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ADMITTED
DENIED

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FILE# CWF-0076

Comments and Documents for Waterfront LID Hearing Examiner
February 4, 2020

By Appointment: February 25, 2020 9.00a
700 – 5th Ave Ste 4000

Re: Hearing Comments & Documents Pursuant to OBJECTION TO FINAL WATERFRONT
LID No. 6751 ASSESSMENT AND APPEAL OF FINAL ASSESSMENT AMOUNT.
Filed by delivery to City Clerk and by Email Case CWF-0076

Tax Parcel No. 919587630
Owners: Steve Danishek & Dee Tezelli
Physical Address: 2000 Alaskan Way, Suite 155, Seattle, WA 98121-2199

Hearing Examiner –

We received a letter dated December 30, 2019 from the Seattle Office of the City Clerk with the
Proposed Final Assessment, noting the following for our parcel –

Final Special Benefit of LID Improvement to Parcel.....\$18,882.00
Proposed Final LID Assessment for Parcel.....\$ 7,398.38

For the record, our property’s King County Assessor valuations are –

2020 \$640,000
2019 \$615,000
2018 \$516,000
2017 \$453,000

We are requesting that these amounts be adjusted to –

Final Special Benefit of LID Improvement to Parcel.....\$ 0.00
Proposed Final LID Assessment for Parcel.....\$ 0.00

Our Objections are based on the fact that the Final Special Benefit fails to reflect the numerous Adverse Impacts that the Project will have on our specific property, as well as on any of the many flaws in the LID itself, the methods and values assigned by the LID appraiser, and the conduct, biases, failures to disclose, concealments and lack of Fair Dealing by the City Council. We understand that this Hearing is to focus on our Objections, but we are including additional LID issues, as all of this will establish our Before Baseline, in anticipation of future legal action against the City.

PLEASE NOTE: There is a lawsuit to be heard on May 6, 2020, Superior Court Case No. 19-2-05733-5 SEA [Attachment #10 to OBJECTION Letter] the Plaintiffs are requesting that the LID be remanded to the City Council for re-consideration, based on two constitutional issues. (Judge Ruhl stated, “This is a classic case that should go to trial.”) We will be supporting Plaintiffs in this Case and believe that Plaintiffs may well prevail. Since that would Re-Set and Re-Start the entire LID process, **we also believe that it would be in home and property owners’ interests to hold this Hearing in abeyance at least until the outcome of this Case is determined by Judge Ruhl.**

Further, we are recommending that any LID Assessment collection activity cease immediately, pending production by the City and Waterfront Seattle Project (“Project”) of specific Plans, Engineering, Cost Estimates and Construction Timelines, none of which currently exist in final form and **without which owners within the LID have no way of determining what Special Benefit**, if any, may exist and no way of determining what percent of the Project has been completed, thus no way to determine the amount of refund to request of LID assessment that may have been paid, i.e. 50% Project completion = 50% Refund Request. We understand that you have Denied a Motion to Continue the February 4, 2020 Hearing, so this is just to document our recommendation.

This is a classic case of the Cart being before the Horse, way before the Horse. We understand the City Council’s blind drive to get at our money without disclosing exactly what we are paying for. However, the City Council got themselves into this mess by ‘borrowing in advance’ nearly \$50,000,000 of the now reduced LID amount of \$160,000,000. **With that borrowing, the City Council compromised any position of Fairness or Lack of Biases.** The City Council is most certainly biased and intends to reduce the Hearing Examiner’s role here to a simple Pro Forma exercise that must adhere to the City Council’s desired outcome. Therefore, we find it difficult to believe that the Hearing Examiner can be fair and impartial. **We all understand that this is nothing more than a Wealth Transfer Scheme conjured up by the City Council**, as they knew that they could never have sold the Waterfront Project to city, county or state residents by a vote. **If the City Council can’t sell the Project’s value to the real Users, why are LID property owners paying?**

The City Council has promised to build us LID payers a \$200,000,000 improvement, then negotiated away \$40,000,000 to secure a promise not to protest from a group of business owners, then ‘borrowed’ \$50,000,000 against the LID, leaving a net available \$110,000,000 to build the ‘improvement’. We are supposed to believe that this City can build us a \$200,000,000 improvement with \$110,000,000

THE LID ASSESSMENT COLLECTION IS PREMATURE. FINAL SPECIAL BENEFITS AND ASSESMENTS SHOULD BE ZEROED OUT UNTIL THE CITY COUNCIL RECONSIDERS LEGITIMATE WATERFRONT PROJECT FUNDING SOURCES. THE LID IS AN ILLEGITMATE FUNDING MECHANISM.

First. The LID is an illegitimate funding source for the Waterfront Project, therefore no Special Benefits can be legally determined. Application of a LID is inconsistent with the law. **This Project is NOT LOCAL.** As stated repeatedly by the City, the proposed Project will draw 8,000,000 annual **City-wide, County, Regional, State and International** visitors (Users), yet \$160,000,000 LID extraction will be funded by 4900 homeowners and 1500 business property owners, **less than 1% OF THE ACTUAL USERS.** Local homeowners who are providing funding via the LID do NOT have any more benefits than visitors who have paid nothing. [See Attachment A. Marshall Foster cites “visitors from Kent and across the world”, yet those Users pay nothing.]

[See Attachment B. Steve Danishek Op-Ed to Puget Sound Business Journal – printed]

[See Attachment C Steve Danishek Op-Ed to Puget Sound Business Journal -pending]

[See Objection Letter point #8 below.

8. *THE LID IS NOT LOCAL!!! The LID is not local nor intended to provide special benefits to homeowners. The City and Waterfront Seattle representatives have stated publicly and in print media that the project will draw "Regional, State and International" visitors. That is their admission that this is not Local and thus the use of a Local Improvement District is inappropriate and possibly illegal. Local homeowners who are providing funding via the LID DO NOT have any more benefits than visitors who have paid nothing.]*

The LID is NOT LOCAL and so the LID is NOT FAIR.

Second. USER FEES are legitimate funding sources for these types of projects. We Object to any Special Benefit determination via illegal LID use, particularly when a Legal Alternative means of funding with User Fees exists. Many major U.S. cities fund public projects with User Fees, including Seattle EXCEPT for the City Council's attempt to substitute legitimate USER FEES with an illegitimate LID. **The City Council was Negligent when they made this crucial decision.** The LID attempts to collect \$160,000,000 in Closed End funding (against which the City has already 'borrowed' \$50,000,000) **Yet we have determined that simple increases in the actual existing User Fees could easily raise the same \$160,000,000 in 3.7 years with Open End funding to cover cost overruns.**

USER FEES are truly reflective of actual visitors. The LID assessments should be Zeroed out and the matter remanded to the City Council for consideration of legitimate funding source(s).

[See Attachment D]

Note: the Seattle Sheraton plans to cover their \$1,500,000 assessment by adding \$5 or so per room night, which is exactly a De Facto User Fee. The Seattle Aquarium will undoubtedly increase their admissions fees, which is a Prima Facie acknowledgment to the real need for User Fees. HOMEOWNERS do NOT have that opportunity to defray the cost of their LID assessment. The LID creates an unfair inequitable dichotomy between Homeowners and Business Property Owners, such that Special Benefits are also inequitable and unfair. The City's discussions and agreements ex parte with the McCullough group exacerbated this imbalance and distortion.

Third. LIDs are to provide Actual, Physical or Material Benefits, NOT Speculative or Conjectural benefits. The Special Benefit determinations are both Speculative and Conjectural, as well as unfounded and insupportable, and should be voided. The LID will not bring electricity, phone or internet service, fire stations, fire truck, aid Medic vans, roads, irrigation canals, sewer systems or such that physically serve our buildings. The Waterfront LID violates the law. We did not request the LID. Nothing in the Waterfront Project will physically improve lives at Waterfront Landings Condominium. Further, as opposed to examples of previous projects that Valbridge has touted, this Project is NOT AN URBAN RENEWAL PROJECT.

Fourth. The Project costs are outdated. Plans and cost estimates are incomplete. We have no way of determining what will be delivered. As a lifelong Seattleite I have suffered through City debacle after debacle, cost miscalculations one after another and know not to Trust this City

Council with ANY project, particularly when based on conjured estimates. **The actual costs and plans must be known and disclosed BEFORE any Special Benefit can be determined and collected.** More frightening is the Project's **determination to Commingle Funds** from various sources, including the LID, then spread funds to benefit certain parties at the expense of others. Of Specific Concern – that ANY LID funds go to pay ANY part of the Ocean Pavilion. **Unless the Final Plans and Costs are known, homeowners have no way of challenging or calculating our liabilities from the Project. Actual adverse impacts would remain unknown.** It is premature to collect LID funds at this time.

[See Objection Letter point #2 below.

*2. We Don't Even Know What We Are Paying For. There are no "plans and specifications" on file with the Clerk's Office for the LID Improvements, and it is **unlawful to move to final assessments without such "plans and specifications."** Ordinance 125760, Section 3; Local and Road Improvement Districts Manual for Washington State 6th Edition, pp. 3, 19, 31, 44 (2009)]*

Fifth. Specific to WATERFRONT LANDINGS CONDOMINIUMS, there will be no Special Benefit for at least the reasons below. The Project will have multiple KNOWN Adverse Impacts on Waterfront Landings. These Negate any Special Benefit.

***A* Limitation of Vehicle Entry & Egress.** The poor design of the Pine Street Connector (Ramp) will adversely impact our vehicle access. Currently we can enter/exit both the North and South garage gates. The Pine Street Ramp will limit us to entry at one gate, exit at the other. The problem is that the North gate is shared with the Waterfront Marriott Hotel's Loading Dock and is frequently blocked by daily delivery trucks.

***B* Significant adverse impacts from increased visitor pedestrian and vehicle traffic.**

Depending on source the expected INCREASE is visitor traffic to the proposed Ocean Pavilion (within 100 feet of our building!) is 1,500,000 to 8,000,000. [Attachments E & F]

Note that 92% is the City's estimate of NON-LOCAL VISITORS, shown as –

- 28% Day-Trip Tourists "Visitors from outside the region"
- 27% Overnight Tourists "Visitors from outside the region"
- 37% Non-City Metropolitan Area Residents "Regional visitors"
- 92% TOTAL NON-LOCAL USERS

***C* We will lose our current convenient access to Pike Place Market, including ADA access..** ~~(This document is not included)~~

***D* Our views of Elliott Bay will not be improved by the LID. In fact, our views are now and for the future adversely impacted by the Derelict and Abandoned Pier 63, an eyesore. We voted and were promised Two New Piers for \$45,000,000. We have one New Pier (62) costing \$100,000,000 (of which \$25M was apparently 'borrowed' from the LID) and a Derelict Pier 63.**

***E* The Ocean Pavilion is an Irrelevant City Vanity Project.** Such a Marine Wildlife In Captivity facility, particularly with Non-Native fish, are Out-Of-Vogue across the country. Construction depends on \$100,000,000 in donation raised by Friends of the Waterfront, yet few funds have been collected. PETA will be protesting this facility. Virtual reality opportunities

make this facility irrelevant. The actual costs of maintenance are not available. The **Energy Costs** alone are **enormous** – Elliott Bay sea water must be filtered, heated, used, re-filtered, cooled and returned to Elliott Bay. One slip-up and heated water dumps into Elliott bay, cooking all nearby marine wildlife. South Seas shark viruses would be introduced through effluent to Elliott Bay marine life. **There is no assurance that this fish tank will ever be completed or abandoned after completion, becoming derelict.**

F The City pitched Victor Steinbrueck Park (adjacent to the Market Overlook) as an Oasis near the Market, but it has become a drug-riven, filthy, stench-filled gathering place with unenforced crime and vagrancy. **The new LID-funded Overlook Park will become a brand new magnet for unenforced drug use, misdemeanor crimes of all sorts, campers, panhandlers, etc. just 60 feet from our building.** No one believes that the City will keep it clean and enforce laws here. If you doubt this, we suggest that you have a conversation with the Steinbrueck Park denizens who are ready to move to and occupy the new Overlook Park. We have.

[See Objection Letter point #5, which reiterates these concerns. No copied here.]

Sixth. The design of the Pine Street Connector Ramp will become a Carbon Monoxide Trap on still air and foggy days, concentrating vehicle exhaust fumes from idling traffic that must accelerate uphill at the stop light. Yet this potential health problem does not appear in any SEPA report. (This is a problem that will be ignored until harm occurs. We are including this just to be sure it is baselined.)

The old Viaduct passed directly behind and along the entire length of Waterfront Landings. **The elevated roadway allowed for the dissipation of both vehicle noise and fumes.** The soon-to-be-constructed new Elliott Way will be a new four-lane road passing by the two-story of Waterfront Landings, **adding more noise and vehicle exhaust where there were none before.** An adverse impact.

Seventh. There is significant disagreement in property value determinations, including those used for Special Benefits, between the King County Assessor Office and the LID/Valbridge appraiser. The King County Assessor is already predicting flattening of market rates, devaluing Special benefits. The LID appraiser's mission was to support the LID Special Benefits to support funding, a clear bias; the King County Assessor's job is to determine real valuations free of LID bias. This matter should be addressed in Court. Also to reiterate – this is NOT an Urban Renewal Project, so comparisons are moot.

Eighth. There can be no Special Benefit if there is NO MITIGATION CLAUSE.

Homeowners will develop baselines (Before) for comparison with After values to determine accuracy of the LID amounts paid. In any case where a) the Before/After and/or b) the Percent of Project completion are Adverse, LID payers should be able to request refunds to mitigate the adverse collections. Waterfront Landings homeowners are set to pay \$1,850,000 in LID collections. Should the Project only attain 50% completion, we should then sue the City for a \$925,000 refund. That is why Project costs and scope MUST be exactly disclosed BEFORE LID assessments are collected.

Ninth. The entire LID amount of \$160,000,000 is NOT NEEDED, so the entire LID can simply be eliminated with a 14% REDUCTION IN PROJECT SCOPE. The best way to be that is to simply eliminate to Pier 58 portion of the project, which aims to cover some 49,000 square feet of water and is a horrible idea. For the love of marine life, keep the surface open.

For the record the following documents are also attached.

Attachment G May 2, 2018 Letter to John McCullough from Anthony Gibbons

Sets out challenges to the Special Benefits study.

Attachment H January 27, 2020 Letter to Molly Terwilliger from Anthony Gibbons

Sets out specific challenges and difficulties with Special Benefit determinations

Attachment I April 19, 2019 Letter to Marshall Foster from Patrick Schneider

Reiterates adverse impacts specific to Waterfront Landings Condominiums

Cordially,



Steve Danishek



Dee Tezelli

2615 words

Danishek & Tezelli, 2000 Alaskan Way #155, Seattle, WA 98121-2199



Attachment
A

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City of Seattle Hearing Examiner
EXHIBIT

ADMITTED ✓
DENIED —

FILE# CWF-0016

MARSHALL FOSTER / CITY OF SEATTLE



► **Picture Seattle.** Are you thinking about waterfront landmarks such as Pike Place Market or the Great Wheel? Hold onto this image, because the waterfront is undergoing a major renovation. Marshall Foster, director of the city's Office of the Waterfront and Civic Projects, spoke with us about what visitors and residents may expect this year as the waterfront transformation chugs along toward its 2024 completion date.

Is the project on track? The project is on track. What visitors are going to see in 2020 is a lot of construction. We will be building out the new surface street: Alaskan Way gets completely rebuilt from the stadiums on the south end all the way through downtown and all the way up the hill into Belltown. That will be underway throughout the year. During that time, the public will still be able to visit the waterfront. It will be open with several lanes in each direction, providing access to all the historic piers, all the businesses and the Great Wheel. The last thing that is exciting is we'll be reopening a first piece of the waterfront, which is our concert pier.

What impact has the construction had on visitor experience and businesses? In 2018, we saw initially about 6.7 million unique visitors to the waterfront, which is down about 3 percent from 2017. Most of that [decline] is attributable to the construction. The waterfront has been in a constant state of transformation for about six years

now, and we're actually quite happy to see how many people continue to come to the waterfront despite the construction.

And some are coming to see the construction? Part of what is drawing people down there is the feeling that this is sort of a city remaking itself.

What's the vision behind the waterfront project? With the Alaskan Way Viaduct down and being replaced by the tunnel, it gives the city the opportunity to reclaim its front porch on Elliott Bay, to really have a great public park that will be a defining feature of visiting Seattle.

What inspired the design? We wanted to be one of the places that you have to see while you're in Seattle, whether you're visiting from Kent or you're visiting from across the world. We've designed it to be a destination park ... like Millennium Park in Chicago, the High Line in New York or Golden Gate Park in San Francisco. **📍 — RANIA EFTHEMES**

RENDERING COURTESY SEATTLEWATERFRONT.COM

Jan. 2020

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Attachment

B

FILE# CWF-0076

Waterfront LID Not Local, Not Fair

Take an \$800M project that relies on \$100M from donations, \$200M from a LID, and is administered by the Seattle City Council. What could go wrong? And what is really fueling the Council's panic to shove the LID down constituents' throats? The story is in the Why.

First, the LID, or Local Improvement District. LIDS are allowed by the State, but for projects with tangible benefits, like sewers, roads, fire stations and vehicles, irrigation systems that legally provide physical and material benefits and cannot be speculative or conjectural. The project hypes that the park will draw 1,000,000 annual visitors to enjoy its benefits, yet the funding is borne by 4900 homeowners and 1300 business property owners, far less than 1% of those benefitting. The new park is a Regional Asset, not local. This LID fails as a legitimate funding mechanism. Regional revenues could be raised by increasing the Hotel Tax (Seattle trails at least nine major metros) and the Rental car Tax (Seattle trails at least 11 major metros, some by double digits). A regional bond issue would be more legitimate, but the Council knows a new vote on taxes would fail, thus use of a LID to circumvent any vote.

Second, the LID is not fair. See above – it is not local. The entire premise of the City's LID is that local home, business and property owners will receive Special Benefit, i.e. increased property values. But it was the City's project appraiser who determined the benefit. Homeowners cannot correctly determine if the benefit is accurate unless they sell. Our condo is dead center average. The City's letter informs us we will pay an "Estimated Assessment" of \$9,106.03" with an "Estimated Special Benefit" of \$18,802.00". But the budget numbers are years old, criticized by experts, and city projects are prone to egregious cost overruns. We expect to pay \$18K...or more, before the concrete settles. Our Benefit? More congestion, reduced accessibility, added to the already increased property crime, drug use, public defecation/urination and vandalism the City chooses not to enforce.

Now the Why. Why the panic to get the LID in place right now, particularly with such squishy numbers? The Council's true goal is to establish LIDs as a funding mechanism, as a wealth transfer tool. Rob Waterfront owners' piggy banks today, Magnolia's for a new bridge tomorrow. Your neighborhood next?

The Waterfront project was the brainchild of previous council members and a group of motivated parties, including the Aquarium and its political and civic supporters. It was not requested by local residents. The project is a collection of separate projects; each should have its own identified funding source. But wrapping them all together obscures the true costs and revenue dispersement.

Which brings us to the curious matter of the three \$100,000,000s. The first \$100,000,000 is to be from Philanthropy. The Council has been told that only \$28M has been pledged by donors BUT NONE WILL PAY UNLESS THE LID IS APPROVED. Why could that possibly be? The second \$100,000,000 is the cost of the Aquarium's new Ocean Pavilion, not part of the LID. The third \$100,000,000 is the budgeted amount for the Overlook Park Concrete Monstrosity to connect Pike Place Market with the waterfront. Engineers are puzzled. How and why would you spend that amount of money on a system of walkways? It makes no sense... unless it includes the \$100,000,000 fish tank. So the LID \$200M can be raided of \$100M to build the Ocean Pavilion under the guise of an overlook park/walkway, creatively rewarding the City, Aquarium and its patrons.

Forcing downtown condo owners to pay for the aquarium's expansion and an overly expensive walkway to the waterfront is the wrong way to fund these projects.

627 words

Waterfront Is Still Not Local Nor Fair...and More.

The City Council sees LIDs (Local Improvement Districts) as important future tools to generate neighborhood revenue by assessment and without a vote. While the Waterfront LID procedures are working to conclusion (Will LID owners' protests reach the 60% needed to kill the LID?), the City Council isn't taking any chances, holding 'secret' meetings and making deals.

The Council's Waterfront LID aims to extract \$200,000,000 from the pocketbooks of 4600 condo owners and 1500 business/property owners. There is no vote. The City simply assesses the condo and property/business owners. The City projects that 1,00,000 visitors will be drawn to the waterfront annually to enjoy the benefits, yet those benefits will be funded solely by local LID owners, representing less than 1% of those enjoying the benefits. It is Not Local. Revenue generation should be regional or broader.

It is Not Fair. Burdening 1% for the enjoyment of the 100% is part of that. But this LID has a flawed dichotomy that is also unfair. Property/business owners represent 88% of the value within the LID; condo owners only 12%. Property/business owners can simply build in the expense. A large hotel can add or increase their daily "Hotel/Resort Fee" by \$5 per night and recover a \$2,000,000 assessment within two years. The 4600 condo owners must pay the assessment upfront (or twice the assessment if they take a City 20-year loan @ 5%), but cannot determine nor recover the 'special benefit amount' unless they sell. The City should have looked to Hotel/Motel taxes and Car Rental taxes for funding. Seattle trails many major cities in these taxes and has plenty of room to increase them. Now that many downtown condominium buildings are littered with AirBnB and short terms rentals, the City could impose a daily or per stay use fee on these visitors. Accommodation and use fees are common place, even expected by guests.

Now the meetings. The City directly intervened in the LID process to ensure that the 60% Protest bar would not be reached. They negotiated with a group of large commercial property owners and traded a 20% decrease of \$40M in the LID for their commitment not to protest. Many stakeholders were kept unaware of the meetings and had no chance to seek better terms. So how to make up the \$40M? In late July the City entered into a \$135M MOU with the Aquarium, committing \$39M to design and construction of the Fish Tank. So \$40M from the LID seems to be backfilled with \$39M in taxpayer money. Curiously, if both the Waterfront project and MOU are correct, they rely on a total of \$160M in Friends of the Waterfront and private fundraising, a moon shot.

Now a New Problem. Appraisal discrepancies. In May condo and property/business owners received notices detailing the LID appraiser determinations of our 'special benefits' and valuations. In August we received our annual King County Assessor valuations. There are many discrepancies and some are huge. The KC Assessor stands by their numbers, tainting the LID appraiser numbers' accuracy, something we suspected all along. The LID appraiser should now correctly re-appraise and re-value every property. Can the City even legally collect assessments knowing that the valuations are likely to be deemed inaccurate and flawed?

If the City can willingly wobble the LID by \$40M while ignoring condo owners and our paltry 12% contribution, then it seems reasonable that the Council can correct part of the Unfairness by simply exempting condo homeowners from the LID. If they are willing to contribute \$39M for fish, how about covering \$20M for people?

603 words

FILE# CWF-0076

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DENIED

EXHIBIT

4

Subject: User Fees Etc
Date: 12/18/2019 5:11:03 PM Pacific Standard Time
From: tmatravel@aol.com
To: [REDACTED]

ADMITTED [checked]
DENIED []

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D

FILE# CWF-0 076

I will get you a few bullet points in a couple of days.

Here are a couple of numbers -

There are 14,393 hotel rooms in downtown Seattle (12,503 within 11 blocks of the Convention Center)

There is already in place a STIA Seattle Tourism Improvement Area surcharge of \$2/room/night, which assuming 80% occupancy (year round) would currently raise -

14,393 x 80% = 11,514 rooms x \$2/nt = \$23,029 per night

Or \$23,029 x 30 nights = \$690,870 per month

Or \$690,090 x 12 months = \$8,290,044 per year (already being collected)

If just that surcharge were expanded to \$5/room/night, or \$3 net/room/night to replace the LID, then

14,393 x 80% = 11,514 rooms x \$3/nt = \$34,542 PER NIGHT

Or \$34,542 x 30 nights = \$1,036,260 PER MONTH

Or \$103,626 x 12 months = \$1,243,512 PER YEAR (x 20 years = \$24,870,240)

If the STIA is increased by \$5 to \$5/room/night, or \$5 net/room/night to replace the LID, then

14,393 x 80% = 11,514 rooms x \$5/nt = \$57,570 PER NIGHT

Or \$57,570 x 30 nights = \$1,727,100 PER MONTH

Or \$1,727,100 x 12 months = \$20,725,200 PER YEAR (x 20 years = \$414,504,000)

Or \$5/room/nt can just be added into the existing Hotel Tax of 15.6% and Rental Car tax of 9.7% and Commercial Parking Tax of 12.5% and new tax on Short Term Rentals for more millions. All of these are for Visitors who actually use the parks, etc.

Cruise ships will embark 600,000 passengers next year.

600,000 x \$10 per passenger = \$6,000,000 PER YEAR (x 20 years = \$120,000,000)

The Port would have to help with that, but they may have an incentive as Piers 89 & 91 are within 3 blocks of the Magnolia Bridge, so they could get tagged millions by a LID, but zero if they increase cruise passenger fees.

Cumulative numbers

\$5 STIA fee increase.....\$20,725,200

\$5 Hotel fee increase.....\$20,725,200

Cruise fees.....\$ 6,000,000

Total Per Year.....\$47,450,400

Waterfront LID maximum to be raised.....\$160,000,000

Year 1 fees.....(47,450,000)

Year 2 fees.....(47,450,000)

Year 3 fees.....(47,450,000)

LID is paid off about 3.7 years

Year 4 turns to credit.....\$ 17,650,000

Year 5 credit.....\$ 65,100,000

Each year then adds 100% of user fees, etc. to replace the Magnolia Bridge, Queen Anne improvements.

These should have been considered 10 years ago.

Steve

Steve Danishek, President

TMA Travel, 2000 Alaskan Way #155, Seattle, WA 98121-2199 USA

Phone: 206-363-2523 Fax: 206-365-8356 Cell: 206-713-6696

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INDEPENDENT, LOCALLY OWNED NEWSPAPER
 .10, 1896

City of Seattle Hearing Examiner
EXHIBIT

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6

New Seattle Aquarium will inspire next generation of conservationists

By MELISSA MAGER
 AND MARTHA KONGSGAARD
Special to The Times

Water is life. The ocean produces nearly every other breath we take. A warmer ocean has less oxygen. A more acidic ocean produces less food. A more polluted ocean sickens life within it and us above.

It's clear the relationship of humankind with the global ocean is now central to life on Earth. The two of us are committed to changing that relationship, starting in Seattle.

We've both led organizations conserving Puget Sound and the greater Salish Sea. Our work has encompassed decades of advocacy around habitat restoration, orca recovery, tribal treaty rights and climate-friendly energy policy. Even as we continue in that work, we have come to understand that investment in conservation education is central to our ability to save the planet.

To tackle the enormity of the ecological challenges facing our planet and our ocean, we must shift hearts, minds and values. We believe Seattle is the right community to lead this shift. That's why we chose to help lead the Seattle Aquarium more deeply into its conservation mission. And that's why we support the public-private partnership we're forging to bring this to the region.

Historically, we humans have perceived ourselves as separate from the natural world. But now in the Anthropocene, the era of human consequence upon the natural world, every life form is in our care. The question is whether we will accept and act on that responsibility.

Many of us never experience the underwater world, even those of

Another view

Read the Op-Ed "Seattle Aquarium expansion misses the mark on conservation" at st.news/nooceanpavilion

us who live at the ocean's edge. Some of us know the facts of its troubled state. But information alone doesn't move people to action. How can we help the public connect emotionally to our blue planet, and imagine themselves inextricably tied to it? How can we help turn this caring into collective action for the sake of our ocean, for our own sake?

The Seattle Aquarium's new Ocean Pavilion will be that place to inspire a new generation of ocean conservationists through science, yes, but also through empathy, urgency and agency. The vision of the new, expanded aquarium has at its core an "ocean ethic," or a declaration about our role in what's at stake as the Earth warms and the world's ocean sours. It will be rooted in our home waters but will encompass the whole Pacific Ocean. The expanded aquarium campus will serve as a new education platform that aspires to engage the entire community — including the expected 20 million additional waterfront visitors per year — in conversation about what we value.

Guided by its mission of "inspiring conservation of our marine environment," the aquarium has reached more than 27 million visitors throughout its history. That includes more than 2 million schoolchildren — 43,000 in 2019 alone and 65% of those with scholarships. The aquarium also mobilizes thousands of passionate volunteers, engages a new generation

of ocean leaders and, as a research institution, is focused on critical global issues like climate change, single-use plastics and saving endangered species.

This one-time investment of public funds will provide a unique, not-your-grandparents' aquarium experience that brings together conservation, education and inspiration. It will serve as the crown jewel of our new waterfront, as a new public space that will reconnect us with our downtown core and with our maritime past. The building itself will "teach" as the new Ocean Pavilion reflects the aquarium's central value of sustainability. With its pioneering state-of-the-art green technologies, it will be one of the most efficient aquariums in the country and 100% fossil-fuel free.

It's time for us to lead. Seattle sits at the cutting edge of global health, innovation and social change. The expanded aquarium will provoke a deep examination of those things that we value, illuminate the connection between ocean health and human health, and will make clear for many Dr. Sylvia Earle's refrain, "No blue, no green. No water, no life."

It's time to embrace this once-in-a-lifetime moment. The clock is ticking.



Melissa Mager is the board chair of the Seattle Aquarium and the former president of People for Puget Sound.

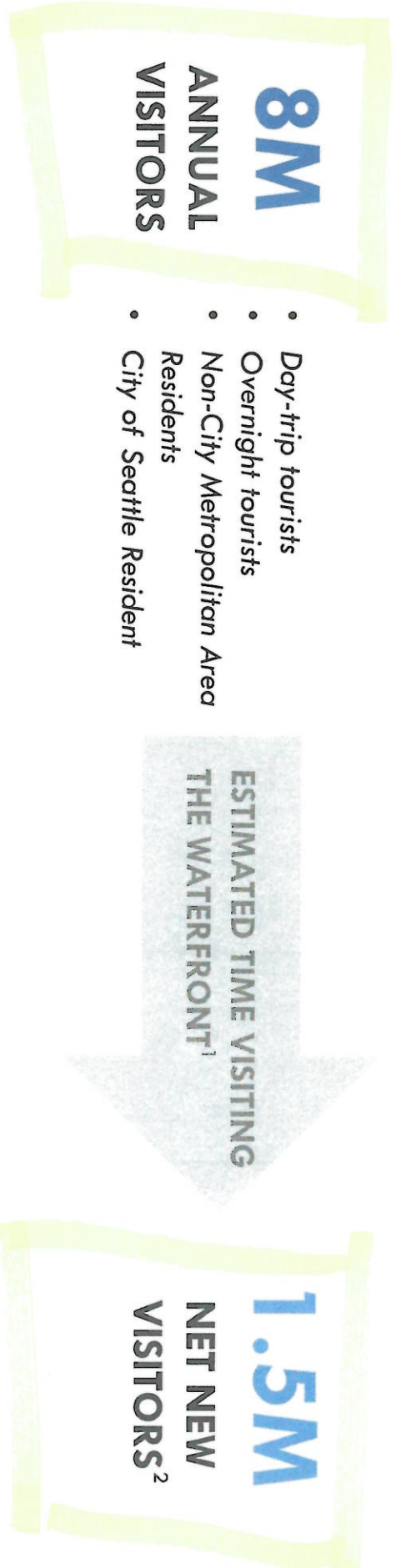


Martha Kongsgaard is the campaign chair for the Seattle Aquarium's new Ocean Pavilion and is former chair of the Puget Sound Partnership Leadership Council.

ECONOMIC & FISCAL IMPACT | NET NEW VISITATION

Based on the amount of time each visitor type is likely to spend at the Waterfront, this equates to 1.5M net new visitors days.

This net visitation figure is an increase from HR&A's 2013 analysis. Growth in Seattle's resident and annual tourist population, as well as updated visitation estimates for Downtown Seattle, drove this increase.



8M
ANNUAL VISITORS

- Day-trip tourists
- Overnight tourists
- Non-City Metropolitan Area Residents
- City of Seattle Resident

ESTIMATED TIME VISITING THE WATERFRONT¹

1.5M
NET NEW VISITORS²

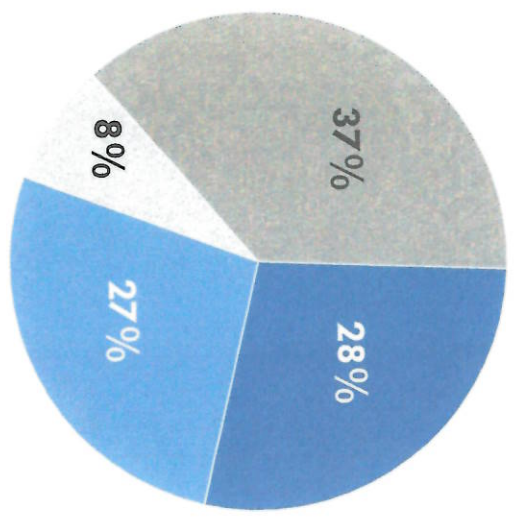
1. HR&A assumption for different visitor populations, based on precedent analysis as discussed on the previous page.
 2. HR&A's 2013 Visitation Study estimated 950K net new visitor days. Further detail available in the Technical Appendix.

92% NOT LOCAL

ECONOMIC & FISCAL IMPACT | VISITOR TYPES

Visitors to the Waterfront Seattle program are comprised of regional residents and out-of-region tourists, who will spend varying amounts of extended time on the Waterfront.¹

Waterfront Visitor Breakdown 8M Annual Visitors²



92%

- Day-Trip Tourists**
Visitors from outside the region who are likely to spend up to 2 hours visiting the Waterfront.
- Overnight Tourists**
Visitors from outside the region who are likely to spend 2+ hours visiting the Waterfront.
- Non-City Metropolitan Area Residents**
Regional visitors who will visit the Waterfront for its unique programming and amenities
- City of Seattle Residents**
Existing residents from Seattle who will also go to the Waterfront.

¹ Estimates refer to regular annual visitation totals only and are based on: i) visitation precedents of comparable parks nationwide, and ii) local and regional population shares. In addition, the Friends of Waterfront Seattle place strong emphasis on developing special events programming oriented to local residents that may attract greater numbers of regional visitors. Preliminary surveys of visitors indicate visitation from zip codes across the city, but additional future tracking and surveys will be required to fully understand actual visitation breakdowns.

² Based on comparable research of regional vs. out-of-region park visitation, population data from the U.S. Census Bureau, and the 2016 Longwood Tourism Study for the City of Seattle. Further detail available in the Technical Appendix.

ECONOMIC & FISCAL IMPACT | NET NEW VISITATION

Residents from the surrounding area and annual tourists will visit Waterfront Seattle at rates similar to other waterfront, linear, and signature downtown open spaces across the country.

Based on current population and tourism figures, an estimated 8M people are likely to visit the Waterfront each year. This likely does not account for all new net visitation activity, which may also benefit from the brand value created by a revitalized Waterfront.

POTENTIAL VISITOR MARKET



1. Population defined as within the Seattle metropolitan area. Source: Bureau of Economic Analysis
 2. Daytime and overnight tourists to the City of Seattle in 2016, based on the 2016 Langwood Tourism Study.
 3. Average capture rate of the visitor market based on comparable waterfront, linear, and downtown destination parks. Methodology is detailed further in the Technical Appendix.

Waterfront Seattle Benefits Study | 17



FILE# CWF-07 76

RE•SOLVE

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May 2, 2018

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RE: **Waterfront Seattle LID Special Benefits Report – File Ref: 17-0291 – May 19, 2018**
Authored by Valbridge.

Dear Mr. McCullough and Ms. Stanford:

At your request, I have conducted this high-level review of the Valbridge mass appraisal study prepared for the purposes of documenting Special Benefit resulting from the city Waterfront Seattle project. The letter is intended as a consultation, and not as an appraisal review. At some point it may be appropriate to address individual valuations on a parcel by parcel basis, but that is not the concern of this letter. This consultation is largely conceptual in nature, and looks purely at the methodology employed and the general conclusions made in the presentation of the study. Please note, as a disclosure, I am part owner of a condominium located within the boundaries of the LID. I do not consider this to be a conflict in providing an objective review of the study methodology.

Valbridge Appraisal

Valbridge presents several conclusions, which briefly may be re-stated as:

1. LID Boundaries. Valbridge identifies a total of 6,130 properties with potential special benefits within an LID boundary that generally comprises the entire downtown area lying between Puget Sound, I-5, Denny Way, and S. Massachusetts Street.
2. Property Valuation. The value of property within this area is concluded to be approximately \$48.8-billion.
3. Special Benefit Lift. The appraisal concludes with incremental increases in individual property values (which are presented numerically in the report) summarized as follows:

| Property Class | Percentage of Property Value Increase | |
|------------------------------|---------------------------------------|--------|
| | High | Low |
| Land value | <4.00% | <0.50% |
| Office/Retail | <3.50% | <0.50% |
| Hotel | <3.50% | <1.00% |
| Apartment/Subsidized housing | 3.00% | 0.00% |
| Residential condominium | 3.00% | <0.50% |
| Waterfront | <4.00% | <0.50% |
| Special purpose | <0.50% | <0.50% |

4. Special Benefit Amount v. Cost. The total of the individual assignments approximates a \$415-million special benefit over these properties. This is compared and contrasted to the LID cost of \$320-million. Legally the cost of the LID cannot exceed the benefit provided.
5. After Valuation. The incremental increases in value calculated are added to the Before value to create an After value, which in aggregate comes to \$49.2-billion.

Conceptual and Methodological Issues

1. The basic construct of the LID and its application to Waterfront Seattle

LIDs are typically reserved for the funding of utility improvements and infrastructure within a specific neighborhood or market, and represent a means by which a group of property owners can receive and pay for improvements that might otherwise be avoided by a municipality; perhaps the project in question is/has been deemed too specific, or not a priority, to cover with general funding. The mechanism essentially allows property owners to pay for the LID with the obvious value lift associated with, say, the provision of sewer or a road. Under RCW 34.44.010, "*The cost and expense [of improvements made through an LID] shall be assessed upon all the property [within the boundaries of the LID] in accordance with the special benefits conferred thereon.*" (bracketed language added). The value lift associated with provision of the infrastructure (say water, power or sewer) is typically easily measured, and *special benefits*¹ are not hard to prove and calculate.

The current proposal, to fund a regional park through this mechanism, represents a special challenge for an appraiser, as the special benefit associated with an amenity such as a publicly-owned park is not obviously beneficial in the same fashion as a utility extension, representing more of an aesthetic, and widely dependent upon factors unrelated to the mere presence of the project (such as operations, public use, etc.). The project becomes even more challenging, when the park is to be located in a regional economic center, and funding requirements require benefit assessment across several downtown blocks that lie uphill from the amenity.

2. Special Benefit

Background

A successful LID is based on the correct identification of the *Special Benefit* created. The term Special Benefit is both a legal term and a term of art in the appraisal industry. The most succinct definition of Special Benefit is provided as a WPI instruction:

"Special benefits are those that add value to the remaining property as distinguished from those arising incidentally and enjoyed by the public generally.

WPI 150.07.01

The distinction between Special and General benefits is then a key consideration for an appraiser in the application of benefit deemed special. Eaton stresses the importance of the proper identification of special benefit, and the necessity for also identifying general benefit for the simple purposes of appropriate benefit allocation; if a project creates both special and general benefits, only the special increment that accrues to certain properties can be part of the assessment:

It should be noted that project enhancement...may be composed of general benefits, special benefits, or a combination of the two. Thus it may be necessary...to allocate the beneficial effects of project enhancement between special and general benefits and to consider only the special benefits in estimating the value of the property in the after situation."

Real Estate Valuation in Litigation, Page 326, by Jim Eaton MAI.

¹ See subsequent discussion on the definition of a special as opposed to general benefit.

The standard dictionary definition of special, an adjective, is *better, greater, or otherwise different from what is usual*. Synonyms include *exceptional, unusual, singular, uncommon, notable, noteworthy, remarkable, outstanding, unique, more*. In practical application though, the precise meaning of Special Benefit has been debated in the courts, particularly in eminent domain cases, with the same principles applying to LIDs. One of the clearest and oft-cited distinctions of special and general benefit is found in the following court decision:

"The most satisfactory distinction between general and special benefit is that general benefits are those which arise from the fulfillment of the public object..., and special benefits are those which arise from the peculiar relation of the land in question to the public improvement"

United States v. 2,477.79 Acres of Land, as quoted in Nicols

There are various common sense applications of special benefits. They cannot be "*remote, speculative or imaginary*" (WPI). In addition the appraiser should consider when the benefits will actually be received.

The fair market value of the remainder, as of the date of valuation, shall reflect the time when the damage or benefit caused by the proposed improvement or project will be actually realized. Uniform Eminent Domain Code 1974, §1006, p.10.11. as quoted in Real Estate Valuation in Litigation by Jim Eaton, MAI

3. The Valbridge Study

The Valbridge study presented on behalf the city fails to meet key tests of credibility in the application of Special Benefit. At issue are the following general categories of analysis:

a. Special Benefit Definition and Distinction from General Benefits

The appraisal:

- Makes no attempt to assess General Benefit, and does not offset the apparent measure of special benefits with general benefits. The appraisal ignores the basic equation:
 - Total Benefit minus General Benefit = Special Benefit.

If the evidence of benefit presented by the appraiser is to be believed, it is apparent that General Benefits have been included in the Special Benefit Study.

Beyond the lack of recognition of General Benefits, it is noted that the very nature of the public improvement – a regional park - and the wide LID boundaries described in the report, suggests that entire project could be described as offering almost entirely general benefit. Almost by definition, if \$48.1B of real estate is impacted by the project, the benefits provided would seem very general and widespread in nature.

b. Method of Assessment

The method of assessment used – an application of a percentage to a concluded before value – does not represent a true measure of benefit. This is considered a short-cut, akin to a "strip-take" analysis, typically reserved for projects with minor damages - small easements or takes of strips of land. Its application to a special benefit study represents an improper method of analysis as the value lift should be calculated, not applied. The appraiser should evaluate the value of the properties without the project, and then with it, and measure the difference. Here the appraiser has not met the burden of proof of a value lift, as the latter is concluded and added, not measured as a difference.

c. Before & After Descriptions

There is very little clarity in the appraisal as to the precise difference between the Before and After. The appraisal acknowledges that the viaduct is down in the before, but it is not clear how the value lift associated

with the viaduct removal is built into the before value estimates. Further the level of improvement that would be undertaken by the city, but for the LID, is not described in detail. With no side-by-side comparison of images, it is not possible to know what was in the mind of the appraiser making an assessment for provision of an “extra” amenity. Since the entire analysis relates to an aesthetic difference, appropriate renderings of the aesthetic difference created would seem to be critical for proper analysis.

The issue also extends to cost. The LID is noted as a \$320,000,000 project. Yet the increment associated with the LID cost versus the investment that would occur anyway is not presented. The impression – that \$320,000,000 would be invested but for the LID – would appear to be an inaccurate presentation. It would appear that the appraiser incorrectly measures the benefits resulting from a \$320,000,000 investment, as opposed to those accruing from a smaller investment, representing the LID extra.

There is also no value discussion pertaining to timing; do assessments consider when the actual park will be complete, and therefore when the benefits, if present, will accrue? The interim condition and associated construction is likely to be disruptive: some properties will be “specially” as opposed to “generally” impacted by construction activity in terms of noise, dust, etc. Proximity, which is stressed as a special benefit, would represent a special negative as concerns related and proximate construction activity.

d. Assessments are not supported by empirical data

The evidence presented for special benefit is almost entirely anecdotal. The appraisal does not provide discrete and empirical before and after analyses of purportedly similar public projects across a wide-range of property takes. Anecdotal opinions of before and after, without apparent adjustment for general benefits, correction of blight issues and the passage of time, do not provide a convincing case for the assignment of a 0.5 to 4% value increase to a full spectrum of property types across a wide downtown area, many blocks away from the improvement.

Moreover, the level of assignment applied is largely immeasurable from an appraisal perspective. Application of a 0.5-4% value change on a general mass appraisal basis falls well below the standard of error already present in such an analysis – in effect the analysis reveals the benefit is immeasurable at this level. Even if individual “MAI appraisals” were completed on every individual property, it would be difficult if not impossible to measure the benefit of a park improvement a few blocks away to say, for instance, a downtown office tower. Take for example the 1201 Third Avenue office tower, valued at \$716,942,500 - it would be hard to rationalize discrete adjustments of the magnitude presented here amid the myriad impacts on value such as market conditions, tenant sizes and rollovers, and different views and floor levels. The majority of the tower has no view of the park and no special access to it; a lease decision here would not logically include serious “special” consideration of a park three blocks away, and at a different elevation. Suggesting the property increased to \$721,442,000 (a \$4,500,000 or 0.6277% difference) on account of park proximity would seem to define a “*remote, speculative or imaginary*” adjustment.

e. Assessments include percentage assignments to improvement value

The assessments are based on a percentage assignment to total property value, in place in 2018. However, the project presented relates, purportedly, to a proximity benefit; this is a location factor, which is a land characteristic. Benefits from proximity do not accrue to improvement value, as the “bricks and mortar” are unchanged. This creates an inequity in the side-by-side comparison of improved and vacant land parcels, and one that is particular well illustrated in case of development properties that will imminently be developed. This methodological error is essentially a function of relying upon an across-the-board percentage adjustment, as compared to truly measuring before and after differences. Two examples are presented below:

Example 1: 1201 Third high-rise office v. 1206 Third across the street, high-rise under construction.

| Property | Land Size | Building Size | Assessment | \$/sf land | \$/sf building |
|------------|-----------|---------------|-------------|------------|----------------|
| 1201 Third | 56,400sf | 1,130,000sf | \$4,500,000 | \$80/sf | \$3.98/sf |
| 1206 Third | 43,680sf | 720,000sf* | \$1,023,000 | \$23/sf | \$1.42/sf |

* under construction; will be complete by 2023

1201 Third is located one block further from the park than 1206, and at a higher elevation. The higher assessment here is inequitable.

Example 2: Cyrene Apartments at Alaskan and University v. Woldson parking lot at 1100 Alaskan (with proposed development).

| Property | Land Size | Units | Assessment | \$/sf land | \$/unit |
|---------------|-----------|------------|-------------|------------|---------------|
| 50 University | 17,333sf | 169-units | \$2,923,000 | \$169/sf | \$17,296/unit |
| 1100 Alaskan | 35,233sf | 256-units* | \$1,233,000 | \$35/sf | \$4,816/unit |

* proposed; will probably be complete by 2023

Both properties have the same orientation to the park and lie at the same elevation. The higher assessment to the Cyrene Apartments at 50 University is thus inequitable.

Conclusion

In conclusion, the Special Benefits study presents several major issues. These include:

- The before condition is not adequately described; side-by-side illustrations of the before and after are not presented. This kind of descriptive detail would appear necessary for the purposes of evaluating an amenity or aesthetic difference to be specifically created through funding.
- Special benefits are merely assigned, not measured. The study does not provide a measurement of after value, with the project in place, that is independent of the before value, and takes into consideration delay until receipt.
- Purportedly measured benefits are not allocated into “general” and “special” benefits. Labelling all benefits as special does not appear credible for a regional park.
- Benefits associated with proximity should be evaluated in the form of a lift in land value. The methodology used (a broad percentage assessment applied to total property value) results in inequitable assignments between properties.

The more general issue is the difficulty of trying to forecast a benefit that is special to a park that has regional appeal. The more common application of an LID is for extension of infrastructure; and here special benefits can be practically and incrementally assessed to unserved property brought to a development condition through the provision of infrastructure. However, the application of the special benefit methodology to a downtown area for a park amenity, represents a challenging and potential impossible assignment, if it is to be free of speculation and imagination.

Respectfully submitted,

Anthony Gibbons, MAI, CRE

RE•SOLVE

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Attachment
H

City of Seattle Hearing Examiner
EXHIBIT

ADMITTED
DENIED

FILE# CWF-0 076

9

January 27, 2020

Molly A. Terwilliger
Attorney at Law
Yarmuth LLP
1420 Fifth Avenue, Suite 1400
Seattle, Washington 98101

RE: **Waterfront Seattle LID Special Benefits Report – File Ref: 19-0101 – November 18, 2019**
Authored by Valbridge.

Dear Ms. Terwilliger:

At your request, I have conducted this high-level review of the Valbridge mass appraisal study prepared for the purposes of documenting Special Benefit resulting from the city Waterfront Seattle project. The letter is intended as a consultation, and not as an appraisal review. At some point it may be appropriate to address individual valuations on a parcel by parcel basis, but that is not the concern of this letter. This consultation looks at the methodology employed and the general conclusions made in the presentation of the study. Please note, as a disclosure, I am part owner of a condominium located within the boundaries of the LID. I do not consider this to be a conflict in providing an objective review of the study methodology.

Valbridge Appraisal

Valbridge presents several conclusions, which briefly may be re-stated as:

1. **LID Boundaries.** Valbridge identifies a total of 6,238 properties with potential special benefits within an LID boundary that generally comprises the entire downtown area lying between Puget Sound, I-5, Denny Way, and S. Massachusetts Street.
2. **Property Valuation.** The value of property within this area is concluded to be approximately \$56.3-billion.
3. **Special Benefit Lift.** The appraisal concludes with incremental increases in individual property values (which are presented numerically in the report) summarized as follows:¹

| Estimated Special Benefit Ranges By Property Class | | |
|--|---------------------------------------|--------|
| Property Class | Percentage of Property Value Increase | |
| | High | Low |
| Land value | <4.00% | <0.50% |
| Office/Retail | <3.50% | <0.50% |
| Hotel | <3.50% | <1.00% |
| Apartment/Subsidized housing | 3.00% | 0.00% |
| Residential condominium | 3.00% | <0.50% |
| Waterfront | <4.00% | <0.50% |
| Special purpose | 0.10% | 1.00% |

¹ This exhibit is lifted from the appraisal. Note that the "Special Purpose" category has the high and low figures reversed.

4. Special Benefit Amount v. Cost. The total of the individual assignments approximates a \$448-million special benefit over these properties. This is compared and contrasted to the LID cost of \$346-million. Legally the cost of the LID cannot exceed the benefit provided. In addition, the city has limited the assessment to \$175,500,000.
5. After Valuation. The incremental increases in value calculated are added to the Before value to create an After value, which in aggregate comes to \$56.8-billion.

Conceptual and Methodological Issues

1. The basic construct of the LID and its application to Waterfront Seattle

LIDs are typically reserved for the funding of utility improvements and infrastructure within a specific neighborhood or market, and represent a means by which a group of property owners can receive and pay for improvements that might otherwise be avoided by a municipality; perhaps the project in question is/has been deemed too specific, or not a priority, to cover with general funding. The mechanism essentially allows property owners to pay for the LID with the obvious value lift associated with, say, the provision of sewer or a road. Under RCW 34.44.010, "*The cost and expense* [of improvements made through an LID] *shall be assessed upon all the property* [within the boundaries of the LID] *in accordance with the special benefits conferred thereon.*" (bracketed language added). The value lift associated with provision of the infrastructure (say water, power or sewer) is typically easily measured, and *special benefits*² are not hard to prove and calculate.

The current proposal, to fund a regional park through this mechanism, represents a special challenge for an appraiser, as the special benefit associated with an amenity such as a publicly-owned park is not obviously beneficial in the same fashion as a utility extension, representing more of an aesthetic, and widely dependent upon factors unrelated to the mere presence of the project (such as operations, public use, etc.). The project becomes even more challenging, when the park is to be located in a regional economic center, and funding requirements require benefit assessment across several downtown blocks that lie uphill from the amenity.

2. Special Benefit

Background

A successful LID is based on the correct identification of the *Special Benefit* created. The term Special Benefit is both a legal term and a term of art in the appraisal industry. The most succinct definition of Special Benefit is provided as a WPI instruction:

"Special benefits are those that add value to the remaining property as distinguished from those arising incidentally and enjoyed by the public generally.

WPI 150.07.01

The distinction between Special and General benefits is then a key consideration for an appraiser in the application of benefit deemed special. Eaton stresses the importance of the proper identification of special benefit, and the necessity for also identifying general benefit for the simple purposes of appropriate benefit allocation; if a project creates both special and general benefits, only the special increment that accrues to certain properties can be part of the assessment:

It should be noted that project enhancement...may be composed of general benefits, special benefits, or a combination of the two. Thus it may be necessary...to allocate the beneficial effects

² See subsequent discussion on the definition of a special as opposed to general benefit.

of project enhancement between special and general benefits and to consider only the special benefits in estimating the value of the property in the after situation.”

Real Estate Valuation in Litigation, Page 326, by Jim Eaton MAI.

The standard dictionary definition of special, an adjective, is *better, greater, or otherwise different from what is usual*. Synonyms include *exceptional, unusual, singular, uncommon, notable, noteworthy, remarkable, outstanding, unique, more*. In practical application though, the precise meaning of Special Benefit has been debated in the courts, particularly in eminent domain cases, with the same principles applying to LIDs. One of the clearest and oft-cited distinctions of special and general benefit is found in the following court decision:

“The most satisfactory distinction between general and special benefit is that general benefits are those which arise from the fulfillment of the public object..., and special benefits are those which arise from the peculiar relation of the land in question to the public improvement”

United States v. 2,477.79 Acres of Land, as quoted in Nicols

There are various common sense applications of special benefits. They cannot be “*remote, speculative or imaginary*” (WPI). In addition the appraiser should consider when the benefits will actually be received.

The fair market value of the remainder, as of the date of valuation, shall reflect the time when the damage or benefit caused by the proposed improvement or project will be actually realized. Uniform Eminent Domain Code 1974, §1006, p.10.11. as quoted in Real Estate Valuation in Litigation by Jim Eaton, MAI

3. The Valbridge Study

The Valbridge study presented on behalf the city fails to meet key tests of credibility in the application of Special Benefit. At issue are the following general categories of analysis:

a. *Special Benefit Definition and Distinction from General Benefits*

The appraisal:

- Makes no attempt to assess General Benefit, and does not offset the apparent measure of special benefits with general benefits. The appraisal ignores the basic equation:
 - Total Benefit minus General Benefit = Special Benefit.If the evidence of benefit presented by the appraiser is to be believed, it is apparent that General Benefits have been included in the Special Benefit Study.

Beyond the lack of recognition of General Benefits, it is noted that the very nature of the public improvement – a regional park - and the wide LID boundaries described in the report, suggests that entire project could be described as offering almost entirely general benefit. Almost by definition, if \$48.1B of real estate is impacted by the project, the benefits provided would seem very general and widespread in nature. The appraisal even uses the term “generally” to discuss assigned Benefits in many areas of the Special Benefit Study³.

b. *Method of Assessment*

The method of assessment used – an application of a percentage to a concluded before value – does not represent a true measure of benefit. This is considered a short-cut, akin to a “strip-take” analysis, typically

³ Example, page 81, second to third line, third paragraph: “Market value estimates generally are 2% to slightly above 3% higher than estimated value without the project.” Another example, related to a comparison project, page 51, third paragraph, line 8: “Properties closer to the park also generally command a higher sale price.”

reserved for projects with minor damages - small easements or takes of strips of land. Its application to a special benefit study represents an improper method of analysis as the value lift should be calculated, not applied. The appraiser should evaluate the value of the properties without the project, and then with it, and measure the difference. Here the appraiser has not met the burden of proof of a value lift, as the latter is concluded and added, not measured as a difference.

c. Before & After Descriptions

There is very little clarity in the appraisal as to the precise value difference arising as a consequence of a comparison of the Before and After. The appraisal acknowledges that the viaduct is down in the before, but it is not clear how the value lift associated with the viaduct removal is built into the Before value estimates. Further it is also not clear how the level of improvement that would be undertaken by the city, but for the LID, is considered. Current values do not represent this condition, and presumably the appraiser is of the opinion that completed streets, street trees and landscaping, sidewalks and parking (many features of which are present in the After Condition) would have no impact on current values. It is unclear how the perceived additional aesthetic actually associated with the "After Improvements" is then translated into a 0.5 or 4% value increment, particularly when compared to the completion of the Before Condition with zero impact.

Three specific "before and after" issues are worthy of additional discussion.

i. Parking

With the addition of park improvements, there will be a loss in parking. This is not documented in detail in the report, and city-sources provide little clarification with regard to this valuable resource. In the August 9, 2017 Feasibility Study, the analysis of parking losses is limited to this statement, with a promise of follow up in the final study:

"Additionally, some parking loss will occur as a result of the project. This loss will be documented as part of the more detailed special benefit/proportionate assessment study." P. 3, 8/9/17 Feasibility study

The follow-up and documentation would be important, as clearly a loss of parking would be regarded as detrimental to many businesses, particularly retailers. However there is no follow-up in the final report, and the treatment of parking remains glossed over and not documented, contrasting with the purported precision of measurement of value for a landscaping aesthetic, an attribute of far-less deterministic value. A report detailing apparently minute impacts for more plants and park improvements, should also consider, in the same incremental manner, those associated with lost parking. The report, however, falls well short of this mark, merely paying lip-service to the issue, without incrementally measuring the impact. The only valuation commentary on parking presented in the study, none of which comes with any precise value-measurement, analysis or location specific value offset, is limited to the following two statements:

- Page 7: *"...some parking losses along Alaskan Way in the waterfront area will occur due to the project and this is considered in the analysis."*
- Page 83/4: *In this analysis, the maximum change in value for the waterfront economic entities is 3%. These conclusions recognize that, while the properties benefit from enhanced relative location arising from the project, there is also a reduced amount of available parking in the vicinity, an important factor considered in the analysis."*

Other sources offer some clues as to how much parking may be eliminated, and if correct, it is substantial. The 2016 FEIS notes that:

“The Preferred Alternative would permanently remove approximately 57 on-street parking spaces along Alaskan Way, 377 parking spaces that existed in the Alaskan Way Viaduct footprint, 15 on-street spaces on Bell Street, 3 spaces on Union Street, and 1 space on S. Main Street. This loss of 453 on-street parking spaces represents approximately 25 percent of the on-street parking supply in the study area”. Page 44 (pdf) Executive Summary 10/16 Final EIS Waterfront Seattle.

In order to properly measure the full impact of the Waterfront project, parking losses need to be analyzed and the loss in value measured on a location by location basis.

ii. Cost

The issue also extends to cost. The LID is noted as a \$346,000,000 project. Yet the increment associated with the LID cost versus the investment that would occur anyway is not presented. Moreover this is no spatial presentation concerning where dollars are invested, as clearly they are not equal to all areas of the “park”. It stands to reason that if the improvements add value, more improvements in localized situations should add more value, and less in other cases. This in particular would underscore the issue of “Special”, as property in areas with no direct investment in the surrounding blocks challenge the notion of a received Special as opposed to General Benefit.

i. Timing

There is also no value discussion pertaining to timing; do assessments consider when the actual park will be complete, and therefore when the benefits, if present, will accrue? The interim condition and associated construction are likely to be disruptive: some properties will be “specially” as opposed to “generally” impacted by construction activity in terms of noise, dust, etc. Proximity, which is stressed as a special benefit, would represent a special negative as concerns related and proximate construction activity.

d. Assessments are not supported by empirical data

The evidence presented for special benefit is almost entirely anecdotal. The appraisal does not provide discrete and empirical before and after analyses of purportedly similar public projects across a wide-range of property types. Anecdotal opinions of before and after, without apparent adjustment for general benefits, correction of blight issues and the passage of time, do not provide a convincing case for the assignment of a 0.5 to 4% value increase to a full spectrum of property types across a wide downtown area, many blocks away from the improvement.

Moreover, the level of assignment applied is largely immeasurable from an appraisal perspective. Application of a 0.5-4% value change on a general mass appraisal basis falls well below the standard of error already present in such an analysis – in effect the analysis reveals the benefit is immeasurable at this level. Even if individual “MAI appraisals” were completed on each property, it would be difficult if not impossible to measure the benefit of a park improvement a few blocks away to (for example) a downtown office tower.

Take for example the 1201 Third Avenue office tower, valued at \$732,527,000 - it would be hard to rationalize discrete adjustments of the magnitude presented here amid the myriad impacts on value such as market conditions, tenant sizes and rollovers, and different views and floor levels. The majority of the tower has no special view of the park and no special access to it; a lease decision here would not logically include serious “special” consideration of a park three blocks away, and at a different elevation. Suggesting the property increased to \$737,043,000 (a \$4,516,000 benefit or 0.62% difference) on account of park proximity would seem to define a “remote, speculative or imaginary” adjustment. If these values were rounded to the nearest \$5M, not an unreasonable level of rounding for a property worth over \$700M, both Before and After estimates would round to the same number, essentially eliminating the “measurement”.

e. Assessments include percentage assignments to improvement value

The assessments are based on a percentage assignment to total property value, in place in 2020. However, the project presented relates, purportedly, to a proximity benefit. This is a location factor, which is a land characteristic. Benefits from proximity do not normally accrue to improvement value, as the “bricks and mortar” are unchanged. This creates an inequity in the side-by-side comparison of improved and vacant land parcels, and one that is particular well illustrated in case of development properties that will imminently be developed, with a completed project in place by the time the park is complete in 2024. This methodological error is essentially a function of relying upon an across-the-board percentage adjustment, as compared to truly measuring before and after differences.

An example is provided in a comparison of the preliminary and final LID studies as pertain to one building that was under construction during the interval between receipt of the reports. In the Preliminary version, when the 2 + U tower was under construction, the main site for this building⁴, at 1201 Second Avenue, # 197470-0175 was assessed as vacant. As of the date of the Final Study, the building had been largely constructed, although it remains unoccupied. Now with the value of the improvements added, the assessment increased 561% between the Preliminary and Final. See below.

| LID Study Issue: Comparison of Preliminary and Special Benefit | | | | | |
|---|------------|-----------|-------------|------------|----------------|
| Property | Land Size* | Future sf | Assessment | \$/sf land | \$/sf building |
| <i>Preliminary Study</i> | | | | | |
| <i>Low, as site treated vacant</i> | | | | | |
| 2 + U Site* | 25,760sf | 701,000sf | \$622,000 | \$24/sf | \$0.89/sf |
| <i>Final Study</i> | | | | | |
| <i>Now, with building nearly complete</i> | | | | | |
| 2 + U Site* | 25,760sf | 701,000sf | \$4,113,000 | \$160/sf | \$5.87/sf |

* LID study has an error; there is an additional half block still treated as vacant.

Had the construction been delayed a year, the property would have escaped this increase. And other vacant property, particularly parcels intended for imminent development, and there are many of them, will still be able to take advantage of this methodological error. An example of this is provided by the following comparison:

Example: Cyrene Apartments at Alaskan and University v. Woldson parking lot at 1100 Alaskan (with proposed development).

| Property | Land Size | Units | Assessment | \$/sf land | \$/unit |
|---------------|-----------|------------|-------------|------------|---------------|
| 50 University | 15,413sf | 169-units | \$3,033,000 | \$197/sf | \$17,947/unit |
| 1100 Alaskan | 28,306sf | 257-units* | \$1,312,000 | \$46/sf | \$5,105/unit |

* proposed; will probably be complete by 2024

Both properties have the same orientation to the park and lie at the same elevation. The higher assessment to the Cyrene Apartments at 50 University is thus inequitable as compared to 1100 Alaskan, which is planned to have a larger apartment complex constructed upon it by the time the park is complete in 2024.

⁴ There is an error in the study. The appraiser is treating the half-block used for development of this tower, as though it were still vacant – Assessed parcels 197470-0190 and 197470-0210.

Conclusion

In conclusion, the Special Benefits study presents several major issues. These include:

- The Before condition is not adequately captured in the appraisal. The Before valuation pertains to “current” 2020 values, without the benefit of completed street improvements, as represented in renderings in the appraisal of the Before Condition. The inevitable conclusion is that the lift, if any, that property values would experience with completed streets and landscaping in the Before, has inadvertently been included as a “Special Benefit”, or has no value.
- Special benefits are merely assigned, not measured. The study does not provide a measurement of After value, with the project in place, that is independent of the Before value, and takes into consideration delay of benefits until year of receipt.
- The benefits supposedly measured are not allocated into “general” and “special” benefits. Labelling all benefits as “special” does not appear credible for a regional park, or for an LID boundary that encompasses all of downtown.
- Benefits associated with proximity should be evaluated in the form of a lift in land value. The methodology used (a broad percentage assessment applied to total property value) results in inequitable assignments between properties. All properties that will be constructed and delivered to the market by 2024 have escaped a significant assessment, even though they may be identically positioned to otherwise currently built-product with regard to the Waterfront Project when it is complete.

The more general issue is the difficulty of trying to forecast a benefit that is special to a park that has regional appeal. The more common application of an LID is for extension of infrastructure; and here special benefits can be practically and incrementally assessed to unserved property brought to a development condition through the provision of infrastructure. However, the application of the special benefit methodology to a downtown area for a park amenity, represents a challenging and potential impossible assignment, if it is to be free of speculation and imagination.

Respectfully submitted,

Anthony Gibbons, MAI

Ref: 20032-Waterfront LID

ADMITTED
DENIED

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FILE# CWF-0076

Attachment

1

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April 15, 2019

Marshall Foster, Director
Office of the Waterfront
City of Seattle
Marshall.foster@seattle.gov

Re: The City's final Special Benefit Study and the Waterfront Landings
Condominiums

Dear Marshall:

This letter is a companion to the letter submitted to you by appraiser Anthony Gibbons on behalf of Waterfront Landings Condominiums ("WLC). I write to emphasize that there is no legal basis for the City's final Special Benefit Study to ignore, as does the preliminary Special Benfit Study, the *adverse impacts* of the Waterfront Seattle Project on the fair market value of the WLC.

Mr. Gibbons letter addresses the flaws in the Special Benefit Study's valuation of the units at the WLC. In particular, the massive structure that will support the extension of Pine Street to the waterfront will have a significant adverse effect on the fair market value of many units within WLC, and the City's preliminary Special Benefit Study pretends this adverse effect does not exist.

The City apparently attempts to justify its decision to disregard the adverse impacts of this structure because the City may be funding the structure from sources other than the LID itself. The Waterfront Seattle Project is a single project, however, and the extension of Pine Street is an integral part of the Project, as the City's own literature has recognized from the outset. A court will not countenance a Special Benefit Study that determines special benefit by considering only the aspects of a project that increase fair market value while ignoring the aspects of a project that diminish fair market value.

Whether there is *any* "special benefit" to the WLC must be determined by taking into account the fact that their "after" condition will include the extension of Pine Street to Alaskan Way. This massive structure immediately adjacent to WLC will block views and access and thus have a significant adverse impact on the fair market value of the WLC, while removal of the Viaduct will not increase fair market value because the Viaduct is landward of the WLC and therefore had no effect on views or access to begin with.

April 15, 2019

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I urge the City to prepare a final Special Benefit Study that does not manipulate fair market value by disregarding the adverse impacts of the Waterfront Seattle Project on the Waterfront Landings Condominiums.

Sincerely,

Patrick J. Schneider

Cc: Waterfront Landings Condominiums Board
Anthony Gibbons