidewalks,**  
25 **streets and rights-of-way?**



1 A. Yes.

2 **Q. Okay.**

3 **Can you describe those briefly for us?**

4 A. Before we could start construction, we had to  
5 move King County's odor control facility out of our  
6 property into an easement as well as Seattle City  
7 Lights duct bank. That was prior to construction.

8 I'm sorry, what was the part of the question?

9 What improvements did we make?

10 **Q. Yes.**

11 A. Okay.

12 Obviously, all these sidewalks, curbs,  
13 gutters, a bunch of landscaping, planters. There's  
14 granite pavers out in front of the hotel to the atrium  
15 that actually enters both buildings.

16 We also improved King County -- or King  
17 Street. Half of King Street was repaved as well as a  
18 new crosswalk about etching went in, and we also put  
19 a -- some ducting across for -- across King Street for  
20 Seattle City Lights. We put in new street lights,  
21 obviously, the curbs, gutters, driveways, et cetera.

22 **Q. And why did you make these improvements?**

23 A. They were required by the City.

24 **Q. Okay.**

25 **Can you please turn to Tab 54 in your binder.**

1 MS. TERWILLIGER: And I would offer this  
2 as Exhibit 49.

3 HEARING EXAMINER VANCIL: And I'm sorry,  
4 which tab?

5 MS. TERWILLIGER: 54.

6 BY MS. TERWILLIGER:

7 **Q. Ms. Cole, have you seen this document before?**

8 A. Yes.

9 **Q. What is it?**

10 A. This is the street improvement plan we had  
11 that was approved by the City.

12 (Exhibit No. 49 was marked.)

13 BY MS. TERWILLIGER:

14 **Q. And if you turn to the final page of this**  
15 **document, can you sort of walk me through the kinds of**  
16 **work that you did on King Street?**

17 A. We had to replace the sidewalks. They were  
18 broken and uneven, I believe from the trees that were  
19 there. We also had to do maintenance on the trees by  
20 a City-approved arborist as the City watched, since --  
21 that was true, and then it also shows how we had to  
22 repave half of King Street, and the sidewalk painting  
23 that we had to put in.

24 Towards the middle, it shows the new street  
25 light we had to put in. Towards the left-hand side of

1 the page, it says, remove existing pole and luminaire.  
2 So we had to take down an existing pole that was there  
3 and light and move it, and then towards the right, it  
4 just kind of shows the improvements that we had to  
5 make to get the grade for our driveway as well as King  
6 Street Station's parking and et cetera --

7 **Q. Okay.**

8 A. -- even.

9 **Q. I'd like to talk about the costs that were**  
10 **involved in that.**

11 MS. TERWILLIGER: I have a new document.

12 MS. DUCOMB: 50.

13 MS. TERWILLIGER: 50?

14 (Exhibit No. 50 was marked.)

15 BY MS. TERWILLIGER:

16 **Q. Ms. Cole, have you seen this document before?**

17 A. Yes.

18 **Q. Okay.**

19 **At the same time, I would like to turn your**  
20 **attention to Exhibit 55 -- or I'm sorry, it's behind**  
21 **Tab 55?**

22 MS. TERWILLIGER: And ask that that be  
23 marked, and that would be Exhibit 51.

24 (Exhibit No. 51 was marked.)

25 BY MS. TERWILLIGER:

1 **Q. Let's turn back to Exhibit 50. Do you know**  
2 **how this was created?**

3 **HEARING EXAMINER VANCIL: Before you move**  
4 **on --**

5 MS. TERWILLIGER: Sorry.

6 HEARING EXAMINER VANCIL: -- we're marking  
7 this as 51, the LID backup cost information?

8 MS. TERWILLIGER: Yes.

9 HEARING EXAMINER VANCIL: How much of this  
10 are you going to use?

11 MS. TERWILLIGER: Almost none. It's the  
12 backup costs for the amounts reflected in Exhibit 50.

13 HEARING EXAMINER VANCIL: It's pretty  
14 thick.

15 MS. TERWILLIGER: I know. They're -- all  
16 the backup numbers are there.

17 HEARING EXAMINER VANCIL: If you're not  
18 going to use it, though, I mean --

19 MS. TERWILLIGER: Well, I mean, it's -- we  
20 want to lay a foundation so that there aren't  
21 questions about whether we actually spent the amount  
22 of money that's reflected on the cost summary. I  
23 mean, you'll find -- if you would like me to walk  
24 through the cost documentation to show that the  
25 numbers match, I'm okay to do that. That wouldn't

1 actually take very long.

2 HEARING EXAMINER VANCIL: I'm not  
3 questioning the document.

4 MS. TERWILLIGER: Okay.

5 HEARING EXAMINER VANCIL: I'm questioning  
6 submitting all of this seems.

7 MS. TERWILLIGER: Yeah.

8 HEARING EXAMINER VANCIL: It seems we're  
9 getting further astray from --

10 MS. TERWILLIGER: Okay.

11 HEARING EXAMINER VANCIL: -- what we need  
12 to be getting in. It's just creating a large record.

13 I'll allow it for now.

14 MS. TERWILLIGER: Okay.

15 BY MS. TERWILLIGER:

16 **Q. So, Ms. Cole, exhibit -- can you tell me what**  
17 **Exhibit 50 reflects?**

18 A. It's the summary of the LID backup costs.

19 **Q. And what specific backup costs?**

20 A. Do you want to go through the line items? Is  
21 that --

22 **Q. Yeah.**

23 A. -- what you want?

24 Okay.

25 So stone masonry, fountain, landscape walls,

1 benches, tile pavers, those are on the exterior of the  
2 building. They are granite pavers that you walk on or  
3 they're walls that were landscaped with stone or stone  
4 benches that are out there for the public to sit on.

5 **Q. Okay.**

6 A. The odor control facility was moving King  
7 County's odor control facility as it would run through  
8 our pro- -- our building. The lighting is adding the  
9 one Chief Sealth street light on King Street, plus --  
10 I'd have to look at the photos -- it's three or four  
11 additional light poles on Second Avenue --

12 **Q. Okay.**

13 A. -- as well as lighting for landscape, trees,  
14 et cetera.

15 Street restoration is hard to -- a little hard  
16 to understand why the dollar value is so small. That  
17 really is concrete walls for the planters that were  
18 then covered with stone.

19 Asphalt paving and permeable paving were King  
20 Street being paved, Second Avenue being paved, and  
21 permeable paving on the south side of the building as  
22 well as the east side of the building. Right-of-ways,  
23 sidewalks and driveways are fairly self-explanatory.  
24 Sidewalks, driveways, et cetera.

25 Curbs and gutters are part of the sidewalk

1 system. Irrigation is for all the landscape planters  
2 at the street level. Landscape and tree grades are,  
3 again, self-explanatory. They're landscape and the  
4 planters along the street and in planters close to the  
5 building as well as tree gate -- grates.

6 **Q. And just to be clear on this one, was the --**  
7 **why did you do the landscaping near the building?**

8 A. It was required --

9 **Q. By the City?**

10 A. -- by the City --

11 **Q. Okay.**

12 A. -- per -- per the green factor.

13 **Q. Okay.**

14 A. Water was putting in a one-inch new water line  
15 to the Weller Street Bridge. The sewer was to repair  
16 the damaged sewer to the Weller Street Bridge when  
17 King County put in the odor control facility.

18 The storm drain was an enlarged pipe that we  
19 took down to the stadium for them. The electrical  
20 transmission and distribution was moving of SCL's duct  
21 bank that ran through our property as well as putting  
22 some piping across the street for them on King Street.

23 **Q. Do you know how this document was put**  
24 **together?**

25 A. Our estimator put it together based on me

1 pulling all the contracts and change orders that were  
2 issued to subcontractors during the project.

3 **Q. And those backup documents are reflected in**  
4 **Exhibit 51?**

5 A. That is correct.

6 **Q. So in total, the costs for these sorts of**  
7 **improvements was more than \$3 million; is that right?**

8 A. Yes.

9 **Q. Did -- did you make any other improvements to**  
10 **the area that aren't included in these costs?**

11 A. There are \$3 million worth of contaminated  
12 soil that was removed from the property prior to the  
13 building commencing construction, when we dug the  
14 hole. There's also fountains, artwork/sculptures, lit  
15 gabion walls, et cetera.

16 **Q. Why did you remove the contaminated soils?**

17 MS. THOMPSON: Objection. I would object  
18 to this line of questioning. I don't see how this is  
19 relevant to this proceeding which involves the  
20 assessment to particular properties.

21 MS. TERWILLIGER: Right. So our position  
22 is that 255, the Embassy Suites building, should be  
23 entitled for an offset for improvements that it  
24 already made, particularly because they are so akin to  
25 the improvements being made in -- the other property



1 owners within the LID.

2 HEARING EXAMINER VANCIL: The cleanup of  
3 the site?

4 MS. TERWILLIGER: Well, not the cleanup of  
5 the site.

6 HEARING EXAMINER VANCIL: I mean, I got  
7 the sidewalk, but --

8 MS. TERWILLIGER: Yeah, yeah.

9 HEARING EXAMINER VANCIL: -- we're now  
10 talking about site cleanup --

11 MS. TERWILLIGER: Well, it's just --

12 HEARING EXAMINER VANCIL: -- and that's  
13 what the objection's to.

14 MS. TERWILLIGER: Okay.

15 HEARING EXAMINER VANCIL: It does seem  
16 irrelevant.

17 MS. TERWILLIGER: I'll withdraw it.

18 HEARING EXAMINER VANCIL: Okay.

19 Thank you.

20 MS. TERWILLIGER: Thank you for your time.

21 Wait.

22 HEARING EXAMINER VANCIL: Any cross?

23 MS. DUCOMB: They might have some  
24 questions.

25 CROSS-EXAMINATION

1 BY MS. THOMPSON:

2 **Q. Oh, I guess one question I had. You**  
3 **mentioned the green factor --**

4 A. Yes.

5 **Q. -- was what drove the required improvements.**  
6 **Can you just --**

7 A. For the landscaping.

8 **Q. Oh, for the landscaping?**

9 A. Um-hmm.

10 **Q. Okay.**

11 **Could you explain --**

12 A. (Shakes head). Sorry.

13 **Q. -- what that is? No?**

14 A. No.

15 **Q. Okay.**

16 A. It's -- to the best of my knowledge, it is a  
17 certain percentage of the project needs to be green,  
18 and that is a City requirement. I don't know how the  
19 factor -- I don't know how that's determined. That  
20 was done by our architect and landscape architect with  
21 the City.

22 MS. THOMPSON: No further questions.

23 HEARING EXAMINER VANCIL: Any redirect  
24 from that?

25 MS. TERWILLIGER: No, your Honor.

1 HEARING EXAMINER VANCIL: Okay. Thank  
2 you.

3 MS. TERWILLIGER: Thank you.

4 HEARING EXAMINER VANCIL: I just want to  
5 make sure we're caught up with exhibits. We did just  
6 mark and admit exhibits for a period when counsel was  
7 introducing them, but I haven't been doing that  
8 waiting to see if any objections on some of these  
9 others.

10 So I'd like to -- we're up to 51 now.

11 What were we admitted to?

12 (Brief discussion off the record.)

13 HEARING EXAMINER VANCIL: Let me check to  
14 see where we are on admitted exhibits.

15 (Brief discussion off the record.)

16 HEARING EXAMINER VANCIL: All right. From  
17 Exhibit 32 to 51, were there any objections to those  
18 being admitted?

19 MS. THOMPSON: My only objection would be  
20 to the last two exhibits, 50 and 51, on the basis that  
21 they're irrelevant.

22 HEARING EXAMINER VANCIL: Any response to  
23 the objection?

24 MS. TERWILLIGER: I think my response is  
25 the same as my response to the objection during the

1 testimony. 255 is seeking a credit for the amount of  
2 public improvements that it already made as part of  
3 its construction project, most of which were required  
4 by the City, and it is our position that those amounts  
5 should offset the assessment of issue here.

6 HEARING EXAMINER VANCIL: Okay.

7 For that limited purpose, they'll be  
8 admitted. So Exhibits 32 to 51 are admitted. Caught  
9 up on that.

10 Next witness from objectors.

11 MS. TERWILLIGER: The objectors call Nick  
12 Kuhns.

13 HEARING EXAMINER VANCIL: Please state  
14 your name and spell it for the record.

15 A. Nicholas, N-I-C-H-O-L-A-S, Kuhns, K-U-H-N-S.

16  
17 NICHOLAS KUHNS, witness herein, having been  
18 first duly sworn on oath,  
19 was examined and testified  
20 as follows:

21

22 HEARING EXAMINER VANCIL: Thank you.

23 DIRECT EXAMINATION

24 BY MS. TERWILLIGER:

25 **Q. Good afternoon, Mr. Kuhns.**

1 A. Hi. How are you?

2 **Q. Could you tell us what your current position**  
3 **is?**

4 A. I'm the hotel general manager at the Embassy  
5 Suites Seattle in downtown Pioneer Square.

6 **Q. Okay.**

7 **And that's located at 255 South King Street?**

8 A. Correct.

9 **Q. Okay.**

10 **How long have you been the manager of the**  
11 **Embassy Suites?**

12 A. June of 2018.

13 **Q. And was that when the hotel opened?**

14 A. No. It opened on March 28th, 2018.

15 **Q. Okay.**

16 **And were you at the hotel when it opened or**  
17 **just -- you started in June?**

18 A. I was not. I started June 1st.

19 **Q. Okay.**

20 **And how many years do -- of experience do you**  
21 **have in the hospitality industry?**

22 A. 18.

23 **Q. How much of that is in Seattle?**

24 A. June of 2018.

25 **Q. Okay.**

1           **And my understanding for the record is that**  
2 **you're here to testify today as the general manager of**  
3 **the hotel, you're not a representative of the Hilton**  
4 **enterprise or Hilton generally?**

5           A. Correct. I am testifying as a  
6 manager/operator of the Embassy Suites and not as a  
7 representative of the ownership group or as the Hilton  
8 enterprise.

9           **Q. Do you have personal knowledge of the hotel**  
10 **operations?**

11          A. I do.

12          **Q. What about its clientele?**

13          A. I know the type of business traveler,  
14 corporate traveler type of traveler that is coming to  
15 the hotel. I engage with them six days a week. I've  
16 done that since June of 2018.

17               I'm responsible for working with the sales and  
18 marketing team to contract corporate permanent  
19 business travelers as well as the type of travelers  
20 that come for stadium events and cruise travelers,  
21 things like that.

22          **Q. Are you familiar with the proposed**  
23 **improvements to the Seattle Waterfront?**

24          A. I am.

25          **Q. Okay.**

1           **And do you see these proposed improvements**  
2 **providing special benefits to the Embassy Suites?**

3       A. I do not.

4       **Q. Why not?**

5       A. This specific project would not change our  
6 model of occupancy, it wouldn't change our strategy  
7 with rates, and it wouldn't change the type of  
8 customer that we're already getting.

9       **Q. So what is your current model of occupancy?**

10      A. Because this is recorded, I don't want to give  
11 too many specifics because of competitors and things  
12 of that nature. The predominant traveler to our hotel  
13 is coming for stadium events, it's coming from  
14 corporate or negotiated business that we've  
15 contracted, permanent business that we've contracted,  
16 and leisure cruise travelers --

17      **Q. Okay.**

18      A. -- is predominantly what makes up the mix of  
19 traveler.

20      **Q. Okay.**

21           **And can you give me a very high-level**  
22 **breakdown of what percentage of guests come to your**  
23 **hotel for events that -- that happen in your hotel?**

24      A. Events that are happening in our hotel,  
25 whether it be weddings, meetings, things like that,

1 would probably be around the 25 percent.

2 **Q. Okay.**

3 **Do you have an estimate for corporate groups?**

4 A. It's all-encompassing because corporate  
5 negotiated international business traveler, it's  
6 probably around the 20 to 25 percent range.

7 **Q. Okay.**

8 **Is proximity to the waterfront something that**  
9 **your hotel advertises?**

10 A. No.

11 **Q. Do you advertise proximity to the stadium?**

12 A. Yes.

13 **Q. What about proximity to Pioneer Square?**

14 A. Yes.

15 **Q. Okay.**

16 **How do you know or why do you think that the**  
17 **proposed improvements aren't going to be a benefit for**  
18 **the hotel guests?**

19 A. Of the 282 rooms in our hotel, only 24 have  
20 views of the actual waterfront. So we have 23 floors.  
21 We only consider the view rooms from the 12th floor  
22 and up, and there's only two rooms per floor that have  
23 a west-facing view that would even be able to see the  
24 waterfront.

25 **Q. And when you say see the waterfront, can they**



1 **actually see what's on the waterfront or do the**  
2 **buildings in front of you block that view?**

3 A. There is -- I mean, I would say between 12  
4 and -- floors 12 and 16, it's very limited. You would  
5 see more water than the actual waterfront.

6 **Q. Okay. Okay.**

7 **Now, you work in the area six days a week?**

8 A. Yep.

9 **Q. Do you ever go down to the waterfront?**

10 A. No.

11 **Q. Okay.**

12 **Why not?**

13 A. It's not a path that I would travel unless I  
14 was going to, like, the science center. I mean, even  
15 if I was going to Pike's Market, I would travel on  
16 First Avenue and walk up the mile that way. It  
17 wouldn't make sense to go to Alaska and then kind of  
18 come back, so that's issue number one.

19 But we also have a shuttle that is in front of  
20 the hotel where if we need to take a shuttle, it would  
21 take us there. It's a lot more convenient for our  
22 guests that stay in the hotel.

23 **Q. Got it.**

24 **Do you think you're more likely to go to the**  
25 **waterfront after the changes are made with the LID**

1 **improvements?**

2 A. No more than currently.

3 **Q. Okay.**

4 MS. TERWILLIGER: That's all I have. I  
5 don't have any additional questions.

6 THE WITNESS: Okay.

7 MS. THOMPSON: Just some follow-up.

8 THE WITNESS: Yeah.

9 **CROSS-EXAMINATION**

10 **BY MS. THOMPSON:**

11 **Q. You were just asked about the waterfront.**

12 **How do you define the waterfront?**

13 A. I would say from King Street and Alaska to the  
14 pier, port.

15 **Q. Which pier?**

16 A. Port -- I think it's 54.

17 **Q. Do you know if the Embassy hotel has retained  
18 an appraisal expert related to this case?**

19 A. I am not aware.

20 **Q. So you haven't spoken with any appraisers in  
21 connection with this case?**

22 A. No.

23 MS. THOMPSON: Okay. No further  
24 questions?

25 HEARING EXAMINER VANCIL: Any redirect?

1 MS. TERWILLIGER: No, not at this time.

2 HEARING EXAMINER VANCIL: Thank you.

3 THE WITNESS: Thank you.

4 MS. DUCOMB: We have one more witness  
5 that's available Wednesday morning but not available  
6 this afternoon. And we have Duana --

7 MS. TERWILLIGER: Yes.

8 MS. DUCOMB: -- and SEPA issues that we'd  
9 like to address with your Honor.

10 HEARING EXAMINER VANCIL: Okay.

11 So you have one witness to appear on  
12 Wednesday for approximately how long on direct?

13 MS. TERWILLIGER: Probably a half hour.  
14 She's the manager of the Courtyard Marriott.

15 HEARING EXAMINER VANCIL: Okay.

16 And you said something else, but I didn't  
17 catch the last --

18 MS. DUCOMB: Duana Kolouskova is --

19 COURT REPORTER: I'm sorry. I can't hear  
20 you.

21 MS. DUCOMB: Duana Kolouskova is an  
22 attorney representing the property owners on the SEPA  
23 issues, and she's -- her plan was to come Wednesday  
24 morning and address SEPA issues with your Honor.

25 HEARING EXAMINER VANCIL: And just present

1 argument?

2 MS. DUCOMB: Um-hmm.

3 HEARING EXAMINER VANCIL: Okay.

4 MS. DUCOMB: Um-hmm.

5 HEARING EXAMINER VANCIL: On SEPA. So  
6 just legal argument?

7 MS. DUCOMB: Yeah, and we have a few  
8 exhibits to go with that.

9 HEARING EXAMINER VANCIL: Okay.

10 MS. DUCOMB: And then I thought maybe -- I  
11 know it would be good for me to spend a few minutes  
12 making sure I have straight the exhibit list with your  
13 exhibit list. And then we have a few items to offer,  
14 such as the objections themselves and --

15 HEARING EXAMINER VANCIL: So the  
16 objections we have already.

17 MS. DUCOMB: Okay.

18 HEARING EXAMINER VANCIL: They're --

19 MS. DUCOMB: So we don't have to worry  
20 about those.

21 HEARING EXAMINER VANCIL: Yeah, right.

22 MS. DUCOMB: Okay.

23 HEARING EXAMINER VANCIL: Yeah, anything  
24 that was the objections and anything submitted with  
25 them. Sometimes I don't know --

1 MS. TERWILLIGER: Okay.

2 HEARING EXAMINER VANCIL: I mean I could  
3 look at your -- you've got more than the objections  
4 here.

5 MS. DUCOMB: Okay.

6 HEARING EXAMINER VANCIL: Because they're  
7 attachments --

8 MS. DUCOMB: Okay.

9 HEARING EXAMINER VANCIL: Whatever  
10 attachments were submitted with them, those are all  
11 part of the record already.

12 MS. DUCOMB: Okay.

13 HEARING EXAMINER VANCIL: For example,  
14 there was -- it looks like there was a motion for a  
15 prehearing conference, some other items that are in  
16 here.

17 MS. DUCOMB: Okay. Great.

18 And then we just had then -- I think it  
19 was just the one other topic around the relationship  
20 and the role the Friends of the Waterfront has played  
21 in requiring the LID. And we have three, four -- four  
22 exhibits to offer on that topic.

23 HEARING EXAMINER VANCIL: So you have some  
24 exhibits, okay, that may be coming through counsel  
25 or --

1 MS. DUCOMB: And I can do those now.

2 HEARING EXAMINER VANCIL: Yeah, we can do  
3 anything --

4 MS. DUCOMB: Yeah.

5 HEARING EXAMINER VANCIL: -- you want to  
6 now.

7 MS. DUCOMB: Yeah.

8 HEARING EXAMINER VANCIL: We've got time,  
9 so --

10 MS. DUCOMB: Yeah. Exhibit -- our Tab 44.

11 HEARING EXAMINER VANCIL: It's going to be  
12 52.

13 (Exhibit No. 52 was marked.)

14 MS. DUCOMB: That's resolution 31768. And  
15 then we have the mayor's transmittal letter regarding  
16 the resolution of intent, our Tab 45.

17 HEARING EXAMINER VANCIL: Okay.

18 MS. DUCOMB: And then Tab 46 is the  
19 resolution regarding intent.

20 HEARING EXAMINER VANCIL: That's 54.

21 (Exhibit Nos. 53 and 54 were marked.)

22 MS. DUCOMB: And then our Tab 52 is a  
23 transcript of the Friends of the Waterfront comments  
24 on May 18th, 2018.

25 HEARING EXAMINER VANCIL: That would be

1 55.

2 (Exhibit No. 55 was marked.)

3 MS. DUCOMB: If you'd like me to do it, I  
4 can do the SEPA ones now, and then they'll be  
5 numbered, and we can refer to them by your number on  
6 Wednesday if you want.

7 HEARING EXAMINER VANCIL: That would be  
8 fine.

9 MS. DUCOMB: Okay.  
10 Our Tab 47, the excerpt from the Elliott  
11 Bay Seawall project.

12 COURT REPORTER: I'm sorry, I can't hear  
13 you.

14 MS. DUCOMB: It's the excerpt from the  
15 Elliott Bay Seawall project, our Tab 47, I believe  
16 now, Exhibit 46 -- or 56, sorry.

17 (Exhibit No. 56 was marked.)

18 HEARING EXAMINER VANCIL: All right.

19 Let's -- before we do the SEPA --

20 MS. DUCOMB: Okay.

21 HEARING EXAMINER VANCIL: -- let me check,  
22 were there any objections to the 52, 53, 54 and -- or  
23 55?

24 MS. THOMPSON: I just have a question  
25 about 55. Was this -- is this a document that was

1 prepared by counsel or --

2 MS. DUCOMB: No.

3 MS. THOMPSON: -- printed from a website?

4 MS. DUCOMB: It was from the audio

5 recording, and Ms. Terwilliger's legal assistant typed  
6 it up.

7 MS. THOMPSON: Transcribed it, okay.

8 MS. DUCOMB: Yeah.

9 MS. THOMPSON: Thank you.

10 No objection.

11 HEARING EXAMINER VANCIL: 52 to 55 are  
12 admitted.

13 For the SEPA documents, I'm okay with  
14 marking them today, but I don't want to get into  
15 admissibility since they're being submitted in  
16 association with argument that another counsel's going  
17 to be addressing --

18 MS. DUCOMB: Okay.

19 HEARING EXAMINER VANCIL: -- and I -- I --  
20 this isn't --

21 MS. DUCOMB: Okay. We can hold it for --

22 HEARING EXAMINER VANCIL: Yeah, we can  
23 mark them --

24 MS. DUCOMB: Okay. Okay.

25 HEARING EXAMINER VANCIL: -- so we have



1 exhibit numbers, but -- and again, I'm not certain  
2 we're going to allow heading down a track of  
3 substantive SEPA arguments --

4 MS. DUCOMB: Right, right.

5 HEARING EXAMINER VANCIL: -- where, you  
6 know, there's going to be significant impacts.

7 There's no SEPA here, so --

8 MS. DUCOMB: No, it's nothing like that.

9 Yeah.

10 HEARING EXAMINER VANCIL: I can't tell  
11 what this is, and we'll have to wait and see. So for  
12 now, I'm going to hold off on admissibility.

13 56.

14 MS. DUCOMB: And then Tab 48 or -- yeah,  
15 our Tab 48 are the petitions for review. 57.

16 HEARING EXAMINER VANCIL: That's 57.

17 (Exhibit No. 57 was marked.)

18 MS. DUCOMB: Tab 49 is the SEPA settlement  
19 agreement.

20 HEARING EXAMINER VANCIL: That will be 58.

21 (Exhibit No. 58 was marked.)

22 MS. DUCOMB: And then I believe 50,  
23 your Honor, was already -- our Tab 50 was already  
24 admitted.

25 HEARING EXAMINER VANCIL: All I can tell

1 you is it's empty, so I don't think so.

2 MS. DUCOMB: Do you know what number that  
3 was, Galen?

4 MR. EDLUND-CHO: Let's see. 50 was --

5 MS. DUCOMB: Our Tab 50, do you know if  
6 it's -- oh 38, maybe it was your Exhibit 38.

7 MS. TERWILLIGER: 38.

8 MS. DUCOMB: Yeah. Okay.

9 And our Tab 28 went in, right?

10 MS. TERWILLIGER: Tab 28, yep.

11 MS. DUCOMB: I think that that's it,  
12 your Honor.

13 HEARING EXAMINER VANCIL: Okay.

14 Thank you for getting that addressed.

15 So that leaves us with the witness for  
16 Wednesday, half-hour, and Duana. You had -- at the  
17 beginning of the hearing of this segment of the  
18 hearing for these objectors, you had asked about  
19 keeping the record open.

20 MS. DUCOMB: Um-hmm.

21 HEARING EXAMINER VANCIL: You've got a lot  
22 of time, so --

23 MS. DUCOMB: Um-hmm.

24 HEARING EXAMINER VANCIL: -- what are we  
25 keeping the record open for?

1           You're not out of time, so --

2           MS. DUCOMB: Right, right, right, right.

3 I think the biggest challenge we're having,  
4 your Honor, is that we haven't been able to depose the  
5 City's appraiser and cross-examine him and --

6           HEARING EXAMINER VANCIL: So you will be  
7 able to -- so that's -- okay.

8           So, I'm sorry.

9           MS. DUCOMB: Yeah.

10          HEARING EXAMINER VANCIL: I won't  
11 interrupt you. Let's just keep an eye -- let's make a  
12 list of the things you are -- and we'll go through  
13 each one at a time.

14          MS. DUCOMB: Okay.

15          HEARING EXAMINER VANCIL: So there's this  
16 City witness --

17          MS. DUCOMB: Appraiser, um-hmm.

18          HEARING EXAMINER VANCIL: -- with  
19 deposition and cross, and that -- that I will,  
20 hopefully, be addressing and I'll discuss that when we  
21 get to it.

22          MS. DUCOMB: Okay.

23          HEARING EXAMINER VANCIL: Okay.

24          MS. DUCOMB: And then the other one is  
25 also LID administrator or -- or engineer that's

1 responsible for the before and after conditions, the  
2 plans and specifications, the -- the conditions  
3 that --

4 HEARING EXAMINER VANCIL: Is that the same  
5 thing?

6 MS. DUCOMB: Yeah.

7 HEARING EXAMINER VANCIL: There's a  
8 deposition and maybe cross or --

9 MS. DUCOMB: I think that's in dispute  
10 right now.

11 MS. TERWILLIGER: The deposition is in  
12 dispute, but the City has indicated there's going to  
13 call that person as a witness, I think.

14 MS. DUCOMB: Okay.

15 HEARING EXAMINER VANCIL: Okay.

16 MS. DUCOMB: So we'll be able to cross  
17 them at least.

18 HEARING EXAMINER VANCIL: Okay.

19 MS. DUCOMB: Okay.

20 And then also, we are trying to -- trying  
21 to develop some testimony around cost estimates, which  
22 we anticipate will come through another objector that  
23 we're working with, but just want to be able to adopt  
24 by reference, you know, that testimony, which it  
25 sounds like that's going to all be worked out, that's

1 okay, that's allowed.

2 HEARING EXAMINER VANCIL: Well, let's just  
3 get down the list.

4 MS. DUCOMB: Okay.

5 HEARING EXAMINER VANCIL: What else do you  
6 have?

7 MS. DUCOMB: And then we have an architect  
8 making a small calculation on green space for the  
9 waterfront, and we're anticipating too an expert  
10 engineer to talk about percent of design and where the  
11 City might really be in terms of its percent of design  
12 and, thus, its costs estimates.

13 HEARING EXAMINER VANCIL: Anything else?

14 MS. DUCOMB: I think with -- I think that  
15 that's it. That's the end of it.

16 HEARING EXAMINER VANCIL: All right.

17 So as far as City witnesses go, I have  
18 received a motion that -- from Mr. Lutz, who's asking  
19 to argue -- have oral argument on the opening for his  
20 cases, which is March 3rd. That's the only -- that's  
21 the only thing I've heard about deposition so far, and  
22 I have -- I did issue a ruling essentially indicating  
23 that if the parties could accommodate depositions,  
24 please do so, but that the request for depositions had  
25 come in well after the date for the hearing. The date

1 for hearing was set, you know, well in advance, so  
2 requests for discovery were coming in after the  
3 hearing had already started.

4           If there's an opportunity to work things  
5 out and -- and to make that happen, I accommodated  
6 that, but if there's discussion about additional  
7 depositions, we'll have to deal with that on the 3rd.  
8 I can't rule on that now, but what I can tell you is  
9 that if -- and I probably will be issuing, hopefully  
10 later this week, depending how much time we're -- I'm  
11 in hearing, an order concerning scheduling, when the  
12 City's going to go, when the -- when the  
13 cross-examination's going to be, and we have dates set  
14 for those, and also at that time address potential --  
15 I expected after an individual's crossed, they've  
16 already put on their case in chief, that they're going  
17 to want to have some, at least, statement about that,  
18 some argument, and so I will likely leave the record  
19 open.

20           I haven't determined a schedule for that,  
21 but if a witness is called, whether it's the City  
22 appraiser or this administrator, then barring some  
23 significant accident or legal standard that I'm not  
24 aware of, there would be the opportunity to put  
25 something in the record on those. So we thought

1 that's logical, and you just haven't had a chance to  
2 do it.

3           There's nothing -- I'm not leaving the  
4 record open to come out at deposition because that's  
5 purely there to inform cross-examination.

6           MS. DUCOMB: Yeah, yeah, yeah.

7           HEARING EXAMINER VANCIL: So you don't  
8 need the record left open for that.

9           MS. DUCOMB: Okay.

10           HEARING EXAMINER VANCIL: I'll address  
11 that. You'll have the same privilege as every other  
12 party does, and there will be some restrictions and  
13 guidance on how to do cross-examination that'll  
14 probably be less directed at you as --

15           MS. DUCOMB: Um-hmm.

16           HEARING EXAMINER VANCIL: -- some of the  
17 pro se litigants we've been seeing coming in.

18           The cost estimates, tell me more about  
19 that. I don't --

20           MS. DUCOMB: Well, again, one of the  
21 really foundations of the appraisal and the project is  
22 what are you building and how much does it cost, and  
23 it really informs to Anthony Gibbons's testimony today  
24 how you value the improvements themselves and how you  
25 value their impact to their surroundings. And the

1 cost estimates are driven by percent of design, which  
2 is -- remains --

3 HEARING EXAMINER VANCIL: Let me clarify  
4 my question --

5 MS. DUCOMB: Okay.

6 HEARING EXAMINER VANCIL: -- and I'll ask  
7 it for the next remaining three items.

8 There's cost estimates and architect  
9 calculation --

10 MS. DUCOMB: Um-hmm.

11 HEARING EXAMINER VANCIL: -- of green  
12 space and an engineer commenting on percentage. Why  
13 aren't we ready to go with those now for the objection  
14 with the time you were allocated?

15 MS. DUCOMB: We -- we haven't had -- been  
16 able to secure them. We -- we've been dealing with  
17 hundreds of cases --

18 HEARING EXAMINER VANCIL: I mean, I get  
19 land use pro se litigants in front of me that had two  
20 weeks to file an appeal, and they're in front of a  
21 hearing and they don't get that same argument. It  
22 doesn't work for them, right? They're in hearing,  
23 so --

24 MS. DUCOMB: Well, we -- but we've been  
25 trying to coordinate with the other appellants, right,



1 SO --

2 HEARING EXAMINER VANCIL: Right. So --

3 MS. DUCOMB: -- it's not that I'm bringing

4 in, like, necessarily --

5 HEARING EXAMINER VANCIL: Sorry.

6 MS. DUCOMB: -- someone new for just this.

7 I'm just trying to make sure that I am able to

8 continue to take advantage of --

9 HEARING EXAMINER VANCIL: So --

10 MS. DUCOMB: -- the other evidence

11 presented.

12 HEARING EXAMINER VANCIL: -- what I will

13 do is allow you to -- can you identify who you're

14 doing this with?

15 MS. DUCOMB: With Perkins Coie?

16 HEARING EXAMINER VANCIL: So is this

17 representative Mr. Lutz?

18 MS. DUCOMB: Yes.

19 HEARING EXAMINER VANCIL: Okay.

20 So if you want to now incorporate his

21 argument, then you've put your finger on that --

22 MS. DUCOMB: Okay.

23 HEARING EXAMINER VANCIL: -- and then he

24 can notify us all when that's coming in at that time.

25 MS. DUCOMB: Okay.

1 Okay.

2 HEARING EXAMINER VANCIL: Okay.

3 So that's allowed.

4 MS. DUCOMB: Okay.

5 HEARING EXAMINER VANCIL: All right.

6 Under -- under that format, but I --

7 MS. DUCOMB: Got you.

8 HEARING EXAMINER VANCIL: -- am not  
9 expecting something independent to be coming from  
10 you --

11 MS. DUCOMB: Right, right, right, that  
12 was --

13 HEARING EXAMINER VANCIL: -- but it would  
14 be coming during Mr. Lutz's time.

15 MS. DUCOMB: Correct.

16 HEARING EXAMINER VANCIL: Okay.

17 Are there any of these items that you were  
18 just wanting the record open for, except in that --  
19 that's not in that format?

20 MS. DUCOMB: No, I don't think so.

21 HEARING EXAMINER VANCIL: Okay.

22 MS. DUCOMB: I think even our architect's  
23 calculation will be very small, and we can bring it in  
24 through multiple parties with Mr. Lutz, yeah.

25 HEARING EXAMINER VANCIL: Okay. All

1 right.

2 The -- the other -- the two other, cost  
3 estimates and the architect calculation, don't raise a  
4 lot of concerns. Certainly, you can -- you can do  
5 those through the time when Mr. Lutz is presenting.

6 The expert engineer, is this testimony  
7 you're anticipating that there'd be additional  
8 testimony from a witness that he's calling that it  
9 would also be speaking to your case?

10 MS. DUCOMB: It won't be to the individual  
11 properties or the individual owners, it's more to the  
12 baseline --

13 HEARING EXAMINER VANCIL: And I mean the  
14 engineer, is this --

15 MS. DUCOMB: Right.

16 HEARING EXAMINER VANCIL: You said there's  
17 an engineer, an expert engineer.

18 MS. DUCOMB: Right.

19 HEARING EXAMINER VANCIL: Is this  
20 testimony or is this -- what's the format?

21 MS. DUCOMB: I imagine it might be  
22 testimony. It depends right now because we only  
23 learned, like, literally five days ago trying to put  
24 this all together where the shifting sands are going  
25 were with the plans and specifications, and so

1 we've -- we're just trying to make sure that we do  
2 understand where the City is at on their designs, and  
3 we do know what it's going to cost so that the  
4 baseline condition and the improvements themselves are  
5 properly understood.

6 HEARING EXAMINER VANCIL: Okay.

7 So what's already been communicated to  
8 every party, including you and Mr. Lutz, and I did  
9 this on the 4th, is that every party's getting the  
10 amount of time potentially that they asked for.

11 MS. DUCOMB: Yeah.

12 HEARING EXAMINER VANCIL: And, obviously,  
13 it shifts with schedules and it didn't work out for  
14 everybody, but --

15 MS. DUCOMB: Yeah.

16 HEARING EXAMINER VANCIL: -- everyone's at  
17 least gotten what they asked for, including Mr. Lutz,  
18 and just as you're working it out with him, just --  
19 this has to work within the time he's gotten.

20 MS. DUCOMB: Yeah, yeah.

21 HEARING EXAMINER VANCIL: So that's going  
22 to be up to him.

23 MS. DUCOMB: Yeah, yeah.

24 HEARING EXAMINER VANCIL: But I will leave  
25 the record open for this case to essentially reference

1 back during that period for the engineering testimony,  
2 the architecture calculations and the cost estimates  
3 you referenced, but no other items, so -- because  
4 that's what's identified today.

5 MS. DUCOMB: And can I ask one question?

6 Will we all be -- be able to submit, like,  
7 a closing brief like we traditionally do?

8 HEARING EXAMINER VANCIL: I knew there was  
9 one thing we were missing. No.

10 MS. DUCOMB: No more -- no closing briefs.

11 HEARING EXAMINER VANCIL: No. Yeah,  
12 the -- you will have -- you can do -- what my  
13 intention is that after you've done cross-examination,  
14 that, obviously, there's nothing in the record -- I  
15 mean, if we just close, then there'd be  
16 cross-examination and you wouldn't have an opportunity  
17 to argue with anything.

18 MS. DUCOMB: Right.

19 HEARING EXAMINER VANCIL: So I am -- I am  
20 anticipating limited argument in written form to be  
21 allowed following the cross-examination by parties who  
22 did participate in the cross-examination. Not --

23 MS. DUCOMB: Okay.

24 HEARING EXAMINER VANCIL: -- just  
25 everybody under the sun.

1 MS. DUCOMB: Okay.

2 HEARING EXAMINER VANCIL: For those  
3 parties that want to do closing as part of their  
4 objection, they should be the doing it during their  
5 time, so you can either --

6 MS. DUCOMB: Okay.

7 HEARING EXAMINER VANCIL: -- submit it in  
8 writing or you can do oral argument, however you want  
9 to do that.

10 MS. DUCOMB: Okay.

11 HEARING EXAMINER VANCIL: If you want to  
12 give a closing argument -- you had a pretty lengthy  
13 intro --

14 MS. DUCOMB: Yeah.

15 HEARING EXAMINER VANCIL: -- and I think  
16 Mr. Gibbons's testimony was clear and concise.

17 MS. DUCOMB: Um-hmm.

18 HEARING EXAMINER VANCIL: So other than  
19 that, I don't think you have a lot to marshal for  
20 me --

21 MS. DUCOMB: Okay.

22 HEARING EXAMINER VANCIL: -- in a brief  
23 anyway, but if you want to do a closing, you certainly  
24 are welcome to do that and use your time set aside on  
25 Wednesday.

1 MS. DUCOMB: Okay. All right.

2 HEARING EXAMINER VANCIL: Any other  
3 questions?

4 Okay. Great.

5 MS. DUCOMB: Not from me.

6 HEARING EXAMINER VANCIL: Anything from  
7 the City?

8 MS. TERWILLIGER: Oh, yes. Actually, I do  
9 have a question.

10 HEARING EXAMINER VANCIL: Um-hmm.

11 MS. TERWILLIGER: Would it be helpful for  
12 us to submit replacement copies for Exhibits 1, 2 and  
13 3 that have the actual exhibit numbers in them rather  
14 than our --

15 HEARING EXAMINER VANCIL: With the page  
16 numbers correct?

17 MS. TERWILLIGER: Yeah, would that be  
18 okay?

19 MS. DUCOMB: Oh, that for sure.

20 MS. TERWILLIGER: The page numbers as  
21 well.

22 MS. DUCOMB: But also, since we changed  
23 the exhibit numbers, we could change the citations for  
24 you as well.

25 HEARING EXAMINER VANCIL: Oh, yes, you

1 could do that. Sure. That's fine.

2 MS. DUCOMB: Okay.

3 MS. TERWILLIGER: Okay. We'll bring that  
4 on Wednesday.

5 HEARING EXAMINER VANCIL: Any problem with  
6 that from the City?

7 MS. THOMPSON: I don't think so. Thank  
8 you.

9 HEARING EXAMINER VANCIL: Okay. Great.  
10 Are there any procedural items we need to  
11 address before we adjourn?

12 MS. THOMPSON: None for us.

13 HEARING EXAMINER VANCIL: Okay.

14 The Waterfront LID hearing is adjourned  
15 for today. We'll reconvene tomorrow at 9:00 a.m.

16 (Hearing adjourned at 3:59 p.m.)

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C E R T I F I C A T E

STATE OF WASHINGTON )  
                                  ) ss.  
COUNTY OF KING        )

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

IN WITNESS WHEREOF, I have hereunto set my hand  
and seal this 9th day of March 2020.

\_\_\_\_\_  
ANITA W. SELF, RPR, CCR #3032